ORDINANCE NO. O-2019-02

AN ORDINANCE AMENDING PORTIONS OF CITY OF WHEATON EMPLOYEE RULES AND REGULATIONS

WHEREAS, the City of Wheaton, Illinois, is a home rule municipality pursuant to the provisions of Article VII, Section 6 of the Illinois Constitution, 1970; and, as such, the City may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, the City of Wheaton has determined that the employment, performance and conduct of its employees is related to its government and affairs; and

WHEREAS, the Employee Manual of the City of Wheaton dated January 17, 2018 and adopted by Ordinance No. 2018-03, (hereinafter "Employee Manual") which is incorporated in this Ordinance by reference as if fully set forth, contains the employee rules and regulations of the City; and

WHEREAS, the City of Wheaton has determined that it is necessary to amend portions of the Employee Manual to reflect changes required by law and to comport with current practices.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Wheaton, DuPage County, Illinois, pursuant to its home rule power as follows:

SECTION 1: The Employee Manual, is hereby amended by the adoption of Exhibit 1 which is attached hereto and incorporated herein as if fully set forth. Those sections of the Employee Manual referenced in Exhibit 1 shall be the employee rules and regulations related to the matters set forth therein and shall fully supplant and replace those sections of the Employee Manual existing prior to the adoption of this Ordinance which hereby are rescinded. In all other respect the Employee Manual is reaffirmed.

SECTION 2: That all ordinances or parts of ordinances in conflict with these provisions are repealed.

SECTION 3: That this ordinance shall become effective January 7, 2019, after its passage, approval and publication in the form and manner prescribed by law.

Mayor

Attest:

City Clerk

Roll Call Vote:

Ayes: Councilman Rutledge
Councilman Suess

Councilman Barbier
Councilwoman Fitch
Councilman Prendiville
Mayor Gresk

Nays: None
Absent: Councilman Scalzo
Motion Carried Unanimously

Passed: January 7, 2018
Published: January 8, 2018

EXHIBIT 1

Chapter 1
Non-Discrimination Policies

B. Policy Against Harassment:

1. Prohibited Conduct

A. The City strictly prohibits unlawful harassment, including unlawful sexual harassment and other defined inappropriate conduct by its employees, visitors, customers, vendors, and contractors, whether on City premises, at job sites or in connection with the City's business (including by telephonic, electronic, or paper-based communication). It is not the purpose of this policy to provide legal advice or an exhaustive explanation of all forms of unlawful harassment.

Unlawful harassment is defined as unwelcome conduct (verbal, visual or physical) that is based upon a person's gender, color, race, ancestry, religion, national origin, age, disability, or other characteristic protected by law. The City will not tolerate unlawful harassment that interferes with an individual's work performance, creates an intimidating, hostile, or offensive working environment for any person. All employees have a personal responsibility to keep the workplace free of any such of unlawful harassment on behalf of themselves and others. No one including a manager, department head, supervisor or employee has the authority to request or require an employee or applicant to submit to unlawful harassment as a condition of receiving any job benefit (such as a raise or a promotion) or avoiding any job detriment (such as a pay cut or a demotion).

B. Sexual Harassment

The City's prohibition against unlawful harassment includes sexual harassment. The courts have determined that sexual harassment is a form of discrimination under Title VII of the U.S. Civil Rights Act of 1964, as amended in 1991. All persons have a right to work in an environment free from unlawful sexual harassment. Unlawful sexual harassment is misconduct which may affect individuals of all genders and sexual orientations. It is a policy of the City of Wheaton to prohibit sexual harassment of any person by any municipal official, municipal agent, municipal employee or municipal agency or office. All municipal officials, municipal agents, municipal employees and municipal agencies or offices are prohibited from sexually harassing any person, regardless of any employment relationship or lack thereof.

This policy adopts the definition of sexual harassment as stated in the Illinois Human Rights Act, which currently defines sexual harassment as:

Any unwelcome sexual advances or requests for sexual favors or any conduct of a sexual nature when:

1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment,
2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or

3) Such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Conduct which may constitute sexual harassment includes:

1) Verbal: sexual innuendos, suggestive comments, insults, humor, and jokes about sex, anatomy or gender-specific traits, sexual propositions, threats, repeated requests for dates, or statements about other employees, even outside of their presence, of a sexual nature.
2) Non-verbal: suggestive or insulting sounds (whistling), leering, obscene gestures, sexually suggestive bodily gestures, "catcalls", "smacking" or "kissing" noises.
3) Visual: posters, signs, pin-ups or slogans of a sexual nature, viewing pornographic material or websites.
4) Physical: touching, unwelcome hugging or kissing, pinching, brushing the body, any coerced sexual act or actual assault.
5) Textual/Electronic: "sexting" (electronically sending messages with sexual content, including pictures and video), the use of sexually explicit language, harassment, cyber stalking and threats via all forms of electronic communication (e-mail, text/picture/video messages, intranet/on-line postings, blogs, instant messages and social network websites like Facebook and Twitter).

The most severe and overt forms of sexual harassment are easier to determine. On the other end of the spectrum, some sexual harassment is more subtle and depends, to some extent, on individual perception and interpretation. The courts assess sexual harassment by a standard of what would offend a "reasonable person."

2. Complaint Procedure

If an employee has experienced or witnessed an incident of harassment, sexual or otherwise, discrimination, or retaliation the employee has the right to file a complaint. Initially, this may be done in writing or orally. Regardless if a written statement is submitted, the City will initiate an investigation for any complaint.

A. The reporting employee and/or affected employee(s) are encouraged to complete a written statement to include all relevant facts surrounding the incident such as date(s), time(s), location(s), statements or materials from witnesses, identification of the offending person, and a detailed description of incidents. The report may be completed during work hours without loss of pay or benefits.

B. Any such complaint should be filed with the reporting employee's Department Head, Director of Human Resources or City Manager. Any complaint against a Department Head shall be reported to the Director of Human Resources or City Manager, and cases of alleged harassment by the City Manager shall be reported to the Mayor for both investigation and discipline. This Policy does not require the harassment to be directed at the person making the complaint. An employee may bring a complaint to any of the designated individuals with whom they would feel most comfortable discussing the matter.

C. Any complaint for harassment against an elected official of the City or members of City Boards and Commissions should be filed with the Illinois Department of Human Rights, 100 West Randolph Street, 10th Floor, Chicago, IL 60601; phone: 312-814-6200; email: IDHR.webmail@illinois.gov.

D. Supervisors shall immediately report any conduct that may violate this policy of which they become aware of to their Department Head, who will then forward it to the Director of Human Resources.

E. All reported violations of this policy will be investigated. The investigation will be conducted thoroughly and promptly. It may include interviews with the person making the complaint; the person against whom the complaint is made, any potential witnesses identified by either person, as well as with others whom the City believes may have relevant information. Employees are expected to cooperate in this process. The investigation may also include review of pertinent documents and other materials. In most circumstances, the person making the complaint will be requested to put their complaint in writing, honestly setting forth full particulars (such as the date, time, location, presence of any witnesses, etc.) to ensure that all possible violations of this policy are properly investigated. It shall be a violation of this policy for any person to engage in retaliatory behaviors against a complainant.

    1) The investigation will be conducted in a manner that protects the confidentiality of those involved to the extent reasonably possible. Employees involved in an investigation may be instructed to or instructed not to discuss the investigation with other employees depending upon the specific circumstances of the investigation. The City will use the criteria set forth in rulings of the National Labor Relations Board in making these determinations.
    2) The results of the investigation will be discussed with the person making the complaint and the person against whom the complaint is made.

This complaint procedure is a critical part of the City's efforts to eliminate unlawful workplace harassment. Persons who believe they have been unlawfully harassed or who receive reports of unlawful harassment of others are required to use it.

A request not to investigate a reported violation of this policy cannot be honored.

3. Prohibition on Retaliation for Reporting Harassment Allegations

    a. No municipal official, municipal agents, municipal employee or municipal agency or office shall take any retaliatory action against any municipal employee due to a municipal employee's:
        1) Disclosure or threatened disclosure of any violation of this policy,
        2) Provision of information related to or testimony before any public body conducting an investigation, hearing or inquiry into any violation of this policy, or
        3) Assistance or participation in a proceeding to enforce the provisions of this policy.

b. For the purposes of this policy, retaliatory action means the reprimand, discharge, suspension, demotion, denial of promotion or transfer, or change in the terms or conditions of employment of any municipal employee that is taken in retaliation for a municipal employee's involvement in protected activity pursuant to this policy.

c. No individual making a report will be retaliated against even if a report made in good faith is not substantiated. In addition, any witness will be protected from retaliation.

d. Similar to the prohibition against retaliation contained herein, the State Officials and Employees Ethics Act (5 ILCS 430/15-10) provides whistleblower protection from retaliatory action such as reprimand, discharge, suspension, demotion, or denial of promotion or transfer that occurs in retaliation for an employee who does any of the following:
    i. Discloses or threatens to disclose to a supervisor or to a public body an activity, policy, or practice of any officer, member, State agency, or other State employee that the State employee reasonably believes is in violation of a law, rule, or regulation,
    ii. Provides information to or testifies before any public body conducting an investigation, hearing, or inquiry into any violation of a law, rule, or regulation by any officer, member, State agency or other State employee, or
    iii. Assists or participates in a proceeding to enforce the provisions of the State Officials and Employees Ethics Act.

e. Pursuant to the Whistleblower Act (740 ILCS 174/15(a)), an employer may not retaliate against an employee who discloses information in a court, an administrative hearing, or before a legislative commission or committee, or in any other proceeding, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. In addition, an employer may not retaliate against an employee for disclosing information to a government or law enforcement agency, where the employee has reasonable cause to believe that the information discloses a violation of a State or federal law, rule, or regulation. (740 ILCS 174/15(b)).

f. According to the Illinois Human Rights Act (775 ILCS 5/6-101), it is a civil rights violation for a person, or for two or more people to conspire, to retaliate against a person because he/she has opposed that which he/she reasonably and in good faith believes to be harassment in employment, because he/she has made a charge, filed a complaint, testified, assisted, or participated in an investigation, proceeding, or hearing under the Illinois Human Rights Act.

An employee who is suddenly transferred to a lower paying job or passed over for a promotion after filing a complaint with IDHR or EEOC, may file a retaliation charge – due within 300 days of the alleged retaliation.

4. Consequences of a Violation of the Prohibition on Harassment

    a. In addition to any and all other discipline that may be applicable pursuant to municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreement, any person who violates this policy or the Prohibition on Sexual

Harassment contained in 5 ILCS 430/5-65, may be subject to external consequences. Each violation may constitute a separate offense.

b. Any discipline imposed by the City shall be separate and distinct from any penalty imposed by an ethics commission and any fines or penalties imposed by a court of law or a State or Federal agency.

c. If warranted, appropriate disciplinary action will be taken, up to and including immediate termination.

5. Consequences for Knowingly Making a False Report

a. A false report is a report of harassment made by an accuser using the harassment report to accomplish some end other than stopping harassment or retaliation for reporting harassment. A false report is not a report made in good faith which cannot be proven. Given the seriousness of the consequences for the accused, a false or frivolous report is a severe offense that can itself result in disciplinary action, up to and including termination. Any person who intentionally makes a false report alleging a violation of any provision of this policy shall be subject to discipline or discharge pursuant to applicable municipal policies, employment agreements, procedures, employee handbooks and/or collective bargaining agreements.

b. An employee making a false sexual harassment claim is subject to penalties ranging from: counseling, suspension without pay and up to and including termination depending on the severity of the violation, as well as any penalty provided by State or Federal law.

c. Any employee who violates this sexual harassment policy or makes a false report of sexual harassment, if not discharged, may be subject to mandatory remedial training.

EXHIBIT 1

Chapter 4

Fringe Benefit Package

A. Sick Leave:

1. Sick Leave Program

   a. Tier 1

   Full-time employees shall be credited with one (1) paid sick leave day for each full month of service. Such days may accumulate to a maximum of one hundred (100) sick days. Sick days will not accrue beyond one hundred (100) days, except for the purpose of IMRF accrual (i.e., the days cannot be used for sick leave, but may be accrued only for IMRF service time credit upon retirement). Regarding IMRF service time accrual, employees will accrue ½ day per month for any months in which the employee has over 100 days accrued. For employees with a sick leave accumulation in excess of 100 days as of March 31, 2012:

   1) Sick leave balances as of March 31, 2012, will become the individual employee's accumulation maximum.

   2) As sick leave balance is reduced; individual accumulation maximum shall also be reduced until the accumulation reaches 100 days.

   b. Tier 2

   Full-time employees under Tier 2 shall be credited with two-thirds (2/3) paid sick leave day for each full month of service. Such days may accumulate to a maximum of seventy-five (75) sick days; thereafter, days will accumulate at a rate of one-half day per month to a maximum of 100 days.

   c. Sick leave shall not be considered a privilege which an employee may use at the employee's discretion, but shall be allowed only in the event of actual sickness or disability of the employee. Sick leave may also be granted to meet health or dental appointments which cannot be reasonably scheduled during non-working hours, and in the event of an illness or injury of an immediate family member which requires the presence of the employee. For the purpose of this section, immediate family includes the employee's sibling, child (adopted, step, biological), grandchild, spouse or domestic partner, mother/father-in-law and the employee's parents, grandparents, or step-parents.

   If a pattern of sick leave abuse occurs, the City reserves the right to impose any discipline, up to and including discharge.

   Exempt employees shall take sick and vacation leave in 4-hour increments.

d. Employees off on sick leave for five (5) or more consecutive or intermittent days due to the same serious health condition in one year will be required to submit a note from their health care provider which indicates when the employee is able to return to work or provide a prognosis as to the earliest date when the employee will be able to return to work. The employee will also be placed on FMLA leave. The Human Resources Department may require an employee to have the physician's certificate updated. Any costs associated with providing a physician's certificate are the responsibility of the employee.

e. Department Heads or their designee may send an employee home on sick leave if, in the opinion of the Department Head or designee, the employee appears ill and threatens the health of other employees, or the employee is unable to properly or safely perform the essential functions of their job. Employees who are eligible for sick leave, but do not have any accrued sick days available, will be required to use other accrued paid time off (personal days, vacation days, compensatory time) before being allowed to take their time unpaid.

f. Sick leave may be advanced to employees by the Director of Human Resources. The Department Head shall provide the Director of Human Resources with a memorandum describing in reasonable detail the rationale for approval.

E. Holidays:

1. Except as otherwise provided in this Chapter, employees are given the following days off with pay:

   a. New Year's Day
   b. Presidents' Day
   c. The Friday before Easter
   d. Memorial Day
   e. Independence Day
   f. Labor Day
   g. Thanksgiving Day
   h. The Friday following Thanksgiving
   i. Christmas Day

   j. Two (2) personal days (all newly-hired full-time employees must work three months before taking a personal day off). A newly hired employee who works less than 6 months (but more than 4 months) in the fiscal year shall earn one (1) personal day, while a newly hired employee who works more than six (6) months in the fiscal year shall earn two (2) personal days. The scheduling of all personal days is subject to the prior approval of the supervisor who will pass the request to the Department Head.

   k. All employees who are eligible to take personal days off must do so in the fiscal year in which the personal days are earned. Personal days may not be accrued.

   l. Assistant Fire Chiefs (Shift Commanders), the Police Services Supervisor, Community Service Officers and Police Services Representatives are eligible for one personal day taken as paid time off. (The second personal day is included in their Holiday pay.)

2. Full-time employees who attain twenty-five (25) or more years of service by March 31, 2012, shall receive three (3) personal days. Full-time employees who attain twenty-five (25) or more years of service on/after April 1, 2012 shall continue to receive a maximum of two (2) personal days.

3. Holiday Pay: Assistant Fire Chiefs (Shift Commanders), the Police Services Supervisor, Community Service Officers and Police Services Representatives receive a lump sum of 4% of their annual base salary as holiday pay, computed and paid out as follows:

   a. For employees with one (1) year of service at the time of the regular holiday pay out, the employee shall receive payment on or about Thanksgiving Day, for all authorized holidays falling during the course of the fiscal year.

   b. For employees with less than one (1) year of service at the time of the regular holiday pay out, the employee shall receive payment on or about April 30th for those authorized holidays falling during the course of their employment.

      Holiday pay for employees with less than one (1) year of service is based on the number of holidays falling during the employee's employment. Thereupon, the employee will fall under the provisions governing employees with one year or more service.

4. If a holiday falls on a Sunday, the following Monday will be observed as the holiday and, if a holiday falls on Saturday, the preceding Friday will be observed as the holiday.

5. In the event an employee other than a Community Service Officer or Police Services Representative is required to work on a holiday because their presence is essential, that employee shall be entitled to additional pay computed on the basis of actual time worked and in accordance with the overtime provisions applicable to the employee's department.

6. If an employee is on vacation when a holiday occurs, that day shall either be added to the regularly scheduled vacation (if approved in advance by the Department Head) or not charged against the employee's vacation time.

7. In the event an employee does not work the scheduled day before or scheduled day after a holiday and is not on a previously authorized absence, that employee shall not receive holiday pay until proof of illness or an otherwise excusable absence is established to the satisfaction of the Department Head.

F. Family and Medical Leave:

This section is an effort to summarize aspects of the Family and Medical Leave Act (the "Act"). It is not a comprehensive explanation of the Act or the regulations adopted in furtherance of the Act. It is not intended to provide legal advice. The text of FMLA may be found in the United States Code. The detailed regulations related to the FMLA may be found at 29 CFR Part 825. These are both available online. The City also has posted required written notice at City buildings; Appendix C to

EXHIBIT 1

Part 285 entitled: "EMPLOYEE RIGHTS AND RESPONSIBILTIES UNDER FAMILY AND MEDICAL LEAVE ACT, which provides basic information to employees regarding FMLA.

1. FMLA allows eligible employees a maximum of twelve (12) workweeks, and in limited cases for military servicepersons up to twenty-six (26) workweeks of unpaid leave during a twelve-month period with job protection and no loss of service.

2. Eligible employees must have been employed with the City for at least twelve (12) months and have worked at least 1,250 hours during the twelve (12) months before the commencement of the leave. Employees are entitled to a maximum of twelve workweeks unpaid leave during a rolling twelve-month period measured backward from the date the employee uses any FMLA leave. Part-time employees who work at least 1,250 hours in a 12-month period are eligible to use FMLA Leave

3. If an employee is eligible, the employee may take family/medical leave for any of the following reasons as defined by the Act: (1) the birth of a child and in order to care for such child; (2) the placement of a child with the employee for adoption or foster care; (3) to care for an immediate family member with a serious health condition; or (4) because of the employee's own serious health condition which renders the employee unable to perform the functions of the employee's position. Leave because of reasons one and two above must be completed within the 12-month period beginning on the date of birth or placement.

4. If an employee is eligible, the employee may use the 12-week FMLA entitlement to take military family leave. This leave may be used to address certain qualifying exigencies related to the active duty or call to active duty status in the National Guard or Reserves in support of a contingency operation of a spouse, son, daughter or parent. Qualifying exigencies may include (1) attending certain military events; (2) arranging for alternative childcare; (3) addressing certain financial and legal arrangements; (4) attending certain counseling sessions; (5) addressing issues related to short-notice deployment; (6) spending time with a covered family member who is resting and recuperating; and (7) attending post-deployment briefings.

   An employee may also be eligible for up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. *This single 12-month period begins with the first day the employee takes the leave.* A covered service member includes: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the service member medically unfit to perform his or her duties for which the service member is undergoing medical treatment, recuperation, or therapy or is in outpatient status; or (2) is on the temporary disability retired list.

5. FMLA does not alter any existing programs providing for paid leave including disability leave, Workers' Compensation leave, paid vacation, personal leave, and unused comp time leave. If existing leave programs provide paid benefits coverage (i.e., paid leave of any type), those benefits shall be applied first and the paid leave shall run concurrently with FMLA leave.

6. Employees are required to exhaust all eligible paid leave and unused compensatory time before using unpaid leave.

7. Employees shall be required to take eligible leave in the following order: sick or statutory (such as Workers' Compensation) leave, vacation, personal day leave, unused compensatory time, and unpaid time off leave. Employees shall not have the option of altering this order.

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

   a. Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; or

   b. Continuing treatment by a health care provider, which includes:

      1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:

         i. treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); or

         ii. one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); or

      2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; or

      3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; or

      4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or

      5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

   Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental problems, and similar afflictions are not a "serious health condition" and therefore do not qualify for FMLA leave.

   With regard to substance abuse (including alcohol abuse), FMLA leave may only be taken for treatment of substance abuse by (or on referral from) a health care provider. Absence caused by

the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

9. An employee on an FMLA qualifying leave may continue in the City's health and dental plans. Coverage in the health and dental plans will remain on the same terms as if the employee had continued to work for a period of up to twelve (12) weeks. While the employee is active on the City's payroll, premiums will continue to be deducted from the employee's paycheck. If any portion of the FMLA-approved leave is unpaid, the employee has the option to manually pay their premiums to the City, or upon return, they may double their premium deductions until the premium is paid in full for the length of their unpaid leave.

   Employees who fail to return to work from an FMLA qualifying leave will be required to pay full cost of the COBRA premium rate for the twelve-week period unless the failure to return to work was due to the recurrence or onset of a serious health condition or was otherwise beyond the employee's control. After twelve weeks, the employee can purchase continued coverage at COBRA rates for the period permitted by COBRA.

10. Upon return from FMLA qualifying leave, an employee will be restored to their original job or to a job with equivalent pay, benefits, and employment conditions unless the employee would no longer be employed had the employee not taken the leave. Certain key" employees may not be entitled to reinstatement. A "key" employee is a salaried eligible employee who is among the highest paid ten percent of all employees.

11. Employees seeking to use FMLA leave are required to provide:

    a. Thirty (30) day advance notice when the need is foreseeable;

    b. Complete a ""Request for Family/Medical Leave Form;"

    c. Medical certification(s) supporting the need for leave; and

    d. Medical recertification(s) and status report(s) as reasonably requested during the leave.

    e. Fitness for duty verification may be required upon return to work following a leave for employee's own illness specifying that the employee is fit to perform the essential functions of the job or where a leave is intermittent when reasonable safety concerns exist. Employees failing to provide the certification will not be permitted to resume work until it is provided.

12. If the employee is requesting leave because of the employee's own or a family member's serious health condition, the employee and the relevant health care provider shall supply appropriate medical certification. The medical certification shall be provided within 15 days after it is requested, unless good cause is stated in writing by the employee within the 15 days and thereafter as soon as reasonably possible based on specifically identified circumstances. Failure to provide requested medical certification in a timely manner may result in denial of leave and absences will be considered unexcused. The City, at its expense, may require an examination by a second health care provider designated by the City, if it has reason to doubt

the medical certification. If the second health care provider's opinion conflicts with the original medical certification, the City, at its expense, may require a third, mutually agreeable health care provider to conduct an examination and provide a final and binding opinion.

13. If the employee is requesting leave because of a qualifying exigency arising out of a covered family member's active duty or call to active duty status, the employee shall supply a copy of the covered military family member's active duty orders or other documentation issued by the military indicating that the covered military member is on active duty or call to active duty status in support of a contingency operation (including the dates of the active duty service). The City may also request additional information pertaining to the leave.

14. If an employee is requesting leave because of the need to care for a covered service member with a serious injury or illness, the City may require the employee to supply certification completed by an authorized health care provider of the covered service member. In addition, the City may also request additional information pertaining to the leave.

15. Spouses who are both employed by the City are entitled to a combined total of twelve workweeks during any twelve-month period when both are eligible for the same leave (e.g., when the leave is for the birth and care of a child, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition).

16. Employees are not eligible, from the date of their last appearance on the City payroll, to accrue seniority, sick leave, personal days, vacation time nor are they eligible for funeral leave pay while on FMLA leave.

17. For eligible employees, total FMLA leave hours are determined by computing the average number of regular hours worked per week in the twelve weeks preceding the leave times twelve.

18. Reduced or Intermittent Leave:

    a. An eligible employee who requests medical leave based upon the serious health condition of the employee, or the employee's family member, or to care for a servicemember with a serious injury or illness or because of a qualifying exigency may request that such leave be taken on an intermittent or a reduced leave schedule. "Intermittent leave" is leave of one hour or more that is taken during any nonconsecutive time period (e.g., one week on, one week off). "Reduced leave" is leave that is taken by reducing the employee's normal working hours (e.g., from eight hours to four hours per day). If the leave is unpaid, the City will reduce the employee's salary based on the amount of time actually worked. A request for either intermittent or reduced leave will be granted only where medically necessary, as established by information requested in the City's FMLA medical certification form.

    b. If such intermittent or reduced leave is foreseeable, the City may alter the employee's existing job (while maintaining existing pay and benefits), or may temporarily transfer the employee to a different position with equivalent pay and benefits, in order to best serve the City's operational needs during the leave.

c. The City may consider requests for intermittent or reduced leave in conjunction with the birth, adoption, or foster placement of a child, but the City is not obligated to grant such requests under any circumstances and will do so only at its sole discretion.

G. Other Leaves of Absence:

Full-time, non-introductory period employees may be granted a leave of absence in accordance with the following:

1. Military Leave

Full-time, non-introductory employees who, as a member of any reserve component of the United States Armed Forces, including the Illinois National Guard, are ordered for training, shall be paid in accordance with the Illinois Service Member Employment and Reemployment Rights Act (ISERRA)(330 ILCS 61/5-5 *et seq*). During leaves for annual training, the employee is entitled to receive his/her regular compensation for up to thirty (30) days per calendar year.

Employees mobilized to active duty, as a result of an order from the Illinois State Governor or the President of the United States, shall receive differential compensation when appropriate and other benefits in accordance with the Illinois Service Member Employment and Reemployment Rights Act (ISERRA). The City also follows the provisions set forth in the Uniformed Services Employment and Re-employment Rights Act of 1994 (USERRA).

EXHIBIT 1

Chapter 5

Administrative Policies

R. Toxic Substances Information:

1. In accordance with the Toxic Substance Disclosure to Employees Act, the City will require all suppliers to identify whether any substances, mixtures, or compounds purchased and used by the City are considered a "toxic substance" as determined by the Illinois Department of Labor.

2. In accordance with the Toxic Substances Disclosure Act, the City will attempt to ensure that all employees receive the necessary information concerning the nature of any toxic substances with which the employee must work, and full information concerning the known and suspected health hazards of such toxic substances.

3. The City will require that every supplier provide a "Safety Data Sheet (SDS)" on each toxic substance which the City may purchase and use. Employees will receive education and training information with respect to all toxic substances to which the employee is routinely exposed including methods in material handling, SDS information, and a summary of employee rights under the Toxic Substances Disclosure to Employees Act.

4. Any employee may obtain a copy of an SDS by submitting a written request to the employee's immediate supervisor who will then forward the request to the Department Head. The City will then provide the employee with a copy of the SDS.

5. In accordance with the Act, the employee may not refuse to work with a toxic substance if the City makes a good faith effort to provide a Safety Data Sheet to the employee with the time limits and process as specified in the Act.