City of Healdsburg
Family Care and Medical Leave, Pregnancy Disability Leave, and Military Family Leave Policy

Effective Date: March 1, 2023

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Jeff Kay, City Manager

I. PURPOSE:

To provide employees with information about and establish guidelines for taking family care and medical leave, in accordance with the federal Family and Medical Leave Act ("FMLA"), the California Family Rights Act ("CFRA"), and the California Pregnancy Disability Leave Law ("PDL").

II. POLICY:

To the extent not already provided for under current leave policies and provision, the City of Healdsburg (the "City") will provide family and medical care leave for eligible employees as required by state and federal law. The leaves provided for in this Policy are granted under a variety of state and federal laws. Employees should be aware that leave under one Section of the Policy may also qualify for leave under another Section. In addition, leave may qualify under one law for a particular purpose, but not another law. For example, an employee is entitled to take CFRA leave to care for a registered domestic partner, but FMLA leave does not include registered domestic partners. In such cases, the city will advise affected employees in writing which of their statutorily protected leaves are being used and how much of that leave remains.

Additional definitions and other provisions governing employees' rights and obligations under the FMLA, CFRA, and PDL that are not specifically set forth below are set forth in the Department of Labor's FMLA regulations (29 C.F.R. § 825.00 *et seq.*) and the California Department of Fair Employment and Housing's CFRA regulations (2 C.C.R. § 11087 *et seq*.) and PDL regulations (2 C.C.R. § 11035 *et seq*.) This Policy is deemed to include such regulatory provisions, including subsequent revisions to such regulatory provisions.

III. FAMILY CARE AND MEDICAL LEAVE (FMLA/CFRA LEAVE):

A. Eligibility: To be eligible for FMLA/CFRA leave, an employee must have been employed by the City for at least 12 months prior to the date on which the FMLA/CFRA leave is to commence and have worked at least 1,250 hours over the 12-month period preceding the FMLA/CFRA leave. For employees performing covered military service under the federal Uniformed Service Employment and Reemployment Rights Act, periods of absence due to such service shall be counted for purposes of determining whether the employee meets these eligibility requirements.

B. **Qualifying Reasons for FMLA/CFRA Leave:** Employees meeting the eligibility requirements under Section III.A. may take FMLA/CFRA leave for any of the following qualifying reasons:

1. The birth of a child of the employee and in order to care for such child.

2. The placement of a child with the employee for adoption or foster care of the child by the employee and in order to care for that child.

3. Providing care for a spouse, child, or parent with a serious health condition.

CFRA also provides for leave to care for the following family members due to a serious health condition: domestic partner, adult child, child of a domestic partner, grandparent, grandchild, sibling, or parent-in-law.

4. The employee's own serious health condition.

FMLA and CFRA also provides for military exigency leave and military caregiver leave, and those types of leaves are addressed under Section V of this Policy. The PDL also provides for leave for employees with a serious health condition on account of the employee's pregnancy, childbirth, or related medical conditions, and that leave is addressed under Section IV.

C. **Child:** Leave may be taken under Section B.1., B.2., or B.3 under CFRA and FMLA, concurrently, by an employee for a "child" who is any of the following

1. A biological child, adopted child, foster child, stepchild, legal ward of the employee, or a child to whom the employee stands *in loco parentis*, and who, at the time leave is to commence is either:
   a. Under 18 years of age; or
   b. 18 years of age or older and incapable of caring for themself because of a mental or physical disability.

2. CFRA's definition of child includes child as defined in Section C.1 above, and also any of the following:
   a. A child, as defined in Section C.1 above, of a domestic partner;
   -or-
   b. An adult biological child, adopted child, foster child, stepchild, legal ward of the employee, or a child to whom the employee stands *in loco parentis* of the employee or of the employee's domestic partner.

D. **In loco parentis**:

1. For purposes of this policy, an employee stands *in loco parentis* by providing day-to-day care or financial support with demonstrated intent of assuming the responsibilities typically held by a parent.

2. Whether an employee stands *in loco parentis* to a child for purposes of this policy will be determined by the City on a case-by-case basis, and the City may require reasonable documentation to support an employee's claim of providing either day-to-day care or financial support for the child.

E. **Spouse:** The definition of spouse expressly includes individuals in lawfully recognized same sex marriages, common law marriages and marriages that were validly entered into outside of the United States if they could have been entered into at least one state. In addition, the regulatory definition of spouse has moved from “state of residence” rule to “place of celebration” rule in which to look to the law of the place in which the marriage was entered into as opposed to the law of the state where the employee resides. This allows all legally married couples to have consistent federal family leave rights regardless of their residence.

F. **Parent:** Parent means a biological, foster or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood *in loco parentis* to the employee as a child. For purposes of leave under only CFRA, parent includes parent-in-law.

G. **Domestic Partner:** A registered domestic partner as defined by Family Code 297 through 297.5.

1. Two adults who have chosen to share one another’s lives in an intimate and committed caring relationship.

2. Domestic partnership is established in the state of California when both persons file a Declaration of Domestic Partnership with the Secretary of State and the time of the filing all of the following requirements are met:

    a. Neither persons are married to someone else nor is a member of another domestic partnership unless otherwise terminated, dissolved, or adjudged a nullity;

    b. Both persons are at least 18 years of age and are not related by blood in any way that would prevent them from being married in California; and

    c. Both persons are capable of consenting to domestic partnership.

H. **Serious Health Condition:** A serious health condition is an illness, injury,

impairment, or physical or mental condition that involves the employee or a Covered Family Member[1] that makes the employee unable to work. Specifically, it involves either inpatient care or continuing treatment or supervision by health care provider as follows: following:

1. "*Inpatient care*" means an overnight stay in a hospital, hospice, or residential medical care facility, or any subsequent treatment in connection with such inpatient care, or any resulting period of incapacity.

    a. A person is considered to have an "overnight stay" for purposes of this provision if a health care facility formally admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

2. "*Continuing treatment or supervision by a health care provider*" means and includes any one or more of the following:

    a. In-person treatment two or more times, within 30 days of the first day of incapacity (CFRA excludes two or more in-person treatments within 30 days to establish continuing treatment), unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.* physical therapist) under orders of, or on referral by, a health care provider, with the first visit being within seven days of the first day of incapacity; or

    b. In-person treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider, with the first visit being within seven days of the first day of incapacity (CFRA does not include a seven-day requirement to establish continuing treatment).

    c. Any period of incapacity due to pregnancy, or for prenatal care, whether or not in-person treatment is received during that time, or whether the resulting absence lasts fewer than three days (CFRA excludes pregnancy as a serious health condition, including other conditions of pregnancy related disability).

    d. Any period of incapacity, or treatment for such incapacity, due to a chronic serious health condition, whether or not in-person

1 For purposes of this Policy, a "covered family member" means: 1) a child as defined in Section III.C; 2) a parent as defined in Section III. F; 3) a spouse as defined in Section III.E, 4) a domestic partner as defined in Section III.G; 5) a Sibling (CFRA only); 6) a Grandparent (CFRA only); and/or 7) a Grandchild (CFRA only).

treatment is received during that time, or whether the resulting absence lasts fewer than three days. A chronic serious health condition is one which:

i. Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; and

ii. Continues over an extended period (including recurring episodes of a single underlying condition); and

iii. May cause episodic rather than a continuing period of incapacity (*e.g.,* asthma, diabetes, epilepsy, *etc.*).

e. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

f. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for either:

i. Restorative surgery after an accident or other injury; or

ii. A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days (CFRA excludes full-days provision and states incapacity of more than 3 consecutive days) in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), or kidney disease (dialysis).

3. "*Incapacity*" means that a person is unable to work, attend school, or perform regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

I. Amount of Leave Entitlement: Provided that all applicable conditions of Section III are met, an employee may take a maximum of 12 workweeks of FMLA/CFRA leave in a rolling 12-month period measured backwards from the date the employee uses any FMLA/CFRA leave.

1. Employees taking FMLA/CFRA leave for the birth, adoption, or foster care of their child must initiate and complete any FMLA/CFRA leave within one year of the birth of the child or placement of the child with

the employee for adoption or foster care.

2. Parents who are both employed by the City may take a maximum combined total of 12 workweeks of FMLA leave and may each take a maximum of 12 workweeks of CFRA leave in a 12-month period for the birth, adoption, or foster care of their child. Both parents and registered domestic partners (CFRA only in some circumstances) may be on leave simultaneously, provided the employees provide a certificate, from a health care provider, stating the need for both employees' participation in the care of the child.

3. An employee's FMLA/CFRA leave does not need to be consecutive but can be cumulative within a 12-month period.

4. Industrial injury leaves and all non-industrial injury leaves are FMLA/CFRA leaves if they qualify as serious health conditions.

J. Concurrent Use of Accrued Paid Leaves: Leave taken under this Policy are unpaid. Employees may elect or may be required to use their accrued leave balances concurrently with FMLA/CFRA leave, as provided below. When an employee elects or is required to use the employee's accrued leave balances, the employee may specify in writing the order in which the employee would prefer to exhaust accrued leave balances. If the employee fails to designate the order of exhaustion, the City will exhaust the leave balances in the following order: sick leave (subject to the terms of this Section III.J.1., below), vacation, compensatory time off (CTO) or management leave, and floating holiday. The paid leave shall run concurrently with the FMLA/CFRA leave and shall not extend the employee's entitlement to FMLA/CFRA leave.

1. **Sick Leave:** Employees are required to coordinate all accumulated sick leave concurrently when FMLA/CFRA leave is taken for the employee's own serious health condition. Employees may elect to so coordinate their accumulated sick leave when FMLA/CFRA leave is taken for any other reason under Section III.B. of this policy.

2. **Other Paid Leaves:** Employees are required to coordinate all other accrued paid leaves of absence, including but not limited to, compensatory time off, management leave, vacation, and floating holiday leave when taking FMLA/CFRA leave for any reason.

3. **Coordination with Wage Replacement Plans:** If an employee who is on FMLA/CFRA leave is also receiving a wage replacement payment from State Disability Insurance (SDI), Paid Family Leave (PFL), and/or Workers' Compensation, the employee and the City may mutually agree to coordinate the employee's accrued paid leaves with the amount received from the wage replacement plan, up to an amount equal to the employee's regular salary.

K. Intermittent or Reduced Schedule Leave: Intermittent FMLA/CFRA leave is leave taken on an as-needed basis in increments of minutes, hours, or days. A reduced schedule FMLA/CFRA leave involves a reduction in the number of hours per day or per week that an employee regularly works, with the employee substituting FMLA/CFRA time for hours not worked. The minimum FMLA/CFRA leave increment that can be taken by an employee is 15 minutes.

1. **Calculation of Intermittent or Reduced Schedule Leave:** The maximum equivalent number of hours to which an employee is entitled during the 12-week period will be based on the employee's regularly scheduled workweek. For example, an employee who is regularly scheduled to work 40 hours per workweek will be entitled to a maximum of 480 hours of FMLA/CFRA leave, whereas an employee who is regularly scheduled to work 32 hours per workweek will be entitled to a maximum of 384 hours of FMLA/CFRA leave. In calculating this amount for employees with a varying schedule, the city will use an average of the employee's workweeks within the 12-month period immediately preceding the intermittent or reduced schedule leave.

2. **Impact on Salary:** Where permitted by applicable state and federal wage and hour laws, the city may make deductions from an employee's salary for all hours of leave taken as intermittent leave, unless the employee is entitled or required to coordinate paid leave. Such deductions do not affect the employee's classification as exempt or nonexempt for purposes of the Fair Labor Standards Act.

3. **Inclusion of Scheduled Overtime:** If an employee normally would be required to work overtime hours but is unable to do so because of an FMLA/CFRA-qualifying reason that limits the employee's ability to work overtime, the hours that the employee would have been required to work may be counted against the employee's FMLA/CFRA entitlement, as the employee would be considered to be using intermittent or reduced schedule leave. For example, if an employee is normally required to work 50 hours in a particular workweek, but because of an FMLA/CFRA-qualifying reason, the employee works only 40 hours that week, the employee would use 10 hours of FMLA/CFRA-protected leave out of the 50-hour workweek.

4. **Conditions for Taking Intermittent or Reduced Schedule Leave**

   a. FMLA/CFRA leave taken for the employee's own serious health condition, or the serious health condition of the covered family member, as defined in Footnote 1 above, or for military caregiver leave under Section V.B. of this policy, may be taken intermittently or on a reduced leave schedule when medically necessary (as distinguished from voluntary treatments and procedures).

b. Military exigency leave under section V.A. of this policy may be taken on an intermittent or reduced schedule basis without limitation.

c. Leave taken following the birth, adoption, or placement or foster care of a child may be taken on an intermittent or reduced schedule basis, subject to the conditions set forth in Section III.K. 6., below.

5. Temporary Transfer:

a**. Required by the City**: The City may require that the employee temporarily transfer to an available alternative position for which the employee is qualified, and which provides equivalent pay and benefits and that better accommodates recurring leave periods than the employee's regular position.

b. **Requested by Employee**: An employee on intermittent or reduced schedule FMLA/CFRA leave for foreseeable and planned medical treatments may request a transfer to an open and available position for which the employee is qualified if the duties of that position would better accommodate the employee's intermittent or reduced schedule FMLA/CFRA leave. Transfers will not be considered under this Section when the intermittent or reduced schedule FMLA/CFRA leave is unscheduled, such as in the case of chronic conditions.

6. Leave Taken for Baby Bonding: The basic minimum duration of a leave taken for the birth, adoption, or foster care of a child shall be two weeks. However, the city may also grant multiple requests for shorter leave periods in the applicable one-year period, up to the maximum allotment of time under FMLA/CFRA.

L. Employee Notice: Employees requesting leave under the FMLA/CFRA must notify their supervisor in accordance with the rules set forth below. Employees will provide the supervisor with sufficient information to make the City aware that the employee needs FMLA/CFRA leave, and the anticipated timing and duration of that leave. Supervisors must forward any such requests to Human Resources for review and approval. Employees may also provide notice of requested FMLA/CFRA leave to the Human Resources Department directly.

1. **Foreseeable Events:** An employee must provide the city with at least 30 days' advance notice before the date the leave is to begin, or must provide notice as soon as is practicable, normally the same business day or next business day if the employee is off work when the employee learns of the need for leave. If the employee provides less than 30 days' advance notice, the city may require explanation of why

30 days' advance notice was not practicable.

a. In any case in which the need for FMLA/CFRA leave is foreseeable based on one of the circumstances listed below in subsection b., the employee shall make a reasonable effort to schedule any planned medical treatment or supervision so as not to unduly disrupt the operations of the City. However, any such scheduling shall be subject to the approval of the health care provider of the employee, or the covered family member as defined in Footnote 1 above.

b. The need for leave is considered "foreseeable" when it is taken for any of the following reasons:

   i. Planned medical treatment for a serious health condition of the employee.

   ii. Planned medical treatment for a serious health condition of a family member.

   iii. An expected birth, or placement for adoption or foster care.

c. If an employee fails to provide the requisite 30-day advance notice for foreseeable events without any reasonable excuse for the delay, the City reserves the right to delay the taking of the leave by up to 30 days after the date the employee provides notice of the need for FMLA/CFRA leave.

2. **Unforeseeable Events:** If an employee requires FMLA/CFRA leave for an unforeseeable event, the employee is required to provide notice to the city as soon as is practicable.

3. **Notice of Intermittent/Reduced Schedule Leave:** The notice requirements for foreseeable intermittent or reduced schedule leaves shall be the same as for other foreseeable leaves, and the notice requirements for unforeseeable intermittent or reduced schedule leave shall be the same as for other unforeseeable leaves.

4. **Contents of Notice:** All requests for FMLA/CFRA leave should include the anticipated date(s) and duration of the leave and be sufficient to make the City aware that the employee needs leave under the FMLA/CFRA. The employee must state the reason the leave is needed, by reference to the list in Section III.B. of this policy. When the employee provides notice, it may not contain sufficient information for the City to determine whether the employee's leave could be for an FMLA/CFRA-qualifying purpose. In such cases, the city may follow up with the employee for additional information, and the employee is required to respond to the same. However, the employee shall not be

required to provide the City with a diagnosis.

5. **Changes to Dates of Leave:** The employee must advise the city as soon as practicable when the employee learns that the dates of the FMLA/CFRA leave may change.

6. **Requests for Extension:** Any requests for extensions of an FMLA/CFRA leave must be received at least five business days before the date on which the employee was originally scheduled to return to work, where practicable, and must include the revised anticipated date(s) and duration of the FMLA/CFRA leave. If the employee has exhausted the employee's leave entitlement under Section III.I., the City will evaluate on a case-by-case basis whether additional leave may be available as a reasonable accommodation for the employee's own serious health condition; however, any such additional leave shall not be subject to the provisions of this Section III.

M. **City Response to a Request for FMLA/CFRA Leave or Request for Extension - Eligibility Notice**: Within five business days of an employee's request to take FMLA/CFRA leave, the City shall provide the employee with a written Eligibility Notice. The Eligibility Notice is not a designation of the employee being on FMLA/CFRA Leave. The Eligibility Notice shall include the following information:

1. Whether the employee is eligible to take FMLA/CFRA leave. If the employee is ineligible for FMLA/CFRA leave, the notice will include the reason(s) why the employee is ineligible.

2. Whether the employee has exhausted their 12-week FMLA/CFRA entitlement.

3. Whether additional information, such as a medical certification, is required from the employee in order to process the employee's request for FMLA/CFRA leave or request for extension.

4. The employee's rights and responsibilities under the FMLA/CFRA, which will include a statement of whether the employee is required to provide a medical certification or recertification. A statement requiring a medical certification will also advise the employee of the anticipated consequences of the employee's failure to provide adequate notice.

5. If the employee has requested an extension of leave for the employee's own serious health condition but has exhausted the leave entitlement under Section III.I., the City will advise whether additional leave will be granted as a reasonable accommodation; however, any such additional leave shall not be subject to the provisions of this Section III.

N. Medical Certification and Recertification: Any request for FMLA/CFRA

leave for an employee's own serious health care condition or for FMLA/CFRA leave to care for a family member with a serious health condition must be supported by medical certification from the treating health care provider. Employees are encouraged to use the City's medical certification form to ensure that all pertinent information is obtained. Any request for an extension of FMLA/CFRA leave also must be supported by a medical certification from the treating health care provider. Again, employees are encouraged to use the City's medical certification to ensure that all pertinent information is obtained.

1. **Timing of Request for Medical Certification:** The City will request medical certification:

    a. Within five business days after an employee requests foreseeable leave;

    b. Within five business days after an employee provides notice of an unforeseeable leave, or within five business days after an unforeseeable leave commences, whichever is later;

    c. At a later date, if the City has a reason to question the appropriateness or duration of an employee's leave (FMLA only).

2. **Timing for Employee's Return of the Medical Certification:** All medical certifications and recertifications must be returned to the city within 15 days from the City's request, regardless of whether the leave is foreseeable or unforeseeable. Exceptions to this may be granted when it is not practicable to provide the certification or recertification within 15 days, despite the employee's diligent, good faith efforts to do so.

3. **Certification for Serious Health Condition of Covered Family Member:** The employee must have the patient's treating health care physician complete a medical certification form when requesting family leave to care for a Covered Family Member (as defined in Footnote 1, above) with a serious health condition. Employees are encouraged to use the City's medical certification form to ensure that all pertinent information is obtained.

    a. **Medical Recertification:** If the employee requests additional leave beyond the time period which the health care provider originally estimated that the employee needed to take care of Covered Family Member, the city may request a recertification from the employee.

4. **Certification for the Employee's Own Serious Health Condition:**

    a. **First Opinion:** The employee must have the employee's

health care physician complete a medical certification form when requesting FMLA/CFRA leave for the employee's own serious health condition. Employees are encouraged to use the City's medical certification form to ensure that all pertinent information is obtained.

b. **Second and Third Opinions:** If the City has reason to doubt the validity of the certification provided by the employee, the city may require the employee to obtain a second opinion from a doctor of the City's choosing at the City's expense. If the employee's health care provider and the doctor providing the second opinion do not agree, the City may require a third opinion, also at the City's expense, performed by a mutually agreeable doctor who will make a final determination that shall be binding on both the City and the employee.

c. **Medical Recertification:** The City may request recertification of a medical condition upon the expiration of the time period which the health care provider originally estimated, if additional FMLA/CFRA leave is requested.

5. Certification for an Employee's Return to Work:

a. **Returning from a Continuous Leave:** As a condition of restoration to the employee's former position, an employee taking continuous leave under the FMLA/CFRA is required to provide the City with certification from the employee's health care provider stating that the employee is able to resume essential work functions. An employee who fails to provide the certification may have reinstatement delayed.

b. **Returning from an Intermittent or Reduced Schedule Leave:** In addition to the requirement in Section 5.a., above, if the employee is on intermittent or reduced schedule leave, the city may require a fitness for duty certification at fixed intervals not exceeding every 30 days if there are reasonable safety concerns. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the employee or others.

c. **Contents of Certification:** The City will provide the employee with a form and a copy of the employee's job description for the employee health care provider to review in completing the fitness for duty certification, and employees are encouraged to use the City's form to ensure that all pertinent information is obtained. The employee must provide a complete and sufficient fitness for duty certification. If the employee's health care provider releases the employee back to work with restrictions, the City will engage in the interactive process to determine what reasonable accommodation, if any, will permit

the employee to return to work in accordance with the ADA and the FEHA.

6. **Employee's Failure to Provide a Medical Certification or Recertification:** If the employee fails to timely provide a complete and sufficient medical certification when requested, the request for FMLA/CFRA leave may be denied or delayed until a sufficient certification is provided. Employees will be advised of these consequences in connection with any request by the city for medical certification or recertification.

O. City's Designation of Leave: Absent extenuating circumstances, within five business days after the city has acquired enough information to determine whether the employee's request qualifies for FMLA/CFRA leave, the City will provide the employee with a written Designation Notice.

1. Designating Leave as FMLA/CFRA-Qualifying: If the leave is designated as being FMLA/CFRA-qualifying, the Designation Notice will contain, but is not limited to, the following information:

a. A statement that the leave is being designated as FMLA and/or CFRA leave;

b. The amount of leave being counted as FMLA and/or CFRA leave, if known;

c. Whether accrued paid leave will be used during the leave, and that any paid leave used will count as FMLA and/or CFRA leave;

d. Whether a medical certification or recertification will be required to release the employee to return to work; and

e. Whether a job description or description of essential duties is attached to the Designation Notice for the health care provider to use in completing the medical certification or recertification to release the employee to return to work.

2. Unable to Designate: If the City is unable to determine whether the leave requested is FMLA/CFRA-qualifying because more information is needed, the employee will be informed that

a. The medical certification is incomplete or insufficient, and the City will provide a list of deficiencies and explain the employee's opportunity to cure said deficiencies; or

b. A second or third medical opinion is being required.

3. Not Designating Leave as FMLA/CFRA-Qualifying: If the City has

determined that the employee's leave does not qualify as FMLA/CFRA leave, or that employee has exhausted the 12-week FMLA/CFRA entitlement, the city will notify the employee in writing that the leave is not being designated as FMLA/CFRA leave, and the reason for the denial.

P. Employment Benefits and Protection:

1. Previously Accrued Benefits and Seniority Status:

a. Leave under the FMLA/CFRA will not result in the loss of any employment benefits accrued before the date the leave commenced.

b. Leave under the FMLA/CFRA will not constitute a break in service or otherwise cause the employee to lose longevity or seniority, even if other paid or unpaid leave constitutes a break in service for purposes of establishing longevity or seniority, or for layoff, recall, promotion, job assignment, or seniority-related benefits.

2. No Accrual of Leave or Seniority during Unpaid FMLA/CFRA Leave:

a. An employee on unpaid FMLA/CFRA leave shall not accrue any additional paid leave time. Thus, employees will not accrue vacation leave, sick leave, administrative leave, nor will they be paid for holidays during the unpaid leave.

b. The time off on unpaid FMLA/CFRA leave shall not count as time worked for purposes of establishing additional seniority for purposes of layoff, recall, promotion, job assignment, and other seniority-related benefits.

c. However, during the time that an employee supplements unpaid FMLA/CFRA leave with paid leave credits, the employee will continue to accrue leaves and benefits in accordance with the provisions of the City's policy governing those leaves of absence (*i.e.,* when coordinating with sick leave, the rules governing sick leave will apply with regard to the employee's benefits).

3. Maintenance of Health Insurance of the Employee: Employees will continue to receive the same medical benefits while on FMLA/CFRA leave for up to 12 workweeks, or longer depending on the basis for the qualifying leave, in a 12-month period. The City shall be responsible for the continued payment of the City's share of the cost of the employee's health benefits during the leave period. Benefits for absences beyond the allotted period will be handled in the same

manner as benefits for employees on any other type of unpaid leave of absence. An employee who notifies the city that the employee does not intend to return to work from the FMLA/CFRA leave is not entitled to medical benefits provided by the City as if the employee were on a FMLA/CFRA leave and instead is entitled to the benefits provided to employees who are on an unpaid leave of absence for any other reason.

4. Maintenance of Benefits Requiring Employee Contributions:

a. During any period of unpaid leave, unless otherwise prohibited by applicable law, an employee may elect to discontinue health insurance coverage for the employee, a spouse, registered domestic partner, and/or any dependent(s) as well as any other benefits offered or sponsored by the City to which the employee is required to make monthly contributions. Employees must notify the city in writing of such an election.

b. An employee will continue to be responsible for making the payment of monthly contributions for which the city has not received advanced notice of election to discontinue. If any premium amounts are increased or decreased for other employees similarly situated, the employee will be required to pay the new premium rates.

c. All monthly contributions are due and payable to the city at the same time as they would be if made through payroll deduction.

d. If any monthly contributions are not received within 30 days of their due date, the city has the option to either discontinue said benefit(s) or continue said benefit(s) by making the monthly contributions on the employee's behalf.

e. Upon the employee's return to work, the City is entitled to seek reimbursement from the employee for the employee's share of any monthly contributions made on the employee's behalf.

f. Employees included in a pension or retirement plan may continue to make contributions in accordance with the terms of the plan during the period of leave. However, the City shall not be required to make plan payments for employees during the leave period which is unpaid, and the unpaid leave period shall not be counted for purposes of time accrued under the plan.

g. If the City provides a new health plan or benefits or changes health plans or benefits while an employee is on FMLA/CFRA leave, the city will give written notice to the employee to advise that the employee is subject to the new or changed plan/benefits in the same manner, and to the same extent, as if

the employee were not on leave.

5. Failure to Return from Leave: The City may recover the entire premium it paid for maintaining health insurance benefits for an employee during any period of unpaid leave if the employee fails to return to work promptly upon the expiration of a leave for a reason other than the continuation, recurrence or onset of a serious health condition that entitles the employee to leave or other circumstances beyond the employee's control.

Q. Reinstatement:

1. Restoration to Position: When an employee returns from a leave under the FMLA/CFRA, the employee will be restored to the position held when the leave began, or to a comparable position, with equivalent (i.e., virtually identical) employment benefits, pay, and other conditions of employment.

a. The duties of the position must be capable of being performed in the same or similar geographic location and involve the same or substantially similar duties as the position held when leave began, with responsibilities that entail substantially equivalent skill, effort, and responsibility.

2. Denial of Restoration Rights: There are two circumstances where the City may refuse to reinstate an employee to the employee's pre-leave position:

a. **Position No Longer Exists:** The City may refuse to reinstate an employee to the employee's pre-leave position at the conclusion of a leave under either the FMLA or CFRA when the employee's position and any comparable position have ceased to exist because of legitimate business reasons unrelated to the employee's FMLA/CFRA leave. In this case, the City shall reasonably accommodate the employee through alternative means that will not cause undue hardship to the City's operation. The City may offer the employee any other position that is available and suitable. The City is not required to create new employment that would not otherwise be created, discharge or transfer another employee, or promote another employee who is not qualified to perform the job.

b. **Key Employee**: The City may refuse to reinstate an employee to the employee's pre-leave position at the conclusion of a leave under the FMLA, and *not* CFRA, when the employee is considered a key employee. A key employee is a salaried eligible employee who is among the highest paid ten percent of the City's employees. In addition, the following steps must take place:

1. The city notifies the employee at the time the employee gives notice of the need for leave, or when leave commences, if earlier, that the Key Employee is a Key Employee, and also notifies the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the City should determine that reinstatement will result in substantial and grievous economic injury to its operations; and

2. As soon as the city makes a good faith determination that substantial and grievous economic injury will result if the city reinstates that Key Employee at the end of the requested FMLA leave period, the City notifies the employee that it intends to deny reinstatement at the end of the requested leave period. The notice from the city will include an explanation for the basis for the City's determination and provide the Key Employee with a reasonable time in which to return to work, considering the circumstances, such as the requested duration of the leave and the urgency of the need for the employee to return.

3. The Key Employee has already begun the FMLA leave at the time of receiving the notice, and the Key Employee does not return to work within the specified timeframe after receiving such notice from the city.

    A. The Key Employee will remain entitled to the maintenance of health benefits under Section III.P.4. for the duration of the originally requested leave, but the City will not be entitled to recover its contributions to premiums under Section III.P.5.

    B. The Key Employee's rights will then continue under the FMLA unless and until the employee either gives notice that the employee will not seek to return to work, or the employee requests to return to work at the conclusion of the leave and receives notice that the City has denied that request.

4. If the Key Employee requests to return to work upon completion of the originally requested leave, the City again determines that substantial and grievous economic injury will result if the City reinstates the employee, based on the facts at hand, and the City provides written notice of the denial.

3. **Opportunity to Fulfill Missed Requirements:** If an employee is unable to attend a necessary course, renew a license, or is otherwise adversely affected in terms of fulfilling minimum requirements or qualifications for the position because of the FMLA/CFRA leave the employee will be given a reasonable opportunity to fulfill those requirements or qualifications upon returning to work from FMLA/CFRA leave.

4. **Accommodation Upon Returning from Leave:** Nothing in this section prevents the City from accommodating an employee's request for any change in shifts, schedule, position, or geographic location. Similarly, nothing in this section prohibits the city from offering a promotion to a better position, or from providing a reasonable accommodation pursuant to its obligations under the Americans with Disabilities Act and the Fair Employment and Housing Act.

IV. PREGNANCY DISABILITY LEAVE OR TRANSFER:

A. Eligibility and Duration:

1. Eligibility:

a. Any employee who is disabled on account of pregnancy, childbirth, or related medical conditions may take a pregnancy-related disability leave, regardless of the number of hours worked or the employee's length of employment with the City. However, unless an employee has met the eligibility requirements under Section III of this policy, the employee shall not be subject to the additional terms and conditions that apply to an employee who is eligible for FMLA leave.

b. An employee's pregnancy-related disability is not considered a serious health condition under the CFRA and is not counted against an employee's CFRA leave eligibility.

2. **Amount of Leave Entitlement:** An eligible employee may take a pregnancy-related disability leave for the period of disability, up to four months (an equivalent of 17 1/3 weeks). The pregnancy disability leave shall run concurrently with any family care or medical leave to which the employee may be entitled under the FMLA. An employee is entitled to take off the number of days or hours that the employee would normally work during 17 1/3 weeks of employment. For example, an employee, who regularly works 40 hours per week is entitled to take 693 hours of leave, and an employee who regularly works 20 hours per week, would be entitled to 346.5 hours of leave.

3. **Temporary Transfer:** Any employee affected by conditions related to

pregnancy, childbirth, or related medical conditions is entitled to transfer temporarily to a less strenuous or hazardous position or to less strenuous or hazardous duties upon the certification of the employee's health care provider that the transfer is medically advisable, if the transfer can be reasonably accommodated.

4. **Reasonable Accommodation:** The City will provide reasonable accommodation to an employee who is affected by pregnancy, childbirth or related medical conditions as required by law.

B. **Use of Accrued Leave**: An employee taking pregnancy-related disability leave must coordinate any available sick leave with the pregnancy-related disability leave. An employee taking pregnancy-related disability leave may, at the employee's option, coordinate any other accumulated paid leaves, including, but not limited to, sick leave, vacation time, compensatory time off or management leave, or floating holiday pay with the pregnancy-related disability leave. The paid leave shall run concurrently with the pregnancy-related disability leave and shall not extend the employee's entitlement to pregnancy-related disability leave beyond the amount specified in Section IV.A.2 of this policy.

1. **Coordination with Wage Replacement Plans:**

a. This provision only applies when the employee's pregnancy-related disability leave is also designated as a serious health condition under the FMLA.

b. Pursuant to the provisions of the FMLA, if an employee is receiving a wage replacement payment from State Disability Insurance (SDI) or Paid Family Leave (PFL), the employee and the City may mutually agree to coordinate the employee's accrued paid leaves with the amount received from the wage replacement plan, up to an amount equal to the employee's regular salary.

c. If the employee is still receiving SDI benefits when the twelve workweeks of leave under the FMLA expire, the city will require that the employee begin coordinating any additional accrued sick leave with the wage replacement benefits. The employee may also elect to coordinate all other accrued paid leaves with the wage replacement benefits.

C. **Notice**: An employee should notify the supervisor of the employee's need for pregnancy-related disability leave or transfer as soon as the employee is aware of the need for such leave.

1. **Foreseeable Events:** Where the need for pregnancy-related disability leave or transfer is foreseeable, the employee must provide at least 30 days' advance notice to the City of the need for pregnancy-related

disability leave or transfer. If the leave or transfer is required in connection with any planned, non-emergency medical treatment or supervision, the employee shall consult with the City and make a reasonable effort to schedule any such planned medical treatment or supervision to minimize disruption to the City's operations, subject to the approval of the health care provider of the employee.

2. **Unforeseeable Events:** For non-emergency events that are not foreseeable 30 days in advance, or when 30 days' advance notice is not practicable, the employee must notify the city as soon as practicable under the circumstances, ordinarily within two business days after the employee learns of the need for leave.

3. **Notice of Intermittent Leave:** In the event that an employee requires intermittent pregnancy-related disability leave, the employee shall notify the City of the anticipated dates for the absences as much in advance as possible.

4. **Failure to Provide Notice:** If the employee fails to provide the requisite 30-day advance notice for foreseeable events without any reasonable excuse for the delay, the City reserves the right to delay the employee's right to take leave for up to 30 days after the date the employee provides notice of the need for pregnancy-related disability leave or transfer; provided, however, that the delay would not endanger the employee's health, pregnancy, or health of the employee's co-workers.

D. Contents of Notice or Request for Extension:

1. All requests for pregnancy-related disability leave or transfer should include the anticipated timing and duration of the leave or transfer and be sufficient to make the City aware that the employee requires a pregnancy-related disability leave or transfer. Any requests for extensions of a pregnancy-related disability leave or transfer must be received at least five business days before the date on which the employee was originally scheduled to return to work, where practicable, and must include the revised anticipated date(s) and duration of the pregnancy-related disability leave or transfer.

2. If the employee has exhausted the leave entitlement under Section IV.A.2., the City will evaluate on a case-by-case basis whether additional leave may be available as a reasonable accommodation; however, any such additional leave shall not be subject to the provisions of this Section IV.

E. Intermittent or Reduced Schedule Leave: Pregnancy-related disability leave can be taken on an intermittent or on a reduced schedule basis when medically advisable, as determined by the employee's health care provider. The minimum pregnancy-related disability leave increment that can be taken

by an employee is fifteen minutes. If pregnancy-related disability is taken on an intermittent or reduced schedule basis and it is foreseeable based on planned medical treatment because of pregnancy, the City retains the discretion to temporarily transfer the employee to an alternative position, for which the employee is qualified, with equivalent pay and benefits, which better accommodates the employee's leave schedule, but need not have equivalent duties.

F. City Response to a Request for Pregnancy-Related Disability Leave or Transfer or Request for Extension: Within five business days of an employee's request for pregnancy-related disability leave or transfer, the City shall provide the employee with a written Eligibility Notice, which shall conform to the provisions of Section III.M. The Eligibility Notice shall also inform the employee of the additional rights under the California PDL. If the employee has exhausted the leave entitlement under Section IV.A.2., the City will advise whether additional leave will be granted as a reasonable accommodation; however, any such additional leave shall not be subject to the provisions of this Section IV.

G. Medical Certification:

1. Timing of Certification: Any request for pregnancy-related disability leave or transfer must be supported by a medical certification from a health care provider.

a. For foreseeable pregnancy-related disability leaves or transfers, employees will provide the required medical certification before the leave/transfer begins. When this is not possible, employees must provide the required certification within 15 days, unless it is not practicable under the circumstances to do so. Failure to provide the required medical certification may result in the denial or delay of foreseeable pregnancy-related disability leaves or transfers until such certification is provided.

b. In the case of unforeseeable leaves, failure to provide the required medical certification within 15 days of being requested to do so may result in a denial of the employee's continued leave until certification is eventually provided. Any request for an extension of the leave/transfer must also be supported by an updated certification.

2. Contents of the Certification for Pregnancy-Related Leave: Employees are encouraged to use the City's medical certification when requesting pregnancy-related disability leave to ensure that all pertinent information is obtained. The following information must be included: (1) date the employee became or will become disabled due to pregnancy; (2) the probable duration of the period or periods of disability; and (3) an explanatory statement that, due to the disability,

the employee is unable to work at all or is unable to perform any one or more of the essential functions of the employee's position without undue risk to self, to the successful completion of the pregnancy, or to other persons.

3. **Contents of the Certification for Pregnancy-Related Transfers:** Employees are encouraged to use the City's medical certification when requesting pregnancy-related disability transfer to ensure that all pertinent information is obtained. The medical certification for pregnancy-related transfer shall include: (1) a description of the requested transfer or reasonable accommodation; (2) the date the need for the transfer or reasonable accommodation became medically advisable; (3) the probable duration of the need for the transfer or reasonable accommodation; and (4) an explanatory statement that, due to the disability, the transfer or reasonable accommodation is medically advisable.

4. **No Second/Third Opinions Allowed:** There will not be a second or third opinion regarding pregnancy-related disability leave or transfer.

5. **Return to Work Certification:** As a condition of restoration to the employee's former position, an employee taking leave under the FMLA/PDL is required to provide the City with certification from the employee's health care provider stating that the employee is able to resume original job duties.

H. **City's Designation of Leave**: Once an employee requests pregnancy-related disability leave or transfer, Human Resources shall notify the employee in writing whether the requested leave or transfer is approved and qualifies as pregnancy-related disability leave or transfer. This designation shall comply with the provisions of Section III.O and shall also inform the employee of any additional rights and obligations under the California Pregnancy Disability Leave Law.

I. **Employment and Benefits Protection**: The provisions set forth in Section III.P. of this Policy regarding employment and benefits protection in connection with FMLA/CFRA leave also apply to all pregnancy-related disability leaves, except that where the City's policy permits employees on paid leave and/or unpaid leave to accrue seniority, employees on paid and/or unpaid pregnancy-related disability leaves shall also accrue seniority.

J. **Reinstatement**: Upon the completion of the employee's pregnancy-related disability leave or transfer period, and upon submission of the return to work notice, the employee shall be returned to the same position previously held, or to a comparable position as permitted by law. However, for pregnancy-related disabilities, there is no reinstatement exception for Key Employees.

V. MILITARY LEAVE.

The FMLA/CFRA provides for military exigency leave, which is addressed in Section V.A. of this policy. The FMLA also provides for military caregiver leave, which is addressed in Section V.B. of this Policy.

A. **Military Exigency Leave**: The City permits employees who have a covered military family member in the Armed Forces (including the National Guard or Reserves) to take up to twelve workweeks of FMLA/CFRA leave due to a qualifying exigency resulting from the covered military family member's active military duty (or call to active-duty status) in support of a contingency operation. *Leave granted under this Section shall count against the FMLA/CFRA leave granted under Section III*.

1. **Definitions:**

a. **Armed Forces:** The Army, Navy, Air Force, Marine Corps, or Coast Guard, including the National Guard and Reserves.

b. **Covered Active Duty or Call to Active Duty Status:** One of the following:

i. For a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; or

ii. For a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code.

c. **Covered Military Family Member:** An employee may take leave under FMLA/CFRA for the employee's spouse, son, daughter, or parent who is a member of the Armed Forces and is on Covered Active Duty or Call to Active-Duty Status. An employee may take leave under CFRA for the employee's domestic partner who is a member of the Armed Forces and is on Covered Active Duty or Call to Active-Duty status.

i. For purposes of this definition only, "son" or "daughter" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, within the meaning of Section III.D. of this Policy, regardless of age.

d. **Covered Military Family Member's Child:** The biological, adopted, or foster child, stepchild, legal ward, or child for whom the Military Family Member stands *in loco parentis*, within the meaning of Section III.D. of this Policy, who is either under the

age of 18 or who is aged 18 or older but incapable of self-care because of a physical or mental disability at the time leave under this Section V.A. is to commence.

e. **Covered Military Family Member's Parent:** The biological, adoptive, step, or foster father or mother, or an individual who stood *in loco parentis*, within the meaning of Section III.D. of this Policy, to a Covered Military Family Member who was under 18 years of age.

2. **Qualifying Reasons for Military Exigency Leave:** Military exigency leave can be taken for the following non-medical, non-routine activities only:

a. **Short-Notice Deployment Activities:** If a Covered Military Family Member receives seven or less calendar days' notice prior to the date of deployment, an employee may take FMLA/CFRA leave to address any issue arising from an impending call or order to active duty in support of a contingency operation. The employee may take FMLA/CFRA leave for up to seven days beginning on the date the Covered Military Family Member receives the notice of impending call or order to active duty.

b. **Military Events and Related Activities:** An employee may take FMLA/CFRA leave to attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active-duty status of the Covered Military Family Member. An employee may also take FMLA/CFRA leave to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or American Red Cross that are related to the active duty or call to active-duty status of a Covered Military Family Member.

c. **Childcare and School Activities:** An employee may take FMLA/CFRA leave for the following reasons, if the reason is necessitated by the Covered Military Family Member's active duty or call to active-duty status, or circumstances arising from it:

i. To make alternative childcare arrangements of a Covered Military Family Member's Child;

ii. To provide childcare for a Covered Military Family Member's Child on an urgent, immediate need basis, but not on a regular, routine, or everyday basis;

iii. To enroll in or transfer a Covered Military Family

Member's Child in a new school or day care facility; and/or

iv. To attend meetings with staff at a school or day care facility, such as regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a Covered Military Family Member's Child.

d. **Financial and Legal Arrangements:** An employee may take FMLA/CFRA leave in order to make or update financial or legal arrangements to address the Covered Military Family Member's absence while on active duty or call to active duty status; and/or to act as the Covered Military Family Member's representative before a federal, state, or local City for purposes of obtaining, arranging, or appealing military service benefits while the Covered Military Family Member is on active duty or call to active duty status (up to a period of 90 days following the termination of the Covered Military Family Member's active duty status).

e. **Counseling Activities:** An employee may take FMLA/CFRA leave to attend counseling, provided that:

i. The need for counseling arises from the Covered Military Family Member's active duty or call to active duty;

ii. Such counseling is provided by someone other than a health care provider; and

iii. The counseling is for the employee, the Covered Military Family Member, and/or the Covered Military Family Member's Child. (Note that if medical counseling is needed due to a serious health condition, the employee may be able to take FMLA/CFRA leave under Section III instead.)

f. **Rest and Recuperation Activities:** If a military member is granted short-term, temporary, rest and recuperation leave during the period of deployment, an employee may take FMLA/CFRA leave to spend time with the military member. An employee may take FMLA/CFRA leave for this purpose for up to fifteen business days for each instance of rest and recuperation, beginning on the date the Covered Military Family Member commences each instance of rest and recuperation leave.

g. **Post-Deployment Activities:** An employee may take

FMLA/CFRA leave to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following termination of the Covered Military Family Member's active-duty status. An employee may also take FMLA/CFRA leave to address issues that arise from the death of a Covered Military Family Member while on active-duty status, such as meeting and recovering the body of, making funeral arrangements for, or attending funeral services for the Covered Military Family Member.

h. **Parental Care:** An employee may take FMLA/CFRA leave for care of a Covered Military Family Member's Parent who is incapable of self-care.

i. "Incapable of self-care" means that the individual requires active assistance to provide daily self-care in three or more of the following activities: caring appropriately for one's grooming and hygiene; bathing; dressing; eating; cooking; cleaning; shopping; taking public transportation; paying bills; maintaining a residence; using telephones and directories; using a post office; or other activities or instrumental activities of daily living.

ii. An employee may take parental care leave for the following purposes when the need arises from the covered active duty or call to active duty of the Covered Military Family Member:

A. To arrange for alternative care of the Covered Military Family Member's Parent from the existing care arrangement;

B. To provide care for the Covered Military Family Member's Parent on an urgent, immediate need basis (as opposed to a routine, regular, or everyday basis);

C. To admit to or transfer to a care facility the Covered Military Family Member's Parent; or

D. To attend meetings with staff at a care facility, such as meetings with hospice or social service workers, that are not regular or routine.

i. **Additional Activities:** An employee may take FMLA/CFRA leave for another form of exigency, provided that:

i. The reason for the leave arises out of the Covered Military Family Member's active duty or call to active duty;

ii. The City and the employee mutually agree that such leave shall be considered taken for a qualifying exigency; and

iii. The City and employee mutually agree on the timing and duration of the leave.

3. **Employee Notice of Need for Military Exigency Leave.**

a. **Timing of Notice:** Employees are required to give notice of the need for military exigency leave as soon as practicable under the circumstances.

b. **Content of Notice:** Employees are required to provide the City with sufficient information, depending on the situation, to notify the City as to the anticipated timing and duration of the leave, that a Covered Military Family Member is on active duty or call to active-duty status, and that one of the qualifying exigencies in Section V.A.2. is present.

c. **Updates from Employee:** The employee is required to advise the city as soon as is practicable when the dates of leave or other circumstances change.

4. **City Response to Notice of Need for Military Exigency Leave:** The City will request any additional, necessary information needed to process the employee's request and will also follow the procedures set forth under Section III of this Policy in responding to an employee's notice that employee has a need for military exigency leave.

5. **Certification of Need for Military Exigency Leave:** The City will request certification of the employee's need for military exigency leave when it provides notice under Section III, and will provide the employee with a form to complete or an explanation of the information needed. Employees requesting military exigency leave for the first time for a particular active duty or call to active duty are also required to provide the city with a copy of the military member's active duty orders.

a. **Required Information for Certification:**

i. A signed statement or description by the employee of the facts supporting the request for leave for one or more of the reasons set forth in Section V.A.2 and any available supporting written documentation, including,

but not limited to, meeting announcements, appointment confirmations, or a copy of a bill for services.

ii. The approximate date on which the reason for the leave commenced or will commence.

iii. The applicable timeframe.

A. If for a single, continuous period of time, the beginning and end dates for the employee's absence from work;

B. If on an intermittent or reduced schedule basis, the estimated frequency and duration of the employee's absences.

iv. For leave involving a meeting with a third party, appropriate contact information for the individual or entity, such as name, title, organization, address, telephone number, fax number, and email address, as well as a brief description of the purpose of the meeting.

v. For leave involving rest and recuperation activities, a copy of the Covered Military Family Member's Rest and Recuperation orders, or other documentation issued by the military indicating that the Covered Military Family Member has been granted Rest and Recuperation leave and identifying the dates of that Rest and Recuperation leave.

b. **Timing of City's Notice of Required Certification:** The City will request the certification in accordance with the timeframes set forth in Section III.N. of this Policy.

c. **Insufficient or Incomplete Certification:** Employees are required to provide a complete and sufficient certification. If an employee provides an incomplete or insufficient certification, the city will give the employee written notice of the deficiencies and seven calendar days to cure the deficiencies, unless seven days is not practicable, despite the employee's diligent, good faith efforts. The employee's leave may be denied if the employee fails to provide timely a required certification.

d. **Verification of Certification:** The City may verify the employee's certification by contacting the appropriate Department of Defense unit to verify the military member is on active duty or call to active-duty status. If the exigency involves meeting with a third party, the City may contact the entity or individual with whom the employee is meeting to verify the

meeting or appointment schedule and the nature of the meeting. The City will not request additional information. No permission from the employee is required for such verification.

B. **Military Caregiver Leave**: In addition to military exigency leave, as described above, the FMLA provides for military caregiver leave. As explained at length below, military caregiver leave is available when an employee whose covered military spouse, registered domestic partner, child, or other covered relative has incurred a serious injury while on active duty. *Leave granted under this Section shall count against the FMLA leave granted under Section III*.

Specifically, the City will permit an employee who is the spouse, registered domestic partner, son, daughter, parent, or next of kin of a Covered Servicemember in the Regular Armed Forces, National Guard, or Reserves who has incurred a serious injury or illness in the line of duty, while on active duty, to take up to 26 workweeks in a single 12-month period, per Covered Servicemember, and per injury/illness of the servicemember.

Note that there are many differences between military exigency leave and military caregiver leave. The two types of FMLA military leave use different definitions, are utilized for different purposes, and grant different amounts of leave.

1. Definitions:

a. **Armed Forces:** The Army, Navy, Air Force, Space Force, Marine Corps, or Coast Guard, including the National Guard and Reserves

b. **Authorized Health Care Provider:** For purposes of completing the certification required under Section V.3.b., an authorized healthcare provider includes any one of the following:

i. United States Department of Defense ("DOD") health care provider;

ii. A United States Department of Veterans Affairs ("VA") health care provider;

iii. A DOD TRICARE network authorized private health care provider;

iv. A DOD non-network TRICARE authorized private health care provider; or

v. Any health care provider permitted to provide medical certification under Section III.N of this Policy.

c. Covered Servicemember:

i. A current member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a Serious Injury or Illness; or

ii. A veteran who is undergoing medical treatment, recuperation, or therapy, for a Serious Injury or Illness and who was a member of the Armed Forces, at any time during the period of five years preceding the date on which the employee commences FMLA leave to care for the veteran. If the veteran was discharged or released under conditions other than dishonorable, the period from October 28, 2009, through February 8, 2013 shall not be counted in determining whether the veteran's last day of service falls within the five-year period.

d. **Next of Kin:** The nearest blood relative of a Covered Servicemember (other than spouse, registered domestic partner, parent, son, or daughter), in the following priority order:

i. A blood relative designated in writing by the servicemember as the nearest blood relative for purposes of military caregiver leave under the FMLA, who, if so designated, shall be the only next of kin for purposes of this policy;

ii. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;

iii. Brothers or sisters;

iv. Grandparents;

v. Aunts or uncles; and

vi. First cousins.

If no blood relative has been designated under section V.B.1.d.i., all blood relatives at the next applicable level of priority shall be considered "next of kin" who may take FMLA leave to provide care for the Covered Servicemember, either simultaneously or not.

e **Outpatient Status:** The status of a Covered Servicemember who is assigned to a military medical treatment facility as an outpatient, or a unit established for the purpose of providing command and control of members of the military receiving medical care as outpatients.

f. **Parent of a Covered Servicemember:** A Covered Servicemember's biological, adoptive, step or foster father or mother, or an individual who stood *in loco parentis* to a Covered Servicemember, within the meaning of Section III.D. of this Policy.

g **Son or Daughter of a Covered Servicemember:** A Covered Servicemember's biological, adopted, or foster child, stepchild, legal ward, or child for whom the Covered Servicemember stood *in loco parentis*, within the meaning of Section III.D. of this Policy, except that this definition shall apply regardless of the child's age.

h. **Serious Injury or Illness:**

i. **For a current member of the Armed Forces**: An injury or illness incurred by a Covered Servicemember in the line of duty on active duty (or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty or active duty), and that may render the servicemember medically unfit to perform the duties of the servicemember's office, grade, rank, or rating.

ii. **For a veteran who is a Covered Servicemember**:

A. An injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty) and that manifested itself before or after the member became a veteran; and

B. Is one of the following:

1. A continuation of a Serious Injury or Illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the veteran unable to perform the duties of their office, grade, rank, or rating; or

2. A physical or mental condition for which the veteran has received a U.S. Department of Veteran Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the VASRD rating is based, in whole or in part, on the condition precipitating the need for the military caregiver leave; or

3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

4. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

i. **Veteran:** A person who served in the Armed Forces, and who was discharged or released therefrom under conditions other than dishonorable.

2. Terms of Military Caregiver Leave. An employee may take up to 26 weeks of leave, during a 12-month period, to care for a Covered Servicemember with a Serious Injury or Illness. The 12-month period begins on the first date of the employee's military caregiver leave. Otherwise, except as set forth in this policy, the City shall grant military caregiver leave under the same terms that CFRA and other FMLA leave is granted under Section III of this policy.

3. Relationship to CFRA and Other FMLA Leave: Leave granted under this Section shall run concurrently with the FMLA and CFRA leave under Section III, unless the employee is caring for their "next of kin" who is not covered by the CFRA. Leave granted under this Section shall be included in computing the employee's 12 weeks of leave granted under the FMLA, so that an employee may not, under any circumstances, exceed 26 total weeks of FMLA leave in a rolling 12-month period.

4. Required Certifications: The City will provide the employee with a form to complete that certifies the servicemember's family relationship, military status, and Serious Injury or Illness. The employee is required to ensure that this form, or an equivalent form containing the information set forth in this Section, is completely and sufficiently

completed and returned within the same time periods set forth in Section III.N. of this Policy. If the employee fails to provide a complete and sufficient form, the City will inform the employee of the deficiencies, and grant the employee at least seven calendar days to cure them.

a. **Certification of Family Relationship and Military Status:** The City will require proof of the servicemember's family relationship to the employee and proof of the servicemember's military status for the employee's first request of military caregiver leave for a particular illness or injury for a particular servicemember.

b. **Certification of Serious Illness or Injury:** The City will require certification from an Authorized Health Care Provider that the servicemember is suffering from a Serious Illness or Injury. However, the employee will not be required to reveal the servicemember's diagnosis.

i. The Authorized Health Care Provider may base the certification upon their personal determination and/or may certify their reliance upon determination(s) made by an authorized DOD representative or an authorized VA representative. The certification must also include:

A. The name, address, appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and the basis on which employee is an authorized health care provider, as set forth in Section V.B.1.b, above;

B. The approximate date on which the injury or illness commenced, or was aggravated, and its probable duration; and

C. Information sufficient to establish that the Covered Servicemember is in need of care, and addressing the following matters:

1. Whether the need for care is for a single continuous period, and if so, an estimate of the beginning and ending dates, including any time needed for treatment and recovery;

2. Whether there is a medical necessity for periodic care, based on a schedule of

planned medical treatment, and if so an estimate of the treatment schedule;

3. Whether there is a medical necessity for periodic care for reasons other than planned medical treatment, such as episodic flare-ups, and if so, an estimate of the frequency and duration of the periodic care.

5. **Alternative Certifications:**

a. **Special Automatic Certification:** The DOD may issue a special invitation to a member(s) of a servicemember's family when a DOD health care provider has determined that the injury or illness is serious enough to warrant the immediate presence of a family member at the servicemember's bedside. If the DOD issues an invitational travel order ("ITO") or invitational travel authorization ("ITA") for "medical purposes" to any member(s) of the servicemember's family (even if the employee's name is not on it), the ITO or ITA constitutes automatic certification of military status and Serious Injury or Illness for the period of time specified in the ITO or ITA for the employee to take leave on either a continuous or intermittent basis, and the City will not require further certification of those matters for the specified period of time. However, in this circumstance, the City may still require proof of the covered family relationship between the employee and the servicemember. The ITO or ITA is in effect for the duration specified on it. If the employee wishes to request leave to care for a Covered Service Member beyond the period of time specified in an ITO or ITA, the employee must submit additional certification in accordance with Section V.B.3.b., above.

b. **Documentation of Enrollment in Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers:** As another alternative to the certification required under Section V.B.3.b., the City will accept as sufficient certification documentation of the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers, whether or not the employee is the named caregiver in the enrollment documentation. However, the city may still require proof of the covered family relationship between the employee and the servicemember. The city may also require proof of the servicemember's date of discharge and proof that the servicemember's discharge was other than dishonorable.

6. Authentication and Clarification: The City may seek authentication

and clarification of a certification issued under Section V.B.3.d., or of an ITO or ITA, or of documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

7. **Second and Third Opinions:** No second or third opinions of the servicemember's Serious Illness or Injury will be sought from an Authorized Health Care Provider who meets the criterion set forth in V.B.1(a)(i)-(iv); however, when a certification has been completed by an Authorized Health Provider who meets the criteria in V.B.1(a)(v), the City may request a second or third opinion. No second or third opinions will be sought regarding an ITO or ITA for the period of time specified in the ITO or ITA.

8.. **Recertification:** No recertifications of the servicemember's Serious Illness or Injury will be sought.

9. **Administrative Delays in Issuance of Military Documents:** When an employee is unable to submit required documentation within the timeframe required under Section III.N, despite the employee's diligent, good faith efforts to obtain such documents, the City will not delay or deny leave on the grounds of such administrative delay.

VI. EMPLOYEE RESPONSIBILITIES AND DUTY TO COOPERATE:

Employees are expected to fully cooperate with the City in meeting the obligations and requirements set forth under this Policy, as well as those set forth in state and federal law. An employee's cooperation includes, but is not limited to, timely completion of all requested forms and responding to all inquiries for additional information. Cooperation also requires that an employee respond to the City's inquiries for information to determine whether the employee is requesting leave under the FMLA, CFRA, and/or PDL. Employees are also required to consult with the city and make a reasonable effort to schedule foreseeable treatments so as to not unduly disrupt the City's operations. Employees on family care or medical leave will respond to the City's reasonable inquiries and keep the city updated as to the status of the employee's family care or medical leave.

Failure to cooperate with the city or failure to meet the employee's responsibilities may result in a delay in granting the employee's leave, a denial of leave, and/or a denial of the protections and benefits afforded by the FMLA, CFRA, and/or PDL. Employees who have questions about their responsibilities under this policy will direct their inquiries to the Human Resources Department.