CITY OF CALISTOGA PERSONNEL RULES: APPENDIX B

POLICY AND COMPLAINT PROCEDURE AGAINST HARASSMENT, DISCRIMINATION, AND RETALIATION

I. Purpose

The purpose of this Policy is to: establish a strong commitment to prohibit and prevent discrimination, harassment, and retaliation in employment; to define those terms; and to set forth a procedure for investigating and resolving internal complaints. The employer encourages all covered individuals to report—as soon as possible— any conduct that is believed to violate this Policy.

II. Policy

The City has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law to violate this Policy. A single act can violate this Policy and provide grounds for discipline or other appropriate sanctions.

Harassment or discrimination against an applicant, unpaid intern, volunteer, or employee by a supervisor, management employee, City Council member, co-worker, member of the public, or contractor on the basis of race, religion, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability, medical condition, genetic characteristics or information, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other protected classification as defined below, will not be tolerated.

This Policy applies to all terms and conditions of employment, internships, and volunteer opportunities, including, but not limited to, selection, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, and training.

Disciplinary action or other appropriate sanction up to and including termination will be instituted for prohibited behavior as defined below.

Any retaliation against a person for filing a complaint or participating in the complaint resolution process is prohibited. Individuals found to have retaliated in violation of this Policy will be subject to appropriate sanction (in the case of an official or contractor) or disciplinary action up to and including termination (in the case of an employee or volunteer).

III. Definitions

A. Protected Classifications: This Policy prohibits harassment or discrimination because of an individual's protected classification. "Protected Classification" includes race, religion, religious creed, color, sex (including gender, gender identity, gender expression, transgender, pregnancy, and breastfeeding), national origin, ancestry, citizenship status, disability (physical or mental), medical condition, genetic characteristics or information, marital status, age (40 or over),

sexual orientation (including homosexuality, bisexuality, or heterosexuality), military or veteran status, or any other classification protected by law.

B. Policy Coverage: This Policy prohibits the City, City Council members, employees, interns, volunteers, or contractors from harassing or discriminating against the following individuals covered by this policy: applicants, City Council members, employees, unpaid interns, volunteers, members of the public, or contractors (collectively, "covered individuals") because of: 1) an individual's protected classification; 2) the perception that an individual has a protected classification; or 3) the individual associates with a person who has or is perceived to have a protected classification.

C. Discrimination: This Policy prohibits treating individuals differently because of the individual's protected classification, actual or perceived; because the individual associates with a person who is a member of a protected classification, actual or perceived; or because the individual participates in a protected activity as defined in this Policy.

D. Protected Activity: This Policy prohibits discrimination, harassment or retaliation because of an individual's protected activity. Protected activity includes: making or supporting a complaint under this policy; opposing violations of this policy; participating in an investigation pursuant to this policy; making a request for or receiving an accommodation for a disability; or making a request for or receiving accommodation for religious beliefs or practices.

E. Harassment may include, but is not limited to, the following types of behavior that is taken because of a protected classification. Note that harassment is not limited to conduct that the City's employees take. Under certain circumstances, harassment can also include conduct taken by those who are not employees, such as City Council members, persons providing services under contracts, or even members of the public:

1. Speech, such as epithets, derogatory comments or slurs, and propositioning on the basis of a protected classification. This might include inappropriate comments on appearance, including dress or physical features, or dress consistent with gender identification, or race-oriented stories and jokes.

2. Physical acts, such as assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to physical acts.

3. Visual acts, such as derogatory posters, cartoons, emails, pictures, or drawings related to a protected classification.

4. Unwanted sexual advances, requests for sexual favors and other acts of a sexual nature, where submission is made a term or condition of

employment, where submission to or rejection of the conduct is used as the basis for employment decisions, or where the conduct is intended to or actually does unreasonably interfere with an individual's work performance or creates an intimidating, hostile, or offensive working environment. Sexually harassing conduct need not be motivated by sexual desire.

F. Guidelines for Identifying Harassment: To help clarify what constitutes harassment in violation of this Policy, use the following guidelines:

1. Harassment includes any conduct which would be "unwelcome" to an individual of the recipient's same protected classification and which is taken because of the recipient's protected classification. But, harassment can also be unwelcome or offensive conduct based upon a protected classification, even where the recipient is of a different protected classification.

2. It is no defense that the recipient appears to have voluntarily "consented" to the conduct at issue by failing to protest the conduct. A recipient may not protest for many legitimate reasons, including the need to avoid being insubordinate or to avoid being ostracized or subjected to retaliation.

3. Simply because no one has complained about a joke, gesture, picture, physical contact, or comment dòes not mean that the conduct is welcome. Harassment can evolve over time. Small, isolated incidents might be tolerated up to a point. The fact that no one is complaining now does not preclude anyone from complaining if the conduct is repeated in the future.

4. Even visual, verbal, or physical conduct between two individuals who appear to welcome the conduct can constitute harassment of a third individual who observes the conduct or learns about the conduct later. Conduct can constitute harassment even if it is not explicitly or specifically directed at a particular individual.

5. Conduct can constitute harassment in violation of this Policy even if the individual engaging in the conduct has no intention to harass. Even well-intentioned conduct can violate this Policy if the conduct is directed at, or implicates a protected classification, and if an individual of the recipient's same protected classification would find it offensive (e.g., gifts, over attention, endearing nicknames).

G. Retaliation: Any adverse conduct taken because an applicant, employee, or contractor has reported harassment or discrimination, or has participated in the complaint and investigation process described herein, is prohibited.

H. Adverse conduct includes but is not limited to: disciplinary action, counseling; taking sides because an individual has reported harassment or discrimination, spreading rumors about a complaint, shunning and avoiding an individual who reports harassment or discrimination, or real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination. The following individuals are protected from retaliation: those who make good faith reports of harassment or discrimination, those who associate with an individual who is

involved in reporting harassment or discrimination, and those who participate in the complaint or investigation process.

IV. Complaint Procedure

A. A covered individual who believes he or she has been harassed may make a complaint verbally or in writing with any of the following. There is no need to follow the chain of command:

1. Immediate supervisor;
2. Any supervisor or manager within or outside of the department;
3. Any Department director;
4. Director of Administrative Services; or
5. City Manager;
6. City Attorney (in the instance of a complaint by or against the City Manager or a City Council Member (or other official); or
7. City Council (in the instance of a complaint against the City Manager, City Attorney, or a City Council Member)

B. Any supervisor or department director who receives a complaint concerning alleged violations of this Policy (collectively referred to herein as "harassment complaint") should immediately notify the Director of Administrative Services or the City Manager, or with respect to a complaint involving a City Council member or the City Manager, the City Attorney.

C. Upon receiving notification of a harassment complaint, the Director of Administrative Services shall complete and/or delegate the following steps. If the Director of Administrative Services is an accused, the City Manager will complete and/or delegate the following steps. If the City Manager or a City Council member is an accused, the City Attorney (or designee) shall complete and/or delegate the following steps:

1. Provide the complainant with a timely response indicating that the complaint has been received and that a fair, timely, and thorough investigation will be conducted.
2. Timely authorize and supervise a fair and thorough investigation of the complaint by impartial and qualified personnel and/or investigate the complaint. The investigation will afford all parties with appropriate due process and include interviews with: a) the complainant; b) the accused harasser; and c) other persons who have relevant knowledge concerning the allegations in the complaint.

3. Review the factual information gathered through the investigation to reach a reasonable conclusion as to whether the alleged conduct constitutes harassment, discrimination, or retaliation under this Policy giving consideration to all factual information, the totality of the circumstances, including the nature of the conduct, and the context in which the alleged incidents occurred.

4. Timely report a summary of the determination as to whether harassment occurred to appropriate persons, including the complainant, the alleged harasser, the supervisor, and the department head. If discipline (or sanctions) is imposed, the level of discipline (or sanctions) will not be communicated to the complainant.

5. If conduct in violation of this Policy occurred, take or recommend to the appointing authority prompt and effective remedial action. The remedial action will be commensurate with the severity of the offense.

6. Take reasonable steps to protect the complainant from further harassment, discrimination, or retaliation.

7. Take reasonable steps to protect the complainant from retaliation as a result of communicating the complaint.

D. The City takes a proactive approach to potential Policy violations and will conduct an investigation if its supervisors, or managers become aware that harassment, discrimination, or retaliation may be occurring, regardless of whether the recipient or third party reports a potential violation.

E. Option to report to outside administrative agencies: An individual has the option to report harassment, discrimination, or retaliation to the U.S. Equal Employment Opportunity Commission (EEOC) or the California Department of Fair Employment and Housing (DFEH). These administrative agencies offer legal remedies and a complaint process. The nearest offices are listed in the government section of the telephone book or employees can check the posters that are located on employer bulletin boards for office locations and telephone numbers.

V. Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate and the duty to take effective remedial action. As a result, confidentiality will be maintained to the extent possible. An employee who is interviewed during the course of an investigation is prohibited from attempting to influence any potential witness while the investigation is ongoing. An employee may discuss his or her interview with a designated representative. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or court order.

VI. Responsibilities

A. Each employee, volunteer, intern, contractor, or City Council member (or other official) is responsible for:

1. Treating all individuals in the workplace or on worksites with respect and consideration.

2. Modeling appropriate behavior that conforms with this policy.

3. Participating in periodic training.

4. Cooperating with the employer's investigations by responding fully and truthfully to all questions posed during the investigation.

5. Taking no actions to influence any potential witness while the investigation is ongoing.

6. Reporting any act he or she believes in good faith constitutes harassment, discrimination, or retaliation as defined in this policy, to his or her immediate supervisor, department director, or to the Director of Administrative Services or another manager, or to the City Manager, or to the City Attorney (e.g., for complaints against the City Manager or a City Council Member (or other official).

B. In addition to the responsibilities listed above, managers and supervisors are responsible for:

1. Informing employees of this Policy.

2. Taking all steps necessary to prevent harassment, discrimination, or retaliation from occurring.

3. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.

4. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as removing inappropriate pictures or correcting inappropriate language.

5. Following up with those who have complained to ensure that the behavior has stopped and that there are no reprisals.

6. Informing those who complain of harassment or discrimination of his or her option to contact the EEOC or DFEH regarding alleged policy violations.

7. Assisting, advising, or consulting with employees and the Director of Administrative Services or City Manager regarding this policy and Complaint Procedure.

8. Assisting in the investigation of complaints involving employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with the City's Personnel Rules and/or applicable Memorandum of Understanding, up to and including discharge.

9. Implementing appropriate disciplinary and remedial actions.

10. Reporting potential violations of this policy of which he or she becomes aware, regardless of whether a complaint has been submitted, to the Director of Administrative Services, another department director or manager, the City Manager, or the City Attorney (e.g., for complaints against the City Manager or a City Council Member).

11. Participating in periodic training and scheduling employees for training.

VII. Dissemination of Policy

All employees, volunteers, interns, contractors, and City Council Members (or other official) shall receive a copy of this policy at the time they are hired or begin service for the City. The policy may be updated from time to time and redistributed with a form for the individual to sign and return acknowledging that the individual has received, read, and understands this policy.

ACKNOWLEDGMENT OF RECEIPT OF ANTI-HARASSMENT POLICY

I, hereby acknowledge that I have received a copy of the City of Calistoga's Policy and Complaint Procedure against Harassment, Discrimination, and Retaliation, and that I am responsible for reading and understanding this Policy, and that I will comply with its requirements.

PRINT NAME: _____

SIGNATURE: _____

DATE: _____

The signed form will be placed in the individual's personnel file at the City.

APPENDIX C

ALCOHOL AND DRUG ABUSE POLICY

The City of Calistoga is concerned about employees being impaired for the performance of duty or under the influence of alcohol, drugs and/or controlled substances at work, and the use of such substances in the work environment. The City's position is that, any measurable amount of drugs or alcohol in an employee's system while on City time is counter-productive to the goals and mission of City. The City is also concerned about the possession, distribution, purchase or sale of illegal drugs and controlled substances in the workplace.

These activities may adversely affect work performance, efficiency, safety and health. In addition, they constitute a potential risk to the welfare and safety of other, risks of injury to other persons, property loss or damage, or negative image for the City.

The City's policy is designed to promote a drug-free workplace and to comply with applicable state and federal laws. In recognition of the public service responsibilities entrusted to City employees, and because drug and alcohol usage can hinder a person's ability to perform duties safely and effectively, the following Policy on drug and alcohol testing is hereby adopted by the City.

Section 1. Policy Purpose

This Policy establishes the rules and procedures regarding the use of drugs and/or alcohol as it pertains to employment and the procedures to be used to test for drug and/or alcohol use in the following three circumstances: 1) pre-employment testing of external applicants for City special need jobs; 2) reasonable suspicion testing of current employees; and 3) post-accident testing of current employees.

The City provides reasonable accommodations as required by law to those employees whose drug or alcohol problem classifies them as disabled. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those whose continued substance abuse, even if enrolled in counseling or rehabilitation programs, results in performance deficiencies, danger to the health and safety of others and themselves, and/or violations of federal, state or City laws and/or policies.

Section 2. Violation of Policy

All persons covered by this Policy should be aware that violations of the Policy may result in discipline, up to and including termination, or in not being hired.

Section 3. Individuals Covered

This Policy applies to external applicants for City special needs jobs and to all employees. A copy of this Policy will be given to all employees. Notices of this Policy will be posted on all Department bulletin boards and copies are available in the Administrative Services Department.

Section 4. Confidentiality

Any information about an employee's use of prescription or non-prescription medication, the results of any pre-employment or reasonable suspicion drug and/or alcohol testing, and/or an employee's past or present participation in rehabilitation or treatment for substance abuse shall be considered confidential personnel information. The information received in enforcing this Policy shall be disclosed only as necessary for: disciplinary actions and appeals; interactive process meetings and reasonable accommodation efforts, or resolving legal issues. Any reports or test results generated pursuant to this Policy shall be stored in a confidential file, accessible only by those authorized to receive the information, and separate and distinct from the employee's general personnel file.

Section 5. Definitions

A. "Alcohol" shall mean the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

B. "Chain of Custody" shall mean procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen at the certified laboratory.

C. "City Equipment" shall mean all property and equipment, machinery and vehicles owned, leased, rented or used by City.

D. "Collection Site" shall mean a designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen to be analyzed. The City will select a Collection Site and require that the Collection Site comply with all methods of collection and Chain of Custody and provide documentation of compliance to the City.

E. "Designated Employer Representative (DER)" shall mean the Director of Administrative Services or designee.

F. "Drug or Drugs" shall mean any controlled substance that is not legally obtainable under State or Federal law, or a prescription drug obtained or used without benefit of a prescription by a licensed physician.

G. "Medical Review Officer (MRO)" shall mean a licensed physician with knowledge of drug abuse disorders as well as appropriate training to interpret and evaluate an employee's positive test results together with an employee's medical history and any other biomedical information. MRO reviews all negative and positive test results and interviews individuals

who tested positive to verify the laboratory report before the employer is notified. The City shall select a MRO who is a licensed physician.

H. "Prescription Drug" shall mean any substance that can lawfully be obtained or possessed pursuant to a prescription by a licensed physician.

I. "Positive Test" shall mean to have the presence of a drug or a drug metabolite and/or alcohol in a person's system that is equal to or greater than the levels allowed by this Policy in the confirmation test as determined by appropriate testing of breath, urine or blood specimen and which is determined by the MRO to be the result of the use of drugs and/or alcohol.

J. "Testing Laboratory" shall mean a Substance Abuse and Mental Health Services Administration (SAMHSA) certified testing laboratory.

K. "Substance Abuse Professional (SAP)" shall mean a licensed physician, social worker, psychologist, Employee Assistance Program (EAP) or certified National Association of Alcohol and Drug Abuse Counselors (NAADAC) with knowledge of and clinical experience in diagnosis and treatment of alcohol and controlled substance disorders. SAP determines whether an employee is "Fit for Duty" following an employee's refusal to test or failed alcohol or drug test, refers employee for a return to duty test and schedules unannounced follow up testing for a period of up to 36 months from the date the employee tested positive.

Section 6. Restrictions on the Use of Alcohol

Employees may not use, be under the influence, or possess alcohol under any of the following circumstances: while on City property, while performing their duties (whether or not on City property) or at any time when use of alcohol would impair, to any extent, the employee's ability to perform his/her duties or to operate any City equipment.

Section 7. Prohibition Against the Use of Unlawful Drugs

No employee shall possess, use, sell, transfer, manufacture, purchase or transport drugs or attempt to do so or report to work with unlawful drugs in his or her system. No employee shall possess, use, sell, transfer, manufacture, purchase or transport prescription drugs, or attempt to do so, or report to work with prescription drugs in his or her system, unless the prescription drug has been lawfully prescribed to the employee.

While the State of California has legalized the possession and use of limited amounts of marijuana for recreational use, marijuana remains classified as a Schedule I substance by the Drug Enforcement Agency (DEA) and the federal Controlled Substances Act. Therefore, the possession and use of marijuana—whether or not for recreational purposes-- remains illegal under federal law and regulations. While the passage of Proposition 64-the Adult Use of Marijuana Act, make it legal to possess and use marijuana for recreational purposes, it does not change the ability of employers to enact and enforce drug-free workplace rules and policies, and

it does not change employees' duties to comply with federal requirements (such as the Department of Transportation (DOT) regulations applicable to safety-sensitive positions and commercial drivers).

Section 8. Criminal Drug Statute Convictions

To fulfill its obligations under the Federal Drug-Free Workplace Act of 1988, the City requires any employee who is convicted of any criminal drug statute for a violation occurring in the workplace, to provide written notice of the conviction to the Department Director no later than five (5) days after the conviction. The City is also required, and will fulfill its obligations to educate employees on the harmful effects of using and abusing drugs and/or alcohol. As required by law, the City will notify federal contracting agencies within ten (10) days after receiving notice that an employee, directly engaged in performance of work on a federal contract, has been convicted of a criminal drug statute violation resulting from conduct occurring in the workplace.

Whenever the City has reason to believe that Federal, State or local drug laws are being violated, the City may refer the matter to the appropriate law enforcement agencies for investigation and possible criminal prosecution.

Independent contractors, or employees of independent contractors, working on City projects are required by law or contract to notify the City, the Administrative Services Director, or other Department Director of a drug and/or alcohol related conviction or positive test for drugs and/or alcohol. Said individuals will not be permitted to work on City projects.

Section 9. Medication Reporting Requirements

Employees shall, in the case of prescription drugs, ask the prescribing physician and/or, in the case of medication available over-the-counter, review product packaging, to determine whether the use of a prescription drug or over-the-counter medication may impair his/her ability to perform his/her normal job duties or to safely operate City equipment. Any employee taking any over-the-counter medication or prescription drug marked "do not drive," "do not operate heavy equipment" or similarly labeled, shall inform the appropriate Supervisor of the use of the medication or drug prior to reporting for duty.

In the case of prescription drugs, the Supervisor shall determine whether the employee may work, full duty or light duty, based on the written opinion of the employee's medical provider that the use of the medication may impair the employee's ability to perform specific duties. The Supervisor may, upon a determination that the employee is unable to safely perform his or her normal duties, or that a modified work assignment is not available, direct the employee not to work and to return home on paid leave or industrial leave if appropriate. If the employee's personal medical provider provides a written opinion that the use of the drug or medication will not impair the employee's ability to perform his/her normal duties, the Supervisor will allow the employee to perform those duties. Notices or communications required by this Section shall be confidential and disclosed only to the Supervisor and the other employees specifically authorized to receive information pursuant to this Policy.

Section 10. Indications for Alcohol and Drug Testing

A. Certain External Job Applicants – The City has a special need to require certain job applicants to take a drug and alcohol test after a conditional job offer has been given. Those applying for jobs classified by the City as safety sensitive positions (i.e., including, but not limited to, those jobs where individuals perform work that involves a danger to the public, including operating dangerous instrumentalities such as heavy trucks used to transport hazardous material, work regarding national security, work involving the enforcement of drug laws, and/or operating natural and liquefied natural gas pipelines), or those applicants seeking jobs which can directly influence children; must take and pass a mandatory drug and alcohol test as soon as practical following their acceptance of an offer of employment that is conditioned upon passing a pre-employment physical and drug and alcohol test.

Those external job applicants, described above, who:

- refuse to submit to testing, or attempt to tamper with or adulterate a test sample, will be considered to have refused to participate in the testing process and shall not be hired and will not be considered for employment for the certain positions described above for two years from the job applicant's refusal to participate in the testing process.
- test positive for drugs and/or alcohol or unauthorized prescription drug use shall not be hired and will not be considered for employment for the certain positions described above for two years from the applicant's last positive test.

B. Employees – the City may require an employee to submit to a drug and/or alcohol screen test under the following circumstances:

1. Following a work-related accident, incident or mishap that resulted in death, or injury requiring medical treatment away from the scene of the accident, or property damage, where drug and/or alcohol use by the employee cannot be ruled out as a contributing factor. See Exhibit A – Reasonable Suspicion Evaluation Form.

2. When a trained Supervisor has reasonable suspicion to believe, based upon specific and documented facts and observations that the employee may be under the influence of drugs and/or alcohol. See Exhibit A – Reasonable Suspicion Evaluation Form.

3. When a trained Supervisor has reasonable suspicion to believe, based upon specific and documented facts and observations, that the employee either possesses, uses, sells, transfers, manufactures, purchases or illegally transports alcohol, drugs and/or drug related paraphernalia or attempts to do so. See Exhibit A – Reasonable Suspicion Evaluation Form.

4. Follow-up testing for employees who have returned to work following a positive test and their participation in a drug and/or alcohol rehabilitation program.

5. When an on duty employee is contacted by a police officer who has reasonable suspicion to believe the employee is under the influence of alcohol or drugs or the employee has been involved in an on-duty vehicle-related incident and the officer suspects the employee is under the influence of drugs and/or alcohol.

C. Positive Test or Refusal to Test -- Employees who refuse to take a test after direction to do so, or who test positive, will be subject to discipline up to and including termination. External applicants who test positive or who refuse to take a test after direction to do so, will not be considered for employment for a safety sensitive position as described in this policy and will not be considered for such positions for two years from the applicant's last positive test. A refusal to test is defined as any of the following:

1. Not providing the City a written consent to take the test;

2. The individual does not supply enough quantity of the laboratory required sample for alcohol or drug testing without sufficient or valid medical explanation;

3. Tampering with a specimen or collection process;

4. Tardiness to reporting Collection Site after time allocated for individual to report, without reasonable explanation, as determined by the City;

Section 11. Drug and Alcohol Testing

A. Administration

1. The Director of Administrative Services or his/her designee is the Designated Employer Representative ("DER") and shall be responsible for overseeing implementation of this Policy and the testing procedures. The Director of Administrative Services will be responsible for reviewing all disciplinary actions resulting from violations of this Policy to ensure that the action proposed or taken is consistent with this Policy and the Personnel Rules.

2. The DER shall be responsible for the following:

i. Communications directly with the MRO and/or SAP and SAMHSA regarding any drug and/or alcohol tests;

ii. Overseeing testing programs;

iii. Providing training to Supervisors and Employees;

B. Procedures

1. Mandatory Reporting – Any employee who has reason to believe that another employee may be in violation of this Policy shall immediately notify his or her immediate Supervisor. The Supervisor should take whatever immediate action is deemed prudent to ensure the safety of the public and employees. Should the Supervisor have reasonable suspicion to believe, based upon specific and documented facts and observations, that the employee may be under the influence of drugs and/or alcohol, the employee should be immediately removed from the workplace and placed upon administrative leave with pay until such time as testing results confirm or refute the presence of drugs and/or alcohol. The Supervisor shall use the Reasonable Suspicion Evaluation Form (Exhibit A) to assist in making this determination.

2. Acknowledgement - No drug and/or alcohol test may be administered, sample obtained, or drug and/or alcohol test be conducted on any sample in the pre-employment context without the written acknowledgment of the applicant being tested. See Exhibit B Acknowledgement Form. Refusal of any applicant or employee to submit to testing, or attempt to adulterate or evade the testing process, will be viewed as insubordination and will subject the person to disqualification from employment or disciplinary action, up to and including, discharge. The City will pay the cost of all drug and/or alcohol tests required by this Policy.

3. Collection, Integrity and Identification

   A. After the applicant or employee has been advised about the reason for the test by the Supervisor, the applicant or employee will be properly identified and Collection Site personnel will explain the mechanics of the collection process.

   B. Procedures for urine collection will allow for individual privacy unless there is reason to believe the individual may alter or substitute the specimen to be provided. Samples will be tested for temperature and subject to other validation procedures as appropriate.

4. Chain of Custody

   A. Procedures for the storage and transportation of test specimens shall conform to the Mandatory Guidelines for Federal Workplace Drug Testing Programs promulgated by the Department of Health and Human Services as amended from time to time.

   B. The test laboratory shall maintain custody of the specimens.

5. Testing Methods – All tests will be screened using an immunoassay technique and for alcohol an Evidential Breath Testing (EBT) device. All presumptive positive drug tests will be confirmed using gas chromatography/mass spectrometry (GC/MS) and

all presumptive positive alcohol tests will be confirmed with a second EBT performed within 15 –30 minutes after the first EBT test is completed. The City will test for cannabinoids (marijuana), cocaine, amphetamines, opiates, barbiturates, benzodiazepines, and phencyclidine (PCP) as well as alcohol. Tests will seek only information about the presence of drugs and/or alcohol in an individual's system and will not test for any medical condition.

6. Notification – Any employee who tests positive will be notified by the MRO and will be given an opportunity to provide the MRO any reasons he or she may have that would explain the positive drug and/or alcohol test, other than the presence of alcohol or the illegal use of drugs. If the employee provides an explanation acceptable to the MRO that the positive drug or alcohol test result is due to factors other than the presence of drugs and/or alcohol in the test specimen, the positive test result will be disregarded and reported to the City as negative. Otherwise, the MRO will report the positive test result to the Designated Employee Representative or Human Resources Manager. Test results will only be disclosed to the extent expressly authorized by this Policy.

7. Split Sample Testing – An employee who has been subjected to drug and/or alcohol screening may request a split sample test be conducted at a certified laboratory chosen by the employee. All costs associated with an employee's decision to pursue split sample testing will be the full responsibility of the employee. The employee must adhere to the following procedures to maintain strict Chain of Custody of the sample and validity of the split sample test results:

   i. To request a split sample test to be conducted, the employee must submit his or her written request on the required Chain of Custody release form provided by the City's testing laboratory to the Designated Employee Representative.

   ii. The request will be forwarded to the testing laboratory used by the City facility. They will release the split sample to the certified lab chosen by the employee provided they have received the properly executed Chain of Custody release form.

   iii. The laboratory selected by the employee must be a certified laboratory per State regulations and authority and be able to conduct GC/MS method of testing for validation of testing results. Any method of testing performed on the split sample that is not the GC/MS method will be considered invalid.

   iv. The split sample test results will not be released to City without the employee's written consent.

Section 12. Rehabilitation

A. Voluntary Disclosure – Any employee with a drug and/or alcohol problem may voluntarily disclose the problem to the Designated Employer Representative who shall refer the employee to the Employee Assistance Program (EAP). An employee requesting this

assistance may, at the Supervisor's discretion, be transferred, given work restrictions, or placed on leave while receiving treatment and until the employee is drug and/or alcohol free. Where required by law, the City may have a duty to provide a reasonable accommodation. An employee's voluntary disclosure of a substance or alcohol abuse problem will not terminate any investigation, criminal or administrative, initiated prior to the disclosure.

Each employee is responsible for seeking assistance before the employee's drug and/or alcohol problem leads to a violation of this Policy, or before the employee is asked to submit to a reasonable suspicion drug and/or alcohol test.

B. Leave Time – Employees must use available sick time, vacation accrual, flex leave or request personal leave of absence without pay if time off from work is necessary for any treatment or rehabilitation program. The costs of long-term rehabilitation or treatment services, whether or not covered by the employee's medical plan, are the ultimate responsibility of the employee.

Section 13. Exceptions

This Policy shall not prevent a Safety Employee of the City Police Department from possessing drugs or alcohol as part of his/her official duties and when in furtherance of the mission of the Police Department.

EXHIBIT A

DRUG AND ALCOHOL TESTING POLICY

REASONABLE SUSPICION EVALUATION FORM

Employee Name:_____

Observation Date and Time:_____

Location of Employee:_____

Location of Supervisor(s):_____

Others present during activities or observations:_____

Incident(s) observed which give cause for reasonable suspicion:_____

_____

(Factors that may be considered in combination with those listed in 1 – 6 below include: takes needless risks, accident(s), disregard for others safety, unusual/distinct pattern of absenteeism/tardiness, increased high/low periods of productivity, lapses of concentration or judgment, etc.)

1. Presence of alcohol, alcohol containers, drugs, and/or drug paraphernalia (specify):

_____

2. Appearance:

___Flushed ___Inappropriate ___Disheveled

___Bloodshot/Glassy Eyes ___Tremors ___Profuse Sweating

___Dilated/Constricted Pupils ___Inappropriate Wearing of Sunglasses

___Dry-mouth Symptoms ___Runny Nose/Sores ___Smell of Alcohol

___Puncture Marks ___Other:

3. Behavior/Speech:

___Incoherent ___Slurred ___Unconscious

___Confused ___Slowed ___Hostile/Confrontation

___Agitated ___Sleeping on the job

___Other:

4. Awareness:

___Confused ___Mood Swings ___Euphoric

___Lethargic ___Paranoid ___Disoriented

___Lack of Coordination

___Other:

5. Motor Skills/Balance:

___Unsteady ___Swaying ___Falling

___Staggering ___Stumbling ___Reaching for Support

___Arms Raised for Balance

___Other:

6. Other observed actions or behaviors:_____

_____

_____

Supervisor's Comments:_____

_____

_____

_____

_____

Supervisor's Name:_____

Signature:_____ Date:_____

Supervisor's Name:_____

Signature:_____ Date:_____

Witness(es)' Name:_____ Date:_____

Signature:_____ Date:_____

EXHIBIT B

ALCOHOL AND DRUG ABUSE POLICY

ACKNOWLEDGEMENT OF SUBMISSION TO DRUG AND/OR ALCOHOL TESTING BY THE CITY OF CALISTOGA

I, _____[PRINT NAME], understand and acknowledge that I have reviewed a copy of the City of Calistoga Alcohol And Drug Abuse Policy (Policy). I hereby acknowledge that I am required to submit to drug and/or alcohol testing pursuant to the Policy.

I understand and acknowledge that information regarding the test results will be released to the City of Calistoga and that such information may be used as grounds for disciplinary action, up to, and including discharge.

I further understand and acknowledge that:

1. The City of Calistoga will pay the cost of all drug and/or alcohol tests required or requested by the City;

2. I may request in writing a copy of the results of any such test;

3. I may request that a split sample test be sent to a certified Testing Laboratory of my choice, consistent with the procedures outlined in the City of Calistoga Alcohol and Drug Abuse Policy, and that I will bear all of the costs associated with the split sample testing;

4. By signing this form, I hereby acknowledge that the split sample test results will be released to the City of Calistoga; and

5. I have the right to refuse to submit to such testing; however, refusal by me to submit to or cooperate at any stage of the testing shall be considered equivalent to a confirmed "positive" test for purposes of disqualification from employment and/or disciplinary action, up to and including discharge from my employment with the City of Calistoga.

6. I may also be required to execute forms at the Collection Site of Testing Laboratory.

With full understanding and knowledge of the foregoing, I hereby acknowledge my obligation to submit to drug and/or alcohol testing conducted by the clinics and/or Testing Laboratory selected by the City of Calistoga.

I have read the above acknowledgement and certify that I have signed this document with full knowledge and understanding of its contents.

Signature:_____

Date:_____

City and State:_____

Witness Signature_____ Date_____

APPENDIX D: FAMILY AND MEDICAL LEAVE POLICY

I. Statement of Policy

To the extent not already provided for under current leave policies and provisions, the City of Calistoga will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA"), and the California regulations implementing the California Family Rights Act ("CFRA"), including Pregnancy Disability Leave ("PDL"). Unless otherwise provided by this policy, "leave" under this policy shall mean leave pursuant to the FMLA, CFRA, and/or PDL. Unless otherwise provided by law, the City will run each employee's FMLA and CFRA leaves concurrently.

II. Definitions

A. "12-Month Period" means a rolling 12-month period measured backward from the date leave is first taken and continuous with each additional leave day taken.

B. "Single 12-month period" means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date.[1]

C. "Four month" maximum leave for PDL means four months, or the working days in one-third of a year or 17 1/3 weeks, depending on the period(s) of actual disability.

D. "Child" means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child.

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

E. "Parent" means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.

F. "Spouse" means a husband or wife as defined or recognized under California State law for purposes of marriage. "Spouse" also includes registered domestic partners and same-sex partners in marriage.

G. "Domestic Partner," as defined by Family Code §§ 297 and 299.2, shall have the same meaning as "Spouse" for purposes of CFRA Leave.

H. "Serious health condition" means an illness, injury impairment, or physical or mental condition that involves:

1. Inpatient Care (i.e. an overnight stay or the expectation of an overnight stay and occupying a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom). A person is considered an "inpatient" when a health care facility formally admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; or

2. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

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

i) Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity, unless extenuating circumstances exist.. The first in-person treatment visit must take place within seven days of the first day of incapacity; or

ii) Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

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

c) Any period of incapacity or treatment for a chronic serious health condition. A chronic serious health condition is one which:

i) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse supervised by the provider;

ii) Recurs over an extended period of time; and

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

d) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider.

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

I. "Health Care Provider" means:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;

2. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;

3. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;

4. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;

5. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and

6. Any health care provider from whom an employer or group health plan's benefits manager will accept a medical certification of the existence of a serious health condition to substantiate a claim for benefits.

J. "Covered active duty" means: (1) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a

foreign country, or (2) in the case of a member of a reserve component of the Armed Forces (members of the U.S. National Guard and Reserves), duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.

K. "Covered Servicemember" means (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy and who was discharged within the previous five years.

L. "Outpatient Status" means, with respect to a covered servicemember, the status of a member of the Armed Forces assigned to either: (1) a military medical treatment facility as an outpatient; or (2) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

M. "Next of Kin of a Covered Servicemember" means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.

N. "Serious Injury or Illness": (1) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the servicemember in the line of duty on active duty that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. A serious injury or illness may also result from the aggravation of a pre-existing condition in the line of duty on active duty; or (2) in the case of a veteran, means an injury or illness that was incurred in the line of duty when the veteran was on active duty in the Armed Forces, including any injury or illness that resulted from aggravation of a preexisting condition in the line of duty on active duty. The injury or illness may manifest itself during active duty or may develop after the servicemember becomes a veteran, and is (a) a continuation of a serious injury or illness that was incurred or aggravated during active duty and rendered the servicemember unable to perform his/her duties of office, grade, rank, or rating, (b) a physical or mental condition for which the veteran received a U.S. Department of Veterans Affairs Service Related Disability Rating of 50 percent or greater and the need for care is related to that condition, (c) a physical or mental condition because of disability or disabilities related to military service that substantially impairs the veteran's ability to work, or would do so absent treatment, or (d) any injury for which the veteran has been

enrolled in the Department of Veterans' Affairs Program of Comprehensive Assistance for Family Caregivers.

III. Reasons for Leave

Leave is only permitted for the following reasons:

1. The birth of a child or to care for a newborn of an employee;

2. The placement of a child with an employee in connection with the adoption or foster care of a child;

3. Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition;

4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position (i.e., an employee is unable to perform any one or more of the essential functions of his/her position);

5. Leave for a "qualifying exigency" may be taken arising out of the fact that an employee's spouse, son, daughter, or parent is on covered active duty or call to active duty status (under the FMLA only, not the CFRA). For qualifying exigency leave, a "son or daughter" means an employee's biological, adopted, foster or step-child, a legal ward, or a child in which the employee stands in loco parentis (in place of a parent). The son or daughter may be of any age; or

6. Leave to care for a spouse, son, daughter, parent, or "next of kin" who is a covered servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA). For military caregiver leave, a "son or daughter of a covered servicemember" means the covered servicemenber's biological, adopted, or foster child, step-child, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age.

Employees who misuse or abuse FMLA leave may be disciplined up to and including termination. An employee who fraudulently obtains or uses CFRA leave is not protected by the CFRA's job restoration or maintenance of health benefits provisions.

IV. Employees Eligible for Leave

A. An employee is eligible for leave if the employee:

1. Has been employed for at least 12 months; and

2. Has worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

If an employee is not eligible for CFRA leave at the start of a leave because the employee has not met the 12-month length of service requirement, the employee may nonetheless meet this requirement while on leave, because leave to which he/she is otherwise entitled counts toward length of service (although not for the 1,250 hour requirement). The City will designate the portion of the leave in which the employee has met the 12-month requirement as CFRA leave.

B. An employee is eligible for PDL upon commencement of employment. There is no length-of-service requirement for PDL.

V. Amount of Leave

A. Leave Entitlement

1. Eligible employees are entitled to a total of 12 workweeks of leave during any 12-month period (or 26 weeks to care for a covered servicemember in a single 12-month period). Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

2. Eligible employees are entitled to take up to four months of PDL per pregnancy. Part-times employees are entitled to leave on a pro rata basis. PDL does not need to be taken in one continuous period of time.

B. Minimum Duration of Leave

1. If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks' duration on any two occasions.

2. If leave is requested to care for a child, parent, spouse or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

C. Parents or Spouses Both Employed by the City

1. In any case in which both parents are employed by the City and are entitled to leave, the aggregate number of workweeks of CFRA leave to which both may be entitled may

be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave). Similarly, where married spouses both work for the City, they may be limited to a total of 12 weeks of FMLA leave for bonding leave.

2. In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember under FMLA.

3. Except as noted above, this limitation does not apply to any other type of leave under this policy.

VI. Employee Benefits While on Leave

A. Leave under this policy is unpaid. While on family and medical care leave, employees will continue to be covered by the City group health insurance to the same extent that coverage is provided while the employee is on the job for up to 12 weeks each leave year for FMLA and/or CFRA qualifying events. If the employee is disabled by pregnancy, coverage will continue for up to 4 months for each pregnancy (as opposed to each leave year). In the event an employee is disabled by pregnancy and also uses leave under the CFRA, the City will maintain the employee's group health benefits while the employee is disabled by pregnancy (up to four months or 17 1/3 weeks) and during the employee's CFRA leave (up to 12 weeks).

B. Employees may make the appropriate contributions for continued coverage under the preceding non-health benefit plans by payroll deductions or direct payments made to these plans. Depending on the particular plan, the City will inform the employee whether the premiums should be paid to the carrier or to the City. An employee's coverage on a particular plan may be dropped if he or she is more than 30 days late in making a premium payment. However, the employee will receive a notice at least 15 days before coverage is to cease, advising the employee that he or she will be dropped if his or her premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

C. If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover group health care premiums through deduction from any sums due the City (e.g. unpaid wages, vacation pay, etc.).

VII. Substitution of Paid Accrued Leaves

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and may also require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

If an employee is receiving a paid benefit (e.g., State Disability Insurance, State Paid Family Leave, or workers' compensation), an employee may, at his/her option, coordinate the use of paid time off, sick leave, or accrued vacation up to his/her regular salary amount.

A. Employee's Right to Use Paid Accrued Leaves Concurrently with Family Leave

Where an employee has earned or accrued paid vacation, administrative leave, or compensatory time, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

As for sick leave, an employee may elect or City may require an employee to use accrued sick leave only if:

1. The leave is for the employee's own serious health condition; or

2. The leave is for another reason mutually agreed upon between the City and the employee.

If the City and employee do not "mutually agree" to allow use of accrued sick leave to care for a family member, the City may still be required to allow the employee to use some sick leave for the employee to care for a family member with a serious health condition pursuant to the Protected Sick Leave law under Labor Code section 233 and the California Paid Sick Leave Law.

An employee receiving Paid Family Leave ("PFL") (e.g., through the Employment Development Department) to care for the serious health condition of a family member or to bond with a new child is not on "unpaid leave." Therefore the City may not require the employee to use sick leave, accrued vacation, or other accrued paid time off, while the employee is receiving PFL benefits.

B. City's Right to Require an Employee to Use Paid Leave When Using FMLA/CFRA Leave

Employees must exhaust their accrued leaves concurrently with otherwise unpaid FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave, with two exceptions:

1. Employees are required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and

2. Employees will only be required to use sick leave concurrently with FMLA/CFRA leave if the leave is for the employee's own serious health condition or another reason mutually agreed upon between the City and the employee.

C. City's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Leaves

If an employee takes a leave of absence for any reason which is FMLA/CFRA-qualifying, the City may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for peace officers and firefighters who are on leave pursuant to Labor Code § 4850.

D. City's and Employee's Rights if an Employee Requests Accrued Leave, Other Than Accrued Sick Leave, Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off, other than accrued sick leave, without reference to a FMLA/CFRA-qualifying purpose, the City may not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA/CFRA-qualifying, the City may require the employee to exhaust accrued leave as described above.

VIII. Medical Certification

A. Nature of Medical Certification

Upon the City's request, employees who request leave for their own serious health condition (or for pregnancy disability) or to care for a child, parent, spouse, or domestic partner who has a serious health condition, must provide written certification from the health care provider of the individual requiring care. The written certification must provide the contact information for the health care provider, including name, address, phone number, fax number, and type of medical practice/specialty.

1. If the leave is requested because of the employee's own serious health condition, the certification must identify the date, if known, on which the serious health condition commenced and the probable duration of the condition, and include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position due to his/her serious health condition.

2. If leave is requested because of the employee's family member is the patient, the certification should state the date, if known, on which the serious health condition commenced; the probable duration of the condition; an estimate of the amount of time which the health care provider believes the employee needs to care for the child, parent, domestic partner, or spouse, and a statement that the serious health condition warrants

the participation of the employee to provide care during a period of treatment or supervision of the child, parent or spouse.

3. If intermittent leave or a reduced schedule is requested, then the certification must also provide information that establishes the medical necessity of intermittent or reduced schedule leave and a) an estimate of the dates and duration of such treatment and periods of recovery (planned medical treatment); b) an estimate of the frequency and duration of the episodes of incapacity due to the serious health condition (unforeseeable leave for employee's own serious health condition); or c) an estimate of the frequency and duration of leave (unforeseeable leave for family member's serious health condition).

4. If the leave requested is PDL, the certification must include a statement that the employee is disabled due to pregnancy, the date on which the employee became disabled due to pregnancy, the probable duration of the period or periods of disability, and an explanatory statement that, due to disability, the employee is unable to work at all or is unable to perform any one or more of the essential functions of her position without undue risk to herself, the successful completion of her pregnancy, or to other persons.
5. Employees who request leave to care for a covered servicemember who is a son or daughter, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.

6. The first time an employee requests leave because of a qualifying exigency, the City may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member's active duty service. A copy of new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member.

B. Time to Provide a Certification

1. When an employee's leave is foreseeable and at least 30 days' notice has been provided, and if a medical certification is requested, the employee must provide it before the leave begins.

2. When this is not possible, the employee must provide the requested certification to the City within the time frame requested by the City (at least 15 calendar days), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

3. The City may require recertification from the health care provider if additional leave is requested or required. (For example, if an employee requests two weeks of leave, but

following upon expiration of two weeks' intermittent leave, the City will request and require the employee to provide a new medical certification.)

C. Consequences for Failure to Provide an Adequate or Timely Certification

1. If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. The City will provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good faith efforts) to cure any such deficiency. If the deficiencies specified by the City are not cured in the resubmitted certification, the City may deny the taking of the leave.

2. However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA/PDL leave until the required certification is provided.

D. Second and Third Medical Opinions – FMLA/CFRA Leave

If the City has a good faith, objective reason to doubt the validity of a certification the employee provides for his or her own serious health condition, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be final and binding on the City and the employee. An employee may request the City to provide, at no cost to the employee, a copy of the health care provider's opinions when a second or third medical opinion was obtained.

E. Intermittent Leave or Leave on a Reduced Leave Schedule

1. If an employee requests leave intermittently (e.g., a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.
2. If the employee's health care provider provides a medical certification that it is medically advisable for an employee to take intermittent leave or leave on a reduced work schedule due to pregnancy disability, the employee may, in some instances, be required to transfer temporarily to an available alternative position that meets the employee's needs. The alternative position need not consist of equivalent duties, but must have the equivalent rate of pay and benefits. The employee must be qualified for the position. The position must better accommodate the employee's leave requirements than her regular job.

IX. Employee Notice of Leave

A. Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. Except for qualifying exigency leave, if leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his or her supervisor as soon as possible that such leave will be needed. If the City determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

B. For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

X. Reinstatement upon Return from Leave

A. Right to Reinstatement

1. Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

2. If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and the City, the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.

B. Employee's Obligation to Periodically Report on His or Her Condition

Employees may be required to periodically report to the Director of Administrative Services (or Human Resources) on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

C. Fitness-for-Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition or pregnancy disability, which made the employee unable to perform his or her job, the employee must obtain and present a fitness-for-duty certification from his or her health care provider that the employee is able to perform the essential functions of the

employee's job and resume work. Failure to provide such certification will result in denial of reinstatement.

D. Reinstatement of "Key Employees"

The City may deny reinstatement to a "key" employee on FMLA/CFRA (i.e., a key employee is a salaried employee who is among the highest paid 10 percent of all employed by the City, and working within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

XI. Required Forms

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request for Family or Medical Leave Form". **NOTE: EMPLOYEES WILL RECEIVE A CITY RESPONSE TO THEIR REQUEST WHICH WILL SET FORTH CERTAIN CONDITIONS OF THE LEAVE.**

2. Medical certification—either for the employee's own serious health condition or for the serious health condition of a child, parent, spouse or registered domestic partner.

3. Authorization for payroll deductions for benefit plan coverage continuation.

4. Fitness-for-duty to return from leave form.

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[1] 29 C.F.R. § 825.127(e)(1).