

## *DIVISION 2. RETURN TO WORK POLICY<sup>1</sup>*

### **Subdivision I. Generally**

#### **Sec. 2-31. Return to work policy statement.**

- (a) It is the policy of the city to provide a return to work program as the means of returning employees to meaningful, productive employment following injury or illness. In order to provide the highest level of quality service to the citizens of the city, it is necessary for every employee of the city to be available for work, ready and capable of performing the duties and responsibilities for which the employee was hired. If the injured or ill employee is not able to be returned to regular work within six (6) months, he/she will be evaluated for Americans with Disabilities Act (ADA) consideration. If he/she does not qualify for ADA consideration, they will be placed on inactive status, and terminated at the end of two hundred sixty (260) work days of lost time due to business necessity, unless otherwise specified by the Collective Bargaining Agreements of Police and Fire and V.T.C.A., Local Government Code, ch. 143, Municipal Civil Service.
- (b) The return to work program enables a regular full-time employee to return to work at full duty if the employee has
- (1) A disability as defined by the ADA;
  - (2) Limitations as a result of a work-related injury sustained during the course and scope of employment;  
or
  - (3) A serious health condition as defined by the Family Medical Leave Act (FMLA), and will run concurrently starting on day one of lost work time.

If the employee is not physically capable of returning to full duty, the return to work program will temporarily assign the employee to either modified duty or alternate duty. Modified duty will allow the employee to perform the essential functions of his regular position to the employee's physical capacities for a period not to exceed ~~sixty (60)~~ *one hundred eighty (180)* work days. Alternate duty will assign the employee to a position in the same department or another department for a period not to exceed ninety (90) work days. An extension for alternate duty positions may be granted at the city manager's discretion. Modified duty positions and alternate duty positions will be assigned only if available and must have the department director's approval.

- (c) Participation in the return to work program shall not be construed as recognition by the city, its management, or its employees as having a disability as defined by the ADA of 1990. To the extent reasonably feasible, it is the employee's responsibility to inform the supervisor or management that a disability under the ADA exists and reasonable accommodation is necessary to perform the essential job functions of their job.

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<sup>1</sup>Editor's note(s)—Prior to its reenactment by Ord. No. 98-003, adopted Jan. 19, 1998, Div. 2, §§ 2-38—2-41, was repealed by Ord. No. 89-101, § 2, adopted June 5, 1989. The former Div. 2 pertained to the city engineer and derived from §§ 4, 7, 8, and 16 of an ordinance adopted May 4, 1920. Prior to the repeal of Div. 2 by Ord. No. 89-101, sections 2-39, 2-40 of Div. 2 were repealed by § 1(b) of Ord. No. 85-201, adopted Nov. 19, 1985, which readopted this Code.

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- (d) Specific procedures and guidelines will be provided regarding the return to work program. All employees of the city are required to comply with procedures and guidelines as specified in the return to work policy.

(Ord. No. 98-003, § 1, 1-19-98)

## Subdivision II. Procedure

### Sec. 2-32. Definitions.

The following definitions apply to this procedure:

*Serious health condition* means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, or residential medical care facility, including any period of incapacity; or continuing treatment by a health care provider, including a period of incapacity.

*FMLA leave* means federal leave entitlements of up to twelve (12) weeks of unpaid leave when an eligible employee is unable to work because of a serious health condition. The absence from work must be a period of incapacity of more than three (3) consecutive calendar days. The leave is normally continuous, but may be taken intermittently or on a reduced leave schedule. Employees will be notified that FMLA will run concurrently with sick leave, workers compensation, and serious illness pool. Documentation from the treating physician is required.

*Lost work days* means time spent away from work at the direction of the treating doctor as a result of a serious medical illness or a compensable injury sustained in the course and scope of employment. Working in a temporary assignment of modified or alternate duty are not counted as lost time.

*Full duty* means performance of all duties and tasks of the positions for which the employee was employed. "Full duty" entails performing all essential and nonessential functions of the employee's regular job.

- (1) *Essential function.* The fundamental duties of the position. A task may be essential because the position exists to perform the function; or a function may be essential based on the number of other employees available to perform the task or among whom the responsibility of doing so can be distributed; or a function may be essential if it requires a certain degree of skill or specialization.
- (2) *Nonessential.* The duties of a position that anyone else can perform.

*Temporary assignment* means performance of a temporary job assignment that is intended to return an injured employee to work at less than his or her full duties when a compensable injury or serious medical condition prevents the employee from working full duty. Two (2) types of "temporary assignments" are modified duty and alternate duty. They are not counted as part of two hundred sixty (260) lost work days.

- (1) *Modified duty.* Performance of all the essential functions, but only a portion of the nonessential functions and tasks of the regular job, and performing those duties and tasks that are within the capabilities of the employee given the restrictions to duty imposed by the treating physician. "Modified duty" is a temporary arrangement until the injured employee can resume full duty and limited to ~~sixty (60)~~ one hundred eighty (180) work days. If the employee is qualified as defined under the ADA, then modified duty may become a permanent arrangement as a reasonable accommodation, if it does not create an undue hardship on the city.
- (2) *Alternate duty.* Performance of the essential functions of a job or position other than the position for which the employee is employed. "Alternate duty" allows the employee to temporarily perform other duties and tasks that are within the restrictions to duty imposed by the treating physician. Such alternate duty may be physically located in the same facility or in some other facility. Alternate duty is a temporary arrangement until the injured employee can resume full activities of his/her regular job. If the employee is a qualified individual with a disability as defined under the ADA, then alternate duty

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may become a permanent arrangement as reasonable accommodation, if the accommodation does not create an undue hardship on the city. Alternate duty is limited to ninety (90) work days. One (1) additional extension, not to exceed ninety (90) days, may be granted and must be approved by the city manager and the department director.

*Undue hardship* means an action requiring significant difficulty or expense. An example may be an action that is unduly costly, extensive, substantial or disruptive, or that will fundamentally alter the nature of the employer's business.

*Reasonable accommodation* means any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy equal opportunities.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-33. Prohibited actions.**

This return to work policy and procedure shall not be applied to any situation or circumstance in a manner that discriminates on the basis of race, color, sex, national origin, religion, or disability. It is a violation of the return to work policy, procedure and state or federal law for any employee, supervisor or manager of the city to:

- (1) Discharge or in any other manner discriminate against an employee of this city because the employee:
  - a. Files a workers' compensation claim;
  - b. Hires a lawyer to represent the employee in a workers' compensation claim;
  - c. Institutes or causes to be instituted in good faith a proceeding under the Texas Workers' Compensation Act;
  - d. Testifies or is about to testify in a proceeding under the Texas Workers' Compensation Act.
- (2) Discharge or in any other manner discriminate against an employee of this city because the employee:
  - a. Opposes any practice made unlawful by the FMLA;
  - b. Has filed any charge, or has instituted or caused to be instituted any proceeding relating to any right provided under the FMLA;
  - c. Has given, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided under the FMLA;
  - d. Has testified, or is about to testify, in any inquiry or proceeding relating to any right provided under the FMLA;
  - e. Interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided by the FMLA.
- (3) Discriminate on the basis of disability against an employee of this city who is a qualified individual with a disability under the ADA in regard to:
  - a. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
  - b. Leaves of absence, sick leave, or any other leave.
  - c. Upgrading, promotion, award of tenure, demotion, transfer, layoff termination, right of return from layoff, and rehiring.
  - d. Rates of pay or any other form of compensation, changes in compensation and fringe benefits available.

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- e. Selection and financial support for training, or social and recreational activities.
  - (4) Limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.
  - (5) Require a medical examination of an employee who is disabled as defined under the ADA, unless the medical examination is job-related and consistent with business necessity.
  - (6) Make inquiries as to whether an employee is an individual with a disability or as to the nature or severity of such disability.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-34. Position descriptions.**

- (a) All department directors/designees are responsible for identifying, defining, documenting and maintaining the essential and nonessential functions for all positions for which they are responsible.
- (b) The physical requirements of the position should be included in all position descriptions as either an essential or nonessential function.
- (c) All position descriptions shall be reviewed on an as-needed basis, and must be submitted for approval to the personnel officer.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-35. Return to work coordinator.**

- (a) The employee health nurse is the return to work coordinator.
- (b) The return to work coordinator shall be responsible for coordinating all activities associated with the return to work program, unless specific duties are otherwise assigned to another person or position.
- (c) The return to work coordinator shall also develop, maintain, and provide an appropriate training module for inclusion in new employee orientation training.
- (d) The return to work coordinator shall also develop, maintain and provide an appropriate refresher training module for presentation to employees on an as-needed basis.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-36. Employee participation in the return to work program.**

- (a) In order for a regular employee of this city to be eligible to participate in this return to work program, the employee must have:
  - (1) Sustained a compensable injury, as defined in the Texas Workers' Compensation Act, that results in lost time away from work;
  - (2) A serious health condition as defined by the FMLA;
  - (3) A disability as defined by the ADA.
- (b) An employee who meets the above criteria shall participate in the program. If the employee refuses to participate, disciplinary action will be taken and the employee will be terminated based on business

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necessity pursuant to personnel policies or as per Collective Bargaining Agreement of Police and Fire and V.T.C.A., Local Government Code ch. 143, Municipal Civil Service.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-37. Notification of injury or illness.**

- (a) An employee who sustains an injury or illness either on- or off-the-job will give written notification to the supervisor, or a person in a management position, that an injury or serious health condition exists.
- (b) The notification should occur at the earliest possible time after occurrence of injury or knowledge that a serious health condition exists.
- (c) Notification should occur within twenty-four (24) hours of the injury or when the serious health condition first manifests itself. In order to receive workers' compensation benefits, an employee must give notice of injury within thirty (30) days or the claim may be denied.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-38. Authorization for leave and lost time.**

- (a) An employee who must miss work due to a compensable injury and/or a serious health condition must be authorized by a health care provider to be off work. It is the employee's responsibility to provide such documentation to his/her supervisor after three (3) lost working days. The employee can be disciplined for unauthorized lost work time.
- (b) A "certification of physician or practitioner" form is on file with the city for this purpose. If an employee is disabled as defined under the ADA, the request for information must be job-related, consistent with business necessity and cannot inquire as to the nature or severity of the injury.
- (c) In general, the treating health care provider's certifications shall be provided by the employee to the supervisor according to the following timeliness:
  - (1) When the employee knows in advance that FMLA is necessary, the certification form shall be provided to the supervisor a minimum of three (3) working days prior to the time when the leave will commence.
  - (2) When the employee cannot know in advance that leave is necessary, the certification form should be provided to the supervisor within a maximum of three (3) calendar days after the initial visit to the health provider.
- (d) The employee's director or designee shall coordinate with the employee health nurse and provide a copy of the employee's job description and physical job requirements to the employee to take to the health care provider to assist the health care provider to determine whether the employee can perform the essential functions of the job.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-39. Substitution of paid leave for unpaid leave.**

- (a) If an employee is injured off the job or has a serious illness, accrued annual leave, sick leave, or serious illness pool, if eligible, must be used before unpaid leave is taken.

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- (b) If a compensable work-related injury or illness is involved, the employee is not required to use all accrued annual or sick leave. Workers' compensation will start paying benefits on the eighth day of the disability. Police and firefighters are an exception to this due to their collective bargaining status.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-40. Periodic status reports.**

- (a) If an employee is certified by a health care provider to be off work, the employee is required to submit periodic status reports to his/her supervisor to report the employee's status and intention to return to work. Such status reports are required at the time of each scheduled visit with the treating health care provider and are due immediately following the visit.
- (b) A "return to work status report" form is attached to this procedure for this purpose. The status report should be provided to the supervisor within twenty-four (24) hours after the scheduled visit, or if a weekend or holiday is involved, before close of business on the next scheduled workday as applicable.
- (c) If an employee has returned to work in a temporary assignment, and follow-up healthcare provider appointments are necessary, the employee shall schedule the appointments to minimize time away from the job.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-41. Communications with the employee.**

- (a) At the time of first communication with the employee, the return to work coordinator shall provide information to the employee that contains the following, as appropriate: the city's return to work policy and procedure, and appropriate forms.
- (b) If a job-related injury or occupational disease occurs, the following information will be provided to the employee:
  - (1) Notification that the city provides workers' compensation benefits to employees who sustain compensable job-related injuries and /or occupational diseases;
  - (2) How medical expenses and income payments are made;
  - (3) How employees health benefits are continued;
  - (4) The name, location, and telephone number of the local Texas Workers' Compensation Commission's (TWCC) field office;
  - (5) The name of the ombudsman at that office;
  - (6) The notice will state that the employee has a right to information and assistance from TWCC ombudsman with his/her claim;
  - (7) Information will be provided to the employee regarding employee rights under the Texas Workers' Compensation Act.
- (c) The following information will be provided to the employee regarding FMLA leave:
  - (1) Information regarding the employee's FMLA entitlement;
  - (2) How employee health benefits are continued;
  - (3) Required certifications from health care provider.

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(d) The return to work coordinator is responsible for maintaining regular, weekly communications with the employee. The purposes of these communications are to:

- (1) Encourage the employee during recuperation from the injury;
- (2) Communicate the value of the employee to the city;
- (3) Encourage return to work at the earliest possible date.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-42. Communications with the Texas Worker Compensation Commission.**

- (a) The department director/designee is responsible for submission to risk management, all required reports and other important documents in the city's possession regarding a workers' compensation claim, including the certification of physician or practitioner form and the return to work form. They should be submitted within twenty-four (24) hours and notification made to the risk management department.
- (b) Timely submission of reports and forms is necessary to promptly initiate workers' compensation benefits, or cease payment of benefits when the employee returns to work. All reports and forms shall be submitted in a timely manner in accordance with requirements of the Texas Workers' Compensation Act.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-43. Temporary assignment positions.**

- (a) If an employee is certified by the health care provider to return to work to less than full duty, the city may provide a temporary assignment position to the employee. Directors and managers will identify temporary modified or alternate duty positions to facilitate return to work based on the business necessity of filling the employee's position, the employee's entitlements to family medical leave, the availability of temporary assignments, and other appropriate factors.
- (b) These temporary assignments shall be coordinated with the return to work coordinator/designee and/or administrative services director/designee. The maximum length of time that a temporary assignment may last must be based on relevant factors including the business necessity of the employee's original position being filled.
- (c) Temporary assignment positions shall be identified, assigned and managed on a case by case basis based upon the business necessity of the city.
- (d) The temporary assignment position shall be documented in a bona fide offer of employment letter to the employee.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-44. Bona fide offer of employment.**

- (a) The bona fide offer of employment letter shall include the following information:
  - (1) The type of position offered and the specific duties;
  - (2) A statement that the city is aware of and will abide by any physical limitations under which the treating doctor has authorized the employee to return to work;
  - (3) The maximum physical requirements of the job;

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- (4) The wage rate of the job;
  - (5) The location of the temporary assignment;
  - (6) The expected duration of the temporary assignment.
- (b) If the employee has questions regarding the temporary assignments, job modifications, or questions regarding the FMLA or ADA, the employee can contact the personnel officer.
  - (c) The employee may accept or reject a bona fide offer of employment. The employee should be informed that rejection of a bona fide offer of employment may result in workers' compensation temporary income benefits cessation (if applicable) by the workers' compensation commission, and termination of employment.
  - (d) If the employee accepts a bona fide offer of employment, the employee shall perform the duties of the temporary assignment position for the term of the assignment or until the employee is able to return to full duty, whichever is sooner.
  - (e) If the employee rejects the bona fide offer of employment, then the employee remains off work until the end of the FMLA entitlement period or is terminated.
  - (f) If the employee is unable to return to full duty by the end of the temporary assignment and/or by the end of the employee's FMLA leave entitlement period, the employee's continued employment with the city shall be considered based upon business necessity of having the employee's position filled and whether any reasonable accommodation is required under the ADA.
  - (g) If the employee does not qualify for ADA, the employee shall be placed on inactive status and shall be terminated at the end of two hundred sixty (260) work days of lost time due to business necessity.
- (Ord. No. 98-003, § 1, 1-19-98)

### **Subdivision III. On-the-job Injury Policy**

#### **Sec. 2-45. Generally.**

It is the policy of the city to insure that all employees who are injured in the course and scope of their employment be afforded the protection guaranteed by the applicable workers' compensation laws of the state.

(Ord. No. 98-003, § 1, 1-19-98)

#### **Sec. 2-46. Purpose.**

[The purpose of this article is:]

- (1) To provide a uniform policy of reporting on-the-job injuries;
- (2) To properly document on-the-job injuries for administrative and insurance requirements;
- (3) To outline benefits eligibility requirements.

(Ord. No. 98-003, § 1, 1-19-98)

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### **Sec. 2-47. Scope.**

This policy is applicable to all on-the-job injuries/illnesses regardless of how minor in nature, even if no treatment is required or no time is lost from work.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-48. Definitions.**

*Leave benefits* refer to time off as defined in the personnel policies of this Code.

*Regular full time employees* shall mean as defined in the personnel policies of this Code. This does not include orientation employees, part-time, summer, or temporary employees.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-49. Responsibilities.**

- (a) *Employees.* Employees shall report all on-the-job injuries to their supervisor (who informs their director/designee) within the required time period (see subsection 2-50(a)), even if no medical treatment is required.
- (b) *Supervisors.* Supervisors shall report all on-the-job injuries/illnesses to their director/designee and to the risk management department within the required time period (see subsection 2-50(b)).
- (c) *Risk management.* Risk management will maintain records of all on-the-job injuries/illnesses including the filing of claims processing.
- (d) *Employee health nurse.* The employee health nurse will maintain the medical records on all injuries/illnesses.
- (e) *Accident review.* Accident review will be conducted by the training and safety officer to determine if the accident was preventable. A copy of the determination will be placed in the employee's workers compensation file.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50. Reporting procedures.**

- (a) Any employee who sustains an on-the-job injury should report the injury to their immediate supervisor by the end of the regularly scheduled shift. Failure to report the injury to the immediate supervisor within thirty (30) days of injury may make them ineligible to receive workers compensation benefits.
- (b) The supervisor/designee will report the injury/illness to their director/designee and will complete the TWCC-1 form and submit it to the risk management department within twenty-four (24) hours of notification of injury/illness.
- (c) The employee health nurse will coordinate the scheduling of any initial medical treatment (see subsection 2-50.3(a)). A supervisor/designee will accompany the employee to the clinic/hospital if he is available.
- (d) The supervisor will immediately notify the department director/designee and the employee health nurse when an employee returns to work with a restriction; if it impacts the employee's ability to perform the duties of his/her job for more than the next regularly scheduled work shift, following the date of injury, or first medical treatment.

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(e) The department director/designee will be responsible for insuring that these procedures are followed.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.1. Eligibility.**

All active employees on the city payroll are eligible to receive workers compensation benefits.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.2. Provisions.**

During the time an employee is unable to work and is authorized to be off duty due to an on-the-job injury, the employee will be paid workers compensation benefits prescribed by the Texas Workers' Compensation Act. These benefits include compensation payments, medical care as reasonably required to cure and relieve the effects of on-the-job injury and/or death benefits.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.3. Medical procedures.**

- (a) The initial medical visit for treatment will be arranged by the employee health nurse and a supervisor/designee will accompany the employee on the initial visit if possible. The initial visit will be with the city-designated health care provider. After the initial medical visit, the employee still retains the right to choose a primary care physician.
- (b) If an employee is not released for work, the employee will provide a completed workers' compensation form for each visit to the doctor until the employee receives a medical release to return to work. Each injury/illness report will be reviewed by the employee health nurse to assure that the employee is returned to work as soon as possible.
- (c) If an employee is released for work after the initial treatment for an injury/illness, the employee must return the completed workers' compensation form to the risk management department. When the employee returns this form, a release for duty will be issued and the employee will be allowed to return to work. An employee cannot return to work without a medical release and a release from the risk management division.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.4. Temporary replacement.**

- (a) While an employee is unable to work due to an on-the-job injury, a temporary employee may be hired or promoted to replace the injured employee if it is deemed necessary by the department director and approved by the city manager.
- (b) After one hundred eighty (180) work days from the date of injury/illness if an employee is unable to return to regular duty, the employee will be placed on inactive status and a temporary replacement for the position may be made subject to the city manager's approval. If the employee is classified as an orientation or other than regular employee, he/she will be terminated.
- (c) If the injured regular employee reaches maximum medical improvement as defined by the Texas Workers' Compensation Law after one hundred eighty (180) work days but before two hundred sixty (260) work days, the city will consider the employee for employment in a capacity that the employee, was previously assigned

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and qualified for, if a position is available. After two hundred sixty (260) work days from the original date of injury, if the regular employee is unable to return to work and does not fall under the ADA guidelines, the employee will be terminated due to business necessity.

(Ord. No. 98-003, § 1, 1-19-98)

## **Subdivision IV. Modified Duty Policy**

### **Sec. 2-50.5. Purpose.**

To aid employees in returning to work from an on-the-job or off-the-job injury or illness, the city has established a modified duty policy. Regular city employees who, for medical reasons, may not return to full duty as the result of on-the-job or off-the-job injury or illness, are eligible for this program. For the purpose of this policy, modified duty shall be any duty as a result of restrictions placed on an employee by a physician which will not allow the employee to perform the full course and scope of his/her job. The modified duty positions will be limited to five (5) percent of the work force for each department.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.6. General administration.**

(a) *Administrative services responsibilities.*

- (1) The administrative services director/designee will coordinate the modified duty program.
- (2) All modified duty job assignments will be approved by the department director, risk manager, and the employee health nurse.

(b) *Length of modified duty.*

- (1) Modified duty assignments shall not exceed a total of one hundred eighty (180) work days.
- (2) After one hundred eighty (180) work days on modified duty, the employee shall return to his/her original job or will be placed on workers' compensation leave, sick leave, or leave without pay.
- (3) The employee is responsible for obtaining an evaluative medical exam at least once each month, and the results sent to risk management if it is an on-the-job injury or to the employee health nurse if it is not a job-related illness/injury within two (2) working days after the exam.
- (4) The evaluative examination will specifically define and state the employee's medical condition. It will state a prognosis for recovery within an expected time period and outline the treatment or therapy needed to promote full recovery. The exam will also identify any physical performance limitations or restrictions of activity regarding their job status.

(c) *Benefits.* All benefits as applicable shall continue while an employee is on modified duty. Employees on modified duty may take any available leave subject to compliance with the policy pertaining to such leave and with the approval of the appropriate department director.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.7. Modified duty access.**

When a physician determines that an employee cannot return to their original position and the employee can perform a modified duty assignment:

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- (1) The employee will provide a statement requesting modified duty from the attending physician to risk management if it is a work related injury/illness. If the employee is off due to a personal injury or illness, the statement is sent to the employee health nurse.
  - (2) The department director, after consultation with the employee health nurse and the risk manager, will attempt to place the employee in a modified duty position.
  - (3) If modified duty is not available within the employee's department, the department director/designee will contact the employee health nurse/designee.
  - (4) The number and type of modified duty positions are available on a limited basis; therefore, if a modified duty position is not available the employee shall remain on workers' compensation, sick-leave, serious injury pool or unpaid leave.
  - (5) If an employee refuses to accept a job assignment within the capabilities as approved by the employee's physician, the employee will be disqualified from participating in the modified duty program, and shall be terminated.
  - (6) If the employee's physician restricts an employee from taking part in or performing certain physical activities outside the workplace, the employee shall abide by these restrictions. The violation of these physical restrictions shall be grounds for the termination of benefits and employment.
  - (7) Any employee assigned to modified duty will be compensated at their regular rate of pay.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.8. Medical support.**

If it becomes questionable as to the need or the ability of an employee to be on modified duty, the employee health nurse will arrange an independent medical exam (IME) (second opinion) of the employee. If the employee disputes the IME he/she may request a third medical opinion at the employee's expense or, when applicable, the exam may be covered under the city medical benefits program.

(Ord. No. 98-003, § 1, 1-19-98)

## **Subdivision V. Alternate Duty Policy**

### **Sec. 2-50.9. Policy.**

It is the policy of the city that regular full time employees who become temporarily disabled due to an on-the-job or off-the-job illness/injury and who have the medical expectation of returning to full duty may be assigned to duties consistent with their limited status for a specified period of time. The individual will be assigned to their department or one needing a service that the employee can provide within the constraints of their skill, experience and knowledge and within the limits of their physical capability as determined by their treating physician. The alternate duty positions will be limited to five (5) percent of the work force for each department.

(Ord. No. 98-003, § 1, 1-19-98)

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### **Sec. 2-50.10. Purpose.**

Establish a policy for assigning regular full time employees to alternate duty assignments in their own department or in other city departments. There, the employee will continue to assist in providing the highest level of quality service to the citizens of the city.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.11. Procedures.**

- (a) The employee health nurse designee working with the department director/designee will assure that the assignment to alternate duty is subject to approval by the city manager according to the following criteria:
  - (1) A significant need for service that is valuable to the city must exist.
  - (2) The employee must have the knowledge and skill and ability to perform the service needs of the city.
  - (3) The employee, if injured on the job, is eligible.
  - (4) The employee, if injured off the job, is physically capable of performing alternate duty, as determined by his treating physician.
- (b) No assignment may be made to alternate duty without the approval of the employee's department director/designee and a written statement from the treating physician.
- (c) A treating physician's alternate duty release will be definitively outlined stating specific limitations of the injured employee. The treating physician will receive a copy of essential job functions, physical job requirements of the position, and a copy of the alternate job policy for use in making this determination.
- (d) Work assignments and work schedules for those on alternate duty will be determined by the department director/designee in accordance with the need for service. Whenever possible an alternate duty assignment will be made in the employee's department. If an alternate duty assignment is not available in the employee's regular department, the employee health nurse/designee will arrange placement in another city department, if a suitable assignment is available.
- (e) Any employee assigned to alternate duty will be compensated at their regular rate of pay. If the alternate duty assignment rate of pay is higher, the employee will be compensated at the higher rate after thirty (30) days as per city ordinance.
- (f) Alternate duty assignments will not exceed ninety (90) work days. An extension may be granted at the discretion of the city manager. An employee is limited to a total of one hundred eighty (180) work days per year of alternate duty regardless of the number of injuries incurred. At the end of alternate duty assignment, the employee will be placed on inactive status. The employee may then be placed on worker's compensation leave if eligible, take accrued sick leave, or leave without pay.
- (g) Alternate duty provisions for temporarily disabled employees will be re-evaluated at the time it is determined by medical authority that a permanent disability exists.
- (h) This policy will not be construed or interpreted to mean an employee has a right to an alternate duty assignment and that the department director is compelled to assign an employee to alternate duty status.
- (i) If an employee refuses to accept a job assignment within the capabilities as approved by the employee's physician, the employee will be disqualified from participating in the alternate duty program. If the employee does not qualify for ADA consideration, the employee may be terminated due to business necessity.

(Ord. No. 98-003, § 1, 1-19-98)

## Subdivision VI. ADA Procedure and Documentation Policy

### Sec. 2-50.12. Purpose.

To provide policy and procedure for use by the city department director/designee in responding to requests from employees with disabilities for reasonable accommodation, as defined by the Americans with Disabilities Act (ADA).

(Ord. No. 98-003, § 1, 1-19-98)

### Sec. 2-50.13. Background.

Under Titles I and II of the ADA, the city must provide reasonable accommodations to the known physical or mental limitations of qualified individuals with disabilities who are:

- (1) Job applicants; or
- (2) Employees

to enable equal access and opportunity in two (2) aspects of employment: performance of essential functions of a job, and enjoyment of benefits and privileges of employment.

(Ord. No. 98-003, § 1, 1-19-98)

### Sec. 2-50.14. Definitions.

*Qualified individual with a disability* means an individual who has a physical or mental impairment that substantially limits one (1) or more life functions and who can perform the essential functions of the job, with or without a reasonable accommodation.

*Reasonable accommodation* means:

- (1) Modifications or adjustments to the work environment which may include, but are not limited to, acquiring or modifying equipment or devices, assigning part-time or modified work schedules.
- (2) Providing readers and interpreters;
- (3) Making the workplace readily accessible to and usable by people with disabilities.
- (4) Reassignment to a vacant position and job restructuring.

(Ord. No. 98-003, § 1, 1-19-98)

### Sec. 2-50.15. Procedure and documentation.

(a) *Step 1.*

- (1) *Procedure:* The employee requests an accommodation for a disability.

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- a. This request is directed to the employee's department director/designee and should be made in writing.
  - b. If the supervisor accepts a verbal request, the department director/designee must immediately put it in writing.
  - c. The supervisor may initiate discussion, in terms of performance issues only, by asking if an employee needs any additional resources to perform the job.
  - d. The employee is responsible for bringing up any disability related issues.
- (2) *Documentation:* Accommodation must be in writing using the request for accommodation form.
- (b) *Step 2.*
- (1) *Procedure:*
- a. The department director/designee, with the assistance of the administrative services director/designee, determines if the employee is a qualified individual with a disability. If the impairment is not obvious, the supervisor should request that the employee submit documentation from a qualified professional, such as a physician, and it must include:
    - 1. Diagnosis, in order to substantiate the existence of the impairment;
    - 2. Evaluation of functional limitations which impact performance of the essential functions of the job or access to benefits of employment; and
    - 3. A functional job description and functional video (when available) is provided to the qualified professional by the employee for the purpose of this evaluation.
  - b. The employee is responsible for acquiring the diagnosis and evaluation.
    - 1. The cost of this evaluation is borne by the employee.
    - 2. If the cost is not covered by insurance, or the supervisor feels that a second opinion is necessary, the supervisor should contact the administrative services director/designee for guidance as to funding options.
    - 3. The administrative services director/designee may consult with designated advisory personnel if needed.
  - c. Diagnosis is used by the supervisor only to determine that a disability exists.
    - 1. Reasonable accommodation is to be determined on a case by case basis, according to the evaluation and discussion of functional limitations.
    - 2. Any employee's medical information, including diagnosis and evaluation for providing reasonable accommodation, must be kept confidential in the employees medical record.
    - 3. Copies of any correspondence must be forwarded to the administrative services director/designee for their files.
- (2) *Documentation:* Medical documentation and evaluation (if necessary).
- (c) *Step 3.*
- (1) *Procedure:* The employee and the department director/designee discuss functional limitations:
- a. If the employee has a disability as defined by the ADA, consult with him or her to find out specific physical or mental abilities and limitations, only as they relate to the performance of essential functions of the job, or access to benefits and privileges of employment;

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- b. Assess and discuss how these barriers can be overcome with accommodation.
  - (2) *Documentation*: Functional limitations should be listed on the request for accommodation form.
- (d) *Step 4*.
- (1) *Procedure*:
    - a. The employee and supervisor identify effective accommodation.
    - b. In consultation with the employee, identify potential accommodations and assess how effectively each should enable the individual to perform the essential functions of the job or to access employment benefits.
    - c. If this consultation does not identify an appropriate accommodation, the employee shall obtain assistance from the administrative services director/designee.
  - (2) *Documentation*:
    - a. Possible accommodations are discussed, assessed, and listed on the request for accommodation form.
    - b. The department director/designee, with the assistance of the administrative services director/designee, will determine if the accommodation is reasonable. This is always determined on a case by case basis.
      - 1. An accommodation is reasonable if it does not pose an undue hardship to the city.
      - 2. An undue hardship is an action requiring significant difficulty or expense, i.e., an action is unduly costly, extensive, substantial, disruptive or fundamentally alters the nature of the business.
      - 3. The entire resources of the city must be considered before making a determination of undue hardship.
      - 4. If an effective accommodation cannot be funded or provided out of the respective department's budget, or if some other difficulty is identified, the accommodation decision must be coordinated with the administrative services department.
      - 5. Even if one (1) accommodation is determined not to be a reasonable, alternative accommodations must be considered.
      - 6. A copy of the request for accommodation form must be forwarded to the administrative services director.
- (e) *Step 5*.
- (1) *Procedure*. The department director/designee implements the reasonable accommodation when an effective and reasonable accommodation has been identified, it must be implemented on a timely basis according to the type of accommodation needed.
  - (2) *Documentation*. The type of accommodation and date the accommodation will be implemented is recorded on the request for accommodation form.
- (f) *Step 6*.
- (1) *Procedure*. The department director/designee documents the reasonable accommodation:
    - a. When a reasonable accommodation has been provided, it must be documented on the request for accommodation form and a copy forwarded to the administrative services director/designee.
    - b. The forms are available from the administrative services department.

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- c. Employees' medical information is to be kept by the employee health nurse.
  - d. Supervisors or other city staff must not retain copies of medical information.
- (2) *Documentation.* The request for accommodation form requires employees signature and department director's signature, the completed copy must be forwarded to the administrative services director/designee.
- (g) *Step 7.*
- (1) *Procedure:*
- a. When reasonable accommodation cannot be provided, the employee should be referred to the administrative services director/designee.
  - b. The administrative services director/designee and an advisory panel will assess the nature of the impairment and the lack of accommodation, and discuss with the employee what options are available.
  - c. Possible options are eligible retirement, eligible disability retirement, eligible leave programs, termination, or they may reapply for a suitable job or position.
- (2) *Documentation:*
- a. A request for accommodation form will be forwarded to the administrative services director with the reason for the lack of an accommodation consideration.
  - b. Complete alternate option evaluation form. The administrative services director/designee and employee signatures are required with notification to the department director of the agreement for alternative action required.

(Ord. No. 98-003, § 1, 1-19-98)

### **Sec. 2-50.16. Policy.**

The City of Laredo will not tolerate any acts of workplace violence against persons or damage to property. Any employee who commits, or threatens to commit, an act of workplace violence will be subject to investigation and discipline, up to and including termination. In addition, the city will utilize the workplace violence review committee to conduct an incident assessment, implement measures to protect employees, customers, and property from workplace violence and investigate threats and actual occurrences of workplace violence.

This policy shall not be construed and is not intended to abridge the rights and duties of Laredo police officers or other law enforcement officers to uphold and enforce the laws of the City of Laredo and the State of Texas, or to use any amount of force that is deemed reasonably necessary to affect an arrest or to protect persons who are in danger of bodily injury or death.

(Ord. No. 2000-O-236, §§ 1—4(I), 10-16-00)

### **Sec. 2-50.17. Definitions.**

- (a) *Workplace violence*, as used in this policy, means acts of violence against an employee or member of the public, threats to inflict physical harm, or damages to property or any purposeful or knowing behavior that would cause a reasonable person to feel threatened with physical harm committed by an employee or non-employee in the workplace. Workplace violence does not include reasonable force in the defense of one's self or others.

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- (b) *Weapon(s)* mean any firearm, switchblade, knife, dangerous chemical, explosives, blasting cap, chains, and any other objects used to injure or intimidate others.
  - (c) *Workplace violence review committee*, as indicated in this policy, is an administrative committee composed of the following individuals:
    - (1) Administrative services director/designee;
    - (2) Director from affected department;
    - (3) Police chief/designee;
    - (4) Employee health nurse;
    - (5) Risk manager.

(Ord. No. 2000-O-236, §§ 1—4(II), 10-16-00)

### **Sec. 2-50.18. Responsibilities—Employee.**

- (a) Employees are required to treat other people and property with respect. No employee is permitted to commit, coerce, or threaten to commit violence against any employee or member of the general public. Examples of prohibited conduct are: Physical abuse, verbal threats to inflict physical harm, vandalism, arson or use of weapons.
- (b) Employees are not permitted to bring weapons to the workplace unless the weapon is required to fulfill the employee's job duties, such as those of a police officer.
- (c) Employees shall report threats or incidents of workplace violence to a supervisor immediately. The violence report form shall be completed and forwarded to the workplace violence review committee immediately. In case of immediate serious threat or commission of a crime, the police shall be notified immediately. In the case of imminent danger to persons or property, employees shall take action to safeguard persons or property without endangering their personal safety and shall make a formal report.
- (d) Even without an actual threat, employees shall report any behavior they have witnessed which they regard as threatening or violent.
- (e) Immediately report to a supervisor personal conflicts that could lead to workplace violence.

(Ord. No. 2000-O-236, §§ 1—4(III), 10-16-00)

### **Sec. 2-50.19. Same—Supervisors.**

- (a) Supervisors shall attend training on identifying and defusing workplace problems and conflicts. Supervisors are expected to appropriately intervene when they see an employee subjected to abuse, whether from another employee or a member of the public.
- (b) Supervisors shall immediately notify their department director and the administrative services director/designee if an incident of workplace violence is suspected, or if they become aware of a threat.

(Ord. No. 2000-O-236, §§ 1—4(IV), 10-16-00)

### **Sec. 2-50.20. Same—Directors.**

- (a) Directors, managers, and supervisors have the following responsibilities:

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- (1) Assessing prospective employees appropriately in accordance with this policy.
  - (2) Assessing all workplaces to ascertain their security and implement measures to assure workplace security.
  - (3) Investigating all situations where workplace violence has occurred to remedy the violence that has occurred and to avoid future occurrences.

(Ord. No. 2000-O-236, §§ 1—4(V), 10-16-00)

**Sec. 2-50.21. Same—Administrative services department.**

The administrative services department is responsible for implementing this policy as follows. It shall:

- (1) Develop and implement training for supervisors and employees to lower risk and improve employee relationships.
- (2) Investigate all threats of workplace violence that have been reported.
- (3) Implement post-incident response and evaluation to include trauma-crisis counseling, critical incident stress debriefing or employee assistance programs to assist victims.
- (4) Ensure that the employees involved in incidents of workplace violence are referred to the employee assistance program for an evaluation regarding their work status before returning to work.

(Ord. No. 2000-O-236, §§ 1—4(VI), 10-16-00)

**Sec. 2-50.22. Same—Workplace violence review committee.**

The workplace violence review committee is responsible for implementing this policy as follows. It shall:

- (a) Review each alleged incident of workplace violence;
- (b) Make recommendations to discipline and/or terminate employment for violation of this policy;
- (c) Forward all recommendations to legal department for review.

(Ord. No. 2000-O-236, §§ 1—4(VII), 10-16-00)

**Secs. 2-50.23—2-50.29. Reserved.**

**Sec. 2-50.30. Equal opportunity statement.**

The City of Laredo is an equal opportunity employer. Employment discrimination on the basis of race, religion, color, sex, national origin, age, veteran's status, disability, or any other characteristics protected by law, is strictly prohibited.

(Ord. No. 2000-O-236, §§ 1—4(I), 10-16-00)

**Sec. 2-50.31. Policy.**

It is the policy of the City of Laredo to provide a productive and professional work environment free from all forms of discrimination, including harassment. Harassment undermines the integrity of the employment relationship and erodes morale and productivity. The city prohibits any form of sexual harassment, whether it be

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visual, verbal or physical, and without regard to whether the harasser or the victim is a supervisor, coworker, vendor, or customer. Harassment on the job is unlawful, whether it involves coworker harassment or harassment by a supervisor or manager. Any employee engaging in any form of harassment will be promptly disciplined, up to and including termination. If the harasser is a vendor or customer, appropriate action will be taken to end the harassment and prevent future occurrences.

This policy shall not be construed and is not intended to abridge the rights and duties of Laredo police officers or other law enforcement officers to uphold and enforce the laws of the City of Laredo and the State of Texas, or to use any amount of force that is deemed reasonably necessary to affect an arrest or to protect persons who are in danger of bodily injury or death.

(Ord. No. 2000-O-236, §§ 1—4(II), 10-16-00)

### **Sec. 2-50.32. Scope of coverage.**

This policy applies to all city employees, customers, vendors and visitors on city premises using any type of communication medium. All city employees are entitled to a workplace free of harassment by management, supervisors, coworkers, vendors and customers.

(Ord. No. 2000-O-236, §§ 1—4(III), 10-16-00)

### **Sec. 2-50.33. Harassment—Sexual and other.**

(a) *Sexual harassment.* Sexual harassment is a form of discrimination. Unwelcome sexual advances, requests for sexual favors, and other visual, verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (1) Submission to or rejection of such conduct by an individual is made expressed or implied as a term or condition of employment or used as a basis for employment decisions affecting an individual;
- (2) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment;

Examples of prohibited conduct include unwelcome discussion of sexual activities, touching, display of sexually explicit or suggestive pictures or cartoons, making sexually suggestive gestures, sexual remarks about physical attributes, unwelcome propositions, profanity and off-color jokes.

(b) *Other forms of harassment.*

- (1) *[Harassment based on protected characteristics.]* Harassment of employees on the basis of race, religion, color, national origin, age, disability or any other characteristics protected by law is also prohibited. Slurs, jokes, offensive or derogatory comments, or other verbal or physical conduct based on these characteristics could be unlawful if the conduct creates an intimidating, hostile, or offensive working environment, or unreasonably interferes with the individual's work performance. Slurs, epithets, offensive jokes, and derogatory comments have no place in the workplace. Conduct, comments, or innuendoes that may be perceived by others as offensive are wholly inappropriate and are strictly prohibited.
- (2) *Harassment via electronic means.* This policy also prohibits sending, showing, sharing, or distributing, [in] any form, inappropriate jokes, pictures, stories, etc. via facsimile, internet, voice mail, or other electronic means.

(Ord. No. 2000-O-236, §§ 1—4(IV), 10-16-00)

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### **Sec. 2-50.34. Retaliation.**

No retaliation will be tolerated or permitted against employees who make a good faith charge or report of harassment.

(Ord. No. 2000-O-236, §§ 1—4(V), 10-16-00)

### **Sec. 2-50.35. Reporting of complaints.**

It is important for employees to report incidents of harassment to prevent violations from going undetected. No one connected with the city in any capacity is authorized to harass a city employee or customer. Any employee who feels that he or she has been subjected to harassment, or who observes harassment in the workplace should take action to end it by observing the city's reporting procedure outlined as follows:

*Step one.* If the employee is the victim, immediately confront the harasser and tell that person to stop the behavior. Although the employee may find it difficult to directly confront the harasser, the conduct perceived as harassment may be a simple misunderstanding that can be quickly and privately resolved.

*Step two.* If the conduct does not cease or if the employee does not feel comfortable confronting the harasser, the employee (victim) must immediately report the matter to his/her supervisor or department director.

*Step three.* If for any reason the employee does not feel the department director has been able to resolve the matter satisfactorily, or the employee does not feel comfortable discussing the matter with his/her department director he/she must contact the administrative services director/designee.

*Step four.* Finally, if the employee (victim) is not satisfied with how the matter was handled at step two or three and/or feels that he/she has experienced retaliation because he/she filed a complaint or assisted in a sexual harassment investigation, [he/she should] contact the city manager.

(Ord. No. 2000-O-236, §§ 1—4(VI), 10-16-00)

### **Sec. 2-50.36. Investigation.**

The administrative services director shall coordinate and direct the investigation reviews of all harassment complaints. All reports of harassment will be fully investigated immediately. The administrative services director/designee will fully investigate the complaint, including interviewing the alleged harasser, victim and any other witnesses.

The following procedures shall apply to the receipt, review, and handling of such complaints:

- (1) The individual making the complaint will be interviewed by the administrative services director/designee on the nature of the allegations and will be asked to provide a written statement.
- (2) The administrative services director shall immediately notify the city manager of the harassment complaint.
- (3) The person against whom the complaint is being made will be notified by the administrative services director/designee that a harassment complaint has been filed.
- (4) A complainant may withdraw a complaint at any time. However, the city will pursue an investigation to determine whether disciplinary action is warranted either on the basis of a validated complaint or falsification of a complaint.

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- (5) Employees filing a harassment complaint will be advised in writing of the corrective action taken by the city.
  - (6) Falsified complaints shall warrant disciplinary action up to and including termination.

(Ord. No. 2000-O-236, §§ 1—4(VII), 10-16-00)

### **Sec. 2-50.37. Confidentiality.**

All reports of harassment will be investigated in a confidential manner. An employee who files a complaint will be instructed not to discuss the details of the incident with anyone other than the complaint investigator while the investigation is pending. The employee may discuss the incident with his/her private attorney. These restrictions shall also apply to any employee against whom a complaint has been filed, as well as those who may have witnessed the incident. All employees are required to cooperate with the investigation.

The names of the complaining party and the alleged harasser as well as the circumstances of the alleged harassment may be revealed during the course of the investigation in order to ensure that the investigation is as thorough and as fair as possible. Therefore, the city cannot guarantee complete confidentiality of complaints. However, disclosure of any information about the complaint will be strictly limited to persons who "need to know." Unauthorized disclosure of information about any harassment complaints or investigations can be cause for disciplinary action up to and including termination.

(Ord. No. 2000-O-236, §§ 1—4(VIII), 10-16-00)

### **Sec. 2-50.38. Consequences.**

Upon conclusion of the investigation, the administrative services director shall meet with the appropriate parties to discuss the findings and determine appropriate action, if any.

*Disciplinary and other actions.* Sexual and other forms of harassment are prohibited by the City of Laredo. The city will take appropriate action against any person found to be in violation of this policy. Note: A person who has harassed another or retaliated against another may also be subject to civil or criminal liability under state or federal law.

- (a) *Disciplinary actions.* Any employee who has harassed another employee, customer, vendor or who retaliates against such person for bringing a complaint of harassment, or otherwise violated this policy shall be guilty of misconduct and subject to disciplinary action up to and including termination in accordance with applicable law, rules, policies, and/or collective bargaining agreements.
- (b) *Other actions.* The City of Laredo will take such legal corrective action as necessary against customers or vendors found to have violated this policy as may be appropriate under the circumstances.

If the investigation substantiates an allegation of prohibited conduct, appropriate measures will be taken to remedy all violations of this policy.

(Ord. No. 2000-O-236, §§ 1—4(IX), 10-16-00)

### **Sec. 2-50.39. Notice to complainant.**

The administrative services department director shall notify the complainant of the findings of the investigation, and shall follow up, if necessary, on a periodic basis until the final decision on the matter is made.

(Ord. No. 2000-O-236, §§ 1—4(X), 10-16-00)