

2019 - 2022

MEMORANDUM OF UNDERSTANDING BETWEEN

THE CITY OF SANTA CRUZ

AND

THE FIRE MANAGEMENT ASSOCIATION OF THE CITY OF SANTA CRUZ

MEMORANDUM OF UNDERSTANDING
CITY OF SANTA CRUZ AND
SANTA CRUZ FIRE MANAGEMENT ASSOCIATION

2019 – 2022

TABLE OF CONTENTS

SECTION 1.00 – TERM	1
SECTION 2.00 – PREAMBLE	1
SECTION 3.00 – NO ABROGATION OF RIGHTS	1
SECTION 4.00 – EMPLOYEE RIGHTS.....	1
SECTION 5.00 – RECOGNITION.....	1
5.01 Payroll Deductions	2
5.02 Association’s Certification	2
5.03 Indemnification.....	2
SECTION 6.00 – JOB ACTIONS	2
SECTION 7.00 – NO DISCRIMINATION/RESPECTFUL WORKPLACE CONDUCT ..	3
SECTION 8.00 – SAFETY	3
SECTION 9.00 – NOTIFICATION TO ASSOCIATION	3
SECTION 10.00 – WORK SCHEDULE	3
10.01 Back-Up Duty Chief Assignment.....	3
SECTION 11.00 – PERSONNEL ACTION.....	4
11.01 Performance Evaluations	4
11.02 Probation.....	4
11.02.01 Probationary Period.....	4
11.02.02 Objective of Probationary Period.....	4
11.02.03 Rejection of Probationary Employee.....	4
11.02.04 Extension of Probation	4
SECTION 12.00 – PAY RATES AND PRACTICES	5
12.01 Salary Steps	5
12.01.01 Salary Rates Upon Appointment	5
12.01.02 Advancement within the Range.....	5
12.02 Working Out of Classification	6
12.03 Salary	6
12.04 CalPERS	6
12.04.01 Employees Hired on or Before Sept. 2, 2011 (Tier I).....	6
12.04.02 Employees Hired on or After Sept. 3, 2011 (Tier II).....	7

12.04.03	Employees Hired on or After Jan. 3, 2013 (Tier III)	8
12.04.04	Retirement, All Employees	8
12.05	Operational Compensation/Emergency Callback	9
12.06	Longevity	9
12.07	On-Call Fire Investigator	9
12.08	Educational Incentive	10
12.09	Emergency Medical Technician (EMT) Incentive	10
12.10	Hazardous Materials (Haz-Mat) Technician Incentive	10
12.11	Special Event Compensation	10
SECTION 13.00 – HOLIDAYS		11
13.01	56-Hour Per Week Employees	11
13.02	40-Hour Per Week Employees	11
SECTION 14.00 – SICK LEAVE		12
14.01	Definition	12
14.02	Accrual	12
14.02.01	24-Hour Shift Personnel	12
14.02.02	40-Hours per Week Personnel	12
14.02.03	Eligibility	12
14.03	Limitations	12
14.04	Sick Leave Incentive Program	13
14.04.01	40 Hour Per Week Employees	13
14.04.02	56-Hour per Week Employees	13
A.	Maximum Sick Leave Accrual	13
B.	Vacation Conversion	13
14.04.03	Retirement Conversion	14
SECTION 15.00 – VACATION		14
15.01	40-hour per Week schedules	14
15.02	56-hour per Week Schedules	15
SECTION 16.00 – BEREAVEMENT LEAVE		15
SECTION 17.00 – LEAVES OF ABSENCE		15
17.01	Paid Leaves of Absence	15
17.01.01	Paid Birth/Adoptive Leave	15
17.01.02	Military Duty	15
17.02	Unpaid Leaves of Absence	16
17.02.01	Medical or Personal Leave	16
17.02.02	Pregnancy Disability Leave	16
17.02.03	Family Leave	16
17.02.04	Conditions Covering Family Leave	17
17.03	Continuation of Benefits During Unpaid Leaves of Absence	18
17.03.01	Personal Leave	18
17.03.02	Medical Leave	18
17.03.03	Family Leave	18

SECTION 18.00 – BENEFITS.....	19
18.01 Medical Plan/Flexible Benefits.....	19
18.01.01 Pre-Tax Optional Benefits.....	19
18.01.02 Post-Tax Optional Benefits.....	19
18.02 Principal Domestic Partners.....	20
18.03 Dental and Vision Benefits.....	20
18.04 Retired Health Plan.....	21
18.05 Retiree Medical Incentive.....	21
18.06 Disability Retirement Before Age 50.....	21
18.07 Life Insurance.....	22
18.08 Long Term Disability Insurance.....	22
18.09 Medicare Buy Back.....	22
18.10 Health Savings Account.....	22
SECTION 19.00 – UNIFORM ALLOWANCE AND REPLACEMENT	23
SECTION 20.00 – MANAGEMENT BENEFITS.....	23
20.01 Management Vacation.....	23
20.02 Optional Management Benefit.....	24
SECTION 21.00 – CITY PROVIDED VEHICLE.....	24
SECTION 22.00 – REDUCTION IN FORCE.....	24
22.01 Lay-Offs.....	24
22.02 Bumping.....	25
22.03 Notification.....	25
22.04 Reinstatement.....	25
SECTION 23.00 – GRIEVANCE PROCEDURE	25
23.01 Purpose.....	25
23.02 Definitions.....	25
23.03 Limitations.....	26
23.04 Procedures.....	26
23.04.01 Step I.....	26
23.04.02 Step II.....	26
23.04.03 Step III.....	27
23.04.04 Step IV.....	27
SECTION 24.00 – DISCIPLINARY APPEALS PROCEDURE	28
24.01 Definition.....	28
24.02 Pre-Action Procedure.....	28
24.02.01 Step I.....	28
24.02.02 Step II.....	28
24.03 Post-Action Appeal.....	28
24.03.01 Step III.....	28
24.03.02 Step IV.....	29
24.04 Firefighter Procedural Bill of Rights Act.....	30

SECTION 25.00 – WRITTEN REPRIMANDS30
SECTION 26.00 – SEVERABILITY.....30
**EXHIBIT A – DISCRIMINATION, HARASSMENT, RETALIATION, AND
RESPECTFUL WORKPLACE CONDUCT POLICY.....32**
**EXHIBIT B – DISCRIMINATION/HARASSMENT/RETALIATION POLICY
IMPLEMENTATION AND COMPLAINT PROCEDURE.....36**
EXHIBIT C – RESPECTFUL WORKPLACE CONDUCT POLICY41

2019 - 2022

MEMORANDUM OF UNDERSTANDING

**CITY OF SANTA CRUZ AND FIRE MANAGEMENT ASSOCIATION
OF THE CITY OF SANTA CRUZ**

SECTION 1.00 – TERM

The term of this Memorandum of Understanding shall commence August 10, 2019 and shall expire on September 30, 2022.

SECTION 2.00 – PREAMBLE

This Memorandum of Understanding is entered into by the City of Santa Cruz (hereinafter referred to as the City) and the Fire Management Association of the City of Santa Cruz (hereinafter referred to as the Association). Employee defined for the purpose of this Memorandum of Understanding shall mean a regular employee assigned to the classification of Fire Battalion Chief, and Fire Division Chief,. This Memorandum of Understanding is subject to Sections 3500-3510 of the Government Code of the State of California, the City of Santa Cruz Municipal Code and the Personnel Rules and Regulations for the City of Santa Cruz.

SECTION 3.00 – NO ABROGATION OF RIGHTS

The parties acknowledge that City responsibilities and rights as indicated in current Article 1, Section 1, (Appendix A) of the City Personnel Rules and Regulations and all applicable State or Municipal laws are neither abrogated nor made subject to the meet and confer process by adoption of this Memorandum of Understanding.

It is agreed that except as specifically delegated, granted, or modified by this Memorandum of Understanding, all of the rights, power and authority the City had prior to the signing of this Memorandum of Understanding, are retained by the City and remain the exclusive right of the City without limitation. Furthermore, these retained rights are not subject to any grievance or impasse procedure.

SECTION 4.00 – EMPLOYEE RIGHTS

The Association and the City acknowledge that although the Association is the recognized bargaining representative, the rights of employees under this Memorandum of Understanding, State law, City Personnel Rules and Regulations and the City Charter are neither abrogated nor diminished by the adoption of this Memorandum of Understanding.

SECTION 5.00 – RECOGNITION

Pursuant to the Meyer-Milias-Brown Act and the City's Personnel Rules and Regulations, the City has certified the Association as the recognized employee organization of the representation unit consisting of all full-time Fire Battalion Chiefs, and Fire Division Chiefs. This unit shall be titled the Fire Management Association Unit.

5.01 Payroll Deductions

The City shall deduct Association membership dues and any other mutually agreed-upon, payroll deductions, to the extent permitted by law, from the monthly pay of each member employee. The Association will provide the City with information regarding the amount of dues deductions and the list of Association member employees who have affirmatively consented to or authorized dues deductions.

The City shall remit the deducted dues and any other mutually agreed payroll deduction, to the extent permitted by law, to the Association as soon as possible after the deduction.

The City agrees to direct each member employee to the Association with regard to any questions or concerns related to membership dues or any other mutually agreed payroll deduction, to the extent permitted by law.

The Association is responsible for providing the City with timely information regarding changes to member employees' dues and any other lawful Association-related payroll deduction.

5.02 Association's Certification

The City shall make payroll deductions in reliance on the Association's certification certifying that the Association has and will maintain an authorization, signed by each member employee who affirmatively consents to pay Association membership dues. Similarly, The City shall only cancel or modify any membership dues or any other mutually agreed payroll deduction, to the extent permitted by law, for any member employees in reliance on the information provided by the Association.

The City shall not request the Association to provide a copy of any member employees' authorization unless a dispute arises about the existence or terms of the authorization.

5.03 Indemnification

The Association shall indemnify, defend, protect and hold harmless the City and its elected and appointed officials, officers, employees, officers and agents (collectively hereafter the "Indemnitees") from and against any and all claims, liabilities, losses, damages, fines, penalties, claims, demands, suits, actions, causes of action, judgments, costs and expenses (including, but not limited to, reasonable attorneys' fees and court costs) arising from the application of any provisions under Sections 5.01 and 5.02, including, but not limited to, any claims made by any member employees for the membership dues deductions the City made in reliance on the Association's certification, and any claims made by any member employees for any deduction cancellation or modification the City made in reliance on the information provided by the Association.

In the event any such action or proceeding is brought against the City by reason of any such claim, the Association, upon notice from the City, covenants to defend such action or proceeding by counsel reasonably satisfactory to the City. Further, the Association agrees to indemnify and hold harmless the Indemnitees for any loss or damage arising from the Association's actions or inactions under Sections 5.01 and 5.02.

SECTION 6.00 – JOB ACTIONS

The Association recognizes the Santa Cruz Municipal Code and agrees not to permit, authorize

or in any other manner allow its members or those supervised to strike, slowdown, sick-in or engage in any work stoppage or other legal or illegal work or job action.

SECTION 7.00 – NO DISCRIMINATION/RESPECTFUL WORKPLACE CONDUCT

The City and the Association agree to adhere to the City Council policies pertaining to equal employment opportunity, and the prevention of discrimination, harassment, and disrespectful workplace conduct as listed in Exhibits A, B, and C as well as applicable federal and state discrimination laws.

SECTION 8.00 – SAFETY

The City intends to meet its obligation under the California Occupational Safety and Health Act and shall adopt and use safeguards, devices and practices reasonably adequate to render such employment safe.

The Association will cooperate with the City by requiring employees under its control to work safely and, further, the Association recognizes its obligation as management to support the City's effort to prevent injuries.

SECTION 9.00 – NOTIFICATION TO ASSOCIATION

Except in cases of bona fide emergency, the Association shall be given seven workday's advance written notification of any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council or City Administration and shall be given the opportunity to meet with the City representative prior to its adoption.

SECTION 10.00 – WORK SCHEDULE

Work schedules utilized in the Fire Management Unit are as follows:

- A. Employees assigned to a 56-hour/week schedule shall typically work hours corresponding to the Fire Operations shift schedule. Employees working shifts shall not be released from duty until they are relieved by the next shift supervisor, unless otherwise directed by the Fire Chief or his/her representative.
- B. The work week for employees assigned to a 40-hour/week schedule shall typically consist of four or five consecutive days totaling 40 hours.

The Fire Chief shall assign starting and quitting times to these employees to meet operational needs. Affected employees will be notified five (5) working days in advance of changes in work schedules. This shall not preclude the City from effecting schedule changes due to operational needs, overtime or emergency work.

40-hour employees may request to work a 9/80 or 4/10 schedule.

10.01 Back-Up Duty Chief Assignment

Back-up Duty Chief assignments will be made in accordance with the Santa Cruz Fire Department Police and Procedure Manual Article 6-3 (Back-Up Duty Chief Assignment).

Back-up Duty Chief assignments will be covered with no stipend or other additional compensation for coverage unless activated as emergency call-back.

SECTION 11.00 – PERSONNEL ACTION

11.01 Performance Evaluations

It is compulsory that all regular employees receive an annual written performance evaluation from their supervisor. All employees serving their twelve (12)-month probationary period will be evaluated at six (6) months and then annually on their merit review date.

Evaluations are intended to be a summary of the employee's performance over the course of the evaluation period. Evaluations are also to be used as a tool to motivate the employee to work at his/her highest capacity and to communicate and document the employee's level of performance. To this end, the supervisor and the employee will meet and discuss work responsibilities, job standards and objectives, review progress and plan for the employee's future development prior to the evaluation being placed in the employee's personnel file. Disputes regarding performance reviews shall be resolved by the Fire Chief and disputes shall not be subject to the grievance process.

11.02 Probation

11.02.01 Probationary Period

All original, promotional and re-hire appointments shall be subject to a probationary period of twelve (12) months from date of hire or promotion. Any time spent by an employee on unpaid status shall not be counted as qualifying service toward completion of the probationary period.

11.02.02 Objective of Probationary Period

The probationary period shall be regarded as part of the selection process and shall be utilized for training the new employee on work assignments and standards, and observing and evaluating the employee's performance.

11.02.03 Rejection of Probationary Employee

During the probation period, an employee may be rejected at any time by the appointing authority without the right of appeal. Notification of rejection shall be served to the probationary employee in writing. Any promoted employee who is rejected during the probationary period shall be reinstated to the position from which promotion occurred; unless the rejection is due to discharge in which case no reinstatement shall occur.

11.02.04 Extension of Probation

All efforts will be made to sufficiently evaluate the probationary employee during the assigned period. An extension of the probationary period may, however, be recommended by the appointing authority when good cause exists. Such extensions shall be for a specific period of time not to exceed three (3) months.

SECTION 12.00 – PAY RATES AND PRACTICES

12.01 Salary Steps

Each classification in the unit shall be assigned a salary range that increases by six percent (6%) between steps.

12.01.01 Salary Rates Upon Appointment

New employees shall be hired at the first step of the classification's salary range unless a higher starting step is recommended by the Fire Chief based on the employee's advance qualifications for the position and such recommendation is approved by the Director of Human Resources and City Manager.

12.01.02 Advancement within the Range

- A. Advancement within a classification's salary range shall normally be granted on the employee's scheduled merit review date. Such advancements shall be based solely on meritorious job performance as documented by a satisfactory performance evaluation and successful completion of department required training standards.
- B. Employees are eligible for their first merit increase at the end of the first six (6) months of their twelve (12) month probation. After successful completion of the full probation, the employee shall be eligible for subsequent merit increases after each full year on paid status from the last merit review date, continuing until the top of the salary range is attained.
- C. Merit increases shall normally be from one pay step to the next higher pay step. Increases of greater than one (1) step may, however, be recommended by the Fire Chief when exceptional performance has been demonstrated by the employee. Such step increases must be approved by the City Manager.
- D. A merit increase may be denied by the Fire Chief when an employee's job performance falls below the acceptable work standards for the duties assigned. The Fire Chief may, in such a case, recommend that the employee's work performance be reviewed again at a specific time before the next review date. If a merit increase is granted at that time, the employee's original review date shall not change and they shall be eligible for the next merit increase after one (1) year on a paid status from the original review date.
- E. An employee's scheduled merit review date shall be adjusted for any time spent by the employee on unpaid status.

- F. Upon receipt of a satisfactory annual evaluation, the effective date for a merit increase shall be the first day of the pay period which includes the employee's merit review date.

12.02 Working Out of Classification

The term "working out of classification" is defined as a management authorized, full-time assignment on a temporary basis of an employee in a lower classification to a budgeted higher classification. Assignments will only be made to qualified employees assuming a significant number of duties of the higher classified position. Pay for "working out of classification" shall be as follows:

- A. Employees appointed to fill vacant positions will receive acting pay beginning the first day of the assignment.
- B. Employees appointed to a position for vacation, sick leave or leave of absence coverage will receive acting pay beginning on the first work day of the appointment.
- C. Acting pay will not be less than 5%.

In accordance with the Public Employees' Pension Reform Act (PEPRA), working out of classification pay is not pensionable compensation for employees who are "New Members" of CalPERS, as defined by California Government Code Section 7522.04(f).

12.03 Salary

Effective August 10, 2019, the salaries for represented classifications will be increased by three percent (3.00%).

Effective August 8, 2020, the salary for represented classifications will be increased by three percent (3.00%).

Effective August 7, 2021, the salary for represented classifications will be increased by three percent (3.0%).

12.04 CalPERS

12.04.01 Employees Hired on or Before September 2, 2011 (Tier I)

This section 12.04.01 shall apply to employees hired on or before September 2, 2011, who are contributing members of CalPERS.

- A. Final Compensation Based on the Single Highest Year
For purposes of determining a retirement benefit, final compensation for employees covered by this section 12.04.01 shall be based on the single highest year, defined by CalPERS as any consecutive one-year period with the highest average pay rate and special compensation.

- B. 3.0% @ 50 Pension Formula
The 3.0% @ 50 pension formula shall be available to all employees covered by this section 12.04.01 who are contributing members of CalPERS. Additionally, the City provides the Pre-Retirement Optional Settlement 2W Death Benefit to employees covered by this section 12.04.01.
- C. Required Employee Contribution
Members covered by this section 12.04.01 will contribute the employee contribution amount established by CalPERS for the 3.0% @ 50 pension formula. The required contribution amount was 9.0% as of the date of this MOU.
- D. Additional Required Employee Contribution
In addition to the required employee contribution, starting with the pay period beginning August 15, 2015 members covered by this section 12.04.01 will contribute an additional 2.0% (total 11.00%).

Effective January 1, 2018, employees will contribute an additional 1% towards PERS for a total of 12%. (Total amount as of the date of the signing of this MOU)

12.04.02 Employees Hired On or After September 3, 2011 (Tier II)

This section 12.04.02 shall apply to employees hired on or after September 3, 2011 and prior to January 1, 2013 who are contributing members of CalPERS.

- A. Final Compensation Based on Three Year Average
For purposes of determining a retirement benefit, final compensation for employees covered by this section 12.04.02 shall be based on the employee's highest three year average, defined by CalPERS as any consecutive three-year period with the highest average pay rate and special compensation.
- B. 3.0% @ 55 Pension Formula
The 3.0% @ 55 pension formula shall be available to all employees covered by this section 12.04.02 who are contributing members of CalPERS. Additionally, the City provides the Pre-Retirement Optional Settlement 2W Death Benefit to employees covered by this section 12.04.02.
- C. Required Employee Contribution
Members covered by this section 12.04.02 will contribute the employee contribution amount established by CalPERS for the 3.0% @ 55 pension formula. The required contribution amount was 9.0% as of the date of this MOU.

D. Additional Required Employee Contribution

In addition to the required employee contribution, starting with the pay period beginning August 15, 2015 members covered by this section 12.04.02 will contribute an additional 2.0% (total 11.00%).

Effective January 1, 2018, employees will contribute an additional 1% towards PERS for a total of 12%.

12.04.03 Employees Hired On or After January 1, 2013 (Tier III)

This section 12.04.03 shall apply to employees hired on or after January 1, 2013 who are contributing members of CalPERS.

A. Final Compensation Based on Three Year Average

For purposes of determining a retirement benefit, final compensation for employees covered by this section 12.04.03 shall be based on the employee's highest three year average defined by CalPERS as any consecutive three-year period with the highest average pay rate and special compensation.

B. 2.7% @ 57 Pension Formula

The 2.7% @ 57 pension formula shall be available to all employees covered by this section 12.04.03 who are contributing new members of CalPERS. Additionally, the City provides the Pre-Retirement Optional Settlement 2W Death Benefit to employees covered by this section 12.04.03.

Employees covered by this section 12.04.03 who are classic members as defined by CalPERS may be eligible for a different pension formula.

C. Required Employee Contribution

Members covered by this section 12.04.03 will contribute the employee contribution amount established by CalPERS for their pension formula. The required contribution amount for the 2.7% @ 57 was 12.25% as of the date of this MOU.

D. Additional Required Employee Contribution

In addition to the required employee contribution, starting with the pay period beginning August 15, 2015 members covered by this section 12.04.03 will contribute an additional 2.0% (total 14.25% as of the date of the signing of this MOU). Effective January 1, 2018, employees will contribute an additional 1% towards PERS for a total of 15.25%.

12.04.04 Retirement, All Employees

The City will maintain the IRS 414(h)(2) provision allowing employees to defer

State and Federal income taxes on their CalPERS contributions.

The City's contract with CalPERS includes the service credit for unused sick leave (Section 20965).

12.05 Operational Compensation/Emergency Callback

If a Battalion Chief's absence creates or contributes to overtime as a result of minimum staffing requirements, a Battalion Chief may be offered to work the vacancy at a pay rate which is 1.45% above the employee's current base rate of pay. This provision is administered in accordance with Policy and Procedures Manual Article 5-26.

In addition, Battalion Chiefs or Division Chiefs required to return to work for emergency call duty as determined by the Fire Chief, will be paid time and one-half pay.

Battalion Chiefs and Division Chiefs will also be paid time and one-half pay if assigned to work for declared disaster team or to provide coverage for Battalion Chiefs required to perform such duty. Payment of time and one-half will only be for those incidents which the City receives reimbursement from OES, FEMA, or other appropriate State or Federal agencies.

Battalion Chiefs and Division Chiefs are designated as FLSA exempt and this compensation will not be considered PERS income, as it is considered additional duties.

12.06 Longevity

Upon completion of ten (10) years of continuous regular service employees shall receive a 2½% longevity pay increase.

Upon completion of fifteen (15) years of continuous regular service employees shall receive an additional 2% longevity pay increase.

Upon completion of twenty (20) years of continuous regular service employees shall receive an additional 2% longevity pay increase.

Upon completion of twenty five (25) years of continuous regular service, employees shall receive an additional 2% longevity pay increase.

12.07 On-Call Fire Investigator

On-call Fire Investigator assignments will be made in accordance with Santa Cruz Fire Department Policy and Procedure Manual Article 2, #B2-4 (On-Call Fire Investigator Assignment).

Compensation for on-call Fire Investigator assignments is as follows:

- A. For every weekday covered, a stipend equal to 1 ½ hours of "C" step Deputy Fire Marshal pay shall be provided.

- B. For every weekend day (24-hour period) covered, a stipend equal to 2 hours of “C” step Deputy Fire Marshal pay shall be provided.
- C. For every City designated 8-hour holiday (24-hour period) covered, a stipend equal to 4 hours of “C” step Deputy Fire Marshal pay shall be provided and 4 additional hours will be credited to the employee’s holiday bank.
- D. For every City designated 4-hour holiday (19-hour period) covered, a stipend equal to 2 hours of “C” step Deputy Fire Marshal pay shall be provided and 2 additional hours will be credited to the employee’s holiday bank.
- E. When an on-call Fire Investigator is dispatched or activated, the pay rate will revert to 1 ½ the employee’s base pay rate as “emergency call back”.

12.08 Educational Incentive

Employees will be eligible for the following educational incentives (the maximum incentive available is four percent (4%) :

- A. AA/AS degree or 60 units and actively pursuing job related college work and/or bachelors, or AA/AS degree program – two percent (2%) of base salary.
- B. BA/BS or Masters degree or State Chief Officer or Fire Marshal certification – four percent (4%) of base salary.

12.09 Emergency Medical Technician (EMT) Incentive

Each employee who is certified in the County of Santa Cruz as an Emergency Medical Technician-D shall be compensated an additional two percent (2%) of the employee’s base salary.

12.10 Hazardous Materials (Haz-Mat) Technician Incentive

Employees designated as Haz-Mat technicians in accordance with departmental policies and procedures will receive an incentive equal to two percent (2%) of the employee’s base salary.

12.11 Special Event Compensation

A special event assignment is defined as an assignment for which the City is reimbursed by a event’s sponsor, through the Finance Department, for fire services. If a unit employee staffs a special event that results in hours being worked in addition to the employee’s 40-hour work week, the employee will be paid at time and one-half pay for hours worked while performing such duty. Payment of time and one-half special event pay will only be for those special events which are so designated by the Fire Chief and not co-sponsored by the

City. Because unit employees are designated as FLSA exempt, this compensation will not be considered PERS income, as it is considered compensation for additional duties.

SECTION 13.00 – HOLIDAYS

13.01 56-Hour Per Week Employees

Employees shall accrue up to 192 hours of holiday pay and shall be credited with 192 hours on the first day of the pay period that includes July 1 of each year. This amount will be prorated for new hires.

Pursuant to City directives, employees may use accrued holiday leave. Alternately, holidays may be paid at a straight time rate. If paid, a separate check shall be issued for 96 hours (less any hours used to date in the fiscal year) on the first pay date in December and again for the remaining balance of hours on the second pay date in June.

Upon separation, employees shall receive the value of their unused accrued holiday leave. Accumulation of holidays shall not exceed 192 hours.

13.02 40-Hour Per Week Employees

Employees shall accrue up to 88 hours of holiday pay and shall be credited with an hour bank on the first day of the pay period that includes July 1 of each year. During fiscal years when Christmas and New Year's days are on or between Tuesday through Saturday, employees shall be credited with 88 hours. In fiscal years where Christmas and New Year's days are on a Sunday or Monday, employees shall be credited with 80 hours. This amount will be prorated for new hires.

Pursuant to City directives, employees may use accrued holiday leave. Alternately, all unused holidays may be paid at a straight time rate on the second pay date in June.

Upon separation, employees shall receive the value of their unused accrued holiday leave. Accumulation of holidays shall not exceed 88 hours.

In addition to the above holidays, 40-hour per week employees shall accrue up to twenty-four (24) hours of floating holidays per fiscal year. Floating Holiday accrual shall be on a monthly basis. Full-time employees shall accrue floating holiday at the rate of two (2) hours per month. Part-time employees shall accrue floating holiday on a pro-rated basis, given the ratio of their budgeted work schedule to full time (e.g., all employees working in a 20 hour/week position shall receive one (1) hour of floating holiday each month).

Floating Holidays may only be taken with prior approval.

Accumulation of Floating Holidays shall not exceed twenty-four (24) hours. Upon separation, the employees shall receive their unused accrued Floating Holiday.

SECTION 14.00 – SICK LEAVE

14.01 Definition

The purpose of this section is to provide paid leave time to be used by employees in the event of a non-work related illness, injury, preventative healthcare, care of an existing health condition, as victims of domestic violence, sexual assault or stalking, or the medical necessity of others as specified below. Sick leave shall not be construed to be a privilege which an employee may use at his/her discretion, but shall be allowed only in case of necessity herein set forth.

14.02 Accrual

14.02.01 24-Hour Shift Personnel

All 24-hour shift personnel shall accrue sick leave at the rate of 12 hours for each full month of continuous regular service in which the employee has worked or has been in authorized leave of absence with pay.

14.02.02 40-Hours per Week Personnel

All 40-hour week shall accrue such leave at the rate of 8 hours for each full month of continuous regular service in which the employee has worked or has been in authorized leave of absence with pay.

14.02.03 Eligibility

Employees must be on paid status at least 50% of the working hours of a pay period to earn sick leave for that period.

14.03 Limitations

- A. To receive compensation while absent on sick leave, the employee shall notify his/her immediate supervisor in the manner provided in the departmental rules and regulations.
- B. The Fire Chief may require an employee to submit verification of an illness or injury from a licensed medical practitioner prior to any use of sick leave being authorized.
In cases of chronic absenteeism or medical work restrictions, the Director of Human Resources may have an employee examined by a City-selected physician. The City shall pay the cost of any such medical exam.
- C. Up to 72 hours for 24-hour shift personnel and 48 hours for 40-hour week of accrued sick leave per fiscal year may be used when the employee's personal attendance is required to care for a family member who is ill or injured, or for preventive care, care of an existing health condition, or if they are a victim of domestic violence, sexual assault, or stalking. For the

purposes of this provision, family is defined as a spouse, registered domestic partner, son, daughter, parent, sibling, step-parent, grandparent or grandchild or other close relation residing in the employee's household. The seventy-two (72) or forty-eight (48) hour limitation may be extended by the City Manager with good cause.

- D. A 40-hours per week employee may be granted up to 8 hours per calendar year of personal business leave chargeable to sick leave. The scheduling of such leave is subject to the approval of the Fire Chief.

14.04 Sick Leave Incentive Program

14.04.01 40 Hour Per Week Employees

On an annual basis, 40-hour week employees who have accumulated more than 400 hours of sick leave, will be asked to choose among the following options, which will be paid out on the last pay date in June:

1. To receive a cash pay-off of all hours in excess of 400 at the rate of 33% of their current rate of pay.
2. To "bank all hours in excess of 400. Banked hours may not later be converted to cash and will be used as sick leave only when all other sick leave is exhausted.

14.04.02 56-Hour per Week Employees

A. Maximum Sick Leave Accrual

As of the last pay date in June of each year, employees who have accumulated sick leave in excess of the minimum amounts listed below may take vacation pay or receive a cash payment for the amount of excess sick leave; or, employees may elect to accumulate sick leave up to the maximum limits at which point they must take the excess as cash or time off. The amount of vacation pay or cash payment will be made based on 25% of the time accrued above the designated threshold.

56-hour week employees: 1680 - 1860 hours

In addition, employees may be allowed to "bank" all hours in excess of 1,860. Banked hours may not later be converted to cash and will be used as sick leave only when all other sick leave is exhausted or be converted to CalPERS service credit upon retirement.

B. Vacation Conversion

Employees with 15 or more years of regular service and a minimum sick leave balance of 150 hours for 56-hour/week

schedules may elect to convert sick leave to vacation time according to the following table:

<u>Years of Service</u>	<u>Maximum No. of Extra Vacation Hours</u>
15 - 19	24/year
20 - 24	36/year
25+	48/year

Department head approval is required prior to taking vacation, and converted hours are not allowed to accumulate from one calendar year to the next.

14.04.03 Retirement Conversion

In addition to selecting the CalPERS service credit option, employees retiring from the City with at least twenty (20) years of regular service may also elect to convert a maximum of 1,500 hours of their accrued sick leave (banked and unbanked) in 100 hour increments to an additional 1% contribution by the City towards the cost of their retiree medical benefits as defined by Sections 18.04 (Retiree Medical Plan) and 18.05 (Retiree Medical Incentive) of this memorandum. For example, the maximum conversion of 1,500 hours would equal a 15% increase in the City's contribution towards a retiree medical plan for a maximum 90% contribution. All restrictions and requirements of Sections 18.04 (Retiree Medical Plan) and 18.05 (Retiree Medical Incentive) apply to this sick leave incentive option including, but not limited to, eligibility and plan availability.

Procedures clarifying the sick leave incentive program shall be prescribed by the Director of Human Resources and/or City Manager and shall be subject to administrative directive.

SECTION 15.00 – VACATION

Vacation accrual will be on a monthly basis beginning at date of hire. Accumulated vacation time may not exceed twice the annual rate of accrual unless prior written authorization for a specified amount is received from the City Manager or Director of Human Resources. An employee must be on paid status at least 50% of the working hours of a pay period to earn vacation for that period. Upon proper authorization, a probationary employee may use accrued vacation leave.

Vacation accrual shall be based on continuous regular service, as follows:

15.01 40-hour per Week schedules

Up to 5 years	80 hours per year
6 to 10 years (inclusive):	120 hours per year
11 or more years:	120 hours, plus eight (8) hours for each year of service after ten (10) years to a maximum of 160 hours.

15.02 56-hour per Week Schedules

Up to 5 years	12 hours per month
6 to 10 years	18 hours per month
11 or more years:	18 hours per month plus one hour per month for each year of service after ten (10) years to a maximum of twenty-four (24) hours per month.

SECTION 16.00 – BEREAVEMENT LEAVE

The purpose of this section is to provide paid leave for employees when they are bereaved at the death of a family member and this loss has had a temporary effect on the employee's ability to continue daily work performance.

A leave of absence with pay of up to twenty-four (24) hours for 40-hour/week employees or thirty-six (36) hours for 56-hour/week employees per incident is available to an employee in the event of a death in the employee's family which shall, for the purpose of this article, include spouse, parent, son, daughter, grandparent, sibling, mother or father-in-law, registered Principal Domestic Partner, grandchild of employee, spouse, or registered Principal Domestic Partner, son-in-law, daughter-in-law, grandparent-in-law, brother-in-law, sister-in-law or a close relation residing in the employee's household. In rare cases when the employee and the deceased have no other legal relationship than a foster or step-parent, the Human Resources Director or City Manager has the discretion to approve that leave upon application.

SECTION 17.00 – LEAVES OF ABSENCE

17.01 Paid Leaves of Absence

17.01.01 Paid Birth/Adoptive Leave

An employee is entitled to forty-eight (48) hours leave (56 hours schedule) or forty (40) hours leave (40 hour schedule) with pay at or about the time of the birth of the employee's child or at the time of adopting a child. The paid leave shall be within two (2) months of the birth or adoption. This leave will be considered a part of the time allotted to family leave as authorized in Section 17.02.03 (Family Leave).

17.01.02 Military Duty

An employee who is a member of the National Guard or any reserve component of the armed services of the U.S. shall be granted up to thirty (30) days per year of paid leave for any active duty scheduled during the employee's regular work hours (or 10 shifts per year for 24-hour personnel). The employee must give his/her supervisor forty-eight (48) hours advance notification of the need for such leave and must present a copy of the official notice for such duty. All other military leaves shall be granted pursuant to relevant state and federal statutes.

17.02 Unpaid Leaves of Absence

17.02.01 Medical or Personal Leave

Leave of absence without pay may be granted to an employee in a case of extended illness or disability, personal emergency or other situation where such absence would not be contrary to the best interests of the City. Approval of all such leaves of absence is at the sole discretion of management. Such unpaid leave will only be granted after an employee has depleted all appropriate paid leaves. The department head may grant a leave of absence of up to thirty (30) consecutive calendar days; additional leave may only be granted by the City Manager and may not exceed a total of twelve months. No vacation, holidays, sick leave, or any other paid benefit shall be accrued or earned during such leave. All requests for unpaid leaves of absence must be made in writing and include specific begin and end dates for the leave. Denials of unpaid leaves of absence shall be given in writing and contain the reason therefore.

17.02.02 Pregnancy Disability Leave

An employee may take a leave of absence up to four (4) months in length for the purpose of pregnancy disability leave. The City may request a license medical practitioner's opinion regarding any work restrictions that may exist prior to or after delivery.

Requests for pregnancy disability leave must be made in writing to the Fire Chief at least thirty (30) days in advance of the anticipated starting date. Such request must include specific begin and end dates for the leave. Starting dates should be as accurate as possible barring any unforeseen medical issues related to the pregnancy or earlier or later birth than expected. Any requests for extension of pregnancy disability leave must be made in writing to the Fire Chief at least ten (10) calendar days prior to the scheduled end of the existing leave.

The employee may elect to use any appropriate paid leave either before or after an approved pregnancy disability leave, within the use limitations of those leave provisions. No combination of pregnancy disability leave, family leave, sick leave or vacation may exceed one year total or seven (7) months post-partum.

Any additional post-partum leave, not to exceed one (1) year total, may be approved by the City Manager or his designee after consideration of the nature of the request and the operational needs of the department.

Upon return to work, the employee shall be assigned to the same position but not necessarily to the same assignment.

17.02.03 Family Leave

In accordance with the Federal Family and Medical Leave Act and the California Family Rights Act, the City will grant job protected unpaid family and medical

leave to eligible employees for up to twelve (12) weeks, (continuous or cumulative), per twelve (12) month calendar year period. Effective January 1, 2016, the City will begin using a “rolling” twelve (12) month period measured backward method to establish the 12-month period. Family leave may be taken for any one or more of the following reasons:

- A. The birth of a child and in order to care for such child or the placement of a child with the employee for adoption or foster care (leave for this reason must be taken within the twelve-month period following the child’s birth or placement with the employee); or
- B. In order to care for an immediate family member (spouse, domestic partner, child, or parent) of the employee if such immediate family member has a serious health condition; or
- C. The employee’s own serious health condition that makes the employee unable to perform the functions of his/her position.

17.02.04 Conditions Covering Family Leave

- A. Eligible employee means having been employed by the City for twelve (12) months and has worked for at least 1,250 hours during the twelve (12) month period immediately preceding the commencement of the leave.
- B. Medical verification is required for employee or ill family member for medical leave period.
- C. Employees are required to give at least thirty (30) days written notice in the event of a foreseeable leave. In unexpected or unforeseeable situations, an employee should provide as much written notice as is practicable.
- D. Employees are required to use accrued vacation as a part of the family leave period. Use of sick leave is not required, but may be used pursuant to the applicable provisions of the Memorandum of Understanding.
- E. Pregnancy disability is not covered under this section and is covered by the California Fair Employment and Housing Act which allows up to four (4) months of leave depending on the actual disability (see Section 17.02.02 – Pregnancy Disability Leave).
- F. Employees retain “employee” status while on family care leave. The leave does not constitute a break in service for purposes of longevity, and/or seniority. Upon return to work, employee will be

reinstated to an equivalent position with equivalent pay and benefits.

- G. Any request for additional leave may be made pursuant to Section 17.02.01 (Medical or Personal Leave). Requests for leave time using multiple time off provisions may not exceed the total amount allowed pursuant to Section 17.02.01 (Medical or Personal Leave).
- H. Benefits premiums shall be made in accordance with the Federal Family and Medical Leave Act and the California Family Rights Act. Under the current law, the City will continue to maintain coverage under the same conditions, as coverage would have been provided if the employee had been continuously employed during the leave period.
- I. Any other conditions or interpretations of the leave shall be based upon the Federal Family and Medical Leave Act and the California Family Rights Act.

17.03 Continuation of Benefits During Unpaid Leaves of Absence

City sponsored insurance benefits may be continued during unpaid leaves of absence in accordance with the following provisions:

17.03.01 Personal Leave

The City shall continue to pay benefit premiums during a personal leave of less than thirty (30) calendar days. For leaves of more than thirty (30) calendar days, employees may continue premium payments at their own cost, in accordance with appropriate CalPERS medical plan provisions.

17.03.02 Medical Leave

The City shall continue to pay benefit premiums during the entire length of a medical leave of absence.

17.03.03 Family Leave

Benefit premiums shall be made in accordance with the Federal Family and Medical Leave Act and the California Family Rights Act. Under the current law, the City will continue to maintain coverage under the same conditions as coverage would have been provided if the employee had been continuously employed during the leave period.

SECTION 18.00 – BENEFITS

18.01 Medical Plan/Flexible Benefits

The City will provide a medical insurance plan to employees and eligible dependents through the California Public Employees' Retirement System (CalPERS). The City will contribute a monthly amount to CalPERS pursuant to Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA).

In accordance with IRS Section 125, the City will provide a flexible benefits plan ("cafeteria plan") to all eligible employees. If an employee elects to participate in a medical plan, the maximum monthly City contribution to the cafeteria plan is the cost of the Blue Shield Access+ HMO Plan (for the Bay Area/Sacramento region; Region 1 effective January 1, 2020) less the following employee contribution amounts.

Employee Only	\$70
Employee & One Dependent	\$92.
Family	\$95.5

In no event will the maximum monthly City contribution exceed the premium for the plan in which the employee is enrolled. In no event will employees receive cash back based on the plan chosen.

Employees may elect to waive City medical coverage and receive a cash benefit. In order to receive the medical waiver benefit, the employee must provide proof to the City of other current medical coverage. Full-time employees who waive medical coverage are eligible to receive \$200 per month; part-time employees shall receive a pro-rated amount based upon their full-time equivalency (FTE). The medical waiver may be applied toward the purchase of any pre-tax or post-tax optional benefits, or paid as a taxable cash benefit.

Employees receiving the medical waiver must notify the Human Resources Department if they cease to be covered by any other medical plan, thereby making them ineligible for the medical waiver benefit.

18.01.01 Pre-Tax Optional Benefits

Through the cafeteria plan, employees may enroll in the following optional benefits and elect to pay premiums on a pre-tax basis:

1. Medical Reimbursement Account (MRA)
2. Dependent Care Assistance Plan (DCAP)
3. Cancer and Critical Illness Protection Insurance

18.01.02 Post-Tax Optional Benefits

Employees may also enroll in the following optional benefits and elect to pay premiums on a post-tax basis:

1. Additional life insurance
2. Accident protection insurance
3. Long term care insurance

18.02 Principal Domestic Partners

The City will provide medical, dental, and vision benefits to employees with Principal Domestic Partners equivalent to those provided to an employee’s spouse. Employees may enroll their eligible Principal Domestic Partners and the eligible dependents of their Principal Domestic Partners subject to eligibility requirements established either by CalPERS or the City and subject to tax regulations of the State of California and the Internal Revenue Service of the United States government.

18.03 Dental and Vision Benefits

The City shall provide a dental plan for employees and their eligible dependents at no premium cost to employees and with the following minimum benefit levels.

	<u>In-PPO Network</u>	<u>Out-of-PPO Network</u> (fees charged are usually higher)
Annual Deductible	\$25/person, \$75/family	\$25/person; \$75/family
Annual Maximum	\$1,500/person	\$1,500/person
Diagnostic & Preventive	100%	80% of contract allowance
Basic Benefits	80%	80% of contract allowance
Crowns & Other Castings	50%	50% of contract allowance
Restorations/ Prostodontics	50%	50% of contract allowance
Orthodontic Benefits (for dependent children only)	50% up to \$2,000 lifetime maximum/ person (up to age 23)	50% of contract allowance up to \$2,000 lifetime maximum/person (up to age 23)

The City shall provide a vision plan for employees and their eligible dependents at no premium cost to employees and with the following minimum benefit levels.

Co-Pays	\$15 (does not apply to contacts)
Exams	100%, every 12 months after co-pay
Prescription Lenses	100%, every 12 months after co-pay
Frames	100% up to \$115 plus 20% off any out-of-pocket costs, every 24 months after co-pay
Contacts	100% (in lieu of glasses) up to \$105, every 12 months - no co-pay

18.04 Retired Health Plan

Covered employees who retire under the provisions of the City's contract with CalPERS are currently eligible to continue CalPERS medical coverage. The City will contribute a monthly amount to CalPERS pursuant to Government Code Section 22892 of the Public Employees Medical and Hospital Care Act (PEMHCA), currently \$139 for 2020.

18.05 Retiree Medical Incentive

In addition to the PEMHCA minimum monthly contribution amount pursuant to Government Code Section 22892 (currently \$122 for 2015) that the City contributes for all employees in a CalPERS medical plan, employees currently on the City's retiree medical plan and future covered employees who receive a retirement from PERS and have at least five (5) years of continued service with the City and are at least fifty (50) years of age will receive a retiree medical benefit in the amount of \$112.04 per month. This benefit will continue as long as the employee continues PERS medical coverage and until such time the retiree is eligible for Medicare or other Federal or State health programs, solely on account of age.

Employees who retire with more than twenty (20) years of City service will receive a retiree medical incentive of 75% the cost of the employee-only coverage of the highest CalPERS HMO plan from only among those plans available in Santa Cruz County at the time of ratification of this agreement (less the contribution listed in Section 18.04 (Retiree Medical Plan) of this memorandum).

To the extent allowed by law, the benefits bestowed by this section are intended to survive the termination and/or expiration of this memorandum. To this end, future Fire Management bargaining representatives shall not amend or delete these benefits retroactively or agree to benefits at variance with the above defined benefits so as to reduce or eliminate the benefits herein conferred upon existing retirees.

18.06 Disability Retirement Before Age 50

Upon disability retirement before age 50, an employee shall be reimbursed for unused sick leave through the provision of the City's retired health care plan for the employee only to the following limits, whichever occurs first: (1) up to the current value of the employee's sick leave accrual; or (2) until such time as the employee obtains primary health care coverage under another plan; or (3) until the employee is eligible for Federal or State medical programs. Once any of these limits are reached, the employee is no longer eligible for coverage under this plan.

The retiree shall notify the City in writing at such time as they are receiving primary coverage under another plan.

Two years after the date of retirement, if a retiree is still covered under the City's plan, they must provide the City with an affidavit stating that they are not receiving primary coverage under another plan. If the retiree fails to provide such an affidavit, the City has the right to cancel coverage with 30 days written notice.

To be eligible for this Retired Health Care Plan, the employee must have an accrued sick leave balance of 144 hours as of the effective date of disability retirement.

If an employee is medically declared to be totally disabled, the City shall provide the retired health plan to that employee until they are eligible for Federal or state medical programs, regardless of the employee's sick leave balance.

In all cases, retired employees may purchase coverage for their dependents under this plan as long as they, themselves, remain eligible and are insured under the plan.

Employees with 15 or more years of service may elect to apply all or part of their sick leave toward purchase of the retired health care plan or convert it to cash as provided under Section 14.04 (C).

18.07 Life Insurance

The City shall contribute full cost toward the City-sponsored \$25,000 basic term life insurance program.

The City shall make a voluntary term life insurance policy available to unit employees.

18.08 Long Term Disability Insurance

The City shall contribute full cost of the City-sponsored long-term disability program. The maximum monthly benefit shall be at least \$5,000.

18.09 Medicare Buy Back

The City will meet and discuss with the Association the desirability and implementation of Medicare buyback. Because this item is not cost neutral to the City, further discussion regarding the level of employee participation is needed before the City can agree to implement a Medicare buyback process.

18.10 Health Savings Account

The City will meet and discuss with the Association to facilitate the established of a third-party-managed Health Savings Account for Association members.

SECTION 19.00 – UNIFORM ALLOWANCE AND REPLACEMENT

Employees will comply with departmental standards with regard to appearance and cleanliness. To this end, the City agrees to pay the cost of cleaning department authorized uniforms. For this purpose, the City will establish an account at a dry cleaning establishment located within the City of Santa Cruz. For their part, employees will deliver and retrieve uniforms from the dry cleaning establishment, and do so during non-working hours. However, under exceptional circumstances, subject to the approval of the Fire Chief or his representative, uniforms may be delivered or retrieved during working hours.

The City agrees to replace uniforms on an as-needed basis, as determined by the Fire Chief. It shall be the responsibility of each unit employee to arrange for purchasing, fitting, pickup, delivery, return, repair and control of uniform items.

The parties agree that for PERS reporting purposes, the value of the cleaning service is four hundred and sixty-eight dollars (\$468.00) per year.

Employees who themselves pay the employee share of PERS, shall pay the PERS cost of the value of cleaning service. Such payment shall be made through a payroll deduction out of her/his paycheck each pay period. The amount of the deduction shall be determined by multiplying the employee's PERS contribution rate by eighteen (\$18.00) dollars.

SECTION 20.00 – MANAGEMENT BENEFITS

20.01 Management Vacation

In the first full pay period in January of each year all management employees will be credited with vacation time in addition to their normal authorized vacation allowance. Those on a 40-hour/week schedule shall receive 80 hours management vacation, and those on a 56- hour/week schedule shall receive 112 hours management vacation. Although these additional hours will be documented on the employee sick leave and vacation schedule, it will be itemized separately. Employees desiring to be paid for any or all of their management vacation may so indicate on either July 1 or December 31 of each year. Upon separation, employees shall receive the value of their unused accrued management vacation. This benefit will be pro-rated for new hires.

It is mutually understood and agreed that retroactive changes to time cards converting already used management vacation to some other form of paid leave, thus increasing the number of management vacation hours eligible for pay out at years end, will not be allowed.

It is mutually understood and agreed that it is each individual employee's responsibility to manage his/her use of management vacation hours to avoid the loss of any unused time.

Accumulation of management vacation shall not exceed eighty (80) hours for 40-hour per week employees and one hundred twelve (112) hours for 56-hour per week employees.

20.02 Optional Management Benefit

In recognition of unscheduled and special assignments performed by management employees and night meetings they occasionally attend, the City will contribute \$1,500 for employees with more than ten (10) years of service and \$1,300 for employees with less than ten (10) years of service, annually, to an optional management benefit plan. Payment for this benefit shall be made in July of each year for the previous fiscal years' service.

Employees may select the following options for use of the benefit:

1. Payment to deferred compensation;
2. Upon approval of the department head, purchase of additional vacation leave;
3. Direct payment to the employee.

This benefit will be prorated for new hires and terminated employees.

SECTION 21.00 – CITY PROVIDED VEHICLE

Subject to the approval of the Fire Chief and the City Manager, a City provided car may be provided to the Division Chiefs. Employees approved for and provided with City vehicles are responsible for all associated tax liabilities in accordance with Federal, State, and local regulations and laws.

SECTION 22.00 – REDUCTION IN FORCE

All Fire department employees shall be subject to the layoff policy and procedure provided in this section. In case of elimination, reorganization, or reclassification of personnel during the term of this agreement, the City agrees to discuss redistributing negotiated cost of living adjustments to assist with additional workloads that may be imposed. It is recognized and agreed that the salary savings resulting from any reductions of the work force are to be wholly realized by the City.

22.01 Lay-Offs

The City reserves the right to reduce its workforce by layoff of employees for reasons of economy or changes in departmental operations. When one or more employees assigned to the same classification within a department are to be laid off, the order of layoff shall be as follows:

1. Temporary
2. Probationary
3. Regular

The order of layoffs shall be governed by seniority in the current classification from the date of hire in the classified position.

22.02 Bumping

Bumping is defined as a voluntary movement of an employee to be laid off from his/her current classification to a previously held lower classification (based upon previous duties, if title has changed) held by an employee with less seniority. An employee with sufficient seniority to bump an employee in a lower classification shall bump the least senior person in that classification.

For bumping purposes, the employee exercising bumping, will add time in the affected position (position bumping into), current position (laid off position), and related higher position as total seniority time. This time will be carried forward and bump that employee in the next lower classification with less time in the lower classification. This seniority will establish the individual's seniority in the lower classification.

22.03 Notification

Employees to be laid off shall be given not less than fifteen (15) working days written notice prior to the reduction in force. An employee wishing to bump to a lower classification shall provide written notice to the City within ten (10) days of receiving their layoff notice.

22.04 Reinstatement

Should there be a vacancy in the classification from which an employee was laid off be re-established within 18 months, the employee shall be eligible for reinstatement. It shall be the employee's responsibility to notify the Human Resources Department of his/her current address. Every effort shall be made to notify the affected individual of any reinstatement opportunity. Reinstatement shall be in the reverse order of layoff.

SECTION 23.00 – GRIEVANCE PROCEDURE

23.01 Purpose

To assure prompt and fair treatment of employee grievances related to employment. Any employee covered by this Memorandum of Understanding may file a grievance.

23.02 Definitions

A. Grievance: An alleged violation, misinterpretation or misapplication of the provisions of this Memorandum, the City's Personnel Rules and Regulations or Fire Department Rules and Regulations.

B. Workday: All weekdays excluding holidays and weekends.

23.03 Limitations

- A. A grievant may be represented by any representative of his or her choosing in preparing and presenting a grievance.
- B. No reprisal shall result against any employee who presents a bona fide grievance under this procedure.
- C. Time limits may be extended by written mutual agreement of the parties.
- D. A grievance shall be considered settled in favor of the other party if, at any step, a decision is not rendered or appealed within the specified time limit.
- E. Only upon mutual written agreement between the parties may Step I of the grievance procedure be waived.

23.04 Procedures

23.04.01 Step I

The grievant will first attempt to resolve the grievance through informal discussions with successive levels of supervision beginning with his/her immediate supervisor through his/her highest management-level supervisor, exclusive of the department head. These discussions must be initiated within ten (10) workdays of when the employee knew, or reasonably should have known the incident upon which the grievance is based. Every attempt will be made by the parties to settle the issue at this level.

23.04.02 Step II

If the grievance is not resolved through the informal discussion, the employee may, within ten (10) workdays, submit a written grievance to his/her department head after the informal meeting.

The written grievance must contain in clear, factual and concise language:

1. A brief statement as to the date of the occurrence on which the grievance is based and the facts as the grievant see them.
2. The rule, regulation or act on which the grievance is based.
3. The action the grievant believes will resolve the grievance.
4. Signature of the employee.

The department head shall have ten (10) workdays following receipt of the appeal to review the matter and prepare a written response. Copies shall go to the parties involved and the Human Resources Department.

23.04.03 Step III

If the grievance is not resolved, the grievant may, within five (5) workdays following receipt of the department head's response, appeal to the City Manager or his/her representative, stating in writing the basis for the appeal.

The City Manager or his/her representative shall render a written decision to all parties directly involved within fifteen (15) workdays following the date which the aggrieved employee appealed the department head's decision.

23.04.04 Step IV

If the grievance is not resolved to the satisfaction of the employee at the conclusion of Step III, the employee may appeal the decision of the City Manager to a neutral arbitrator, provided her/him so informs the City Manager in writing within ten (10) working days following receipt of the City Manager's decision.

Within ten (10) working days from the date of receipt of the appeal, the parties may mutually agree on a neutral party from an independent source to serve as an arbitrator. In the event the parties fail to agree on the neutral party, they shall immediately, thereafter, jointly request the California State Mediation and Conciliation Service to submit to them a list of five (5) persons qualified and available to act as arbitrator.

If such a list is requested from the state Mediation and Conciliation Service, the parties within five (5) working days of receipt of the list, shall mutually agree upon the person on the list who shall be the arbitrator. If one person is not mutually agreed upon, the parties shall within five (5) days after receipt of the list of names alternately strike two (2) names from such list with the last remaining name to be the person serving as arbitrator. The party having first choice to strike a name from the list shall be determined by lot.

The arbitrator shall have no authority to add to, detract from, alter, amend or modify any provision of this Agreement, or impose on any party hereto a limitation or obligation not explicitly provided for in the Agreement, or to alter any wage rate or wage structure. The decision of the arbitrator shall be rendered after the evidence and arguments are presented to him/her by the parties in the presence of each other and in post-hearing briefs, if necessary. The decision of the arbitrator shall be final and binding upon the parties.

The arbitrator is requested to expedite the decision as the parties normally expect a decision to be issued within fifteen (15) days after the conclusion of the hearing.

The arbitrator's expenses, if any, shall be borne equally by the parties. Each party shall bear the cost of its own representation.

SECTION 24.00 – DISCIPLINARY APPEALS PROCEDURE

24.01 Definition

Disciplinary action shall mean written reprimand, suspension (as authorized by FLSA), demotion, disciplinary reduction in salary, or discharge.

The appeal procedure described herein shall apply to cases of disciplinary action affecting regular employees. It shall not be applicable to probationary employees. Employees have the right to representation at any or all stages of the appeal process.

24.02 Pre-Action Procedure

24.02.01 Step I

Prior to imposing disciplinary action which would result in a loss of salary, the supervisor shall first provide the employee a preliminary written notice of the proposed action stating the effective date, the specific grounds and particular facts upon which the action will be taken. The employee shall have access to any known written materials, reports or documents upon which the action is based. The employee shall have the right to respond to the charges within five (5) workdays from receipt of the notice either orally, in writing, or both to the Fire Chief.

The employee may request an extension of the time to respond for justifiable reasons. Failure to respond within the time specified will result in the employee's waiver of his/her procedural rights and final action will be taken.

24.02.02 Step II

Following a review of a proposed disciplinary action the Fire Chief, within five (5) workdays of receiving employee's response, shall render a written decision and send it by registered mail or personal delivery to the employee. A copy shall also be mailed to the employee's representative. The written decision will include the effective date of the disciplinary action.

The employee has the right, within five (5) workdays after receiving the decision, to file a request for appeal with the City Manager. The appeal shall be a written statement, signed by the applicant, explaining the matter appealed from, stating the action desired by the appellant, with his/her reasons therefore, and stating that the pre-action procedures have been exhausted.

24.03 Post-Action Appeal

24.03.01 Step III

If the employee files a timely appeal, the City Manager shall, within five (5) workdays after receiving the appeal, designate a hearing officer who shall schedule a hearing not less than five (5) workdays from the date the appeal is received.

The hearing officer may conduct such independent investigation of the matter as they deem necessary. The appellant shall be given the opportunity to answer or present evidence in opposition to the findings of this independent investigation.

The appellant shall appear personally at the scheduled hearing unless physically unable to do so. The appellant or his/her representative may produce relevant oral or documentary evidence at the hearing.

Within fifteen (15) workdays following the hearing, the hearing officer shall render a written decision to all parties involved. The hearing officer has the authority to affirm, repeal or modify the disciplinary action.

For discipline equivalent to the severity of suspension (as authorized by FLSA) of one (1) week or less, or leave balance reduction of one (1) week or less, there shall be no appeal beyond Step III and the City Manager's decision shall be final.

24.03.02 Step IV

If the appeal (except as exempted above) is not resolved to the satisfaction of the appellant at the conclusion of Step III, the employee may appeal the decision of the City Manager to a neutral arbitrator, provided it so informs the City Manager in writing within ten (10) working days following receipt of the City Manager's decision.

Within ten (10) working days from the date of receipt of the appeal, the parties may mutually agree on a neutral party from an independent source to serve as an arbitrator. In the event the parties fail to agree on the neutral party, they shall immediately, thereafter jointly request the California State Mediation and Conciliation Service to submit to them a list of five (5) persons qualified and available to act as arbitrator.

If such a list is requested from the State Mediation and Conciliation Service, the parties within five (5) working days of receipt of the list, shall mutually agree upon the person on the list who shall be the arbitrator. If one person is not mutually agreed upon the parties shall within five (5) days after receipt of the list of names, alternately strike two (2) names from such list with the last remaining name to be the person serving as arbitrator. The party having first choice to strike a name from the list shall be determined by lot.

The arbitrator shall have no authority to add to, detract from, alter, amend, or modify any provision of this agreement, or impose on any party hereto a limitation or obligation not explicitly provided for in this agreement, or to alter any wage rate or wage structure. The decision of the arbitrator shall be rendered after the evidence and arguments are presented to him/her by the parties in the presence of each other and in post hearing briefs, if necessary. The decision of the arbitrator shall be final and binding upon the parties.

The arbitrator is requested to expedite the decision as the parties normally expect

a decision to be issued within fifteen (15) days after the conclusion of the hearing. The arbitrator's expenses shall be borne equally by the parties. Each party shall bear the cost of its own representation.

24.04 Firefighter Procedural Bill of Rights Act

During the period of this Memorandum of Understanding, the City and Association agree to adopt and comply with the Firefighter Procedural Bill of Rights, codified at California Government Code §§ 3250-3262, effective January 1, 2008.

SECTION 25.00 – WRITTEN REPRIMANDS

A written reprimand may be issued by an employee's supervisor if an employee has violated a City rule, provision of the M.O.U., or if his/her performance is in need of improvement. Written reprimands shall be placed in the employee's personnel file. An employee shall have the right to prepare a written response to the reprimand and have said response placed in his/her personnel file. An employee may appeal the supervisor's decision to issue a written reprimand to the Fire Chief by filing an appeal to the Fire Chief within five (5) working days of receipt of the reprimand. The Fire Chief's decision regarding the written reprimand shall be final.


SECTION 26.00 – SEVERABILITY

This Memorandum is subject to all current and future applicable Federal and State laws, State regulations, California Constitution, and City of Santa Cruz Charter, Resolutions, or Ordinances.

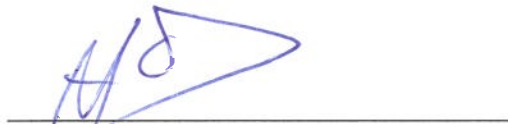
Should any of the provisions herein contained be rendered or declared invalid by reason of any State or Federal legislation or court action, such invalidations of such part or portions of this Memorandum shall not invalidate the remaining portions hereof and they shall remain in full force and effect insofar as such remaining portions are severable.

DATED: 8/10/19


**FIRE MANAGEMENT ASSOCIATION
OF THE CITY OF SANTA CRUZ**


Robert Young, Fire Battalion Chief



Josh Coleman, Fire Battalion Chief


Robert Davis, Fire Battalion Chief
Analyst

CITY OF SANTA CRUZ


Lisa Murphy, Human Resources
Director


Timothy Davis, Chief Negotiator


Joe McMullen, Principal HR

POLICY TITLE DISCRIMINATION, HARASSMENT, RETALIATION, AND
RESPECTFUL WORKPLACE CONDUCT POLICY

POLICY STATEMENT

It is the policy of the City of Santa Cruz to maintain and promote a working environment free from abusive conduct, discrimination, harassment, and retaliation; and to provide all current and prospective employees, Councilmembers, contractors, unpaid interns, and volunteers with equal opportunity in employment regardless of race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military and veteran status (all of which are later referred to as “Protected Categories”), or any other consideration made unlawful by local, State or Federal law.

This policy pertains to all aspects of employment with the City or the application for employment with the City including, but not limited to, recruitment, selection, placement, assignment, compensation, benefits, training, transfer, promotion, evaluation, discipline, and termination.

This policy prohibits unlawful harassment, discrimination, and retaliation by supervisors, managers, co-workers, and third parties such as vendors or customers.

Definitions:

Discrimination as used in this policy is defined as the treatment or consideration of, or making a distinction in favor of or against, an employee on the basis of any of the above-listed protected categories including, but not limited to, any of the following forms:

- a) basing an employment decision on a job applicant’s or an employee’s protected status;
- b) treating an applicant or employee differently with regard to any aspect of employment because of their protected status;
- c) offering an employment benefit in exchange for sexual favors;
- d) threatening negative consequences if an employee declines a sexual advance;
- e) engaging in harassment, as more specifically defined below; and
- f) taking adverse employment action (i.e., demotion, transfer, discipline, or termination) against an employee based on the employee opposing discrimination in the workplace; assisting, supporting, or associating with a member of a protected category who complains about discrimination, or assisting in an investigation of discrimination.

Harassment as used in this policy is defined as the persistent disturbance or irritation of an employee on the basis of any of the above-listed protected categories including, but not limited to, any of the following forms:

- a) verbal harassment such as epithets, derogatory comments, or slurs, including on social media;
- b) physical acts such as assault or impeding or blocking movement;
- c) visual insults such as derogatory posters, drawings, or photographs;

- d) unwanted sexual advances, requests for sexual favors, and other acts of a sexual nature; and
- e) sending sexually-related emails or text messages.

Abusive Conduct as used in this policy is defined as conduct in the workplace or on social media, undertaken with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests; it may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating or humiliating, or the sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Employee as used in this policy is defined as an individual performing business activities under direct supervision of another City employee and includes full-time, part-time, and temporary employees, contractors, unpaid interns, and volunteers.

Equal Employment Opportunity Committee (EEOC) as used in this policy is an advisory body to the City Council consisting of nine (9) members, including representatives from the community appointed by the City Council, employees appointed by the City Manager, and employees appointed by various labor groups.

Responsibilities:

1. The City of Santa Cruz shall take reasonable steps to prevent abusive conduct, discrimination, harassment, and retaliation from occurring in the workplace environment, including the following:
 - a) affirmatively raising the subjects of abusive conduct, discrimination, harassment and retaliation;
 - b) expressing strong disapproval;
 - c) maintaining and developing appropriate sanctions;
 - d) informing employees of their right to raise and how to raise the issues of abusive conduct, discrimination, harassment, and retaliation under City policy and/or the law; and
 - e) maintaining and developing methods to sensitize all concerned.

Such behavior shall not be tolerated, condoned, or trivialized. The City is committed to take action against any person violating this policy which will end the prohibited conduct. City employees who violate this policy shall be subjected to appropriate discipline, including possible dismissal, upon consideration of the findings and recommendations of the City Manager or their representative.

2. The City Manager shall fully accept and support the City's commitment to prevent abusive conduct, discrimination, harassment, and retaliation as a means to assure full equal employment opportunity for all prospective and current employees, contractors, unpaid interns, and volunteers including the following:
 - a) defining and assigning specific responsibilities throughout the organization for the development, implementation, and monitoring of this policy;
 - b) appointing one (1) department head and three (3) employee representatives to the EEOC;
 - c) ensuring all department heads support this policy;
 - d) reviewing the recommendations of the Human Resources Director on the resolution of complaints appealed under the Administrative Procedure Order (APO) Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure, and making final decisions in each such complaint; and
 - e) ensuring that an EEO Report is completed and submitted annually to the City Council.

3. The Human Resources Department (HR) Director shall be responsible for:
 - a) ensuring that this policy, including its definition of abusive conduct, discrimination, harassment, and retaliation and the complaint procedures are disseminated to all employees;
 - b) providing guidance, training sessions, and assistance to department heads, managers, supervisors, and employees within their areas of responsibility;
 - c) investigating, resolving, and making findings and recommendations on complaints that are reported according to established informal and formal grievance procedures as set forth in the Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure APO and the Respectful Workplace Conduct APO;
 - d) coordinating the annual EEO report, to include data on the make-up of the City workforce and the representation of protected classes, and distributing the report to the City Council, City staff, the public, and Federal and state agencies as requested or required;
 - e) regularly reviewing and revising personnel policies, procedures, and practices to eliminate non-job-related criteria, minimize the opportunity for discrimination and harassment, and ensure compliance with all legal requirements for equal employment opportunity;
 - f) designing, implementing, and monitoring a recruitment program to draw all qualified applicants; and
 - g) designating an EEO Coordinator, who will assist the HR Director with EEO-related activities and staff the EEOC.

4. Department Heads, Managers, and Supervisors shall all be responsible for:
 - a) giving their full support to this policy through active cooperation, leadership, and personal example;
 - b) informing employees in their respective departments or areas of responsibility of their rights and responsibilities regarding abusive conduct, discrimination, harassment, and retaliation under this policy;
 - c) ensuring that their employees have equal access to training and promotional opportunities;
 - d) acting to prevent abusive conduct, discrimination, harassment and retaliation from occurring; and
 - e) cooperating with the HR Director in resolving complaints involving employees in their respective departments.

5. Employees of the City shall be responsible for lending their personal support and cooperation in maintaining equal employment opportunities in the City. Employees shall cooperate fully with all investigations of abusive conduct, discrimination, harassment, and retaliation and implementation of remedial measures and shall not retaliate against complainants or witnesses.

6. The EEOC shall act in an advisory capacity to the City Council in all matters pertaining to EEO and be responsible for serving as a communication channel between City employees, the community, the City Manager, and the EEO Coordinator on any EEO activities and concerns.

Additional Applications and Considerations:

- Complaints may be filed by any individual (or a representative of their choice, on their behalf) who feels a violation of this policy has occurred. The procedures for resolving complaints alleging violation of this policy are set forth in APO Discrimination/Harassment/Retaliation Policy Implementation and Complaint Procedure and APO Respectful Workplace Conduct.

- Contracts with the City of Santa Cruz which contain an equal employment opportunity/non-discrimination clause shall also include language which requires those contractors to be responsible for ensuring that effective policies and procedures concerning the prevention of abusive conduct, discrimination, harassment, and retaliation exist in their companies.
- Councilmembers, contractors, unpaid interns, volunteers, customers and visitors shall not be subjected to, or cause, a violation of this policy.
- All Memoranda of Understanding entered into by the City and any employee organization shall contain an appropriate non-discrimination/harassment clause.
- In applying this policy, the rights of free speech and association shall be accommodated consistently with the intent of this policy. Nothing in these regulations may be construed as limiting the City's right to take reasonable disciplinary measures which do not discriminate on a basis identified in this policy.
- Discrimination/harassment/retaliation prevention (including prevention of abusive conduct), and cultural diversity awareness training, is mandatory for all City employees and City Councilmembers.
- All City employment announcements, brochures, procedures, advertisements, and application forms will state that the City is an Equal Opportunity Employer. The Human Resources Department will also inform all outreach recruitment and referral sources of the City's Discrimination and Harassment Policy and request that sources actively recruit and refer qualified applicants from all sectors of the community.
- In support of recruitment and retention efforts, City management shall consider the viability of participating in or developing supportive programs in such areas as: job-related skill training and education, job development, career counseling, transportation, day care, and health care.
- Where groups of employees are featured in the City's publications and communications (i.e., text and photographs), insofar as possible, the materials should illustrate that the City's workforce is as diverse as the populace it serves.

AUTHORIZATION: Council Policy Manual Update of November 17, 1998

HISTORY:

Revision by Resolution No. NS-28,533 July 24, 2012

Revision by Resolution No. NS-28,823 September 9, 2014

Revision by Resolution No. NS-29,220 April 4, 2017

City of Santa Cruz
Administrative Procedure Order
Section II, #1A (Revised April 2017)

II-1A

TO: Department Heads

SUBJECT: DISCRIMINATION/HARASSMENT/RETALIATION POLICY
IMPLEMENTATION AND COMPLAINT PROCEDURE

PURPOSE

The purpose of this document is to confirm the City’s commitment to prohibit and prevent unlawful discrimination, harassment, and retaliation in employment, and provide a City complainant an investigation procedure to resolve complaints of alleged discrimination, harassment, or retaliation in violation of the law or City Council Policy 25.2 (*Discrimination, Harassment, and Respectful Workplace Conduct Policy*).

POLICY

It is the policy of the City of Santa Cruz to maintain and promote a working environment free from discrimination, harassment, and retaliation, and to provide all current and prospective employees, contractors, interns, and volunteers with equal opportunity in employment regardless of race, religious creed (including religious dress and grooming practices), color, national origin (including language use restrictions), ancestry, disability (mental and physical), medical condition, sex, gender (including gender identity and gender expression), physical characteristics, marital status, age, sexual orientation, genetic information (including family health history and genetic test results), organizational affiliation, and military and veteran status (later referred to collectively as “Protected Categories”) or any other consideration made unlawful by local, State, or Federal law.

This policy is promulgated in recognition of the fact that conduct of the type prohibited by this policy, if allowed to exist, not only violates Federal, State, and municipal law, but also serves to undermine employee integrity, create low employee morale, reduce employee productivity, and cause skilled and valuable workers to leave their City employment. All of this, in turn, is detrimental to the general health and welfare of the community, which depends upon a highly motivated and skilled body of City employees to deliver essential municipal services.

The City Council acknowledges and understands that in order to implement a policy of this type, it is essential that all persons who witness or experience discrimination, harassment, or retaliation report it immediately in order to facilitate early, effective, efficient, and impartial investigation and intervention by the City. Accordingly, any retaliation against a person for filing a complaint, reporting discrimination, harassment, or retaliation which he or she has witnessed, or assisting in an investigation is strictly prohibited. Employees found to have participated in retaliatory action in contravention of this policy shall be subject to disciplinary action up to and including termination.

In implementing the policy, the rights of free speech and association shall be accommodated in a manner consistent with applicable Federal and State law and in a manner consistent with the intent of the policy.

DISSEMINATION OF POLICY AND TRAINING

All employees, supervisors, and managers shall receive a copy of this Administrative Procedure Order and City Council Policy 25.2 and shall also attend sexual harassment and cultural diversity training according to the following schedule:

- 1) All New Employees – Harassment/Discrimination/Retaliation Prevention Training, and Cultural Diversity Training, within the first year of hire.
- 2) Supervisors – Cultural Diversity Training within the first year of hire, Harassment/Discrimination/Retaliation Prevention Training within six months of gaining supervisory responsibilities, and refresher training no less frequently than every two years.

Posters explaining local, State, and Federal non-discrimination laws will be prominently displayed in the Human Resources Department.

REASONABLE ACCOMMODATION FOR DISABILITY (in accordance with Title II of the *Americans with Disabilities Act of 1990, and as amended by the ADA Amendments Act of 2008*)

Disability is defined as: a) a physical or mental impairment that substantially limits one or more major life activities, b) having a documented record of such an impairment, or c) being regarded as having such an impairment.

Accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal employment opportunities. It means modifications or adjustments to: a) a job application process to enable an individual with a disability to be considered for the position, b) the work environment in which a position is performed so that a person with a disability can perform the essential functions of the position, and c) enable individuals with disabilities to enjoy equal benefits and privileges of employment as employees without disabilities enjoy.

I. Inclusions

Accommodation includes making existing facilities and equipment used by employees readily accessible to and usable by individuals with disabilities. Accommodation applies to: a) all employment decisions and to the job application process, b) all services and programs provided in connection with employment, c) non-work facilities provided in connection with employment, and d) known disabilities only.

II. Exclusions

Accommodation is not required if: a) it eliminates essential functions of a position from the person's job, or b) adjustments or modifications requested are primarily for the benefit of the person with a disability. The law does not require an accommodation that imposes an "undue

hardship” on the operation of the City. Undue hardship means significant difficulty or expense incurred in the provision of accommodation relative to the operation of the City’s program and includes, but is not limited to, financial difficulty. Undue hardship refers to any accommodation that would be unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature or operation of the City. Whether a particular accommodation will impose an undue hardship is determined on a case-by-case basis. The following factors will be considered in determining whether an accommodation would create undue hardship: a) the nature and cost of the accommodation, b) the financial resources of the City, c) the number of employees, and d) the type of operations of the City, including the composition and functions of its workforce.

III. Determining the Appropriate Accommodation

Where a particular accommodation would result in an undue hardship, the City must determine if another accommodation is available that would not result in an undue hardship. If a qualified individual with a disability requests the provision of a reasonable accommodation, the City shall engage in an informal, interactive process with the person with a disability which identifies the precise limitations resulting from the disability and potential accommodations that could overcome those limitations. The accommodation process shall generally involve five (5) steps.

- First, the City shall analyze the particular job at issue and determine its purpose and essential functions.
- Second, the City shall consult with the individual with a disability to ascertain the precise job-related limitations imposed by the individual’s disability.
- Third, the City shall consult with the individual with a disability and, if desired by the agency, the appropriate rehabilitation or ergonomics consultant to identify potential accommodations and the necessary modifications.
- Fourth, the City shall assess the effectiveness of each potential accommodation with regard to enabling the individual to perform the essential functions of the position.
- Finally, the City shall consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the agency.

DISCRIMINATION, HARASSMENT, AND RETALIATION COMPLAINT PROCEDURE

This complaint procedure is available to City of Santa Cruz employees and individuals who believe that they have been subjected to discrimination, harassment, and/or retaliation in relation to employment with the City of Santa Cruz.

Complainants, and employees alleged to have engaged in discrimination, harassment, or retaliation, may choose to be represented at any or all steps in the complaint process.

I. Filing a Complaint

Complaints may be submitted to an employee’s immediate supervisor, any supervisor or manager within or outside the department, the department head, or Human Resources Department within one (1) year of the date the alleged action occurred. Any City of Santa

Cruz supervisor, manager, or department head who receives a discrimination or harassment complaint shall notify the Human Resources Department immediately upon receipt of the complaint. Complaints may be presented orally or in writing.

Written complaints should include the following information:

- The name, address, and telephone number of the complainant.
- The basis for the alleged discrimination or harassment (protected category and/or retaliation).
- The specific discriminatory practice(s) or incident(s) that have occurred.
- The names of any persons thought to be responsible for the discrimination/harassment.
- The remedy the complainant is seeking as a result of the complaint.
- The name, address, and telephone number of the complainant's representative, if any.

If complainants wish to file the complaint in person and receive assistance, they may contact the Human Resources Department to schedule an appointment with a staff investigator.

II. **Investigation and Resolution**

After reviewing the complaint, the Human Resources Director shall determine if an investigation is necessary to resolve the issues of the complaint and, if so, authorize and supervise the investigation of the complaint by a qualified person. The complainant will be contacted by the investigator upon the investigator's receipt of the complaint and will be kept apprised of the status of the investigation. The investigation will be documented and tracked for reasonable progress and appropriate due process. Every effort will be made to conclude the investigation within one hundred and twenty (120) calendar days of receipt of the complaint.

The Human Resources Director will not proceed with the investigation of a complaint if the complaint contains no assertion that the alleged acts occurred based on one or more of the protected categories or if a nexus cannot be established between the alleged act(s) and discrimination based on any of the protected categories.

When the investigation is completed, the Human Resources Director will determine if there is sufficient evidence to substantiate a violation of the City's Discrimination, Harassment, and Retaliation Policy and if remedial action is necessary to resolve the issues of the complaint. The complainant, alleged perpetrator/harasser, and department head(s) will be notified of the Human Resources Director's determination. If discipline is imposed, the discipline will not be communicated to the complainant.

If it would present a conflict (or the appearance of such) for the review and investigation of a complaint to be conducted by the Human Resources Department, the City Manager will be responsible for this process.

III. City Manager Review

Complainants who are not satisfied with the Human Resources Director's determination may request a review by the City Manager (or his/her representative), in writing, within ten (10) workdays following receipt of the Human Resources Director's determination. The City Manager (or his/her representative) shall review the complainant's written appeal and the investigative findings and shall render a written decision within thirty (30) workdays following the review.

IV. Additional Remedies

Current City employees covered by a memorandum of understanding that includes arbitration as the final step in the grievance process may request that the matter be taken to arbitration in accordance with the specific procedures contained in the applicable memorandum of understanding.

In addition, all complainants may file complaints of discrimination, harassment, or retaliation with the State of California Department of Fair Employment and Housing and the Federal Equal Employment Opportunity Commission, whether or not complainants choose to use the City of Santa Cruz' complaint procedure. Time limits for filing complaints with State and Federal compliance agencies vary, and those agencies should be contacted directly for specific information. The addresses and telephone numbers (as of the revision date of this procedure) are:

California Department of Fair Employment and Housing
Bay Area Regional Office
39141 Civic Center Drive, Suite 250
Fremont, CA 94538
Phone: (800) 884-1684
For Persons with a Hearing Impairment: (800) 884-1684 or TTY at (800) 700-2320
E-mail: contact.center@dfeh.ca.gov

United States Equal Employment Opportunity Commission
San Jose Local Office
96 North Third Street, Suite 250
San Jose, CA 95112
Phone: (800) 669-4000
Fax: (408) 291-4539
TTY: (800) 669-6820
ASL Video Phone: (844) 234-5122

Exhibit C

City of Santa Cruz
Administrative Procedure Order
Section II, #1B (Effective April 2017)

II-1B

TO: Department Heads

SUBJECT: RESPECTFUL WORKPLACE CONDUCT

PURPOSE

The City of Santa Cruz is committed to maintaining and promoting a respectful work environment. Council Policy 25.2 (*Discrimination and Harassment Policy*), Administrative Procedure Order II-1A (*Discrimination/Harassment Policy Implementation and Complaint Procedure*), and this Administrative Procedure Order establish behavioral and workplace standards to support a culture of collaboration, inclusion, and productivity.

POLICY

It is the intent of the City of Santa Cruz that all employees, volunteers, Councilmembers, Commissioners, customers, contractors, and visitors to the City's worksites or places where City work is conducted enjoy a positive, respectful, and productive work environment free from behavior, actions, or language constituting a violation of this Respectful Workplace Conduct Policy. Such conduct may include, but is not limited to, the following as perceived by a reasonable person: repeated infliction of verbal, written, or social media abuse such as the use of derogatory remarks, epithets, or insults; physical conduct that is threatening, intimidating, bullying, or humiliating; or the sabotage or undermining of a person's work performance. Incorporated by reference in this policy is the amendment to §12950.1 of the California Government Code created by Assembly Bill 2053 (effective January 1, 2015) adding to the supervisory training requirement the subject matter "prevention of abusive conduct."

Employees found to have participated in actions constituting a violation of this policy shall be subject to disciplinary action up to and including termination. Volunteers found to have participated in actions constituting a violation of this policy may be subject to termination of their volunteer relationship with the City. If a complaint involves the conduct of a contractor, Human Resources will inform the contractor of the behavior and request prompt, appropriate action. The City reserves the right to prohibit a contractor's individual employee(s) from entering City-owned property/premises. Councilmembers, Commissioners, customers, and visitors who engage in conduct in violation of this policy are subject to action on the part of the City intended to stop the conduct and protect others. Executives, managers, and supervisors who know or should know of conduct in violation of this policy and who fail to report such behavior or fail to take prompt, appropriate action when such conduct is observed or reported may be subject to disciplinary action up to and including termination. In implementing the policy, the rights of free speech and association shall be accommodated in a manner consistent with applicable Federal and State law and in a manner consistent with the intent of the policy.

All employees shall receive a copy of this policy when they receive Council Policy 25.2 (*Discrimination and Harassment Policy*) and Administrative Procedure Order II-1A (*Discrimination/Harassment Policy Implementation and Complaint Procedure*).

I. **Definition**

Disrespectful Conduct: Any one or all of the following as perceived by a reasonable person:

- 1) Use of language that is intended to be, or perceived by a reasonable person to be, demeaning, berating, humiliating, threatening, bullying, offensive, insulting, slanderous, or malicious rumor-spreading;
- 2) Conduct that a reasonable person would find disruptive, abusive, threatening, intimidating, aggressive, or insubordinate; and/or
- 3) Acts to undermine or interfere with an employee's work performance.

A single act shall not constitute disrespectful conduct unless especially severe and egregious.

II. **Responsibilities**

- a. **Employees, Volunteers, Councilmembers, Commissioners, Customers, Contractors, and Visitors:** All persons are required to behave respectfully and to refrain from disrespectful behaviors, and are expected to:
 - Recognize when they or others are being subjected to disrespectful conduct and not condone or ignore it;
 - Bring the situation to the attention of a supervisor or the next person in the chain of command, department director, or Human Resources Department, or where physical safety is concerned, contact emergency services (9-1-1);
 - Understand that someone's intent does not excuse otherwise disrespectful conduct and/or relieve them from being held accountable for their actions; and
 - Address, if possible, inappropriate behavior directly with the person engaging in such conduct in a professional and nonconfrontational manner.
- b. **Executives, Managers, and Supervisors:** Executives, managers, and supervisors are responsible for demonstrating respectful personal behavior towards all coworkers and visitors, as well as to set an example of respectful behavior as a model for City employees, volunteers, and visitors. In addition to this responsibility and the expectations listed above, executives, managers, and supervisors are expected to:
 - Maintain a level of awareness with their staff sufficient to know if disrespectful behavior is occurring; and
 - Maintain a level of open communication with their staff that encourages them to report instances of disrespectful behavior that have occurred;

- Encourage the reporting of instances of disrespectful behavior by making this policy known to all employees;
- Promptly address all observed disrespectful behavior;
- Take reports and complaints of disrespectful behavior seriously and, if deemed appropriate following consultation with their immediate supervisor, attempt to independently confirm whether or not the reported behavior occurred or is occurring, without divulging the identity of the reporting party; and
- Promptly report complaints to a supervisor, the department director, and Human Resources Department.

III. **Retaliation**

The City maintains a strict stance of no tolerance for retaliation against anyone for bringing a complaint or participating in an investigation. Under no circumstances will anyone be disciplined, demoted, or otherwise retaliated against for reporting, disclosing, or bringing a Respectful Workplace Conduct complaint to the attention of the City. Employees found to have participated in retaliatory action in contravention of this policy shall, therefore, be subject to disciplinary action up to and including termination.

- a. Anyone who believes they have been retaliated against because they filed a complaint, participated in an investigation, or reported observing a violation of the Respectful Workplace Conduct Policy should report this behavior to their supervisor, department director, or Human Resources Department.
- b. Complaints of retaliation will be investigated promptly.

PROCEDURE

I. **Filing a Respectful Workplace Conduct Complaint**

Any person who observes or perceives they have been subjected to conduct by another person believed to be a violation of this policy may initiate the complaint process by notifying their immediate supervisor, department director, or Human Resources Department.

- a. Complaints may be submitted to an employee's immediate supervisor, any supervisor or manager within or outside the department, the department director, or Human Resources Department within thirty (30) days of the date the alleged action occurred. Any City of Santa Cruz supervisor, manager, or department director who receives a complaint shall notify an appropriate supervisor/manager/director and Human Resources upon receipt of the complaint.
- b. If a complainant wishes to file the complaint in person and receive assistance, they may contact the Human Resources Department to schedule an appointment.
- c. Written complaints should include the following information (it is recommended but not required to use the "Respectful Workplace Conduct Complaint Form");

- The name, address, and telephone number of the complainant.
- The specific disrespectful practice(s) or incident(s) that have occurred, including retaliation.
- The names of any persons thought to be responsible for the disrespectful behavior.
- The remedy the complainant is seeking as a result of the complaint.
- The name, address, and telephone number of the complainant's representative, if any.

II. **Investigation**

After reviewing the information contained in the complaint, the staff member who received the complaint within the department of the complainant will, in consultation with his or her immediate supervisor, determine if the complaint can be resolved within the department or if there is sufficient complexity to warrant a formal investigation. If so determined, the department director will be consulted and the Human Resources Department will coordinate and conduct (or delegate responsibility for coordinating and conducting) an investigation. The investigation will proceed within the following guidelines:

- a. Steps will be taken to ensure employees are protected from further violations.
- b. Complaints will be dealt with in a discreet and confidential manner, to the extent possible.
- c. All parties are expected to cooperate with the investigation and are required to keep information regarding the investigation confidential. Failure to cooperate or maintain confidentiality could result in disciplinary action up to and including termination.
- d. Employees who are the subject of an investigation into actions constituting a possible violation of this policy may request to have representation. The right to representation may be required for members of the Police and Fire bargaining units.
- e. The complainant, the employee subject to the investigation, and all witnesses will be informed that retaliating against a person for making a complaint and/or participating in an investigation will not be tolerated and could result in disciplinary action up to and including termination.

III. **Resolution of the Complaint**

If a complaint is substantiated, the employee subject to the investigation will be notified of the appropriate disciplinary action that will be taken.

- a. The complainant will be notified if any part of a complaint is substantiated and if action has been taken. The complainant will not be told the details of the action, including discipline.

- b. Both the complainant and the employee subject to the investigation will be notified if a complaint is not substantiated.

IV. Withdrawal of Complaint

The complaint or any part of the complaint may be withdrawn at any time by the complainant; however, the request for such withdrawal must be in writing and state the reasons for the request. The Human Resources Department will review the request for withdrawal in order to determine whether or not it was the result of restraint, interference, coercion, discrimination, retaliation, or reprisal. An investigation may still proceed if a complaint is withdrawn.

V. Records

All records of complaints and investigations, whether substantiated, unsubstantiated, or withdrawn, will be maintained in confidence by the Human Resources Department.

Only documentation of disciplinary action imposed as a result of a sustained complaint is maintained in the employee's personnel file.

DEFINITIONS OF TERMINOLOGY

Abusive Conduct: Conduct of an employer or employee in the workplace or on social media, undertaken with malice that a reasonable person would find hostile or offensive and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of written or verbal abuse, including the use of social media, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the sabotage or undermining of a person's work performance. A single act shall not constitute abusive conduct, unless especially severe and egregious.

Aggressive: Demonstrating unduly forceful behavior.

Bullying: Conduct, either direct or indirect, that harms one or more individuals, not limited to behaviors that cause physical harm. Bullying may be verbal (including oral and written language as well as the use of social media) or nonverbal, may involve a real or perceived imbalance of power, and often includes behaviors described above as *Abusive Conduct*.

Derogatory: Behavior that is disparaging or belittling in attitude that aims to detract or diminish.

Disrespectful Conduct:

- 1) Use of language that is intended to be, or would be perceived by a reasonable person to be, demeaning, berating, humiliating, threatening, rude, bullying, offensive, insulting, slanderous, or malicious rumor-spreading;
- 2) Conduct that a reasonable person would find disruptive, abusive, threatening, intimidating, aggressive, or insubordinate; and
- 3) Acts to undermine or interfere with an employee's work performance.

A single act shall not constitute disrespectful conduct, unless especially severe and egregious.

Epithet: A word or phrase meant to characterize a person or thing, particularly in a negative or derogatory manner.

Humiliate: To disgrace, belittle, or make another appear foolish.

Insolent: Speaking or behaving in a way that is disrespectful or insulting.

Insult: To use offensive or disrespectful epithets towards others.

Intimidate: To behave in a manner that would cause a reasonable person to fear physical or emotional damage or harm.

Malice: A willful and conscious disregard of the feelings, rights, or safety of others.

Respectful Conduct: Behavior that expresses consideration of others' identities, viewpoints, and beliefs; restraint from behaviors that would be considered disrespectful conduct.

Retaliation: Verbal, nonverbal, or physical conduct or actions including the use of social media intended to injure or harm someone as a response to an action taken or perceived to have been taken; revenge.

Sabotage: The deliberate undermining of a person's work performance.

Threatening: Acting in a deliberately frightening quality or manner.

EXAMPLES OF BEHAVIORS

I. Examples of Respectful Behavior:

Every person is expected to abide by these values and standards of respectful interpersonal behavior, communication, and professionalism:

- We respect and value the contributions of all members of our community;
- We listen first and take responsibility for all our behaviors, including all verbal and nonverbal actions;
- We treat coworkers and others with respect, civility, and courtesy;
- We work honestly, effectively, and collegially;
- We respond promptly, courteously, and appropriately to requests for assistance or information;
- We use conflict management skills, together with respectful and courteous verbal communication, to effectively manage disagreements;
- We encourage and support all coworkers and others in developing their individual conflict management skills and talents;

- We have an open and cooperative approach in dealings with employees, recognizing and embracing individual differences;
- We recognize that differing social and cultural standards may mean that behavior that is acceptable to some may be perceived as unacceptable or unreasonable to others;
- We abide by all applicable rules, regulations, and policies and address any dissatisfaction with, or violation of, policies and procedures through appropriate channels;
- We demonstrate commitment to a culture where all coworkers cooperate and collaborate in using best practices to achieve positive work-related outcomes; and
- We are responsible stewards of resources and human assets to achieve excellence and innovation in the service to our community.

II. **Examples of Disrespectful Behavior**

Every person is expected to refrain from exhibiting disrespectful behavior. Examples of disrespectful behavior can include, but are not limited to, the following:

- Use of threatening or abusive language, or language that is intended to be, or is perceived by others to be, demeaning, berating, humiliating, or offensive;
- Intentionally ignoring someone, picking on an individual or group, or bullying;
- Making threats of violence, retribution, or financial harm; shouting or engaging in other speech, conduct, or behaviors that are reasonably perceived by others to represent intimidation;
- Using racial or ethnic slurs; demonstrating racial, gender, sexual orientation, or cultural bias (see also 1) City Council of Santa Cruz Policy 25.2 (*Discrimination and Harassment Policy*), and 2) Administrative Procedure Order II-1A, (*Discrimination/Harassment Policy Implementation and Complaint Procedure*));
- Making or telling jokes that are intended to be or that are reasonably perceived by others to be derogatory, crude, or offensive; teasing, name-calling, insulting, ridiculing, or making someone the brunt of pranks or practical jokes;
- Using sarcasm or cynicism directed as a personal attack on others;
- Spreading malicious rumors or gossip;
- Throwing instruments, tools, office equipment, or other items as an expression of anger, criticism, or threat, or in an otherwise disrespectful or abusive manner;
- Making comments or engaging in behavior that is untruthful or directed as a dishonest personal attack on the professional or personal conduct of others;
- Retaliation;
- Sabotage; and
- Insubordination: Not submitting to authority; being disobedient to proper direction from an organizational superior, including, but not limited to, refusal to do an assigned job, refusal to render assistance, refusal to work overtime when mandatory, insolent response to a work order, or unreasonable delay in carrying out an assignment.



RESPECTFUL WORKPLACE CONDUCT COMPLAINT FORM

SECTION I. Complainant Information (Person filing this complaint)

Name: _____

Address: _____

Phone: _____

Position: _____

Supervisor: _____

SECTION II. Respondent Information (Person this complaint is being filed against)

Name: _____

Job Title: _____

Department: _____

SECTION III. Description of Complaint

Date and Time of Incident: _____

Location of Incident: _____

1. Please provide a description of the incident(s) constituting the alleged violation. Include the person(s) involved, and the name(s), and contact information of any person(s) who may have knowledge of the incident(s). (Attach additional sheets if necessary.)
