

RESOLUTION NO. R2021-22

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, AMENDING PERSONNEL POLICIES 3.01 EQUAL EMPLOYMENT OPPORTUNITY, 8.10 LEAVE OF ABSENCE, 7.04 WORKMAN'S COMPENSATION PROGRAM, ADDING PERSONNEL POLICIES 1.08 AMERICANS WITH DISABILITIES ACT, 8.16 HEALTH/MEDICAL EXAMINATIONS/FITNESS FOR DUTY, 10.06 MODIFIED DUTY ASSIGNMENTS, AND REMOVING PERSONNEL POLICIES 8.05 INJURY LEAVE AND 10.04 ON THE JOB INJURIES BY UPDATING AND CLARIFYING POLICY REQUIREMENTS.

Whereas, the City Council believes its personnel policies should reflect the needs of the City and meet all applicable state and federal labor laws; and

Whereas, it is necessary to update, revise, and clarify language in the City of Burnet Personnel Policies consistent with laws, regulations, and industry standard practices; and

Whereas, the City of Burnet has previously adopted Ordinance No. 2009-31, Personnel Policy Manual on December 8, 2009; and

Whereas, the Personnel Policy Manual was last revised on January 12, 2021; and

Whereas, the City Council believes it is in the best interest of the City and its employees to make additional amendments to said Personnel Policy Manual; and

Whereas, the City Council has reviewed the proposed amendments to the Personnel Policy Manual and has determined the need to update and clarify those sections.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section 1. The City Council hereby accepts and adopts the amendment to the Personnel Policy as attached hereto as Exhibit "A" with an effective date of May 25, 2021.

Section 2. The findings and recitations set out herein above are found to be true and correct and are hereby adopted by the City Council and made a part hereof for all purposes as findings of fact.

Section 3. If any provision of this resolution or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications hereof which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

Section 4. That it is hereby officially found and determined that the meeting at which this resolution is passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Chapt. 551, Loc. Gov't. Code.

PASSED AND APPROVED on this 25th day of May 2021.

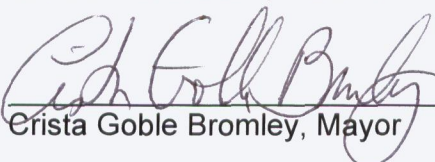
ATTEST:



Kelly Dix, City Secretary



CITY OF BURNET, TEXAS



Crista Goble Bromley, Mayor

Addendum - Human Resources Personnel Policies
City Council Agenda Item
May 25, 2021

3.01 EQUAL OPPORTUNITY POLICY (Current/Remove)

Affirmative action shall be taken to promote equal employment opportunity in the City service. Discrimination against any person in recruitment, examination, appointment, training, promotion, discipline, pay, or any other aspect of personal administration because of political or religious opinions or affiliations, membership or non-membership in employee organizations, or, because of race, color, natural origin, marital status, or other non-merit factors, is prohibited. Discrimination on the basis of age, sex, or physical disability is prohibited except where specific age, sex, or physical requirements constitute an occupational qualification necessary to perform the essential functions of the position. It is the policy of the City to maintain a work environment free of harassment. Employees will demonstrate concern for the well-being of their coworkers. Harassment of an individual by fellow employees is not permitted, regardless of their working relationship.

3.01 EQUAL EMPLOYMENT OPPORTUNITY (Proposed)

The City of Burnet provides equal employment opportunities to all employees and applicants for employment and prohibits discrimination and harassment of any type because of race, color, religion, age, sex, national origin, disability status, genetics, protected veteran status, sexual orientation, gender identity or expression, or any other characteristic protected by federal, state or local laws. This policy applies to all terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training.

1.08 AMERICANS WITH DISABILITIES ACT (New)

To ensure compliance with the Americans with Disabilities Act (ADA) and Americans with Disabilities Act as Amended (ADAAA), the City offers equal employment opportunity to qualified individuals and strictly prohibits discrimination against qualified individuals on the basis of disability.

The City will provide reasonable accommodation to the known physical or mental impairments of an otherwise qualified individual with a disability if such reasonable accommodation will enable the individual to perform the essential functions of the position. The City's obligation under this policy is limited to providing reasonable accommodations that will not result in undue hardship to the City.

Any employee seeking a reasonable accommodation for a disability that affects the employee's ability to perform the essential functions of the position shall advise the Human Resources Department in writing or verbally. The City will engage in the interactive process to assess the essential functions of the position and reasonable accommodation under this policy.

Employees who have a complaint involving potential violations of the ADA or ADAAA, including but not limited to harassment, discrimination, or failure to provide a reasonable accommodation, must immediately contact the Human Resources Department.

8.16 HEALTH/MEDICAL EXAMINATIONS/FITNESS FOR DUTY (New)

The City endeavors to provide a safe work environment for all employees. It is the responsibility of each employee to maintain the standards of physical and mental health fitness required for performing the essential functions of the position, either with or without reasonable accommodation. Failure to maintain the ability to

function as an effective employee because of a degraded fitness or mental level will be evaluated under the ADA and other City policies, and may result in separation of employment.

Serious Health Condition/Disabilities. The City recognizes that employees with a potentially life-threatening and/or infectious illness or physical and/or mental disabilities may wish to continue to engage in as many of their normal pursuits as their condition allows, including their employment. As long as these employees are able to perform the essential functions of their job, with or without a reasonable accommodation, without creating an undue hardship on other employees or the City, and medical evidence indicates that their condition is not a direct threat to themselves or others, the City will treat them consistently with other employees.

Medical Exams for Current Employees. The City Manager, Director of Human Resources, or an employee's Department Director (with the prior approval of the Director of Human Resources and City Manager) may require a current employee to undergo a medical and/or psychological examination, by a professional of the City's choosing, to determine fitness for continued employment, as may be necessary in order for the City to provide a reasonable accommodation; based on reasonable suspicion that the employee is not fit for duty; following an injury or accident; and as otherwise permitted in accordance with applicable laws. Refusal to submit to or participate in a medical/psychological fitness for duty examination is grounds for termination.

Medical Information from an Employee's Doctor. Under certain circumstances (e.g., FMLA Certifications), Human Resources may require employees to provide medical information from their health care provider. In such cases, employees are to inform their health care provider not to provide any genetic information when responding to such request.

Genetic Information. In accordance with the Genetic Information Nondiscrimination Act (GINA), the City will neither request nor require genetic information of an employee or his/her family member, except as specifically allowed by GINA. To comply with GINA, employees are directed not to provide any genetic information when responding to any City request for medical information. "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or embryo lawfully held by an individual or family member receiving assistive reproductive services.

Medical Records. Medical records and sensitive information regarding an employee's health will be kept confidential as required by law. Limited information may be provided to supervisors and managers, first aid and safety personnel, government officials, Texas Workers' Compensation Commission, and as necessary for insurance and other business-related purposes.

Return to Work/Fitness for Duty. Before returning to work following a medical and/or psychological examination under this policy, the employee must coordinate his/her return through Human Resources. An employee who misses work due to medical reasons may be required to provide a fitness-for-duty certification before returning to work.

Time Off From Work. Time away from work undergoing a City mandated fitness for duty examination will normally be coded to paid administrative leave, but may be retroactively changed to sick leave, Family Medical Leave Act leave, and/or other paid/unpaid leave as circumstances warrant.

8.10 LEAVE OF ABSENCE (Current/Remove)

Granting a leave of absence is at the discretion of the City Manager, but such leave is not authorized unless there is a reasonable expectation that the employee will return to employment with the City at the end of the approved period.

Employees on unpaid leave of absence receive no compensation and accrue no benefits.

Previously accrued benefits are retained during leave of absence unless otherwise prohibited by the terms or provisions of the benefit programs. Employee and dependent insurance benefits can be continued if paid for in advance by the employee.

A leave of absence is appropriate for reasons including but not limited to:

- Educational purposes when successful completion will contribute to the value of the service of the City,
- Public service assignments, or
- Personnel exchange programs that emphasize intergovernmental relations.

Upon written approval of the City Manager and Department Director, an employee may be granted up to fifteen (15) days of unpaid leave of absence. After fifteen (15) days, an employee may apply for an additional thirty days of unpaid leave time resulting in a maximum of forty-five (45) days off. During this time, an employee accrues no additional vacation, sick leave, or longevity benefits, but retains those already accrued. Insurance benefits are retained during unpaid leave of absence unless otherwise prohibited by the terms or provisions of the benefit program.

Upon the expiration of the approved leave, the City Manager will attempt to place the employee in the same or equivalent position, at the salary of the position offered. Refusal to accept the new position shall be considered a voluntary termination. Should the employee fail to return to work on the first day after the expiration of their leave, they will be considered voluntarily separated.

A leave of absence may be revoked upon receipt of evidence that the cause for granting such leave was misrepresented or has ceased to exist.

8.10 LEAVE OF ABSENCE (Proposed)

It is the policy of the City of Burnet to allow employees to take official leaves of absence (LOA), with or without pay, provided the reasons for such leaves are acceptable to management, and there is a reasonable expectation that the employee will return to work at the end of the approved leave period. This policy will be applied in accordance with applicable law.

Definition - A leave of absence is an officially approved temporary suspension of employment, not to exceed three months, initiated at the employee's request. The employee's name remains on the payroll and seniority remains intact.

Criteria - Factors considered by the City in granting a LOA include the reason for the leave; departmental work requirements; the employee's length of service, work performance and disciplinary history.

Any employee who is absent from the workplace for three consecutive months may be terminated from the City. The three-month period does not include approved leave taken under the Family and Medical Leave Act (FMLA) or other approved leave by the City Manager. This policy applies to all full-time City of Burnet employees, regardless of the reason(s) for their absence from work.

This policy will be administered consistently with the City's obligation under the Americans with Disabilities Act (ADA), including considering leave as a possible reasonable accommodation.

Eligibility - In order to be eligible for a personal leave of absence, an employee must have completed at least one year's continuous full-time service with the City and have successfully completed his/her initial evaluation/new employee orientation period.

PROCEDURES

- **City LOA Runs Concurrently With Other Types of Leave** - The City LOA is typically unpaid unless the absence also qualifies for paid leave under another City policy, at which point the City LOA and paid leave will run concurrently.
- **Sick Leave** - If an employee has any available accrued sick leave, it must be used concurrently with any available City LOA time, provided the employee's absence is covered by the City's sick leave policy and the employee satisfies that policy's procedural requirements.
- **Vacation and Comp Time** - If a City LOA qualifying absence is not covered by the City's sick leave policy or if the employee has exhausted all accrued sick leave, the following leave time will be applied and will run concurrently with any remaining LOA time in this order: accrued vacation and then comp time.
- **Disability & Workers' Compensation Leave** - Workers' compensation and short- and long-term disability absences will run concurrently with City LOA.
- **Benefits Only Status** – Employees on LOA status who do not receive a paycheck from the City of Burnet will be transitioned to a Benefits Only status. During this period, employees will no longer accrue vacation, holiday, and sick leave or pay for holidays, and must pay their benefit premiums to the City of Burnet while on LOA.
- **Applications and Condition** - An employee desiring a leave of absence must make a fully detailed written request stating the purpose and beginning and ending dates of the leave to his or her Department Director, who, with the Human Resources Director and City Manager, will review the request and give it approval or disapproval according to City policy. The request for a leave must normally be made at least two weeks prior to the first day of the leave. The need for a medical LOA must be supported by documentation acceptable to the City, including but not limited to a doctor's explanation of why the employee cannot perform his/her duties, when he/she is expected to return to work, and periodic updates regarding the employee's ability or inability to return to work. The Department Director and/or City Manager may require that the employee on leave periodically contact a designated supervisor to report on his/her condition or status. Before returning to work from a medical LOA, the employee may be required to submit a letter from his or her doctor stating that the employee is able to resume his or her normal job duties. The City may also impose additional return to work requirements as set out in the City's Health/Medical Examinations/Fitness for Duty Policy (8.16) or pursuant to the FMLA policy.

An employee failing to report to work on the first working day following the expiration of the leave will be considered to have voluntarily resigned.

CONTINUATION OF BENEFITS

- **Group Health Insurance** - During any period of approved City LOA, the City will continue to pay its portion, if any, of any group insurance coverage for the employee on the same terms as if the employee had continued to work. Where applicable, the employee must timely pay his or her share of insurance premiums while on City LOA. An employee's failure to pay his/her own or the City's portion of insurance premiums during a leave will likely result in cancellation of coverage.
- **Other Benefits** - The employee's use of City LOA will not result in the loss of any employment benefits that accrued prior to the start of the employee's leave, and seniority will not be affected while on City LOA. However, benefit accruals such as vacation and sick leave may be suspended during any unpaid leave.
- **Holidays** - When an employee takes a full work week of City LOA and a holiday occurs within that week, the full week (7 days) is counted against the 90 allowed calendar days.

- **TMRS** - Contributions to TMRS will cease when an employee on unpaid leave ceases to receive a paycheck from the City and will resume after the employee returns to a paid status.

JOB RESTORATION AFTER CITY LOA

An employee's return to work from leave of absence status is always subject to and contingent upon availability of current openings for which he or she is qualified; it may or may not be possible to place him or her in the same job or in the same department. The City will make an effort to place the employee back into its original position. Normally, during a leave of absence, the workload of the employee on leave is absorbed by other employees. If this is not practical, the Department Director and Human Resources Director, with approval of the City Manager will jointly determine whether the employee must be replaced or other accommodations can be made in other positions.

Other Employment During Leave - Under no circumstances may an employee on a City LOA, sick leave, disability leave, or workers' compensation leave engage in outside employment unless expressly authorized in writing in advance by the Department Director and the City Manager.

Revocation - The City Manager may revoke an approved leave of absence at any time. Failure to provide required medical status reports, physician's statements, or to contact the City per the required schedule will likely result in revocation of the LOA and/or disciplinary action up to and including dismissal.

8.05 INJURY LEAVE (Current/Remove)

For information on occupational disability or injury leave for on-the-job, work related injuries, please see Section 10.00 in these policies on Health and Safety.

7.04 WORKMAN'S COMPENSATION PROGRAM (Current/Remove)

The City of Burnet provides worker's compensation benefits to all employees who are injured on the job while in the course and scope of employment. Worker's compensation benefits include payment for medical expenses related to the injury, as well as partial salary continuation benefits in accordance with state law. If you are injured on the job, you must report the incident immediately to your supervisor. A First Report of Injury Form will be completed by your supervisor and will be forwarded to the Human Resources Director immediately. Failure to report your injury may affect your eligibility to receive worker's compensation benefits and may delay your benefit payments. It is the policy of the City of Burnet to investigate those claims that may be deemed as frivolous and/or unwarranted. An on-the-job-injury (OJI) commences on the date the employee begins missing work due to the OJI. Each employee has a responsibility for knowing and following all policies and procedures pertaining to an on-the-job-injury. Employees injured as the result of negligent behavior may be terminated in accordance with the City's safety policies regardless of worker's compensation benefits being awarded.

If the employee is approved for worker's compensation benefits or short-term or long-term disability, the employee's absence from work is automatically approved for FMLA, provided he/she has met the FMLA's eligibility requirements. This means that worker's compensation and short-term or long-term disability absences will run concurrently with FMLA leave. Employees being paid either worker's compensation salary benefits or short-term or long-term disability benefits while on leave are not required to use accrued sick, personal, holiday, comp time or vacation leave while collecting worker's compensation or disability benefits.

Worker's compensation benefits do not begin until the employee is off work because of an injury in accordance with state law. The employee may elect to be paid any sick or vacation hours that are available for these days.

An employee must:

- As soon as possible, report all on-the-job-injuries to his or her supervisor.
- Comply with the instructions of the treating physician.
- Comply with requests from Administration and/or the workman's compensation insurance carrier offices pertaining to the administration of the claim.

- Report to his or her supervisor either in person or by telephone each week while absent from work to report on his or her condition.
- Not perform any work for pay while absent from work due to an OJI.
- Prior to returning to work, provide a written statement from an appropriate physician certifying the employee has been released to return to work, and specifying the type(s) of work (s)he is capable of performing as well as any limitation(s).

Failure to comply with the provisions of this policy will result in disciplinary action. An employee who sustains a job-related injury, which includes medical attention, may use a Texas Workman's Compensation Commission approved physician of his or her own choice. However, the employee may also be required to see a doctor required by the City Manager and/or our worker's compensation carrier.

When an employee is off for a period of six (6) months, their City sponsored group benefits will continue through the end of that month. During any period that the employee is not receiving a paycheck from the City, (s)he will be responsible for remitting the amount of the dependent benefit premium, if any, to the Human Resources Department. At the end of the six months, the employee will be responsible for remitting the full amount of the employee and dependent benefit premium to the Human Resources Department. An OJI may not be used in conjunction or relation with the Family and Medical Leave policy.

10.04 ON THE JOB INJURIES (Current/Remove)

The City provides Worker's Compensation Insurance for all of its employees in accordance with state and federal law. This insurance provides medical expenses and a weekly payment if an employee is absent from work because of an on-the-job injury. All employees who incur an on-the-job injury must immediately notify their supervisor and must complete a First Report of Injury as soon as reasonably possible after an accident but in all cases within 48 hours.

After six (6) months off, accrual of sick leave, vacation leave, and City provided medical, dental, & life insurance ceases until the employee returns to work.

If the employee is approved for worker's compensation benefits or short-term or long-term disability, the employee's absence from work is automatically approved for FMLA, provided he/she has met the FMLA's eligibility requirements. This means that worker's compensation and short-term or long-term disability absences will run concurrently with FMLA leave. Employees being paid either worker's compensation salary benefits or short-term or long-term disability benefits while on leave are not required to use accrued sick, personal, holiday, comp time or vacation leave while collecting worker's compensation or disability benefits.

During the time off due to on-the-job injuries, employee is still responsible for paying dependent health and dental insurance premiums. If no provision is made, coverage will be dropped. It is the employee's responsibility to make sure all payments typically paid through payroll deductions are being paid.

An employee who sustains an on-the-job injury will seek medical attention from the medical facility or professional of the employee's initial choice providing that the physician is a Texas Workman's Compensation Commission approved physician. Employees on leave for an on-the-job injury must provide a medical doctor's statement as to the date upon which the employee is no longer able to perform his/her duties and the expected length of the recuperation period. Employees must also provide periodic statements from a medical doctor as to whether or not the employee is able to return to work. The employee shall periodically contact a City supervisor weekly to report on his/her condition. Failure to provide required medical status reports or to contact the office on a regular schedule as set by the City Manager and Department Director is grounds for revoking the leave and for taking disciplinary action.

Return to Service A written statement from an appropriate physician certifying the employee has been released to return to work and specifying the type(s) of work (s)he is capable of performing as well as any limitation(s) must be received by the Personnel Director before an employee may return to work. All employees on injury

leave must return to work after approval of either the employee's attending physician or an independent physician paid for by the City. Failure to return to work when directed will result in appropriate disciplinary action.

Light Duty During the course of an occupational disability leave of absence, if an employee is released by his/her doctor for light duty and upon written notification of such to the Personnel Director, the employee's job or alternative job assignment(s) will be evaluated for a determination of whether a position is available in which the City can use the employee's limited services for an interim period of time. If no appropriate light duty assignment can be found that is approved by the employee's doctor, the employee will be placed on inactive status until released by the doctor and worker's compensation to return to his/her previous job. An employee who is able to return to work in light duty status and perform the tasks of the position may be required to work in a different department and perform duties not contained within his/her current classification without loss of pay. Light duty status is provided to allow employees to return from a job-related injury to minimize absence when light duty work is available that is determined to be appropriate by the employee's doctor. Refusal to perform light duty tasks deemed appropriate by the employee's doctor will be considered a resignation by the employee.

Final Release Statement At the time of final release or settlement of a worker's compensation claim, the employee must furnish the Personnel Director with a certificate from the employee's physician stating that the employee is able to return to work. The certificate must also specify any time limitation on the employee's physical condition and the estimated duration of those conditions. The City may require additional information or documentation to evaluate the employee's fitness for duty and to ensure to position the employee is returned to will accommodate the physical limitations, if any, of the employee. The position the employee is returned to may not be the position previously held. The accommodations required or the amount of time elapsing between the injury and return to work may impact the position offered upon return. The City shall ensure reinstatement of seniority, pay and benefits at the same level as prior to the injury.

Employees released to return to work but refusing to return to work or refusing to accept a reasonable accommodation may be terminated for cause. The employee's doctor or a physician selected by the City shall provide the City with a detailed explanation of the duties the employee can perform, and the accommodations required to return to work. The City may require the employee to have an approved physician review the light duty accommodations to approve or disapprove any accommodations.

10.04 WORKERS COMPENSATION (Proposed)

A. Eligibility for Workers' Compensation

Workers' compensation is designed to cover the costs associated with injuries resulting from identifiable and specific accidents or injuries occurring during the course and scope of one's employment. It is not designed to cover ordinary diseases of life. All employees of the City are covered by workers' compensation insurance.

An employee injured on the job may be eligible for workers' compensation benefits, which may cover the cost of hospitalization, doctors, treatment, prescription drugs and other related expenses, to include possible partial salary continuation.

Injuries not directly related to or caused by a specific accident or incident that occurred in the performance of the employee's job duties for the City, injuries occurring while an employee is working or volunteering for an employer or organization other than the City, and/or injuries occurring during self-employment, are not covered under the City's workers' compensation plan.

B. Accident and Injury Reporting Procedures

Medical Attention

When an employee is injured on the job, the City's first priority is to ensure that the employee gets timely medical attention. The employee must immediately report the circumstances of the accident and/or injury to the supervisor who will direct the employee to seek medical treatment, if necessary, from the Approved Doctor List (ADL), as provided by the Texas Department of Insurance.

Reporting and Documentation

The employee's supervisor is responsible for notifying the Human Resources Department and the employee's Department Director immediately upon being made aware of an employee's involvement in an accident or injury. This timely notification is critical.

The employee's supervisor will initiate a thorough investigation into the cause and circumstances of the accident causing the injury, including interviewing all witnesses and preparing a detailed written report explaining the facts of the accident that occurred. The supervisor must submit the City's Accident Report, First Report of Injury or Illness and any other related information to the Human Resources Department no later than the next business day after the injury was reported or no later than 9 a.m. on Monday for injuries occurring over the weekend. Extensions may be granted for unusual circumstances.

If the employee's supervisor has reason to believe that an injury has been reported that is not directly related to or caused by a specific accident or incident occurring in the performance of the employee's assigned job duties, the supervisor must advise Human Resources of these circumstances. The decision of whether or not an injury will be covered by workers' compensation is not made by the City.

If the employee's treating physician recommends convalescence at home, the employee is required to contact the supervisor and Human Resources Department weekly during the time away from work. For every doctor's office visit, the employee is required to obtain from his doctor a completed Work Status Report, which includes the employee's diagnosis, when the employee is expected to be able to return to work, the employee's restrictions and the date of the employee's next appointment. It is the employee's responsibility to ensure that a copy of the Work Status Report is forwarded to the Human Resources Department and to the supervisor. Failure to report to Human Resources as required may result in disciplinary action, up to and including termination of employment.

C. Returning to Work

The employee is to return to work immediately after treatment unless the employee's physician will permit neither regular duty nor modified duty. The employee must have a written release from the doctor to return to work and the release must specify any restrictions. The City does not guarantee the availability of a modified duty opportunity. However, the employee must accept any modified duty assignment that is offered, including an assignment in another department.

All modified duty assignments must be approved by the Human Resources Director to ensure compliance with the City's policies, the physician's restrictions/release and with the Americans with Disabilities Act (ADA,) the Americans with Disabilities Act as Amended (ADAAA).

D. Maximum Time Limits

Subject to other restrictions, limitations and earlier terminations as applicable in particular circumstances, the City will hold open an employee's position, following an injury that occurred while performing official job duties or conducting City business, for a reasonable time period if holding the position does not result in undue hardship on the City and in accordance with the ADA/ADAAA. If applicable, twelve weeks of this period will be deemed

leave under the Family and Medical Leave Act (FMLA), running concurrently with the employee's worker's compensation leave.

The Director of Human Resources will engage in discussions of any reasonable accommodations that may assist the employee in performing the essential functions of the job. At the end of the reasonable period of time, should the employee still be unable for any reason to perform the essential duties of the job, with or without accommodation, the employee's position may be filled, and the employee may be considered for a vacant position for which the employee is qualified and released from the physician to perform. If no vacant position is available for which the employee is qualified, if not selected to fill the vacant position or if the employee declines to accept another position, employment with the City will be terminated.

Other Employment During Workers Compensation. Employees that are on workers' compensation from the City of Burnet may not work a second job, including self-employment or participate in volunteer work while on workers' compensation.

10.06 MODIFIED DUTY ASSIGNMENTS (New)

The City may modify duty assignments available to ill or injured employees who are temporarily unable to perform their regular job duties. The decision to offer an employee a modified duty assignment is made in the City's sole discretion in accordance with the City's policies including but not limited to the ADA/ADAAA or FMLA. A modified duty assignment may be in the employee's own or another department in the City. Factors considered by the City in making its decision include, but are not limited to: the nature of the employee's illness or injury; the medical release provided in support of modified duty; the risk that a modified duty assignment may result in aggravation of the employee's injury or illness; the type of modified duty work available; the length of the employee's employment with the City; the employee's performance and disciplinary history; and whether the illness or injury occurred on or off duty.

Employees who are released for and given a modified duty assignment may not perform work duties in violation of their medical release. An employee, who violates the terms of the medical release while on a modified duty assignment may (1) lose the modified duty assignment, (2) be returned to leave status the employee had prior to obtaining the modified duty assignment, and (3) in addition, may be disciplined up to and including termination of employment.

Modified duty will not normally extend beyond 45 calendar days without an evaluation by the employee's treating physician and a recommendation from the Department Director and Director of Human Resources to the City Manager. Only the City Manager may approve an extension of a modified duty assignment. Employees still unable to return to regular duty within the time limit established for modified duty must re-qualify for modified duty through evaluation by the treating physician or revert to workers' compensation indemnity payment, accumulated sick leave, Family Medical Leave Act (FMLA) or vacation benefits, if available.

An employee who is released for and offered modified duty by the City, but who elects not to accept such an assignment, will be ineligible for paid sick leave benefits under the City's Sick Leave policy and salary continuation benefits under workers' compensation, but may still be entitled to unpaid leave under the City's Family Medical Leave Act policy.

During a modified duty assignment, employees will typically work an 8-hour workday, Monday through Friday. This means that 24-hour shift employees, as well as other employees who work a non-traditional schedule, will usually be temporarily reassigned to an 8-hour workday, Monday through Friday, for the duration of their modified duty assignment.

An employee's salary during any modified duty assignment shall be at the same rate as the salary received prior to the injury.

All modified duty requests and assignments will be reviewed by and coordinated through the Director of Human Resources. The Director of Human Resources will work with the employee's department in making its decision whether modified duty work will be offered. Before returning to regular job duties following a modified duty assignment, the employee must provide a release from the physician to return to work, including any accommodation(s) that may be required, and coordinate the return through the Director of Human Resources.

Other Employment During Modified Duty Assignment. Employees on a modified duty assignment, may not work a second job, including self-employment or participate in volunteer work. Exceptions to this policy must be obtained in writing from the Department Director and the City Manager.