

## **2. GENERAL PROVISIONS (Rev August 2014)**

### **2.1. Purpose**

These policies are established to carry out the City's personnel resolution, or personnel ordinance, or intent of the governing board to adopt uniform personnel policies that will enable each employee to make his/her fullest contribution to the programs and services of the City.

The City retains the sole right to manage its affairs and direct its workforce within the existing framework of law (national, state, and local), but not limited to the right to plan, direct, and control its operations: to determine the location of its facilities; to determine working hours; to decide the types of services to be provided and the manner of providing them; to decide the work to be performed; to decide the method and place of providing its services; to determine the schedules of work; to hire, layoff, assign, transfer, and promote employees; to determine the qualifications of employees; to determine and re-determine job content; to determine the starting and quitting times; to make such reasonable rules and regulations not in conflict with any collective bargaining agreement, as it may from time to time deem best for the purpose of maintaining order, safety, and/or effective operations of its facilities and to require compliance therewith by employees; to discipline and discharge employees for cause. These management rights are not subject to the dispute resolution/grievance procedure except as may be provided in a collective bargaining agreement.

### **2.2. Scope**

In cases where the application of these policies would conflict with a collective bargaining agreement that is in effect between a recognized employee organization and the City, the provisions of the collective bargaining agreement shall govern. In all other cases, these policies shall govern. Nothing in these policies is intended to supersede applicable state or federal laws or administrative regulations related to personnel matters.

### **2.3. Computing Time for Notices**

For the purpose of determining the length of time periods for processing an action in these Policies, days shall be counted beginning with the calendar day following mailing or delivery of notice and concluding at 5 p.m. on the last day to be counted. If the last day to be counted falls on a weekend or a holiday, the period will end at 5 p.m. on the first City business day following the last counted day.

### **2.4. Administration**

The City of Mesquite reserves the right to change these personnel policies at any time. The City Manager shall have the authority and the duty to develop and promulgate administrative directives, interpretive memorandums, and other administrative procedures to execute the Personnel Ordinance and these Policies, and to implement the City's personnel program on a consistent basis.

All employees of the City are expected to read and familiarize themselves with the contents of these policies. Employees who fail to comply with these policies may be subject to disciplinary action, up to and including termination.

All changes, revisions, additions, and notices of deletions to these policies will be made available to all employees.

## **2.5. Change of Address**

It is the responsibility of each candidate and employee to keep the City informed, in writing, of his/her current address, telephone number, change of name through marriage or otherwise, and of any change in eligibility for appointment.

## **2.6. Failure to Receive Notices**

All written communications to employees shall be hand-delivered or sent by certified mail, return receipt required, and first class mail to the most current address on record. All written communications to applicants for employment shall be hand-delivered or sent by first class U.S. mail to the most current address shown on the application for employment. The City is not responsible in the event that mail is not received. It is the employee's responsibility to respond to all City communications, including those mailed to the address on record, and the responsibility of the eligible candidate to follow through with all phases of the selection process within the specified time. Failure of an employee to respond to a City communication for any reason may have an adverse effect on an individual's employment status and/or result in disqualification for hiring to a position.

## **2.7. Personnel Files**

### ***2.6.1 Guidelines***

The contents of each employee's personnel file may include the following:

- Job description
- Position's exempt/non-exempt status
- Job application/resume
- Job offer letter
- Any agreement between the employee and the City.
- Signed acknowledgments including receipt of City's policies and procedures, handbook, new employee orientation checklist, and related documents
- Enrollment documentation for City-sponsored benefits
- Emergency contact information
- Authorizations for release of information signed by employee
- Salary history record including rates of pay and other forms of compensation
- Employment history of positions held including promotion, demotion, transfer, layoff, termination
- Training/education records
- Performance evaluations
- Performance improvement plan, letters of instruction, reports of coaching/counseling session
- Documentation of oral reprimand, written reprimand, disciplinary notices and documents
- Letters of recognition, commendations, congratulations
- Separation checklists
- COBRA notice
- Exit interview (unless confidentiality was guaranteed)

The personnel file should NOT include any of the following:

- Grievances or the responses thereto
- I-9 immigration form and supporting documents
- General correspondence
- Any document which describes a medical or psychological condition of the employee or any other individual. (Medical and related documents must be kept in a separate, locked file to which access is strictly limited to those in a “need-to-know” position.)
- Investigation reports and supporting documents
- Employment examination results (written and/or oral testing)
- Employment interview questionnaires and supporting materials (including documentation of remarks by oral examiners)

### ***2.6.2 Maintenance of Personnel Files***

The City shall maintain a master personnel file for each employee. An employee’s supervisor or manager may elect to maintain a duplicate copy of the documents; however, this does not supersede or eliminate the City’s need to maintain the master personnel file for each employee. At the time of hire, each new employee will complete all government-required documentation, all City-required documentation, and when applicable, documentation pertaining to such matters as benefit plans enrollment and beneficiary designations. Where required, the employee is responsible for providing a copy of his/her driver’s license or other required license or certificate. Additionally, an employee must notify his/her supervisor or manager of any suspension, restriction, or revocation of his/her driver’s license, permit, or other license or certification required for the performance of his/her assigned job.

### ***2.6.3 Employee Access***

An employee may view the contents of his/her personnel file upon request. All inspections must be conducted in the presence of an authorized representative of the Personnel Department. An employee may make copies of any or all documents in his/her file, but may not remove any documents from the file. The City will provide only one (1) set of copies to the employee without charge per year. If the employee needs additional copies, s/he will be required to pay for them.

### ***2.6.4 Negative Information***

The City shall not put negative or derogatory material in an employee’s file unless the employee has had a reasonable opportunity to review the material beforehand. The City will require the employee to sign such material to indicate they have reviewed it. If the employee refuses to sign such material, the City may place it in the employee’s file with a dated notation that the employee refused to sign such material after having been given an opportunity to do so. Whenever possible, another supervisor or manager should be used as a witness to the employee’s refusal, and should co-sign the entry along with the originating supervisor.

### ***2.6.5 Employee Information Submitted***

Statements by an employee submitted in rebuttal to adverse material placed in his/her personnel file will be included in the employee's personnel file. The City may place other information submitted by the employee in the personnel file if the City finds that such information is relevant to the employee's work history with the City.

### ***2.6.6 Verification of Employment***

Upon a request for verification of employment, the City will provide only dates of employment, base salary, and job titles. The City will not give out an employee's address or telephone number without proper authority; i.e., a written release signed by the employee, a court order, or a subpoena.

### ***2.6.7 Identification of Confidential Information***

The following types of personnel information and employment records concerning current employees, former employees, and applicants for employment that the City maintains are confidential:

1. All information related to an employment application including, but not limited to, letters of reference, résumés, or his/her status as an applicant for employment.
2. All information that the City received or compiled concerning the qualifications of an applicant or an employee including, but not limited to, reports by City's, law enforcement officials, or other individuals concerning the hiring, promotion, performance, conduct, or background of applicants or employees.
3. Ratings, rankings, scoring sheets, or remarks by members of an evaluation board or individual interviewer, concerning an applicant or results from any testing or employment screening process.
4. Materials used in employment examinations including answers, rating guides, score sheets, etc., on any written exam or rating criteria for interviews.
5. Information in an employee's file or record of employment which relates to his/her:
  - a. Performance;
  - b. Conduct, including any proposed or imposed disciplinary action taken;
  - c. Race, ethnic identity or affiliation, age, gender, marital status, number and names of dependents, military/veteran status, living arrangements, membership in any organization, sexual orientation, national origin, disability, date of birth, or social security number;
  - d. Past or present home address, telephone number, post office box, or relatives; and

- e. All information concerning the voluntary or involuntary termination of an employee, other than the dates of actual employment.
6. The name of an employee's/former employee's designated beneficiary.
7. All medical information concerning an employee or applicant including, but not limited to:
  - a. Pre-employment and post-employment medical and psychological examinations;
  - b. Disability and documentation relating to reasonable accommodation requested or granted;
  - c. Drug testing;
  - d. Genetic Information;
  - e. Pregnancy, doctor's certification and other communication; and
  - f. Any other medical information that an employee or applicant has voluntarily provided or the City has requested.
8. All confidential medical information shall be kept in files segregated from other personnel and employment records. Access to such files shall be strictly limited to those with a demonstrable need-to-know. This would include:
  - a. Supervisors and managers, regarding necessary restrictions and accommodations in the employee's duties;
  - b. First-aid and safety personnel;
  - c. Government officials investigating compliance with the ADA, on request;
  - d. State Workers' Compensation office officials; and
  - e. Insurance company employees when the company requires a medical examination to provide health or life insurance (29 C.F.R. §1630.14(c)(1)).
9. Notations on attendance sheets that an employee took sick leave are not a confidential record.
10. All information contained in a confidential investigative file. The City shall keep all confidential investigative documentation in files separate from other personnel and employment records with access limited to only those with a demonstrable need-to-know. When and if it becomes the basis for disciplinary action, it will be part of the file to which the employee has access.
11. Grievance files that include notices, notes, and decisions of appeal will be maintained in a separate file with limited access to only those individuals with a demonstrable business need-to-know.

### ***2.6.8 Access to Confidential Information***

Access to confidential records is restricted to the following unless specifically provided in a separate policy:

1. The names of members of an evaluation panel shall not be released, nor shall tests that are governed by confidentiality agreements be released. Should a standardized test be developed internally by the City, it is not protected. Access to the materials for an examination and information relating to an applicant that is relevant to a decision to hire that person; e.g., information described in *items 1-4 of Section 2.6.7* is limited to:
  - a. Employees with a need-to-know in order to fulfill the responsibilities assigned by the City;
  - b. The City's manager/administrator, human resources director/manager, or his/her designee;
  - c. Persons authorized pursuant to any state or federal law or court order; i.e., governmental/legal/auditing/investigating agencies;
  - d. Counsel retained by or on behalf of the City; and
  - e. Any other parties with whom the City has a contractual relationship in order to enable the City to respond accurately and fully to any lawsuit, complaint, grievance, or other statutory appeal filed by or on behalf of an employee or former employee against the City.
2. Access to an employee's personnel-related confidential file containing those items listed above in *Section 2.6.7., items 5 – 9* is limited to:
  - a. The employee;
  - b. The employee's representative when s/he presents a current signed authorization from the employee;
  - c. The employee's manager/supervisor, with a need-to-know, or as needed for a reasonable accommodation and human resources;
  - d. Persons authorized pursuant to any state or federal law or court order;
  - e. Counsel retained by or on behalf of the City; and
  - f. Any other parties with whom the City has a contractual relationship in order to enable the City to respond accurately and fully to any lawsuit, complaint, grievance, or other statutory appeal filed by or on behalf of an employee or former employee against the City.
3. Access to an employee's personnel-related confidential file containing those items listed above in *Section 2.6.7., items 10 and 11* is limited to:
  - a. The employee's manager/administrator, human resources director/manager, or his/her designee;
  - b. Persons authorized pursuant to any state or federal law or court order;
  - c. Counsel retained by or on behalf of the City; and
  - d. Any other parties with whom the City has a contractual relationship in order to enable the City to respond accurately and fully to any lawsuit, complaint, grievance, or other statutory appeal filed by or on behalf of an employee or former employee against the City.

### ***2.6.9 Disposal of Personal Records***

1. As of June 1, 2005, and in compliance with the Fair and Accurate Credit Transactions (FACT) Act Disposal Rule, the City shall dispose of sensitive information derived from consumer reports to ensure there will be no unauthorized access to – or use of – any confidential information. “Consumer Reports” are defined as reports which contain information from a consumer reporting company, such as reports obtained from third party agencies who conduct employment background checks on behalf of the City.
2. Sensitive information includes any and all documents containing employee information, which can include:
  - a. Employee name
  - b. Social security number
  - c. Driver’s license number
  - d. Phone number
  - e. Physical address
  - f. Email address
  - g. Any other personal identifiers

In addition, any identifying personal information, such as that described above, which is stored on electronic files, shall be destroyed or erased so that the information cannot be read or reconstructed.

3. *Method of disposal.* The City shall dispose of sensitive information by shredding or burning any and all documents which contain personal information. Although the law specifically applies to consumer reports and the information derived from consumer reports, the City shall, in accordance with good personnel practices, properly dispose of any records containing employee personal or financial information.
4. The City will determine whether the disposal of consumer report documents will take place by utilizing an internal process and equipment or by procuring the services of a document destruction contractor to dispose of material that is specifically identified as consumer report information. The City will exercise due diligence to ensure that a contractor disposes of documents as required by law. Due diligence may consist of requiring that the disposal company be certified by a recognized trade association to ensure the disposal company complies with the disposal rule requirements.