

**CITY OF LA VISTA
MAYOR AND CITY COUNCIL REPORT
DECEMBER 18, 2007**

| Subject: | Type: | Submitted By: |
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| AMEND CITY PERSONNEL POLICY AND PROCEDURES MANUAL | ◆ RESOLUTION ORDINANCE RECEIVE/FILE | RITA M. RAMIREZ ASSISTANT CITY ADMINISTRATOR |

SYNOPSIS

A resolution has been prepared to amend Section 7 and Section 8 of the City Personnel Policy and Procedures Manual regarding vacation carryover and payout.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval.

BACKGROUND

A little over one year ago the Nebraska Supreme Court ruled in the *Roseland* case that accrued vacation time, which is part of an employment agreement, is due and payable as wages upon termination of employment. Basically, they were saying that once vacation time is earned and can be used by an employee, it cannot be taken away. The City of La Vista has always paid employees for all of their accrued vacation time upon termination. We did, however, establish maximum carry forward amounts for vacation leave, creating a "use it or lose it" situation for employees. The *Roseland* decision makes it clear that you cannot take away an employee's vacation leave once it has been awarded.

In lieu of the "maximum carry forward" provision, we are recommending an "accrual to a fixed maximum" plan. The City establishes the maximum amount of vacation leave that an employee can accrue and when they reach that amount, no additional vacation time is accrued until they use some of their time.

During contract negotiations with the Fraternal Order of Police, a maximum accrual provision for vacation leave was established. It is recommended that a similar policy be adopted for the other employee groups. Currently, exempt employees who have reached the highest vacation accrual level earn 26 days or 208 hours of vacation per year. Non-exempt employees who have reached the highest vacation accrual level earn 23 days or 184 hours of vacation. A maximum accrual rate of 220 hours is being proposed. (An amendment to the Compensation Ordinance reflecting this change is also necessary and is included under a separate agenda item.)

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LA VISTA, NEBRASKA, AMENDING SECTION 7 AND SECTION 8, OF THE CITY PERSONNEL POLICY AND PROCEDURES MANUAL REGARDING VACATION LEAVE.

WHEREAS, the Mayor and City Council of the City of La Vista, Nebraska, has determined that a need exists to make changes to the existing La Vista City Personnel Policy and Procedures Manual as adopted on December 20, 2005; and

WHEREAS, it is being proposed that Subsection 7.22 in the manual regarding vacation payout be deleted and Subsection 8.1 (3) be amended to create a vacation accrual cap; and

WHEREAS, it is the desire of the City Council to amend Section 7 and Section 8 of the Personnel Policy and Procedures Manual to incorporate the changes to the above listed subsections; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of La Vista, Nebraska, that the existing La Vista City Personnel Policy and Procedures Manual adopted on December 20, 2005, is hereby amended to reflect the proposed changes submitted at the City Council meeting to Section 7.22 and Section 8.1 (3) regarding vacation leave.

PASSED AND APPROVED THIS 18TH DAY OF DECEMBER 2007

CITY OF LA VISTA

Douglas Kindig, Mayor

ATTEST:

Mary C. Lupomech
Deputy City Clerk

to the employee's estate if the employee leaves no surviving spouse or if, prior to his or her death, the employee has filed with the City Clerk a written designation of his or her estate as beneficiary of such payment.

7.19 Temporary and Regular Part-Time Employees:

- (1) Pay for temporary employees shall be consistent with the duties and responsibilities of the temporary position. Such pay shall be determined by the City Administrator and shall normally be an hourly rate of pay.
- (2) Pay for regular part-time employees shall be based on the number of hours worked per day multiplied by the established hourly pay rate. Such pay shall normally be established proportionate to the regular full-time pay rate for the position.

7.20 Wages in Advance: No advance of earnings, including accrued vacation leave, shall be made.

7.21 Termination Pay: An employee who is dismissed or voluntarily resigns shall receive his/her final pay check on the first regularly scheduled payday following termination of his/her employment. An employee shall be paid for all unused accrued vacation time upon termination. No employee shall be paid for any unused sick leave upon termination of his/her employment, except as follows:

- (1) An employee who voluntarily retires after twenty or more years of service with the City and has no disciplinary action pending against him/her at the time of his/her retirement shall be paid for his/her accrued and unused sick leave.
- (2) An employee who began his/her employment with the City on or after January 1, 2005, or who began his/her employment prior to January 1, 2005 but elected to waive his/her eligibility for emergency sick leave on or before January 31, 2005, subject to any restrictions established in Section VIII, shall be paid for any unused sick leave according to the following sliding schedule:
 - (a) After 10 years of employment – 100% of sick leave hours accrued over 660 hours;
 - (b) After 15 years of employment – 100% of sick leave hours accrued over 440 hours;
 - (c) After 20 years of employment – 100% of sick leave hours accrued up to 880 hours.

~~7.22 **Vacation Payout:** An employee can request to be paid for up to 40 vacation hours which have been earned and are unused in excess of the maximum carry forward permitted from one calendar year to the next under Section VIII or the applicable collective bargaining agreement subject to:~~

- ~~(1) The request must be made in writing to the employee's department head and will be approved only if the department can budget or has budgeted for the expenditure; and;~~
- ~~(2) Approval of the City Administrator in accordance with such policies and procedures as the City Administrator may establish to make such approvals equitable and consistent with any City-wide budgetary conditions, restrictions and limitations.~~

~~Employees can request that authorized payments be made directly to them or deposited into their pension account with the City. Deposits to the pension account are governed by the pension plan document and administrative procedures established by the City Administrator.~~

7.223 Pay During National Guard or Reserve Active Duty:

- (1) State of Nebraska Non-Emergency Active Service: All employees who are active members of the National Guard or other military reserve component (Army Reserve, Naval Reserve, Marine Corps Reserve, Air Force Reserve or Coast Guard Reserve) shall be entitled to a military leave of absence from their respective City duties at their full regular City pay or compensation when employed with or without pay on a non-emergency basis under the orders or authorization of competent authority in the active service of the state or of the United States, for not to exceed the Limitations set forth in this paragraph. Such military leave of absence may be taken in hourly increments and shall be in addition to the employee's regular annual leave. Limitations: (1) A City employee who normally works or is normally scheduled to work 120 hours or more in three consecutive weeks shall be eligible to receive such a military leave of absence of up to 120 hours each fiscal year. (2) A City employee who normally works or is normally scheduled to work less than 120 hours in three consecutive weeks shall be eligible to receive such a military leave of absence each fiscal year equal to the number of hours he or she normally works or would normally be scheduled to work, whichever is greater, in three consecutive weeks. See also, subsection 8.1(5) of this Manual.
- (2) State of Nebraska Emergency Active Service: If such an employee is ordered into active service of the state pursuant to a declaration of an emergency by the Governor of Nebraska, the employee shall be entitled to a state of emergency leave of absence until the employee is released from active service of the state by competent authority. During a state of emergency leave of absence because of the call of the Governor, the employee shall receive his or her normal City salary or compensation less the state active duty base pay he or she receives in the active service of the state. Such an employee may alternatively choose to receive his or her full City salary and to remit his or her military compensation to the City. See also, subsection 8.1(5) of this Manual.

7.234 Re-employment: A former employee who is re-employed shall once again serve an initial probationary period regardless of whether he/she had probationary or permanent status prior to separation. Such initial probationary period may be extended in the same manner as any other initial probationary period.

7.245 Annual Salary Survey: The City, to remain competitive in the labor market, shall recognize changes in the cost of living and other variables in the compensation structure by adjusting the grade table or by re-classification of positions. It shall be the responsibility of the City Administrator to determine appropriate adjustments to the grade table annually by analyzing the following general trends:

- (1) Regional, state and municipal compensation trends.
- (2) National compensation trends.
- (3) Local compensation trends.
- (4) Impact of area union contracts on pay scales.
- (5) Cost of living indices.

PERSONNEL RULES AND REGULATIONS

SECTION VIII: EMPLOYEE BENEFITS

ADOPTED: RESOLUTION NO. 96-012

DATE: FEBRUARY 6, 1996

AMENDED: RESOLUTION NO. 01-140

DATE: OCTOBER 2, 2001

AMENDED: RESOLUTION NO. 02-128

DATE: DECEMBER 3, 2002

AMENDED: RESOLUTION NO. 03-072

DATE: AUGUST 19, 2003

AMENDED: RESOLUTION NO. 04-126

DATE: DECEMBER 21, 2004

READOPTED: RESOLUTION NO. 05-159

DATE: DECEMBER 20, 2005

AMENDED: RESOLUTION NO. 07-100

DATE: SEPTEMBER 18, 2007

AMENDED: RESOLUTION NO. XX-XXX

DATE: DECEMBER 18, 2007

8.1 Request for Leave: An employee wishing to take any type of leave shall first submit a Request for Time Off form to the department head and/or City Administrator for approval. This requirement applies to all types of leave.

- (1) Sick Leave for Employees Hired Before January 1, 2005 Who Have Not Elected to Waive Their Eligibility for Emergency Sick Leave:

Full-time regular employees shall accrue entitlement to paid sick leave at the rate of ten (10) hours for each full calendar month of employment. Full-time regular employees shall be allowed to accrue unused sick leave from previous years to a maximum of 880 sick leave hours. An employee shall be credited with one (1) hour of annual vacation leave for each eight (8) hours of sick leave which would otherwise be earned but for the maximum allowable accumulation of sick leave, unless the employee elects to waive his/her eligibility for sick leave.

Earned sick leave may be used for absence necessitated by illness, injury or quarantine. Employees may use sick leave as accrued during the initial probationary period. Paid sick leave may also be used to keep medical or dental appointments. Paid sick leave may also be used for illness in the immediate family to a maximum of five (5) work days in each calendar year.

Paid sick leave shall be used by employees in one hour increments. No full-time non-exempt employee shall be allowed paid sick leave until the department head has approved the sick leave and certified the employee's request to the City Administrator for approval. No full-time exempt employee shall be allowed paid sick leave until the City Administrator has approved the sick leave request. Any full-time employee claiming paid sick leave may be required by the department head and/or the City Administrator to provide a certificate signed by a physician stating the nature and extent of illness.

Paid sick leave shall not be allowed in advance of accumulation. Abuse of paid sick leave may result in disciplinary action. All cases of possible sick leave abuse shall be investigated.

Emergency Sick Leave: All paid sick leave days which would otherwise be earned but for the 880 hours maximum allowable accumulation shall be credited to emergency sick leave accounts

established for full-time exempt and full-time non-exempt employees, less any time of the employee credited to vacation leave (namely eight (8) hours of sick leave time which would otherwise be earned but for the maximum allowable accumulation shall be credited as one (1) hour vacation time for the employee and seven (7) hours credited to the appropriate emergency sick leave account). There are two separate emergency sick leave accounts, one for all full-time exempt employees and one for all full-time non-exempt employees. There are not separate accounts for each individual exempt or non-exempt employee. The accounts are only inclusive of hours contributed by current, eligible employees. Emergency sick leave may be allowed to any regular full-time exempt or non-exempt employee after the employee has exhausted his/her individual paid vacation leave, personal leave and sick leave. Allowance of use of the appropriate emergency sick leave account is granted by the emergency sick leave committee for that account.

The emergency sick leave committee for exempt and non-exempt employees shall consist of the City Clerk, the Finance Director, and the requesting employee's Department Head. If the requesting employee is a Department Head, the City Administrator shall participate in the emergency sick leave committee. Employees are required to complete and sign a Sick Bank Request Form and a HIPAA waiver.

The emergency sick leave committee shall regulate the use of emergency sick leave from the reserve. Only employees meeting the established criteria will be processed through the emergency sick leave committee. Prior to allowing use from the reserve, the committee must determine that the applicant has exhausted his/her individual paid vacation, personal, and sick leave accrual and that an emergency situation exists as defined herein. The committee shall determine the number of hours of emergency sick leave to be granted and shall report the same to the City Council and City Administrator. No employee having less than 880 hours of accrued individual sick leave may contribute sick leave hours to an emergency sick leave account.

An "emergency situation" is a set of circumstances respecting which the appropriate committee determines that an employee, due to serious illness, serious injury or other serious medical, physical or mental condition of the employee, reasonably has an extraordinary need for more time off than he or she has available in any form of paid leave days, and that the employee has previously been conscientious and judicious in the use of his or her paid sick leave. It does not include any illness or injury that typically would be expected to cause the employee to be unable to work a duration of less than five weeks (35 consecutive calendar days).

Provisions of the Worker's Compensation law shall apply where illness or injury occurs on the job.

A full time regular employee who is not a member of the Fraternal Order of Police collective bargaining unit would have had to submit a written request to the City Clerk prior to January 31, 2005, to waive their eligibility for emergency sick leave. Upon submission of said written request, the employee became subject to subsection 8.1(2) for all accrual and payout of sick leave.

- (2) Sick Leave For Employees Hired Prior to January 1, 2005 Who Have Elected to Waive Their Eligibility for Emergency Sick Leave and For Employees Hired On or After January 1, 2005:

Full-time regular employees shall accrue entitlement to paid sick leave at the rate of ten (10) hours for each full calendar month of employment. Full-time regular employees shall be allowed to accrue unused sick leave from previous years to a maximum of 880 sick leave hours. Unless otherwise established by a collective bargaining agreement, no sick leave accrual or vacation credits are earned by any employee at the maximum of 880 accrued and unused sick leave hours.

Earned sick leave may be used for absence necessitated by illness, injury or quarantine. Employees may use sick leave as accrued during the initial probationary period. Paid sick leave may also be used to keep medical or dental appointments. Paid sick leave may also be used for illness in the immediate family to a maximum of five (5) work days in each calendar year.

Paid sick leave shall be used by employees in one hour increments. No full-time non-exempt employee shall be allowed paid sick leave until the department head has approved the sick leave and certified the employee's request to the City Administrator for approval. No full-time exempt employee shall be allowed paid sick leave until the City Administrator and/or the department head has approved the sick leave request. Any full-time employee claiming paid sick leave may be required by the department head and/or the City Administrator to provide a certificate signed by a physician stating the nature and extent of illness.

Paid sick leave shall not be allowed in advance of accumulation. Abuse of paid sick leave may result in disciplinary action. All cases of possible sick leave abuse shall be investigated.

Emergency Sick Leave: In lieu of an emergency sick leave program, employees in this category are eligible for an alternate sick leave payout schedule as outlined in Section 7.21, Termination Pay.

Provisions of the Worker's Compensation law shall apply where illness or injury occurs on the job.

- (3) Vacation Leave: All full-time employees and permanent part-time employees working a minimum of twenty (20) hours per week shall earn paid vacation time as provided herein with the exception of employees subject to the paid vacation leave provisions of the La Vista FOP contract or the Public Works employees contract.

Exempt Employees: During the first year of employment, all full-time exempt employees shall earn eighty (80) hours of paid vacation time per year. No vacation may be taken until the employee has successfully completed the initial or extended initial probationary period with the City. For continuous employment with the City thereafter, an additional eight (8) hours of paid vacation time is earned at the beginning of each calendar year for each additional year of service. All paid vacation time is accrued on a bi-weekly basis. The total paid vacation time earned per year shall not exceed 26 days (208 hours).

Non-exempt Employees: During the first year of employment all full-time non-exempt employees shall earn forty-eight (48) hours of paid vacation time. No vacation may be taken until the employee has successfully completed the initial or extended initial probationary period with the city. Starting the second year of continuous employment, paid vacation time will be earned at a rate of 88 hours per year. For continuous employment with the City thereafter, an additional eight (8) hours of paid vacation time is earned at the beginning of each calendar year for each additional year of service. All paid vacation time is accrued on a bi-weekly basis. The total paid vacation leave earned per year shall not exceed 23 days (184 hours).

Permanent Part-Time Employees: After six (6) months of employment and successful completion of the initial or extended initial probationary period, permanent part-time employees who work a minimum of twenty (20) hours per week shall earn forty (40) hours of paid vacation time per year. All paid vacation time is accrued on a bi-weekly basis. The total paid vacation time earned per year shall not exceed 5 days (40 hours).

Exempt, Non-exempt, and Permanent Part-Time Employees shall be allowed to accrue unused vacation leave from previous years to a maximum of 220 hours. ~~÷ A maximum of ninety-six (96) hours or twelve (12) days of earned vacation may be carried forward from one calendar year to the next. At the end of the final full pay period in December each year, City payroll personnel shall review the amount of unused vacation in each employee's vacation account. Any amount greater than ninety-six (96) hours shall be forfeited unless the employee has applied and been approved for the vacation payout program as outlined in Section 7.22 of this Personnel Manual, and shall not be carried forward into the new calendar year unless approved in writing by the City Administrator for good cause, such as the employee's inability to have taken requested vacation during the expired calendar year due to a directive of the City mandated by the needs of City business.~~

Use of Vacation Leave:

- (a) Vacation leave may be scheduled or taken only with the approval of the employee's department head and/or the City Administrator.
- (b) Vacation leave will only be approved if it will not be disruptive to the work schedule of the departments concerned and/or the operations of the City.
- (c) Upon satisfactory completion of the initial or extended initial probationary period, regular full-time employees and permanent part-time employees shall be entitled to begin using earned vacation leave. Vacation shall not be used in increments of less than one hour. Use of vacation leave in increments of less than four hours must be approved at least forty-eight (48) hours in advance and may be taken only at the beginning or at the end of the employee's work day.
- (d) If a day designated as a paid holiday for the employee falls during an employee's vacation, the day shall not be charged as vacation time. An employee who leaves the employment of the City shall be compensated for vacation leave earned and accrued as provided herein.