

COVID-19 PUBLIC HEALTH EMERGENCY FLEXIBLE AND EVOLVING RESPONSE PLAN

A. INTRODUCTION

This policy addresses issues the City can anticipate due to the coronavirus, also known as COVID-19. It is intended to be flexible, and subject to on-going review and revision based on circumstances and developing knowledge. The City has carefully considered each of the following:

- Needs and welfare of City employees and their families.
- Imperatives to maintain continuity of essential City services to protect the community.
- Operational needs.
- Union proposals.
- The scope of the City's and unions' duty to bargain concerning mandatory subjects of bargaining in this circumstance.
- Exigencies of this unique, public health and employee health emergency.
- Applicable Oregon and federal law.
- Ability to implement changes to this policy and City practices to keep pace with public health developments.

This policy will be revised periodically, and shall be maintained as a "living" policy subject to adaptation based on lessons learned, innovations and need for responsiveness to evolving circumstances.

Employees should consult their Department Head for clarification if required, or to offer ideas or proposals beneficial for City consideration.

Actions necessary to protect employee health and public health will be guided by state and federal public health authorities. Should any of the following occur, the City will determine the response most appropriate in the circumstance *case-by-case*:

- An employee has been exposed to an individual who has tested positive for COVID-19 (as confirmed by the CDC or other authorized body) and is directed to quarantine by a public health official;
- An employee has tested positive for COVID-19 (as confirmed by the CDC or other authorized body);
- A family member in an employee's immediate household has tested positive for COVID-19 (as confirmed by the CDC or other authorized body); or
- An employee or a member of the employee's immediate household has symptoms of flu-like illness or is recovering from flu-like symptoms.

Any employee affected in any of these ways is required to notify the Department Head or the City Manager.

B. GENERAL POLICY:

The City will follow the guidance of the Oregon Health Authority (OHA), Centers for Disease Control (CDC), and Linn County Health authority. The City will adhere to the recommendations of these public health experts regarding preventative measures including social distancing, quarantines and curtailment of non-essential City functions. The City will adjust as the recommendations of these agencies evolve.

This policy applies to all employees, and specifically those who fall into any of these categories:

1. An employee or an employee's dependent or household member who is under observation, being monitored or has been diagnosed with COVID-19;
2. An employee or a household member identified by the CDC as presenting risk for serious complications from COVID-19 who has been advised by a medical professional or Public Health Authority not to leave home or not to attend work;
3. An employee whose supportive services for a dependent (such as medical transportation and in-home care) are unavailable due to documented exposure of COVID-19, and the employee must care for that dependent;
4. An employee whose public or alternative transportation is unavailable due to documented exposure of the employee to COVID-19 and that employee is unable to travel to and from work.

In the event that the CDC, the OHA, or a Linn County Health authority directs the City to take advanced steps such as social distancing, quarantines or curtailment of non-essential City functions, this policy will apply to those who perform non-essential services as determined *case-by-case* in the City's discretion. In this event, the City Manager will issue appropriate guidance for the continuation of essential services, staff reductions and paid/unpaid leave alternatives. At a minimum, employees who perform or directly support police, water, water treatment, payroll and human resources functions will be deemed essential during this COVID-19 pandemic. Certain municipal court employees may be deemed essential for the hours required to perform those services required by the Judge.

C. DEFINITIONS:

Novel Coronavirus / COVID-19: A respiratory disease caused by a novel (new) coronavirus. The virus has been named "SARS-CoV-2". The disease it causes has been named "coronavirus disease 2019" ("COVID-19").

Curtailed Operations: A change or reduction to the routine services, service levels, activities and functions of an office or department.

Household Member: Any person who resides in the employee's household.

Immediate Family: As defined by Oregon Family Leave Act: the spouse, same-gender domestic partner, custodial parent, non-custodial parent, adoptive parent, foster parent, biological parent, step parent, parent-in-law, parent of same-gender domestic partner, grandparent or grandchild of the employee, or a person with whom the employee is or was in a relationship of *in loco parentis*. It also includes the biological, adopted, foster or

stepchild of an employee or the child of an employee's same-gender domestic partner. For the purposes of OFLA, an employee's child in any of these categories may be either a minor or an adult at the time serious health condition leave, sick child leave, or leave under ORS 659.159(1)(e) is taken.

Isolation: A method to separate sick people with a contagious disease from people who are not sick. Isolation is a term applied to infection control actions taken by public health officials to stop or slow down the spread of highly contagious disease.

Medical Advice: Information or advice received from a healthcare professional.

Quarantine: Quarantine separates and restricts the movement of people who have been exposed to a contagious disease pending confirmation of illness which warrants isolation.

Social Distancing: Measures taken to restrict when and where people gather to stop or slow the spread of infectious diseases. Social distancing measures include limiting large groups of people coming together, closing buildings and canceling events.

Tele-work: A work arrangement in which the employee works outside the normal work site, generally working from home.

Linn County Health Authority: The County health authority for public health concerns in Linn County including the County Health Director and the Oregon Health Authority.

D. POLICY REQUIREMENTS AND GUIDELINES:

1. Priorities and City Expectations: The health and safety of City employees are among the City's highest priorities. The City and employees must cooperate in adherence to the following:
 - a. Based on concern that an employee has been exposed to the COVID-19 virus the City may require the employee to be evaluated by a physician or public health authority. The City will cooperate with medical experts and the employee will cooperate with both the City and health authorities and healthcare providers regarding exclusion from the workplace and other precautions.
 - b. If there is a reasonable basis to suspect exposure, the City may ask an employee questions to determine the employee's threat level to others or possible need for self-quarantine.
 - c. If there is a reasonable basis based on current CDC guidelines to suspect that an employee may have COVID-19, the City may send the employee home. The City may take reasonable measures to protect the employee, other employees, citizens, customers and the City. Current CDC guidelines define reasonable basis as including that an employer has credible information suggesting an employee may have been infected with COVID-19, an employee was exposed to an affected area or in close or extended contact with someone tested positive for COVID-19, or an employee has been in

close or extended contact with someone who has recently visited a high risk location per CDC guidance.

- d. The City requires that employees cooperate with and adhere to infection control measures (e.g., washing hands, coughing etiquette, social distancing and other measures publicized by public health authorities). The City will provide necessary personal protective equipment to those employees required to use it on the job.
- e. CDC guidance is that the City should require that employees self-disclose and self-quarantine after: travel to high-risk locations (as defined by the CDC), and after exposure to a family member or other close contact (roommate, physician) who has tested positive for COVID-19 or recently visited a high risk location identified by CDC guidance.
- f. Consistent with CDC guidance, the City expects that all employees will strictly cooperate and comply with CDC guidance as publicized periodically, including:
 - ◆ Staying home when sick, respiratory etiquette, and hand hygiene,
 - ◆ Performing routine environmental cleaning,
 - ◆ Taking appropriate steps before traveling to affected areas consistent with public health authority guidance, and
 - ◆ Cooperating fully with this policy and City expectations that employees will notify their supervisors if they have family members with COVID-19.
- g. All employees will cooperate with the City to insure continued compliance with OSHA requirements. OSHA governs infectious disease under the general duty clause of Oregon and federal law. If there is a recognized hazard, the City must take reasonable steps to prevent and abate the hazard. The City will conduct a hazard assessment to determine risk of infection and adopt appropriate protective procedures (e.g., workplace sanitation and, where there is credible threat of infection, quarantine).
- h. When it becomes reasonable to do so, the City will require an employee to stay home. It may be reasonable to require an employee to stay home if the employee meets the criteria set forth by the CDC. The Equal Employment Opportunity Commission's guidance does not forbid an employer from requiring an employee who has COVID-19 or who has been exposed to COVID-19 to stay home because such an employee poses a "direct threat" to others.
- i. Permitting employees to return to work will occur when reasonable. If there is a reasonable basis to suspect an employee was exposed to the virus, CDC recommends the employee remain away from the workplace for at least the 14-day quarantine period. To alleviate burdens on the healthcare system the City will not require a medical certification in order for such an employee to return to work as a general rule. However, if an employee has taken leave under the FMLA, is considered a "direct threat" under the ADA by virtue of their exposure to COVID-19, or is seeking an accommodation, the City may

request a medical certification *case-by-case* as the City deems appropriate. In addition, if certification is not possible and there is a business need to return an employee to work, the City may impose other reasonable requirements to help ensure the employee is not infected (e.g., symptom free during the incubation period or, where the employee was symptomatic, that the employee be symptom free for at least 14 days without medication, and/or a temperature test before returning to work).

2. Administrative and Protected Leave: Employees who fall into one of the four (4) categories listed in the General Policy section above and are not authorized to perform tele-work may use Administrative Leave without pay or any paid leave accrual to which the employee is entitled. Upon proper OFLA or FMLA certification these employees will be granted protected leave in accordance with law.
3. Discretionary Leave for Convenience: The City will strive to cooperate with Employees who do not fall into one of the four (4) categories listed in the General Policy section above who wish to be absent from work for personal, family reasons. Consistent with City operational needs and strategies to permit reasonable accommodations, the City will make *case-by-case* considerations and authorize unpaid leave, paid leave, intermittent paid leave and similar arrangements in order to meet employee needs such as closure of schools and childcare facilities. Sick leave will be made available only to employees entitled to use it due to their own health condition or for circumstances which entitle the employee to use sick leave.
4. Tele-work Accommodation: If an employee meets one of the four (4) categories listed in the General Policy section above but is not presenting symptoms, is not sick and is able to work, tele-work may be an option. The following considerations will apply:
 - a. The employee must consider alternatives to address family needs which do not require the employee to be present as a caregiver.
 - b. The employee may elect to take paid or unpaid protective leave in accordance with law, City policy and the City's applicable labor contract.
 - c. If the employee believes that the work permits tele-work as an option, the employee may propose arrangements that will address City needs and requirements. The department head and City Manager will consider such tele-work proposals *case-by-case*. Approval decisions will be informed by the public interest and City operational considerations as described for tele-work above with regard to ADA accommodation implications.
 - d. Employees authorized for tele-work must be available on-line and on an authorized computer and by phone. The phone contact while working remotely must meet all other conditions and expectations established for the tele-work arrangement.
 - e. If approved, any tele-work option may be discontinued by the City at any time. All tele-work approved arrangements are temporary, indefinite and not guaranteed for any duration.

- f. If tele-work is authorized the City and the employee will determine what resources are required and whether the employee will incur costs which the City must reimburse. If a non-FLSA exempt employee (or an employee not paid on a salary basis as defined by law) who does not regularly work remotely is permitted to do so during the COVID-19 pandemic, the City may need to reimburse the employee for additional phone, internet or other expenses incurred by the employee. Although the U.S. Department of Labor has not stated that employers must reimburse employees, Wage and Hour Division guidance suggests that if the City requires a non-exempt employee to work from home, the City may not require the non-FLSA exempt, hourly employee to pay for business expenses if doing so would reduce such employee's earnings below the required minimum wage or required overtime compensation.
5. COVID-19 Diagnosis: Employees who notify the City in writing of diagnosis as infected by COVID-19 will be approved for the first fourteen (14) days of FMLA/OFLA protected leave without need of medical certification during that period. In this event, FMLA/OFLA paperwork will be required and shall be presented to the City after the first 80 hours of protected leave. In each such case, medical certification will be required to support the leave entitlement. If the employee submits FMLA/OFLA leave certification, it will be protected as FMLA/OFLA leave.
6. Essential Employees: Employees who provide essential services to the City, as determined by the City, may be denied administrative leave and required to attend work. However, the City will entertain alternative work scheduling opportunities and encourage public safety and other essential services employees to assist and accommodate each other's personal and family needs through shift trades, shift extensions and other creative arrangements.
7. Municipal Court Employees: The Municipal Court Judge may issue orders and policy guidance which delineates essential Court services under such specific circumstances as the Judge may determine. The City Manager will seek the advice and consent of the Judge with respect to any staffing reduction warranted by the Court's workload. Judicial staff needs are expected to be affected by reductions in Court docketed appearances, modification of case management requirements, postponement of trials and other matters unaffected by legal mandates for timely judicial review required by law.
8. Exceptions: Exceptions to this temporary policy may be granted by the City Manager. Any situation or circumstance not covered in this temporary policy shall be governed by existing City policies and procedures. The City Manager may depart from City policy when appropriate to address unforeseen exigency, to alleviate hardship or to accommodate an employee, family or humanitarian consideration.
9. Implementation: Elected officials, department managers and supervisors are responsible for implementing this policy. Observance of this policy is mandatory for all City employees. Making a false claim or providing false information to the City to obtain favorable treatment, a benefit or accommodation will impact the City and other employees, and will be grounds for serious discipline including discharge. Providing

false information concerning an employee or family situation to gain consideration not warranted in fact for the reasons given may constitute official misconduct, creation of a false public record, and/or forgery.

10. Review: This temporary policy will be reviewed by the City Manager periodically so that it remains current with circumstances and developments. This temporary policy will remain in effect during the period covered by the COVID-19 Emergency Declaration issued by the State of Oregon. When the emergency ceases, this policy will lapse. However, if a risk of public health emergency is again identified by a public health authority, then this policy in the form last in effect shall become effective for the duration of the emergency.

E. IMPLICATIONS AND IMPACTS OF CONTROLLING LAWS:

1. Health Insurance. Oregon requires health insurance plans to cover the costs of coronavirus testing not subject to deductibles, co-payments or co-insurance costs. There is currently no requirement under Federal law for plans to cover costs related to coronavirus testing; however this will likely change when the Families First Coronavirus Response Act (H.R. 6201) becomes law. It has passed the House of Representatives and is before the Senate for enactment as of the date this policy is first adopted.

2. Sick Leave and Vacation. Existing City policy and labor contract terms define benefits related to access to sick leave and vacation. These continue to apply subject to any accommodation to the COVID-19 emergency permitted by this policy. In nearly all if not all cases, sick leave will be determined by City policy and the labor contracts. When applicable, the City also provides benefits required by Oregon Paid Sick Leave laws (40 hours paid sick leave per year, which may be used after the employee's 90th day of work, which the City accrues at a rate of 30:1 (one hour of leave per 30 hours worked) but not in addition to the accruals otherwise provided by City policy and labor contract.

3. ADA, FMLA and OFLA. COVID-19 is not a disability but could lead to development of a disability. The City regards COVID-19 infection as a serious health condition.

Labor contract terms and laws apply to COVID-19 infection to the same extent as any other serious health condition, and guarantee 12 weeks of protected leave per year for eligible employees in appropriate circumstances. This policy addresses separately issues related to exposures, infection, positive tests and quarantine.

Employees who are merely concerned about COVID-19 are not disabled and are not entitled to accommodation. Only qualified disabled employees have a right to consideration of reasonable accommodation such as a work from home arrangement, provided there is no undue hardship and that the accommodation does not pose a "direct threat" (defined by EEOC) to the safety of self or others.

4. Tele-work. The City will consider authorizing remote work from home when required by current laws. Tele-work will be permitted and facilitated when tele-work constitutes a reasonable accommodation and is required due to protected classification (employees with a serious health condition or an age-related condition that requires reasonable accommodation during the COVID-19 pandemic). In each case the City will

weigh the following considerations of accommodation and practicality:

- reasonableness and undue hardship,
- reasonable and realistic capacity to manage and supervise the work,
- capacity for appropriate communication and collaboration,
- ability to establish and oversee expectations,
- ability to monitor hours of work and productivity,
- for non-FLSA exempt employees, requirements for a clearly established system to track hours and monitor breaks and meal periods, and
- whether the arrangement will adequately protect City interests including personal workspace safety, ergonomics, confidentiality of information, and communication needs.

5. Workers' Compensation & COVID-19 Exposure. This policy does not address workers compensation insurance coverage or law related to exposures and a claimant's burden of proof to show that the exposure was work-connected. Employees should treat any work related exposure in the manner established for blood borne pathogens and file an appropriate accident report with the City.

6. HIPAA & GINA Considerations. Federal laws such as Health Insurance Portability and Accountability Act (HIPAA) and the Genetic Information Nondiscrimination Act of 2008 (GINA) require that covered entities, including employers and health plans, maintain the privacy of protected health information. Although COVID-19 has been declared a pandemic, there is no exception to HIPAA and GINA requirements related to the coronavirus. The City and City employees who gain access to personal health information are required to take the same steps to protect health information about any employee's coronavirus status as we would any other protected health information. GINA prohibits employers from discriminating against an employee based on the employee's family member's illness (such as whether an employee's family member has or had coronavirus). The City will continue to comply with these requirements.

The City cannot reveal an employee's medical diagnosis. If the City learns that employees may have been exposed to COVID-19, the City will generally communicate the exposure or potential exposure occurrence without providing information that would identify the individual employee.

7. COBRA Coverage. COBRA requirements and rights will apply if a triggering event occurs and impacts any employee. If an employee's work hours are reduced such that the employee is no longer entitled to health insurance coverage and City coverage is lost, then a COBRA notice must be sent to the employee by CIS. The City will monitor CIS for rule changes in light of this pandemic and will keep employees informed of developments, particularly those related to modifications of employment requirements for coverage to avoid a lapse of coverage for employees who have reduced work schedules. Of course, employees authorized to take paid leave (sick leave and vacation) will continue to be insured as active employees during such paid leaves of absence.

8. FLSA Considerations. FLSA exempt executive and administrative employees who are required to stay home due to COVID-19 issues must be paid salary through any workweek during which any compensable work is performed. FLSA exempt employees may be able to continue working while at home temporarily, and if this is an option, they

will be paid their usual salary.

F. LABOR RELATIONS CONSIDERATIONS:

This policy is adopted as an emergency response to the unprecedented public health emergency and pandemic. Decisiveness and appropriate response are critical for viral contagion containment. This circumstance mandates immediate actions which are wholly inappropriate for collective bargaining. Bargaining as a condition of implementation will create delay which could cost human life.

The City recognizes labor law decisions which define and clarify matters mandatory for bargaining (some of which may be implicated by the subjects addressed in this policy). These might include, for example:

- needs to alter shift schedules and extend hours of work,
- elimination and alteration of vacation,
- elimination of assignments to reassign to higher priority work,
- requiring performance of additional and/or new duties,
- securing and providing appropriate safety equipment,
- other matters central to employee safety,
- impacts on vacation and leave,
- identification of essential and non-essential employees in this particular emergency,
- determining needs and requirements for tele-working arrangements, and
- use of accrued leaves for personal reasons occasioned by this emergency when the entitlement to paid leave does not exist.

The City has determined that it may respond to an emergency and adopt unilateral changes required under emergency conditions without first bargaining, at least on a temporary basis and perhaps otherwise. ERB explicitly recognizes the needs of a public employer to manage and supervise and that under some conditions enforcement of PECBA rights can adversely affect the duties and mandates of public services. These decisions provide justification for the City's action in issuing this policy without first bargaining, and the pandemic emergency and public health considerations constitute a defense and appropriate reason not to bargain as the City and unions would do ordinarily.

The City will not decline to consider employee and Union ideas and proposals to modify this policy. However, for the duration of this public health emergency the City will exercise its right to manage, direct, supervise and assign personnel. The City will allocate resources as the City deems in the best interest of the public. The City will not defer or delay appropriate action based on traditional labor relations jurisprudence which time and necessary responsiveness do not permit in the face of pandemic and public health emergency. When the emergency has passed, and beforehand if reasonable and practical, the City will bargain if requested to do so concerning mandatory subjects changed or impacted by this policy, including considerations of retroactivity if any.

G. FURLOUGH ADMINISTRATION:

If the City determines that sufficient work does not exist and/or that circumstances

warrant reduction in the City workforce, the City will layoff employees by job classification for which insufficient work exists. In cases where there are more than one position in the job classification, layoffs will be by seniority.

The City will interpret and apply the AFSCME contract in the administration of any layoff should the City determine this action is required. The City may, in appropriate circumstances, provide notice to an employee or employees of “partial layoff” and may implement layoff as a reduction of hours of work in the current classification or as a reclassification to a part-time position. Partial layoff may be effectuated as a temporary reclassification to a part-time position.

Laid off and furloughed employees will likely be entitled to unemployment benefits based on formulas administered by the State of Oregon Employment Division in accordance with federal law. These might be amended in response to the COVID-19 outbreak, and such changes may provide greater relief than previously available.