



**CIVIL SERVICE COMMISSION
MEETING AGENDA**
Wednesday, September 13, 2023 at 3:30 PM
Commission Chambers - 300 Municipal Drive,
Madeira Beach, FL 33708

Meetings will be televised on Spectrum Channel 640 and YouTube Streamed on the City's Website.

1. CALL TO ORDER

2. ROLL CALL

3. PUBLIC COMMENT

Public participation is encouraged. If you are addressing the Civil Service Commission, step to the podium and state your name and address for the record. Please limit your comments to three (3) minutes and do not include any topic that is on the agenda. Public comment on agenda items will be allowed when they come up.

4. APPROVAL OF MINUTES

A. Approval of Minutes

5. OLD BUSINESS

A. "Draft" Personnel Policy Manual

B. Ex Officio Board Member - Robert's Rules of Order

C. Ordinance 2023-06, Civil Service Rules

6. NEW BUSINESS

A. Items to be scheduled for future meetings

7. NEXT MEETING

8. ADJOURNMENT

One or more Elected or Appointed Officials may be in attendance.

Any person who decides to appeal any decision of the Civil Service Commission with respect to any matter considered at this meeting will need a record of the proceedings and for such purposes may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based. The law does not require the minutes to be transcribed verbatim; therefore, the applicant must make the necessary arrangements with a private reporter or private reporting firm and bear the resulting expense. In accordance with the Americans with Disability Act and F.S. 286.26, any person with a disability requiring reasonable accommodation to participate in this meeting should call Clara VanBlargan, City Clerk, at 727-391-9951, ext. 231 or 232 or email a written request to cvanblargan@madeirabeachfl.gov.



MINUTES
CIVIL SERVICE COMMISSION
MEETING
AUGUST 8, 2023
2:00 p.m.

The City of Madeira Beach Civil Service Commission meeting was scheduled for 2:00 p.m. on August 08, 2023, in the Patricia Shontz Commission Chambers at City Hall, located at 300 Municipal Drive, Madeira Beach, Florida.

MEMBERS PRESENT: Gene Embler, Chair
 Cristina Ponte, Vice Chair
 Jerry Cantrell
 Paul Tilka
 Clara VanBlargan, Ex-Officio Secretary

MEMBERS ABSENT: Judithanne McLauchlan

CITY STAFF PRESENT: Robin Gomez, City Manager
 Attorney Rob Eschenfelder, Trask Daigneault, L.L.P.

1. CALL TO ORDER

Chair Gene Embler called the meeting to order at 2:06 p.m.

2. ROLL CALL

City Clerk Clara VanBlargan called the roll. Judithanne McLauchlan was absent.

3. PUBLIC COMMENT

There were no public comments.

Chair Embler said they agreed to spend one hour and a half going through the personnel policy and thirty minutes on the remainder. To follow Robert's Rules of Order, she asked for the following changes to the order of business on the agenda:

1. Old Business before New Business
2. HR Report moved to under New Business
3. Approval of the minutes will be the first order of business.

Mr. Cantrell received confirmation that they would discuss the 2020 version of the personnel policy and then Ordinance 2023-06.

The Commission consented to the change.

3. HR REPORT

4. APPROVAL OF MINUTES

A. Approval of Meeting Minutes: 2023-07-11, Civil Service Commission

Chair Emblar asked that the minutes be corrected to state that Chair Emblar called the meeting to order and to add under Roll Call that Judithanne McLauchlan and Christiana Ponte were absent.

Chair Emblar asked that the PowerPoint presentation by Jerry Cantrell in the last meeting packet be reprinted in the packet. It looked fine on the screen, but the pages did not print properly in the packet, and half the words were missing. If they had to refer to the packet and check the PowerPoint presentation, she would like it captured correctly.

Chair Emblar said the minutes accurately reflect what Mr. Cantrell said in his presentation. It was very informative and brought forth a lot of information, but she did not necessarily agree with his comments in some areas. Rather than rehash it in the minutes, she would like to comment on it when they review the appropriate documents. Attorney Eschenfelder said they could do that.

Jerry Cantrell motioned to approve the meeting minutes for July 11, 2023 as corrected. Paul Tilka seconded the motion.

ROLL CALL:

Jerry Cantrell	"YES"
Paul Tilka	"YES"
Chair Emblar	"YES"
Cristina Ponte	"ABSTAINS"

Christina asked if she could abstain because she did not review the minutes in detail. Attorney Eschenfelder explained to Christina Ponte that under Florida law, a member of a public body is required to vote unless they declare a conflict of interest and fills out a form (Form 8B, Memorandum of Voting Conflict for County, Municipal, and other Local Public Officers).

Vice Chair Ponte changed her vote to approval. The motion carried 4-0.

5. OLD BUSINESS

The order of business on the agenda was changed as requested.

A. "Draft" Madeira Beach Personnel Policy 2020

Chair Emblar said they had unanimously agreed to use the attorney's version of the handbook and make changes. She recapped how they stopped using the attorney's 2020 version and returned to it. They had already gone through a good portion of it when using it. She had spoken

to the City Clerk, and they were to start where they left off, Section XXIV. Uniforms (Page 624 of the agenda packet). They will revisit from Section I to ensure it captures all their intent, which would be a better use of their time than starting again in Section I.

Commissioner Cantrell said he respectfully disagreed. He sees value in starting at XXIV because some members covered stuff, but most of them have not. No matter what happens, they are starting with ground zero. A perspective given to them on what was discussed from the beginning would benefit them. It might help them make decisions as they move forward. He went through everything and made a lot of notes. He would like to ask things that will make a difference to what he will ask later.

Commissioner Ponte said when discussing the City's version for the last year and a half, they asked to use the attorney's version in two or three meetings and somehow got pushed down. She would like them, as a team, to do a case study review of how they got there. She appreciated the review and research by Commissioner Cantrell. It pushed them over the hump to return to the attorney's version. She would like to see some review by their team to make sure something like that never happens again. They spent about a year and a half on something that would go into the garbage. The Chair said she believed they had already taken steps in the new ordinance to ensure it does not happen again. It spells out better communication flows.

Commissioner Ponte said she would like to start over, pretend the year and a half did not happen, and give it the due diligence deserved. Hopefully, they learned from it. The Chair said she agreed 100%. They will go back to the very start, but first go through the remainder of the document, allow the City Clerk to give them an updated version, and then start from the beginning and go through it to ensure it contains everything they agreed upon. Commissioner Ponte asked that the attorney review the entire document before they start going through it again.

Commissioner Cantrell said he had lengthy discussions with Attorney Eschenfelder about which version they should use, the 2020 or 2023. He never saw the 2023 version until Attorney Eschenfelder provided it. It contains more pages than the 2020 version, and differences when comparing it to the 2020 version. He does not want to try to state their significance, but there is more pagination and better formatting.

Attorney Eschenfelder said he had met with Mr. Daniels and Sean Lilly twice, and from those meetings, he went through and made adjustments. It would not seem logical to return to the 2020 version, but that was the decision. When the Commission circles back to Chapter 1, he will let the Board know what changes he made.

Commissioner Ponte asked who in the City wanted to use the 2020 version. The City Clerk said it was a vote by the Civil Service Commission at their last meeting.

The City Clerk said she did not receive the 2020 version that the attorney said he would send her. Instead, he sent a 2023 version that she sent to all the members as he requested. She included only the 2020 version in the meeting packet because that is the version they voted on.

Commissioner Ponte motioned to use the attorney's 2023 version. She felt more comfortable using the current version. She wanted the attorney to review it entirely before they start over with

it, so they know the changes. Attorney Eschenfelder suggested they start now with the Section where they left off. He will take notes and include those changes in his most recent version for the Clerk to send to everyone.

Chair Emblar said they talked about version control and how important it is. She asked the Clerk before the meeting to include a footnote with a date at the bottom of each revised version to avoid confusion about what version they are using. The attorney said he could use track changes when making the revisions. It shows the date of the revisions and what changes were made. Chair Emblar said she would still want the footnote added.

Commissioner Ponte said when they meet, she would like the information they are discussing projected on the screen, so everybody is on the same page. They make comments and edits as they go along, which they are allowed to do to have a usable version.

Attorney Eschenfelder said he has the master Word version. He will make the changes using track changes. He will deliver it to the Clerk to provide to the Commission. Commissioner Ponte said she would rather do live edits as they make discussions to avoid waiting on it.

The Commission decided that the attorney be the keeper of the document, make the track changes, and be accountable for what is said.

The Commission discussed the 2020 personnel policy starting with XXIV. Uniforms, beginning on Page 133 through XXV, J. Loss of or Failure to Obtain Professional Certification or License on Page 137 of the agenda packet. Commissioner Cantrell read aloud each Section as they made discussions, comments, and changes. The changes are shown in red font with strikeouts and underlines. Strikeouts mean removing language, and underlines mean adding language.

XXIV. UNIFORMS

1. Purpose

It is the intent of this policy to provide the following guidelines to City employees required to wear uniforms in the performance of their duties.

1. If the City provides an employee a uniform, the employee shall be required to wear such uniform as a condition of employment.
2. Employees required to wear uniforms shall only wear the uniforms while on duty or commuting. Wearing uniforms at any other time is strictly prohibited.
3. Uniforms are City property and must be returned to the department upon separation or transfer to a position which does not require use of the uniform.
4. It is the responsibility of the employee to ensure that their uniforms are properly maintained and laundered.

5. Employees may be subject to disciplinary action, up to and/or including dismissal, for violation of any of the above.

The Commission did not discuss Section 1.

~~2. Uniform Maintenance Allowance~~

- ~~1. Employees required (as a condition of employment) to wear, maintain and launder uniforms purchased by their department will receive a \$*** uniform maintenance allowance each pay period.~~
- ~~2. This allowance is to cover the cost of cleaning and maintaining the uniforms in accordance with departmental standards.~~
- ~~3. 2. Any taxes due on uniform maintenance allowance shall be the responsibility of the employee.~~

Commissioner Cantrell asked if a dollar amount would be added for uniform maintenance allowance. The City Manager said he did not believe it was being done that way.

Commissioner Cantrell asked if there was an annual allotment for employees to get uniforms. The City Manager said the cost of uniforms is budgeted in each department. If the personnel manual does not list an amount, there is no amount other than what is budgeted in each department for uniforms. The City provides uniforms, whether they need steel-toed shoes, pants, shirts, etc.

Commissioner Cantrell asked if employees washed their uniforms. The City Manager said they do. Commissioner Cantrell asked if it was different for the fire department. Attorney Eschenfelder said anything they do would be through their collective bargaining agreement. He recommended they think that provision through. An argument could be made that the City is not reimbursing them for washing the uniforms they are asked to wear. Employees must give them back when they are no longer working for the City. That can be resolved by plugging in a small allowance. If it is not a moral issue, they could strike it; if it should become an issue, they could always add it.

The Commission consented to strike Section 2, Uniform Maintenance Allowance, and making Section 3. Uniform Rental Service, Section 2.

~~3. 2 Uniform Rental Service~~

1. If the City contracts for uniform rental and maintenance, the City's contract for uniform rentals will provide for maintenance and laundering services for uniforms.
- ~~2. If a City uniform maintenance contract provides for laundering of uniforms supplied under the contract, employees will not receive a uniform maintenance allowance.~~

Attorney Eschenfelder said since they are taking out the allowance, #2 goes away. The Commission consented to strike #2.

XXV. MISCELLANEOUS POLICIES

A. Departmental Rules

Though Madeira Beach attempts, where possible, to maintain uniform rules generally applicable to all City employees, unique departmental needs may call for customized rules. Therefore, each City department director may promulgate and implement departmental rules based upon operational needs and requirements as a supplement to the Personnel Policy, Rules and Procedures Manual. Such rules, when issued, shall be applicable to employees of that department as though they were published herein. Any such department-based rule shall be reviewed by the Civil Service Commission prior to implementation.

Commissioner Cantrell said he has an objection to that rule. He would like to add a phrase that if department rules are part of the policy, the Civil Service Commission must review them before they are implemented. He does not object to any department wanting extra rules. If they give grounds for dismissal, the Commission must have something to do with the implementation, or how else would they know if they are fairly and accurately applied to all employees across the board. It does not make sense for one department to be stricter and another to be less restrictive. Commissioner Ponte said the Civil Service Commission is responsible for writing the policies.

Attorney Eschenfelder said due to some department operations there could be attendance issues that do not occur in other kinds of departments. The department director might have a particular procedure for employees to follow when calling in sick to avoid problems of not having enough people in place to do the job. He asked that when reviewing the rules, allow the director to make their case for the reasons needing them.

Commissioner Cantrell said if the Commission must decide in some quasi-judicial forum, they need to know what those rules are based on ahead of time and not learn about it at the last minute. The attorney said there is a benefit to them knowing ahead of time if a grievance or an appeal is filed and the person points to the rule as unfair and oppressive. Chair Embler said the HR report at every meeting would be the time to bring it up.

Attorney Eschenfelder recommended adding at the end of the rule, "Any such department-based rule shall be reviewed by the Civil Service Commission prior to implementation." The Commission consented to add the language.

Commissioner Ponte asked if the City had a centralized location on its website to access all its policies. Everybody should have access to an understanding of the policies. She asked if new employees had access to them. The City Manager said the policies are provided in electronic format, and they are shown where to locate them. Commissioner Ponte asked if the Commission had access to all supplemental policies. The City Manager said they could provide them. Not all departments have their own, but most do.

Commissioner Cantrell said they have a rolling agenda of things they need to cover but cannot get to all of them in the next meeting or two. He would like to add department rules to the list.

The City Manager said he will email those to them. If the Commission would like to expand it to departments, he has no problem providing them, but to be clear, he believed it is not the Commission's charge. The Charter references explicitly Citywide.

Commissioner Ponte said in the policy, the departments had the ability to make rules. The goal of the personnel policy and the rules is to minimize any opportunity for litigation. The City Manager said department rules are specific to their operations. Commissioner Ponte said although it is department-specific, it is under the umbrella of the personnel policy. Chair Embler said they will add it to the list for discussion. They agreed to prioritize the list as a team.

Commissioner Ponte asked for clarification that the City Manager would prefer not to reference department rules in the policy. The City Manager said they typically do not. Attorney Eschenfelder recommended referencing it. If not in the policy, a plaintiff's attorney could ask why they are separate and who authorized them. If employees can be terminated based on those department-specific rules, they need to be referenced in the policy. Chair Embler said they are adding language to allow it. The City Manager disagrees with it, but that is his opinion.

Commissioner Cantrell asked the City Clerk to add the department-specific rules to the list of items on the agenda for discussion.

B. General Appearance and Work Attire

The City's management staff are authorized to adopt reasonable standards of personal dress, appearance and hygiene during working hours. Personal appearance should be evaluated based upon the type of work, the work environment, and the amount of public contact required by the job. Designated uniforms or work clothes shall be worn as required by City or departmental policy.

Commissioner Cantrell said it was concerning that the City's management staff are authorized to adopt reasonable standards of personal dress, appearance, and hygiene during working hours because there is not enough definition. He does not know what is reasonable, but that leaves it too loose. However, he does not want to make it so restrictive it cannot be accomplished.

Attorney Eschenfelder said in a governmental organization, they cannot adopt one standard. Employees that work in the field would not be required to wear business casual attire. The provision falls more in the line of things that should be in the policy. The City could be accused of making up rules to discriminate against employees that are in a protected category. The rule gives reason management is allowed to promulgate the rules.

Commissioner Ponte said employees in a public facing must dress business casual. The rule allows freedom without opening themselves up to litigation. If an issue should arise, they handle it by department rules. They have the tools to resolve it if it becomes a management issue.

C. City Property and Supplies

1. Employees are expected to take proper care in the handling and use of all City equipment and property. Employees are not to remove City property from the premises without authorization by the department director with the exception of those items that have been authorized for use off the premises such as cellular phones, pagers, laptop computers, etc.
2. Employees are not permitted to "recycle," "scavenge" or take for personal use any used or excess supplies, tools or equipment, including construction materials and office supplies, absent a published City policy on re-use or recycling of such materials.
3. Upon request or separation from employment, or extended leave, employees shall return all City property to the City. By accepting employment with the City, employees agree that the replacement cost for all property damaged, lost or not returned may be deducted from the employee's paycheck without need to file any further legal action against the employee, except to the extent a deduction would reduce pay to an hourly rate below the prevailing minimum wage.

Commissioner Cantrell said he had no objections.

Commissioner Ponte asked if language could be added to #3 about a person going on unpaid leave. The attorney said they could add "extended leave" in the first sentence of #3. The Commission consented.

D. City Communications Equipment

All City equipment, including electronic communications systems such as e mail and voice mail, and video recording and streaming systems is the property of the City and is subject to monitoring at any time, with or without further notice, at the sole discretion of management. All City employees are required to comply with the terms of the City's computer and internet use policies, to the extent such are adopted by the Board of Commissioners.

Chair Emblar asked if they needed to include video, text, social media, and audio at the end of the first sentence. The attorney said the provision dealt with City equipment. It is a warning that it could be monitored. The federal courts require them to alert employees about that upfront.

Commissioner Cantrell asked regarding the recent House Bill on social media use, specifically TikTok, if anything needed to be covered. The attorney said no, it was likely to be struck down as a First Amendment violation.

Attorney Eschenfelder recommended adding "and video recording and streaming systems" to the list in the first sentence. The Commission consented.

E. Address and Telephone Number

Each employee shall provide his or her department with a current physical address, telephone number, and contact information. The employee shall also provide and maintain a current name and telephone number of an emergency contact. The department and Human Resources department must be informed of any change in the above-required data in a timely manner.

Commissioner Cantrell asked if departments were required to give that information to Human Resources or if it was a collective set of data. The City Manager said employees provide information in their application, which enters the HR system and payroll. The system is electronic. The employees and HR can access the system to make changes.

F. Solicitation of Contributions, Membership, or Business

1. The solicitation of contributions, memberships, or business among employees of the City shall not be permitted on City property during the employee's working time except for those charity drives or employee benefit promotions specifically authorized by the Board of Commissioners. Employees may, with department approval, engage in limited, temporary, passive solicitation such as the temporary posting of a girl scout cookie order form, placement in break area of little league candy box, and the like. However, other forms of direct solicitation, including direct or network marketing, whether for charitable, business or other reasons, is prohibited.
2. Employee organizations, their members, agents, representatives, or persons acting on their behalf are prohibited from soliciting employees during working hours. This Section shall not be construed to prohibit solicitation by employee organizations during the employee's lunch period or in such areas not specifically devoted to the performance of the employee's official duties. This provision is not intended to conflict with the provisions of the National Labor Relations Act and where any conflict is shown, the Act shall prevail.

The Commission did not discuss Section F.

G. Statements by City Employees to Attorneys, Law Firms, or Others Concerning Employees or City Business

City employees may from time to time be requested or subpoenaed to make a statement to an investigator, an attorney, or a law firm. These statements may be concerned with an actual or contemplated legal action against the City. Employees are not generally authorized to make representations to anyone regarding City business. Therefore, should any employee receive either a request to make a statement or be subpoenaed regarding City business, the employee shall discuss the matter first with his or her department director and, prior to making any oral or written statements, discuss the matter with the City Attorney's Office. Nothing herein should be interpreted as preventing an employee

from speaking with his or her own legal counsel regarding personal legal matters, nor from speaking with a representative of a labor association concerning any grievance, mutual aid or concerted activity as protected by Florida Statutes § 447.301.

Commissioner Cantrell said he did not understand the requirement to discuss matters with the City Attorney's Office. The Charter for that position is City Attorney. It should state City Attorney instead because, per the Charter, they are to discuss the matter with the City Attorney and not the City Attorney's Office. The City Manager said it might be semantics. The same thing applies to the City Manager and the City Clerk. It could be the City Manager's Office or the City Clerk's Office. If they changed it for the City Attorney, they would need to do it for the City Manager and City Clerk.

Commissioner Ponte asked what representation of City business meant. The City Manager said it concerns legal matters.

Attorney Eschenfelder said there is a rule of evidence called admission by a party. The plaintiff will want somebody, particularly somebody in management, to say something, for example, about the accident that just happened. Then, in court, they will say that the City admitted it. Having it in the policy allows them to defend that.

H. Media Relations, Requests for Interviews

- 1. General Policy:** The City's official positions and policies are set and communicated to the public by the elected Board of Commissioners and, in certain circumstances such as litigation or administrative matters, the City Manager or City Attorney. However, other City employees may from time to time be asked by various media outlets to provide comments or interviews concerning the City's policies, operations, or other such matters. To ensure that the City's official positions on matters related to the business of the City are communicated to the media in a consistent and informed way, any employee, with the exception of the City Manager or City Attorney or their respective assistants, who receives a request to be interviewed or provide comments concerning City business shall refer the matter to his or her department director or designated media officer for response. Unless first authorized by the applicable department director, employees shall refrain from providing comments or being interviewed regarding City business or policy.
- 2. Exceptions:** Certain City departments or functions, by their nature, draw frequent media requests for interviews or information. In these circumstances, such as hurricane and other emergency services operations, the department chief or director overseeing the department or function may designate an employee as a "spokesperson" regarding that matter and that employee, once designated, may then provide interviews and information to the media concerning their area of responsibility without the need to obtain individualized prior approval. Such employees should, however, keep the City Administration and, where appropriate

Board of Commissioners and the City Attorney informed of interviews or information requests of significant concern.

3. Nothing herein shall be interpreted or applied so as to prevent any employee from the exercise of the personal right to free speech as a citizen, as that right is defined by the federal courts. However, employees in such situations should be clear they are speaking for themselves and refrain from stating or implying that they are speaking for or as representatives of Madeira Beach.

The Commission did not discuss Section H.

I. Recording Workplace Communications Prohibited

Chapter 934, Florida Statutes, prohibits interception of wire or oral communications by electronic, mechanical or other device without the consent of all parties involved. Recordings related to City business are also public records subject to being retained and inspected. Employees are therefore prohibited from recording any conversations between individuals, whether fellow employees, subordinates or citizens, with or without the permission of all parties, except as otherwise provided by law, as part of an official City broadcast production, as may be authorized by a criminal investigation conducted by law enforcement, or as is authorized by City policies regarding City-owned phones, faxes, radios and computers.

The Commission did not discuss Section I.

J. Loss of or Failure to Obtain Professional Certification or License

1. Where an employee's position with the City requires any specific certification, license or other credential, including driver's license, as a condition of holding that position, the employee is required to obtain and maintain the certification, license or credential, and to provide written proof thereof upon request. An employee who loses or within the provided amount of time fails to obtain the required certification, license or credential for whatever reason, including suspension, revocation, or expiration, has a responsibility to immediately report this fact to his or her department director. Failure to provide timely notice will result in discipline up to termination.
2. Upon timely notification by an employee that he or she has lost or failed to obtain the certification, license or credential, his or her department shall have the following options:
 - a) Make a reasonable effort to reassign the employee, on a temporary basis, to appropriate and available responsibilities not requiring the certification, license or credential, for a reasonable timeframe up to the subsequent exam/incident follow-up and results notification date to provide continuous

employment during his or her efforts to attempt to acquire or obtain reinstatement.

- b) Allow him or her to use any available and applicable leave during the allotted timeframe while obtaining reinstatement.
 - c) Place him or her on a temporary administrative leave of absence without pay not to exceed the allotted timeframe.
3. An employee who fails to have his or her certification, license or credential reinstated, or to initially obtain same within the allotted period, may apply for and be considered on a competitive basis for any vacant City position for which he or she is qualified. The City Manager determines the timeframe or his designee. If the employee is not selected or does not apply for such position prior to expiration of the allotted timeframe, then he or she shall be non-disciplinarily separated for failure to obtain or maintain a necessary job qualification.

Chair Emblar asked how to implement Section J.1. For example, the City Clerk must have a certification, and if the certification expires, would the City be responsible for advising the City Clerk or anybody else? The City Manager said they would not know unless the employee told them. They must notify their employer of a change.

Commissioner Cantrell said in his line of business, he is required to recertify every five years. That is up to the school board and him. He asked if there were any positions requiring the person to be certified. The City Manager said they have professional engineers and CPAs. Their license expires every year. The City Clerk must have a certification; continuing professional education is required to maintain it. She must notify them if it expires, or they would not know.

Chair Emblar asked if the City should be tracking it. The attorney said no. He has a license to practice law, and it is not the firm's responsibility to check the Florida Bar website every morning to see if it is still active or switched to suspended. That is his obligation. Every licensed employee is responsible for informing management if the license expires or is suspended. The Chair said it would be onerous for the City to track it. The attorney said it could cause a legal claim to the City to undertake that effort and not monitor it.

The City Clerk said she has an ethical duty to notify the Board of Commissioners if something should happen with her certification. The position requires that the person be a professional city clerk with a Master Municipal Clerk Certification before being hired. She has a master's degree and a master's municipal clerk certification.

Commissioner Ponte asked about the allotted timeframe and who determined it. The attorney said the timeframe depended on the type of license. Some require a shorter period, such as reinstating a driver's license; the process could be longer for a professional license. He could add,

“The City Manager determines the timeframe or his designee.” The Commission consented to add the language behind the first sentence in #3.

Following the discussion on the personnel policy, Attorney Eschenfelder said he would add what the Commission did to the most recent version and send it to the City Clerk to send to the Civil Service Commission. At the next meeting, they will finish it and then circle back around, beginning with Section 1, so they all agree.

K. Searches on City Property

The Commission will start with K. Searches on City Property at the September 13, 2023 meeting.

5. B. Ordinance 2023-06, Amendment to Civil Service Commission Rules

Chair Emblar said they discussed the ordinance in a previous meeting, and there was an opportunity for discussion by all members, including the City Manager. She asked why it had not been brought forward. The City Clerk said the City Manager has the ordinance on an Excel spreadsheet to go to the Board of Commissioners for the first reading in September. The Civil Service Commission discussed the ordinance in April and discussed it again at the last meeting. It was agreed at the previous meeting that since Commissioner Cantrell was a new member, he was to look at it and provide his comments and changes at this meeting. The City Manager advised the Commission at that meeting to make the changes they want made before the ordinance goes to the Board of Commissioners for approval so it would include those changes. The rules are what the Civil Service Commission will follow.

Chair Emblar said they discussed it after the new Board was in place. They questioned some areas, and all voted to agree on it. Commissioner Cantrell is coming in new, and he has some glaring differences in opinion, but the Board approved the version of the ordinance before them.

Vice Chair Ponte said she would like them to talk about Commissioner Cantrell's changes and recommendations to decide if they want to consider them further. Taking the time to do it might be the answer.

Commissioner Cantrell said it was at the May meeting when they asked him to go through the ordinance. He could point out simple things. One is changing the grievance to appeal. It states grievance in the City Charter. No matter what they call it, he does not want there to be a problem by changing it.

Chair Emblar asked the Vice Chair how she would like to handle it since it would be a long discussion. There are significant points and philosophies. The Vice Chair said she is okay to consider it if he is right. If it is wrong, they will talk about it. They could table it until the next meeting if it is a long discussion. Chair Emblar said she would like to put it to vote.

Commissioner Cantrell said they have the policy they must create based on the Charter and are getting good cooperation and productive discussions on it. The Charter is the base root of what they must do and not less than that. When they write the rules, if doing the base stuff, they can

relinquish some of what they are supposed to do. Inside the documents, he noticed issues that take away the authority for them to make decisions and allow the City Manager and Human Resources Director to make those decisions on their behalf. Those are things that concern him. They improve the policy by discussing and fixing any errors they see when going through it.

Vice Chair Ponte said she did not recall them having an all-out discussion on the Commission rules, so she is open to it. She asked if they could continue with the rules the way they are now and make it a later item. Commissioner Cantrell said they needed to do it before the first reading of the ordinance in September. If not, it might be too late to submit revisions. It would require a new ordinance to make changes. There are things the Board repeatedly asked to be included in their rules. The rules determine how they function and what they can do with the policy. In the 2019 policy they were working on, grievance excluded half the employees. The salaried employees could not hold a grievance or an appeal, whichever they want to call it.

Chair Emblar said the difference between a grievance and an appeal is critical. The Charter refers to a grievance. That is a language dating back to 1975 or 1983. The modern language now says a grievance is a complaint, whereas an appeal is when an employee does not agree with something done, and they come to them. The policy allows the City employees to go through due process. Then, in the end, if the employee still says they want to appeal it after due process, they come to the Civil Service Commission. They need to move on from it because they are defined in the new document. They can make those changes per the Charter. Commissioner Cantrell said he read the entire document. The word grievance is not defined in the document anywhere.

Commissioner Ponte asked the legal definitions of both a grievance and an appeal. The attorney said the ordinance and the personnel policy go hand in hand. His counsel to the City of Madeira Beach and all his clients is to stop using the antiquated word grievance, which leads to a union-setting situation. Unions and collective bargaining agreements still speak in those terms. In the union world, grievance often blends with appealing discipline issues and complaining about the air conditioning. Because Madeira Beach is largely non-unionized, he has a standalone section in his personnel policy called employee complaint procedure. That is his recommendation for handling non-disciplinary things. For example, an employee says that the air conditioning is too cold, and they are being placed in an unsafe situation that is against the safety manual or whatever. Those things are not an appeal of discipline. They also have a section in his personnel policy on discipline and discharge. He recommends separating classified employees who are civil service protected from at-will management. The department heads and above are at the will of the City. If the City Commission wants their department heads to be civil service protected, that is a policy decision they can make. If the Civil Service Commission felt that the department heads should be civil service protected, they can make that recommendation to the City Commission. He will inform the City Commission when the policy gets to them that it could create problems. A department director working for the City Manager might think they can undermine him. The City Manager is responsible for what they do.

Chair Emblar said she found three general philosophical differences. As much as she wants to go forward, if they have not reviewed the packet, then they will do it.

1. Grievance versus appeal.

- 2. Who it applies to and at what level. The Charter says that if it is a complaint against the City Manager, it goes to the Board of Commissioners, not them. The City Manager and City Clerk go directly to the Board of Commissioners. Below department directors, it is clear they come to the Civil Service Commission. They must think about what the right thing for the City is.
- 3. In her opinion, a lot of Jerry's comments have shifted the responsibility of how they interact instead of working with the City Manager to working with the City Clerk.

Chair Emblar said the three philosophical differences are critical to how they operate.

Vice Chair Ponte said she had no recollection of discussing and commenting on Ordinance 2023-06.

Commissioner Cantrell said it did not matter whether they called it a grievance or appeal. The word grievance is what is written in the Charter. There is a process to follow if they disagree with the wording in the Charter. They could request an amendment to the Charter that can be voted on, changing that from grievance to appeal.

Attorney Eschenfelder said per City Charter, Section 5.7, D. Duties and Powers of the Civil Service Commission, they can change the word from grievance to appeal. Commissioner Cantrell said that is what he needed to hear. It makes sense to use the word appeal. He would love to readdress it.

Vice Chair Ponte said she would love to have the conversation. She does not recall the rules ordinance, and the whistleblower ordinance opened to discussion and comments.

Attorney Eschenfelder said he would like to keep both ordinances on the adoption track for the first reading in September. They can discuss them between now and when the second reading and public hearing occurs in October.

Commissioner Cantrell said he was trying to prevent the Board of Commissioners from having to reproduce their work.

Vice Chair Ponte said she would like to make a motion to push the whistleblower ordinance forward and bring the rule's ordinance back for discussion.

Attorney Eschenfelder said they voted to have the two ordinances adopted. They can make a motion to withdraw the recommendation to adopt Ordinance 2023-06 and/or Ordinance 2023-07.

Vice Chair Ponte motioned to withdraw Ordinance 2023-06 to allow more time for discussion so they can align better. Commissioner Cantrell seconded the motion.

Roll Call:

Vice Chair Ponte	"YES"
Commissioner Cantrell	"YES"
Commissioner Tilka	"YES"

Chair Emblar "NO"

The motion carried 3-1.

Vice Chair Ponte said Commissioner Cantrell is a new member, so they might as well discuss it again. She recommended they start with the ordinance at the next meeting before they do the policy. They bring their comments and spend 30 minutes to resolve it. Chair Emblar said she wanted to see the original ordinance and the ordinance with Jerry's highlighted changes so they could do the stare and compare individually.

Commissioner Cantrell said after what Attorney Eschenfelder said about an appeal, he has no objection to using the word appeal.

Chair Emblar said they needed to think about who it applies to. There are numerous instances where Jerry's version wants to put more authority on the Clerk instead of the City Manager, and they must decide if that is appropriate. There are a couple of other things.

The consensus of the Commission was to have a separate meeting to discuss Ordinance 2023-06 for an hour. The ordinance would be the only item on the meeting agenda.

5. C. Ordinance 2023-07, Whistleblower Ordinance

The consensus of the Civil Service Commission was to forward Ordinance 2023-07 to the Board of Commissioners for approval.

6. NEW BUSINESS

- A. Pay Plan for all Classified City Positions (City Charter, Section 5.7, C, 2)**
- B. Classification of all Classified City Positions, based upon the Duties, Authority, and Responsibilities of each position, with adequate provisions for classification of any position whenever warranted by circumstances (City Charter, Sec. 5.7, C, 1)**
- C. Methods for determining Merits and Fitness of Candidates for Appointment or Promotions (City Charter, Section 5.7, C, 3)**
- D. Hours of Work, Attendance Regulation and Provisions for Sick and Vacation Leave (City Charter, Section 5.7, C, 5)**
- E. HR Director Position**
- F. Employee Satisfaction Surveys**
- G. Implementation Process for making sure that all Rules, Regulations, and Procedures of the Employee Personnel Policy are working and is followed by everyone (City Charter, 5.7, C, 8)**

7. NEXT MEETING

The Civil Service Commission meeting scheduled two meetings:

1. Thursday, August 17, 2023, 4:00 p.m. to 5:00 p.m. for Ordinance 2023-06 only.
2. Wednesday, September 13, 2023, 3:30 p.m. to 5:30 p.m. for a regular meeting to review the policy and then circling back from the beginning of the policy to the stopping point and then to the new business.

The City Manager said he would be out of the office the week of September 13.

The City Clerk said there are two Board of Commissioners meetings on Wednesday, September 13, 2023. The first at 5:45 p.m. and the other at 6:00 p.m. They will need enough time to set up those meetings.

Attorney Eschenfelder said he would like to work with Megan during the interim to put the measurements of how the City does its leave accumulations and so forth into the policy. He would like it in the new version to save time discussing it.

8. ADJOURNMENT

Chair Gene Embler adjourned the meeting at 4:15 p.m.

ATTEST:

Gene Embler, Chair

Clara VanBlargan, City Clerk/Secretary Ex-Officio



MINUTES
CIVIL SERVICE COMMISSION
MEETING
AUGUST 17, 2023
4:00 p.m.

The City of Madeira Beach Civil Service Commission meeting was scheduled for 4:00 p.m. on August 17, 2023, in the Patricia Shontz Commission Chambers at City Hall, located at 300 Municipal Drive, Madeira Beach, Florida.

MEMBERS PRESENT: Gene Embler, Chair
 Cristina Ponte, Vice Chair
 Jerry Cantrell
 Paul Tilka
 Clara VanBlargan, Ex-Officio Secretary

MEMBERS ABSENT: Judithanne McLauchlan

CITY STAFF PRESENT: Robin Gomez, City Manager
 Attorney Rob Eschenfelder, Trask Daigneault, L.L.P.
 Megan Powers, Assistant to City Manager & HR Staff

1. CALL TO ORDER

Chair Gene Embler called the meeting to order at 4:08 p.m.

2. ROLL CALL

City Clerk Clara VanBlargan called the roll. Commissioner McLauchlan was absent.

3. PUBLIC COMMENT

There were no public comments.

4. OLD BUSINESS

A. Proposed Ordinance 2023-06, Civil Service Commission Rules

[Chair Embler and Commissioner Cantrell prepared a PowerPoint presentation for the meeting. The PowerPoints were distributed to the members before the meeting.]

Chair Embler presented her PowerPoint presentation first.

Ordinance 2023-06 "The Rules"

Section 5.7. D of the City Charter provides that the Board of Commissioners may provide for the duties and powers of the Civil Service Commission by Ordinance passed by the BOC.

Chair Emblar said the meeting's purpose was to continue the discussion on Ordinance 2023-06, Civil Service Commission Rules. Hopefully, everyone had an opportunity to go through both versions of the ordinance, the Attorney's version, and Commissioner Cantrell's proposed changes. The differences mainly center on three areas. The City Charter provides for the Board of Commissioners to approve their rules by ordinance on how they want to conduct themselves as it relates to the duties and powers of the Civil Service Commission.

Eschenfelder and Cantrell – Version Comparison: 3 major areas for discussion.

(1) Grievance vs Appeal

Attorney Eschenfelder clarified the purpose of the verbiage change and stated that the Ordinance is in alignment with the proposed Employee Handbook. He also clarified that no judge would require them to use the word 'grievance' simply because that was the word used in the City Charter. CSC members unanimously agreed with not using the word 'grievance' but rather using the termination 'appeal.'

Chair Emblar said at their last meeting they had addressed a difference of opinion concerning grievance vs. appeal, the first major difference between the two ordinances. The Attorney had clarified the verbiage change and confirmed that no judge would require them to use the word grievance. They unanimously agreed not to use the word grievance but to use the word appeal as stated in the Attorney's version.

Commissioner Cantrell said he appreciated the explanation by the Attorney. He was good with using either one.

(2) Who Can Appeal to the CSC? (Disciplinary Terminations)

- **Attorney: Regular, not 'at-will'**
- **Mr. Cantrell: Classified, delete 'at will' language**
- **Classified, per the current Handbook includes "All employees of the City not employed as a Charter Officer, Department Head, or confidential officer."**
- **Part II Code of Ordinances, Division 4 also states "rules with regard...to classified employees"**
- **Regular employees include individual contributors, supervisors, and Managers, not Department Heads.**
- **Question: Should the CSC hear the appeals of Department Heads, or should Department Heads appeal to BOC, like Charter Officers?**
 - **Historically to BOC**
 - **The Attorney opined that appeals should go to BOC, not CSC.**

Chair Emblar said the second major difference between the two is who can appeal to the Civil Service Commission regarding disciplinary terminations. The word in the Attorney's version applies to regular, not at-will employees. Jerry's version references classified and would like to

strike at-will language. Classified, per the current handbook, are all employees of the City not employed as a Charter Officer, Department Head, or confidential officer. The Code, Division 4, is in regard to classified employees. The regular employees include individual contributors, supervisors, and managers, not department heads. That has been the historical Intent of who can appeal to the Civil Service Commission. At their last meeting, the Attorney explained why he recommended that department heads not be included. She asked the Attorney to speak to that and remind them of the definition of at-will.

Commissioner Cantrell said before the Attorney does that, he would like to present the historical things said by Mr. Hendricks, Ms. Price, and Mr. Andrews. It would be better if they looked at everything when presenting and then make comments. He made notes to request clarification of at-will and would like to address Charter Officers and department heads.

Chair Emblar said they must agree on whether the Civil Service Commission should hear appeals of department heads or should department heads appeal to the Board of Commissioners the same as the Charter Officers. Historically, they would appeal to the Board of Commissioners. The Attorney told them that the department heads should appeal to the Board of Commissioners, not the Civil Service Commission. They have the power to change that. The question is, does it make sense?

Commissioner Tilka asked if that had changed from the previous procedures. Chair Emblar said no, it has been that way. The department directors and the Charter Officers will go directly to the Board of Commissioners. The Charter Officers include the City Clerk, City Manager, Finance Director, and the City Attorney if they do not have a contract. The City Clerk said the City Charter does not require all Charter Officers to have a contract. The City Clerk and City Treasurer were meant to be long-tenured employee Charter Officers.

Commissioner Cantrell said City Charter, Article V, lists the Charter Officers as the City Clerk, City Attorney, City Manager, and City Treasurer. Those are the positions appointed by the Board of Commissioners.

Chair Emblar said before they decide, they look at it historically, listen to the Attorney's recommendation, look at other things, and look at the pros and cons and decide accordingly.

Commissioner Ponte asked that the Chair and Commissioner Cantrell present together so they could make comments on both as they go along. Commissioner Cantrell said he would prefer that the Chair present first, and following his, they discuss and decide.

(3) City Manager / City Clerk: Roles and Responsibilities

- **Attorney verbiage provides authorization for City Manager to**
 - **Schedule / Cancel Meetings with CSC Chair approval, Clerk providing notification**
 - **Schedule Personnel meetings that cannot wait until the next formal meeting**
 - **Agree on Agenda items with CSC Chair**
 - **Request legal advice (intended to preclude conflict of interest)**

- **Co-develop classification and pay plans with CSC**
- **Mr. Cantrell's version provides authorization for the Clerk to**
 - **Schedule / Cancel Meetings with CSC Chair approval, Clerk providing notification**
 - **Schedule Personnel meetings that cannot wait until the next formal meeting**
 - **Agree on Agenda items with CSC Chair**

Chair Emblar said the third area of difference she saw between the two documents was the attorney version referenced in several places the role of the City Manager, and Commissioner Cantrell cited a desire to change many of them to the City Clerk. Some duties stated in the City Clerk's job description and included in the packet are setting up and handling elections, records management, public notices, and notary services. She saw nowhere in the City Charter that they work directly with the Clerk. Instead, the Clerk is there as a support person. Section 5.7 (C) in the City Charter says they give advisory opinions to the City Manager. Division 4 of the Code of Ordinances says the Civil Service Commission makes non-binding advisory recommendations to the City Manager. She has the historical perspective they should be working with the City Manager. However, it is up to the Civil Service Commission if they want to change the responsibilities to the Clerk.

The City Clerk said the City Charter, Section 5.2, says the City Clerk shall be the secretary ex-official of the Civil Service Commission. She does not know why that language is not referenced in Section 5.7 also.

Commissioner Cantrell asked the definition of the ex-officio secretary. He understands that the City Clerk is part of the Civil Service Commission and a non-voting member. The City Clerk said research showed that there are ex-officio members who take part in debates and votes. There are different things that an ex-officio member does. One city had an ex-officio finance member on a board that did not vote only because their City Charter said non-voting. She participates in the Civil Service Commission meetings and discussions. The City Charter does not state non-voting.

Chair Emblar said the City Clerk plays an important role and participates, which they welcome. In the business world language, the Clerk is an enabling and support organization, not a line organization. The Clerk is there to support the line people. The Commission reports to the City Manager, not through the Clerk.

Attorney Eschenfelder said every city clerk and county clerk essentially serves the same role. They are a supporting entity but are not meant to be a participating member of the various boards but are stakeholders they must listen to. Municipal and county clerks have a unique existence in the country. If the City Clerk were a member of the Board, there would be a potential dual office holding situation but not to an advisory board. The City Clerk said it is not considered dual office holding when both duties are stated in the City Charter.

Vice Chair Ponte said since they are talking about who is part of the Civil Service Commission, she would like to know why former HR Director Sean Lilly sat with them and participated in the meeting and the City Manager did not. She would like the City Manager to be involved in the same

capacity as the City Attorney and City Clerk, participating in the discussions and giving them advice. She would like them to discuss it at the next meeting.

Commissioner Cantrell said he had documentation where the Board of Commissioners in the past and the current have specifically stated they want a HR Director. That would be separate from the City Manager, but there are not enough hours for a full-time HR Director. He is certain that their decisions as a Civil Service Commission impacted their ability to do their job and how well the City will function. The Civil Service Commission is not doing its job if they do not have input. Commissioner Ponte said she would like them to discuss the expected participation level.

Chair Emblar said they have said that the City Manager will be there when possible. If the City Manager is not available, should they cancel the meeting, and if he is there, where does he sit?

Commissioner Cantrell presented his PowerPoint presentation. He said he only pulled out things specific to what the Civil Service Commission said, detailing what they would like them to do regarding the rules.

2018-08-20, Joint CSC and Charter Review Committee Meeting

- **Both committees agreed that the Civil Service Board needed more power to make decisions, especially regarding Grievances and Appeals.**
- **Arbitration steps must be in place, so all employees have due process if an employee is terminated. It specifically stated all employees.**

Commissioner Cantrell said at the August 8, 2018 Joint Meeting that Mr. John Hendricks was part of the meeting as a member of the Civil Service Commission, and Mr. Doug Andrews was part of it as a member of the Board of Commissioners.

Vice Chair Ponte asked if the information was obtained from meeting minutes and meeting videos. Commissioner Cantrell said it came directly from the minutes.

2019-07-12, Joint BOC, Budget Review, and CSC Meeting

- **The Personnel Policy has not been updated since 2014.**
- **Commissioner Andrews noticed that Article X, Disciplinary Action, had been removed from the Policy. The City Manager removed that section from the Policy without notifying the CSC.**
- **The Personnel Policy was returned to the CSC.**

Commissioner Cantrell said at the July 12, 2019 Joint Meeting with the Board of Commissioners, Budget Review Committee, and the Civil Service Commission, it was brought up that the personnel policy had not been updated since 2014. Commissioner Andrews had noticed that Article X, Disciplinary Action, had been removed from the policy. The City Manager had removed it without notifying the Civil Service Commission. The personnel policy was then returned to the Civil Service Commission for corrections. The City Manager should be involved in what is on

their meeting agenda and when they are having the meeting. Any type of grievance or information must be reported to the City Manager to share with personnel, and they must also report it to the Board of Commissioners.

2020-08-04, Joint BOC and CSC Meeting

- **The entire discipline section of the Personnel Policy had been removed. The BOC sent the document back to the CSC to continue working on it.**
- **The Labor Attorney offered to create a better version for the CSC to consider. The CSC members were to send their changes to the City Clerk. Commissioner Price would work as a liaison with the Labor Attorney to create the workable document.**
- **The document is to include a section on whistleblowing.**

Commissioner Cantrell said at the August 4, 2020 Joint BOC and CSC Meeting, the Board of Commissioners noticed that Article X, Disciplinary Action, still had not been put back in and sent the document back again to the CSC. The Labor Attorney offered to create a better version and created a whistleblower ordinance for the Board of Commissioners to approve.

2022-01-31, CSC Meeting

- **It had been 10 months since the last Civil Service Commission meeting: resignation, commissioner termed out, there were not 3 members to hold a quorum. The City Manager also delayed meetings as he wished the new City Manager to be present.**

Commissioner Cantrell said because of the delay, the City Manager should not be making those decisions.

2022-07-20, BOC Meeting: Civil Service Commission By-Laws

- **Vice Mayor Andrews acknowledged, "Problems have occurred with the grievance procedures and mistakes were made that had not been corrected. The Civil Service Commission conducts grievance hearings, and makes a recommendation to the City Manager, a Charter Officer. In one case, the grievance was found in favor of the employee and against the City Manager, and he ignored recommendation by Civil Service Commission and the Board of Commissioners did not act upon it. The grievance hearings are time-consuming, and the Civil Service Commission felt they had spent their time for nothing. They need more teeth to do their job so that does not happen again. A City Manager should not decide their own fate. If a Charter Officer files a complaint against an employee and the Civil Service Commission finds in favor of the employee, the complaint and recommendation should be given to the Board of Commissioners and not to the City Manager. The procedures need to be made by the voters or the Board of Commissioners could do it. That would change the dynamic and direction of it.**

- **Mayor Hendricks agreed with Vice Mayor Andrews and supported a change giving the Civil Service Commission more teeth. He was involved in the Civil Service hearing when that happened, and he was very disappointed in how it was handled and how the employee was handled. The Civil Service Commission is an impartial group, and if a complaint is found against the City in a grievance hearing, they need the ability to fight back when told their decision was meaningless.**
- **Mayor Hendricks read City Charter, Section 5-7, Personnel Systems, Civil Service Commission, Subparagraph A (p. 3 of 56, agenda packet): "Merit Principal. All appointments and promotions of City employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence."**
- **The Mayor said the department heads should be the ones determining whether an examination is needed, and he does not know if they give examinations to City employees. The City Manager said currently only fire employees are given examinations, written and physical.**
- **Mayor Hendricks read City Code, Section 2-126, Intent, (c), (p. 5 of 56, agenda packet): "The Civil Service Commission members also recommend cost of living increases and employee pay adjustments to the Board of Commissioners for consideration."**
- **The Mayor said that the department directors should determine the cost of living and pay adjustments for their employees, but since it is only a recommendation, he is okay with the language as is.**
- **Mayor Hendricks said if a Charter Officer brings a complaint against an employee and the Civil Service Commission finds in favor of the employee, then that should come before the Board of Commissioners and not to the Charter Officer that filed the charges. Attorney Mora thanked the Mayor for the clarification and said he would follow through with his colleague to ensure the best procedural mechanism to make the change.**

Commissioner Cantrell said he listed all four Charter Officers as at-will, the way they have it. Anyone else is a classified or a regular employee. To that extent, if the City Manager had a problem with one of his department heads, he would not want to interfere with him taking corrective actions. If the City Manager puts an employee's expectation in writing and the employee does not do that, the City Manager has the right to release that person. However, if the City Manager does that unfairly, that person has the right to come before the Civil Service Commission. They all say the same thing, so how do they resolve it? He looked at what was historically said and tried to figure out how they could make it happen based upon the things already brought up, which is why he is saying all employees.

Vice Chair Ponte said it seems like Commissioner Cantrell and the Attorney's language is different and a difference in opinion. So, they need to resolve it.

Chair Emblar said she would like to hear the recommendation of the Attorney if department heads should go to the Board of Commissioners or should it be changed to go to the Civil Service Commission.

Attorney Eschenfelder said philosophically his advice would be that a line be drawn between management and civil service-protected employees. His draft policy defines it as at-will. The first provision he has is that for purposes of the policy, the term at-will or serving at-will shall mean that employees holding positions designated by the Board of Commissioners as such serve at the will and pleasure of the City Manager. That includes but is not limited to all deputy or assistant City Managers, directors, deputy or assistant directors, division Managers, division chiefs, section managers, or trusted aides or assistants regardless of specific position title, which positions exist or may in the future be created. All employees directly reporting to the City Manager shall be deemed as directors for purposes of the policy, notwithstanding their actual title. A trusted aide is any employee working as an administrative assistant to the City Manager or one or more members of the Board of Commissioners. Absent City Charter or contract terms to the contrary, the City Manager and City Clerk serve at the will and pleasure of the Board of Commissioners subject to the terms of any employment contract to the contrary. That is his line drawn. However, the Board of Commissioners could give civil service protection to department directors. If it does, it could set up tension between the Manager and his or her senior management team. The City Manager would need the ability to require his or her directors to perform in the manner they want without them going before an advisory board. The employee, when hired, understands what is expected of them and their role and responsibility. The Board of Commissioners could choose to give directors civil service protection. If they should do that, he will revise the policy to state that and that the four Charter Officers appeal to the Board of Commissioners.

Vice Chair Ponte asked Commissioner Cantrell if it changed his opinion after hearing that from the Attorney. Commissioner Cantrell said no, he could add more to it.

Commissioner Tilka asked the Attorney if the City Manager could terminate an employee without cause. The Attorney said under his draft policy rules before the Civil Service Commission, the City Manager could terminate any of his direct reports, confidential employees, and executive assistants. The City Manager does not terminate people below the rank of his direct reports. He is recommending a tiered system where each director oversees his or her department, and each director makes the termination or suspension decisions subject to review by the Manager, and if it is a termination, it is subject to review by the Civil Service Commission. Each department head can have his or her own disciplinary philosophy. Some directors could be stricter than others. That would be fine by the courts as long as the department head is consistent and non-discriminatory in how they treat the people in their department. The rules must be applied equally in that department. Across departments, there could be differences of opinion, which is fine. The Civil Service Commission will review that.

Commissioner Tilka asked for a yes or no answer: Can a City Manager terminate an at-will employee without cause? The Attorney said yes. They have no appeal process.

Commissioner Tilka said he sat on the Civil Service Commission some years ago, and the Manager terminated two employees. Following the hearings of both employees, the Manager proceeded with termination, although they found in favor of the employees. The City Manager did not listen to their reasons. So, he is in favor of having more teeth for the employees.

Attorney Eschenfelder said they continue to be an advisory commission without a Charter amendment and cannot become the type of Civil Service Commission with the power to overrule the Manager.

Commissioner Cantrell said they would not overrule the Manager. They would come up with a fair and distinct decision and take that before the Board of Commissioners, which is their job. They are supposed to supply the information to the City Manager and requested to supply it to the Board of Commissioners. If they have to make a ruling based on their decisions, they are ultimately the ones to choose, but they must do the research and background to get it done. He was on the Board of Directors while working at Medical Education Technologies in Sarasota, Florida. If the boss wanted to let him go, he could have, but just like any other employee, he had the right to be treated fairly. If he is not doing his job, let him know. Put the expectations in writing and hold him to it. If it is at a director's level, they do not need to be given more than 24 hours. There should be significant expectations from that position. If they cannot uphold it and cause disruption to the rest of the workforce, remove the person from that position. But that person deserves the opportunity to go through the process everyone else goes through. When he was at Siemens Medical Solutions as a senior manager of field engineering, he had to make all sorts of decisions, and many of his employees worked in at-will states. However, although it was an at-will state, he still had to go through the documentation process if that employee needed to be terminated. If a new city manager comes in and he already does not like somebody, the person would be gone, and that is not fair practice. If the rule is in the employee manual that they are at-will and they are let go because someone did not like them, he is competent that they might come back and sue. It would make sense they at least have the authority to look at it first to determine what is or is not fair and provide their recommendation to the City Manager and the Board of Commissioners. They must decide to leave the City Charter as is or write in their rules that they provide their recommendation to the City Manager as required by the City Charter and go a step further and provide it to the Board of Commissioners. He does not think it is wise to put anyone in the position to file a grievance with the Board of Commissioners when the Board of Commissioners does not hire that person. It is the job of the Civil Service Commission to review that grievance, not the Board of Commissioners. If a Charter Officer wants to file a grievance, the Civil Service Commission should not have anything to say about it because the Charter Officers are hired and fired by the Board of Commissioners. The Board of Commissioners is the one to fire a Charter Officer if they are not doing their job. The Civil Service Commission should have something to say about everybody the City Manager hires and fires because the City Charter says they review grievances. They provide a recommendation to the Board of Commissioners. If they find against the City Manager, the Board of Commissioners should know about it. Vice Chair Emblar said that seems reasonable and valid.

Commissioner Tilka asked how the Civil Service Commission would get more authority, as Mr. Hendricks and Mr. Andrews suggested. Commissioner Cantrell said they would need to agree on a recommendation to take to the Board of Commissioners and request a vote by the citizens. If the

Board of Commissioners asks for more teeth, the only way to make it permanent is for the citizens to vote on it. The Civil Service Commission has the authority to request an amendment to the City Charter to change its rules.

Attorney Eschenfelder said Commissioner Cantrel and Vice Chair Ponte are going in the right direction in terms of amending the Charter. If the Civil Service Commission believes they should have actual authority to overrule or modify the Manager's discipline decisions, that needs to be a Charter amendment. Currently, the City Charter gives the authority to the Manager, who is hired by the Board of Commissioners, to hire and fire someone below them. If a majority of the Board of Commissioners feels that the City Manager fired someone unfairly, they could choose to terminate their contract. It would require a Charter amendment to change the procedure. Long ago, when he was the City Attorney for St. Petersburg, their Civil Service Commission had the authority to overrule a termination, and if they ruled in favor of someone, they got their job back. That is not how the Madeira Beach Charter reads.

Vice Chair Ponte said she would think the value of having the Civil Service Commission is to have a hearing to present the other side of the case. They must submit to the Board of Commissioners even though they are advisory. In essence, they are representing the employees against the City Manager. Commissioner Cantrell said they are representing the City, not the employees. They decide what is fair. Vice Chair Ponte said as the Charter is written, their unbiased opinion on a department head appeal or any of it is valuable, even in an advisory position. They could move forward with getting an amendment to the Charter, but they still have value as it is with having the appeal process and the review. Commissioner Cantrell said they need to decide whether they request an amendment or say that the department heads go through the appeals process with the Civil Service Commission. They give a report to the City Manager and give it to the Board of Commissioners.

Commissioner Tilka said even if the Board of Commissioners decided the employee should be reinstated the Manager can still go ahead and terminate. Vice Chair Ponte said they seem to be on the same page. They want to address that. Chair Emblar said she does not know if they are on the same page but does want to address it. To simplify it, they only talked about what happens to department heads or directors. Vice Chair Ponte said Commissioner Tilka is asking to amend the Charter for them to have the final say and can overturn a regular employee's termination. Commissioner Cantrell said Tampa's Civil Service Commission can do that. Chair Emblar said that is another issue outside the ordinance. Commissioner Cantrell said they need to decide what they want to do because it impacts the ordinance. That is what they are trying to get at; what do they want to do? He does not know the process to request a Charter amendment.

Attorney Eschenfelder said there are two distinct issues. The Commission can deal with the first issue through a combination of the ordinance and the personnel policy. If they want to recommend that every employee, no matter how high ranking except for the Charter Officers, can appeal to the Civil Service Commission for an advisory opinion if they get terminated. Then, the advisory opinion gets given to the Manager and the Board of Commissioners. That could be written in the personnel policy. The only issue with that is they would be raising an expectation among those employees that if they agree with their position, the Manager would be forced to change his mind,

which is not the case. That gets to the second distinct legal issue: Do they want authority to overrule the Managers' discipline decision? That would require a Charter amendment.

Commissioner Cantrell said if they brought a grievance or appeal to them, they should be able to report that to the Board of Commissioners because the Board of Commissioners employs the Manager. If the Manager is firing somebody for an unjust reason, they need to know it anyway. It does not matter if they overturn it; the Board of Commissioners still needs to know there is a problem, a bigger issue.

Vice Chair Ponte said she agrees with Commissioner Cantrell on it. Hearing both sides, she agrees with the Attorney in the sense that, yes, managerially, it is appropriate for the Manager to be able to make decisions and to hire and fire. Ideally, those are sound, without bias or any other reason that could come back to them for litigation. However, it could be that the City Manager is wrong. In those instances, it seems reasonable for a department director to go through the process. She does not see why that would be a problem with the regular expectations. The same relationship would still exist. It would only be a problem if there were something out of line. An appeal process would only be used in a very extreme process. It should be negligible almost.

Commissioner Tilka said he could go along with reporting to the City Manager and the Board of Commissioners, which is how it should go. If there is a complaint against the Manager, it should go to the Board of Commissioners.

Chair Embley said there is no appeal process for a department head terminated, but could they hire an attorney to defend them to seek their job back? The Attorney said they could hire an attorney to file a lawsuit that they were terminated for an unlawful reason. They are still protected by all the civil rights laws, such as Title VII, race discrimination, disability discrimination, and gender. The Americans with Disabilities Act covers them; they could say they were terminated for First Amendment retaliation, and there are a lot of state and federal civil rights laws that at-will employees can invoke. The key difference is that they do not have a property interest in their job. There must be just cause for terminating the employee. That is the line drawn between the civil service-protected and at-will groups. The Civil Service Commission can say that even the at-will group can still come and make a case that they shouldn't have been terminated, and if they agree, they can develop a report agreeing they should not have been terminated, and that gets sent to the Manager and the Board of Commissioners. If the Civil Service Commission decides to do that, the director must understand that unless the Charter is changed, it doesn't change the fact they are still terminated.

Commissioner Tilka said if they cannot get a referendum to go forward, he would be inclined to go with Commissioner Cantrell's recommendation.

Vice Chair Ponte asked the City Clerk if it were to be extended and written in the policy, would it cause any difference in managerial style? As a manager in her profession, it would not. The City Clerk said she did not believe it would cause a problem if done fairly. Any side of the party could be abusive to it. In the Civil Service Commission policy, the City Manager and the employee are expected to do what they are supposed to do. If an appeal is filed, the Civil Service Commission would be doing due diligence by listening to both sides and making their recommendation to the

City Manager and Board of Commissioners based on that. Employees can also go to the Civil Service Commission if they feel they might be getting terminated, and it has not happened yet. The Civil Service Commission is like a mediator, listening to both sides settling that way and giving the recommendation to the City Manager.

Chair Emblar asked if the language in the ordinance should include all employees or should remain that all at-will are not included. She asked for a motion. Commissioner Cantrell said he considers at-will as the four Charter Officers hired by the Board of Commissioners. Commissioner Tilka said at-will would mean all employees.

Vice Chair Ponte asked the Attorney who in the City is at-will by his definition. The Attorney said at-will means employees holding positions designated by the Board of Commissioners as such serve at the will and pleasure of the City Manager and includes but is not limited to all deputy or assistant City Managers, directors, deputy or assistant directors, division Managers, division chiefs, section managers, or trusted aides or assistants regardless of specific position title, which positions exist or may in the future be created. All employees directly reporting to the City Manager shall be deemed as directors for purposes of the policy, notwithstanding their actual title. A trusted aide is any employee working as an administrative assistant to the City Manager or one or more members of the Board of Commissioners.

Commissioner Tilka asked if all regular employees were at-will. The Attorney said they are technically because the Civil Service Commission has no power to reinstate. Commissioner Cantrell said they want to make sure that all employees who feel they were unfairly terminated can appeal to the Civil Service Commission. They listen to both sides of the information and determine whether the employee was terminated fairly or not. They provide the findings to the City Manager and Board of Commissioners. The Board of Commissioners decides if the employee is or is not reinstated.

Vice Chair Ponte asked the City Manager if the department directors should be allowed to enter an appeal process. The City Manager said no. The City Manager should still have the authority to hire and fire. To change that it would require a different form of government. Department directors should not be able to appeal against the termination. Department directors should have an employment agreement with their employees, so they know their expectations. The Board of Commissioners hires their CEO based on their qualifications. The Vice Chair asked what happens if the Board of Commissioners does that and the City Manager does not do what he is supposed to do. The City Manager said they need to get a new Board of Commissioners because they are responsible for hiring the right person. It is properly managing the employees and providing clear expectations.

Commissioner Cantrell said the City Manager is asking to change the entire process. They would have to write additional procedures to accommodate a contract. Other employees have it, which is done through the Board of Commissioners. The City Clerk said employees are hired to do a job. They sign a document accepting the position. That is a service contract stating they will do what is expected. Commissioner Cantrell said if the person does not do the job hired to do, they get terminated. Department directors must document what did not happen. The City Manager needs a significant degree of latitude regarding a director. If a director does not do what they are supposed

to do and causes disruption, the City Manager has a right to terminate that director. Still, that does not take away their right to an appeal if something else happened. As stated on August 8, 2018, in the Joint Civil Service Commission Meeting with the Charter Review Committee, arbitration steps must be in place, so all employees have due process if an employee is terminated. It specifically stated all employees.

Chair Emblor told Commissioner Cantrell that he cited people from 2018 who are not part of the current Board of Commissioners. Their philosophy does not count. Vice Chair Ponte said it was not about philosophy. The idea is to prevent something that happened in the past multiple times. There was an ability to do something to prevent that. Now, they are trying to have the ability to prevent that from happening again.

Chair Emblor said the two employees went through the regular process. The problem they are trying to solve has never happened before. What happens to a department head if a City Manager decides to fire them? They've heard from the Attorney, who said it should stay status quo, and the City Manager, who said he would be a good leader. At that high level of the organization, they must trust that. Anything below that is spelled out. They are civil service employees. They can appeal to the Civil Service Commission, so they are involved.

Commissioner Cantrell said he read the last six years' documents that were sidestepped. The Board of Commissioners had asked for additional steps to ensure that what happened previously does not happen again. Do they make sure it does not happen to a few or all employees? It has been routinely addressed as 'all employees.'

Attorney Eschenfelder said they really would not be changing what happened back then. It would still happen unless the voters give the Civil Service Commission the authority to overrule a Manager's employment decision. Those two people who had disputes did get to come before the Civil Service Commission. The problem was, as he understands it, that the City Manager utterly ignored the process and chose not to listen to what the Civil Service Commission had to say and forged ahead and did what he did. The voters would need to give the Civil Service Commission or the Board of Commissioners the authority to overrule.

Commissioner Cantrell said they are trying to address how to take care of it right now. It has to be the Civil Service Commission or the Board of Commissioners to have the ability to overturn it when something has been wrong. The Chair said there was a third option that they not be involved. Commissioner Cantrell said per Charter Section 5.7, they are supposed to be involved. It says they are supposed to hear grievances, which are now appeals. Only four employees are employed by the Board of Commissioners directly. Everyone else is under the guidance of the Manager. Based on what the Attorney is telling them, do they want the authority to overturn a decision by the Manager, or do they want to ask the Board of Commissioners to have that authority? It is one or the other.

The City Manager said his concern would be that they are trying to remove the authority from the Manager. The Vice Chair said they should only be involved when somebody has done something incorrectly because it has happened historically, which they are trying to prevent. The City Manager said it did not happen to a department head. Commissioner Cantrell said it could.

Commissioner Cantrell said, as he stated before, he has been in companies where he was a director, and only one person was above him. In those cases, if they wanted to eliminate any director, they still had to go through the same process and document what was happening. They could not just fire them. Commissioner Ponte said they like to think things through. It is not that they would not support a correct decision. They are trying to prevent anything that would come back as an issue and a liability. That is what they are after and to prevent liability.

Commissioner Cantrell said the Attorney had said if, through the appeal process, they agreed with the employee they had unfair treatment, they send it to the Board of Commissioners, there is still no process to rehire an employee. The Vice Chair said that is reality, and she would like to put it to a workshop. There is value in their history, and they do need more teeth. They should have a workshop to discuss that. Commissioner Cantrell and Commissioner Tilka said they agreed.

Chair Emblar said they are an advisory group, and the Board of Commissioners needs to hire competent people. The Civil Service Commission does not need more teeth but instead needs to trust the people. They mentioned before they did not need much teeth. What has changed now to have more teeth? Commissioner Cantrell said it was probably because they now know the historical information they asked him to research. He presented that. He read six years of documents.

Commissioner Tilka said they need more teeth. He would like to find a way to do it without a Charter amendment, but there is not. The City Clerk said they and the Board of Commissioners always brought it up. Nothing has ever been put on the agenda to make that happen.

Vice Chair Ponte asked the City Clerk if they have always been an advisory Commission. The City Clerk said yes, but their advisory opinion is based on court cases or whatever may have happened to reach the recommendation to the City Manager. The opinions are like those of the Attorney General. The City Manager said it had read the same for a long time. The Charter can only be changed by referendum. Before a referendum occurs, an ordinance puts the referendum to the voters. If the voters approve the referendum, the ordinance would be codified in the Charter. In a workshop, the Board of Commissioners would listen. If it were to be a Charter amendment, the City Attorney would write an ordinance for the Board of Commissioners to approve to put the amendment on the ballot for voter approval.

Commissioner Ponte motioned to have a workshop meeting with the Board of Commissioners to do that. The Attorney asked that the motion be for a joint meeting.

Commissioner Ponte motioned to host a joint meeting with the Board of Commissioners to understand the option to make a referendum to the City Charter. Commissioner Tilka seconded the motion.

ROLL CALL:

Vice Chair Ponte	"YES"
Commissioner Tilka	"YES"

Commissioner Cantrell	"YES"
Chair Emblar	"YES"

The Motion carried 4-0.

The City Clerk said she would put it on the agenda for the Board of Commissioners to set a date.

Ordinance 2023-06, Civil Service Rules

Chair Emblar said of the three issues, they resolved one, changing grievance to appeal. She would like to resolve the issue of the role of City Manager and City Clerk. She asked who oversaw scheduling and canceling meetings. She has always seen it as a joint decision. The City Clerk said the City Manager's office and the City Clerk's office work together in scheduling meetings. The Civil Service Commission is supposed to set its meeting calendar for the year and the items they wish to discuss so everyone is aware. If there is nothing to discuss, the meeting gets canceled. Commissioner Cantrell said the City Manager should not be the one canceling their meetings. The Chair or the Vice Chair needs to be in that loop.

Commissioner Cantrell said on the first page of Ordinance 2023-06, shown on Page 11 of the agenda packet, that the language in red was only for his notes and did not need to be there.

Attorney Eschenfelder said that 2-127 (g), Page 13 of the agenda packet, says that members of the Civil Service Commission shall schedule in advance quarterly meetings. However, if the Chair, in consultation with the City Manager, determines that there are no agenda items to discuss in the scheduled meeting, the Chair is authorized to cancel the scheduled meeting and instruct the City Clerk, acting as ex officio secretary, to notify the members of the cancellation. In addition to its scheduled quarterly meetings, the Civil Service Commission shall promptly schedule hearings on employee post-termination appeals. The City Manager or their designee may request unscheduled meetings to discuss personnel matters that cannot wait until the next regularly scheduled meeting. Commissioner Cantrell said the language in the ordinance also says that it will be at the behest of staff in collaboration with the Chair of the Civil Service Board. That language is stricken out and should not be.

Chair Emblar asked Commissioner Cantrell if, in paragraph (g), he wanted to replace where it says City Manager with ex officio secretary. Commissioner Cantrell said he did not want to exclude the City Manager, although the former City Manager prevented things from happening inside the Commission and should not have. The City Manager should always be able to give them input. Chair Emblar said the discussion should be with the City Manager, not the City Clerk. The Clerk is an enabling body. Commissioner Cantrell said he was okay with that as long as the Chair decided to cancel the meeting and not the City Manager. He did not want the Chair to lose the authority to cancel a meeting. The City Clerk said there were only two instances where they had to cancel a meeting: one was when there was a storm and a hurricane, and the other was because there would not be a quorum.

Chair Emblar asked Commissioner Cantrell if he wanted to change City Manager to City Clerk in 2-127 (g) where it says any other unscheduled meetings may be requested by the City Manager or

his or her designee through the Civil Service Commission chair. Commissioner Cantrell said he was okay with that as long as it reads that way. The City Clerk said they also have to check with her because the City Clerk is required to be at the meetings. The consensus of the Civil Service Commission was to keep the Attorney's version of paragraph 2-127 (g).

Chair Emblar said in Commissioner Cantrell's version that paragraph ~~(h)~~(g) is stricken. She asked if they wanted to keep the language in that section that says the City Manager shall coordinate with the Civil Service Commission chairperson and the human resources coordinator to choose and set meeting dates and times before a meeting is noticed. Vice Chair Ponte said that would be a conflict. Why would the City Manager be scheduling their meetings if it is their regular meetings? The Civil Service Commission should choose their meeting dates and times. They are allowed to meet without the City Manager, who is not responsible for scheduling their meetings. The Attorney said the "City Manager shall coordinate" is already the current language. He is the one that has to bring the resources to bear. Commissioner Cantrell said that the five commissioners are doing the coordination for normal meetings and would like it to read that way. The Chair said they could say that the Civil Service Commission chairperson coordinates with the City Manager.

Commissioner Ponte suggested they bring the meeting to a wrap and continue the discussion at their next meeting. The Chair said they would put paragraph ~~(h)~~(g) on hold to think about.

Chair Emblar said Commissioner Cantrell wants to change City Manager to ex officio in paragraph ~~(h)~~(j), where it says the City Manager and the chairperson of the Civil Service Commission shall coordinate and agree on all agenda items prior to the civil service commission meetings. That should be the City Manager because they are dealing with personnel issues. The personnel people report to the City Manager and not the City Clerk. The City Clerk is an enabling organization.

Commissioner Cantrell said when he added his edits, the whole idea was for the City Manager not to make their decisions for them, and he knew that the City Clerk was the one who coordinated the meetings. He wanted to ensure they were not taking the authority away from themselves. They can retain it but not exclude the City Manager or human resources. Vice Chair Ponte said she agreed with Commissioner Cantrell on some of it because whenever they have some conversation where they are not in agreement, it usually falls back on what the rules are in the City Charter. She would like it made to support them and what they need to accomplish. She does not want to see what happened in the last year and a half happen again. The meetings were canceled, which prevented the Civil Service Commission from meeting. She would like that considered because a lot of time was wasted on their behalf.

Chair Emblar said in paragraph ~~(k)~~(l) that Commissioner Cantrell wants to change the City Manager to ex officio secretary, where it says that prior to each Civil Service Commission meeting, the City Manager and the commission Chair shall confer on the agenda and determine if the City Attorney's attendance would be necessary or desired. The City Manager is in a better position to determine that. Commissioner Cantrell said it should be the Chair in consultation with someone else to determine that because, in the past, having an attorney was the Manager's decision. Miranda was fired, and there was no alternative to his decision. In paragraph ~~(k)~~(l), it says that the city attorney shall be the primary legal advisor to the Civil Service Commission on all matters of municipal law, and if the Civil Service Commission should require specialized labor or

employment counsel of a nature the city attorney cannot provide, the City may within established budgets provide additional specialized counsel. The City Manager should not be involved in what Attorney is in the meeting. It should be up to the Civil Service Commission when having problems with counsel to go directly to the Board of Commissioners and request an attorney to help. It would be up to the Board to get them that legal counsel.

Chair Embler said they had identified four areas, and there could be more where they disagree with the roles and responsibilities, taking things away from the City Manager and giving them to the Clerk. Commissioner Cantrell said after they discussed it, he agreed that it should not be changed in some areas. Chair Embler said they could continue discussing the four areas of differences at another meeting.

Commissioner Cantrell said it is important not to overlook that they need to be in control of what is happening. They do not need to relinquish that to any other person, or otherwise, they lose the ability to make the decisions that need to be made. He does not want to downplay anyone because they have good people employed, but they do not want past instances to reoccur should people leave their positions. It is their job to make sure that does not happen again. Vice Chair Ponte said she agreed.

5. NEW BUSINESS

6. NEXT MEETING – September 13, 2023; 3:30 p.m. to 5:30 p.m.

The Civil Service Commission scheduled a Joint Workshop Meeting with the Board of Commissioners and the Civil Service Commission at 4:00 p.m. on Monday, September 18, 2023, to discuss their options to put a referendum on the ballot to amend the City Charter.

Commissioner Tilka asked the City Clerk to come up with rules of appeal and look at other communities to see how they go about it. The City Clerk said she already had some information from other cities when asked to work on it before the Civil Service Commission stopped meeting for a while. She would add the item to their list for discussion and provide the information well in advance to allow them time to review it before they meet to develop their appeal process rules. Attorney Eschenfelder said he could also provide some information. Commissioner Tilka and Commissioner Cantrell said both would be helpful.

Chair Embler said they will finish up on the Attorney's version of the handbook at their next meeting on September 13, 2023, at 3:30 p.m. and then circle back around at the beginning and go through it. The City Clerk will check with the Board of Commissioners to see if they can get together in a Joint meeting with the Board of Commissioners on September 18, 2023, at 4:00 p.m. to specifically discuss a possible Charter amendment ordinance and who should be included under their purview.

7. ADJOURNMENT

Chair Gene Embler adjourned the meeting at 6:09 p.m.

ATTEST:

Gene Embler, Chair

Clara VanBlargan, City Clerk/Secretary Ex-Officio

DRAFT



MEMORANDUM

TO: Civil Service Commission

FROM: Clara VanBlargan, City Clerk/ Secretary Ex-Officio for the Civil Service Commission

DATE: September 7, 2023

RE: Madeira Beach Personnel Policy “Draft”

Background

Per City Charter, Section 5.7 Personnel Systems; Civil Service Commission, C. Personnel Rules, the Civil Service Commission is required to prepare personnel rules, provide them to the City Manager for review and concurrence, and then forward them to the Board of Commissioners to adopt with or without amendments.

At the July 11, 2023 Civil Service Commission meeting, the Commission voted 3-0 to discontinue the 2019 version and continue with the 2020 Eschenfelder version that was 60% completed. Chair Emblar said they needed to spend time updating the attorney's version with what they agreed to put in the policy so far to ensure it is there. She asked the City Clerk to send the 2020 version they had been working on within the next few days that is 60% completed. Attorney Eschenfelder said he would send the Word version to the City Clerk to send to them. The City Clerk did not receive the 2020 document in Word version from Attorney Eschenfelder.

At the August 8, 2023 Civil Service Commission meeting, the Commission discussed the 2020 personnel policy and made changes, starting with XXIV. Uniforms on Page XXIV-1 of the document through XXV, J. Loss of or Failure to Obtain Professional Certification or License on Page XXV-4 of the document. The Commission agreed to continue from there at the next meeting and then circle back around to the beginning and work their way through the document at each meeting until completion. At this meeting, the Civil Service Commission voted to use the newest version of the policy from Attorney Eschenfelder. He said he would make the changes made at the meeting to the new version and forward it to the City Clerk to send to the Commission. The City Clerk did not receive the newest version of the personnel policy from Attorney Eschenfelder.

Because the City Clerk did not receive the newest version of the policy from Attorney Eschenfelder, the City Clerk incorporated the changes made at the August 8th meeting into the 2020 version. If there are any corrections to be made they can be made at the meeting. The City Clerk can continue making the changes or Commissioner Ponte can make the changes at the

meeting as she suggested. When the document has been completed it will contain all changes made by the Civil Service Commission.

Attachments:

Madeira Beach Personnel Policy 2020

MADEIRA BEACH BOARD OF COMMISSIONERS

PERSONNEL POLICY, RULES, AND PROCEDURES MANUAL



ADOPTED BY THE BOARD OF COMMISSIONERS ON _____, 20____

EFFECTIVE DATE _____, 20____

TABLE OF CONTENTS

SECTION	CHAPTER-PAGE
GENERAL POLICY STATEMENT.....	i
Equal Employment Opportunity	ii
I. EMPLOYMENT.....	I-1
A. Non-Temporary (Regular) Employment	I-1
B. Temporary Employment	I-3
C. Joint Employment	I-5
D. Employment of Relatives (Nepotism).....	I-6
E. Re-Employment and Disqualification.....	I-7
II. PERSONNEL FILES	II-8
A. File Location and Content	II-8
B. Access to and Retention of Official Personnel Files.....	II-10
III. PROBATIONARY PERIOD	III-1
IV. PAY, HOURS OF WORK AND WORKWEEK	IV-1
A. General Policies	IV-1
B. Allocation of Work Hours, Workweek and Work Period	IV-2
C. Pay Eligibility	IV-4
D. Work Time Records and Emergency Compensation	IV-8
E. Salary Basis Compensation Questions	IV-10
F. Forms	IV-11
V. CLASSIFICATION AND PAY PLAN	V-1
A. General Policies	V-1
B. Administration	V-2
C. Application.....	V-3
VI. HOLIDAYS	VI-1
A. Administration	VI-1S
B. Listing of Holidays.....	VI-2
VII. LEAVES OF ABSENCE	VII-1
A. Vacation Leave	VII-1
B. Sick Leave.....	VII-4
C. Personal Medical Appointment Leave	VII-9
D. Bereavement Leave	VII-10
E. Military Leave.....	VII-11
F. Jury Leave	VII-13
G. Witness Leave	VII-14
H. Disability Leave	VII-15

TABLE OF CONTENTS

SECTIONCHAPTER-PAGE

I. Domestic Violence Leave..... I-18

J. Leaves of Absence Without Pay VII-19

K. Family and Medical Leave Act of 1993 (FMLA) VII-20

L. Judicial Leave VII-30

VIII.ABSENCE WITHOUT AUTHORITY.....VIII-1

IX. NON-DISCIPLINARY SEPARATIONS FROM CITY EMPLOYMENT..... IX-1

 A. Resignation..... IX-1

 B. Retirement IX-2

 C. Death IX-3

 D. Layoff..... IX-4

 E. Disability Separation/Reasonable Accommodation..... IX-7

 F. Alternate Employment Program (AEP) IX-8

X. CODE OF ETHICS FOR OFFICERS AND EMPLOYEESX-1

XI. DISCIPLINE AND DISCHARGE XI-1

 A. General Provisions XI-1

 B. Grounds for Discipline or Discharge XI-2

 C. Progressive Discipline..... XI-6

 D. Appeal Process XI-8

XII. EMPLOYEE COMPLAINT PROCEDURE XII-1

 A. Definition of Terms..... XII-1

 B. General Provisions XII-2

 C. Procedural Steps..... XII-3

 D. Prohibition Against Retaliation..... XII-4

XIII.ILLEGAL DISCRIMINATION OR HARASSMENTXIII-1

 A. PolicyXIII-1

 B. Definitions.....XIII-1

 C. ProcedureXIII-2

XIV.LABOR-MANAGEMENT RELATIONS..... XIV-1

XV. EMPLOYEE RECOGNITION PROGRAMXV-1

XVI.EMPLOYEE PERFORMANCE EVALUATION SYSTEM XVI-1

XVII.OUTSIDE EMPLOYMENT, ENTERPRISE, BUSINESS XVII-1

XVIII.POLITICAL ACTIVITY.....XVIII-1

XIX. SAFETY XIX-1

TABLE OF CONTENTS

SECTIONCHAPTER-PAGE

XX. DRUG-FREE WORKPLACE PROGRAMX-1

 A. Purpose, Scope and Prohibitions.....XX-1

 B. Drug and Alcohol Testing ProgramXX-3

 C. Consequences of Positive Test ResultsXX-15

 D. Awareness and Education ProgramXX-17

 E. RehabilitationXX-18

XXI. PROFESSIONAL DEVELOPMENT..... XXI-1

XXII. TRAVEL TIME..... XXII-1

XXIII.WORKPLACE VIOLENCE AND THREATS.....XXIII-1

XXIV.UNIFORMS XXIV-1

XXV.MISCELLANEOUS POLICIESXXV-1

 A. Departmental Rules.....XXV-1

 B. General Appearance and Work AttireXXV-1

 C. City PropertyXXV-1

 D. City Communications EquipmentXXV-1

 E. Address and Telephone NumberXXV-1

 F. Solicitation of Contributions, Memberships, or Business.....XXV-2

 G. Statements by City Employees to Attorneys, Law Firms, or Others Concerning Employees or City BusinessXXV-2

 H. Media Relations, Requests for Interviews.....XXV-2

 I. Recording Workplace Communications Prohibited.....XXV-3

 J. Loss of or Failure to Obtain Professional Certification or License.....XXV-3

 K. Searches on City PropertyXXV-4

 L. Employee Arrest or Charge.....XXV-4

 M. Use of Tobacco and E CigarettesXXV-4

 N. City Bulletin Boards and Common Areas.....XXV-4

 O. Communicable DiseasesXXV-5

 P. Inventions and Intellectual PropertyXXV-5

 Q. Letters of ReferenceXXV-5

 R. Funds Owed by Employees; Debt Collection CallsXXV-5

XXVI.USE OF CITY VEHICLES & USE OF PRIVATE VEHICLES FOR CITY BUSINESS..... XXVI-1

GENERAL POLICY STATEMENT

Excellence in government public service is attained, in part, through personnel systems that reflect merit principles and sound administrative management. It is the intent of Madeira Beach's Board of Commissioners that its Personnel Policies, Rules and Procedures Manual provide firm and clear direction to its employees. To this end, every reasonable effort is made to protect the personal rights and privileges of individual employees.

Furthermore, it is the intent of the Board of Commissioners that no unlawful discrimination exist in the application and administration of any Madeira Beach Board of Commissioners' policy, practice, rule or regulation.

The City Manager, through the City department directors, in coordination with the Human Resources staff, is charged with ensuring that the provisions of this Policy are implemented and made known to the employees of Madeira Beach Government.

Executive contract employees hired by the Board of Commissioners shall have the same authority and responsibility as the City Manager, where cited, in matters pertaining to this Policy, unless specifically excluded by Contract or Resolution.

These Personnel Policies are not and shall not be considered an employment contract with any person. Nothing herein is intended to create an employment contract between the City and any person for the purposes of employment, promotions, or for the providing of any benefit.

The provisions contained within this Manual are and shall be considered as part of the terms and conditions of employment of all regular employees with Madeira Beach and should thus be adhered to by all regular City employees. Madeira Beach reserves the right to establish, modify, or make exceptions to these rules when necessary. Any question concerning the interpretation or application of these rules shall be referred to the Human Resources staff for resolution.

Madeira Beach may, from time to time, designate certain positions, such as part time, temporary, initial probationary, managers or directors, as serving at the will of the City Manager and exempt from "regular employee" status. In such cases, the provisions within this Manual regarding regular employees, including just cause and disciplinary appeals, are inapplicable.

Madeira Beach endeavors to include a comprehensive overview of the rules and policies governing employment with Madeira Beach within this Personnel Policy Manual. However, there may from time to time be additional personnel rules or policies issued by the Board of Commissioners. The City Manager or a particular department head may also issue additional rules so long as such additional rules do not conflict with the provisions in this Manual. All such additional rules shall also constitute a part of the terms of employment. Violation of any provision of any such additional rules will subject an employee to discipline.

If a direct conflict exists between policies and procedures included in these rules and a current labor agreement to which the City is a party, the terms and conditions of the labor agreement shall take precedence for employees in classifications represented by a bargaining agent, whether the rights and benefits are greater or less than those provided in these rules.

Equal Employment Opportunity

It is the continuing policy of the Board of Commissioners of Madeira Beach, Florida, to promote the concepts of equal employment opportunity in its employment function and to comply with all federal, state and local laws, rules and regulations pertaining to fair employment practices.

1. All employees and applicants for employment will be treated fairly with respect to all terms and conditions of employment regardless of race, color, religion, national origin, ancestry, gender, age, marital status, or physical or mental disability which does not preclude the performance of the essential functions of the job with or without reasonable accommodation(s).
2. All personnel opportunities and decisions related to employment, promotions, transfers, reclassifications, compensation, benefits, performance ratings, training courses and programs, layoffs, returns from layoff, terminations, and all other aspects of employment with Madeira Beach will be in accordance with the principles of the merit system, which afford equal opportunity by imposing only valid requirements.
3. The Board of Commissioners reaffirms its commitment to equal employment opportunity through a formal Affirmative Action Program.
4. Employees who allege that they have been unlawfully discriminated against or treated unfairly in the application or employment process must follow the steps outlined in the policy on Illegal Harassment or Discrimination, as described in Section XIII of this Policy. Non-employee applicants and applicants for temporary employment alleging unlawful discrimination must complain in writing to the Human Resources Staff, who will conduct an investigation in accordance with the applicable portions of this Policy.

I. EMPLOYMENT

Section: I-A

A. Non-Temporary (Regular) Employment

I. EMPLOYMENT**A. Non-Temporary (Regular) Employment**

1. In the interest of hiring "best qualified and available" people to meet City employment requirements, and to avoid favoritism in hiring practices, the Human Resources Department is responsible for ensuring that all interested applicants have an equal opportunity to apply for City employment.
2. Notices of open positions will be published interdepartmentally and/or publicly according to the department's request and concurrence of the Human Resources Department. Notwithstanding the foregoing, where a department director or other official with hiring authority determines that a particular candidate is fully qualified for a position (for instance where an intern or employee in acting status has been working successfully in the position for some time), the Human Resources Staff may authorize that candidate to be offered the position without the need to post the position. However, to prevent undue favoritism or nepotism and ensure a diverse, well qualified work force, this exception should not be regularly used in place of posting opportunities and allowing candidates to apply.
3. Applicants for City employment apply to the Human Resources Department in the form and manner, including electronic application submission, as the Department designates. Applicants who make initial contact with an individual City department and/or applications/resumes received by other City departments shall immediately be directed to the Human Resources Department. The Human Resources Staff or designee may grant exceptions for certain special programs.
4. Applications are accepted for announced openings during the published advertising period.
5. Once a position has been filled, the position is closed. Should one or more of the same position come open again within ninety days after first being filled, a department may make an offer to the next most qualified candidate from among the original applications. Alternatively, or if the vacancy arises more than sixty days later, the position will, absent an exception approved by the Human Resources Staff, be re-advertised and new applications sought.
6. Employees chosen for interview for other City jobs will be allowed to interview during work hours if necessary. Departments shall work with the employee to make reasonable adjustments to the employee's schedule to permit the interview. If the interview takes place during the employee's scheduled work hours, the time will not be paid, and employees should use available vacation leave for such purposes. All other interviews are unpaid.
7. The Human Resources Staff may establish eligibility registers for positions as required by turnover frequency or other recruitment issues. Positions that are identified by departments or the Human Resources Department as being vacant on a regular basis or having certain recruitment needs, may have an eligibility register of qualified applicants established. The Human Resources Staff is responsible for establishing the registers in accordance with the City's policy of non-discrimination.

I. EMPLOYMENT

Section: I-A

A. Non-Temporary (Regular) Employment

8. No employee may begin activities associated with working for the City, including engaging in post-offer screening activities, until the candidate signs, electronically or otherwise, a conditional offer of employment. No term or condition of employment, including matters of pay, bonuses, expense reimbursement, or other similar matters, shall be effective unless included within a conditional offer of employment.
9. The City Manager and Human Resources Staff are authorized to adopt such forms and procedures as are deemed necessary to effectively implement these employment policies and to conduct such pre-employment screening as may be either legally or administratively required, including background and reference checks and physical or psychological examinations related to job functions. For any position requiring a pre-employment, post-offer examination, it shall be job-related, and given uniformly to all candidates conditionally offered the position. Candidates must meet/satisfy any established screening requirements and any candidate who fails to do so may be denied employment. In addition to the foregoing, for any City position requiring interaction with law enforcement personnel, records or other matters, access to secure facilities, or otherwise required to pass background standards promulgated by a regulating agency with jurisdiction over such records, personnel or facilities, employees holding such positions must be able to pass the relevant standards and their inability to do so will disqualify them from continued employment.
10. For purposes of this Policy, the term “at-will” or “serving at-will” shall mean that employees holding positions designated by the Board of Commissioners as such serve at the will and pleasure of the City Manager, and includes, but is not limited to, all deputy or assistant city managers, directors, deputy or assistant directors, division managers, division chiefs, section managers, or trusted aides or assistants, regardless of specific position title, which positions exist or may in the future be created. All employees directly reporting to the City Manager shall be deemed as “director” for purposes of this Policy notwithstanding their actual title. All employees directly reporting to a director shall be deemed as “division manager” notwithstanding their actual title. A trusted aide is any employee working as an administrative assistant to the City Manager or to one or more members of the Board of Commissioners. Absent City Charter or contract terms to the contrary, the City Manager, City Clerk and City Attorney serve at the will and pleasure of the Board of Commissioners subject only to the terms of any employment contract to the contrary.
11. All volunteers are not City employees for any purpose. However, pursuant to Florida Statutes § 440.02 provides eligibility for certain worker compensation benefits for municipal volunteers. Therefore, City volunteers must comply with all related City accident or injury reporting procedures.
12. Employment of persons under 18 years of age in either regular or temporary positions shall be subject to and in accordance with applicable child labor laws.
13. To ensure compliance with the Affordable Care Act, when an employee formerly eligible for health benefits leaves the City’s employ for any reason, he/she shall be ineligible for re-hire until the former employee has been separated from the City for a minimum of thirteen (13) weeks.

I. EMPLOYMENT

Section: I-B

B. Temporary Employment**B. Temporary Employment**

1. Temporary employment, for purposes of this Policy, shall include:
 - a. OPS regular (Other Personal Services) positions (including non-student interns) which cannot extend beyond six (6) consecutive calendar months.
 - b. OPS on-call positions where employees are called unexpectedly, on an as-needed basis, to complete a specific task or assignment.
 - c. OPS Seasonal positions where employees work a seasonal assignment (such as summer camp or pool guard).
 - d. OPS Intern positions follow guidelines provided in Section I.B.3. of this Policy.
 - e. Other temporary employment programs, not specifically defined herein, shall be considered at the option of the Human Resources Staff in compliance with any federal, State or local laws, rules or regulations governing such programs.
2. Unless waived by the Human Resources Staff, employment procedures described in Section I.A of this policy shall apply to employees hired in temporary positions with the exception of temporary employees defined in Section I.B.1.d.e. of this Policy.
3. Interns
 - a. The City provides internship opportunities for students to experience work in City government that is relevant to their educational goals and objectives or personal career interests, and to non-students seeking to experience working in a City position.
 - b. Recruitment of interns shall be conducted through the City's regular recruiting procedures, outlined in this section, unless otherwise approved by the Human Resources Staff.
 - c. Interns shall not be recruited to fill regularly authorized position vacancies or displace regular employees. Interns are considered temporary employees and are not eligible for benefits provided regular employees. Intern appointments shall not exceed 12 months.
 - d. In order for a student to be eligible for employment as an intern, an individual must be a student in good standing, enrolled in or on school-approved break from an accredited secondary or post-secondary school, junior college, college or university, or a vocational-technical school.
 - e. Student Interns are required to notify the employing department of any change in their academic or disciplinary standing at the institution.
 - f. Interns will be paid at the minimum pay rate of assigned pay grades. A departure from the minimum pay rate may be approved by the Human Resources Staff upon request and proper justification from the relevant director.
 - g. Persons who may be students but who wish to volunteer with the City outside of any

I. EMPLOYMENT

Section: I-B

B. Temporary Employment

academic program must complete a Volunteer Service Agreement to be developed by Human Resources with assistance from the City Attorney as needed.

- h. Students who are present in the workplace and who are not performing any services for the City, nor participating in any related academic program, are considered to be “job shadowing” and are not considered to be volunteers, or employees, of the City. Any persons who are “job shadowing” must be approved by the relevant department director in advance, must not perform any work for the City, and must be under the supervision of an employee-mentor.
 - i. Students who are present in the workplace and who may perform work for the City but who are not compensated shall meet the requirements of the federal Department of Labor concerning the acceptance of work by student interns. Interns who are not students must be compensated at least the prevailing minimum wage for work performed for the City.
 - j. The Human Resources Department is responsible for the development, coordination and promotion of intern recruitment activities and is responsible for ensuring that all interested persons have an equal opportunity to apply and be considered for internship opportunities.
 - k. Notwithstanding the foregoing, Madeira Beach may, from time to time, enter into agreements with educational institutions whereby student interns will be identified, assigned and compensated pursuant to the terms of such agreements. In such cases, Human Resources shall assist hiring departments as needed to implement the terms of the agreements, even where same may vary from the provisions of this Policy.
4. Employment of temporary personnel shall be subject to the equal employment opportunity provisions of this Policy.
 5. To ensure compliance with the federal Affordable Care Act, except for Seasonal OPS staff, all persons employed in temporary/OPS positions who are not offered health care coverage shall not be scheduled or permitted to work more than 27 hours per week.
 6. Unless otherwise required by law, individuals performing work for the City through temporary employment agencies shall not be considered “employees” for purposes of this Policy.

I. EMPLOYMENT

Section: I-C

C. *Joint Employment*

C. *Joint Employment*

The intent of this policy is to allow employees to be employed in more than one position, and at possibly more than one pay rate, at the same time within the City payroll structure. The following criteria must be met for eligibility:

1. Only temporary OPS, part-time positions, which are considered to be occasional or sporadic (in accordance with 29 C.F.R., Section 553.30), will be eligible.
2. The employee's decision to work in a different capacity must be made freely and without coercion, implicit or explicit, by the employer.
3. The joint position must be in a different capacity, i. e., it must not fall within the same general occupational category as the employee's primary government employment.

Administrative procedures for implementation and tracking of this program will be published separately.

I. EMPLOYMENT

Section: I-D

D. Employment of Relatives (Nepotism)**D. Employment of Relatives (Nepotism)**

1. Employment shall be in compliance with Florida Statutes § 112.3135 regarding “*Restriction on employment of relatives.*” Pursuant to this section, a public official may not appoint, employ, promote, or advance, or advocate for appointment, employment, promotion, or advancement, in or to a position in which the official is serving or over which the official exercises jurisdiction or control any relative of the public official. An individual may not be appointed, employed, promoted, or advanced in or to a position if such appointment, employment, promotion, or advancement has been advocated by a public official, serving in or exercising jurisdiction or control over a City department or office, who is a relative of the individual or if such appointment, employment, promotion, or advancement is made by a City board of which a relative of the individual is a member.
2. Relative, for purposes of this Section only, shall include father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister; but shall not include any other relatives who become related by law or marriage not specifically listed above.
3. For purposes of this Section only, public official, hereinafter referred to as "official," shall include, but not be limited to, Commissioners, the City Manager, assistant City Manager, City Clerk, department directors, assistant directors, managers, supervisory employees and any other City employee authorized to make employment-related recommendations or decisions, whether the official is elected, contracted, appointed, or hired.
4. It is the City's policy to prohibit an official from having direct supervision over any employee who is a relative of the official, as more fully set forth in Paragraph 1. It is also the City's policy to prohibit an official from having direct supervision over any employee to whom the official is engaged or is otherwise involved in a current romantic relationship.
5. Direct supervision shall include any situation in which the official would be in a position to make decisions concerning the terms and conditions of the person's employment with the City including decisions about hiring, promotion, transfer, reclassification, compensation, benefits, work assignments, performance evaluations, training courses and programs, layoffs, return from layoff, termination, and all other tangible aspects of employment.

I. EMPLOYMENT

Section: I-E

*E. Re-Employment and Disqualification**E. Re-Employment and Disqualification*

1. An employee who has been terminated from City employment for violation of any conduct or performance rule set forth in this Policy, or who resigns after being notified of the City's intent to conduct a pre-termination meeting but prior to a final disciplinary decision, is ineligible for re-employment for three years from the date of such resignation or termination.
2. An employee terminated due to a positive drug/alcohol test, a refusal to test, or other violations of the drug-free workplace policy; or who voluntarily resigns within two weeks of a positive result in a test for drug use; or when an employee serves notice of resignation immediately upon notification of being selected for such test, is ineligible for re-employment for a period of three years after such resignation. Additionally, a former employee who owes the City money for drug testing or treatment which was the responsibility of the employee to pay shall be ineligible for re-employment until all funds owed are paid.
3. An employee who voluntarily resigns without giving the required two-week notice (see Section IX.A.4) or is separated from employment for absence without leave (see Section VIII) is ineligible for re-employment for a period of one year. In circumstances where the hiring department director certifies, to the Human Resources Staff's satisfaction, that a non-eligible former employee will meet a critical need of the City, the Human Resources Staff has the authority to waive this waiting period.
4. Employees who separate from City service due to failure to complete probation period where no discipline violation occurred, layoff, end of a temporary position, or whose employment is terminated because work is no longer available, are eligible for re-employment with no waiting period.
5. Notwithstanding the foregoing provisions, an employee may become ineligible for a longer period, or permanently ineligible for re-employment, as the result of independent action such as the settlement of a legal claim or an arbitration decision. Additionally, the City Manager shall have the authority, in exceptional circumstances and where the best interests of the City will be served, to waive or reduce the periods of ineligibility stated in paragraphs 1 and 2 above.
6. NOTE: The disqualification periods contained herein are distinct from the ability of a department to recommend or not recommend an employee for re-hire. Such recommendations are simply the opinion of the former employee's management. Though such recommendations may be taken into account should a former employee apply for re-employment, they do not create a bar against such applicant from being considered for re-hire so long as the applicant is not under a disqualification period, and is otherwise qualified to perform the job duties.

II. PERSONNEL FILES

Section: II-B

*B. Access to and Retention of Official Personnel Files***II. PERSONNEL FILES***A. File Location and Content*

1. The City's official records of present and past employees' personnel files are maintained by the Human Resources Department. The Human Resources Staff is the custodian of these records and may delegate maintenance and control responsibilities to staff members.
2. The Human Resources Department shall develop, revise and authorize all forms related to personnel matters. Therefore, absent specific authorization from the Human Resources Staff to the contrary, departments may not promulgate or make use of any customized or unauthorized personnel forms, including leave requests, time records or employee evaluations. Department directors may, however, compile informational files on their employees. These files may duplicate information in the "official" personnel files. The department director is the custodian of personnel files maintained in his/her area of responsibility.
3. Public Records requests for personnel files made to the City must be transferred to the Human Resources Department for response. The Human Resources Staff, or designee, shall be responsible for reviewing files to ascertain any information which has been designated as confidential or exempt from public records disclosure, and in conjunction with the City Attorney's Office, asserting applicable public records exemptions for such records.

NOTE: Employees holding certain positions are entitled under Florida law to request that certain personally-identifying information such as home addresses, not be released by other governmental agencies which may be in possession of this information. It is the responsibility of each employee holding such a position to make these requests to other governmental agencies.

4. The official personnel record, which will be maintained by the Human Resources Department, shall contain at least the following documents regarding the employee:
 - a. The employee's initial and any subsequent employment/transfer/promotion applications; I-9 form; interview forms; oath of employment; employment contract (if applicable); acknowledgments of receipt of benefits (to include secondary employment approval forms); conditional offer forms; retirement enrollment forms (when applicable); approved hire action forms authorizing employment; and other related documents required by law or City policy to be included.
 - b. The employee's performance evaluation forms and written responses thereto;
 - c. All official personnel actions, such as promotions, transfers, and pay increases;
 - d. Official disciplinary notices and warning or counseling forms issued to the employee;
 - e. Signature forms demonstrating an employee's receipt of City policies;
 - f. Records demonstrating attendance at City training sessions.
 - g. Any separation surveys provided by a departing employee.

II. PERSONNEL FILES

Section: II-B

B. Access to and Retention of Official Personnel Files

5. The personnel record may also contain the following items, at the discretion of the Human Resources Staff:
 - a. Correspondence from citizens, co-workers, etc., concerning the employee's performance of his or her job or contribution to the community (excepting documents which are found to be fraudulent, false, or which are required by law to be separately maintained);
 - b. Records regarding an employee's education or professional credentials;
 - c. Such other records as the Human Resources Staff may deem appropriate for inclusion or which are not prohibited from inclusion by law.
6. The Human Resources Department will also keep and maintain separate and secured files of current and former employees which contain medical records or medical claim records exempt under Florida Statutes § 112.08, the results of drug tests (excepting discipline notices confirming a positive result was received), medical documents provided in support of sick leave requests (including those covered under the FMLA), reports of a healthcare provider discussing specific health conditions or status associated with a fitness-for-duty exam, medical records provided in support of a request for accommodation of a disability under the ADA, medical records received in the course of administering a worker compensation claim.
7. Notwithstanding the foregoing, the City Manager and all department directors are entitled to review medical records of applicants and current employees when these officials have the business need to do so. Such instances include reviewing an employee's defense against a disciplinary action where the employee cites a medical reason for the conduct or performance, reviewing requests for sick leave including decisions as to whether an absence is covered by the FMLA, reviewing requests for accommodation under the ADA or determining whether the applicant or employee presents a danger to him/herself or others due to a medical condition. The City Attorney or other attorneys representing the City in any employment claim or suit are also authorized to examine such records to the extent the claim or suit places the medical condition of the applicant or employee at issue.
8. In the event a City official examines records which includes information which is otherwise confidential or exempt from public disclosure under law, such official must exercise care and discretion so as not to further communicate any such information to subordinates or an employee's co-workers unless there is a valid legal reason to do so. City officials in doubt as to their duties in such circumstances are encouraged to seek advice from the City Attorney.
9. The City Manager is responsible for ensuring that human resources records are controlled, maintained, disposed of, and that requests for copies are processed, in accordance with the Public Records Act and the rules of the Florida Division of Archives, History and Records Management. To that end, the City Manager is authorized to develop such additional administrative procedures and forms so as to accomplish this responsibility.
10. While managerial personnel responsible for drafting performance evaluations may, to assist them in drafting annual evaluations, maintain separate notes on positive/negative conduct or performance, including notes on verbal counseling events, such records are public records and, if specifically referenced in an evaluation or discipline notice, must be attached thereto.

II. PERSONNEL FILES

Section: II-B

B. Access to and Retention of Official Personnel Files

B. Access to and Retention of Official Personnel Files

1. Personnel files (official and informational copies) are public records subject to review under Florida Statutes § 119.07, subject to any applicable exemption(s). Official employee personnel files may be reviewed at the Human Resources Department during normal working hours. The records custodian, or designee, will assist and supervise during the review. Documents cannot be removed or rearranged within the official personnel file during review.

NOTE: Employees holding certain positions are entitled under Florida law to request that certain personally-identifying information such as home addresses, not be released by other governmental agencies which may be in possession of this information. It is the responsibility of each employee holding such a position to make these requests to other governmental agencies.

2. Requests concerning past or present employee personnel information should be referred to the Human Resources Department. The Human Resources Staff will respond to inquiries from agencies and the general public regarding disclosure of official personnel data.
3. In accordance with the Florida Public Records Act, copies of personnel files may be made and furnished to requesters upon payment of the statutory fees. Money collected is remitted to the City's general fund. Employees are not charged for single copies made from their official personnel files. However, they shall be charged the established rate for additional copies. The Human Resources Department is responsible for reviewing a personnel file prior to production or copying to ensure all material exempt from public records disclosure has been covered.
4. Official personnel files must be retained for a length of time determined by the State of Florida Bureau of Archives and Records Management. This period is currently twenty-five (25) years following the employee's effective date of separation from City employment. Because of the permanency of such records, department directors must carefully review documents to determine their necessity before requesting entry to the "official" personnel file. The City Manager, in consultation with the City Attorney as needed, is authorized to develop administrative procedures concerning the proper storage of, and access to, records, including medical files, of current or former employees.

III. PROBATIONARY PERIOD*Initial Probationary Period***III. PROBATIONARY PERIOD**

1. The first twelve (12) months of employment serve as a probationary period for all non-at-will employees filling regular full-time or part-time positions and are used for the following:
 - a. To provide an adjustment period for an employee to become familiar with his/her job duties and responsibilities.
 - b. To provide on-the-job instruction, guidance and counseling.
 - c. To observe and evaluate employee job performance.
 - d. To remove/discharge an employee whose job performance fails to meet required work standards or who, for reasons stated in Section XI.B. of this Policy, must be removed/discharged for other reasons.
2. Probationary employees are not entitled to utilize the Employee Complaint Procedure (ECP) or appeal process unless a claim of unlawful discrimination is made, nor are they entitled to any hearing except as provided in Section XI.D.2.d. of this Policy.
3. Regular employees accrue paid leaves of absence during the probationary period. They can use accrued sick or vacation hours subject to normal approval procedures (after they have been credited to their accrual accounts).
4. Probationary employees who leave City employment are paid their compensatory time and accrued vacation leave balances in accordance with Section VII. A. of the Policy. This payment is made at the employee's base hourly pay rate in effect at the time of separation. If service is terminated by death, payment is made as authorized by Florida Statutes § 222.15.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-1

*A. General Policies***IV. PAY, HOURS OF WORK AND WORKWEEK***A. General Policies*

1. Due to the variety of services provided by City departments, certain employees may be required to work varying days and hours. Department directors schedule work that is necessary and beneficial for the efficient operation of the City. It is the responsibility of the department director to manage overtime within budgetary constraints. Pursuant to 29 C.F.R. § 553.23, by accepting employment with the City, all overtime-eligible employees agree that the City may elect to provide compensatory time in lieu of payment of overtime work in cash pursuant to its compensatory time policies. Employees may also be required, at the discretion of the City, to use compensatory time in lieu of vacation pay when requesting vacation time off.
2. Non-Exempt Employees
 - a. For purposes of this Policy, all employees not considered exempt will be considered non-exempt, and therefore subject to the minimum wage and maximum hour provisions of the Fair Labor Standards Act (FLSA). Non-exempt employees are eligible to earn overtime (including premium pay differential when applicable) or compensatory time at one and one-half (1 ½) times their hourly rate.
 - b. Whenever a non-exempt employee becomes promoted or reclassified to an FLSA-exempt position, the employee shall have any accrued compensatory time paid to him/her at their rate of pay of the non-exempt position they held immediately prior to their promotion.
3. Exempt Employees:
 - a. For purposes of this Policy, exempt employees are expected to work whatever hours are necessary to accomplish assigned duties and responsibilities. However, it is recognized that because exempt employees are often required to work irregular and/or extended hours, it is appropriate that they be provided a certain latitude in occasionally being away from their place of work during normal work hours. It is the responsibility of the immediate supervisor or the department director to determine if the absences are inappropriate.
 - b. Exempt employees are not eligible to be awarded compensatory time or premium pay differential.
 - c. Department directors may suggest the exemption of certain job classifications from the provisions of the Fair Labor Standards Act (FLSA). However, the final determination is made and executed by the City Manager, in consultation with the City Attorney's Office.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-D

B. Allocation of Work Hours, Workweek and Work Period**B. Allocation of Work Hours, Workweek and Work Period**

1. The *workweek* starts at 12:00 a.m. on Saturday and ends at midnight the following Friday. The normal full-time work schedule includes forty (40) hours during the workweek. These hours should not be construed as either a fixed minimum or maximum. Work hours that exceed a normal workweek may be required. Except as provided herein or as determined by the department director, in conjunction with the City Manager and payroll staff, normal hours are Monday through Friday, 8:00 a.m. to 5:00 p.m.
2. *Lunch periods*- Bona fide meal periods (employee is completely relieved from duty for the purpose of eating regular meals) are not work time and are unpaid. The time scheduling and length of lunch periods are coordinated between the employee and the supervisor, according to that organization's needs. (Note: There is no federal or State of Florida law requiring meal breaks in industries or offices, with the exception that minors 17 years of age or younger shall not be permitted to work for more than 4 hours continuously without at least 30 minutes for a meal period.)
3. *Break (rest periods)* - Breaks (usually not more than 15 minutes each) may be permitted by supervisors when the work requirements allow them, and must be allowed for nursing mothers to express milk for up to one year after birth. Break periods are considered to be rest periods and must fall within working hours (work is performed immediately preceding and following the break period) and may not be accumulated for additional time away from work. (Note: There is no federal or State of Florida law requiring rest periods, but if they are offered, they must be counted as hours worked.)
4. *Flexitime* is the generic term for flexible scheduling programs - work schedules that permit flexible starting and quitting times within limits set by management. Flexitime requires employees to work a standard number of hours within a given time period (usually forty (40) hours during a five-day work week). Each City department has the option to use flexitime, if it can be adapted to better meet that organization's unique needs. However, each City department or division which elects to permit flexitime must, with the assistance of the Human Resources Staff, adopt a flexitime procedure which will be published to the department's employees and which will be uniformly applied within that department or division.
5. *Work-at-Home Program* - The Madeira Beach Board of Commissioners does not recognize a "work-at-home" program. There may be times when certain projects could be performed by employees who are at home due to extenuating circumstances. Any such projects must be authorized by the department director and approved by the City Manager prior to work being done. If a project is approved to be completed at home, the project must be familiar to the employee concerned and have definite parameters for measuring time necessary to perform the work. The employee will only be compensated for the standardized hours recognized for completion of the project. City equipment is not to be used outside the regular workplace, unless authorized by the department director and approved by the City Manager. All hours worked at home must be reported.
6. *Medical Attention* - In accordance with 29 C.F.R., § 785.43, time spent by an employee in waiting for and receiving non-elective medical attention on the premises or at the direction of the employer during the employee's normal working hours on days when he or she is

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-D

B. Allocation of Work Hours, Workweek and Work Period

working constitutes hours worked except for worker compensation visits (see also section VII.B.8.a. of this Manual).

7. *Furlough* - Notwithstanding any other provision of these policies to the contrary, where the City Manager, in consultation with the Board of Commissioners, determines that current budgetary conditions require a reduction in the overall hours employees work in order to remain within the authorized budget, the operational hours of any one or more office, service or function of the City may be reduced for one or more weeks, days or hours, either consecutively or sporadically. Such periods of reduction may be either by complete closure or operation with a less than full staff as deemed necessary. Employees working within such offices, services or functions will be placed on unpaid furlough during such periods, and hours spent on furlough shall not count as hours worked for any purpose. Pursuant to 29 C.F.R. § 541.710(b), the City Manager is authorized to deduct hours spent on any furlough from any employee being compensated on a salary basis if budgetary constraints require the deduction.
8. *Electronic Timekeeping* – In recognition of the limitations which may be inherent in the electronic timekeeping systems the City may now or in the future use, including limitations on the delineation of actual lunch or break schedules, employees who are unable to enter the actual chronological times for such events shall not be subject to discipline for falsifying records. FLSA non-exempt employees must, however, ensure that their actual hours worked each day are truthfully and accurately recorded in any such system to ensure proper payment of wages due, including overtime and premium pay.
9. *Pay Class/Annual Base Salary Calculations* – Annual base salaries shall be calculated based upon the pay class and full-time equivalent assigned to the position.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-G

*C. Pay Eligibility**C. Pay Eligibility*

1. Extra Hours

The necessity to work extra hours is made at the discretion of the City Manager. It is important that department directors ensure that extra hours are distributed equitably among employees qualified to perform the work, while giving consideration to the personal wishes of employees involved. However, it is ultimately the department director's decision to designate who will perform the extra hours.

For overtime control purposes, overtime-eligible employees are prohibited from coming to work early and leaving late for purposes of conducting work, or working through lunch periods or bringing work home, unless specifically authorized by their supervisor in advance. Supervisors shall monitor the workplace to ensure that employees who are not scheduled to be working do not remain in the workplace. Nothing herein is intended to prevent an employee from remaining in a City building during a meal period. However, during such period, the employee is not expected to, and is prohibited from, performing work of any kind (including answering phones or reviewing emails) for the City.

Unless otherwise specified by a collective bargaining agreement, an employee shall be required to work overtime when assigned unless excused by the supervisor. An employee who refuses to work overtime when assigned will be subject to disciplinary action for said refusal. An employee scheduled to work overtime who fails to fulfill the assignment for reported medical reasons will, at the City's discretion, be required to substantiate the medical absence with a doctor's note or similar proof.

Overtime or compensatory time be documented by an electronic time off request. However, if this is not feasible, a schedule of work hours or other form of written documentation should be available to support the designation of overtime or compensatory time.

a. Non-Exempt Employees

All hours worked over forty (40) in a workweek are considered overtime and are compensated by overtime pay or compensatory time as agreed or understood before the work in excess of forty (40) in a workweek is performed. Absent emergency circumstances, overtime must be approved in advance by the City Manager in advance.

b. Exempt Employees

For purposes of this Policy, exempt employees are paid on a salaried basis and are expected to work the hours necessary to accomplish assigned duties and responsibilities. Paid extra hours are only to be considered under the terms of an approved performance bonus plan.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-G

C. Pay Eligibility

2. Overtime Pay

Employees entitled to overtime pay are paid for each work hour in excess of forty (40) hours in the workweek at a rate of one and one-half (1 ½) times their regular hourly rate of pay, including premium pay differentials when applicable.

3. Compensatory (Comp.) Time

Time off in place of overtime is called compensatory (comp.) time.

- a. Non-exempt employees scheduled for extra hours of work designated as comp. time are credited at the rate of one and one-half (1 ½) hours for each hour worked. Used comp. time (reflected on the timecard) is deducted from the compensatory time accrual account hour for hour and does not count as hours worked.
- b. Employees may be required to utilize compensatory time in lieu of leave time at the discretion of the department director.
- c. Non-exempt employees are prohibited from accumulating comp. time balances in excess of one-hundred twenty (120) hours (180 for certain Fire/EMS employees who work 24/48 hour shifts). Such employees who perform work and are not eligible for the accumulation of additional comp time shall be compensated by regular or overtime pay as the case may be. By accepting employment with the City, employees consent to be paid comp. time in lieu of overtime pay at the discretion of management.
- d. Comp. time hours shall be paid out when an employee is promoted or reclassified to an FLSA-exempt position, as specified in Section IV.A.2.b., or when an employee separates (voluntarily or involuntarily) from City service.
- e. An employee who has accrued compensatory time, and requests use of the time, must be permitted to use the time off within a reasonable period after making the request, if it does not unduly disrupt the operations of the agency (29 U.S.C., § 207 (O)(5)). Comp. time cannot be used in lieu of sick leave if sick leave balances are available.
- f. When a non-exempt employee is designated as “acting” in an open exempt position (such as a manager position open due to retirement where a new manager must be recruited), the employee shall be compensated during this acting status as an FLSA exempt manager and shall therefore not be eligible for overtime, comp or premium pay differential.
- g. However, when a non-exempt employee is only temporarily fulfilling the duties normally associated with an exempt position (such as to cover for a vacationing manager) in addition to their normal duties, the employee shall continue to be paid his/her normal rate of pay, and shall be eligible for overtime, comp and premium pay differential, as may normally be applicable.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-G

C. Pay Eligibility

4. On-Call Status
 - a. Exempt employees are ineligible for on-call status.
 - b. An employee required to remain on-call (on City premises or so close that he/she cannot use the time effectively for personal purposes) is considered to be working in an on-call status. On-call hours are designated as work hours for the workweek and count towards overtime.
 - c. On-call hours for non-exempt employees are eligible for premium pay differentials, overtime and compensatory time.
 - d. On-call employees must always be reachable by a pre-designated means of communication and able to arrive at the work location within the time established by the department director or designee. As employees are compensated for on-call assignments, they must refrain from drinking alcohol, taking medications or engaging in any other conduct which would prevent being ready for duty. Further, if they are unavailable when called in, they will be subject to disciplinary action and will not be paid any on-call pay for that assigned period. On-call assignments should be distributed equitably among qualified employees, consistent with operational needs.

5. Standby Status
 - a. Exempt employees are ineligible for standby pay.
 - b. Employees who are not otherwise informed that they have been scheduled to work and who are placed on standby status (instructed to be available but otherwise able to use the time effectively for personal purposes) may remain at home, or they may leave word how (pager, cell phone, etc.) and where they can be reached, but they must do one or the other. These employees receive straight time pay (compensatory time not allowed) for hours designated as standby assignment, with maximum accruable hours of three (3) in a 24-hour period. Standby hours must be outside the scheduled (regular or modified-schedule) workday, and may not be assigned to or worked by employees who do not work their regularly-scheduled shift immediately prior to standby assignment, or who are unable to respond, due to illness. Employees who receive advanced notice of a requirement to report for duty, even where such work is to be performed outside of a regular schedule, are not eligible for standby pay. Since assigned standby hours can vary according to circumstances, guidelines will be used to award compensation as shown below. (Note: No other proration methods are authorized):
 - ❖ Less than five (5) hours of standby status is ineligible for standby pay
 - ❖ One (1) hour of straight time pay for 5 up to 9 hours of standby status
 - ❖ One and one-half (1.5) hours of straight pay for 9 up to 12 hours of standby status
 - ❖ Two (2) hours of straight pay for 12 up to 16 hours of standby status
 - ❖ Two and one half (2.5) hours straight pay for 16 up to 20 hours of standby status
 - ❖ Three (3) hours of straight pay for 20 up to 24 hours of standby status

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-C

C. Pay Eligibility

- c. If employees on standby status are required to report for duty, they are paid for hours worked, with a minimum of two (2) hours for the first “call out” regardless of time spent responding. Thereafter, employees shall only be paid for the actual hours worked on subsequent “call outs” during the standby period. Call-out hours are eligible for premium pay differentials and count as hours worked towards overtime. In addition to the call-out hours, employees are also compensated for standby status as reflected under Section IV.C.6.b.
- d. Employees placed on standby assignments must always be reachable by a pre-designated means of communication and able to arrive at the work location within the time established by the department director or designee. As employees are compensated for standby assignments, they must refrain from drinking, taking medications or engaging in any other conduct which would prevent being ready for duty. Further, if they are unavailable when called in, they will be subject to disciplinary action and will not be paid any standby pay for that assigned period.
- e. Standby assignments should be distributed equitably among qualified employees, consistent with operational needs.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-D

D. Work Time Records and Emergency Conditions

D. Work Time Records and Emergency Conditions

1. The City's Work Time Records or time cards are designed to meet the record-keeping requirements of the FLSA. Department directors are responsible for maintaining a record of work schedules for non-exempt employees.
2. **Exempt Employees:** Due to their exempt, salaried status and the expectation that they are often required to work irregular and extended hours, but have the latitude of occasionally being away from their workplace during normal work hours, exempt employees complete work records but do not have to complete a daily record of time worked. For payroll accounting purposes, they will need to record absences charged to employee benefit accounts (i. e., sick, vacation, holiday, etc.). Exempt employees are not required to create time worked records, unless absences are charged to their accrued benefit accounts.
3. **Non-Exempt Employees:** All hours (paid, unpaid or charged to accrual accounts) must be recorded in the City's time and attendance system daily for the non-exempt employee's scheduled work periods. Pay, including overtime pay, is calculated for each workweek and paid (if overtime pay) or credited (if comp. time) to employees on a bi-weekly basis. Non-exempt employees are required to sign their time records, either physically or, where provided, via electronic means.
4. After payroll has completed processing, original records of time worked are maintained by human resources for the appropriate periods set forth in the FLSA and Florida records retention schedule. To the extent the City employs an electronic time and attendance system, such records maintenance may be performed electronically.
5. **Emergency Conditions:** When the Board of Commissioners formally declares a state of emergency, City employees who hold positions designated to perform essential services during the actual emergency declaration period shall, if report to work when required. The City Manager or department directors may also require employees who perform essential services to work during actual or impending extreme emergency situations or conditions (weather, hazard, etc.), not declared as a "state of emergency."
6. **Pay for Work During Declared Emergency:** During a declared emergency, City offices and operations may close. Employees who are not directed to work in any capacity during such closure must not report for duty during such periods. Employees are not authorized to designate themselves as essential or to perform work of any kind for the City during a closure of City offices and operations, unless expressly directed to work by their director or the city manager.

For all employees in positions classified as FLSA exempt, such employees will receive no additional compensation for any hours worked during any declared emergency. FLSA non-exempt employees shall receive compensatory time at 1.5 times their regular hourly rate of pay for any hours worked during any declared emergency regardless of what non-emergency hours he or she may have worked during any given work week and regardless of what specific work assignment such employee is given during the emergency period.

Non-FLSA exempt employees shall not be compensated for any time off during such periods.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-D

D. Work Time Records and Emergency Conditions

FLSA exempt employees shall be paid their established salaries except that if they are not directed to perform any work during the entire work week, such employees shall not receive their salaries for that week.

Employees who are not compensated due to a closure during a declared emergency may, at their discretion, use any available vacation or compensatory leave to accommodate otherwise unpaid periods. Employees may not use non-FMLA sick leave for such periods unless they demonstrate through medical documentation to their department director's satisfaction that they were medically unable to perform their duties during the period in question.

In the event a City holiday falls on a day where the City is closed due to an emergency condition, compensation of the holiday for employees not required to report for duty shall be as provided for in this policy with respect to holiday compensation. Employees required to work on a holiday during a declared emergency shall be entitled to take the equivalent unpaid time off with no reduction in leave balance once the declared emergency ends and the leave may be scheduled.

All employees with approved leave requests covering the declared emergency period, regardless of leave type, are subject to having such leave cancelled and to being recalled to duty during the emergency period. Directors shall make every effort to accommodate pressing conditions, and ill employees, when determining which employees to call back from leave. Notwithstanding the foregoing, employees who cannot report for duty due to a certified FMLA condition shall not be called back to duty during an emergency condition.

Failure to Report for Duty When Assigned: Any employee required to report for duty during an emergency condition who fails or refuses to report and/or to perform duties as directed will be subject to termination from employment. Failure to monitor on-call or stand-by phone numbers and respond to calls will constitute a failure to report. The only exception to this policy will be for employees physically or medically unable to report or perform as ordered, or where the employee is on pre-authorized FMLA leave during the emergency period. For non-FMLA medical conditions, the City will require after the fact medical verification of medical conditions, and reserves the right to require second opinion examinations. Employees claiming a physical inability to report when required are not permitted to cite a mere fear of travel during the emergency condition, or a general concern for not staying with family. Employees, particularly those designated by their departments as being critical responders during emergency conditions, have a responsibility to plan ahead for the safety and welfare of their families and the securing of their property so that they will have the ability to report when called. Only extraordinary incidents of inability to report wholly beyond the employee's ability to control will be excused.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV

*E. Salary Basis Questions**E. Salary Basis Compensation Questions*

1. It is Madeira Beach's policy to comply with applicable wage and hour laws and regulations. Accordingly, the City intends that deductions be made from your pay only in circumstances permitted by the Fair Labor Standards Act and the U.S. Department of Labor's rules governing the salary basis for pay for exempt employees. The improper pay deductions specified in 29 C.F.R. §541.602(a) may not be made from the pay of employees subject to the salary basis test.
2. If you have any questions or concerns about your salaried status, or you believe that any deduction has been made from your pay that is inconsistent with your salaried status, you should immediately raise the matter with your department director. If you have raised the matter with your supervisor and it is not resolved within ten (10) business days, or if, for any reason, you are uncomfortable discussing the matter with your director, you must submit your question or concern to the Human Resources Staff for review and response.
3. To ensure the City understands your question or concern and is able to conduct a proper review, any such question or concern which seeks the payment of wages allegedly owed must be made using the official HR form approved for that purpose. Any such question or concern must, at a minimum, include employee name, a brief description of the facts related to the question or concern, and the response of the employee's director, if any. The pay period(s) at issue should also be identified. If you are unable due to disability to submit your complaint in writing, a Human Resources representative will assist you in formalizing your question or concern, which you will then be asked to review and sign to ensure its accuracy.
4. The City is committed to investigating and resolving all compensation disputes as promptly, but also as accurately, as possible. Consistent with the U.S. Department of Labor's policy, any question or concern will be responded to within a reasonable time given all the facts and circumstances. If a review of the matter reveals you were subjected to an improper deduction from pay, you will be reimbursed and the City will take whatever action it deems necessary to ensure compliance with the salary basis test in the future.

IV. PAY, HOURS OF WORK AND WORKWEEK

Section: IV-1

F. Forms

F. Forms

1. Department directors, in conjunction with the Human Resources Staff, are responsible for investigating and ensuring job compliance for all positions (exempt and non-exempt) under applicable federal, state, local, and personnel policy guidelines. Any significant or important changes should be noted on the appropriate position description forms.
2. Changes (i. e., pay, classification, status, etc.) for exempt and non-exempt positions are initiated and approved by processing Pay Assignments and other pertinent forms. Procedures are set through "administrative" guidelines.
3. The Human Resources Staff ensures standardization of forms used throughout City departments. These forms are designed, updated and distributed from time to time under direction of the Human Resources Staff. To reduce the cost of purchasing, printing and storing paper, and to enhance efficiency, the Human Resources Staff shall endeavor to use electronic generation, electronic signatures, and electronic storage and retrieval systems for personnel records whenever possible.

V. CLASSIFICATION AND PAY PLAN

Section: V.A

A. General Policies

V. CLASSIFICATION AND PAY PLAN**A. General Policies**

The Madeira Beach Civil Service Commission, in cooperation with the City Manager, is charged with the on-going development of Madeira Beach classification and pay plans. This includes periodic studies relating to equitable classification categories and pay ranges. The goal of the Board of Commissioners is to maintain sound plans providing classification and pay structures that are fair, equitable, and systematic compared with other governmental jurisdictions and the private sector. This enhances Madeira Beach's ability to attract and retain competent employees to provide efficient services to the citizens of Madeira Beach.

The Civil Service Commission, working with the Human Resources Department, will periodically examine, by use of staff, consultants and such other resources available, market conditions and comparative wage data for relevant public and private sector employers, and based upon the results of this examination, will make a written recommendation to the City Manager concerning wage adjustments. Based upon such written recommendations concerning the need for market equity adjustments, the City Manager may propose a budget including funds sufficient to implement such adjustments concurrent with a new fiscal year, and may implement same upon budget approval. Any such overarching market equity adjustments shall be confined by the budget approved by the Board of Commissioners for that fiscal year.

Notwithstanding the foregoing, any awarded wage rate increases based upon a merit evaluation system (which system must be separately established by resolution) shall be implemented based on the calendar year.

The Civil Service Commission, working with the City Manager, is charged with creating recommended classifications and pay plans (subject to budgets approved by the Board of Commissioners) as the City's business needs and operating experience dictate.

Madeira Beach reserves the right to organize itself, and classify and schedule its employees, in the manner deemed most effective and efficient at any given time, based on the needs of the community the City serves, and available City resources. Therefore, while the City will make every attempt to create stable career opportunities and work environments for employees, no City employee has any permanent right to claim any job title, classification, department, pay plan or rate, job description, benefit, schedule, shift, work location, co-worker(s) or any other aspects of the employment relationship other than those required by law to be provided.

V. **CLASSIFICATION AND PAY PLAN**

Section: V-D

B. Administration

B. Administration

1. Recommendations for assignment of authorized positions to classification titles and pay grades and recommendations for changes to existing classification and pay grade assignments are made to the City Manager by the Civil Service Commission and Human Resources Staff. Any such changes for administration positions shall become effective once approved by the City Manager.
2. Recommendations for staffing level changes which will result in an overall increase in the number of authorized employees under the City Manager or for which an increase in the overall operating budget is sought shall be submitted to the Board of Commissioners for approval. Staffing level reductions, or any transfer or reassignment of one or more City staff, either within or between departments, may be performed administratively by the City Manager.

V. CLASSIFICATION AND PAY PLAN

Section: V-C

C. Application

C. Application**1. General**

- a. Notwithstanding any other provision of this Policy, no employee may receive any pay rate increase (other than for temporary duty performance) which would cause such employee to be compensated in excess of the maximum of the pay range established for the position such employee holds.
- b. Requests that are different from the parameters provided in Section V. of this Policy may be considered under exceptional circumstances. Such requests must be submitted, with appropriate justification, by the department director to the City Manager, who shall approve or decline such requests.
- c. At no time is an applicant or employee to be promised pay or conditions that are outside the parameters of the Policy, unless authorized through the approval process (as outlined in b. above.) Any terms or conditions of employment, including but not limited to departures from established pay rates, moving expenses, hiring bonuses, language inducements, unique leave accrual rates, or transfer of unpaid leave balances or time in service, must, to be effective, be included in the written conditional offer of employment presented to the candidate by the City. Any other promises or representations made to a candidate not included in the conditional offer of employment shall not be valid or enforceable against the City.

2. New Hire Employment

- a. Initial employment in a classified position is normally paid the minimum of the assigned pay grade.
- b. Initial employment in a classified position may be paid at any rate agreed to between the City and an applicant. In establishing a pay rate offer, department director shall consider grant/program funding levels, current budgetary allocations and projected expenditures within the department, labor market conditions, equity and compression issues within the department, as well as candidate qualifications. Prior to extending an offer to a candidate which exceeds the mid-point of the pay range, the department must be able to provide appropriate justification to the Human Resources Staff. The Human Resources Staff shall review all proposed offers and, where an offer is in excess of the mid-point of the pay range established for the position, shall make a recommendation to the City Manager as to whether the proposed offer should be approved or denied.

3. Promotions

- a. *Advertised Promotion* occurs when a current employee is selected through open competition for a position in a higher classification. Subject to available resources and market conditions, employees promoted as a result of advertising to a classification in a higher pay grade will generally receive the greater of a 5% increase or entry level of the new pay grade. Directors may request higher increases for extenuating circumstances, but may not be offered to an employee prior to the Human Resources Staff's review and approval of the written documentation supporting the request.

V. CLASSIFICATION AND PAY PLAN

Section: V-C

C. Application

- b. Internal Promotion occurs when a qualified employee is placed in a higher position without advertising. Requests for internal promotions must be submitted to the Human Resources Staff by the department director with explicit support documentation (i. e., employee meets job requirements, will not create equity or other issues with other employees, is in the employee's career path, employee is already performing duties, and is in the best interest of the City). The Human Resources Staff shall either approve or deny the request. Pay guidelines are the same as outlined in V.C.3.a. above (Note: External recruitment helps build strong workforces. Therefore, positions below director level should usually be advertised. Internal promotions without first advertising should only be considered in unusual circumstances, such as recruitment difficulty, departmental health/safety criteria dictates immediate need to fill, internal candidate with extraordinary skills or background, etc.)

4. Demotions (Changes to Lower Classifications)

When an employee is demoted for any reason, the employee is requested to sign a statement of understanding, acknowledging the demotion and rate of pay. (Signing this document does not mean that the employee agrees or disagrees with the action, only that he/she received notice of it). This acknowledgment is attached to the demotion paperwork sent to Human Resources for processing.

- a. An employee who applies through open competition, or requests a voluntary transfer, to a lower classification and pay grade, and is accepted; or who are involuntarily demoted to a lower classification for non-disciplinary reasons (i. e., inability to perform the duties of the job, reduction in work force, lack of work, reorganization, etc.), will be placed in the lower pay grade at the same percentage above the lower pay grade minimum as the employee's previous rate of pay was above the previous pay grade minimum. (See example below). This is subject to approval by the Human Resources Staff.

EXAMPLE: Employee's current hourly pay rate is \$10.00. Entry level pay rate for the current pay grade is \$9.00. To calculate the percentage over entry level, divide the difference (\$1.00) by \$9.00 = 11.11% over entry level. If the entry level pay rate for the lower pay grade is \$8.00 (\$8.00 plus 11.11% = \$8.888, rounded to \$8.89). Employee's new pay rate for the lower pay grade will be \$8.89.

- b. Notwithstanding the provisions of Paragraph 4.a. above, in order to ensure fair and equitable treatment, each case of demotion shall be reviewed individually. The department director must document any salary adjustment request that is different (either a greater rate or lower rate) from that provided in Paragraph 4.a. above and have the request approved by the Human Resources Staff.
- c. In cases where an employee is demoted as the result of disciplinary action, the disciplining director shall have the authority to assign the employee a pay rate lower than those otherwise specified for non-disciplinary involuntary demotions.

5. Temporary Assignments

- a. Acting Status. Employees temporarily assigned to perform all duties of a higher-level

V. CLASSIFICATION AND PAY PLAN

Section: V-C

C. Application

position may receive additional compensation during the assignment at a rate determined by the City Manager. The assignment must be appropriately documented by the department director, and approved by the Human Resources Staff. Regular salary adjustments are granted during temporary assignments, and shall be applied to the employee's non-acting pay rate. Upon expiration of the acting status, the employee's pay rate will return to the same level it was prior to entering into acting status, but increased by any regular salary adjustments which occurred during that period. An employee may not be placed in acting status unless that employee meets the minimum qualifications of the higher-level position.

- b. **Additional Duties.** Employees temporarily assigned by their directors to perform additional duties while continuing to perform their regular duties may, upon request of the director and approval by the Human Resources Staff, be eligible to receive additional compensation over their current pay rate consistent with Section IV.C.3.g and Section V.C.3.a., above. Regular salary adjustments are granted during temporary additional duty status, and shall be applied to the employee's non-temporary duty pay rate. Upon expiration of the temporary duties status, the employee's pay rate will return to the same level it was prior to assignment of the temporary additional duties. Alternative forms of compensation for the performance of additional duties may be developed by the City Manager from time to time and may be utilized in lieu of the rate enhancement provided for above.

6. Reclassifications and Reorganizations

Market factors, evolving priorities, evolutions in equipment and materials, employee input, grant funding, or changing organizational needs may cause a particular position classification within the City to become subject to change. Madeira Beach continually evaluates these factors against classified positions accordingly and at times determines, where the position is not wholly eliminated, to re-classify and/or reassign one or a group of positions to better serve the needs of the City and its citizens. Such reclassifications/reassignments can be minor or significant, and may result in enhancing one or more positions and related duties and requirements, or decreasing duties and requirements. Such reclassifications/reorganizations are solely within the discretion of the City and no employee possesses any right or expectation to hold or keep any one position or set of duties. To ensure compliance with any applicable personnel policies or regulations, requests for reclassifications must be submitted by a department director in writing with supporting justification to the Human Resources Department which shall review and comment upon all reclassifications or reorganization requests regardless of number of employees involved. Every possible scenario cannot be described in a general policy document such as this Manual. However, in an effort to inform employees of the outcomes of common reclassification decisions, the following examples are provided:

- a. Employees reclassified to higher pay grades shall be compensated based upon the City's assessment of the factors set forth in subsection (c) below, and such compensation changes shall take effect on the first pay period after the effective date of the reclassification.
- b. In circumstances where an employee's position is downgraded based upon reorganization, market study, individual job analysis or other similar non-disciplinary

V. CLASSIFICATION AND PAY PLAN

Section: V-C

C. Application

reason, the employee will not normally have their pay rate reduced, though their pay grade may be reduced, based upon the City's assessment of the factors set forth in subsection (c) below.

- c. In reaching any decisions regarding the establishment of reclassifications and accompanying pay grades and rates, the City will consider various factors including, but not limited to, individual experience and years of service, individual work/discipline records, current compensation and where same falls within a new pay range, equity between and among similarly-situated positions and incumbent employees, market factors, established career ladders and budgetary constraints.

7. Transfers/Lateral Transfers

Employees may be transferred to vacant positions with the same job title (transfer) or within the same pay grade, different job title (lateral transfer) without advertising, if appropriate justification is provided and the request is authorized by the department director, approved by the Human Resources Staff and future department director if transfer is to another department. Transfers/lateral transfers are not eligible for pay adjustments.

V. CLASSIFICATION AND PAY PLAN

Section: V-C

C. Application

8. Permanent Additional Duties

Where an employee is permanently assigned significant additional duties not warranting a reclassification of their position, the employee's director shall work with the Human Resources Staff to determine a suitable wage rate increase.

9. Equity Pay Adjustment

- a. Equity Pay Adjustments are granted to maintain fair and equitable treatment of employees.
- b. Requests for equity pay adjustments may be submitted, with appropriate justification, by the department director to the Human Resources Staff for review and approval.

10. Retroactive Pay Adjustments

Retroactive pay adjustments may be considered under exceptional circumstances (such as where an employee performed assigned duties but due to accounting/recordkeeping error was not paid or where a pay-increasing certification was earned but unknown to the City). If a department director requests retroactive payment for an action, a written request must be submitted to the Human Resources Staff for consideration. If approved by the Human Resources Staff, the amount of retroactive compensation will be determined by Human Resources and Payroll. (NOTE: Nothing herein should be interpreted as authorizing any employee to be paid for work which was not authorized to be performed by the City. Employees performing unauthorized work shall be subject to disciplinary action). To the extent the adjustment results in a deduction from pay for wrongly-paid compensation, any such deduction shall not result in an employee being paid less than the established minimum wage for any given pay period.

11. Pay for Performance

In addition to any general wage adjustment that the Board of Commissioners may from time to time adopt, the Board of Commissioners may by separate resolution adopt a compensation program which includes variable wage increases linked to job performance. Such program may distinguish between exempt professional and managerial classifications, and full and part time hourly compensated employees. As to hourly employees, any such program shall be based upon quantifiable measures of performance and shall be designed and administered so as to ensure discrimination, favoritism or inconsistent application of eligibility criteria do not occur. In addition, pursuant to Florida Statutes § 215.425(3), the Board of Commissioners may from time to time adopt, by resolution, a performance bonus plan based on work performance which describes the performance standards and evaluation process by which such awards are to be given. Any such plan must be noticed to all employees prior to implementation. Nothing herein shall be interpreted as creating any requirement to develop or budget funds for pay for performance or bonus programs or policies, nor as creating an entitlement on the part of any employee to receive same.

VI. HOLIDAYS

Section: VI

A. Administration**VI. HOLIDAYS****A. Administration**

The following is offered as a guideline and is not considered to be all inclusive. Recognized holidays are subject to periodic review and revision by the Board of Commissioners.

1. Paid holidays are a Madeira Beach employee benefit. They may not be accrued for future use, and holiday hours taken shall not count as hours worked for any purpose other than FMLA eligibility.
2. A holiday must be taken in one (1) work day.
3. When a City observed holiday occurs during an approved leave of absence with pay (i. e., vacation, sick, compensatory, military, bereavement, etc.), and the appropriate leave is identified on the timecard, the employee will be paid for the holiday. (The holiday should be coded as "holiday" on the timecard.) If applicable accrued leave balances (i. e., vacation, sick, etc.) are charged on the timecard for the period in which the holiday occurs and the holiday is not coded as "Holiday," if eligible, the employee will be credited for the appropriate accrued leave upon written request from the department director to the Human Resources Staff.
4. An employee who is not on an approved leave of absence and is absent from work on the day preceding or the day following a City observed holiday is required by the department director to explain the absence. If the absence is approved, appropriate accrued balances will be charged on the timecard. If the absence is not approved, or if the employee has no appropriate accrued balances to be charged, the employee is not paid for the unapproved absence, nor for the holiday, and may also be subject to discipline.
5. When an employee is scheduled to work on a City observed holiday and fails to report for duty, the employee shall not be paid for the holiday and may be subject to discipline.
6. When a City observed holiday occurs during a leave of absence without pay, i.e., FMLA, suspension, sick/vacation with no accrued leave balances, administrative leave pending discipline, etc., the employee will not be paid for the holiday.
7. When a City observed holiday occurs within a period of Workers' Compensation benefit pay, holiday hours shall be paid to bring the employee's pay to 100 percent pay status for that day.
8. When a holiday falls on a Saturday, it is observed on the preceding Friday. When a holiday falls on a Sunday, it is observed on the following Monday, except as may be determined otherwise by the City Manager.
9. When a holiday falls outside of an employee's regular work schedule, the employee will be paid straight time for the holiday at 8 hours multiplied by the full-time equivalent (FTE). These hours will not be subject to overtime consideration or count as hours worked for any purpose.

VI. HOLIDAYS

Section: VI

*B. Listing of Holidays**B. Listing of Holidays*

Holidays recognized are as follows:

1. New Year's Day - January 1
2. Martin Luther King's Birthday - Third Monday in January
3. President's Day - Third Monday in February
4. Memorial Day - The last Monday in May
5. Juneteenth Day – June 19
6. Independence Day - July 4
7. Labor Day - First Monday in September
8. Veteran's Day - November 11
9. Thanksgiving Day - Fourth Thursday in November
10. Friday After Thanksgiving Day
11. Christmas Eve – December 24
12. Christmas Day - December 25
13. Personal Holiday(s)
 - a. Personal holidays, the number of which are set by the Board of Commissioners from time to time, and awarded during a calendar year, are to be taken during the year in which they are awarded. Failure to use available personal holidays by the end of the calendar year will result in those days being lost.
 - b. OPS (temporary) employees are not eligible for personal holidays.
 - c. Since daily scheduled work hours can vary depending on an employee's status and job assignment, the number of hours to be paid as a personal holiday must be equal to the number of regular work hours scheduled for that day. Personal holiday hours used do not count as hours worked for any purpose.
 - d. While on unpaid leaves of absence employees are ineligible to use a personal holiday.
 - e. Notwithstanding the availability of personal holidays to employees, advanced permission to use a personal holiday must be obtained, and the department director has the sole discretion to allow a personal holiday to be used on any particular day, or to rescind a prior approval where the needs of the City so require.
 - f. Employees who separate from City employment and are rehired within the same calendar year are ineligible to use a personal holiday if it was used prior to separation.

VII. LEAVES OF ABSENCE

Section: VII.A

A. Vacation Leave

VII. LEAVES OF ABSENCE

A. Vacation Leave

1. Full-time and part-time employees who fill established positions earn Vacation Leave credits. For health and well-being purposes, employees are encouraged to use their vacation leave each year and it is recommended that supervisors ensure employees are given that opportunity. Vacation Leave taken for purposes which qualify for FMLA coverage will be designated as FMLA Vacation Leave. Scheduling preference (where such decisions become required such as traditional holiday seasonal request increases) will be made by the department director based upon the operational needs and efficiencies of the department, seniority, timing of request, and any other factors which the department director deems appropriate.
2. Employees may only begin a new calendar year with a maximum of *** vacation leave hours, accruals of which are tracked by the calendar year. If an employee's vacation leave balance exceeds its maximum by end of calendar year, excess hours will be transferred to sick leave account in the first pay period of the new calendar year unless otherwise approved under Section VII.A.8. Employees earn vacation leave according to the following tables:

* 80 Scheduled Work Hours Per Pay Period		
Period of Continuous Employment	Hours of Leave Earned Bi-Weekly/Annually	Maximum End of Year Hours
0 to End of 5 Years	5 Hours/130 Hours	400 Hours
6th to End of 10 Years	6 Hours/156 Hours	400 Hours
11th to Termination	7 Hours/182 Hours	400 Hours

* **All employees except some Fire/EMS employees on schedules other than forty (40) hours a week. (Part-time employees accrue on a pro-rata basis.)**

** 112 Scheduled Hours Per Pay Period		
Period of Continuous Employment	Hours of Leave Earned Bi-Weekly/Annually	Maximum End of Year Hours
0 to End of 5 Years	6.72 Hours/174.72 Hours	400 Hours
6th to End of 10 Years	8.16 Hours/212.16 Hours	400 Hours
11th to Termination	9.56 Hours/248.56 Hours	400 Hours

** **Applies to employees who have a regular “24 on/48 off” work shift.**

VII. LEAVES OF ABSENCE

Section: VII-A

A. Vacation Leave

NOTE: When hours paid are less than the scheduled hours, the hours accrued are a pro-rata of the designated accrual rate. (Example: Scheduled hours 80, paid hours 60, accrual rate 5.00 hours; would be calculated as 60 divided by 80 = .75 X 5.00 = 3.75 hours accrued).

3. Vacation leave for non-exempt employees (which should generally be scheduled no less than three (3) workdays in advance), regardless of whether such leave is used for actual vacation or other purposes such as FMLA absence, court appearance, etc., will not be counted as hours worked towards overtime (including premium pay differentials, if applicable).
4. Approved vacation leave will be paid in accordance with the number of hours regularly scheduled to work that day. Employees taking less than a full work day shall be paid vacation hour for hour.
5. Employees shall forfeit all vacation payouts under this section if employment terminates because the employee:
 - a. Has been found guilty in a court of competent jurisdiction of committing, aiding, or abetting any embezzlement or theft from the employee's employer or bribery in connection with the employment; or
 - b. Has been terminated by reason of the employee having admitted to committing, aiding, or abetting an embezzlement or theft from his or her employer or by reason of bribery; or
 - c. Prior to termination or retirement, is found guilty of, or adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees; or
 - d. Was terminated for the commission of any felony with the intent to defraud the public or a public agency of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.
 - e. The forfeiture of leave payout pursuant to this policy is supplemental to any other forfeiture requirements related to public officers or employees provided by law.
 - f. Forfeiture shall also occur where the employee resigns from employment after having been charged by the City or other law enforcement authority with any of the above acts but prior to having been terminated.
6. Use of vacation leave credits cannot be authorized prior to the time they are earned and credited. Vacation leave hours are used only with approval from the department director or designee.
7. At the end of the last pay period in the calendar year, the vacation leave account is audited. Vacation leave in excess of 400 hours is transferred to the employee's sick leave account on an hour-for-hour basis.
8. If an employee becomes sick/injured (personal illness/injury only) during approved vacation leave, the leave hours may be adjusted only if the time record has not been processed by Payroll and, if applicable, where acceptable FMLA certification has been submitted.

VII. LEAVES OF ABSENCE

Section: VII-A

A. Vacation Leave

9. Unused vacation time, up to *** hours, shall be paid when an employee ends employment with Madeira Beach, subject to the provisions of Section VII.A.6. However, to the extent an employee, upon enrolling a qualified Deferred Retirement Option Program, elects to receive a vacation leave payout under state administrative rules, such payout shall count toward the total *** hours payout provided for herein.
10. Sick Leave accruals cannot be used or paid out as vacation leave.
11. Notwithstanding any provision of this Policy referring to “calendar year,” accruals of leave balances shall be governed by the City’s adopted payroll tracking system, and may be calculated by the payroll calendar year used by that system.

VII. LEAVES OF ABSENCE

Section: VII-B

B. Sick Leave

B. Sick Leave

NOTE: Family and Medical Leave Act (FMLA) will be considered and, if applicable, will run concurrently with Sick Leave. (See FMLA Section: VII.L.)

1. Full-time and part-time employees who fill established positions earn Sick Leave credits each bi-weekly pay period based on a maximum of 80 paid hours (pro-rated if less than 80). Tracking of sick leave accruals is by the calendar year. The accrual rate for regular employees is five hundredths (.05) of an hour for each hour paid up to a maximum of 80 hours (.07 for Fire/EMS employees on 24/48 hour shifts). (Examples: 80 paid hrs. x .05 = 4 hrs.; 60 paid hrs. x .05 = 3 hrs.; EMS 80 paid hrs. x .07 = 5.6 hrs., etc.).
2. Employees using sick leave are paid at the hourly rate in effect at the time the approved sick leave is taken, but such leave used shall not count as hours worked for any purpose other than FMLA eligibility.
3. During leaves of absence with pay, employees continue to earn sick leave credits (with the exception of employees drawing hours from the Sick Leave Bank or Long Term Disability).
4. Full-time and part-time employees who fill established positions may accumulate unlimited sick leave credits.
5. Sick leave earned during any pay period is credited to the employee on the last day of that pay period. In the case of employment termination, it is credited on the last day the employee is on the payroll.
6. Use of sick leave credits cannot be authorized prior to being earned and credited, and used only with approval from the department director or designee, who may require sufficient and specific medical documentation of the need for leave prior to authorizing sick leave pay. Sick leave pay may be denied to any employee who fails to provide requested documentation.
7. Sick leave hours are charged to an employee's sick leave account. If accumulated sick leave is exhausted, the employee may request through the appropriate departmental authority to use vacation, compensatory time, or personal holiday (may be used only as a whole day) leave to cover remainder of the absence.
8. Sick leave can be authorized for the following purposes:
 - a. Personal Sick Leave

Personal Sick Leave is for an employee's personal illness, injury, or exposure to a contagious disease which could endanger other employees. Any sick leave credits used for these reasons are authorized in accordance with provisions of Section VII.B.9. For purposes of this Policy, personal illness includes complications in pregnancy, miscarriage, childbirth, and recovery from these. Note: Medical Attention - In accordance with 29 C.F.R., § 785.43, and Section IV.B.6, time spent by an employee in waiting for and receiving non-elective medical attention (with the exception of worker compensation-related visits) on the premises or at the direction of the employer during the employee's normal working hours on days when he or she is working constitutes hours worked.
9. The employee has the responsibility of notifying his/her supervisor or other designated personnel when sick leave absence is necessary. This notification should be given prior to the absence, if possible, or as soon as possible on the first day of absence. Upon request, an

VII. LEAVES OF ABSENCE

Section: VII-B

B. Sick Leave

employee may be permitted to use sick leave credits if the following procedures are followed:

- a. Prior to authorizing an employee to use sick leave credits, the department director may require the employee to certify that the absence is for reasons outlined in this Policy.
- b. After three (3) consecutive workdays (regardless of number of scheduled hours in any workday) of sick leave absence, the employee shall be required to provide FMLA medical certification from a certified health care provider before being authorized to use additional sick leave credits, unless deemed unnecessary by the department director based upon facts already known.
- c. Employees may be required to report periodically (no more often than seven (7) calendar day intervals) on the status of their sick leave and intent to return to work, and may be required to submit (no more often than thirty (30) day intervals) medical certification/re-certification from a certified health care provider if their sick leave continues.
- d. Employees may be required to convalesce at a specific location, such as a health care facility or at home where deemed necessary by the department director to prevent abuse of sick leave.
- e. Upon returning to work following a long-term illness or injury, an employee may be required to provide medical certification from a certified health care provider showing he/she is safely able to perform the essential functions of his/her job with or without reasonable accommodation.

VII. LEAVES OF ABSENCE

Section: VII-B

B. Sick Leave

10. An employee who refuses to comply with the above stated requirements is not eligible to use sick leave credits. Any unapproved absence from work will be considered unauthorized and may subject the employee to disciplinary action in accordance with the provisions of Section XI. of this Policy.
11. Employees providing written documentation from a certified health care provider indicating that the employee is unable to perform regular job duties due to an accident, illness, or medically related reason, with the approval of the department director, may be placed on light duty status or assigned to perform other temporary duties which will not be prohibited by the condition during recuperation, within the following guidelines:
 - a. The employee's hourly rate of pay remains the same, including personnel working non-standard schedules (such as 24/48 shifts).
 - b. If requested by the employer, the employee submits to a physical examination by a certified health care provider (selected and paid for by the department) prior to approval (or continuation) of the temporary status. Failure to comply could result in denial of use of further sick leave.
 - c. The temporary status may be approved by the department director for a period not to exceed three (3) consecutive months.
 - d. Requests to remain in the temporary status in excess of the three-month period must be authorized by the City Manager. Such requests will only be considered under exceptional circumstances.
 - e. Approval of temporary light duty is in the sole discretion of the City and is conditioned upon the availability of budgeted payroll funds to pay the employee and/or temporary workers at the same time, the disruption which may be caused to other workers in the workplace, the needs of the department, and the availability of bona fide light duty work to be done.
 - f. With documentation from a certified health care provider stating the employee may return to regular, unrestricted, full duty status, the employee will resume his/her regular position.
 - g. When approved to return to regular, unrestricted, full duty status, failure by the employee to do so could result in termination of employment under Section XI. of the Policy.
 - h. Approval of temporary light duty does not signify the City's agreement that the employee is a qualified individual with a disability under the Americans with Disabilities Act ("ADA") or the Rehabilitation Act, or that the employee is covered by the terms of the FMLA, or abrogate any defense that the City may have under the civil rights laws.
 - i. Employees who are determined to be unable to perform the essential functions of their job may either request a reasonable accommodation under Section IX.E, or where no accommodation is available, be referred to the Alternate Employment Program under Section IX.F.

VII. LEAVES OF ABSENCE

Section: VII-B

B. Sick Leave

12. Payment of Unused Sick Leave

NOTE: Payment for unused sick leave balances for contract employees will be in accordance with the contract in effect at the time of separation.

- a. Employees with continuous service who leave City employment, and qualify to receive payment of unused sick leave credits, may be paid a percentage of their existing sick leave balance in accordance with the table shown below, with a lifetime maximum of *** hours:

Less than 5 Years of Service	0%	10 Years of Service	40%
5 Years of Service	30%	11 Years of Service	42%
6 Years of Service	32%	12 Years of Service	44%
7 Years of Service	34%	13 Years of Service	46%
8 Years of Service	36%	14 Years of Service	48%
9 Years of Service	38%	15 Years of Service or More	50%

- b. Employees who are rehired by Madeira Beach after having previously worked for the City are not entitled to receive credit for unpaid sick leave hours related to the previous period of employment.
- c. Payment of unused sick leave credit is paid in a lump sum at the regular hourly rate in effect at the time of separation. This payment is not considered as salary in determining the average final compensation of an employee in the State administered retirement system. There is a lifetime maximum payout of *** sick leave hours for all eligible employees.
- d. Employees shall forfeit all sick leave payouts under this section if employment terminates because the employee:
 - (1) Has been found guilty in a court of competent jurisdiction of committing, aiding, or abetting any embezzlement or theft from the employee's employer or bribery in connection with the employment; or
 - (2) Has been terminated by reason of the employee having admitted to committing, aiding, or abetting an embezzlement or theft from his or her employer or by reason of bribery; or
 - (3) Is adjudged by a court of competent jurisdiction to have violated any state law against strikes by public employees; or
 - (4) Has been found guilty by a court of competent jurisdiction of violating any state law prohibiting strikes by public employees; or

VII. LEAVES OF ABSENCE

Section: VII-B

B. Sick Leave

-
- (5) Was terminated for having committed any felony with the intent to defraud the public or a public agency of the right to receive the faithful performance of his or her duty as a public officer or employee, realizes or obtains, or attempts to realize or obtain, a profit, gain, or advantage for himself or herself or for some other person through the use or attempted use of the power, rights, privileges, duties, or position of his or her public office or employment position.
 - (6) The forfeiture of leave payout pursuant to this policy is supplemental to any other forfeiture requirements related to public officers or employees provided by law.
 - (7) Forfeiture shall also occur where the employee resigns from employment after having been charged by the City or other law enforcement authority with any of the above acts but prior to having been terminated.
13. Notwithstanding any provision of this Policy referring to “calendar year,” accruals of leave balances shall be governed by the City’s adopted payroll tracking system, and may be calculated by the payroll calendar year used by that system.

VII. LEAVES OF ABSENCE

Section: VII-C

*C. Personal Medical Appointment Leave**C. Personal Medical Appointment Leave*

1. With prior approval, Personal Medical Appointment leave allows eligible employees to attend personal medical-related appointments when it is not possible to arrange for appointments during off-duty hours.
2. Approved personal medical appointment leave is charged to an employee's sick leave account. Personal medical appointment hours are not considered hours worked towards overtime.
3. Personal medical leave will be recorded appropriately on the timecard (i.e., sick, FMLA, or no pay), in accordance with established pay codes for such leave. Where applicable, use of this leave will also be classified as FMLA protected and recorded as such. Departments are responsible for ensuring that FMLA coverage be documented where applicable.
4. Since medical facilities have varying waiting periods for appointments, there is no set limit for number of hours for an appointment. The employee should give his/her best estimate at the time of submission of request to the department.
5. Only the time used for the medical appointment, plus travel time to and from the appointment, may be coded as personal medical appointment leave. In addition, where the appointment is for an invasive medical test requiring pre-test preparation or a recovery period which causes an employee to be unable to report for duty, such preparation or recovery time may also qualify as personal medical appointment leave.
6. If there is a question that an employee may be abusing personal medical appointment leave, the department director may require verification of appointments.
7. Requests for personal medical appointment leave should be submitted with as much lead-time as possible. Personal Medical Appointment Leave may not be used for worker compensation examinations, treatment, etc., which must instead be coded as worker compensation leave.
8. If covered under the Family and Medical Leave Act, as evidenced through execution of adequate certification and employer response forms, personal medical appointment leave will not be used in evaluating an employee's performance.

VII. LEAVES OF ABSENCE

Section: VII-D

*D. Bereavement Leave**D. Bereavement Leave*

1. Paid leave may be authorized for probationary and regular employees (OPS employees are ineligible) who have a death in their "immediate" families (see 2. below). The following procedures apply:
 - a. Bereavement leave may be authorized (excluding holidays if scheduled to work the holiday) for up to * scheduled work days (* days for employees working four 10 hour shifts) with the exception of Fire/EMS 24/48 hour employees, who may be authorized to receive up to two shifts (not to exceed 48 hours) and 12 hour shift employees may be authorized to receive up to four shifts not to exceed 48 hours.
 - b. Bereavement leave is separate and distinct from other types of leave and is not chargeable to any accrued leave balance (i.e., sick, vacation, etc.). Bereavement leave does not count as hours worked towards overtime.
 - c. In the event a family death occurs during an employee's approved sick, vacation or compensatory time leave, the time missed due to the death may be designated as bereavement leave, if eligible. The actual leave account charged (i. e., sick, vacation, etc.) can be adjusted through a request from the department director to the Human Resources Staff.
 - d. Bereavement leave is paid in accordance with scheduled work days including premium pay differentials if applicable.

2. Definition of Immediate Family

For the purpose of administering this type of leave, "Immediate Family" is defined as the following persons, as related by blood or law to the employee and/or the employee's spouse: spouse, child, step-child, foster child, grandchild, parent, step-parent, grand or great grandparent, step-grand or step-great grandparent, brother, sister, half-brother, half-sister, step-brother, step-sister, or legal guardian. The definition also includes an individual for whom the employee or the employee's spouse is the legal guardian, and any other family member of the employee or of the employee's spouse who was a full-time resident in the employee's household immediately preceding the death.

3. Proof of Purpose of Leave

Validation of the request is left to the discretion of the employee's department director.

VII. LEAVES OF ABSENCE

Section: VII-E

*E. Military Leave**E. Military Leave*

1. For purposes of interpreting this Section, the general term "Military Leave" includes both Military Leave, as provided for in subsection (2) below, and Military Call, as provided for in subsection (3) below.
2. Military Leave: In accordance with Chapter 115, Florida Statutes, City employees who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or a member of the National Guard, shall, upon presentation of a copy of the employee's official orders, be granted military leave on all days during which the employee is ordered to active duty or inactive duty for training. Such employees shall not be required to work or use accrued personal leave on any day during which they are engaged in training under official orders. Whether continuous or intermittent, such leave with pay may not exceed 240 working hours in any one annual period beginning January 1 and ending December 31. Administrative leaves of absence for additional or longer periods of time for assignment to duty functions of a military character, including assignments under applicable FEMA or USERRA regulations, shall be without pay unless required by federal law.
3. Military Call: City employees who are commissioned reserve officers or reserve enlisted personnel in the United States military or naval service or members of the National Guard, who are ordered to active military duty shall, upon presentation of a copy of the employee's official orders, be granted military leave beginning with the day ordered to duty and ending up to 31 days after the date of release from the military service or from hospitalization continuing after discharge, unless a longer period is required by the FMLA. The first thirty (30) calendar days of such leave shall be with full pay. (Note: Employees would only be compensated for scheduled workdays during this 30-day period.)
4. Scheduled workdays for which Military Leave is taken under the rules outlined in subsections (2) and (3) above will be compensated as Military Leave or Military Call (as applicable) and will not count towards overtime. If an employee approved for Military Leave is scheduled to work a shift which qualifies for premium pay differential, Military Leave hours will be compensated at the appropriate premium pay differential rate.
5. Employees requesting Military Leave shall furnish the department director with competent orders from the appropriate military command as valid evidence of such duty status. These orders shall be kept in the employee's departmental personnel file. Since "competent orders" are not always defined or consistent, department directors should consult with the Human Resources Department for guidance.
6. Any absence in excess of the limits set in subsections (2) and (3) above may, upon request by the employee and approval by the appropriate supervisor, be covered by accrued vacation leave, accrued comp. time or personal holiday. If not requested by the employee or approved by the appropriate supervisor as vacation, comp. time, or personal holiday, such absences in excess of the limits shall be approved as military leave without pay. However, such leave shall be without loss of seniority, time or efficiency rating. Should any portion of the leave be paid leave, the employee shall be entitled to accumulate all benefits granted under paid leave status.
7. Madeira Beach employees called to active military service will not be discharged, reprimanded, or in any other way penalized because of their absence due to such service.

VII. LEAVES OF ABSENCE

Section: VII-E

E. Military Leave

The employee's position may be filled by another employee with substitute or temporary status. Upon separation from the military service, the employee shall be eligible to return to the former position held or a different position in the same class in the same geographic location.

8. Veteran's Leave: A City employee filling a regular established position and who has been rated by the United States Department of Veterans Affairs or its predecessors to have incurred a service-connected disability and has been scheduled by the United States Department of Veterans Affairs to be examined or treated for the disability, shall be granted veteran's leave for such reexamination or treatment without loss of pay or benefits. The maximum veteran's leave authorized for this purpose shall not exceed six (6) calendar days in any one annual period beginning January 1 and ending December 31. Hours used are not counted as hours worked toward overtime.
9. Issues of military leave not addressed in this policy shall be resolved as provided for state employees in applicable provisions of the Florida Administrative Code, Florida Statutes, and federal law.

VII. LEAVES OF ABSENCE

Section: VII-F

*F. Jury Leave**F. Jury Leave*

1. Whenever an employee (full-time, part-time or temporary OPS) is called for jury duty, upon presentation of the summons to his/her supervisor, the employee will be excused from scheduled work days and will receive Jury Leave pay for hours actually performing such duty, but not exceeding their scheduled work hours. The employee will not be compensated by the City for Jury Leave on unscheduled workdays unless the employee requests to substitute a night or weekend shift or portion thereof immediately preceding or following jury duty. The employee keeps any jury fees received.
2. Paid Jury Leave hours are considered as hours worked for all compensation purposes including calculating hours worked towards overtime. The City does not reimburse an employee for meals, lodging, travel, or any other expenses incurred as a juror.
3. Employees are required to report to work if excused from jury duty during their regular working hours. However, if their scheduled shift has been filled or they are not otherwise needed to complete the shift, they may, with supervisory approval, charge the balance of their scheduled work hours to their vacation or compensatory time leave accounts, or take the time off without pay, but only to the extent they are not able to make up regularly-scheduled hours by means of flex time assignment.
4. An employee called to jury duty shall promptly notify his or her department director and provide a copy of the court summons so that arrangements may be made in advance for his or her absence from work. Where so requested by an employee's department director, an employee will provide the director with a statement of actual days spent on jury duty service (such as by memo or e mail) before compensation is approved. Where the Clerk of Court engages in "day prior call in" programs (where unseated jurors call a number to determine whether their presence will be needed the next day), employees who discover their presence at the court house will not be required the following day (but who have not yet been released from duty) shall report to work on that day unless otherwise ordered by the Court. Once an employee is released from duty, he or she shall inform the department and report to work as required in Paragraph 4 above.
5. An employee called to jury duty while on vacation leave shall be allowed jury duty pay for that time served in court which corresponds to his or her regular work day. Such employee shall have his or her vacation leave hours restored provided satisfactory evidence of the time served on jury duty is presented to the department. In the event a holiday occurs during the period an employee is serving on jury duty, he or she shall receive holiday pay for the holiday rather than jury duty pay.
6. Employees who have a normal work schedule outside the regular business day (night or weekend shifts) who are summoned for jury duty during the business day immediately following the scheduled shift shall, if they request, be permitted to be excused from their scheduled work shift (or portion thereof) immediately prior to the jury duty day, in order to rest or otherwise prepare for their jury service. However, such excused period shall not exceed 8 hours and, where an employee requests to be excused from work for a portion or all of a scheduled shift, the employee shall not be compensated for the shift or portion thereof, not actually worked (unless vacation leave is used) but shall only be compensated for jury duty equal to the number of shift hours missed performing such duty. Notwithstanding the general requirement for employees to report to duty should they not be required to spend an entire day of jury duty service, night/weekend shift employees who serve any portion of a day for jury duty without taking time off their regular shift shall be paid for the entire shift, not to exceed the number of work hours scheduled.

VII. LEAVES OF ABSENCE

Section: VII-C

*G. Witness Leave**G. Witness Leave*

1. An employee appearing as a witness for the City in a court case or administrative proceeding within the boundaries of Pinellas County, in which the City is a party, including depositions, post-termination proceedings, mediation or arbitration proceedings, or who is subpoenaed as a witness in a court case or administrative proceeding in which the employee's testimony is related to official City business, is considered to be on duty during such appearance (not including travel time), even during off-duty hours. The employee must remit to the City any witness fee received in connection with such appearance. In the event the litigation is in a forum outside Pinellas County, and the employee attends as a witness for Madeira Beach, he/she shall be entitled to per diem expenses in accordance with Florida Statutes § 112.061. However, in the event the litigation is in a forum outside Pinellas County, and the employee is subpoenaed by a party other than Madeira Beach, the employee may keep any reimbursement of travel expenses, and he/she shall not be entitled to reimbursement of per diem expenses from the City.
2. An employee who voluntarily appears at a court or administrative proceeding, as defined above, on behalf of a party litigating against the City shall be ineligible for witness leave pay by the City for any time spent at such proceeding and must attribute such time to appropriate available leave balances or take leave without pay.
3. An employee who becomes a party in, or appearing as a witness in any case other than those described in Paragraph 1. is considered to be off duty, and must attribute such time to appropriate available leave balances or take leave without pay. Under such circumstances, the employee is entitled to keep any witness fee received. The only exception to this provision is where a City EMT or Paramedic who, while off duty, renders medical aid or assistance at an accident scene or emergency event and by so doing becomes a witness. In such cases, the EMT or Paramedic will be paid as described in Paragraph 1. above.

VII. LEAVES OF ABSENCE

Section: VII-H

H. Disability Leave**H. Disability Leave**

Note: Family and Medical Leave Act (FMLA) eligibility will be considered and may run concurrently with Disability Leave. (See FMLA Section: VII.L.)

1. Workers' Compensation

- a. An employee who suffers accidental injury arising out of work performed in the course and scope of City employment may qualify for benefits during periods in which the employee is unable to work, as provided in the Workers' Compensation Law, F.S. Chapter 440. Any employee who has suffered an injury or illness while at work is required to report that injury or illness on an appropriate City form as soon as possible. Supervisors or managers who are aware of such illness/injury are required to provide the appropriate form to the employee, to compel the employee to complete it, and to promptly report the incident to the director and risk management.
- b. The City's risk management staff administers all workers' compensation claims and benefits.
- c. An employee receiving workers' compensation wage benefits may, at the employee's election, use available leave balances, in accordance with Section VII.B.7, to supplement those benefits. The supplemental payments plus workers' compensation benefits cannot exceed the employee's regular salary. Time spent by an employee accessing treatment for a workers' compensation covered injury does not count as hours worked toward overtime.
- d. An employee who is released to light duty by the workers' compensation primary care provider may, at the discretion of the department director, be assigned to perform other than his/her regular duties during recuperation. An employee who refuses to accept a light duty assignment will be ineligible for other disability leave, may lose workers' compensation benefits, and will be subject to disciplinary action under Section XI. of the policy.
- e. An employee who refuses to return to work after being released to unrestricted full duty by the workers' compensation primary care provider will be subject to discipline, including discharge, or may be deemed to have abandoned his/her job and resigned.
- f. Nothing in this sub-section eliminates or reduces an employee's rights under Florida law, to appeal workers' compensation decisions, nor should it be read as guaranteeing light duty work. Where no bona fide light duty work is available within the employee's department, the employee may be required to remain out of the workplace until recuperated. While no employee will be retaliated against for having submitted a claim for benefits and will give every opportunity for employees to recover from work-related injuries, the City reserves its right under law to terminate any employee for the inability to perform the essential functions of his or her job where the needs of the City so require. (See Section IX-E).

2. Short-Term Disability Leave/Reasonable Accommodations/Fitness for Duty Exam

- a. All employees of the City are expected to be able to perform the essential functions of the positions they hold. At times, a physical or mental impairment may cause an employee to become unable to perform one or more job functions. In such circumstance, it will be the responsibility of the employee's department, in consultation with the Human

VII. LEAVES OF ABSENCE

Section: VII-H

H. Disability Leave

Resources Department, to work with the employee to identify reasonable accommodations, which will permit the employee to perform all essential job functions. This process may take more than one try, depending on the specific facts of the case. Though the employee's input on accommodations should be given weight, an employee is not entitled to demand a particular accommodation if the department wishes to provide a different accommodation, so long as the accommodation will permit the employee to perform his or her job functions. The Human Resources Department, with appropriate advice from the City Attorney's Office, should be consulted where any questions arise over the identification of accommodations.

- b. A department director who, through appropriate medical documentation or written representations from the employee, becomes aware that an employee is unable to perform the functions of his/her job due to illness or injury, will explore with the employee any workplace accommodations which may permit the employee to perform the affected job functions. In conjunction with this accommodation search, or in instances where the facts reveal that an accommodation is not possible or legally unreasonable, the department may require the employee to submit to a fitness for duty medical examination by a physician named and paid for by the department. The City's inquiry is limited to whether the employee is able to perform job-related functions and if not, the probable duration of the disability and expected return to full duty. If the medical examination confirms that the employee is unable to perform the essential functions of his/her job with or without reasonable accommodation, the employee may request to be placed on short term disability leave for up to thirty (30) calendar days. The granting of such request is at the discretion of the department director. NOTE: Outside of a worker compensation claim or a City-paid fitness for duty examination, department employees, including directors, should NOT be directly communicating with healthcare providers of employees. Instead, all such communication will be made through the employee to the provider in writing.
- c. At the outset of short-term disability leave, the department director informs the employee in writing of the maximum duration of the leave and that, at the conclusion of that time period, the employee is expected to return to unrestricted full duty work, if he/she is able to perform the essential functions of the job with or without reasonable accommodation.

NOTE: The granting, denying, or administration of short-term disability leave under this rule relates only to the ability to remain on the City's payroll as an employee and does not constitute, and is in no way related to, any disability insurance policy or other benefit to which an employee may be entitled on becoming disabled, whether such policy or benefit is issued through a City insurance program or via a private insurer.

- d. An employee placed on short-term disability leave is required to use sick leave hours. If sick leave is exhausted, the employee may request use of vacation, compensatory time, or personal holiday (must be used as a whole day) credits. If the employee uses all such leave or does not have enough leave to cover the duration of the short-term disability leave period, the employee may request to be placed on leave without pay for the balance of the short-term disability leave period.
- e. If, at the conclusion of the short-term disability leave, the employee is still unable to perform the essential functions of his/her job with or without reasonable accommodation, the following options are available:

VII. LEAVES OF ABSENCE

Section: VII-H

H. Disability Leave

- (1) The department director may require the employee to submit to another medical examination as described in Section VII.I.2.a. If the examination reveals that the employee is able to perform the essential functions of the job with or without reasonable accommodation, the employee must return to work or face discharge in accordance with Section XI-B. of the Policy, or be deemed to have abandoned his/her position and resigned.
 - (2) The employee may request an extension of short-term disability leave for another thirty (30) calendar day period not to exceed a total of three (3) consecutive months. The department director may require the employee to produce medical certification indicating that he/she remains unable to perform the essential functions of the job during these periods. Such requests may be granted under exceptional circumstances, depending on the operational needs of the department.
 - (3) The department director may refer the employee to the Alternate Employment Program, as outlined in Section IX-F of this Policy.
 - (4) The department director may accept the employee's voluntary written resignation for reason of inability to perform assigned duties.
 - (5) The employee may be non-disciplinarily separated for inability to perform.
- f. While under short-term disability leave without pay, it is the employee's responsibility to pay any group health and life insurance premiums that are normally paid by the employee. Such monthly premiums must be paid by the employee prior to the effective month of coverage; otherwise, coverage may terminate.

VII. LEAVES OF ABSENCE

Section: VII-

*I. Domestic Violence Leave**I. Domestic Violence Leave*

1. Pursuant to Florida Statutes § 741.313, an employee who has been employed for 3 or more months is permitted to request up to 3 working days of paid or unpaid leave during any rolling 12 month period if the employee, or a family or household member of the employee is the victim of domestic violence, where such leave is taken to:
 - a. Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
 - b. Obtain medical or mental health care for the employee or family or household member to address injuries resulting from an act of domestic violence;
 - c. Make the employee's home secure from the perpetrator of domestic violence or to seek new housing to escape the perpetrator; or
 - d. Seek legal assistance or attend court proceedings arising from an act of domestic violence.
2. Domestic violence leave shall be coded as paid vacation or sick leave (depending on whether the reason for taking the leave is to seek medical treatment or not) to the extent the employee has sufficient balances in his or her relevant leave account. Otherwise, the leave shall be coded as no pay.
3. Except in cases of imminent danger to the health or safety of the employee or family or household member, an employee seeking domestic violence leave must provide appropriate advanced notice of the leave request, and may be required to produce sufficient documentation to support the requested leave. To the extent an employee provides personal identifying information related to a request for domestic violence leave, such information shall be maintained by the department as confidential and exempt from public records disclosure, pursuant to Florida Statutes § 741.313(4)(c)(2).
4. Employees who feel they are not being granted domestic violence leave should contact a Human Resources Staff to determine eligibility and obtain a suitable resolution to the matter.

VII. LEAVES OF ABSENCESection: VII-

J. Leaves of Absence Without Pay**J. Leaves of Absence Without Pay**

Note: Family and Medical Leave Act (FMLA) eligibility will be considered and may run concurrently with Leaves of Absence Without Pay which are unrelated to judicial proceedings. (See FMLA Section: VII.L.)

1. Leaves of absence without pay will only be allowed upon depletion of applicable accrued leave balances. The exception to this would be an employee who requests a leave of absence without pay to supplement military leave.
2. The decision to grant leaves of absence without pay is a matter of administrative discretion and must be approved by the department director.
3. Leaves of absence without pay may be approved up to a maximum of three (3) months.
4. While under a leave of absence without pay, any group health and life insurance premiums that are normally paid by the employee must continue to be paid by the employee. Applicable monthly premiums must be paid by the employee prior to the effective month of coverage; otherwise, coverage will be canceled at the beginning of the delinquent period.

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)**K. Family and Medical Leave Act of 1993 (FMLA)**

Note: This section of Policy is intended to set guidelines only and does not represent the Family and Medical Leave Act of 1993 in its entirety. FMLA procedures may differ from other types of City leave but FMLA does not provide any additional paid leave accruals over the City's other leave awards. (If further information is needed, contact the Human Resources Department.) FMLA use will be tracked concurrently with other types of leave where the reason for the leave is an FMLA-qualifying event. There are two general FMLA types, Basic Leave (see Section VII.L.1, et seq.) and Military Family Leave (see Section VII.L.15).

1. Basic FMLA Eligibility and Qualifying Events

The Family and Medical Leave Act (FMLA) is not to be considered as a separate or distinct form of leave. Instead, it is a law which provides for protection for employees who take leave from work for a covered reason, regardless of the pay code used. The FMLA authorizes an employee with 12 months of City service, who has worked at least 1,250 hours during the 12 months preceding commencement of leave, a maximum of 12 weeks of FMLA, job-protected, leave during a 12-month period. The 12 month-period is based on a rolling 12-month period beginning with the most recent day upon which coverage is requested and counting back 12 months. Basic FMLA leave may be taken for the following reasons:

- a. The birth of a son or daughter of an employee and to care for the newborn child;
- b. The placement of a son or daughter with an employee for adoption or foster care (entitlement to leave for birth, placement for adoption or foster care of a son or daughter expires 12 months from the date of the birth or placement of the child);
- c. In order to care for the employee's spouse, son, daughter or natural or adoptive parent with a serious health condition.

For purposes of this policy, definitions of spouse, son, daughter or parent are:

- (1) Spouse means a husband or wife as defined or recognized under State law for purposes of marriage in the State where the employee resides. (Note: Florida does not recognize common law marriage.)
 - (2) Parent means a biological parent or an individual who stands or stood "in loco parentis" to an employee when the employee was a son or daughter as defined in (3) below. This term does not include parents "in law".
 - (3) Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing "in loco parentis" who is either under age 18, or age 18 or older and "incapable of self-care because of a mental or physical disability."
- d. A serious health condition which renders the employee unable to perform one or more functions of the employee's position.

2. Serious Health Condition

A "serious health condition" means an illness, injury, impairment, or physical or mental

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)

condition that involves either:

- a. In-patient care (i. e., an overnight stay) in a hospital, hospice facility, including any period of incapacity (for purposes of this policy defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor, or recovery therefrom), or any subsequent treatment in connection with such in-patient care; or
- b. Continuing treatment by a health care provider, which includes any one or more of the following:
 - (1) A period of incapacity (i. e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three (3) consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (a) Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - (b) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
 - (2) Any period of incapacity due to pregnancy, or for prenatal care.
 - (3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition.
 - (4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective.
 - (5) Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).
 - (6) FMLA leave for a serious health condition may be intermittent under the following circumstances: For intermittent leave or leave on a reduced leave schedule, there must be a medical need for leave (as distinguished from voluntary treatments and procedures) and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. The treatment regimen and other information described in the certification of a serious health condition meets the requirement for certification of the medical necessity of intermittent leave or leave on a reduced leave schedule. Employees needing intermittent FMLA leave or leave on a reduced leave schedule must attempt to schedule their leave so as not to disrupt the

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)

employer's operations. In addition, the employer may assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

- c. When leave is taken after the birth, or placement of a child for adoption or foster care, an employee may take leave intermittently or on a reduced leave schedule only if the employer agrees. However, the employer's agreement is not required for leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

3. Medical Certification

- a. The employer may require that an employee's leave to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a medical certification issued by the certified health care provider of the employee or the employee's ill family member.
- b. When leave is foreseeable and at least 30 days-notice has been provided, the employee should provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the employer within the time frame requested by the employer (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. Failure to provide the appropriate healthcare certifications after having been requested to do so may result in disciplinary action, and/or in the delay or denial of approval of FMLA leave.
- c. In accordance with Department of Labor (DOL) rules, if the employer has reason to doubt the validity of the medical certification, the employer may request, at the employer's expense, a second or third health care provider's opinion for leave taken because of a serious health condition. The employer may also require subsequent recertification from the employee's health care provider on a reasonable basis, in accordance with DOL rules, which normally will not be more than every thirty (30) days. No second or third opinion on recertification may be required.

4. Spouses Working for the Same Employer

If both spouses work for the same employer (Board of Commissioners), the combined leave shall not exceed 12 weeks in the 12-month period, if the leave is taken:

- a. for birth of the employee's son or daughter or to care for the child after birth;
- b. for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement; or
- c. to care for the employee's parent with a serious health condition.

5. Health Insurance Premiums

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)

(Note: Any questions regarding employee health insurance premiums while under FMLA should be directed to the policy administrator.)

- a. During FMLA leaves of absence, the employer will continue to pay its portion of the health insurance premiums and maintain the employee's coverage under the health plan in the same manner as if the employee had been continuously employed during the entire leave period, provided the employee continues to pay his or her share of the premiums normally paid by the employee.
- b. Should the employee fail to continue to pay his or her share of the premiums, notices of proposed insurance cancellation and the opportunity to pay the premium as required by the FMLA will be provided before cancellation.
- c. Employees will be advised well in advance of any changes in premiums so they will have ample opportunity to make arrangements to continue to pay their share of the premiums during the Family Medical Leave. To avoid required reimbursement, appropriate certification from a health care provider may be required if the employee does not return to work because of a serious health condition.

6. Benefit Accruals

- a. During FMLA leave, the FMLA does not require accrual of employment benefits, such as vacation leave, sick leave, etc. Accordingly, during unpaid FMLA leave, accrual of benefits shall be on the same basis as for any other unpaid leaves of absence. Paid FMLA leave will continue to accrue vacation, sick, etc., on the same basis as other types of paid leave. With respect to pension and other retirement plans, any period of unpaid FMLA leave shall not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. Employment benefits to which an employee may be entitled on the day on which the Family and Medical Leave of absence begins will not be lost because of such leave, except for those paid leave days substituted for leave taken under this policy.
- b. Employees on unpaid FMLA leave are to be treated as if they continued to work for purposes of changes to benefit plans. They are entitled to changes in benefits plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken.
- c. Employees will not be disqualified from bonuses based upon safety for which they qualified prior to leave because of the taking of FMLA leave.

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)**7. Relationship to Paid Leave**

- a. Employees will be required to substitute paid sick leave for an equivalent portion of FMLA leave for a serious health condition. (Note: If sick leave is used for a family member's serious health condition, a maximum of eighty (80) hours can be used for all family sick, including FMLA, during the calendar year and must be coded appropriately on the time card).
- b. If eligible sick leave is exhausted, the employee will be required to substitute any other available paid leave sources, as outlined in Section VII.B.7. If all eligible leave balances are exhausted, any FMLA leave entitlement remaining will be coded as FMLA, no-pay status. (Note: Compensatory time may be used during the FMLA leave period and will be charged against the FMLA leave entitlement.)
- c. To the extent the City does not provide paid sick or family sick for a condition covered by FMLA, neither this policy nor the FMLA entitles the employee to paid leave. However, under paragraphs a. and b. above, paid leave and the FMLA leave will run concurrently.
- d. Workers' Compensation or Short-Term Disability-based leaves, whether paid or unpaid, will run concurrently with FMLA leave when the reason for the leave is an FMLA qualifying event.
- e. To the extent an event occurs which makes an employee eligible for an alternative form of leave not related to absence due to covered medical reason (for instance family death and ensuing need for bereavement leave), the employee's use of such leave will not be counted as an FMLA absence.

8. Return from Family Medical Leave

- a. With the exception of certain "key" employees (salaried FMLA-eligible employees among highest paid 10 percent of all employees employed by the employer), those who return to work from FMLA leave within or on the business day following the expiration of the leave are entitled to return to their job or a position with equivalent benefits, pay and other terms and conditions of employment. Designation of "key" employee status and whether such status will affect the employee's right to reinstatement will be made at the time the employee gives notice of the need for leave, or at the commencement of leave, whichever is earlier, or as soon as practicable thereafter if such determinations cannot be made at that time.
- b. Failure to return to work upon completion or expiration of FMLA-protected leave could result in termination of employment, in accordance with FMLA rules and regulations and the Madeira Beach Personnel Policy, Rules, and Procedures Manual.

9. FMLA Procedures and Forms:

Department directors, managers, supervisors and personnel liaisons shall review, be familiar with, and make use of procedures applicable to requesting, qualifying for, and approval of FMLA coverage (Note: *all non-automated FMLA-forms will be posted on the City i-net for*

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)

employee use by Human Resources). Requests for FMLA-covered leave must be submitted through use of the City's leave request system at least thirty (30) days before the leave is to begin if need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member. If thirty (30) days-notice is not practicable, such as because of a lack of knowledge of approximately when leave will be required to begin, change in circumstances, or medical emergency, notice must be given as soon as practicable. (Note: Notwithstanding any requirement to submit leave requests via the established leave request system, verbal notice, or the City's knowledge of the need for FMLA qualified leave, is sufficient to trigger the obligations under the FMLA.) Once the department has acquired knowledge that the leave is being taken for an FMLA eligible reason, whether from the employee, a health care provider or some other reliable source, the department will notify the employee, on an official Employer Response Form signed by the director, that the leave is being designated as FMLA qualified and whether it will be paid or unpaid leave (according to whether or not the employee has chargeable accrued balances.)

10. Counting FMLA Leave

To the extent allowed by law, in the event an absence is for a reason covered by the FMLA, the City will designate it as Family Medical Leave-protected whether the employee has applied for it or not. When this occurs, the employee will be promptly notified as described above. Tracking of FMLA leave is the responsibility of the employee and the employee's department. FMLA is specific to the individual employee, not to the particular health condition or family event. Therefore, employees should be aware that the maximum 12 week protection period will be inclusive of all covered conditions and events which happen within the applicable 12 month period. Additionally, where the City obtains unequivocal confirmation, either from the employee or a health care provider, that the employee does not intend to return, or the employee's medical condition will prevent the employee from returning to full duty permanently, or for a significant or indefinite extended period past the FMLA period, the City may terminate employment even where the 12 week period has not yet run, and the employee's entitlement to continued leave, maintenance of health benefits, and reemployment will cease.

11. Coordination

Absences due to sickness or injury, whether paid or unpaid, including absences for work-related sickness or injury that are also covered by the FMLA, will be considered for FMLA leave.

12. Employee Obligations

During FMLA leave, employees must periodically report on their medical status and intent to return to work. Upon taking such leave, the employee will be advised of the reporting requirements.

13. Medical Certification Upon Return to Work

An employee who has taken FMLA-covered leave for his/her own health condition (whatever

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)

pay code) may be required to obtain certification from the employee's health care provider, based on a job and FMLA condition-related fitness-for-duty exam at the employee's expense, that the employee is able to perform the essential functions of his/her job before being allowed to return to work.

14. Failure to Cooperate

Employees who fail to provide information, which Madeira Beach is allowed by law to require the employee to provide, may have their leave delayed, or not counted as FMLA leave, and be subject to discipline up to and including discharge as permitted by law.

15. FMLA Military Family Leave.

In addition to the FMLA-protected categories above, Congress's 2007 and 2010 FMLA military family leave amendments in the 2013 Final Rule provide that employees eligible for FMLA leave are entitled to leave for a covered family member's service in the Armed Forces under the following circumstances:

- a. Qualifying Exigency Leave. Up to 12 weeks of unpaid leave in any 12 month period for a qualifying exigency arising out of a covered employee's spouse, son, daughter, or parent's Armed Forces (including members of the National Guard or Reserves) covered active duty or notification of an impending call or order to active duty in the support of a contingency operation; or
- b. Military Caregiver Leave. Up to 26 weeks of unpaid leave in a single, 12 month period for an employee to care for his or her spouse, son, daughter, parent, or next of kin, a service member/covered veteran, recovering from a serious injury or illness suffered while on active duty in the armed forces. FMLA leave taken for family military leave runs concurrent with other leave entitlements, as allowed under federal, state and local law.

Qualifying exigencies may arise when the employee's spouse, son, daughter or parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on covered active duty or has been notified of an impending call or order to covered active duty.

Qualifying exigencies categories.

- Issues arising from the military member's short notice deployment (within seven or less days of notice)
- attending military events and related activities
- to arrange for childcare and related activities
- issues related to care of the military member's parent who is incapable of self-care
- making or updating financial and legal arrangements
- Attending counseling

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)

- Rest and Recuperation leave during deployment (up to 15 calendar days)
- Post-deployment activities (within 90 days of the end of the military member's covered active duty)
- Any other event that the employee and employer agree is a qualifying exigency

Should an employee request FMLA military family leave for a qualifying exigency, please consult with Human Resources and the City Attorney's Office for additional guidance.

Contingency operation. A "contingency operation" means a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services during a war or during a national emergency declared by the President or Congress.

Covered active duty is duty during deployment of the covered service member of the Armed Forces to a foreign Country.

For members of the National Guard and Reserves, covered active duty is duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation.

Deployment to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States. It also includes deployment to international waters.

Service member is a current member of the Armed Forces, including a member of the National Guard or Reserves who is receiving medical treatment, recuperation, or therapy, or in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

Covered veteran is an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. The period between enactment of the FY 2010 NDAA on October 28, 2009 and effective date of the 2013 Final Rule is excluded in the determination of the five-year period for covered veteran status.

The covered veteran is undergoing medical treatment, recuperation, or therapy for a serious injury or illness if he or she:

- was a member of the Armed Forces (including a member of the National Guard or Reserves);
- was discharged or released under conditions other than dishonorable; and
- was discharged within the five-year period before the eligible employee first takes FMLA military caregiver leave to care for him or her.

Serious injury or illness. A serious injury or illness means an injury or illness that is/was

VII. LEAVES OF ABSENCE

Section: VII-K

K. *Family and Medical Leave Act of 1993 (FMLA)*

incurred by the covered service member in the line of duty on active duty in the Armed Forces (including National Guard and Reserves) and rendered the service member unable to perform the duties of the service member's office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member's active duty and that were aggravated by service in the line of duty on active duty.

Serious injury or illness for a veteran means an injury or illness that was incurred by the covered veteran in the line of duty on active duty in the Armed Forces or that existed before the veteran's active duty and was aggravated by service in the line of duty on active duty, and that is either:

1. A continuation of a serious injury or illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member's office, grade, rank or rating; or
2. A physical or mental condition for which the veteran has received a U.S. Department of Veterans Affairs Services Related Disability rating (VASRD) of 50% or greater, and the need for military caregiver leave is related to that condition; or
3. A physical or mental condition that substantially impairs the veteran's ability to work because of a disability or disabilities related to military service, or would do so absent treatment; or
4. An injury that is the basis for the veteran's enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

In order to obtain military family leave to care for a family member who is recovering from an injury or illness suffered while on active duty in the armed forces, an employee must demonstrate a qualifying injury or illness is suffered by a covered family member who is a service member/veteran of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury or illness.

The term "outpatient status" means the status of a member/veteran of the armed forces assigned to a military medical treatment facility as an outpatient, or a unit established for the purpose of providing command and control of members of the armed forces receiving medical care as outpatients. The illness or injury must be serious enough to render the person unable to perform the duties of the member's office, grade, rank, or rating.

Next of kin. "Next of kin" is defined as the nearest blood relative to that individual.

Substitution of paid leave for military family leave. For leave taken for a qualifying exigency or for injured serviceperson caregiver leave, an eligible employee will be required to use available paid leave balances in the same manner as the City requires for other FMLA leave taken as noted below:

Qualifying Exigency Leave: Vacation, then Comp, then No Pay

Military Care Giver Leave: Family Sick (up to yearly max), then Vacation, then Comp, then No Pay.

VII. LEAVES OF ABSENCE

Section: VII-K

K. Family and Medical Leave Act of 1993 (FMLA)

Married employees. When both husband and wife work for the City, the aggregate amount of leave that can be taken by the husband and wife is 26 weeks in a single 12 month period for serviceperson caregiver leave, or a combination of active duty leave and serviceperson caregiver leave. The aggregate number of workweeks of leave to which both that husband and wife can take for only active duty leave is 12 weeks.

Notice and certification. If the need for leave is foreseeable, the employee must provide such notice to the City as is reasonable and practicable. Employees requesting leave under this section shall provide certification for the need for the leave on such forms as may be developed in the Secretary of Labor's final regulations, as modified by the City.

Calculating the 12-month period. Leave for a qualifying exigency is counted as the City calculates other categories of FMLA leave. Leave to care for a covered spouse, son, daughter, parent, or next of kin recovering from an injury or illness suffered while on active duty in the armed forces is a one-time benefit and as such, the 26 weeks are only available during a single, 12-month period. The City will begin counting the 12-month period on the first day of leave taken to care for the injured or ill service person.

Note: This FMLA military family leave policy supplements the City's main FMLA policy and provides general notice of employee rights to such leave. Except as discussed above, an employee's rights and obligations to FMLA military family leave are governed by the City's main FMLA policy and application/approval procedures.

VII. LEAVES OF ABSENCE

Section: VII-L

*L. Judicial Leave**L. Judicial Leave***Leaves of Absence Related to Judicial Proceedings**

1. If an employee is arrested for, and/or charged with, an alleged violation of a federal or State law, county or municipal ordinance, or an order of a court, and/or becomes incarcerated for such reason, the concerned department director shall investigate as necessary for the purpose of determining whether to take disciplinary action and/or whether to place the employee on judicial leave of absence pending judicial proceedings. The investigation, review and action options shall be coordinated with the Human Resources Department. The decision to place an employee on leave of absence is discretionary with the department director and subject to review by the Human Resources Staff. Any decision to place an employee on judicial leave shall be final and not subject to appeal through any grievance process.
2. While in some cases the City may elect to await the outcome of judicial proceedings prior to discipline action, the City reserves the right to make its own determination regarding the facts of the case and whether its personnel rules were violated, regardless of the outcome of any criminal proceedings.
3. An employee not incarcerated while awaiting disposition of a charge may be permitted to work if it is determined by the department director that allowing the employee to work will not adversely impact City operations or citizen good will, or jeopardize the well being of other employees or citizens.
4. Judicial Leave is not a right but an option which may be exercised in the sole discretion of the City and shall be unpaid. However, an employee must use all of his or her Vacation Leave prior to any unpaid period. Nothing herein should be interpreted as preventing the City from proceeding to terminate or otherwise discipline an employee at any time after a charge or arrest where the City possesses adequate information upon which to base its decision.

VIII. ABSENCE WITHOUT AUTHORITY

Section: VII

VIII. ABSENCE WITHOUT AUTHORITY

None of the provisions of this Policy shall be interpreted or construed to circumvent or mitigate the rule that: Any City employee absent from his/her position of employment without approval of competent authority for a period of two (2) consecutive workdays/shifts is considered to have resigned without notice.

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-A

A. Resignation

IX. NON-DISCIPLINARY SEPARATIONS FROM CITY EMPLOYMENT**A. Resignation**

1. Resignation is the separation of an employee from City employment through submission of a written or verbal notice of intent to resign. An employee's resignation shall be deemed as accepted by Madeira Beach the moment it is tendered regardless of any stated effective date, and no supervisor, manager or director has the authority to reject or permit an employee to rescind a resignation without the express prior authorization of the City Manager.
2. An employee who wants to leave City employment in good standing must notify his/her immediate supervisor at least two (2) weeks prior to leaving. The supervisor, in turn, will notify the department director. The department director may allow the employee, under extenuating circumstances, to give less than two (2) weeks' notice and still resign in good standing. In the event the department director, in consultation with the Human Resources Staff, determines that it would be in the City's best interest to deem a resignation notice an immediate resignation or shorten the resigning employee's notice, he/she may do so.
3. Upon an employee's resignation notice, any interest in continued employment ceases, and the employee is not entitled to any due process hearing.
4. Employees who resign from City employment without two (2) weeks' notice (unless otherwise approved by the department director), may not be recommended for rehire, nor be eligible for re-employment, with the City for one (1) year following their date of termination unless approved by the Human Resources Department.
5. Each City employee separating from City employment is requested to complete an Employee Separation Survey. The purpose of this survey form is to provide management with input the employee may have about his/her job and the City. The completed form is maintained by the Human Resources Department.
6. An employee who fails to report to work for two (2) consecutive workdays/shifts without approval of competent authority is considered to have resigned without notice. (See Section VIII., Absence Without Authority.)
7. An employee who takes any step to run for a Madeira Beach Board of Commissioners seat, including opening a campaign account for that purpose, filing qualifying paperwork with the Supervisor of Elections, or conducting a press conference or issuing a press release confirming his or her candidacy, shall be deemed to have resigned his or her position with Madeira Beach as of the close of business of the date any of these actions are first taken. Nothing herein shall be read or interpreted as preventing an employee from standing for election for any other elective public office or applying for appointment to any appointive public office.

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-B

B. Retirement

B. Retirement

1. None of the provisions of this Policy can be construed or interpreted to alter or impair the City's retirement plan.
2. There is no mandatory retirement age for employees of Madeira Beach unless otherwise provided by Florida Statute or a pension plan provision. Continued employment is determined by the employee's ability to perform satisfactorily in the job classification assigned.
3. Employee assistance and retirement information is available from the Human Resources Staff as needed. Department directors should urge their employees to contact the Human Resources Department at least ninety (90) days in advance of the anticipated retirement date, to allow time to process retirement benefits.
4. Employees who have retired from City employment may be re-hired by the City in any position and under such terms and conditions as the City may offer, consistent with policies or procedures applicable at the time of application.

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-C

C. Death

C. Death

1. Separation is effective on the date the death occurs.
2. All compensation due the employee at separation is paid to the beneficiary, surviving spouse, or to the estate of the employee, as determined by law or by executed forms in the employee's official personnel file.
3. Department directors must immediately report an employee's death, regardless of cause, to the Human Resources Staff and initiate the appropriate separation paperwork forthwith.

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-D

*D. Layoff***D. Layoff**

1. It is the intent of the Board of Commissioners to provide stable employment to members of Madeira Beach Government. However, there may be occasions which necessitate a reduction in the City work force.
2. A reduction of work force may be instituted in cases of bona fide budget reduction, lack of work, lack of funds, program or grant discontinuation, technological replacement, or any other significant organizational change or condition of serious financial distress that may occur. When such conditions exist, the department director may, after coordination with the Human Resources Staff and approval by the City Manager, proceed to lay off an employee or employees. To the extent a reduction in force is necessitated by the City Manager's proposed budget, layoff decisions shall be consistent with the programs, services or operations to be reduced or eliminated by such budget.
3. A reduction in work force may be made by work site assignment and/or specific function performed and/or unique skills or qualifications held and/or by general job classification and/or by pay grade within the affected department, or division or operation thereof. Layoffs which are targeted solely at reduction of salary costs must fairly target the foregoing employee classifications in a roughly uniform way so as not to cause the layoff of a more senior worker where a more junior employee performing the exact same duties and working at the same location is earning more.
4. The duties previously performed by a laid-off employee may be reassigned to other employees already working in positions in appropriate job classifications.
5. The Human Resources Department, with appropriate advice from the City Attorney, shall review any reduction in force proposals prior to their implementation so as to review such proposals to minimize negative impacts on prior equal employment gains in impacted work units, and advise the City Manager on any labor law implications.

6. Layoff Priority

- a. In the event of layoff, primary consideration will be on the factors set out in Section IX.D.3. Thereafter, the order of layoff shall begin with temporary then probationary employees. The next order of layoff shall begin with the employee who has the least seniority (see Section IX.D.6.b.).
- b. Seniority shall be determined by City-wide continuous service. Rules of continuous service shall be observed in deciding the date of last hire for the purpose of seniority determination.
- c. If two or more individuals should have the same hire date for determining seniority, the employee with the most disciplinary and/or counseling notices shall be laid off first.

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-D

D. Layoff

- d. In accordance with prevailing veteran laws, including Chapter 295, Florida Statutes, certain veterans and spouses of certain veterans may be eligible for preference in retention when layoffs are necessitated. Human Resources shall review layoff proposals to ensure compliance with such laws.
7. City employees who are scheduled for layoff shall not have "bumping rights" to other positions in any City department. However, where the City is able to forecast a layoff in advance, the City may establish a time period wherein employees subject to a pending layoff will be permitted to apply for open positions. During this period, such employees shall, when being considered by interviewing departments, receive preference in hiring where they are otherwise equally qualified with other candidates. Nothing herein, however, is intended to require the hiring of any such employee by a department where another candidate is clearly more qualified for the position.
8. Employees scheduled for layoff may, if offered by the City, elect to accept transfer to vacant City positions for which they are qualified. Such transfer offers may be made at the discretion of the City and must be accepted by the employee within 3 days of receipt of the written offer. The employee's pay rate would be adjusted in accordance with Policy for any other City employee changing positions within the City. Employees who accept a transfer offer under this paragraph shall not be further entitled to any reinstatement to their prior position.
9. However, employees on layoff status with no offer of transfer, may for a period of twelve (12) months from the date of layoff apply and receive preference in interviewing for any job for which they are minimally qualified.
10. Human Resources Department shall ensure Employee Health Benefits is made aware of any layoffs to ensure proper COBRA notices are provided.

11. Reinstatement

- a. Laid-off employees, who have not accepted an offer of transfer to a different City position, have priority for reinstatement, according to seniority, in jobs within their classifications at the time of separation for twelve (12) months following the effective date of layoff. Laid-off employees reinstated to those classifications within the twelve (12) month period shall have their previous dates of hire restored (including vacation and sick leave accrual rates and any unpaid sick leave balances in effect at the time of layoff). However, recalled employees may not be offered the rate of pay they had prior to their layoff, where fiscal conditions require a reduced rate for the position. At the end of the twelve (12) month period, all laid-off employees' rights associated with reinstatement are concluded. The City offers reinstatement to laid-off employees by certified mail to the last known address. (Note: It is the laid-off employee's responsibility to keep the Human Resources Department notified of any change of address, if he/she is interested in reinstatement.)

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-D

D. Layoff

- b. Reinstatement is offered to laid-off employees provided they are qualified (medical certification may be required) to perform the essential duties of the job, and are in compliance with current pre-employment requirements including the City's Drug Free Workplace Program. A laid-off employee, who is temporarily unable to accept an offer of reinstatement due to medical certification, may request a delay in starting work, not to exceed thirty (30) calendar days.
 - c. The return to work date for a laid-off employee, who is qualified to return to work and compliant with all pre-employment requirements, is determined by the City's requirements, but the employee must be available for work no later than two (2) weeks following notice or his/her seniority will be forfeited and he/she is no longer considered eligible for reinstatement under the Layoff procedures.
 - d. If the employee fails to report to the Human Resources Staff within three (3) business days after receipt of the certified notice or if the employee does not meet all current pre-employment requirements, his/her seniority is forfeited and he/she is no longer considered eligible for reinstatement under the Layoff procedures.
12. Employees who are scheduled for layoff do not have the right to submit appeals or complaints in regard to layoff actions, except for reasons of alleged violation of these policies and procedures governing such reduction of work force, or for alleged acts of illegal discrimination. The City Manager may elect to offer separation agreements to employees subject to layoff. Such agreements should be reviewed by the City Attorney's Office prior to being offered.
 13. Employees who are scheduled for layoff should contact Human Resources to discuss their medical coverage and other health benefits.
 14. The Human Resources Department shall make all reasonable efforts to provide outplacement assistance and services to laid-off employees.

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-E

*E. Disability Separation/Reasonable Accommodation**E. Disability Separation/Reasonable Accommodation*

1. All employees of the City are expected to be able to perform the essential functions of the positions they hold. At times, a physical or mental impairment may cause an employee to become unable to perform one or more job functions. In such circumstance, it will be the responsibility of the employee's department, in consultation with the Human Resources Department, to work with the employee to identify reasonable accommodations which will permit the employee to perform all essential job functions. This process may take more than one try, depending on the specific facts of the case.
2. Though the employee's input on accommodations should be given weight, an employee is not entitled to demand a particular accommodation if the department wishes to provide a different accommodation, so long as the accommodation will permit the employee to perform his or her job functions. The Human Resources Department and the City Attorney's Office should be consulted where any questions arise over the identification of accommodations.
3. If no reasonable accommodation can be identified, or if attempts at accommodations fail, or if the employee declines to accept reasonable accommodations offered by the department, then the department director, prior to separation, may refer the employee to the Alternate Employment Program (AEP). Such referrals shall be in writing and shall review the accommodations attempts made by the department.
4. An employee may be terminated when he/she is unable to perform the essential functions of the job because of a physical or mental impairment and where no reasonable accommodation has been identified or accepted. Separations based on the employee's inability to perform the essential functions of the job under the provisions of this section will not be considered disciplinary terminations.
5. If the inability to perform the job occurs due to an on-the-job injury, the employee should be given a reasonable opportunity to reach maximum medical improvement (MMI) as stated by the Workers' Compensation doctor before being evaluated for mandatory participation in the Alternate Employment Program (AEP) unless such inability has existed for more than 12 weeks in the immediate prior 12 month period. The point in time at which an employee is considered for discharge for an illness or off-duty injury will be dependent upon the needs of the department in conjunction with the availability of a definitive recovery prognosis. Nothing herein prohibits discharge for inability to perform duties, regardless of the source of illness or injury, where the continued non-performance of essential job functions by the employee results in an extreme hardship for the City department or operation involved.

**IX. NON-DISCIPLINARY SEPARATIONS
FROM COUNTY EMPLOYMENT**

Section: IX-F

F. Alternate Employment Program (AEP)***F. Alternate Employment Program (AEP)***

1. When the City receives information an employee has medical restrictions/limitations that appear to prevent the employee from performing the essential functions of the job and the department cannot provide or the employee does not accept reasonable accommodation(s) which would allow the performance of the essential job functions, the department director shall submit the appropriate referral form to the Human Resources Staff indicating the information received regarding the restrictions and how those restrictions prevent the employee from performing the essential job functions. The department director shall also indicate what efforts were made to identify reasonable accommodations; what accommodations were suggested by the employee; and why any potential accommodations were rejected by the department as an undue hardship. The Human Resources Staff will determine if the rationale are sufficient. If not, an independent medical and/or vocational evaluation may be arranged to further explore the potential for an accommodation.
2. After the Human Resources Staff receives sufficient notice from a physician and/or vocational rehabilitation counselor and the department that the employee is restricted in such a manner that he/she can no longer perform essential job functions, an HR representative will meet with the employee and over a 90 day period assist him/her in searching for suitable alternate employment. The 90 day period shall be consecutive calendar days from the time the employee is notified in writing of acceptance into the AEP. Where deemed necessary by the Human Resources Staff, a vocational rehabilitation counselor may be utilized in the search for alternate employment.
3. The HR representative shall maintain a list of all vacancies which occur during the 90 day period and evaluate the requirements for each vacant position vis-a-vis the individual's qualifications and capabilities. Employees in the AEP can be considered for any currently-vacant budgeted position which he/she would be otherwise qualified for, either with or without an accommodation. The HR representative will refer the employee to the department where an opening exists for an interview provided the employee executes an application, meets the qualifications for the position and satisfies all requirements with respect to testing, licensing and certification.
4. If suitable alternate employment has not been arranged within the 90 day period following the employee's entrance into the AEP, the HR representative will notify the Human Resources Staff that no suitable alternate position was identified or accepted. The Human Resources Staff will notify the employee's department director that the employee may be discharged after an exit interview, if possible, with the Human Resources representative and the department director.
5. The Human Resources Department, if at all possible, shall schedule an exit interview with the employee in order to inform the employee that the discharge is not a disciplinary termination, that all vacancies in the City have been examined and there is no suitable alternate employment available at that time. If the employee should recuperate to the extent that he/she can perform the essential functions of the job within nine (9) months of termination under this policy, he/she may contact the Human Resources Department and the employee's former Director may authorize reinstatement upon receipt of acceptable evidence that the employee can satisfactorily perform the job, providing there is a vacancy. The individual may continue to check the City job postings and may apply for other positions within the City as they occur. Nothing in this policy should be construed as creating a right to transfer to a different position, a right to reinstatement after termination under this policy, nor a right to any particular wage rate upon reinstatement.

X. CODE OF ETHICS FOR OFFICERS AND EMPLOYEES

Section: X

X. CODE OF ETHICS FOR OFFICERS AND EMPLOYEES

1. Officer and Employee Ethics: Officers and employees are required to conduct the affairs of the City in an ethical manner in accordance with the Code of Ethics for Public Officers and Employees (Florida Statutes 112.311 - 112.326), including, but not limited to, the following:
 - a. Duties and obligations will be discharged in a manner that reflects credibility upon the City. Conduct that gives the appearance that decisions and actions are motivated by personal relationships or for personal gain do not meet the standards of conduct for employees under the Policy.
 - b. In conducting the affairs of the City, no employee shall seek or assure a favorable decision or service by any person or entity, public or private, through acceptance of gifts, loans, favors, or any other form of unethical or unlawful conduct.
 - c. Employees shall not be employed or accept employment with any business entity or agency or engage in a professional activity which might result in a conflict of interest or cause/require the employee to disclose confidential information acquired as a result of his/her official capacity with the City. Approval of secondary employment shall be obtained as provided for in Section XVII of this Policy.
 - d. No City officer or employee shall solicit or accept anything of value to the recipient such as a gift (including Christmas gift), favor, loan, reward, promise of future employment, preferred service, benefit, or concession that would reasonably tend to improperly influence the officer or employee in the discharge of his or her official duties or give the appearance of improperly influencing the officer or employee.
 - e. No City officer or employee shall disclose/use information not available to members of the general public and gained by reason of his or her official position for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity.
 - f. No City officer or employee shall transact, or solicit to transact any business in his or her official capacity with any business entity of which the officer or employee, or his or her spouse or child is an officer, director, agent, or member, or in which the officer or employee or his/her spouse or child owns a financial interest, or otherwise has any material interest therein. Nor shall a City officer or employee, acting in a private capacity, transact or solicit to transact any business with the City, or with any of its subdivisions or agencies.
 - g. No City officer or employee shall have personal investments in any business which would reasonably create a conflict between his or her private interests and the City's interest.
 - h. No City officer or employee or his or her spouse or minor child shall, at any time, accept any compensation, payment or thing of value when he or she knows, or with the exercise of reasonable care, should know, that it was given to influence a vote or other action in which the officer or employee was expected to participate in his or her official capacity.

X. CODE OF ETHICS FOR OFFICERS AND EMPLOYEES

Section: X

- i. No City officer or employee shall have or hold any employment or contractual relationship with any business entity or agency which is subject to the regulation of, or is doing business with the City, or any part of the City of which he or she is an officer or employee. Nor shall any City officer or employee have or hold any employment or contractual relationship which will create a continuing or frequently recurring conflict between his or her private interests and the performance of his or her public duties, or that would impede the full and faithful discharge of his or her public duties.
 - j. Violations of the Code of Ethics for Public Officers and Employees are violations of State law and can result in fines, removal from employment, and criminal conviction; as well as in discipline including discharge from City employment.
2. Certain City public officers and employees, including “Local Officers,” “Procurement Employees,” “Legislative Analysts,” and those who are required by law to file either limited financial disclosure forms (Form 1), or full financial disclosure forms (Form 6), are under more stringent requirements, especially with regard to the acceptance of gifts and honoraria.
 3. City employees are encouraged to seek guidance from the City Attorney and/or the Human Resources Department if there is any question whatsoever about the propriety of any contemplated action prior to such action being undertaken. A copy of the statutory Code of Ethics may be obtained by contacting the City Attorney’s Office. Employees may also request, through their department directors, a formal request for an opinion from the Florida Commission on Ethics in Tallahassee. Such requests shall be directed to the City Attorney’s Office, which shall formulate the request and be the point of contact with the Commission.
 4. Procedures Upon Offering of Group Gift-From time to time, including during holidays, City departments, divisions, crews or individuals may receive or be offered gifts including gift certificates, baskets, tickets, food, or other items of value, from developers, vendors, contractors, lobbyists and other persons who conduct, have conducted, or seek to conduct business with Madeira Beach. In such instances, such gifts or offers should be reported to the City Manager’s Office so that the gift or offer may be evaluated under the applicable ethics laws. In cases where it is determined that a gift or offer may not be accepted, the gift will be returned or offer declined. Nothing herein, however, prevents any person from presenting a gift to Madeira Beach government, which gift may be accepted on behalf of the government by the Board of Commissioners and used at its sole direction.
 5. No current employee of Madeira Beach may serve on any Madeira Beach board, commission, task force or other body, nor hold any other office of City government, including advisory bodies. Nothing herein shall be interpreted as preventing employees from holding any office of any other governmental entity, or from serving on the board of directors of any corporation, so long as no other ethical conflict prevents such service.
 6. Employees who may wish to disclose information concerning alleged violations of law or gross mismanagement, malfeasance, waste of public funds or neglect of duty by a City agent, official or contractor must follow the procedures outlined in the City’s Whistle-Blower Ordinance, which are at § 50-20 through § 50-25 of the Madeira Beach Code.

XI. DISCIPLINE AND DISCHARGE

Section: XI-A

A. General Provisions

XI. DISCIPLINE AND DISCHARGE*A. General Provisions*

1. The level of discipline an employee will receive for a given offense varies in each case depending on the employee's past work and discipline record, seniority and the severity of the offense.
2. Employees may be disciplined by written notice alone (with or without other conditions), suspension, probation, demotion, discharge or combinations of these for an action or failure to act which adversely affects job performance or the efficient operation of Madeira Beach Government or the work unit. It is the intent of the City that employees succeed within their own departments. Therefore, transferring of unsuccessful employees from one department to another is a disfavored practice and will not generally be used to address employee performance or misconduct issues.
3. Probationary and temporary employees and other employees designated as serving at the will of the Board of Commissioners or the City Manager do not possess a property interest in their positions and therefore may, absent contrary charter or contract terms, be discharged without cause and are not entitled to any recourse in the event of discipline or discharge, except as provided in this paragraph and Section XI.D.2.d. of this Policy. Further, the City Manager may elect to grant an employee a last chance agreement or voluntary separation agreement (in a form approved by the City Attorney) and employees who have waived their appeal rights by virtue of having entered into such agreements are not entitled to appeal any subsequent discharge to the extent set forth in such agreements. If any such employee believes he/she has been disciplined or discharged as a result of illegal discrimination, the employee must follow the procedures outlined in Section XIII of this Policy regarding Illegal Discrimination or Harassment.

XI. DISCIPLINE AND DISCHARGE

Section: XI-B

B. Grounds for Discipline or Discharge***B. Grounds for Discipline or Discharge***

Employees may be disciplined or discharged for any of the following reasons, or for any other just cause:

1. Incompetency or inefficiency in the performance of assigned duties.
2. Possession, use, sale, purchase, or attempt to sell or purchase, any illegal controlled substance, on or off duty; misuse of prescription drugs while on duty.
3. Consumption or possession of any alcoholic beverage on duty or while operating or riding in or on City vehicles or equipment or immediately prior to driving a City vehicle or operating City equipment.
4. Reporting to work, or working with, the presence of alcohol or illegal drugs in one's body; or failure to inform supervisor of use of prescription or non-prescription medication which may affect the employee's ability to safely and effectively perform job functions, or otherwise reporting to work while either mentally or physically unfit to perform duty.
5. Refusal to submit to drug or alcohol testing as provided for in this policy or as may be required by law; attempting to contaminate test specimens or otherwise interfering with drug or alcohol testing procedures.
6. Insubordination including refusing to perform work when assigned, or to comply with written or verbal instructions of the supervisory force, including the use of abusive or threatening language or behavior directed toward a supervisor.
7. Refusal to fully and truthfully cooperate in an investigation conducted by or at the direction of the City or to testify at any hearing or proceeding when directed to do so.
8. Interference with the work of another employee.
9. Conducting personal business during duty hours.
10. Unexcused absenteeism or tardiness, including failure to report to duty at any reasonable time.
11. Political campaigning in writing, orally, or by telephone while on the job or during work hours.
12. Carelessness or negligence in handling or control of City property or the improper appropriation of City property.
13. Willful or negligent failure to follow safety rules or procedures.
14. Discourteous, insulting, abusive, or inflammatory language or conduct toward any person, which disrupts the workplace or serves to offend any citizen, vendor or other person with whom the employee comes into contact during the performance of duties.
15. Inability to perform the essential functions of the employee's position with or without reasonable accommodation, including the inability to maintain regular attendance.

XI. DISCIPLINE AND DISCHARGE

Section: XI-B

B. Grounds for Discipline or Discharge

16. Failure to comply with ethical requirements in law or these Policies, including the acceptance of a gift under circumstances from which it could reasonably be inferred that the giver expects preferred treatment in a City-related matter.
17. On or off the job conduct which adversely affects the ability of the employee to perform his/her duties or the ability of another employee to perform his/her duties. This includes conduct that adversely affects the efficient operation of Madeira Beach Government or any department/office/division/area thereof.
18. Lying, falsifying an official document including employment applications, medical examination forms, accident records, insurance records, leave or payroll records, purchase orders, or any other dishonesty connected with the employee's job or the operation of Madeira Beach Government.
19. Unlawful or unauthorized possession, use, or threat of use, of a deadly weapon, including a firearm, ammunition, explosive device, illegal knife, or other weapon, while on duty, on City property, or in a City vehicle.
20. Horseplay, fighting, unsafe conduct, or other disorderly misconduct, while on duty or on Madeira Beach Government property.
21. Violation of a City or departmental rule, procedure, order or regulation, any statute or ordinance related to City employment, or any provision of this Policy.
22. Unlawful or improper conduct, either on or off the job, which would tend to affect the employee's relationship to his or her job, his or her fellow workers, or Madeira Beach's reputation or goodwill in the community.
23. Engaging in discriminatory or harassing behavior of a verbal or physical nature which includes, but is not limited to, slurs, epithets, jokes, negative stereotyping, or other acts that relate to race, religion, gender, national origin, marital status, age or disability; or any display or written or graphic material such as photographs or cartoons that denigrates or shows hostility or aversion toward any individual or group because of same; as prohibited by Section XIII and the City's EEO/AA Policy.
24. Violation of Florida Statute 447.505, prohibiting public employees from participating in any strike against a public employer.
25. Conviction or guilt of a felony or a misdemeanor of the first or second degree as defined by Florida statutes or federal criminal law, without regard to or status of any criminal proceeding, or any violation of a county or municipal ordinance involving moral turpitude, while either on or off the job.
26. Failure to obtain and maintain, or suspension or revocation, of a state, federal or other license/certificate required or essential to the performance of the employee's job, and failure to inform the City of such suspension or revocation of license/certification.
27. Unacceptable driving record as determined by the Madeira Beach Workplace Safety Committee, or the loss, suspension, or revocation, of a driver's license, when driving duties and/or possession of a valid driver's license are requirements for the employee's job.

XI. DISCIPLINE AND DISCHARGE

Section: XI-B

B. Grounds for Discipline or Discharge

28. Two or more related or unrelated disciplinary actions.
29. A less than satisfactory employee performance evaluation.
30. Use of City vehicles for other than City business.
31. Failure to use seat belts while driving or riding in City vehicles, or any other violation of the policies on the use of vehicles for City business.
32. Failure to notify the City Human Resources Staff of any criminal arrest, charge or conviction within three (3) business days of such arrest, charge or conviction.
33. Operating, using, or possessing tools, equipment or machines to which the employee has not been assigned, or performing other than assigned work.
34. Productivity or workmanship not up to required standards of performance.
35. Failure to properly wear a complete City uniform as provided by the employee's department, or to display proper City identification as required by departmental rules.
36. Taking more than specified time for meals and rest periods.
37. Habitual failure to properly and timely complete record of time worked.
38. Knowingly making any unauthorized marks or amendments to time records of oneself or of another, or requesting or soliciting another employee to make such marks or amendments.
39. Failure to obtain and keep current the required authorization for outside employment.
40. Failure to pay just debts due, including debts to the City, or failure to make reasonable provision for the future payment of such debts, thereby causing annoyance or embarrassment to the City or its agents.
41. Failure to report immediately to the department director the loss of a City identification card or access keys.
42. Knowingly permitting another person to use your City identification card, or using another person's identification card, or altering a City identification card.
43. Failure to keep the Human Resources Department notified of current address and telephone number.
44. Unauthorized posting or removal of any matter on or from any City bulletin boards or City property.
45. Provoking or instigating a fight, or actively participating in a fight during the workday, including breaks and meal periods, or at any time while on City property.
46. Sleeping during work hours unless otherwise provided as in the Emergency Medical Service.
47. Unauthorized distribution of written or printed matter of any description on City premises.
48. Failure to report to the City Attorney's Office a request for information, or receipt of a subpoena from an attorney, law firm, or court of law in connection with City related litigation.

XI. DISCIPLINE AND DISCHARGE

Section: XI-B

B. Grounds for Discipline or Discharge

49. Unauthorized vending, soliciting or collecting contributions at any time on City premises.
50. Failure to comply with the City's computer and internet use policies.
51. Disregarding job duties by loafing or neglecting work during working hours or stopping work, wasting time, or loitering, or temporarily leaving assigned work area during working hours without permission.
52. Abuse of vacation or other leave privileges, including failure to follow leave request procedures or giving false information to access leave.
53. Being absent without permission or leave.
54. Deliberately misusing, destroying, damaging, or causing to be destroyed or damaged, any City property or property of a co-worker or citizen.
55. Making false claims or misrepresentations in an attempt to obtain accident benefits, workers' compensation benefits, health insurance payments, or other benefits.
56. Knowingly harboring without proper treatment, a communicable disease, which may endanger the health of other employees.
57. Concerted curtailment or restriction of production or interference with work in or about the City's work stations including, but not limited to, instigating, leading or participating in any walkout, sit-down, stand-in, slowdown, sick-out, refusal to return to work at the assigned time for the scheduled shift, or participation in a strike or any concerted activity against the City as defined in Florida Statutes.
58. Threatening, intimidating, coercing or interfering with fellow employees, supervision or the public at any time, including the use of abusive, foul or obscene language.
59. Making or publishing false, vicious or malicious statements concerning any employee, supervisor, the City or its operations.
60. Failure to report a work-related accident, illness or injury to the Risk Management Division.
61. Theft or misappropriation of City funds or other assets.

XI. DISCIPLINE AND DISCHARGE

Section: XI-C

C. Progressive Discipline**C. Progressive Discipline**

1. Progressive discipline is a series of steps which provide a systematic approach to address and correct performance or behavior that fails to meet standards established by the City.
2. This subsection shall cover regular employees except those listed in Section XI.A.3, and XI.D.2.d. of this Policy. Regular employees may appeal discipline in accordance with Section XI.D.
3. Directors and supervisors may utilize this process when discipline becomes necessary in an attempt to maintain fairness and consistency. However, the step at which progressive discipline begins may vary depending on a number of factors, such as the nature and severity of the conduct, the employee's past discipline and performance record, and seniority. The Human Resources Staff may be consulted at any step in the Progressive Discipline procedure.
4. The following steps apply to progressive discipline (Note-counseling and warnings alone are not considered disciplinary action for purposes of appeal, but are available tools to use in appropriate circumstances prior to issuing discipline. However, where conduct so warrants, counseling and/or warnings may be skipped in favor of disciplinary action):

Step 1 - Oral Counseling or Warning

Step 2 - Written Counseling or Warning

Step 3 - Written Discipline Notice, Suspension Without Pay, Probation, Demotion

Step 4 - Discharge

5. When a supervisor determines that an employee's behavior or performance fails to meet standards established by the City or violates any provision of this policy, the supervisor should discuss such concerns with the employee and recommend a course of action for improvement. The discussion should include the following interactive process:
 - a. Clearly outline the behavioral problem or performance deficiency.
 - b. Allow the employee to respond to the concerns.
 - c. After considering the employee response, explain expected conduct or performance changes.
 - d. Establish a reasonable time frame in which improvement can be noted. In some cases, it is reasonable to expect quick improvement; other times, months may be more appropriate.
 - e. Tell the employee what the consequences will be if performance does not improve.
 - f. Ask the employee for a commitment to improve performance and correct the problems and follow up with the employee, providing feedback where appropriate.
 - g. Document this process on official Counseling/Warning or Discipline forms as appropriate.

Step 1 - Oral Counseling or Warning. Progressive discipline may begin with an informal discussion between the supervisor and the employee.

Step 2 - Written Counseling or Warning. Absent an improvement in performance, or

XI. DISCIPLINE AND DISCHARGE

Section: XI-C

C. Progressive Discipline

upon recurrence of a minor violation, the supervisor issues a written warning or counseling to the employee on appropriate City form. A copy of the counseling/warning, together with a copy of the employee's response (if any) will be sent to Human Resources for inclusion in the employee's official personnel file.

Step 3 - Written Discipline Notice, Suspension without Pay, Probation, Demotion.

Absent an improvement in performance following a written counseling/warning, or upon the occurrence or recurrence of a serious violation, the department director may discipline with written notice, suspend without pay, place on probation, or demote, the employee. These measures are coordinated with Human Resources. Discipline actions shall be taken through issuance of the City's official Notice of Employee Discipline form, and will be sent to Human Resources for inclusion in the employee's official personnel file.

Step 4 - Discharge. Absent an improvement in performance following suspension without pay, probation, or demotion, or upon the occurrence or recurrence of a serious violation, the department director may decide to discharge the employee. Documentation associated with discharge will be included in the employee's official personnel file.

6. The progressive discipline policies specified herein are guidelines only and shall not be interpreted as creating a condition precedent to the issuing of justified disciplinary action or any particular level of discipline. Furthermore, due to the severity of discharge, where a director is considering discharge (in cases where discharge is not mandatory), in addition to considering the most recent conduct or performance which give rise to the need to discipline, the director shall also consider the employee's entire performance and discipline history, how the director has handled similar conduct or performance in the past, and how the performance or conduct impacts the employee's co-workers, the City's operations and reputation, and the City's citizens. While each case and each employee will have its unique factors, directors should strive to administer discipline in a consistent manner across his or her department and over time.
7. Managerial, professional or confidential personnel of the City who have been designated as serving at the pleasure of the Board of Commissioners or the City Manager are not covered by this progressive discipline policy and may be terminated at any time without regard to cause. To the extent the City adopts official forms for the purpose of issuing counseling, warnings or discipline, department directors will be required to make use of such official forms to communicate these actions to employees.

XI. DISCIPLINE AND DISCHARGE

Section: XI-D

D. Appeal Process***D. Appeal Process***

1. Discipline Not Including Discharge

- a. A regular employee, not probationary or otherwise classified as serving at-will, who is disciplined by written notice of discipline only, or by probation, suspension without pay, or demotion may, within five (5) business days after the employee is notified of the discipline, excluding weekends and holidays, request a review by the City Manager of the discipline action. The request for review must be submitted to the Human Resources Staff in writing and must state with specificity why the employee disagrees with the discipline action. The official City form adopted by Human Resources must be used to file the appeal. Upon receipt of a timely request, the City Manager will provide a review of the discipline action, which will include an opportunity for the employee to explain to the City Manager the facts surrounding the discipline and why he/she disagrees with the disciplinary action. In addition to providing an opportunity for the employee to present his or her arguments and any related documents, the City Manager shall speak with the director who issued the discipline, any relevant witnesses provided by the employee or director, and may review any City documents which might assist the City Manager in reaching a conclusion as to the merits of the review request.
- b. The City Manager shall make the final determination in writing. In the event the City Manager determines that the discipline was unwarranted or too severe for the incident concerned, the employee's suspension will be rescinded and loss of pay, benefits, or seniority restored, or the appropriate level of discipline will be imposed as determined by the City Manager. The City Manager's decision shall be final and not appealable.

2. Discharge

- a. A regular employee, not probationary, at-will, or otherwise ineligible for appeal per Section XI.A, whose conduct is under investigation or whose discharge is contemplated, may be placed on administrative leave without pay pending a final decision. Such employee shall be offered a pre-termination meeting unless the discharge is in accordance with Section XX of this Policy or immediate dismissal is required to protect the health, safety or welfare of City employees or the public. The purpose of a pre-termination meeting is to provide the employee an opportunity to hear the charges against him or her, and to present reasons why his/her employment should not be terminated. In the event the employee is discharged, a post-termination hearing before the Civil Service Commission will be offered. In the alternative, and where the facts of the case appear to warrant it, the City Manager, in his/her discretion, may forego a pre-termination meeting and may instead place the employee on administrative leave without pay, and conduct, either in person or through a designee a full evidentiary hearing in accordance with the procedure set forth in Section XI.D.2.c before the final decision is made.
- b. A regular employee, (not probationary, at-will, or otherwise ineligible for appeal per Section XI.A), who has been discharged for cause, and who was not afforded a full evidentiary hearing before the discharge, may file a written request for a post-termination hearing with the Human Resources Department within ten (10) calendar days following the date the notice of termination is mailed.

XI. DISCIPLINE AND DISCHARGE

Section: XI-D

D. Appeal Process

- c. The jurisdiction of the Civil Service Commission is to interpret this Policy and any other relevant City policies, and to ultimately find if the City had factual and legal just cause to impose the discipline. In reaching its decision, the Civil Service Commission sits in an appellate advisory capacity. The focus is on whether the City has proven, through documents and witness testimony and by a preponderance of evidence, facts which demonstrate that the employee violated the cited City rules and policies. In addition to the question of proof of violation, the Civil Service Commission may also hear and consider an employee's argument that termination was not warranted. However, as to this question of proportionality, the Civil Service Commission should not impose its own managerial philosophy on the administration. Rather, it should consider factors such as whether the discipline imposed is required or allowed in this Policy, whether the director issuing the discipline has dealt with similar past cases in the same manner in light of the particular appellant's entire record vs. other employees the appellant may seek to compare him or herself to.
- d. The Civil Service Commission does not have jurisdiction over, and may not rule upon, or make findings about, any allegations of a violation of a county, state or federal law. Appellants seeking to raise such violations should do so by way of the appropriate statutory procedures.
- e. Employees may not appeal letters confirming job abandonment, letters confirming separation due to inability to perform due to health issues or loss of license or qualification, last chance agreements or voluntary separation agreements, as these are not forms of discipline.
- f. Discharges for violation of Section XX based on test results must proceed with the test result challenge process in that Section prior to being granted a post-termination hearing. Employees failing to challenge a test result will be deemed to have waived any right to a post-termination hearing.
- g. Upon timely receipt of a request for a post-termination hearing, the following will occur:
 - (1) The City Manager will refer the request to the Civil Service Commission, which will work with Human Resources staff to schedule a hearing date in a prompt and reasonable time.
 - (2) The Human Resources Department will serve as the Clerk for the proceedings, and shall maintain the official record of evidence submitted and meeting notes. The Clerk will set the time and place of the hearing, and will notify all interested parties. The Clerk shall also ensure that hearing officers are provided with appropriate standard hearing procedures to permit an orderly, efficient and fair hearing.
 - (3) The Civil Service Commission will conduct the post-termination hearing pursuant to quasi-judicial procedures developed with the assistance of the City Attorney. At a post-termination hearing, the City and the discharged employee may present evidence, examine and cross-examine witnesses, raise objections, and be represented by counsel.
 - (4) The Civil Service Commission will make findings of fact and conclusions as to the application of those facts to the City's policies.

XI. DISCIPLINE AND DISCHARGE

Section: XI-D

D. Appeal Process

- (5) The Civil Service Commission's advisory opinion will be forwarded to the City Manager who will make a final decision. In making a final decision, the City Manager may not overturn the Civil Service Commission's findings of fact, but may reach a different conclusion as to how such facts should be applied to the City's policies. For purposes of certiorari appellate review, the City Manager's written decision shall be the final action of the City.
 - (6) In the event the City Manager determines that the violation was not factually supported, the employee will be reinstated without loss of pay, benefits, or seniority. Upon determining that policy violations occurred but that a discipline other than termination is warranted, the City Manager shall impose the appropriate discipline, which shall not be further appealable. If the City Manager determines that policy violations occurred and that the discipline imposed was appropriate, he/she shall so find.
 - (7) Notwithstanding the foregoing, employees may elect an alternative remedy to appeal a disciplinary action where same is provided for by applicable collective bargaining agreement.
- h. Name Clearing Hearings
- (1) When an employee is discharged for cause, and where the employee believes that his or her file contains stigmatizing information connected with the discharge or where a City official publishes post-termination information connected with the discharge the employee believes contains stigmatizing information, the employee may, within ten (10) calendar days of receiving notice of the discharge or of the publishing of the post-termination information, request a hearing for the sole purpose of responding to the information considered to be stigmatizing.
 - (2) The Civil Service Commission shall conduct a name-clearing hearing, and shall provide the discharged employee an opportunity to clear his/her name. A hearing held pursuant to this section (h) will be recorded and the record preserved for such times as may be prescribed by law or, if no such time is prescribed, for a reasonable time. Upon hearing from the former employee and any relevant City witnesses, the Civil Service Commission may recommend to the City Manager that a demonstrably false or incomplete statement or conclusion in a file be supplemented with the former employee's side, that the City issue a retraction or clarification of a demonstrably false or incomplete statement to the public, or some other measure requested by the former employee so as to eliminate or reduce the alleged unwarranted stigma. The Civil Service Commission may also decide to make no recommendation if one is not warranted. The mere confirmation that the former employee had been discharged, the fulfillment of a public records request for documents related to the discharge, or the former employee's disagreement with a discharge decision, will not be proper foundations for a name-clearing hearing. Such a hearing shall not entitle the employee to any relief from discharge.

XII. EMPLOYEE COMPLAINT PROCEDURE

Section: XII-A

A. Definition of Terms

XII. EMPLOYEE COMPLAINT PROCEDURE**A. Definition of Terms**

1. **Complaint** - a written statement made by an employee concerning any non-disciplinary, work-related problem. The statement must be submitted on the City's official grievance form before it can be considered a "complaint."
2. **Immediate Supervisor** - the person in the chain of command to whom an employee directly reports and under whose direct supervision the employee performs his/her job.
3. **Regular Employee or Employee** - (for purposes of this Section) - a person employed by the City who is not working in a temporary status.
4. **Occurrence** - an event that caused the complaint or an incident which the employee, through the exercise of reasonable care, should have known about.
5. **Temporary Employee** - a non-regular employee (e.g., OPS, on-call, contingency, student intern) as defined in Section I.B.1. of this policy.

XII. EMPLOYEE COMPLAINT PROCEDURE

Section: XII-B

B. General Provisions**B. General Provisions****1. Purpose**

The purpose of the Complaint Procedure is to establish a process for resolving employee work-related problems and grievances at the lowest administrative level possible and to ensure the fair, expeditious and orderly resolution same. The Complaint Procedure shall NOT be used to appeal evaluations or discipline, nor to address allegations of illegal harassment or discrimination. Complaints regarding such matters must be processed under the provisions of Section XIII, Illegal Discrimination or Harassment.

2. Coverage

- a. The Employee Complaint Procedure is applicable to all regular employees.
- b. Employees, including probationary and temporary employees, who wish to lodge a complaint concerning illegal discrimination must utilize the formal procedures established in Section XIII of this Personnel Policy Manual.

3. Time Limits

- a. The time limits set forth in this Procedure are strictly adhered to unless waived by both parties concerned or the Human Resources Staff.
- b. Failure on the part of the supervisor, the department or the Human Resources Department to comply with the time limits enables the employee to proceed to the next step.
- c. If an employee fails to comply with the time limits, his or her problem shall be deemed resolved, and any pending complaint shall be dismissed.

4. Responsibilities of Department Directors

- a. Department directors are responsible for ensuring that supervisors promptly handle employee problems and that each employee is made aware of this Procedure.
- b. Department directors are encouraged to call upon the Human Resources Staff for an interpretation of any City Personnel Policy or Procedure or for guidance regarding the application of City Personnel Policies, Rules and Procedures. Department directors are also encouraged to consult with the Human Resources Staff or designee concerning employee relations matters.

5. Available Complaint Procedures

Employees have the following procedures available to them:

- a. Opportunity to file a complaint with the Human Resources Department.
- b. Opportunity for informal resolution of the complaint. An effort will be made within the affected department to resolve the problem informally through the use of representatives of the Human Resources Department, as necessary.
- c. Opportunity to bring witnesses and documentary evidence at any step in this Procedure.
- d. Opportunity to have copies of relevant records or documents provided by the records custodian when such records or documents are kept by or for the City in the ordinary course of business.

XII. EMPLOYEE COMPLAINT PROCEDURE

Section: XII-C

C. Procedural Steps**C. Procedural Steps**

The following steps are available to employees for the orderly and expeditious processing of non-disciplinary, work-related problems or complaints.

1. STEP I: Immediate Supervisor

- a. When an employee has a work-related complaint, the employee should consult with his/her immediate supervisor within ten (10) calendar days of the occurrence. Either or both parties may request Human Resources' assistance in resolving the complaint. However, employees are encouraged to work in good faith with their respective supervisors for speedy resolutions of their problems or concerns.
- b. If a satisfactory resolution is not reached within two (2) of the supervisor's working days following the employee's initial consultation with the supervisor, the employee has two (2) additional work days to put the problem in writing on an official form and to present it to his/her supervisor.
- c. The supervisor has two (2) working days (supervisor's working days) from the day the employee presented the written complaint to give the employee a written decision on an official form, with forwarding copies.

2. STEP II: Department Director

If the matter is not satisfactorily resolved in Step I, the employee may present the written statement of the problem or concern to the department director. This step must be taken within five (5) working days of receipt of the supervisor's written decision. The department director shall render a written decision to the employee within five (5) working days after receipt of the employee's written statement, with forwarding copies.

3. STEP III: Human Resources Department

In the event the complaint remains unsettled, the employee may refer the matter to Human Resources within five (5) working days of receipt of the department director's decision. The Human Resources Staff or designee attempts to resolve complaints within his/her area of responsibility. In the event the complaint is not resolved within ten (10) working days of receiving the complaint or if it is beyond the scope of the Human Resources Staff's responsibility, the Human Resources Department will prepare a report to the City Manager.

4. STEP IV: City Manager

The City Manager or his/her designee will consider the complaint. Upon request, the complaining employee may explain his/her position in writing and/or in a meeting with the relevant official/designee. After considering all the available information, including any recommendation by a designee, the City Manager will make a final determination within fifteen (15) calendar days after receipt of written submission, meeting with employee, or receipt of designee's report, whichever is last-occurring.

XII. EMPLOYEE COMPLAINT PROCEDURE

Section: XII-D

D. Prohibition Against Retaliation

D. Prohibition Against Retaliation

1. Madeira Beach prohibits retaliation against any employee for using the Employee Complaint Procedure or for participating or cooperating in any way in connection with this Procedure.
2. An employee who believes that he/she has been harassed or retaliated against for having used this complaint procedure may, within ten (10) calendar days of the occurrence, file such allegation with the Human Resources Department for further investigation. After completion of its investigation, the Human Resources Department will submit a report of its investigation to the City Manager, who will take appropriate action.
3. Violation of this subsection is subject to disciplinary action up to and/or including discharge.

XIII. ILLEGAL DISCRIMINATION OR HARASSMENT

Section: XIII

XIII. ILLEGAL DISCRIMINATION OR HARASSMENT**A. Policy**

1. Madeira Beach is committed to providing workplaces that are non-discriminatory and afford equal treatment to all. The City will not condone or tolerate illegal discriminatory behavior. This specifically includes sexual harassment and any other type of harassment or discriminatory conduct based on race, color, national origin, religion, gender, marital status, age, citizenship or disability (protected class).
2. Employees shall not engage in conduct which violates this policy at any time during working hours, or on City premises while off duty, or while off duty and interacting with fellow employees (including interactions on social media).
3. All administrative and supervisory personnel are expected to abide by the City's commitment to equal opportunity and treatment under the law and to ensure that this policy is fully implemented and enforced.
4. Due to the severity of illegal discriminatory conduct, and the legal questions which are often involved in investigating such conduct, the procedures in this policy shall be used in investigating and dealing with illegal discrimination complaints. The City's general Complaint Procedure shall not be used to address such complaints.

B. Definitions

1. Illegal harassment or discriminatory conduct can be any verbal or physical conduct that belittles or otherwise shows hostility or aversion toward an individual or group based upon that individual's or group's race, color, religion, gender (including sexual orientation or transgender status), national origin, marital status, age, citizenship or disability, and that for a reasonable person:
 - (a) has the effect of creating an intimidating, hostile, or offensive work environment; or
 - (b) has the effect of unreasonably interfering with an individual's work performance; or
 - (c) otherwise adversely affects an individual's terms and conditions of employment.
2. Examples of illegal harassment include, but are not limited to, epithets, slurs, jokes, negative stereotyping, or other acts which are threatening, intimidating, or hostile in nature, that relate to a protected class, or any display of written or graphic material such as photographs or cartoons that belittles or shows hostility or aversion toward an individual or group because of the same.
3. Sexual harassment is generally defined as abusive treatment of an employee by the employer or by a person or persons under the employer's control, which would not occur but for the person's gender, when:
 - (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
 - (b) submission to such conduct by an individual is used as the basis for employment decisions affecting the individual; or

XIII. ILLEGAL DISCRIMINATION OR HARASSMENT

Section: XIII

- (c) such conduct has the effect of unreasonably interfering with an individual's work performance or creating an intimidating or offensive work environment.
4. Examples of conduct which may constitute sexual harassment may include, but are not limited to, the following:
- (a) unwelcome sexual advances, flirtations, or propositions
 - (b) actual or implied demands for sexual favors in exchange for favorable treatment or continued employment
 - (c) unwelcome jokes or remarks of a sexually oriented nature
 - (d) verbal abuse of a sexual nature
 - (e) unwelcome commentary about an individual's body, sexual prowess, attractiveness, or sexual deficiency
 - (f) any display in the workplace of sexually suggestive objects, pictures, posters, or reading material
 - (g) a coerced sexual act or assault
 - (h) uninvited physical contact of a sexual nature such as pinching, grabbing, patting, or brushing against another person
 - (i) uninvited leering, whistling, or gestures of a sexual nature

C. Procedure

1. Any employee or applicant who believes that he or she is being or has been illegally discriminated or retaliated against or harassed must file a timely written complaint with the Human Resources Staff. To the extent the City maintains an official form for the purpose of filing a charge under this section, such form must be used and all questions therein responded to fully.
2. Directors, managers and supervisors must not initiate investigations on their own but are responsible for immediately bringing any allegation or concern related to potential cases of illegal discrimination or harassment to the attention of Human Resources.
3. The Human Resources Department will be responsible for evaluating all complaints under this policy with legal advice as needed, and making the determination on whether an internal investigation is warranted. In cases where such an investigation is determined to be warranted, the City Manager will designate an appropriately qualified person or persons from outside the employee's department who shall be responsible for conducting a prompt, thorough and objective investigation.
4. Employees questioned during the course of an investigation are obligated to cooperate in a full and honest manner. No employee shall face any form of reprisal for making a complaint or for his or her cooperation with an internal investigation. Employees who either refuse to cooperate in an internal investigation, or who intentionally give false information at any point within an investigation, shall be subject to disciplinary action.

XIII. ILLEGAL DISCRIMINATION OR HARASSMENT

Section: XIII

5. Once an internal investigation has been concluded, the Human Resources Department will review the investigator's written report with the City Manager and appropriate senior staff, to include the department director(s) at-interest. In appropriate cases, the City Attorney may also be present to advise. This panel will determine the remedial action to be taken, if required. A final written report containing final findings and the actions taken will be generated at the conclusion of the investigation and review, with a copy provided to the complainant. Individuals against whom allegations were raised will likewise be entitled to receive a copy of the final report upon request.
6. Once an investigation has been concluded, it shall be the responsibility of the department director at-interest to implement the remedial actions which were determined by the review panel to be appropriate. The Human Resources Department shall be responsible for monitoring the workplace situation, and should be contacted by the complainant or other affected parties if they at any point feel that either retaliation is taking place or the illegal behavior is continuing.
7. This internal complaint and investigation process does not preclude an aggrieved employee from filing a complaint with the United States Equal Employment Opportunity Commission and/or the Florida Commission on Human Relations. However, failing to utilize this internal procedure may under the law result in the loss of important legal rights.

XIV. LABOR-MANAGEMENT RELATIONS

Section: XIV

XIV. LABOR-MANAGEMENT RELATIONS

1. By law, Madeira Beach employees have the right to form, join, and participate in, or to refrain from forming, joining, or participating in legally sanctioned employee organizations to represent them in employee relations matters.
2. City employees have the right to refuse to join or participate in the activities of employee organizations. They also have the right to represent themselves individually in their employment relations with the City.
3. No employee will be interfered with, intimidated, restrained, coerced or discriminated against because of his/her exercise of these rights. It is the intent of the City that nothing in this section shall be construed to either encourage or discourage the organization of employees.
4. Employees who are or become covered under a collective bargaining agreement shall also be subject to the Personnel Policy, Rules and Procedures. If any direct conflicts occur between such agreements and the Personnel Policies, the agreement shall take precedence. Such agreements shall be controlling, in cases of conflict, even where the rights or benefits provided within said agreements are lesser than those contained within the Personnel Policies.

XV. EMPLOYEE RECOGNITION PROGRAM

Section: XV

XV. EMPLOYEE RECOGNITION PROGRAM

1. The Board of Commissioners seeks to recognize and reward City employees for dedication to the City, exemplary performance and innovation, and gains in efficiency, City positive environmental impacts and cost reduction, all of which enhance the performance of Madeira Beach Government.
2. All regular full and part-time employees shall be eligible to receive recognition and awards related to an individual employee's or work group's exceptional accomplishments or contributions related to their City service.
3. Employees may, to the extent budgeted funds are available, receive appropriate recognition including plaques or other tokens, paid time off, leave credits or monetary awards for the following categories such as employee of the month/year, heroism, and years of service.
4. Employees may receive recognition based on the following criteria:
 - Discovery or invention of a unique innovative idea, process, procedure or policy which will result in significant improvement or efficiency in the operation of their department or the City in general.
 - Implementation of a project, idea, process, procedure or policy resulting in significant monetary savings to the City.
 - Outstanding and exemplary performance in the daily capacity of an employee which far exceeds the expectations of the position.
 - Achieving or substantially contributing to the achievement of a highly desirable outcome, either in terms of substantial safety improvements or the avoidance of risk, or otherwise obtaining an extraordinary beneficial result through exceptionally strenuous or complex work of a non-routine nature.
 - Providing highly effective assistance "above and beyond the call of duty" type efforts resulting in a positively changed outcome for the employees or citizens of Madeira Beach.
5. All employee awards provided for herein shall be in accordance with Florida law and City policies concerning such awards. The City Manager shall have the authority to develop and periodically revise procedures and forms to implement this section.

XVI. EMPLOYEE PERFORMANCE EVALUATION SYSTEM

Section: XVI

XVI. EMPLOYEE PERFORMANCE EVALUATION SYSTEM

1. Under the direction of the City Manager, the Human Resources Staff administers a program for rating the work performance of Madeira Beach employees.
2. The Performance Evaluation Program is designed to provide procedures and guidelines for supervisors to evaluate the performance of City employees in the accomplishment of their assigned duties and responsibilities.
3. Through the uniform application of these procedures and guidelines, supervisors can use the Performance Evaluation Program as an effective management tool to recognize accomplishments, guide and reward performance and improve productivity and morale.
4. The City Manager is authorized to approve administrative revisions to the Performance Evaluation Program.
5. The Employee Performance Evaluation Forms adopted by the City Manager must be used for all official employee performance evaluations. These forms shall be posted on any available employee-only City computer networks so as to facilitate electronic completion by management.
6. Performance Evaluation Program guidelines may be published separately by Human Resources to aid management in the use of the Program.
7. All employees of Madeira Beach may, at their election, draft and submit a written response to any performance evaluation given by management. Such written responses, which shall be free of profane, discriminatory, abusive or inflammatory language, and which should address and respond to the evaluation, will be appended to the evaluation being responded to, and placed in the official personnel file.

XVII. OUTSIDE EMPLOYMENT, ENTERPRISE, BUSINESS

Section: XVII

XVII. OUTSIDE EMPLOYMENT, ENTERPRISE, BUSINESS

1. No City official or employee shall work in any enterprise or business, including self-employment, accept outside employment, or render services for private interests, whether paid or unpaid, non-profit or profit, when the employment or service conflicts with the employee's official duties. Nor shall such work create an appearance of conflict or impair independent judgment or action in the performance of the duties of a City employee.
2. Newly-hired or current employees wishing to engage in, or continue in any enterprise, business, outside employment, or to render services for private interests, paid or unpaid, non-profit or profit, must first request approval from their department director on a request for outside employment form provided by the Human Resources Department. The department director will make an initial assessment of the request to ascertain whether the proposed nature and/or schedule of the outside employment will or likely will negatively impact the employee's City job performance. If an initial determination of non-interference is made by the director, the department director then informs the City Manager of the request. Employees who fail to file a request to their department director (City Manager for employees directly reporting to that official) prior to engaging in outside employment activity may be subject to disciplinary action up to and/or including dismissal. Newly hired employees must declare and seek approval of supplemental employment or other outside business at the time of hiring.
3. Upon referral from the department, the City Manager reviews all pertinent information and consults with the department director as needed. The City Manager determines if the employment or activity is inconsistent, incompatible, or conflicts with the employee's duties and responsibilities, or may tend to do so. Based upon this information, the City Manager approves or disapproves the request to engage in the secondary employment or outside business.
4. The proposed employment shall not be with a business or agency subject to the regulation of, or that is doing business with, the department of the employee, except if expressly permitted by state law.
5. The proposed employment cannot require the employee to disclose or use information gained in his/her official City position that is not available to the public.
6. Changes in secondary employment or outside business must be reported promptly to the department director, who will determine whether further approval is required.
7. Permission to engage in secondary employment and outside business may be denied or withdrawn at any time if the City Manager or Department Director determines, in his or her sole discretion, that such activities are interfering with, or may be expected to interfere with, the employee's production, efficiency, duties or responsibilities, or when it causes discredit or is in conflict with City interests.
8. Any outside employment or business described above is secondary to the requirements of regular City employment. It must not interfere with or impede the availability of an employee to perform his/her duties and responsibilities. Every employee granted approval under this rule must agree to respond immediately to any call to duty by the City whenever the

XVII. OUTSIDE EMPLOYMENT, ENTERPRISE, BUSINESS

Section: XVII

department director (City Manager for employees directly reporting to that official) determines his/her services are necessary.

9. Supervisors must be notified immediately, but no later than the employee's next scheduled working day, of injuries sustained during outside employment. Employees sustaining injuries are ineligible to receive workers compensation benefits from the City. Sick leave benefits are allowed based on injury or illness arising from outside employment only if the outside employment has been approved under this policy and only to the extent the employee is not eligible to be otherwise compensated for absences caused by the injury or illness.
10. No City personnel, equipment, facilities, vehicles, or other property may be used by employees while engaged in outside employment, enterprise or business.
11. No employee shall perform work for private individuals or other governmental departments/agencies as a part of his/her City employment except when the work is part of contract arrangements, mutual aid agreements, or interlocal agreements entered into by the Board of Commissioners.
12. No employee of Madeira Beach shall have financial interests in the profits of contracts, services or other work performed by or for the City. Nor shall a City employee personally profit, directly or indirectly, from any contract, purchase, sale or service between the City and any person or business. Any employee who violates this rule is guilty of misconduct and subject to immediate dismissal.

XVIII. POLITICAL ACTIVITY

Section: XVIII

XVIII. POLITICAL ACTIVITY

1. No person shall be appointed to, demoted, or dismissed from any City position, or in any way favored or discriminated against with respect to employment with Madeira Beach, because of political opinion or affiliations.
2. No person shall use or promise to use, directly or indirectly, any official authority or influence, whether possessed or anticipated, to secure for any person an appointment or advantage in appointment to a position in Madeira Beach Government service, or in the service of any Pinellas County constitutional officer, or an increase in pay or other advantage in employment in any such position, for the purpose of influencing the vote or political action of any person, or for any other political consideration.
3. As an individual, each employee retains all rights and obligations of citizenship provided in the Constitution and laws of the State and the Constitution and laws of the United States. However, no employee of Madeira Beach Government shall:
 - a. Take any active part in a political campaign while on duty or within any period of time during which they are expected to perform services for which they receive compensation from the City. This will include making or distributing flyers, hand cards, or other campaign or political items in the workplace; or making use of any City equipment, service or facility in furtherance of any campaign or political purpose.
 - b. Use the authority of their position to secure support for or oppose any candidate, party or issue in an election or affect the results thereof.
 - c. Use any promise or reward or threat of loss to encourage or coerce any employee to support or contribute to any political issue, candidate or party.
 - d. Display on their person (while on duty), City vehicles or in their workplace, any button, sign, decal or other symbol of support for any elected official, political party, issue or candidate for public office.
 - e. Appear in any print, television, radio or other form of advertisement for any elected official, political party, issue or candidate while wearing a Madeira Beach uniform, or while identifying oneself as an employee of Madeira Beach.

Nothing herein shall be interpreted as prohibiting a City employee from using City resources related to state or local referendum or initiative to the extent authorized by Florida Statute § 106.113 where that employee's duties permit or require such work, and where the Madeira Beach Commission has adopted a policy or position concerning the matter.

4. An employee who takes any step to run for a Madeira Beach Commission seat, including opening a campaign account for that purpose, filing qualifying paperwork with the Supervisor of Elections, or conducting a press conference or issuing a press release confirming his or her candidacy, shall be deemed to have resigned his or her position with Madeira Beach as of the close of business of the date any of these actions are first taken. Nothing herein shall be read or interpreted as preventing an employee from standing for election for any other elective

XVIII. POLITICAL ACTIVITY

Section: XVIII

public office or applying for appointment to any appointive public office.

5. An employee elected to public office other than as a Madeira Beach Commissioner or Constitutional Officer shall resign from City employment if the elected position presents any conflict of interest or interference with the employee's City job. The City Manager may grant written permission to remain in the City job, if no such conflict or interference exists. For purposes of this section, a conflict of interest will be determined in the sole discretion of the City Manager regardless of any other determination.
6. Any person who violates any provision of this section shall be subject to disciplinary action, up to and/or including discharge. However, nothing herein shall be construed to prohibit an employee's right to file a complaint of workplace discrimination or harassment, to raise a concern regarding workplace safety, to report to appropriate authorities the misuse or theft of City assets, or to engage in casual workplace discussions on social or political topics, so long as such discussions do not, in the judgment of management, interfere with the orderly, peaceful, and efficient performance of assigned duties or with the valid exercise of authority of management. Employees or managers having questions concerning political activities or the interpretation of this policy should consult the Human Resources Staff and the City Attorney's Office.

XIX. SAFETY

Section: XIX

XIX. SAFETY

1. Employee safety is a primary Madeira Beach obligation. All employees are personally responsible for safety in the workplace.
2. The City Manager is authorized to develop and publish a Madeira Beach Safety Manual to provide safety policies and procedures to be used by all departments for the safety of City employees and protection of City property.
3. Employees who knowingly and willfully violate any published safety policies and procedures are subject to disciplinary action, up to and/or including discharge, under Section XI of the Policy.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-A

*A Purpose, Scope and Prohibitions***XX. DRUG-FREE WORKPLACE PROGRAM***A. Purpose, Scope and Prohibitions*

1. Madeira Beach Government has a compelling interest in maintaining a safe, healthy and productive work environment for all its employees; in providing professional services for its customers in a safe, timely and efficient manner; in maintaining the security of its equipment and workplace; and in performing all these functions in a fashion consistent with the interests and concerns of the community.
2. Pursuant to these goals, the City has established a Drug-Free Workplace Program. This program is intended to comply with: the Drug-Free Workplace Program requirements set forth in Chapter 440, Florida Statutes; the implementing regulations, promulgated by the State of Florida, Department of Labor and Employment Security, Division of Workers' Compensation; 49 U.S.C. §§ 5301 and 5331; and the implementing regulations in **Title 49 of the Code of Federal Regulations, Parts 29, 40, 382 and 655 (bolded throughout Sections XX-A, B, C, and D of this policy)**. The program is also intended to deter drug and alcohol abuse by employees in order to limit illness and injuries to themselves and to others. While the majority of the program will have standards applicable to all City employees, certain provisions will vary to comply with regulations specific to certain job classifications. A copy of the federal regulations applicable to this program may be obtained in the Human Resources Department, or directly from the federal government's web sites.
3. To enforce the City's drug and alcohol-free policies and programs, candidates for employment and current employees can be required to submit to substance abuse testing under certain circumstances as set forth herein, and are expected to cooperate fully in providing specimens and explanations that may be subsequently required by this Policy.
4. This policy applies to candidates for employment and to City employees in all job classifications at all locations, during their entire work day (includes on-call and stand-by time).
5. City employees are strictly prohibited from engaging in any of the following acts while on City premises or within City facilities, while conducting City-related work off City premises, or while operating City vehicles:
 - a. Unlawful possession, use, consumption, sale, purchase, distribution, dispensation or manufacture of any illegal drug; or
 - b. Use or consumption of alcoholic beverages; or
 - c. Misuse of legally obtained drugs.
6. The City:
 - a. Will not permit any employee to report to work nor to perform duties with the presence of any illegal drug in his/her system; or with a blood-alcohol level as defined in Florida Statutes § 316.1932(1) (b), of 0.08 percent or more; or if his/her senses are impaired due to misuse of legally obtained drugs.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-A

A Purpose, Scope and Prohibitions

- b. **Will not permit any safety-sensitive employee covered by Parts 655 (Federal Transit Administration) and 382 (Federal Motor Carrier Safety Administration) of Title 49 of the Code of Federal Regulations (hereinafter: "covered employee") to:**
 - (1) **report to work with an alcohol concentration of 0.02 or greater**
 - (2) **perform safety sensitive functions within four hours of using alcohol**
 - (3) **consume alcohol for 8 hours following an accident unless employee has undergone and tested clean after being administered a post-accident alcohol test**
 - (4) **perform or continue to perform safety sensitive functions with an alcohol concentration of 0.02 or greater.**
 - c. **Will not permit employees to consume alcohol during the hours the employee is on call. Pursuant to Federal Transit Administration regulation 49 C.F.R. Part 655, a covered on-call employee who is called to report to duty shall have the opportunity to acknowledge that he/she has used alcohol during the on-call period, and whether he/she is able to perform his or her safety-sensitive duties. If the covered employee acknowledges having used alcohol during the on-call period, but asserts that he/she is able to perform his/her duties, the City shall refer the employee for testing. The City requires any admission that an on-call employee has used alcohol during an on call duty shift be in writing, and reserves the right to send any employee for testing, even where the employee admits alcohol use and that he/she cannot perform their duties.**
 - d. **Will not permit any employee to report to work or to perform his/her duties while taking prescription or non-prescription medication which adversely affects the person's ability to safely and effectively perform his or her job functions. Employees are required to notify their supervisor of prescription or over-the-counter medication which carries a warning label that indicates mental functioning, motor skills, or judgment may be adversely affected. All employees holding safety sensitive positions must comply with this requirement by completing the official reporting form developed by the Human Resources Department for this purpose. The City also reserves the right, once in receipt of notice, to require submission of additional documentation from the prescribing physician(s) confirming the ability to work under this policy. Medical advice will then be sought, as appropriate, before allowing the employee to return to performing work-related duties.**
 - e. **Will require an employee to report any criminal drug statute conviction, or a finding of guilt whether or not adjudication is withheld, or the entry into a diversionary program in lieu of prosecution to the Human Resources Staff, in writing, no later than three (3) days after such conviction. Any employee who fails to notify the Human Resources Staff will be subject to disciplinary action, up to and including termination.**
7. **Abiding by the terms of this policy is a condition of employment.**
 8. **Any employee who violates this policy is subject to disciplinary action, up to and/or including discharge.**
 9. **The policies and procedures set forth in the City's Drug-Free Workplace Program constitute statements of policy only, and are not to be interpreted as a contract of employment between the City and any of its employees. The City reserves the right to change, modify, or delete any of the Program's provisions and policies at any time.**

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program**B. Drug and Alcohol Testing Program**

1. Types of Testing

a. Job Applicant Testing

- (1) Employment of every applicant who has received an offer of a job which has been designated as safety-sensitive is contingent on successfully passing a substance abuse test. The City reserves the right to allow a job applicant to start work pending the results of the drug test (with exception to applicants hired into "covered" positions).
- (2) For purposes of this section, the term "applicant" includes City employees who, for any reason, accept or are assigned to a safety-sensitive position.
- (3) Employees who advance within an established career ladder into a safety-sensitive position must submit to a drug test.

b. Persons covered under subsection two (2) or three (3) above will be sent for testing under City authority and using non-DOT referral form(s). **Non-safety-sensitive employees accepting or being assigned a covered safety-sensitive position must use DOT-approved referral form(s).**

c. Reasonable Suspicion Testing and/or Post Accident/Cause.

- (1) Personnel trained by the City to detect the signs and symptoms of drug or alcohol use (and any other official authorized to make non-DOT referrals) may develop a reasonable suspicion to believe that an employee is using or has used drugs in violation of the City's policy. Evidence sufficient to support the development of a reasonable suspicion may consist of, but is not limited to:
 - (a) Observable phenomena while at work, such as direct observation of drug or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug or alcohol.
 - (b) Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
 - (c) A report of drug/alcohol use, provided by a reliable and credible source. Covered employees will be referred and tests processed on non-DOT chain of custody and breath alcohol forms.
 - (d) Evidence that an individual has tampered with a required drug test.
 - (e) Evidence that an employee has used, possessed, sold, solicited, or transferred drugs or alcohol while working or while on City premises or while operating a City vehicle, machinery, or equipment. Covered employees will be referred and tests processed on non-DOT chain of custody and breath alcohol forms.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

- (f) Information that an employee has caused, contributed to, or been involved in an accident while at work. An employee who is unable to submit to testing at the time of an accident due to the seriousness of his/her injuries is required to provide the necessary authorization for obtaining medical reports or other documentation that would indicate whether there were any drugs or alcohol in his or her body. Employees not involved in accidents covered by specific federal regulatory criteria shall be referred to post-accident testing pursuant to forms and criteria developed by the Human Resources Department. **Pursuant to Federal Transit Administration regulation 49 C.F.R. Part 655, covered employees, including operators and other covered employees whose performance could have contributed to the accident, shall be referred for post-accident testing in the case of a fatality, bodily injury requiring medical attention away from the scene of the accident, or if the transit vehicle is a rubber tire vehicle and any of the involved vehicles are towed away, unless, in the case of a non-fatal accident, the employee's performance can be completely discounted as a contributing factor based on the best information available at the time of the referral decision. Accidents involving employees covered by Federal Motor Carrier Administration regulations will be referred for post-accident testing as required by 49 C.F.R. Part 382.**
- (g) An expanded panel drug test will be completed if any of the above criteria (a-e) exist. Note: **Federal Motor Carrier Administration and Federal Transit Administration** employees will have both a 5-panel test and a City specified expanded panel test completed during the one collection.
- (2) Immediate supervisors will report their suspicions to their department director. An employee will report immediately after the order to the designated laboratory for testing, under the following conditions:
- (a) If the supervisor believes the employee is impaired in any way by drugs or alcohol, the supervisor will personally drive or direct another responsible individual to drive the employee to the approved drug testing site.
- (b) An employee suspected of being impaired shall never be permitted to drive a vehicle during any duty shift during the period of suspicion.
- (c) Travel to and from, and time spent at, the drug testing site will be on City time - not the employee's own time.
- (d) After drug testing is completed, the employee should be transported to the department director's location. The director, based on the facts and circumstances, may place the employee on administrative leave pending receipt of the results of the drug or alcohol testing.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

- (e) The director should arrange to have an impaired employee taken home. The director should tell an employee who refuses assistance that law enforcement authorities will be called if the employee attempts to drive home alone. If the employee persists in attempting to drive after such a warning, the director must call the appropriate law enforcement agency.
- (f) **Pursuant to 49 C.F.R. Parts 382 and 655, covered employees will be subject to alcohol testing only while performing safety sensitive duties or immediately before or after the performance of such functions. Alcohol testing shall only be administered if the reasonable suspicion observation is made immediately before or after the performance of safety sensitive duties, or while actually performing such duties (non-DOT forms shall be used to process referrals of employees performing non-safety-sensitive duties). If breath alcohol test is not administered within two (2) hours, then reasons shall be documented by the supervisor or other authorized official on designated HR forms and attempts to obtain testing shall continue. However, attempts to obtain alcohol testing shall cease after eight (8) hours and the supervisor or authorized official must further document the reasons for the failure to obtain testing within the allotted time period.**
- (3) Within seven (7) days after testing based on reasonable suspicion, the supervisor who recommended the testing shall detail in writing, on the City's Reasonable Suspicion Testing Report Form, the circumstances which formed the basis of his or her belief that reasonable suspicion existed to warrant the testing. The department director who directed the drug test will certify on the form that he/she was informed of the basis of suspicion and was satisfied reasonable suspicion existed. A copy of this report shall be provided to the employee being tested upon request. The original copy of the report shall be kept confidential and retained by the Human Resources Department for at least twelve months.
- (4) Any on-the-job injury for which an employee requests or is required to seek Workers' Compensation medical treatment amounts to sufficient reasonable suspicion to require drug testing. All employees reporting for such medical treatment will submit to a drug/alcohol test as part of the evaluation. The employee's immediate supervisor will prepare a Reasonable Suspicion Testing Report Form the first time an employee is treated for a particular injury and forward the Form, through the department director for certification, to the Human Resources Staff within three (3) work days of the first treatment.
- (5) **Pursuant to 49 C.F.R. Parts 382 and 655, post-accident testing related to accidents involving covered employees shall be completed as soon as practicable but must be within thirty-two (32) hours of the accident. If a post-accident alcohol test is not conducted within two (2) hours of the accident, the supervisor must document the reasons why on such form as may be developed by the Human Resources Department for such use. Nevertheless, the supervisor shall continue attempts to obtain a specimen for up to eight (8) hours after the accident. All reasons why attempts to obtain a specimen within this eight (8) hour period were unsuccessful must be documented as noted above. Covered**

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

employees must remain readily available for post-accident testing, including notifying their department or Human Resources of their location if they leave the scene of an accident prior to submission to post-accident testing. Failure to make such notifications upon leaving an accident scene shall constitute a refusal to submit to testing.

d. Routine Fitness-for-Duty Testing

All employees in an employment classification or group, for which the City routinely schedules employee fitness-for-duty medical examinations pursuant to City policy, must submit to a drug test as a part of their medical examinations.

e. Follow-up/Return to Duty Testing

(1) **Covered employees subject to return to duty and follow up testing must first meet with a substance abuse professional pursuant to the requirements of 49 C.F.R. Part 655 and 40. Covered employees reemployed after violating DOT drug and/or alcohol regulations must show written proof of completion of required certified substance abuse professional (SAP) evaluation, referral and education/treatment process and obtain a negative return to duty test. If said covered employee has been released by the SAP to return to safety sensitive duties but still required by the SAP to obtain ongoing treatment (at employee's expense), all such SAP requirements must be complied with as a condition of continued employment. Any post-positive return to duty or follow up testing required will be at the employee's expense and be "observed collections."**

(2) If, in the course of employment, an employee is required by the City to enter an employee assistance program (EAP) for drug-related problems or a drug/alcohol rehabilitation program, the employee must submit to drug or alcohol testing as a part of and as follow-up to such program.

f. Post-Absence Testing

Safety sensitive employees who are returning to the workplace after an absence of ninety (90) calendar days or more (i.e., sick, vacation, jury duty, military leave, leave of absence, worker compensation, family sick, etc.), must, whether leave was FMLA-covered or not, submit to drug testing before returning. **In accordance with applicable federal regulations, a Covered Employee returning to duty after ninety (90) consecutive calendar days or more, must obtain a negative test result prior to the reassignment to safety-sensitive duties. Covered Employees absent from the workplace for ninety (90) days or more shall not be subjected to random testing during the period of absence.**

g. Random Testing

(1) **An employee in a safety-sensitive or special-risk position (X-B-1-g(3)) will be required to submit to unannounced and unpredictable drug/alcohol testing when selected pursuant to a random selection process, any time while on duty. The process developed by Human Resources to make the random selections shall be by a scientifically valid method, such as a random number table or computer-**

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

based random number generator, and ensure that each covered employee will have an equal chance of being tested each time selections are made. Pursuant to 49 C.F.R. Parts 382 and 655, covered employees will be subject to alcohol testing only while performing safety sensitive duties or immediately before or after the performance of such functions. Notwithstanding the foregoing and regardless of applicable federal DOT regulations, any employee may be subject to random testing at any time where such random testing has been agreed to by the employee and the City within a labor contract, last chance agreement or similar contract.

- (2) **The Human Resources Staff will establish a program to annually test randomly a number of employees in safety-sensitive and special-risk positions. Of the total number of employees in these positions, 10 percent will test for alcohol and 50 percent will test for drugs. The Program shall ensure that the dates established for administering random tests are spread reasonable throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are being performed by those subject to such testing. Once notified of selection for random testing, the selected employee must proceed immediately to the testing facility as instructed by the referral.**
- (3) **"Safety-sensitive or special-risk positions" include the following positions:**
 - (a) **Transit and Para-transit vehicle operators and attendants.**
 - (b) **Transit and Para-transit dispatchers, schedulers, and movement controllers.**
 - (c) **Mechanics who perform maintenance on Transit and Para-Transit vehicles and equipment.**
 - (d) Pool lifeguards.
 - (e) Emergency Communications Division dispatchers.
 - (f) Emergency Medical Technicians, Paramedics, Supply Officers and Trainees.
 - (g) Emergency Medical Lieutenants, Captains and Chiefs.
 - (h) Beach lifeguards and officers.
 - (i) Water treatment plant operators and laboratory technicians.
 - (j) Any employee not listed above who, as a condition of employment, must possess a Commercial Drivers License (CDL) or who has the use of heavy equipment or machinery, such as back hoes and chain saws which could, during a momentary lapse of attention, cause great harm to others, or who work with toxic or hazardous chemicals, high voltage, pressurized gasses, or volatile chemicals.

2. Conditions of Testing

a. Confidentiality

- (1) All information including, but not limited to, interviews, reports, statements,

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

memoranda, and drug test results received by any City official in conjunction with this Drug Testing Program, will be forwarded to the Human Resources Staff and will be considered confidential communications. Such information will not be disclosed or released except as authorized pursuant to State law or regulations or written consent by the person tested.

- (2) The Human Resources Department will establish and maintain a separate confidential file for Drug Testing Program information. All correspondence and documentation shall be retained for at least one year. The file is exempt from release except as provided in Florida Statutes § 440.102(8).
- b. Consent Form
- (1) Employees and applicants must sign a "Testing Consent Form" stating they agree to be tested for drugs and alcohol as provided in this program and they release the City and its employees from liability.
 - (2) Refusal to sign the consent form may result in applicant disqualification for further employment or promotion consideration, or an employee's termination from City employment.
- c. Refusal to Submit to Testing
- (1) **Refusals to submit to drug/alcohol testing will consist of the following:**
 - (a) **Refusing to provide a specimen or report for drug and/or alcohol testing as required by the City.**
 - (b) **Failing to provide adequate breath for alcohol testing without a valid medical explanation.**
 - (c) **Failing to provide an adequate urine sample for controlled substance testing without a medical explanation.**
 - (d) **Failure to permit direct observation of urination when required, or, where directed to attend a direct observation collection, to follow an observer's instructions to raise clothing above waist, lower clothing/underpants, and turn to permit observer to determine if any type of prosthetic or other device is being used to interfere with the collection process.**
 - (e) **Failing or refusing to submit to a second test directed by the City or collector. Examples of when such second tests may be directed include the following categories: Negative Dilute—the employee will be required to undergo another test. Should this second test result in a negative dilute, the test will be considered a negative, and no additional testing will be required unless directed by the medical review officer (MRO). Invalid Result with no Medical Explanation will require immediate observed recollection. Test Cancelled Results will require an immediate, non-observed recollection when a negative test result is required (i.e.: pre-employment, post-absence, etc.). Test Cancelled Results will require observed recollection if directed by the MRO. Negative-dilute result or invalid result with no medical explanation**

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

will require immediate observed recollection.

- (f) **Failing to undergo a medical examination or evaluation when directed by the Medical Review Officer as part of the test result verification process, or when required as part of the “Shy Bladder”/“Shy Lung” evaluation.**
 - (g) Under non-DOT authority, refusing to comply with the Drug-Free Workplace Program policy or disciplinary consequences of this procedure.
 - (h) Under non-DOT authority, refusing to comply with mandatory referrals to the City’s employee assistance program provider or failing to comply with any recommendations made by that provider.
 - (i) **Engaging in conduct that clearly obstructs the testing process, including failing to remain readily available for testing by leaving an accident scene without notifying the department or Human Resources of location, including refusal to empty pockets when directed by collector, behaving in a confrontational manner that disrupts the collection process, failure to wash hands after being directed by the collector, or wearing or possessing prosthetic devices or other items/substances which could be used to interfere with test results.**
 - (j) **A verified MRO report of an altered, adulterated or substituted test sample. Admit to collector or MRO that you adulterated or substituted specimen.**
 - (k) **Failing to appear at the collection facility at date and time directed by the City, via form or verbal instruction of authorized personnel, without prior approval or valid explanation.** Failure of applicants for positions covered under DOT regulations who fail to appear at a testing facility as directed as part of the pre-employment application process shall be considered to have refused by virtue of non-DOT authority.
 - (l) **Failure to sign the certification on Step 2 of the alcohol test form.**
 - (m) **Failure to remain at the testing facility, once the testing process has begun, until the testing process is complete.**
- (2) An employee who is injured in the course and scope of his/her employment and who refuses to submit to a drug test, forfeits his/her eligibility for Florida Workers' Compensation medical and indemnity benefits. Any City group health/medical insurance in effect does not cover injuries sustained in the course and scope of employment.

3. Testing Procedures

a. Licensed/Certified Laboratory

- (1) All drug testing will be conducted by a City-designated laboratory licensed by the State of Florida Agency for Health Care Administration or, **in the case of Department of Transportation employees in safety sensitive positions, certified by the United States Department of Health and Human Services to do drug-**

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

testing for Federal agencies. All testing procedures will comply with 49 C.F.R Parts 40, 382 and 655.

- (2) The testing will be conducted with chain of custody procedures in place to ensure accuracy/continuity in specimen collection, handling, transfer and storage.

b. Drugs to be Tested

When testing is conducted in conjunction with this Program, the City may test for any or all of the following drugs: **amphetamines; cannabinoids; cocaine; opiates; phencyclidine;** barbiturates; benzodiazepines; methaqualone; hallucinogens; synthetic narcotics; designer drugs; alcohol, including distilled spirits, wine, malt beverages or an intoxicating liquor; or a metabolite of any of the substances listed in this paragraph. **Screening test cut off levels for the first five listed drugs will be as set forth in 49 C.F.R. Part 40.87.**

c. Reporting Medication Which May Alter or Affect a Drug Test Result

Either before or after being tested, job applicants or employees are required to inform the MRO of the use of prescription or non-prescription medication which may alter or affect the outcome of a drug test as well as any other information relevant to the drug test result. The information provided by the employee or job applicant will be kept confidential and shall be reviewed only by a Medical Review Officer (MRO) interpreting any confirmed positive results. Applicants or employees have the right to consult with the MRO for technical information regarding prescription and non-prescription medication to determine whether the medication has affected a drug or alcohol test result. To aid in this opportunity, the City will provide to the applicant or employee, at the point of referral, a list of the most common medications, by brand name or common name, as well as by chemical name, which may alter or affect a drug test result. (Note: hemp, hemp and/or "coca" products, nor "medical marijuana" will not be accepted as a legitimate explanation for a THC positive test.)

d. Cost of Testing

- (1) The City will pay the costs of initial and confirmation drug/alcohol testing which it requires of job applicants and employees.
- (2) Applicants and employees shall pay the cost of any additional drug and alcohol testing not required by the City, including tests conducted for employees as part of an EAP or drug/alcohol rehabilitation program, or as a condition of returning to work. Payment for such tests are a condition of employment and must be paid under the terms and conditions established by the Human Resources Staff. Former employees who owe the City funds for drug testing or treatment which remain unpaid will not be eligible for re-employment until such amounts are paid.
- (3) Any drug/alcohol test requested by an employee, but not required by the City, will be at the employee's expense. The employee requesting the test may not use the City's "Drug Test Referral" form, nor will the result of the test be reported to the City through its normal testing/reporting procedures.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

e. Collection Site and Laboratory Analysis Procedures

Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen and transportation of the specimen to the laboratory, as well as laboratory security, laboratory chain of custody, transporting and receiving of specimens, specimen processing, retesting, storage of specimens, instrument calibration, and reporting of results, shall be in accordance with Florida Statutes §§ 112.0455 and 440.102, or 49 U.S.C. § 5331, and the rules established by the State of Florida, Agency for Health Care Administration, or by 49 C.F.R. Parts 40, 382 and 655. These procedures are intended to ensure that specimens are properly collected, identified and tested.

f. Specimen Type Testing

- (1) **Drug testing will be by urinalysis, following the procedures of 49 C.F.R. Part 40 Subpart E and Chapters 112 and 440 of the Florida Statutes.**
- (2) **Normally, alcohol testing will be by a breath alcohol device, following the procedures of 49 C.F.R. Part 40 Subpart L. Evidential breath testing devices (EBTs), approved by the National Highway Traffic Safety Administration, will be operated only by Breath Alcohol Technicians (BATs), qualified under 49 C.F.R. §40.211 or certified under Florida law. EBTs will be able to print out results and will conform to subparts L & M of 49 C.F.R. Alcohol screening tests will be conducted according to the procedures set forth in 49 C.F.R. §40.243. If the screening shows an alcohol concentration of 0.02 or greater, a confirmation test will be performed, according to 49 C.F.R §40.253 & 40.255, within 30 minutes of the screening test. A different BAT, EBT or location is not required.**

4. Release and Review of Test Results

a. Medical Review Officer (MRO)

The City will contract with a private entity, which will employ licensed physicians to act as MROs. The MROs will be responsible for receiving and reviewing all confirmed test results from the testing laboratory. The MROs will contact each donor who tested positive to inquire about possible prescription or over-the-counter medications or other factors which could have caused a positive test result, and to provide technical assistance for the purpose of interpreting the result.

b. Reporting Results

- (1) The testing laboratory will report all drug test results directly to the MRO as soon as possible. The laboratory must provide the MRO quantification of the test results upon request.
- (2) Only specimens which are confirmed as positive on the confirmation test shall be reported positive to an MRO for a specific drug.
- (3) When the MRO receives a confirmed non-negative drug test result from the

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

laboratory, the MRO will telephonically contact the donor (actually talk to the donor) on a confidential basis to determine whether the employee wants to discuss the test result. In making this contact, the MRO will explain to the donor that if he or she declines to discuss the result, either face to face or on the phone, the result will be verified as positive or a refusal, as applicable. While the staff of the MRO may make the initial contact with the donor to schedule the discussion, advise the donor to have medical information (e.g. prescriptions or other medical information explaining the result) ready to present to the MRO, and relay the consequences of the donor's refusal to discuss the results with the MRO, MRO staff will not gather any medical information from the donor, nor any information concerning possible explanations for the test result. If the donor declines to schedule a discussion with the MRO concerning results, MRO staff will document this decision, including the date and time the donor so declined. The MRO or his/her staff will make reasonable efforts to contact the donor at the day and evening phone numbers listed on the referral form. Such efforts will include, at a minimum, three (3) attempts to call each number, at reasonable intervals, over a 24-hour period.

- (4) If the MRO is unable to directly contact a donor who has tested positive after contact efforts, such efforts will be documented, including dates and times of calls. If the numbers provided are found to be incorrect (disconnected, wrong number), upon the first attempts to use them, then, without waiting the full 24-hour period, the MRO will notify the Designated Employer Representative (DER) and request that the City direct the donor to contact the MRO, but will not then inform the City that the donor has a confirmed positive, adulterated, substituted or invalid result. The MRO will document the dates and times the City was contacted, and the name of the City staff person contacted. After such notice from the MRO, the City will attempt to contact the donor immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the donor contact the MRO. If the City succeeds in contacting and actually talking to the donor, it will order the donor to comply with the MRO's request for contact immediately, inform the donor of the consequences of failing to contact the MRO within the next 72-hours, document the date and time, and inform the MRO that the foregoing information has been conveyed to the donor. The City will not inform anyone else about its efforts to contact the donor on behalf of the MRO. If the City has made at least three (3) reasonably-spaced attempts over a 24-hour period to contact the donor at both the day and evening phone numbers listed, the City will leave a message for the donor by any reasonable means (including letter, e mail or voice mail) that the donor must contact the MRO, and may thereafter place the donor on unpaid leave pending receipt of test results from the MRO. The City will document the dates and times of the call attempts.
- (5) If the MRO was unable to speak directly with the donor and has reported the result to the DER, or designee, the MRO will allow the donor to present information to the MRO within 60 days of the verification to document that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided. On the basis of such information, the MRO may reopen the verification, allowing the donor to present information concerning whether there is a legitimate medical explanation of the confirmed test result.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

- (6) If the donor refuses to talk with the MRO regarding a confirmed positive test result, the MRO will validate the result as positive and annotate such refusal in the report.
- (7) The MRO will notify the Human Resources Staff or designee, in writing, of the verified test result, either negative, positive or inconclusive. If the MRO determines that there is a legitimate medical explanation for the positive test result, the MRO will report a negative test result to the City.
- (8) Should the MRO feel that the legal use of a medication would endanger the donor or others, or if the donor is in a safety sensitive or special risk position at the City, the MRO will report the test negative due to a validated prescription, but will request that the individual be placed in a position which would not threaten the safety of the donor or others. The Human Resources Staff or designee will notify the employee's department director, or designee, immediately.

c. Notice to Donor of Test Results

Within three (3) workdays after receipt of a confirmed positive test result from the MRO on an employee or a job applicant, the Human Resources Staff, or designee, will inform the applicant in writing of the positive test results, the consequences of the results, and the options available to the employee/applicant, including the right to file an administrative or legal challenge.

d. Administrative Requirements

The City will contract with a reputable firm which will be responsible for maintaining all records and making all reports required by federal and state laws, regulations and rules. Employees will have access to their personal records.

5. Challenges to Test Results**a. A copy of the test results will be provided to the donor upon request.****b. Administrative or Legal Challenge**

- (1) An injured employee may administratively challenge test results by filing a petition for benefits with a Judge of Compensation Claims pursuant to Chapter 440, Florida Statutes.
- (2) Any donor may challenge the test result in a Court of competent jurisdiction, as may be authorized by general law.
- (3) A donor who desires to challenge the results of a test is responsible for notifying the testing laboratory to retain the testing sample until the retesting is performed or the matter otherwise closed.

c. Independent Testing

- (1) **DOT employees that have a verified positive drug test result, or a test refusal due**

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-B

B. Drug and Alcohol Testing Program

to adulteration or substitution, may request a test of their split specimen. However, there is no split specimen testing for an invalid result.

- (2) The donor has 180 days, from time of written notification, **(3 days, from time of MRO notification, for safety-sensitive Department of Transportation employees)** to request independent testing of a portion of the tested specimen after receiving written notification of a positive test result. The laboratory utilized must also be licensed by the State of Florida Agency for Health Care Administration certified by the United States Department of Health and Human Services. Split specimens conducted under DOT regulations must be tested at a laboratory certified by the United States Department of Health and Human Services.
- (3) The independent testing is at the donor's expense. Safety-sensitive Department of Transportation employees will be required to pay in full any and all costs relating to their requested re-test of their original split specimen after such test has been ordered.
- (4) Results of the testing may be used in any administrative or legal challenge.
- (5) Notwithstanding the foregoing, the City reserves the right, where an adequate sample size exists, to request a retest on its own, but only to the extent that such retest can be performed without compromising the ability of the employee or applicant to request his or her own retest, as otherwise permitted under this policy.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-C

*C. Consequences of Positive Test Results**C. Consequences of Positive Test Results*

1. Non-Employee Applicants

- a. If the results of a pre-employment drug test are confirmed positive, or if the applicant's actions are deemed a refusal to submit to testing, as defined in Section XX.B.2.c.1 (hereinafter defined as "refusals"), a general public applicant will be disqualified from further consideration.
- b. General public applicants are eligible to reapply for employment consideration employment consideration as provided in that section.
- c. Disqualified after a thirty-six (36) month waiting period.
- d. Once the applicant has taken the pre-employment drug test, he/she must begin work within thirty (30) calendar days from the test date. If thirty (30) calendar days pass prior to the applicant beginning work, the hiring department must send the applicant for a re-test.
- e. **Covered safety-sensitive applicants who have violated the DOT drug and alcohol regulations cannot perform any DOT safety-sensitive duties for any employer until and unless they complete the certified Substance Abuse Professional's evaluation, referral and education/treatment process set forth by the CFR. Additionally, any DOT employee returning to City employment at the end of his/her restriction period will be required to show proof of completing the Substance Abuse Professional's (SAP) evaluation and recommendations and stating his/her ability to return to safety-sensitive duties. This must be done by a written report on letterhead from the SAP.**

2. Employees

- a. Any employee whose results are confirmed positive when tested for any valid reason, or who refuses to submit to testing as defined in Section XX.B.2.c(1), will be immediately removed from duties and discharged. **Covered employees who test positive will be given a list of local substance abuse professionals and treatment providers.**
- b. Notwithstanding the foregoing, non-safety-sensitive employees with a confirmed alcohol concentration of .02 or greater but less than .08, or safety-sensitive employees with confirmed alcohol concentration of .02 but less than .04 will not constitute a "positive." However, such employee will be immediately removed from duties and placed on administrative leave without pay pending disciplinary action for having alcohol in the system during working hours.
- c. Employees terminated from employment due to a positive drug/alcohol test, refusal to test, or violation of the Drug-Free Policy shall be disqualified from re-employment for a period of thirty-six (36) months, as required by Section I.E.2.
- d. The City reserves the right to place an employee on administrative leave with or without pay pending receipt of the results of a drug test or the outcome of an investigation or appeal related to a violation of the City's Drug-Free Workplace Policy.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-C

C. Consequences of Positive Test Results

3. Request for Review of Termination/Disqualification

- a. Within five (5) working days after receiving notice of a confirmed positive test result, the donor may submit a written, signed statement to the Human Resources Staff explaining the test results and providing all relevant information the donor believes should result in the automatic dismissal/disqualification provisions of this policy not being applied. The donor may be required to submit additional statements or materials to facilitate the Human Resources Staff's review. The purpose of the submission would be to explain how the positive test result was not the fault of the donor, not to challenge the underlying test result.
- b. The Human Resources Staff will review the submission and if he/she believes that the donor has provided confirmed, reliable evidence that the positive test result was not in any way the fault of the donor or the result of the donor's actions, inaction, or illegal, careless or negligent behavior, and that the circumstances otherwise may not support the application of the automatic dismissal/disqualification provisions of this policy to the donor, a recommendation to that effect may be made to the City Manager, who shall have sole authority to except the application of the provisions, and may condition any exception on such terms and conditions as he or she may deem appropriate to place upon the donor. The Human Resources Staff will provide the donor with a written response to the submission once a determination has been made. Notwithstanding any reversal of the automatic dismissal/disqualification provisions pursuant to this section, neither confirmed positive test results nor related medical conclusions concerning the reasons for those results may be overturned by the City and the record of same will remain in the applicable confidential drug free workplace program files.

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-D

*D. Awareness and Education Program****D. Awareness and Education Program***

1. The Madeira Beach Drug-Free Workplace Awareness and Education Program is designed to help achieve the City's goal of maintaining a drug-free workplace.
2. The Human Resources Staff will establish an awareness and education program, which will include the following elements:
 - a. Ongoing communications to City employees through educational and informational materials advising about the dangers of drug and alcohol abuse.
 - b. Display and distribution to City employees of the City's Drug-Free Workplace Policy and a community service hot-line telephone number for employee assistance concerning drug and alcohol abuse.
 - c. Training of City management and supervisory personnel who are responsible for determining when an individual is subject to testing based on "reasonable suspicion." Such training will encompass the physical, behavioral, and performance indicators of probable drug or alcohol use. **Training will comply with 49 C.F.R. § 382.603 and § 655.14.**
 - d. Maintaining a current resource file of EAP providers the City may have available and providing a representative sampling of local drug/alcohol rehabilitation programs and employee assistance programs.
 - e. Notice of drug-testing requirements on all job vacancy announcements.
 - f. Copies of drug testing policy available for inspection by employees and job applicants.
 - g. The Human Resources Staff or designee, located at 1112 Manatee Avenue West in Bradenton, Florida, phone 941.748.4501 ext. 3865, is designated as the person to whom employees may direct their questions on drug and alcohol related matters.
 - h. **Training of "covered employees" will comply with 49 C.F.R § 655.14.**

XX. DRUG-FREE WORKPLACE PROGRAM

Section: XX-E

*E. Rehabilitation****E. Rehabilitation***

1. The City supports sound treatment efforts. No employee will be retaliated against for voluntarily seeking assistance for problems relating to drug or alcohol use or abuse. Such individuals will be allowed to address and resolve any drug and alcohol related problems on a confidential basis.
2. An employee who realizes that he or she has developed a dependence on drugs, alcohol or any controlled substance should inform his/her supervisor, or the Human Resources Staff, of that condition and seek trained, professional assistance immediately. Employees are encouraged to seek rehabilitation voluntarily (without disciplinary action) prior to any management action, to address and resolve any drug and alcohol related problems on a confidential basis.
3. The City reserves the right to require an employee to use an EAP or drug rehabilitation program. In all cases, the cost will be paid by the employee, through insurance or otherwise.

XXI. PROFESSIONAL DEVELOPMENT

Section: XXI

XXI. PROFESSIONAL DEVELOPMENT

1. To encourage a well-trained, educated workforce, the Board of Commissioners desires through this policy to provide training and education opportunities for its employees to the fullest extent allowed by law.
2. The Human Resources Department shall serve as clearing-house for all education/training opportunities, including but not limited to the development of training programs for all employees with the authority to make such programs mandatory where deemed necessary, and shall otherwise administer the professional development policy. Individual department directors shall have oversight of all issues herein related to the obtaining and maintaining of professional licenses, legal or technical certifications, or similar department-specific or specialized training or testing.
3. An annual report of training and education activities/participation will be generated at the end of each fiscal year to allow the City Manager and department directors to assess trends and set training/education program priorities. A record indicating the employee has attended training and/or participation in tuition reimbursement shall be maintained by Human Resources for each employee.
4. The following policies apply to costs related to degree programs and non-degree courses:
 - a. *Non-degree courses or seminars:* Costs of training courses or seminars not taken as part of a college or university program terminating in the award of a degree may be paid for or reimbursed only if the course or seminar is designed to improve the effectiveness or efficiency of an already qualified employee in the position which the employee already holds and works in, and is not designed to qualify an employee for his/her current duties. However, such costs may be paid for or reimbursed for courses or seminars which will allow an employee to advance within established career ladders, or to obtain or maintain certifications required by state or federal laws or regulatory authorities.
 - b. *Degree programs:* Tuition may be reimbursed at a level not to exceed 80% of the prevailing in-state resident University of South Florida rate. Reimbursement shall be limited to courses which are required as part of an overall academic program leading to a degree related to the employee's current City position, but specifically excludes remedial courses and doctoral dissertation credits. The tuition reimbursement benefit shall only be applicable to actual tuition charged and shall not be used to pay for other college-related costs such as books, fees or campus housing. Reimbursement may only be provided for a course offered by an institution accredited by the Southern Association of Colleges and Schools, or other national or regional accrediting agency recognized by U. S. Secretary of Education, as listed at: www.ed.gov.
5. *Tuition reimbursement conditions:* Reimbursement for college tuition is a discretionary benefit and shall always be subject to the availability of appropriated funds from the Board of Commissioners. Approval of any specific reimbursement request is at the sole discretion of the Human Resources Staff, who must weigh all relevant facts and policies in granting or denying any request. Reimbursement is further conditioned on the award of a "C" grade (or "pass" in pass/fail courses), and upon such standards or priorities as Human Resources may develop for eligibility, such as execution of tuition records release, whether the employee is full or part time, the employee's work, attendance or discipline record, whether the institution is a Florida public institution, private college, or online college, and past ability of the

XXI. PROFESSIONAL DEVELOPMENT

Section: XXI

employee to successfully complete reimbursed courses. Reimbursement may also be conditioned upon an employee's agreeing to reimburse the City for tuition paid should the employee receive subsequent grants or scholarships covering all or part of the City tuition payment, resign prior to a set period of time after the course is taken, or be terminated for cause.

6. Pursuant to paragraph 4(a) above, expenditures for technical training, licensing and/or certifications, renewal of licensing and/or certifications, and testing fees may be paid for or reimbursed as long as they relate to the employee's position or career ladder. Where the department director deems it appropriate, he/she may authorize a one-time pre-payment of fees for a required license or certification exam where such license or certification is contingent upon the passage of such exam.
7. In accordance with 29 C.F.R. § 785.27, attendance at lectures, meetings, training programs and similar activities need not be counted and, consequently, shall not be counted as working time if the following four criteria are met:
 - a. Attendance is outside of the employee's regular working hours;
 - b. Attendance is in fact voluntary;
 - c. The course, lecture, or meeting is not directly related to the employee's job; and
 - d. The employee does not perform any productive work during such attendance.
8. Attendance at training workshops/seminars is permissible during working hours with prior department approval. All employees who attend education or training classes during normal working hours are directed to mark their time cards with the appropriate code as enacted by the City's payroll system.
9. Where reimbursement requests under this policy exceed available funds as they have been budgeted and allocated across the City organization, the Human Resources Staff, subject to approval of the City Manager, may set priorities such as electing to offer only partial reimbursement to requestors, reimburse in a first-come, first-served manner, or in such other manner as is deemed needed to ensure a fair and balanced ability for all employees to obtain the benefit.
10. An employee may not use any City personnel, equipment or supplies as part of the course or program of instruction. Nor may an employee work on projects or homework, or attend a tuition-reimbursed course during assigned working hours, unless such time is covered by approved vacation or compensatory time leave, or leave without pay.
11. NOTE: The establishment of this section does not create an entitlement to any given level of tuition or training funding. Each fiscal year, the Board of Commissioners will budget such funds as it deems appropriate to provide for such expenses, balancing the City's desire to provide training and educational opportunities to its employees vs. the many other funding priorities of the City. To the extent funding is made available in any given fiscal year, the City Manager and Human Resources shall endeavor to ensure such funds are equitably granted among the City's various departments.
12. Human Resources is authorized, subject to approval of the City Manager, to develop such forms, schedules and procedures so as to implement the provisions of this policy.

XXII. TRAVEL TIME

Section: XXII

XXII. TRAVEL TIME

1. Ordinary home to work travel is not considered "hours worked" or compensable time. (This includes travel time to and from home for employees assigned a take-home City vehicle.)

2. **Exempt Employees**

Travel time and/or attendance at a meeting, seminar, conference, etc. (voluntary or requested by the City) is compensable only when it occurs during regular working hours during the regularly scheduled workweek.

3. **Non-Exempt Employees**

- a. Travel time and/or attendance at a meeting, seminar, conference, etc., which is for the City's benefit and at the employer's request is compensable, regardless if it occurs within or outside regular working hours. These hours count as hours worked towards overtime.
- b. Travel time and/or attendance at a meeting, seminar, conference, etc., which is voluntary and not required by the employer, will be compensated only during regular scheduled working hours during the regularly scheduled workweek.
- c. Employees driving or riding as passengers will receive compensation in accordance with Section XXII.3.a. and b. above.

XXIII. WORKPLACE VIOLENCE AND THREATS

Section: XXIII

XXIII. WORKPLACE VIOLENCE AND THREATS

1. Madeira Beach does not condone workplace violence, or the threat of violence, by any of its employees, customers, the general public and/or anyone who conducts business with the City. It is the intent of the City to provide an environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior.
2. Violence or the threat of violence, by or against any employee of Madeira Beach or other person, is unacceptable and will subject the perpetrator to disciplinary action up to and including discharge and possible criminal charges. The City will work with law enforcement to aid in the prosecution of anyone within or outside of the organization who commits or threatens violence against an employee or employees.
3. Possession, use, or threat of use, of a deadly weapon, including a firearm, ammunition, explosive device, illegal knife, bow and arrow, or other weapon, is not permitted while on duty, on City property, or in a City vehicle, unless specifically required by law.
4. Each incident of violence or threat of violent behavior, whether committed by another employee or an outside individual such as a customer, vendor, or citizen, must be reported immediately to the appropriate management authority (supervisor or Department Director) or directly to the Human Resources Department.
5. Any employee who acts in good faith by reporting real or implied threats or violent behavior will not be subject to any form of retaliation or harassment.
6. False or malicious reports of threats or violent behavior, real or implied, will result in an investigation and be subject to appropriate disciplinary action.

XXIV. UNIFORMS

Section: XXIV

XXIV. UNIFORMS

1. Purpose

It is the intent of this policy to provide the following guidelines to City employees required to wear uniforms in the performance of their duties.

1. If the City provides an employee a uniform, the employee shall be required to wear such uniform as a condition of employment.
2. Employees required to wear uniforms shall only wear the uniforms while on duty or commuting. Wearing uniforms at any other time is strictly prohibited.
3. Uniforms are City property and must be returned to the Department upon separation or transfer to a position which does not require use of the uniform.
4. It is the responsibility of the employee to ensure that their uniforms are properly maintained and laundered.
5. Employees may be subject to disciplinary action, up to and/or including dismissal, for violation of any of the above.

~~2. Uniform Maintenance Allowance~~

- ~~1. Employees required (as a condition of employment) to wear, maintain and launder uniforms purchased by their Department will receive a \$*** uniform maintenance allowance each pay period.~~
- ~~2. This allowance is to cover the cost of cleaning and maintaining the uniforms in accordance with departmental standards.~~
- ~~3. Any taxes due on uniform maintenance allowance shall be the responsibility of the employee.~~

[Revised 8/8/2023]

~~3. 2 Uniform Rental Service~~

1. If the City contracts for uniform rental and maintenance, the City's contract for uniform rentals will provide for maintenance and laundering services for uniforms.
- ~~2. If a City uniform maintenance contract provides for laundering of uniforms supplied under the contract, employees will not receive a uniform maintenance allowance.~~

[Revised 8/8/2023]

XXV. MISCELLANEOUS POLICIES

Section: XXV

XXV. MISCELLANEOUS POLICIES

A. Departmental Rules

Though Madeira Beach attempts, where possible, to maintain uniform rules generally applicable to all City employees, unique departmental needs may call for customized rules. Therefore, each City department director may promulgate and implement departmental rules based upon operational needs and requirements as a supplement to the Personnel Policy, Rules and Procedures Manual. Such rules, when issued, shall be applicable to employees of that department as though they were published herein. Any such department-based rule shall be reviewed by the Civil Service Commission prior to implementation.

[Revised 8/8/2023]

B. General Appearance and Work Attire

The City's management staff are authorized to adopt reasonable standards of personal dress, appearance and hygiene during working hours. Personal appearance should be evaluated based upon the type of work, the work environment, and the amount of public contact required by the job. Designated uniforms or work clothes shall be worn as required by City or departmental policy.

C. City Property and Supplies

1. Employees are expected to take proper care in the handling and use of all City equipment and property. Employees are not to remove City property from the premises without authorization by the department director with the exception of those items that have been authorized for use off the premises such as cellular phones, pagers, laptop computers, etc.
2. Employees are not permitted to "recycle," "scavenge" or take for personal use any used or excess supplies, tools or equipment, including construction materials and office supplies, absent a published City policy on re-use or recycling of such materials.
3. Upon request or separation from employment, or extended leave, employees shall return all City property to the City. By accepting employment with the City, employees agree that the replacement cost for all property damaged, lost or not returned may be deducted from the employee's paycheck without need to file any further legal action against the employee, except to the extent a deduction would reduce pay to an hourly rate below the prevailing minimum wage.

[Revised 8/8/2023]

D. City Communications Equipment

All City equipment, including electronic communications systems such as e mail and voice mail, and video recording, and streaming systems is the property of the City and is subject to monitoring at any time, with or without further notice, at the sole discretion of management. All City employees are required to comply with the terms of the City's computer and internet use policies, to the extent such are adopted by the Board of Commissioners.

[Revised 8/8/2023]

E. Address and Telephone Number

XXV. MISCELLANEOUS POLICIES

Section: XXV

Each employee shall provide his or her department with a current physical address, telephone number, and contact information. The employee shall also provide and maintain a current name and telephone number of an emergency contact. The department and Human Resources department must be informed of any change in the above-required data in a timely manner.

F. Solicitation of Contributions, Memberships, or Business

1. The solicitation of contributions, memberships, or business among employees of the City shall not be permitted on City property during the employee's working time except for those charity drives or employee benefit promotions specifically authorized by the Board of Commissioners. Employees may, with department approval, engage in limited, temporary, passive solicitation such as the temporary posting of a girl scout cookie order form, placement in break area of little league candy box, and the like. However, other forms of direct solicitation, including direct or network marketing, whether for charitable, business or other reasons, is prohibited.
2. Employee organizations, their members, agents, representatives, or persons acting on their behalf are prohibited from soliciting employees during working hours. This section shall not be construed to prohibit solicitation by employee organizations during the employee's lunch period or in such areas not specifically devoted to the performance of the employee's official duties. This provision is not intended to conflict with the provisions of the National Labor Relations Act and where any conflict is shown, the Act shall prevail.

G. Statements by City Employees to Attorneys, Law Firms, or Others Concerning Employees or City Business

City employees may from time to time be requested or subpoenaed to make a statement to an investigator, an attorney, or a law firm. These statements may be concerned with an actual or contemplated legal action against the City. Employees are not generally authorized to make representations to anyone regarding City business. Therefore, should any employee receive either a request to make a statement or be subpoenaed regarding City business, the employee shall discuss the matter first with his or her department director and, prior to making any oral or written statements, discuss the matter with the City Attorney's Office. Nothing herein should be interpreted as preventing an employee from speaking with his or her own legal counsel regarding personal legal matters, nor from speaking with a representative of a labor association concerning any grievance, mutual aid or concerted activity as protected by Florida Statutes § 447.301.

H. Media Relations, Requests for Interviews

1. General Policy: The City's official positions and policies are set and communicated to the public by the elected Board of Commissioners and, in certain circumstances such as litigation or administrative matters, the City Manager or City Attorney. However, other City employees may from time to time be asked by various media outlets to provide comments or interviews concerning the City's policies, operations, or other such matters. To ensure that the City's official positions on matters related to the business of the City are communicated to the media in a consistent and informed way, any employee, with the exception of the City Manager or City Attorney or their respective assistants, who receives a request to be interviewed or provide comments concerning City business shall

XXV. MISCELLANEOUS POLICIES

Section: XXV

refer the matter to his or her department director or designated media officer for response. Unless first authorized by the applicable department director, employees shall refrain from providing comments or being interviewed regarding City business or policy.

2. Exceptions: Certain City departments or functions, by their nature, draw frequent media requests for interviews or information. In these circumstances, such as hurricane and other emergency services operations, the department chief or director overseeing the department or function may designate an employee as a “spokesperson” regarding that matter and that employee, once designated, may then provide interviews and information to the media concerning their area of responsibility without the need to obtain individualized prior approval. Such employees should, however, keep the City Administration and, where appropriate Board of Commissioners and the City Attorney informed of interviews or information requests of significant concern.
3. Nothing herein shall be interpreted or applied so as to prevent any employee from the exercise of the personal right to free speech as a citizen, as that right is defined by the federal courts. However, employees in such situations should be clear they are speaking for themselves and refrain from stating or implying that they are speaking for or as representatives of Madeira Beach.

I. Recording Workplace Communications Prohibited

Chapter 934, Florida Statutes, prohibits interception of wire or oral communications by electronic, mechanical or other device without the consent of all parties involved. Recordings related to City business are also public records subject to being retained and inspected. Employees are therefore prohibited from recording any conversations between individuals, whether fellow employees, subordinates or citizens, with or without the permission of all parties, except as otherwise provided by law, as part of an official City broadcast production, as may be authorized by a criminal investigation conducted by law enforcement, or as is authorized by City policies regarding City-owned phones, faxes, radios and computers.

J. Loss of or Failure to Obtain Professional Certification or License

1. Where an employee’s position with the City requires any specific certification, license or other credential, including driver’s license, as a condition of holding that position, the employee is required to obtain and maintain the certification, license or credential, and to provide written proof thereof upon request. An employee who loses or within the provided amount of time fails to obtain the required certification, license or credential for whatever reason, including suspension, revocation, or expiration, has a responsibility to immediately report this fact to his or her department director. Failure to provide timely notice will result in discipline up to termination.
2. Upon timely notification by an employee that he or she has lost or failed to obtain the certification, license or credential, his or her department shall have the following options:
 - (a) Make a reasonable effort to reassign the employee, on a temporary basis, to appropriate and available responsibilities not requiring the certification, license or credential, for a reasonable timeframe up to the subsequent exam/incident follow-up and results notification date to provide continuous employment during his or her efforts to attempt to acquire or obtain reinstatement.

XXV. MISCELLANEOUS POLICIES

Section: XXV

- (b) Allow him or her to use any available and applicable leave during the allotted timeframe while obtaining reinstatement.
- (c) ~~Place him or her on a temporary administrative leave of absence without pay not to~~

exceed the allotted timeframe.

3. An employee who fails to have his or her certification, license or credential reinstated, or to initially obtain same within the allotted period, may apply for and be considered on a competitive basis for any vacant City position for which he or she is qualified. The City Manager determines the timeframe or his designee. If the employee is not selected or does not apply for such position prior to expiration of the allotted timeframe, then he or she shall be non-disciplinarily separated for failure to obtain or maintain a necessary job qualification.

[Revised 8/8/2023]

K. Searches on City Property *[9/13/2023 start at this section]*

Madeira Beach seeks to provide a safe work environment for all its employees. To that end, the City reserves the right whenever a manager or department director has reasonable suspicion to believe an employee has brought on City premises or work sites alcohol, illegal drugs or controlled substances, or any other illegal or prohibited item, weapon, or stolen property; or has misused City equipment, to search City property including, but not limited to work locations, desks, file or storage cabinets, computer files (including software, hardware, e mail, voice mail, and internet activity), lockers (locked or unlocked), City vehicles and private vehicles parked on City property or being used at the time of search for City business, and all other City equipment.

On a case by case basis, employees may be requested to display personal property for visual inspection. Failure to comply with a search or visual inspection request from supervisory or security personnel will be grounds for discipline. Searches of an employee's personal property, such as purses or briefcases or lunch containers, will take place only in the employee's presence unless an emergency condition exists which would, if confirmed, endanger others or the employee him/herself. Employees who do not wish to subject personal items to possible inspection are strongly advised to leave such items at home.

The City will make every effort to honor the personal dignity of employees during any search but will take appropriate disciplinary action in cases where prohibited items or activities are uncovered, regardless of how such item(s) or activity has been discovered (accidentally or in the process of a search).

L. Employee Arrest or Charge

Employees must inform the City's Human Resources Staff, either verbally or in writing and either personally or via an attorney or family member, etc., within three (3) business days of their being criminally arrested, charged or convicted of any state or federal crime, including for violation of parole or probation. Failure to do so will result in disciplinary action.

M. Use of Tobacco and "e cigarettes"

Use of any tobacco product, is prohibited within City owned/leased buildings, including bathrooms and stairwells, except in areas specifically designated and designed for smoking. Department directors may prohibit the use of, or adopt rules related to the use of, "e

XXV. MISCELLANEOUS POLICIES

Section: XXV

cigarettes”.

N. *City Bulletin Boards and Common Areas*

The City may from time to time establish and ordain certain display cases, bulletin boards, or the like for the purpose of posting authorized communications to employees and/or the public. The purpose of such bulletin boards or display cases is not to create a general speech

area but is instead intended to effectively and efficiently communicate information to citizens and employees. Employees are thus prohibited from posting any item not approved by the City Manager or Human Resources Staff in advance and not related to City government or City employment. Employees are likewise prohibited from removing any posted notice or item from a City display case or bulletin board unless authorized, and from posting, or facilitating or authorizing anyone else to post any advertisement, notice, solicitation or any other printed materials in, on or along any common area of any City building or facility. Common areas include, but are not limited to, break rooms, entryways, doors, elevators, hallways and parking facilities.

O. *Communicable Diseases*

Madeira Beach government desires to maintain a workplace free from preventable risks of communicable illness or disease. Therefore, all employees of Madeira Beach government are required to properly treat any communicable disease which would present a danger to the health or safety of fellow employees. Employees should, in consultation with their health care providers, take appropriate precautions within the workplace to reduce any infection risks to co-workers. Madeira Beach does not seek to needlessly impose on the medical privacy of its employees and where a communicable disease or illness is adequately managed and treated, the employee need not disclose same to co-workers or the City. However, should the employee desire the assistance of the City in modifying working conditions to prevent risk of transmission, the Human Resources Staff should be consulted and any records generated concerning the medical condition will be treated as confidential as permitted by state and federal law.

P. *Inventions and Intellectual Property*

Any invention, method, program, publication or other form of intellectual property which is developed by a City employee during work hours or using City equipment or resources, is the property of Madeira Beach. Employees are prohibited from seeking to patent, trademark, service mark, copyright or otherwise register such intellectual property without the prior authorization of the Board of Commissioners.

Q. *Letters of Reference*

Though all employees have the right to express their personal opinions regarding another current or former co-worker, no employee below the rank of Department Director may write any letter of recommendation, commendation, etc., on City letterhead without the express prior approval of the Department Director or City Manager.

R. *Funds Owed by Employees; Debt Collection Calls*

Employees may on occasion become indebted to the City. By accepting employment with the City, employees acknowledge and consent to the City's authority to retain or otherwise withhold portions of an employee's compensation to allow such funds to be recovered by the City except to the extent the deduction would reduce regular pay to an hourly rate below the prevailing

XXV. MISCELLANEOUS POLICIES

Section: XXV

minimum wage, or as otherwise prohibited by law. The City does not authorize or permit the use of City communication assets, including phones and e mail systems, to be used to make or receive messages related to debt collection efforts. Employees are not authorized to initiate, receive or forward such communications to any other person, and debt collectors violating this policy shall be subject to fines and penalties as provided for by federal and state debt collection practice laws.

XXVI. USE OF COUNTY VEHICLES & USE OF PRIVATE VEHICLES FOR COUNTY BUSINESS

Section: XXVI

XXVI. USE OF CITY VEHICLES & USE OF PRIVATE VEHICLES FOR CITY BUSINESS

1. When it is necessary to allow an employee to carry out assigned job duties, an employee may be required to operate and control City-owned vehicles, or to operate a personally owned vehicle for City business. When possessing a City-owned vehicle for such a reason, employees may only use it during the course and scope of their assigned employment duties, and under no circumstances is the vehicle to be used for personal business or pleasure, whether during duty hours or not. However, employees may make work day deviations to use restrooms or take meal/comfort breaks.
2. An employee driving a City vehicle, or a personal vehicle for City business, must have in his or her possession a valid Florida driver's license with any required endorsements or classifications.
3. City vehicles will not be used to transport anyone other than City employees unless the person(s) to be transported are directly involved in the provision of City-related services or otherwise involved in City government operations.
4. In normal circumstances, City owned vehicles are to be driven over the most direct route. Any out of Pinellas County travel must be pre-approved by the employee's director unless emergency circumstances prevent prior approval.
5. No employee shall operate a City vehicle or personal vehicle on City business when any physical or mental impairment causes the employee to be unable to drive. This prohibition includes, but is not limited to, circumstances in which the employee is temporarily unable to operate a vehicle safely or legally because of illness, medication or being under the influence of illegal drugs or alcohol.
6. Vehicles driven on City business must be driven in accordance with all applicable traffic and parking laws, including applicable speed limits. Seat belts must be used by vehicle occupants at all times. Each employee shall be personally responsible for any fines or penalties incurred as a result of driving or parking violations while operating a City vehicle.
7. Any accident involving a City-owned vehicle which results in property damage and/or personal injury will be reported without delay to the operator's immediate supervisor, regardless of whether such accident occurs during or after regular duty hours, as well as to the law enforcement agency with jurisdiction over the accident scene.
8. Employees assigned a City vehicle for use to and from work shall be responsible for the personal tax liability for the value of this use. Employees using take-home vehicles must record such use when recording their hours in the City's time and attendance system.
9. City vehicles must be maintained in good working order at all times. An employee who observes an apparent safety or equipment defect regarding vehicle equipment should report it to a supervisor immediately and if the vehicle is unsafe, it shall not be driven further. Employees who have been assigned a take home vehicle shall store the vehicle in a safe, secure area at the employee's residence, keep it locked, and shall take all reasonable measures to prevent damage to the vehicle.

**XXVI. USE OF COUNTY VEHICLES & USE OF
PRIVATE VEHICLES FOR COUNTY BUSINESS**

Section: XXVI

10. Employees are on notice that they should avoid bringing valuable personal items into City vehicles. The City will not be responsible for the loss or theft of any personal items from City vehicles, and City vehicles may be inspected or searched at any time at the City's election.
11. Employees who are assigned a City vehicle, or who are using their personal vehicle while on City business, must refrain from speaking on cellular phones while driving the vehicle unless the employee makes use of a "hands-free" device. Employees not using hands-free devices must bring their vehicles to a full stop in a safe location prior to using a cellular phone. Employees shall not text or type on smart phones while driving.
12. Employees who are assigned a City vehicle, either permanently or on a rotational or pool basis, shall not smoke or use smokeless tobacco within the vehicle.
13. No City employee shall order, authorize or permit any non-City employee, including contractors and temporary workers, to operate any City vehicle, including cars, trucks, earth-moving equipment, airplanes, all-terrain vehicles, and boats, unless same is absolutely required to respond to an extreme emergency or imminent threat to life or safety and no City employee is available to operate the vehicle.
14. Employees may not use a City owned take home vehicle to engage in personal business while commuting to and from work, including shopping trips, stopping at dry cleaners (other than to pick up or drop off City uniforms), or picking up or dropping off school children.
15. Under Florida law, the City may not be required to cover injuries or damages resulting from use of vehicles by its employees unless such use was in the course and scope of employment. Employees are therefore warned that failure to limit use of City vehicles to such purposes may result in personal financial liability for any such damage or injury to the employee or third persons. To the extent the City Manager determines appropriate, employees being granted use of City vehicles or being instructed to use personal vehicles to conduct City business may be required to execute acknowledgement forms concerning issues of liability.
16. Authorization given to an employee to use a City owned vehicle, whether take home, daily assignment, pool or otherwise, is not and shall not be construed as being a guaranteed benefit or entitled form of compensation to the employee. Vehicles are assigned based on operational needs and budgetary limitations and the City may remove, reassign or decommission any of its vehicles at any time within its discretion.
17. The City Manager is authorized to issue operational procedures which govern the administration of this vehicle policy by the departments.

Ex Officio Member Definition (Skinner, 2023)

Robert's Rules of Order (Robert III, 2023) defines an ex officio member as someone who holds another office or position of importance or relevance and is also part of a body, such as a board, committee, or council. In non-legislative organizations, this is the most widely used "parliamentary procedure" manual and provides order and fairness in decisions while protecting the rights of the minority and expediting meetings.

Ex officio members are not necessarily elected or appointed. They agree to serve in a position because the organization requires their expertise or influence in that position.

Members of an organization should not use the term to describe a type of membership in the organization. Instead, one should use the word to describe an obligation or privilege they have to serve on a committee or board. Ex officio members whose offices entitle them to membership will have their membership on the board terminated when they cease to hold those offices.

It is also common when establishing a board that certain board members are required to be government representatives, corporate officers, or voting delegates that represent the entity that they work for. They are appointed as ex officio members by virtue of their position. When a member terminates employment with an employer, their successor becomes an ex officio member.

What is an Ex Officio Member on a Board of Commission? (Skinner, 2023)

Ex officio members who are also members of the board or commission, such as the treasurer of an organization, the chair of a standing committee, or an employee representative, generally have all the rights and responsibilities of membership in the board or committee they serve on. Making motions, speaking in debates, and voting are some of the rights of membership. Being an active and contributing member is also one of the obligations.

Advantages and Disadvantages of Having Ex Officio Members on Your Board (Skinner, 2023)

First, their expertise and experience can often provide valuable insights and guidance to your board. Their connections and influence can also help the board in fundraising efforts or strategic partnerships and collaborations. Plus, since ex officio members typically serve for longer terms, they can also provide continuity and institutional memory to the board. This ensures important knowledge and perspectives are retained even as other board members change.

It's important to carefully consider the potential disadvantages of having ex officio members. The drawbacks may vary depending on the organization's goals, structure, and the individuals involved.

For example, ex officio members may have conflicting loyalties or interests, as they often hold positions within the organization or related entities. This may lead to conflicts of interest that could undermine the board's decision-making processes.

If ex officio members hold significant power or influence, it can lead to power imbalances within a board. Other board members may feel intimidated or less inclined to voice their opinions if ex officio members dominate the discussions or decision-making processes, and this can impact the overall effectiveness of the board.

Finally, ex officio members may limit diversity of the board, as they are often selected based on their roles or positions. The lack of diversity in background, perspectives or expertise can restrict the range of ideas and perspectives brought to discussions and decision-making processes.

City of Madeira Beach City Charter, Section 5.2 City Clerk

For the Civil Service Commission, the City Clerk was chosen as the ex officio secretary to the CSC based on the position held in the organization. Section 5.2 of the City Charter of Madeira Beach states “The City Clerk shall be the secretary ex-officio for the Civil Service Commission” (City of Madeira Beach, 2023).

The ex officio secretary is a board member but not counted for quorum purposes. The City Clerk is meant to serve until no longer working for the organization, no term limits. This provides a historical perspective as well as parliamentary procedure understanding.

The Civil Service Commission does not appoint the City Clerk to serve as the ex officio secretary; this is provided as part of the City Charter (the bylaws). The need for historical representation and perspective is the reason why a City Clerk is not a contracted position in the City Charter. Note, this is the same reasoning that the City Treasurer is not contracted. These two Charter positions are meant to be non-contracted employees, to serve for a long time, provide consistency in the City, and to hold a historical perspective of the City and its needs.

References

Robert III, H. M. (2023). *The Newly Revised 3rd Edition in Brief*. Retrieved from Robert’s Rules of Order: <https://robertsrules.com/>

Skinner, K. (2023, May 2). *Board Best Practices*. Retrieved from Ex Officio Role and Responsibilities: [https://aprioboardportal.com/news/ex-officio-board-member-role-and-responsibilities/#:~:text=Robert's%20Rules%20of%20Order%20defines,board%2C%20committee%2C%20or%](https://aprioboardportal.com/news/ex-officio-board-member-role-and-responsibilities/#:~:text=Robert's%20Rules%20of%20Order%20defines,board%2C%20committee%2C%20or%20)

so long as all of the requirements of public notice and hearing are adhered to, as provided in this Code.

(Code 1983, § 2-310; Ord. No. 974, § 2, 9-24-02; Ord. No. 1044, § 3, 5-24-05; Ord. No. 1050, § 2, 8-9-05)

Editor's note—Ord. No. 974, § 2, adopted September 24, 2002, changed the title of § 2-82 from "Authority to institute amendments to zoning regulations" to "Authority to initiate amendments to zoning regulations and zoning boundaries." See note at § 2-81.

Sec. 2-83. Conflict of interest provisions.

(a) No member of the local planning agency shall communicate with another member of the local planning agency concerning their intent on any issue or potential issue which is or may be placed before them except at their scheduled meetings.

(b) No member of the local planning agency shall communicate with any party, witness, representative of a party, or interceding person concerning any issues except at their scheduled meetings or as otherwise specified in article I, division 2 for ex-parte communications.

(c) Failure on the part of a member of the local planning agency to comply with the provisions of this section shall constitute grounds for removal of such member from the local planning agency. (Code 1983, § 2-312; Ord. No. 974, § 2, 9-24-02; Ord. No. 1044, § 3, 5-24-05; Ord. No. 1050, § 2, 8-9-05)

Editor's note—See note at § 2-81.

State law references—Public meetings, Florida Statutes § 286.011; ex parte communications, Florida Statutes § 286.0115.

Secs. 2-84—2-100. Reserved.

DIVISION 3. RESERVED*

Secs. 2-101—2-125. Reserved.

***Editor's note**—Ord. No. 1019, § 2, adopted May 25, 2004, repealed division 3 in its entirety, which pertained to the board of adjustment and derived from the Code of 1983, §§ 2-402—2-410, 2-412, and Ord. No. 953, § 1, adopted November 13, 2001.

DIVISION 4. CIVIL SERVICE COMMISSION†

Sec. 2-126. Intent.

(a) The intent of this division is to create a civil service commission in order to review, prepare, and recommend rules for the city's personnel policies and procedures with regard to classified employees.

(b) The civil service commission shall hear grievance for classified employees who believe they have a grievance arising from their employment and render recommendations as provided in the Charter § 6.6C.6.

(c) The civil service commission members also recommend cost of living increases and employee pay adjustments to the board of commissioners for consideration.

(Code 1983, § 2-502)

Sec. 2-127. Organization.

(a) The civil service commission membership and appointment shall be as provided in Charter § 6.6B. The term of each person appointed shall be staggered so that not more than two terms expire within any one year. Any civil service commission member may be reappointed by the board of commissioners. Appointments to fill vacancies shall be for the unexpired term of office.

(b) Members of the civil service commission shall be residents of the city at the time of their appointment and throughout the term of office. Any member who is no longer a resident of the city shall be automatically removed, and that vacancy filled as provided in this division.

(c) Members of the civil service commission shall be suspended or removed for cause upon the filing of written charges by the mayor. The written charges shall be served by hand delivery or certified mail upon the member being charged. The member being charged shall have 15 days to appeal the charges to the board of commissioners. If the charges are appealed, the member of the civil service commission being charged shall be afforded a prompt public hearing on the matter.

†**Charter reference**—Civil service commission, § 6.6.

Cross reference—Personnel, ch. 50.

The member shall be retained, suspended or be removed by majority vote of the board of commissioners.

(d) The failure of any member of the civil service commission to attend two of three successive meetings without cause and without prior approval of the chairman, the civil service commission shall then declare the member's seat vacant and the board of commissioners shall promptly fill such vacancy. The failure of any individual civil service commission member to attend four meetings of the civil service commission in any contiguous 12-month period shall be cause for removal.

(e) Appointments shall be made, consistent with the Charter on the basis of demonstrated experience or interest in the subject matter.

(f) The members of the civil service commission shall, in November of each year, elect a chairman and a vice-chairman from among its members who shall be voting members.

(g) Members of the civil service commission shall meet quarterly, as necessary, or at the call of the chairman. All meetings of the civil service commission shall be public.

(h) Civil service commission members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by board of commissioners or as otherwise provided by law. (Code 1983, § 2-503; Ord. No. 1028, § 2, 8-24-04; Ord. No. 1075, § 1, 4-25-06)

Charter reference—Civil service commission membership, § 6.6B.

Sec. 2-128. Conduct a meeting/hearing.

(a) *Notification.* When and at such time a meeting is scheduled the city administration shall post a notice of the time and place when the civil service commission shall meet and the topics on their agenda.

(b) *Meetings/public hearing.* At the hearing of the civil service commission any interested person may be heard upon the subject matter.

(c) *Recommendations.* The civil service commission, by majority vote, shall conclude recommendations.

(d) *Written records.* Minutes shall be kept of all meetings and hearings by the civil service commission, and all hearings shall be open to the public. The board of commissioners shall provide clerical and administrative personnel as may be reasonably required by the civil service commission for the proper performance of its duties. The written record shall include the vote of each member of the civil service commission upon each question, or if absent or failing to vote, indicating such fact. The minutes of all proceedings, decisions and/or recommendations of the civil service commission shall be made public record on file in the office of the city clerk.

(Code 1983, § 2-504)

Sec. 2-129. Powers.

The civil service commission shall have the power to establish rules and regulations for its own operation not inconsistent with the provisions of this Code.

(Code 1983, § 2-505)

Secs. 2-130—2-150. Reserved.

ARTICLE IV. DEPARTMENTS, OFFICERS, EMPLOYEES*

Sec. 2-151. Generally.

(a) The administrative departments of the city shall be as follows:

- (1) City manager/administration department.
- (2) Building and zoning department.
- (3) Finance department.
- (4) Community services department—Administrative.

***Charter references**—City manager, art. V; charter officers, § 6.1; city clerk, § 6.2; city attorney, § 6.3; treasurer, § 6.4; administrative departments, § 6.5.

Cross reference—Any ordinance establishing positions, classifying employees and setting salaries, or regarding personnel policies or pensions or retirement benefits not inconsistent with this Code saved from repeal, § 1-11(7).

ORDINANCE 2023-06

AN ORDINANCE OF THE CITY OF MADEIRA BEACH, FLORIDA, AMENDING DIVISION 4 (CIVIL SERVICE COMMISSION) OF ARTICLE III (BOARDS, COMMITTEES, COMMISSIONS) OF CHAPTER 2 (ADMINISTRATION) OF THE CODE OF ORDINANCES RELATED TO THE DUTIES AND OPERATION OF THE CIVIL SERVICE COMMISSION; AND PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Division 4 of Article III of Chapter 2 of the City of Madeira Beach Code of Ordinances provides for certain procedures related to the operation of the City's Civil Service Commission; and

WHEREAS, Section 5.7(C) of the City Charter provides that the Madeira Beach Civil Service Commission is responsible for the preparation of the City's personnel rules and that, once such proposed rules are concurred with by the City Manager, the same shall be proposed to the Board of Commissioners for consideration, which may adopt same with or without amendment by ordinance; and

WHEREAS, Section 5.7(0) of the City Charter provides that the Board of Commissioners may provide for the duties and powers of the Civil Service Commission by ordinance; and

WHEREAS, the Board of Commissioners has received recommendations from the City Attorney regarding revising the current substantive and procedural operations of the Civil Service Commission to reflect the intent of the City and to ensure prevailing caselaw and statutory law regarding the function of such bodies is adequately addressed; and

WHEREAS, the City Attorney has reviewed best practices and has recommended the provisions contained in this Ordinance to provide the policy specificity the Board of Commissioners desires; and

WHEREAS, the Board of Commissioners finds that it is in the best interests of the City to adopt the policy provisions set forth in this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of City of Madeira Beach, Florida, that:

SECTION 1. Division 4 (Civil Service Commission) of Article III (Boards, Committees, Commissions) of Chapter 2 (Administration) of the City of Madeira Beach Code of Ordinances is hereby amended as follows:

DIVISION 4. - CIVIL SERVICE COMMISSION

Sec. 2-126. - Intent: appellate jurisdiction.

- (a) The intent of this division is to provide for the scope or authority of the civil service commission and to establish procedural and organizational rules related to its exercise of that authority create a civil service commission in order to review, prepare, and recommend rules for the city's personnel policies and procedures with regard to classified employees.
- (b) The civil service commission shall preside over appeals of disciplinary terminations of regular, non-probationary hear grievance for classified employees, but shall not consider appeals of disciplinary actions against employees who are classified as at-will, or who are otherwise made ineligible by the city's adopted personnel policy to file such appeals-who believe they have a grievance arising from their employment and render recommendations as provided in the Charter § 6.6C.6. In performing this role, the jurisdiction of the civil service commission is to interpret the city's personnel policy and any other relevant city policies, and to ultimately find if the city had factual and legal just cause to impose the discipline. In reaching its decision, the civil service commission sits in an appellate advisory capacity. The civil service commission does not have jurisdiction over, and may not rule upon, or make findings about, any allegations of a violation of a county, state or federal law. Employees seeking to assert such violations should do so by way of the appropriate statutory procedures.
- (c) The civil service commission members also recommend cost of living increases and employee pay adjustments to the board of commissioners for consideration.

Sec. 2-127. - Appointment and membership Organization.

- (a) In addition to any charter provisions concerning the appointment and membership of the civil service commission, unless doing so would result in the inability to have a fully-appointed commission, membership and appointment shall be as provided in Charter § 6.6B. The term of each person appointed to the commission shall be staggered so that not more than two terms expire within any one year. Any civil service commission member may be reappointed by the board of commissioners. Appointments to fill vacancies shall be for the unexpired term of office.
- (b) Members of the civil service commission shall be residents of the city at the time of their appointment and throughout the term of office. Any member who is no longer a resident of the city shall be automatically removed, and that vacancy filled as provided in this division.
- (c) Members of the civil service commission may be shall be suspended or removed for cause upon the filing of written charges by the mayor. The written charges shall be served by hand delivery or certified mail upon the member being charged. The member being charged shall have 15 days to appeal the charges to the board of commissioners. If the

charges are appealed, the member of the civil service commission being charged shall be afforded a prompt public hearing on the matter. The member shall be retained, suspended or ~~be~~-removed by majority vote of the board of commissioners.

- (d) The failure of any member of the civil service commission to attend two of three successive meetings without cause and without prior approval of the commission chairma-Rshall result in, the member's seat becoming vacant and the city clerk, serving as ex officio secretary to the civil service commission shall repol1 then declare the member's seat vacan0.t toand the board of commissioners, which shall promptly fill such vacancy. The failure of any individual civil service commission member to attend four meetings of the civil service commission in any contiguous 12 month period shall be cause for removal.
- (e) Appointments shall be made, consistent with the Charter on the basis of demonstrated experience or interest in the subject matter.
- (f) The members of the civil service commission shall, in November of each year, elect a chairman and a vice-chairm-an from among its members who shall be voting members. The chair, and in his or her absence the vice-chair, shall preside over meetings and hearings and shall, subject to the will of the entire commission, make rulings on points of order and procedure, and in quasi-judicial hearings shall rule on motions and objections.

gl Members of the civil service commission shall schedule in advance quarterly meetings. However, if the chair, in consultation with the city manager, determines that there are no agenda items requiring a scheduled meeting, the chair is authorized to cancel the scheduled meeting, and to instruct the city clerk, acting as ex officio secretary, to notify the members of the cancellation. In addition to its scheduled quarterly meetings, the civil service commission shall promptly schedule hearings on employee post-termination appeals, and \<'hen grievances are filed. Any other unscheduled meetings may be requested by the city manager or his or her designee to discuss personnel matters which cannot wait until the next regularly-scheduled meetingwill be at the behest of staff, in collaboration with the chair of the civil service board.

fgj(h) The city manager shall coordinate with the civil service commission chairperson and the human resources coordinator to choose and set meeting dates and time before a meeting is **noticed**

fhj(i) Pursuant to the city charter, the city clerk shall serve as the civil service commission's ex officio secretary. In that role, the clerk shall ensure board meetings are noticed and minutes are recorded and maintained so as to ensure compliance with the state's sunshine law. The clerk shall also provide civil service members with electronic copies of agenda materials and keep and maintain the official records of the commission. The clerk shall also serve as the hearing clerk for any quasi-judicial post-termination appeal hearings and in that role shall swear in all witnesses and keep the official record of the hearing, including all exhibits admitted or proffered into evidence. The City Clerk shall also utilize a com1 repol1 er for quasi-judicial post-termination appeal hearings.

fB(j) f±1The city manager and the chairperson of the civil service commission shall coordinate and agree on all agenda items prior to the civil service commission meetings except that the civil service commission cannot refuse to promptly set for hearing a timely-filed post-termination appeal.

ffi(k) f.BHuman resources staff or such other staff as may be designated by the city manager's designee shall serve as staff person(s) for the civil service commission and shall attend fill meetings of the civil service commissionooa-ro. In this role, the assigned staff person(s) shall assist the civil service commission by providing it with information, reports, historical data, surveys, or such other information or materials as the civil service commission may reasonably request to assist it in performing its duties of advising on possible policy changes, providing advice and recommendations on policy implementation, and making recommendations related to compensation and classification plans, to the extent these matters are within the scope of the civil service commission's duties as set forth in the city charter.

fti(l) The city attorney shall be the pnmry legal advisor to the civil service commission on all matters of municipal law. However, in the event the civil service commission may require specialized labor or employment counsel of a nature the city attorney is not able to provide, the city may, within established budgets, provide additional specialized counsel. Prior to each civil service commission meeting, the city manager and commission chair shall confer on the agenda and determine if the city attorney's attendance would or an employment lawyer for the city may attend civil service commission meetings as may be necessary or desired, and if so, shall request the city attorney's presence.

{mlf4-j}Notwithstanding the foregoing, if, in the sole judgment of the city manager, the nature and complexity of the appeal requires that an assistant city attorney to assist the disciplining director in the prosecution of the appeal hearing by presenting arguments and evidence and calling and questioning witnesses, the city attorney shall ensure such attorney is assigned to that role. In no circumstances may the attorney assigned to be the civil service commission's neutral legal advisor also serve as the attorney presenting the disciplining director's case and making argument before the commission.

fB(n) **A**s set forth in the Charter, the civil service commission is an advisory board that makes non-binding advisory recommendation to the city manager. In its quasi-judicial role hearing post-termination appeals, the civil service commission will make written findings of fact and conclusions as to the application of those facts to the city's policies. The written recommended order may be rendered by the civil service commission immediately upon the conclusion of a hearing or, if adequate time is required to draft a suitable order, may be rendered at a subsequent meeting to occur in a reasonable time after the conclusion of the hearing.

fmj(o) Civil service commission members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by board of commissioners or as otherwise provided by law.

Sec. 2-128. - Procedural matters~~Coeduet u meeting/hearing~~.

- (a) The city clerk, serving as ex officio secretary to the civil service commission, shall ensure aJI notices of Notification. When and at such time a meeting is scheduled the city administration shall post a notice of the time and place when the civil service commission are posted in a manner compliant with the state's sunshine lawshall meet and the topics on their agenda.
- (b) Meetings and /public hearing . At all regular meetings the hearing of the civil service commission, the chair shall afford any interested person the ability to address the commission on any matter to be voted upon by the commission prior to the vote being takenmay be heard upon the subject matter. In addition, the civil service commission may, in its adopted rules of procedure, afford time on its agenda for any city employee or citizen to address the commission on any matter within the commission's duties and responsibilities. However, when the civil service commission is sitting in its quasi-judicial capacity during post-tenmination appeal hearings, it shall not afford such opportunity for comments, but rather shall only base its findings and conclusions on the documents and testimony admitted into evidence during the hearing, and any arguments the parties or their attorneys may make.
- (c) Recommendations. The civil service commission, by maJonty vote, may makes-hail conclude recommendations to the city on any matter within the scope of its jurisdiction. Such recommendations may take the form of motions recorded in the minutes, adoption of a written report, or for quasi-judicial appeals, adoption of a written recommended order.

{ill_ Written records. Minutes shall be kept of all meetings and hearings by the civil service commission, and all hearings shall be open to the public. Pursuant to the city chail er, the city clerk shall serve as the ex officio secretaLy of the civil service commission, and shall perform the duties associated with that role, as set forth in the city code, including the maintenance of the commission's official record. The board of commissioners shall provide clerical and administrative personnel as may be reasonably required by the civil service commission for the proper performance of its duties. The officialwritten record shall include the vote of each member of the civil service commission upon each question, or if absent or failing to vote, indicating such fact. The minutes of all proceedings, decisions and/or recommendations of the civil service commission shall be made public record on file in the office of the city clerk. The City Clerk shall also utilize a court reporter for quasi-judicial post-termination appeal hearings.

fdj(e) The civil service commission may adopt such procedural rules to regulate the conduct of its meetings as may be deemed to be necessary and desirable. In developing such rules, the civil service commission shall consult with the city attorney to ensure they comply with the state's sunshine and records laws and, to the extent that they will govern the commission's quasi-judicial post-termination hearings, to ensure they comply with applicable due process standards. Notwithstanding the foregoing, the civil service commission's procedural rules may not place any specific duty or assignment upon any

city official or employee and may not be inconsistent with any provision of the city charter or code, or state law.

Sec. 2-129. - Non-appellate p.P.owers and duties.

{tl_The civil service commission, in consultation with the city manager, is charged with the on-going development of the city's classification and pay plans. This includes periodic studies relating to equitable classification categories and pay ranges.-sha-l-l-have the power to establish rules and regulations for its o.,vn operation not inconsistent ,vith the provisions of this Code.

(b)The civil service commission, working with the city manager and relevant human resources staff, will periodically examine, by use of staff, consultants, and such other resources available, market conditions and comparative wage data for relevant public and private sector employers, and based upon the results of this examination, will make a written recommendation to the city manager concerning wage adjustments.

(c)The civil service commission, working with the city manager and relevant human resources staff, is charged with developing recommended classifications and pay plans (subject to budgets approved by the board of commissioners) as the city's business needs and operating experience dictate.

SECTION 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

SECTION 3. For purposes of codification of any existing section of the Madeira Beach City Code herein amended, words **underlined** represent additions to original text, words **strich.en** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

SECTION 4. The Codifier shall codify the substantive amendments to the Madeira Beach City Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS __ day of _____,2023.

John B. Hendricks, Mayor

ATTEST:

Clara VanBiargan, MMC, MSM, City Clerk

PASSED ON FIRST READING:

PUBLISHED: _____

PASSED ON SECOND READING:

- A. *Merit principal.* All appointments and promotions of City employees shall be made solely on the basis of merit and fitness demonstrated by examination or other evidence of competence.
- B. *Civil Service Commission; Membership.* There shall be a Civil Service Commission of the City of Madeira Beach, Florida, which Commission shall be composed of five citizens of said City. The Civil Service Commission shall be appointed by the Board of Commissioners of the City of Madeira Beach, Florida. The term of office for each member shall be three years and shall be staggered so that not more than two terms expire within any one year. Three Commissioners shall constitute a quorum. Members of the Civil Service Commission shall hold no remunerative office or employment under the City of Madeira Beach, Florida. The Board of Commissioners of the City of Madeira Beach, Florida, shall have the authority to remove for cause any and/or all Civil Service Commissioners.
- C. *Personnel Rules.* The Civil Service Commission shall prepare personnel rules. When concurred by the City Manager, the rules shall be proposed to the Board of Commissioners, and the Board of Commissioners may by Ordinance adopt them with or without amendment. These rules shall include, but are not limited to:
1. The classification of all classified City positions, based upon the duties, authority and responsibility of each position, with adequate provisions for classification of any position whenever warranted by circumstances;
 2. A pay plan for all classified City positions;
 3. Methods for determining the merits and fitness of candidates for appointment or promotions;
 4. The policies and procedures regulating reduction in force, demotion, suspension and removal of employees;
 5. The hours of work, attendance regulation and provisions for sick and vacation leave;
 6. Grievance procedures, including procedures for the hearing of grievances by the Civil Service Commission, which may render advisory opinions based on its findings to the City Manager with a copy to the aggrieved employee. In this respect the Civil Service Commission shall have the power to issue subpoenas to compel attendance by witnesses and to administer oaths;
 7. Other practices and procedures necessary to the administration of the City personnel system;
 8. In connection with the aforementioned personnel rules, the Civil Service Commission shall inquire into the implementation of such personnel rules as considered necessary to ensure compliance therewith.
- D.

Duties and powers of the Civil Service Commission. All duties, powers, reservations of power, and functions for the Civil Service Commission may be provided for by Ordinance duly passed by the Board of Commissioners of the City of Madeira Beach, Florida.

E. *Powers to collectively bargain recognized.* Nothing contained in this Charter shall limit the power of the Board of Commissioners of the City of Madeira Beach, Florida, acting through its Manager from entering into collective bargaining negotiations with any officers, employees, or group of employees for the purpose of establishing by contract conditions of employment, rules or compensation of said officers, employees, or groups of employees. For the purposes of this Charter, ARTICLE I, Section 6, of the Constitution of the State of Florida is specifically recognized.

(Ord. No. 446, 1-28-1975; Ord. No. 664, 8-14-1984/11-7-1984; Ord. No. 2018-09, § 1(Exh. A), 8-20-2018)

ORDINANCE 2023-06

AN ORDINANCE OF MADEIRA BEACH, FLORIDA, AMENDING DIVISION 4 (CIVIL SERVICE COMMISSION) OF ARTICLE III (BOARDS, COMMITTEES, COMMISSIONS) OF CHAPTER 2 (ADMINISTRATION) OF THE CODE OF ORDINANCES RELATED TO THE DUTIES AND OPERATION OF THE CIVIL SERVICE COMMISSION; AND PROVIDING FOR CONFLICT, PROVIDING FOR SEVERABILITY, PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Division 4 of Article III of Chapter 2 of the City of Madeira Beach Code of Ordinances provides for certain procedures related to the operation of the City's Civil Service Commission; and

WHEREAS, Section 5.7(C) of the City Charter provides that the Madeira Beach Civil Service Commission is responsible for the preparation of the City's personnel rules and that, once such proposed rules are concurred with by the City Manager, the same shall be proposed to the Board of Commissioners for consideration, which may adopt same with or without amendment by ordinance. These rules shall include, but are not limited to:

1. The classification of all classified City positions, based upon the duties, authority and responsibility of each position, with adequate provisions for classification of any position whenever warranted by circumstances;
2. A pay plan for all classified City positions;
3. Methods for determining the merits and fitness of candidates for appointment or promotions;
4. The policies and procedures regulating reduction in force, demotion, suspension and removal of employees;
5. The hours of work, attendance regulation and provisions for sick and vacation leave;
6. Grievance procedures, including procedures for the hearing of grievances by the Civil Service Commission, which may render advisory opinions based on its findings to the City Manager with a copy to the aggrieved employee. In this respect the Civil Service Commission shall have the power to issue subpoenas to compel attendance by witnesses and to administer oaths;
7. Other practices and procedures necessary to the administration of the City personnel system;
8. In connection with the aforementioned personnel rules, the Civil Service Commission shall inquire into the implementation of such personnel rules as considered necessary to ensure compliance therewith.; and

Commented [JC1]: Can this statement follow this sentence? "Grievances against Charter Officers shall be heard by the Civil Service Commission and its findings shall be provided to the Board of Commissioners, the City Manager, and the aggrieved employee by the Civil Service Commission."

Formatted: List Paragraph, Numbered + Level: 1 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

WHEREAS, Section 5.7(D) of the City Charter provides that the Board of Commissioners may provide for the duties and powers of the Civil Service Commission by ordinance; and

WHEREAS, the Board of Commissioners has received recommendations from the City Attorney regarding revising the current substantive and procedural operations of the Civil Service Commission to reflect the intent of the City and to ensure prevailing caselaw and statutory law regarding the function of such bodies is adequately addressed; and

WHEREAS, the City Attorney has reviewed best practices and has recommended the provisions contained in this Ordinance to provide the policy specificity the Board of Commissioners desires; and

WHEREAS, the Board of Commissioners finds that it is in the best interests of the City to adopt the policy provisions set forth in this Ordinance; and

NOW, THEREFORE, BE IT ORDAINED by the Board of City Commissioners of City of Madeira Beach, Florida, that:

SECTION 1. Division 4 (Civil Service Commission) of Article III (Boards, Committees, Commissions) of Chapter 2 (Administration) of the City of Madeira Beach Code of Ordinances is hereby amended as follows:

DIVISION 4. - CIVIL SERVICE COMMISSION

Sec. 2-126. - Intent: appellate jurisdiction.

Commented [JC2]: Why is this here?

(a) The intent of this division is to provide for the scope of authority of the civil service commission and to establish procedural and organizational rules related to its exercise of that authority~~create a civil service commission in order to review, prepare, and recommend rules for the city's personnel policies and procedures with regard to classified employees.~~

(b) The civil service commission shall preside over appeals of disciplinary terminations of regular all classified, non-probationary ~~hear grievance for classified employees, but shall not consider appeals of disciplinary actions against employees who are classified as at-will, or who are otherwise made ineligible by the city's adopted personnel policy to file such appeals who believe they have a grievance arising from their employment and render recommendations as provided in the Charter § 6.6C-6. In performing this role, the jurisdiction of the civil service commission is to interpret the city's personnel policy and any other relevant city policies, and to ultimately find if the city had factual and legal just cause to impose the discipline. In reaching its decision, the civil service commission sits in an appellate advisory capacity. The civil service commission does not have jurisdiction over, and may not rule upon, or make findings about, any allegations of a violation of a county, state or federal law. Employees seeking to assert such violations should do so by way of the appropriate statutory procedures.~~

Commented [JC3]: This should read "hear grievance for classified...".

(c) ~~The civil service commission members also recommend cost of living increases and employee pay adjustments to the board of commissioners for consideration.~~

Commented [JC4]: Restore this clause.

Sec. 2-127. - Appointment and membershipOrganization.

- (a) In addition to any charter provisions concerning the appointment and membership of the civil service commission, unless doing so would result in the inability to have a fully-appointed commission, membership and appointment shall be as provided in Charter § 6.6B. The term of each person appointed to the commission shall be staggered so that not more than two terms expire within any one year. Any civil service commission member may be reappointed by the board of commissioners. Appointments to fill vacancies shall be for the unexpired term of office.
- (b) Members of the civil service commission shall be residents of the city at the time of their appointment and throughout the term of office. Any member who is no longer a resident of the city shall be automatically removed, and that vacancy filled as provided in this division.
- (c) Members of the civil service commission may be shall be suspended or removed for cause upon the filing of written charges by the mayor. The written charges shall be served by hand delivery or certified mail upon the member being charged. The member being charged shall have 15 days to appeal the charges to the board of commissioners. If the charges are appealed, the member of the civil service commission being charged shall be afforded a prompt public hearing on the matter. The member shall be Retained, suspended or be removed by majority vote of the board of commissioners.
- (d) The failure of any member of the civil service commission to attend two of three successive meetings without cause and without prior approval of the commission chairman shall result in; the member's seat becoming vacant and the city clerk, serving as ex officio secretary to the civil service commission, shall report then declare the member's seat vacancy to and the board of commissioners, which shall promptly fill such vacancy. The failure of any individual civil service commission member to attend four meetings of the civil service commission in any contiguous 12-month period shall be cause for removal.
- (e) Appointments shall be made, consistent with the Charter on the basis of demonstrated experience or interest in the subject matter.
- (f) The members of the civil service commission shall, in November-October of each year, elect a chairman and a vice-chairman from among its members who shall be voting members. The chair, and in his or her absence the vice-chair, shall preside over meetings and hearings and shall, subject to the will of the entire commission, make rulings on points of order and procedure, and in quasi-judicial hearings shall rule on motions and objections.
- (g) Members of the civil service commission shall schedule in advance quarterly meetings. However, if the chair, in consultation with the city manager ex officio secretary, determines that there are no agenda items requiring a scheduled meeting, the chair is

Commented [JC5]: Restore this clause.

Commented [JC6]: We need to add a statement that all terms expire on September 30th.

Commented [JC7]: It should never be the City Manager. This must be the Ex Officio Secretary.

authorized to cancel the scheduled meeting, and to instruct the city clerk, acting as ex officio secretary, to notify the members of the cancellation. In addition to its scheduled quarterly meetings, the civil service commission shall promptly schedule hearings on employee post-termination ~~appeals, complaints and grievances,~~ and when grievances are filed. Any other unscheduled meetings ~~may be requested by the city manager or his or her designee~~ the Ex Officio Secretary, through the civil service commission chair to discuss personnel matters which cannot wait until the next regularly-scheduled meeting will be at the behest of staff, in collaboration with the chair of the civil service board.

Commented [JC8]: I believe this should be "grievance" so that it complies with the terminology within the Charter.

Commented [JC9]: The CSC holds the meetings and should approve all unscheduled meetings.

Formatted: Highlight

~~(g)(h)~~ The city manager shall coordinate with the civil service commission chairperson and the human resources coordinator to choose and set meeting dates and time before a meeting is noticed, and

Formatted: Strikethrough, Highlight

Commented [JC10]: The city manager and the hr representative may not schedule meetings without approval from the CSC.

Formatted: Strikethrough, Highlight

~~(h)(i)~~ Pursuant to the city charter, the city clerk shall serve as the civil service commission's ex officio secretary. In that role, the clerk shall ensure board meetings are noticed and minutes are recorded and maintained so as to ensure compliance with the state's sunshine law. The clerk shall also provide civil service members with electronic copies of agenda materials and keep and maintain the official records of the commission. The clerk shall also serve as the hearing clerk for any quasi-judicial post-termination appeal hearings and in that role shall swear in all witnesses and keep the official record of the hearing, including all exhibits admitted or proffered into evidence. The City Clerk shall also utilize a court reporter for quasi-judicial post-termination appeal hearings.

~~(i)(j)~~ ~~(2)~~ The city manager ~~ex officio secretary~~ and the chairperson of the civil service commission shall coordinate and agree on all agenda items prior to the civil service commission meetings, except that the civil service commission cannot refuse to promptly set for hearing a timely-filed post-termination ~~appeal~~ grievance.

Commented [JC11]: The city manager should never decide the content of a CSC meeting. He may request items to add through the chair or ex officio secretary, and if they agree on it, then it is added to the agenda.

Formatted: Strikethrough, Highlight

~~(j)(k)~~ ~~(3)~~ Human resources staff or ~~such other staff as may be designated by the city manager's designee~~ shall serve as staff person(s) for the civil service commission and shall attend all meetings of the civil service commission board. In this role, the assigned staff person(s) shall assist the civil service commission by providing it with information, reports, historical data, surveys, or such other information or materials as the civil service commission may reasonably request to assist it in performing its duties of ~~advising~~ on possible policy changes, providing ~~advice and~~ recommendations on policy implementation, and making ~~recommendations~~ determinations and decisions related to compensation and classification plans, to the extent these matters are within the scope of the civil service commission's duties as set forth in the city charter.

Formatted: Highlight

Formatted: Highlight

Formatted: Highlight

~~(k)(l)~~ The city attorney shall be the primary legal advisor to the civil service commission on all matters of municipal law. However, in the event the civil service commission may require specialized labor or employment counsel ~~of a nature the city attorney is not able to provide,~~ the city may, ~~within established budgets,~~ provide additional specialized counsel. Prior to each civil service commission meeting, the ~~city manager ex officio secretary~~ and commission chair shall confer on the agenda and determine if the city attorney's attendance would ~~or an employment lawyer for the city~~

Commented [JC12]: This troubles me. The HR representative and the City Manager should both be available for the CSC, when requested. However, they should not be permanent members of the CSC.

Formatted: Highlight

~~may attend civil service commission meetings as may be necessary or desired, and if so, shall request the city attorney's presence.~~

~~(m)(4) Notwithstanding the foregoing, if, in the sole judgment of the city manager chair and the ex officio secretary, the nature and complexity of the appeal grievance requires that an assistant city attorney to assist the disciplining director in the prosecution of the appeal hearing by presenting arguments and evidence and calling and questioning witnesses, the city attorney shall ensure such attorney is assigned to that role. In no circumstances may the attorney assigned to be the civil service commission's neutral legal advisor also serve as the attorney presenting the disciplining director's case and making argument before the commission.~~

- Formatted: Highlight
- Formatted: Highlight
- Formatted: Highlight

~~(n)(5) As set forth in the Charter, the civil service commission is an advisory board that makes non-binding advisory recommendations to the city manager and the board of commissioners. In its quasi-judicial role hearing post-termination appeals, the civil service commission will make written findings of fact and conclusions as to the application of those facts to the city's policies. The written recommended order may be rendered by the civil service commission immediately upon the conclusion of a hearing or, if adequate time is required to draft a suitable order, may be rendered at a subsequent meeting to occur in a reasonable time after the conclusion of the hearing. Grievances against Charter Officers shall be heard by the Civil Service Commission and its findings shall be provided to the Board of Commissioners and the aggrieved employee by the Civil Service Commission.~~

- Commented [JC13]: This is troubling. The City Manager should not request legal counsel for the CSC. This request should be made through the members of the CSC. Input and advice from the City Manager should be welcomed.
- Formatted: Highlight
- Formatted: Highlight
- Formatted: Highlight

Commented [JC14]: This must also reference the BOC. Should it include that the findings are rendered to the employee, the City Manager, and the BOC?

Formatted: Highlight

~~(o) Civil service commission members shall serve without compensation, but may be reimbursed for such travel, mileage, and per diem expenses as may be authorized by board of commissioners or as otherwise provided by law.~~

Sec. 2-128. - Procedural matters~~Conduct a meeting/hearing.~~

- ~~(a) The city clerk, serving as ex officio secretary to the civil service commission, shall ensure all notices of Notification. When and at such time a meeting is scheduled the city administration shall post a notice of the time and place when the civil service commission are posted in a manner compliant with the state's sunshine law shall meet and the topics on their agenda.~~
- ~~(b) Meetings and /public hearings. At all regular meetings the hearing of the civil service commission, the chair shall afford any interested person the ability to address the commission on any matter to be voted upon by the commission prior to the vote being taken may be heard upon the subject matter. In addition, the civil service commission may, in its adopted rules of procedure, afford time on its agenda for any city employee or citizen to address the commission on any matter within the commission's duties and responsibilities. However, when the civil service commission is sitting in its quasi-judicial capacity during post-termination appeal hearings, it shall not afford such opportunity for comments, but rather shall only base its findings and conclusions on the~~

Commented [JC15]: Should we have a time designation for responses?

documents and testimony admitted into evidence during the hearing, and any arguments the parties or their attorneys may make.

(c) Recommendations. The civil service commission, by majority vote, ~~may make~~ shall ~~conclude~~ recommendations to the city board of commissioners on any matter within the scope of its jurisdiction. Such recommendations may take the form of motions recorded in the minutes, adoption of a written report, or for quasi-judicial appeals, adoption of a written recommended order.

Commented [JC16]: Our findings and decisions must go before the BOC. It is important that that is stated in this rule
Formatted: Strikethrough, Highlight
Formatted: Highlight

(d) Written records. Minutes shall be kept of all meetings and hearings by the civil service commission, and all hearings shall be open to the public. Pursuant to the city charter, the city clerk shall serve as the ex officio secretary of the civil service commission, and shall perform the duties associated with that role, as set forth in the city code, including the maintenance of the commission's official record. ~~The board of commissioners shall provide clerical and administrative personnel as may be reasonably required by the civil service commission for the proper performance of its duties.~~ The official written record shall include the vote of each member of the civil service commission upon each question, or if absent or failing to vote, indicating such fact. The minutes of all proceedings, decisions and/or recommendations of the civil service commission shall be made public record on file in the office of the city clerk. The City Clerk shall also utilize a court reporter for quasi-judicial post-termination appeal hearings.

~~(d)~~ (e) The civil service commission may adopt such procedural rules to regulate the conduct of its meetings as may be deemed to be necessary and desirable. In developing such rules, the civil service commission shall consult with the city attorney to ensure they comply with the state's sunshine and records laws and, to the extent that they will govern the commission's quasi-judicial post-termination hearings, to ensure they comply with applicable due process standards. ~~Notwithstanding the foregoing, the civil service commission's procedural rules may not place any specific duty or assignment upon any city official or employee and may not be inconsistent with any provision of the city charter or code, or state law.~~

Commented [JC17]: This sentence is NOT a requirement of the charter. How does this interact with the charter's requirement that the CSC conduct inquiries regarding the implementation of the Personnel Policy? We will have to task personnel with minor items with respect to questions and response?
Formatted: Highlight
Commented [JC18]: The CSC is charged with this responsibility. The City Manager has not place in it with respect to the Charter.
Formatted: Strikethrough
Formatted: Strikethrough
Commented [JC19]: The Charter does not reflect this language.

Sec. 2-129. - Non-appellate pPowers and duties.

(a) The civil service commission, in consultation with the city manager, is charged with the on-going development of the city's classification and pay plans. This includes periodic studies relating to equitable classification categories and pay ranges. ~~shall have the power to establish rules and regulations for its own operation not inconsistent with the provisions of this Code.~~

(b) The civil service commission, working with the city manager and relevant human resources staff, will periodically examine, by use of staff, consultants, and such other resources available, market conditions and comparative wage data for relevant public and private sector employers, and based upon the results of this examination, will make a written recommendation to the city manager ~~board of commissioners~~ concerning wage adjustments.

(c) The civil service commission, ~~working with the city manager and relevant human resources staff,~~ is charged with developing recommended classifications and pay plans (subject to budgets approved by the board of commissioners) ~~as the city's business needs and operating experience dictate.~~

Formatted: Strikethrough
Commented [JC20]: The Charter does not reflect this language.

SECTION 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

SECTION 3. For purposes of codification of any existing section of the Madeira Beach City Code herein amended, words **underlined** represent additions to original text, words **stricken** are deletions from the original text, and words neither underlined nor stricken remain unchanged.

SECTION 4. The Codifier shall codify the substantive amendments to the Madeira Beach City Code contained in Section 1 of this Ordinance as provided for therein, and shall not codify the exordial clauses nor any other sections not designated for codification.

SECTION 5. Pursuant to Florida Statutes § 166.041(4), this Ordinance shall take effect immediately upon its adoption.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE CITY OF MADEIRA BEACH, FLORIDA, THIS _____ day of _____, 2023.

James “Jim” Rostek, Mayor

ATTEST:

Clara VanBlargan, City Clerk

PASSED ON FIRST READING:

PASSED ON SECOND READING:

ITEMS TO BE SCHEDULED FOR FUTURE DISCUSSIONS

1. RFP – Classification and Compensation Plan Study – To include an analysis of the current staff positions and their responsibilities; increased efficiency and cross training of personnel to develop teamwork within the departments and within the organization as a whole; a new classification and compensation plan with updated positions descriptions, policies and procedures for future classification action and related management/supervisory training
2. Classification of all Classified City Positions, based upon the Duties, Authority, and responsibility of each position, with adequate provisions for classification of any position whenever warranted by circumstances (City Charter, Sec. 5.7, C, 1)
3. Pay Plan for all Classified City Positions (City Charter, Section 5.7, C, 2)
4. Methods for determining Merits and Fitness of Candidates for Appointment or Promotions (City Charter, Section 5.7, C, 3)
5. Grievance procedures, including procedures for hearing of grievances by Civil Service Commission, which may render advisory opinions based on its findings to the City Manager with a copy to the aggrieved employee. In this respect the Civil Service Commission shall have the power to issue subpoenas to compel attendance by witnesses and to administer oaths (City Charter, Section 5.7, C, 6)
6. Implementation Process for making sure that all Rules, Regulations and Procedures of the Employee Personnel Policy are working and is followed by everyone (City Charter, 5.7, C, 8)
7. Meeting Schedule for Regular Meetings
8. Employee Satisfaction Surveys
9. Department Specific Rules
10. Chair and Vice Chair Appointments in November 2023
11. HR Director Position
12. PowerPoint History Presentation- Civil Service Commission beginning when it was first created by the City of Madeira Beach Voters

Definitions

Advisory Opinions – An advisory opinion is an opinion issued by a court or a commission like an election commission (or a Civil Service Commission) that does not have the effect of adjudicating a specific legal case, but merely advises on the constitutionality or interpretation of a law [Wikipedia]

Recommendation – An official suggestion about the best thing to do to accept/reject a recommendation – recommendation (to somebody) (for/on/about something) The committee made recommendations to the board on teachers’ pay and conditions [Oxford Dictionary].