

Tempe Supervisors Association

Representatives Meeting Minutes

10 a.m., Jan. 14, 2014

Westside Community Center

1. **Call to Order** - The meeting was called to order at 10:05 a.m. by Keith Burke.

REPS/MEMBERS PRESENT

Keith Burke, President
Wendy Springborn, Vice President
Jerry Judkins, Treasurer
Mary Fowler, Secretary
Andy Acedo, Trustee
Bobbi Jones, Health & Wellness

Mercedes Payne, Diversity
Roni Alexander
Denise Brewer
Donna Sullivan-Hancock
Kris Schlarlau
Bruce Smith

GUESTS

Jon O'Connor, Human Resources

2. **HR/City Manager update**

- Jon O'Connor discussed the market study. HR received between 30 and 40 appeals, which is about the same as in previous years. HR will begin reviewing the appeals on Jan. 21. TSA requested a master document indicating the results of the challenges. Jon estimated that the study effected between 140 and 150 employees and will increase salaries by about 200,000.
- The team, six-week walking challenge began on Jan. 13. Pedometers should be in on Jan. 14.
- Biometrics screening sign-up is currently underway. Anyone scoring 70 or more will receive 15 points toward the premium reduction.
- Health insurance claims have risen mostly as a result of an increase in dependent claims. The city remains under budget at this time.
- The city is hoping for no changes to premiums, co-pays or deductibles. The national average for the cost of health insurance is six percent; Tempe has budgeted seven percent.
- The "look-back" period for part-time hours related to health insurance begins on July 1, 2014.
- HR is looking for ways to educate employees on selection of physicians, surgical facilities and more when it comes to being "in-network." People have discovered that while their physicians are "in-network," the hospital, anesthesiologist, hospitalist and more may not be. If employees are prescheduling surgery, they should receive – in writing – a commitment that nothing will be used out-of-network. If it is, then only reasonable and customary charges can be billed. Such charges can be found through a search engine. Cigna has an app to show what is in-network. Kris commented that dentists are requiring patients to sign for payment when receiving care. This, sometimes results in surprise charges to the city or to the patient. TSA asked if the city can release information on doctors, pharmacies and facilities

that have been problematic. HR is directing the issue to the City Attorney's office. Supervisors are asked to encourage employees to attend meetings when they are scheduled or ask for someone from HR to attend a staff meeting.

- There have been several inconsistencies surrounding the CPM program. Managers want to change the application process to require employees to seek approval to attend before the application. Discussion ensued about the support and credibility of the program related to time off and relevance to job postings.
- Jon presented the Rule 5: Leave Programs & Benefits recommended changes (see attached).

3. **Approval of December Meeting Minutes**

4. **New Business**

- **Certified Public Manager Program**
This was discussed by HR.

5. **Old Business**

- None

6. **Budget Report**

- Jerry reported that TSA has \$10,000 in checking and \$37,000 in reserve.

7. **Committee Reports**

- **Diversity** – Mercedes reported that the committee is proposing an Anti-Discrimination Ordinance (see attached).
- **Deferred Compensation** – No report
- **Wellness & Health committee** – Bobbi reported that the group is looking to include transgender surgery as a covered health expense. Currently, hormone therapy is covered, but surgery is not. TSA asked to consider other issues, like in vitro fertilization, gastric bypass... .

8. **Open Discussion**

- Keith reported that UAEA and TSA have met with Mayor Mitchell, Onnie Shekerjian and Kolby Granville and will be meeting with the remaining council members and City Manager in the future regarding:
 - Equal treatment in negotiations with other union groups
 - Understaffing as related to increases in development
 - Clarification that both groups prefer to hold salaries steady and continue offering current services to laying off employees
- Bruce mentioned that Governor Brewer has ensured that city sales tax will be controlled by the state.

9. **Adjourn**

The meeting adjourned at 11:24 a.m. The next meeting is scheduled for 10 a.m. on Feb. 11 at the Westside Community Center.

Minutes submitted by Mary E. Fowler

Minutes reviewed by Wendy Springborn



City of Tempe – Human Resources Department

January, 2014

Personnel Rules – 2013/14 rewrite

Rule 5: Leave Programs & Benefits – Recommended Changes:

Section 501: Paid Leave

- All paid leaves now covered under this section – intro paragraph provides general information covering all paid leave and adds accrual rates and criteria for part-time employees.
- 501.A. - adds current practice that requests to utilize paid personal leaves that are not pre-scheduled may be denied.
- 501.A.3. – sabbatical leave for part-time employees – adds the option to take pro-rated leave after 15 years service or wait to meet 15 years of full-time service equivalent to take the full benefit.
- 501.A.4 – adds current practice of 50% pro-ration of EL if hired after June 30. Current rule does not specify any percentage pro-ration.
- 501.B. – changes medical documentation to go to HR rather than the supervisor – this has been the practice for several years.
- 501.B.2 – adds current practice where employees who solicit compassionate leave donations forfeit eligibility for the program. Adds current practice of not allowing donation of VA or SK hours that will be forfeited.
- 501.C. – adds minimum 10 years service for retiring employees to be paid for holiday as last day.
- 501.D.1. – adds specific hours for bereavement leave (current rule states 5 working days) to create consistency with all leave benefits and for differing schedules. Adds requirement to provide a reason to supervisor for splitting bereavement leave allotment.
- 501.D.4. – adds language for employee to request a change in schedule to attend Jury Duty/Court for safety or other reasons.

Section 502: Payouts of Accrued Leave

- 502.B.2 – removes previous matrix for payout of SK leave for resigning employees who have 10+ years of service. Payout established at 50%.
- 502.B.3 – adds minimum 10 years of continuous service for payout of SK leave at 50% to retiring employees for consistency with other provisions requiring minimum service.

Section 503: Unpaid Leave

- 503.A – removed “military obligations” as qualifying for GX leave as the City has since established specific paid and unpaid leave provisions for military service.
- 503.B. – Adds verbiage defining unpaid sick leave which is currently utilized but not defined. Adds that unpaid sick leave in excess of 40 hours in a calendar year may result in counseling.
- 503.C. – FMLA – remove most of the previous language regarding FMLA as much of it has been revised in the federal legislation and also does not need to be in the Personnel Rules. Propose change to move from current calendar year utilization to a “rolling” twelve month period – this provides a benefit that is fair and consistent for all employees and not based on “timing” and is also more consistent with the vast majority of public and private sector organizations. **Discuss priority of leave use.
- 503.D. – Adds verbiage defining unauthorized leave and specifies counseling for UX use and then disciplinary action after 24 hours of UX (to create consistency with current practice).
- 503.E. - Adds verbiage defining unpaid administrative leave consistent with current practice.

Rule 5: Leave Programs & Benefits

Section 501: Paid Leave

New employees may use accrued paid leave, with supervisory approval, after working thirty (30) calendar days.

Paid leave may be taken only after it is earned. Accruals shall be posted and available for use as of the first of each month. Paid leaves continue to accrue during any leave with pay, except compassionate and/or catastrophic leave.

Leave accruals will be shut down for any employee in an inactive and/or unpaid status. Pro-rated accrual amounts will be posted at the end of the month based on any actual hours in an active paid status during that month.

Any employee on a regular work schedule (not including regular overtime) that is more than 40 hours/week shall have leave accruals (including maximum allowable accrual) adjusted accordingly. For example, regular 48 hour/week schedules will result in accruals adjusted at 1.2x the 40 hour accruals rates below.

Leave hours for part-time regular employees (who work less than forty (40) hours per week but at least one thousand and forty (1,040) hours a year) shall be prorated for all leave benefits and programs. Those working 20-29 hours/week will receive 50% and those working 30-39 hours/week will receive 75% of the full benefit. Part-time employees shall not receive paid leave benefits in any one (1) work week that results in their total pay being in excess of their regular part-time schedule.

The number of paid leave hours required to take one (1) day of leave will vary depending on the hours normally scheduled for the employee on the day requested (e.g., if an employee works a 4/10 schedule and takes one (1) leave day on a day normally scheduled as a 10-hour work day, 10 hours of leave must be used). This also applies to part-time regular employees.

A. Personal Leaves

Employees shall request supervisory approval for all leave under this section and pre-approval must be received for the leave to be authorized and paid. All personal leave shall be scheduled and taken in accordance with the best interests of the City. The City reserves the right to postpone or cancel personal leave in the event of any emergency. This includes the right to recall an employee from personal leave. Employee expenses resulting from cancellation or recall from personal leave may be reimbursed by the City. Requests to utilize any personal leaves that are not pre-scheduled may be denied.

1. Vacation Leave (VA)

Regular, full-time employees accrue annual vacation leave as outlined below when in an active pay status.

<i>Yrs of Service</i>	<i>40 hours/week Monthly Accrual</i>	<i>40 hours/week Annual Accrual</i>
<i>Up to 5</i>	9.33	112
<i>5 - 9</i>	11.33	136
<i>10 - 14</i>	13.33	160
<i>15 - 19</i>	16.67	200
<i>20 +</i>	18	216

Maximum vacation leave use at any one time is thirty (30) consecutive working days except for employees working fifty-six (56) hour schedules who may take a maximum of fourteen (14) working days.

Employees may carry over a maximum of four hundred fifty (450) hours of accrued vacation. Any employee with excess vacation hours over the allowable maximums shall have until the last pay date paid in December to utilize the excess hours, or have up to 40 hours paid out under the annual vacation payout program if eligible, or excess hours shall be forfeited.

The City Manager shall approve any request for an extension of the forfeiture date for excess vacation. An extension to March 31 of the next year may be approved for dire circumstances where organizational need precluded the employee from utilizing excess hours. Excess vacation hours not used by April 1 will be forfeited.

2. Personal Day (BD)

Regular employees may take one (1) personal leave day anytime during the calendar year. The number of hours of leave full-time regular employees shall receive is based on the employee's normal work schedule for the leave day requested.

48 hr employees will be given an eight (8) hour day off with pay.

The personal leave day cannot be taken incrementally (e.g., four (4) hours one day and four (4) hours another day)

Employees may take their personal leave day on their last day worked prior to resignation or retirement from the City.

3. Sabbatical Leave (SL)

Non-union, regular employees who have completed fifteen years of full-time, regular employment with the City are eligible to apply for a one-time extended four-week sabbatical leave of absence that includes two weeks of the employees accrued vacation leave and an additional two weeks of City-paid sabbatical leave. Program guidelines shall be provided on the sabbatical leave request form.

Regular, part-time employees may elect to take pro-rated sabbatical leave after 15 years of part-time service, or wait until they have accrued the

required equivalent of 15 years of full-time service and take the full sabbatical leave entitlement if all other requirements are met.

4. Exempt Leave (EL)

Council appointees, department directors, deputy directors, and other exempt staff designated by the City Manager are eligible to receive exempt leave. Any eligible employee shall routinely work fifty (50) hours or more per week to qualify for exempt leave.

Each January 1, eligible qualified employees receive exempt leave hours according to the following schedule:

Council Appointees, Department Directors, Deputy Directors	56 hours
PD Commanders, Lieutenants, FD Deputy Chiefs	40 hours
Others as designated by the City Manager	24 hours

Exempt leave can be used at the employee's discretion with his or her supervisor's approval. Exempt leave shall be used before the end of the last full pay period paid in each calendar year or be forfeited.

Eligible employees hired or promoted after June 30, receive a 50% pro-rated exempt leave credit for the year they were hired.

5. Wellness Leave (WD)

Non-union, regular employees with sufficient sick leave accruals may make an irrevocable election in November of each year to convert either 16 hours or 32 hours of sick leave at a conversion rate of 50% to either 8 hours or 16 hours of wellness leave. Employees must maintain a minimum of 480 hours of sick leave after the conversion. The wellness leave will be available for use as of January 1 of the following year and shall be utilized under the same guidelines as vacation leave. Wellness leave shall not be converted to any other type of leave and shall not be cashed out. Any unused wellness leave remaining after the last full pay period paid in that same calendar year will be forfeited. Employees will be responsible for making the election for wellness leave.

B. Medical Leaves

Medical leaves are provided to allow employees time off work for non-work related illness or injury. Employees shall report the need to take time off work promptly to their supervisor, adhering to any department specific notification policies. Employees shall provide any supporting medical documentation to Human Resources in a timely manner if requested and shall comply with reasonable terms of any provider prescribed treatment plan or paid leave benefits may be suspended. Employees shall not engage in outside employment while on any medical leave unless authorized by Human Resources.

Return to work from medical leave may require a written release from a qualified physician. Any release requiring limited duty with restrictions will require an employee to request an off the job, light duty assignment. If light duty is not

available, the employee will remain on medical leave until released to full duty with no restrictions.

1. Sick Leave (SK)

Regular, full-time 40 hr employees accrue eight (8) hours of sick leave monthly. There is no maximum accrual for sick leave and all accrued hours shall carry over at the end of each calendar year.

Use of sick leave for medical, dental, vision or mental health appointments is also permissible but requires pre-approval by the employee's supervisor and is granted in accordance with the best interests of the City and the employee's health. Documentation of appointments may be requested.

Sick leave may be approved for an employee to care for ill family members*, or to accompany family members* to medical, dental, vision, or mental health appointments if that is reasonably required. Documentation may be requested.

* "Family members" for this purpose are defined as:

- Spouse
- Domestic partner
- Parent (in-law and step)
- Child (in-law and step)
- Brother (in-law, half, and step)
- Sister (in-law, half, and step)
- Grandparent (in-law)
- Grandchild (step)

Use of sick leave is permissible for all pregnancy or childbirth-related examinations, hospitalizations, surgeries, illnesses, and recovery. An employee will be expected to work before delivery until she cannot adequately perform the duties of her job, or it is no longer safe for her to do so, as certified by her attending physician.

An employee who is on approved vacation leave shall not normally be allowed to request substitution of sick leave for previously approved hours of vacation leave. Department directors may approve an exception for extraordinary, unusual medical situations specific to the employee or his or her *immediate family*, which is defined as follows: Spouse, domestic partner, child (step), mother, father, brother, or sister. Documentation shall be required.

2. Compassionate Leave

The compassionate leave program allows employees to voluntarily donate their own accrued sick and/or vacation leave to another employee who has exhausted all their paid leave, including all accrued compensatory time, and has requested compassionate leave donations through Human Resources. Any employee who solicits leave donations from another employee shall forfeit eligibility for this program.

Vacation and sick leave may be donated to an employee on approved Family and Medical Leave (FML) for their own non-job related serious health condition, or for other extenuating circumstances as approved by the City Manager. Vacation leave only may be donated to an employee on approved FML to care for a spouse, domestic partner, child (step) or parent with a serious health condition. Any vacation or sick leave hours that will be, or are being forfeited due to requirements of those leave programs cannot be donated. The value of donated leave is based on the donor's hourly rate of pay as it relates to the recipient's hourly rate of pay.

Program guidelines shall be provided on the compassionate leave request form.

3. Catastrophic Leave

Catastrophic leave provides up to one hundred sixty (160) hours per calendar year to eligible employees on approved FML for their own non-job related serious health condition or to care for a spouse, domestic partner, child (step), or parent with a serious health condition. To qualify for catastrophic leave, the employee must have completed initial probation, have been out of work for at least sixty (60) consecutive calendar days on approved FML and have exhausted all paid leave, including all accrued compensatory time, and any compassionate leave donations.

Program guidelines shall be provided on the catastrophic leave request form.

4. Industrial (Workers Compensation) Leave (IP)

Employees are covered under the Arizona State Worker's Compensation Act for injuries, illness or disease occurring in the course of their city employment. Employee's shall immediately report every on-the-job injury or illness, regardless of severity, to their supervisor. Supervisors shall report incidents to Risk Management within twenty-four (24) hours.

If an employee is absent from work as a result of an on-the-job injury, illness, or disease, the employee is paid IP. Any absence greater than three (3) days will also be considered and coded as FML. Use of SK is not permitted for absences that qualify as IP.

a. Schedule of Benefits — Regular Employees

For absences of one (1) to seven (7) calendar days, employees receive IP at one-hundred percent (100%) of regular pay.

For absences over seven (7) calendar days, employees receive IP at ninety percent (90%) of regular pay for up to twelve (12) months.

Employees may voluntarily elect to supplement the 90% IP compensation with accrued SK, or VA (only if/when SK is exhausted). The amount that may be supplemented is the difference between the worker's compensation benefit and the employee's (net) take home pay plus voluntary payroll deductions.

Beyond twelve (12) months, employees receive IP at sixty-six and two-thirds percent (66 2/3%) of regular pay with no SK or VA supplement permitted.

Employees on IP shall continue to accrue SK and VA.

Employees on a reduced schedule, light duty assignment under workers compensation continue to accrue SK and VA for a period not to exceed six (6) months.

After six (6) months, employees on a reduced schedule, light duty assignment under workers compensation shall have SK and VA accruals prorated based on actual light duty hours worked each month.

Employees are not permitted to engage in unauthorized outside employment while receiving any workers compensation benefits.

b. Schedule of Benefits -- Temporary (non-benefitted) Employees

For absences of one (1) to seven (7) calendar days, temporary employees receive no income.

For absences up to thirteen (13) calendar days, worker's compensation income begins on the eighth (8th) day. How much??

For absences of fourteen (14) or more calendar days, worker's compensation is made retroactive to the date of injury or illness in accordance with state law.

c. Off-duty Workers Compensation

An employee unable to work as a result of an injury or illness that occurred while performing approved off-duty employment for another employer, and who is receiving workers compensation benefits from that other employer, shall notify their supervisor, Risk Management and Human Resources as soon as possible. The employee may use accrued SK, or VA (only if/when SK is exhausted), to supplement worker's compensation pay received from the off-duty employer. The amount that may be supplemented is the difference between the worker's compensation benefit and the employee's (net) take home pay plus voluntary payroll deductions.

d. Light Duty Assignments

The City shall attempt to find light duty assignments for employees released to restricted duty by a City designated physician. Employees shall return to work in a light duty assignment as directed by Risk Management and shall adhere to all physician imposed restrictions.

C. Holidays

The following are official City holidays:

New Year's Day

Martin Luther King's Birthday

President's Day
Cesar Chavez Recognition Day
Independence Day
Memorial Day
Labor Day
Veteran's Day
Thanksgiving Day
Friday following Thanksgiving Day
Christmas Day

(NOTE: When a holiday falls on Sunday, it will be observed the following Monday. When a holiday is on Saturday, it will be observed the preceding Friday)

Regular and probationary employees shall receive the above holidays off with pay unless required to work due to organizational need. An employee must be in an active, paid status (including approved paid leave, except for compassionate and catastrophic leave) both the day before and the day after a holiday in order to receive pay for the holiday, except employees who are retiring after a minimum of ten (10) years continuous service who shall be paid for a holiday if it is the day after their last day worked.

D. Other Paid Leave Benefits

1. Bereavement Leave (FD)

Upon the death of a family member, all regular and probationary employees in an active, paid status may request up to one (1) work week (up to 40, 48 or 56 hours depending on scheduled work week) of paid bereavement leave. Bereavement leave shall be used consecutively, but an employee may request to split the bereavement leave allotment by providing the reason for the request to their supervisor or Human Resources. Documentation of the death and attendance at the funeral and/or memorial service may be required.

*Family members are defined as:

- Spouse / Domestic Partner
- Parent (including in-law and step)
- Child (including in-law and step)
- Siblings (including in-law, half and step)
- Grandparent (including in-law)
- Grandchild (including step)
- Aunt, Uncle, Niece, Nephew

2. **Administrative Leave (AL)**

Administrative leave is the non-disciplinary suspension of an employee from work with pay. Administrative leave shall be approved by both the department director and the Human Resources Director.

Reasons for placing an employee on administrative leave include, but are not limited to:

- An internal review or investigation when the employee's presence on the job or at the work site would hinder the review or investigation; or
- A situation that is perceived to be of an urgent or serious nature in which a supervisor believes the employee should be immediately removed from the workplace, such as when the employee's presence would be detrimental to the public interest or the continued efficient operation of the City, or may create a safety issue for the employee, other employees, or the public; or
- Other extraordinary circumstances as determined by both the department director and the Human Resources Director.

An employee shall receive and sign an "Administrative Leave Rights and Obligations" form at the time he or she is placed on administrative leave.

An employee on administrative leave is accorded the right to contact at any time a designated city "safe haven" which includes the Human Resources department, and/or the Diversity department.

Paid administrative leave shall not extend beyond thirty (30) consecutive calendar days, except in extraordinary circumstances and with the approval of the Human Resources Director.

3. **Military Leave of Absence**

In accordance with A.R.S. 26-168 & 38-610, employees who are members of the national guard or the United States armed forces reserves shall be entitled to take a leave of absence to comply with orders of the state or United States for training or active duty. Taking a military leave of absence shall not result in loss of seniority, pay increases, vacation accrual rates or other employment rights. Employees shall submit a copy of their military orders to Human Resources prior to commencement of any military leave of absence and to establish eligibility for military leave benefits. Employees shall submit a DD214 form or equivalent on their return from a military leave of absence. The City complies with all requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

- a. **Paid Military Leave (MI):** Regular employees shall be entitled to MI not to exceed thirty (30) workdays (240 hours for employees working an annual 2080 hour schedule and 336 hours for employee working an annual 2912 hour schedule) in any two (2) consecutive calendar years.

- b. Using Accrued Leave: Employees may use accrued vacation (VA), sick leave (SK), and/or compensatory time (CT), in that order of priority, at the employee's discretion, but only after exhausting all available MI and only during the first thirty (30) workdays of a military leave of absence. For employees utilizing any paid leave, deductions for medical, dental and/or vision benefits will continue to be taken at the same rate as if the employee were actively working.
- c. Unpaid Military Leave (MX): If the employee has used all available MI and chooses not to utilize accrued leave during the initial thirty (30) workdays, the time shall be MX. Employees on MX do not receive holiday pay, accrue paid leave or receive any other type of compensation (except for military supplemental pay if eligible).

After the initial thirty (30) workdays, MX leave will be coded through the end of the military leave of absence for all employees.

Employees on MX leave may elect to continue medical, dental, and/or vision benefits for up to twenty-four (24) months, by submitting monthly premiums to the City equal to the rate(s) they would pay if actively working.

- d. Retirement Contributions: The City will remit employee and employer contributions to the Arizona State Retirement System (ASRS) or the Public Safety Personnel Retirement System (PSPRS) on the employee's behalf for up to forty-eight (48) months and time spent on a military leave of absence will count as credited service for retirement.
- e. Military Supplemental Pay (MAS): Thirty (30) workdays (240 hours for employees working an annual 2080 hour schedule and 336 hours for employee working an annual 2912 hour schedule) after commencing an approved military leave of absence for training or active duty, employees may be eligible for MAS, which will be equal to the difference between an employee's base salary (not including any additional components of pay or premium pay) and all pay and allowances received by the employee for his/her military duty, when that amount is less. The City will pay MAS for a period of up to twenty-four (24) months. While receiving MAS, employees shall not accrue paid leave or receive any other type of compensation. Employees may elect to continue medical, dental and/or vision benefits by requesting deductions from their supplemental pay or by submitting monthly premiums equal to the rate(s) they would pay if actively working.

4. **Jury Duty & Court Service Leave (JD)**

Employees shall notify their supervisor immediately of a jury summons or subpoena and shall request pre-approval for JD leave.

Regular employees in an active, paid status summoned to perform jury duty or serve as a witness (for any matter that does not involve the personal interest of the employee) receive their usual compensation for JD leave if serving during their regularly scheduled work hours.

Employees may request to their supervisor to temporarily adjust their regular schedule to accommodate jury duty and court service during non-work hours if reasonably required to meet safety or other considerations. Under no circumstances will overtime rates be paid for JD leave.

Employees retain any compensation or reimbursement received from the Court for performing jury duty.

5. Voting Leave

In accordance with A.R.S. 16-402, the City shall allow eligible employees (those employees who are entitled to vote in an election held pursuant to Title 16 of the Arizona Statutes) paid leave from work to vote at a primary or general election held within the State of Arizona on the day of election when the following conditions are met:

- There is less than three (3) consecutive hours between the opening of the polls and the beginning of the employee's regular work shift or less than three (3) consecutive hours between the ending of his or her work shift and the closing of the polls.
- The employee obtains approval before the day of election from his or her supervisor.

Two (2) hours is the maximum time allowed for voting. The time off with pay must be used to vote. If requested, an employee must be able to show proof of being a registered voter.

6. Exceptional Performance Reward

Department directors may reward a regular employee who has performed exceptionally by granting the employee a day off with pay.

A. Vacation

1. Annual VA Payout Program

On the first pay date paid in January of each year, employees who meet the criteria below shall have up to forty (40) hours of accrued vacation paid out.

- The employee must have used a minimum of one hundred twenty (120) hours of vacation, during the previous twelve (12) months. Vacation usage must occur between the first pay date paid and the last pay date paid in the current year.
- After the payout of up to forty (40) hours, the employee must retain four hundred fifty (450) hours.

2. Payout of VA on Termination

Upon termination of employment, employees receive a 100% payout of all unused, accrued VA hours at their current base hourly rate of pay.

B. Sick Leave

1. Annual SK Payout Program

In October of each year, employees may voluntarily make an irrevocable election for a payout at 25% of any SK hours that accrue the following calendar year in excess of four hundred eighty (480) hours.

The 25% payout will be included in the first?? paycheck of December of the year following the October election. The maximum possible payout is 25% of 96 hours (equivalent to 24 hours of pay).

Employees who do not make this election will continue to have unused accrued SK hours banked.

2. Payout of SK on Resignation

Employees resigning from city service in good standing with a minimum of ten (10) years of continuous service shall receive a 50% payout of all unused, accrued SK hours at their current base hourly rate of pay.

3. Payout of SK on Retirement

Employees retiring from city service in good standing with a minimum of ten (10) years of continuous service and who are immediately commencing receipt of retirement benefits under the Arizona State Retirement System (ASRS) or Public Safety Personnel Retirement System (PSPRS) shall receive a fifty percent (50%) payout of all unused, accrued SK hours at their current base hourly rate of pay including assignment, maximum staffing, hazardous material, technical rescue technician, bilingual, shift differential, temporary detail, standby and holiday pay (excluding overtime) paid to the employee during the twelve (12) months preceding retirement.

4. Payout of SK on Death of Active Employee

1/13/2014

One hundred percent (100%) of a deceased employee's accrued SK leave shall be paid to the designated beneficiary on the employee's basic life insurance policy at the employees' current base hourly rate of pay.

DRAFT

Section 503: Unpaid Leave

A. General Leave (GX)

Regular employees, who have completed their original probationary period, may request general leave with their supervisor's and department director's approval for the following reasons only:

1. To run for elective office.
2. To receive an education that will improve the employee's value to the City.
3. To supplement vacation only if all accrued vacation leave and compensatory time has been exhausted, and for no more than a total of forty (40) hours in any one (1) calendar year.
4. For other reasons approved by the Human Resources Director and the City Manager.

B. Unpaid Sick Leave (SX)

Employees who have exhausted all accrued SK leave, are unable to report to work due to a non-work related illness or injury, and who are not eligible for other paid medical leave, shall request SX. Employees on SX shall provide any requested medical documentation to Human Resources to support their absence from work and shall be required to provide a release from their medical provider before being permitted to return to work.

Use of SX for non-FML protected absences is not an entitlement and shall be approved by the supervisor and Human Resources. Use of SX leave in excess of forty (40) hours in a calendar year for non-FML protected reasons may result in counseling.

C. Family and Medical Leave (FML)

The City adheres to all requirements of the Family and Medical Leave Act of 1993 (FMLA) and all subsequent amendments.

To determine how much FML an employee has available, the City utilizes a "rolling" twelve (12) month period measured backward from the date an employee uses FMLA leave.

In addition to the twelve (12) work weeks of FML required under the FMLA, City employees may request up to an additional five (5) work weeks of job-protected unpaid leave under the same provisions as FML.

Any non-union employee and spouse or domestic partner, when both employed by the City, are each entitled to utilize up to seventeen (17) weeks of FML if the leave is taken for the birth or adoption of a child or to care for a sick parent.

Employees are not allowed to work at outside employment while on FML unless prior authorization has been received from Human Resources and their department.

Employees on FML will be required to use available paid leave prior to SX or GX. Paid or unpaid leave will be coded concurrently with FML, except for compensatory time.

D. Unauthorized Leave (UX)

Employees who take unauthorized absences from work for any reason shall have the time coded as UX by their supervisor. Any time away from work that is coded as UX shall result in a counseling. UX coding in excess of twenty four (24) hours shall result in disciplinary action up to and including termination.

E. Unpaid Administrative Leave (AX)

Employees may be placed on administrative leave without pay under extraordinary circumstances that shall be reviewed and approved by both the department director and the Human Resources Director.

An employee shall be notified and provided with documentation at the time he or she is placed on AX.

An employee on AX is accorded the right to contact at any time a designated city "safe haven" which includes the Human Resources department, and/or the Diversity department.

F. Victim Rights Leave

Employees are entitled to unlimited unpaid leave under ARS title 8, article 7, Chapter 3 and title 13 Chapter 40, to attend certain criminal proceedings if they were the victim of a crime or the immediate family member of a person who was killed or incapacitated by a crime. If such leave creates an undue hardship on the City, it may be limited. Employees shall request victim rights leave through Human Resources. Employees may elect to use VA, compensatory time, and/or their personal leave day or may request GX.

ORDINANCE NO. 2013. __

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, AMENDING CHAPTER 2-ADMINISTRATION, TEMPE CITY CODE, BY ADDING NEW ARTICLE VIII RELATING TO HUMAN RELATIONS.

WHEREAS, the City of Tempe is comprised of various and diverse individuals and groups of people; and

WHEREAS, the City of Tempe values this diversity and wishes to encourage all persons to contribute to, fully participate in and contribute to the cultural, social, spiritual and commercial life and activities in Tempe; and

WHEREAS, discrimination and discriminatory practices prohibits the social and economic growth and progress of the City of Tempe; and

WHEREAS, existing practices in the City of Tempe already reflect anti-discriminatory practices among and toward its employees, contractors and vendors; and

WHEREAS, the purpose of this Ordinance is to make the appropriate conforming changes to the Tempe City Code;

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 2, Administration of the Tempe City Code is hereby amended by adding Article VIII – Human Relations to read:

ARTICLE VIII

HUMAN RELATIONS

SEC. 2-600. DEFINITIONS.

THE FOLLOWING WORDS, TERMS AND PHRASES, WHEN USED IN THIS CHAPTER, SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN THIS SECTION, EXCEPT WHERE THE CONTEXT CLEARLY INDICATES A DIFFERENT MEANING:

ADULT: MEANS A PERSON WHO HAS ATTAINED EIGHTEEN (18) YEARS OF AGE.

STATE LAW REFERENCE—SIMILAR PROVISIONS, A.R.S., § 1-215(3).

CONTRACTOR: MEANS ANY PERSON WHO HAS A CONTRACT WITH THE CITY.

CROSS REFERENCE-PROCUREMENT, CH. 26A.

DISCRIMINATION MEANS TO EXCLUDE INDIVIDUALS FROM AN OPPORTUNITY OR PARTICIPATION IN ANY ACTIVITY BECAUSE OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS, AND OCCURS WHENEVER SIMILARLY SITUATED INDIVIDUALS OF A DIFFERENT GROUP ARE ACCORDED DIFFERENT AND UNEQUAL TREATMENT IN THE CONTEXT OF A SIMILAR SITUATION.

EMPLOYEE MEANS AN INDIVIDUAL EMPLOYED FOR PAY TO PERFORM SERVICES FOR AN EMPLOYER COVERED BY THIS ARTICLE AND WHOSE ACTIVITIES ARE CONTROLLED AND DIRECTED BY THE EMPLOYER, FOR WHOM SERVICES ARE BEING PERFORMED.

EMPLOYER MEANS A PERSON DOING BUSINESS WITHIN THE CITY WHO HAS FOURTEEN (14) OR LESS EMPLOYEES FOR EACH WORKING DAY IN EACH OF TWENTY (20) OR MORE CALENDAR WEEKS IN THE CURRENT OR PRECEDING CALENDAR YEAR, AND ANY AGENT OF SUCH PERSON. THIS DEFINITION EXCLUDES:

- (1) THE UNITED STATES OR ANY DEPARTMENT OR AGENCY THEREOF, A CORPORATION WHOLLY OWNED BY THE UNITED STATES OR ANY INDIAN TRIBE;
- (2) THE STATE OF ARIZONA OR ANY DEPARTMENT OR AGENCY THEREOF, EXCEPT FOR ANY POLITICAL SUBDIVISION OF THE STATE OF ARIZONA, INCLUDING ANY COMMUNITY COLLEGE DISTRICT OR HIGH SCHOOL OR ELEMENTARY SCHOOL DISTRICT;
- (3) A BONA FIDE MEMBERSHIP CLUB (OTHER THAN A LABOR ORGANIZATION) THAT IS EXEMPT FROM TAXATION UNDER THE INTERNAL REVENUE CODE OF 1986 (AS AMENDED FROM TIME TO TIME);
- (4) A RELIGIOUS ORGANIZATION; OR,
- (5) AN EXPRESSIVE ASSOCIATION WHOSE EMPLOYMENT OF A PERSON PROTECTED BY THIS CHAPTER WOULD

SIGNIFICANTLY BURDEN THE ASSOCIATION'S RIGHTS OF EXPRESSIVE ASSOCIATION.

STATE LAW REFERENCE—SIMILAR PROVISIONS, A.R.S., § 23-613.

FAMILIAL STATUS MEANS THE STATE OF HAVING ONE OR MORE MINOR CHILDREN UNDER THE AGE OF EIGHTEEN (18) BEING DOMICILED WITH: A PARENT, GUARDIAN OR ANOTHER PERSON HAVING LEGAL CUSTODY; THE DESIGNEE OF SUCH PARENT, GUARDIAN OR ANOTHER PERSON HAVING LEGAL CUSTODY WITH WRITTEN PERMISSION; OR, A FOSTER PARENT OR OTHER PERSON WITH WHOM A MINOR CHILD IS PLACED BY COURT ORDER.

GENDER IDENTITY MEANS AN INDIVIDUAL'S VARIOUS ATTRIBUTES AS THEY ARE UNDERSTOOD TO BE MASCULINE OR FEMININE AND SHALL BE BROADLY INTERPRETED TO INCLUDE PRE AND POST OPERATIVE GENDER INDIVIDUALS, AS WELL AS OTHER PERSONS WHO ARE OR ARE PERCEIVED TO BE TRANSGENDERED.

PLACE OF PUBLIC ACCOMMODATION MEANS FACILITIES, ESTABLISHMENTS, ACCOMMODATIONS, SERVICES, COMMODITIES, OR USE OFFERED TO OR FOR USE BY THE GENERAL PUBLIC, INCLUDING PUBLIC PLACES WHERE FOOD OR BEVERAGES ARE OFFERED FOR SALE, PUBLIC PLACES OPERATED FOR TEMPORARY LODGING, USE OR ACCOMMODATION OF THOSE SEEKING HEALTH OR RECREATION AND ALL ESTABLISHMENTS OFFERING SUCH GOODS OR FACILITIES, AND ENTITIES SOLICITING PATRONAGE FROM THE GENERAL PUBLIC, EXCEPT FOR RELIGIOUS ORGANIZATIONS OR EXPRESSIVE ASSOCIATIONS WHOSE INCLUSION OF A PERSON PROTECTED BY THIS CHAPTER WOULD SIGNIFICANTLY BURDEN THE ASSOCIATION'S RIGHTS OF EXPRESSIVE ASSOCIATION. THIS DOES NOT INCLUDE ANY PRIVATE CLUB OR ANY PLACE WHICH IS IN ITS NATURE DISTINCTLY PRIVATE.

SOCIAL CLUB MEANS AN ORGANIZATION COMPOSED OF PEOPLE WHO VOLUNTARILY MEET ON A REGULAR BASIS FOR A MUTUAL PURPOSE OTHER THAN FOR EDUCATIONAL, RELIGIOUS, CHARITABLE, OR FINANCIAL PURSUITS. THIS INCLUDES ANY GROUP THAT HAS MEMBERS WHO MEET FOR A SOCIAL, LITERARY, OR POLITICAL PURPOSE. THIS DEFINITION DOES NOT INCLUDE ANY CLUB CONDUCTED FOR THE PURPOSE OF EVADING THIS CHAPTER.

SEXUAL ORIENTATION MEANS AN ENDURING PATTERN OF EMOTIONAL, ROMANTIC, OR SEXUAL ATTRACTIONS TO MEN, WOMEN, OR BOTH SEXES AS WELL AS THE GENDERS THAT ACCOMPANY THEM, INCLUDING THE PERCEPTION OR STATUS OF AN INDIVIDUAL'S SAME-SEX, OPPOSITE-SEX, OR BISEXUAL ORIENTATION.

VENDOR MEANS A PERSON OR FIRM IN THE BUSINESS OF SELLING OR OTHERWISE PROVIDING PRODUCTS, MATERIALS OR SERVICES.

CROSS REFERENCE-PROCUREMENT, CH. 26A.

SEC. 2-601. POLICY.

IT IS DECLARED TO BE THE POLICY FOR THE CITIZENS OF TEMPE, ARIZONA, TO BE FREE FROM DISCRIMINATION IN PUBLIC ACCOMMODATIONS, EMPLOYMENT, AND HOUSING, AND CONTRARY TO PUBLIC POLICY AND UNLAWFUL TO DISCRIMINATE AGAINST ANY PERSON ON THE BASIS OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS, IN PLACES OF PUBLIC ACCOMMODATION, EMPLOYMENT, AND HOUSING; AND CONTRARY TO THE POLICY OF THE CITY AND UNLAWFUL FOR VENDORS AND CONTRACTORS DOING BUSINESS WITH THE CITY TO DISCRIMINATE, AS SET FORTH IN THIS CHAPTER.

SEC. 2-602. ADMINISTRATIVE PROVISIONS.

(A) *POWERS AND DUTIES.* ADMINISTRATION, AUTHORITY AND RESPONSIBILITY FOR ADMINISTERING THIS CHAPTER SHALL REST WITH THE CITY MANAGER.

- (1) THE CITY MANAGER OR HIS DESIGNEE MAY DELEGATE FUNCTIONS, DUTIES AND RESPONSIBILITIES FOR INVESTIGATION, MEDIATION, AND CONCILIATION AND MAY OTHERWISE ACT TO ASSIST THE CITY IN THE ADMINISTRATION OF THIS CHAPTER.
- (2) THE CITY MANAGER OR HIS DESIGNEE SHALL ADMINISTER PROGRAMS AND ACTIVITIES AS AUTHORIZED HEREIN TO FURTHER THE PURPOSES OF THIS CHAPTER, IN COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS, AND SHALL WORK WITH AND ENTER INTO AGREEMENTS AS APPROVED BY THE CITY COUNCIL, WITH THE UNITED STATES EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, AND OTHER AGENCIES OF THE UNITED STATES OR STATE OF ARIZONA THAT GOVERN OR AFFECT DISCRIMINATORY PRACTICES AS DEFINED BY THIS CHAPTER, INCLUDING THE ACCEPTANCE OF FUNDS FROM SUCH AGENCIES AND THE CARRYING OUT OF SUCH COVENANTS AND CONDITIONS OF SUCH AGREEMENTS, IN COMPLIANCE WITH THIS CHAPTER.

- (3) THE CITY MANAGER OR HIS DESIGNEE SHALL COOPERATE WITH AND RENDER ASSISTANCE TO, AS REASONABLY REQUESTED, OTHER PUBLIC OR PRIVATE AGENCIES, ORGANIZATIONS AND ENTITIES, TO FORMULATE OR CARRY OUT PROGRAMS TO FURTHER THE PREVENTION OR ELIMINATION OF DISCRIMINATORY PRACTICES AS DEFINED IN THIS CHAPTER.

(B) THE CITY ATTORNEY SHALL BE AUTHORIZED TO TAKE SUCH ACTIONS AS AUTHORIZED HEREIN TO CARRY OUT THE DUTIES AS SET FORTH IN THIS CHAPTER.

SEC. 2-603. UNLAWFUL PRACTICES.

THE FOLLOWING SHALL CONSTITUTE A VIOLATION OF THIS CHAPTER:

- (1) FOR ANY OWNER, OPERATOR, LESSOR, MANAGER, AGENT OR EMPLOYER OF ANY PLACE OF PUBLIC ACCOMMODATION TO DISCRIMINATE AGAINST ANY PERSON, INCLUDING TO RESTRICT OR REFUSE ACCESS ON THE BASIS OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS.
- (2) FOR AN EMPLOYER, BECAUSE OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS, TO REFUSE TO HIRE OR EMPLOY OR BAR OR DISCHARGE FROM EMPLOYMENT ANY PERSON, OR TO DISCRIMINATE AGAINST SUCH PERSON IN COMPENSATION, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT.
- (3) FOR A LABOR ORGANIZATION, BECAUSE OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS, TO EXCLUDE, EXPEL, LIMIT OR RESTRICT FROM ITS MEMBERSHIP ANY PERSON, OR TO PROVIDE SEGREGATED MEMBERSHIP OR OTHERWISE DISCRIMINATE IN ANY MANNER AGAINST ANY OF ITS MEMBERS, APPLICANTS OR EMPLOYERS.
- (4) FOR ANY OWNER OR LESSOR TO DISCRIMINATE AGAINST

ANY PERSON IN THE TERMS, CONDITIONS, OR PRIVILEGES OF SALE OR RENTAL OF A DWELLING, OR IN THE PROVISION OF SERVICES OR FACILITIES THEREWITH, BECAUSE OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS.

- (5) FOR A CITY VENDOR OR CITY CONTRACTOR, BECAUSE OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS, TO REFUSE TO HIRE OR EMPLOY OR BAR OR DISCHARGE FROM EMPLOYMENT ANY PERSON, OR TO DISCRIMINATE AGAINST SUCH PERSON IN COMPENSATION, CONDITIONS, OR PRIVILEGES OF EMPLOYMENT. CITY VENDORS AND CONTRACTORS SHALL PROVIDE A COPY OF ITS ANTIDISCRIMINATION POLICY TO THE CITY'S PROCUREMENT OFFICER, TO CONFIRM COMPLIANCE WITH THIS CHAPTER OR ATTEST IN WRITING TO COMPLIANCE WITH THIS CHAPTER.
- (6) FOR ANY PERSON TO COERCE, INTIMIDATE, THREATEN, OR INTERFERE WITH ANY PERSON IN THE EXERCISE AND ENJOYMENT OF, OR ON ACCOUNT OF ANY AID OR ENCOURAGEMENT OF ANY RIGHT GRANTED OR PROTECTED UNDER THIS CHAPTER.

SEC. 2-604. EXCLUSIONS.

THIS CHAPTER SHALL NOT APPLY TO:

- (1) A RELIGIOUS ORGANIZATION;
- (2) AN EXPRESSIVE ORGANIZATION WHOSE EMPLOYMENT OF A PERSON PROTECTED BY THIS CHAPTER WOULD SIGNIFICANTLY BURDEN THE ASSOCIATION'S RIGHTS OF EXPRESSIVE ASSOCIATION;
- (3) A BONA FIDE MEMBERSHIP CLUB (OTHER THAN A LABOR ORGANIZATION) THAT IS EXEMPT FROM TAXATION UNDER THE INTERNAL REVENUE CODE OF 1986 (AS AMENDED FROM TIME TO TIME), AS DEFINED IN THIS CHAPTER; OR
- (4) A SOCIAL CLUB, AS DEFINED IN THIS CHAPTER.

SEC. 2-605. FAIR HOUSING.

(A) IT SHALL CONSTITUTE A VIOLATION OF THIS CHAPTER TO REFUSE TO SELL OR RENT AFTER THE MAKING OF A BONA FIDE OFFER, OR TO REFUSE TO NEGOTIATE FOR THE SALE OR RENTAL OF RESIDENTIAL REAL PROPERTY TO ANY PERSON BECAUSE OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS, WITHIN THE LEGAL JURISDICTION OF THE CITY.

(B) IT SHALL CONSTITUTE A VIOLATION OF THIS CHAPTER TO REFUSE ANY PROVISION OF SERVICES OR FACILITIES, PRIVILEGES OR CONDITIONS OF THE SALE OR RENTAL OF RESIDENTIAL REAL PROPERTY TO ANY PERSON BECAUSE OF RACE, COLOR, GENDER, GENDER IDENTITY, SEXUAL ORIENTATION, RELIGION, NATIONAL ORIGIN, FAMILIAL STATUS, AGE, DISABILITY, OR UNITED STATES MILITARY VETERAN STATUS, WITHIN THE LEGAL JURISDICTION OF THE CITY.

(C) NOTHING IN THIS CHAPTER SHALL EXCLUDE OR DENY HOUSING DESIGNATED FOR SENIOR LIVING OR FOR THE DISABLED, OR AS OTHERWISE DESIGNATED OR DIRECTED BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR THE STATE OF ARIZONA.

SEC. 2-606. PENALTIES, PROCESS AND APPEALS.

(A) ANY PERSON FOUND RESPONSIBLE OF VIOLATING ANY SECTION OR SUBSECTION OF THIS CHAPTER SHALL BE PUNISHED BY THE IMPOSITION OF A CIVIL SANCTION OF A FINE NOT LESS THAN ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) AND NOT MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500) PLUS APPLICABLE SURCHARGES, FOR EACH VIOLATION.

(B) ANY PERSON CLAIMING TO BE AGGRIEVED OF A VIOLATION OF THIS CHAPTER MAY FILE WITH THE CITY MANAGER OR HIS DESIGNEE OF THE CITY, A WRITTEN CHARGE SIGNED BY THE COMPLAINANT AND VERIFIED BY SUCH SIGNATURE, WITHIN FORTY-FIVE (45) DAYS OF THE ALLEGED VIOLATION OCCURRING. THE CHARGE SHALL SET FORTH FACTS UPON WHICH IT IS BASED AND SHALL IDENTIFY THE PERSON CHARGED (HEREINAFTER "RESPONDENT"). THE CITY MANAGER OR HIS DESIGNEE SHALL FURNISH THE RESPONDENT WITH A COPY OF THE CHARGE AND SHALL PROMPTLY INVESTIGATE THE ALLEGATIONS OF THE DISCRIMINATORY PRACTICES SET FORTH IN THE CHARGE.

(C) THE RESPONDENT MAY FILE, NO LATER THAN TWENTY (20) DAYS FOLLOWING RECEIPT OF THE CHARGE, A WRITTEN VERIFIED ANSWER TO

THE CHARGE. FAILURE TO ANSWER OR PARTICIPATE IN THE PROCESS WILL BE CONSIDERED AN ADMISSION.

(D) THE CITY MANAGER OR HIS DESIGNEE SHALL RENDER WRITTEN FINDINGS AS TO WHETHER THERE MAY BE REASONABLE CAUSE TO SUBSTANTIATE THE CHARGE NO LATER THAN ONE HUNDRED TWENTY (120) DAYS FROM THE FILING OF THE CHARGE. THE CITY MANAGER OR HIS DESIGNEE SHALL FURNISH A COPY OF ITS REPORT OF FINDINGS TO THE CHARGING PARTY AND TO THE RESPONDENT.

(E) IF THE CITY MANAGER OR HIS DESIGNEE FINDS THAT THERE IS REASONABLE CAUSE TO BELIEVE THAT THE RESPONDENT HAS ENGAGED IN A DISCRIMINATORY PRACTICE THAT IS PROHIBITED BY THIS CHAPTER, THE CITY MANAGER OR HIS DESIGNEE MAY ATTEMPT TO ELIMINATE THE ALLEGED DISCRIMINATORY PRACTICE BY CONFERENCE, CONCILIATION, AND PERSUASION. THE TERMS OF ANY AGREEMENT BETWEEN THE PARTIES MAY REQUIRE THE RESPONDENT TO REFRAIN FROM OR ENGAGE IN CERTAIN ACTIONS TO CARRY OUT THE PURPOSES OF THIS CHAPTER IN THE FUTURE. IF AN AGREEMENT IS REACHED, THE CITY MANAGER OR HIS DESIGNEE SHALL ISSUE AN ORDER STATING ITS TERMS AND FURNISH A COPY TO EACH PARTY.

(F) NO ACTIONS OR OMISSIONS UNDERTAKEN PURSUANT TO THIS CHAPTER, SHALL GIVE RISE TO LIABILITY OR LEGAL RESPONSIBILITY ON THE PART OF THE CITY OR ANY OF ITS EMPLOYEES, AGENTS OR OFFICIALS.

(G) IN CONNECTION WITH THE INVESTIGATION OF ANY CHARGE FILED UNDER THIS CHAPTER, THE CITY MANAGER OR HIS DESIGNEE SHALL SEEK THE VOLUNTARY COOPERATION OF ANY PERSON TO: OBTAIN ACCESS TO PREMISES, RECORDS, DOCUMENTS, INDIVIDUALS AND OTHER POSSIBLE SOURCES OF INFORMATION; EXAMINE, RECORD AND COPY ANY MATERIALS; TAKE AND RECORD TESTIMONY AND OBTAIN STATEMENTS AS REASONABLY NECESSARY TO FURTHER THE INVESTIGATION.

(H) CHARGES MAY BE DISMISSED FOR REASONS INCLUDING: THE COMPLAINT WAS UNTIMELY FILED; THE LOCATION OF THE ALLEGED PRACTICE WAS OUTSIDE OF THE CITY'S JURISDICTION; INSUFFICIENT EVIDENCE EXISTS TO CONCLUDE THAT THE VIOLATION OCCURRED; OR A CONCILIATION AGREEMENT HAS BEEN EXECUTED BY THE PARTIES.

(I) IF UPON COMPLETION OF THE INVESTIGATION, THE CITY MANAGER OR HIS DESIGNEE HAS CONCLUDED THAT A VIOLATION OF THIS CHAPTER OCCURRED, BUT IS UNABLE TO OBTAIN A CONCILIATION AGREEMENT, REFER THE CHARGE TO AN APPROPRIATE FEDERAL OR STATE AGENCY, OR OTHERWISE DISPOSE OF THE VIOLATION, IT SHALL

IMPOSE A FINE OF NO LESS THAN ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) PER CIVIL VIOLATION. A PERSON FOUND RESPONSIBLE FOR THE SAME CIVIL INFRACTION SHALL BE FINED NO MORE THAN TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500). IN ADDITION, THE CITY MANAGER OR DESIGNEE MAY REFER THE MATTER TO THE CITY ATTORNEY'S OFFICE, WHO SHALL DETERMINE HOW BEST TO PURSUE FURTHER ACTION, IF ANY, ON THE VIOLATION.

(J) THE CITY ATTORNEY'S OFFICE WILL DETERMINE WHETHER SUFFICIENT FACTS AND EVIDENCE EXIST IN ORDER TO WARRANT THE INITIATION OF AN ACTION IN A COURT OF COMPETENT JURISDICTION. IF THE CITY ATTORNEY'S OFFICE DETERMINES THAT THE FACTS OR EVIDENCE ARE INSUFFICIENT TO WARRANT THE INITIATION OF AN ACTION, THE CITY ATTORNEY WILL PROVIDE WRITTEN NOTIFICATION TO THE PARTIES, AND THE CHARGE WILL BE DISMISSED.

(K) FAILURE TO REMIT PAYMENT OF A FINE IMPOSED UNDER THIS CHAPTER SHALL RESULT IN COLLECTION EFFORTS AS ANY OTHER CIVIL JUDGMENT.

SEC. 2-607. SEVERABILITY AND LEGAL EFFECT.

(A) NOTHING CONTAINED IN THIS CHAPTER SHALL BE DEEMED OR INTERPRETED TO ALTER, CONTRAVENE, OR SUPERCEDE STATE OR FEDERAL LAWS, INCLUDING PRIVACY LAWS.

(B) NOTHING IN THIS CHAPTER SHALL BE DEEMED TO CONFER RIGHTS OR BENEFITS IN ADDITION TO WHAT IS DESCRIBED HEREIN.

(C) NOTHING IN THIS CHAPTER SHALL BE CONSTRUED TO GIVE RISE TO CIVIL OR LEGAL LIABILITIES GREATER THAN THOSE ALREADY EXISTING UNDER LAW OR TO CREATE NEW PRIVATE CAUSES OF ACTION, OTHER THAN TO BE REMEDIED AS SET FORTH HEREIN.

(D) IF ANY PROVISION, SECTION OR SUBSECTION OF THIS CHAPTER IS HELD TO BE INVALID BY A COURT OF COMPETENT JURISDICTION, THEN SUCH PROVISION, SECTION OR SUBSECTION SHALL BE CONSIDERED SEPARATELY AND APART FROM THE REMAINING PROVISIONS OR SECTIONS, WHICH SHALL REMAIN IN FULL FORCE AND EFFECT.

SEC. 2-608. APPEALS.

THE FOLLOWING IS THE PROCESS FOR APPEALS OF ANY ACTION UNDER THIS CHAPTER:

- (1) IF A RESPONDENT IS DISSATISFIED WITH THE FINDINGS OF A VIOLATION UNDER THIS CHAPTER, THE RESPONDENT MAY

ADMINISTRATIVELY APPEAL THE DECISION TO THE CITY MANAGER OR HIS DESIGNEE, WITHIN FIVE (5) DAYS OF RECEIPT OF THE FINDINGS. THE CITY MANAGER OR HIS DESIGNEE SHALL RENDER A DECISION WITHIN TEN (10) WORKING DAYS OF THE RECEIPT OF REQUEST FOR REVIEW.

- (2) IF ANY FINES ARE LEVIED PUSUANT TO THIS CHAPTER, THE RESPONDENT MAY APPEAL THE DECISION AND RESULTING FINE IN WRITING TO THE CITY MANAGER WITHIN FIVE (5) WORKING DAYS OF THE RECEIPT OF THE IMPOSITION OF THE FINE. SUCH APPEAL SHALL CONTAIN THE FACTUAL BASIS FOR THE RESPONDENT'S POSITION AND THE REASONS WHY THE DECISION IS INCORRECT AND SHOULD BE OVERTURNED.
- (3) IF THE RESPONDENT IS DISSATISFIED WITH THE ADMINISTRATIVE REVIEW BY THE CITY MANAGER, THE RESPONDENT MAY FILE AN APPEAL IN WRITING WITH THE CITY CLERK TO BE HEARD BY A HEARING OFFICER. SUCH APPEAL SHALL BE FILED WITHIN TEN (10) DAYS OF THE RECEIPT OF A DECISION BY THE CITY MANAGER, SETTING FORTH THE REASONS WHY THE DECISION IS INCORRECT AND SHOULD BE OVERTURNED.
- (4) THE HEARING OFFICER SHALL CONSIDER ALL FACTS RELATING TO THE ISSUANCE OF THE CHARGE AND RESULTING FINE, IF ANY, AND MAY UPHOLD THE PENALTY IMPOSED, ELIMINATE IT OR MODIFY IT.
- (5) THE COSTS OF THE ADMINISTRATIVE HEARING MAY BE ASSESSED TO THE RESPONSIBLE PARTY IN ADDITION TO ANY OTHER FINES AND PENALTIES, IN THE EVENT THE CHARGE IS UPHELD.
- (6) IF THE RESPONDENT IS DISSATISFIED WITH THE REVIEW BY THE HEARING OFFICER, THE RESPONDENT MAY FILE AN APPEAL IN WRITING WITH THE CITY CLERK TO BE HEARD BY A THE CITY COUNCIL. SUCH APPEAL SHALL BE FILED WITHIN TEN (10) DAYS OF THE RECEIPT OF A DECISION BY THE HEARING OFFICER, SETTING FORTH THE REASONS WHY THE DECISION IS INCORRECT AND SHOULD BE OVERTURNED. THE DECISION OF THE CITY COUNCIL SHALL CONSTITUTE THE FINAL DECISION.

SEC. 2-609. PUBLIC RECORDS.

ALL DOCUMENTS PROVIDED TO THE CITY PURSUANT TO THIS CHAPTER ARE PUBLIC RECORDS PURSUANT TO THE LAWS OF THE STATE OF ARIZONA AND MAY BE SUBJECT TO DISCLOSURE UPON REQUEST IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA.

Section 2. Pursuant to the Tempe City Charter, Section 2.12, ordinances are effective thirty (30) days after adoption or at any later date specified therein.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, this ___ day of _____, 2013.

Mark W. Mitchell, Mayor

ATTEST:

Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:

Judith R. Baumann, City Attorney