

2005

# Irene Thomas v. Draper City and Appeal Board of Draper City : Brief of Respondent

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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IRENE THOMAS,

Petitioner/Appellant,

**BRIEF OF DRAPER CITY**

vs.

Case No. 20050071-CA

DRAPER CITY and APPEAL BOARD  
OF DRAPER CITY,

Respondents/Appellees.

**ORAL ARGUMENT REQUESTED**

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Appeal From Decision of the Appeal Board of Draper City

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## I. STATEMENT OF JURISDICTION

On December 30, 2004, following a two-day hearing, the Draper City Appeal Board (the “Board”) issued a unanimous Ruling<sup>1</sup> upholding the employment termination of petitioner Irene Thomas (“Thomas”) from Draper City (the “City”). R00001-00012. On January 25, 2005, Thomas timely filed a Petition for Review. R. 00016. This Court has jurisdiction under Utah Code Ann. § 10-3-1012.5 and Utah R.App.P. 14.

## II. ISSUES PRESENTED FOR REVIEW

**1. Issue:** Based on Thomas’ failure to marshal the evidence, should this Court affirm the Board’s finding that Thomas knew or should have known that unlicensed Veritas software had been installed on the City’s network with a hacked key code?

**Standard of Review:** “A party challenging a fact finding must first marshal all record evidence that supports the challenged finding.” Utah R.App.P. 24(a)(9); *Whitear v. Labor Comm’n*, 973 P.2d 982, 984 (Utah Ct. App. 1998). If an appellant fails to marshal evidence, the appellate court will not address a challenge to factual findings and must assume they are correct. *Id.* at 985.

**2. Issue:** Is there substantial evidence to support the Board’s finding that Thomas engaged in “serious misconduct,” as defined in City’s Personnel Manual?

**Standard of Review:** In making factual findings, an appeal board is to determine “whether the facts support the charges made by the department head.” *Lucas v.*

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<sup>1</sup>The Board consisted of three City employees and two City Council members, who reached their decision after casting individual secret ballots (R. 00005).

*Murray Civil Serv. Comm'n*, 949 P.2d 746, 758 (Utah Ct. App. 1997); *Kelly v. Salt Lake City Civil Serv. Comm'n*, 2000 UT App 235, ¶ 16, 8 P.3d 1048. A Board's findings are reviewed on appeal under a substantial evidence standard and in light of the entire record. *Lucas*, 949 P.2d at 758. "Substantial evidence is that quantum and quality of relevant evidence that is adequate to convince a reasonable mind to support a conclusion." *Id.* (internal quotations omitted). An appellate court does "not review [factual] findings de novo or reweigh the evidence." *Id.* An appellate court employs a clearly erroneous standard in assessing whether to overturn a Board's factual findings. *Kelly*, 2000 UT App 235, ¶ 15, 8 P.3d 1048.

**3. Issue:** Do the charges against Thomas warrant termination?

**Standard of Review:** In determining whether the charges warrant the discipline imposed, the "discipline imposed for employee misconduct is within the sound discretion" of the person making the decision to terminate and the standard of review is abuse of discretion. *Lucas*, 949 P.2d at 761; *accord*, *Kelly*, 2000 UT App 235, ¶ 22, 8 P.3d 1048. The decision-maker "exceeds the scope of his discretion if the punishment imposed is in excess of the range of sanctions permitted by statute or regulation, or if, in light of all the circumstances, the punishment is disproportionate to the offense." *Lucas*, 949 P.2d at 761. An appellate court reviews "the sanction in light of all the circumstances underlying the termination." *Kelly*, 2000 UT App 235, ¶ 24, 8 P.3d 1048.

### **III. STATUTES AND RULES OF CENTRAL IMPORTANCE**

1. Utah Code Ann. § 10-3-1106. City's Add., Ex. 1.



2. The Draper City Personnel Manual, including § 5030.3. City's Add., Ex. 2.

#### **IV. STATEMENT OF THE CASE**

##### **A. NATURE OF THE CASE, COURSE OF PROCEEDINGS, AND DISPOSITION BELOW.**

Thomas is appealing the Board's 5-0 decision affirming her termination by City Manager Eric Keck ("Keck"). Thomas was employed as the City's Information Systems Administrator for several years. Her duties included managing and administering the City's computer network and system. R. 00826; R. 00440-00441. On March 5, 2004, the City sent Thomas a Notice of Proposed Disciplinary Action and Pre-Disciplinary Hearing, based on a recommendation from Thomas' supervisor, Pete Shabastari ("Shabastari"), that Thomas be terminated. R. 00001; R. 00446.

Shabastari's recommendation was based on an evaluation of the City's computer network by Corner Canyon Information Technology Solutions ("CCIT"), an independent contractor hired to examine the network. R. 00002. CCIT's hiring was prompted by the frequent failures of the City's network, which was repeatedly crashing and remaining down for long time periods. CCIT discovered a host of serious problems, including the installation of illegal, unlicensed software on the City's network, specifically Veritas Backup Exec ("Veritas"), and Symantec Antivirus Suite ("Symantec"). *Id.*; R. 00044.

At the request of Thomas' attorneys, the March 8, 2004 Pre-Disciplinary Hearing was continued for three months due to Thomas' hospitalization for emotional and mental problems. R. 00002; R. 00447. In a March 19, 2004 letter, however, Thomas' attorneys responded to the unlicensed software allegations, and denied that the Symantec software

was pirated. *See* R. 00454-00456. This letter included a copy of a May 2002 invoice to the City from Pinnacle Solutions (“Pinnacle”) purportedly proving the City had purchased this software. *See* R. 00457.

This March 19, 2004 letter essentially admitted that the Veritas software was not properly licensed, and stated that Pinnacle had used a key code obtained on the internet to activate the software, and informed Thomas of this fact:

The [Veritas] software developed problems in January or February 2004. These problems meant that the entire Draper computer system was not properly being saved upon backup. Ms. Thomas was extremely concerned and immediately called [Paul Despain of Pinnacle] to fix the problem. He came right over and installed a more recent version (9.1) of the software. Mr. Despain owned several copies of the version Draper needed but, in rushing over to help, he did not bring the software box with the key code to activate the software with him. **He was able to find a key code on the internet** to get the software up and running so that Draper could properly save its data. **He told Ms. Thomas what he had done**, but assured her that he owned the software and that when he got back to the office, he would set that software aside for Draper so that he did not accidentally sell it to another customer. Pinnacle has not yet invoiced Draper for that software. Mr. Despain will provide both a copy of the box cover of the software which belongs to Draper and a partially redacted copy of the key code which indicates the unique identity of the legitimate Draper software.

R. 00455 (emphasis added).

The first Pre-Disciplinary Hearing was finally held on June 2, 2004. R. 00002; R. 00066-87; R. 00448-452. In response to Thomas’ allegations at this hearing, the City took no action and continued to investigate the matter. R. 00002. On July 22, 2004, the City issued a second Notice of Proposed Disciplinary Action and Pre-Disciplinary Hearing, scheduling a hearing for July 28, 2004. R. 00002; R. 00448-00452. This Notice reiterated the City’s concerns about unlicensed software and also raised serious concerns

about Thomas' competency to perform her job, based on a number of problems

discovered by CCIT, including the following:

- (1) "All five of the City's servers are pieced-together clone PC computers using a variety of different parts. These computers are uncovered with internals exposed on shelves in the basement wiring closet. This defeats airflow rules for processor cooling, and invites dust and foreign debris."
- (2) "An antivirus solution was partially deployed . . . with scans on these systems occurring at all times of the day, even on servers during peak hours."
- (3) "Backups of the network systems were being performed during peak usage hours on two separate backup servers. These were backup jobs running in conflict with each other on production servers causing file resource outages. These backup servers were running two different versions of backup software, one old and one new. File locking parameters on these backup jobs were incorrectly set causing conflicts with files in use by users. Backup tapes were not labeled, making it nearly impossible to manage a situation requiring restoration using backups. An administrator would have to insert up to 70 different tapes to find the correct one. **It was later found that both these backup servers contained illegally obtained software using allcracks.net hacking codes to find the correct one.**"
- (4) "Virus and spyware problems were found on most computers on the City network, even police department patrol car laptops."
- (5) "Main City wiring closet contained dysfunctional cabling architecture."
- (6) "The Microsoft Active Directory had repeated errors with only one AD server and no backup AD. The primary AD server was also the Exchange Email server which was also the backup server, the DHCP server, the DNS server, and the WINS server. **When email would fail, all other roles and AD authentication would be down until the server was reset.**"
- (7) The "failures and outages of the network occurred because [Symantec] antivirus software definitions on the Exchange Email server were out of date and were not receiving updates and, as such, most viruses entering the City were coming in via email." "The [Symantec] antivirus software on the Exchange server was not licensed. As a result, Symantec was rejecting requests for electronic updates."
- (8) "Antivirus scans were being performed on a schedule beginning at 8 am and

noon each day on the email, file servers and many user machines. There were no remaining resources on these servers to service users, and the user machines performing scans were not usable until the scans were completed, causing hours of lost productivity for these users not to mention a high degree of frustration.”

(9) The “ad-hoc daisy-chained manner” in which the network was arranged created bottlenecks in data traffic and severely slowed down the speed at which data was handled and delivered. “The backup schemes for critical data on the network were in a condition that were practically indiscernible.” “The cabling in the wiring closet was hand-crimped, leading to shorts and a variety of connectivity failures. The City has subsequently learned that cabling of this nature must be machined and molded to conduct ethernet traffic properly.”

(10) Roughly 40% of critical City data was scheduled for backup, but due to the design and timing of the backup processes, “the backups failed on a daily basis.”

(11) “Police Department patrol car computers contained the most unmanageable software configurations . . . and in some cases your configurations and installations led to loss of an officer’s functionality in the field.”

(12) “The IT department work area was in complete disarray with literally no functionality. Three dumpsters full of junk parts and equipment have been thrown out by [CCIT] after exhaustive testing and analysis to find out which equipment and parts were actually salvageable. . . . [only] 15% to 20% of the City IT inventory was in working condition or usable.”

(13) “[B]atteries that were used in the wiring closet were found to be insufficient and in one case, when fully burdened, caught on fire.”

(14) “[T]he most minor of power fluctuations caused servers to crash which . . . cost productivity time for the entire City staff.”

(15) “[E]very server had a Terminal Services conduit opened from a Firewall. This would allow anyone on the public internet to easily access these servers using the most basic of hacking means. These conduits were intentional and even labeled on the firewall. This would have allowed for a number of breaches within the security of the City’s data and files,” including Police Department files.

R. 00448-00452 (emphasis added). This Notice also raised the following issues:

(1) Misappropriation of funds by Thomas for having purchased for \$349.99 a second Blackberry telephone for herself without authorization.

(2) Thomas' purchase of seventeen (17) digital pagers (\$637.24) which the City could not locate.

R. 00451-00452. Finally, this Notice questioned Thomas' competence, her refusal to admit her lack of knowledge, and her unwillingness to accept assistance, stating that:

As the Information Systems Specialist for Draper City, you were charged with ensuring that all of the above mentioned failures did not occur. You did not meet these expectations and it is now clear that this was the case due to poor performance and inability to perform the duties specified within your job description. This violates the tenets of Section 6080 (Employee Conduct and Work Rules) Subsection 1(A) relating to performance.

R. 00451.

A second Pre-Disciplinary Hearing was held July 28, 2004. R. 00459. On August 27, 2004, Keck sent Thomas a Notice of Termination. R. 00003; R. 00459-00462. This Termination Notice stated that Keck's decision to terminate Thomas' employment was based on the reasons set forth in his earlier Notice, as well as the following reasons:

(1) In the first Pre-Disciplinary Hearing, Thomas denied knowing that software was pirated and had stated that Pinnacle was entrusted to provide the updates for Symantec and Veritas. R. 00460. However, Thomas' attorneys' March 19, 2004 letter stated that Despain explained to Thomas that he had obtained a [hacker] key from the internet to enable the Veritas software program. *Id.*

(2) Despain was contacted by the City on June 4, 2004, and he said at that time that Thomas was "fully aware that he was putting a temporary patch onto the servers."<sup>2</sup> The City never received a "legitimate copy of Veritas Back Up or Symantec Antivirus from Pinnacle," and the only Veritas certificate found in Thomas' files covered only the "Solaris application or Spillman server for the Police Department." R. 00460

(3) Old, unpaid invoices were found in Thomas' records, but no indication of

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<sup>2</sup>City employee Wendy Peterson tape-recorded her conversation with Despain and the disk on which that conversation is recorded is part of the record. *See* R. 00547.

renewals of Veritas or Symantec licenses could be found. R. 00460.

(4) A search of the server room and IT area revealed no software representing the Symantec or Veritas versions that were previously on the system, but “several burned copies of both Symantec and Veritas software were found. . . . [I]t has been verified by both Symantec and Veritas that the existence of burned copies of their software is not standard industry practice.” R. 00460.

(5) Thomas had left the computer network unattended and without password protection when Pinnacle worked on the system, which was a violation of security procedures detailed in Sections 6030(8) and 6040(3) of the City’s Personnel Policies. R. 00460.

(6) Thomas violated Section 6040 of the City’s Personnel Policies, which requires that “All computer users must respect copyrights and software licenses.” “Section 2 of this Policy states that ‘no Software protected by copyright may be copied except as otherwise stipulated by the owner, pursuant to a valid license, or otherwise permitted by copyright law.’ Again, as the City’s IT Technician, you should have recognized the existence of hacker software on the system because the icon for Veritas Backup is readily identifiable as being illegal with the name ‘Blizzard’ attached to it.” R. 00460.

(7) The seller of the Blackberry telephone denied it had a deal with Thomas to let her return her first Blackberry at no additional charge and obtain in its place a Blackberry that had a color screen. R. 00461.

This Termination Notice also addressed the excuse Thomas offered during the second Pre-Disciplinary Hearing, wherein she blamed her failures on a lack of assistance and inadequate funding. *See* R. 00461-00462. To the contrary, the Termination Notice stated that: (1) Thomas’ budgets were adequate to acquire the necessary equipment and operate a “first class IT network;” (2) the City paid for a large portion of Thomas’ network systems degrees from the University of Phoenix; (3) the City engaged the services of CCIT to help Thomas, but Thomas resisted and refused this help, stating that she did not trust CCIT and that CCIT “did not know what they were doing;” and (4)

Thomas' solution seemed to be to provide more employees, but that she "created more work for [herself] due to the fact that [she] did not understand how to build and maintain the infrastructure assigned to [her] trust and management." R. 00461-462.

On August 27, 2004, Thomas appealed her termination to the Board. R. 00003. After delays requested by Thomas, a two-day hearing on her termination was held before the Board on December 13 and 20, 2004. R. 00004. On December 30, 2004, the Board issued its Ruling affirming the termination and made the following factual findings:

- (1) "The City followed the requirements of its written policies and procedures for the discipline of employees." R. 00006.
- (2) **The acts and omissions of Thomas, which the Board described in more detail in the rest of its ruling, "fall within the provisions and requirements of Policy Section 5030.3, entitled 'Serious Misconduct.' The acts and omission of Ms. Thomas require 'severe measures' as defined in Policy Section 5030.4, justifying her termination by the City."** R. 00006 (emphasis added).
- (3) Thomas was responsible for maintaining and ensuring "the quality and integrity of the computer network and systems of the City." R. 00006.
- (4) From December 2003 through February 2004, the City's computer network was beset by virus attacks and other network problems, which caused "numerous shut downs of the City's computer network." R. 0007-0008.
- (5) During this same time period, the Veritas software used by the City's network to perform back up functions experienced problems, and data backup on the City's network was not being performed and completed as needed. R. 00007.
- (6) Sometime between December 2003 and late-February, 2004, Thomas asked Despain of Pinnacle to come to the City to correct the backup problems. R. 0007.
- (7) Based on her own conflicting testimony as to dates, **Thomas' credibility is in doubt as to the date that Despain actually came to the City to deal with the Veritas backup problems.** R. 00007-00008, n.3.
- (8) Despain had concluded that the Veritas software had a "bug" "that could be



remedied only by installing a new version of Veritas back-up software.” R. 00008.

(9) Despain had in his possession a **copy** of the new version of the Veritas software, and he installed it on the City’s network. **He did not, however, have the required license code or key number to make the Veritas software functional, so he went to the internet and “obtained from an internet cite known as ‘allcracks.net’ an unauthorized code or ‘key’ number to the Veritas software.”** R. 00008.

(10) A trial version of the Veritas software could have been obtained from the internet and used by the City for up to 90 days, and **Despain’s explanation as to why he simply did not use this trial software was not credible.** R. 00008, n.4.

(11) Despain knew that the installation of the Veritas software through the use of an illegal key code obtained on the internet, was inappropriate. R. 00009.

(12) **“Thomas knew or should have known of the installation of the improperly obtained Veritas software and key.”** R. 00009.

(13) **The Veritas backup software on the City’s computer network was obtained using a “key that originated from an internet web site called ‘allcracks.net’” which can be identified by an icon on the computer screen that states “by Blizzard,” which indicates “that the software, or the code allowing the use of the software, was obtained from an unauthorized source.”** R. 00009.

(14) From December 2003 through late-February 2004, the City experienced serious problems attributable to computer viruses infecting the City’s computer network. **This was due to the fact that the Symantec Antivirus software being used by the City was unlicensed and, consequently, the City was not receiving the usual automated updates to its anti-virus software.** R. 00009-00010.

(15) On the evening of February 26, 2004, Thomas was told by both City Manager Keck and Assistant City Manager Melanie Dansie (“Dansie”) to provide passwords to CCIT. Thomas refused to do so, and did so only after Dansie confronted her. R. 00010. **This “constitutes insubordination under the City’s policies and procedures.”** R. 00010.

(16) **“Credible evidence was received casting doubt on Ms. Thomas’ ability and competence to perform the functions of her position as the City’s IT specialist.”** R. 00010.



The Board's Ruling concluded that:

- (1) the misconduct committed by Thomas "was sufficient to warrant her termination";
- (2) Thomas "**participated in or acquiesced in the improper installation and use of unlicensed Veritas backup software,**" using a key code obtained from a "**hacker's site**" on the internet;
- (3) "misconduct involving the Veritas software was sufficiently grievous that the Corrective Action principles and procedures of the City's Policies were not appropriate or required."

R. 00010-00011 (emphasis added). On January 25, 2005, Thomas timely filed a Petition for Review of the Board's Ruling.

## **B. RESPONSE TO THOMAS' STATEMENT OF FACTS**

The City responds to Thomas' Statement of Facts as follows:

4. This Fact fails to mention the undisputed fact that Thomas' education in computer information systems at the University of Phoenix was primarily paid for through the City's education reimbursement system. R. 00949-00950; R. 01106; R. 00465-00474. The fact that Thomas has both a Bachelor's and a Master's degree in computer information systems makes her performance failures even more egregious.
5. The City contends there was cause to terminate Thomas' employment.
6. The City disputes that all employee terminations must be preceded by progressive discipline. Section 5030 of the City's Personnel Manual provides only "general guidelines" to address problems, with the supervisor having discretion:

Discipline. The following steps should be considered **general guidelines for routine corrective actions**. Some performance and behavior problems may be serious enough to warrant skipping one or more steps and may even

call for immediate suspension and termination. . . . **Corrective action taken is at the supervisor's discretion.**

R. 00636-00637 (emphasis added). The Personnel Manual reaffirms this broad leeway in termination without pursuing any kind of progressive discipline whatsoever:

Serious Misconduct: In instances of **serious performance problems**, the **suggested corrective action steps above may not be followed.**

R. 00638 (emphasis added).

7. Sharlene Behunin ("Behunin") also testified that when she first supervised Thomas, it did not go well because "Irene felt that she was a department head when I was hired and the fact that she was asked to work as a subordinate for me did not sit well." R. 00932. Behunin also testified she gave Thomas lower evaluations because: (a) Thomas would not delegate work and she felt Thomas needed to work on giving her assistant more to do so as to be "relieved of the burden that she was trying to shoulder on her own" (R. 00960); and (b) Thomas' "office was always extremely messy" and she kept things such as computer parts and manuals all over the place. R. 00958-00962.

8. This Fact is not a complete or fair representation of Keck's and Shabastari's opinions of Thomas. Shabastari testified that Thomas: (a) could be difficult to work with (R. 00829); (b) failed to follow his directions (R. 00829-00830); (c) would not delegate work to her assistant, Mardi Rich ("Mardi") (R. 00830-00831; R. 00837-00838); and (d) did not work "smart" so he told her to "work smarter not longer" (R. 00832-00833). Shabastari also testified that Mardi told him that he (Mardi) was frustrated because Thomas would not give him work to do and "was keeping so many things close at hand

and did not want Mardi to start working on certain items, that even though we had given her help, she wasn't using the help." R. 00837-00838. Similarly, Keck testified that: (a) Thomas' claim that she did not know the Veritas software was hacked was not credible (R01090-R01091); (b) after the hacked software was discovered, "it crossed his mind" that this was why Thomas was so reluctant to have CCIT come in to assess the network (R. 01169); (c) the repeated network failures and other computer problems made him question Thomas' competency (R. 01093-01094); and (d) after seeing what Thomas had done with the network, he had no confidence that she could manage it and would not trust her if she returned to do so (R. 01130-01131).

9. This comment by Shabastari is a criticism of Thomas, not a compliment. Shabastari testified he was frustrated with Thomas because she: (a) refused to delegate work to Mardi, which was one reason she felt overworked (R. 00830-00831; R. 00837-00838); and (b) was not working "smart" (R. 00832-00833).

10. This alleged Fact does not tell the entire story, which strongly suggests Thomas was hiding something. Her claims of emotional stress and needing to take time off were first raised March 3, 2004, immediately after CCIT arrived. R. 00842. When the CCIT technician and Thomas were alone on the first evening CCIT was at the City, Thomas became "hysterical" and refused to give CCIT the network passwords. R. 00972. She then failed to show up for work on the next two work days, claiming to be sick. R. 00841-00842. When she returned to work on March 3, 2004, she met with Shabastari and gave him a letter threatening to take FMLA leave as of 5:30 pm unless CCIT was

discharged and she was given two people of her own choice (from Pinnacle) to work under her direction. R. 00843. Shabastari did not agree to her demands, and she did not return to work on March 4, 2004. R. 00846. In fact, she never returned to work. Shabastari learned of the unlicensed software on March 4, 2004. *Id.*

14. The City disputes this alleged Fact. Shabastari testified that he had conversations with Thomas about her failure to delegate, which resulted from his complaints to her about the network's operations and her insistence that she had too much work to do. R. 00832-00833; R. 00837-00838.

15. This alleged Fact is contrary to evidence relied on by the Board in finding:

**The date on which the Veritas software was installed on the City's computer network is unclear.** At the Appeal Board hearing, Ms. Thomas and Mr. Despain testified that the software was installed sometime in late-February, 2004. In her June 2, 2004 pre-disciplinary hearing, Ms. Thomas testified that it was installed several weeks earlier, "between December [2003] and January [2004]." Transcript, June 2, 2004 Predisciplinary Hearing, pp. 6-7. **This casts doubt on Ms. Thomas' credibility.**

R. 00007-00008, n.3 (emphasis added). Moreover, CCIT technician Steve Alsop testified that the last modified date on the Veritas software was January 26, 2004, which means the hacker key had to have been used no later than that date. R. 01052.

16. This fails to detail the entire story. *See infra*, City's Statement of Facts.

17. This is a misstatement. The Board did not believe Despain's story about being unable to download a trial version of Veritas from the internet:

The evidence at the hearing clearly indicated that the newest version of Veritas backup software is available on-line as a trial version, usable by the City for up to 90 days without charge. **The Board finds that Mr. Despain's explanation of why he did not simply unload this trial**

**version is not credible.**

R. 00008 n.4 (Board's Ruling) (emphasis added).

18. This alleged Fact confirms the Veritas software was unlicensed and illegal.

19. This misstates the Board's findings. The Board stated it did not find Thomas' testimony credible regarding the date the Veritas software was installed, which she originally said was in December 2003 or January 2004, whereas she did not go on medical leave until March 4, 2004. *See supra* Facts ¶¶ 10, 15. Moreover, Alsop testified that the Veritas software was installed by January 26, 2004, at the latest. R. 01052.

20. This alleged Fact does not marshal the evidence.

21. This alleged Fact misstates the record. On cross-examination, Despain did not deny that he might have told Thomas that he needed a key to activate the Veritas software and how he would obtain one from the internet. R. 01338. When asked whether Thomas, with her experience and ability, would have known that downloading a key from the internet was illegal, Despain answered "probably." R. 01342. He also admitted on questioning by a Board member that an administrator would have noticed the Blizzard icon on the computer screen. R. 01351. Moreover, the March 19, 2004 letter from Thomas' attorneys admitted that Despain told Thomas that "[h]e was able to find a key code on the Internet to get the software up and running so that Draper could properly save its data. He told Ms. Thomas what he had done . . . ." R. 00455.

22. This alleged Fact is disputed by the Board's finding that it doubted Thomas' credibility as to when the Veritas software was installed, and by Alsop's testimony that

objective evidence showed the Veritas software was installed January 26, 2004 at the latest. *See supra* Facts ¶¶ 19, 21.

26. This Fact is incomplete. Thomas threatened to take FMLA leave unless she could hire the two people (from Pinnacle) that **she** wanted to hire. *See supra* Facts ¶ 10.

28. This misstates the record. These Notices inform Thomas of a pre-disciplinary hearing, the grounds, and that her supervisor has recommended dismissal so that the **proposed** discipline is termination. *See* R. 00036; R. 00093.

29. This Fact takes Keck's statement out of context. Keck was asked by Thomas' attorney why he did not bring Thomas back to work with CCIT in order to see whether her performance would improve. Keck responded that he did not think Thomas' lack of competency could be remedied, that bringing her back would be spending more "good money after bad," and "would not be appropriate" given her lack of credibility, based on the fact that he did not believe she was "completely truthful" during the second Pre-Disciplinary Hearing. R. 01161-01163. Keck also testified that, while he originally considered giving Thomas a second chance in February, 2004, when he decided to terminate her in August he had learned much more about Thomas' lack of competency, and he was also aware of the hacked and unlicensed software problem. R. 01163.

### C. CITY'S STATEMENT OF FACTS

Thomas concedes "the Court can accept as true most of the Board's findings regarding how Ms. Thomas performed her job" and that the evidence "reflected poorly on how she was doing her job." *Aplt. Brf.*, p. 2. She contends, however, that the Board

erred in finding that she engaged in “serious misconduct,” or that her termination was warranted. *See* Aplt. Brf., p. iv. To support her argument, Thomas relies on a Statement of Facts which is both misleading and incomplete, because she fails to cite the extensive evidence in the record that is **not** supportive. *See* Aplt. Stmt. Facts, pp. vi-x. To dispute a factual finding on appeal, Thomas is required to marshal all evidence supporting any of the Board’s findings which she disputes. Thomas has failed to comply with this requirement, as demonstrated by the following facts in the record which Thomas ignores.

**1. TESTIMONY OF PETE SHABASTARI**

1. In about November 2002, there was a reorganization in the City and Shabastari, the GIS (global information systems) Manager, became Thomas’ supervisor. R. 00858-00859; R. 00824-00825. He supervised Thomas until she took FMLA leave in March of 2004, when the unlicensed software was discovered. *Id.*

2. Shabastari testified that whereas Thomas was a “good employee,” she could be difficult to work with and he soon became frustrated with her performance. R. 00828. He felt Thomas did not communicate with him, and he began to lose confidence in her abilities. R. 00829.

3. In addition to the problems outlined in the City’s response to ¶ 8 of Thomas’ Fact Statement, above, Shabastari was also frustrated with Thomas’ failure to follow directions. For example, one time he felt strongly the City needed “a different type of computer, a brand name [Dell] computer with more reliability than we had had in the past,” and told her several times to purchase them. R. 00829. After being off work,

he returned to find Thomas had purchased “clone” computers from Pinnacle and not the Dell computers he had told her to purchase. R. 00829-00830.

4. Shabastari testified the budget was sufficient to purchase the Dell computers as opposed to the “clone” computers. R. 00888. When asked whether the City saved money by doing this he said: “Significant money was not saved. In fact, significant time was wasted in dealing with these [clone] computers at a later date.” R. 00889.

5. Shabastari testified Thomas had ties to Pinnacle through her son, Greg, who worked for Pinnacle from time to time. R. 00830.

6. Shabastari also felt that Thomas “burned through” budget monies too quickly and he was concerned about how she was spending money. R. 00834. Though Shabastari instructed Thomas to show him all purchase invoices, he felt that she was not showing him all of the invoices from Pinnacle. R. 00835-00836.

7. Shabastari testified that it got to the point where City employees would not call Thomas about computer problems, and instead would call him and Mardi, because they did not think they were getting good service from Thomas. R. 00833.

8. Shabastari testified that a crisis stage was reached in about December of 2003, as the City was moving into a new building where it was setting up a new computer network and infrastructure. R. 00836. By February of 2004, the City was experiencing numerous serious problems with its computer network. For example, the City’s computers were being “hit with viruses that were targeting very amateur issue holes in security systems. Things that we never should have been hit with, we were getting hit



with.” R. 00836-00837. The City also was having problems with its email, its servers required frequent reboots, and there were problems with data backups. R. 00837.

9. Thomas responded to these problems by claiming she was overworked and Mardi was not helping her. Mardi, however, told Shabastari that he was frustrated because Thomas would not give him work or allow him to help. R. 00837-00838.

10. Thomas also told Shabastari that she would need three and one-half employees to do the job. To verify this, Shabastari talked to other cities and determined that “you don’t necessarily need more people, you just need the right people.” R. 00838; R. 00868. It was at this point that the City hired CCIT to “do a review of the network infrastructure and computers in the City and make recommendations.” R. 00838-00839.

11. Shabastari testified that when CCIT was brought in, Thomas was “[v]ery hostile. Very reluctant.” He felt she saw this as a threat to her “control over the network system.” Thomas let Shabastari know that “she felt [CCIT was] not qualified to do the job, and as such, she would not cooperate with [CCIT] in any way.” R. 00839.

12. On March 2, 2004, Shabastari sent a memorandum to Keck telling him of Thomas’ resistance to CCIT and that, after CCIT’s arrival, Thomas did not show up for work the following day, March 1, 2004, claiming a sick day. R. 00442; R. 00840-00842.

13. Thomas also failed to show up for work on March 2, 2004, and, when she returned to work on March 3, 2004, Shabastari met with her and she gave him a letter threatening to take FMLA leave as of 5:30 pm that day if her demands were not met. R. 00842. Thomas stated in the letter that she needed two more people to work under her

direction, “and that she had two people in mind who could help her right away,” whom Shabastari understood would come from Pinnacle. R. 00843. He told Thomas that CCIT was hired with the intent to help her. R. 00844. She told him she did not think CCIT “were the right ones to do the job” and that she was reluctant to work with them or to provide them with the necessary passwords. R. 00844.

14. On March 4, 2004, Shabastari was informed that CCIT had found pirated software. R. 00846. He was in the server room with Steve Alsop (“Alsop”), the CCIT technician, and Alsop “showed me on one of the servers a small hacker key called Blizzard,” and said that “this was to circumvent network licensing issues.” R. 00847.

15. Thomas had failed to report for work on March 4, 2004. R. 00846. That same day Shabastari sent a memorandum to Keck informing him of the unlicensed software, and stating that when Shabastari questioned Thomas about the status of the Symantec and Veritas software licenses, she had said that “they were a valid license that we simply needed to get CDs for.” R. 00847-00848; R. 00444. Shabastari also reported that CCIT had found the Blizzard “cracker” or hacked key on the network and, based on these facts, he recommended that Thomas be disciplined “up to and including termination.” *Id.*

16. Shabastari testified the licensing issue “was about as serious as it can get.” R. 00848. In his mind this constituted “stealing software. . . . [I]f it’s unlicensed, it is stolen.” *Id.*

17. Shabastari believed “stolen software” exposed the City to liability. He

testified: “[s]oftware companies take the issue of unlicensed software very seriously. They will prosecute aggressively what they see are blatant abuses of licensing agreements.” R. 00849. He felt Thomas “put the City at significant legal risk.” *Id.*

18. When Shabastari learned about the licensing issue, he asked Thomas to show him the software “licenses or certificates of authenticity.” R. 00849. She brought him “an unsigned invoice from Pinnacle showing some software licenses.” *Id.* Shabastari testified that what Thomas showed him was **not** a license. *Id.*; *see also* R. 00464 (Symantec Invoice). At the bottom of Pinnacle’s invoice was a note stating “Irene, we understand this isn’t in the budget until June or July. We will wait on payment until then.” R. 00850. This invoice increased Shabastari’s concerns because:

I realized that there were serious licensing issues that Irene was either not telling me about or could not tell me about because she, herself, didn’t know. The fact that they say that they will just give us these licenses until June or July made me realize that yes, in fact, they are putting cracker software on there. I think they fully intended and we fully intended to buy these. But they would not float us the amount of money it would take to buy these for us. There’s no way. They are not that big of a company. **So yeah, what they did was put illegal software on our server.**

R. 00851 (emphasis supplied).

19. With regard to Pinnacle’s suggestion that the City pay for the Symantec software “in June or July,” Shabastari testified it violates City policy to purchase on “time,” “particularly when it relates to software.” R. 00852-00853.

20. Shabastari testified regarding Thomas’ termination that “in the end, I felt like she gave us no choice and so yes, I support the termination after Irene has decided that she did not and would not cooperate with us in any way.” R. 00853-00854.

21. Shabastari testified he was not aware of, nor did he approve, the purchase of either one of the two Blackberries that Thomas purchased for herself. R. 00855.

## **2. TESTIMONY OF BART LECHEMINANT**

22. Bart LeCheminant (“LeCheminant”) is a City GIS AutoCAD Technician, which involves “data management of the GIS shape files, AutoCAD files, design work, graphic designs for various other employees,” and dealing with computerized maps, platting, and plans for subdivisions and buildings. R. 00897-00899.

23. LeCheminant, who had computer network experience from other jobs (*see* R. 00899-00901), testified that, under Thomas, the City’s network “crashed” a lot, and when “the server crashes or goes down, you cannot get your data across the network to your computer.” *Id.* LeCheminant testified that the network’s “connectivity problems” caused him to lose many hours of work, that they occurred 2-3 times per day, and each time he would lose data, requiring him to “[s]tart over with the drawing, the data input, the map construction, your analysis construction.” R. 00902-00904.

24. LeCheminant testified that when he complained about this to Thomas she would tell him she could do nothing because “it was just the wiring in the old building.” Based on his experience he did not believe her statement. R. 00906. He said that after moving into the new building, the connectivity problems continued. *Id.*

25. LeCheminant related an incident where he asked Thomas to fix a problem he was having with JavaScript. R. 00910-00912. After waiting awhile, he went ahead and fixed the problem himself. Thomas later came in and reformatted his computer to fix

this problem. He testified he had already told her he had fixed the problem himself and, even if he had not told her, she should have been able to tell it was fixed before she reformatted the computer. He said that reformatting a computer to fix this type of problem was “[l]ike hitting a mosquito with a sledge hammer.” R. 00919.

26. LeCheminant testified that he had to do desktop support for other employees because they did not trust Thomas to do the work properly and she often left the situation worse off than before. R. 00908- 00910; R. 00913-00914.

27. LeCheminant testified that Thomas gave him a “new” computer about every six months, which he felt was unnecessary. R. 00915. Once he requested certain specifications on his computer and Pinnacle, the company that built the computer, failed to include those specifications, and took 1 1/2 months to fix its mistake. R. 00916-00917.

28. LeCheminant testified that the problem with viruses attacking the City’s network became so severe that, on one occasion, he opened a program and watched as files simply disappeared from his screen as a virus deleted them. R. 00914. Since Thomas’ termination, and while CCIT has been handling the City’s network, LeCheminant testified that there have been no problems with the network, with viruses, or with data disappearing. R. 00918-00919.

### **3. TESTIMONY OF SHARLENE BEHUNIN**

29. Behunin was called as a witness by Thomas. She worked for the City from June 2000 to June 2003 as finance director (R. 00923; R. 00949), and supervised Thomas at one time (R. 00924; R. 00938). Behunin handled City budgets. She testified she did

not believe Thomas was treated differently with regard to budgeting. R. 00947. Behunin testified that Thomas called in Pinnacle when she needed help with the network and that Thomas' son worked for Pinnacle and did some of the City's work. R. 00945.

30. Behunin testified that as finance director, she had no authority to terminate an employee but could make that recommendation. R. 00950-00951. She testified that she once recommended termination for an employee who stole money, and that she felt it was justified in that situation not to go through a process that would begin with a reprimand. R. 00951. She testified that City policies allow for bypassing a disciplinary process in such situations, and that it is her understanding "that when someone has done something illegal, that is potentially a cause for immediate termination." R. 00951.

#### **4. TESTIMONY OF STEVE ALSOP**

31. Alsop is affiliated with CCIT, an IT consulting firm, which is an independent contractor for the City. R. 00967. Alsop has extensive expertise, education, and employment experience in computer networking. *See* R. 00967-00969. He is a Certified Systems Engineer, and has worked as an IT Manager and/or Network Systems Engineer at various companies. *See id.*; *see also* R. 00475-00477 (Alsop Resume).

32. Alsop testified he was called in by the City near the end of February 2004 to provide services related to the City's computer network, in response to a call to Alsop's brother from Keck who explained "that [the City] had an urgent need. They had some network outages, things going on that needed to be repaired immediately because the City networks were not functioning." R. 00969-00970.

33. When Alsop and his brother arrived at the City, they met with Keck and Dansie, who discussed “symptoms that they were experiencing that they wanted fixed.” R. 00970. These included problems with viruses, requiring rebooting of the email server, and the fact that the network would just stop working and start again after a few minutes. R. 00971. Alsop thought the City appeared to be in turmoil and, on the day Alsop arrived, the network had been down all day. *Id.*

34. Keck and Dansie told Alsop they wanted CCIT “to assist Irene in evaluating what the nature of the problem was, since for some reason it was unable to be determined. They just brought us in as experts to figure out where the break was.” R. 00971.

35. Alsop said he was introduced to Thomas during the meeting with Keck and Dansie, and that he and Thomas were then “excused to go downstairs to look at the problems, in the data room.” R. 00971. Dansie told Thomas in Alsop’s presence to give Alsop the network passwords. R. 00972.

36. Alsop testified that once in the data room, he asked for the network passwords and Thomas refused to provide them, becoming very upset and described, her demeanor as being a bit hysterical. She was crying. She was very upset. I didn’t know Irene. I didn’t know anything about Irene except that she was the IT person here. I didn’t really know how to react to that. But she didn’t want to give us the passwords and we couldn’t carry on a conversation with her, so I came up and got [Dansie].

R. 00972. He said Dansie came and took Thomas away, and that Dansie returned 20-30 minutes later with the passwords written down and gave them to him. R. 00973. Alsop then logged onto the City’s five servers, as well as the routers and firewalls to try to

determine the source of the failures. R. 00973.

37. On March 2, 2004, Alsop found that the City was running illegal Veritas software on its network. *See* R. 00478-00492. Alsop saw the “Blizzard” icon which appears right on the desktop monitor screen of one of the City’s servers. R. 01005. By clicking on the Blizzard icon, Alsop opened and examined the “info file” that went along with the cracker code, which boasted that the Veritas key was hacked, showing that the software was illegal. R. 01007-01008. The Exhibit of the desktop monitor screen clearly shows the “Blizzard” icon. R. 00478-00479.

38. Alsop testified that he investigated this matter, and “called Veritas and said, ‘I have a key here. Can you validate it?’” R. 01005. He said that,

after I gave Veritas the key, the person on the other end of the phone started to get angry with me. She said, “Where did you get this?” I said we are evaluating some down time on a network and this is a key being used. And she said, “Did you know that this is a hacked key?”

R. 01005. Alsop testified that Veritas told him the serial number was an illegal software number. R. 01010.<sup>3</sup>

39. Alsop testified that he examined every piece of paper in the City’s IT work area, and never found a license certificate for Veritas software. R. 01012. Significantly, Alsop testified that the last modified date on the Veritas software was January 26, 2004, so the hacker key had to have been used on or prior to that date. R. 01052.

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<sup>3</sup>The Veritas representative told Alsop she had researched the issue and determined that the City “owned Version 4 about four or five years ago, for a Sun system.” R. 01010. Alsop said that the City no longer had a Sun system, which showed the Veritas licensing had expired years earlier. *Id.*



40. When asked whether the “Blizzard” icon should have made it obvious to a knowledgeable network administrator that the Veritas code key had been hacked, Alsop responded “I don’t think you need any computer savvy whatsoever to understand that this is an illegal piece of software. Just the name of it alone.” R. 01008.

41. Alsop testified that “anyone that administers a system, that is responsible for a system, is going to notice the crack icon on the desktop of one of your servers. I don’t know how that could have been missed by Ms. Thomas.” R. 01062.

42. Alsop testified that no reputable company would put unlicensed software on any system. R. 01053. He said that to install the hacked Veritas software, someone had to have had **administrative** access to the system. R. 01055.

43. Alsop also determined that the Symantec software on the City’s network was unregistered and unlicensed. R. 00478. Alsop confirmed this fact by calling Symantec. R. 01014. Alsop did not find a Symantec license in the IT work area. *Id.* When going through the IT room, Alsop did find a “burned” CD containing the Symantec Enterprise Edition 8.5 software. R. 01026. This was not a manufacturer’s disk; but a copy. R. 01027. Alsop was unable to conclude, however, that this diskette is where the illegal Symantec software came from. *Id.*

44. Alsop found many problems with the network during his initial inspection. *See* R. 00493-00499 (“Draper City IT Department Infrastructure Issues” (drafted by CCIT)). Alsop testified about the concerns created by these problems as follows:

- (1) scanning for viruses in the middle of the work day, as Thomas’ system did, caused computers to be slow because the requests made of the machine had to get

in line behind the scan (R. 00978);

(2) 75% of the City's computers were totally unprotected from viruses (R. 00979);

(3) backups and virus scans were both happening in the middle of the workday which made the slowdowns even worse (R. 00979-00980); these should be done starting at about 10 pm, and this is "like networking 101" (R. 00980-00982);

(4) backup tapes were not labeled which would have made it nearly impossible to restore any lost data (R. 00981-00982);

(5) virus and spyware problems were found even on Police Department patrol car laptops (R. 00983);

(6) the daisy-chain cabling used by Thomas, and the hand-crimped cables, caused network outages (R. 00986-00989);

(7) Symantec was rejecting requests for electronic virus updates because the software had not been activated with the proper license (R. 00993);

(8) it took significantly more time and work to service desktop computers because of their lack of standardization (R. 00994);

(9) every server had a terminal services conduit open from the firewall, which meant that there was an insecure environment and "anyone with any sort of hacking background, very minor, a twelve-year-old could sniff that password and gain access to any file that the City is housing" including police files (R. 01002).

## **5. TESTIMONY OF ERIC KECK**

45. Keck became City Manager on November 1, 2002. R. 01065. In 2003, Shabastari came to him about problems with Thomas' purchasing practices; she would say she would purchase something then "go into a different direction." R. 01066.

46. Keck testified that he had authorized Thomas to purchase a Blackberry, and he subsequently discovered she had bought two. R. 01100-01103; R.01157. Thomas told Keck she wanted a color Blackberry, that Simply Wireless only had the non-color model,

that she was told if she bought the non-color model she could trade it in later for a color one, but Simply Wireless later refused to allow her to do this, so she also bought the color one when it became available. *Id.* Simply Wireless denied any such agreement. *Id.*

47. Thomas told Keck that problems with the computer system would improve after the move to new City offices, but they did not. R. 01068. Keck said that there were many days when computers were at a standstill for two to three hours at a time. R. 01068. He testified that “[t]here were times I almost had to consider sending employees home who relied upon the network, accessing files, relied upon e-mail. When you can’t do your job, that’s a problem.” *Id.*

48. Due to all the problems, Keck began talking to different computer companies to try to find help for Thomas and the IT department. R. 01068. He said “things were really dismal, frankly, with respect to ability to work.” R. 01069.

49. An “emergency situation” was reached in early 2004, with the network always down and people complaining that Symantec was updating every hour or so and would not allow them to complete computer tasks, and Keck said to himself, “This is ridiculous. Let’s get somebody in here.” R. 01072. He felt comfortable with CCIT because they had experience with another city, so he called them. R. 01073.

50. On February 26, 2004, Keck asked CCIT to meet with him, Dansie and Thomas and “scope” the network. R. 01073. Keck and Dansie met with Alsop and his brother at about 5 pm that day, and then introduced the Alsops to Thomas. R. 01075. Keck said that when Thomas met with him, Dansie, and the Alsops, he could tell she was

agitated. He told Thomas to give the network passwords to CCIT. *Id.*

51. Right after Thomas left with the Alsops, one of the Alsops returned and said “Irene is having a total meltdown.” R. 01078. Keck was told that Thomas refused to give the passwords to CCIT and was “speaking incoherently.” *Id.* Dansie went to the IT area to establish “some semblance of order and console Irene.” *Id.* Keck testified that Thomas’ refusal to provide the passwords to CCIT was insubordination. *Id.*

52. When Keck learned from Alsop about the Veritas software, he was upset. R. 01082. He knew the Business Software Alliance (“BSA”), an alliance of United States software companies, had “gone after” companies and entities for using hacked software. *Id.* Keck “had visions of them coming in here and raising” problems. *Id.*

53. Keck works “with risk management on a schedule to ensure that we were clean with respect to our policies and procedures and the way we do business. . . . [and this software problem] did not please me. So we wanted to make sure that we acted quickly and . . . that we were doing things appropriately with our software.” R. 01082.

54. After the illegal software was found on the network, Keck wondered if that was the reason Thomas was so reluctant to have someone that she had not selected herself, come in to assess the network. R. 01169.

55. When he received the March 19, 2004 letter from Thomas’ attorneys, with a purported invoice to show the software was not pirated (*see* R. 01087), Keck testified that this did not alleviate his concerns because he knew from talking to the BSA that an invoice was not sufficient, and the BSA person he spoke to even scoffed at his question

of whether an invoice was proof of proper licensing. R. 01088.

56. At the first Pre-Disciplinary Hearing, when Keck asked Thomas to give her side of the story regarding software licenses, Thomas told him “she did buy the software . . . [which] Despain had provided to the City—and she had no knowledge that it was hacked software on the network because she had turned that portion of the responsibility over to the consultant, Pinnacle, to provide us with that software.” R. 01090.

57. Keck thought Thomas’ response was “not very credible” and he “found it difficult” to believe “that she would not have known that the software that was on there was hacked or pirated,” because she “holds things very close to the vest with respect to security and maintenance of the system.” R. 01090-01091. Keck could not see how Thomas, as the network administrator, could miss the “Blizzard” icon. R. 01091.

58. Keck testified that as he became more aware of the problems with the City’s network, “[s]ome things were quite eye-opening; specifically, the nature of the organization or lack thereof. How our IT was managed was shocking to me, frankly.” R. 01092-01093. Keck said that the network structure and failure of certain things raised questions in his mind about Thomas’ competency. R. 01093-01094.

59. Keck concluded the City was using illegal software and was “in trouble.” R. 01098. He testified that he spoke to Symantec and sent an e-mail to IP enforcement at Veritas about the problems, and was contacted by telephone. R. 01095-01096. Veritas was appreciative of his honesty and did not impose any fines or penalties for illegal usage of their software. R. 01096. Symantec told Keck the unlicensed software was the reason

for the problems with worms and viruses. R. 1099. Had the software been legitimate, the City's network would have automatically pulled up the daily updates required to battle new viruses and worms. *Id.*

60. Keck testified that since Thomas left and CCIT has taken over the network, "complaints [from employees] have gone down to zero. From many to zero." R. 01121.

61. Keck said that he had no confidence that Thomas could manage the City's network, that he would not trust her if she were to return to manage it, and that he would not trust her to make sure the City complied with software licensing. R. 01130-01131.

## **6. TESTIMONY OF ANTHONY TRAFNY**

62. Anthony Trafny ("Trafny"), an engineer with Intermountain Consite, a computer network consulting firm, was called by Thomas. R. 01188. A Board member showed Trafny the hearing Exhibit with the Blizzard icon and asked Trafny whether someone who logged on as a network administrator would see the screen with the icon. R. 01225-01226. Trafny said: "If I logged in as an administrator, and this was on the administrator desktop, yes, I would see that screen." *Id.*

## **7. TESTIMONY OF PAUL DESPAIN**

63. Despain, one of the owners of Pinnacle, was called as a witness by Thomas, and testified that his companies, Pinnacle and Westgate, have provided computer services for the City since 1998. R. 01254-01255; R. 01261-01262. He said that Thomas' son worked for both Westgate and Pinnacle doing contract work for the City. R. 01258.

64. Despain testified that he was contacted in February of 2004 by Wendy

Peterson, a City employee, who asked him to send her any outstanding invoices for the City that had not been sent in earlier and that had not been paid. R. 01258. Despain had some invoices but never sent them.

65. Despain testified that running virus scans in the middle of the day, during peak hours, should not be done. R. 01324. Despain also admitted that because software on the City's network was not standardized, the time and effort spent to administer computers was greatly increased, which is a problem. R. 01329-01330.

66. Despain explained how he downloaded the Allcracks.net key code for Veritas from the internet. *See* R. 01311-01312. He admitted that using a key that is posted on the internet that "came from somewhere other than Veritas" is illegal. R. 01341; R. 01362. He testified he did not recall what date he downloaded the key code and it could have been earlier than February 2004. R. 01334. He testified that Thomas was sitting with him some of the time that he was doing this work, but he could not recall if she was there when he downloaded the illegal, hacked key code. R. 01338.

67. On cross-examination, Despain did not deny that he might have told Thomas that he needed a key for the Veritas software and how he planned to obtain one from the internet. *Id.* When asked whether Thomas, with her experience and ability, would have known that downloading such a key from the internet was illegal, Despain answered "probably." R. 01342.

68. When a Board member asked Despain whether an IT administrator would be aware of the legal vulnerability of having unlicensed software if the administrator was

competent, Despain said “yes.” *Id.*<sup>4</sup> Despain also admitted that a network administrator should have noticed the Blizzard icon on the desktop within a couple of days. R. 01351.

## **8. TESTIMONY OF IRENE THOMAS**

69. Thomas admitted that she had not listed her son Greg on the disclosure form that City employees must complete which identifies “any personal interests or investment which creates or has the appearance of creating a conflict between the employees’ or officials’ personal interests and his or her public duties.” R. 01441-01443.

70. On cross-examination, when Thomas was confronted with her attorneys’ March 19, 2004 letter to the City, she claimed she “did not recall” Despain telling her he had downloaded the key from the internet. R. 01454.

71. Thomas admitted she had told Keck at the first Pre-Disciplinary Hearing that the Veritas software had been installed between December 2003 and January 2004, whereas now she claimed the software was installed at the end of February 2004, “the day before Corner Canyon showed up.” R. 01457-01458.

72. Thomas admitted that she was 1 1/2 years behind in filing licenses for software into her books. R. 01463. Thomas denied, however, that she had refused to provide the passwords to CCIT (R. 01459), or that she supervised Mardi. R. 01464.

73. A Board member asked Thomas whether, since she had testified that she had been updating the Symantec software manually because it would not update

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<sup>4</sup>When this Board member asked Despain whether he was “aware of the vulnerability that organizations are placed in by having illegal software installed on their systems,” Despain said, “More so the last couple of months than before, yes.” R. 01350.



automatically, that had led her “to believe that maybe that software was out of registration.” R. 01497. Thomas responded: “I didn’t take the time to think.” *Id.*

74. Thomas admitted at the hearing that the document that her counsel had claimed was a license for Veritas was not a license. R. 01500.

## V. SUMMARY OF ARGUMENT

This Court should affirm the Board’s Ruling and uphold Thomas’ termination.

First, there is no merit to Thomas’ argument that there is insufficient evidence to show that she knew or should have known that the Veritas software was unlicensed and installed with a hacked key, based on Thomas’ failure to marshal the evidence which supported the Board’s finding on this factual issue. Instead, Thomas focuses only on the evidence that supports her position, while ignoring the substantial evidence which supported the Board’s finding, as detailed in the City’s factual statement, above, including the Board’s finding that Thomas’ testimony on this point was not credible.

Second, an examination of the entire record demonstrates there is overwhelming evidence to support the Board’s findings regarding: (1) the installation of unlicensed and Veritas software and the use of a hacked key, about which Thomas knew or should have known; (2) the installation of unlicensed Symantec software on the network; (3) Thomas’ insubordination; and (4) the fact that Thomas was not competent to perform her job.

Third, the Court should reject Thomas’ argument that there is not substantial evidence to support the Board’s decision to uphold her termination. The Board did not limit its “serious misconduct” finding to the Veritas issue, as Thomas contends and, in

fact, found “serious misconduct” in all of Thomas’ failings including: (1) the fact that unlicensed Symantec software was on the network; (2) Thomas’ insubordination in refusing to provide CCIT with network passwords; and (3) Thomas’ lack of “ability and competence to perform the functions of her position as the City’s IT specialist.” Even if the Board had limited serious misconduct to Veritas issue, which it did not, that misconduct alone justified Thomas’ termination. The Board’s other findings, which Thomas does not dispute, also established a sufficient basis to justify her termination.

Finally, Thomas’ contention, that the City had to use progressive discipline before terminating her, has no merit. The City’s disciplinary policies do not require progressive discipline, are merely guidelines, and the final decision-maker has broad discretion in determining the punishment to be imposed. Thomas has failed to identify any City employee who was treated differently than her. Given the overwhelming evidence of Thomas’ many performance failures, her termination was warranted.

## **VI. ARGUMENT**

### **A. THOMAS FAILED TO MARSHAL THE EVIDENCE.**

Thomas argues that the Board erred because there is not sufficient evidence to show that she “participated in or acquiesced” in the installation of unlicensed Veritas software using an unauthorized hacked key. Aplt. Brf., pp. 4-5. The Court should reject this argument because Thomas failed to marshal all of the evidence to support the Board’s finding on this factual issue.

It is well-settled that to challenge a factual finding by the Board, she must marshal

all evidence supporting the finding and then show that, despite these facts, and in light of conflicting or contradictory evidence, the finding is not supported by substantial evidence. *Whitear*, 973 P.2d at 984; *see also* Utah R.App.P. 24(a)(9). If an appellant fails to marshal evidence, the appellate court will not address a challenge to factual findings and must assume they are correct. *Lucas*, 973 P.2d at 985; *see also Valcarce v. Fitzgerald*, 961 P.2d 305, 312 (Utah 1998).

Although Thomas contends she has marshaled the evidence on this issue (*see* Apl't. Brf. pp. 4-5, & n.4), both the City's Statement of Facts and its Response to Thomas' Statement of Facts, above, establish that she failed to marshal the evidence supporting the Board's findings and, instead, focused only on evidence that supported her version of events. Thomas even failed to mention the Board's findings that her and Despain's testimony was not credible on the fact issues she now disputes. The City offers the following examples of evidence which Thomas ignored regarding the Veritas finding.

First, her attorneys' March 19, 2004 letter essentially admits that Thomas knew about the unlicensed software and the illegal key code, by stating that Pinnacle had used a key code obtained from the internet to activate the Veritas software, and Despain told this to Thomas. *See* R. 00455. When confronted with this letter at the hearing, Thomas said only that she "did not recall" Despain telling her about this. R. 01454. She also admitted that the invoice, which her counsel sent with this letter, was not a license. R. 01500.

Second, Despain's testimony does not confirm that Thomas did **not** know of the illegal Veritas. Rather, he testified that he could not recall the date when he downloaded

the key code for Veritas and that it could have been earlier than February 2004.<sup>5</sup> *See* R. 01334. Despain also testified that Thomas was sitting with him during some of the time that he was dealing with the Veritas software, but he said he could not recall one way or another whether she was there when he downloaded the key code. R. 01338. He also did not deny that he might have told Thomas he needed a key for Veritas and how he planned to obtain one from the internet. *Id.* Despain also admitted that Thomas “probably” would have known that downloading such a key from the internet was illegal. R. 01342.

Third, based on Thomas’ differing stories as to exactly when the Veritas was installed, the Board specifically found that Thomas was not credible on this issue. R. 00007-00008 n.3. Thomas admitted she had told Keck at the first Pre-Disciplinary Hearing that the Veritas software had been installed between December 2003 and January 2004, whereas at the hearing before the Board she claimed the software was installed at the end of February 2004, “the day before Corner Canyon showed up.”<sup>6</sup> R. 01457-01458). The Board also found that Despain was not credible when he attempted to explain why he had not simply downloaded a trial version of the Veritas software from

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<sup>5</sup>This is significant because Thomas’ defense on this issue is that she did not see the Blizzard icon because the Veritas installation was only a couple of days before she took FMLA leave. As discussed in Section VI.C, below, there is substantial evidence establishing that the Veritas installation occurred weeks, if not months, before her leave.

<sup>6</sup>Thomas’ own evasive testimony at the hearing also raised questions about her credibility. She denied having refused to provide the network passwords to CCIT, when Keck and Alsop testified she had. R. 01459. She denied that she supervised Mardi, when she did. R. 01464. When a Board member asked whether the fact that she was updating Symantec manually, because it would not update automatically, had not led her “to believe that maybe that software was out of registration,” she responded: “I didn’t take the time to think.” R. 01497.

the internet, which would have been legal. R. 00008 n.4. This finding means that, after hearing and observing Thomas and Despain in person, and assessing their credibility and comparing it with that of other witnesses and the evidence, the Board simply did not believe them.

This Court has made clear that appellate courts may not “determine the credibility of conflicting evidence or the reasonable inferences to be drawn therefrom,” and must defer to the trial court in such assessments. *See, e.g., State v. Nichols*, 2003 UT App 287, ¶¶ 27-29, 76 P.3d 1173 (citations omitted); *see also, Lucas*, 949 P.2d at 758 (appellate court does not “review the Commission’s findings de novo or reweigh the evidence,” and “defers to the Commission’s findings on issues of credibility”). As the Utah Supreme Court recognized in *State v. Pena*, appellate courts “cannot hope to garner from a cold record” a sense of the proceedings or the credibility of witnesses. *State v. Pena*, 869 P.2d 932, 936 (Utah 1994). Thus, this Court must defer to Board’s finding that Thomas and Despain lacked credibility with respect to the installation of the unlicensed Veritas software.

Fourth, Alsop testified that the last modified date on the Veritas software was January 26, 2004, which means the hacker key had to have been used no later than that date, and that Thomas had plenty of time to see the “Blizzard” icon. R. 01052. Alsop also testified that anyone administering a network would have seen the “Blizzard” icon and understood that this is an illegal piece of software, and he does not know how Thomas could have missed it. R. 01008; R. 01062. Similarly, Trafny, Thomas’ own

witness, also confirmed that someone who was the network administrator would have seen the Blizzard icon. R. 01225-01226. Finally, Despain also admitted that a network administrator should have noticed the Blizzard icon within a couple of days. R. 01351.

Fifth, Keck also testified that he “found it difficult or not very credible that she would not have known that the software that was on there was hacked or pirated.” R. 01090-01091. Keck also zeroed in on Thomas’ odd behavior in refusing to cooperate with CCIT and refusing to provide passwords, and said it “crossed his mind” after the hacked software was found that this may have been the reason Thomas was reluctant to have someone that she had not selected herself come in to assess the network.<sup>7</sup> R. 01169.

Sixth, testimony presented to the Board about Thomas’ strange behavior and reactions to CCIT, as well as her own denial of obvious matters, cast a cloud over her credibility and suggested that she was hiding something. For example, when the CCIT technician asked for the network passwords that she had been ordered to give to him, she became “hysterical” and refused to provide them R. 00972. She then failed to show up for work on the next two work days, claiming to be sick. R. 00841-00842. When she did finally return to work on March 3, 2004, she met with Shabastari and gave him a letter in which she threatened to take FMLA leave unless she was given two people of her own choice (from Pinnacle) to work under her direction. R. 00843. When he refused, she did not show up for work on March 4, 2004. R. 00846. Certainly, this chain of events

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<sup>7</sup>The evidence presented about Thomas’ reluctance to work with her assistant, Mardi, and failure to allow him to work on the network, also reflects Thomas may have been hiding something that she did not want Mardi to see or know about.

suggests she may have been hiding something.

In sum, the City's Statement of Facts shows that Thomas failed to marshal the evidence, and an examination of the entire record reveals there is substantial evidence to support the Board's findings regarding the Veritas issue, as well as its other findings.

**B. SUBSTANTIAL EVIDENCE SUPPORTS THE BOARD'S RULING.**

As the City's factual statements demonstrate, this Court should reject Thomas' argument that there is not substantial evidence to support the Board's decision to uphold her termination. An appeal board's task as to factual findings is only to determine "whether the facts support the charges made by the department head." *Lucas*, 949 P.2d at 758; *see also Kelly*, 2000 UT App 235, ¶ 16, 8 P.3d 1048. A Board's findings are then reviewed on appeal under a substantial evidence standard and in light of the entire record. *Lucas*, 949 P.2d at 758. An appellate court does "not review [a Board's factual] findings de novo or reweigh the evidence." *Id.* An appellate court employs a clearly erroneous standard in assessing whether to overturn a Board's factual findings. *Kelly*, 2000 UT App 235, ¶ 15, 8 P.3d 1048. Applying this legal standard to the full record in this case establishes that there is substantial evidence supporting the Board's Ruling.

Thomas contends the Board found that the only "serious misconduct" engaged in by Thomas to support her termination was with regard to the installation of the unlicensed Veritas software with an illegal, hacked key. The Board's ruling, however, did not limit its "serious misconduct" finding to the Veritas software issue, and in fact found "serious misconduct" in all of Thomas' failings including the unlicensed Symantec software that

was on the City's network, Thomas' insubordination in refusing to provide CCIT with network passwords, and her lack of "ability and competence to perform the functions of her position as the City's IT specialist," as evidenced by the fact that the City's computer network was simply not functioning. *See* R. 00010.

The first page of the Board's Ruling details its "Findings," and states,

**The acts and omissions of Ms. Thomas, as described below, fall within the provisions and requirements of Policy Section 5030.3, entitled "Serious Misconduct."** The acts and omissions of Ms. Thomas require "severe measures" as defined in Policy Section 5030.4, justifying her termination by the City.

R. 00006 (emphasis added). The "acts and omissions" that the Board then "describes below" include the Symantec, Veritas, competency, and insubordination issues.

Moreover, it is in the context of its findings regarding all these issues that the Board concludes that, "Ms. Thomas committed misconduct which was sufficient to warrant her termination." *Id.* The Board then goes on to address only the Veritas software issue. *See id.* The Board's specific mention of the Veritas issue does not change the fact that the Board also found that the Symantec, insubordination, and lack of competency issues constituted "serious misconduct" under City policies which warranted termination.

Even if the Board had limited its "serious misconduct" to the Veritas issue (which it did not), the City's fact statement establishes that there is substantial evidence to support the Board's finding that Thomas "participated in or acquiesced" in the installation of illegal, hacked Veritas software. Thomas' misconduct regarding the Veritas matter alone is sufficiently serious to warrant her termination.



Significantly, however, Thomas does not dispute the bulk of the Board's factual findings, and disputes only the finding as to the Veritas software and the hacked key. *See* Aplt. Brf., p. 2 (noting "Court can accept as true most of the Board's findings regarding how Ms. Thomas performed her job," and stating these "arguably, reflect poorly on how she was doing her job"). This means Thomas does not dispute the following non-Veritas related facts found by the Board:

- (1) From December 2003 through late-February 2004, the City suffered serious problems with computer viruses infecting the network (R. 00009);
- (2) The Symantec Anti-Virus software on the City's network was unlicensed (and thus illegal), so that the City was not receiving the automatic updates as it would have if the software had been licensed (R. 00009);
- (3) Thomas was given a directive by Keck and Dansie to provide CCIT with the network passwords, and Thomas refused to do so, which constitutes **insubordination** under the City's policies and procedures (R. 00010).

The City submits that the Board's findings on these three issues justify termination.

In addition, the fact that Thomas does not dispute the Board's other findings means that she accepts the Board's findings that "[c]redible evidence was received casting doubt on Ms. Thomas ability and competence to perform the functions of her positions as the City's IT specialist." R. 00010. The fact that Thomas lacked the competency and ability to be the City's network administrator is evidenced by the following: (1) the network was repeatedly crashing and was down for hours at a time which prevented many employees from doing their jobs (R. 01068); (2) there were repeated problems with viruses on the network, which deleted data (R. 00918-00919); (3) Thomas had set the network up so that backups and virus scans took place during the work day (instead of after hours), which

slowed down the network and made it difficult for employees to use their computers (R. 00978; R. 00980-00982); (4) 75% of the City's computers were totally unprotected from viruses (R. 00979); (5) backup tapes were not labeled which would have made it nearly impossible to restore any lost data (R. 00981-00982); (6) the daisy-chain cabling used by Thomas, and the hand-crimped cables, caused network outages (R. 00986-00989); (7) Symantec was rejecting requests for electronic virus updates because the software had not been activated with the proper license (R. 00993); (8) it took significantly more time and work to service desktop computers because of their lack of standardization (R. 00994); (9) every server had a terminal services conduit open from the firewall, which meant that there was an insecure environment and anyone with even very limited hacking skills could "gain access to any file that the City is housing" including police files (R. 01002); (10) Thomas purchased clone computers when she had been told to purchase Dell computers (R. 00829-00830); (11) Thomas failed and refused to allow Mardi Rich to assist her with some network issues (R. 00830-00832); (12) other employees avoided having Thomas assist them with desktop support because they did not trust her (R. 00906-00914); (13) Thomas' work area was messy and disorganized in her work area (R. 00961-00962); and (14) viruses and spyware was found on all computers, even on Police Department patrol car laptops (R. 00983).<sup>8</sup>

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<sup>8</sup>Indeed, the City submits that a review of the entire record reveals there is substantial evidence to support the long list of performance failures set forth in both the July 22, 2004 Notice of Proposed Disciplinary Action and Pre-Disciplinary Hearing, and in the August 27, 2004 Notice of Termination. R. 00448-00452; R. 00459-00462.

In addition, the Board also heard evidence concerning Thomas' own suspicious and secretive conduct, such as the fact that Thomas: (1) failed to disclose her son, Greg's, association with Pinnacle (R; 00830, R 00945); (2) failed to show Shabastari invoices from Pinnacle (R. 00935-00836); (3) expressed hostility towards CCIT and refused to work or cooperate with CCIT (R. 00839-00840; R. 00442); (4) became hysterical and refused to provide CCIT with network passwords (R. 00841-00843; R. 00972); (5) gave an ultimatum that she be allowed to hire two assistants (from Pinnacle) to help with the network and that CCIT be let go (R. 00841-00844); (6) failed to timely pay Pinnacle's Symantec invoice, which was a violation of City policies (R. 00849-00853, R. 00464); and (7) purchased two Blackberries for herself without approval (R. 00855).

All of these fact support the Board's finding that Thomas engaged in serious misconduct. The City's Personnel Manual defines "Serious Misconduct" very broadly, and includes "serious performance problems." R. 00638. Obviously the record establishes that Thomas had serious performance problems, and the issues regarding the unlicensed Veritas and Symantec software, as well as Thomas' insubordination and incompetency fall within this broad definition. Accordingly, there is substantial evidence in the record to support the Board's findings that Thomas engaged in serious misconduct and that her termination was justified.

**C. THE CHARGES WARRANTED TERMINATION, AND PROGRESSIVE DISCIPLINE WAS NOT REQUIRED.**

Utah courts have held that the "discipline imposed for employee misconduct is within the sound discretion" of the person making the decision to terminate and the

standard of review is abuse of discretion. *See Lucas*, 949 P.2d at 761; *accord, Kelly*, 2000 UT App 235, ¶ 22, 8 P.3d 1048. The person making the termination decision “exceeds the scope of his discretion if the punishment imposed is in excess of the range of sanctions permitted by statute or regulation, or if, in light of all the circumstances, the punishment is disproportionate to the offense.” *Lucas*, 949 P.2d at 761. To determine whether the discipline is appropriate the court asks two questions: (1) is there a disparity of treatment between the terminated employee and other employees; and (2) is the punishment proportional to the offense. *See Ogden City v. Harmon*, 2005 UT App 274, ¶¶ 16-18, 116 P.3d 973. An appellate court reviews “the sanction in light of all the circumstances underlying the termination.” *Kelly*, 2000 UT App 235, ¶ 24, 8 P.3d 1048.

Given this legal standard, and the overwhelming evidence of Thomas’ misconduct and incompetency, the Board’s Ruling was not an abuse of discretion under the applicable two-prong test. First, Thomas failed to offer any evidence of a disparity between how she was treated in comparison with other City employees. Indeed, Thomas failed to identify any employee whose treatment was different than her own. Thus, the first test is satisfied.

Second, an examination of the entire record demonstrates that no one can credibly argue that termination was not proportional to the charges leveled against Thomas. Thomas makes several arguments to the contrary, but none of them are persuasive. Thomas contends that termination was not warranted because she did not engage in “intentional wrongdoing” by using the pirated key herself, and because the facts show that, at worst, she “was not performing her job duties in a manner Draper found

satisfactory.” Thomas Brf., p. 9. This argument hinges on Thomas’ claim that the hacked key was installed only a day or so before CCIT arrived on the scene, and she had no opportunity to see the “Blizzard” icon before she took FMLA leave. This argument is not supported by the evidence. In the first place, Thomas’ own testimony regarding the timing of Pinnacle’s installation of the Veritas software was inconsistent, and the Board specifically found her testimony on this point not credible. *See* R. 00007-00008 n.3.

In fact, Thomas admitted that she told Keck at the first Pre-Disciplinary Hearing, that the Veritas software had been installed between December 2003 and January 2004. R. 01457-01458. Alsop testified that the last modified date on the Veritas software was January 26, 2004, which means the hacker key had to have been used no later than that date. R. 01052. Thus, Thomas had plenty of time to see the “Blizzard” icon and, as Alsop and Trafny both testified, any competent network administrator would have seen that icon and known immediately that it was a hacked key. R. 01008; R. 01062; R. 01225-01226. Even Despain admitted that a network administrator should have noticed the “Blizzard” icon within a couple of days. R. 01351. Further, her attorneys’ March 19, 2004 letter admitted that Thomas knew that Despain used a key from the internet to activate the Veritas software, and she therefore must have known that was illegal. R. 00455. Thus, this argument fails.

Similarly, there is no merit to Thomas’ contention that she should not have been terminated because she was an exemplary employee. Although no one disputes that Thomas appeared to be a “nice person,” who worked hard, the fact is that Thomas

ultimately failed miserably in her job duties as a network administrator. Both Shabastari and Keck testified at length about the significant concerns they had with her performance, and their testimony, together with the testimony of LeCheminant and Alsop, establishes that Thomas' administration of the City's network and computer system was a failure, and that she was an incompetent IT administrator. *See* City's Response to ¶ 8 of Thomas' Statement of Facts, above; *see also* City's Statement of Facts, ¶¶ 2-28, 31-61, above.

The reality is that, during the hearing, the Board heard a litany of Thomas' failures. As a result, the City's network repeatedly crashed and was down for extended periods of time, thereby preventing many City employees from doing their jobs, viruses were running rampant on the network, deleting files and data, critical functions on the network were running on illegal and unlicensed software, backup tapes were not properly organized and labeled so it would have been almost impossible to retrieve lost data, and the City's files were unprotected from even the most amateur hackers. Imagine a municipality with a computer network where confidential police department files could be accessed by hackers with minimal skills. This was what the City experienced with Thomas as its IT administrator.

Finally, there is no merit to Thomas' argument that the City should have followed progressive discipline before terminating her. Progressive discipline is not mandated by City policy. Thomas would have this Court require the City to engage in progressive discipline before terminating any employee, regardless of the severity of an employee's misconduct. To the contrary, Section 5030 of the City's Personnel Manual specifically

states that the detailed disciplinary process are only “general guidelines” to address and correct problems, and that the final decision maker has broad discretion in determining the punishment to be imposed. R. 00636-00637. Moreover, the City’s Personnel Manual gives broad leeway in terminating an employee without any kind of progressive discipline whatsoever.<sup>9</sup> See R. 00638. Certainly, Thomas’ many serious performance failures constituted “serious misconduct,” under the City’s policies and justified her termination. Thus, no progressive discipline was required here, particularly given the fact that Thomas failed to prevent the installation of illegal, unlicensed software on the City’s network.

In sum, given Thomas’ massive performance failures, her utter lack of competency to perform her job, and the fact that she had lost the trust and confidence of City management, the City had no choice but to terminate Thomas.

## VII. CONCLUSION

Based on the foregoing, the City respectfully asks this Court to affirm the Board’s Ruling and uphold Thomas’ termination.

DATED this 22<sup>nd</sup> day of February, 2006.

SNOW, CHRISTENSEN & MARTINEAU

By

Stanley J. Preston

Judith D. Wolferts

Attorneys for Draper City

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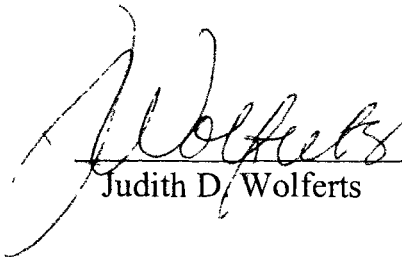
<sup>9</sup>In fact, Behunin testified that her recommendation to terminate an employee who stole money was justified without going through any prior disciplinary process, and she also acknowledged that City policies allow for bypassing a disciplinary process, and that it is her understanding “that when someone has done something illegal, that is potentially a cause for immediate termination.” R. 00951.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22<sup>nd</sup> day of February, 2006, I caused two (2) true and correct copies of the BRIEF OF DRAPER CITY to be mailed by first class United States Mail, postage prepaid, to the following:

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\_\_\_\_\_  
Judith D. Wolferts



## **ADDENDUM**

### **EXHIBITS**

- 1. Utah Code Ann. § 10-3-1106**
- 2. Draper City Personnel Manual**

# **ADDENDUM**

## **EXHIBIT 1**

Utah 134, 172 P 701 Municipal Corporations  
 ⇨ 183(2)

#### 6. Removal of employees

Assuming a city marshal was rightfully holding the office, the attempt by the mayor to remove him without the concurrence of the council was wholly ineffectual, in view of Comp Laws 1907, § 215, as amended by Laws Utah 1911, c 125, requiring the concurrence of the council *Henriod v Church*, 1918, 52 Utah 134, 172 P 701 Municipal Corporations ⇨ 183(3)

#### 7. Reappointment

In the absence of prohibitive statute, a city marshal, having resigned on day preceding effective date of raise in salary, was eligible to reappointment on the next day, especially in view of Laws 1911, c 125, and Sess Laws 1917, c 44, amending Comp Laws 1907, § 225, prohibiting increase of salary during term of city officer, so as to limit such section to elective officers *Henriod v Church*, 1918, 52 Utah 134, 172 P 701 Municipal Corporations ⇨ 183(4)

#### 8. City marshals

Under statute providing for appointment of a city marshal in third class city city marshal's term cannot in any event last beyond the next municipal election even though no successor be appointed Utah Code 1943, 15-6-29, 15-6-30, 15-6-32 *Taylor v Gunderson*, 1944, 107 Utah 437, 154 P 2d 653 Municipal Corporations ⇨ 183(2)

Where four of the five councilmen of third-class city were present when motion was made to remove city marshal and vote was two for and two against, and mayor pursuant to statute cast a vote in favor of the removal, the mayor having voted "aye" it was not necessary for him to vote again or otherwise indicate his concurrence and hence proper procedure was followed in removing the city marshal Utah Code 1943, 15-6-3, 15-6-20, 15-6-24, 15-6-32 *Taylor v Gunderson*, 1944, 107 Utah 437, 154 P 2d 653 Municipal Corporations ⇨ 183(3)

A city marshal of third-class city may be removed without cause in view of fact that Legislature eliminated from statute the words expressly requiring cause for removal Utah Code 1943, 15-6-29, 15-6-30, 15-6-32 *Taylor v Gunderson*, 1944, 107 Utah 437, 154 P 2d 653 Municipal Corporations ⇨ 183(3)

### § 10-3-1106. Discharge, suspension without pay, or involuntary transfer— Appeals—Board—Procedure

(1) An employee to which Section 10-3-1105 applies may not be discharged, suspended without pay, or involuntarily transferred to a position with less remuneration:

(a) because of the employee's politics or religious belief; or

(b) incident to, or through changes, either in the elective officers, governing body, or heads of departments

(2)(a) If an employee is discharged, suspended for more than two days without pay, or involuntarily transferred from one position to another with less remuneration for any reason, the employee may, subject to Subsection (2)(b), appeal the discharge, suspension without pay, or involuntary transfer to a board to be known as the appeal board, established under Subsection (7).

(b) If the municipality provides an internal grievance procedure, the employee shall exhaust the employee's rights under that grievance procedure before appealing to the board.

(3)(a) Each appeal under Subsection (2) shall be taken by filing written notice of the appeal with the municipal recorder within ten days after:

(i) if the municipality provides an internal grievance procedure, the employee receives notice of the final disposition of the municipality's internal grievance procedure, or

(ii) if the municipality does not provide an internal grievance procedure, the discharge, suspension, or involuntary transfer.

(b)(i) Upon the filing of an appeal under Subsection (3)(a), the municipal recorder shall forthwith refer a copy of the appeal to the appeal board

(ii) Upon receipt of the referral from the municipal recorder, the appeal board shall forthwith commence its investigation, take and receive evidence, and fully hear and determine the matter which relates to the cause for the discharge, suspension, or transfer.

(4) An employee who is the subject of the discharge, suspension, or transfer may:

- (a) appear in person and be represented by counsel;
- (b) have a public hearing;
- (c) confront the witness whose testimony is to be considered; and
- (d) examine the evidence to be considered by the appeal board.

(5)(a)(i) Each decision of the appeal board shall be by secret ballot, and shall be certified to the recorder within 15 days from the date the matter is referred to it, except as provided in Subsection (5)(a)(ii).

(ii) For good cause, the board may extend the 15-day period under Subsection (5)(a)(i) to a maximum of 60 days, if the employee and municipality both consent.

(b) If it finds in favor of the employee, the board shall provide that the employee shall receive:

- (i) the employee's salary for the period of time during which the employee is discharged or suspended without pay; or
- (ii) any deficiency in salary for the period during which the employee was transferred to a position of less remuneration.

(6)(a) A final action or order of the appeal board may be appealed to the Court of Appeals by filing with that court a notice of appeal.

(b) Each notice of appeal under Subsection (6)(a) shall be filed within 30 days after the issuance of the final action or order of the appeal board.

(c) The Court of Appeals' review shall be on the record of the appeal board and for the purpose of determining if the appeal board abused its discretion or exceeded its authority.

(7)(a) The method and manner of choosing the members of the appeal board, the number of members, the designation of their terms of office, and the procedure for conducting an appeal and the standard of review shall be prescribed by the governing body of each municipality by ordinance.

(b) For a municipality operating under a form of government other than council-mayor form under Part 12, Optional Forms of Municipal Government Act, an ordinance adopted under Subsection (7)(a) may provide that the governing body of the municipality shall serve as the appeal board.

Laws 1977, c 48, § 3, Laws 2004, c 260, § 2, eff May 3, 2004

#### Library References

Municipal Corporations 159, 218(8), Westlaw Key Number Searches 268k15  
218(9) 268k218(8) 268k218(9)

# **ADDENDUM**

## **EXHIBIT 2**

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INTRODUCTION

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Section 1010  
INTRODUCTION TO THE MANUAL

General Policy Statement:

Our employees are our most valuable resource. Therefore, this manual was written to provide a framework to guide Department Heads' actions and to inform employees of their rights and responsibilities.

Guidelines:

1. Purpose of the Personnel Policies and Procedures Manual. The manual is the City's guide and general summary of Human Resource policies. Through the manual we hope to provide an understanding of City philosophy and interests, promote consistency and fairness in employee/employer relationships, enhance employee performance, and protect City legal interests.
2. General Guidelines. The manual contains general information and guidelines. It is not intended to be comprehensive or to deal with all possible applications and detailed specifics of City policies and procedures. Some policies outlined here (such as Benefit and Retirement Plans) are described in other official documents not included in this manual. These documents are controlling and should be reviewed when specific questions arise.
3. City's Right to Modify or Discontinue Policies. Our business environment changes frequently and quickly. The City reserves the right to unilaterally alter, amend, except or revoke any policy, practice or procedure set forth herein in its sole discretion. All amendments shall be adopted by resolution of the City Council.
4. Department Head Responsibilities. It is important that Department Heads review the manual, become familiar with its policies, ask questions, and utilize it as may be appropriate. Our goal is that these policies will promote sound management practices and the success of each member of our organization. This manual is Draper City property and is intended for use as a reference inside our organization.

5. Employees' Acknowledgment. All City employees are responsible to be aware of and adhere to all the provisions of this manual and the policies and procedures set forth herein and any amendments hereto. Each employee shall sign and submit to the City an Acknowledgment Form, as provided by the City, attesting to the fact that he or she has had an opportunity to read and understand the provisions set forth herein. The copy of the Personnel Manual shall be available in each Department and on the City's Network System.
6. Disclaimer. The information contained herein and any amendments or alterations hereto do not constitute a contract or agreement of any kind between the City and its employees. No person other than the City Manager, with the advice and consent of the City Council, shall enter into an employment agreement with any person inconsistent with the provisions herein. The information and policies contained herein shall not constitute or create any rights in or obligations to any persons or parties other than to the City and its employees. Nothing herein shall be construed to limit the City's right to discharge an employee or to create any other obligation or liability on the City.
7. City Manager Delegation Authority. Except as otherwise required by law or as directed by the City Council, the City Manager shall perform the administrative duties and responsibilities of the City regarding personnel matters and the administration of the policies contained herein. Except in the case of appointments, hiring, promotions, transfers, reclassifications, suspensions or dismissals, the City Manager may delegate such administrative duties and responsibilities to Department Heads or other designees as deemed appropriate and permitted by law.

Section 1020  
DEFINITIONS

**For the purpose of these rules and regulations, certain words and phrases used herein shall be defined as follows:**

**Anniversary Date:** The date on which an employee begins employment in his or her current position.

**Date of Hire:** The date on which an employee begins employment with the City, except if a part-time or temporary employee becomes a permanent full-time employee; his or her date of hire is the first day worked as a permanent full-time employee. Any change in status

initiated by a date of hire shall be effective as of the first full pay period following the date of hire.

**Employee, Part-time:** Any person working for the City on a regular basis who is regularly assigned to work less than an average of 40 hours per week.

**Employee, Probationary:** Any person working for the City either full-time or as a part-time employee, not having successfully completed a Probationary Employment Period.

**Employee, Full-time:** Any person working for the City on a regular basis who is regularly assigned to work 40 hours per week.

**Employee, Temporary:** Any person hired for defined projects and/or limited time frames, typically for less than six (6) months, such as seasonal, emergency or other special help.

**Level or Band:** A group of positions(s) sufficiently alike in duties, authority and responsibility to justify the same position title, qualifications, and the schedule of pay to all positions in the group.

**Personnel Administrator:** The Personnel Administrator is the City Manager or as delegated by him/her to a Department Head or other designee as permitted herein.

## Chapter 2000 GENERAL MANAGEMENT PRACTICES

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2010	<u>Americans with Disabilities Act (ADA)</u>
2020	<u>Equal Employment Opportunity (EEO)</u>
2030	<u>Harassment-Free Workplace</u>

### Section 2010 AMERICANS WITH DISABILITIES ACT (ADA)

#### General Policy Statement:

As part of our commitment to Equal Employment Opportunity and diversity in the workplace, we seek to implement all applicable provisions of the Americans with Disabilities Act ("ADA") and related state law. All employment practices are conducted on a nondiscriminatory basis. Ability, not disability, is the basis of employment decisions.

#### Guidelines:

1. **Individuals Protected.** Under the ADA, employment discrimination is prohibited against individuals with disabilities who:

A) Meet the job-related requirements of the position; and

B) Can perform the essential functions of the job with or without reasonable accommodation.

2. **Disability Defined.** An individual with a "disability" includes one who:

A) Has a physical or mental impairment that substantially limits one or more major life activities; or

B) Has a record of such an impairment; or

C) Is regarded as having such impairment.

Whether an individual is disabled under the ADA should include consideration of measures that mitigate or correct the impairment and be examined on an individual basis.

3. **Scope.** Our ADA policy applies to all policies, procedures, terms and conditions of employment including, but not limited to:

A) **Recruitment and Hiring.** All qualified job applicants are considered for positions in our organization regardless of disability. Hiring procedures have been reviewed and provide disabled individuals meaningful hiring opportunities.

B) **Job Actions.** Employment and job-related decisions (including corrective action, promotions, transfers, terminations, layoffs) will be performance and job-related and based on business needs.

C) **Compensation and Benefits.** Qualified individuals with disabilities will not be discriminated against in pay or other forms of compensation and benefits. Leaves are available to all full-time employees on an equal basis.

D) **Other Employment Benefits.** Other benefits including training, social programs, and facilities are made available to all employees regardless of disability.

4. **Reasonable Accommodations.** The City will reasonably accommodate "qualified individuals with known disabilities" (physical or mental) unless the accommodation would impose an undue hardship on the City.

5. **Testing.** All medical exams and employment testing will be conducted in accordance with applicable law.



6. **No Discrimination Because of Relation or Association.** Applicants or employees who are related to or associated with persons with disabilities will not be discriminated against because of that relationship.
7. **Facility Accessibility.** We are committed to making our facilities accessible to applicants, employees, and members of the public. Employees who are aware of accessibility problems or who have suggestions for improvement should contact the Personnel Administrator.
8. **Service Animals.** Service animals accompanying disabled individuals are welcome at the City. Service animals should remain with their owners at all times.
9. **Employee Responsibilities.** All employees are responsible for the successful implementation of the ADA and are expected to support our ADA policy. Ensuring equal opportunity for all, regardless of disability, cannot be realized without the assistance of all employees throughout our organization.
10. **The Personnel Administrator Oversees ADA Compliance.** Any employee or Department Head with ADA related questions or discrimination issues, or anyone seeking an accommodation should contact the Personnel Administrator.
11. **ADA Complaint.** Any employee who believes he or she has been discriminated against on the basis of a disability regarding access to or benefit of City services, activities or programs, or in connection with the City, may file a written complaint in accordance with the City complaint procedure as set forth in Section 5020.
12. **Retaliation Prohibited.** By law any retaliatory action against an employee, job applicant, or witness who makes a charge of an ADA violation or who assists in an ADA investigation is strictly forbidden.

Section 2020  
EQUAL EMPLOYMENT OPPORTUNITY

General Policy Statement:

Equal Employment Opportunity has been and will remain a basic commitment at the City. Employment is based upon qualifications and ability. Discrimination because of race, religion, sex, pregnancy, age, national origin, sexual preference, citizenship, disability, veteran or military status, or other protected characteristics is forbidden and will not be tolerated. Implicit in our commitment to Equal Opportunity is our goal to maintain a

work environment that is free of harassment, intimidation, ridicule, or discrimination of any kind.

Guidelines:

1. **Scope.** Our Equal Employment Opportunity commitment applies to all policies, procedures, terms, and conditions of employment including, but not limited to:
  - A) **Recruiting and Hiring.**
    - (i) Advertising
    - (ii) Recruiting efforts
    - (iii) Job postings
    - (iv) Application process
    - (v) Testing
    - (vi) Interviews and selection
    - (vii) Initial Employment Periods
    - (viii) Job Assignments
  - B) **Compensation and Benefits.**
    - (i) Pay structure and programs
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    - (iv) Insurance, pension and retirement systems
  - C) **Job Actions.**
    - (i) Corrective actions
    - (ii) Promotions
    - (iii) Transfers
    - (iv) Terminations
    - (v) Layoffs
  - D) **Employment Benefits.**
    - (i) Training and development opportunities
    - (ii) Social programs

(iii) Employee activities

(iv) Facilities

2. **Commitment to Diverse Workforce.** In the spirit of our commitment to Equal Employment Opportunity, we also seek to promote a workplace that reflects our ethnically and culturally diverse community.
3. **Administration of EEO.** The Personnel Administrator has overall responsibility to administer and ensure effective administration of equal employment opportunities throughout the City.
4. **Employee's Role.** All employees are expected to support our EEO policy. Meaningful equal opportunity cannot be realized without the assistance of all employees throughout our organization. It is each employee's responsibility to inform his or her supervisor or Department Head of any evidence of discrimination or harassment.
5. **Department Head's Role.** Department Heads have special responsibility through leadership and example to effectively implement this policy.
6. **EEO Communications.** Any communication, questions, or issues involving equal employment issues should be referred to a supervisor or Department Head.
7. **Discrimination Issue.** Any employee who believes he or she has been discriminated against on the basis of race, religion, sex, national origin or other protected class may file a written complaint in accordance with the City's complaint procedure as set forth in Section 5020.
8. **Reporting.** Any employee who feels they have been discriminated against or believes he/she have witnessed discrimination is strongly encouraged to file a complaint and/or to immediately bring the matter to the attention of the appropriate supervisor, Department Head or Personnel Administrator. Any such complaints or reporting of discrimination or harassment should be reported and investigated in accordance with the procedures set forth in Section 2030.
9. **Retaliation Prohibited.** By law, any retaliatory action against an employee, job applicant, or witness who makes a charge of an EEO violation or who assists in an EEO investigation is strictly forbidden and may be subject to corrective action.

Section 2030  
HARASSMENT-FREE WORKPLACE

General Policy Statement:

The City prohibits harassment of its employees, visitors, and customers. We will not tolerate verbal, visual, or other communication, physical conduct, or any other actions by any employee, visitor, vendor, or customer which interferes with another's job performance or which creates a hostile working environment.

The City seeks to provide a professional work environment in an atmosphere of mutual respect. Actions, words, or other forms of harassment based on an individual's sex, race, age, national origin, religion, disability, sexual preference, or any other legally protected characteristic are prohibited and will result in corrective action up to and including termination.

The purpose of this policy is to communicate to all employees of the City and all persons conducting business with or served by the City that harassment is prohibited. In addition the intent of this policy is to inform and communicate to employees experiencing or witnessing harassment that they have a means to discourage and report offensive or inappropriate conduct and that such reports will be immediately investigated and appropriate action will be taken. The City Manager should conduct or cause to be conducted annual employee training regarding harassment.

Guidelines:

1. **Sexual Harassment Defined.** Sexual harassment is unwelcome conduct or communication of a sexual nature (or based on gender, pregnancy, or childbirth), which adversely affects a person's employment relationship or working environment.
  - A) **Unlawful Activity.** Sexual harassment is unacceptable work-related behavior and is an unlawful activity, which is prohibited and considered to be a form of sex discrimination under Title VII of the Civil Rights Act.
  - B) **Directed Toward Either Gender.** Harassment may be directed at men or women. Same sex as well as heterosexual harassment is prohibited.
  - C) **Involves Employees and Non-Employees.** Sexual harassment can occur between co-workers, between supervisors and subordinates, and may also occur in business relationships with customers and suppliers.

2. Examples of Sexual Harassment. Sexually harassing conduct includes, but is not limited to:

- A) Sexual teasing, leers, stares, advances, propositions, or repeated unwelcome requests for a date.
- B) Inappropriate physical conduct or touching including patting, pinching, or brushing up against someone.
- C) Verbal harassment including suggestive comments, "kidding," and "practical jokes."
- D) Offensive or suggestive remarks about someone's appearance.
- E) Obscene, lewd, or sexually degrading language.
- F) E-mail, Internet, or other communication which is offensive and/or contains sexual implications or gender slurs.
- G) Showing or posting pornography, sexual objects, cartoons, drawings, posters, and pictures.
- H) Questions which infringe upon individual privacy.
- I) Any conduct which has the purpose or effect of substantially interfering with a person's work performance or of creating an intimidating, hostile or offensive work environment.
- J) Instances where submission to or rejection of forms of conduct is used as the basis of an employment decision, or either explicitly or implicitly is used as a condition of employment. (Examples include submitting to sexual advances in exchange for a raise, a promotion, or to prevent corrective action.)
- K) Gender stereotyping abuse including offensive, demeaning, or ridiculing treatment of another person because of that individual's sex or sexual preference.

3. Harassment Based on Sexual Preference, Religion, National Origin, Age, Race, Disability, etc. The City intends to maintain a working environment free from discrimination and harassment, whether based upon race, sexual preference, religion, national origin, age, disability, sex, or any other protected characteristics. Under this policy, harassment includes any form of communication, physical conduct, negative stereotyping, or other actions, which ridicule or

constitutes direct hostility toward any employee because of any protected status or characteristic.

4. Department Head Responsibilities. All Department Heads are responsible to see that the work environment is productive, professional, and free of harassment. Responsibilities include providing:

A) Information to Employees. Supervisors should discuss this policy with all employees and assure them that they are not expected to tolerate insulting, degrading, or exploitative sexual, harassing, or discriminatory treatment.

B) Harassment-Free Workplace. No supervisor is to explicitly or implicitly communicate that an employee's job, compensation, promotion opportunities, or any other term of employment may be affected by submission to or rejection of harassing conduct.

C) Non-Preferential Treatment. No special treatment may be provided to an applicant or employee who has submitted or may submit to a supervisor's sexual advances or harassing conduct.

D) Inform Administration. All supervisors are required to immediately report instances of harassment and/or discrimination to the Personnel Administrator and to ensure that appropriate actions are taken.

5. Employee Reporting of Harassment. Any employee who believes that he or she has been harassed or who witnesses harassment is strongly encouraged to immediately bring it to the attention of the appropriate supervisor, Department Head or the Personnel Administrator.

A) Notification of Administration. Any Department Head or supervisor who receives a report of alleged harassment or who has reason to believe that an employee has been harassed is required to immediately notify the Personnel Administrator.

B) Employee Responsibilities. Under no circumstances is an employee required to confront an alleged harasser. However, if possible, the employee should:

- (i) Report to work;
- (ii) Verbalize that the action is unwelcome;
- (iii) Demand that harassment cease;
- (iv) Document the occurrences; and

- (v) Identify any witnesses who could substantiate the allegations.
- C) **Witnesses' Responsibility.** Employees who witness acts of harassment must also immediately report the incidents to a supervisor or Department Head.
6. **Harassment Investigations.** All complaints of harassment will be taken seriously and investigated immediately and thoroughly by a supervisor or Department Head. In the event the employee's supervisor or Department Head is implicated in the matter or the employee does not feel comfortable raising the matter with his or her supervisor or Department Head, the employee may verbally notify or file a written complaint with the City Manager. If the City Manager is implicated, the matter may be raised or filed with the Mayor. Employees are required to cooperate in any investigation. Investigations will be conducted as confidentially as possible and should include the following:
- A) **Conference with Involved Parties.**
    - (i) Interview the accuser. Determine the names of possible witnesses and names of people who may have had similar experiences with the alleged harasser. Develop a specific chronology of incidents and complete written documentation.
    - (ii) Interview the alleged harasser.
    - (iii) Interview witnesses and others with relevant information.
    - (iv) Get the facts. Ascertain facts and observable incidents, not opinions.
    - (v) Protect confidentiality. All employees involved in the investigation should be reminded that the issues should be discussed confidentially and professionally, on a "need to know basis" only.
  - B) **Documentation.** The investigation should be thoroughly documented and all allegations researched and verified, if possible.
  - C) **Findings.** Results of the investigation will be provided to the complaining employee and the alleged harasser.
7. **Confidentiality.** Confidentiality will be maintained as much as possible; however a guarantee of absolute confidentiality cannot be made. Information concerning a harassment complaint will be considered classified in order to encourage the reporting of harassment and to protect the reputation of any employee wrongfully charged with harassment.
8. **Corrective Action.** Appropriate corrective procedures up to and including termination will be taken against any employee found guilty of harassing another employee. Consideration will be given to the nature, the severity, and the circumstances of the harassment.
- A) **Non-Employee Harassment.** A non-employee who subjects an employee to harassment will be informed of the City's policy against harassment and appropriate action will be taken.
  - B) **False Claims.** Employees found to have initiated false harassment claims or who have provided false information will also be subject to corrective action up to and including termination.
9. **Conduct Unbecoming.** Inappropriate behavior which has sexual connotations but does not meet the test of sexual harassment or which may be offensive but does not rise to the level of harassment, may constitute "conduct unbecoming an employee" and shall also be subject to corrective action or discharge.
10. **Supervisors Head/Subordinate Relationships.** This harassment policy should not be construed as intent on the part of the City to regulate the social interaction or relationships freely entered into by employees. However, based upon the City's concern with the appearance of favoritism, possible claims of sexual harassment and employee dissension created by romantic relationships between supervisor and their employees, Supervisors are prohibited from pursuing or maintaining intimate personal relationships with subordinate employees within their Department.
11. **Retaliation.** By law, any form of retaliatory action taken against an employee or applicant who makes a charge of harassment or who assists in a related investigation is strictly forbidden and may subject the retaliating individual to corrective action.
12. **Appeal.** An employee who is dissatisfied with the final decision in a harassment case may appeal the decision to the City Manager. If the City Manager investigates the matter, the appeal may be filed with the Mayor. Any final decision of the City Manager or Mayor may be appealed to the City Council. Any

appeal shall be in writing filed with the City Recorder within ten (10) days from the date of the final decision stating the grounds therefore.

## Chapter 3000 EMPLOYMENT STATUS AND PERSONNEL RECORDS

3010	Employee Classification and Status
3020	Probationary Employment Period
3030	Personnel Files and Records
3040	Reference Requests

### Section 3010 EMPLOYEE CLASSIFICATION AND STATUS

#### General Policy Statement:

Based on the conditions and terms of employment, our employees are classified into several categories: temporary, part-time, full-time, exempt or nonexempt. Employment classifications are important in determining eligibility for various benefits and to ensure that we meet all applicable legal requirements.

#### Guidelines:

#### 1. Exempt and Nonexempt Positions. All positions are classified as either exempt or nonexempt.

A) Exempt. Exempt employees are paid on a salary basis and hold positions that meet specific tests established by the Fair Labor Standards Act (FLSA), resulting in exemption from overtime pay requirements. Exempt positions are determined by the City Manager and in accordance with FLSA.

B) Nonexempt. Employees whose positions do not meet the established FLSA exemption tests are nonexempt from overtime requirements and are paid one and one-half times their regular pay rates for hours worked in excess of forty hours per week. Nonexempt employees' wages may be paid hourly or on a set salary basis, but are based on the actual hours worked.

#### 2. Temporary Employees.

A) Classification. Temporary employees may be hired for full or part-time and for exempt or nonexempt positions.

B) Duration of Employment. Temporary employees are hired for defined projects and/or limited time frames, typically for less than six (6) months.

Temporary employees are considered at-will employees throughout their employment and may be terminated with or without cause.

C) Temporary Positions. Without the budgetary approval of the City Council and City Manager, temporary positions cannot exist for a period exceeding six months. If, after six months, the position is still needed, approval for full-time/part-time funding may be requested.

D) Filling Vacancies. Temporary employees should not be converted to full-time/part-time positions without following competitive announcement procedures as provided in these policies.

E) Status. Employment beyond an initially specified term does not in any way imply an employment status change. Temporary employees retain that status unless and until notified in writing of a change.

F) Benefits. Temporary employees receive all legally required benefits (such as Social Security) but are ineligible for City benefits or insurance programs.

#### 3. Full-Time Employees. Full-time employees are hired to work the City's normal 40-hour workweek on a regular basis.

A) Benefits. Full time employees are eligible for all standard benefits, effective on the date of program eligibility.

B) Change of Status. If an employee's position changes from temporary or part-time to full-time, his or her hire date for the purpose of determining applicable benefits will be the date of the change. If an employee's position changes from full-time to part-time, days of paid leave accrued as a full-time employee will be preserved and may be used under the terms established in the applicable policies. All other City benefits are discontinued.

#### 4. Part-Time Employees.

A) Hours. Part-time employees are scheduled to work less than 40 hours per week, on a regular basis.

B) Benefits. Part-time employees are eligible for all legally mandated benefits, but do not qualify for City benefits unless they meet the hours worked requirements.

C) Part-time Must Compete. Part-time employees will not be given preference when a full-time position



becomes available. Such employees desiring to be considered must compete for any full-time vacancies.

D) If it is determined that additional work load requires a full-time position to replace a part-time position within a department, after the full-time position is approved and funded by the City Council, then the part-time position will become unfunded.

5. Review of Employment Categories. Full-time and part-time employment categories will be reviewed annually and adjusted where appropriate.

6. Independent Contractors. Independent contractors are not employees. They do not receive regular employment benefits and no deductions are made from pay for taxes or Social Security. Various factors must be closely reviewed before independent contractor status can be determined. The factors considered differ under various statutes and may include, but are not limited to:

A) Degree of Employer Control. Independent contractors are generally not under the employer's control.

B) Domain of Business. Independent contractors are generally engaged in a distinct business and may work for other clients.

C) Terms of Work. Independent contractors usually have project specific relationships with the City.

D) Work Location. Generally, independent contractors provide their own tools and work is often performed at their own business locations.

E) Specialized Skills. The need for specialized skill and/or knowledge may indicate that an independent contractor relationship exists.

F) Professional Services. Independent contractors frequently perform professional services.

G) Contract. Independent contractor must be under contract with the City.

No one factor above is determinative. The entire work situation must be examined and an assessment should be made to decide if the individual acts and is treated as an employee or as an independent contractor. If the individual contracts to perform work according to his or her own methods, without being subject to the employer's control, except for the final product or service result, then an independent contractual arrangement may exist. The

Personnel Administrator should be contacted for further information.

## Section 3020 PROBATIONARY EMPLOYMENT PERIOD

### General Policy Statement:

All employees, both full and part-time, are required to complete Probationary Employment Periods. The first 180 calendar days of employment after hire or change of status are considered to be the "Probationary Employment Period." During this period of time, the employee's potential for successful performance will be closely examined. It is expected that the employee will also evaluate the City and position in terms of his or her own personal needs. Employees are considered at-will during the Probationary Employment Period and may be terminated with or without cause during such time.

### Change of Status-Defined

A change of status is defined as when an employee assumes a new job position requiring new job qualifications and/or job skills unrelated to his/her current job. Status change is not defined to include a move in a career ladder position (for example, moving from a Building Inspector I to a Building Inspector II) or involuntary job restructurings or reclassifications.

### Guidelines:

1. Probationary Employment. All employees hired by the City shall be required to successfully complete a Probationary Employment Period in accordance with provisions set forth in this section.

2. Expectations for Competency. By the end of the Probationary Employment Period, a new, transferred, or promoted employee will generally be expected to be performing at an acceptable level of performance in his or her position.

A) Supervisor's Guidance. During the Probationary Employment Period, the employee's supervisor should provide close supervision, necessary training and guidance, and should keep the employee informed of progress being made.

B) Formal Performance Appraisal. At the end of 90 days and again at the successful completion of the Probationary Employment Period, a formal, written performance appraisal should be completed and discussed with the employee. The appraisal should include:

(i) Discussion of the employee's strengths and weaknesses; and

(ii) The supervisor's assessment of the employee's potential and whether he/she should be retained.

3. Probationary Employment. Upon completion of the Probationary Employment Period, recommendation of the Department Head, and approval of the City Manager, an employee will become a full time or part time employee in the position for which he or she is serving. The Department Head shall notify the employee of the new status and document the event with a Personnel Action Form.
4. Written Notice of Extension. Upon the recommendation of the supervisor and approval of Department Head and the City Manager, the Probationary Employment Period may be extended when the original period is not adequate for the satisfactory assessment of an employee's performance. In such event, the employee will receive written notification of the reason for and length of the extension.
5. Benefits. New employees are eligible for benefits as detailed in the applicable sections of this manual and specific plan documents.
6. Termination of New Hires. All terminations must have the prior approval of the City Manager.

#### Section 3030 PERSONNEL FILES AND RECORDS

##### General Policy Statement:

Records and information regarding each applicant, employee, and former employee will be kept to ensure compliance with government requirements and to support employment actions. The City recognizes the need to protect each employee's right to privacy, while ensuring that appropriate information is available to meet business needs. The following policies have been developed to address both of those goals.

All personnel records and files shall be accessed and maintained in accordance with the Utah Government Records Access and Management Act, as set forth in Utah Code Ann. §§ 63-2-101, et seq., as amended, and the Municipal Records Retention Schedule, as adopted by the City.

##### Guidelines:

1. Contents of Personnel Files. Personnel files retained by Human Resources should include information as required by law, and documentation regarding all aspects of employment with the City. This information generally includes, but is not limited to, the following:

A) Hiring Documents. References, official transcripts, licenses, certifications, test results, applications, resumes and other documents related to hiring.

B) Personnel Action Form. Record of promotions and rate increases.

C) Performance Appraisals.

D) Corrective Actions. Warnings reduced to writing, corrective action and disciplinary decisions and documents.

E) "W-4" Forms. Changes in marital status, address changes, or number of dependents which changes the number of exemptions must be reported immediately.

F) Records of Status Changes. Promotions, demotions, transfers, and other employee change forms.

G) Insurance Enrollment Forms. Signed authorizations for payroll deductions and beneficiary designation forms must be submitted in a timely manner.

H) Records of Terminations. Letters of resignation, termination, and exit interview forms.

I) Documentation of Continued Training or Education.

J) Employee Personal Information. Telephone number, address, marital status and information regarding dependents and spouse for tax and benefits purposes, other benefit related information, an emergency contact, and any additional personal information should be kept current.

2. Employment Eligibility Verification (I-9) Forms. I-9 employment forms should be retained in a separate "I-9 File" and not retained in employee personnel files.
3. Separate Medical Records. The City will attempt to maintain the confidentiality of employees' medical histories and records, unless required otherwise by law. Medical records are to be held in separate

personnel files and their access strictly limited. Such records will not be disclosed to other employees, government agencies, insurance companies, etc., unless required by law, regulation, or appropriate business practice, or such disclosure is necessary to protect the health or safety of others.

4. Review and Revision of Records. Files and records should be examined regularly by the supervisor and/or the employee to confirm that only appropriate and relevant materials are retained. Files should be updated and revised as needed.
5. Employee Review of Files. Employees have a right to review their personnel files in accordance with the provisions of Utah Code Ann. § 67-18-1, as amended, and in accordance with the following procedures. It is expressly acknowledged that personnel files are City property and access to such records may be restricted as provided by law. Employees may review their records by making a written request for an appointment with the Personnel Administrator or his or her designee. The following guidelines should be followed:
  - A) Personnel Administrator. The Personnel Administrator or his or her designee must be present during an employee review of his or her records.
  - B) Copies or Removal of Records. Copies of personnel records may be made. However, under no circumstances may the file or any of the contents be removed by the employee.
  - C) Employee Disagreement with File Information. Employees who, after reviewing their personnel files, think that any information is misleading or untrue may:
    - (i) Request that the Personnel Administrator or designee amend or remove the information from the file, or
    - (ii) Submit a statement explaining his or her position. If the request to remove or revise file materials is refused, the statement will become part of the employee's file and will be released whenever the disputed information is disclosed.
6. Confidentiality. All information related to employees in personnel files will be considered "confidential" and shall be maintained and subject to access in accordance with the Utah Government Access and Management Act, as set forth in Utah Code Ann. §§ 63-2-101, et seq., as amended.

7. Reference Checks. All inquiries regarding a current or former employee shall be referred to the Personnel Administrator. Information will be released in accordance with established policy.

#### Section 3040 REFERENCE REQUESTS

##### General Policy Statement:

Except as provided herein or otherwise permitted by law regarding public records and information, private or confidential information from an employee file will not be released to any outside individual or organization without the prior written consent of the employee. All releases of employee information will be coordinated through the Personnel Administrator.

##### Guidelines:

1. Inquiries and Requests. All reference requests and inquiries regarding current or former employees should be directed to the Personnel Administrator.
2. Letters of Reference for Employees. No employee may provide a letter of reference from the City for any current or former employee without the permission of the Personnel Administrator. Personal letters of reference may be provided from individual employees.
3. No Verbal Release of Information. Under no circumstances may any information regarding a current or past employee be provided over the telephone. The Personnel Administrator or designee will respond in writing only to reference requests that are submitted in writing. No information will be provided without a written request from a prospective employer or current/past employee.
4. Limited Information Provided Without Consent of Individual.
  - A) No Authorization or Release. Limited information will be provided without the written consent and release of the individual involved. The Personnel Administrator may provide written verification of:
    - (i) Dates of employment;
    - (ii) Job title and department; and
    - (iii) Location of employment.
  - B) Requests Accompanied By a Signed Employee Release. If a prospective employer's request for reference information is accompanied by a written



release signed by the individual involved, additional information may be provided at the discretion of the Personnel Administrator or designee. Such information may include:

(i) *Performance Records.* Prior to giving a reference, the Personnel Administrator will consult with the responsible supervisor regarding the employee's performance record.

(ii) *Properly Documented Information.* Reference information will be limited to properly documented excerpts from the employee's personnel record.

(iii) *Only Job-Related Information.* Only information regarding job performance and professional work conduct and experience will be provided.

(iv) *No Subjective Information.* Under no circumstances will reference information be provided that could be construed as "subjective" or "second-hand" and that cannot be substantiated through proper documentation.

C) *Employment Information for Financial Institutions.* Employment information released to financial institutions will be accompanied by a signed release from the employee. Copies of released information will be given to the affected employee and a copy retained in the employee file.

5. *Disclosing Sensitive Information.* Certain situations require proper disclosure of sensitive information involving public health and public safety, or criminal activity. If an employee's employment record contains such information, no reference of any type may be provided until the matter has been reviewed by the City Manager, who may choose to seek legal counsel.

#### Chapter 4000 HIRING ISSUES

4010	<u>Employment of Minors</u>
4020	<u>Hiring Procedures</u>
4030	<u>Hiring of Relatives</u>
4040	<u>Immigration Law Compliance</u>
4050	<u>Obtaining Reference Information</u>
4060	<u>Orientation</u>

#### Section 4010 EMPLOYMENT OF MINORS

General Policy Statement:

All full-time, part-time, seasonal and temporary employees must be at least 16 years of age. The City seeks to comply with all child labor requirements set forth in the Federal Fair Labor Standards Act (FLSA), related Department of Labor regulations, and applicable State law provisions. Our goal is to provide a safe and healthy workplace for all employees.

Guidelines:

1. *State and Federal Requirements.* Employment of minors under the age of eighteen (18) years shall be in accordance with applicable State law provisions regarding the employment of minors, including, but not limited to provisions set forth in Utah Code Ann. §§ 34-23-101, et seq., as amended, and applicable Federal laws and regulations, including, but not limited to provisions of the Fair Labor Standards Act.
2. *Age Certification.* While documenting an employee's identity and eligibility to work through completion of an I-9 form as part of the established hiring process, the Human Resource staff must ensure that satisfactory age certification of employees is provided. Such documentation should be copied and kept on file.

#### Section 4020 HIRING PROCEDURES

General Policy Statement:

Applicants and employees will be evaluated based on job qualifications and ability. Sex, race, religion, disability, age, national origin, sexual preference, marital status, citizenship, or other protected status will not be considered.

Guidelines:

1. *Hiring Criteria.* Employees will be hired based on their qualifications and ability to do the job. Such selection criteria include the applicant's:
  - A) *Relevant Experience.*
  - B) *Skills.*
  - C) *Education and Training.*
  - D) *Results of a written exam, assessment center exercise or other performance examination.*
  - E) *Ability to Perform "Essential Functions."*
2. *EEO/Affirmative Action Commitment.* We are committed, as required by law, to affirmatively hire and promote qualified women, minorities, disabled

individuals, disabled veterans, and veterans of the Vietnam era at all levels and throughout our organization. We seek to employ a diverse workforce and to hire qualified applicants without regard to religion, race, sex, disability, age, sexual preference or any protected status.

3. **Disabled Applicants and Employees.** Disabled applicants are eligible for hire if they can perform the essential functions of the job, with or without reasonable accommodation. Persons with disabilities will not be disqualified because of inability to perform nonessential or marginal job functions. Reasonable accommodations will be provided to assist applicants and employees with disabilities as required. We are committed to ensuring that all applicants have equal opportunity to participate in the application and hiring process.
4. **Staffing Requests.** Personnel requisition requests shall be submitted to and approved by the Personnel Administrator. All requests will be examined to ensure appropriateness and compliance with internal policies. Each personnel requisition request must include an up-to-date and detailed position description and a list of prerequisites, qualifications, and essential functions. Positions must have been approved during the budget process, and unless authorized by the City Council, positions not filled within 180 days after the budgeted position is approved will become unfunded.
5. **Placement from Within.** The City shall consider qualified employees to fill vacant positions from within the City before outside applicants are solicited.
  - A) **Position Posted.** Positions will be posted and held open for a minimum of five (5) working days.
  - B) **Position Description.** An accurate and current position description which describes the job's minimum qualifications, essential functions, responsibilities, and working conditions should be included in the posting.
  - C) **Human Resource Authorization.** Human Resource will post job announcements on designated City bulletin boards.
  - D) **Employee Applications.** Employees requesting consideration for job openings must submit a completed City Employment Application to Human Resources.
6. **Outside Recruitment.** A variety of recruitment methods may be utilized in hiring outside candidates. To ensure that all recruiting efforts comply with EEO

standards, all outside recruiting for an open position must receive prior approval from the Personnel Administrator. Care will also be taken to ensure that job information is accessible to all persons seeking employment. Supervisors are encouraged to recommend recruitment sources and techniques for attracting qualified job candidates. Methods of recruiting may include, but are not limited to:

- A) **Advertisements.** Any advertising must state that the City is an "Equal Opportunity Employer," and must be void of any indicated preference of sex, age, religion, nationality, etc.
  - B) **Recruiters and Search Firms.** Such firms should be advised of our EEO commitment.
  - C) **Government agencies, including Utah Workforce Services.**
  - D) **Professional Organizations.**
  - E) **Qualified Female, Minority, Disabled and Veterans' Recruiting Services and Organizations.**
  - F) **Prior Active Applicants.**
  - G) **Alternative Methods.** Internships, recorded job messages, government-subsidized/sponsored programs, university placement, large group seminars, the Internet, and personal referrals may be pursued as appropriate.
7. **Recruitment Records.** A detailed record of all recruiting efforts should be maintained and filed in accordance with the Utah Government Records Access and Management Act, as set forth in Utah Code Ann. §§ 63-2-101, et seq., as amended. Such records should contain the following:
    - A) **Advertising.** Copies of the advertisement including dates and publication names.
    - B) **Verbal and Written Notifications.** Notice of job openings sent or given to agencies, organizations, and individuals with the dates and names of contacts.
    - C) **Job Applications and Resumes.**
  8. **Outside Hiring Procedures.**
    - A) **Announcement.** The hiring Department Head and the Personnel Administrator shall prepare an employment announcement including the following information: the position available, minimum qualifications, testing and selection procedures,

manner of application, application deadline, and other relevant information.

B) Publication of Announcement. The announcement of a job opening within the City shall be published in a newspaper of general circulation. The closing date for applications shall be at least seven (7) days after the final date of publication.

C) Application Process. All applicants must complete a Draper City Employment Application. Previously submitted applications will be considered "active" for the advertised position for 90 days. At the end of the 90-day period, interested candidates must reapply to be considered. Applications are to be retained in accordance with applicable federal and state requirements.

D) Ranking Panel. Upon the request of a Department Head, a ranking panel made up of three (3) supervisors will be established to rank all applicants. Ranking criteria will be established by the hiring Department Head. Two of the ranking panel members will be from outside the hiring department. The ranking panel will submit to the interview panel a minimum of the highest three (3) "highly qualified applicants." If more than one vacancy exists, the ranking panel will submit one for each additional vacancy.

E) Initial Interviews. The hiring department will screen all applications and conduct initial interviews of qualified applicants. At least three (3) applicants shall be interviewed to fill an open position with the City, unless fewer than three (3) qualified applicants have applied for the vacancy. Applicants should be informed that their references will be checked. The City will obtain the applicant's consent to check references including a signed release prior to reference checks.

F) Job-Related Testing and ADA (or other EEO) Accommodations. The Personnel Administrator will provide or arrange any tests required, and make appropriate ADA and EEO accommodations as necessary.

(i) Accommodations may include providing additional time to complete written tasks and forms, substituting oral for written procedures, and providing an interpreter or signer, as appropriate.

(ii) All testing will be job related.

(iii) All applicants for a position must be given the same test or exercise.

(iv) In accordance with the ADA, no pre-offer medical examinations will be conducted.

G) Interviews.

(i) All questions asked during an interview must be strictly job and performance related and consistent with EEO principles. Additionally, the ADA prohibits pre-employment inquiries about a disability or medical history to ensure that qualified candidates are not eliminated because of a disability before their actual ability to do the job is determined.

(ii) Necessary accommodations will be provided during the interview to provide all applicants equal opportunity in the hiring process.

(iii) The applicant's skills, experience, and abilities will be reviewed to ensure that he/she can meet the specific requirements of the position.

(iv) No employment commitments or discussions of specific salaries should be discussed during the initial interview.

(v) Where appropriate, candidates may be interviewed multiple times by a variety of individuals.

(vi) No questions may be asked relating to age, sex, race, national origin, marital status, sexual orientation, political, or religious affiliation.

(vii) All hiring decisions require the approval of the City Manager.

H) Background Check. If an applicant is deemed qualified following the interview process, employment references will be checked. Job-related credit, personal background, motor vehicle, and/or criminal background investigations may be conducted as necessary and allowed by law. All reference checks shall be conducted in accordance with Section 4050. A consent and release form shall be obtained from all applicants prior to conducting any such background or reference checks.

I) Records of Applicant Selection. Prior to making any formal offer of employment, the following forms shall be submitted to Human Resources:

- (i) Complete Interview Evaluation Results;
  - (ii) Copies of all applications; and
  - (iii) Copies of all reference and background checks.
- J) Employment Offer.
- (i) Terms of Verbal Offer. Verbal offers will be extended subject to the approval of the City Manager and must be documented. An employment offer should include job requirements, compensation, benefits, and any employment conditions or contingencies. Employment offers will be made by the responsible Department Head. No reference may be made to a long-term commitment of employment, employment for a specified time, future salary increases, career advancements, etc. No verbal conditions of employment shall be binding upon the City unless included in the written offer of employment.
  - (ii) Written Offer. After the verbal offer has been made and the applicant has agreed to the essential terms of employment, a written offer, prepared by Human Resource and signed by the hiring Department Head, will be sent to the candidate. The written offer will confirm the terms of the verbal offer and any other contingencies or essential conditions of employment. The written offer must be signed and returned by the candidate within five working days.
  - (iii) Personnel Action Form. Upon receipt of the countersigned offer of employment and before employment begins, the hiring department will submit a completed Personnel Action Form to Human Resources.
- K) Post-offer Investigations. After any employment offer is made, a drug screening will be conducted and results submitted to Human Resources prior to the date of employment. A post-offer medical examination may be conducted for job related purposes. If a post-offer medical examination, drug screening, or any other inquiry reveals that false information has been provided by the applicant or that the applicant is not an appropriate candidate, employment will be denied or terminated.
- L) Rejection Letters. Letters of rejection should be sent within 10 working days of the final selection and completion of post-offer investigations to all unsuccessful applicants by Human Resources.
9. Probationary Employment Period. All employees hired by the City shall be required to successfully complete a 180 day Probationary Employment Period in accordance with provisions set forth in Section 3020.
10. Former Employees (Rehires). Former employees who resigned or retired with proper notice and acceptable performance records may be rehired.
- A) Seniority. Rehired employees separated from the City less than one year may be reinstated with full seniority and service credits previously accrued. Rehired employees who have been separated more than one year will be treated as new employees.
  - B) Benefits. Benefit eligibility is determined by each program.
11. Temporary Hires. Temporary employees may be hired as organizational needs require and in accordance with available appropriations.
12. Exceptions to Hiring Policy. In case of an emergency or business needs of the City, exceptions to certain hiring policy requirements may be necessary. Any exceptions to these hiring policies must remain in general compliance with EEO principles and must have the prior approval of the City Manager with the advice and consent of the City Council.

#### Section 4030 HIRING OF RELATIVES

##### General Policy Statement:

The following guidelines have been established to avoid potential morale, security, productivity, and supervision problems or personal issues brought into the workplace. Relatives of current employees, elected, and appointed officials of the City do not receive special consideration or favoritism in the hiring process. It is the intent and policy of the City to comply with all provisions of Title 52, Chapter 3 of the Utah Code Annotated, as amended, regarding the prohibition of and restrictions regarding the employment of relatives.

##### Guidelines:

1. Conditions. An employee's immediate relative may be hired provided the applicant can perform essential job functions. However, any such employment may not establish a direct or indirect managerial relationship, a

real or apparent conflict of interest, a potentially adverse work situation, or be in the same department.

2. Relationships Prohibited. Relationships are prohibited which involve:

A) Performance evaluation (including supervision, discipline, and appraisal functions);

B) Legislative, budgetary, financial or records control; or

C) Physical control (including quality control, reviewing or auditing the other's work, theft prevention, etc.); or

D) Working relationships which may hamper performance or productivity.

3. Immediate Relative Defined. For purposes of this policy, "immediate relative" refers to the employee's father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, first-cousin, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, grandfather, grandmother, or step-children living in the household.

4. Transfers and Promotions. The above policies also apply to transfers, promotions, or similar employment actions.

Section 4040  
IMMIGRATION LAW COMPLIANCE

General Policy Statement:

Under the terms of the Immigration Reform and Control Act of 1986 (IRCA) we must verify the legal employment status of all new hires, including American citizens. Therefore, all offers of employment are contingent upon an individual's ability to produce required documents establishing identity and employment authorization.

Guidelines:

1. Documentation of Identity and Eligibility. All employment offers are contingent upon an applicant's ability to produce legally specified documents that establish identity and eligibility to work in the United States.

A) INS Form I-9. All new employees must complete an INS Form I-9. Section one, "Employee Information and Verification," must be completed and signed the first day the employee begins work. In completing Section One, the employee need not present any

documents. Section two, "Employee Review and Verification," must be completed within three days after the employee starts work. The Personnel Administrator will be responsible for ensuring completion of the I-9's and carefully verifying related documentation.

B) Validity. Only original documents (or certified copies of birth certificates) will be accepted. Photocopies are not permitted.

2. Employee Files. I-9 forms must be retained in accordance with the City's retention schedule. For organizational purposes, I-9's should be filed separately from the employee's personnel file. While not required by law, City policy provides that photocopies of required documents be made and filed.

3. Failure to Provide Documentation. Newly hired employees who are unable to produce required documentation within required time frames will be considered "undocumented" and will be terminated immediately with full pay for the hours worked.

4. Expired Work Authorization. Employees with time-limited work authorizations that have expired will be terminated upon expiration of such authorization.

5. Non-Discrimination. The City does not discriminate against individuals on the basis of national origin or citizenship. Particular individuals or groups will not be required to provide more or different documentation than is required of all employees.

Section 4050  
OBTAINING REFERENCE INFORMATION

General Policy Statement:

As part of the hiring process we will verify prior employment and educational history of all applicants who are seriously considered for employment. All reference checks will be conducted on a non-discriminatory basis.

Guidelines:

1. Timing of Reference Checks.

A) Pre-Offer. Every practical effort must be made to obtain complete verification of an applicant's work and/or educational history before an offer of employment is extended.

B) Limited Exceptions. When the postponement of an employment offer due to reference delays would seriously impair departmental function, job offers may



be made contingent upon future receipt of acceptable references.

2. Non-Discriminatory Reference Checks.

A) All Applicants Checked. Complete reference checks should be obtained for all applicants under serious consideration for employment. "Selective" reference checks (checks made only on those applicants whose background is questionable) are not allowed.

B) Reference Request Form. Employment reference checks should be documented on the Reference Request Form, which has been designed to comply with relevant legal guidelines.

3. Checks Performed by Hiring Department Head. Reference checking will be done by the hiring Department Head.

4. Applicant's Authorization and Release. Before initiating a reference check, it should be confirmed that an applicant has signed a release authorizing former employers to provide employment related information. Many companies refuse to provide reference information without signed consent from a former employee.

5. Reference Checks Must Be Job-Related. Reference inquiries will be limited to verifiable job-related information. Questions must meet EEO guidelines and are subject to the same limitations and standards as are required by law in a job interview.

6. Hiring Documentation. A written record of each reference check on the Reference Check Form will become part of each new employee's hiring documentation and of each applicant's records. The scope and depth of each reference check should be fully documented, noting even those reference requests for which no information was obtained.

7. References as Selection Criteria.

A) Defensible Selection Criteria. Good references, combined with directly related work and/or educational experience, will normally provide defensible selection criteria.

B) Negative References.

(i) Thorough Inquiry. If a reference check produces negative information, further checks should be made to confirm the information and to eliminate the possibility of bias.

(ii) Falsification of Information. Falsified information supplied by an applicant will result in disqualification for employment consideration. Discovery of false information after employment will lead to corrective action up to and including termination.

(iii) Hiring Consultation. If negative information is revealed in a reference check, the City Manager should be made aware of such information before a final hiring decision is made.

8. City Manager or Designee. Questions regarding the interpretation of this policy or on how to handle specific situations should be referred to the City Manager or his or her designee.

Section 4060  
ORIENTATION

General Policy Statement:

Through our orientation program we seek to welcome new hires, complete necessary paperwork, and convey essential job and City information. Our goal is to reduce the time required for new employees to become productive on the job. All new hires will participate in an orientation program that begins on the first day of work by reporting to the Personnel Administrator.

Guidelines:

1. Personnel Administrator Responsibilities.

A) Program Management.

(i) Design and implementation of program;

(ii) Training supervisors regarding their responsibilities;

(iii) Developing orientation checklists; and

(iv) Oversight of program;

(a) Maintaining and updating the Orientation Program as needed;

(b) Evaluating Program's success and modifying as needed.

B) Paperwork. Completion of necessary paperwork including:

(i) I-9's and New Hire Registry;

- (ii) Payroll information and IRS requirements;
- (iii) Benefits information and enrollment; and
- (iv) Employee data and file requirements.

C) Conveying Information. Human Resource is responsible for conveying a variety of information about our organization including:

- (i) Discussion and dissemination of employee information;
- (ii) Basic management policies:
  - (a) Commitment to EEO principles;
  - (b) Harassment and nondiscrimination policies; and
  - (c) Complaint procedures;
- (iii) Salary and payroll procedures;
- (iv) Explanation of benefits;
- (v) City products and services;
- (vii) Work rules and standards of conduct; and
- (viii) Customer service standards.

## 2. Supervisor's Responsibilities.

A) Planning. Planning activities for a new hire includes preparing:

- (i) Co-workers for new employee's arrival;
- (ii) New hire's work area, including equipment and supplies;
- (iii) A work schedule and assignment of tasks for the first week; and
- (iv) The Orientation Checklist and customizing as needed.

B) Conveying Information.

- (i) Introducing co-workers and assigning a trainer to the new hire;
- (ii) Providing a tour of the department and building;

(iii) Discussions of job description, job duties and responsibilities;

(iv) Clarifying work standards and City expectations;

(v) Discussing performance review procedures; **and**

(vi) Overseeing necessary job training.

C) Conducting Follow-up Sessions. The supervisor should schedule and conduct several follow-up meetings with a new hire within the first few weeks to answer questions and provide additional information.

## 3. New Employee's Responsibilities.

A) Paperwork. Complete and submit required paperwork.

B) Seek Information. Ask questions and seek information regarding job functions, procedures or other issues affecting any aspect of the position or employment relationship.

## Chapter 5000 EMPLOYMENT PRACTICES

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5010	<u>Working Schedules</u>
5020	<u>Complaint Procedure</u>
5030	<u>Corrective Action</u>
5040	<u>Layoff and Reduction in Force</u>
5050	<u>Medical Examinations</u>
5060	<u>Medical Reporting and Health Certification</u>
5070	<u>Outside Employment</u>
5080	<u>Performance Appraisal</u>
5090	<u>Serious Illness or Medical Condition</u>
5100	<u>Termination Procedures</u>
5110	<u>Job Transfers</u>

## Section 5010 WORKING SCHEDULES

### General Policy Statement:

Department Heads may develop alternate work schedules appropriate to their departments based upon service and staffing necessities such as 4/10 and 5/4/9 workweek. All alternative work schedules must be approved by the City Manager. In no case will alternative work schedules be approved by the City Manager if it requires another employee to take on additional workload.

The City reserves the right to change or cancel these arrangements at any time.

Guidelines:

1. Full-Time. All full-time employees must work a forty-hour workweek.
2. Workday. The normal workday begins at 8:00 a.m. and ends at 5:00 p.m. The attendance of all employees during these hours is necessary to ensure effective communication, coordination and supervision.
3. Lunch Period. All full-time, nonexempt employees must schedule with their supervisor, an unpaid, one (1) hour lunch period each day.
4. Required Overtime. Supervisors may require any employee to work overtime as necessary. As much notice as possible will be provided when the need for overtime work arises. However, advance notice may not always be feasible. No overtime may be worked without a supervisor's approval.

Section 5020  
COMPLAINT PROCEDURE

General Policy Statement:

It is important for employees to have both an informal and a formal procedure for informing Management of work-related problems. The City seeks to provide immediate and fair resolution of complaints, disputes, and appeals through an open door policy and/or use of the procedures below. Employees are required to utilize these procedures. No employee will be penalized for voicing a disagreement with the City in a reasonable and appropriate manner or for properly using the formal complaint system.

The provisions of this policy are intended to be used for complaints and grievances which are not otherwise addressed in this manual. In the event a separate complaint or grievance procedure is set forth elsewhere in this manual, such as for grievances or complaints regarding discrimination and/or harassment claims and corrective action involving demotion, transfer or dismissal, such separate procedures govern.

Guidelines:

1. Complaint Defined. Complaints may include any employee dispute or grievance involving:
  - A) The terms or conditions of employment;

- B) Wages and hours of employment; or
- C) Allegations of unethical, unsafe, illegal, or inappropriate behavior of supervisors, co-workers, and non-employees.
- D) ADA or EEO complaints.

2. Open Door Policy (Informal Problem Solving). Employees are encouraged to speak freely and discuss any problems with their supervisor so that appropriate action may be taken. The Personnel Administrator is also willing and available to discuss employee concerns. If such informal discussions fail to resolve an employee's complaint, he/she may utilize the more formal procedures outlined below.
3. Formal Problem-Solving.

A) Documentation in Writing. In order to facilitate resolution of employee concerns or complaints, all formal problem-solving efforts should be documented in writing. Proper documentation should include:

(i) A detailed explanation of the problem or complaint;

(ii) A description of all related acts or events; and

(iii) A summary of how the employee would like to see the problem resolved, as well as any employee suggestions for resolution.

B) Time Frame. Complaints must be submitted within ten (10) business days of the date of the action, decision, occurrence or reasonable knowledge thereof.

(i) Extensions. Time for filing a complaint may be extended upon a showing of good cause.

(ii) Failure to Meet Time Limits. If a complaining employee does not meet established time limits and no extension is granted as provided herein, the complaint will be considered terminated.

C) Problem-Solving Steps.

(i) Supervisor Review. An employee should immediately inform his or her supervisor of a complaint. Employees should first attempt to resolve the problem with the immediate supervisor before further actions or appeals are taken. The supervisor should:



- (a) Research the complaint;
- (b) Attempt to solve the problem;
- (c) Consult with appropriate Management, as necessary;
- (d) Notify the Personnel Administrator if the problem involves discrimination, harassment, or other serious issues;
- (e) Inform the employee of a decision within a reasonable time frame.
- (f) Document and file the complaint and actions taken in all applicable employee personnel files.

**Note:** If an employee's complaint concerns his or her supervisor, the employee may submit the complaint directly to the Department Head or City Manager or his or her designee as appropriate.

(ii) **Appeal to Department Head.** An employee who is dissatisfied with a supervisor's decision may submit an appeal with his or her Department Head within five (5) working days from the date of the supervisor's decision. The employee must document the complaint and the supervisor's decision for review by the Department Head. The supervisor will also submit his or her documentation related to the case. While it is recommended that the employee and his or her supervisor present the problem jointly, each party may also request a private meeting.

The Department Head should review the matter and provide a final written decision concerning the complaint within a reasonable time.

(iii) **Appeal to City Manager.** An employee who is dissatisfied with a Department Head's decision may submit an appeal to the City Manager within ten (10) working days from the date of the Department Head's decision. The City Manager shall review the appeal and make a written decision regarding the matter within a reasonable time.

- 4. **Retaliation Prohibited.** Employees may not be retaliated against or punished (formally or informally) for appropriate use of the complaint procedure. No employee who initiates a complaint according to the terms of this policy will be subjected to any form of intimidation, harassment, or reprisal as a consequence of taking such action.

- 5. **Abuse of Complaint System.** Employees, who abuse the complaint system, use it to intimidate or harass, or who submit frivolous or groundless complaints may be subject to corrective action.
- 6. **Confidentiality.** Every effort will be made to resolve an employee's complaint as confidentially and privately as possible. Information will be shared on a "need-to-know" basis only.
- 7. **Records.** The Department Head and the City Manager shall cause to be maintained all records pertaining to employee grievances and complaints filed hereunder and all records pertaining to an appeals of such grievances in accordance with the Utah Government Records Access and Management Act, as amended.

## Section 5030 CORRECTIVE ACTION

### General Policy Statement:

All employees are required to meet City conduct and performance standards. Unacceptable employee performance or behavior should be immediately addressed and corrected. The following corrective action policies are provided as guidelines.

### Guidelines:

- 1. **Supervisor Responsibilities.** It is the immediate supervisor's responsibility to promptly initiate corrective action as needed. In disciplinary situations, supervisors will apply the following:
  - A) **Knowledge of Corrective Action Procedures.** Supervisory and managerial personnel should be familiar with City Human Resource policies and practices so that problems may be quickly remedied and that like cases are treated with similar consequences.
  - B) **Consultation.** Supervisors should consult their Department Head regarding more severe disciplinary measures including probations, suspensions, terminations, or any situation where such action seems appropriate. Supervisors should confer with their Department Head any time they have questions or need guidance regarding the corrective action procedures.
- 2. **Discipline.** The following steps should be considered general guidelines for routine corrective actions. Some performance and behavior problems may be serious enough to warrant skipping one or more steps

and may even call for immediate suspension or termination. In other cases, an employee's effort to improve behavior may warrant a repeat of the oral or written warning steps. Corrective action taken is at the supervisor's discretion.

A) Verbal Admonishment (reduced to writing). If established conduct and/or performance standards have been violated by an employee, and a verbal admonishment seems appropriate, the supervisor should, upon becoming aware of the misconduct:

- (i) State the problem in a private discussion with the employee. Describe the impact of the undesirable behavior on the City.
- (ii) Allow the employee an opportunity to explain.
- (iii) Outline the employee actions necessary to address the problem. Provide a specific description of behavior changes and a timetable for required corrections. Confirm the employee's understanding of what is expected.
- (iv) Describe further corrective action that will be taken if the problem occurs again.
- (v) Document the conversation thoroughly by recording the nature of the problem, recommendations and action plan for improvement, and the date of the oral admonishment. The documentation will be placed in the employee's personnel file.

B) Written Reprimand. If performance or behavior problems continue or the employee's initial behavior is of a more serious nature, a written reprimand may be issued. The following procedures should be followed:

- (i) Issue a written reprimand describing the exact nature and impact of the problem, City expectations, and specific actions and timetables for improvement required.
- (ii) Let the employee explain or provide input.
- (iii) Confirm the employee's understanding and commitment to the corrective actions.
- (iv) Caution the employee that another incident will result in more serious corrective action.
- (v) Prepare a written reprimand and dated report that:

- (a) Summarizes the specific performance or behavior problems;

- (b) Describes previous admonishments and actions taken to resolve the problem;

- (c) Lists the specific expected changes in the employee's performance;

- (d) Confirms the employee's agreement to improve;

- (e) Includes allotted time for improvement; and

- (f) States the consequences of not meeting the required performance changes in the designated time.

- (vi) Obtain the employee's signature on the original copy of the reprimand, indicating receipt. The employee may, if desired, write a response to the written report. If the employee refuses to sign the memo, the supervisor should indicate that the employee "refuses to sign". (Where possible, the employee's receipt of the reprimand and/or refusal to sign should be witnessed by another Department Head.)

- (vii) Provide a copy of the written reprimand to the employee and provide a signed copy to the employee's personnel file.

C) Probation or Suspension. If the seriousness of the offense requires more severe measures, or the employee has continued to violate standards of conduct or performance beyond the verbal admonishment and written reprimand stages, the supervisor may recommend to the Department Head that the employee be placed on formal probation or suspension. The Department Head shall review and investigate the matter as more particularly provided herein and provide a written recommendation regarding the same to the City Manager. No employee may be placed on probation or suspension without the consent of the City Manager.

- (i) Formal Probation. The employee may be placed on formal corrective probation for a period of up to six months.

- (a) Written documentation provided to the employee will summarize the actions taken, the employee's response, and the conditions of future employment. The immediate supervisor shall develop a

specific action plan outlining the expected standards of performance required.

(b) Employees placed on formal probation are not eligible for salary increases, bonuses, or promotions during the probation period.

(ii) Suspension. The employee may be suspended with or without pay.

(a) Investigation. The Department Head shall conduct an investigation of the violation of conduct or performance standards. The investigation and corrective action recommendations will be documented and a written recommendation provided to the City Manager.

(b) No Benefit Use or Accrual. Suspended employees are not entitled to use the following employment benefits:

- (1) Vacation and sick leave time;
- (2) Holiday pay;
- (3) Stand-by (on call) pay;
- (4) Compensatory time.

3. Serious Misconduct. In instances of serious performance problems, the suggested corrective action steps above may not be followed. For example, serious misconduct may include but is not limited to; the consumption of or being under the influence of alcoholic beverages, illicit drug use while at the workplace or work site; theft; violation of the laws of the United States, the State of Utah, or its political subdivision which are related to job performance; conduct on or off the job which discredits the City or affects the employee's ability to perform effectively; scoring below standard on a performance review and not showing improvement after a three month period; etc.

4. Termination. If the seriousness of the offense requires more severe measures, or the employee has continued to violate standards of conduct or performance beyond previous corrective action stages, the supervisor may recommend to the Department Head that the employee be terminated. The Department Head shall review and investigate the matter as more particularly provided herein and provide a written recommendation regarding the same to the City Manager. No employee may be terminated without the consent of the City Manager.

5. Review of Corrective Action during Performance Appraisal. All corrective action steps taken during the past year (including verbal and written warnings, suspension, and probation) should be discussed during an employee's performance appraisal session. The supervisor and employee should review progress toward correcting behavior and/or performance problems. Specific recommendations for further actions, if needed, should be included in the written goals and timetable.

6. Employee Assistance Program. The City Department Head or his or her designee may refer an employee to the Employee Assistance Program (EAP). If an employee is offered EAP assistance and refuses, or reverts to previous misconduct, then corrective action may continue, up to and including termination. If an employee is referred to an EAP by a department head, any pending disciplinary action may be postponed until completion of the program, depending upon the nature of the misconduct.

7. Documentation in Employee Files. Corrective action documentation forms and related notes will be maintained in an employee's personnel file in accordance with the City's retention schedule.

8. Pre-Disciplinary Action Hearing. Any corrective action involving demotion, transfer or dismissal shall be preceded by a pre-disciplinary action hearing with the City Manager. The purpose of the pre-disciplinary action hearing is to provide the employee with notice and an opportunity to respond to the alleged violations and proposed corrective action. The City Manager shall provide the employee with written notice of the date and time of the pre-disciplinary action hearing and information regarding the proposed disciplinary action. After the pre-disciplinary action hearing, the City Manager shall provide the employee with written notice of his or her final decision stating the disciplinary action to be taken, if any, and the employee's right to appeal the same.

9. Appeals. All appointed officers and employees of the City, other than members of the Police Department, Department Heads and the City Manager, shall hold their employment without limitation of time, being subject to discharge or dismissal only as provided in Utah Code Ann. § 10-3-1106, as amended. Any appointed officer or employee covered herein who is discharged or transferred to a position with less remuneration for any reason, shall have the right to appeal the discharge or transfer to a position with less remuneration to the City Appeals Board in accordance with the provisions of Utah Code

Ann. § 10-3-1106, as amended. All other disciplinary actions may be appealed in accordance with the complaint procedures set forth in Section 5020.

#### Section 5040 LAYOFF AND REDUCTION IN FORCE

##### General Policy Statement

Circumstances including unfavorable economic conditions may require a short-term, long-term, or permanent reduction in employment.

In such circumstances, layoffs and returns from layoffs will be conducted in accordance with City needs and the guidelines below. In all instances, layoffs and recalls from layoffs will be made without regard to sex, race, religion, age, disability, national origin, marital or veteran status, color, or other protected status.

Management reserves the right to adjust layoff procedures as necessitated by business requirements.

##### Guidelines:

1. **Layoff Reviews.** Recommendations for layoff are to be reviewed by the Personnel Administrator, evaluating all related issues including the anticipated costs, savings, and the impact on affected departments and employees.

A) **Confidential Pre-planning.** Careful, confidential planning must be given to all elements of a work force reduction before employees are informed.

B) **Interviews.** Employee interviews may be conducted as necessary.

2. **Layoff Criteria.** In the event of a workforce reduction, those employees who are best qualified to do the remaining work, as determined by the City, will be retained. Employees may be considered in the following order:

A) **Temporary Employees.** The need for temporary employees will be evaluated first. Non-essential temporary employees or those whose positions may be filled by regular employees will be terminated first.

B) **Part-time Employees.** Secondly, the need for part-time employees in the affected departments will be closely reviewed to determine whether positions can be consolidated. Less critical part-time employees will be laid off.

C) **New Employees within the Probationary Employment Period.** New employees who have not completed their Probationary Employment Period will be evaluated next. Those who are least essential will be laid off.

D) **Full-Time Employees.** Full-time employees will be selected for layoff after consideration of the following criteria, recognizing that each City position will be reviewed closely to determine its relative value and importance.

(i) Can the employee's job function be consolidated or will program reductions result in elimination of the functions?

(ii) Is there a possibility of utilizing employee skills in a transfer, demotion or promotion within the department? What are the employee's potential contributions?

3. **Layoff Notices.** Employees who are laid off will receive as much notice as possible under the circumstances and as is required by law.
4. **Leave Accrual Rates.** Employees laid off for less than 24 months will be reinstated at their accrual rates previously earned. (However, seniority does not accrue during layoff periods which extend beyond thirty days).

#### Section 5050 MEDICAL EXAMINATIONS

##### General Policy Statement:

Post-offer applicants and current employees may be required, as legally appropriate and as permitted under the Americans with Disabilities Act, to submit to medical examinations.

##### Guidelines:

1. **Testing of Applicants.** An applicant who has received a job offer may be required to undergo a medical examination to demonstrate ability to safely perform essential job functions. Employment offers are contingent upon satisfactory completion of such exams/tests.

A) **Approved Physician.** The examination or screening is to be administered by a health provider selected or authorized by the City.

B) **Follow-up Tests.** As permitted under the ADA, follow-up tests may be given to individual employees

where an exam identifies that further information beyond an initial exam is needed.

C) Results for Job-Related Use Only. Results of post-offer examinations will be used solely to establish the ability of applicants to safely perform the essential functions of their prospective jobs. An individual with a disability will not be refused employment based on the results of a post-offer medical exam or inquiry unless the reason for the rejection is job-related (i.e., the essential functions of the job cannot be performed) and justified by business necessity, and no reasonable accommodation exists.

D) Questions Regarding Physical/Mental Disabilities. As required under the ADA, applicants (before an employment offer is made) will not be asked whether they have any physical or mental disabilities, nor whether they have received medical treatment for any injury or illness.

E) Reasonable Accommodations. If necessary, reasonable accommodations will be provided as required by law to those employees with known disabilities to assist them to safely perform the essential functions of their jobs.

2. Employee Medical Examinations. As a condition of continued employment, employees may be required to undergo periodic medical examinations. Medical inquiries and examinations of current employees may be undertaken if job related and consistent with applicable legal requirements. Examples of circumstances which may require exams include, but are not limited to, the following:

A) There is concern regarding the employee's ability to safely or productively perform job duties.

B) The employee requests an accommodation under the ADA.

C) The employee is returning after a lost work accident or illness.

D) The employee is being considered for transfer to a new job requiring new or different physical demands.

E) There is concern that a person in a physically demanding job continues to be fit for duty.

F) An on-the-job accident has occurred.

G) Examinations are required by other laws (e.g., DOT or OSHA).

H) There is the possibility of exposure to potentially hazardous working situations.

3. Exams and Testing Procedures and Records.

A) Tests Paid by City. Required medical examinations will be performed at City expense. Reimbursement for other than a City-selected health professional will be limited to the cost the City is required to pay its selected health professional.

B) Approved Health Professional. Required medical examinations must be conducted by a City-selected or approved health professional.

C) Confidential Records. Medical examination and testing records are confidential. As required by law, this information will be kept in medical files separate from other personnel information. Any employee who inappropriately discloses confidential medical information is subject to corrective action, up to and including termination.

D) Availability of Records. Maintenance of and access to employee medical records shall be provided in accordance with the Utah Government Records Access and Management Act.

4. Exam/Testing Time is "Hours Worked". Time spent undergoing City required medical testing is considered "hours worked." Employees will be paid for that time.

#### Section 5060

#### MEDICAL REPORTING AND HEALTH CERTIFICATION

##### Guidelines:

1. Use of Prescription or Non-Prescription Drugs. Employees must inform their supervisor and provide appropriate medical documentation when taking prescription or non-prescription drugs which may affect job performance or threaten employee safety. Employees unable to safely and effectively perform their responsibilities may be:

A) Temporarily transferred to other positions;

B) Prohibited from performing functions which may be unsafe or unproductive;

C) Provided other appropriate accommodations;

D) Placed on an earned leave of absence; or



E) Placed on FMLA (Family Medical Leave Act) leave.

2. Requests for Accommodations. Employees concerned about their abilities to effectively or safely perform their jobs are encouraged to discuss their situations with their supervisor and request reasonable accommodations as necessary.

3. Health Certification. Documentation of medical condition and/or suitability for work may be required in certain situations. At the City's discretion, additional medical opinions may also be requested. Additional opinions requested will be obtained at the City's expense. The following circumstances are examples which may warrant medical certification:

A) Sickness or Injury. The employee is absent from work as a result of illness or injury.

B) Return From Leave. The employee is returning from a health-related leave of absence.

C) Request for Leave. The employee is requesting a medical leave of absence or extension of such a leave.

D) Accommodation. The employee is requesting an accommodation for a disability.

4. Reporting-Work Related Injuries. All work related injuries and illnesses (regardless of severity) must be reported to the employee's supervisor and the Personnel Administrator to ensure proper reporting and compliance with the Occupational Safety and Health Act of 1970 (OSHA) and Workers' Compensation requirements. Injuries not promptly reported also adversely impact an employee's workers' compensation claim.

A) Supervisor Notification. Employees who must leave their work areas for medical attention should, whenever possible, notify their supervisor. The supervisor should ensure that:

(i) The employee receives proper medical care;

(ii) The incident is reported to the Personnel Administrator; and

(iii) The accident is properly investigated and any unsafe conditions remedied.

B) Human Resources Documentation. Human Resources will maintain required federal and state reports and records, including mandatory

OSHA records in accordance with the City's retention schedule.

## Section 5070 OUTSIDE EMPLOYMENT

### General Policy Statement:

An employee's position at the City is considered to be their primary employment. Employees are expected to devote full-time attention and energy to the City. Employees may hold outside jobs or be involved in outside business activities as long as they continue to meet established performance standards and such work or activities do not conflict with the employee's duties for the City. All outside employment shall be approved by the City Manager to ensure compliance with the policies set forth herein. If outside activities contribute to any work related problems, such involvement must be ended.

### Guidelines:

1. Employee Performance. Outside employment or business activities must not compromise job performance. Employees are expected to fulfill all job duties and should determine whether outside activities will create conflicts or hinder the effective completion of assigned responsibilities. The following problems which may result from outside employment must be avoided and may subject an employee to corrective action:

A) Attendance and Punctuality Problems. Absence from work, arriving late, leaving early, unwillingness to work overtime or alternate hours/shifts.

B) Abuse of Leave. Use of sick leave or unpaid absences to work at another job.

C) Exchanging of job assignments, scheduled shifts, or scheduled work days to accommodate work at another job.

2. Outside Activities During City Time. Employees may not perform outside work or business activities while on duty.

3. Conflict of Interest. Employees may not work for any outside organization where such employment constitutes a conflict of interest with the City.

4. City Equipment and Facilities. Outside employment or activities must not involve use of City equipment, supplies, or facilities.

5. **Use of City Name or Position.** Outside employment activities must be avoided which may suggest or give the appearance that any individual or entity will be treated disproportionately or given advantage.
6. **Corrective Action.** Violation of these policies may subject the employee to corrective action, up to and including termination.

Section 5080  
PERFORMANCE APPRAISAL

**General Policy Statement:**

The City has instituted a performance management system to assess job performance consistent with job standards and requirements. Department Heads are responsible to ensure that employee performance is reviewed and recorded in accordance with established procedures. The following are suggested procedures for assessing job performance.

**Guidelines:**

1. **Purposes.** Supervisors will document employee performance. Objectives in conducting performance appraisals include:
  - A) **Employee Development.** An outline of an employee's strengths, skill development needs, and specific areas for improvement may be developed. An action plan and timetable may be implemented.
  - B) **Communication of Goals.** Appraisals provide opportunity to communicate standards, expectations, and goals.
  - C) **Improved Morale and Employee Relations.** Employee relations are enhanced as communication channels are opened and desired individual performance is reinforced.
  - D) **Career Planning.** An opportunity to discuss career goals and strategies is provided. Training needs may be identified.
  - E) **Documentation for Corrective Action.** Written documentation of unsatisfactory performance is maintained.
  - F) **Pay Adjustments.** Appraisals may be used in salary reviews and determining pay adjustments.
  - G) **Appropriateness for Promotions**

2. **Timing and Evaluation Tools.** Performance appraisals should generally be conducted as follows:

- A) At 90 days and upon completion of the probationary employment period.
- B) Employee performances should be reviewed by the employee, his or her supervisor and reporting employees (if applicable).

- i) A six-month review should be conducted in the first quarter of each calendar year.

- ii) An annual performance review should be conducted at the end of each fiscal year. At this time, goal accomplishment for the previous period and goal setting for the next period should be conducted as provided herein.

- C) **Position Change.** Employees who are promoted or transferred to another department due to the acceptance of a new job, and/or whose job responsibilities change significantly, will be reviewed at the end of the 180 day probationary period. If an unsatisfactory evaluation is given, the employee will be placed in the previously held position at the previous salary.

- D) **Outstanding Performance.** When an employee performs exceptionally well, Department Heads should note such performance in the employee's personnel file. Copies should be shared with the employee.

- E) **Poor Performance.** Frequency of performance reviews may be increased when an individual does not perform satisfactorily. Copies should be shared with the employee.

- F) **Termination or Layoff.** Department Heads will complete a performance appraisal in conjunction with a termination report.

- G) **As needed.** Special reviews may be requested by the employee or the Department Head at any time. (These will not change the customary cycle.)

3. **Informal Evaluation.** Evaluating a subordinate's performance is part of the normal day-to-day feedback responsibility of every supervisor. The supervisor is encouraged to discuss the employee's job performance frequently on an informal basis. Supervisors should also keep informal written records of significant events concerning the job performance of individuals under their supervision.

4. **Performance Evaluation.** At the end of each fiscal year employees shall participate in a performance evaluation process that is being used by the City.
5. **Request for Appraisal Review.** If an employee strongly disagrees with the evaluation, and the issue cannot be satisfactorily resolved with the Supervisor, the employee may add a note to the form indicating the basis for disagreement. Any such disagreement will not excuse the employee from meeting established performance factors and goals.

#### Section 5090 SERIOUS ILLNESS OR MEDICAL CONDITION

##### General Policy Statement:

Employees with serious illnesses or medical conditions (including but not limited to cancer, heart disease, HIV and AIDS) may wish to continue their active employment. Such employees who are able to meet acceptable performance standards and whose conditions do not threaten themselves or others may continue to work. Reasonable accommodations will be provided as required under the ADA.

No employee who has a serious medical condition or other disability is to be discriminated against in any area of employment. Discrimination or harassment in the workplace based on an employee's medical condition or disability will not be tolerated.

##### Guidelines:

1. **Fair Treatment.** Department Heads should be sensitive to employee's serious medical conditions and ensure fair treatment. If a medical condition affects an employee's performance, reasonable accommodations will be provided, as required under the ADA. Department Heads should be aware that continued employment is not only financially important for an employee with a serious illness, but may be therapeutically important in the remission or recovery process or may extend an employee's life.
2. **Request for Accommodation.** Employees requiring accommodations should request them from their Department Head. The supervisor, with the employee's assistance, will explore and implement reasonable accommodations to the employee's medical condition that do not create an undue business hardship, and are consistent with business needs, established City policy, and applicable federal, state, and local laws. Employees seeking accommodations should provide appropriate medical information necessary for the City to make related

employment decisions. A health provider's certification of the employee's condition and work limitations and/or further medical examination may also be required.

3. **Employee Counseling.** If desired, employees with serious illnesses may receive information on related City benefits and programs. The Department Head/supervisor should demonstrate sensitivity while discussing City policy regarding:
  - A) City benefits;
  - B) Leaves of absence;
  - C) Community counseling and services;
  - D) Safety needs and concerns;
  - E) Employee assistance program (EAP);
  - F) Possible accommodations; and
  - G) Job performance and attendance requirements.
4. **Privacy and Confidentiality.** An employee's health condition is personal and confidential. Therefore, every reasonable effort will be made to ensure that an employee's medical history and condition remain confidential, unless required by law or business necessity.
5. **Non-Discrimination.** No employee with a serious illness is to be discriminated against in any aspect of employment including, but not limited to, compensation, benefits, promotions, hires, transfers, working conditions, or terminations.
6. **Safe Work Environment.** While we seek to be sensitive to the rights and needs of an employee with a serious health condition, we also recognize our obligation to provide a safe work environment for all employees, clients, and visitors. Every precaution should be taken to ensure that an employee's condition does not present a health or safety hazard to anyone within the work community.
7. **Employee Concern.** An employee who is apprehensive about working with a co-worker, vendor, citizen, or anyone else who has a serious illness should inform his or her Department Head. The City seeks to be sensitive and responsive to employees' concerns, however, where there is very minimal or no danger of harm, the employee will be expected to work with anyone who has a serious illness.



- A) Refusal to Work. An employee's refusal to work with someone who has a serious illness may result in corrective action, up to and including termination.
- B) No Special Transfers of Threatened Employees. No special consideration beyond normal transfer requests will be given to employees who feel threatened by a co-worker's illness.
- C) No Special Transfers of Ill Employees. Employees with serious illnesses may not be asked to transfer or resign because of co-workers' concerns.

#### Section 5100 TERMINATION PROCEDURES

##### General Policy Statement:

The City may terminate employment for cause, reorganization, obsolescence of a function, or due to budgetary constraints.

##### Guidelines:

1. Voluntary Termination. All employees shall provide written advance notice of their intention to leave the City employment. The notice will state the reason for the resignation and give the date of departure. To ensure an orderly transition, the following time periods shall be followed:
  - A) Department Heads and Other Exempt Employees. At least four (4) weeks' notice should be provided. (Vacation may not be included in the four (4) week period.)
  - B) All Other Employees. At least two (2) weeks' notice should be provided. (Vacation may not be included in the two (2) week period.)
  - C) Withdrawal of Resignation. A withdrawal of resignation may not be allowed without the permission of the City Manager.
2. Approval by the City Manager. All involuntary terminations shall be reviewed and approved by the City Manager. The Department Head is responsible for all related paperwork, which must also be coordinated with the Personnel Administrator. All separations shall be fully documented and should include:
  - A) Appropriate Support Information. Appraisals, corrective action documents, etc.;

- B) Specific incidents. Full documentation of detailed events that led up to the separation (as appropriate); and

- C) Conclusions. The final reason(s) for separation.

3. Involuntary Termination Procedures. When conducting an involuntary termination, Department Heads should observe the following recommendations:

- A) Confidentiality. Involuntary terminations shall be dealt with privately and professionally.

- B) Meeting. The meeting should be brief and should be controlled so that no opportunity to argue about the termination exists.

- C) Clear Rationale. The basic reasons for the termination (the same as those documented in the employee file) should be explained. No vague, unsupported statements or opinions should be made.

- D) Information. As appropriate, information regarding benefits (such as COBRA) and other applicable City policies will be provided.

- E) Documentation. A record of the termination meeting shall be completed and filed in the employee's personnel file.

4. Exit Interviews. An exit interview should be conducted with each terminating employee. Exit interviews should be utilized to obtain information that will promote better employee selection, placement, training, and managerial practices, and to retain the goodwill of the employee. During exit interviews, the Department Head will obtain and discuss the following information:

- A) Reasons for Termination. Record the employee's principal motivation and circumstances for leaving.

- B) Employee Feedback. Note complaints, criticisms, or suggestions that the employee may have regarding his or her position, department, Department Head, etc.

- C) Benefits. Explain benefits available to terminating employees, including COBRA.

- D) City Property. Ensure that City property (keys, credit cards, uniforms, etc.) and equipment have been returned.

E) Confidentiality. As appropriate, remind the employee of his or her obligation to continue to protect confidential City information.

F) Correct Address. Ensure that the employee's personal records (such as address) are current.

G) References. Explain the City's reference policy.

**Two City representatives shall be present if the exit interview involves a particularly sensitive situation.**

5. Paychecks. Employees who are discharged or who voluntarily terminate employment will be paid in accordance with state law requirements.
6. Payment for Accrued Leave. Payment for accrued vacation will be provided at termination. However, no payment will be made for accrued sick leave.
7. Severance and Release. At the City Manager's discretion and with City Council approval, severance pay may be provided terminating employees and a release of legal claims may be obtained.
8. Failure to Follow Guidelines. Failure to follow these guidelines shall not be a basis for appealing the termination.
9. Non-Discriminatory Terminations. As part of our Equal Employment Opportunity (EEO) commitment, all terminations will be conducted on a non-discriminatory basis.
10. Compliance with Due Process Requirements. All involuntary terminations for cause shall comply with the pre-termination hearing and post-termination appeal proceedings as set forth in Section 5030 and as required by law.

#### Section 5110 JOB TRANSFERS

##### General Policy Statement:

The City provides equal transfer opportunities for qualified employees. We support the principle of selection from within. Business necessity may require that employees be transferred from one job, workplace, or work shift to another. Transfers within a department or outside a department may only be made within the same job description. Permanent transfers may not be made into positions requiring different skills that would otherwise be considered a promotion. Transfers do not circumvent the job announcement process. Employees may also wish to

initiate a transfer for personal reasons or professional development.

Transfer decisions are based upon operational needs and employee qualifications, and are at the discretion of the City.

##### Guidelines:

1. Temporary Transfer. Temporary transfers for training, projects, temporary business needs, or personal needs of an employee may be made. Such transfers will be for defined time periods and may be extended as necessary. Temporary job transfers to a different job requiring more complex work skills or substantially different job responsibilities will be compensated for by giving the transferred employee temporary pay increases equal to at least 5% above the employee's current pay rate but not less than the starting pay for the new position for a period not to exceed 6 months.
2. Job Postings and Announcements. Job and transfer opportunities may be posted on bulletin boards, announced in City publications, and memoranda to Department Heads, or reported in staff meetings.

A) Job Information. Information will be posted for a minimum of seven (7) calendar days and will include:

- (i) Position title,
- (ii) Salary band,
- (iii) Department/Division,
- (iv) Basic job duties, essential functions, and
- (v) Qualifications required.

B) Advertising. Job opportunities may be advertised at the discretion of Department Heads. Positions may be advertised both internally and externally at the same time.

3. Eligibility for Voluntary Transfer. Employees will be evaluated for transfer based on their overall work records as well as their potential career interests, and relevant knowledge and skills. The best qualified candidates will fill job vacancies. To be eligible for a voluntary transfer, the City will consider the following:

A) Minimum Job Qualifications. Meeting the minimum qualifications of the new job as outlined in the position description.

B) Acceptable Attendance and Performance History. Past performance appraisals and attendance records.

C) Professional Conduct. The record of corrective actions for the past 24 months.

4. Employee Initiated Transfer Procedures. Employee transfer requests will generally be processed as outlined below.

A) Request for Transfer. To apply for an internal transfer, an employment application must be completed and forwarded to the Personnel Administrator.

B) Department Review. The Personnel Administrator will assess the employee's qualifications for the open position. If it is determined that the employee is qualified, the application will be sent to the hiring Department Head who will conduct appropriate interviews.

C) Transfer Decision. The hiring Department Head will make transfer decisions. A mutually agreed upon transfer date will be decided by the current and future Department Heads.

D) Paid Interview Time. Transfer interviews are considered "hours worked." Employees seeking transfers will be paid for their time.

E) Pay. Employees transferred to positions in the same pay band as their current jobs will be paid according to the skills required for the new position.

F) Seniority and Benefits. Current eligibility for leave and benefits will be preserved for transferred employees.

5. Reassignment to Lower Positions. An employee may be required to take a reduction in pay or have his or her pay frozen as the result of a demotion or transfer to a position in a lower pay band. Such a demotion or transfer may occur under the following condition(s):

A) Poor Employee Skills. An employee's ability seriously impedes job effectiveness.

B) Reduction in Force. A layoff or reduction in force occurs.

C) Current Job Has Significantly Changed. If an employee's present job has decreased in scope or responsibility.

D) Employee Request.

5. Transfers at Discretion of City Manager. The City Manager retains discretion to transfer any employee as operational needs dictate.

#### Chapter 6000 EMPLOYEE RESPONSIBILITIES

6010	Appearance and Grooming
6020	Attendance and Dependability
6030	Communication and Information Systems
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6050	Conflicts of Interest/Code of Ethics
6060	Drugs and Alcohol
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#### Section 6010 APPEARANCE AND GROOMING

##### General Policy Statement:

Service and professionalism are what separate Draper City from other organizations. The nature of our business demands that an employee's appearance reflect an appropriate professional image and be consistent with an employee's particular duties. All employees are expected to conform to City dress and grooming standards.

##### Guidelines:

1. Clothing Appropriate to the Work. Dress, grooming, and hygiene should be appropriate to the nature of work, degree of customer contact, expected business standards, and the need to maintain job safety.
2. Expected Attire. Employees who frequently interact with the public are expected to be professionally dressed and to convey a positive City image.
3. Prohibited Attire. Extreme, immodest, or revealing attire is not permitted.
4. Special Dress Standards. As designated by the City Manager and Department Heads, specific dress standards may be required of employees in some positions depending upon the nature of their work and the working conditions present.

5. **Casual Dress Days.** The environment within the City must be maintained at a professional level at all times, therefore, "casual dress days" are authorized by the Department Head when it will not affect the level of professionalism for the department.
6. **Grooming.** Good personal hygiene is essential. Employees are expected to be clean, neat, and well-groomed.
  - A) **Perfume.** Employees should avoid excessive perfume, cologne, or other fragrances.
  - B) **Hair.** Extreme hair styles or colors are not appropriate for business. Hair, beards, and moustaches must be kept neat, clean, and controlled.
  - C) **Personal Hygiene.** Employees whose personal hygiene presents a problem or concern will be so advised by their immediate supervisor. It will be the employee's responsibility to take appropriate action to correct the problem.
7. **Dress Outside the City.** Employees, who travel on City business, attend business-related seminars and/or training programs, or whose business takes them outside of the office are expected to continue to adhere to City dress standards.
8. **Corrective Action.** Improperly groomed or dressed employees will be subject to corrective action including possible termination. Where necessary, such employees will be sent home to comply with established standards. Employees will not be paid for missed work under such circumstances.
9. **City Uniforms.** When required, qualified employees will wear a uniform provided by the City. When uniforms are required, a uniform budget is provided to departments for the purpose of procuring appropriate clothing for the work environment.
  - A) The uniform policies will be reviewed each year during annual budget deliberations and from time to time, as deemed necessary by the governing body.
  - B) In addition, qualified employees may purchase, at City expense, safety footwear approved by the American National Standards Institute. This purchase may not exceed \$100 annually.
  - C) Department Heads reserve the right to prescribe clothing and dress standards for employees receiving a City uniform. For the purposes of this section, clothing may include; trousers, coveralls, gloves,

shirts, safety glasses, jackets, hats and hard hats. The City may provide a coat every three (3) years.

- D) No employee shall receive uniform benefits while on disability, administrative or extended sick leave.
- E) **Qualified Employee Defined.**
  - (i) Animal Control Officers
  - (ii) Code Enforcement Officers
  - (iii) Streets, Parks, Water, Storm Water Maintenance, Fleet Management and Facility Employees
  - (iv) Public Works and Engineering Inspectors
  - (v) Chief Building Official and Building Inspectors
  - (vi) Police Department
- F) Any employee issued uniform or protective clothing shall be required to wear such clothing unless temporarily excused by his or her supervisor.

#### Section 6020 ATTENDANCE AND DEPENDABILITY

##### General Policy Statement:

Absenteeism and tardiness burden co-workers, disrupt business operations, and reduce the quality of customer service. Therefore, good attendance, punctuality, and dependability are required of all employees. Attendance and tardiness problems will result in corrective action, up to and including termination.

##### Guidelines:

1. **City Expectations.**
  - A) **Punctuality.** Employees are expected to be at work and to return from breaks as scheduled.
  - B) **Responsibility.**
    - (i) Employees should be at their workstations or performing assigned responsibilities during all work hours.
    - (ii) Employees are not permitted to leave before their scheduled quitting time, unless specifically authorized by their supervisor.

- (iii) Employees are expected to work any assigned overtime. Supervisors will try to give as much advanced notice as possible.
  - (iv) Employees participating in approved, paid time training are required to be in attendance for the approved curriculum and to actively participate.
2. Notification of Absence/Tardiness. Employees are responsible for giving their supervisor as much advance notice as possible of anticipated tardiness, absence, or of the need to leave early.
    - A) Reason for Absence and Return Date. Employees should explain the reason for the absence or lateness, and when they will return to work.
    - B) Personal Notification Required. Employees should personally notify their supervisor. Leaving a voice mail message or having someone call for the employee (except in unusual circumstances) does not satisfy this requirement unless previously authorized by the supervisor.
    - C) Extraordinary Circumstances. Consideration will be given in extraordinary circumstances that prevent an employee's giving timely notice.
  3. Health Certification. Documentation of medical condition and/or suitability for work may be required in certain situations. At the City's discretion, additional medical opinions may also be required. Additional opinions will be obtained at City expense. The following circumstances are examples that may warrant medical certification:
    - A) Sickness or Injury. The employee is absent from work as a result of illness or injury.
    - B) Return From Leave. The employee is returning from a health-related leave of absence.
  4. Serious Illness or Injury. In cases of absences resulting from serious illnesses or injuries, an employee should maintain regular contact with their Supervisor regarding their condition and anticipated return.
  5. Emergency Closing. In the event of extremely severe weather, natural disasters, power outages, and other emergencies, the City Manager may close City facilities with the advice and consent of the Mayor.
  6. Make-up Time. Employees may not work extra hours to make-up missed work time without their supervisor's permission. "Make-up" work should occur infrequently and not be utilized as a tool to compensate for frequent tardiness or excessive absences. Make-up time is also not appropriate where it would create an overtime situation.
  7. Leaving City Premises. Non-exempt employees must receive permission from their supervisor before leaving the workplace during working hours.
  8. Absent Without Notice. An employee who has been absent for three (3) days without approval from his or her supervisor will be considered to have voluntarily terminated employment.
  9. Supervisor's Responsibility. Supervisors have primary responsibility for monitoring and promoting good employee attendance.
    - A) Records. Records of daily attendance should be accurate and current. Employees' attendance records should be reviewed periodically and included as part of the performance appraisal. Absenteeism and tardiness may reduce an employee's opportunities for advancement and compensation increases.
    - B) Follow-up Discussion. Supervisors should meet with employees to discuss attendance problems.
      - (i) Documentation. Supervisors should document the discussion and record the dates and reasons for the absences or tardiness.
      - (ii) Verbal or Written Warning. Supervisor should remind the employee of City attendance policies and if necessary, warn that continued problems will result in further corrective action, up to and including termination.
    - C) Tracking Problems. In determining whether there is an attendance problem, supervisors should consider the employee's:
      - (i) Reasons for past absences;
      - (ii) Level of past and present performance;
      - (iii) Attendance pattern in past years;
      - (iv) Current attendance record; and
      - (v) Duration and frequency of absences.
    - D) Ensuring Employee is ready to Work. Supervisors are responsible for ensuring that employees are physically able, properly dressed, and



prepared to work. Employees unable or not prepared to work should be sent home until the problem can be corrected. Nonexempt employees will not be paid for missed work under such circumstances.

10. Corrective Action. Violations for which corrective action may be taken include:

- A) Failure to notify the employee's supervisor of any absence or delay;
- B) Unexcused absence;
- C) Excessive absence;
- D) Chronic tardiness;
- E) Leaving work before the designated quitting time without permission;
- F) Lying about reasons for absence;
- G) Discernible patterns of absence or lateness (e.g., Mondays, Fridays, or absence following holidays); or
- H) Failure to be in attendance for the approved curriculum during a paid time training program.

11. FMLA and ADA. Absences taken in accordance with the Americans with Disabilities Act (ADA), the Family and Medical Leave Act (FMLA), and similar leaves will be treated according to the terms of those Acts.

Section 6030  
COMMUNICATION AND INFORMATION SYSTEMS

General Policy Statement:

Communication and information systems (telephone, fax, computers, e-mail, voice mail, Internet, etc.) are provided for business purposes. Communication equipment should be used properly, efficiently, and in accordance with City policy. Improper use of systems and equipment may subject an employee to corrective action.

Guidelines:

1. Controlling Costs. Employees should know the costs of services and should use the most cost effective means of communication.
2. Telephone and Voice Mail Use. The telephone and voice mail systems are provided for business purposes only. Improper or personal use, which

increases costs, interferes with job performance, or is used to harass or insult other employees will not be tolerated.

A) Personal Phone Calls. Personal use of the telephone should be minimal. It is expected that good judgment will be used in limiting the length and frequency of personal calls.

B) Personal Long-Distance Calls. Long-distance phone calls may not be charged to the City. Long distance calls must either be placed collect or billed to the employee's personal telephone.

C) Personal calls placed on a City cell phone which result in an expense to the City must be reimbursed by the employee.

D) Telephone Courtesy. It is essential to project a professional telephone manner at all times. Employees should attentively respond to all business inquiries and meet the following standards:

- (i) Answer promptly.
- (ii) Use a friendly but businesslike tone of voice. Employees should identify themselves and the department of the City as appropriate.
- (iii) Provide full attention to the caller.
- (iv) Carefully track anyone placed on hold and offer further assistance if the call is not picked up promptly.
- (v) Transfer calls carefully, as requested. Explain where and why calls are being transferred.
- (vi) Close phone calls courteously.
- (vii) Ensure that phones will be answered and messages recorded when leaving the work area.
- (viii) Ensure that messages are accurate and immediately forwarded.
- (ix) Promptly return phone calls (within the same day, if possible).
- (x) An employee may terminate a telephone call, after offering to transfer the caller to a supervisor, if a caller becomes abusive. An employee who terminates a call under these circumstances shall immediately notify his or her supervisor.

3. City Letterhead and Supplies. City letterhead, postage, supplies, etc. are to be used solely for business related communication.
4. Photocopying, Faxes, and Mail Facilities. Mail equipment, fax, and photocopy machines are to be used for business purposes.
5. Unauthorized Installation of Computer Programs. To ensure the safety and integrity of our computer system, employees may not install personal or other outside software programs. Any exception to this policy must be approved by the IT Administrator and the City Manager.
6. E-Mail and Voice-Mail. The electronic information and voice mail systems should be used for City business.

A) City Property. The electronic and voice mail systems are owned and maintained by the City, consequently, all e-mail and voice-mail communications are City property. Messages created, sent or received are not an employee's private property.

(i) City Right to Monitor. The City reserves the right to access, intercept, review, monitor, and disclose all messages sent over its electronic and voice-mail systems.

(ii) Managing E-Mail. To ensure that disk storage space is not depleted, employees should delete e-mail messages and regularly maintain their mailboxes. Computer system default will delete e-mail over 90 days.

B) Prohibited Activities. The following actions related to e-mail and voice-mail use will subject employees to corrective action:

(i) Solicitation. Solicitation for commercial, religious, political, charitable, or other non-business causes is not permitted.

(ii) Non-Job-Related Communications. Communication regarding personal matters, outside organizations, or non-job-related matters should be very limited and purely incidental.

(iii) Sexually Explicit Messages. The communication of sexually explicit images, messages, or cartoons is strictly prohibited.

(iv) Discriminatory Messages. Transmission of ethnic slurs, racial epithets, jokes, or any communication that may be considered

harassment or insulting to others based on race, national origin, sex, sexual orientation, age, disability, or religious or political beliefs is not permitted on the e-mail, voice-mail, or any other communication device.

C) Privacy. Employees should treat all messages as confidential and should not attempt to access another employee's personal e-mail or voice-mail without permission. However, employees should be aware that their messages are not confidential and may be accessed by the City and may be subject to disclosure pursuant to the Utah Government Records Access and Management Act.

D) Copyrighted and Proprietary Information. Communication systems may not be used to send or receive copyrighted, confidential, or proprietary information without prior permission from the appropriate party.

7. The Internet. The Internet is useful in providing access to a broad range of information. However, employee distraction and performance problems related to use of the Internet will subject employees to corrective action up to and including termination.

A) Privacy Issues and Monitoring. Any material sent and received over the Internet is subject to inspection. Employees should have no ownership or privacy expectations with regard to data accessed on City premises. Use of the Internet may be monitored to identify inappropriate amounts of time spent "surfing the NET" or for the sending or receiving of data that do not support business objectives.

B) Prohibited Activities. The Internet may not be used to:

(i) View or download any pornographic or other inappropriate or non-business related materials;

(ii) Place personal copies or non-work-related software on City equipment;

(iii) Attempt illegal use of copyrighted software or data;

(iv) Play computer games;

(v) Conduct any form of solicitation;

(vi) Advertise merchandise or services placed on the Internet;

(vii) Pursue any other similar activity, to include but not limited to, "web browsing" rather than working, and distracting other employees from completing their assignments;

(viii) Participate in non-business related discussion groups and "chat rooms."

(ix) Distribute or store chain letters, jokes or other non business material, or

(x) Send uninvited or inappropriate e-mail.

C) Harassment Forbidden. The use of the Internet to harass employees, vendors, customers, or others is strictly forbidden. Derogatory comments, racial slurs, or any form of discriminatory communication will not be tolerated. The City will trace the origin of abusive messages and employ appropriate corrective action up to and including termination.

D) Security. Because of the threat of a virus infecting the City's information system, the following security procedures will be observed:

(i) Downloaded materials from the Internet should be placed on diskettes where they will be scanned for viruses before being placed on the hard drive.

(ii) Items uploaded to our web site will be inspected and scanned for viruses.

(iii) Computer hard drives are subject to periodic inspections to determine whether there is a virus present.

8. Data Security. Employees are responsible for following the City's data security policies to protect information from unauthorized use, disclosure, alteration or destruction, whether intentional or accidental.

A) Password Protection. Security passwords and other procedures must be protected from unauthorized or unintentional disclosure. Personal passwords should not be shared with anyone and terminals should not be left unattended unless an employee has "logged off". All passwords remain City property. Passwords through command only systems (CMOS) setup are not allowed. Only employees with authorized passwords may access sensitive materials. Violators of this policy will face corrective action up to and including termination.

B) Reporting. Employees should immediately report to their Department Head and the IT Specialist any identified problems with data security procedures or suspected attempts to compromise City data systems.

9. Improper Use of Communication Equipment. Employees are responsible for informing their Department Head of problems and suggestions regarding improvement of the City's communication and information systems. Corrective action, up to and including termination, will result if:

A) Communication equipment is used improperly;

B) Established communication and management information system procedures or policies are violated; or

C) Harassing, insulting, threatening, or sexually suggestive communications are made.

10. Applicability of Policy. The policy applies to all communication and information systems:

A) Accessed on or from City facilities;

B) Accessed using City equipment or resources; and/or

C) Used in a manner that associates the employee with the City.

#### Section 6040 COMPUTER SECURITY

##### General Policy Statement:

The integrity of our computer resources is extremely important to the successful operation of our business. All computer equipment, peripherals, and software are City property and are provided for business purposes. Proper use and control of computer resources is the responsibility of all employees. Intentional or reckless violation of established policies or improper use of our computers will result in corrective action up to and including termination. Employees should also be aware that any work completed on City computers is subject to monitoring and review and that they should not expect their communications to be private.

##### Guidelines:

1. Copyrights and Licenses. All computer users must respect copyrights and software licenses. We are committed to ensuring that only authorized and legitimate copies of software are used in our City.



A) Copying. No software protected by copyright may be copied except as specifically stipulated by the owner, pursuant to a valid license, or otherwise permitted by copyright law. Unauthorized copying of software (even for convenience or internal City use only) can result in monetary and/or criminal penalties. Unauthorized copying of software for use on an employee's home computer is also strictly prohibited.

B) Number of Simultaneous Users. The number and distribution of software copies must not exceed those purchased or legally permitted.

C) Copyrights. All other copyrighted information (including text, images, icons, etc.) must also be used only in conformance with copyright and other law.

## 2. Integrity of Computer Resources.

A) Modification or Removal of Equipment. Computer equipment, peripherals and software may not be altered or removed except as authorized by the IT Specialist. Opening the computer or adding internal or external equipment is prohibited except as authorized by the IT Administrator and the City Manager.

B) Monopolizing Resources. Computer users must not limit others' use or access to information resources by sending chain letters or excessive messages, printing excess copies of documents, files or data, or running grossly inefficient programs.

C) Personal Software. Employees shall not install personal software on City computers for business or any other purpose.

D) Unauthorized Access. Employees must not access computers, software, data, or other information without proper authorization. Employees must not access the computer's CMOS set-up.

E) Password Protection. An employee who has been authorized to use a password-protected account must not disclose the password or otherwise allow another to access the account without the permission of the City Manager.

F) Unauthorized or Destructive Programs. Employees may not develop or use programs, which disrupt computer resources, access restricted areas or files, or damage software or hardware.

3. Employee Duty to Report Problems. All employees must immediately report any potential or actual computer security problems or concerns to the Department Head and/or the Personnel Administrator.

4. Strict Enforcement. Given the importance of City computer resources and the potentially serious consequences of security violations, the City will strictly enforce these policies. All reported or identified problems should be quickly investigated and resolved.

5. Corrective Action. Violation of this policy may result in corrective action up to and including termination.

### Section 6050

## CONFLICTS OF INTEREST/CODE OF ETHICS

### General Policy Statement:

The City recognizes the right of employees to participate in private activities outside their employment, which are unrelated to City business. However, employees are hired and continue their employment with the understanding that the City is their primary employer and that other employment or business involvement which conflicts with City business interests may subject an employee to corrective action. Any outside employment activities shall comply with Section 5070. If an activity is contemplated which could result in a real or perceived conflict of interest, the employee must make full disclosure of the activity to the City Manager for prior review and approval.

All employees shall adhere to the provisions and disclosure requirements of the Utah Municipal Officers' and Employees' Ethics Act as set forth in Utah Code Ann. §§ 10-3-1301, et. seq., as adopted by reference by the City, including the signing of a Disclosure Statement prepared by the City.

### Guidelines:

1. General Examples Are Illustrative Only. The following Code of Ethics sets forth general principles, which both guide and protect employees and which contain broad examples outlining expected employee behavior. Since it is impractical to address all possible ethical issues, specific questions about the propriety of conduct or business relationships should be brought to the City Manager's attention.

2. Employee Integrity. Employees of Draper City have, as their first duty, to conduct themselves in a manner deserving of public trust and confidence, both on and off the job. The City's reputation for excellence and

fairness in business activities is built upon each individual's ethical conduct. We expect all employees to conduct themselves with utmost integrity and at the highest of ethical standards at all times.

3. **Employee Conflicts of Interest.** To maintain independence of judgment, employees must avoid potential conflicts or appearance of compromise that might arise because of economic or personal self-interest.
4. **Participation in Community Activities.** Employees are encouraged to participate in charitable, religious, educational, and community nonprofit activities. The City supports participation in such activities so long as employee job performance is not affected. However, unless approved by the City Manager, City supplies and equipment should not be used to solicit financial support or provide other assistance to community organizations.
5. **Non-Business Relationships.** Personal relationships are improper if others can reasonably construe them as influencing or obligating the employee in current or future business dealings or as attempts to improperly influence others.
6. **Reporting Violations.** Employees are required to report to the City Manager all violations or suspected violations of this Code of Ethics. All reports will be handled professionally and as confidentially as possible.
7. **Disciplinary Action.** The guidelines established in this section should be taken very seriously. Employees who breach or disregard the conflict of interest/ethics policy will be subject to corrective action, up to and including termination.

#### Section 6060 DRUGS AND ALCOHOL

##### General Policy Statement:

Draper City has a strong commitment to maintaining a drug-free, healthy, and safe workplace. Consistent with the spirit and intent of this commitment we have established this policy regarding substance abuse. All employees will be required to comply with the guidelines of this policy as a condition of employment. Failure to comply will result in corrective action up to and including termination. A copy of our employee drug and alcohol policy will be distributed to employees and will be available for review by prospective employees. The provisions of this policy are intended to be in accordance with the Utah Local Government Entity Drug-Free Workplace Act.

##### Guidelines:

1. **Workplace Prohibitions.** The following acts are strictly prohibited while on City property or work sites, while conducting City business off-premises (regardless of location), or while operating any City vehicle, equipment, or private vehicle on City business.
  - A) **Illegal Drugs, Alcohol, and Controlled Substances.** The City prohibits the buying, selling, transportation, possession, distribution, consumption, or use of illegal drugs, alcohol, or controlled substances not required by a physician's prescription, on City premises, while on City business, or at any time during working hours.
  - B) **Use of Alcohol or Non-Prescribed Controlled Substances.** The City further prohibits the consumption or use of alcohol or controlled substances not required by a physician's prescription off City premises or during non-working hours where such use might, in the City's judgment:
    - (i) Impair the employee's work performance;
    - (ii) Affect the safety and welfare of other employees on the job; or
    - (iii) Impair the employee's ability to operate a City provided/paid for motor vehicle.
  - C) **Use of Prescription Drugs.** The use of controlled substances in accordance with a physician's prescription for the employee will not be the basis for corrective action by the City unless, as allowed by law, such use might impair the individual's work performance or threaten safety.
2. **Off-the-Job Prohibitions.** Off-the-job use, possession, sale, etc., of alcohol, illegal drugs, or controlled substances may subject an employee to corrective action if such actions impact job performance or workplace safety, as permitted by law.
3. **Testing.** The City respects employees' rights of privacy while recognizing our responsibility to provide a safe work environment for all employees and the public. Therefore, the City reserves the right to conduct drug tests on any employee, at any time, unless prohibited by law.
  - A) **Pre-Employment.** A prospective (post offer/pre-employment) employee will be required to submit to testing for controlled substances as a condition of employment. Prospective employees will be informed of City testing procedures and provided a copy of our

testing policy in advance. As a condition of employment, an employee must sign a consent form agreeing to be tested for drugs. Failure to comply with this policy will result in the City refusing to hire a prospective employee or disciplinary action for current employees, up to and including termination.

B) **Current Employees.** The City may require, and an employee must submit to, testing for controlled substances and alcohol whenever the City has reason to believe that the employee has violated the policies set forth in Section 1, or for the following purposes:

(i) **Impaired Performance.** All employees are expected to report to work in appropriate mental and physical condition. The influence of drugs and alcohol can reduce efficiency and productivity, and may create a disruptive working environment. Employees may be required to undergo immediate evaluations under various circumstances including, but not limited to:

(a) Investigation of possible individual employee impairment or inability to perform essential job functions;

(b) Investigation of accidents and injuries in the workplace or incidents of workplace theft;

(c) Maintenance of safety for employees or the general public;

(d) Maintenance of productivity, quality of products or services, or security of property or information; or

(e) Compliance with regulations mandated by federal or state government.

(ii) **Random Testing.** The City reserves the right to institute random testing of employees as allowed by law.

(iii) **Signed Acknowledgement.** All employees will be given copies of the Drug and Alcohol policy and will sign forms acknowledging that they have received and read the policy and consent to testing under its terms. The signed acknowledgement will be kept in each employee's personnel file.

(iv) **Compensation for Test Time.** Any drug or alcohol testing shall be deemed "hours worked" for compensation and benefits purposes. Further, the City will pay all costs associated with testing.

4. **Confidentiality.** All information, interviews, reports, statements, memoranda, or test results received by the City through controlled substance and alcohol testing are confidential communications kept apart from regular personnel records and will be processed through the office on a "need to know" basis. Such information will only be used in a proceeding related to a corrective action taken by the City or in defense of any action brought against the City.

5. **Collection and Testing.**

A) **Standard Laboratory Procedures.** All sample collection and testing for controlled substances or alcohol shall be performed in accordance with standard laboratory operating procedures as mandated by applicable law and in such a manner as to reasonably preclude contamination or adulteration or erroneous identification of test results.

B) **Samples.** Employees shall submit a split urine sample, a hair sample or other approved sample for drug testing or retesting required herein. The sample shall be divided into two specimens by the collection entity in accordance with the Utah Governmental Entity Drug-Free Workplace Act. Employees shall submit to a breath alcohol test for alcohol testing required herein.

C) **Tests Required.** Controlled substance testing will be by any scientifically accepted testing method the City may determine.

D) **Alcohol Testing.** The City will test for alcohol by any scientifically accepted method the City may determine.

E) **Identification Required.** To ensure reliability, the City will require presentation of reliable identification to the person collecting the samples.

F) **Employee Information.** An employee or prospective employee will be permitted to provide notification of any information which he or she considers relevant to the test, including identification of currently or recently used prescription or non-prescription drugs, or other relevant and medical information.

- G) Refusal to Submit to Testing. If any employee refuses to submit to the drug or alcohol screening test or tests, such refusal may result in corrective action up to, and including termination. If any prospective employee refuses to give written consent to a drug and/or alcohol screening test or tests, such refusal will result in the City's withdrawing any conditional offer of employment.
- H) Privacy. Testing shall be conducted under secure conditions and with due regard for the privacy of the individual being tested.
- I) Second Test Option. If the test results indicate the presence of drugs or their metabolites, the donor of the test shall have seventy-two (72) hours from the time he or she is notified of such results to request, at his or her option, to have the split sample testing. The cost of the second shall be equally divided between the donor and the City, unless the second sample tests negative, in which case the City shall pay for the entire cost of the second test. In addition to the initial test results, the test of the split sample shall be considered at any subsequent disciplinary hearing if the requirements of this policy have been complied with in the collection, handling and testing of the samples.
6. Corrective Actions. Any violation of this policy, including receipt of a confirmed positive drug or alcohol test result, tampering with evidence, or an employee's or applicant's refusal to provide a test sample, may, at the City's discretion, result in corrective action up to and including termination. Possible corrective and rehabilitation actions include, but are not limited to:
- A) Withdrawal of a job offer to a prospective employee;
  - B) Suspension with or without pay;
  - C) Termination;
  - D) Requirement of employee enrollment (at his or her own expense) and successful completion of a City approved rehabilitation, treatment or counseling program;
  - E) Additional and ongoing drug and alcohol testing as a condition of employment; and/or
  - F) Other corrective actions in accordance with City policies and procedures.
7. Searches. All employee searches will be conducted by at least two City representatives and must be approved in advance by the Department Head. Any illegal substance confiscated will be turned over to the appropriate legal authorities for further investigation. Authorized personnel may conduct searches and surveillance of:
- A) City Property. Employees may have no expectation of privacy on City property. City property includes, but is not limited to grounds, facilities, equipment, furniture, storage areas, vehicles, etc.
  - B) Employee's Person and Personal Property. Personal property includes any employee belongings (including vehicles) located on City premises. An employee who fails to cooperate in a search investigation will be subject to corrective action.
8. Department Head Responsibility.
- A) Reporting.
    - (i) Suspicious Behavior. Department Heads must report all suspected drug or alcohol activity to the City Manager or his/her designee.
    - (ii) Reporting Suspected Drug or Alcohol Activity. Department Heads must also immediately report any other suspected drug or alcohol related activity in the workplace to the City Manager or his or her designee.
  - B) Documentation, Not Investigation. Department Heads should not discuss their suspicions with other employees and should not conduct their own investigations. The Department Head's role is to document job performance and not to determine underlying causes.
  - C) Evaluation. The City Manager and the Department Head will conduct a confidential and professional investigation and decide whether an employee should be:
    - (i) Removed from service;
    - (ii) Required to undergo a medical exam; and/or
    - (iii) Screened for drugs and alcohol.
9. Employee Responsibility. Any employee who has a reasonable suspicion of a violation of this policy or observes prohibited substance use/abuse by another employee should contact his or her Department Head or the Personnel Administrator immediately. The

suspicion should not be discussed with any other employee and the investigation will be undertaken at the discretion of the City.

10. Use of Prescribed Drugs. As permitted by law, working under the influence of any legal drug that impairs judgment, job performance, behavior, or which endangers employees will not be allowed.

A) Inform Supervisor. As allowed by law, employees who must use prescribed or over-the-counter drugs during work which may impair their performance or pose a danger should notify their supervisor and provide documentation of the need for the medication.

B) Accommodations. The Department Head and Supervisor will determine whether temporary restrictions of job responsibilities, reassignment, or special accommodation should be made.

11. Counseling and Treatment. Employees with alcohol or drug-related problems are encouraged and may be required to participate in counseling and treatment.

A) Confidentiality. Counseling for dependency or other drug related problems is considered confidential.

B) Counseling Will Not Prevent Appropriate Corrective Action. Employees will not be penalized for seeking counseling. However, counseling and treatment do not shield employees from the consequences of poor performance. Participation in counseling or rehabilitation programs will not:

(i) Protect an employee from appropriate corrective action, or

(ii) Relieve an employee of the responsibility to perform assigned duties safely, efficiently, and to meet established performance standards required of all employees.

12. Test Results. Test results will be retained in employee files in accordance with Federal Regulation 49CFR382.401, as amended.

13. Use of Alcohol for Business-Related Events. The use or presence of alcoholic beverages on City premises is strictly prohibited.

## Section 6070 DOT DRUG AND ALCOHOL TESTING

### General Policy Statement:

It is the purpose of this policy to provide guidelines for the implementation and management of a Drugs and Alcohol testing program for City employees who are subject to the Commercial Drivers License Drugs and Alcohol testing requirements under the federal Omnibus Transportation Employee Testing Act of 1991 and the Department of Transportation Regulations promulgated there under. The provisions of this policy are intended and shall be interpreted in accordance with the Omnibus Transportation Act and the Department of Transportation Regulations as defined herein.

### Guidelines:

1. Applicability. This policy applies to all City employees who operate a commercial motor vehicle in commerce and who are subject to the Commercial Drivers License requirements of the Department of Transportation, hereinafter "CDL Employees." All other employees shall comply with the Drugs and Alcohol policy set forth in Section 6060 rather than the provisions set forth herein. All City CDL employees shall be subject to the testing requirements of this policy and the Drugs and Alcohol policy, subject to the following limitation. When the provisions of this policy are applicable to a certain situation, this policy shall be complied with and no other testing requirements may be imposed. However, when provisions of this policy do not apply to a situation which is otherwise covered by the City's Drugs and Alcohol policy, CDL employees shall be subject to testing under the City's Drugs and Alcohol policy. In any case, if there is any conflict between this policy and any other policy or regulation of the City, the requirements of this policy shall control and no other testing requirements shall be imposed which would conflict or hinder compliance with this policy.
2. Policy. Alcohol and controlled substance abuse in the workplace is a threat to the safety, health and job performance of employees and it is the policy of the City to employ a work force and create a work place free from such adverse affects of alcohol and controlled substance abuse. It is further the policy of the City to balance the employee's privacy interest with the City's need to comply with the DOT Regulations and testing requirements for employees subject to the Commercial Driver's License requirements.



3. Definitions. As used in this policy, the following words shall have the following meanings:

A) "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

B) "Consortium" means an entity that provides alcohol or controlled substances testing as required by the Department of Transportation rules and regulations and that acts on behalf of the City for conducting such tests.

C) "Controlled Substances" shall include marijuana, cocaine, opiates, amphetamines, phencyclidine, their metabolites, and any other controlled substance or its metabolite designated for required testing by the DOT Regulations. Specimens collected under this policy may only be used to test for controlled substances and their metabolites as defined herein and shall not be used to conduct any other analysis or test unless otherwise specifically authorized by DOT Regulations.

D) "DOT Regulations" means the rules and regulations promulgated by the U.S. Department of Transportation for alcohol and controlled substance testing requirements for employees subject to the Commercial Driver's License requirements pursuant to the Omnibus Transportation Act of 1991, including, but not limited to §§ 49 C.F.R. 40 and 49 C.F.R. 382, as amended.

E) "Employee" means any person in the service of the City who is required as part of his or her job duties to operate a commercial motor vehicle in commerce and is subject to the Commercial Driver's License requirements of § 49 C.F.R. 383, as amended.

F) "FHWA" means the Federal Highway Administration.

G) "Refusal to Submit" to a test means that the employee: (1) fails to provide adequate breath for alcohol testing as required by the DOT Regulations without a valid medical explanation after he or she has received notice of the requirement for breath testing; (2) fails to provide an adequate urine sample for controlled substances testing as required by the DOT Regulations without a genuine inability to provide a specimen after he or she has received notice of the requirement for urine testing; or (3) engages in conduct that clearly obstructs the testing process.

H) "Safety-Sensitive Functions" means any duties requiring a Commercial Driver's License or other

duties deemed safety-sensitive under the DOT Regulations. An employee is considered to be performing a safety-sensitive function during any period in which he or she is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

I) "Substance Abuse Professional" means a licensed physician or licensed or certified psychologist, social worker, employee assistance professional or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders as defined in the DOT Regulations.

4. Prohibitions.

A) Alcohol Concentration. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater.

B) On-Duty Alcohol Use. No employee shall use alcohol while performing safety-sensitive functions.

C) Pre-Duty Alcohol Use. No employee shall perform safety-sensitive functions within four (4) hours after using alcohol.

D) Post-Accident Use. No employee may use alcohol for eight (8) hours following an accident in which the employee is required to take a post-accident test, or until he or she undergoes the post-accident test.

E) Controlled Substance Use. No employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions when the driver uses any controlled substances, as shown by the presence of drugs or their metabolites in the employee's system, except when the use is pursuant to the instructions of a physician as set forth herein.

F) Controlled Substance Testing. No employee shall report for duty, remain on duty or perform a safety-sensitive function if the driver tests positive for controlled substances or their metabolites in the employee's system.

G) Refusal to Submit. No employee shall refuse to undergo a required alcohol or controlled substance test.

5. Testing Required. All employees subject to this policy are required to abide by this policy and the testing requirements set forth herein as a condition of

employment. Employees shall be subject to pre-employment, random testing, reasonable suspicion testing, post-accident testing, return-to-duty testing, and follow-up testing as set forth herein. Prior to submitting to testing required herein, employees shall sign a Consent Form authorizing the test and permitting release of the test results to appropriate personnel.

6. Pre-Employment Drug Testing. Prior to the first time an employee performs a safety-sensitive function for the City, the employee shall undergo testing for controlled substances. The City shall not allow an employee to perform a safety-sensitive function unless the employee has been administered and the City has received a controlled substance test result from a Medical Review Officer indicating a verified negative test result. A controlled substance test may not be required if the employee has participated in a drug testing program that meets the DOT Regulations within the previous thirty (30) days and all other exception requirements as set forth in the DOT Regulations are satisfied.

7. Random Testing.

- A) Required Alcohol Testing. Except as otherwise provided by the DOT Regulations, at least twenty-five percent (25%) of the number of City CDL employees shall be randomly tested for alcohol each year in accordance with the DOT Regulations.

- B) Required Controlled Substance Testing. Except as otherwise provided by the DOT Regulations, at least fifty percent (50%) of the number of City CDL employees shall be randomly tested for controlled substances each year in accordance with the DOT Regulations.

- C) Selection Technique. The selection of employees for random alcohol and controlled substance testing shall be made by a scientifically valid method, such as a random number table or computer-based random number generator that is matched with the employee's Social Security number, or other comparable identifying numbers. Under the selection procedure, each employee shall have an equal chance of being tested each time selections are made.

- D) Unannounced Tests. Random alcohol and controlled substances tests conducted hereunder shall be unannounced and the dates for administering the tests should be spread reasonably throughout the calendar year. An employee notified of selection for

random alcohol or controlled substances testing shall proceed to the test site immediately.

- E) Time for Alcohol Testing. Employees shall be randomly tested for alcohol only while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

- F) Consortium. The City may contract with a consortium to administer and manage its random Drugs and Alcohol testing requirements.

8. Reasonable Suspicion Testing.

- A) Testing Required. Employees shall submit to an alcohol and/or controlled substances test when a trained and approved supervisor has reasonable suspicion to believe that the employee has violated the prohibitions of this policy.

- B) Reasonable Suspicion. The supervisor's determination that reasonable suspicion exists to require the employee to undergo an alcohol and/or controlled substance test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. Reasonable suspicion observations for use of controlled substances in violation of this policy may include indications of the chronic and withdrawal effects of controlled substances.

- C) Suspicion Form. The supervisor shall complete a signed and written record of his or her observations leading to a controlled substance or alcohol test under reasonable suspicion using a "Reasonable Suspicion Form" prepared by the City within twenty-four (24) hours of the determination or before the results of the test are announced, whichever is earlier.

- D) Alcohol Testing Requirements. The person who makes the determination that reasonable suspicion exists to conduct an alcohol test shall not conduct the alcohol test of the employee. Alcohol testing under reasonable suspicion must be made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this policy.

- E) Time Limit for Alcohol Test. If a test required by this Section is not administered within two (2) hours following the determination of reasonable suspicion, the City shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this Section is not

administered within eight (8) hours following the determination, the City shall cease attempts to administer an alcohol test and shall prepare and maintain a record regarding the same.

F) Records. Records required to be maintained under this Section shall be submitted to the FHWA in accordance with the DOT Regulations.

G) Performance. Notwithstanding the absence of a reasonable suspicion alcohol test under this Section, no employee shall report for duty or remain on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, nor shall the City permit the employee to perform or continue to perform such functions until an alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or twenty-four (24) hours have elapsed following the determination of reasonable suspicion.

H) Action. The City shall not take any action under this Section against an employee based solely on the employee's behavior and appearance, with respect to alcohol or controlled substance use, until an alcohol and/or controlled substance test has been conducted and confirmed in accordance with this policy.

#### 9. Post-Accident Testing.

A) Testing. As soon as practicable following an accident involving a commercial motor vehicle, the City shall test for alcohol and controlled substances of each surviving driver who:

(i) Was performing a safety-sensitive function with respect to the vehicle and the accident involved loss of human life; or

(ii) Receives a citation under State or local law for a moving traffic violation arising from the accident, if the accident involved:

(iii) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iv) One or more motor vehicles incurring disabling damage as a result of the accident, as defined by the DOT Regulations, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

B) Available for Testing. An employee subject to post-accident testing shall remain readily available for such testing or may be deemed by the City to have refused to submit to the testing. Nothing in this Section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

C) Time Limit for Alcohol Test. If a test required by this Section is not administered within two (2) hours following the accident, the City or its agent shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this Section is not administered within eight (8) hours following the accident, the City shall cease attempts to administer an alcohol test and shall prepare and maintain a record regarding the same.

D) Time Limit for Controlled Substance Test. If a test required by this Section is not administered within thirty-two (32) hours following the accident, the employer shall cease attempts to administer a controlled substances test, and prepare and maintain on file a record stating the reasons the test was not promptly administered as set forth in Subsection (3).

E) Records. Records required to be maintained under this Section shall be submitted to the FHWA in accordance with the DOT Regulations.

#### 10. Return to Duty Testing.

A) Alcohol Testing Required. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by Subsection 4 concerning alcohol, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

B) Controlled Substance Testing. Before an employee returns to duty requiring the performance of a safety-sensitive function after engaging in conduct prohibited by Subsection 4 concerning controlled substances, the employee shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

#### 11. Follow-Up Testing.

A) Following a determination that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or controlled substances in



accordance with provisions set forth herein, the employee shall be subject to unannounced follow-up alcohol and/or controlled substances testing as directed by a substance abuse professional consisting of at least six (6) tests in the first twelve (12) months following the employee's return to duty and in accordance with the DOT Regulations.

B) Time for Testing. Follow-up testing shall be conducted only when the driver is performing safety-sensitive functions, just before the driver is to perform safety-sensitive functions, or just after the driver has ceased performing safety-sensitive functions.

12. Testing Procedures. All testing conducted under this policy shall comply with the alcohol or controlled substance testing procedures set forth in the DOT Regulation, including but not limited to § 49 C.F.R. 40, as amended. All procedures used for testing shall be conducted in a manner which protects the employee and the integrity of the testing processes, safeguards the validity of the test results, and ensures that the results are attributed to the correct employee. Employees shall be notified of any positive alcohol or controlled substance test results in accordance with the DOT Regulations.
13. Confirmation Tests. Alcohol tests with a result of 0.02 or greater shall be confirmed by a second test that provides quantitative data of the alcohol concentration. Controlled substances tests with a positive result shall be confirmed by a second analytical procedure to identify the presences of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from the screen test in order to ensure reliability and accuracy.
14. Results. No employee shall be permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, if the employee has engaged in conduct prohibited by this policy until the procedures set forth herein are complied with. Any employee found to have violated the prohibitions set forth in Subsection 4 shall be removed immediately from safety-sensitive functions and shall be required to undergo evaluation and treatment set forth in herein. Any employee who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, shall not be permitted to perform safety-sensitive functions, including driving a commercial motor vehicle, until the start of the driver's next regularly scheduled duty period, but not less than twenty-four (24) hours following administration of the test. No other action shall be taken against the employee for test results showing an alcohol concentration of less than 0.04, unless otherwise authorized by law or City policy.
15. Referral. Each employee who has engaged in prohibited conduct under Subsection 4 of this policy shall be advised by the City of the resources available to the employee in evaluating and resolving problems associated with the misuse of alcohol and use of controlled substances, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs.
16. Evaluation. Each driver who engages in conduct prohibited by Subsection 4 of this policy shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and controlled substances use.
17. Treatment. Each employee identified as needing assistance in resolving problems associated with alcohol misuse or controlled substances use shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program and shall be subject to unannounced follow-up alcohol and controlled substance tests in accordance with this policy. Evaluation and follow-up testing required herein shall be at the expense of the employee.
18. Action. The City may use confirmed positive test results, or any refusal of a prospective or current employee to take the test, as a basis for disciplinary action up to and including termination of current employees and refusal to hire prospective employees. Any disciplinary action taken by the City for violation of this policy shall be in accordance with the City disciplinary procedures. Such procedures shall include any required pre-disciplinary hearing and proper appeal proceedings.
19. Policy Distribution. Educational materials, including this policy, shall be provided and distributed to all City employees subject to the requirements set forth herein. Each employee shall be responsible for reading this policy and shall file an Employee Acknowledgment Form with the City certifying that he or she has received a copy of this policy. Any employee questions regarding this policy or the DOT Regulations may be addressed to the City Manager.
20. Records and Confidentiality. The City shall maintain records of its alcohol misuse and controlled substances use program in accordance with the DOT Regulations and for the time periods required therein.

The records shall be considered confidential and shall be maintained in a secure location, separate from other personnel records, with controlled access. Confidential records will be shared on a need to know basis only, provided that the employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol or controlled substance, including any records pertaining to his or her alcohol or controlled substances tests.

21. Prescribed Drug Use. Employees taking prescribed medications may not report to duty unless the employee advises the physician of the employee's occupation and job duties and the physician is of the opinion that the employee can safely perform such job duties while taking the prescribed drug. If the licensed physician is of the opinion that the employee cannot safely work or perform the employee's job duties while taking the prescribed drug, the employee shall report the prescribed drug use and the physician's opinion regarding its use in writing to the employee's supervisor or the City Manager prior to performing any work for the City.
22. Background Checks. The City shall follow the requirements for background checks for employees with past substance abuse violations in accordance with the DOT Regulations. Prospective employees shall complete and sign a Release Form to allow the City to review previous test results in accordance with the DOT Regulations. The City shall not use an employee to perform safety-sensitive functions if the City obtains information on the employee's alcohol test with a concentration of 0.04 or greater, verified positive controlled substances test result, or refusal to be tested, by the employee, without obtaining information on a subsequent substance abuse professional evaluation and/or determination and compliance with the DOT Regulations for return to duty testing.

#### Section 6080

#### EMPLOYEE CONDUCT AND WORK RULES

##### General Policy Statement:

Employee conduct and work standards have been established to promote a productive and safe work environment. Behavior which fails to meet established standards or violates City rules must be corrected and may be subject to corrective action, up to and including termination.

##### Guidelines:

1. Expectations. All employees are expected to meet established performance and conduct requirements. The following guidelines provide a general outline of expectations.

A) Performance. Employees are expected to perform their jobs efficiently, effectively, and in accordance with established procedures. The following are examples of performance misconduct which are subject to corrective action:

- (i) Failure to meet quality standards and deadlines;
- (ii) Refusal to work mandatory overtime;
- (iii) Insubordination or failing to follow their supervisor's directions or accept work assignments;
- (iv) Unprofessional conduct or rudeness to customers; and/or
- (v) Violation of safety rules and failure to wear prescribed safety gear.

B) Attendance. Employees are expected to arrive at work on time, as scheduled and return from breaks promptly. Advance notification should be given to the supervisor when the employee will be absent or tardy. The following are examples of attendance misconduct which are subject to corrective action:

- (i) Unexcused or excessive tardiness;
- (ii) Unexcused or excessive absences;
- (iii) Leaving work early without notifying or obtaining permission from his or her supervisor; and/or
- (iv) Unauthorized absence from workstation during the workday.

C) Honesty and Integrity. Employees are expected to demonstrate honesty and candor in the conduct of all business activities, including observance of the spirit as well as the letter of the law. Utilization of City property, including financial assets, equipment, furniture, buildings, records, and information, must be in accordance with the highest standards of integrity and trust. Employees are responsible for reporting any illegal or unethical actions of employees and non-employees to their supervisor or Department Head.

The following are examples of behaviors subject to corrective action:

- (i) Willful or negligent damage, theft, or misuse of property;
- (ii) Falsification of City records or documents (including time and absence records, employment applications, medical reports, work records, expense accounts, or other business records);
- (iii) Failure to report injury or unsafe conditions, or to cooperate in City investigations;
- (iv) Illegally divulging confidential City information without authorization; and
- (v) Use of City time or equipment for unauthorized or personal purposes.

D) Behavior. Employees are expected to conduct themselves, both professionally and personally, in a manner that is consistent with the professional *reputation of the City and to avoid any activities that might reflect adversely upon the City.* The following are examples of inappropriate behaviors subject to corrective action:

- (i) Violation of dress and grooming code;
- (ii) Working under the influence of alcohol and/or illegal drugs;
- (iii) Possession, use, or sale of alcohol or illegal drugs at work or on City property;
- (iv) Using offensive, foul, or abusive language;
- (v) Possession of guns, explosives, or other weapons while conducting City business;
- (vi) Fighting with or threatening fellow employees or non-employees;
- (vii) Harassment or discrimination of any kind (including sexual harassment);
- (viii) Smoking in unauthorized areas;
- (ix) Unauthorized solicitation;
- (x) Pranks, or practical jokes that result in damage to City property or are detrimental to other employees;

(xi) Conviction of a felony relevant to an employee's position or employee/City safety;

(xii) Any willful or negligent act which endangers the safety, health, or well-being of another person; and/or

(xiii) Misconduct or any act which disrupts work or discredits the organization.

- 2. Use of City Equipment Prohibited. Borrowing City equipment for personal purposes is not permitted. When unusual circumstances arise, the Department Head must be consulted for special permission.
- 3. Working at home. Working at home is prohibited except in unusual circumstances. Employees are prohibited from working at home unless the City Manager determines that working in the office is detrimental to the safety or welfare of the employee(s). Department Heads, with the approval of the City Manager, are occasionally authorized to work at home when special projects require immediate attention. *Working at home is the exception rather than the rule.* Weather conditions or work interruptions are no basis for working at home.

#### Section 6090 PERSONAL PROPERTY, SEARCHES, AND INSPECTIONS

##### General Policy Statement:

Employees will be assisted in protecting their personal property while at work; however, the City does not assume responsibility for its theft, damage, or disappearance. Other employees, customers, and vendors may have access to employee work areas; consequently, employees should not keep valuable property or large amounts of cash at work. Additionally, to ensure workplace security and safety, all City facilities, City property, and employees' personal property on City premises are subject to inspection upon probable cause and to ensure workplace security and safety.

##### Guidelines:

##### 1. Employee Responsibility.

A) Personal Property. Employees should protect personal property brought to work. Such property should not be left unattended or in open sight. Damage or theft of personal property should be reported immediately to the Department Head. Further, good judgment should be used when displaying personal items. Employees should ensure

that such items are professional and do not hamper City functions.

B) Unfamiliar or Suspicious Persons. Employees should notify their Department Head immediately of any unfamiliar or suspicious persons on City premises. Unfamiliar persons should be offered assistance and escorted to the appropriate area as required.

2. Assigned Storage Areas. Provided storage areas and work stations will remain under the City's control.

A) Locks, Keys, and Lock Combinations Provided. Locks, keys, and combinations for secured storage areas will be provided. Employees may not use their own locks.

B) City Pass Keys. The Public Works Department will hold pass keys to all secured areas, including City facilities and equipment.

3. Searches and Inspections. The City may be required to conduct internal investigations relating to security, auditing, or work-related matters. Employees are required to assist and fully cooperate in the investigations. The City reserves the right to inspect, without notice, all City property, equipment, storage facilities, and, with probable cause, any employee personal belongings on City premises.

A) City Property. Employee computer files, voice mail, email, storage facilities, cabinets, desks, lockers, etc., are City property and are subject to inspection at any time, with or without probable cause.

B) Corrective Action. Any employee who refuses to submit to a legal search, assist in an investigation, or is found in possession of prohibited articles will be subject to corrective action up to, and including termination.

#### Section 6100 PUBLIC RELATIONS

##### General Policy Statement:

Draper City's goal is to provide high quality customer service. Employees are expected to be professional and to interact politely and patiently with all customers and business contacts.

Occasionally it may be necessary for a supervisor to become involved when a customer is angry or frustrated. Employees should seek help from supervisors as needed if public relations problems arise.

##### Guidelines:

1. Professionalism. Customer satisfaction and outstanding public relations are critical to the City's success. Therefore, it is imperative that customers are treated professionally.
2. Prompt and Timely Attention. All business relationships must be carried out in a timely manner. Scheduled appointments and meetings must be attended on time. If delay is necessary, appropriate notice must be given. Phone calls must be promptly returned (within the same day if possible).
3. Follow-Through. All citizen and customer requests and complaints must be handled promptly and effectively throughout the entire service process.
4. Knowledge of Business and Services. Knowledgeable employees are a key to providing superior customer service. Therefore, employees are assumed to understand City services, to positively promote Draper City interests, and to build goodwill. Employees are also responsible for being informed of service changes, procedures, and customer needs.
5. Employee Input. Employees are encouraged to provide suggestions regarding policies and practices which could improve business relationships and customer service. Employees should also inform their Department Head of any public relations problems or issues which require attention.
6. Employee Support. Employees must support each other when dealing with the public. Under no circumstances should an employee speak disrespectfully about another employee's abilities or job performance to a citizen or customer.
7. Proper Language Skills. Employees in public contact positions must be able to communicate effectively. Such employees must have language and writing skills appropriate to their positions.

#### Section 6110 SAFETY

##### General Policy Statement:

It is the City's goal is to prevent all occupational injuries and illnesses and to eliminate foreseeable hazards. The City will seek to comply with all federal, state, and local safety, health, and environment regulations. Maintaining a safe and healthy workplace is the joint responsibility of the City and all of its employees. The following safety policies

have been established to enable the City to achieve our goals.

**Guidelines:**

1. **Department Heads' Responsibilities.** Department Heads are responsible through leadership and example to effectively implement this policy. Their responsibilities include:

- A) Understanding all related policies and procedures;
- B) Ensuring that all employees are appropriately trained in health and safety issues;
- C) Inspecting work areas regularly and identifying and reporting health or safety concerns to the Public Works Director;
- D) Ensuring that all safety rules are implemented and that corrective action is taken immediately when an employee fails to follow a rule;
- E) Providing all safety and health information to employees as required by City policy and applicable law;
- F) Reporting all workplace injuries, illnesses, and accidents regardless of severity to Human Resources; and
- G) Participating in accident investigations as required.

2. **Employee Responsibilities.** Injuries, illnesses, and accidents, regardless of severity, must be reported to their Supervisor immediately. Supervisors will report all injuries and accidents to Human Resources.
3. **Employee Suggestions.** Employees often provide the best safety improvement ideas. Therefore, employees are strongly encouraged to submit suggestions to their Department Heads.
4. **Use and Possession of Deadly Weapons.** No employee (other than authorized security personnel) may possess any deadly weapons while conducting City business, nor store such weapons in any City vehicle. Employees who violate this policy will be subject to immediate corrective action up to and including termination.
5. **No Retaliation or Reprisal.** No employee may be discriminated against because he/she has reported

any safety or health concern or has participated in a related investigation or proceeding.

6. **Corrective Action.** Employees who violate City safety policies may be subject to corrective action up to and including termination.

**Section 6120  
SMOKING**

**General Policy Statement:**

The City is committed to providing a work environment which supports employee health, safety, and productivity. For the protection of all employees, and to ensure compliance with federal and state law, smoking is not allowed in City buildings including any work areas, break rooms, and hallways, and City owned vehicles. Employees who smoke should do so outside at least 25 feet from the building during approved breaks and lunch periods. Visitors must also smoke outside. All employees, both smoking and non-smoking, are expected to be courteous in respecting the needs and rights of others.

**Guidelines:**

1. **Enforcement.** Supervisors and Department Heads are responsible for monitoring and ensuring compliance with smoking policies.
2. **Break Time Abuse.** Smokers are responsible to refrain from abusing break times. Employees who utilize their rest breaks to smoke should ensure that smoking areas remain clean and that scheduled break times are not exceeded.
3. **Corrective Action.** Employees who violate this policy will be subject to appropriate corrective action up to and including termination.

**Section 6130  
WORKPLACE VIOLENCE**

**General Policy Statement:**

The City's goal is to provide a safe workplace for all employees, customers, vendors, and guests and to protect City property. To promote a safe workplace and to reduce the risk of violence, all threatening, aggressive, and violent behavior, including verbal and written threats, e-mail, and physical attacks are prohibited. The possession of firearms, ammunition, and dangerous or deadly weapons on City premises or City controlled space, except by authorized personnel, is also prohibited. Such conduct by employees will be subject to corrective action.



Guidelines:

1. Employees' Responsibilities.

A) Reporting. All potentially threatening, dangerous, or suspicious situations should be immediately reported to the employee's supervisor, the Department Head or Personnel Administrator.

B) Don't Challenge Potentially Violent Individuals. In no event should an employee attempt to investigate or resolve a potentially violent, suspicious, or threatening situation. All such incidents will be handled by a supervisor. Employees should never endanger themselves attempting to disarm or remove a potentially violent individual.

C) Law Enforcement Officers. Employees should not hesitate to call a Law Enforcement Officer if confronted with potentially violent or dangerous situation requiring emergency assistance.

2. Supervisors' Responsibilities. Supervisors have special responsibility through leadership and example to implement this policy. Their responsibilities include:

A) Reporting. Being especially alert to potentially violent or threatening situations and reporting all possible instances to their Department Head.

B) Communicating to Employees. Informing employees of the City's commitment to a safe workplace, conveying our policy to them, and encouraging them to report potential problems.

C) Implementing Policies. Ensuring that workplace safety rules are implemented and that any related corrective actions are implemented immediately.

3. Prohibited Conduct. The City will not tolerate any form of workplace violence or threat of violence committed by employees or non-employees. Such prohibited behavior includes but is not limited to:

A) Injuring or threatening physical injury to another person;

B) Hitting, shoving or fighting with an individual;

C) Making threatening remarks or written communications, or e-mails, or behaving in a threatening manner;

D) Behaving in a hostile or aggressive manner that creates a reasonable fear of injury or subjects another to extreme emotional distress;

E) Damaging or threatening to damage City, employee or non-employee property intentionally or because of gross negligence;

F) Possessing a firearm or other weapon in City facilities, on City property or while on City business, except for authorized public safety personnel;

G) Committing acts of harassment;

H) Behaving in a manner which disrupts another's work performance or the City's ability to execute its mission.

4. Investigations. All reports of potentially violent or threatening situations will be taken seriously and investigated by the Department Head. Employees are required to cooperate in any investigation.

5. Confidentiality. Confidentiality will be maintained as much as possible; however, a guarantee of absolute confidentiality cannot be made. Information will be shared on a need-to-know basis only.

6. Retaliation Prohibited. No employee may be discriminated or retaliated against because he/she has reported any potential workplace threat or violence or has participated in a related investigation or proceeding.

7. Corrective Action. Appropriate corrective action up to and including termination will be taken against any employee found to have violated this policy.

Chapter 7000  
COMPENSATION AND BENEFITS

7010	COBRA - Insurance Continuation
7020	Benefits
7030	Overtime
7040	Rest and Lunch Breaks
7050	Salary and Payroll Procedures
7060	Time Records
7070	Working Hours/ "Hours Worked"

Section 7010  
COBRA - INSURANCE CONTINUATION

General Policy Statement:

COBRA generally applies to businesses which offer "group health plans" and employ 20 or more employees on at least 50% of regular business days during the preceding calendar year. In specified circumstances, COBRA allows qualified employees and their families who have lost

insurance coverage to pay for a temporary extension of coverage. COBRA coverage is not automatic. Employees must inform the Human Resource Specialist that an extension in coverage is desired and then complete and submit all required paperwork within established time frames. The following are very general guidelines. The Personnel Administrator should be contacted for more specific in-depth information, the actual law should be reviewed, and a professional contacted for more specific information.

Guidelines:

1. **Qualified Beneficiaries.** "Qualified beneficiaries" under COBRA include persons (such as employees, ex-employees, spouses and dependents) who had City group health insurance coverage before a "qualifying event" occurred. Additionally, a child that is born to or placed for adoption with the covered employee during a period of COBRA coverage will be eligible to become a qualified beneficiary.
2. **"Group Health Plan" Defined.** Insurance coverage offered under COBRA is identical to that provided to similarly situated plan beneficiaries who have not had qualifying events. COBRA may apply to any "group health" plan, including:
  - A) Traditional medical coverage;
  - B) Dental and vision programs; and
  - C) Section 125 medical flexible spending accounts and cafeteria plans.
3. **All or No Coverage.** A qualified beneficiary may be required to elect all coverage or no coverage.
4. **Qualifying Events and Coverage Periods.** A qualified beneficiary may have a right to choose and pay for COBRA coverage if a group health plan is lost because of any of the following "qualifying events." The length of the COBRA continuation depends upon the type of "qualifying event." The coverage period is measured from the date of the qualifying event.
5. **Notice Requirements.** Initial Notification of Newly Eligible Employee, Spouse, and Dependent(s). An initial general notice which outlines rights under COBRA should be provided to newly covered employees, their spouses, and dependents.
6. **Employees Must Act to Receive COBRA Coverage.** COBRA coverage is not automatic. The Plan Administrator must be notified that continued coverage is desired.

7. **Payment of Premiums.** COBRA coverage is paid for by the employee or other qualified beneficiary. Initial COBRA premiums must be paid within 45 days of the COBRA election. Once the initial premium has been paid subsequent payments must be made within 30 days of the required due date.

8. **FMLA and COBRA.** Under the Family and Medical Leave Act (FMLA), employees on qualified leaves must receive the same types of health insurance coverage, under the same conditions as if they were in active employment status. Therefore, since health insurance coverage must be maintained during an FMLA leave, the leave does not constitute a qualifying event and COBRA does not apply.

However, if an employee on an FMLA leave decides not to return to work, COBRA may apply and a qualifying event may occur when the City receives notice of the employee's intent to terminate or on the last day of FMLA leave if the employee decides not to return to work. A non-FMLA leave of absence may be a qualifying event if an employee loses group health coverage because of the leave.

Additionally, an employee is entitled to COBRA even if he had a lapse in coverage during an FMLA leave because the employee's portion of the premiums was not paid.

9. **Military Service and COBRA.** Employees called to military duty may also purchase COBRA continuation coverage. Employees on military leaves for 30 days or less may not be required to pay more for the coverage than they would have paid had they remained with the City. Employees whose military leave extends beyond 30 days may be required to pay 102% of premiums. Generally, the COBRA coverage period is 18 months or the time of the leave, whichever is less.

Section 7020  
BENEFITS

General Policy Statement:

Eligible employees are offered various insurance, retirement, and wellness benefits. Information summarizing these benefits is provided to participating employees periodically and as required by law. The programs outlined below are described in depth in official documents located in Human Resources. Those documents are controlling and should be reviewed when specific questions arise.



Guidelines:

1. **Benefits Offered.** Eligible employees are provided a wide range of benefits in addition to those required by law (e.g., Utah State Retirement System, Social Security, Workers' Compensation, and Unemployment Insurance). Eligibility is dependent upon employee classification and time employed. Benefits offered include but are not limited to:

A) **Retirement System.** The City participates in the Utah State Retirement System. Participation in the system is mandatory for all employees required by law to participate. The City pays the percentage required for each full time employee. Part time and temporary employees are not eligible for retirement benefits unless mandated by State law.

B) **Participation 401(k) and 457.** The City will match 50% of an employee's contribution to a 401(k) or 457 retirement plan after the employee has completed one year of employment. The maximum City participation in such a plan is 3% of base compensation and is restricted to the plans approved by the City.

C) **Medical, Dental and Life Insurance.** The City participates in group dental, medical and life insurance programs for full time employees. The City pays 90% and the employee pays 10% of family or two party medical and dental insurance premiums. The City pays 100% of single coverage. The City pays 100% of term life insurance for coverage of \$50,000 for the employee. Supplemental life insurance coverage may be purchased by the employee.

D) **Wellness Program.** Full time employees actively participating in a qualified wellness program, such as a health club program, may be reimbursed up to \$50.00 per month or 50% of the monthly membership fee, whichever is lesser.

2. **Benefit Documents.** Details of benefits offered are found in materials and plan descriptions provided to employees as they become eligible for various programs and during open enrollment or initial employment periods. Additional information required by the Employee Retirement Income Security Act (ERISA) and other applicable law is contained in official plan documents and booklets kept by Human Resources. Such information is controlling and is available for employee review during business hours.
3. **Personnel Administrator as Administrator.** The Personnel Administrator or designee is responsible for administering and overseeing all City benefit

programs. He/she should be consulted regarding any questions or concerns involving City programs.

4. **Termination of Benefits.** Benefits, including medical and dental benefits, end on the last day of the month in which the employee separates from employment with the City.
5. **COBRA.** Qualified employees and dependents that lose health care coverage under the City insurance plan may continue to buy coverage as group members for an 18-month period.

Section 7030  
OVERTIME

General Policy Statement:

Employees may occasionally be required to work overtime hours to meet business needs. When overtime is required, Department Heads will attempt to schedule hours fairly and consistently. Overtime compensation will be made in accordance with the following guidelines and applicable law.

Guidelines:

1. **No Overtime Pay for Exempt Employees.** Employees exempt from the Fair Labor Standards Act's overtime requirements (managers, professionals, etc.) are not eligible to receive overtime pay.
2. **Overtime Pay For Nonexempt Employees.** Nonexempt full-time and part-time employees are eligible for overtime pay for work performed beyond forty hours per week. Department Heads may require employees to work overtime as necessary. As much notice as possible will be provided when the need for overtime work arises. However, advance notice may not always be feasible.

A) **No Overtime without Prior Authorization.** The Department Head's prior authorization is required for all overtime work.

B) **Rate.** Compensation for authorized overtime work will be paid to nonexempt employees at one and one-half times the regular hourly rate of pay for all hours worked beyond forty (40) in any given workweek

C) **Workweek Defined.** Overtime is calculated on a single workweek which includes seven consecutive days beginning at midnight on Sunday and ending at midnight on Saturday.

D) Based on Hours Worked As required by law, overtime pay is based on actual "hours worked" Time off for lunch breaks, annual leave, funeral leave, jury leave, sick leave, compensatory time, or any leave of absence is not considered "hours worked" for purposes of calculating overtime

E) Discretionary Income Excluded Discretionary wages that are not performance related may be excluded from overtime calculations Discretionary wages include

(i) Discretionary bonuses,

(ii) Severance pay, if any, at the time of termination, or

(iii) Paid leave hours

F) Processing Pay Employees will normally receive payment for overtime in the pay period following the period in which the overtime is worked Time sheets must be properly completed, signed by the Supervisor and Department Heads, and submitted to the Finance Department on time

- 3 Authorization for Overtime Department Heads are responsible for ensuring that appropriate controls are established to prevent unauthorized overtime

A) Prior Approval of Overtime Prior approval of a supervisor is required before any nonexempt employee may work overtime

B) Time Sheets Signed Time records with overtime hours logged must be signed by the Department Head in order to be processed

C) Overtime without Authorization Overtime worked without prior authorization may result in corrective action, up to and including termination

- 4 Compensatory Time

A) Eligibility Eligible employees may elect to receive compensatory time off in lieu of overtime payment in cash Employees desiring to obtain compensatory time off in lieu of overtime payment in cash shall file an Overtime Compensation Election Form with the City prior to performance of work eligible for compensatory time

B) Compensatory Time Earned Compensatory time shall be earned for eligible employees at one and one half times hours worked beyond forty (40) hours per week Employees who have elected to receive

compensatory time in lieu of overtime payment in cash may accrue up to forty (40) hours of compensatory time off Accrued hours for purposes of granting compensatory time will be placed on the employee's time record and submitted to the Finance Department for payroll purposes Accrued compensatory time must be used or paid prior to the end of the fiscal year in which it was earned In limited circumstances, due to scheduling or business necessity, the Department Head may approve the carry over of accrued compensatory time for a period not to exceed four (4) months

C) Use of Compensatory Time Employees may request use of compensatory time off from their supervisor Such requests shall be made at least forty-eight (48) hours in advance of intended use Approval of compensatory time off shall be within the discretion of the supervisor provided, employees should be permitted to use compensatory time off within a reasonable period after making the request if such use does not unduly restrict the operations of the City and/or the Department within which the employee works Compensatory time off does not constitute "hours worked "

D) Payment of Compensatory Time Payment of compensatory time off shall be paid at the employee's regular rate of pay at the time the employee receives such payment

E) Rights Reserved The City reserves the right to pay any employee overtime compensation in cash in lieu of providing compensatory time off for any workweek or work period or for any accrued compensatory time Employees shall be compensated for unused and accrued compensatory time in accordance with the provisions of the Fair Labor Standards Act

- 5 Notice of Overtime Supervisors will attempt to provide employees with reasonable notice when the need for overtime work arises However, advance notice may not always be possible

- 6 Corrective Action Failure to work overtime may result in corrective action, up to and including termination

#### Section 7040 REST AND LUNCH BREAKS

##### General Policy Statement

Full-time, employees may take two (2) fifteen minute rest breaks and will take a one (1) hour lunch break during

a normal eight hour work day in accordance with the guidelines below.

Guidelines:

1. **Scheduling.** Supervisors are responsible for scheduling lunch and rest breaks with appropriate consideration for staffing needs and operational demands. Supervisors may change break schedules as work situations dictate.
2. **Lunch Breaks.** The normal workday will extend from 8:00 a.m. to 5:00 p.m. including a one hour unpaid meal period. Supervisors must give specific approval to a single occurrence of a change in the meal period. Department Heads may give written approval for any longer term change in an employee's meal period.
  - A) **Part-Time and Seasonal Employees.** Part-time and seasonal employees who work more than five (5) hours per day will receive at least a 30-minute unpaid meal break.
  - B) **No Working Through Lunch Hour.** Except with the supervisor's permission, an employee may not work through a meal period.
3. **Rest Breaks.** Full-time, employees receive two (2) fifteen (15) minute rest breaks in each eight-hour workday.
  - A) **Scheduling.** A fifteen (15) minute break will be scheduled during each four-hour period of work.
  - B) **Staggered Times.** Scheduled break times will be staggered to maintain adequate staffing.
  - C) **Working Through Breaks.** Employees who work through rest breaks may not leave work early and will not be paid additional compensation.
  - D) **Long Workdays.** Employees required to work two (2) or more hours of overtime may also receive an additional rest break.
4. **Compensation for Breaks.** Meal periods for employees are not considered "hours worked" and are unpaid. Rest breaks are considered "time worked" and will be paid. Employees who are directed to work during lunch will be paid for their meal time.
5. **Abuse of Break Time.** Employees who violate or abuse lunch or rest break privileges will be subject to corrective action, up to and including termination.

A) **Tardiness.** Employees must take meal and rest breaks at their scheduled times and return to work promptly. Employees will not be paid for unauthorized break times.

B) **Distracting Others.** Employees on breaks should not distract others who are working. Breaks should be taken away from workstations in the employee break room or a similar area as directed by their supervisor.

6. **Leaving City Premises.** Employees on rest breaks should not leave City facilities without their Supervisor's permission.

Section 7050

SALARY AND PAYROLL PROCEDURES

General Policy Statement:

Draper City seeks to provide fair, competitive wages and salaries which recognize each individual's unique contribution to the overall goals of the organization. Salary increases, when granted, are based on merit, job performance, position, and City financial health.

We seek to provide timely and accurate payment to employees in compliance with all applicable laws.

Guidelines:

1. **Compensation Plan.** To be determined by the City Council during the budget process.
2. **Payroll Procedures.** Employees are paid every two (2) weeks according to the amount of compensation set by the City.
  - A) **Pay Period.** A pay period consists of fourteen (14) days beginning at midnight on Sunday and ending thirteen (13) days later a midnight on Saturday.
  - B) **Paycheck Distribution.** Paychecks will be given to department secretaries for distribution or deposited directly into an employee's checking or savings account. Direct deposit requires an employee's written authorization. Arrangements for mailing or pick-up by another person must be made in advance and in writing with the Finance Department.
  - C) **Early Checks.** The City will not release paychecks prior to the announced schedule except in case of emergency.
  - D) **Lost Checks.** The Finance Department must be notified in writing as soon as possible if a paycheck is lost so that a replacement check can be issued.

However, the City is not responsible for a lost check if payment cannot be stopped. A replacement check shall be issued if all of the following prerequisites are satisfied:

- (i) **Statement.** The employee whose paycheck has been lost or stolen shall fill out a statement, indicating the pay period of the lost check, that the check was not endorsed, and that there is no reason why the City cannot stop payment on said check.
  - (ii) **No Presentation.** The missing check has not been presented for payment at the City's bank.
  - (iii) **Payment Stopped.** The Finance Department effectively stops payment of the check by order to the City's bank. The Finance Department shall direct the bank, if the check appears, after inquire, that no presentation of the check has been made and if the required statement by the employee is received. The employee will pay costs of issuing stop payment requests.
  - (iv) **Waiting Period.** Twenty-four (24) hours elapse from the date of the stop payment order without either recovery of the check or information coming to light that the check has been cashed.
- E) **Paycheck Error.** An employee who believes a mistake has been made on his or her paycheck should inform the Finance Department immediately. The Finance Department will investigate and make any corrections within three (3) working days. If error is de minimus, the correction may be carried over to the next pay period with notice to the employee.
- 3. **Garnishment.** An employee whose wages are garnished or assigned will be notified by the Finance Department upon receipt of the assignment. If more than three (3) assignments are received, and depending upon the circumstances of the case, the employee may be subject to corrective action as permitted by state law. Copy (s) of garnishment shall be placed in the employee's personnel file.
  - 4. **Employee Bankruptcy.** An applicant or employee will not be denied employment or terminated solely because he/she has filed a bankruptcy petition.
  - 5. **Disclosure of Employee Financial History.** An employee's personal financial information will not be

disclosed to third parties without the employee's written consent or as required by law.

#### Section 7060 TIME RECORDS

##### General Policy Statement:

The Finance Department will keep records of hours worked. Nonexempt employees are required to record actual time worked and use of accrued leave time on official time record forms. Exempt employees are not required to record actual time worked but must account for daily attendance and record accrued leave days utilized. Care should be taken to ensure that time records are completed accurately. Alteration or falsification of any time record is subject to corrective action up to and including termination.

##### Guidelines:

- 1. **Nonexempt Employee Time Records.** Nonexempt employees must complete daily time records. These records of actual hours worked will be signed and submitted to the Department Head on a bi-weekly basis. Vacation leave and compensatory time are recorded but are not designated as "hours worked".

A) **Required Information.** The daily time record for nonexempt employees will include the following information :

- (i) Total hours worked daily.
- (ii) Use of accrued leave.
- (iii) Unpaid absences.
- (iv) Employee's and Department Head's signature.
- (v) Other information as needed.

B) **"Rounding Off" Hours.** Hours recorded will be rounded to the nearest quarter hour.

C) **Supervisor and Department Head Responsibility.** Department Heads will be accountable for:

- (i) Reviewing and resolving any discrepancies on the time record;
- (ii) Reviewing paid absences, (e.g., holidays, vacation, sick, funeral, or jury leave) as appropriate;

- (iii) Reviewing unpaid time-off;
- (iv) Verifying authorized overtime;
- (v) Verifying time records for absent employees; and
- (vi) Signing the time record and submitting it to the Finance Department for processing.

D) **Assigned Work Times.** Nonexempt employees must comply with assigned starting and ending work times.

- (i) Employees may not sign in or start work before their assigned work hours.
- (ii) Employees may not continue to work or sign-out beyond their assigned stopping times.
- (iii) Employees must take their assigned lunch breaks.
- (iv) Department Heads must approve any changes in an employee's assigned starting and ending hours.

E) **Time Record Falsification.** Completing another employee's time record or misrepresenting or altering information on a time record violates City policy and will subject an employee to corrective action, including termination.

F) **Corrections to Time Records.** If corrections or changes are made to a time record, both the employee and the Department Head must verify the change by signing the time record.

2. **Exempt Employees.** Executives, professional employees, and certain administrative and computer personnel who qualify for exempt status under the Fair Labor Standards Act should comply with the following time record procedures:

A) **No Daily Work Record.** Exempt employees are required to monitor leave and submit a form indicating monitored leave time.

B) **Weekly Leave Record.** Use of all hours of paid annual or sick leave should be tracked and submitted to the Finance Department bi-weekly.

C) **No Overtime.** Exempt employees are not eligible to be paid overtime or compensatory time for work performed beyond a forty-hour workweek.

D) **Corrective Action.** Exempt employees who abuse their exempt status and are excessively late or frequently leave early will be subject to corrective action.

E) **Salary Deductions.** Salary deductions may be made for exempt employees if the employee is absent for personal reasons or because of illness or injury if he/she has yet to qualify for the leave plan or has exhausted his or her leave allowance.

## Section 7070 WORKING HOURS "HOURS WORKED"

### General Policy Statement:

In accordance with applicable law, the City reserves the right to schedule work hours as business and organizational needs require. Daily and weekly work schedules may be changed by Department Heads to meet varying business conditions and weekly work schedules.

### Guidelines:

1. **Workweek.** The standard workweek shall include 40 hours.
2. **Workday.** Full-time, nonexempt employees generally work eight (8) hours each day and are provided a one (1) hour unpaid lunch break. Hours may vary depending on the position and City requirements. Work and break schedules will be set by supervisors and Department Heads. Staffing needs and operational demands may necessitate daily work schedule changes.
3. **Scheduling Changes.** The Department Head must approve any changes in starting or ending hours or scheduling of shifts or overtime. The City retains the right to change the normal working hours on either a temporary or a permanent basis. Changes in work schedules will be announced as far in advance as practical. However, lack of notice is not an acceptable reason for refusing work.
4. **Hours Worked.** The Fair Labor Standards Act (FLSA) requires that nonexempt employees be paid at least the minimum wage for "hours worked" and be paid overtime wages for "hours worked" in excess of forty during any workweek. Broadly defined, "hours worked" includes any time that an employee is required to be at work or on duty, is under the employer's control, or is performing activities which are primarily of benefit to the employer. Examples of "hours worked" include:



A) Rest Breaks.

B) Idle or Stand-by Time. Idle or stand-by time constitutes "hours worked" if it is controlled or requested by the City, is of primary benefit to the City, and the employee cannot effectively use the time for his or her own purposes.

C) On-Call Time. On-call time is not considered "hours worked." It is generally characterized by a readiness to respond to a page or other notice to report to an emergency situation. Employees on-call are expected to report as directed within 30 minutes of notification. Time worked after reporting will be considered "hours worked."

Hours worked in excess of eight (8) per day or in excess of 40 hours per workweek, shall be paid at time and one-half. Employees designated by their supervisor as on-call will be paid an additional \$5.36 per day as on-call compensation. On-call designation must be recorded on the employee's time record and approved by the Department Head.

D) Emergency On-Call. The Public Works Director may establish regulations governing the activities of Public Works employees on emergency on-call status. If an employee is designated by their Department Head to be on emergency on-call, they will be compensated at an additional 1/14th of the "on-call" rate for each 24-hour period. All other provisions of on-call time shall apply.

E) Call-in Pay. Employees called in for overtime work during hours not consecutively annexed to the normal workday shall be paid at least for two hours at the appropriate rate.

F) Travel Time.

(i) Work Day Travel. During the workday, time spent traveling which involves primarily work activities is "hours worked." (Any travel between work sites after reporting for work is to be included.)

(ii) Mandatory Travel Time. Travel time during workday hours on regular working days as well as on Saturdays, Sundays, and holidays, which corresponds to an employee's normal working hours is "hours worked" if the travel is mandated by the City.

G) Medical Attention. Time spent waiting for and receiving medical attention at the employer's request

is "hours worked" unless covered by Workers' Compensation.

5. Not Considered "Hours Worked". Time not controlled by the City or not for the City's benefit does not constitute "hours worked." Such time would include:  
A) Early Arrival. Time spent waiting to start regular work hours is not considered work time.

B) Lunch Breaks. Meal breaks of at least thirty minutes or more where the employee is completely relieved from job tasks will be unpaid.

C) Ordinary Home-To-Work Travel. Time spent commuting to and from work whether in an employee or in an employer-provided vehicle is not considered time worked.

D) Training. Attendance at voluntary training sessions is not regarded as time worked if all of the following conditions apply:

(i) Attendance is not during regular working hours;

(ii) Attendance is not required by the City (non-attendance at voluntary training will not adversely affect employment). However, failure to attend voluntary training opportunities may result in an individual becoming personally responsible for increasing skills in order to qualify for advancement;

(iii) The course, lecture, or meeting is not required to maintain the employee's current position.

E) Based on Hours Worked. As required by law, overtime pay is based on actual "hours worked." Time off for lunch breaks, annual leave, funeral leave, jury leave, sick leave, compensatory time, or any leave of absence is not considered "hours worked" for purposes of calculating overtime.

6. Overtime. Department Heads may require employees to work overtime as necessary. As much notice as possible will be provided when the need for overtime work arises. However, advance notice may not always be feasible.

A) No Overtime without Prior Authorization. The Department Head's prior authorization is required for all overtime work.

B) Overtime Compensation. Compensation for authorized overtime work will be paid to nonexempt employees at one and one-half times the regular

hourly rate of pay for all hours worked beyond forty (40) in any given workweek.

7. **Unauthorized Work.** The FLSA provides that an employee must be compensated for unauthorized work that, even though prohibited by City policy, is allowed to occur with the supervisor's knowledge. Therefore, Supervisors are responsible for ensuring that employees are not "allowed" or "permitted" to work beyond their regularly scheduled working hours unless such hours are properly authorized and recorded. Typical examples of unauthorized work include when an employee voluntarily:
- A) **Works Extra Hours.** Coming early or staying late to catch up on work is not allowed unless approved in advance by the supervisor.
  - B) **Skips Lunch.** Employees are required to take lunch breaks, unless prior approval is granted by the Supervisor.
  - C) **Takes Work Home.** The supervisor must provide special prior approval for any work completed outside City premises.

The Supervisor must make every effort to see that unauthorized work is not performed and if necessary, should discipline employees who continue to work without authorization.

8. **Make-Up Work.** Nonexempt employees may not "make-up" work hours if an overtime situation would be created or if the hours were initially "lost" because of the employee's own actions. Employees who are repeatedly late or miss work frequently will be dealt with through the corrective action process and not allowed to make up work. In other instances, work may be made up at the Department Head's discretion.
9. **Lunch Time Coupled With Sick Leave, Vacation Leave, or Compensatory Time.** Lunch time may not be used to extend time off if time off is scheduled before 11:00 a.m. or after 2:00 p.m.

#### **Chapter 8000 TIME OFF**

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<u>8010</u>	<u>Family and Medical Leave</u>
<u>8020</u>	<u>Annual Leave</u>
<u>8030</u>	<u>Funeral Leave</u>
<u>8040</u>	<u>Holidays</u>
<u>8050</u>	<u>Jury, Witness, and Voting Leave</u>

<u>8060</u>	<u>Military Leave</u>
<u>8070</u>	<u>Unpaid Leave</u>
<u>8080</u>	<u>Sick Leave</u>

#### **Section 8010 FAMILY AND MEDICAL LEAVE**

##### **General Policy Statement:**

Family and medical leaves of absence will be granted and administered in accordance with the Family and Medical Leave Act (FMLA) and applicable state law. The length of each leave of absence and the compensation received (if any) during the leave will be determined as outlined below. Non-FMLA leaves are subject to Department Head approval that is conditioned upon the employee's work record, the reason for the request, and department needs.

##### **Guidelines:**

1. **Leave Entitlement.** Under the provisions of FMLA an eligible employee must be granted up to a total of 12 weeks of unpaid leave during any 12 month period for one of the following reasons:

- A) The birth of an employee's child or the care of the newborn child;
- B) The placement of a child with an employee for adoption or foster care or to care for the newly placed child;
- C) To care for an employee's spouse, child, or parent (but not in-law) with a serious health condition; and/or
- D) An employee's own serious health condition (including work-related injuries) that makes the employee unable to perform one or more of the essential functions of his or her job.

2. **Eligibility.** Employees are eligible for Family and Medical Leave if they have:

- A) Worked for the City for at least twelve months (which need not be consecutive);
- B) Worked for at least 1,250 hours during the previous 12 months; and
- C) Worked at a site with 50 or more employees, or where 50 or more employees are located within 75 miles of the work site.



3. Leave Time Allowed. The Family and Medical Leave Act (FMLA) allow eligible employees to take up to 12 workweeks of leave during a "12 month period" for the family and medical reasons listed above. The "12 month period" is determined by a rolling calculation and is measured backward from the date leave is used.
  - A) Spouses employed by The City are jointly entitled to a combined total of 12 work weeks of family leave for the birth of a newborn child, for placement of a child for adoption or foster care, and to care for a parent who has a serious health condition. Leave for birth and care, or placement for adoption or foster care must conclude within 12 months of the birth or placement.
4. Serious Health Conditions Defined. An employee with a serious health condition, who is unable to perform his or her job, may be granted a sick leave of absence.
  - A) A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves:
    - (i) Inpatient care, or
    - (ii) Continuing treatment by a health care provider. Continuing treatment includes incapacity of more than three (3) calendar consecutive days involving:
      - (a) Treatment two (2) or more times or under the orders of a health care provider, or
      - (b) Treatment by a health care provider on at least one occasion that results in a supervised regimen of continuing treatment.
  - B) Conditions Specifically Covered. "Serious health conditions" specifically include:
    - (i) Disabilities caused by pregnancy (including severe morning sickness), childbirth, or other related medical conditions or time needed for prenatal visits;
    - (ii) Incapacity and related treatment due to episodic continuing conditions such as asthma, diabetes, epilepsy, migraine headaches, etc.;
    - (iii) Cases where multiple treatments (e.g., chemotherapy, radiation, dialysis, etc.) are required;
    - (iv) Incapacity which is permanent or long-term and which may not be treatable (e.g., Alzheimer's, severe stroke, or the terminal stages of a disease); or
    - (v) Substance abuse, but only if the requirements defining "serious illness" are met and the absence is for treatment.
  - C) Intermittent or Reduced Schedule Leave. An employee may take leave for a serious health condition continuously, intermittently, or on a reduced schedule when such leave is medically necessary.
    - (i) Consideration of City Operations. If the need for intermittent or reduced leave is foreseeable, employees must make reasonable efforts to schedule treatments so as to not disrupt City operations.
    - (ii) Temporary Transfers. When intermittent or reduced leave is necessary, the City may temporarily transfer an employee to an alternative, equivalent position that better accommodates recurring periods of leave.
5. Medical Certifications. The City may require that the need for a serious health condition of the employee if the employee's immediate family member be supported by a certification issued by a health care provider. The City will allow the employee at least 15 calendar days to obtain the medical certification.
 

The City may, at its own expense, require the employee to obtain a second medical certification from a health provider. The City may choose the health provider for the second opinion, except, that in most cases The City may not regularly contract with or otherwise regularly use the services of the current health provider. If the opinions of the employee's and the City's designated health care provider differ, the City may require the employee to obtain certification from a third health care provider, again at City expense. This third opinion shall be final and binding. The third health care provider must be approved jointly by The City and the employee.
6. Health Care Provider Defined. Health care providers who may provide certification of serious health conditions include:
  - A) Doctors of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices;
  - B) Podiatrists, dentists, clinical psychologist, and chiropractors (limited to treatment consisting of

manual manipulation of the spine to correct sublimation as demonstrated by X-Ray to exist) authorized to practice in the State and performing within the scope of their practice under State law;

C) Nurse practitioners, nurse-midwives, and clinical social workers, authorized to practice under State law and performing within the scope of their practice as defined under State law;

D) Christian Science parishioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;

E) Any health care provider listed above who practices in a country other than United States and who is authorized to practice under the laws of that country.

7. Employee Notice Requirements. If possible, employees must give thirty (30) days advance notice to Department Head of the need to take FMLA leave. If such advance notice is not possible, notice should be given as soon as possible, within one or two business days of learning of the need for leave.

A) Leave Request Form. Employees should submit an Employee Request for Family Medical Leave to the Personnel Administrator.

B) Appointment with the Personnel Administrator. Where possible, employees should meet with the Personnel Administrator prior to beginning leaves. During this appointment each employee should:

- (i) Be informed of leave certification and City reporting requirements;
- (ii) Be advised of the status of his or her participation in benefit programs;
- (iii) Make arrangements, if necessary, for premium payments to ensure continuous insurance coverage; and
- (iv) Be informed of related rights under the FMLA.

C) Change in Anticipated Return to Work Date. If it becomes necessary for an employee to take more or less leave than originally intended, he/she must provide reasonable notice (i.e., within two business days) of the changed circumstances and new return to work date.

8. Employer Notice Requirement. An employee will be notified that the requested leave is designated as FMLA leave, within two business days if possible. The notice may be oral or written, but if oral it must be confirmed in writing no later than the following payday. The notice should also include the employer's and employee's responsibilities under the law.

9. Substitution of Paid Leave. The employee is required to use accrued leave to cover some or all of the FMLA leave taken. The paid leave must be used in the following order: (1) Accrued Compensation Time. (2) Annual Leave. The City has the responsibility of informing the employee use of paid leave counts as FMLA leave.

10. Exempt Employees and Partial Day Absences. Exempt employees may take unpaid, partial day FMLA leave as medically necessary. Such leave does not alter exempt status under the Fair Labor Standards Act.

11. Workers' Compensation or Disability Payments Preclude Use of Paid Leave. Under the FMLA, an employee who is paid workers' compensation or disability payments while on an FMLA leave may not also use accrued leave. In such circumstances, the City will not require use of accrued leave.

12. Benefits during Family and Medical Leaves. The City will provide health insurance and other benefits to employees on leave as required by law. Employees who receive health care benefits under current group health plans will continue to receive the same health benefits while on leave that they would have had if they had remained continuously employed.

A) Employees Responsible For Premiums. Employees are responsible for continued payment of their health insurance premiums, if applicable. Payment arrangements must be made.

B) City May Recover Premiums. As allowed by law, the City may recover health insurance premiums it paid for an employee who fails to return from leave.

C) Length of Service Benefits Do Not Accrue. Employees retain their accrued benefits while on leave. However, benefits that accrue according to length of service, including vacation, holidays, and sick leave do not accrue during leave periods.

13. Reinstatement. Employees returning from FMLA leaves of absence will be reinstated to their same positions held before the leave or equivalent ones with equivalent pay, benefits, and other employment terms.

A) *Employee Certification of Ability.* Employees returning from sick leave(s) must provide certification of their ability to resume work.

B) *Exceptions.* An employee is entitled to reinstatement only if he/she would have been continually employed if FMLA leave had not been taken. If the same job or one of equivalent status and pay is not available as a result of organizational changes or a reduction in force, the employee will be treated in the same manner as though he/she were not on leave at the time of the reduction in force or organizational change.

14. *Key Employees.* Under limited circumstances, an employee who qualifies as a "key employee" under the law may be denied reinstatement after an FMLA leave.

A) *Key Employees Defined.* "Key employees" are defined as salaried and among the highest paid 10% of employees.

B) *Notice Required.* Upon requesting FMLA leave, or at a later time if appropriate, affected employees will be notified of their key employee status if there is any possibility that they may be denied reinstatement after their leaves.

15. *Failure to Return to Work Following FMLA Leave.* An employee who fails to return to work following an FMLA leave will be considered to have voluntarily resigned.

16. *FMLA Leave in Excess of 12 Weeks Per Year.* As allowed by law, if an employee exceeds 12 weeks of FMLA leave during a one-year time period, he/she may be terminated due to excessive absenteeism.

#### Section 8020 ANNUAL LEAVE

##### General Policy Statement:

An employee may use annual leave and *compensatory time for vacations, rest and relaxation, and personal business or emergencies.* An employee has the right to take annual leave and compensatory time subject to the approval of the Department Head to schedule the time when leave may be taken. An employee will receive a lump-sum payment for accumulated and accrued leave when he or she separates from the City.

For the purposes of this section, seniority shall be measured from the first effective date of employment with the City in any permanent position.

##### Guidelines:

1. *Annual Leave Eligibility.* Employees are eligible to use paid annual leave if they:

- A) Have completed 180 days of employment;
- B) Are Full Time Employees;
- C) Have accrued annual leave available; and
- D) Have Department Head approval.

Part-time and temporary employees are not eligible for paid annual leave time off, but may take compensatory time or leave without pay (LWOP) as approved by their Department Heads. In limited circumstances, pre-authorized absences without pay may also be granted to full-time employees who have no accrued leave available. Any LWOP exceeding one (1) month shall require City Manager approval.

2. *Annual Leave Accrual.*

A) All salaried and hourly employees who work a regular forty (40) hour workweek shall be entitled to annual leave with pay to be accrued in accordance with his or her tenure of employment at the following rate:

- (i) 5 years or Less – 3.08 hrs of leave per pay period worked (10 days per year)
- (ii) More than 5 years but less than 16 years – 4.62 hrs of leave per pay period worked (15 days per year)
- (iii) More than 16 years – 6.15 hrs of leave per pay period worked (20 days per year).

Employees whose annual leave accrual rate at the time of adoption of this standard is in excess of the above schedule will continue at their pre-existing accrual rate.

B) *Based on Actual Time Worked.* Annual leave accrual is based on hours worked and length of employee service. Annual leave days may not be taken until they are accrued. Annual leave does not accrue during:

- (i) Unpaid leaves of absence;

(ii) Workers compensation or other disability leaves; or

(iii) Layoffs.

3. **Scheduling Annual Leave.** Employees may schedule annual leave days as soon as they are accrued and they are eligible. With the City's needs in mind, every effort will be made to grant employee requested annual leave dates.

A) **Advance Requests.** Leave time should be requested as much in advance as possible. If conflict exists in scheduling time off within the same department priority will be given to the first advance request submitted. If requests are submitted at the same time, seniority will determine which employee is granted annual leave.

B) **Department Head Approval.** Annual leave requests are subject to Department Head approval based upon operating requirements, staffing considerations, and business necessity.

4. **Holidays during Annual Leave Time.** A City holiday that occurs during scheduled annual leave time will not be counted as annual leave time day.
5. **Leaves.** Employees on a leave of absence (other than military leaves or as prohibited by law) are required to use all earned annual leave before LWOP may be used or granted. Accrued annual leave for employees will be charged for both partial and whole day absences.
6. **Corrective Action.** Employees who abuse annual leave policies or exceed their annual leave accruals may be subject to corrective action, up to and including termination. Employees who have used their accrued annual leave will be granted excused absences without pay only in emergencies, unusual situations, or as required by law.
7. **Compensation.** Annual leave pay is calculated using an employee's base rate of pay at the time of absence.
8. **Donation of Vacation Time.** In the case of an employee's serious illness, City employees with an accrued annual leave balance in excess of 80 hours may give annual leave hours to a seriously ill employee. Annual leave hours will be deducted from an employees account and added to the seriously ill employee's sick leave. The City Manager must approve a transfer of annual leave hours. Donations

may not exceed 160 hours total for the seriously ill employee.

9. **Leave Carryover.** The maximum carryover of annual leave into the next calendar year is determined by the employee's current accrual rate plus forty (40) hours. If the Supervisor determines that work priorities will not allow the employee to use his or her carryover of annual leave prior to the end of the calendar year, the period may be extended but not longer than 60 days after the end of the calendar year.

#### Section 8030 FUNERAL LEAVE

##### General Policy Statement:

Eligible full-time employees may use funeral leave to attend the funeral make any necessary funeral arrangements of related family members in accordance with the guidelines below.

##### Guidelines:

1. **Eligibility.** Full time employees are eligible to use funeral leave.
2. **Time Allowed.** Funeral leave of up to three (3) days with pay is provided in cases of death in the immediate family.
3. **Immediate Family Defined.** For the purposes of this policy, "immediate family" includes spouse, child, father, mother, brother, sister, father-in-law, and mother-in-law, brother-in-law, sister-in-law, grandmother and grandfather.
4. **Approval by Department Head.** An employee requiring funeral leave must immediately inform his or her Department Head. In all instances, funeral leave requires the Department Head's approval.
5. **Part-Time Employees.** An employee who works less than full time will not be eligible for paid funeral leave but may with the Department Head's approval, use unpaid leave to attend a funeral or handle family affairs.
6. **Compensation.** Funeral pay is calculated based on an employee's base rate of pay. Funeral leave does not constitute "hours worked" for overtime purposes.
7. **Employee Assistance Program.** An Employee Assistance Program is available to employees.

Section 8040  
HOLIDAYS

General Policy Statement:

The City recognizes the importance of leisure time and will observe holidays as designated by the City Council. Eligible full-time employees will receive holiday pay according to the guidelines established below.

Guidelines:

1. Schedule. The City Council will determine the holiday schedule on an annual basis. Currently, the following holidays are observed:

New Year's Day	January 1 <sup>st</sup>
Martin Luther King Day	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4 <sup>th</sup>
Pioneer Day	July 24 <sup>th</sup>
Labor Day	1 <sup>st</sup> Monday in September
Columbus Day	2 <sup>nd</sup> Monday in October
Veteran's Day	November 11 <sup>th</sup>
Thanksgiving	4 <sup>th</sup> Thursday and Friday in November
Christmas Day	December 25 <sup>th</sup>

A) Must Work Day Before and Day after Holiday. To be eligible for holiday pay, an employee must work (or be on approved annual leave or other permitted leave in active pay status) the last scheduled day immediately before the holiday and the first scheduled day immediately after it. At Department Head's request, absences due to illness or injury may require medical certifications.

B) No Holiday Pay. Holiday pay will not be approved when:

- (i) It is the employee's first or last day of employment;
- (ii) The employee is scheduled to work and is absent without excuse;
- (iii) The employee is not in active pay status (e.g., unpaid leave, Workers' Compensation leave, or lay-off); or
- (iv) Employment is on a temporary basis.

3. Holiday Pay. Holiday pay will be calculated using an employee's base rate of pay and their average daily hours worked.

4. Holidays Are Not Considered "Hours Worked." Holidays are not considered as "hours worked" for overtime purposes.
5. Holidays on Weekends. Where a holiday falls on a weekend, it may be observed on either the Friday before or the Monday after the holiday as scheduled by the City Manager.
6. Holidays During Vacation. When a City holiday falls during an employee's scheduled vacation, it will not be counted as a vacation day.

Section 8050  
JURY, WITNESS, AND VOTING LEAVE

General Policy Statement:

Employees are encouraged to fulfill their civic responsibilities by serving jury duty as required. Employees will be granted leave as needed to perform jury duty or to serve as witnesses in any municipal, county, state, or federal court, or before an administrative tribunal. Such leave will be granted and any compensation provided in accordance with the following guidelines. Time off to vote will also be granted as required by law.

Guidelines:

1. Jury and Witness Duty.

A) Eligibility. Full time and part time employees are eligible for court-ordered witness or jury leave.

B) Eligible employees will be paid at their regular base pay net of jury pay for jury leave for up to four (4) months. Thereafter, such leave shall be unpaid.

C) Procedure. Employees must immediately provide their Department Head and the Finance Department with copies of court notices. Jury or witness pay and leave will not be authorized without prior documentation.

(i) Breaks in Duty. An employee should report to work on any business day that the court schedule permits. If released from court with sufficient time to return to work, the employee is expected to come to work.

(ii) Jury Compensation. Fees received for jury or witness service must be submitted to the City to receive jury leave pay.



(iii) Department Head Updates. An employee on jury or witness leave is expected to check in daily and advise his or her Department Head of the status of court proceedings.

D) Not Applicable to Personal Employee Actions. This policy will not apply when an employee appears in traffic or civil court on a voluntary basis and/or in his or her own behalf.

2. Compensation. Jury or witness pay is calculated based on an employee's base rate of pay. Jury, witness, or voting leave does not constitute "hours worked" for overtime purposes.
3. Time Off to Vote. Employees whose work schedules do not allow them opportunity to vote in elections may receive up to one (1) hour of paid time off to vote. Voting time must be scheduled at the beginning or end of the employee's workday and requires Department Head authorization. Employees should request time off to vote at least one day prior to Election Day to minimize disruption of operations.

#### Section 8060 MILITARY LEAVE

##### General Policy Statement:

Employees who enter active service in any branch of the armed forces of the State of Utah or of the United States shall be granted a leave of absence from employment with the City during his or her military service to the extent required by State and Federal law, including, but not limited to Utah Code Annotated provisions regarding "Governmental Employees in Military Service" set forth at Utah Code Ann. § 39-3-1, et seq., as amended, and provisions of the federal Uniformed Services Employment & Reemployment Rights Act (USERRA).

##### Guidelines:

1. Initial Employee Notice To City. To qualify for approved leave, an employee must, where possible, give notice of the anticipated military service. Upon receipt of orders for active or reserve duty, an employee must notify their Department Head immediately. A copy of military orders must be included with the notification and a copy submitted to the Finance Department.
2. Use of Accrued Paid Leave. An employee may (but is not required to) use accrued annual leave while on approved Military Leave. Employees who choose not to use their accrued paid leave during Military Leaves are still entitled to use those days at a later time.

The City will continue to provide health insurance under the City's plan then in force to any employee and his/her family for up to 60 days while the employee is on Military Leave or until the employee's military health insurance is in effect.

#### Section 8070 UNPAID LEAVE

##### General Policy Statement:

Employees may be granted unpaid leave under limited circumstances in accordance with the provisions set forth herein. Unless otherwise required by law, such as for military or family and medical leave, unpaid leave is a privilege and not a right and shall be determined on a case-by-case basis at the sole discretion of the City. Employees shall not be entitled to the accrual of annual or sick leave during the period of unpaid leave, but may be entitled to life insurance, group insurance, and seniority entitlements as required by law. Unless otherwise required by law, employees on unpaid leave may be required to pay for continuation of insurance benefits during unpaid leave. Any unpaid leave shall be reviewed and approved by the City Manager, provided, any unpaid leave in excess of five (5) weeks shall require approval of the City Council. Review and approval of unpaid leave shall be based upon the employee's work record, the reason for the requested leave, conditional circumstances and business needs of the City.

#### Section 8080 SICK LEAVE

##### General Policy Statement:

Sick leave is insurance protection provided by the City to protect the employee and his/her family from loss of income during illness. It is not intended to serve as a substitute for other types of leaves. Abuse of sick leave will result in corrective action up to and including termination.

##### Guidelines:

1. Sick Leave Eligibility. Employees are eligible for paid sick leave if:

- A) They work at least forty (40) hours per week;
- B) They have accrued hours of sick leave to cover the absence; and
- C) The sick leave is authorized by their Department Head.

Employee illness or accident covered by Workers' Compensation are not eligible for paid sick leave, but may take unpaid absences as approved by their Department Head. Authorized absences without pay may also be granted to full-time employees who have no accrued leave available.

2. Rate of Accrual. Sick leave will accrue at the rate of 3.69 hours of sick leave pay period (12 days per year). Unused sick leave balances at the end of the calendar year will be carried over to succeeding years in an unlimited amount.

A) Sick leave may be used for reasons of personal sickness or disability. Sick leave used beyond any 3 day period will require a physician's verification. Unverified sickness will be charged to annual leave or leave without pay.

B) Up to 3 days of sick leave may be used by the employee in any 1 calendar year in order to care for a spouse or for a child. Physician verification may be required for any sick leave under this provision. Abuse of this provision will result in corrective action up to and including termination.

(i) Department Heads may require anyone who is sick or becomes sick on the job to stay at home or at some other approved location.

(ii) No compensation for unused sick leave shall be given to an employee who terminates or is separated from employment.

(iii) After an employee has accumulated 1440 hours of sick leave the employee may convert one-half of future sick leave accruals to annual leave up to a maximum of twenty-six (26) days of annual leave.

#### Chapter 9000 EXPENSES AND REIMBURSEMENT

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9010	<u>Business Travel</u>
9020	<u>Car Expenses</u>
9030	<u>Education and Development</u>
9040	<u>Participation in Professional and Other Organizations</u>

#### Section 9010 BUSINESS TRAVEL AND TRAINING EXPENSES

##### General Policy Statement:

Actual and reasonable business travel and training expenses, including transportation, registration fees, meals, and lodging costs, provided such travel is incurred in the authorized conduct of City business, will be paid by the City. Business travel must be approved in advance and employees are responsible for securing reasonable and cost effective travel arrangements.

##### Guidelines:

1. Expenses. All employees must obtain prior approval before incurring business related travel expenses. Employees, as a condition of employment, may be required by the City to attend essential education. An employee may receive a cash advance for anticipated expenses no more than thirty (30) days prior to anticipated travel. Costs resulting from the following activities are generally paid:

A) Attending meetings and conventions; or

B) Participating in job-related education functions. All travel must be related to and within the scope of an employee's work activities.

2. Mode of Travel. Employees are responsible for using the most efficient, direct and economical form of transportation available, given the circumstances.

A) Airlines. Employees are expected to:

(i) Fly coach or economy class;

(ii) Book fares 14 days in advance to take advantage of reduced rates;

(iii) Fly during non-peak times if scheduling permits and lower fares are available;

(iv) Fly the least expensive airline.

- B) Use of Personal or City Vehicles. Transportation by car may be required if travel time is less than one day, scheduling permits and the expense is more economical than air travel. If a private vehicle is used, the City will compensate at the mileage rate established by the IRS for tax purposes. If a City vehicle is used, no mileage compensation will be made, but the City will pay fuel costs and any repairs needed to the vehicle while traveling. Employees with



vehicle allowances are expected to use the vehicle at no additional cost to the City for all City related travel.

C) Car Rentals. Car rentals are compensated only when other less costly forms of transportation are unavailable. Employees are required to rent compact cars unless only a larger car is available or circumstances necessitate a larger car. Employees are encouraged to use public transportation, complimentary shuttles, and/or share taxi expenses with a group whenever possible.

3. Lodging. Employees are responsible for using the most efficient and economical accommodations with the best combination of location and price.

A) Convention or Special Rates. Whenever possible, employees should use hotels where a corporate or convention rate has been established. Asking for special or better rates is also advised when checking in at hotels.

B) Reimbursement. Lodging will be reimbursed at actual cost on a single rate basis or divided rate basis if more than one employee shares the room. Employees will be reimbursed according to the rates allowable for each locality in the United States as specified in the per diem schedule issued periodically by the U. S. Government Office of Personnel Management. In some instances, actual expenses in excess of the maximum rate for lodging may be allowed, e.g., where a conference or meeting hotel has been designated and scheduling does not reasonably permit alternative lodging, or where no other rooms are available. Prior approval must be obtained from the employee's Department Head under these circumstances. When obtaining lodging, employees should notify the hotel of their tax-exempt status as a City government employee and provide tax exemption forms available from the Finance Department. All lodging receipts must be submitted with travel voucher. Use of personal accommodations will not be reimbursed.

4. Meals. The City will compensate employees for per diem consistent with the maximum rates allowable for each locality in the United States as specified in the per diem schedule issued periodically by the U. S. Government Office of Personnel Management. The schedule applies to all travel, which extends more than 12 hours, and overnight lodging is required. Allowances for seasonal rates may be considered.

A) Adjustments. The suggested rate may be altered depending upon the destination and the typical expenses.

B) No Allowance for Companions. No daily allowance is authorized for spouses of employees or others traveling with the employee at his or her own expense.

C) Receipts Required. Receipts evidencing actual meal expenses for the entire period of travel must be submitted if an adjusted rate is requested.

5. Frequent Flyer and Hotel Club Programs. Employees may retain accrued frequent flyer and hotel club program credits, however, any cash rebates must be returned to the City. Employees should ensure that they continue to make the most economical travel arrangements, uninfluenced by potential airline or hotel travel awards.

6. City Credit Cards. Employees who travel frequently on business may be provided City credit cards.

A) For Business Travel Only. City credit cards may be used only for actual and necessary business related charges and not for any personal expenses.

B) Inappropriate Use. Employees are responsible for inappropriate credit card charges. Such improper use may also subject an employee to corrective action.

7. Entertainment Expenses. No reimbursement will be made for entertainment expenses during a business trip unless the entertainment is business related and pre-approved by the Department Head. The employee must pay any cost for personal magazines, movies, books, and newspapers.

8. Miscellaneous Travel Expenses. The following expenses may be compensated when incurred for approved business travel:

A) Taxi and/or shuttle fares;

B) Tolls;

C) Baggage handling;

D) Up to two telephone calls daily to the employee's home area code are reimbursable while in travel status, in addition to calls related to City business. The amounts of personal telephone calls are not to exceed \$7.50 in aggregate daily total. The City may supply prepaid phone cards as an alternative;

E) Parking fees with receipts;

F) Necessary and reasonable cab/shuttle fare and maid service, including gratuities not to exceed 15% (or 20% in major markets) are reimbursable with receipts.

9. Personal Travel. Generally, employees are permitted to combine personal travel with business travel as long as annual leave is approved. Additional expenses arising from such non-business travel are the employee's responsibility.

10. Compensation of Nonexempt Employees for Travel Time.

A) Regular Work Hours. Nonexempt employees will be compensated for travel time during regular working hours while on approved City business.

B) Regular Work Hours on Non-Work Days. Travel during regular working hours on non-work days (e.g., Saturday, Sunday or holidays) is treated as "hours worked" only when the City mandates such travel.

C) Outside of Regular Work Hours. Time traveling, (e.g., on a plane, bus, or in a car) outside of normal working hours, is not considered "hours worked".

#### Section 9020 CAR EXPENSES

##### General Policy Statement:

City owned vehicles may be provided to employees with demonstrated business needs. Additionally, employees may be compensated for use of their own vehicles on City business. All such expenses will be compensated subject to the following guidelines.

##### Guidelines:

1. City Vehicles. City vehicles may be provided to employees as business needs warrant.

A) Compensable Expenses. Fuel, tolls, parking, and related expenses will be compensated for when incurred for approved business activities.

B) Personal Use of City Vehicles Prohibited. City vehicles shall not be used for commuting or other personal purposes except as follows.

Certain emergency response employees due to the nature of their position or functional area of responsibility may be assigned a City vehicle in the performance of their job or function. Such vehicle may incidentally be used for commuting purposes to

facilitate expeditiously responding to after hour calls, or assisting with emergencies. Any such employee must have written authorization from their Department Head.

Employees, who at the time of adoption of this policy were permitted commuting use of a City vehicle as a previously agreed upon component of their compensation may continue to do so by written agreement. However, such personal use shall not be extended to any newly hired or transferred employee.

All IRS regulations shall be followed if a City vehicle is used for commuting purposes.

C) Mileage Record. Employees permitted City vehicles for commuting must document miles driven.

2. Employee-Owned Vehicles. Employees using their own cars for business purposes must receive prior authorization from their Department Head.

A) Mileage Allowance. A mileage allowance, which may vary from year to year, for all costs related to vehicle operation, will be provided. Mileage will be paid at the current rate specified by the IRS.

B) Mileage Record. Employees must keep a detailed record of mileage for approved travel to ensure accurate compensation.

C) Related Compensation. Parking charges, tolls, and other related expenses are compensable upon presentation of receipts, if incurred for business-related travel. However, all fuel, maintenance and depreciation expenses are considered to be included in the standard mileage rate.

D) Approval. The employee's Department Head or the City Manager must approve claims for mileage allowance and related compensation.

E) Vehicle Allowance. In limited instances, a monthly vehicle allowance may be granted to those who travel regularly on City business. This allowance is in lieu of a mileage and miscellaneous reimbursement allowance for all travel. Employees who receive monthly allowances are prohibited from using a City owned vehicle except in the case of an emergency. An emergency does not include the unavailability of the employee's car.

F) Use of City vehicles for non-City business related purposes are prohibited. Employees who are scheduled to respond on-call, outside of regular work hours may be assigned an appropriate City vehicle to

make such response from their homes. Such assignments, except in case of emergencies, shall be approved by the City Manager. Commuting miles are subject to IRS regulations and must be reported annually on forms provided by the City.

3. **Employee Responsibilities.** Employees are accountable for the responsible operation of City cars, personal vehicles, or rentals when traveling for business purposes. An employee who drives any vehicle on City business must:

A) **License.** Be a responsible driver and possess a current driver's license.

B) **Carry Insurance Coverage.** Ensure that they have vehicle liability insurance in at least the minimum amounts required by state law and carry proof of such coverage. The employee assumes liability for his or her personal vehicle in work-related travel.

C) **Employee Impairment.** No employee may operate a City vehicle or City equipment while his or her performance is impaired by alcohol or any controlled substance or over-the-counter drug. An employee taking a prescription drug for a bona fide medical condition shall notify his or her supervisor who shall make reasonable accommodation of the condition or place the employee on sick leave as required to ensure the safety of the employee, co-workers and public.

D) **Check Vehicle.** Inspect the vehicle and confirm that it is in safe operating condition.

E) **Obey Traffic Laws.** Observe all traffic laws including wearing a seat belt.

(i) **Assume Responsibility for Fines.** Pay any fines or parking violations incurred while driving on City business.

(ii) **Cell Phone Use.** Employees are prohibited from talking on a cell phone while driving a City vehicle or talking on a cell phone on City business while operating their private vehicle.

4. **Compliance.** The employee and Department Head are responsible to ensure that all related policies are followed and established safety standards met.
5. **Accidents.** An employee involved in an accident while traveling on City business must immediately report the incident (regardless of how minor) to his or her Department Head and Police Department having jurisdiction.

## Section 9030 EDUCATION AND DEVELOPMENT

### General Policy Statement:

Employees are encouraged to continue their education in order to maintain and enhance current skills and to prepare themselves for advancement opportunities. Consequently, the City offers educational assistance according to the following guidelines.

### Guidelines:

1. **Equal Education Opportunities.** In the City's education and development activities, the City is committed to providing equal opportunities for all employees at all levels of our organization.
2. **Education Must Not Interfere With Job Performance.** Education must not unduly interfere with an employee's job responsibilities and must be completed during non-work hours, unless otherwise directed or approved by their Department Head. Employees who allow outside education to negatively impact job performance may lose City financial assistance and be subject to corrective action up to and including termination.
3. **Requirements for Educational Assistance.** Employees desiring to enroll in a course at an accredited institution must obtain approval in writing from their immediate supervisor and Department Head. Financial assistance may be provided to full-time employees for continuing education when the following requirements are met:

A) **Acceptable Educational Institutions.** The educational experience must take place at accredited colleges, universities, or trade schools. Correspondence courses qualify for assistance only with explicit approval from an employee's Department Head.

B) **Direct Relationship to Job.** Courses must be job related to the department's business activity. Reimbursement of educational expenses is only reimbursable if it is incurred in order to maintain or improve an employee's existing skills required in their present job, to meet the express requirement of the City, or the requirements imposed by law to retain his or her employment status. The City will not reimburse expenses required to meet the minimum educational standards in an existing job, nor will it reimburse expenses to qualify the employee for a new trade or vocation. Unless approved by the Department Head to meet the requirements of the City, fees incurred for

professional qualifications exams such as bar review and CPA review courses are not reimbursable.

C) Completion of Probation Period. Employees receiving assistance must have completed their employment probation period with the City.

D) Employees Must Be in Active Employment Status.

E) Satisfactory Job Performance. Employees must be performing satisfactorily. Additionally, employees who have been subject to corrective action in the last year are generally not eligible for assistance.

4. Department Head Pre-Approval. Requests for educational assistance must be approved prior to enrollment. The Department Head should participate in career development planning with the employee and must approve all educational assistance. All requests for assistance must be received in the Finance Department by December 31st of the year prior to the fiscal year beginning the following July. All requests must receive authorization by the City Manager and are subject to necessary appropriations by the City Council.

5. Criteria for Reimbursement. The following criteria are reviewed in considering educational reimbursements:

- A) Department/Division and City needs;
- B) Employee career development plans;
- C) Employee motivation and commitment;
- D) Cost and availability of appropriations;
- E) Cross-training needs;
- F) Impact on productivity and City resources; and
- G) The amount of educational assistance already provided to the employee.

6. Reimbursement Form. Within 30 days of completion of approved education, employees must submit a reimbursement form to their Department Head with all required information including:

- A) Receipts. The cost of tuition and educational materials must be itemized and documented.
- B) Percentage of Reimbursement Expected. The expected reimbursement amount based upon the City's prescribed formula.

C) Transcripts. Official transcripts, which indicate a qualifying grade of "B" or better. In those cases of "pass" or "not pass," a pass is required to receive financial assistance.

7. Reimbursement. For educational advancement, the City will reimburse 100% of tuition and educational materials for an "A" and 75% for a "B" grade. Upon satisfactory completion, the City will reimburse the pre-approved expenses subject to submission of appropriate documentation of the approved coursework. This program is limited to an educational fund controlled by the City Manager in an amount funded by the City Council.

8. Other Outside Assistance. Employees eligible for reimbursement from a grant or a scholarship may seek City educational assistance; but are reimbursed only for the appropriate percentage (100% or 75%) of the difference between the amount received from the grant or scholarship and the actual course costs.

9. Employee Termination - Special Conditions for Reimbursement.

A) Full Reimbursement. Employees will be reimbursed for 100% of educational costs when courses are interrupted because of a City layoff.

B) No Reimbursement. Employees will receive no reimbursement when, prior to completing course work, they:

- (i) Are terminated for cause or violating expected rules of conduct; or
- (ii) Voluntarily separate from the City.

10. Employee Repayment of Educational Assistance. Educational assistance is provided with the expectation that employees will remain with the City and utilize newly acquired skills. However, if an employee voluntarily terminates employment or is terminated for cause or for willful violation of City policy during or following educational assistance, he/she may be required to reimburse the City.

A) Full Amount Repaid by Employee. The full amount reimbursed by the City, within the prior 24-month period, must be repaid if the employee resigns or is terminated for cause or for willful violation of City policy within twenty-four (24) months of completing course work. Any such reimbursement will be deducted to the extent available from the final paycheck and any vacation pay due the employee at termination.

11. No Guarantee of Promotion. While additional educational opportunities may develop employee's skills and abilities, the City cannot guarantee that further education will provide pay increases or advancement.
12. Employee Acknowledgement. Employees will be informed of City educational assistance and reimbursement policies and be asked to sign forms acknowledging their understanding and responsibilities prior to receiving Department Head permission for coursework.

Section 9040  
PARTICIPATION IN PROFESSIONAL AND OTHER  
ORGANIZATIONS

General Policy Statement:

Membership and participation in professional organizations can be important in promoting employee development and our City's business interests. Professional memberships and related expenses, which benefit our organization, will be paid for or reimbursed by the City as outlined below.

Guidelines:

1. Pre-Approval. Employees considering joining a professional organization or attending a seminar for which payment or reimbursement will be requested must obtain advance approval from their Department Head.
2. Justification of Professional Expenses. When determining which professional expenses will be reimbursed, the Department Head will evaluate the following:
  - A) The potential benefit to the City and the employee;
  - B) Possible disruptions to business operations; and
  - C) Budgetary considerations and the costs involved.
3. City Selected Membership. In some instances, the Department Head may choose employees to represent the City with selected organizations.
4. Reimbursable Expenses. The City will pay for or reimburse the following types of professional expenses on a limited basis:
  - A) Membership Dues. Professional memberships paid by the City will be limited to one (1) organization per functional area of employee responsibility.
  - B) Meetings, Seminars, and Conventions. The City may pay for and/or reimburse related expenses of attendance at professional seminars and conventions including fees for materials at the sole discretion of the City Council, as approved in the annual budget or as provided in an employment agreement.
5. Potential Conflicts of Interest.
  - A) Leadership Positions. City Manager authorization is required before employees may accept leadership roles or other positions in professional organizations requiring significant amounts of time or commitment of resources.
    - (i) Such activities must not significantly interfere with job performance or create a conflict of interest.
    - (ii) Where appropriate, employees should ensure that they distinguish their personal views or opinions from the positions of the City.
  - B) Professional Writing or Presentations. An employee who writes professional papers, participate in panel discussions, act as guest speakers, or give any type of public presentation must have the advance consent of the City Manager and their Department Head, if such activities occur during regular working hours. Care must be taken to ensure that:
    - (i) City confidentiality is maintained;
    - (ii) City positions are accurately represented; and
    - (iii) Employees distinguish their personal viewpoints from those of the City.
6. Compensation for Participation in Professional Organizations and Related Activities.
  - A) Activities Outside Working Hours. Employee initiated, voluntary, professional activities that are outside working hours are not compensated.
  - B) City Initiated Participation. Participation in a professional organization by non-exempt personnel during "off-duty hours" will be compensated as "hours worked" if it is required by the City.

C) Exempt Employees. Exempt employees do not receive additional compensation or overtime for additional responsibilities or hours worked.