



PERSONNEL RULES AND REGULATIONS

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SECTION I: INTRODUCTION AND GENERAL INFORMATION

The Personnel Rules and Regulations “Rules” of the City of Hercules are adopted in an effort to maintain a competent and professional workforce in the City Government. It is intended that personnel decisions in the City Government be based on merit.

The Rules do not create any contract right, or any express or implied contract of employment. The City of Hercules retains the full discretion to modify these Rules at any time in accordance with law.

The Personnel Rules apply to all employees except as follows or where a particular rule or chapter expressly states it does not apply to certain categories of employees, or applies only to certain categories of employees. Section III (probationary period), VII (layoffs) X (disciplinary procedure) do not apply to at-will employees (who do not have a legal property right in continued employment).

If a provision of these Rules conflicts with any provision of a valid collective bargaining agreement between the City and a recognized employee organization, the provision of the collective bargaining agreement that is in conflict shall apply to employees covered by that collective bargaining agreement.

As a condition of employment, all employees are required to read and request necessary clarification of these Rules. Each employee is required to sign a statement of receipt acknowledging that: (a) he or she has received a copy, or has been provided access to the Rules and Administrative Policies related to Human Resources and General Administration; and (b) understands that he or she is responsible to read and become familiar with the contents and any revisions to the Rules.

The City Manager is designated by the Municipal Code as the person responsible for the Personnel function. The City Manager has designated this authority to the Administrative Services Director.

SECTION II: MANAGEMENT RIGHTS

The City shall retain, whether exercised or not, solely and exclusively, all express and inherent rights and authority pursuant to law with respect to determining the level of, and the manner in which, the City’s activities are conducted, managed, and administered, and it is the exclusive right of the City to establish and maintain departmental rules and procedures for the administration of its departments.

The City has the exclusive right and authority to schedule work and/or overtime work as required in the manner most advantageous to the City.

Every incidental duty connected with operations enumerated in job descriptions is not always specifically described; nevertheless, it is intended that all such duties shall be performed by the employee.

The appointing authority reserves the right to discipline or discharge employees as set forth in these Policies. The City reserves the right to lay off personnel of the City at any time.

The City shall determine assignments, and establish methods and processes by which assignments are performed.

The City shall have the exclusive right to transfer employees within departments and to positions outside a department in a manner most advantageous to the City.

The City shall have the authority, without prior meeting and conferring, to effect reorganizations and reallocation of work of the City.

The City has the right, without prior meeting and conferring, to contract for matters relating to municipal operations, including contracting out bargaining unit work. The right of contracting or subcontracting is vested exclusively in the City.

The inherent and express rights of the City, including those herein specifically referred to that are not expressly modified or restricted by a specific provision hereof, are not in any way, directly or indirectly, subject to meeting and conferring or the Grievance Procedure herein.

SECTION III: EMPLOYEE CATEGORIES AND CLASSIFICATIONS

A. Categories of Employees and Non-Employees

At-Will Employee – An employee who serves at the pleasure of the City, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. At-will employees include: (1) City Manager; (2) Assistant City Manager(s); (3) department heads; (4) temporary employees; (5) seasonal employees; and (6) probationary employees.

Probationary Employee – A person who is serving a probationary period at the outset of initial employment with the City. During the initial probationary period, a probationary employee serves at the pleasure of the City, has no property right in continued employment, and has no right to any pre- or post-disciplinary procedural due process or evidentiary appeal. A probationary employee serving in the initial probationary period is an at-will employee.

Promotional Probationary Employee – A regular employee who is serving a probationary period at the outset of a promotion to a higher classification.

Regular Employee – An employee who has satisfactorily completed the initial probationary period.

Full Time Employee – A regular employee whose position is budgeted to work at least 38 hours per week. Full-time employees receive all benefits provided in these Policies, unless otherwise provided in a memorandum of understanding (MOU).

Part-time Employee – A regular employee whose position is budgeted to work no more than 30 hours per week. Part-time employees may have different rights to leave and other benefits under the law or these Policies, depending on the number of hours they work.

Confidential Employee – Employees who are privy to decisions of City management affecting employer/employee relations.

Independent Contractor – A person who serves solely pursuant to a contract that has been formed and approved as required by the City's purchasing policies and procedures. An independent contractor cannot be used to perform any part of the City's regular and customary work. Independent contractors are not employees of the City.

Temporary or Seasonal Employee – An at-will employee who is appointed other than from an eligible list for a short term or seasonal basis, not to exceed six months serves at the pleasure of the City in a position of a limited duration. Temporary/seasonal employees serve at the pleasure of the City, have no property right in continued employment, and have no right to any pre- or post-disciplinary procedural due process or evidentiary appeal.

Volunteer – A person who provides services to the City for civic or philanthropic reasons and receives no compensation or benefits other than nominal fees and reimbursement of expenses. Volunteers are not City employees. They serve at the pleasure of the City and have no property rights in a continued volunteer relationship with the City.

B. Classification Plan

The classification plan shall consist of classes of positions described and defined by class specifications (duties, responsibilities, qualifications) and class title.

C. Establishing New Positions

Full-time and part-time regular positions may be established only upon recommendation of the City Manager and approval of the City Council. Full-time and part-time temporary positions may be established only with approval of the City Manager or her/his designee.

A Department Director may request a new position by completing a formal Position Request indicating the following for each new position:

- Employee classification
- Compensation level
- Position description
- Justification for the position (workload requirement)

- Budget impact (initial year and ongoing)

Requests for new regular positions should occur during the annual budget process. Requests will be a component of a department's supplemental budget. City Council action authorizing the position must occur prior to any recruitment activity. Considerations of new/regular positions outside the budget process are the exception.

D. Reclassification

The Administrative Services Director may initiate a job audit to determine whether the duties of a position have changed to such an extent that they necessitate reclassification of the position from the existing classification to a more appropriate classification.

Upon completion of the reclassification assessment, the Administrative Services Director will provide a written report on the findings and make a recommendation to the City Manager regarding whether reclassification is appropriate. Reclassification of a position must be approved by the City Council.

If a position occupied by an existing City employee is reclassified, the recruitment process as outlined in Recruitment and Selection Policy may not be followed. In all such cases of reclassification, the reclassified employee must complete a new probationary period.

Reclassifications of employees to either new or vacant positions are not automatic; the Administrative Services Director may utilize the selection procedure outlined in this section for any new or existing vacant position.

SECTION IV: COMPENSATION AND PAYROLL PRACTICES

A. Employee Compensation

1. Compensation Levels

Salary adjustments for unrepresented employees will be reviewed by Human Resources with any adjustments recommended to the City Council by the City Manager.

Incumbent employees may receive annual step-based merit increases, as described below, if their performance warrants the increase, until they reach the top step of their range.

2. Establishing Salaries for New Hires

Compensation is set upon hire by the City Manager within the range established by the City Council. New hires may be appointed, or incumbents adjusted, anywhere within the range,

provided that where a position salary range contains predetermined “step,” appointments and/or adjustments shall be made to such a step.

3. Step-Based Merit Salary Adjustments

Merit increases and continued employment are contingent upon continued satisfactory performance evaluations. Upon completion of not less than six (6) months of actual initial or promotional probationary service, full-time employees shall be evaluated, and when a satisfactory performance evaluation is received, a merit increase to the next higher step in the pay range shall be granted to eligible full-time employees. The date of such increase shall be the first (1st) full pay period after the anniversary date. Each twelve (12) months of actual service thereafter, employees shall be evaluated regardless of their step in the pay range. When the performance evaluation is satisfactory, any applicable merit increase shall be granted to the next higher step.

Employees hired at the first step reflect an absence of experience and/or training which the City will provide through employment. Employees who are hired at higher steps or levels in the range reflect a recognition of the greater level of training and/or experience which they bring to the City. Prior to the employee’s anniversary date, the City Manager or designated Department Head or immediate Supervisor shall meet with each employee, as described in Section VI on Performance Evaluation.

When an employee performs above satisfactory level in the discharge of responsibilities in her/his position, and when individual and associated departmental goals have been exceeded, the employee will be considered for a step-based merit increase. Conversely, when an individual performs at an average or lower level in the discharge of responsibilities in her/his position, the individual may be given a lesser or no merit increase. In the case where an employee receives no increase, the individual’s performance shall be evaluated within six months, with the evaluation encompassing the one-year period immediately prior to this review. Any merit-based salary adjustment shall be based upon an evaluation and recommendation by the appropriate Department Head with approval of the City Manager.

The merit review shall be administered according to the following guidelines:

Performance Rating	Step Increase
Meets standards and above.	One-step salary increase (except where employee has already met the top step in the range).
Below standard performance/needs improvement.	No salary increase

A failure on the part of the Department Head or the City Manager in completing a performance evaluation shall not cause a merit salary increase to be delayed past an employee's anniversary date. Where such a situation occurs, the merit based increase is made effective on the on the first (1st) full pay period after the anniversary date.

The merit review shall not cause the salary of any individual to exceed her/his range. If, after any cost of living adjustment, the individual is at the top of her/his range, she/he shall not be eligible for a merit increase. All merit reviews, whether or not they result in a merit salary adjustment, shall be documented in the employee's personnel file.

B. Work Schedules

1. Work Schedules

Work schedules are determined at the discretion of the Department Director and are subject to change with or without notice, according to the needs of the department or City. An overtime-eligible employee shall be in attendance and at work during the hours specified by his or her supervisor.

2. Changes to Work Schedule

An employee who wishes to change his or her schedule must seek permission from his or her immediate supervisor, who will in turn communicate the request to the Department Director who will then make a recommendation about whether to approve the request to the City Manager.

C. Breaks

1. Meal Periods

A one-hour non-compensated meal period will be provided to all full-time overtime-eligible employees who work at least an eight hour work day. A 30-minute non-compensated meal period will be provided to all overtime-eligible full-time employees who work more than five hours, but less than eight hours during the work day. Overtime-eligible employees are responsible for taking their meal period at a time designated by the supervisor.

2. Rest Periods

A 15-minute compensated rest period will be provided to all overtime-eligible employees for each four-hour period of service. The rest period shall be taken at a time designated by the employee's supervisor. Rest periods may not be combined to shorten the workday or to extend the meal period.

3. Lactation Break Time

An overtime-eligible employee who wishes to express breast milk for her infant child during her scheduled work hours will receive a reasonable amount of additional unpaid time beyond the 15-

minute compensated rest period. Those desiring to take a lactation break must notify a supervisor prior to taking such a break. Breaks may be reasonably delayed if they would seriously disrupt operations. Once a lactation break has been approved, the break should not be interrupted except for emergency or exigent circumstances.

Private Location: The City will make reasonable efforts to accommodate employees by providing an appropriate location that is not in a bathroom, to express milk in private. The City will attempt to find a location in close proximity to the employee's work area. Employees occupying such private areas shall either secure the door or otherwise make it clear to others through signage that the area is occupied and should not be disturbed. All other employees should avoid interrupting an employee during an authorized break under this section, except to announce an emergency or other urgent circumstance. Authorized lactation breaks for employees assigned to the field may be taken at the nearest appropriate private area.

Storage of Expressed Breast Milk: Any employee storing expressed milk in any authorized refrigerated area within the City shall clearly label it as such. No expressed milk shall be stored at the City beyond the employee's work day/shift.

D. Work Week

The work week begins at 12:00 a.m. on Sunday and ends at 11:59 p.m. on Saturday, except as otherwise designated in an applicable MOU.

E. Overtime

Overtime is all hours an overtime-eligible employee actually works over 38 hours in the designated 7-day workweek. Only actual hours worked will be counted towards the 38-hour threshold for purposes of calculating overtime pay under the Fair Labor Standards Act (FLSA); paid leave will not be counted.

Overtime-eligible employees who are directed to work overtime must do so.

1. Prior Approval Required for Overtime

Overtime-eligible employees are not permitted to work overtime except as directed and authorized by their supervisor, or in case of emergency, as determined by the City. Working overtime without prior authorization or approval is grounds for discipline. In emergency situations that necessitate working overtime, the employee must notify a supervisor as soon as possible, and in no event later than the end of that day upon which the emergency occurred. If the supervisor denies the request to work overtime, the employee must obey the supervisor's directive and cease working. Failure to follow these overtime approval procedures may subject the employee to disciplinary action, up to and including termination, for violating the overtime approval procedures.

F. Compensatory Time Off

An overtime-eligible employee may opt to accrue compensatory time-off (CTO) in lieu of cash payment for overtime worked if his or her supervisor agrees prior to overtime work being performed.

Except as otherwise provided by applicable MOU or employment agreement, CTO accrues at the rate of 1.5 hours for each hour, or fraction thereof, worked after 38 hours of actual work within the employee's designated work week. Time in paid leave status does not count toward CTO. CTO cannot be accumulated in excess of 240 hours at any given time.

The City will grant an employee's request to use accumulated CTO provided that: 1) the department can accommodate the use of CTO on the day requested without undue disruption to department operations; and 2) the employee makes the request in writing to the supervisor no later than five days prior to the date requested. If the employee does not provide five days' notice, or if the department cannot accommodate the time off without undue disruption, the City will provide the employee the opportunity to cash out the amount of CTO requested at the end of the current pay period.

G. Time Reporting

All time spent for the benefit of the City must be reported as hours worked on time records so that the employee is paid for all work. Overtime-eligible employees may not "volunteer" work time to perform duties that are the same or similar as their stated or regular job duties. Employees have no authorization to work without compensation. No supervisor has authority to request overtime-eligible employees to volunteer work time.

H. Education Reimbursement

The City offers a voluntary Education Reimbursement Program to encourage professional growth which is beneficial to both the City and the employee. Under this Program, the City will provide reimbursements to eligible employees, up to the amount listed in the applicable MOU or Employment Agreement, for expenses incurred for training/education for which the employee earns college credit or education which would promote professional development. (See also Administrative Policy No. 53.) Eligible employees, for the purposes of this section, are those who are subject to the Education Reimbursement Program pursuant to the MOU or Employment Agreement applicable to their position.

I. Attendance

1. Deviation from Regular Work Hours

An overtime-eligible employee is required to seek advance permission from his or her supervisor for any foreseeable absence or deviation from regular working, break, and meal times.

2. Notification of Unforeseen Late Arrival or Absence

An overtime-eligible employee who is unexpectedly unable to report for work as scheduled must notify his or her immediate supervisor no later than the beginning of the employee's scheduled work time and report the expected time of arrival or absence. If the immediate supervisor is not available, the employee must notify the Department Director.

3. Unauthorized Absence is Prohibited

Arriving late to work or leaving early in connection with scheduled work times, breaks, or meal periods is prohibited, absent authorization. An overtime-eligible employee who fails to timely notify the supervisor of any absences as required by this Policy, or who is not present and ready to work during all scheduled work times will be deemed to have an unauthorized tardy or absence and will not receive compensation for the period of absence.

4. Excessive Tardiness/Absenteeism

Excessive tardiness occurs when an overtime-eligible employee who, without authorization, is late to work or late to return from breaks more than three times during any 30-day period. Excessive absenteeism occurs when the number of unapproved absences for reasons that are not permitted by state or federal law, exceeds three days in any three-month period. Excessive tardiness or absenteeism may be grounds for discipline, up to and including termination.

SECTION V: LEAVES

A. Vacation

1. Accrual of Vacation Leave

The City provides paid vacation benefits for all full-time and part-time regular employees. Eligible employees earn vacation leave while in paid status until they reach the applicable vacation accrual cap. The amount of paid vacation accrual is based on the number of years of service for each employee. Part-time regular employees will receive prorated vacation accrual according to the percentage of hours worked to the full-time equivalent position. The vacation accrual is as follows:

1 through 4 years	96 hours annual accrual rate
5 through 9 years	120 hours annual accrual rate
10 through 15 years	144 hours annual accrual rate
16 through 19 years	160 hours annual accrual rate
Beginning at 20 years	176 hours annual accrual rate

2. Accumulation of Vacation Leave

Employees shall not accrue more than 30 working days (280 hours) of vacation. When an employee reaches 280 hours of accrued vacation leave, he or she shall cease earning vacation leave until his or her leave balance falls below 240 hours.

No vacation leave will accrue during leaves of absence without pay unless required by law.

3. Use of Vacation Leave

Vacation leave may not be used until it is earned. The employee and the department head will schedule the times when an employee may take vacation leave. The scheduling will be based on the employee's preference and the City's operational needs. An employee shall provide a minimum of one week's written advance notice, unless waived by the department head, when requesting vacation time off.

In addition, no vacation leave may be taken by an employee during her/his first six full months of employment, unless approved by the City Manager. If an employee terminates prior to completing six full months of service, she/he will receive payment for vacation time earned. A new employee who has successfully completed six full month of probation is eligible to use vacation benefits as described above.

B. Sick Leave

1. Purposes for Sick Leave

Sick leave is paid leave from work that can be used for the following purposes:

- a. diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or any of the following of the employee's family members: child of any age or dependency status; parent; parent-in-law; spouse; registered domestic partner; grandparent; grandchildren; or sibling;
- b. for an employee who is a victim of domestic violence, sexual assault, or stalking to: i) obtain or attempt to obtain a temporary restraining order or other court assistance to help ensure the health safety or welfare of the employee or his or her child; or ii) obtain medical attention or psychological counseling; services from a shelter; program or crisis center; or participate in safety planning or other actions to increase safety.

2. Terms of Sick Leave

- a. Entitlement, Accrual, and Carryover

- i. Full time employees who are not seasonal or temporary accrue eight hours of sick leave for each calendar month of paid status; part-time employees who are not seasonal or temporary accrue sick leave in an amount prorated to the lower number of hours they work each calendar month in paid status. Accrued sick leave carries over from year to year, but full time employees stop earning sick leave once they have accrued 2,080 hours of sick leave.
- ii. Seasonal and temporary employees are entitled to three (3) days or twenty-four (24) hours of paid sick leave, whichever is greater, annually. For example, an employee who works eight (8) hours per day, or less, will be entitled to a maximum benefit of twenty-four (24) hours of paid sick leave. An employee whose regular work schedule calls for workdays in excess of eight (8) hours (e.g. an employee who works four, ten (10) hour days per week), will be entitled to three (3) days of sick leave, where a "day" is the equivalent to the hours in the employee's regularly-scheduled work day. Employees will be provided the total amount of sick leave to which they are entitled—twenty-four (24) hours or three (3) days—at the beginning of each fiscal year, beginning July 1, or the first date of employment, whichever is later. Paid sick leave hours/days do not carry-over from one fiscal year to the next.

b. Sick Leave Use

An employee may use accrued sick leave, in a minimum increment of one hour, beginning on the 90th day after the first day of employment with the City, subject to the limits and request provisions in this Policy. The City Manager or designee, at his or her sole discretion, may allow an employee to use available paid sick leave in advance of the 90th day of employment.

c. Protected Sick Leave

For full time employees who are not seasonal or temporary, one-half of the employee's accrued and available annual sick leave is protected and may be used for any of the purposes stated in this Policy.

For seasonal or temporary employees, up to 24 hours, or three days, whichever is greater, of accrued and available sick leave each year is protected and may be used for any of the purposes stated in the Sick Leave Policy. The year is measured beginning on July 1st, or the employee's anniversary of hire date, whichever is later.

d. Sick Leave Request:

To request to use sick leave if the need for leave is foreseeable, an employee must give the immediate supervisor reasonable advance written or oral notice. If the need for sick leave is not

foreseeable, the employee shall provide written or oral notice of the need for the leave as soon as practicable.

If the employee is required to be absent on sick leave for more than one day, the employee must keep the immediate supervisor informed each day as to the date the employee expects to return to work and the purpose of the leave. Failure to request sick leave as required by this Policy without good reason, may result in the employee being treated as absent without leave.

The City will not condition the use of sick leave on the employee finding someone to cover his/her work.

e. Certification

The City may require that employees who are not seasonal or temporary to provide a physician's certification to support any absence that involves the illness of the employee or family member if the City suspects that there is an abuse of sick leave by the employee.

All employees, including seasonal and temporary employees, who use paid leave to address issues related to domestic violence, sexual assault or stalking, and who cannot provide advance notice of their need for leave must provide certification of the need for leave within a reasonable time thereafter.

f. Sick Leave on Separation from Employment

Unused sick leave is not cashed out upon termination, resignation, retirement, or other separation from employment. Unused sick leave may be converted to retirement service credits only as may be permitted under applicable retirement system laws and regulations.

g. Sick Leave Reinstatement

If an employee separates from City employment and is rehired within one year from separation, accrued and unused sick leave, to a maximum of 6 days or 48 hours, whichever is greater, will be reinstated. An employee who worked at least 90 days in the initial employment with the City may immediately use reinstated sick leave. An employee who had not worked 90 days in the initial employment with the City must work the remaining amount of the 90 day-qualifying period to be able to use accrued sick leave.

C. Holidays

1. Annual Holidays

The City provides paid time off for all full-time and part-time regular employees for 11 holidays per year. The eleven annual holidays observed by the City are New Year's Day, Martin Luther King, Jr. Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Veterans Day,

Thanksgiving Day, the day after Thanksgiving Day, Christmas Eve, and Christmas Day. For sworn personnel, refer to the current POA Memorandum of Understanding.

2. Floating Holidays

Full-time employees who are entitled to holidays receive two floating holidays per fiscal year, which are awarded on July 1st. Floating holidays may not be carried forward from one fiscal year to the next and are not compensable at the time of separation from City service.

Employees entitled to paid holidays or floating holidays shall be paid for the number of hours the employee was scheduled to work had it not been a holiday or floating holiday. An overtime-eligible employee who is required to work on a holiday shall receive holiday pay and pay for the actual time worked on the holiday

D. Jury Duty Leave/Subpoenaed or Court-Ordered Witness Leave

1. Jury Duty

Any employee who is summoned to serve on a jury, or subpoenaed or ordered to be a witness, must notify his or her supervisor or department head as soon as possible.

All overtime-eligible employees will be paid for actual work hours missed because of time spent in jury service or court. The time spent on jury duty is not work time for purposes of calculating overtime compensation. The City will offset from pay the amount the employee receives from the Court for jury fees.

All FLSA-exempt employees will continue to receive their normal salary while on jury duty or as serving as a witness only for any work week in which they perform any work duties. The City will offset the amount from pay the employee receives from the Court for jury fees.

If an employee is dismissed by the Court and 3 hours or more remain in the work day, the employee is expected to report to work.

2. Other Court or Administrative Proceeding Appearances

a. Regarding City Duties

Any employee who is subpoenaed to appear in court in a matter regarding an event or transaction in the course of his or her City job duties, must give his or her supervisor as much advance notice as is possible. The City will determine whether the matter involves an event or transaction in the course of the employee's City job duties. If so, this leave to appear in court will be without loss of compensation, and the time spent will be considered work time. The City will offset the amount from pay the employee receives for witness fees.

b. Regarding Employee-Initiated Proceedings

Any employee who is subpoenaed to appear, or appears in court because of civil or administrative proceedings that he or she initiated, is not entitled to receive compensation for time spent related to those proceedings. An employee may request to receive time off without pay, or may use any accrued leave other than sick leave for time spent related to those proceedings. The time spent in these proceedings is not considered work time. Notwithstanding the above, an employee who is testifying or appearing as the designated representative in PERB conferences or hearings, or at a personnel or merit commission is entitled to paid release time.

E. Military Leave

Military leave shall be granted in accordance with the provisions of state law. An employee requesting leave for this purpose shall provide the department head, whenever possible, with a copy of the military orders specifying the dates, site, and purpose of the activity or mission. Within the limits of such orders, the department head may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

F. Leave for Victims of Domestic Violence, Sexual Assault, or Stalking

1. Certification of Victim Status

An employee who is a victim of domestic violence, sexual assault, or stalking and who requests an accommodation to provide for his or her safety while at work must provide both of the following:

- a. A written statement signed by the employee or an individual acting on the employee's behalf, to certify that the accommodation is to address victim-safety concerns while at work; and
- b. A certification demonstrating the employee's status as a victim of domestic violence, sexual assault, or stalking, which can be in the form of: a police report indicating the employee's victim status; a court order separating the perpetrator from the employee or that the employee has appeared in court for that purpose; or documentation from a medical professional or counselor that the employee is undergoing treatment for physical or mental injuries or abuse resulting from an act of domestic violence, sexual assault, or stalking.

2. To Obtain Restraining Orders or Injunctive Relief

Any employee who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to obtain or attempt to obtain any relief, including, but not limited to: a temporary restraining order, restraining order, or other injunctive relief to help ensure the health, safety, or welfare of the employee or his or her child, if the employee provides advance notice of the need

for leave. If advance notice is not feasible, the employee must provide any of the following certifications within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave, accrued vacation or paid leave, or compensatory time off.

3. To Obtain Medical Attention or Counseling or Safety Planning

Any employee who is a victim of domestic violence, sexual assault, or stalking, may take leave from work to attend to any of the following: obtaining medical attention or psychological counseling; obtaining services from a shelter, program or crisis center; or participating in safety planning or other actions to increase safety, if the employee provides advance notice of the employee's intention to take time off for these purposes. If advance notice is not feasible, the employee must provide any of the following to the City within a reasonable time after the leave: a police report indicating that the employee was a victim; a court order protecting the employee from the perpetrator; evidence from the district attorney or court that the employee has appeared in court; or documentation from a health care provider or counselor that the employee was undergoing treatment for physical or mental injuries or abuse. The leave is unpaid unless the employee elects to use 2014 Healthy Workplaces sick leave, accrued vacation or personal leave, or compensatory time off.

G. Bereavement Leave

All regular employees may utilize paid bereavement leave to attend a funeral or memorial service, or to take care of family matters, that are related to the death of a member of immediate family. "Immediate family" consists of the following: employee's spouse, domestic partner, child, stepchild, parent, grandparent, grandchild, brother, sister, mother/father-in-law, son or daughter-in-law, brother or sister-in-law, legal guardian, or custodial child, or the same relatives of a domestic partner. Employees are entitled to up to three paid days of leave for each death in the immediate family. An employee who utilizes bereavement leave shall notify his/her supervisor or department head of the intent to use such leave.

H. School-Related Leave

1. School or Licensed Day Care Activity Leave

Any employee who is a parent, guardian, stepparent, foster parent, grandparent, or person who stands in loco parentis to one or more children who are in kindergarten or grades 1 through 12, or who are in a licensed child care facility, shall be allowed up to 40 hours each school year, not to exceed eight hours in any calendar month of the school year, to: participate in activities of their child's school or licensed child care facility; find, enroll, or reenroll a child in a school or with a licensed child care provider; or to pick up a child due to a child care provider or school emergency. The employee must provide reasonable advance notice to his/her supervisor of the planned absence. The leave is unpaid unless the employee uses vacation, personal leave or compensatory

time off. The employee must provide documentation from the school or licensed child care facility as verification that the employee participated in school or child care facility activities on a specific date and at a particular time. If both parents, guardians or grandparents having custody work for the City at the same City work site, only the first parent requesting will be entitled to leave under this provision.

2. Child Suspension Leave

Any employee who is the parent or guardian of a child in grades 1 through 12 may take time off to go to the child's school in response to a request from the child's school, if the employee gives advance notice to his or her supervisor. A school has the authority to request that the parent attend the child's school if the child has: committed any obscene act; habitually used profanity or vulgarity; disrupted school activities; or otherwise willfully defied the valid authority of school personnel.

I. Time Off to Vote

Any employee, if he or she does not have sufficient time outside of working hours to vote, may request up to two hours of paid leave either at the beginning or end of scheduled working hours to enable him or her to vote. The employee must request time off to vote from his or her supervisor at least two days prior to election day.

J. Authorized Leaves of Absence Without Pay

1. Upon the recommendation of a department head, the City Manager may, in his or her discretion, grant an employee an unpaid leave of absence for a period not to exceed three months.
2. Employees desiring to take time off without pay shall submit a request in writing to their department head. Whenever possible, such a request shall be submitted at least six (6) weeks in advance. If accrued vacation leave or compensatory time is available to the employee, leave without pay will not ordinarily be authorized.
3. Extension of Leave: During the period of the authorized leave of absence, an employee may request that the leave be extended by submitting such a request in writing to the department head and stating the reason for the extension. Such a request shall be approved or disapproved by the City Manager after reviewing the department head's recommendation. No leaves of absence exceeding a cumulative total of one year for any one reason or circumstance may be granted under any circumstances.

4. Failure to Return to Work from Leave of Absence: Failure of an employee to return to work on the approved date is grounds for disciplinary action up to and including dismissal.
5. Benefits during Leaves of Absence: Employees on leave of absence may continue their medical and insurance benefit coverages by reimbursing the City directly for the amount of the insurance premiums in advance. Such reimbursement must be made in advance for each month in which the employee wishes to receive coverage.
6. Status of Employees on Authorized Leave of Absence
 - a. An authorized leave of absence does not represent a break in employment for a regular employee. However, only active full-time service shall count towards accumulated seniority or to benefits which accrue according to the time of service (including vacation and sick leave). An employee on an authorized leave of absence retains all accrued vacation, sick leave, and other rights as exist at the time when the leave of absence begins. Unless required by law, vacation, sick leave, holiday, and merit salary increases to do not accrue to an employee on leave during the period of such leave.
 - b. An employee returning from leave of absence returns to the same salary step or relative placement in the pay range existing at the time when the employee returns to work.

K. Unauthorized Absence

Arriving late to work or leaving early in connection with scheduled work times, breaks, or meal periods is prohibited, absent authorization. An overtime-eligible employee who fails to timely notify the supervisor of any absences as required by this Policy, or who is not present and ready to work during all scheduled work times will be deemed to have an unauthorized tardy or absence and will not receive compensation for the period of absence.

Additionally, an unauthorized leave of absence may be deemed to be job abandonment and can lead to termination of employment.

L. Paid Administrative Leave

The City has the right to place an employee on leave with full pay for non-disciplinary reasons at any time when the Administrative Services Director has determined that the employee's and/or City's best interests warrant the leave. The employee does not have a right to appeal the decision to be placed on administrative leave with pay.

M. Industrial Injury Leave

1. Employees Not Covered by Labor Code Section 4850

Employees, other than those covered by Labor Code section 4850, who are absent from work by reason of an injury or illness covered by Workers' Compensation, shall continue in pay status under the following provisions.

2. Coordination of Benefits

When the employee authorizes, the difference between the amount granted pursuant to such Workers' Compensation and the employee's regular pay will be deducted from the employee's accumulated sick leave, vacation, personal holidays, and compensatory time, if any. The employee will continue in pay status and receive his or her pay until his/her accumulated sick leave, and authorized compensatory time, personal holidays and vacation days, have been depleted to the nearest hour.

3. Accrual of Sick and Vacation Leave Continues While on Paid Leave

During the time the employee is in fully paid status while absent from work by reason of injury or illness covered by Workers' Compensation, he or she shall continue to accrue sick leave and vacation benefits as though he or she were not on leave of absence.

4. Unpaid Leave and Continuation of Health Care Benefits

Any employee subject to this Policy who depletes his or her accumulated sick leave, compensatory time, personal holiday time and vacation days while absent from work by reason of an injury or illness covered by Workers' Compensation may receive an unpaid leave of absence and continuation of health care benefits consistent with state and/or federal law.

5. Employees Covered by Labor Code Section 4850

Sworn police employees covered by Labor Code Section 4850 *et seq.* will be allowed up to one year leave of absence for an industrial injury or illness without loss of salary in lieu of disability payments, consistent with state law. The employee will continue to accrue sick leave and vacation benefits while in paid status.

6. Coordination of Benefits after 4850 Leave

Whenever the injury or illness continues beyond the one-year 4850 leave period, and when the employee authorizes, the difference between the amount granted pursuant to such Workers' Compensation and the employee's pay may be deducted from the employee's accumulated sick and vacation leave, personal holidays, and compensatory time, if any. Thereafter, the employee may receive an unpaid leave of absence and continuation of health care benefits consistent with state and/or federal law.

SECTION VI: PERFORMANCE EVALUATIONS

A. Performance Evaluations

A non-probationary employee's supervisor will prepare and sign a performance evaluation on a City form for each performance evaluation period. The Department Director will review and approve all performance evaluations of subordinates in his or her department. The City Manager will review and approve all performance evaluations of department directors and any other employees under his or her direct supervision. Additional performance evaluations may be prepared at any time the Administrative Services Director deems necessary.

B. Probationary Employee Performance Evaluations

On or about the completion of six months of a probationary period, and again at any point prior to separation or the successful completion of the probationary period, the probationary employee's supervisor will prepare and sign a performance evaluation. The purpose of the probationary performance evaluation is to chart the probationer's progress toward meeting the standards of his or her position.

C. Performance Evaluation Meeting

The supervisor will meet with the employee to discuss the evaluation. The employee shall sign the evaluation to acknowledge its contents and that he or she has met with his or her supervisor to discuss the evaluation. The employee's signature shall not mean that he or she endorses the contents of the evaluation.

D. No Appeal Right

An employee does not have the right to appeal or submit a grievance regarding any matter relating to the content of a performance evaluation. Instead, the employee may comment on the evaluation in a written statement which will then be placed with the evaluation in the employee's personnel file. The written statement must be submitted within 10 days after the employee receives the evaluation.

SECTION VII: JOB MOVEMENT

A. Voluntary Transfer

A regular employee may initiate a request to transfer to another position in the same or lower classification for which the employee is qualified in the opinion of the Administrative Services Director or designee by submitting a written request to transfer to the Human Resources Department. The request will be kept on file for one year from the date of receipt. With the approval of the Department Director for whom the employee now works and the Department

Director for whom the employee wishes to work, the employee will be transferred to the new position when the first vacancy becomes available.

B. Involuntary Transfer

The City may involuntarily transfer an employee at any time. Whenever possible, an employee being transferred from one position to another position in the same class, or a comparable class at the same salary level, will receive five working days' notice. If the transfer requires the employee to move equipment from one location to another, the employee will receive seven working days' notice.

If an employee disputes the involuntary transfer, the employee may, within two days of the Notice of Transfer, file a written appeal with the Administrative Services Director or designee setting forth the reasons therefore. Any appeal filed must be based upon the alleged violation of the requirements for transfer and/or procedure followed. The Administrative Services Director's or designee's decision shall be final.

C. Types of Separation

All separations of employees from positions in City employment are designated as one of the following types:

- Probationary release;
- Release of temporary and seasonal employees;
- Resignation;
- Retirement;
- Job abandonment;
- Layoff;
- Non-disciplinary separation;
- Disciplinary separation.

D. Probationary Release

Probationary employees serving in their initial probationary period with the City may be released at any time during the probationary period as recommended by the Department Director, without cause or reason or notice. A released probationary employee has no right to appeal or to submit a grievance.

E. Release of Temporary and Seasonal Employees

A temporary or seasonal employee may be separated at any time, without cause, and without right to any appeal or grievance.

F. Resignation

An employee who wishes to resign his or her City employment in good standing must submit written notice of resignation to the Administrative Services Director at least two weeks prior to the planned separation date. The written notice must state the reasons for the resignation. Failure to follow the aforementioned procedure may be cause for denying future employment with the City. A resignation becomes final when the Administrative Services Director accepts the resignation in writing. Once a resignation has been accepted, it is final and irrevocable. A resignation can be accepted by the Administrative Services Director even if it is submitted less than two weeks prior to the planned resignation date.

G. Retirement

An employee planning to retire may provide a written notice to the Administrative Services Director prior to the effective date of the retirement. A notice of retirement becomes final when the Administrative Services Director accepts the notice of retirement in writing. Once a notice of retirement has been accepted, it is final and irrevocable.

H. Job Abandonment

An employee is deemed to have resigned from his/her position if he or she is absent for five consecutive scheduled work days/shifts without prior authorization and without notification during the period of the absence. The employee will be given written notice, at his or her address of record, of the circumstances of the job abandonment, and an opportunity to provide an explanation for the employee's unauthorized absence. An employee who promptly responds to the City's written notice, within the timeframe set forth in the written notice, can arrange for an appointment with the Administrative Services Director before final action is taken, to explain the unauthorized absence and failure of notification. An employee separated for job abandonment will be reinstated upon proof of justification for such absence, such as severe accident, severe illness, false arrest, or mental or physical impairment which prevented notification. No employee separated for job abandonment has the right to a post-separation appeal.

I. Layoff

Whenever, in the judgment of the City Council, a reduction in personnel is necessary for economic or operational reasons, any employee may be laid off or demoted for non-disciplinary reasons.

1. Order of Layoffs

Employees will be laid off in the inverse order of their seniority in their classification in the department. Seniority is determined based on the length of employment in the affected classification in the department, or higher classifications in the department. Length of employment includes all days of employment in attendance at work and on authorized or legally-protected leaves of absence. Length of service does not include unauthorized periods of leave or suspension or layoff. Within each classification, employees will be laid off in the following order: temporary/seasonal; part-time; probationary; and for-cause status. If two or more employees in a

classification to be laid off have the same length of employment, the employee to be laid off will be decided by lottery.

2. Notification of Layoff

Employees to be laid off will be given 21 calendar days' notice of layoff.

3. Demote to Vacancy

Except as otherwise provided, whenever there is a reduction in personnel, the City shall first demote to a vacancy, if any, in a lower class for which the employee who is the latest to be laid off is qualified. All persons so demoted shall have their names placed on the reemployment list.

4. Displacement

For-cause employees who are noticed for layoff and who have held for-cause status in a lower classification within the same classification series in the same department, may displace employees in the lower classification provided that the employee seeking to displace has greater length of employment in the lower classification than the incumbent in the lower classification. Employees in lower classifications will be displaced in inverse order of their length of employment in the classification.

Any employee who seeks to displace another must provide the Administrative Services Director with written notice no later than five working days after the date of the notice of layoff.

Employees retreating to a lower or similar class shall be placed at the salary step representing the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

Employees retreating to a lower or similar class shall serve a probationary period in a new class unless they have previously successfully completed a probationary period in the class or a class in the class series.

5. Transfer

If the Administrative Services Director determines that a for-cause employee who is subject to layoff is qualified to perform the duties in a vacant position, the employee will receive a written notice of option to transfer in lieu of layoff. An employee who does not accept a transfer within 10 days after the date of the written notice, forfeits the option to transfer. An employee who accepts a transfer will be paid the rate applicable to the position into which he or she transfers.

6. Appeal

An employee who has been noticed for layoff, and who has any questions or concerns about the layoff decision or process may make an appointment to be heard by the Administrative Services Director for an informal pre-layoff review. The employee must request this appeal in writing

within five work days from the date of the notice of layoff. The Administrative Services Director's decision is final.

7. Reemployment List

The names of persons laid off or demoted in accordance with these Policies shall be entered upon a reemployment list. Such list shall be used by the City Manager or designee when a vacancy arises in the same or lower class of position before certification is made from an eligible list.

Names of persons laid off shall be carried on a reemployment list of one (1) year, except the persons appointed to permanent positions on the same level as that which laid off, shall, upon such appointment, be dropped from the list. Persons who refuse reemployment shall be dropped from the list. Persons reemployed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for one (1) year.

J. Non-Disciplinary Separation

Any employee separated because of an inability to accommodate after the reasonable accommodation and interactive process is concluded, will be given a written pre-separation notice of the reasons for the separation, the evidence supporting the decision to separate for non-disciplinary reasons, and an opportunity to respond before the separation takes effect. Any for cause employee has the opportunity for a post-separation appeal as described in Section XIII.

K. Disciplinary Separation

A for cause employee may be separated for disciplinary reasons pursuant to the policy and procedures in Section XIII.

1. Return of City Property

All City property in the employee's possession must be returned prior to separation, including keys, key fobs, identification cards, equipment, credit cards, gas cards, cell phones, pagers, and any other City equipment.

2. Job References/Verification of Employment

All reference inquiries and verifications of employment must be referred to and approved by the Administrative Services Director. Unless the Administrative Services Director receives a written waiver signed by the employee, the City will release only the employee's dates of employment, last position held, and final salary rate. Department Directors and supervisors should not provide information in response to requests for reference checks or verification of employment, unless specifically approved by the Administrative Services Director on a case-by-case basis.

SECTION VIII: DISCIPLINARY PROCESS

A. Applicability of this Section

The provisions of this section shall apply only to regular classified employees.

B. Grounds for Discipline

Causes for disciplinary action shall include, but are not limited to, the following:

1. Violation of any department rule, City policy, or City regulation, ordinance, or resolution;
2. Absence without authorized leave or tardiness;
3. Excessive absenteeism and/or tardiness as defined by the employee's Department Director, and/or these Policies;
4. Use of leave from work in a manner not authorized or provided for under City policies;
5. Making any false representation or statement, or making any omission of a material fact;
6. Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;
7. Unsatisfactory job performance;
8. Failure to maintain required license(s) or certificate(s);
9. Inefficiency;
10. Acceptance of gifts or gratuities for the performance of services, functions, and duties for which employee is retained by the City.
11. Damaging any City property, equipment, resource, or vehicle, or the waste of City supplies through negligence or misconduct.
12. Insubordination; or insulting or demeaning the authority of a supervisor or manager;
13. Dishonesty;
14. Theft;
15. Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;
16. Misuse or unauthorized use of any City property, including, but not limited to: physical property, electronic resources, supplies, tools, equipment, City communication systems, City vehicles, or intellectual property;
17. Mishandling of public funds;
18. Falsifying or tampering with any City record, including work time or financial records;
19. Discourteous or offensive treatment of the public or other employees;

20. Abusive conduct, including malicious verbal, visual or physical actions, or the gratuitous sabotage or undermining of a person's work performance;
21. Conviction, meaning any judicial determination of guilt, of a crime that has a nexus to the employee's job duties;
22. Unapproved outside employment or activity, or other enterprise that constitutes a conflict of interest with service to the City;
23. Any conduct that impairs, disrupts or causes discredit to the City, to the public service, or other employee's employment;
24. Reckless or unsafe conduct;
25. Working overtime without prior authorization or refusing to work assigned overtime;
26. Carrying firearms or other dangerous weapons while on duty when not required by job duties;
27. Horseplay or fighting.

C. Types of Counseling, Reprimands, and Discipline

The specific types of counseling, reprimands, and discipline the City may impose are as follows:

1. Counseling Memo

A counseling memo will be provided to an employee to identify: a failure of appropriate conduct or performance issue; the performance the employee is to demonstrate in the future; and consequences for failure to correct the behavior or problem. A counseling memo will be retained in the supervisor's file until the completion of the evaluation year, and then documented in the performance evaluation, as the supervisor deems necessary. A counseling memo is not subject to the discipline or discipline appeal procedures described below. A counseling memo is not considered "punitive action" under the Public Safety Officers Procedural Bill of Rights Act.

2. Verbal Reprimand

A verbal reprimand is a verbal direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A verbal reprimand will be documented in writing and retained in the supervisor's file until the completion of the evaluation year and then documented in the performance evaluation, as the supervisor deems necessary. A verbal reprimand is not subject to the discipline or discipline appeal procedures described below.

3. Written Reprimand

A written reprimand is written direction from a supervisory employee to discontinue inappropriate conduct or to correct a performance issue. A written reprimand will be retained in the employee's personnel file and documented in the performance evaluation.

A written reprimand should include: (1) description of the action or activity necessitating a written reprimand; and (2) the date(s) and time(s) of the action or activity causing the written reprimand.

The written reprimand should be prepared in duplicate and presented to the employee for his or her signature. The written reprimand should then be distributed as follows: (1) a copy to the employee; (2) copies to the Department Director and City Manager; and (3) a copy to the employee's personnel file.

The employee has the right to have his or her written rebuttal attached to the reprimand in the employee's personnel file, if the employee submits the rebuttal to the Administrative Services Director within 10 calendar days after the reprimand is received.

Unless required by law, a written reprimand is not subject to the discipline or discipline appeal procedures described below.

4. Suspension

Suspension is the temporary removal, without pay, of an employee from his or her duties. The Department Director may suspend an employee from his or her position for cause. Documents related to a suspension shall become part of the employee's personnel file when the discipline is final. An employee subject to suspension will receive prior written notice and appeal as provided herein. Employees who are exempt from FLSA overtime will only be suspended as authorized by the FLSA.

5. Reduction in Pay or Paid Leave

The City may reduce an employee's pay or paid leave for cause. A reduction in pay for disciplinary purposes may take one of three forms: 1) a decrease in salary to a lower step within the salary range; 2) a decrease in salary paid to an employee for a fixed period of time; or 3) loss of accrued paid vacation or Administrative Leave, floating holiday, or compensatory time off. Documents related to a reduction in pay shall become part of the employee's personnel file when the reduction in pay is final and documented in the performance evaluation. A reduction in pay is subject to the discipline and discipline appeal procedures described below. Employees who are exempt from the FLSA overtime requirements are not subject to pay reduction, except loss of accrued vacation, floating holiday, or Administrative Leave.

6. Demotion

A demotion is the removal of an employee from his or her existing position to a lower paying position. The Department Director may demote an employee from his or her position for cause. Documents related to a demotion shall be part of the employee's personnel file when the discipline is final. An employee subject to demotion will be entitled to prior written notice and appeal as provided herein.

The rejection of an employee who is serving in a probationary promotional position and subsequent removal from that promotion is a failure by the employee to satisfactorily complete the promotional testing process. Such a rejection and removal is not a disciplinary action and therefore is not grievable or subject to these disciplinary rules or appeal.

7. Last Chance Agreement

In lieu of terminating employment of an employee for serious violations of company policies, procedures and rules and for other inappropriate behavior or conduct, the Department Director at his/her discretion may provide the employee a final opportunity to continue employment by the employee and Department Director agreeing to sign a Last Chance Agreement. A Last Chance Agreement between the Employee and the City of Hercules shall contain the following components:

- a. Description of the violation or reason for the agreement
- b. Describe any suspension from work without pay
- c. Identify that the employee received a written disciplinary notice and date of notice which identifies the violation or reason for the agreement, the Department Director's expectations, an improvement plan and a time period for improvement.
- d. A statement that the employee agrees to comply with all City policies, practices and procedures and understands that this agreement in no way prevents the employer from taking disciplinary action, including termination for violations.
- e. Agreement to be signed by Employee, Department Director and Administrative Services Director.

8. Discharge

The Department Director may discharge an employee from his or her position for cause. Documents related to the dismissal shall become a part of an employee's personnel file when the dismissal is final. A dismissed employee is entitled to the discipline and discipline appeal procedures described below.

Any employee may be released from his or her position during the probationary period of his or her initial appointment to the City's classified service without right of appeal.

D. Discipline Procedure

The following discipline procedures only apply to the City's for-cause employees. All employees other than for-cause employees, namely temporary, seasonal, at-will, and probationary employees, may be disciplined or separated at will, with or without cause, and without the disciplinary procedures listed below. The following discipline procedures apply only to suspension without pay, reduction in pay, demotion, or dismissal.

1. “Skelly” Notice of Intended Disciplinary Action to Employee

A written notice of the intended disciplinary action shall be given to the employee, which will include the following information:

- a. The level of the intended discipline;
- b. The specific charges that support the intended discipline;
- c. A summary of the facts that show that the elements of each charge at issue in the intended discipline;
- d. A copy of all materials upon which the intended discipline is based;
- e. Notice of the employee’s right to respond to the Department Director regarding the intended discipline within seven calendar days from the date of the notice, either by requesting a Skelly conference, or by providing a written response, or both;
- f. Notice of the employee’s right to have a representative of his or her choice at the Skelly conference; and
- g. Notice that failure to respond by the time specified constitutes a waiver of the right to respond prior to final discipline being imposed.

2. Response by Employee and Skelly Conference

If the employee requests a Skelly conference, the Department Director or designee will conduct an informal meeting with the employee. During the informal meeting, the employee shall have the opportunity to rebut the charges against him or her and present any mitigating circumstances. The Department Director will consider the employee’s presentation before issuing the disciplinary action. The employee’s failure to attend the conference, or to deliver a written response by the date specified in the Skelly notice, is a waiver of the right to respond, and the intended disciplinary action will be imposed on the date specified in the Skelly letter.

3. Final Notice of Discipline

After the Skelly conference and/or timely receipt of the employee’s written response, the Department Director will: 1) take no disciplinary action; 2) modify the intended discipline; or 3) impose the intended disciplinary action. In any case, the Department Director will provide the employee with a notice that contains the following:

- h. The level of discipline, if any, to be imposed and the effective date of the discipline;
- i. The specific charges upon which the discipline is based;
- j. A summary of the facts that show that the elements of each charge at issue in the intended discipline;
- k. A copy of all materials upon which the discipline is based; and
- l. A reference to the employee’s appeal right and deadline to appeal.

4. Delivery of the Final Notice of Discipline

The final notice of discipline will be sent by mail method that verifies delivery to the last known address of the employee, or delivered to the employee in person. If the notice is not deliverable because the employee has moved without notifying the City or the employee refuses to accept delivery, the effective date of discipline will be the date the post office or delivery service attempted delivery.

E. Discipline Appeal Procedures

The following appeal procedures only apply to the City's for-cause employees. All employees other than for-cause employees, namely temporary, seasonal, at-will, and probationary employees, may be disciplined or separated at will, with or without cause, and without the disciplinary appeal procedures listed below. The following appeal procedures apply only to suspension without pay, demotion, reduction in pay or dismissal.

1. Request for Appeal Hearing

An employee may submit a written request for appeal to the Administrative Services Director within 10 calendar days from: 1) receipt of the final notice of discipline; or 2) the date of attempted delivery by the post office or delivery service of the notice to the last known address of the employee. Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline.

2. Appeal Hearing Officer

The appeal hearing officer shall be the City Manager or an individual designated by the Administrative Services Director who is selected through the Office of Administrative Hearings (OAH). If the City Manager served as the Skelly officer for the discipline at issue, then the appeal hearing officer shall be an individual designated by the City Council who is selected through SMCS.

3. Date and Time of the Appeal Hearing

Once the appeal hearing officer has been designated, the Administrative Services Director will set a date for an appeal hearing. The employee shall be notified in writing at least 21 days prior to the hearing of the scheduled date.

4. Prehearing Notice of Witnesses and Evidence

No later than 10 days before the hearing date, each party will provide the other and the appeal hearing officer a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee will use alphabet letters. Neither party will be permitted to call any witness or evidence that has not been listed, unless that party can show that the party could not have reasonably anticipated the need for the witness or exhibit.

5. Subpoenas

Upon the request of either party, and upon his or her own motion, the hearing officer will issue subpoenas to compel attendance at the appeal hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually spend testifying.

6. Continuances

The appeal hearing officer may continue a scheduled hearing only upon good cause shown.

7. Record of the Appeal Hearing

The hearing may be recorded, either electronically or by a court reporter, at the option of the City. If the City orders a transcript or makes a transcript of the recording, the City will notify the employee within three days of ordering or making the transcript, and will provide a copy of the transcript upon receipt of the costs of duplication.

8. Employee Appearance

The employee must appear personally before the hearing officer at the time and place set for the hearing. The employee may be represented by any person he or she may select.

9. Conduct of the Hearing:

- a. Sworn Testimony: All witnesses shall be sworn in prior to testifying. The hearing officer or court reporter shall request each witness to raise his or her hand and respond to the following: “Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?”
- b. Evidence: Hearings need not be conducted according to technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner that the hearing officer decides is the most conducive to determining the truth. The rules dealing with privileges shall be effective to the same extent that they are recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. The appeal hearing officer shall determine the relevance, weight and credibility of testimony and evidence.
- c. Exclusion of Witnesses: During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing.

- d. Burden of Proof: The City has the burden of proof by the preponderance of the evidence.
- e. Authority of Hearing Officer: The appeal hearing officer shall not have the power to alter, amend, change, add to, or subtract from any of the terms of these Policies.
- f. Professionalism: All parties and their attorneys or representatives shall not, by written submission or oral presentation, disparage the intelligence, ethics, morals, integrity or personal behavior of their adversaries or the appeal hearing officer.

10. Presentation of the Case

The parties will address their remarks, evidence, and objections to the appeal hearing officer. The appeal hearing officer may terminate argument at any time and issue a ruling regarding an objection or any other matter. The appeal hearing officer may limit redundant or irrelevant testimony, or directly question the witness. The hearing will proceed in the following order unless the appeal hearing officer directs otherwise:

- a. The City is permitted to make an opening statement;
- b. The employee is permitted to make an opening statement;
- c. The City will produce its evidence;
- d. The employee will produce its evidence;
- e. The City, followed by the employee, may present rebuttal evidence;
- f. Oral closing arguments of no more than 20 minutes may be permitted at the discretion of the appeal hearing officer. The City argues first, the employee argues second, and if the City reserved a portion of its time for rebuttal, the City may present a rebuttal.

11. Written Briefs

Either party may request to submit a written brief and/or a draft decision. The appeal hearing officer will determine whether to allow written briefs or draft decisions, the deadline for submitting briefs, and the page limit for briefs.

12. Appeal Hearing Officer's Recommended Decision

Within 60 days of the conclusion of the hearing, the appeal hearing officer shall make written findings and a recommended decision as to the discipline.

- a. If the City Manager was not the appeal hearing officer or the Skelly officer, he or she shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Manager is final. There is no process for reconsideration.
- b. If the City Manager was the appeal hearing officer or the Skelly officer, the City Council shall review the findings and recommendations of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Council is final. There is no process for reconsideration.

13. Proof of Service of the Written Findings and Decision

The City will mail a copy of the final written findings and decision within 5 business days of the decision, along with a proof of service of mailing that confirms that each of the parties and each of the parties' representatives were mailed the final written findings and decision. It shall be the responsibility of the employee to inform the City of his/her address.

SECTION IX: GRIEVANCE PROCEDURE

A. Definition of a Grievance

A grievance is an alleged violation of a specific provision of these Policies that adversely affects the employee and that contains all of the information listed in the "Statement of the Grievance" below. The following procedure applies to all City employees, unless: the employee is covered by a grievance procedure in an MOU; another dispute resolution procedure applies to the dispute; or a discipline policy and procedure applies. The grievance procedure cannot be utilized to challenge the content of a performance evaluation.

B. Statement of the Grievance

A concern is not a grievance unless the affected employee is able to state each of the following: the date of the alleged violation; the specific provision(s) of these Policies that were allegedly violated; a description of all facts regarding how the alleged violation occurred; and a list of all persons who are witnesses or are involved. The grievant may use a City form to make the Statement of the Grievance. A Statement of the Grievance must be signed by the employee filing the grievance to certify that it is filed in good faith.

C. Timelines

Failure of the City to comply with the time limits of the grievance procedures allows the grievant to appeal to the next level of review. Failure of the grievant to comply with the time limits of the grievance procedures constitutes settlement and resolution of the grievance on the basis of the last disposition. The parties may extend time limits by mutual written agreement in advance of a deadline.

D. Procedures

1. Step I Informal Resolution with Supervisor

The employee must first work in good faith to resolve the grievance informally through discussion with his/her immediate supervisor no later than 15 calendar days after the grievant first became aware of the facts or circumstances resulting in the filing of the grievance. The immediate supervisor shall hold discussions and attempt to resolve the matter within 15 calendar days after the presentation of the grievance.

2. Step II Department Director

If the employee believes that the grievance has not been resolved through Step I, the employee may submit a written Statement of the Grievance to his/her Department Director. The employee must submit the Statement of the Grievance within 15 calendar days after the Step I discussion with his/her immediate supervisor or 28 calendar days after grievant first became aware that a grievance has occurred, whichever is later.

The written Statement of the Grievance should include: (1) a description of the specific grounds of the grievance, including names, dates, and places necessary for a complete understanding of the grievance; (2) the provisions of these Policies which are alleged to have been violated; (3) the reasons why the immediate supervisor's proposed resolution of the problem is unacceptable; and (4) the specific actions requested of the City which will remedy the grievance.

The Department Director shall consider, discuss the grievance with the grievant, and/or investigate as he/she deems appropriate, and shall, within 15 calendar days of receipt of the written Statement of the Grievance, submit his/her decision in writing to the grievant. If the Department Director does not respond within the time limits, the grievant may appeal to the next level.

3. Step III Administrative Services Director

If the employee believes that the grievance has not been resolved through Step II, the employee may appeal the grievance decision of the Department Director to the Administrative Services Director. Such appeal must be filed within 15 calendar days of the date of the Department Director's written decision.

The statement of appeal shall include a copy of the original grievance and a clear, concise statement of the reasons for the appeal to Step III.

The Administrative Services Director shall consider, discuss the grievance with the grievant, and/or investigate as he/she deems appropriate, and shall, within 15 calendar days of receipt of the written statement of appeal, submit his/her decision in writing to the grievant. The decision of the Administrative Services Director shall be final.

SECTION X: MISCELLANEOUS POLICIES

A. General Office Operations

1. Hours

Staff members assigned to public counters shall be ready to work and/or receive visitors during hours City Hall is open to the public, subject to available staffing.

2. Responding to Visitors

All public counter areas in all City facilities shall be kept clean and uncluttered, and counter areas should have general information available for distribution to visitors.

If the staff member whom a visitor wishes to see is not available, the visitor should be provided with any relevant material and a business card so they may contact the staff member with any follow-up questions.

Departments which have pre-prepared information packets should have such packets available for distribution.

3. Common Use Areas

Coffee areas and all lunchrooms located within City facilities are to be maintained in a neat, clean manner throughout the day. Each user is responsible for cleaning the area which he/she has used, including removing dishes, utensils, and paper before leaving the area.

Coffee makers are to be emptied and cleaned at the end of each day.

The administration copier/mail center shall be maintained in a neat and orderly fashion.

4. Maintenance of Professional Work Environment

- a. **Work Stations:** All work stations shall be kept neat, clean, and uncluttered. No boxes or supplies are to be stacked by desks or in aisles. An effort should be made

to put work-related items in binders for availability to others in the department without cluttering the work area.

- b. City Hall Conference Rooms: All conference rooms are to be cleaned after each use by the users. Use of conference rooms can be scheduled through the shared conference room schedules available through Microsoft Outlook or by contacting the Sr. Office Clerk in the reception area.
- c. Interruptions: Employees should refrain from interrupting other employees who are obviously in the course of work or meeting with another individual. Conversations conducted within the office area should be conducted so as to minimize the disruption to others.

B. Administrative Policies Related to Human Resources

The City of Hercules maintains a variety of Administrative Policies some of which are related to Human Resources and Personnel. To obtain a copy of an Administrative Policy go to the City's Intranet Site: <http://intranet/Policies.htm> or contact the Human Resources Department.

While this is not an all-inclusive listing, the below referenced Administrative Policies were reviewed and updated or newly created during the 2020 update of the Personnel Rules and Regulations:

1. **Administrative Policy #3** – Anti-Smoking Policy
2. **Administrative Policy #12** – Limitations on Political Activity
3. **Administrative Policy #13** – Use of City Equipment or Resources
4. **Administrative Policy #14** – Travel Expense Policy
5. **Administrative Policy #31** – Computer Loan Program
6. **Administrative Policy #42** – Recruitment & Selection Procedure
7. **Administrative Policy #43** – Personnel Files
8. **Administrative Policy #44** – Equal Employment Opportunity and Discrimination, Harassment and Retaliation Prevention Policy; Complaint Procedure
9. **Administrative Policy #46** – Prohibitions on Drugs and Alcohol in the Workplace
10. **Administrative Policy #47** – Catastrophic Leave Program
11. **Administrative Policy #50** – Violence in the Workplace
12. **Administrative Policy #54** – FMLA and Leave do to Pregnancy, Childbirth, or Related Medical Conditions
13. **Administrative Policy #58** – Vacation Sell Back Request
14. **Administrative Policy #65** – Compensation and Payroll Practices
15. **Administrative Policy #69** – Limitations on Outside Employment

Other Administrative Policies related to Human Resources that may be of interest:

1. **Administrative Policy #48** – Consequences of Poor Work Performance
2. **Administrative Policy #52** – Driving While on City Time
3. **Administrative Policy #53** – Education Reimbursement
4. **Administrative Policy #56** – Professional Memberships, Conferences, Meetings and Expense Reports
5. **Administrative Policy #15** – Temporary Emergency Telecommuting Policy

CITY OF HERCULES
PERSONNEL RULES AND REGULATIONS

EMPLOYEE ACKNOWLEDGMENT

I have received a copy of the City of Hercules Personnel Rules and Regulations. I understand that I am responsible for familiarizing myself with information in the Personnel Rules and Regulations and understand that the Personnel Rules and Regulations describe the general personnel rules and regulations of the city which govern my employment. In addition, I understand that the city has other Administrative Policies related to human resources policies and procedures and that I have been informed on how to access the Administrative Policies of the City of Hercules.

I also understand that the information, policies and benefits described in the Personnel Rules and Regulations and various Administrative Policies may be modified or amended from time to time.

Date: _____

Signature: _____

Print Name: _____