

# ***PERSONNEL CODE OF THE CITY OF TOPEKA***

**Adopted by Resolution No. 7758**

**February 28, 2006 by the Topeka City Council**

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## ARTICLE I. ADMINISTRATION

### Section 1. Statement of Purpose.

The provisions of this chapter effectuate the mandate of City of Topeka Charter Ordinance, Section A2-3, calling for the adoption of a comprehensive personnel system. This Personnel Code shall provide, among other things, general employment policies; an employee development program; health and safety provisions; a classification and pay plan; the manner of completing appointments and promotions; compensation policies; employee benefits, including a flexible compensation plan and leaves of absence; separation policies and procedures; disciplinary actions; and a grievance procedure. Provided, however, that the terms and conditions contained in an agreement negotiated between the City and a recognized collective bargaining unit shall control in the event of a conflict with specific terms or conditions contained herein.

### Section 2. Definitions.

The following words, when used in this article, shall have the meaning as prescribed to them in this section unless the context shall clearly indicate otherwise:

- A. Base Pay - Base pay (or base salary) is the hourly or bi-weekly rate of pay received by an employee excluding any additional, authorized compensation such as overtime, allowance, reimbursement or benefit.
- B. Benefit-eligible - Refers to a position which is regular (continuing on a year-round basis), and is approved for benefit eligibility on relevant personnel schedules. A benefit-eligible position scheduled for a less than full-time schedule shall be eligible for benefits on a pro-rated schedule, affecting all allowable benefits for the position. A benefit-eligible position shall have access to the City's full benefit program as stated herein and be covered by all applicable

administrative rules and regulations. Unless otherwise provided by this Personnel Code, positions designated temporary or seasonal are not "benefit-eligible."

- C. Bumping - Is defined as the process under which a full-time benefit eligible employee may choose to move to a lower classification in the employee's class series in the event such employee is scheduled to be laid off pursuant to a lay-off plan developed and approved pursuant to this Personnel Code.
- D. Compensatory Leave - Is defined as leave which is earned at the rate of one and one-half (1½) times the overtime hours worked.
- E. Continuous Work Hours of Employment - Continuous hours of employment refers to the number of routine working hours an employee has been in a pay status subsequent to initial employment or following a promotion, transfer, demotion, salary adjustment, other status change or performance review. Continuous hours do not include overtime, compensatory time, or any other hours worked in addition to a normal schedule (typically forty (40) hours per week except for twenty-four (24) hour shift employees). Continuous employment hours may be broken by absences in a non-pay status, resulting in extension of eligibility for various benefits or other considerations, with the length of any extension being governed by the circumstances causing the non-pay status, at the discretion of the department head following a report and recommendation by the Human Resources Director.
- F. Demotion - The movement of an employee from a position in one class to a position in another class having a lower maximum salary rate because of disciplinary reasons, incapacity to perform work, inefficiency or unsatisfactory

work performance, by request of the employee, or lack of work at higher class.

- G. Department - The term "department" means a major operating functional unit of the executive branch of the City government established in or pursuant to the charter.
- H. Department Head - The term "department head" means the officially appointed head of any department, or an employee appointed as "acting" head of any department.
- I. Disciplinary Action - An action taken against an employee and which may range from a verbal reprimand up to and including termination.
- J. Division - A specific activity or program within the department.
- K. Eligible - A person who is a qualified candidate for a position.
- L. Eligibility List - A list of individuals who have qualified to fill a position in a class in accordance with provisions outlined in the Civil Service Chapter of this Personnel Code.
- M. Employee - Generally, a person employed and paid by the City to work on a regular and continuing basis.
- N. Exempt - Employees who work in a bona fide executive, administrative or professional capacity are exempt from the overtime provisions under the Fair Labor Standard Act (FLSA), Section 13(a).
- O. Immediate Family - That group of individuals defined to include one's spouse, child, son-in-law, daughter-in-law, step-child, parent, step-parent, spouse's parent, sibling, grandparent, grandchild or a family member of the immediate household permanently residing under the same roof.

- P. Non-exempt - Those positions designated by the Human Resources Director which do not meet the exemptions offered under the FLSA requiring overtime payment.
- Q. Outside Employment - Employment of any kind engaged in by a City employee for which compensation is received from a source other than the City.
- R. Overtime Hours - Are defined as the total hours worked including any paid leave or paid holiday which exceed the regularly scheduled hours established by the department head for a work week or work period for a classification. When the regularly scheduled hours exceed the FLSA limit, then overtime hours shall include those regular scheduled hours in excess of the FLSA limit.
- S. Overtime Pay - Is defined as additional pay earned at a pay rate of one-half (½) times the overtime hours worked.
- T. Pay Adjustment - Change of an employee's salary without change in duties or responsibilities.
- U. Pay Plan - A schedule of pay ranges in hourly, bi-weekly, and annual rates for each class within the City service.
- V. Pay (or Salary) Range - The minimum and maximum rates of pay established for each class.
- W. Pay Status - Pay status denotes an employee who is receiving compensation from the City either for services rendered or on an approved leave with pay. Eligibility for benefits generally is contingent on being in a pay status.
- X. Position - A group of current duties and responsibilities assigned or delegated by competent authority, requiring the full-time or temporary employment of one

person.

1. Regular: A position included in the adopted annual budget that is neither specified as temporary, nor limited for a period of less than the budget year; also any such position established during a given budget year unless the appointing authority certifies that such position will not be continued in the succeeding year's budget. The term "regular" does not confer upon any employee the right to retain a position for an indefinite period of time.
    - a. Full-Time Employment: Employment in a position which normally requires at least forty (40) hours work per week.
    - b. Part-Time Employment: Employment in a position which normally requires less than forty (40) hours work per week, but continues on a year-round basis.
  2. Temporary Employment: A full or part-time position whose term of employment is limited to one thousand forty (1,040) work hours in a calendar year.
  3. Seasonal Employment: The term "seasonal employment" designates temporary work which may be full- or part-time, usually associated with a specific program or purpose and for a finite period of time (such as holidays, vacations, seasonal activities, etc.).
- Y. Promotion - The advancement of an employee from their current position in one class to a vacated position in another class with increased duties and responsibilities and a higher pay range.

- Z. Reclassification - The movement of an employee or position to a different class because of a change in duties and responsibilities.
- AA. Recruiting Process - The process of advertising a vacant position and review of all applicants according to experience, education, training, and if applicable, test score, prior to interviewing and final selection.
- BB. Re-Employment List - The term "re-employment list" means a list of persons who have been but are no longer regular employees in a particular class and who are entitled to have their names certified for appointment to a position in that class without examination.
- CC. Reinstatement - The action by which a former City employee is reinstated into City service.
- DD. Supervisor - An employee below the department head level in charge of a work unit or other employees. Where no such level exists between an employee and the department head, the department head acts also as the supervisor.
- EE. Suspension - The temporary removal with or without pay of an employee from his/her designated position.
- FF. Termination - A complete separation from City employment resulting from discharge, resignation, retirement or death.
- GG. Transfer
1. lateral - The movement of an employee from one position to another position within the same classification.
  2. classification - The movement of an employee from one classification to another classification within the same pay range.

Section 3. Administrative Rules and Regulations.

- A. The Human Resources Director shall promulgate and issue administrative rules and regulations implementing and interpreting the policies, functions, and programs established by these administrative rules and regulations and any personnel related ordinances.
- B. Administrative rules and regulations will be developed, reviewed and implemented in accordance with the following:
  - 1. Proposed administrative rules and regulations shall reference the specific code section or ordinance subject to interpretation or implementation.
  - 2. The Human Resources Director shall conduct an open hearing for the purpose of review and receiving input from all affected employees prior to the time when such proposed administrative rules and regulations are submitted to the City Manager for approval. Notice of the hearing shall be posted in each department of the City. Employees may also submit written comments regarding the proposed administrative rules and regulations. The Human Resources Director shall establish a deadline for the submission of all written comments. This date shall be posted in each department.
  - 3. Proposed administrative rules and regulations shall be reviewed and approved for legal content and form by the City Attorney or his/her designee.
  - 4. Proposed administrative rules and regulations shall be reviewed and approved by the City Manager prior to implementation.

5. Proposed administrative rules and regulations shall not take effect until all employees affected by the proposed administrative rules and regulations receive notice in one of the following forms: individual handouts, wall postings, publication in employee newsletters, and/or in any manner reasonably determined by the Human Resources Director to notify the employee of the administrative rules and regulations. Employees shall be deemed to be notified if any of the above forms of notice are used. Actual notice is not required.

C. The Human Resources Director and City Manager may permit deviations from the administrative rules and regulations. Any approved deviation must be in writing from the Human Resources Director and City Manager.

Section 4. Independent Departmental Regulations.

In addition to the provisions stipulated herein, a department head shall have the authority to issue in writing reasonable rules and regulations concerning personnel matters which are not governed by the administrative rules and regulations promulgated by the Human Resources Director or are issued in order to govern matters which are unique to the department, provided that the department has granted an opportunity for employee input as described in Article I, Section 3, Paragraph B, Sub-paragraph 2, and such rules and regulations have been approved by the Human Resources Director and the City Manager and are consistent with the City's administrative rules and regulations. For disciplinary and termination purposes a violation of a departmental regulation shall be considered the same as a violation of the administrative rules and regulations.

Section 5. Records.

- A. Statement of Personnel to be Filed Annually by Department Heads. On or before December first of each year, each department head shall file with the Human Resources Director a statement of personnel and classification showing the total number of personnel to be employed during the ensuing year and the total wages estimated to be paid. This statement shall be in a format determined by the Human Resources Director.
- B. Departments/Divisions to Keep Payroll Records. Each City department/division shall be required to keep adequate records of all persons employed, their pay scale, time worked, accrued vacation and sick leave, accrued overtime or compensatory time and all absences for compensatory time. Such records shall be available at all times for inspection by the City Controller, City Treasurer, and the City Manager, or his/her designee.
- C. Number of Employees. The number of employees in a department shall be generally limited to the number listed on the detailed statement of personnel, with variances to be determined by the Human Resources Director, department head and City Manager as discussed in the administrative rules and regulations.

**ARTICLE II. EMPLOYMENT POLICIES**

Section 1. Scope.

All persons employed by the City shall be subject to the administrative rules and regulations and the provisions of this article except elected officials (unless specifically included by this Personnel Code), persons serving the City as consultants, independent contractors or contract employees, part-time employees of part-time boards and commissions, volunteers, those

employees specifically excluded by specific provisions of this Personnel Code and such other offices or positions that are regulated by the state law. However, if the terms of any labor contract between the City and employees of the City governed by this article are inconsistent with the provisions of this article, such terms shall be applicable in lieu of the conflicting provisions of this article. Furthermore, no salary increases granted by the City pay plan shall be or become effective for any employees covered by such an existing labor contract or for any employees subject to or involved in labor contract negotiations during the term of such contract or negotiations, unless specifically provided in a labor agreement.

Section 2. Equal Opportunity.

It is the policy of the City to provide all employees an equal opportunity without discrimination based on age, religion, sex, race, creed, color, disability, national origin or ancestry. This policy applies to all protected groups as required by law.

Section 3. Affirmative Action.

- A. General. Affirmative action shall be taken to employ and/or promote the "underemployed" to all occupations for which they possess necessary skills, education, experience, and interest. The Human Resources Director shall administer an affirmative action program in furtherance of the purposes established by this section.
  
- B. Trainee capacity. The Human Resources Director, and a City department or agency, with the approval of the City Manager, may establish work specifically for the purpose of assisting an employee (or employees) with strong interest and aptitude (including but not limited to socially, physically and/or economically

disadvantaged persons) in preparing to compete for other or higher level appointments. Such position(s) shall generally not exceed twelve (12) months duration per individual, may be established, as practicable, to facilitate EEO affirmative action goals, shall not exceed departmental budgets, with salaries and conditions of employment administered by the Human Resources Director and department head on a case-by-case basis.

Section 4. Compliance With Provisions.

Any person who knowingly violates or conspires to violate the provisions of this article or other related personnel regulations may be prosecuted pursuant to legal procedures consistent with the nature and extent of the infraction. In addition, an employee may be removed from employment for wanton disregard of administrative rules and regulations. Any prohibited contracts or official actions which constitute a conflict of interest shall be null and void.

Section 5. Residency Requirement.

- A. Specifications. Employees employed after December 31, 1981, by the City must be bona fide residents of Shawnee County, except at the time of appointment or employment when they need not be residents of Shawnee County, but shall establish residency in Shawnee County within six (6) months after completion of the initial employment probation. Employees employed in a public safety position, as defined by the Human Resources Director, shall, within six (6) months after completion of the initial employment probation, reside within the boundaries of Shawnee County at a location which is no more than thirty (30) minutes travel time from the assigned reporting station or office. Said residency shall be maintained within the boundaries of Shawnee County for the duration of

the employee's employment. The City Manager may grant one (1) extension not to exceed six (6) months for establishment of residency upon the request of an individual employee for good cause shown.

- B. Department Head Residency. Unless specifically approved by the City Council, all department heads hired after September 3, 2002 shall reside within the boundaries of the City of Topeka. All department heads hired prior to September 3, 2002 shall reside within the boundaries of Shawnee County. The salaries of those department heads who reside within the boundaries of Shawnee County but are not bona fide residents of the City or whose residences are not subject to consent to annex, shall be frozen at the rate of pay in effect on September 9, 2002. The salaries of those department heads who are or become bona fide residents of the City or whose residence are subject to a consent to annex shall not be frozen and those department heads will receive pay increases as allowed by the City of Topeka administrative rules and regulations.

Section 6. Personal Business.

Conducting personal business while on duty shall be prohibited.

Section 7. Conflict of Interest.

Except as may be specifically approved by the City Manager, a City employee shall not engage in any business, activity or transaction and shall not have a substantial financial or personal interest which would impair proper discharge of official duties, independence of judgment, or any action in the public interest. This standard shall apply to an employee's personal and outside activities including outside employment, investments, property holdings, financial interest and source of income. Furthermore, this standard shall apply to an employee's

actions related to the performance of official duties including acceptance of gifts; favors; action or inaction in inspection or regulation functions, disclosure of confidential information; or granting improper favors, services, promises or things of value. Employees shall notify their supervisor(s) of non-City business or personal activities which may constitute a conflict of interest with their position with the City. The department head shall notify the employee if such activity is acceptable and/or whether or not the activity shall be discontinued or otherwise corrected so as not to constitute a conflict of interest.

Section 8. Consideration Given to Achieve Promotion.

No person seeking employment or promotion within the City shall either directly or indirectly give, render or pay any money, service or valuable property to any person for, on account of, or in connection with any selection process, employment, proposed employment, promotion, proposed promotion, or any other placement or transfer.

Section 9. Political Activity.

- A. Employees choosing to seek election to the office of Mayor or City Councilmember shall request vacation leave or request a formal leave of absence from their position with the City for a period of time consistent with any campaign; and if elected, shall relinquish any position with the City.
- B. While on duty, employees shall refrain from active political campaigning of any type including wearing political buttons, distributing campaign materials or similar activities.
- C. Nothing herein shall be construed as preventing or prohibiting City employees from exercising their rights as citizens to express publicly or privately their opinions or to cast their votes.

Section 10. Employment of Relatives.

- A. It shall be the general policy of the City to avoid hiring relatives of present employees into positions in the same work units and departments. No person shall be hired, promoted or transferred to a department when, as a result, employees would be supervising a member of their immediate family, and/or working in the same unit with a member of their immediate family.
- B. Exceptions and variations may be granted by the City Manager upon consideration of a report on the matter by the Human Resources Director which evidences substantive, mitigating circumstances.

Section 11. Multiple City Positions by One Employee.

It shall be the policy to employ individuals in not more than one (1) benefit-eligible position at one time. Exceptions to this provision may be made by the City Manager following a review and report by the Human Resources Director, provided, however, that should a benefit eligible employee be permitted to hold an additional temporary position at an appropriate salary, such extra position shall be only on a sporadic or occasional part-time basis.

Section 12. Solicitation.

No peddling, soliciting or selling for charitable or other purposes is allowed on City property during working hours without the express approval of a department head.

Section 13. Work Breaks.

Two (2) fifteen (15) minute periods, one during each half day or half-shift, may be given to non-exempt employees for each working day of at least eight (8) hours. These are intended to allow employees a brief break from work activities for rest and relaxation. Work breaks are provided on employer-paid time and scheduled by each employee's supervisor. These breaks

may not be combined or accumulated to extend an employee's lunch period or to reduce the number of hours an employee is required to work each day. If abused, work breaks can be revoked by the employee's supervisor. The availability of work breaks is dependent on the type of work required of an employee and is subject to departmental rules and regulations.

Section 14. Alcohol and Drug Use in the Work Place.

- A. General Policy. No City employee is to be under the influence of, using, possessing, concealing, transporting, promoting or selling illegal drugs, controlled substances or unauthorized alcoholic beverages on the job, while performing City business, while operating City vehicles or equipment, or while on City premises. The use or being under the influence of a legally obtained, prescription drug or medication is also prohibited on the job where use of such medication may affect the safety of the employee, co-worker or members of the public. An employee who is under a physician's care and taking a prescribed medication that could affect performance must notify the employee's supervisor in order to address safety concerns.

Employees suspected of alcohol or drug usage on the job may at any time be required to undergo a medical examination pursuant to the provisions of Article III, Section 2 of this Code.

- B. Program Authorized. The Human Resources Director shall establish a drug screening program for employees and prospective employees of the City of Topeka. This program shall provide for drug screening procedures and related training and education for City employees suspected of substance abuse and applicants for positions, as designated by the Human Resources Director. Any

program established pursuant to this section shall be subject to the approval of the City Manager prior to its implementation.

- C. Failure to Comply. Failure to comply with any provision of this Personnel Code or the drug screening program shall be considered failure by the employee to fulfill a condition of employment resulting in disciplinary action as provided for in the drug screening program and other relevant ordinances.

Section 15. Attitude, Smoking, Attire.

A reasonably friendly and courteous attitude toward the public and co-workers shall be required of City employees. Similarly, employees are expected to deliver prompt, thorough and efficient service to the public to the best of their ability.

Regulations concerning refreshments, snacks, foods, etc., during working hours at work stations shall be issued at the discretion of each department head, pursuant to the needs of the operation. The City Manager may establish rules regulating smoking as provided by Section 78-226 *et seq.* of the Code of the City of Topeka.

All City employees are required to maintain a neat and clean personal appearance. Each employee shall be subject to specific departmental rules and regulations concerning acceptable attire, personal hygiene and grooming.

Section 16. Patents and Copyrights.

The City reserves the right to patent and exploit any new product, process or procedure of any kind which may be conceived or discovered by a City employee or employees if such concept or discovery was made using City resources, or during a time the employee was performing duties for the City, or through any activity sponsored by the City. In the event a patent is obtained or the discovery is commercialized, the City will pay to the inventor a total of

twenty-five percent (25%) of net profits from exploitation of the patent. Net profits shall be defined for this purpose as the proceeds from any or all marketing of the patented product, process or procedure, less all sums of any kind expended by the City to obtain, defend or exploit the patent. If two (2) or more employees work together in making a patentable discovery, the total share of net profits to be paid to the joint inventors shall be twenty-five percent (25%).

Section 17. Outside Employment.

Outside employment constitutes a City employee holding a second job with another employer. Outside employment by a full-time employee is permitted only when such outside employment:

- A. is considered secondary to service with the City;
- B. does not interfere with the performance of duties for the City; and
- C. no legal, financial or ethical conflict of interest results from such dual employment.

**ARTICLE III. EMPLOYEE DEVELOPMENT, HEALTH AND SAFETY**

Section 1. Employee Development.

- A. General. The purpose of the City's employee development program is to promote improved productivity in City services by reimbursing eligible employees for academic courses pursued through recognized educational institutions. The Human Resources Director shall establish the guidelines and procedures for implementation and administration of this program.
- B. Eligibility and Curriculum. The Human Resources Director shall issue regulations determining who is eligible to participate in the Educational Development Program, as well as outline the restrictions on the curriculum for which an

employee may be reimbursed.

- C. Funding. Department heads shall make every effort to budget for and approve reimbursement for academic courses for employees in their departments. Department heads shall approve courses based on departmental need and eligibility criteria established by the Human Resources Director.
- D. Reimbursement. Procedures and requirements for obtaining reimbursement for employee development programs, in addition to the limitations on such reimbursement, shall be determined by the Human Resources Director and delineated in the administrative rules and regulations.
- E. Time Away From Work. Employees attending a course pursuant to these policy guidelines during regular working hours may arrange with their supervisor to utilize compensatory time, vacation or leave time without pay for the time utilized to attend the course(s). Supervisors shall be responsible for making sure that employees attending courses are not to be paid by the City during the time the employee is away from work for such purposes, except as provided above. These requirements shall not apply if an employee is absent from work to attend a training seminar or conference approved in writing by the department head.

Section 2. Employee Health.

- A. General. The Human Resources Director shall establish procedures, rules and regulations concerning physical examinations and medical inquiries for all employees. These procedures and administrative rules and regulations shall comply with the provisions of the Americans with Disabilities Act and all other relevant laws and statutes, and shall be subject to the notice, review and approval

process required by Article I, Section 3 of this Personnel Code.

B. Physical Fitness Incentive.

1. General. The City encourages policies and practices which enable employees to achieve optimal physical and mental health. Consequently, the City shall offer incentives to all non-bargaining unit, benefit-eligible employees and those employees specified by union contract to attain an optimal level of fitness.
2. Reimbursement for Authorized Classes. The City shall be authorized to reimburse employees for a portion of the cost of authorized fitness classes at a rate and within the limits set forth in the administrative rules and regulations. Furthermore, the Human Resources Director shall establish a screening committee to evaluate and establish lists of qualified fitness classes and programs.
3. Imposition of Standards. To attain a desirable level of fitness, the City Manager may at his/her discretion establish minimum qualifying standards, establish smoking prohibitions or limitations, provide for periodic checks of physical ability, provide for mandatory participation in conditioning programs, and may provide for incentives (additional pay and/or other benefits) for achieving any desirable levels of fitness. Payment to employees shall be contingent upon budgetary allocations for this purpose, and if budgetary allocations are not available or become exhausted, lack of funds shall not preclude the continuing requirement of maintaining acceptable physical fitness levels.

Employees in public safety or other hazardous capacities may be required by the City Manager, as a condition of employment, to maintain an endurance, overall fitness, physical mobility/agility, and strength level consistent with the work of the classification.

C. Occupational Health Program.

1. The Human Resources Director shall develop procedures and administrative rules and regulations establishing an occupational health program for City employees which include provisions for providing the following services:
  - a. Mental and other health services referrals;
  - b. Management and supervisor health education;
  - c. Health history reviews; and
  - d. Periodic health screening.
2. All procedures and administrative rules and regulations established pursuant to this section shall comply with the provisions of the Americans with Disabilities Act and all other relevant laws and statutes, and shall be subject to the notice, review and approval process required by Article I, Section 3 of this Personnel Code.
3. The Human Resources Director shall issue regulations concerning the keeping of medical records for each employee.
4. Procedures for securing a medical release from an employee shall be determined by the Human Resources Director.
5. The Human Resources Director with the cooperation of the City Attorney

or his/her designee, where appropriate, shall issue regulations regarding physical examinations generally, providing for such things as the location of, fee for, timing of and any special requirements for reporting of physical examinations.

6. Scheduling Health Services. The Human Resources Director or his/her designee shall schedule personnel for initial employment physical examinations and health history reviews. Department/division heads shall submit information relating to an employee's physical status to the Human Resources Director.
7. Reporting Format and Form to be Established. The Human Resources Director shall establish a standard reporting format for all history health reviews, physical examinations and health screenings required by this article. The Human Resources Director shall develop a standard form which shall be approved as to form by the City Attorney or his/her designee.
8. Removal for Cause. Among those things considered removal for cause shall be any employee who:
  - a. Fails to report for or submit to a physical examination within thirty (30) days of receipt of notification to do so from his/her department head; or
  - b. Makes a false, inaccurate or misleading statement or fails to make a material statement which relates to any health problems which may affect work performance; or

c. Is not found to be in such physical condition as would enable the employee to perform all requirements of his or her job without the possibility of injury to themselves or other persons or property.

9. The Human Resources Director shall make available to City employees, free of charge the services of an employee assistance program for the purpose of arranging referrals or otherwise assisting employees with problems related to but not limited to family, job, alcohol/drug abuse and stressful life events. Such services shall be available by appointment and limited to short-term assessment and referral.

Section 3. Employee Safety.

A. General. It shall be the policy of the City to provide employees with a working environment free of recognized hazards that could potentially cause occupational injury or illness. Similarly, all City employees shall be responsible for implementation of job assignments in the safest manner possible.

B. Regulations. The Human Resources Director upon consultation with the City Attorney or his/her designee shall issue regulations to establish minimal guidelines for employee safety.

C. Protective Safety Gear. An employee may be required to wear protective clothing or any type of protective device as a condition of employment. The need and specification of any type of protective clothing or device required shall be determined by the City Attorney or his/her designee. The Human Resources Director shall issue regulations concerning the City's reimbursement of employees for personal protective safety gear.

Section 4. Group Insurance.

- A. Eligibility. All benefit eligible employees including elected officials and bargaining unit members, if their contract so specifies, shall be eligible to participate in the insurance coverage as provided by the City.
- B. Health insurance. The City may provide or contract for insurance benefits providing health, medical and/or disability coverage for eligible employees, their dependents and eligible retirees.
- C. Life insurance. The City may provide or contract for life insurance coverage for eligible employees and their dependents.
- D. Administration. The Human Resources Director shall develop administrative rules and regulations to administer health and life insurance programs as they are approved by the City Manager. Modifications or adjustments in the said programs shall receive the approval of the City Manager prior to implementation.
- E. Pay status and eligibility. An eligible employee shall be in a pay status for at least one (1) pay period in a calendar month, or the equivalent thereof, in order to be eligible to receive City contributions for insurance coverage.

**ARTICLE IV. INITIAL EMPLOYMENT AND COMPENSATION**

Section 1. Classification and Pay Plan.

- A. Required. The Human Resources Director shall maintain a classification and pay plan which provides an inventory by number of all positions in the service of the City. Such positions shall be grouped into classifications sufficiently alike in duties and responsibilities to be called by the same descriptive title, to be accorded the same pay scale and to require substantially and relatively similar

knowledge, skills and abilities.

The department head shall prepare and maintain position descriptions for each position authorized within the department budget. Copies of the position descriptions shall be filed with the Human Resources Director or his/her designee.

The position description shall state the major duties and responsibilities for the position and provide an estimation of the percentage of time the position spends in performing each major duty. The position description shall be numbered and shall be completed on a form provided by the Human Resources Director. Any change in a position description of a permanent nature shall be submitted to the Human Resources Director for a

determination as to whether the proposed change will impact or require an adjustment in the classification of the position.

- B. Administration of Plan. The classification and pay plan shall be updated and revised in accordance with regulations set forth by the Human Resources Director and subject to the approval of the City Manager.

Section 2. Compensation.

- A. Salary. All City employees shall be paid at the appropriate rate for the appropriate classification as provided in the City pay plan plus any authorized premium pay.

- B. Compensation System. The Human Resources Director shall, by rule and regulation, establish a compensation system for employees providing for matters such as, but not limited to, initial salary in a classification, pay rate adjustments, pay for part-time employees, limited service compensation, recruitment and relocation allowances, productivity incentives, and compensation received from

other sources.

C. Miscellaneous Reimbursements:

1. Professional Dues Payment. Upon the approval of an employee's department head, an employee may have professional organization dues paid by the City provided that the membership benefits the employee in completing assigned duties and responsibilities.
2. Use of Private Vehicle. Use of private vehicles for City business shall be approved by the department head. The reimbursement rate for use of a private vehicle shall be determined administratively.
3. Clothing and Cleaning Allowance. Any employee who is required as a condition of employment to wear and maintain a uniform or other special clothing may, subject to budgetary limitations, be eligible to receive an allocation of clothing, an allowance and/or a reimbursement for care and/or replacement of proper attire at the option of and pursuant to departmental policies. A lack of budgeted funds for the purpose of this provision shall not supersede a departmental policy which may require specific attire and/or uniforms for a given job, classification or type of work. Employees in occupations or capacities requiring non-uniform business clothing, including civil service employees, shall not be eligible for allowances or reimbursements under this section.
4. Tools and Equipment. Department heads may, at their discretion, establish departmental policies providing for and/or replacing professional tools and equipment to be used specifically for City business. These policies may

provide for the replacement of tools and equipment purchased and used by an employee specifically for City business.

5. Meals. An employee who may be required to attend a dinner, lunch or similar function wherein the employee would otherwise be required to pay for a meal may be reimbursed for such costs at the discretion of the department head or his/her designee. A department head may authorize payment of meals for an individual or group of individuals who have been invited to participate in a meeting or an activity which is to the benefit of the City.

Section 3. Probationary Period.

- A. General. The probationary period shall be regarded as an integral part of the selection and screening process and shall be utilized for closely observing the work of the employee and for replacing or reassigning an employee whose work does not meet the required work standards (as determined by the employee's supervisor(s) and/or department head).

1. Probation. All employees shall serve a probationary period of not less than one thousand forty (1,040) hours as described in sub-paragraph (a) and (b) of this paragraph.

- a. Initial probationary period shall mean the probationary period served by an employee on their first employment with the City without regard to the department in which the employee is employed unless the employee experiences a break in continuous employment with the City of more than one hundred twenty (120)

days. An employee terminated prior to the successful completion of the initial probationary period shall be considered a termination for just cause.

b. Promotion/classification/transfer/demotion probationary period shall mean the probationary period served by an employee when such employee is promoted, transferred, or demoted within a department or from one department to another in the City.

i. Performance evaluation probation shall mean a period of at least five hundred twenty (520) hours during which an employee is given an opportunity to improve his/her performance in order to remain within a specific position. Performance evaluation probation shall commence only after a special evaluation has been called pursuant to Article IX, Section 3, and the employee has received proper notice.

B. Duration. The initial probation period shall be at least one thousand forty (1,040) work hours in duration, except that such probationary period may be extended for up to a maximum of five hundred twenty (520) work hours at the request of a department head and with the approval of the Human Resources Director.

A promotion/demotion/classification transfer probationary period shall be at least one thousand forty (1,040) work hours in duration.

C. Failure To Complete The Probationary Period. An employee who does not successfully complete a probationary period resulting from a demotion may be

terminated from City employment.

An employee who does not successfully complete a probationary period resulting from a promotion or transfer shall be returned to his/her former position provided that the position remains vacant at the time the employee is determined not able to complete the probationary period. If the former position of the employee has been filled, the employee shall be placed in a comparable position within the department where he/she was formerly employed if such a vacant comparable position exists. In the event no such vacant comparable position exists within the department, the employee shall be placed in the next available comparable position within City employment.

D. Evaluations. Employees shall receive evaluations of their performance at the completion of the probationary period and at least once annually thereafter in accordance with the provisions of Article V of this chapter. The evaluations of performance shall be based on standards negotiated between the employee and his/her supervisor as those standards relate to the major duties and responsibilities as listed on the position description.

E. Removal During the Period. A department head may remove an employee from a position at any time and for any reason during the initial probationary period.

A department head may remove an employee from a position at any time during the probationary period resulting from a transfer/demotion/promotion if the department head determines that the employee is unable or unwilling to perform expected duties satisfactorily, or the employee's attitude, habits or dependability do not merit continuation of service, provided however that the department

provides his/her reasons in writing to the employee being removed from the position.

- F. Initial Evaluation Grievance Rights. An employee who does not successfully complete his/her initial probationary period shall have no right to grieve such failure.

Section 4. Hours of Employment.

- A. Regular. The normal workweek for the City non-bargaining unit employees, except twenty-four (24) hour shift employees, shall be forty (40) hours. Normally, the forty (40) hours will consist of five (5) eight-hour days, however, variations to the schedule may be allowed pursuant to departmental operating needs and the best interest of efficient, effective operation. Full-time office personnel will generally work eight (8) hours per day, Monday through Friday approximately between the hours 8:00 a.m. and 5:00 p.m. While the office hours remain standardized, flexible scheduling for particular assignments and staff is encouraged. The basic workweek for the City shall be defined as starting at 5:01 p.m. Friday and ending at 5:00 p.m. on the following Friday.

- B. Overtime.

- 1. General Policy. The authorization and control of all overtime work is the direct responsibility of the department head. Overtime assignments are permitted when required by operational necessity, and without which the normal functioning of the agency concerned would be adversely affected. Department heads must ensure that adequate funds are available for payment of overtime prior to authorization. Department heads are

responsible for the maintenance of accurate records of hours worked by employees, which conform to the requirements of the FLSA. Except for twenty-four (24) hour shift employees, those employees eligible for overtime compensation who are employed in excess of forty (40) hours per week shall be granted either additional pay at a rate of one and one-half (1½) times the regular rate of pay, or they may be given compensatory time off at a rate of one and one-half (1½) times the number of hours worked in excess of forty (40) hours in a week.

2. Eligibility. The Human Resources Director will determine the method by which employees will be classified as exempt or non-exempt based on their assigned position classifications pursuant to FLSA standards.
3. Accrual and Payment. The Human Resources Director shall establish administrative rules and regulations concerning the accrual and payment of overtime pay and compensatory leave. These administrative rules and regulations shall conform with the FLSA and the policies established by this subsection.
4. Reporting and Administration of Overtime. The Human Resources Director may develop a reporting system which will be used in all City departments to report overtime and compensatory time accrual and usage. Department heads will be responsible for the proper administration of the overtime and compensatory time provisions. Records are subject to review by the City Manager, Human Resources Director and/or the City Treasurer.

5. Employee Misconduct. Any employee found to be missing from a work site or station and/or manipulating work assignments, schedules and/or time-off provisions in order to enable overtime assignment to himself/herself or to another employee, shall be subject to disciplinary action.

Section 5. Receipt of Pay.

- A. Pay Days and Pay Periods. The Human Resources Director shall, within the guidelines given under the FLSA, issue regulations regarding the length of the pay period and the date of pay.
- B. Pay Upon Termination. Terminated employees shall receive earned wages in accordance with regulations set forth by the Human Resources Director.

Section 6. Temporary and Seasonal Employees.

- A. Temporary Employees. Temporary employees shall not be eligible for benefits; they shall be hired within established temporary recruitment and selection procedures (except if a temporary employee is filling a capacity vacated by a regular, benefit-eligible employee); and they shall not be hired into a regular, benefit-eligible position without standard placement procedures consistent with the EEO affirmative action program or with the written approval of the Human Resources Director in exceptional and documented circumstances. Temporary employees shall have salaries allocated based on their relative ability and skill in performing necessary work and shall not be eligible for automatic across-the-board adjustments in salary unless such an adjustment is required due to an increase in the pay range minimum. A temporary employee may work in

more than one (1) temporary or seasonal capacity at salary rates, commensurate with services rendered. Each capacity is then governed by the term(s) of employment stated herein. The Human Resources Director, with approval of the City Manager, shall establish administrative rules and regulations regarding the establishment, continuation and usage of temporary positions and/or employees by City departments.

- B. Seasonal Employees. Seasonal employees shall be defined as employees working in a recreational or amusement facility pursuant to the FLSA. The length of a seasonal employee's employment and the employee's pay and other benefits shall be governed by the FLSA and administrative rules and regulations established by the Human Resources Director.

## **ARTICLE V. PERFORMANCE EVALUATION – SALARY/MERIT REVIEW**

### Section 1. Performance Evaluation.

- A. General. The purpose of the employee performance evaluation shall be to inform employees of how well they are performing their work and how they can improve their work performance. The performance evaluation may also be used in determining salary adjustments, as a factor in determining order of lay-off and for other such purposes as may be deemed advisable.

### Section 2. Provision.

- A. Non Department Head Positions and Non Deputy City Manager Positions.

The Human Resources Director shall, with the approval of the City Manager, establish an employee performance evaluation system which will provide for and address the evaluation of an employee's work performance and any improvements

thereto. Additionally, the Human Resources Director will establish a form for employee evaluations and shall assist and advise department heads in drafting position descriptions and standards of evaluation for each position within the department. The position descriptions and evaluation standards for each position shall be placed on file with the Human Resources Director by each department head. Any change in the position description or standards of review for all positions shall be filed with the Human Resources Director.

B. Department Head and Deputy City Manager Positions.

The Human Resources Director shall, with the approval of the City Manager, establish an employee performance evaluation system which will provide for and address the evaluation of an employee's work performance and any improvements thereto. Additionally, the Human Resources Director will establish a form for department head and Deputy City Manager evaluations and shall assist and advise the City Manager or Deputy City Managers in drafting position descriptions and standards of evaluation for each department head or Deputy City Manager. The position descriptions and evaluation standards for each position shall be placed on file with the Human Resources Director by the City Manager. Any change in position description or standards of review for all positions shall be filed with the Human Resources Director.

Section 3. Confidentiality.

Performance evaluations shall be confidential and shall be made available only to the employee evaluated, his/her supervisor or department head, the Human Resources Director, the City Manager, any person designated by the employee or any individual who may reasonably

need access to the performance evaluations as required for legal actions including the resolution of grievances.

Section 4.     Appeals.

A.     Non Department Head and Non Deputy City Manager Positions. Any employee in a non department head or non Deputy City Manager position who believes he/she has been unfairly evaluated may appeal that evaluation by filing notice of intent with the department head pursuant to the following procedure:

1.     The employee filing the appeal shall do so within ten (10) days of the receipt of the performance evaluation on a form to be provided by the Human Resources Director.
2.     On receipt of notice of an appeal, the department head shall, within five (5) working days select one (1) person representative of the department to serve on the appeal committee and shall notify the employee filing the appeal of the name of the person selected to serve. The person selected to serve on the appeals committee shall be a full-time permanent employee of the City.
3.     The employee filing the appeal shall, within five (5) working days of the filing, select one (1) person to serve as his/her representative to serve on the appeals committee and shall notify the department of the name of the person selected to serve. The person selected to serve shall be a full-time permanent employee of the City.
4.     The persons selected pursuant to No. 2 and No. 3 above shall meet within five (5) working days of notification of their appointment to select a

chairperson to serve on the appeals committee. The person selected as chairperson shall be a full-time permanent employee of the City. In the event the two (2) persons selected by the department head and the employee filing the appeal cannot agree on a neutral chairperson, they shall notify the Human Resources Director of their inability to agree and the Human Resources Director shall provide a listing of five (5) City employees who have been trained to serve as chairpersons of appeals committees. The persons selected to serve by the department head and the employee filing the appeal shall then meet to alternately strike names until only one (1) name remains. The name of the individual remaining after the striking process shall serve as the chairperson of the appeals committee.

5. The appeals committee shall schedule a hearing within five (5) working days of the appointment of the chairperson.
6. The person filing the appeal shall have the right to call as a witness any individual having knowledge of the ability of the employee to perform the job providing that the witness shall have the right to refuse to testify regarding the ability of the employee to perform the job.
7. The supervisor who performed the evaluation shall appear at the hearing and explain the basis for the evaluation as it was written.
8. The appeals committee shall, within five (5) working days of the hearing, either sustain the performance evaluation or change the evaluation to reflect the majority decision of the committee. The majority decision shall

be supported by written findings which shall be presented to the department head and the employee filing the appeal.

B. Department Head and Deputy City Manager Positions.

Department heads or Deputy City Managers shall have no right to appeal a performance evaluation performed by the City Manager or Deputy City Managers, as applicable.

5. Salary/Merit Review.

A. Non Department Head and Non Deputy City Manager Positions.

Whenever it is determined that a merit salary increase shall be given to employees of the City, the department head shall review the personnel file of the employee to determine performance evaluation ratings and disciplinary actions of each employee in order to determine whether each employee of the department will be eligible for merit increases. The department head shall utilize the procedure established by the Human Resources Director for making merit determinations.

There shall be no appeal of a failure to receive a merit increase, provided however that an employee may grieve an alleged failure to comply with the procedure as determined by the Human Resources Director.

B. Department Head and Deputy City Manager Positions.

When sufficient funds have been budgeted for a merit or cost of living salary increase for department heads and Deputy City Managers, the City Manager shall review the performance evaluation ratings and disciplinary actions of each department head or Deputy City Manager in order to

determine whether the department head or Deputy City Manager will be eligible for merit increases. The City Manager shall have the sole discretion to determine the amount of salary increase for each department head or Deputy City Manager. There shall be no appeal by a department head or Deputy City Manager of the amount of or a failure to receive a salary increase.

## **VI. PROMOTIONS**

### **Section 1. General.**

Vacancies in higher positions in the classified service shall be filled when possible by promotion from current City employees in lower classifications. Performance evaluations shall serve as one of the relevant factors to determine favorable candidates for promotion.

### **Section 2. Qualifications.**

To qualify for promotion to a position with a higher classification, an employee shall be expected to meet the minimum qualifications for the new classification; provided, however, that any employee who has demonstrated an ability to perform the duties and responsibilities of the new classification satisfactorily, may be permitted to substitute two (2) years experience in a lesser classification for one (1) year of college and that in such cases the requirement of a college degree maybe waived. Nothing in this section shall be construed as limiting the right of any department head to eliminate any job classification as a result of reorganization within the department.

### **Section 3. Salary.**

Promoted employees shall have their salary determined by the provisions of Article IV.

## ARTICLE VII. BENEFITS

### Section 1. Flexible Compensation Plan.

- A. General. This benefit is intended to qualify as a "flexible compensation plan" under Section 125 of the Internal Revenue Code, and it shall be construed and interpreted consistent with the requirements of that section. The plan shall be further construed and administered in accordance with the laws of Kansas. The City shall provide a flexible compensation plan, through which employees may have the City deduct an amount from their salary and pay said amount to meet the dependent care reimbursement amount, the group health premium, and/or the group term premium, as directed by the employee.
- B. Establishment. The Human Resources Director, with the approval of the City Manager, shall develop and administer the flexible compensation plan. All provisions of the flexible compensation plan promulgated by the Human Resources Director shall conform to the requirements of the Internal Revenue Service for such a plan and shall be subject to the implementation and approval requirements of Article I, Section 3.
- C. Administration of Plan.
1. Plan administrator. The Human Resources Director shall be the plan administrator.
  2. Rights powers, and duties of the plan administrator. The plan administrator shall have such authority as may be necessary to discharge his/her responsibilities under the plan, including the following rights, powers and duties:

- a. The plan administrator shall adopt rules governing the procedures not inconsistent herewith and shall keep a permanent record of actions. The plan administrator shall administer the plan uniformly and consistently with respect to persons who are similarly situated.
- b. The plan administrator shall prepare and file such reports as may be required by Kansas statute or federal law from time to time.
- c. The plan administrator shall not take action with respect to any of the benefits provided hereunder which would be discriminatory in favor of those participants or eligible participants who are officers or highly compensated benefit-eligible employees or benefit-eligible elected officials of the City.
- d. The plan administrator shall have the responsibility for the administration of the plan; and, except as herein expressly provided, the plan administrator shall have the right to interpret the provisions of the plan and to determine any questions arising hereunder or in connection with the administration of the plan, including the remedying of any omission, inconsistency or ambiguity, and the administrator's decision or action in respect thereof shall be conclusive and binding upon any and all participants or former participants.
- e. The plan administrator may employ such counsel and agents in such clerical, accounting and other services as it may require in carrying out the provisions of the plan. Any employee of the City

acting as agent of the plan administrator shall serve without compensation for services as such, but all proper expenses incurred by the individual incident to the functioning of the plan shall be paid by the City.

3. Exercise of the plan administrator's duties. The plan administrator shall discharge the aforementioned duties solely in the interest of participants and former participants:

a. For the exclusive purposes of providing benefits to such participants or former participants and, at the administrator's discretion, defraying reasonable expenses of plan administration; and

b. With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

D. Amendment and termination. This plan shall be subject to amendment or termination at any time by the City; provided, however, that amendment or termination shall not affect any right to claim benefits arising prior to such amendment or termination, and provided further that after termination, no person shall be considered to be a participant for any purpose of the plan.

E. No contract of employment. Nothing herein contained shall be construed to constitute a contract of employment between the City and any employee. The records in the possession of the City shall be final and binding upon all employees

as to liability and participation.

Section 2. Holidays.

- A. The following schedule shall designate employee holidays for purposes of this article:
1. New Year's Day - January first
  2. Martin Luther King Jr.'s Birthday - Third Monday in January
  3. Memorial Day - Last Monday in May
  4. Independence Day - July fourth
  5. Labor Day - First Monday in September
  6. Veterans' Day - November eleventh
  7. Thanksgiving - Fourth Thursday in November
  8. Thanksgiving Extra Day - Friday immediately following Thanksgiving
  9. Christmas Eve - December twenty-fourth
  10. Christmas Day - December twenty-fifth
- B. Holidays which fall on a Saturday or Sunday will be observed on either the immediately preceding or following regularly scheduled work day, except for those employees regularly scheduled to work on the Saturday or Sunday. The Human Resources Director, with the approval of the City Manager shall determine upon which day these holidays will be observed. Further, the Governing Body may designate additional dates as holidays, by resolution, on a temporary schedule, not to exceed one (1) calendar year.
- C. All employees shall receive compensation for holiday leave under terms stipulated in the administrative rules and regulations.

Section 3. Vacations.

- A. Accumulation. Benefit-eligible employees shall earn vacation by pay periods in accordance with the schedule set forth in the administrative rules and regulations.
- B. Accrual. An employee must be either performing assigned duties or on authorized accrued paid leave in order to be eligible to accrue vacation time. An employee in a non-pay status shall not accumulate vacation leave for the duration of the non-pay status. Temporary employees shall not receive paid vacation leave.
- C. Carry-over. The maximum carry-over from year to year for any forty (40) hour employee shall be two hundred forty (240) hours; and for a twenty-four (24) hour employee, the maximum carry-over shall be three hundred sixty (360) hours. If an employee transfers to a different payroll fund, the employee shall be entitled either to retain accrued vacation time or to receive payment thereof, a decision left to the discretion of the head of the department the employee is leaving.
- D. Scheduling. Scheduling of use of and entitlement to vacation time shall be in accordance with the administrative rules and regulations and/or departmental regulations.

Section 4. Leaves of Absence.

A. Sick Leave.

- 1. Accumulation. Benefit-eligible employees shall accrue sick leave in accordance with the rates set forth in the administrative rules and regulations. A civil service employee may retain sick leave accrued before November 1, 1981, over the maximum allowed in this provision with no further accrual eligibility until the surplus is reduced to the maximum

provided herein (one thousand forty (1,040) or prorated for twenty-four (24) hour employees) through use or retired with an employee. A civil service employee promoted out of the bargaining unit on or after November 1, 1981, shall have the aforementioned maximum limit on accrual of sick leave. An employee assigned to a bargaining unit after being in management may resume additional accrual at the time of such reassignment but shall not be eligible for any retroactive allocation based on total service time.

2. Sick Leave Payment. An employee shall receive hour-for-hour reimbursement for sick leave usage only if the employee is utilizing sick leave for approved purposes. Employees who wish to receive full prevailing rate reimbursement for sick leave shall make such a request to their duly authorized supervisor. The reimbursement request may be subject to reasonable audit, confirmation and approval in writing by the duly authorized supervisor prior to authorization of such payment through normal payroll procedures. Requests for reimbursement submitted after prescribed deadlines as established by the department head shall not be honored; and claims submitted following termination of employment shall not be reimbursed. Reimbursement for sick leave shall be available as it is accrued including during the initial probationary period, but it shall not be allowed in advance of accrual.
3. Acceptable Use. Acceptable and non-acceptable uses of sick leave shall be detailed in the administrative rules and regulations. The Human Resources

Director shall also designate the City policy regarding the effect of non-City employment injuries and inter and intra-departmental transfers on sick leave usage and accrual.

4. Accrual Status. An employee must be either performing assigned duties or on authorized accrued paid leave to be eligible to accrue sick leave.
5. Payment Upon Retirement. An employee retiring under the KPERS KP and F or Social Security system may upon request be paid for thirty-five percent (35%) of eligible accrued sick leave up to a maximum payment of four hundred (400) hours for forty (40) hour employees and five hundred twenty (520) hours for twenty-four (24) hour employees at their respective prevailing rates of pay. For the purposes of this section the Human Resources Director shall define "retirement" and establish all regulations required for effective administration.

B. Medical Disability Leave.

1. General. Physical incapacitations including but not limited to pregnancy, miscarriage, abortion, childbirth or other related medical conditions, and recovery there from shall be considered as temporary medical disabilities when the leave is in excess of five (5) working days.
2. Requested Usage. An employee desiring to use medical disability leave shall request its use in accordance with the procedures set forth by the Human Resources Director.

3. Reinstatement. An employee's reinstatement following a medical disability leave shall be in accord with regulations issued by the Human Resources Director.

C. Military Leaves.

1. Temporary Training Period.

- a. General. Temporary training periods: An employee who is a member of a military reserve organization or National Guard unit shall be entitled to a paid leave as hereinafter provided. If such assignment would substantially interfere with execution of duties in the public interest, the employee may be encouraged to request a rescheduling of any such training/assignment. The employee shall provide appropriate documentation of orders to attend any training, citation of the training and any related information as may be required to fully clarify the absence.
- b. Reimbursements. The maximum reimbursement for any military leave shall be the difference between the base pay less special allowances which an employee would normally receive in one (1) pay period and the amount received from the military. There shall be no City reimbursement if the military pay is equal to or greater than City pay. For a typical forty (40) hour employee, for the purpose of calculating the maximum allocation, the pay period would be a maximum of fifteen (15) working days of either eight (8) hours per day excluding any overtime consideration; and for

twenty-four (24) hour employees, a maximum of nine (9) shifts of base pay, less the military pay; provided, however, these maximum amounts shall be less than the full possible allocation in the event the individual is assigned to less training proportionately. Employees shall be reimbursed only for those days they would normally have been assigned to work during the time of the military assignment.

2. Active or Extended Involuntary Military Assignment.

- a. Reimbursements. The maximum reimbursement allowed for any person involuntarily ordered or called to active military service shall be the difference between the base pay less special allowances which an employee would normally receive in one pay period and the amount received from the military. There shall be no City reimbursement if the military pay is equal to or greater than City pay. Computation of the pay differential shall be in accordance with the provisions for temporary training periods in subsection C.1.b. above.

3. Active or Extended Voluntary Military Assignment.

- a. Reimbursement. No City compensation shall be allowed or any persons voluntarily entering active or extended military service.
- b. Military Leave as Leave of Absence without Pay. Employees may have entitlement to a position with the City following completion of an active or extended military voluntary assignment, pursuant to

applicable state and/or federal laws governing such leave. The absence is considered a leave of absence without pay. Benefits do not accrue during this leave of absence without pay. It should be noted that the intent of this provision, unless superseded by state or federal law, is not to encourage a different career opportunity. Employees shall provide appropriate documentation of orders and complete a leave agreement prior to commencement of the leave.

D. Court Appearance.

1. Work related. Code enforcement officials, police officers or employees appearing in their typical employment capacity shall be paid for court appearances and/or depositions pursuant to departmental rules and regulations governing such situations.
2. Jury duty, court witness. An employee called to serve on jury duty, or required by subpoena to serve as a court witness shall be paid in an amount equal to the difference between the wages which would have been earned on a given day and compensation received as witness or juror. Alternatively, an employee may sign witness/juror fees over to the City in order to receive regular pay. An employee may retain any travel, lodging and/or meal reimbursements. An employee shall not have deductions made from accrued leave unless the employee is a voluntary plaintiff in a civil matter, a defendant in a non-job related matter, or appears as a voluntary expert witness in which case the employee may request the use of vacation time or leave without pay.

E. Voting Time. Employees eligible and registered to vote in a primary, general or special election held within the State shall, on the day of such election, be entitled to absent themselves from employment with the City for a limited period of time for the purpose of voting, in accordance with the administrative rules and regulations set forth by the Human Resources Director. Employees shall not, because of so absenting themselves; be subject to any penalty, nor shall deductions be made on account of such absence, from their usual salary or wages.

F. Leave Due to Inclement Weather.

1. Absence. Absence due to an employee's inability to report for scheduled work because of severe inclement weather or conditions caused by severe inclement weather shall be charged to the following, in the order listed: compensatory time, accrued vacation leave, or leave without pay, provided that an employee may request to use leave without pay rather than paid leave.

2. Tardiness. Tardiness due to an employee's inability to report for scheduled work because of severe inclement weather or conditions caused by severe inclement weather will be allowed up to one (1) hour at the beginning of the work day. Inclement weather tardiness in excess of one (1) hour shall be charged as provided in (1) above, unless the supervisor elects to have the employee make up lost time during the workweek. Requests to leave early will be treated in the same manner.

G. Emergency Leaves.

1. Funeral Leave. Forty (40) hour employees shall receive a maximum of three (3) working days per occurrence to make arrangements for and/or to attend the funeral of a member of the immediate family. This time limit shall be pro-rated for twenty-four (24) hour employees.
2. Family Crisis Leave. Forty (40) hour employees shall receive a maximum of three (3) working days per occurrence (pro-rated for twenty-four (24) hour employees) when extreme, extenuating circumstances arise which may threaten the health or welfare of the immediate family.
3. Eligibility Regulations concerning eligibility for paid emergency leave shall be issued by the Human Resources Director.

H. Personal Leave Day.

1. Personal Leave Day. Benefit-eligible employees upon completion of the employee's initial evaluation period shall be allowed to choose one (1) day per year as a discretionary leave day in addition to their accrued vacation. This discretionary day cannot be carried over from one year to the next.
2. A personal leave day shall be allowed to be taken on any day of the week subject to manpower needs.

I. Leave of Absence Without Pay.

1. Defined. A leave of absence without pay is a predetermined amount of time away from work requested by the employee, recommended by the department head and approved in conjunction with appropriate sections. A leave agreement must be completed. A leave of absence without pay shall

not extend beyond twelve (12) calendar months, generally granted in regular increments with necessary documentation submitted at that time. A fact that such a leave is possible does not mean a requested leave is obligatory. Leaves of absence without pay, except in a case of a disciplinary action, and shall be considered as a privilege, and the best interest of the City shall be the determining factor in deciding whether or not such leave shall be granted.

2. City obligation. The department head makes a commitment to allow employees to return to work at the end of their leave to the position they left. If business necessity requires the City to fill the position during the leave with a regular employee, the City agrees to return the employees to positions for which they are fully qualified, if vacancies exist. If no vacancy exists at that time, the employee shall be considered for future vacancies. If a position is officially eliminated or reclassified while employees are on such leave, they shall relinquish any claim or entitlement to their previous position, but may be considered for vacancies for which they qualify.
3. Employee obligation. The employee makes a commitment to return to work at the end of the leave. Failure to contact the department head at the end of the leave shall be considered a resignation. An employee who is granted a leave of absence without pay and who does not subsequently report back to work on or before the predetermined date, or who does not receive an approved extension, or who accepts other employment while on

leave from the City, or who receives unemployment compensation, if not physically incapacitated, shall be considered to have resigned from employment with the City.

4. Conditions. During the leave of absence without pay the employee:
  - a. Shall not receive pay from the City.
  - b. Shall not accrue any leave.
  - c. Shall utilize all accumulated vacation leave if the leave exceeds thirty (30) calendar days, except for military leave.
  - d. Shall not pay retirement contribution nor be accredited time toward retirement for any time the employee is not in pay status.
  - e. Shall pay total health or other insurance falling due, except on worker's compensation leave.
  - f. Shall, upon return to work, carry over sick leave accrued prior to commencement of the leave without pay.
  - g. Shall not receive any other benefits during the absence, including service credit for longevity pay and retirement purposes.

- J. Leave Agreements. Employees shall enter into a written leave agreement between themselves and their department head if the leave, except for vacation, exceeds two (2) calendar weeks excluding accrued vacation. The agreement shall specify the conditions of the leave, whether the leave is with or without pay, and shall include, but not be limited to, consideration and treatment of employment status, salary, and other benefits available. The employee shall be responsible for requesting and completing the written leave agreement. The agreement shall be

approved by the Human Resources Director and the City Manager prior to commencement of the leave.

- K. Unauthorized Absence. An unauthorized absence shall be treated as an absence without pay and may be grounds for disciplinary action up to and including termination. Upon return the employee shall give a written statement to the authorized supervisor explaining the reason for the absence. Prior to instituting disciplinary action a supervisor or department head shall consider an employee's prior job record or performance.

Section 5. Extended Sick Leave Benefits.

- A. General. All employees who have satisfied their initial probationary period and are benefit eligible shall receive extended sick leave benefits. Extended sick leave benefits may only be used by employees who will not be returning to work due to a diagnosed terminal illness.
- B. Amount. Extended sick leave benefits shall consist of five hundred twenty (520) hours of sick leave for full-time employees and three hundred ninety (390) hours of sick leave for employees who are not full-time. An employee who returns to work after using all or part of these benefits shall not receive additional extended sick leave benefits.
- C. Eligibility and Payment. A terminally ill employee may use extended sick leave benefits based on the normal scheduled hours for that employee's position. The extended sick leave benefits shall be paid at the employee's last regular rate of pay. No terminally ill employee shall be paid extended sick leave benefits unless that employee no longer has accrued sick leave or vacation leave available for

use. A terminally ill employee who is using extended sick leave benefits shall not be considered an employee in "pay status" as defined by Article 1, Section 2, "Definitions," of this Personnel Code.

- D. Termination. An employee's receipt and/or usage of extended sick leave benefits shall terminate or be proportionally reduced when the employee receives other disability benefit payments, including, but not limited to, KPERS and/or Social Security. An employee receiving extended sick leave benefits shall be obligated to inform the Human Resources Director when such disability benefit payments are received.
- E. Death. The death of an employee receiving extended sick leave benefits shall cause the benefits to cease. The deceased employee's heirs and/or estate shall not be entitled to either any unused extended sick leave benefits or the continuation of benefit payments.
- F. Rules and Regulations. The Human Resources Director shall, with the approval of the City Manager, establish eligibility and usage criteria as well as any other rules and regulations which are necessary to administer this extended sick leave benefit.

Section 6. Retirement systems.

- A. Mandatory participation. All employees, except sworn police officers and firefighters, shall participate in the federal social security system and all benefit-eligible employees shall participate in the applicable state retirement program following completion of one (1) calendar year of service or as prescribed by the retirement program. Retirement system participation and eligibility shall be monitored and managed by the City Treasurer who shall also periodically conduct

cost-benefit analysis on any such systems to determine if other more viable options may be practical and report to the City Manager as needed.

- B. Optional Deferred Compensation Any benefit-eligible employee, elected official or bargaining unit member may, at his/her option, participate in a deferred compensation program approved by the City Manager. Interested employees shall participate in such a plan through direct payroll deduction of individual arranged contributions.

## **ARTICLE VIII. NON-DISCIPLINARY REDUCTIONS IN FORCE**

### **Section 1. Short Term Reduction in Force: Lay Offs.**

- A. General. A lay off is a temporary reduction in the work force due to a shortage of funds, lack of work, abolishment of a position or other material change in duties or organization. It differs from other forms of separation in that there is an anticipated reinstatement of the employee as soon as the conditions which necessitated the lay off are ameliorated. A lay off is intended to protect a regular, full-time employee's tenure, related benefits and privileges.
- B. Order of Separation.
1. Temporary and part-time employees shall be the first affected by a lay off.
  2. The order of dismissal for regular, full-time employees shall be determined by a combination of performance and seniority.
    - a. Performance. Employees with the highest consistent performance as compared to other employees over a comparable period of time shall be retained, provided they can perform the remaining available work. Performance shall be determined through the

following criteria:

- i. The employee's last four (4) written performance evaluations, if in existence. However, this shall not include any evaluations given after any notice of lay off or within ninety (90) calendar days of such notice.
  - ii. The history of an employee's written disciplinary actions during the past three (3) years.
  - iii. The employee's written record of attendance for the past three (3) years.
- b. Seniority. If two (2) candidates are equal with regard to performance, seniority shall be used to determine the order of separation. Seniority is measured as the length of continuous unbroken service as a regular full-time employee of the City.
- c. The Human Resources Director shall attempt to effectuate the reassignment, transfer or demotion of an employee who is faced with a lay off, provided that there are existing, vacant positions for which the employee is qualified.
- d. The Human Resources Director shall establish by administrative rule and regulation a procedure for bumping.

C. Reemployment.

1. An employee who has been laid off shall have his or her name entered on a reemployment eligibility list and shall be given first consideration when a vacancy occurs in the same or similar position the employee last held.

2. An employee's name may be removed from the reemployment eligibility list for any one (1) of the following reasons:

a. Expiration. If the time limit for recall, as detailed in the following schedule, expires.

Time Limit For Recall As Determined By Length Of Service

Year(s) Of Continuous Service (Employment)	Maximum Time Allowed On Lay Off For Recall	
0 - 1 Year	-0-	Must be separated effective date of lay off
1 - 2 Years	4 Weeks	
2 - 3 Years	8 Weeks	Employees with 2 or more years of service from last date of employment, on lay off status 8 consecutive weeks or more, have the option of requesting to be separated and may receive separation pay according to the Separation Pay Schedule contained in this Article.
3 - 4 Years	12 Weeks	
4 - 5 Years	16 Weeks	
5 - 6 Years	20 Weeks	
6 - 7 Years	24 Weeks	
7 - 8 Years	28 Weeks	
8 - 9 Years	32 Weeks	
9 - 10 Years	36 Weeks	
10 - 11 Years	40 Weeks	
11 - 12 Years	44 Weeks	
12 Years and Over	48 Weeks	

b. Waiver. After a period of eight (8) weeks, an employee may elect to waive the right to recall by signing a waiver form provided by the City. Employees who waive their right to recall shall immediately become eligible to receive severance pay.

c. Forfeiture. Employees forfeit the right to recall if they:

- i. Refuse a job in a position that is not more than two (2) pay ranges below their position at the time of lay off.
- ii. Refuse recall within five (5) days of notice.
- iii. Fail to answer written inquiries from the City's Human

Resources Director.

- iv. Fail to advise the City of a change of address and/or telephone number.

D. Reinstatement.

1. Wages. If employees are recalled to their former position within six (6) months, they shall be paid at their previous rate of pay plus any across-the-board adjustments to which they would have been entitled had the lay off not occurred. If recalled to a lower position, employees shall receive compensation at a rate of pay consistent with the duties and responsibilities of that position.

2. Benefits.

- a. Vacation. When employees on lay off are recalled within the time limits provided in this policy, they will then recommence to accrue and be entitled to vacation pay.
- b. Sick leave. Any sick leave accumulated and not utilized at the time of lay off will be reinstated at the time of recall.
- c. Seniority. Employees retain seniority for the sole purpose that they be able to resume earning leave time immediately upon recall.

E. Notice.

1. Regular, full-time employees.

- a. A department head shall give written notice to the employee and the City Manager of any proposed lay off and the reasons therefore at least five (5) working days prior to the separation, provided the

employee is being laid off through no fault of his or her own.

- b. This five (5) working day notification may be waived in lieu of five (5) days pay at the employee's straight time, base rate.

2. Non full-time employees.

- a. A department head may notify temporary and/or part-time employees of the date of termination of employment in writing at the time of appointment.
- b. Temporary or part-time employees may be notified of lay offs any time prior to the effective date of the lay off.

F. Employee Benefits During Lay Off.

1. Vacation time. An employee on lay off may elect to take any vacation and/or compensatory time which the employee has accrued prior to the lay off. Vacation time, however, does not accrue during the separation. Payment for vacation time taken during the lay off may be made by the City in equal increments on a pay period basis.
2. Group Insurance. An employee may elect to continue group insurance for eighteen (18) months. Timely payment of premiums will be the responsibility of the employee.
3. Other benefits. Additional benefits (holiday, health coverage, retirement contribution or other insurance) will neither accrue nor be paid during an employee's lay off.

- G. Grievance. Lay offs and demotions necessitated by the conditions given in Section 1A of this article shall not be subject to grievance except to contest the

order of reduction in force among affected employees.

Section 2. Permanent Reduction In Force: Severance Pay.

A. General. The purpose of the severance pay policy is to provide temporary relief to employees who have lost their job through no fault of their own. Such separation occurs for reasons such as but not limited to the following:

1. An employee is not recalled from lay off within the time limit set forth in C2a;
2. An employee voluntarily waives the right to recall, as described in C2b;
3. Work is eliminated and is not anticipated to be necessary in the foreseeable future;
4. Work is reassigned to other employees; or
5. The qualifications for a position change.

Employees who are eligible for recall shall not be eligible to receive severance pay.

B. Severance Pay.

1. Amount. Employees eligible to receive severance pay shall be compensated according to the following schedule:

<u>Length of Service</u>	<u>Separation Pay</u>
-0- Less than 1 Year	-0-
1 Year - Less than 10 Years	One (1) week's salary for each complete year of service, as of the date of separation
Over 10 Years	Two (2) weeks' salary for each complete year of service, as of the date of

separation

However, in no case shall severance pay exceed one (1) year's salary. Severance pay shall be calculated using the employee's regular base hourly wage and shall not include any premium payments for overtime, longevity and so on.

2. Disbursement Schedule. The City may elect to make severance payments in equal increments on a pay period basis until the employee receives all severance pay due. In such a case, the payment will amount at least to the base pay of a regular bi-weekly pay period.

C. Other Benefits.

1. Vacation time. Following a non-disciplinary, permanent separation, employees with six (6) months of service or more will be paid the unused portion of vacation time accrued.
2. Unemployment Compensation. Whether employees can draw both severance pay and unemployment compensation benefits will depend on state laws.

D. Forfeiture of Severance Pay.

1. Ineligibility. Employees who resign, retire or are fired for cause are not eligible to receive severance pay. Employees eligible for an immediate retirement annuity, even on a reduced basis, are also not eligible for severance pay.
2. Relinquishment. The City may, at its discretion, provide outplacement counseling and assistance to employees who lose their job through no fault

of their own. If such outplacement assistance results in an offer of employment or employment for separated employees, severance pay shall be waived.

Section 3.     Administrative Leave.

A department head and/or City Manager may require an employee to take an administrative leave with pay. An administrative leave is not considered a corrective or disciplinary action and is therefore not subject to the grievance process. An administrative leave shall only be authorized for a period not exceeding ten (10) consecutive work days. A department head must receive approval from the City Manager prior to requiring an employee to take an administrative leave. Approval shall only be given if the department head provides evidence satisfactory to the City Manager justifying the action.

**ARTICLE IX. CORRECTIVE AND DISCIPLINARY ACTIONS**

Section 1.     General.

Department heads serve at the pleasure of the City Manager and may be terminated without cause. Therefore, the provisions for corrective and disciplinary actions set forth in this article shall not be applied against department heads. Likewise, department heads are not entitled to the grievance or appeal rights granted by the article. For the purposes of the section, "department head" shall mean those positions designated by the Governing Body as the administrative heads of the departments of Public Works, Housing and Neighborhood Development, Legal, Judicial, Human Resources, Information Technology, Parks and Recreation, Planning, Police, Fire, Zoological Park, and Administrative and Financial Services as well as the Executive Director of the Human Relations Commission. This section shall not apply to the position of City Manager or any other position where other ordinances or agreements

address corrective and disciplinary action for the position.

Section 2. Disciplinary Actions.

A. Policy. The City reserves the right to discharge, suspend or otherwise discipline employees for violations of City and/or department rules and regulations. The disciplinary process involves four (4) steps of progressive discipline for infractions of a similar nature and which are of a nature not serious enough to constitute just cause for immediate suspension or termination. Determinations of the seriousness of the offense shall be at the discretion of the Human Resources Director. The progressive steps are:

first offense .....documented verbal warning

second offense .....written warning

third offense .....suspension

fourth offense .....termination

B. Procedure. The progressive disciplinary system listed above is intended to serve as warning to the employee that he/she needs to improve in the listed area and that repeated incidents will result in suspension or termination. The City reserves the right to determine that repeated violations of any of the work rules shall constitute grounds for immediate termination.

1. Disciplinary actions not considered serious enough for immediate termination shall be removed from an employee's personnel file on completion of two (2) years of continuous service free from additional disciplinary actions for violations of a similar nature.

2. Department heads shall have the right to discipline employees up to and

including termination; provided however that all actions to terminate employees shall require the approval of the Human Resources Director of the City.

3. Offenses not normally considered serious enough to warrant immediate suspension or termination:
  - a. destruction or loss of City property
  - b. improperly using or obtaining leave time
  - c. tardiness
  - d. absence without permission or proper notice
  - e. interference with the regular conduct of City business
  - f. using City vehicles, property or equipment for personal use
  - g. consistent or continual unavailability for work
  - h. engaging in habits which interfere with the individual's or any other employee's performance on the job
  - i. suspicion of any of the aforementioned infractions
  - j. violations of any other work rule stated in this Personnel Code or expressed verbally to an employee by a supervisor

The above list does not constitute a complete and total listing of offenses but is listed for illustrative purposes only.

4. Examples of offenses which shall constitute sufficient and just cause for immediate suspension or termination are as follows. This listing shall not be construed to constitute the entire list of such offenses but is solely for the purpose of illustration. The City reserves the right to determine that

any violation of rules and/or regulations shall constitute just cause for immediate suspension or termination depending on the circumstances relating to the offense.

- a. dishonesty in any form or degree
- b. theft of property belonging to the City
- c. knowingly making false statements in matters relative to employment
- d. insubordination
- e. unreasonable and abusive treatment of a client, citizen or other individual in the community or on the City payroll
- f. verbal or non-verbal sexual or racial harassment
- g. disregard for the City's EEO/Affirmative Action policy prohibiting discrimination
- h. solicitation or acceptance of money or anything of value to influence decisions in public matters or as a reward for such decisions
- i. possession of any type of firearm, explosive or concealed weapon without specific authority
- j. possession, sale, consumption or being under the influence of any alcoholic, narcotic or other non-prescription substance while on the work site
- k. other violations of a similar nature

Section 3. Performance Related Corrective Actions.

Each employee of the City shall be evaluated at least annually as provided in the administrative rules and regulations. This evaluation and any special evaluations shall be used as the basis for all performance based corrective actions.

A. Corrective actions - as used in this section, corrective actions shall include:

1. special performance probation
2. demotion
3. termination

B. Special evaluations -

1. A department head may cause a special evaluation to be conducted for any employee when the department head determines that such employee's performance is "less than satisfactory" with respect to any or all of the duties, tasks, and/or responsibilities set forth in the employee's position description.
2. The special evaluation shall be performed pursuant to the adopted standards contained within the employee's position description.
3. Special evaluations may be performed in five hundred twenty (520) continuous work hour intervals which period shall be considered an opportunity for the employee to improve his/her performance to an acceptable level. The department head shall identify the areas of improvement necessary to improve the employee's performance.
4. An employee receiving a ranking of "less than satisfactory" on a special evaluation shall be informed of the areas of improvement needed and shall be given a five hundred twenty (520) continuous work hour period of time

to improve his/her performance to a satisfactory level. The employee shall be considered to be on a probationary status during the five hundred twenty (520) continuous work hour period following a special evaluation in which his/her performance ranks "less than satisfactory." The employee shall be given another special evaluation on the completion of the five hundred twenty (520) continuous work hour probationary period. In the event that an employee's performance has not improved within the five hundred twenty (520) continuous work hour probationary period, as reflected by another special evaluation, the department head, with the concurrence of the Human Resources Director, may take the appropriate action of:

- a. demotion to a position of lesser responsibilities within the expected abilities of the employee;
- b. extending the special probationary period for another four (4) month period; or
- c. terminate the services of the employee.

## **ARTICLE X. GRIEVANCES**

### Section 1. General.

All employees covered by the provisions of Article IX, concerning corrective and disciplinary actions, are entitled to file a grievance in accordance with the regulations established herein, except that employees serving their initial evaluation period shall have no rights under this article. The grievance procedure contained herein shall not be utilized as a procedure for appeals of performance evaluations.

Section 2. Ground Rules.

A. Definitions.

1. Grievance shall mean the appeal of an alleged violation of the administrative rules and regulations of the City, work rules of a division or department or any alleged misapplication of disciplinary action taken by a department head for other than just cause.
2. Days shall mean working days of the involved individual.
3. Working days shall mean, for grievant, normal work days an employee is scheduled to work excluding all previously approved leaves for vacation. In the case of management representatives, working days shall mean regular weekday workdays excluding holidays.

B. Failure to respond. In the event the grieving party fails to respond within the prescribed time sequences, the matter shall be considered resolved on the basis of management's last determination. In the event management does not respond within prescribed time sequences, the grievance shall have the right to proceed to the next step of the grievance procedure. The parties may, at any step of the grievance procedure, agree to extend the time limitations specified in this article.

C. Employee representation. Employees may represent themselves at any stage of the grievance procedure or they may choose to be represented by a person of their own choosing. Any costs incurred by the employee for representation shall be borne by the employee.

D. Management representation. Management may be represented either by the Human Resources Director, or his/her designee, a member of the legal staff or a

member of the legal staff and the Human Resources Director or his/her designee may act as co-advocates.

- E. Grievance Forms. All grievances shall be filed on a form to be provided by the Human Resources Department and incomplete forms shall be returned to the grieving employee for completion. Forms so returned shall be considered as timely filed if the form would have otherwise been timely and the form is returned to the proper management representative within twenty-four (24) hours of rejection.

Section 3. Grievance.

- A. Step one. An eligible employee who believes that a violation, as set forth above, has occurred shall first, within three (3) days of the incident giving rise to the "grievance" or within three (3) days of first having knowledge of the incident, informally discuss the "grievance" with the employee's immediate supervisor.
- B. Step two. In the event the employee believes that the solution offered by his/her immediate supervisor does not resolve the "grievance," the employee may, within five (5) working days, reduce the matter to writing for presentation to the next higher level of supervision. The written grievance shall be on a form provided by the Human Resources Department and shall be completed as required by instruction of the grievance form. The supervisor receiving a written grievance shall verify the completeness of the grievance and either signify acceptance or return the form to the grievant with instructions regarding the appropriate information needed to complete the form. The supervisor shall have seven (7) days in which to investigate the matter, prepare a written response to the

grievance, and provide the response to the grievant by hand-delivering the response, placing a copy in the work site mail box of the employee or by placing a copy in the U.S. Postal Service addressed to the grievant.

- C. Step three. In the event the employee believes that the written response provided by the supervisor as specified in Step two, does not resolve the matter, the employee may, within three (3) days of receipt of the written response, file his/her grievance with the department head.

The department head receiving a Step three grievance shall have seven (7) days to investigate the matter and provide a written response to the grievant. Written responses shall be delivered in the manner as described in Step two of this procedure.

- D. Step four. In the event the employee believes that the written response of the department head does not resolve the matter, the employee may, within three (3) days of receipt of the response, file his/her grievance with the Human Resources Director.

The Human Resources Director shall investigate, may conduct an informal hearing giving all parties an opportunity to express their positions and shall, within fourteen (14) days deliver a written resolution as provided in Step two of this procedure.

- E. Step five. Following receipt of the Human Resources Director's recommendation in the matter, the employee shall have up to three (3) calendar days to either accept the recommendation or issue a notice of intent to arbitrate. The notice of intent to arbitrate shall be in writing and shall be filed with the Human Resources

Director.

1. The Human Resources Director shall request a roster of arbitrators from the Federal Mediation and Conciliation Service, the American Arbitration Association or the Kansas Public Employees Relations Board. The parties shall either agree on the arbitrator or shall engage in the alternate striking procedure to select the arbitrator.
2. The costs associated with fees and expenses of the arbitrator shall be paid by the City if the grievance involves disciplinary actions. Such costs shall be shared equally by the parties if the grievance involves any issue other than discipline as defined by the provisions of this Personnel Code.
3. The arbitrator shall conduct a hearing into the grievance at a time, place and date mutually agreed on by the grievant and the Human Resources Director. In the event the grievant and the Human Resources Director cannot, within three (3) days of the notification of the arbitrator, agree on a time, place and date for the hearing, the arbitrator shall issue a notice of hearing listing the time, place and date for the hearing.
4. All documentary evidence and a list of witnesses shall be presented to the opposing party prior to the commencement of the hearing. Acceptance of additional evidence presented to the arbitrator, which was not submitted in advance to the opposing party, or testimony from a witness not listed in advance shall be admitted at the sole discretion of the arbitrator. The arbitrator shall honor any request for a continuance of the hearing made by

a party not provided evidence or advised of a witness prior to the hearing in the event the arbitrator determines to admit such evidence or testimony.

5. The arbitrator, after hearing all evidence and testimony, shall enter an order resolving the grievance. Such order shall indicate findings, conclusions and a resolution and shall grant the relief deemed appropriate by the arbitrator. This order shall be final and binding on the parties.

Section 4. Scope of Rights.

A. Management rights. Specific areas of responsibility shall be reserved solely to management unless it can be clearly shown that an action by management was arbitrary, capricious, without cause, malicious, discriminatory or in bad faith. Generally, the following management rights shall not be grievable. Unless specifically modified by an action of the Governing Body, management reserves the right to:

1. Direct the work of its employees;
2. Hire, promote, transfer, assign, retain and recall employees in positions within the public agency;
3. Maintain the effectiveness, productivity and efficiency of governmental operations;
4. Discipline, suspend, demote and/or discharge employees for just cause;
5. Take actions as may be necessary to carry out the mission of the agency in emergencies, as declared by the Governing Body;
6. Determine the methods, means and personnel by which operations are to be carried on; including the right to contract and subcontract work; and

7. Retain all other rights typically vested in management which may not be specifically, stated.