

**TOWN OF  
APPLE VALLEY, CALIFORNIA**

**AGENDA MATTER**

**Subject Item:**

**RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY  
AMENDING THE PERSONNEL POLICIES AND PROCEDURES MANUAL**

**Summary Statement:**

The Human Resources Department, in consultation with the California Joint Powers Insurance Authority (CJPIA) and legal counsel, is proposing the Town Council adopt Resolution Number 2012-05, to amend several sections of the Town's Personnel Policies and Procedure Manual.

During the Town's last Risk Management Evaluation from CJPIA, the Town's insurance authority, it was determined that Section 3.23 Alcohol and Drug Policy of the Town's Personnel Policies and Procedure Manual was out of date and needed to be modified. Human Resources staff is recommending conducting pre-employment drug and alcohol testing for safety sensitive positions only.

For Section 6.1 Sick Leave, the Human Resources sought to provide clarification to the language in this section. In addition, Human Resources surveyed the Town's exempt employees and, without a single no vote, the Human Resources Department is proposing changing the means in which sick leave will be paid out to exempt employees at separation. Section 6.1- Sick Leave (5) adds new language which requires the Town's exempt employees to deposit their applicable sick leave payout into their Nationwide 401a deferred compensation plan up to the allowable IRS limits at time of separation or retirement.

The amendment to Rule 15 of the Personnel Policies and Procedure Manual brings the Town's layoff policy into compliance with Government Code Section 45100.

**Recommended Action:**

Adopt Resolution No. 2012-05, a Resolution of the Town Council of the Town of Apple Valley Amending the Personnel Policies and Procedures Manual, Sections 3.23, 6.1, and Rule 15.

**Proposed by:** Nikki Salas, Director of Human Resources Item Number \_\_\_\_\_

**T. M. Approval:** \_\_\_\_\_ Budgeted Item  Yes  No  N/A

**RESOLUTION NO. 2012-05**

**A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY AMENDING THE PERSONNEL POLICIES AND PROCEDURES FOR THE TOWN OF APPLE VALLEY**

WHEREAS, the Town Council of the Town of Apple Valley has established Personnel Policies and Procedures for the Town of Apple Valley employees; and

WHEREAS, the Town Council of the Town of Apple Valley wishes to modify the Personnel Policies and Procedures for the Town of Apple Valley employees; and

WHEREAS, the Town council of the Town of Apple Valley wishes to modify Section 3.23 – Alcohol and Drug Policy, Section 6.1 Sick Leave, and Rule 15 - Layoff Policy and Procedure of the Personnel Policies and Procedures.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Rule 3, Terms of Employment, Section 3.23 Alcohol and Drug Policy shall be amended in its entirety as provided in Exhibit A.
2. Rule 6, Leave, Vacation and Holiday, Section 6.1 Sick Leave shall be amended in its entirety as provided in Exhibit B.
3. Rule 15, Layoff Policy and Procedure as set forth in the Personnel Policies and Procedures shall be amended in its entirety as provided in Exhibit C.

Unless otherwise noted, the effective date of this Resolution shall be January 24, 2012.

**APPROVED AND ADOPTED** this 24<sup>th</sup> day of January, 2012 by the Town Council and the Town of Apple Valley.

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Barb Stanton, Mayor

ATTEST:

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La Vonda M-Pearson, Town Clerk

## EXHIBIT A

### **Section 3.23 Alcohol and Drug Policy**

Town employees are prohibited from using or possessing alcohol, controlled substances or illegal drugs in connection with their employment. The Town has established the following policy with regard to use, being under the influence, possession, distribution or manufacture of alcohol, controlled substances and drugs (hereafter collectively "alcohol" and "drugs").

#### *I. Pre Employment Screening*

The Town will maintains pre-employment screening practices designed to prevent hiring of individuals who use illegal drugs or individuals whose use of legal drugs or alcohol indicates a potential for impaired or unsafe job performance. If the applicant is under age 18, a consent form must be signed by the parent or guardian for drug and alcohol screening.

All offers of employment extended by the Town shall be contingent upon the applicant submitting to and passing a fitness for duty examination which, for safety sensitive jobs only, shall include testing for the use of drugs and alcohol. Applicants who refuse to sign a consent form permitting testing or the release of test results to the Town will not be hired/rehired.

Samples of the applicant's urine shall be collected in a medical environment, during the pre-employment physical, by persons unrelated to the employer.

An applicant who fails the drug and alcohol test is entitled to know what portion of the test he or she failed and to question and challenge test results he or she believes to be erroneous. Any positive test result shall be retested independently using a more sensitive test.

Applicants whose test results are positive for use of un-prescribed controlled substances or alcohol intoxication or abuse will be deemed to have failed the pre-employment physical examination and will not be hired/rehired. Applicants whose test results indicate abuse of lawfully prescribed drugs, likewise, will be deemed to have failed the pre-employment physical examination and will not be hired/rehired. However, an applicant who fails can reapply for employment after one (1) year.

#### *II. Reasonable Suspicion Drug and Alcohol Screening*

The Town may require a blood test, urinalysis, or other drug, and/or alcohol screening of those persons reasonably suspected of using or being under the influence of a drug or alcohol at work or when on standby duty. An employee's consent to submit to such a test is required as a condition of employment and the employee's refusal to consent may result in disciplinary action, up to and including termination for even a first refusal or any subsequent refusal.

A. Use, being under the influence, possession, distribution or manufacture of drugs or alcohol.

##### 1. Alcohol

Use, possession of, or being under the influence of alcohol by any employee while performing Town business, while on Town property or while on standby is prohibited to the extent that it

may affect the safety of the employee, co workers or members of the public, the employee's job performance, or the safe or efficient operation of Town business.

## 2. Legal Drugs

Use of or being under the influence of any legally obtained drug by any employee while performing Town business, while on Town property, or while on standby is prohibited to the extent such use or influence may affect the safety of the employee, co workers, members of the public, the employee's job performance, or the safe or efficient operation of Town business. An employee may continue to work, even though under the influence of a legal drug, if management has determined, after consulting with competent medical authority, that the employee does not pose a threat to his or her own safety or the safety of others and that the employee's job performance is not significantly affected by the legal drug. Otherwise, the employee may be required to take a leave of absence or comply with other appropriate action as determined by the Town.

## 3. Illegal Drugs

The use, possession of, or being under the influence of, manufacture, distribution, purchase, transfer or possession of an illegal drug by an employee while on Town property, while performing Town business or while on standby is prohibited.

### B. Employee Reporting Requirements

#### 1. Legal Drugs

An employee's use of a legal drug can pose a significant risk to the safety of the employee or others. Employees who feel, or have been informed that the use of a legal drug may present a safety risk, are to report their use of such a drug to their immediate supervisor. The employee need not identify the drug taken or the reasons for taking it to the supervisor, and will be referred to the employee's physician and/or Town physician for follow-up to determine if the employee is fit to perform while taking the drug. Employees who suspect that a fellow employee or others are under the influence of alcohol or drugs must report their suspicions to their immediate supervisor for further investigation and appropriate action.

#### 2. Illegal Drugs

Employee use of an illegal drug poses a significant risk to the safety of the employee or others. Employees who have been informed or suspect that a fellow employee has used, is in possession of, or is under the influence of an illegal drug must report such suspicion to his/her immediate supervisor for further investigation and appropriate action.

### C. Disciplinary Action

Violation of this policy can result in disciplinary action, up to and including discharge, even for a first offense. Further, the Town reserves the right to discipline employees, up to and including discharge, for conviction of an offense which involves the use, distribution, or possession of illegal drugs.

### D. Searches

The Town reserves the right to search lockers, desks, storage areas, furniture, Town vehicles and other places under the common control of the Town and employees, and to enlist the assistance of law enforcement personnel in connection with the enforcement of this policy. Employees shall have no expectation of privacy in any Town owned premises, property, or equipment.

#### E. Drug free Workplace Designation

Any location at which Town business is conducted is designated as a drug free workplace. All Town employees are absolutely prohibited from unlawfully manufacturing, distributing, dispensing, possessing or using controlled substances in the workplace.

The Town shall implement an education program for all employees on the dangers of drug abuse in the workplace. Additionally, the Town will provide training to assist in identifying and addressing illegal drug use by employees.

Any employee convicted of violating a criminal drug statute in this workplace must inform the Town of such conviction (including pleas of guilty and nolo contendere) within **five (5) days of the conviction occurring**. Failure to inform the Town shall result in disciplinary action up to and including **termination for the first offense**.

The Town reserves the right to offer employees convicted of violating this policy participation in an approved rehabilitation or drug abuse assistance program as an alternative to discipline or in combination with discipline. If such a program is offered, and accepted by the employee, then the employee must satisfactorily participate in the program, as a condition of continued employment. The employee shall also be required to sign a Last Chance Agreement, setting forth additional terms and conditions of continued employment.

All employees of the Town shall be required to acknowledge that they have read this policy and agree to abide by it in all respects. By law, this acknowledgment and agreement are required as a condition of continued employment.

#### F. Definitions

**Under the influence** – When an employee is affected by a drug or alcohol or the combination of a drug and alcohol in any detectable manner or is impaired in the performance of job duties. The symptoms of influence are not confined to those consistent with misbehavior, or to obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance. A determination of influence can be established by a professional opinion, a scientifically valid test, and, in some cases, by a layperson's opinion.

**Legal Drug** - Includes prescribed drugs and over the counter drugs, which have been legally obtained and are being used for the purpose for which they were prescribed or manufactured.

**Illegal Drug** - Any drug which is not legally obtainable, or which is legally obtainable but has not been legally obtained. The term further includes prescribed drugs not being used for prescribed purposes.

## EXHIBIT B

### **RULE 6 LEAVE, VACATION AND HOLIDAYS**

#### **Section 6.1 Sick Leave**

1. Accrual. Full-time **Town** employees, including **those serving a** probationary period, shall accrue sick leave for each payroll period completed, prorated on the basis of twelve (12) days per year. Earned sick leave shall be available for use the first day following the payroll period in which it **was** earned. However, that an employee must have completed six (6) months of continuous service from the employee's hire date. In no event shall an employee be entitled to receive sick leave with pay in excess of the number of sick leave days accrued at the time of illness. Therefore, an employee who has exhausted sick leave accrual and who is unable to work due to illness or injury will be placed in a vacation status for the duration of the employee's vacation accrual, if any. Pursuant to the Town's pregnancy disability leave policy, employees on pregnancy disability leave may, but are not required to, use vacation. If the employee has exhausted both sick leave and vacation leave accruals, the employee shall be placed on unpaid status.
2. Use. The following are considered appropriate uses of sick leave accrual:
  - a. Employees may use sick leave accrual for personal illness or injury, which incapacitates the employee for duty.
  - b. An employee who is personally undergoing medical, dental or optical treatment or examination may use sick leave accrual for required time away from work.
  - c. Employees shall be allowed **to use** an amount not to exceed six (6) months of the employee's annual sick leave accrual hours (48 hours) to attend to the illness of **the employee's** child, parent, spouse, or domestic partner (as defined in Family Code Section 297). For this purpose, "Child" means a biological, foster, or adopted child, a stepchild, a legal ward, or a child of a domestic partner or a person standing in loco parentis. "Parent" means a biological, foster, or adoptive parent, a stepparent, or a legal guardian. All provisions on the use of sick leave by an employee shall also apply to the use by an employee of sick leave to attend to an illness of his or her child, parent, spouse, or domestic partner.
  - d. An employee quarantined by appropriate authority may use sick leave accruals for the duration of the quarantine period.
3. Bereavement Leave. Sick leave accrual may be used when a death occurs in the immediate family of a regular employee. Such use is limited to ten (10) days and may be used only in the loss of a spouse, domestic partner, children, parents, parents of current spouse, sister, brother, grandparents, stepparents,

half brother, half sister or any individual who may have a true parental relationship to the employee.

4. Minimum charge. The minimum charge against accumulated sick leave shall be fifteen (15) minutes.
5. Notice of Illness. The Town must be notified at or before the start of the employee's scheduled workday of an illness on the first day of absence. It is the **employee's** responsibility to keep the Town informed as to continued absence beyond the first day for reasons due to illness. Failure to make such notification may result in denial of sick leave with pay as well as disciplinary action, up to and including discharge.

Maximum accrual. There shall be no limit on the accrual of sick leave. Payment of accrued **unused** sick leave at a rate of fifty (50%) will occur only upon termination of employment provided the employee has completed at **least five** (5) years of **full time** service with the Town. Employees shall receive vesting of 75% of their sick leave at the beginning of their fifteenth (15<sup>th</sup>) year of service and shall receive vesting of 100% of their sick leave at the beginning of their twentieth (20<sup>th</sup>) year of service with the Town. However, in the case of retirement from the Public Employees Retirement System, the employee shall receive one hundred percent (100%) credit for unused sick leave as it relates to service credit with the Public Employees Retirement System. (Employees with less than five [5] years of service must reference Section 6.17)

**At retirement or separation from Town service, all Exempt employees shall make a mandatory contribution of 100% of the sick leave that they are entitled to, up to the applicable IRS limits, into the Town's Nationwide 401a deferred compensation plan. Contributions in excess of the IRS limits, if any, at time of separation will be paid out to the employee. Employees are permitted to withdraw funds from this account after separation from Town service or at retirement, in accordance with IRS regulations.**

6. Illness during vacation leave. Employees who become ill while on approved vacation leave may request to have vacation time converted to sick leave. Approval may be granted only when the employee presents a doctor's certificate verifying an illness or injury. Such conversion shall require approval of the Personnel Officer.
7. Non-regular employees. Part-time, temporary, and seasonal employees shall not be eligible for sick leave.
8. Return from sick leave. Employees who have been on sick leave may be required to satisfactorily complete a physical examination administered by a Town retained physician if the employee's immediate supervisor believes that the health, safety and welfare of the employee or of the Town and its employees are being jeopardized due to the possibility that the employee lacks fitness for duty or that the employee is abusing the sick leave benefit.

9. Use of State Disability Insurance. Employees who wish to use State Disability Insurance for any period of a sick leave absence are required to notify the Town prior to the first day of any absence. In such cases, the employee's timecard should reflect such use by a reduction in the number of sick leave hours recorded. Employees who apply for State Disability Insurance and fail to inform the Town by adjusting their hours on their timecard will be subject to disciplinary action up to and including discharge.
10. Misuse. Evidence substantiating the abuse and misuse of the sick leave benefit shall result in denial of sick leave with pay and may result in disciplinary action, up to and including discharge.



## EXHIBIT C

### RULE 15 LAYOFF POLICY AND PROCEDURE

#### Section 15.1 Policy

Whenever in the judgment of the Town Manager that it becomes necessary either in the interest of economy or because the necessity for a position no longer exists, the employee holding such position may, at the discretion of the Town Manager, be laid off, or transferred or demoted to a vacant position for which the employee qualifies, without disciplinary action being taken and without the right of appeal or hearing unless otherwise required by law. In the case of a transfer or demotion under this Section, the employee shall be subject to the pay range and benefits applicable to the classification to which the employee is transferred or demoted. Employees transferred or demoted under this Section shall not be required to serve a new probationary period.

#### Section 15.2 Order of Layoff

The order of lay-off, transfer, or demotion shall be based on seniority within the affected classification within the affected Department or Division. Seniority shall be measured from the last date of hire with the Town in a regular position. A regular employee shall not be laid off from his/her position in an affected Department or Division while any part-time, temporary, seasonal, probationary, or acting employee is serving in the same classification in that Department or Division. There are no bumping rights.

#### Section 15.3 Reemployment List

The names of regular employees laid off, or transferred, or demoted in lieu of layoff, shall be placed upon reemployment lists for six (6) months for the classification from which the layoff, transfer, or demotion was made.