

ADA Compliance Policy

- 1.0 **POLICY STATEMENT:** To provide management staff with a policy to resolve issues under the Americans with Disabilities Act (ADA).

- 2.0 **PROCEDURES:** It is the City's policy not to discriminate against qualified individuals with disabilities and to provide reasonable accommodations as required by law to otherwise qualified applicants or employees with disabilities in all employment practices, including job application procedures, hiring, advancement, job assignments, leaves of absence, transfers, layoffs, demotions, discipline, discharge, compensation, fringe benefits and job training. Employment opportunities will not be denied to an otherwise qualified applicant or employee because of the need to make a reasonable accommodation to the physical or mental impairment(s) of such individual.
 - 2.1 Although this policy is largely described in terms of accommodations that may allow an applicant or employee with a disability to perform the essential functions of the position desired or held, the policy is also applicable to accommodations involving the job application process and to accommodations that would enable an employee with a disability to enjoy equal benefits and privileges of employment.
 - 2.2 The procedures contained herein are not exclusive of other employment-related inquiries that the city in its discretion may make as permitted or required by local, state or federal law and in conformance with the Americans With Disabilities Act.
 - 2.3 This policy does not create an express or implied contract of employment. Applicants with conditional job offers or employees are subject to withdrawal of offers or termination at any time, for any reason, except as otherwise prohibited by law.
 - 2.4 Definitions of "Disability," Qualified Individual with a Disability: and "Otherwise Qualified" –
 - 2.4.1 A "disability" with respect to an applicant or employee is: (1) a physical or mental impairment that substantially limits one or more of the major life activities of such individual, (2) a record of such an impairment, or (3) being regarded as such an impairment. Individuals with disabilities may include persons who are mobility impaired, sensory impaired, cosmetically disfigured, mentally ill, mentally retarded, emotionally troubled, learning disabled, neurologically, psychologically, physiologically or otherwise impaired or have suffered an anatomical loss.

“Major life activities” include caring for oneself, performing manual tasks, walking, sitting,

Policy: HR-141
Effective: August 8, 1994
Page: 2 of 8

standing, lifting, reaching, seeing, hearing, speaking, breathing, learning, and working.

2.4.2 A “qualified individual with a disability” means, with respect to employment, “an individual with a disability who satisfies the requisite skill, experience, education and other job-related selection requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation can perform the essential functions of such position.”

2.4.3 An applicant or employee with a disability is “otherwise qualified” if he or she is qualified for a job, “in that he or she satisfies all of the skill, experience, education and other job-related selection criteria”, except that, because of the disability, he or she needs a reasonable accommodation to be able to perform the essential functions of the position in question.

2.5 *Scope of Reasonable Accommodation* - In the It is the city’s intention to hire, employ or promote the best qualified candidate for a job whether disabled or not. When requested by an otherwise qualified applicant or employee with a disability to do so, the city is prepared to modify or adjust the job application process or the job or work environment to make “reasonable accommodation” to the known physical or mental limitations of the applicant or employee to enable the applicant or employee to be considered for the position he or she desires, to perform the essential functions of the position in question or to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities, unless: (1) the accommodation would impose an “undue hardship” on the operation of the city’s business, (2) taking into account the disabled applicant’s or employees qualifications with the requested accommodation, he or she is not the best qualified candidate, or (3) the applicant or employee would still pose a direct threat of substantial harm to the health or safety of himself or herself or others.

2.6 Subject to the determinations referenced in Paragraph III. A. above, reasonable accommodations may include: making existing facilities used by employees readily accessible to and usable by individuals with disabilities; restructuring jobs by reallocating or redistributing marginal job functions; altering when or how an essential job function is performed; modifying or making work schedules part-time; reassigning employees with disabilities to vacant positions; acquiring or modifying equipment or devices; adjusting or modifying employment tests, training materials or policies; permitting use of accrued leave or leave without pay for necessary medical treatment; providing reserved parking for employees with mobility impairments; allowing employees to provide equipment or devices that the city is not required to provide; and other similar accommodations.

- 2.7 In determining the city's ability to offer reasonable accommodation to an otherwise qualified applicant or employee with a disability, each request for an accommodation will be evaluated on a case-by-case basis. Factors to be examined include, among others, the purpose and essential functions of the job; the precise job-related abilities and functional limitations of the applicant or employee and how those limitations could be overcome with reasonable accommodation(s); the nature and cost of the accommodation needed in relation to the city's and the facility's respective financial resources; the impact financially and otherwise of such an accommodation upon the operation of the city and the facility; and other federal and state regulatory requirements.
- 2.8 The city is not required to offer or provide an accommodation or to employ or continue to employ the individual with a disability when: (1) an applicant or employee with a disability is not otherwise qualified to perform a particular job, (2) reasonable accommodation would not overcome the effects of a person's disability, (3) reasonable accommodation would cause undue hardship to the city, or (4) an applicant or employee would still pose a direct threat of substantial harm to the health or safety of himself or herself or others.
- 2.9 *Procedure for Applicants* - Questions directed to an applicant must focus on the applicant's ability to perform the essential job functions. An applicant may also be asked about his or her ability to perform additional job functions.
- 2.10 During the course of an interview, the interviewer must show the applicant a copy of the job description (if one exists) for the position for which the applicant applied and review each essential job function with the applicant. If a job description does not exist, the interviewer should describe for and review with the applicant the essential and other functions of the job for which the applicant applied.
- 2.11 The interviewer may ask an applicant whether he or she is able to perform essential functions of the job with or without reasonable accommodation. If an applicant indicates in response to such an inquiry that he or she can perform the essential job functions but does not volunteer the need for an accommodation, then no inquiry shall be made about the need for an accommodation. If, however, an applicant indicates in response to such an inquiry that he or she can perform the essential functions of the job but does volunteer the need for an accommodation, the interviewer shall ask the applicant how he or she will perform the essential job tasks and with what accommodations.
- 2.12 The interviewer shall not ask the applicant whether he or she has a physical or psychological disability of any kind. If the applicant volunteers information about a disability, the interviewer shall not ask any questions about the disability,

including questions related to the nature or the extent of the disability or whether treatment will be necessary because of the disability.

- 2.13 The interviewer shall not ask an applicant about his or her medical history, his or her past or current injuries, his or her workers' compensation history, his or her past work absences due to illness, his or her treatment for physical or psychological disabilities, or any matters about which associates are prohibited from inquiring under the Americans With Disabilities Act.
- 2.14 The interviewer shall not ask an applicant whether he or she will require or need leaves of absence for medical treatment or other reasons related to disability. However, the interviewer may: (1) provide information about regular hours of work, leave policies and any special attendance needs or requests, and (2) ask if the applicant can meet these requirements.
- 2.15 After completing the interview process, the city will extend a conditional offer of employment to the most qualified applicant for the position. The offer extended is conditional upon the completion of a conditional-offer questionnaire by the offeree and the decision by the city whether to confirm the offer after reviewing the questionnaire and conducting whatever further inquiry it deems appropriate. The conditional offer of employment shall not give the conditional offeree any right to employment as the offeree is not an employee of the city until the offer is confirmed.
- 2.16 If the conditional offeree indicates on the questionnaire that the essential functions of the job applied for can be performed without the need for an accommodation, then the city will either withdraw or confirm the conditional offer of employment. If the conditional offeree indicates on the questionnaire that an accommodation is necessary, the city will either: (1) confirm the conditional offer of employment with the accommodation requested; (2) confirm the conditional offer of employment with a different accommodation than that requested but with the agreement of the offeree; (3) make further inquiry regarding the need for the requested accommodation and act accordingly, or (4) withdraw the conditional offer of employment.
- 2.17 If a conditional offeree has requested an accommodation and the need is not obvious, or the city does not believe that the accommodation is needed or has some question about the need for the accommodation, the city may make inquiries or request documentation of the conditional offeree concerning that person's functional limitations that would support the request. A deadline of one week (7 calendar days) from the date of receipt of the request for such documentation will be allowed in which the documentation, including medical records, must be provided to the city. The conditional offeree shall also provide a medical release from each healthcare provider from whom medical records are requested

permitting the city to receive and the city's representatives to review such medical records. All documentation received by the city will become the property of the city and will be treated as confidential.

- 2.18 Before any conditional offer of employment is withdrawn, the appropriate manager will consult with the Human Resources director.
- 2.19 *Request by Employee for Reasonable Accommodation* – To request reasonable accommodation under this policy, an employee must submit a written statement to the Human Resources Director which indicates the nature of the claimed physical or mental disability and identifies his or her abilities and functional limitation with respect to the claimed disability. The statement should also request reasonable accommodation or at the very least request that some adjustment or change is needed in his or her job because of limitations caused by the disability.
- 2.20 In the written request, the employee with a disability shall also assist the city in determining if and what reasonable accommodation might be provided by identifying: (1) any special methods, skills or procedures which would enable him or her to perform tasks or functions that he or she otherwise might not be able to perform because of his or her disability, (2) the potential accommodations the city might make that would enable him or her to perform the essential functions of the job, properly and safely, including special equipment, changes in the physical layout of the job or other accommodations, and (3) any equipment, aids or services that the employee is willing to provide and utilize that the city is not required to provide. If the employee requires secretarial or other assistance in preparing the request due to his or her disability, this will be provided upon request.
- 2.21 An otherwise qualified employee who identifies himself or herself as having a disability and requests reasonable accommodation may be required to provide documentation, including medical records, sufficient to establish the existence of the claimed physical or mental impairment and the need for accommodation. The Human Resources Director designee may make such a request when the need for an accommodation is not obvious or when otherwise appropriate. A deadline of one week (7 calendar days) from the date of receipt of the request for such documentation will be allowed in which the documentation, including medical records, must be provided to the Human Resources Director. The employee shall also provide a medical release from each healthcare provider from whom medical records are requested permitting the city to receive and the city's representatives to review such medical records. All documentation received by the city will become the property of the city and will be treated as confidential.

- 2.22 The city may require an employee to undergo further testing and/or evaluation by medical personnel retained by the city to verify or establish the claimed disability and the need for accommodation and to provide a basis upon which a reasonable accommodation can be developed or implemented. The costs of such evaluation and testing will be paid by the city. All documentation related to such testing and/or evaluations shall be the property of the city and will be treated as confidential.
- 2.23 The Human Resources Director, individually or in consultation with medical or other personnel retained by the city, will determine whether the city considers the employee to be disabled. If the city determines that the employee is not disabled, the employee will be advised in writing by the Human Resources Director that the request for reasonable accommodation is denied.
- 2.24 Within the guidelines of this policy, once an employee has requested reasonable accommodation and is determined to be disabled, an assessment of the essential job functions that the employee is capable of performing will be made based on the individual's precise job-related abilities and functional limitations and whether and/or how reasonable accommodation would enable the employee to overcome those limitations and perform all of the essential job functions of the position. This assessment shall be made by the Human Resources Director, individually or in consultation with the appropriate department manager or medical or other personnel retained by the city. In making this assessment, the Human Resources Director or designee shall consult with the employee regarding the precise job-related physical or mental limitations imposed by the disability, potential reasonable accommodations to overcome those limitations and the effectiveness of various accommodations in enabling the applicant or employee to perform the essential functions of the position in question. A determination of whether and/or what reasonable accommodation will be offered to the employee will be made by the city. This determination shall be the responsibility of the Human Resources Director, individually or in consultation with medical or other appropriate personnel. In making the determination of what reasonable accommodation will be offered, the Human Resources Director will consider but not be bound by the input and preference of the employee.

The employee will be notified in writing by the Human Resources Director of the city's decision regarding providing reasonable accommodation. Employees with Obvious or Known Disabilities Who Are Not Performing the Essential Functions of the Job - If an employee with an obvious or known disability is having difficulty performing his or her job, the Human Resources Director, in consultation with the employee's department head, may ask the employee whether he or she is in need of a reasonable accommodation. If the employee then requests reasonable accommodation, the conditions and procedures stated in Section V of this policy shall be applied. However, if the employee does not

request reasonable accommodation, an accommodation will not be offered or provided.

- 2.25 Applicants or Employees Who Reject Reasonable Accommodation - If an applicant or employee with a disability rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the applicant or employee to perform the essential functions of the position desired or held, the applicant or employee will not be considered a qualified individual with a disability.
- 2.26 Reasonable accommodation does not negate requirements for good job performance, successful completion of assigned training, adherence to generally acceptable standards of behavior and adherence to supervisory instructions.
- 2.27 An employee with a disability who is reassigned to a vacant, lower graded position as an accommodation will receive the salary or wages of the lower graded position.
- 2.28 Reassignment is not available to applicants as a form of reasonable accommodation.
- 2.29 “Essential job functions” are those functions that are bona fide requisites of the position, as determined by objective criteria such as the fundamental tasks that must be accomplished to do the job, the amount of time required to be spent on the tasks and the relevance of the tasks to the mission of the department or facility. Determinations regarding which job functions are essential will be based on the job description in question, or if none, then by the Human Resources Director, individually or in consultation with other appropriate personnel.
- 2.30 Accommodations will not be offered that would impose “undue hardship” on the operation of the city’s business. An accommodation that would be unduly costly, extensive, substantial or disruptive or that would fundamentally alter the nature or operation of the city’s business would impose such an “undue hardship.” In making this determination, the city will take into consideration the availability of tax credits and deductions and outside funding sources. If the city determines that it would be an undue hardship to offer an accommodation, the employee or applicant requesting the accommodation may be given the option of providing the needed accommodation or paying that portion of the cost which constitutes the undue hardship.
- 2.31 The city will also deny employment opportunities to an applicant or employee when no reasonable accommodation exists that would either eliminate or reduce to an acceptable level any significant, direct threat of substantial harm that an

applicant or employee with a disability would pose to the health or safety of himself or herself or others.

2.32 If the essential job functions and/or duties of a position occupied by an employee with a disability are expanded, revised or modified, the conditions and procedures stated in this section and Sections V, VI, VII of this policy shall apply to any evaluation of the employee's ability to perform the essential functions of the changed, revised or modified position and the city's determination whether reasonable accommodation will be provided.

2.33 An employee who has a complaint about the application of this policy should contact the Human Resources Director.

3.0 RESPONSIBILITY: The Human Resources Director is responsible for the administration and communication of this policy.

APPROVED:

M. Denis Peterson
City Manager

Original: 08/08/1994
Revisions: