

2022

CITY OF KYLE PERSONNEL POLICY



Amended

10/03/2022

**CITY OF KYLE
PERSONNEL POLICY**

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CITY OF KYLE
PERSONNEL POLICY

Article 1. Purpose

Section 1.01. Basic Objectives.

The objective of this Personnel Policy is to facilitate efficient and economical service to the public and to provide for a fair and equitable system of personnel management. While these rules and policies include precise statements of policies and procedures, they are not intended to cover every conceivable personnel situation that may arise. These policies are subject to the City Charter and may be supplemented with administrative regulations in addition to the rules and policies set forth. For this reason, considerable latitude is given the City Manager for administration of these policies. It is expected that amendments and revisions affecting personnel policies will be made from time to time as necessary and desirable in the discretion of the City Manager, subject to approval by the City Council.

Section 1.02. Applicability.

These rules shall apply to and govern all employees of the City of Kyle, except to the extent, if any, inconsistent with State or federal law. Words used in the singular shall be construed to include the plural and words used in the masculine or feminine gender shall be construed to include both genders.

Article 2. General Provisions

Section 2.01. Code of Ethics.

All employees shall strive to uphold the Constitution and laws of the United States, the State of Texas, and the Charter and ordinances of the City of Kyle, and all employees shall also strive to be:

- 1) In compliance with the current Code of Ethics adopted by City Council through ordinance and available on the City website;
- 2) Honest and trustworthy in what they say and write and in all professional and employment relationships;
- 3) Dedicated to providing quality services by being cooperative and constructive, and by making the best and most efficient use of available resources;
- 4) Fair and considerate in the treatment of fellow employees and citizens, addressing concerns and needs with equity, granting no special favors;
- 5) Committed to accomplishing all tasks in a superior way and abstaining from all job behavior that may tarnish the image of the City or public service;

- 6) Aware and recognize that public and political policy decisions are ultimately the responsibility of the City Council; and
- 7) Dedicated to service to improve the quality of life in the City of Kyle.

This Code of Ethics requires hard work, courage, and difficult choices. However, employees and citizens will be better served by doing what is right rather than what is expedient.

Section 2.02. Team Kyle Organizational Culture.

The City of Kyle culture defines the way in which our employees interact with one another and with the public. The City of Kyle has taken specific actions to define its organizational culture with four essential core values. All management processes are developed to instill and reinforce the culture using the core values through employee job descriptions, hiring interview practices, on-the-job training, performance evaluations and the day-to-day work environment.

Team Kyle Culture is based on the Core Values (KYLE) listed below:

KNOWLEDGE- Knowledgeable in all aspects of job and City operations; maintains high quality of work; follows health and safety guidelines.

YES-ATTITUDE- Demonstrates superior customer service; treats other employees and citizens with kindness; promotes goodwill; solves conflict with tact.

LEADING EDGE- Continually looking for areas to improve upon; decisive and adaptive; supports new ideas; a driver for change. Innovative.

EMPLOYEE ACCOUNTABILITY- Actively seeks and gives performance feedback to determine developmental opportunities; uses feedback as an opportunity for continuous improvement. Takes accountability for their mistakes and learns from them.

Team Kyle leaders are also expected to live by these additional Core Values:

ABILITY TO MANAGE PERFORMANCE- Organizes work processes to be effective and efficient; provides employees with the necessary training and resources to get the job done; communicates clear performance expectations and standards to the team and provides formal feedback on performance on an ongoing basis constructively and tactfully.

DEVELOPS AND LEADS AN EFFECTIVE TEAM- Provides learning opportunities to the team; encourages decision making and accountability; establishes a vision and direction and motivates/inspires the team to follow suit; leads by example.

Each employee plays an essential part in Team Kyle. All employees are expected to live the core values and learn the behavior that is expected to live the values every day at work. Managers are key for promoting the Team Kyle culture. Managers shall be responsible for any training value gaps in their perspective departments. All employees are expected to be committed to the goals

and the culture of the organization. Employees that fail to adhere to the City's core values will be subject to discipline, up to and including termination of employment.

Section 2.03. Political Activity.

When on duty or in uniform, an employee of the City may not engage in any political activity relating to a campaign for any elective public office. No employee of the City shall, at any time, make, solicit or receive any contribution to the campaign funds of any party, interest group or candidate for use in any city election; and no employee shall participate in any political activity or campaign for or with respect to any candidate in a City election.

For the purposes of this section, a person engages in a political activity if the person:

- 1) Makes a public political speech supporting or opposing a candidate;
- 2) Distributes a card or other political literature relating to the campaign of a candidate;
- 3) Wears a campaign button;
- 4) Circulate or signs a petition for a candidate;
- 5) Solicits votes for a candidate; or
- 6) Solicits campaign contributions for a candidate.

When not on duty or in uniform, an employee of the City may engage in political activity for and with respect to political parties, candidates and elections for and with respect to governments and entities other than the City; provided that an employee may not under any circumstance use the fact of his/her City employment to solicit campaign contributions for a candidate other than from members of an employee organization to which that person belongs; and provided further that this provision shall not be interpreted to prevent any employee of the City from making private comments to friends, family and co-workers about or with respect to any candidate for office.

Section 2.04. Disclosure of Religious Affiliations.

No question in any text in any application form or in any personnel proceeding, or of any appointing authority, is intended to or shall be so framed as to attempt to elicit information concerning religious affiliations of any applicant or employee. No appointment to, or removal from, a position with the City shall be affected or influenced in any manner by any religious opinion or affiliation. Employees may decline to respond to any enquiry regarding religious affiliation.

Section 2.05. Nepotism.

No person related, within the second degree of affinity (marriage) or within the third degree of consanguinity (blood), to the Mayor or any member of the City Council or the City Manager shall be employed or appointed to any office, position or clerkship or other service of the City. This

prohibition shall not apply, however, to any person who shall have been employed by the City prior to and at the time of election or appointment of the official related in the prohibited degree.

Relatives and members of the immediate family shall not be appointed to serve in positions in the same department or in the departments that work closely together unless specific written approval has been obtained from the City Manager. Department supervisors who believe any such appointment is justified may present to the City Manager the reason and needs that are the basis for requesting the appointment. The City Manager's written approval shall be required to make any such appointment official and the City Manager's decision shall be final.

Section 2.06. At Will Employer.

All employees are hired for an indefinite period of time, and either the employee or the City is free to terminate the employment relationship at will, and at any time, with or without cause.

Section 2.07. Financial Responsibility of Employees.

Employees of the City are expected to maintain a good credit standing in the community and to pay obligations promptly. The City shall in no way serve as a collecting agency or arbitrator and employees shall make reasonable provision for the payment of personal debts or take other appropriate action to assure such failure shall not interrupt, interfere with or be detrimental to the City services. Credit checks may be required for those applicants in offices of trust.

Section 2.08. Outside Employment.

Occasional and part-time work will be allowed if approved in writing by the appropriate department heads or City Manager on a case-by-case basis; and if the work does not constitute a conflict of interest, does not interfere with the employee's performance of duties with the City, and does not involve the use of City time or equipment. Full-time employees approved to hold outside employment may not work more than twenty-four (24) hours in any workweek and such employment shall not interrupt, interfere with or be detrimental to the performance of the employee's duties. Any injury occurring while engaged in outside employment shall be reported immediately in writing to the City Manager. An injury occurring while engaged in outside employment may reduce the benefits otherwise granted by these policies. Employees must provide a waiver release from outside employer.

Section 2.09. City-Owned Vehicles.

All employees who drive City-owned vehicles in the performance of their duties are responsible for their proper operation. Employees who are subject to 24-hour responsibilities may be permitted to drive City-owned vehicles to and from their homes, when recommended by their respective Department Head and approved in writing by the City Manager. No City vehicle, equipment, or emergency vehicles, housed at an employee's home is to be used for personal business, except as specifically approved in writing by the City Manager. No employee shall operate a City vehicle unless the employee shall have a valid driver's license appropriate for that vehicle; and any employee required to operate any motor vehicle as part of his/her job duties shall immediately notify the City Manager, in writing, in the event the employee's driver's license expires, lapses or

is suspended. Periodic examination of driving records may be required. No smoking in City vehicles as per any applicable City Ordinance. In case of accident, employee must notify City Manager within 24 hours if any accident damage occurs. All City vehicles should have a permanent City Seal/City Identification and City Department except vehicles used for Police Department as unmarked vehicles.

Section 2.10. Driver Insurability.

Employees whose positions require the operation of a motor vehicle are expected to obey all traffic laws and avoid accidents at all times, even when driving their own vehicles during non-working hours. Failure by such employees to maintain a satisfactory driving record shall be deemed a violation of this policy and shall subject the employee to dismissal. Employees whose employment duties include the operation of a City vehicle and whose license is suspended shall immediately inform the employee's department head and the City Manager of such suspension. Offenses that are almost certain to result in action affecting employment include (a) a conviction for driving under the influence of alcohol or drugs; and (b) a City employee operating a City vehicle while his/her license is suspended.

Section 2.11. Employment Conditions.

Subject to, budgetary decisions and the discretion of the City Manager, continued employment with the City shall be contingent upon the employee's compliance with the provisions of these rules. Within thirty (30) days after the adoption of these rules and at the time of employment of each new employee, a copy of these rules shall be furnished to each employee.

Section 2.12. Equal Employment Opportunity Policy.

Discrimination against any person in recruitment, examination, appointment, training, promotion, discipline, separation, or any other aspect of personnel administration, because of political or religious opinions or affiliations, or because of race, color, national origin, age, sex, marital status, or other non-merit factors is prohibited. In those instances, if any, in which specific age, sex, or physical or mental requirements constitute a necessary occupational qualification for proper and efficient administration, appropriate consideration of such factors is permitted. Any employee who feels he/she has been discriminated against may process a grievance in accordance with Article 9.

Section 2.13. Fitness Requirements.

It shall be the responsibility of each employee to maintain the minimum standard of fitness required for performing the individual's job. The immediate supervisor may require an employee to submit to an examination by a City-approved physician when it appears that the physical or mental condition of an employee may prohibit the employee from adequately performing the employee's job duties or may constitute or result in a hazard to themselves, fellow employees, citizens or property. The employee will be required, as a condition of continued employment, to authorize the physician to disclose the results of the examination to the appropriate City officials. The employee shall be granted administrative leave for the time required for such an examination, which shall be conducted without expense to the employee and shall be for the sole purpose of

determining the employee's condition relative to the requirements of the employee's job. The examining physician shall make a recommendation as to whether the employee should be continued in the job and be considered for leave time in which to improve the employee's condition or be transferred or otherwise not be continued in the present position. A recommendation that an employee be required to submit to a physical or mental examination at the expense of the City must be approved by the department head and the City Manager.

Section 2.14. City Property.

No employee may take, acquire or purchase any property of the City, of any nature or kind whatsoever, for himself or any other person; provided that this section shall not prohibit any employee from bidding and purchasing surplus city property at a properly noticed public auction authorized by the City Manager or the City Council.

Section 2.15. Amendment and Revision of Rules.

Recommendations for amendment and revision of these rules may be made by the City Manager to the City Council for its approval. These rules and any subsequent amendments thereto may be amended from time to time in the discretion of the City Manager; provided only that no such amendment shall be effective until approved by the City Council.

Section 2.16. Violations of Policy.

Any employee who violates any personnel policy of the City of Kyle may be subject to disciplinary measures up to and including termination. No employee shall have a right to disciplinary actions that are progressive. Consideration may be given to the individual circumstances when determining the disciplinary actions to be taken.

Article 3. Organization and Administration

Section 3.01. Organization of Personnel.

- 1) **The City Council.** The compensation of all appointive officers and employees is approved by the City Council through the budget process.
- 2) **The City Manager.** The City Manager will advise the City Council on personnel matters and recommend changes in the personnel policies, rules and regulations, the compensation rates of appointive officers and other City employees, and any other changes that the City Manager may deem necessary or expedient.

The City Manager is responsible for the administration of the personnel program of the City and, with the prior approval of the City Council, the City Manager may appoint a Human Resources Director to assist in the administration of such program. The City Manager may establish policies for the day-to-day management of the City, which are not inconsistent with this Policy Manual and may discipline any employee of the City up to and including termination. No classification of employees or changes in employee pay or pay category may be made without the written approval of the City Manager. The City Manager may in writing

authorize department heads to appoint and remove all employees of their respective departments.

- 3) **Human Resources Director.** The Human Resources Director, herein the HR Director, may represent the City Manager with regard to routine administration of all phases of these rules and policies. The HR Director may further create and keep on file forms necessary and useful for the implementation of this Policy. Absent a HR Director being appointed: (i) all references herein to the HR Director shall be references to the City Manager; (ii) the duties of the HR Office shall be performed by the Department Head of the department for which the applicable employee position is budgeted; and (iii) the City Manager may designate officers and employees of the City to perform any act or function provided herein to be performed by the HR Director or the HR Office.
- 4) **Department Heads.** Department heads are expected to effectively supervise their employees and to maintain proper working relationships and to ensure employee compliance with this manual and all other policies or procedures of the City. To that end, department heads (i) may adopt and enforce departmental regulations that are not inconsistent with these rules and regulations; (ii) shall report on the efficiency of their subordinates and notify the HR Director of changes in the duties of the employees, in order that the City's classification plan may be maintained; (iii) will recommend to the City Manager merit increases for their employees as a result of an annual written performance evaluation of each employee; (iv) department heads shall set the example for all subordinates on behavior and compliance with the policies and procedures of the City and be subject to discipline by the City Manager for such actions as failure to comply with the policies, rules and procedures including failure to adequately supervise personnel in the department such department head supervises; (v) department heads shall report all disciplinary matters to the City Manager and coordinate discipline of employees with the HR Director; and (vi) have the power of appointment and removal in their departments, including the power to appoint foremen and supervisors subject to the written approval of the City Manager. The appointment of new employees by department heads will be made only from eligible applicants referred to them by the HR Director with exceptions as noted under Article 4, Section 4.02. Transfers and reclassifications should be consummated only after consideration of information contained in the individual's file and approval of the City Manager.

Section 3.02. Policy on Implementation & Administration of Personnel Policies.

- 1) **Implementation.** The City Manager and HR Director and, as directed by the City Manager, each Department Head shall administer and implement the personnel policies of the City of Kyle.
- 2) **Deviations from Policies.**
 - a) Subject to the right of the affected employee to appeal to the City Manager, the department heads may deviate from these policies with respect to the assignment, discipline or termination of any employee when, in the judgment of the City Manager, such deviation is in the best interest of the City.

- b) If circumstances make it advisable to deviate from any of the personnel policies, the department head responsible for overseeing the department involved may provide a written report to be filed with the HR Director. The report should provide:
 - i) Details of the action taken which deviated from the existing policy;
 - ii) A description of the circumstances resulting in the recommendation to a deviation from the existing policy; and
 - iii) A statement of why the deviation was in the best interest of the City and/or other parties involved.
- c) Amendments of the Personnel Policy Manual need to be approved by the City Council.

Section 3.03. Policy on Dissemination of Personnel Policies.

- 1) **Master Personnel Policy Manual.** A Master Personnel Policy Manual, which contains the original of all personnel policies in effect for the City of Kyle, shall be maintained in the office of the City Secretary.
- 2) **Personnel Policy Coordinator.**
 - a) The HR Director, in addition to the duties identified herein, shall serve as the City's Personnel Policy Coordinator.
 - b) The duties of the personnel Policy Coordinator shall include:
 - i) Maintaining the Master Personnel Policy Manual and updating the manual whenever a change, addition or deletion is made in the City's personnel policies;
 - ii) Providing each department head with copies of new or changed policies and information when policies are deleted so that the department head will be able to update the department's copy of the Personnel Policy Manual when a change, addition or deletion is made;
 - iii) Coordinating recommendations for additions, deletions and changes in personnel policies;
 - iv) Developing and implementing a system for notifying all City employees whenever a change, addition or deletion is made in the City's personnel policies; and
 - v) Conducting an annual review of all personnel policies to determine if they are consistent with actual practices and in compliance with legislation relating to the personnel function and the relationship between the employer and employee.
- 3) **Dissemination.** Each department head shall:

- a) Cause each employee to receive a copy of the Personnel Policy Manual and to sign an acknowledgment indicating such receipt;
 - b) Inform each employee that he or she should be responsible for being familiar with the policies, and
 - c) Take active steps to see that each employee has the opportunity to become knowledgeable on the policies.
- 4) **Access to Policy Manuals.** All employees are responsible for becoming familiar with the Personnel Policy Manual. Employees have the right to review the Master Personnel Policy Manual or the copy of the Personnel Policy Manual found in their departments, during the normal workday or at other times approved by the HR Director or the employee's department head.

Article 4. Applications and Conditions of Employment

Section 4.01. Basis of Employment.

All initial employment with the City shall be based on job related qualifications, including but not limited to, knowledge, skills, ability, physical fitness and required licenses, as determined under the authority of the City Manager based upon:

- 1) Education, training and work experience as reflected by the application form, plus other documentary evidence as to certification, registration, licenses, etc...
- 2) Job related written and/or performance tests.
- 3) Job related physical examination and drug screening test.
- 4) Background check for conviction of crimes involving moral turpitude and (in connection with jobs involving the operation of motor vehicles) moving traffic violations.
- 5) Mandatory reference checks made by the HR Department and/or the department head of the department concerned.
- 6) Specific positions may have additional basis of employment standards defined in the job description and application criteria posted by the department head.

Section 4.02. Recruitment.

The HR Director and appropriate Department Head are responsible for recruitment of all regular full-time, part-time, and seasonal employees, and maintenance of all applications. Recruitment occurs through personal contact, through employment agencies, and/or by way of advertising. The HR Director or those designated by the HR Director will conduct the initial recruiting. All applications will be referred to the appropriate department supervisor for screening interviews and possible employment. Absent a HR Director, the department head of the department for which

the vacancy exists, or, in specific instances, another officer of the City designated by the City Manager, shall be responsible for recruitment.

Section 4.03. Requests for Personnel.

When the department head submits a request to the HR Department for persons to fill vacancies, such requests shall include the title of the position to be filled, contemplated initial salary or wages, desired training and/or experience qualifications as per the job description and such other pertinent information as may be needed to enable the HR Department to most satisfactorily find the personnel being sought by the department. Requests for personnel should be made a reasonable period of time in advance of actual need.

Section 4.04. Applicant Preference.

Other qualifications being equal among applicants, departments will give hiring preference to persons currently employed by the City.

Section 4.05. Residence.

All employees required as part of the employee's duties to be on call will be expected to reside within a reasonable response time of the office as defined by the Department Head and as approved by the City Manager.

Section 4.06. Job Postings.

All positions will be open to current city employees and shall be posted for at least seven (7) business days. If a shorter publication period is required due to an emergency, written justification should be included with the requisition and must be approved by the City Manager. External positions will be posted on the City Website and at the City Hall bulletin board where city notices are posted. The department head may request positions to be advertised in other media outlets. Applications will be accepted from both internal and external candidates. Internal only vacancies must be approved by the City Manager.

Section 4.07. Application and Selection Procedures.

All persons seeking initial employment or re-employment may be required to complete, sign and file an application with the HR Department. Application forms will be secured from and returned to the HR Office prior to the posted deadline. Referrals will be made from the City's applicant database. Suitable and eligible candidates will be selected according to the requirements the department places on the requisition; which will include education, skills, experience, and duties, etc. Candidates will be required to complete typing, data entry, aptitude physical and/or psychological testing as applicable. Interviewers must complete and return interview forms after the interviews. No formal job offers are to be made at the time of the interview. If the interviewer determines that a candidate is acceptable, the HR Office will then check references, driving records, etc. and, subject to such information being found satisfactory, extend a preliminary job offer and schedule the candidate for a pre-employment physical examination and drug screening., if required. Clerical positions shall normally be exempted from pre-employment physical

examination requirements. Copy of driving record shall be required for those employees who operate City vehicles. (Records will be returned to employee upon termination of employment.)

Section 4.08. Appointments.

No formal job offers are to be extended prior to completion of the entire recruitment process. The final employment of any applicant may be subject to such applicant passing a physical exam (except for office personnel) and drug screening if required. The preferred candidate shall be reported to the City Manager for approval. The HR Director shall schedule an appointment with the preferred candidate for enrollment and orientation. If no candidate possessing the minimum qualifications is located or approved, the budgeted position may be filled by a lesser-qualified person at a lower job classification.

Section 4.09. Physical Standards.

- 1) Medical Examinations. Any and all new and former employees may be subject to undergoing a prescribed medical and physical examination (except for office personnel) to be made by some officially designated medical authority. Those positions specifically identified and designated as positions requiring medical and physical examinations shall undergo a prescribed medical and physical examination to be made by the officially designated medical authority. The purpose of the examination will be the determination and certification of physical fitness and ability to perform the duties of the position to which appointment is being considered. Such examinations are to be made as near the effective date of employment as possible. The HR Office and appropriate Department Head share the responsibility of making appointments and arrangements for obtaining the examination, and matters concerning the initiation and completion of the requirements should be taken up with the HR Office.
- 2) Exceptions. Physical standards and requirements will vary somewhat in accordance with the duties and working conditions as generally set forth in the specifications for various positions and also as to anticipated length of employment. The HR Director will advise the examining medical officer regarding any special or unusual requirements of this nature. The opinion and recommendation of the examining medical officer will determine the acceptability of any person for employment, to perform the required duties of the position. The examining medical officer will complete and forward to the HR Director the prescribed form indicating specific recommendations. Any discrimination on the basis of disability is prohibited. All applicable ADA (Americans Disabilities Act) guidelines will apply.

Section 4.10. Age Requirements.

Within statutory limits and the restrictions of State or Federal law, minors may be considered for employment in positions of a non-hazardous nature. In all instances, the parents of such minors shall be required to execute a waiver and release form provided by the HR Director. Any related questions that cannot be satisfactorily solved by the HR Director will be referred to the City Attorney, whose ruling shall be final. The employment of any person less than eighteen (18) years of age, in a full-time position, shall require the review and approval of the City Manager.

Section 4.11. Standards of Conduct.

Employees of the City are the "Good Will Ambassadors" of the City, and such status involves a degree of duty and obligation regarding public and private conduct above and beyond other classes of employment. City employees should at all times promote the good will and favorable attitude of the public toward the City Administration and its program and policies.

Section 4.12. Types of Positions.

It is the intent of the City of Kyle to clarify the definitions of employment classifications so that employees understand their employment status and benefits eligibility. These classifications do not guarantee employment for any specified period of time. The right to terminate the employment relationship at will at any time is retained by both the employee and the City of Kyle. Employees are informed of their status as exempt or non-exempt at the time of their initial employment, or subsequently if their classification changes for any reason. An employee's exempt or non-exempt classification may be changed only upon written notification by the Director of Human Resources.

- 1) **Fair Labor Standards Act Job Classifications.** All employees are designated as either nonexempt or exempt under state and federal wage and hour laws:
 - a) Non-exempt employees are employees whose work is covered by the Fair Labor Standards Act (FLSA). They are not exempt from the law's requirements concerning minimum wage and overtime.
 - b) Exempt employees are generally executives or managers or professional, administrative or outside sales staff who are exempt from the minimum wage and overtime provisions of the FLSA. Exempt employees hold jobs that meet the standards and criteria established under the FLSA by the U.S. Department of Labor.
- 2) **City Job Classifications.** The City of Kyle has established the following categories for both non-exempt and exempt employees:
 - a) Regular full-time employees are not in a temporary status and are regularly scheduled to work the department's full-time schedule. Full-time employees are those with an average of at least 30 hours of service per week or 130 hours of service per month. Generally, they are eligible for the full benefits package, subject to the terms, conditions and limitations of each benefit program.
 - b) Regular part-time employees are not in a temporary status and are regularly scheduled to work less than the full-time schedule and less than 1,000 hours of work per year. Regular part-time employees are not eligible for benefits offered by the city and are not eligible for participation in TMRS. There are voluntary benefits offered to all City employees by third party providers, subject to the terms, conditions and limitations of each benefit program.
 - c) Temporary full-time and part-time employees are hired as interim replacements to temporarily supplement the workforce or to assist in the completion of a specific project and are temporarily scheduled to work the department's schedule for a limited duration. Employment beyond any initially stated period does not in any way imply a change in

employment status. Temporary employees receive all legally mandated benefits (such as workers' compensation insurance coverage) but are not eligible for the City's other employment benefits. Temporary employees who are placed with the City but who are actually employed by a temporary staffing agency must look to the temporary staffing agency to determine what benefits are provided. Such employees are not eligible for benefits from the City and are not eligible for participation in TMRS.

- d) Seasonal full-time and part-time employees are hired for only a specific time period associated with certain job duties that arise seasonally. These positions may not exceed 120 days in a calendar year. Employment beyond any initially stated period does not in any way imply a change in employment status. Seasonal employees receive all legally mandated benefits (such as workers' compensation insurance coverage) but are not eligible for the City's other employment benefits.
- e) Evaluation and Training Employee. All newly hired employees shall be subject to a six-month evaluation and training period or longer if extended. All employees shall be subject to being placed on evaluation and training status for disciplinary reasons for a term to be determined in writing at the time the evaluation and training status is instituted.

Note: Volunteers and unpaid interns are not employed by the City in any capacity. Volunteers elect to donate their time and services as a volunteer for the City without any expectation of compensation. City of Kyle interns are unpaid and work in exchange for exposure to, and training in, a particular field of work. Volunteers and interns are generally not paid, are not entitled to any benefits, and are not covered by worker's compensation.

Section 4.13. Disqualification for Employment.

The HR Director or the department head of the applicable department may reject any application, which indicates on its face that the applicant does not possess the minimum qualifications required for the position if:

- 1) the applicant does not meet the experience and/or education requirements of the job description for the position to which the applicant seeks appointment;
- 2) the applicant appears to have made false statements in the application or in the examination or appears to have practiced or attempted to practice deception or fraud in connection with such application;
- 3) the applicant tests positive for drug use;
- 4) the applicant's criminal background information is unsatisfactory;
- 5) the position is one requiring more than 20 hours per week and the applicant is receiving pension benefits under a retirement plan of the City;
- 6) the applicant refuses to participate in a retirement system, insurance or social security program required by this policy;

- 7) it is determined, subsequent to employment or offer of employment, that the applicant/employee made statements as to qualifications or experience in their application that were false, deceptive, inaccurate, and/or misleading;
- 8) or any other grounds set forth in these policies, rules and regulations.

Section 4.14. Training of New Hire.

When the employee first reports for work, the employee shall be notified of the fact that the employee will be in training for several months. During this time, the supervisor shall observe the employee's work with particular care, train, and advise the employee in the performance of his/her duties, and let the employee know if the employee is progressing satisfactorily.

Section 4.15. Drug Screening.

The City may perform pre-employment, post-accident, and reasonable cause drug screening of all employees and may perform pre-employment, post-accident, and reasonable cause drug screening of all employees in positions that mandate such screening.

Article 5. Attendance and Leave

Section 5.01. Vacation Leave.

Vacation leave is earned by regular full-time (non-civil service) employees according to the schedule set forth in paragraph (1) below. Vacation leave for a civil service employee is addressed in Chapter 143 of the Texas Local Government Code and the Meet And Confer Agreement. No vacation or other annual leave will be earned by part-time or temporary employees.

Regular full-time, non-civil service employees shall be eligible for vacation leave as scheduled with the approval of the department head or, as applicable, City Manager, to the extent of leave accrued and credited to the employee. An evaluation and training employee shall accrue vacation but shall, upon the satisfactory completion of evaluation and training, be credited with vacation leave for each pay period of employment. An Evaluation and Training Employee may not take vacation leave until the evaluation and training period is over without Department Head approval. Vacation leave shall thereafter accrue as follows:

Accrual Rate for Vacation Leave:

- 0 to 4 years of continued service= 2 weeks or 80 hours per year
- 5 to 9 years of continued service= 3 weeks or 120 hours per year
- 10 to 15 years of continued service = 4 weeks or 160 hours per year
- 16 plus years of continued service= 5 weeks or 200 hours per year

Maximum Hours Allowed for Accrual of Vacation Leave:

The maximum hours that a non-civil service employee will be allowed to accrue for vacation leave hours shall not exceed 720.0 hours.

Maximum Hours Allowed for Payout of Vacation Leave:

All employees ending employment with the City of Kyle shall be entitled to receive a lump sum payout of their actual accrued vacation leave balance up to a maximum of 480.0 hours

It shall be the duty of the respective department head to monitor vacation schedules to ensure that an adequate work force is available. All requests for vacation will need to be approved by the department head or the employee's supervisor. Except as specifically provided for evaluation and training employees, vacation leave shall be credited on a pro-rata basis each bi-weekly pay period.

All evaluation and training employees shall accrue vacation during the period of evaluation and training. Any employee resigning or being terminated during an evaluation and training period shall not be eligible for payment for the vacation time accrued during the evaluation and training period. During an evaluation and training period, no employee in training may use any vacation time until successful completion of evaluation and training.

In the event that an employee resigns, dies or is terminated after the satisfactory completion of evaluation and training, accrued vacation time up to the maximum permitted in (3) above will be paid to the employee or the employee's designated survivor.

Section 5.02. Hours of Work.

All offices of the City, except those for which special regulations are established, shall be kept open continuously from 8:00 a.m. until 5:00 p.m. Monday through Friday, except on the designated holidays noted in Article 5, Section 5.06.

1) Flex Time may be used to accommodate Quality of Life issues for employees while meeting the City's business needs. This policy applies to any position as deemed appropriate. Employees may request work hours which differ from the City's normal business hours of Monday thru Friday from 8:00 a.m. until 5:00 p.m. Schedules must be recommended and approved by Department Head. Management maintains the authority to schedule/re-schedule work hours to meet business needs.

a) GUIDELINES

- i) Schedule. Employees may work a set schedule, which must add up to applicable full-time hours per week or the number of hours hired to work based on the needs of the position.
- ii) Requirements. Employees who are on flextime will still be required to attend required training/meetings held outside their flextime.

2) Telecommuting. The City of Kyle permits telecommuting work arrangements as provided by this policy when it is in the best interests of the City and when it will enhance the productivity of the employee. Positions that require regular face-to-face contact with a supervisor, other employees, members of the community or the public are not suited to telecommuting.

a) GUIDELINES

- i) The principal location is any of the City of Kyle buildings.
- ii) A regularly assigned place of employment is the location in the city building where an employee usually and customarily reports for work or where work is performed.
- iii) Telecommuting is an authorized work arrangement that involves an employee routinely working one or more days per week at a location that is not the regularly assigned place of employment.
- iv) Telecommuting includes alternative work arrangements available to employees whose job duties are appropriate for such assignment. The decision to authorize these options is within management's discretion based on the nature of the work being performed and other business considerations.
- v) The arrangement is voluntary, and participation does not alter an employee's work relationship with the City, nor does it relieve an employee from the obligation to observe all applicable City of Kyle rules, policies and procedures. All existing terms and conditions of employment, including but not limited to the position description, salary, benefits, vacation, sick leave and compensatory time remain the same as if the employee worked only at his or her regularly assigned place of employment.
- vi) Prior approval is required by the employee's Department Head to participate in telecommuting. The Department Head has the discretion to approve or deny an employee's request for telecommuting based on job or business-related criteria.

b) CRITERIA

Alternative work arrangements are appropriate only when both the abilities of the employee and the nature of the work to be performed meet the minimum criteria set out below. Supervisors may apply more rigorous criteria when determining whether an employee and position are appropriate for alternative work arrangements.

Telecommuting is appropriate for employees who:

- i) Have the abilities to successfully organize, manage time, work independently and productively with minimal supervision, and have at least a satisfactory work performance history;
- ii) Have a thorough knowledge and understanding of their job functions and the equipment required for the alternative work arrangement;

- iii) Have access to a remote work site that is safe and free from interruptions;
- iv) Are able to provide the security necessary to adequately protect any City information and equipment used at the remote work site;
- v) Have job functions that can be performed at a remote site without diminishing the quality of the work or disrupting the productivity of a unit;
- vi) Do not require an employee's presence at the regularly assigned place of employment on a daily or routine basis;
- vii) Allow for an employee to be as effectively supervised as he or she would be if the job functions were performed at the assigned place of employment;
- viii) Have an emphasis on the electronic production and/or exchange of information by means of computers/tablets, wireless internet and phone;
- ix) Involve measurable or quantifiable work product; and
- x) Have minimal or flexible need for specialized materials or equipment available only at the regularly assigned work site.

Additionally, when operational needs require, an employee must report to the regularly assigned place of employment upon the supervisor's request. Employees will be given as much advance notice as feasible under the circumstances presented.

City equipment located at the remote work site is subject to all policies and restrictions related to use of City owned property. Participating employees are responsible for any equipment and software that is used at the remote work site and accept financial responsibility for any equipment that is lost, stolen or damaged because of the employee's negligence, misuse or abuse.

c) WORK SCHEDULES/COMMUNICATIONS

- i) Work Schedules. An alternative work arrangement does not necessarily alter the employee's work schedule. The specific work schedule of a participating employee shall be agreed upon by the supervisor and employee.
- ii) Employee Availability. Participating employees shall be available for communication and contact during telecommuting as they would be if working at their regularly assigned place of employment. Participating employees and their supervisors shall agree on how their communications shall be handled. During the agreed upon work schedule, it is expected that the participating employee shall be available for contact by phone, Skype or email.

d) WORK DOCUMENTATION, TIMEKEEPING AND LEAVE

- i) Documentation. Participating employees and supervisors should identify work items for review and discussion on an ongoing basis to ensure that tasks are fully described and timely performed and/or completed.
- ii) Timekeeping. Participating employees will be required to maintain accurate time accounting documentation to support their work hours and must submit regular bi-weekly time reports detailing hours worked. Departments shall maintain all-time records for the employee. With written director approval, an employee may be authorized to earn compensatory time or overtime for work performed at home or from any other location while telecommuting.
- iii) Leave. Pursuant to established City's policies, employees must obtain supervisory approval before taking accrued and available leave.

e) LIABILITY

- i) Injuries at Remote Work Site. The City assumes no liability for injury at the remote work site to any other person who would not be in the work area if the duties were being performed at the regular place of employment. An injured employee participating in telecommuting must notify his or her supervisor immediately and complete all requested documents. Workers' Compensation benefits will apply to injuries arising out of and in the course and scope of employment.
- ii) Damages to Personal Property and Operating Costs. The City will not be liable for damages to employee-owned equipment being used in telecommuting or that may result from telecommuting. The City will not be responsible for operating costs, home maintenance, or any other incidental costs (e.g. utilities, telephone, and insurance) associated with the use of the employee's residence for telecommuting.

f) TERMINATION OF TELECOMMUTING AGREEMENT

The City reserves the right to terminate the agreement at any time if the City determines in its sole discretion that the telecommuting arrangement no longer is in the best interest of the City. The City also reserves the right to terminate without a notice period for any violations of City policy, a violation of the conditions of the agreement or when there is a relevant change in City policy or law.

Section 5.03. Workweek.

- 1) All non-exempt full-time employees will work forty (40) hours per week; provided that all non-exempt full-time Police Officers may work up to eighty-five (85) hours per two-week cycle, except in circumstances where a different schedule is required or management directs otherwise, and all regular full-time employees shall accrue all employee benefits as described herein. The City Manager and designated employees will be subject to 24-hour call.
- 2) Except as specifically directed by the City Manager from time to time for the accomplishment of City business, all offices and departments of the City will be closed on Saturday and Sunday

except the Police Department and portions of the Water and Sewer departments which must remain operating to continue service. Employees necessary to operate departments not closed on Saturday and Sunday will be chosen by the department head.

- 3) Part-time employees will only receive pay for the time actually worked, which time must be verified by the appropriate department head. Part-time employees are not eligible for retirement, group insurance, or other similar benefits, including vacation, sick leave and holiday benefits.
- 4) Temporary employees will only receive pay for the time actually worked, which time must be verified by the appropriate department head. Temporary employees are not eligible for vacation, sick leave, retirement, group insurance, holiday pay, or other similar benefits.

Section 5.04. Overtime and Compensatory Time.

The City permits eligible employees to earn and use overtime and compensatory time. This policy applies to both full-time civilian exempt and nonexempt employees as defined by the Fair Labor Standards Act.

1) Definitions

- a) **Fair Labor Standards Act (FLSA):** Establishes minimum wage, overtime pay, recordkeeping and youth employment standards affecting employees in the private sector and in Federal, State, and local governments.
- b) **Exempt employees:** Employees who are exempt from the Fair Labor Standards Act under the Executive, Professional or Administrative exemption. These employees are salaried employees.
- c) **Non-exempt employees:** Employees who are entitled to the minimum wage and/or overtime pay protections of the FLSA. These employees are hourly employees. Seasonal employees working in a recreational establishment such as swimming pools and summer camps are exempt hourly employees that are exempt from the calculation of overtime pay and/or compensatory time.
- d) **Standard workweek:** A fixed and recurring period of seven consecutive 24-hour days. The City's workweek begins at 12:01 a.m. Sunday and ends at 12:00 midnight Saturday. The City's regular workweek for full-time employees is eight hours a day on five consecutive days from 8:00 a.m. to 5:00 p.m. Adjusted work schedules may be approved for part-time employees, shift employees, and employees occupying positions which require a workweek other than five days.
- e) **Hours worked:** Any hours that the City requires or permits an employee to work. As used in this policy, hours worked may also be referred to as work time.
- f) **Flex-time Work Schedule:** In situations where overtime payment is not feasible due to budgetary constraints, the Department Director or supervisor may consider flexing the

employee's work schedule in an effort to minimize the need for overtime compensation. Flexing must be completed within the same workweek that the overtime was worked and must be accurately reflected on the affected employee's time record.

- g) **Standard civilian workday:** The 24-hour period beginning at 12:01 a.m. and ending at 12:00 midnight. Working more than eight hours in a workday does not constitute overtime. Fair Labor Standards Act (FLSA) overtime occurs only after actually working more than forty (40) hours in a workweek. Any type of leave taken during a workweek will not be used in determining overtime pay.
- h) **Overtime:** Overtime compensation is paid to all non-exempt employees in accordance with federal and state wage and hour requirements. Overtime pay for non-exempt employees is at the rate of one and one-half times the employee's regular hourly rate of pay for hours actually worked in excess of forty (40) hours in the City's workweek with the exception of certain Civil Service positions.

2) Earning of Overtime and Compensatory Time

- a) **Overtime and Compensatory Time for Non-exempt Employees.** When necessary, in order to maintain the proper City services, employees may be required to work overtime. Non-exempt employees may receive overtime, or if an agreement is arrived at between the department head and the employee before the performance of work, the employee may accrue compensatory time. All non-exempt employees required to work overtime shall be compensated at one and one-half times their regular rate of pay. A non-exempt employee does not receive both FLSA overtime pay and compensatory time for the same hours.
 - i) **Authorization.** All non-exempt employees must receive their supervisor's and Department Director's prior authorization before performing any overtime work. This means employees may not begin work prior to their scheduled workday and may not continue working beyond the end of their scheduled workday, without prior authorization from the appropriate supervisor. Similarly, employees may not work through their lunch break without prior authorization from the appropriate supervisor. On the employee's time sheet, the appropriate supervisor must also approve any overtime before the time sheet is submitted for processing and payment. Non-exempt employees shall not remain at their workstation without authorization unless they are on duty or are scheduled to begin work within a short period of time. Non-exempt employees who work overtime without receiving proper authorization will likely be subject to disciplinary action, up to and including possible termination of employment.
 - ii) **Leaves of Absence.** Paid vacation, sick leave, holiday, jury duty, bereavement leave, or any other accrued leave are not included as hours worked for purposes of determining overtime calculations. Compensatory time may not be transferred or donated to other employees through the Accrued Leave Donation program.
 - iii) **Payment of Compensatory Time.** Non-exempt employees may accrue compensatory time in lieu of being paid overtime compensation. Employees are subject to a cap of

one-hundred and sixty (160) hours. Overtime hours worked beyond the applicable cap must be paid or flexed, as described below. Compensatory time accrues at a rate of one and one-half hours for every hour of overtime worked by non-exempt employees. Compensatory time accruals are to be monitored at the department level and maximum hours accrued will be restricted based on the requirements of this policy. All compensatory time earned must be documented on the employee's compensatory timesheet and accrual balances on the payroll system. Non-exempt employees may be paid at the overtime rate for compensatory time hours when the taking of earned compensatory time would be disruptive to critical functions. All employees who are reclassified from a nonexempt position to an exempt position will be paid all accrued compensatory time upon approval of the reclassification and will cease to be eligible for any additional overtime and/or compensatory time at the rate of one and one-half hours for every hour of overtime. Likewise, an employee who is promoted, transferred or demoted to another non-exempt position will be paid in full for any compensatory time accrued before the promotion or demotion becomes effective. Upon leaving employment with the City, a non-exempt employee will be paid for unused compensatory time at the employee's current hourly rate.

- 3) **Compensatory Time for Exempt Employees.** Exempt employees are not paid overtime compensation. The City permits exempt employees who work over forty (40) hours in a week to request to his or her supervisor to earn compensatory time for the hours worked over forty (40) hours in a workweek. Any time off during the exempt employee's regular scheduled hours must be accounted for through the use of earned compensatory time, sick leave, or vacation. Compensatory time is earned on a straight time, hour for hour, basis. When the workweek has an observed holiday, the eight hours of holiday should count towards the forty (40) hours in a workweek for the purpose of calculating compensatory time.
- a) Exempt employees are not entitled to be paid out compensatory time accumulated upon termination of employment, including retirement, nor receive any cash payment for the use of compensatory time. An exempt employee shall not be permitted to accumulate a balance of more than eighty (80) hours of compensatory time at any point.
 - b) Exempt employees must track in their bi-weekly timesheet the total amount of hours worked per day, per week, and per pay period. Supervisors will need to authorize all compensatory time on the employee's bi-weekly time sheet.
 - c) Exempt employees must be able to communicate and justify to the head of the Department the need to work over forty (40) hours in a given week to track performance, productivity, and/or results.
 - d) Compensatory time will not be approved for any work performed from home, or City approved trips, or during other events unless authorized by the City Manager.
 - e) Compensatory time may not be transferred or donated to other employees through the Accrued Leave Donation program.

4) Use of Compensatory Time

- a) An employee separating from the City can use up to forty (40) hours of compensatory time during their last week on the payroll.
- b) An employee shall be permitted to use compensatory time within a reasonable period after making the request, if doing so does not unduly disrupt the operations of the employer.

5) Employee Responsibilities

- a) The employee shall request to use compensatory time through his or her supervisor.
- b) The employee promptly and accurately records on the weekly time sheet all time worked plus use of paid leave or paid holiday time and the use of compensatory time.
 - i) An exempt employee accounts for time on a weekly basis, according to prior arrangements with the supervisor.
 - ii) A non-exempt employee accounts for time on a daily basis, according to a work schedule previously agreed upon with the supervisor.

6) Supervisor and Department Responsibilities

- a) The supervisor must review and approve the use of compensatory time, verify the employee has accurately recorded the use of the time on the time sheet and sign it.
- b) Supervisors are encouraged to accommodate, to the extent practicable, the employee's use of compensatory time.
- c) All compensatory/overtime must be pre-approved by supervisors and will be allowed when deemed absolutely necessary to finish a project.
- d) When ordered for the maintenance of essential City functions, compensatory/overtime shall be allocated as equitably as possible among all non-exempt employees qualified to do the work.
- e) Department heads and City Management are charged with authorizing the use of compensatory/overtime and likewise with assuring non-abuse of overtime or compensatory time and the inadvertent use of such by employees.

Section 5.05. Attendance.

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, holidays and leaves. If an employee has an unexpected absence, the employee shall call or notify his/her supervisor within the hour prior to when the employee is to report to work. Failure to notify the supervisor may result in disciplinary action. Excessive tardiness, neglect of duties, or unauthorized absences will be grounds for dismissal. If the immediate supervisor is not

available to report the unexpected absence, the employee shall report to the HR Director, or designee, directly. All department heads shall report all expected absences for training, vacation and other planned leave as soon as known but not later than two weeks prior to such leave, unless good cause exists for less notice. All department heads shall report to the HR Director, or designee, any sick leave to be taken as soon as such is known. The HR Director and department head shall ensure adequate supervision of the department in the absence of the department head. If no other supervisor exists for the department, the HR Director, or designee, shall supervise the attendance of the department in the department head's absence and designate a supervisor of such department. All department heads shall keep daily attendance records of employees and all absences shall be reported on a leave form and turned in with the department time sheets each pay period. Department heads shall report personal vacation time and sick time used each pay period to the HR Director. Department heads shall be responsible for keeping true and accurate attendance records for each employee and ensuring each employee's attendance in compliance with this policy manual. The HR Director, or designee, may check time sheets for any department for accuracy.

Section 5.06. Holidays.

The City will observe the following holiday schedule.

New Year's Day	Columbus Day
Martin Luther King Jr. Day	Thanksgiving Day
President's Day	Friday after Thanksgiving
Memorial Day	Christmas Eve
Juneteenth	Christmas Day
Independence Day	
Labor Day	
Veteran's Day	

Full-time employees will receive two (2) Floating Holidays. A total of two floating holidays or sixteen (16) hours shall be available at the beginning of each fiscal year to be taken during the fiscal year. Like any other City holiday observance, the floating holiday must be taken in an eight (8) hour increment only. If the floating holiday is not taken by the end of the fiscal year, the unused floating holiday (s) shall be forfeited by the employee; no carryover of unused floating holiday shall be allowed.

The City Council may add, change, or delete the official holidays. The following provisions shall apply to holidays:

- 1) As many employees as reasonably possible in the discretion of the City Manager shall be given each holiday off consistent with the maintenance of essential municipal functions.
- 2) Regular full-time employees shall be entitled to a paid holiday equal to eight hours of such employee's regular rate of pay. No hours worked will be reflected on the employee's time sheets for holidays for which the employee is paid and does not work.

- 3) In the event any regular full-time employee of the City, except police officers, is required to work on a City holiday, regardless of whether the employee was scheduled or not to work, such employee shall be credited with holiday compensatory time of eight (8) hours and be paid for the actual hours worked. Such compensatory time must be taken within six (6) months of the holiday. Employer may be allowed to either credit holiday compensation time of eight (8) hours or to pay holiday compensation time of eight (8) hours when an employee works on a holiday.
- 4) For all employees regularly scheduled to work Monday through Friday, if a holiday falls on Sunday, the holiday will be observed the following Monday. If a holiday falls on a Saturday, the holiday will be observed the proceeding Friday. For all other employees working a seven-day a week flexible schedule, the holiday shall be observed on the day upon which it falls.
- 5) Part-time, Temporary and Seasonal employees may be given holidays off without pay.
- 6) A non-exempt employee absent without leave on the workday immediately preceding or immediately following a holiday shall forfeit pay for the holiday and the other days off without leave and may be subject to disciplinary action.
- 7) Holidays falling within an employee's approved vacation period or within a period of absence approved for sick leave shall not be charged against the vacation or sick leave.
- 8) An employee desiring to observe a religious holiday other than a listed City holiday, may, with the advance approval of the City Manager or department head, be given time off without pay or may use accrued vacation leave.

Holiday leave for a civil service employee is addressed in Chapter 143 of the Texas Local Government Code and the Meet And Confer Agreement.

Section 5.07. Sick Leave and Emergency Leave.

- 1) **Sick Leave Definition and Accrual Rates.** Sick leave is defined as fully compensable absence from work arising from any illness, sickness, off the job accidental injury, or on the job injury as defined or allowed by Section 5.10 of this Article. All regular full-time employees shall accrue 3.7 hours per pay period (based on a 26- pay period per year for accrual> or a total of 96.0hours per calendar year. Sick leave for a civil service employee is addressed in Chapter 143 of the Texas Local Government Code and the Meet And Confer Agreement. Part-time or Temporary employees shall not accrue sick leave.
- 2) **Maximum Hours Allowed for Sick Leave Accrual.** All full-time employees including civil service employees will be allowed to accrue unlimited sick leave hours.
- 3) **Maximum Hours Allowed for Payout of Sick Leave:** All non-civil service employees ending employment after five (5) years of continuous service and in good standing with the City of Kyle, or upon retirement through TMRS, or upon death after five (5) years of continuous service and in good standing (paid to beneficiary), shall be entitled to receive a lump sum payout of their actual accrued sick leave balance up to a maximum of 480.0 hours. Maximum

hours of payout sick leave for a civil service employee is addressed in Chapter 143 of the Texas Local Government Code and the Meet And Confer Agreement.

- 4) **Proper Use of Sick Leave.** Sick leave shall not be considered as a right which an employee may use at the employee's discretion but shall be allowed only in case of necessity and actual sickness or disability of the employee, the employee's spouse or child, the mother or father of the employee or the parent's spouse, or a legal dependent of the employee or the dependent's spouse.

Employees who consistently use their sick leave as it is earned or who fail to accumulate sick leave may be required to submit a doctor's statement in support of illness. Failure to present same, if requested by department head, may result in such absence being recorded as "leave without pay" and may subject the employee to adverse action under Article 8. Minor ailments, which would not affect the safety or health of the employee or other persons or property while performing job duties, do not qualify an employee for sick leave.

- 5) **Reporting Sick Leave Absences.** In order to receive compensation while on sick leave, an employee shall notify the employee's immediate supervisor within the hour prior to the time set for the employee to begin the employee's daily duties. If the employee is unable to contact his/her supervisor, the employee shall notify the supervisor's designee. Failure to give such notification, except in emergency or unusual circumstances, will cause an employee's absence to be charged as "leave without pay", and shall subject the employee to disciplinary action.
- 6) **Evidence of Illness.** An employee claiming absence due to illness or injury for more than two days may be required to produce a doctor's statement supporting the time of absence, and a release from the doctor in writing when able to return to work. Failure to provide such a doctor's statement may result in disciplinary action.
- 7) **Emergency Leave.** All regular full-time employees may be granted emergency leave with pay for a period not to exceed three (3) days in case of death of a husband, wife, father, mother, son, daughter, brother, sister, grandchild or grandparent of the employee or employee's spouse.

Section 5.08. Military Leave.

Military leave with pay shall not exceed fifteen (15) days during any calendar year and will be granted to regular full-time employees of the City who attend regular annual military training duty, and meet the requirements listed below. This leave must be scheduled with the department head and City Manager and shall be granted without loss of time or efficiency rating. Supporting documents and leave orders should be furnished to the department supervisor prior to taking leave. Such documents shall be placed with the timesheets. During the period of military duty, employees will receive a portion of wages in addition to their military pay to equal their current salary.

- 1) **Leave Credit.** No credit for vacation leave or sick leave shall accrue during military leave. The employee's health, dental, and life insurance provided by the City at the time the military leave is taken will remain in effect during the time on leave for up to twelve (12) calendar weeks.

- 2) **Military Leave Allowance.** Military leave will be permitted as required by §431.005, Tex. Gov., which provides in part as follows:

"(a) All officers and employees of the State of Texas and of any county or political subdivision thereof, including municipalities, who shall be members of the State Military Forces, or members of any of the Reserves Components of the Armed Forces, shall be entitled to leave of absence from their respective duties without loss of time or efficiency rating or vacation time or salary on all days during which they shall be engaged in authorized training or duty ordered or authorized by proper authority, for not to exceed fifteen (15) days in any one calendar year."

"(b) Members of the State Military forces, or members of any of the reserve components of the Armed Forces who are in the employ of the State of Texas, who are ordered to duty by proper authority shall, when relieved from duty, be restored to the position held by them when ordered to duty."

- 3) **Retirement System Credits.** Employees who leave their deposits with the retirement system while on military leave shall retain their membership in the retirement system. The rules and regulations of the retirement system and federal law shall be applicable and control.
- 4) **Reinstatement upon Return from Military Leave.** All employees who have been granted a military leave of absence, and who apply for reinstatement with the City not later than thirty (30) days after being discharged or separated from the Armed Forces, will be re-employed in the same position or a position of like seniority and status at the then current rate of pay; provided that such employee is physically and mentally qualified for reinstatement. If, upon termination of such leave of absence, an employee is physically or mentally incapacitated and not qualified to perform the duties of the position held at the time of commencement of such absence, the employee shall be eligible for placement in such other position for which the employee may qualify. In the event two or more employees have occupied the same position and have been called into service, the first employee occupying and leaving such position after the effective date of this policy shall have first priority on reinstatement, the second person occupying and leaving such position shall have second priority, etc.

Section 5.09. Maternity Leave and Expressing Milk in the Workplace.

- 1) **Maternity Leave.** An employee shall be entitled to non-compensable maternity leave. An employee may be required to begin maternity leave at any point during the period of pregnancy if her physical condition unreasonably impairs her ability to perform the essential duties of her position. Such employee will be entitled to resume work following the termination of pregnancy when she is able to perform her job duties without danger to her health. This policy does not exclude an employee from receiving paid leave as provided for in the Family Medical Leave Act (See: Article 5, Section 5.16), during a period of pregnancy, recuperation or care.
- 2) **Expressing Milk in the Workplace.** The City of Kyle recognizes a mother's responsibility to both her job and her child and acknowledges a woman's choice to breastfeed benefits the family, the City, and society. The City shall make reasonable accommodations for the needs

of a breastfeeding employee. It is the policy of the City of Kyle to comply with all state and federal laws as they relate to workplace breastfeeding.

a) DURATION

The City will accommodate the breastfeeding-related needs of employees for a period up to one year from the birth of a child, including access to appropriate facilities, time, and assistance with equipment and storage.

b) ACCOMMODATIONS

The City will provide accessible, adequate, and private facilities other than a multiple user bathroom, for the employee's breastfeeding related needs. Each designated space will be shielded from view and free from intrusion from other employees and the public. The facility shall be equipped with suitable lighting and electricity if necessary for pumping apparatus. The space will be determined on a case-by-case basis in consultation with the employee and department.

c) BREAK TIME

Normally scheduled break times and lunch periods for non-exempt employees will be primarily utilized for milk expression, with additional unpaid time utilizing leave time or time to be made up by the employee as mutually agreed upon by the breastfeeding employee and the supervisor. Employee must be completely relieved from duty during unpaid time. Break times can be combined and redistributed if needed and as agreed upon by the employee and her supervisor. The City will refer to the guidelines set by the Department of Labor to develop employee break time guidelines.

d) STORAGE

The City will make every reasonable effort to provide suitable facilities such as refrigeration units for milk storage during the employee's daily work period. If a City refrigerator is utilized, the employee's bottles or containers should be clearly labeled with the employee's name. Storage in a City refrigerator is limited to no longer than the end of the business day when it is expressed. Should employer-provided facilities not be available, an employee may store milk in her own personal cooler.

e) EMPLOYEE RESPONSIBILITIES

It is the employee's responsibility to develop their own lactation schedule and to arrange their lactation schedule with their department. It is the responsibility of the breastfeeding employee to make the employee's supervisor aware of the initial lactation schedule prior to or immediately upon returning to work and inform the supervisor if there are changes to the employee's lactation schedule throughout the year. It is the employee's responsibility to contact human resources for assistance finding a lactation room. It is the employee's responsibility to keep the designated space clean.

f) HUMAN RESOURCES RESPONSIBILITIES

Human Resources will provide consultation and interpretation of this policy. Human Resources will assist in finding lactation areas once the employee has requested accommodation.

g) DEPARTMENT HEAD RESPONSIBILITIES

Departments must allow the employee to follow the lactation schedule provided by the employee and acknowledged by the employee's supervisor. Departments will ensure confidentiality on a need-to-know basis of all information disclosed by the employee and/or Human Resources with regards to an employee's breastfeeding or milk expression situation. The City is prohibited from suspending, terminating, or otherwise discriminating against the employee because the employee has asserted the employee's rights under this policy.

Section 5.10. Injuries.

- 1) **General.** Leave resulting from or necessitated by any cause, including injury and/or illness, shall not exceed 180 consecutive calendar days. Leave for more than 180 consecutive calendar days constitutes an unusual hardship on the City and may result in termination of employment. The City will have the right to follow the usual procedure to fill any position previously held by an employee that has been on leave for more than 180 days.
- 2) **Injury on the Job** (Leave and Compensation). Injury leave is defined as compensable absence from work arising from an on the job accidental injury. When an employee is injured on the job, such injury shall be immediately reported to the employee's supervisor, who shall take the steps the supervisor feels necessary to secure proper first aid or other treatment for the injured employee. The employee shall also complete an accident report and forward copies to the HR Director within twenty-four (24) hours of the accident. The department head shall, to the extent the employee is aware of the injury, be further responsible for causing the report to be promptly completed and delivered to the HR Director.

An employee injured on the job shall be granted injury leave, without pay except as listed below, for the period of time the employee is unable to perform the duties of the job. A doctor's statement that the employee is unable to return to work shall be required for an employee to receive injury leave. The continuation of injury leave so granted shall be in the discretion of the City and, subject to these policies and applicable law, may be terminated at any time.

Any employee so injured on the job shall be covered by and entitled to the benefits provided under the Texas Worker's Compensation Act. Such employee's fitness and duty to return to work shall be determined under the provisions of the Worker's Compensation Act. During the period of such injury leave, the employee's compensation will be made up from (1) the weekly benefits payable under the Worker's Compensation Act; (2) the disability benefits, if any, payable under the City group health and accident insurance program; and (3) sick leave pay, from accrued sick leave if any, in an amount that when combined with other benefit payments may equal but shall not exceed the employee's regular salary. An employee shall forfeit all

rights to injury leave, as distinguished from the employee's rights under the Worker's Compensation Act, if the employee: (1) is found to be working on a self-employed basis or for any other employer, either part-time or full-time, for financial gain, (2) resigns from City employment, (3) is discharged, (4) retires or dies, (5) fails or refuses to comply with or follow, or disregards or violates the treating physician's instructions regarding treatment and/or rehabilitation of the injury, (6) refuses to perform light, partial or part-time duty when offered by the department head and which does not require the employee to perform activities which are restricted by the treating physician, (7) falsifies or misrepresents his/her physical condition or capacity, (8) refuses to return to duty on the working day the employee has been released to duty by the treating physician, (9) fails to submit an acceptable physician's statement when requested by the employee's supervisor. A written release from the treating physician shall be required before the injured employee shall be allowed to return to work for either light duty or regular duties.

- 3) **Non-Job-Related Injury** (Leave and Compensation). An employee injured or becoming ill off the job shall have the resulting absence from work, if any, charged against the employee's accumulated sick leave at a rate of one full hour for each full working hour's absence. During the period of such absence from work the employee's compensation will be made from (1) the benefits payable under the city group health and accident insurance program, if any; (2) any compensation which may be received as a result of employment by an outside insured employer, if any; and (3) payment from the City so as to make the total income equal to (but never in excess) of the employee's regular salary. Such payments by the City under (3), shall be made only for such sick leave time as the employee may have accumulated to the employee's credit.

After the expiration of the employee's sick leave time all compensation payment by the City will cease and the employee will draw compensation benefits only from (1) and (2) above at the rates and in the amounts prescribed by the applicable insurance policies involved. Leave beyond this shall be addressed under the Family Medical Leave Act (See: Article 5, Section 5.16). Leave beyond the allowable time addressed under the Family Medical Leave Act (12 weeks) may result in termination of employment.

- 4) **Accidents Involving Motorized Equipment.** If an employee is injured while operating motorized City equipment or if an auto accident in which the employee is injured occurs while the employee is on duty, a motor vehicle accident report form, as provided by the State, may be prepared by the City's Police Department. The HR Director and department head shall be immediately notified, and the department head shall respond to the scene of the accident. A copy of the Police Department's accident report, and, to the extent possible given the employee's injuries, an accident report completed by the employee and the department head, shall be filed with the Personnel Office within 24 hours.

Section 5.11. Professional Leave with Pay.

Department heads may grant employees special leave with pay and actual expenses to attend professional conferences, conventions or short courses or to visit other cities in the interest of the City, as authorized by the City Manager. The City Manager shall also determine whether or not

an employee attending any such training will use a city vehicle or be reimbursed for mileage for use of a personal vehicle.

Section 5.12. Leave to Attend Voting, Jury Duty, Court Subpoenas.

All employees will be allowed time off (with pay if regular full-time employee) to attend the civic duties of voting in elections, serving as members of jury panels, or appearing before any tribunal by virtue of subpoena or summons resulting from their city employment. All employees receiving a call to jury duty must promptly notify their supervisor. Regular full-time employees on jury duty shall be excused from duty without loss of pay. Should jury duty fall within a scheduled vacation period, the vacation period may be extended by a corresponding number of days, or the employee may schedule that number of days at another time. All employees who are requested to testify by the City, or who are subpoenaed as witnesses for the City or as a result of their employment with the City, shall appear in court, without loss of pay. Employees appearing in any matter unrelated to their City employment or appearing voluntarily as an adversary witness against the City, shall not receive wages for answering a subpoena or testifying in court. Employees attending any administrative or judicial proceeding for personal business may use any vacation accrued to their credit for such purpose.

Section 5.13. Leave of Absence.

Department heads may grant leaves of absence without pay to any employee, with the approval of the City Manager, not to exceed thirty (30) days in duration. Requests for such leave shall be in writing and submitted well in advance of the date the employee will commence such leave. Leaves of absence without pay may be granted for any legitimate purpose; however, employees will be obligated to show that the granting of such leave will not materially affect productivity of the Department. Leaves of absence without pay in no case shall exceed thirty days, except as allowed under the Family Medical Leave Act or similar federal and state laws.

Section 5.14. Absence without Leave.

No employee may absent himself from duty for a day or any part of a day without permission of the employee's department head. Any such absence will be without pay and will subject the employee to disciplinary action.

Section 5.15. Physical Incapacity to Perform Assigned Work.

Once it is determined by the department head or the department head's designee, based on the assessment of a licensed medical doctor, that an employee is not able to perform the required physical duties or tasks of the present position (regardless of whether the incapacity is due to on the job injuries, off the job injuries, or illness), then that employee will not be returned to full duty with the City until a medical doctor states in writing that the employee is able to perform all the required physical tasks or duties of the position. Wherever possible, the City may provide light or modified duty to an employee who has been released by a physician to return to work in a limited capacity.

Under this policy, light duty is construed to mean a temporary modification of the employee's regular duties on a full or part-time basis or assignment within the department or within another City department to a funded position that is compatible with the employee's current physical capabilities as determined by the employee's treating physician. The department head may identify and determine the availability of light duty positions within the department.

Once an employee has exhausted all sick leave, vacation leave, or injury leave granted under the previous sections of this chapter, additional leave may be addressed under the Family Medical Leave Act (See: Article 5, Section 5.16). After any additional leave authorized by FMLA is exhausted employment may be terminated; provided the employee may retain the City's health insurance if the employee notifies the HR Director and pays the rate as established by the City as required by the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). Such coverage shall be limited to the minimum lengths of time established by COBRA.

Section 5.16. Family and Medical Leave.

In accordance with the Family and Medical Leave Act of 1993, an employee may be eligible to take up to twelve (12) weeks of unpaid family and medical leave during a rolling twelve (12) month period. An eligible employee is one who has worked for the City for at least twelve (12) months and has worked at least 1,250 hours during the twelve (12) months preceding the first date leave is to be taken. Leave can be taken for any of the following reasons: birth of a child; placement with the employee of a child for adoption or foster care (entitlement to family and medical leave expires twelve months after birth or placement); when the employee is needed to care for a child, spouse, or parent who has a serious health condition; or when the employee is unable to perform the essential functions of the position because of the employee's own serious health condition.

Family Leave has been expanded to provide Family and Medical Leave due to a call to active military duty. This benefit provides 12 workweeks of unpaid FMLA leave due to a spouse, son, daughter or parent being on active military duty or having been notified of an impending call or order to active military duty in the Armed Forces. Leave may be used for any "qualifying exigency" arising out of the servicemember's current tour of active military duty or because the servicemember is notified of an impending call to military duty in support of a contingency operation.

Also, a caregiver needing leave to provide care for an injured servicemember is eligible for extended Family and Medical leave. This benefit provides 26 workweeks of unpaid FMLA leave during a single 12-month period for a spouse, son, daughter, parent, or next of kin caring for a recovering servicemember. A recovering service member is defined as a member of the Armed Forces who suffered an injury or illness while on active military duty that may render the person unable to perform the duties of the member's office, grade, rank or rating.

1) PROCEDURES

- a) **Twelve Month Period:** The twelve (12) month period for counting family and medical leave is a "rolling" 12-month period measured backward from the date an employee requests or is placed on FMLA leave. Each time an employee takes FMLA leave, the

remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months, or 26 weeks provided in certain circumstances.

- b) **Employee Notification:** An employee should give at least thirty (30) days' notice for the need to take foreseeable family and medical leave, unless the need is unforeseeable, in which case, as much notice as is practicable should be given. A form for requesting family and medical leave is available in the Human Resources Department. If it is determined that the need for family and medical leave was foreseeable, the leave may be delayed until at least thirty (30) days after the date that the employee provides notice to the City.
- c) **Department Notification:** Each department supervisor is responsible for notifying the Human Resource Department immediately when an employee is away from work for a family and medical leave qualifying event (if family and medical leave has not been approved), even if the employee is utilizing paid vacation, sick or any other accrued leave, or is out due to a work-related injury. An employee using sick leave should be reported to the Human Resource Department if it is anticipated that the duration of the illness will be three (3) or more days, or once the employee exceeds three (3) days of sick leave use.
- d) **Human Resource Responsibility:** Human Resources is responsible for central administration of all requests for family and medical leave. The Human Resource Department reserves the right to automatically place an employee on family and medical leave if it is determined that a qualifying event has occurred. The Human Resource Department may retroactively designate the beginning date of FMLA to the beginning date of the employee's absence for the qualifying event.
- e) **Approval:** An employee shall submit an initial request for family and medical leave through proper channels to the Department Director. The employee will then need to meet with someone in the Human Resources Department for approval and to coordinate any approved leave. Confidential medical information that accompanies the application should be submitted directly to the Human Resource Department.
- f) **Substitution of Paid Leave:** An employee utilizing this policy for the placement of a child for adoption or foster care with the employee shall be required to exhaust all accrued vacation and any other applicable paid leave prior to going on unpaid leave. An employee utilizing this policy for the serious illness of a child, spouse or parent must exhaust all accrued sick leave, vacation leave and any other applicable paid leave prior to going on unpaid leave. If an employee gives birth to a child, sick leave can be utilized until the employee receives a release from the doctor. After being released, the employee may use additional sick leave in accordance with the sick leave policy. Once all applicable sick leave has been used, the employee shall be required to exhaust all accrued vacation leave prior to going on unpaid leave. An employee utilizing this policy for the employee's own serious health condition shall exhaust all accrued sick and vacation leave prior to going on unpaid leave. If an employee is off work due to a work-related injury and the employee qualifies for family and medical leave, it will run concurrently with any paid leave. Employees do not accrue paid time off while on unpaid leave. The City reserves the right

to count any paid leave that qualifies for family and medical leave toward the twelve (12) or twenty-six (26) weeks allowed under this policy.

- g) **Maximum Time Allowed:** The maximum amount of family and medical leave available is twelve (12) weeks during a twelve (12) month period even if there is more than one family and medical leave qualifying event. The only exception to the twelve (12) week maximum is the leave to provide care of an injured service member, described above, which allows for an extended FMLA leave of 26 weeks.
- h) **Medical Certification:** The City may require medical certification from a health care provider to support a claim for leave to care for a seriously ill child, spouse or parent, or for the employee's own serious health condition. Medical certifications must be returned to the Human Resource Department within fifteen (15) working days. Recertification may also be required on a monthly basis. For leave to care for a seriously ill child, spouse, or parent, the certification must include an estimate of the amount of time the employee is needed to provide care. For the employee's own serious health condition, the certification must include a statement that the employee is unable to perform the essential functions of the position, and expected duration. The City does not seek and should not be provided genetic information. If an employee or applicant's genetic information is inadvertently received by the City; the City will not use genetic information for any employment decision or action.

Upon returning to work after leave for his or her own illness, an employee is required to provide certification to the supervisor that the employee is able to return to regular duties. If the validity of a certification is questioned, the City may require that a second opinion be obtained. If the first and second opinions differ, the City may require a third opinion be obtained. The employee and the City must agree upon a health care provider for the third opinion and this opinion shall be binding on both parties. The City shall bear the expense of second and third opinions.

- i) **Return to Work:** When an employee returns to work after family and medical leave, the employee shall be restored to the same position or to an equivalent position involving the same or substantially similar duties and responsibilities. An employee will be restored to the same worksite or to a geographically proximate worksite. The employee is also entitled to return to the same shift or an equivalent schedule.
- j) **Effect on Married Couples:** If a City employee is married to another City employee and either or both employees request family and medical leave for the birth or placement of a child with the employee for adoption or foster care, the total time allowed shall be limited to no more than twelve (12) weeks combined during any rolling twelve (12) month period. For other qualifying family and medical leave events, each employee is entitled to leave as long as the total amount of leave taken during any twelve (12) month period does not exceed twelve (12) weeks or twenty-six (26) weeks if applicable for one employee.

- k) **Continuation of Insurance Benefits:** While utilizing unpaid family and medical leave, an employee's insurance benefits will continue without interruption as long as the employee pays his or her portion of the insurance premiums and any other voluntary deductions.
- l) **Intermittent Leave:** When medically necessary, an employee may take family and medical leave on an intermittent basis or work a reduced schedule. Arrangements should be made with the employee's immediate supervisor so that the operations of the department are not unduly disrupted. An employee taking intermittent leave or leave on a reduced schedule may be temporarily assigned to an alternative position with equivalent pay and benefits if it better accommodates the needs of the department.
- m) **Holidays:** Holidays will be paid in accordance with the Holidays policy. City holidays will be counted as part of the twelve (12) or twenty-six (26) weeks of family and medical leave, whether the employee is on paid or unpaid leave.
- n) **TMRS:** Employee contributions to TMRS may be made on a voluntary basis through a special arrangement with the City while an employee is in a leave without pay status. It is the employee's responsibility to initiate such an arrangement by timely contacting the City's Director of Human Resources and completing the necessary paperwork.
- o) **Recordkeeping:** Family medical leave time will be tracked on an hourly basis for payroll and compliance purposes. To determine entitlement for employees who work variable hours, the minimum hours required for eligibility is calculated on a pro rata or proportional basis by averaging the weekly hours worked during the twelve (12) weeks prior to the start of family and medical leave.
- p) **Exempt Employees:** Paid leave accounts may be charged for less than one (1) full workday according to department policy and the salary of an exempt employee may be docked for absences of less than one (1) full workday. Salaried executive, administrative, professional and other employees of the City who meet the Fair Labor Standards Act (FLSA) criteria for exemption from overtime do not lose their FLSA-exempt status by using any unpaid FMLA leave.

2) DEFINITIONS

- a) **Child:** A biological, adopted, or foster child; a stepchild; a legal ward; or a child of a person standing in loco parentis, who is standing in the place of a parent, who is either under age 18, or age 18 or older and requires active assistance or supervision to provide daily self-care. A biological or legal relationship is not necessary. A more detailed definition is provided in the Family and Medical Leave Act of 1993 which is available in the Human Resource Department.
- b) **Health Care Provider:** A Doctor of Medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing health care services. A more expansive definition is provided in the Family and Medical Leave Act of 1993 which is available in the Human Resource Department.

- c) **Parent:** A biological parent or an individual who stands or stood in the place of a parent to an employee when the employee was a child. This term does not include parents-in-law.
 - d) **Serious Health Condition:** An illness, injury, impairment, or physical or mental condition that involves: (1) any period of incapacity or treatment that results in inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; (2) any period of incapacity requiring absence from work, school, or other regular daily activities, of more than three calendar days, that also involves continuing treatment by (or under the supervision of) a health care provider; or (3) continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or 4) for prenatal care. Voluntary or cosmetic treatments (such as most treatments for orthodontia or acne) which are not medically necessary are not "serious health conditions," unless inpatient hospital care is required. Restorative dental surgeries after an accident or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met.
 - e) **Spouse:** A husband or wife as defined or recognized under State law for purposes of marriage, including common law marriage.
 - f) **Reduced Schedule Leave:** A leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.
- 3) Interpretation and Application of This Section. This Article and section shall be interpreted and applied by the City in a manner consistent with the Family and Medical Leave Act, 29 U.S. Code Chapter 28. In the event of a conflict between any provision of this section and such Act, the terms and provisions of the Act shall govern and control.

Section 5.17. Accrued Leave Donation.

The purpose of Accrued Leave Donation is to provide for the expanded use of accrued vacation and sick leave as a voluntary donation to coworkers and for the consistent application of rules and guidelines for sharing leave between employees in cases of catastrophic event. Accrued Leave is not tied to FMLA definitions or criteria and does not extend FMLA work guarantees. While using Shared Accrued Leave hours, the leave recipient continues to accrue paid leave benefits and service credit according to schedules established by the City of Kyle Personnel Policies. Medical and other benefits coverage continue under the current conditions and costs, including the City's contribution to the leave recipient's benefits premiums.

Donations will be requested for and designated to a specific employee and the name of leave recipient may be disclosed on the Appeal form or any other public documents only upon written consent of the leave recipient or representative of the leave recipient. Donations are voluntary and discretionary and may only be used by the employee to whom they were donated. Donations may be made from accrued sick and vacation balances and a minimum donation of 4 hours is required; additional donations may be made in four-hour increments. Hours donated to a specific individual

for a specified catastrophic event may be used only for that illness or injury (a different catastrophic event must be handled as a separate or second incident).

Donations will be converted on a straight hour-for-hour basis to the leave recipient Shared Accrued Leave balance, regardless of the classification and/or salary of either the recipient or the donating employee. Once accrued leave is donated, the donating employee cannot retrieve any portion of the donated leave.

The only department to review the leave recipient's application and the specific donations given will be the Human Resource department. However, records will be subject to the regulations of the Texas Public Information Act and HIPAA. The approval to appeal for donated leave and the acceptance of donated leave do not extend FMLA job protection benefits nor eliminate the Human Resources department discretion to act on issues related to employee work status and disciplinary action.

- 1) **Prohibitions.** No employee may intimidate, threaten, or coerce any other employee with respect to donating or receiving leave under this guideline. No individual employee shall receive compensation of any kind for donating accrued leave. Donations may not be used to retroactively pay for time off without pay.
- 2) **Eligibility.** Employees have no right to accrued leave from another employee and any decision to donate accrued leave is strictly at the discretion of the donating employee. Leave recipient may not be eligible to receive Workers' Compensation benefits (TIBs), nor receive other City of Kyle paid benefits (for example, LTD, STD, wage continuation). Appeal for donated accrued leave will be made on behalf of an employee who meets the employment and event eligibility criteria, as follows:
 - a) Leave Recipient has to exhaust all accrued balances (sick and vacation leave), resulting in at least 40 hours (or less, based on prorated workweek) without pay.
 - b) Leave recipient must submit a completed Application for Shared Leave Donation with additional information as requested by the Human Resources Department.
 - c) Leave recipient must be a regular, full-time, non-probationary, non-Civil Service employee of the City of Kyle, or a civil service employee of the Kyle Police Department.
 - d) Event must meet definition of Catastrophic Event, which is a severe condition or combination of conditions. A severe condition or combination of conditions is a mental or physical condition that:
 - i) Will result in death if not treated timely, or
 - ii) Requires hospitalization for more than 72 consecutive hours, or
 - iii) Will create a significant impairment or decrease in life function; or,
 - iv) Is considered a terminal illness.

NOTE: Pregnancy and elective surgery are not considered severe conditions except when life-threatening complications arise from them.

- e) Employees must not be currently receiving short-term disability (STD) or long-term disability (LTD) benefit payments except in cases where the “minimum benefit payment” (as determined by the current carrier) is being received.
 - f) Shared accrued leave may be used for unpaid periods of time establishing eligibility for STD or LTD, or upon exhaustion of STD or LTD benefits, as applicable under the STD/LTD benefit guidelines.
 - g) If qualified for LTD, an employee may first exhaust donated shared leave prior to the start of LTD benefits; employee is responsible for notifying Benefits of the intent to delay LTD benefits.
- 3) **Maximum Donations.** The maximum Shared Accrued Leave hour donation (from all sources) is 520 hours. An additional 520 hours may be requested for a single condition or event under special circumstances. A maximum donation over term of City employment for all qualifying conditions or events is 1040 hours.
- 4) **Prorated Donations.** If more accrued leave hours are donated than needed, up to the maximum amount, the donations may be accepted and deducted from donating employee balances on a pro-rated share of the total donations made.
- 5) **Donating Employee.** Donating employee is required to retain minimum personal accrued leave balances as follows:
- a) Sick Leave – 80 hours
 - b) Vacation Leave – no minimum retained balance required
- 6) **Donations made by Terminating Employees.** Donations made by terminating employees are not subject to minimum retained leave balances. However, donations above the minimum retained leave balance may be made only during the terminating employee’s last pay period of employment and only if an active appeal for donated hours to a specific, qualified employee is underway. The reason for the termination – that is, voluntary or involuntary – does not affect the terminating employee’s option to donate accrued leave.
- 7) **Tax Liability.** Tax liability associated with donated leave will be the responsibility of the recipient. Paid time, including shared leave used, will be subject to all tax liability associated with regular pay including Federal, Medicare, and FICA withholding.
- 8) **Closure.** The catastrophic event under which the leave recipient qualified will terminate at the first of any of the following:
- a) When the leave recipient’s City service terminates;

- b) Upon the healthcare provider's release of the patient to return to work;
- c) At the end of the biweekly pay period in which the Human Resource department receives written notice from the leave recipient or from a representative of the leave recipient that the leave recipient no longer needs to use shared leave.
- d) At the end of the biweekly pay period in which the department receives notice that the Human Resources Department has approved an application for disability retirement for the leave recipient.

As of the day following the last day of Shared Accrued Leave hours, employee will be placed on unpaid leave through the remaining balance of the twelve-week period of FMLA status, if applicable. Additional unpaid leave may be requested as allowed by personnel policies. The leave recipient may reapply for additional Shared Accrued Leave if the amount previously granted is insufficient to cover the employee's absence. The subsequent appeals are subject to the same restrictions as indicated previously, including a request for additional healthcare provider's statements.

If the employee returns to work and has a reoccurrence of the same or related catastrophic event within six months of the date the employee returned to work, after using any accumulated vacation or sick leave accrued days, the employee may use previously donated leave. If no reoccurrence of the catastrophic event occurs within six months of the date the employee returns to work, the unused donated hours will be redistributed to the donating employees on a pro-rated basis.

Section 5.18. Volunteer Time Off.

The City of Kyle encourages all employees to take part in projects that support the community in which we serve. Employees are eligible to use up to 12 hours of paid time off during regularly scheduled work hours each calendar year to volunteer for a charitable organization in our community.

1) Eligibility.

- a) Employee. All regular full-time City of Kyle employees are eligible to participate in this program after the satisfactory completion of the probationary period from the date of hire. The employee must be in good standing. The 12 hours of paid time off during regularly scheduled work hours may be spread over several days during the calendar year. The hours scheduled to work for the workweek that the employee is requesting to volunteer must not exceed 40 hours. Any volunteer hours that result in overtime or compensatory time will not count towards this program.

Regular part-time employees are eligible to use up to 6 hours of paid time off during regularly scheduled work hours that may be spread over several days during the calendar year.

- b) Organization. Charitable organizations classified by the IRS as 501(c)(3) non-profit, public charities and municipalities (i.e. public schools) are eligible.

- i) **Eligible Activities.** Volunteer activities that benefit the local community are eligible, including, but not limited to serving meals at a soup kitchen; helping build houses; mentoring area youths; leading a scout troop; assisting students with reading or writing.

Employees may volunteer with a religious organization if the purpose of the activity is to benefit a cause not associated with religious or political activities.

- ii) **Ineligible Activities.** Programs or initiatives where the primary purpose is the promotion of religious doctrine or tenets are ineligible for Volunteer Time Off. Activities to carry on propaganda, to attempt to influence legislation or the outcome of any public election or to carry on any voter registration drive are also ineligible.

Volunteer activities performed outside the regularly scheduled work hours or during scheduled time off such as vacation, holidays, or any other approved time off are not eligible for this program.

Volunteer Time Off may not be used for organizations that discriminate based on age, race, religion, sex, national origin, citizenship, disability, genetics, veteran's status or other unlawful basis.

- 2) **Participation.** Employees must complete a Volunteer Time Off (VTO) request form and submit to his/her supervisor at least two weeks before the requested time off for approval. The employee is asked to consider peak work periods in his/her department before requesting time off to volunteer. The supervisor should consult with HR regarding any questions or concerns before approving or denying the request. Approval is at the discretion of the employee's supervisor. A copy of the approved VTO forms must be sent to the Human Resources Department for recordkeeping of all city-wide volunteer hours.

Section 5.19. Inclement Weather and Emergency Closing.

The City will make every effort to maintain normal working hours through inclement weather. Except for extraordinary circumstances, City offices DO NOT CLOSE. All City employees, whether exempt or nonexempt, are expected to make a sincere effort to report to work during inclement weather conditions or other emergency situations.

- 1) **Employee.** If an employee determines that the weather conditions constitute a danger to life and/or property, the employee must notify the immediate supervisor and/or Department Director and make arrangements to report to work if weather conditions improve. Any leave taken due to inclement weather can be flexed or charged to vacation or comp time. Regular full-time and part-time nonexempt employees who are unable to flex their time and who have no accrued vacation or compensatory time available will not be paid for the hours missed.
- 2) **Department Head.** The Department Head is responsible for seeing that City services are staffed while City offices are open for business during inclement weather or emergency conditions. Any City service that cannot be provided during inclement weather or other emergency conditions must be immediately reported to the City Manager's Office.

- 3) **City Manager.** When weather or other conditions are such that the City Manager or designee declares certain City offices/departments officially closed, all affected personnel, i.e., those non-essential employees who were scheduled to work during the time of closure, will be granted paid “administrative leave” for the time the office/department is closed. On days when the weather worsens as the day progresses, the City may decide to close early. In such cases, a decision and announcement will be made by the City Manager or designee at the appropriate time. All employees will be expected to remain at work until the appointed closing time, unless they receive permission from their supervisor to do otherwise. Employees will only be paid for time worked.
- 4) **Essential Personnel.** Employees are required to sign an acknowledgement form that they have received, notice of their designation of essential or non-essential status and requirement to work during inclement weather at time of employment. Essential personnel must report to work even when other City departments are officially closed due to weather or other type of extraordinary circumstances. Essential personnel required to be on the job regardless of adverse weather or other conditions are designated by the Department Head and/or the City Manager. Essential personnel shall receive overtime pay of 1.5 the hourly wage during worked performed during such emergency. Essential personnel who fail to report to work may be subject to disciplinary action up to and including termination of employment.

Article 6. Wages and Salary

Section 6.01. Application of Rates.

All employees occupying a position in the salaried or overtime exempt status shall be paid a bi-weekly or monthly salary or wage within the range currently set for that position's class. If an employee begins service in the middle of a pay period, the employee will be paid at the equivalent hourly rate for the total hours worked during that pay period. It shall be the responsibility of the HR Director to maintain an approved classification plan, which, to the extent feasible, accurately classifies every regular position in the City service. Toward that end the City Manager may make surveys of whole departments, of occupational groups located in various departments, or may audit individual positions. Such classification reviews may be initiated by the City Manager independently. However, it is the responsibility of the department heads to request such reviews when it comes to their attention that one or more positions under their jurisdiction are improperly classified. An employee may request a review of his or her position by pursuing the regular grievance procedures outlined elsewhere in these policies. All requests for classification review must be responded to with reasonable promptness by the City Manager.

Section 6.02. Pay Rates for New Employees.

Pay rates for new employees will normally be at the minimum hourly, bi-monthly or monthly step in the salary range established for the position that the employee is occupying. Department heads, with the approval of the City Manager, may pay a new employee a beginning rate above the minimum established in that range if the new employee's abilities, experience and training justify such action.

Section 6.03. Performance Based Pay Increases.

Pay increases for employees shall not be automatic but shall be based on performance and to reward employees for ability and efficiency in performing their duties. Length of service is not considered a valid basis for requesting performance-based pay increases since longevity or service pay is designed to compensate employees for their years of service. Performance based pay increases may be granted only by the City Manager on recommendation of the department head.

Section 6.04. Total Rate of Pay.

No employee shall be paid, or no salary advancement shall be made which would compensate an employee at a higher rate than the maximum or highest step established in the salary range and compensation plan to which that employee's position has been assigned. However, any employee receiving a salary rate in excess of the employee's maximum step in the employee's salary range on the effective date of the adoption of these rules shall continue to receive that rate unless such rate is reduced as otherwise provided in these rules. An employee, whose job was downgraded by reclassification or reorganization through no fault of the employee, may continue to receive his or her former rate of pay upon approval by the City Council until a rate on the new salary range equals or surpasses the old rate. If the exception is not granted by the City Council, the employee shall be compensated within the guidelines of the compensation plan approved.

Section 6.05. Part-time, Temporary and Seasonal Rates.

An employee who works regularly at less than the established workday or work week shall be paid by the hour or at a salary proportional to the amount of time worked. The hourly, semi-monthly, bi-weekly or monthly rates for part-time, temporary or seasonal employees shall be established by the department head and the HR Director after giving due consideration to the ranges and pay rates in effect for similar positions in the current pay plan. Temporary employees shall not receive retirement benefits, health, dental or life insurance, vacation leave, sick leave, holiday pay or military leave pay. Part-time employees shall not receive retirement benefits, health, dental or life insurance.

Section 6.06. Pay Rates for New Positions.

Whenever a new position is created the HR Director shall, with the department head, study the duties and responsibilities of the new position and in light of the existing positions and pay rates in the Performance Based Compensation Plan, submit to the City Manager a recommendation for the proper hourly, semi-monthly, bi-weekly or monthly pay range for the new position.

Section 6.07. Termination Pay.

All employees who terminate employment with the City shall receive all pay that may be due, subject to the following qualifications and exceptions:

- 1) Regular full-time employees who have satisfactorily completed their probationary period prior to termination will be paid for accrued vacation leave; and

- 2) If any employee terminates before the end of a pay period, the employee will be paid for the total hours actually worked through the employee's termination date at his/her calculated hourly rate; provided that payment for accrued vacation may be denied, or reduced, if the termination of the employee results from wrongful actions or misconduct of the employee; and provided further that any such payment for accrued vacation may be credited by the City to any sums or amounts the employee owes the City, or to damages resulting from malicious, intentional or grossly negligent action of the employee with respect to property or assets of the City.

Section 6.08. Longevity Pay.

All regular full-time employees employed for 1 year or more shall be eligible for additional compensation at a rate of nine dollars (\$9.00) per month of continuous service with the City up to a maximum of twenty-five (25) years. This pay will be awarded annually, as a lump sum, during December each year and only eligible employees who are in an active pay status on December 1st will receive this benefit.

Section 6.09. Performance Evaluation System.

The purpose of the system is to improve employee productivity, to provide better communications between supervisors and those they supervise, to identify needs for training or other remedial actions among the workers, to provide the cultivation of skills and abilities, and to further the City service as a good place to work.

- 1) Evaluations shall be used as aides in recommending employees for performance pay increases, in considering dismissal and/or other disciplinary actions based on job performance, in attempting to avoid any influence of personal bias or prejudice in offering promotions to employees, and in other personnel matters.
- 2) Evaluations shall be performed by the immediate supervisor of the employee being evaluated but the evaluations may be reviewed and revised by department heads or the City Manager before becoming final. Evaluations of supervisory employees shall take into account the skill and judgment shown by such supervisors in the rating of those responsible to them.
- 3) An evaluation of all employees shall be completed at least once each year an annual date/time as established by the City Manager.
- 4) Annual performance evaluations shall be completed in a consistent manner for all employees and through a process as defined and approved by the City Manager.
- 5) An evaluation of an employee may also be conducted at any other time at the option of the employee's supervisor(s); such specific evaluations are appropriate if the employee is being considered for promotion, is in need of remedial action, or is to be warned of, or subjected to, possible disciplinary action.

Section 6.10. Payment of Wages and Salary.

For purposes of payment of wages and salary to employees, a pay period consists of 14 consecutive days which begins on a Sunday and ends on a Saturday. Paydays for the payment of wages and salary are on a biweekly basis and all employees are paid every other Friday for total hours worked during the pay period ending on Saturday immediately prior to the Friday payday.

To ensure timely and accurate payment of wages and salary to its employees, the City of Kyle has adopted a direct deposit payroll policy under which all employees are paid through direct deposit of funds to the employee's bank account at a financial institution of their choice.

Article 7. Employment Verification and Termination

Section 7.01. Resignation.

An employee who wishes to leave the employment of the City should give at least two (2) weeks' notice to the employee's supervisor before the effective date of the resignation. Such notice shall be in writing and shall state the reasons for such resignation. The department supervisor shall immediately notify the HR Director and City Manager of such resignation and indicate the reasons therefor, and whether the employee's services have been satisfactory. In no case shall an employee be allowed to take vacation leave during the last two (2) weeks of employment unless approved by the City Manager and the department head. Vacation hours taken during the last two weeks of employment will be deducted from the employees' accrued vacation hours and from the maximum allowed for payment at the time of resignation or termination.

Section 7.02. Retirement.

All regular full-time employees are required to become members of the Texas Municipal Retirement System (TMRS). Enrollment shall be accomplished in accordance with the TMRS guidelines. Members contribute a percentage of their gross salary (7%, Effective October 1, 2002) each pay period toward retirement. The employee's and the City's percentage of contribution to TMRS is determined from time to time based on the City's level of participation in TMRS.

TMRS provides eligible employees with retirement benefits. The City has a five (5) *year* vesting plan with retirement at or after age 60, or at any age after 20 years of participation in the TMRS plan. Accidental death and disability benefits are also incorporated into this retirement plan should an employee become qualified for disability benefits prior to retirement. Funds contributed by the employee may only be withdrawn upon retirement or resignation. Only the employee's contributions plus interest is refunded when an employee resigns or retires and elects to withdraw his/her contribution. Details of the retirement plan are outlined in the TMRS handbook available from the HR Office.

The TMRS participates in the proportionate retirement program provided for by state law. Proportionate retirement permits a member of TMRS and certain other pension plans to combine years of membership with two or several participating plans, e.g. Counties, the State and certain cities that are not TMRS members. Prior service credit will be granted to employees for service

performed for specific, various public entities, with the submission of proper paperwork to TMRS, which shall be the full responsibility of the affected employee.

Section 7.03. Exit Interview.

Upon separation of employment with the City, each employee will be offered an exit interview electronically or in-person at the discretion of the HR Director and /or Department head. Said interview will be conducted to provide for the effective final exchange of information prior to the separation of employment. The final paycheck will be calculated and provided as required as part of the next ensuing payroll period, unless (involuntary) terminated in which final pay will be dispersed per section 61.014 of the Texas Payday Law.

Section 7.04. Requests for Employment Verification.

Information regarding the employment of all current and former City employees shall be verified upon written request made to the HR Director. The designated representative of the Police Department in charge of providing information to the State for Peace Officer licensing shall be permitted to provide all relevant information concerning Police Officers that is required by the State. In the absence of a written request signed by the current or former employee, the HR Director shall be authorized to verify only the following information:

- 1) The date the employee began employment with the City;
- 2) The date the employee ended employment with the City;
- 3) The employee's salary when beginning employment with the City and such salary when employment with the City ended;
- 4) The positions held while employed by the City;
- 5) The City department(s) to which the employee was assigned while employed; and
- 6) As permitted under the Labor Code Chapter 103, the HR Director may respond to requests from a prospective employer seeking information on a prospective employee concerning job performance of a former or current employee of the City by providing information on job performance that the HR Director reasonably believes to be true.

No person other than the HR Director, the City Manager or his or her designee shall be authorized to act on behalf of the City with respect to the verification of employment information.

Article 8. Adverse Action

Section 8.01. Adverse Actions.

The City may deny or reject any application, appointment or promotion, or suspend, demote or remove any employee, at any time that the City Manager or the City Manager's designee determines that such action will promote the efficiency of the City's service.

- 1) General. In determining whether its action with respect to any applicant or employee will promote the efficiency of service, the City shall consider the following:
 - a) Whether the prior history and conduct of the individual evidences that the individual may reasonably be expected to interfere with or prevent effective performance in the position applied for or employed in;
 - b) Whether the prior history and conduct of the individual evidences that the individual may reasonably be expected to interfere with or prevent effective performance by the employing department or co-workers of the co-worker's respective duties and responsibilities; or
 - c) Whether the prior history, conduct, work related experience or performance of the individual evidences that the individual may not reasonably be expected to perform the job duties at an acceptable level of performance.
- 2) Specific Factors. Among the factors which may be used in making a determination as to any applicant or employee, in addition to those set forth in paragraph (1) of this section, any of the following may be considered as a basis for adverse action:
 - a) Prior Employment. Delinquency, misconduct or poor working relationships in prior or current employment;
 - b) Improper Conduct. Criminal, dishonest, infamous or notoriously disgraceful conduct, specifically including:
 - i) Dishonesty. Stealing or taking employer property or other employees' property without proper authorization; misuse of employer or other employees' funds or property; cheating; forging or willfully falsifying reports, records, or documents, misuse of leave of absence; or any other false action detrimental to the employer or fellow employees.
 - ii) Disturbance. Fighting; using profane, abusive or threatening language; horseplay; causing injury to fellow employees through deliberate action or gross negligence; spreading false reports; or otherwise disrupting harmonious relationships between employees.
 - iii) Sabotage. Deliberate damage or destruction of City equipment or property; altering, removing or destroying City records; advocacy of or participating in unlawful trespass or seizure of City property; encouraging or engaging in slow-downs, sit-ins, strikes or any other concerted effort to limit or restrict employees from working.
 - iv) Misconduct. Any criminal offense or other misconduct which could have an adverse effect on the employer, or on the confidence of the public in the integrity of the City government, or on the relationship of the employee and other employees; or repeated convictions during service on misdemeanor charges such as speeding, reckless driving, or accidents involving injuries to persons or damage to property or equipment.

- c) **Misleading Information.** False statements or deception or fraud in applications, examination or representations made for appointment or promotion.
- d) **Abuse of Drugs or Alcohol.** Reporting to work or being "on call" in unfit condition, being under the influence of intoxicants or under the influence of controlled substances or dangerous drugs, including marijuana, narcotics, or drugs of any kind; or drinking intoxicants or taking into the body of an unlawful controlled substance or dangerous drug, including marijuana or a dangerous drug, during working hours, or possessing intoxicants or unlawfully possessing controlled substances, including marijuana, narcotics, or dangerous drugs, on City property or in City vehicles.
- e) **Statutory.** Any statutory disqualification which makes the individual unfit for the job or failure to meet and maintain requirements of the individual's job description.
- f) **Unsatisfactory Attendance.** Excessive or unauthorized absence and/or tardiness.
- g) **Incompetence.** Inability or unwillingness to perform assigned work satisfactorily.
- h) **Indifference toward Work.** Failure to remain at work, inefficiency, loafing, carelessness, performing personal business during working hours, abuse of eating and/or rest periods, sleeping or being inattentive during working hours, interfering with work of others, mistreatment of the public or other employees, or leaving work without permission.
- i) **Insubordination.** Willful failure or refusal to perform assigned work or fully comply with instructions or orders as requested by the supervisor or other members of management. If the employee believes the instruction or order is improper, the employee should obey the order or instruction and file a grievance later. This does not apply to imminently dangerous situations. If the employee believes the instruction or order, if followed, would result in physical injury to himself or another employee, or damage to City equipment, the employee should request immediate verification by the next higher level of supervision.
- j) **Violation of Safety Rules.** Smoking in prohibited areas; improper removal of safety guards, fire extinguishers, or other equipment designed to protect employees; failure to use safety equipment or to follow safety rules; or failure to report an on-the-job injury, vehicle accident, or unsafe condition.
- k) **Misuse of City Equipment or Services.** Using, possessing, taking or providing any City equipment, credentials, or services for other than official City business without proper authority.
- l) **Conduct.** Conduct subversive to the proper order, discipline and morale of city employees.
- m) **Political Activities.** No employee of the City shall, at any time, make, receive or solicit contributions, or engage or become involved in any political activity or campaign, with respect to any candidate for City office. No employee shall, while on duty or in uniform, distribute cards, leaflets or other political advertising for any candidate for neither local, state or federal elective office; nor use or make reference to such employee's city

employment for the purpose of soliciting funds or influencing the vote of any employee or citizen. Employees who are approached or contacted by candidates regarding any aspect of City operations should direct that individual to their supervisor. This provision does not prevent an employee from privately expressing opinions to family, friends, co-workers and acquaintances.

When not on duty or in uniform, an employee of the City may engage in political activity and campaigns for and with respect to any government or entity other than the City. Further, this subsection shall not be construed as being applicable to any campaign for office in any association or organization in which such employee is a member, or to the expression of frank opinions by any employee.

An employee who is considering becoming a candidate for any public office should be aware that an announcement for such office may constitute a resignation from the City service. An employee should advise the City Manager in writing prior to announcing for public office and any such employee may consult with the HR Director and/or the City Manager with respect to the position that may be taken by the City in the event of any such announcement.

- n) Weapons. The control of, or possession by, any employee of a handgun or other concealed weapon in a City vehicle or on any City property other than the employee's personal vehicle or any violation according to Section 11.03. However, this subsection (n) shall not be applicable to certified licensed peace officers or employees with a valid license to carry a handgun that have successfully completed the required course through the Kyle Police Department, provided that the privilege to carry while on duty has not been revoked by the City.
- 3) Additional Considerations. In making determination under paragraph (1) of this section, the City shall consider the following additional factors to the extent that these factors are deemed pertinent in the individual case:
- a) The position for which the person is applying or in which the person is employed, including sensitivity;
 - b) The nature and seriousness of the conduct;
 - c) The circumstances surrounding the conduct;
 - d) The recency of the conduct;
 - e) The age of the applicant or appointee at the time of the conduct;
 - f) Contributing social or environmental conditions;
 - g) The absence or presence of rehabilitation or efforts toward rehabilitation.
- 4) Policy on Disciplinary & Evaluation and Training Period.

- a) Evaluation and Training Period. All new employees shall be in an Evaluation and Training Period for a period of six months after being employed. The evaluation and training period shall be used to closely observe and evaluate the work and fitness of employees and to encourage adjustment to their jobs. Only those employees who satisfactorily meet performance standards during the evaluation and training period shall be retained.
- b) Completion of Evaluation and Training Period - New Employees. All new employees will be evaluated every three months during the six-month evaluation and training period. At the conclusion of the six-month period, all new employees will be evaluated by their supervisor. All new employees who have successfully completed the six (6) months evaluation and training period shall be removed from evaluation and training status and will be eligible for all benefits and privileges of employment enjoyed by other regular city employees. All new employees failing to successfully complete the six-month evaluation and training status shall not be eligible for employment with the City. Evaluation and Training status may be continued upon agreement of the employee and the supervisor for additional three-month periods. These employees may be discharged for any misconduct, with or without notice to correct the misconduct. Employees discharged while on probation may appeal as provided in Article 9.
- c) Promoted Employees.
 - i) All promoted employees shall be required to complete a six-month evaluation and training period in the new position before the same promotion is considered to be fully approved.
 - ii) If a promoted employee cannot meet the requirements as set forth in the job description of the new position, the employee may be restored to the position from which he/she was promoted or to a comparable position.
- d) Demoted Employees. Any employee being demoted as a result of a disciplinary action shall be subject to a 6-month probationary period in their new position.
- e) Placement on a Performance Improvement Plan (PIP). When the job performance of an employee falls below an acceptable standard, the supervisor may place the employee on a Performance Improvement Plan (PIP). The PIP is a tool to give an employee with performance deficiencies the opportunity to succeed. The supervisor must seek guidance from the Human Resources Department to determine whether a PIP is the appropriate action for the situation and to review the draft of the plan to be implemented. The supervisor should ensure all progress meetings with the employee are scheduled and occur on time. A PIP shall consist of the following provided in writing:
 - i) The specific unacceptable deficiency in the employee's performance and what acceptable performance levels are. Specifics regarding the unacceptable performance should be given, including dates, data and detailed explanations.
 - ii) The necessary improvement through specific and measurable objectives that are achievable, relevant, and time-bound (SMART goals). Guidance on what management

will do or provide to assist employee in achieving these goals, such as additional resources or training. Details on how often the supervisor and employee will meet to discuss progress.

- iii) The period of time in which improvement must occur, and
- iv) A statement that further consequences will result if the employee fails to show and maintain satisfactory improvement. Employees not successfully completing the PIP or failing to comply with the standards established for employees of the City may be terminated or demoted without further notice.

The original PIP shall be maintained in the Human Resources Department with a copy given to the employee and one retained by the Department Head. At the end of the established review period, the supervisor meets with the employee to discuss progress and/or improvements made, and they shall be documented on the PIP form and submitted to the Human Resources Department.

- f) Extension of Evaluation and Training Period. All employees on Evaluation and Training Period shall be subject to having such status extended for increments of three (3) months. Upon written recommendation of the department head such periods can be extended if approved by the City Manager in writing. Failure to successfully complete a probationary or evaluation and training period shall be indicated in writing, including the duration of the extension and the improvements required, and provided to the employee.
 - g) Failure of Evaluation and Training Period. An evaluation and training employee may be separated or transferred at any time during the period when his or her fitness and/or quality of work are judged to be insufficient to merit continuation in the position. A newly promoted employee shall be returned to his or her former type of position upon failure of probation or evaluation and training period if such position is available but shall not be disqualified from consideration for later advancement or rehire.
 - h) Appeal. Employees wishing to appeal failure of a PIP may follow the regular appeals procedure in Article 9.
- 5) Demotion. If the adverse action is a demotion, it may be within the same salary range or to a position with a lower salary range, but in either case will be accompanied by at least some reduction in pay for the employee involved. No employee may be demoted to a position for which the employee does not possess the necessary minimum qualifications.
 - 6) Suspension. A suspension shall be with or without pay and shall not exceed thirty (30) calendar days except when based upon unusual circumstances or conditions and shall be approved in writing by City Manager. The City Manager shall approve all suspensions without pay. Employees may be suspended with or without pay for disciplinary reasons. No employee is entitled to suspension prior to termination.
 - 7) Notice. A supervisor may, with the approval of the department head, decide to demote, suspend or dismiss an employee. In such event, the employee should be promptly served with

written notice and informed that the employee has the right to a hearing on the matter through the Grievance Procedure. If circumstances prevent the prompt presentation of such written notice, such employee should be instructed by the department head or Supervisor to appear at the Supervisor's office the next workday (or as soon thereafter as practicable) to receive the written notice and, if so desired by the employee, to initiate the appeal procedure. Any written disciplinary action should set forth:

- a) examples of conduct, incidents, actions, or failures to act, that resulted in the discipline;
- b) the discipline to be imposed,
- c) the effective dates, and
- d) if the action is not a dismissal, the likely effect if the employee continues to perform, or to fail to perform, in the manner that resulted in the disciplinary action.

The written disciplinary action shall be filed with the City Manager and a copy shall be delivered to the employee or mailed to the employee's last known address by certified mail, return receipt requested. A copy shall be placed in the employee's personnel folder.

Section 8.02. Lay Off.

The City Manager may lay off an employee as a result of changes in duties or organization, or lack of work or funds. Where possible, a two-week written notice of lay-off shall be given prior to the effective date of the lay-off and no other notice will be necessary.

Section 8.03. Alcohol Misuse and Controlled Substance (Drug) Plan.

Intoxication, the possession or consumption of alcoholic beverages, or the possession or consumption of any unlawful controlled substance or drug without a prescription therefor issued by a physician or dentist, while on duty, is strictly prohibited and violators will be subject to disciplinary action, up to and including discharge. Employees shall notify their superior if the employee is taking any prescribed drugs that could affect their job safety or performance.

Drug and alcohol testing may be conducted prior to employment, after certain accidents and for reasonable cause; and will be applicable all employees.

Section 8.04. Notice Provisions.

Any notice or decision under the provisions of this Article shall be required to be in writing and shall be given by delivering same in person to the affected employee, or if said employee cannot be located after exercising reasonable diligence, the notice shall be by delivery of same to the last known address as is reflected and shown in the records of the HR Director. Such notice may be delivered by hand delivery or by deposit in the U. S. Mail addressed to the last known address, and such mailing shall be conclusive evidence of the receipt of such notice by the employee. Such notice shall be effective as of the time of its actual delivery to the employee or deposit in the U. S. Mail.

Article 9. Grievance Procedures

Section 9.01. General Guidelines.

It is the City's goal to treat employees fairly in all respects. Employees who feel they have been subjected to unfair treatment or discrimination have the right to present grievances for consideration through simple and reasonable procedures. A grievance is defined as any complaint or problem concerning an employee's duties or working conditions. Any employee may present grievances under the procedures outlined below and should be free from restraint, coercion or reprisal as a result.

Section 9.02. Procedural Steps.

Any employee may file a formal grievance.

- 1) The grievance shall be in legible writing, printing, or typing giving the following information:
 - a) Date, time, place and detailed description of the alleged action.
 - b) Specify the nature of the grievance.
 - c) Explain why the action is considered improper, unjust/unfair.
- 2) Steps in the grievance and appeal process shall be as follows:
 - a) Step One. A grievance by an employee must be presented to the immediate supervisor within five (5) working days of the alleged action. The immediate supervisor will notify the department head of the grievance within two (2) working days after the supervisor receives the grievance. Such immediate supervisor, or in the supervisor's absence his designee, has three (3) working days from the date of receipt of the grievance to respond. If immediate supervisor is the department head, skip step 2 and go to step 3.
 - b) Step Two. If the grievance is not resolved between the employee and the immediate supervisor, the employee may request a hearing with the department head. The request for a department head hearing must be filed with the department head within two (2) working days of the earlier of the immediate supervisor's decision or the expiration of the three (3) day period for response provided in Step One. Unless extended in writing by the HR Director, the department head will schedule a hearing and respond to the grievance within five (5) working days of the date of the department head's receipt of the request for a department head hearing.
 - c) Step Three. Employees who are not satisfied with the decision of the department head may appeal such decision to the HR Director or the HR Director's representative within three (3) working days of the earlier of the decision by the department head or the expiration of the five (3) days provided in Step Two for the department head's response. The HR Director may elect to meet informally with the grievant or to initiate an investigation or inquiry within five (5) working days after receipt of the appeal. In the event the HR

Director is absent or to be absent from work during the five-day period, the informal meeting or the initiation of an inquiry will be within five (5) working days after the HR Director returns to work, but no later than fifteen (15) working days from date of appeal to HR Director. At the meeting with the grievant, the grievant will be given an opportunity to present his/her side of the issue together with such evidence and witnesses connected to the grievance. The HR Director may cause additional inquiry in the matter. Except as and when delayed by the absence or illness of the HR Director or the conduct of an additional inquiry, the HR Director will render a decision within six (6) working days after the meeting; provided the HR Director may extend such six (6) days on the employee's request for time to present additional information. Employees may appeal to the City Manager within five (5) working days after the HR Director's decision.

- d) City Manager. Employees shall have a further right of appeal from the HR Director to the City Manager provided such appeal is made in writing within five (5) working days of the HR Director's decision. The City Manager may modify, amend or deny any appeal without a hearing. If granted a hearing, the City Manager shall indicate the date and time that the hearing will be held. The City Manager's decision shall be final and not subject to further appeal.

Section 9.03. Grievances without Basis.

Grievances are given serious consideration by the City and are encouraged in all legitimate fact circumstances. Equally so frivolous grievances are discouraged, as are repeated grievances regarding trivial matters. And, grievances that are based on evidence the grievant is found to have known to be false will result in disciplinary action.

Section 9.04. Complaints from Non-employees.

All complaints concerning employees of the City received by the City from non-employees shall be handled according to the policy of the City in force at such time as the complaint is filed for citizens' complaints. Any adverse actions taken as a result of the non-employee's complaint may be appealed in the same manner as provided in this Article.

Section 9.05. Grievances against the City Manager.

Grievances against the City Manager regarding discrimination, sexual harassment, or violations of civil rights, may be made to the Mayor or the City Attorney. All other grievances will be first submitted to the City Manager. As, and when appropriate, such grievances will be reported to the City Council.

Article 10. Benefits

Section 10.01. Retirement.

All regular full-time employees are required to become members of the Texas Municipal Retirement System (TMRS). Enrollment shall be accomplished in accordance with the TMRS guidelines. See Section 7.02. Details of the retirement plan are outlined in the TMRS handbook.

Section 10.02. Uniforms.

The City will provide certain employees with uniforms in order to assure a neat appearance, identify the worker as a municipal employee, and to protect the employee's personal clothing while performing the employee's job duties. Employees provided with uniforms must wear full uniforms. The cost of uniforms not returned upon separation from employment will be charged to the employee and, if such uniforms are not returned or the cost thereof paid, such fact shall be recorded in the employee's personnel file.

Section 10.03. Social Security.

All employees of the City are covered under the Federal Insurance Contributions Act (FICA). This government insurance provides retirement, disability and death benefits. This insurance is financed by social security taxes which are paid through payroll deductions by the employee and matched by the City.

Section 10.04. Unemployment Compensation.

All employees of the City are covered, as applicable, under the State unemployment compensation program. This program provides payments for unemployed workers in certain circumstances as provided by law. The City pays an unemployment tax on behalf of each employee to finance this benefit.

Section 10.05. Insurance.

Life and health insurance benefits are provided to all regular full-time employees through a group insurance policy. When deemed appropriate and affordable, dental and vision insurance benefits will also be provided as part of the group insurance policy. At the employee's option and expense, dependent insurance coverage is also available. The City may provide supplemental dependent coverage for health and/or dental insurance as provided for in the City's operating budget. Coverage may be continued with certain limitations upon termination provided the premiums are paid entirely by the employee. These limitations are consistent with the Consolidated Omnibus Budget Reconciliation Act (COBRA).

Section 10.06. Extension of Health Insurance Benefits.

Group 1 Retirees- All former full-time employees, who have retired from the City after twenty-five (25) years or more of continuous service as an officer or employee of the City. (This includes all currently retired employees receiving benefits.) All current full-time employees, who have completed (5) five or more years of continuous of service as a full-time employee of the City of Kyle by 4-1-2009 and complete a total of twenty-five (25) years or more of continuous service as an officer or employee of the City. The City will provide said insurance benefits at no cost to the retired employee. As part of the benefit provided under this Section, and at the retired employee's option and expense, dependent insurance coverage may also available.

Group 2 Retirees- All current full-time employees, who have completed less than (five) 5 years of continuous of service as a full-time employee of the City of Kyle by 4-1-2009 and completed a

total of twenty-five (25) years or more of continuous service as an officer or employee of the City. This group would be eligible to receive payment of \$300 per month against the cost of their medical plan premiums upon retirement with the retiree being required to pay the balance.

Group 3 Retirees- Any full-time employee hired after 4-1-2009 and subsequently completes twenty-five (25) continuous years of service as a full-time employee of the City of Kyle would not be eligible for any benefit paid for by the City for their Medical Plan if they choose to continue it after retirement.

Section 10.07. Worker's Compensation Insurance.

The City participates in Worker's Compensation Insurance coverage for employees. When an employee is injured on-the-job the employee must immediately report the injury to his/her supervisor as outlined in Article 5, Section 5.10.

Section 10.08. Tuition Reimbursement Program.

The Tuition Reimbursement Program is established to recognize the importance of investing in the learning and development of its workforce to increase employee engagement, career growth, high performance and innovation by providing financial assistance to employees who take job related, City career-enhancing credit courses at accredited degree granting colleges and universities.

As with all City benefits, the City Council may choose to modify the funding of the Tuition Reimbursement Program as the budget permits. Therefore, this program is also contingent upon annual appropriation of funds and acceptance into the program does not guarantee payment.

- 1) **Employee.** Employees are eligible for tuition reimbursement if all of the following criteria are met:
 - a) Employee is an active full-time employee in a regular-budgeted position.
 - b) Employee has successfully completed the six-month probationary period as a new hire before the start of class.
 - c) Employee is not under disciplinary probation or suspension at the time of application or in the twelve months preceding the first day of the course for the employee request for tuition reimbursement.
 - d) Employee must complete an application with the Human Resources Department and receive an approval notice to participate in the course prior to the first day of class.
- 2) **Course Eligibility.** Courses are eligible for tuition reimbursement if all of the following criteria are met:
 - a) Course is job-related or will enhance the employee's career opportunities within the City of Kyle. Courses must relate to a field on which the City normally recruits employees or

seek an Associates, Undergraduate or Master's degree related to a field in which the City normally recruits employees.

- b) Course is offered at a school or institution that is approved by the Texas Education Agency or other nationally recognized board of accreditation.
 - c) Course is offered for college credit hours.
 - d) Course is offered on a for-grade basis.
 - e) Pre-approval from employee's Department Head and the Human Resources Department prior to taking course
 - f) Ineligible Courses: If any of the following criteria are met, the course is not eligible for tuition reimbursement:
 - i) Course is required, organized, or coordinated by a City department for its employees.
 - ii) Course is part of a conference, seminar, annual meeting, certification exam, or certification course not offered for academic credit or on a for-grade basis.
- 3) **Eligible Cost.** The Program will reimburse to covered costs of tuition and books (up to the maximum fiscal year allotted amount). Any costs for supplies, travel, student fees, parking permits, etc., are not reimbursable under this Program. The City will not pay the cost of tuition, mandatory fees, and books, which are paid by other sources (i.e., scholarships, grants, aid programs or other subsidies. Sources of assistance will be deducted from the amount that the City will reimburse.
- 4) **Grade Requirements.** Employees must attain a course grade equivalent to a "C" or better in each course to be eligible for reimbursement. In circumstances where pass/fail is the only grading system used, this grading system will be accepted. A pass grade must be earned to be eligible for tuition reimbursement. In case where a class is not completed successfully, tuition reimbursement will not take place for that course.
- 5) **Benefit Allowance.** Funding for the program is available only if and when approved by the City Council in the City's annual budget. Employees may receive up to a maximum of \$1,000 per fiscal year on a first-come first-served basis until all allotted or budgeted funds for this program have been expended. The City will reimburse employees at the conclusion of a successfully completed course, pursuant to the following schedule:
- a) The City will reimburse up to 100% of the tuition cost for an "A" grade.
 - b) The City will reimburse up to 85% of the tuition cost for a "B" grade.
 - c) The City will reimburse up to 70% of the tuition cost for a "C" grade.
 - d) No reimbursements will be made for grades lower than a "C" grade

- e) For courses in which the employee can only receive a "PASS" or "FAIL," "PASS" will be reimbursed at 100% and "FAIL" will not be reimbursed.
 - f) Reimbursement rates are not affected by grades that are accompanied by a plus or a minus sign (+ or -). For example, an eligible employee who receives a B+ will be reimbursed up to 85%. Likewise, an eligible employee who receives a B- will be reimbursed up to 85%.
- 6) **Reimbursing Employee.** Required paperwork must be submitted to the Human Resources Department within thirty (30) days of the grade report to be eligible for reimbursement. Upon review and approval of the final grade report and paid fee receipt and confirmation of continued employee eligibility, the Human Resources Department will process the request for reimbursement through the Finance Department. If an employee has reached the maximum reimbursement amount, documents will not be held for payment in future years. A two (2) year service requirement begins on the reimbursement check date. A separate two-year service requirement must be completed for each reimbursement payment made to the employee. Employees terminated due to a reduction in force shall not be required to reimburse the monies received for tuition reimbursement.
- 7) **Tax Benefits/Implications.** Please consult a tax advisor and/or refer to Section 127 of the Internal Revenue Code and IRS Publication 970 for information regarding tax benefits and implications of company sponsored tuition reimbursement programs. (www.irs.gov)

Section 10.09. Wellness Program.

The City of Kyle strives to keep employees healthy through its Wellness Program. A workplace wellness program enables the organizations to invest in the physical well-being, safety and mental health of its employees through preventive means that initiate a healthier environment. Employers that invest in their employees' wellness will see returns beyond physically healthier workforce. This voluntary program of formal and informal activities is designed to improve the health and well-being of all employees and reduce or eliminate health issues affecting employee health and work productivity. The Wellness Program consists of activities which include awareness, lifestyle change, and supportive policy/ environment. This Wellness Program was established to inspire employees to take stock in their personal health/wellness by creating awareness of classes, programs and other benefits.

- 1) **Exercise Equipment.** The City of Kyle may provide exercise or other health equipment to employees to utilize during working hours. Employees are encouraged to utilize this equipment to maintain a healthy lifestyle while at work. Employees should use their best judgment when deciding whether or not to utilize this equipment and avoid any strenuous activities which may cause injury. Employees should also be mindful of other employees wishing to utilize this equipment and keep it safe and well-maintained. When not in use, equipment should be stored properly as to not create a workplace hazard.
- 2) **Employee Discounts.** The City of Kyle may also offer discounts on classes, programs offered by the City's Parks and Recreation Department for City employees and their immediate family as budget permits. The City of Kyle may also offer discounts on rentals of facilities offered by

the City's Parks and Recreation Department for City employees as space permits. Immediate family for this purpose is defined as the City employee's spouse and children.

Examples of classes, programs, and rentals that may be included in such employee benefit:

- a) Kyle's Historic City Hall facility and Pavilion Rentals
- b) Ball Field Rentals
- c) Kyle Pool Private Rentals
- d) Registration for Kyle's Summer Camp
- e) Registration for Swimming Lessons at the Kyle Pool
- f) Registration for programs such as Family Fun Bike Ride, Family Campout, etc.

Examples of items NOT eligible for an employee discounted rate:

- a) Daily entry fee, seasonal pool passes and punch cards into the Kyle Pool. City employees and their immediate family members living outside city limits may be charged at the resident rate.
- b) Permits (such as special event permits, food truck permits, etc.)
- c) Contracted Programs (such as the Challenger Soccer Camp, Fitness Programs, etc.) unless the contractor chooses to honor an employee discount.

City of Kyle encourages employees and their families to actively participate in Parks & Recreation's exercise programs as part of the City of Kyle Wellness Program.

If an employee has an idea/comment or suggestion for future events/activities, please email the Human Resources Director. It is the City's goal to provide employees with the best Wellness Program we can offer.

Article 11. Safety

Section 11.01. General.

These rules and procedures are subject to modification from time to time at the discretion of the City Council. Modifications will be considered as further opportunities are identified to provide for the safety and health of employees. Amendments are also considered as state, federal, or local safety laws and regulations change.

Section 11.02. Accident Review.

The City Manager may designate an employee to investigate accidents, or the City Manager may appoint employees as members of an Accident Review Board. The primary function of any

employee appointed for this purpose or the Board, if appointed, is to review all motor vehicle accidents and on the job injuries. The appointed employee or the Board consults with administrative personnel as well as department and division heads, supervisory personnel and other employees concerning the removal of hazardous conditions, disciplinary actions and other improvements to the overall safety program.

Section 11.03. Weapons in the Workplace.

This policy outlines business procedures for City employees to manage and comply with state law relating to concealed and open carry of handguns.

1) **City of Kyle Employees.** This policy only allows for those City employees with a valid concealed handgun license to carry a handgun issued by the Texas Department of Public Safety and whom successfully has completed the City's approved qualification course provided by the Kyle Police Department to carry a concealed handgun while on duty. Employees are prohibited from open carry while in City buildings and City property. Employees who have completed the City's approved qualification course may carry a concealed handgun in City buildings and City property with the exception to the following:

a) **SCHOOL SPONSORED ACTIVITIES**

On the grounds or building on which an activity sponsored by a school or educational institution is being conducted, whether the school or educational institution is public or private, unless pursuant to written regulations or written authorization of the institution. It is very common for city facilities to host activities sponsored by a school or education institution. During that time, no person may come onto the "grounds" of the facility, and no signage is required.

b) **POLLING PLACE DURING VOTING**

A person commits a third-degree felony if the person intentionally, knowingly, or recklessly possesses or goes with any firearm on the premises of a polling place on the day of an election or while early voting is in progress.

City management reserves the right to temporarily or permanently prohibit any employee from carrying a handgun or restrict the area where an employee can carry without prior notice. All employees must immediately report to the Department Head or the Director of Human Resources the following:

- i) Any pending criminal charges;
- ii) Loss of license to carry by the Texas Department of Public Safety; and
- iii) Any safety violations made by an employee carrying a handgun.

Allowing an employee to carry a concealed handgun in the workplace is a privilege that may be revoked at any time.

- 2) **The Public.** Employees may see citizens openly carrying handguns in belt or shoulder holsters in municipal buildings and other properties owned and operated by the City of Kyle. Employees should take no action unless they suspect that a crime has occurred or is about to occur. Any questions or concerns that arise when an employee witnesses the carrying of any weapon on government property should be directed to the Kyle Police Department.

No signs can be posted in or on City property to prohibit concealed and/or open carry without the authorization and specific direction of the City Manager or as authorized by City Council. There are severe statutory penalties for improperly denying a citizen, with a valid handgun license, the right to conceal or open carry a handgun on government property. Only licensed peace officers may question a citizen who is carrying as to whether they hold the proper license.

The City will have lockers available for approved-to-carry employees and the public to safely store a handgun before entering into any of the areas prohibited to carry a handgun. The public is prohibited to access the same places as an approved-to-carry employee Section 11.03 (A)(1-2) with the addition of entering a room where municipal court is held.

If an employee observes a person openly carrying a handgun and that person is causing a disturbance or behavior that raises concern for safety:

- a) Move to a safe location; and
- b) Notify a supervisor immediately.

Department Directors, or designee, are responsible for ensuring that employees comply with provisions of this policy and to manage issues that arise relating to open carry.

According to the Texas Penal Code, a "handgun" is a subset of a firearm and means any firearm that is designed, made, or adapted to be fired with one hand. Id. § 46.01(a) (5).

Article 12. Sexual Harassment

Section 12.01. Sexual Harassment Policy.

All employees should be able to enjoy a work environment free from all forms of unlawful discrimination, including sexual harassment.

- 1) Sexual harassment does not refer to occasional compliments of a socially acceptable nature. It refers to behavior that is motivated in whole or in part by a person's sex, that is not welcome and is personally offensive, or that lowers morale and that, therefore, interferes with an employee's work effectiveness.
- 2) Sexual harassment is a form of misconduct that undermines the integrity of the employment relationship.
 - a) No employee either male or female should be subjected to unsolicited and unwelcome sexual overtures or conduct, either verbal or physical. A finding that an employee has

committed any form of sexual harassment will result, at minimum, in a written warning being issued and placed in the employee's personnel file.

- b) No employee or officer of the City shall threaten or insinuate, either explicitly or implicitly, that an employee's refusal to submit to sexual advances will adversely affect the employee's employment, evaluation, wages, advancement, assigned duties, shifts or any other condition of employment or career development. A finding that an employee has committed any such form of sexual harassment will result in severe disciplinary action up to and including transfer, demotion, suspension, or termination from employment.
- 3) Sexual harassment occurs in many forms, including but not limited to, unwelcome physical contact, verbal abuse, leering, gestures, and more subtle advances and pressure inviting sexual activity. Such conduct includes instances in which:
 - a) Submission to the advances is made a term or condition for obtaining employment opportunities or avoiding adverse employment action;
 - b) Submission to or rejection of the advances is used as the basis for making any employment decision; or
 - c) Such conduct interferes with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
 - 4) Sexual harassment of any type is strictly prohibited and will not be tolerated. If any employee feels they are being sexually harassed, they should promptly report such fact and advise the harasser that the conduct is offensive and that it must stop immediately. If any such unwelcome interest or conduct does not cease immediately upon demand by the employee, or if the employee is not comfortable confronting the harasser, the employee must report the matter to the employee's supervisor within twenty-four (24) hours. If such employee is unable or unwilling to speak with his/her supervisor about the alleged harassment, the conduct or incident must be reported directly to the next higher level of authority, the department head, the HR Director, or the City Manager. Upon any supervisor, department head or officer, receiving a report of alleged sexual harassment, the HR Director and all persons in the alleged offender's chain of command shall be advised of the report and appropriate action shall be promptly taken. The first action taken, in such event, shall include steps calculated to prevent recurrences of any such alleged incidents pending investigation and final resolution of the complaint. Each such report shall be investigated promptly, and appropriate corrective action will be taken with the City Manager's concurrence.
 - 5) It will be the responsibility of the HR Director to inform department heads and supervisors of the policy concerning non-discrimination, equal employment opportunities and sexual harassment, the gravity of such behavior and the procedure to be employed in the event an allegation develops. The HR Director shall provide or cause the department heads and supervisors to receive training, with respect to recognizing and dealing with sexual harassment.
 - 6) Each supervisor has a responsibility to communicate to employees that sexual harassment will not be tolerated and to make certain that employees are aware of this policy. This duty includes

discussing this policy with all employees and assuring employees that employees are not to endure insulting, degrading or exploitative sexual treatment.

- 7) Any employee who complains of sexual harassment in good faith will be protected against retaliation or reprisal for making the complaint. However, the City recognizes that false accusations of sexual harassment can have serious effects on innocent men and women, their reputation, and their families. False accusations of sexual harassment will result in severe disciplinary action up to and including termination.

Article 13. Travel Expense Reimbursement Policy

Section 13.01. General.

Employees and/or officials of the City shall be eligible to travel as needed and/or required in the performance of their jobs, maintenance of related professional certifications, and general representation of the City of Kyle.

Incurred expenses for travel meeting the requirements outlined in this section may be covered by the City either by reimbursement to the employee if paid in advance by the employee, city purchasing card, city advancement of funds to the employee, or other method as approved in advance by the city manager or his designee.

Total expenditures incurred by the City for travel expenses as defined under this Section must be approved and properly accounted for within the Annual Operating Budget; and in conformity with operating procedures for same.

All travel will be booked through a central travel desk as assigned by the City Manager.

Section 13.02. Procedures for Other City Officials.

Representatives of the City other than employees, such as the Mayor, members of City Council, and other appointed officials, are also eligible for City funded travel of official business as it specifically relates to their position with the City of Kyle.

It shall also be the policy of the City that all city officials, including the Mayor and members of City Council, shall adhere to the same policies and procedures as defined for employees under this Section for funding and payment of travel expenses related to their position with the City.

Section 13.03. Meetings, Conferences, and Conventions.

Upon written authorization by the appropriate Department Head and City Manager, employees of the City may attend meetings, conferences, seminars, training or educational sessions, and conventions to provide for the professional development of the employee as it relates to his or her employment with the City. The City shall provide for the necessary and reasonable cost for employees as defined herein, to attend such meetings, conferences, and conventions. Whenever applicable, the City will prepay registration fees to approved events or activities. Anticipated costs

for such travel should be included in the approved budget for the appropriate department. Cost not budgeted must obtain approval from the City Manager.

Section 13.04. Lodging.

Upon written authorization by the appropriate Department Head and City Manager, the cost for lodging in accordance with the following restrictions will be reimbursed in full when an employee travels on official City business and such travel requires an overnight stay.

- 1) It is the expressed policy of the City to provide for appropriate and acceptable lodging for its employees and officials when they represent the City at out-of-town functions, but to demonstrate fiscal responsibility and commitment to cost containment.
- 2) Reimbursement and/or direct payment by the City of lodging expense under the terms and conditions of this Section shall be limited to \$135 per night without special exemption provided by the City Manager in advance.
- 3) Appropriate receipts for all costs incurred and requested for reimbursement under this Section are required.
- 4) Designated convention hotels may be booked and paid for by city credit card or reimbursed at the actual cost regardless of limitations with approval of the City Manager.

Section 13.05. Transportation.

The City shall provide funding for employees qualifying expenses related to transportation to and from meetings, conferences, and/or conventions located outside the proximity of the City of Kyle including, but not limited to, mileage (reimbursed at the Federal rate), parking, taxi service, ground transportation, air travel, vehicle rental, and tolls providing the expenses meet all qualifications outlined in this section.

- 1) The City Manager or appropriate Department Head will either assign a City-owned vehicle for such travel to and from meetings, conferences, etc. or employees shall be reimbursed for actual miles driven in their personal vehicles at the current mileage reimbursement rate as defined by the State of Texas. Such payment is considered to be total reimbursement for all vehicle-related expenses (gas, oil, depreciation, insurance, etc.)
- 2) Whenever applicable, employees attending the same meetings, conferences, etc. are expected to travel together to contain costs. Mileage reimbursement is payable to only one (1) of the two or more employees traveling on the same trip, in the same automobile.
- 3) Costs incurred for parking at the destination and any highway tolls incurred while traveling are reimbursable at the actual amount for business purposes only.
- 4) Costs incurred for required vehicle rental at the destination of such qualifying event are allowed at the actual amount.

- 5) No travel expenses allowance will be paid for travel to and from transportation hub (airport, train station, etc.) to and from the employee's residence.
- 6) Appropriate receipts for all costs incurred and requested for reimbursement under this Section are required.

Section 13.06. Meals.

Upon written authorization by the appropriate Department Head and City Manager, the actual cost for meals will be reimbursed in full when an employee travels on official City business; or when meals are made part of any event wherein said employee or official is representing the City in his or her official capacity. Employees or officials shall order reasonably priced meals including a reasonable tip while traveling at the City's expense. If meals are included in registration fees, duplicate meals shall not be reimbursable. The total reimbursement for meals for any single day shall not exceed the travel reimbursement rate set by the General Administration Office of the Federal Government where all employees and officials shall follow the reimbursement set forth for Employees by the GAO.

Appropriate receipts for all costs incurred and requested for reimbursement under this Section are required.

Section 13.07. Miscellaneous.

- 1) Non-reimbursable items – Costs for the following items are not reimbursable to the employee under this Section:
 - a) Alcoholic beverages;
 - b) Entertainment (unless budgeted);
 - c) Excessive Room services charges;
 - d) Expenses for spouse or family members traveling with employees; and
 - e) Any allowable expense where no receipt is provided.
- 2) When applicable, employees shall submit a sales tax exemption form in the appropriate situations to eliminate the need to pay sales tax when traveling on City business.
- 3) Receipts for all allowable expenses must be kept by employees and submitted within a reasonable time to the department head or city manager.

Section 13.08. Requests for Travel Expense Reimbursement.

After returning from any event wherein an employee has incurred eligible travel expenses as described under this Section, an employee or official shall submit a completed Travel Expense

Report Form, as provided by the Finance Director, along with all original receipts and other documentation to the appropriate Department Head.

The report shall be reviewed and approved for reimbursement by the Department Head; or returned to the employee or official for adjustment or further documentation. Once the report has been approved by the Department Head, it shall be submitted to the Finance Director; and subsequently the City Manager, for final approval. Any reimbursement of funds to the employee must be properly recorded and approved on the Travel Expense Report Form and the Finance Director will reimburse the employee based on approved expenses on the form.

Applicable rates as relating to the GAO guidance will be tied to the time the expenses are incurred. Any differences between the actual expenses and the budgeted or approved amounts will be reconciled by the appropriate department head and reported to the City Manager and Finance Director. Employees may be directly responsible for expenditures over the allowed limitations.

Section 13.09. Exceptions to the Limitations.

Exceptions may be considered by the City Manager on a case-by- case basis and upon written request by the appropriate Department Head. The City Manager may direct requests for exceptions for him/herself to the city council during an open meeting.

Article 14. Smoking Policy

Section 14.01. Smoking Policy.

Smoking or other use of tobacco products is prohibited in all city occupied buildings except in designated areas. No smoking will be allowed in areas shared with other employees or which are accessible to the general public. There will be no smoking in City vehicles, or City buildings, as per the applicable city ordinances.

Article 15. Drug Abuse Policy

Section 15.01. Statement of Policy.

The City of Kyle maintains a firm commitment and effort to provide reliable service to its citizens, and a safe and healthy working environment for its employees and the community.

- 1) The City has a vital interest in maintaining a safe, healthy, and efficient working environment. While the vast majority of employees are not involved with illegal drugs or substance abuse, those who are involved in use, abuse, or trafficking, on or off the job, may have an adverse impact both on the health, safety and welfare of our citizens, the workplace and fellow employees; and may impair the City's ability and efforts to maintain a safe work environment that is free from the effects of drugs. The use, sale, purchase, transfer, or possession of an illegal drug in the workplace, and the use, possession, or being under the influence of alcohol also possess unacceptable risks for safe, healthy, and efficient operations.

- 2) The City has the right and obligation to maintain a safe, healthy, and efficient workplace for all of its employees, and to protect the City's property, information, equipment, operations and reputation.
- 3) The City recognizes its obligations to its citizens for the provision of services that are free of the influence of illegal drugs and alcohol and will endeavor through this policy to provide drug-and alcohol-free services.
- 4) The City further expresses its intent through this policy to comply with federal and state rules, regulations or laws that relate to the maintenance of a workplace free from illegal drugs and alcohol.
- 5) As a condition of employment, all employees are required to abide by the terms of this policy and to notify the HR Director of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

Section 15.02. Statement of Purpose.

This policy outlines the goals and objectives of the City's drug and alcohol testing program and provides guidance to supervisors and employees concerning their responsibilities for carrying out the program.

Section 15.03. Scope of Policy.

This policy applies to all departments, all employees and all job applicants. The term employee includes contracted employees.

Section 15.04. Definitions.

- 1) "**Alcohol**" means any beverage that contains ethyl alcohol (ethanol), including but not limited to beer, wine and distilled spirits.
- 2) "**City premises**" or "**City facilities**" means all property of the City including, but not limited to the offices, facilities and surrounding areas on the City-owned or -leased property, parking lots, and storage areas. The term also includes the City-owned or -leased vehicles and equipment wherever located.
- 3) "**Contraband**" means any article, the possession of which on the City premises or while on the City business, causes an employee to be in violation of the City work rule or law. Contraband includes illegal drugs and alcoholic beverages, drug paraphernalia, lethal weapons, firearms, explosives, incendiaries, stolen property, counterfeit money, untaxed whiskey, and pornographic materials.
- 4) "**Drug testing**" means the scientific analysis of urine, blood, breath, saliva, hair, tissue, and other specimens of the human body for the purpose of detecting a drug or alcohol.

- 5) "**Illegal drug**" means any drug which is not legally obtainable; any drug which is legally obtainable but has not been legally obtained; any prescribed drug not legally obtained; any prescribed drug not being used for the prescribed purpose; any over-the-counter drug being used at a dosage level other than recommended by the manufacturer or being used for a purpose other than intended by the manufacturer; and any drug being used for a purpose not in accordance with bona fide medical therapy. Examples of illegal drugs are cannabis substances, such as marijuana and hashish, cocaine, heroin, methamphetamine, phencyclidine (PCP), and so-called designer drugs and look-alike drugs.
- 6) "**Legal drug**" means any prescribed drug or over-the-counter drug that has been legally obtained and is being used for the purpose for which prescribed or manufactured.
- 7) "**Reasonable belief**" means a belief based on objective facts sufficient to lead a prudent person to conclude that a particular employee is unable to satisfactorily perform his or her job duties due to drug or alcohol impairment. Such inability to perform may include, but not be limited to, decreases in the quality or quantity of the employee's productivity, judgment, reasoning, concentration and psychomotor control, and marked changes in behavior. Accidents, deviations from safe working practices, and erratic conduct indicative of impairment are examples of "reasonable belief" situations.
- 8) "**Under the influence**" means a condition in which a person is affected by a drug or by alcohol in any detectable manner. The symptoms of influence are not confined to those consistent with misbehavior, nor to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of being under the influence can be established by a professional opinion, a scientifically valid test, such as urinalysis or blood analysis, and in some cases by the opinion of a layperson.

Section 15.05. Prohibitions.

The following conduct by employees of the City is prohibited and will result in appropriate action by the City, up to and including termination of employment.

1) Illegal Drugs and Alcohol:

- a) The use, possession, manufacture, distribution, dispersion or sale of illegal drugs or drug paraphernalia on City premises, in City supplied vehicles, or during working hours; provided that the prohibition against possession shall not apply to paraphernalia or drugs held as evidence under authority of the Chief of Police;
- b) Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, dangerous drugs or alcohol on City premises or while on City business, in City supplied vehicles, or during working hours;
- c) Storing in a locker, desk, automobile or other repository on City premises or property, any illegal drug, drug paraphernalia, controlled substance, or alcohol; provided that such prohibition shall not apply to the storage of any such substance in conjunction with the performance of public duties as authorized by the Chief of Police or the City Manager;

- d) Having an unauthorized controlled substance, alcohol or illegal drug in one's system while on City premises or City business, in City supplied vehicles, or during working hours; or
- e) Having any detectable trace amount of drugs or alcohol in an employee's system while at work.

2) Legal Drugs:

- a) The undisclosed use of any legal drug by any employee while performing the City business or while on the City premises is prohibited. However, an employee may continue to work even though using a legal drug if the City management has determined, after consulting with the HR Director, that such use does not pose a threat to safety and that the using employee's job performance is not significantly affected. The City may require the employee to obtain a doctor's statement regarding the restrictions and ability of the employee to perform daily duties. Otherwise, the employee may be required to take leave of absence or comply with other appropriate action as determined by the City management.
- b) An employee whose medical therapy requires the use of a legal drug must report such use to his or her supervisor prior to the performance of the City business. The supervisor who is so informed will contact the HR Director.
- c) The City at all times reserves the right to judge the effect that a legal drug may have on job performance and to restrict the using employee's work activity or presence at the workplace accordingly.

3) General Prohibited Activity:

- a) Switching or adulterating any urine sample submitted for testing;
- b) Refusing to report for testing immediately upon notification to do so by any supervisor, or refusing to consent to testing or to submit a urine sample when requested by a supervisor or management;
- c) Refusing to submit to an inspection when requested by any supervisor or management personnel;
- d) Failure by an employee to notify the HR Director or the City Manager of any arrest or conviction of such employee for, or with respect to, the illegal use, possession, control, sale or manufacture of any controlled substance, drug or alcohol, within five days after the arrest or conviction;
- e) Failure to report to the supervisor the use of any drug, prescription, non-prescription medication, or alcohol, which may affect the employee's job performance or safety, e.g. alter the employee's behavior or diminish or impair the employee's physical or mental capabilities;
- f) Refusing to sign a statement agreeing to abide by the City's drug abuse policy;

- g) Refusal by an employee in any position required to adhere to provisions of this policy, as determined by the City, to sign an acknowledgment that the employee will submit to reasonable belief and post-accident testing for drugs, and so long as the employee remains in the position covered by this policy;
 - h) Refusal to complete a medical questionnaire and consent form prior to testing; or
 - i) Refusal to complete the toxicology chain of custody form after submission of a urine specimen.
- 4) **Exemption for Alcohol:** The City Manager, as part of a City sponsored social event, may authorize consumption of Alcohol on City premises by off-duty employees. Off-duty employees shall also be exempt from the alcohol policy to the extent that he or she enters public recreational centers, parks or other social gathering areas owned by the City and consumes or has detectable alcohol in his or her system under the same allowance as other citizens of the City.

The City reserves the right to test employees for drug use and/or relieve any employee from their job duties, when, in the opinion of the City, the use of drugs, legal or illegal, or alcohol, may be affecting the performance of the employee's job duties.

Section 15.06. Drug and Alcohol Testing of Employees.

- 1) **General.** The City shall have the right to require the following drug screening tests be done for all employees:
 - a) Pre-employment;
 - b) Reasonable belief; and/or
 - c) Post-Accident.
- 2) The City will notify employees of this policy by:
 - a) Providing to each employee a copy of the policy and obtaining a written acknowledgement from each employee that the policy has been received and read.
 - b) Announcing the policy in various written communications and making presentations at employee meetings.
- 3) The City may perform drug or alcohol testing:
 - a) Of any applicant for a position of employment with the City;
 - b) Of any employee who manifests "reasonable belief" behavior;
 - c) Of any employee who is involved in an accident;

- d) Of any employee whom is subject to drug or alcohol testing pursuant to federal or state rules, regulations or laws.
- 4) An employee's consent to submit to drug or alcohol testing is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, including discharge, for a first refusal or any subsequent refusal.
- 5) An employee who is tested in a "reasonable belief" situation may be suspended pending receipt of written tests results and whatever inquiries may be required.

Section 15.07. Required Testing.

Prior to the City taking action based on any test result, all applicants and employees who test positive for drugs will have the opportunity to discuss and explain the test results with the medical review officer

- 1) **Pre-employment.** The City requires that all newly hired employees be free of drug or alcohol abuse. Each offer of employment may be conditioned upon the passing of a urine test for drugs. The City may not hire any applicant who refuses to submit to or fails to pass the pre-employment drug test.
 - a) All applicants for employment, including applicants for part-time and seasonal positions and applicants who are former employees, are subject to drug and alcohol testing as a condition of employment.
 - b) An applicant for a position mandating drug and alcohol testing must pass the drug test to be considered for employment.
 - c) An applicant subject to drug and alcohol testing as a condition of employment will be notified of the City's drug and alcohol testing policy prior to being tested; will be informed in writing of his or her right to refuse to undergo such testing; and will be informed that the consequence of refusal is termination of the pre-employment process.
 - d) An applicant subject to drug and alcohol testing as a condition of employment will be provided written notice of this policy, and by signature will be required to acknowledge receipt and understanding of the policy.
 - e) If an applicant refuses to take a drug or alcohol test, or if evidence of the use of illegal drugs or alcohol by an applicant is discovered, either through testing or other means, the pre-employment process will be terminated.
- 2) **Reasonable Belief.** Whenever management personnel reasonably suspects that an employee's work performance or on the job behavior is affected any way by drugs or alcohol, the City may require the employee to submit a urine sample for testing.
 - a) **Initiation of Testing.** Supervisors will be trained to recognize the effects of drug or alcohol use and before a reasonable belief test is administered, two supervisors must

substantiate and concur in the decision to test. Normally the two supervisors are in the employee's chain of command; however, if two supervisors from the same chain of command are not available, another supervisor may be consulted. At least one of the two supervisors must have received training for detecting drug use. Any supervisor of the employee may substantiate and concur in a decision to test, even though that supervisor has not observed behavior of the employee indicating drug or alcohol use. The two supervisors may concur by phone. A supervisor must drive the employee to the testing site. Provided, however, that, upon the recommendation of any supervisor or department head of the City with respect to any employee, the Director of Personnel or the City Manager may authorize and/or direct that a drug and alcohol screening test be administered under this paragraph.

- b) Alcohol testing and Controlled Substance testing is authorized only if the observations are made during, just before or just after the employee performs his or her job functions.
 - c) All supervisors must report reasonable belief that an employee is at the work site with a detectable trace amount of drugs or alcohol in his or her system to the HR Director. The HR Director may require the supervisor complete an affidavit demonstrating the basis for the reasonable belief.
 - d) The HR Director or a designated person shall escort the employee determined to be subject to a reasonable belief test to the facility for testing.
 - e) The City Manager shall in his or her sole discretion determine whether to suspend an employee pending the results of a drug or alcohol test.
- 3) **Post-Accident.** Any employee whose performance either contributes to an accident or cannot be completely discounted as a contributing factor to an accident may be tested; provided that any employee in a safety sensitive position or other position required by federal regulations to be tested will be tested. An employee to be tested will be tested as soon as possible, but no longer than thirty-two hours after the accident. If the employee is unable to reach the approved collection facility within the time required, the employee must take the approved collection kit to the nearest hospital or clinic and request that the hospital or clinic administers the collection. A supervisor must certify that the employee was unable to utilize the approved collection site. A second specimen may be required as soon as the collection site is available for use.
- a) **Post-Accident Testing Mandatory.** Following an accident or incident falling within any of the following events:
 - i) With respect to employees to which such plan is applicable, an incident or event as provided for in the Pipeline Alcohol Misuse and Controlled Substance Plan.
 - ii) With respect to employees to which such plan is applicable, an incident or event as provided for in the Motor Carrier Alcohol Misuse and Controlled Substance Plan.
 - iii) An event involving property, electricity, a motor vehicle, powered machinery or equipment or hazardous substances which results in the following:

- (1) A death, or an injury or apparent injury resulting in any person taking time off from work or receiving any medical care or service;
 - (2) Damage to any vehicle or property while on duty or damage to any vehicle or property belonging to the City in the employee's possession after duty hours;
 - (3) Damage to any machinery or equipment;
 - (4) An event that is significant in the judgment of the City Manager, even though it does not meet any of the criteria above.
- b) **Mandatory Testing for Alcohol:** If a post-accident test is required due to an event occurring which qualifies under subsection (a) above, the test shall be voluntarily submitted to by the employee within two hours of the accident/incident using a federally approved Evidential Breath testing device. If the employee has not submitted to a test within eight (8) hours, the HR Director shall cease all attempts to administer the test and prepare and maintain a record stating the reasons why the test was not administered within eight (8) hours. An employee who is subject to post-accident/incident testing must remain available, or the City will consider the employee to have refused to submit to testing and may be subject to disciplinary action up to and including termination.
- c) **Mandatory Testing for Drugs:** If a post-accident test is required due to an event occurring which qualifies under subsection (a) above, the test shall be voluntarily submitted to by the employee as soon as possible but not later than four (4) hours after the event. If the employee has not submitted to the test within thirty-two (32) hours, the HR Director shall cease all attempts to administer the test and prepare and maintain a record stating the reasons why the test was not administered within thirty-two (32) hours. An employee who is subject to post-accident/incident testing must remain available, or the City will consider the employee to have refused to submit to testing and may be subject to disciplinary action up to and including termination.
- d) **Exigent Circumstances.** Nothing in this policy should be construed as to require the delay of necessary medical attention for an injured employee following an accident. An employee is not prohibited from leaving the scene of an accident for the period of time necessary to obtain medical assistance or obtain necessary emergency medical care.

Section 15.08. Discipline and Return to Duty.

- 1) Violations.
 - a) Any employee who possesses, distributes, sells, attempts to sell, or transfers illegal drugs on the City premises or while on the City business will be discharged.
 - b) Any employee who is found to be in possession of or have a detectable trace amount of alcohol in violation of this policy will be subject to discipline up to and including discharge.

- c) Any employee who is found to be in possession of contraband in violation of this policy will be subject to discipline up to and including discharge.
 - d) Any employee who is found through drug or alcohol testing to have in his or her body a detectable trace amount of an illegal drug or of alcohol in his or her system will be subject to discipline up to and including discharge except that, depending on the circumstances of the case and the employee involved, the employee may be offered a one-time opportunity to enter and successfully complete a rehabilitation program that has been approved by the City. During rehabilitation, the employee will be subject to unannounced drug or alcohol testing. Upon return to work from rehabilitation, the employee will be subject to unannounced drug or alcohol testing for a period of 60 months. Any test that is confirmed as positive during or following rehabilitation will result in discharge.
- 2) **Failure to Test.** The failure to submit to required testing is prohibited and will result in immediate termination, except in the following circumstances:
- a) An employee in a position covered by this policy is randomly selected for testing and is on previously approved leave.
 - b) A supervisor determines that, due to an existing emergency, it is not feasible for an employee to leave the worksite for testing. This determination must be confirmed by the designated drug abuse representative. In such cases, the employee will be required to report for testing as soon as the emergency permits.
 - c) If the employee is physically unable to provide a urine specimen on demand, the employee will be retained at the collection site while waiting for the specimen to be provided. If an employee, after a reasonable period of time, is still unable to provide the sample, he/she may return to the work location; however, he/she must be under constant supervision until he/she is able to be driven back to the collection site and provide the sample. If he/she continues to be unable to provide the sample, he/she will be required to see a physician, to determine if the inability to provide a sample is caused by a medical reason. If the employee has been medically certified as unable to provide a specimen on demand, he/she will not be considered to have refused to submit to testing. If no medical reason exists, the employee will be considered to have refused to submit to testing and will be terminated.
- 3) **Return-to-Duty:** The HR Director shall require before an employee returns to a safety-sensitive position, after being determined to be in violation of the drug and/or alcohol use policy, to submit to a return-to-duty alcohol test with the result indicating a negative result for alcohol. Prior to testing, employees will be required to sign a form consenting to testing.

Section 15.09. Supervisory Training.

The City will train its supervisors in:

- 1) **Performance.** Identifying and documenting job performance and on-the-job behavior that might reflect personal problems.

- 2) **Behavior.** Identifying specific, contemporaneous physical, behavioral and performance indicators of on-the-job use of drugs or alcohol, or impairment by drugs or alcohol.
- 3) **Procedures.** Supervisor training shall include training regarding appropriate procedures for
 - a) Drug testing and technology;
 - b) Conducting workplace inspections; and
 - c) Encouraging voluntary referrals to available resources for counseling and/or treatment.
- 4) **Forms.** Supervisors shall be trained in the use of the Forms provided in Appendix 2 for the determination of reasonable belief and releases.

Section 15.10. Medical Review Officer.

The City (or the firm or consortium) has retained the services of a Medical Review Officer. The Medical Review Officer is a licensed physician knowledgeable in the medical use of prescription drugs and pharmacology and the toxicology of drug abuse. The Medical Review Officer has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test results together with such individual's medical history and any other relevant biomedical information.

The appropriately certified testing laboratory will communicate test results only to the Medical Review Officer. The Medical Review Officer shall review and interpret all test results and examine alternate medical explanations for any positive test results. As part of such review, the Medical Review Officer shall notify the employee or applicant receiving positive test results and offer the individual the opportunity for an interview, and the opportunity to submit any medical records, prescription drugs or other information that might explain the positive test results.

The Medical Review Officer shall determine whether the positive test results are scientifically sufficient to establish the presence of the prohibited substance, drug use. If the Medical Review Officer has reason to question the accuracy or validity of a positive test result, the Medical Review Officer should review the laboratory's quality control data and other pertinent records.

The Medical Review Officer will report all test results to the designated drug abuse representative. The representative will inform the appropriate supervisor of the results, and appropriate action will be taken as outlined in this policy.

Section 15.11. Appeal of a Drug or Alcohol Test Result.

- 1) An applicant or employee whose drug or alcohol test reported positive will be offered the opportunity of a meeting to offer an explanation. The purpose of the meeting will be to determine if there is any reason that a positive finding could have resulted from some cause other than drug or alcohol use. The City, through its health and/or Personnel officials, will judge whether an offered explanation merits further inquiry.

- 2) The employee who is notified of a positive result by the Medical Review Officer may make a written request for retesting within 60 days of receipt of the final test result from the Medical Review Officer. An employee whose drug or alcohol test is reported positive will be offered the opportunity to have the original sample retested:
 - a) Obtain and independently test, at the employee's expense, the remaining portion of the urine specimen that yielded the positive result by a N.I.D.A. certified laboratory but the employee will be reimbursed by the City if the retest is negative;
 - b) Obtain the written test result and submit it to an independent medical review at the employee's expense.
- 3) The decisions and findings of the Medical Review Officer shall be final and determinative.
- 4) The employee may use City's medical benefits, to the extent that coverage may apply, for meeting the costs of subsection (2) (a) and (b) above.
- 5) During the period of an appeal and any resulting inquiries, the pre-employment selection process for an applicant will be placed on hold, and the employment status of an employee may be suspended. An employee who is suspended pending appeal will be permitted to use any available annual leave in order to remain in an active pay status. If the employee has no annual leave or chooses not to use it, the suspension will be without pay.

Section 15.12. Confidentiality and Record Keeping.

The results of all urine tests will be treated as confidential. Each applicant or employee will be required to sign a statement at the time of testing to allow release of the results to the City. This information will only be known to the testing laboratory, the Medical Review Officer, the designated drug abuse representative, and other employees with the "need to know" such as appropriate officers, the HR Director and the employees' immediate supervisor. However, any governmental body may obtain the testing results as a part of an accident investigation, without the express written consent of the tested individual, provided the governmental body has legal authorization to secure such results. No drug test results will be released to a subsequent employer without the written consent of the employee.

All records pertaining to the Drug Testing Program will be maintained in a locked receptacle by the designated drug abuse representative. The list below shows the type of information to be maintained along with the minimum retention times:

- 1) **Collection Process - Three Years.** Records demonstrating the collection process shall be kept for three (3) years.
- 2) **Positive Test Results - Five Years.** Records of employee drug test results that show employees failed a drug test, the type of test failed (e.g. post-accident) will be kept for five (5) years. These records include the following information:
 - a) Functions performed by employee;

- b) Prohibited drugs for which test results were positive;
 - c) Disposition (e.g. termination, etc.); and
 - d) Age of employee.
- 3) **Negative Test Results - One Year.** Records of employees' drug test results that show employees passed a drug test will be kept for one (1) year.
 - 4) **Number Tested - Five Years.** Records of the number of employees tested by type of test shall be kept for five (5) years.
 - 5) **Supervisor Training - Three Years.** Records confirming supervisors have been trained shall be kept for three (3) years.
 - 6) **Employee Training Information - Three Years.** Records confirming drug use/abuse training information given to all employees shall be maintained for three (3) years.

Section 15.13. Contractors.

Contractors shall abide by the regulations promulgated in the federal regulations. The City will require such actions to be part of all contracts and will immediately terminate any contract if the contractor is found to not be in compliance with said federal regulations.

Section 15.14. Employee Assistance Program (EAP).

- 1) **Self-Referral Prior to Testing.** Voluntary participation in a qualified drug or alcohol abuse program prior to a confirmed positive test result is encouraged.
 - a) No disciplinary action will be brought as a result of an employee volunteering to participate in such a program, provided the employee volunteers, prior to committing an act or event which would subject the employee to disciplinary action and prior to the employee being requested to submit to a test. Employees who, prior to being requested to take a test, voluntarily identify themselves as drug or alcohol abusers and obtain counseling and rehabilitation through a qualified drug or alcohol abuse program shall not be disciplined for their drug and/or alcohol abuse if they thereafter refrain from violating the City's policy on drug and alcohol abuse. All employees, however, can be disciplined for any incident resulting from their violation of the City's policy on drug and alcohol policy.
 - b) The City will provide, as available, employees and their families with confidential, professional assessment and referral for assistance in resolving or accessing treatment for addiction to, dependence on, or problems with alcohol, drugs, or other personal problems adversely affecting their job performance. Confidential assessment and referral services will be provided without cost to the employee or family member. The cost of treatment, counseling or rehabilitation resulting from EAP referral will be the responsibility of the employee.

- c) When documented job impairment has been observed and identified, a supervisor may recommend participation in the EAP. Any action taken by the supervisor, however, will be based on job performance.
 - d) Supervisor referrals to the EAP will include employee's release of information consent form to be returned to the City supervisor by the EAP. Refusal to participate in, or failure to complete the EAP directed program will be documented. Should job performance not improve after a reasonable amount of time, the employee is subject to progressive corrective action up to and including termination of employment.
 - e) Self-referral by employees or family members is strongly encouraged. The earlier a problem is addressed, the easier it is to deal with and the higher the success rate. While self-referral in itself does not preclude City's use of corrective action, participation in an EAP directed program may enable the supervisor to allow time for completion of such program before initiating or determining additional corrective actions.
 - f) EAP related activities, such as referral appointments, will be treated on the same basis as other health matters with regards to use of sick or compensation leave. Sick leave may be taken as needed, while compensation time must be pre-approved.
- 2) **Referral after Testing.** Disciplinary action based on a violation of this drug and alcohol policy is not suspended by an employee's participation in an abuse program after a confirmed determination the employee has been under the influence of drugs or alcohol while on duty. Disciplinary action, up to and including dismissal, may be taken against any employee with a confirmed positive test of a detectable trace amount of drugs or alcohol in his or her system while at work. Rehabilitation assistance in lieu of discharge or other discipline may be offered by the City on a case-by-case basis, but shall not be interpreted as a mandatory requirement, to any employee who has violated this policy, provided that the violation does not involve selling or transferring illegal drugs, or serious misconduct. (See Appendix 2, Form D)
- a) An employee who is in rehabilitation as the result of a positive test will be suspended, except that--when indicated by the circumstances of the case and the written recommendation of a licensed physician or recognized rehabilitation professional--an employee may be permitted to work while undergoing rehabilitation on an outside-of-work basis. The written recommendation must include a statement to the effect that the employee's presence in the workplace will not constitute a safety hazard to the employee, co-workers or others.
 - b) An employee whose rehabilitative therapy involves drug maintenance, hospitalization or detoxification will not be considered for the exception from suspension described in subsection (a).
 - c) An employee who is in rehabilitation or who has completed rehabilitation will be allowed to return to work upon presentation of a written release signed by a licensed physician or recognized rehabilitation professional. The release must include a statement to the effect

that the employee's presence in the workplace will not constitute a safety hazard to the employee, co-worker or others.

- d) Rehabilitation assistance given by the City will be:
 - i) Limited to those medical benefits that may be available in the employee's medical benefits plan.
 - ii) Obtained through a rehabilitation program that has been pre-approved by The City.
 - iii) Obtained by the employee during times that will not conflict with the employee's work time, except that the employee may use any available sick leave or annual leave to be absent from the job with pay.
- e) Participation in any such abuse program shall be at the sole cost and expense of the employee and, if applicable, his or her health insurance.

Section 15.15. Coordination with Law Enforcement Agencies and Searches.

The sale, use, purchase, transfer or possession of an illegal drug or drug paraphernalia is a violation of the law. The City will report information concerning possession, distribution, or use of any illegal drugs to law enforcement officials and will turn over to the custody of law enforcement officials any such substances found during a search of an individual or property. The City will cooperate fully in the prosecution and/or conviction of any violation of the law.

The City may conduct unannounced general inspections and searches for drugs or alcohol on the City premises or in the City vehicles or equipment wherever located. Employees are expected to cooperate.

Searches will only be conducted of individuals based on reasonable belief and only of their vehicles, lockers, desks, and closets when based on reasonable belief that the employee is in violation of this policy.

An employee's consent to a search is required as a condition of employment, and the employee's refusal to consent may result in disciplinary action, including discharge, even for a first refusal.

Illegal drugs, drugs believed to be illegal, and drug paraphernalia found on the City property will be turned over to the appropriate law enforcement agency and the full cooperation given to any subsequent investigation. Substances that cannot be identified as an illegal drug by a layman's examination will be turned over to a forensic laboratory for scientific analysis.

Other forms of contraband, such as firearms, explosives, and lethal weapons, will be subject to seizure during an inspection or search. An employee who is found to possess contraband on the City property or while on the City business will be subject to discipline up to and including discharge.

If an employee is the subject of a drug-related investigation by the City or by a law enforcement agency, the employee may be suspended pending completion of the investigation.

Article 16. Internet and E-mail

Section 16.01. General Guidelines.

This policy applies to any and all forms of use of the City computer systems and equipment and does not supersede or limit any state or federal laws, nor any other City policies regarding confidentiality, information dissemination, or standards of conduct. All use of the Internet with any City equipment (including but not limited to computers, telephone lines, modems, telephone numbers, etc.) must be in compliance with all applicable federal, state and local laws and the policies of the City. Individual users should be aware that the City has no control over and cannot be responsible for the content of information available on the Internet. Some employees may find information on the Internet that is offensive or otherwise objectionable. Any use of the City equipment or resources in violation of this policy or applicable departmental policies is grounds for disciplinary action.

- 1) The City's domain name and URL (Internet address or website) are the property of the City and may not be used by City employees for personal gain.
- 2) No unauthorized advertising or unauthorized links may be used on the City's website.
- 3) Employee Internet access must be authorized by the HR Director. A condition of authorization is that all Internet users must read and sign a copy of the internet policy. The HR Director will ensure that a signed copy of the policy is on file in the employee's personnel file prior to granting such access.
- 4) Department heads should work with employees to determine the appropriateness of using the Internet for professional activities and career development.
- 5) Use of the Internet by City employees must be consistent with the City Personnel Policy regarding employee conduct and work conditions.
- 6) The Internet must be treated as a formal communications tool like telephone, radio, and video communications. Therefore, each individual user is responsible for complying with all relevant policies when using the City's resources for accessing the Internet.
- 7) Internet access must not be used for illegal, improper, or illicit purposes.
- 8) Employees need to keep in mind that all Internet usage can be recorded and stored along with the source and destination.
- 9) Use of City equipment or resources to intentionally post or share any racist, sexist, threatening, obscene or otherwise objectionable material is strictly prohibited and subjects the employee to disciplinary action.

- 10) Resources that are not clearly used for a City purpose shall not be accessed or downloaded.
- 11) Resources of any kind for which there is any fee must not be accessed or downloaded without prior approval of the HR Director.
- 12) Employees shall not connect any personal equipment to the computer systems or computer systems telephone lines of the City without the prior approval of the City Manager.

Section 16.02. Privacy.

Employees have no right to privacy with regard to Internet usage. Management has the ability and the right to view employees' usage patterns and take action to assure that City Internet resources are devoted to maintaining the highest levels of productivity. The Internet path record is the property of the City and therefore the taxpayers of the City. Such information is subject to the Texas Public Information Act and the laws applicable to State records retention. Each employee using the Internet shall identify him/herself honestly, accurately, and completely when providing such information.

Section 16.03. Safety and Security.

The safety and security of the City computer systems and resources must be considered at all times when using the Internet.

- 1) Employees shall not share a password for any City account or with any unauthorized person nor obtain any other user password by any unauthorized means.
- 2) Employees must not intentionally use the Internet facilities to disable, impair, or overload performance of any computer system or network, or to circumvent any system intended to protect the privacy or security of another user, except as part of an official Police investigation.
- 3) Employees shall not intentionally create, install, or knowingly distribute a computer virus of any kind on any municipal computer, regardless of whether any demonstrable harm results.
- 4) Employees shall not copy, install, or use any software or data files in violation of applicable copyrights or license agreements.
- 5) Employees shall report all computer virus outbreaks to the City Manager. The City Manager may designate a person to log all such outbreaks and the eradication method used by the departments. All departments shall be notified in the event of a virus outbreak. The City Manager may take whatever action is reasonably necessary to prevent the spread of a computer virus to other computers.

Section 16.04. Personal Use.

- 1) At no time shall City equipment or resources be used for any personal monetary interests or gain.

- 2) Employees may not use City equipment to access e-mail accounts or any other account requiring a password or code that was not established by the City for the employee's use.
- 3) Employees shall not use City Internet accounts to subscribe to mailing lists or mail services for personal use and shall not participate in electronic discussion groups (i.e. list server, Usenet, news group, chat rooms) for personal purposes.
- 4) Employees should be aware that when sending an e-mail message of a personal nature, there is always the danger of the employee's words being interpreted as official City policy or opinion. Therefore, when an employee sends an e-mail message from a City e-mail address that is of a personal nature, especially if the content of the e-mail could be interpreted as an official City statement, the employee must use the following disclaimer at the end of the message: *"This e-mail contains the thoughts and opinions of (employee name) and does not represent official city policy."*
- 5) Employees shall not access non-work-related information or otherwise "surf" the Internet for non-work-related purposes.

Article 17. Reservation of Management Discretion

Section 17.01. No Implied Limitations.

Nothing in this personnel policy shall limit the City in exercising the functions and discretion of management under which the City hires new employees, directs the work force, schedules hours of work, disciplines, suspends, discharges, or requires employees to observe city rules and regulations. The City reserves the right to amend, modify, and delete provisions of this and all other policies of the City. This policy is intended to set forth general guidelines that will be applied in most circumstances, however nothing in this policy: (a) prevents the City Manager from waiving any provision in a specific instance, case or matter; or (b) alters an employee's at-will employment status.

Section 17.02. Reservation of Rights.

The City Council reserves the right to interpret, change, suspend, cancel or dispute, all or any part of this Policy, procedures or benefits discussed herein. Employees will be notified of any change. Although adherence to this Policy is considered a condition of continued employment, nothing in this Policy alters an employee's status and shall not constitute nor be deemed a contract or promise of employment. Employees remain free to resign their employment at any time for any or no reason, without notice, and the City retains the right to terminate any employee at any time, for any or no reason, with or without notice.

Section 17.03. Other Laws and Regulations.

The provisions of this Policy shall apply in addition to and shall be subordinated to any requirements imposed by applicable federal, state or local laws, regulations or judicial decisions. Should any section or part of this manual be held unconstitutional, illegal, or invalid, or the application thereof ineffective or inapplicable, such unconstitutionality, illegality, invalidity, or

ineffectiveness of such section or part shall in no way affect, impair or invalidate the remaining portion or portions thereof, but as to such remaining portion or portions, the same shall be and remain in full force and effect.

APPENDIX 1

Examples of Safety Sensitive Positions

Employees whose duties include, but not limited to:

1. Performing leakage or electrical surveys;
2. Monitoring cathodic protection;
3. Welding or radiographing pipeline repairs;
4. Inspection and testing pressure limiting devices;
5. Classifying notices of leaks as emergencies;
6. Notifying fire, police and other appropriate public officials of pipeline emergencies, and coordinating actual responses during emergencies;
7. Marking pipelines in response to one-call system notice;
8. Monitoring odorization of gas;
9. Controlling gas or hazardous liquid flow or pressure in a pipeline;
10. Inserting plastic pipe into existing gas pipelines;
11. Performing operations, maintenance and emergency-response functions included in operation, maintenance and emergency manuals required federal regulations;
12. Other functions designated by the City to be covered by the drug abuse policy in job descriptions or other documentation;
13. Responding to emergency situations. This includes police officers, firefighters and E.M.S. personnel;
14. Working on the electrical distribution or generation systems, either as linemen, groundmen, operators or mechanics;
15. Operate or drive motor vehicles or powered equipment;
16. Work in the proximity of motor vehicle powered equipment, machinery, or with potentially hazardous and dangerous tools or materials or areas (at heights or in confined spaces);
17. Making decisions or judgments in a managerial or code enforcement position which might impact the health, safety and welfare of City employees.

Form A – Supervisor's Checklist for Making Reasonable Cause Determination

Employee's name _____

Department _____

Date(s) _____

KNOWING THE SIGNS

The indicators listed below are "warning signs" of drug and/or alcohol abuse and may be observed by supervisors:

Moods:

- Depressed
- Anxious
- Irritable
- Suspicious
- Complains about others
- Emotional unsteadiness (e.g., outbursts of crying)
- Mood changes after lunch or break

Actions:

- Withdrawn or improperly talkative
- Spends excessive amount of time on the telephone
- Argumentative
- Has exaggerated sense of self-importance
- Displays violent behavior
- Avoids talking with supervisor regarding work issues

Absenteeism:

- Acceleration of absenteeism and tardiness, especially Mondays, Friday, before and after holidays
- Frequent unreported absences, later explained as "emergencies"
- Unusually high incidence of colds, flus, upset stomach, headaches
- Frequent use of unscheduled vacation time

- Leaving work area more than necessary (e.g., frequent trips to water fountain and bathroom)
- Unexplained disappearances from the job with difficulty in locating employee
- Requesting to leave work early for various reasons

Accidents:

- Taking of needless risks
- Disregard for safety of others
- Higher than average accident rate on and off the job

Work Patterns:

- Inconsistency in quality of work
- High and low periods of productivity
- Poor judgment/more mistakes than usual and general carelessness
- Lapses in concentration
- Difficulty in recalling instructions
- Difficulty in remembering own mistakes
- Using more time to complete work/missing deadlines
- Increased difficulty in handling complex situations

Relationship to Others on the Job:

- Overreaction to real or imagined criticism (paranoid)
- Avoiding and withdrawing from peers
- Complaints from co-workers
- Borrowing money from fellow employees
- Persistent job transfer requests
- Complaints of problems at home such as separation, divorce and child discipline problems

OBSERVING AND DOCUMENTING CURRENT INDICATORS

Patterns of any of the above conduct or combinations of conduct may occur but must be accompanied by indicators of impairment in order to establish "reasonable cause." Please check all indicators listed below that are currently present:

- Constricted pupils
- Dilated pupils
- Scratching
- Red or watering eyes
- Involuntary eye movements
- Sniffles
- Excessively active
- Nausea or vomiting
- Flushed skin
- Sweating
- Yawning
- Twitching
- Violent behavior
- Drowsiness
- Odor of alcohol
- Nasal secretion
- Dizziness
- Muscular incoordination
- Unconsciousness
- Inability to verbalize
- Irritable
- Argumentative
- Difficulty concentrating
- Slurred speech
- Bizarre behavior
- Needle marks
- Possession of paraphernalia (such as syringe, bent spoon, metal bottle cap, medicine dropper, glassine bag, paint can, glue tube, nitrite bulb, or aerosol can).
- Possession of substance that appears to possibly be a drug or alcohol.
- Other _____

DETERMINING REASONABLE CAUSE

If you are able to document one or more of the indicators above, ask yourself these questions to establish reasonable cause:

Y N

Has some form of impairment been shown in the employee's appearance, actions or work performance?

Does the impairment result from the possible use of drugs or alcohol?

Are the facts reliable? Did you witness the situation personally, or are you sure that the witness(es) are reliable and have provided firsthand information?

Are the facts capable of explanation?

Are the facts capable of documentation?

[] [] Is the impairment current, today, now?

Do NOT proceed with reasonable cause testing unless all of the above questions are answered with a YES.

TAKING ACTION

_____ Reasonable cause established

_____ Reasonable cause NOT established

Prepared by:

Supervisor's/Manager's Signature: _____

Acknowledgment of Receipt and Understanding

The undersigned employee of the City of Kyle, Texas, hereby acknowledges that I have received and reviewed a full and complete copy of the City of Kyle's Personnel Policy and the Drug Abuse Policy; that I understand such policies; and further that I have had opportunity to ask questions about the terms, provisions, meanings, application and enforcement thereof.

I have also read and understand the following Statement of Policy by the City of Kyle.

"The City of Kyle is an at-will employer and all employees are subject to termination for any reason or no reason at all, either voluntarily or involuntarily. I understand that this policy manual is a general guide and that the foregoing provisions of this policy manual do not alter my at-will employment or constitute an employment agreement or contract, nor does it guarantee continued employment. I understand the City of Kyle reserves the right to change, modify, add or eliminate any provisions within this policy manual at any time without notice. I understand that the provisions contained in this policy manual are applicable to me. Any promises made to me, which conflict with the provisions of this manual, are effective only if in writing and signed by the City Council. I further understand that employees shall have the right to administratively appeal and file grievances with respect to disciplinary decisions and actions affecting their employment; provided that, consistent with such policy, the decision of the City Manager shall be final, subject only to an appeal to the City Council by certain department heads as provided in the City Charter. The decision of the City Manager or the City Council, as applicable, shall be final and unappealable."

I understand the City will attempt to apply its policies and regulations in a fair and impartial manner. However, I also understand such policies and regulations do not create any contract or due process rights for employees; are intended as a guide only for use and application within the City organization; and that a decision by the City Manager or the City Council, as applicable, with respect to any employment issue controlled by such policies and regulations, will be final and unappealable.

Date of signature: _____

Printed Name and Signature