

Attention City Employee:

The City has a duty under the law, including the California Occupational Safety and Health Act, to maintain safe and healthy working conditions for employees. As part of the City's obligation to provide a safe work environment for all employees, the City institutes the following Policy regarding the use of sick leave for employees who may be directed to stay home due to suspicion of having or being exposed to COVID-19.

This is an emergency policy in accordance with Government Code section 3504.5 subdivision b that provides an emergency exception to the normal meet and confer process. A notice will be sent to Delano Police Officer's Association, MEG Unit, and Delano City Employee's Association and the City will provide them with the opportunity to meet and confer on this policy at the earliest practicable time.

This Policy is not intended to alter any existing City policies, procedures, regulations, and Memoranda of Understanding and all City policies, procedures, regulations, and Memoranda of Understanding remain in full force and effect. This Policy recognizes the importance of the City's employees in implementing the City's mission, the importance of keeping all City employees and the community safe, and the importance of protecting employees' due process rights.

This Policy is subject to change at any time, based on changing circumstances and information known about the COVID-19 virus or any other communicable diseases. The City will notify City employees of any changes to this Policy and will comply with all applicable laws regarding notice to bargaining units, as required.

## **I. Criteria for Sending Employees Home**

In order to ensure employee and the public's safety, supervisors, the Director of Human Resources, and/or the City Manager, or designee, may direct employees to go home depending on the following criteria (1) Exhibition of symptoms associated with COVID-19 (such as fever, defined as 100.4° F [37.8° C] or greater using an oral thermometer, coughing and/or shortness of breath); (2) Severity of such symptoms; (3) Travel to or through areas with level 3 or higher area as defined by the CDC or from travel on a cruise ship; and (4) Close contact with affected individuals, defined as a) being within approximately 6 feet (2 meters) of a COVID-19 case for a prolonged period of time; close contact can occur while caring for, living with, visiting, or sharing a healthcare waiting area or room with a COVID-19 case, or b) having direct contact with infectious secretions of a COVID-19 case (*e.g.*, being coughed on). Additionally, the City will direct employees who have informed the City that they have tested positive for the COVID-19 virus to remain out of work.

Employees directed to stay away from work shall not return to work until the employee provides a certification from his or her treating physician that the symptoms are non-communicable or provides a certification on a form provided by the City that he or she is free of fever, signs of a fever, and any other symptoms of COVID-19 for at least 24 hours,

without the use of fever-reducing or other symptom-altering medicines (*e.g.*, cough suppressants). A symptomatic employee sent home from work should contact a medical professional for further advice. The employee should engage in self-observation while away from work. Employees directed to stay away from work may, at the City's direction, be allowed to telecommute.

Employees who have informed the City they have tested positive for the COVID-19 virus shall not return to work until the employee provides a certification from his or her treating physician that the symptoms are non-communicable or provides a certification that he or she is free of fever, signs of a fever, and any other symptoms of COVID-19 for at least 24 hours, without the use of fever-reducing or other symptom-altering medicines (*e.g.*, cough suppressants).

If, after returning to work, the employee still exhibits symptoms of a communicable disease or the City has any other significant evidence that could cause a reasonable person to question whether the employee is still capable of performing one or more of his or her essential job duties, or is still capable of performing those duties in a manner that does not harm him or herself or others, the City will require the employee to undergo a medical examination to determine if the employee can safely return to work. The examination will be at the City's expense and will comply with the City's Policy regarding fitness for duty examinations.

## **II. Use of Sick Leave**

### **a. Employees With Sick Leave Balances**

If an employee is sent home from work and has a sick leave balance, the employee may choose whether to use such leave for the duration of the period they stay away from work. Employees choosing not to use sick leave shall use other accruals available to them. If the employee is directed to stay home and is allowed to use sick leave for the duration of the time they are not at work, they will be given due process rights as described in Section III(c).

### **b. Employees With No Sick Leave Balances**

If an employee sent home from work has no sick leave balance from which to draw or the employee exhausts their sick leave, the employee may choose to draw down accrued vacation time or any other leave balance. If the employee is directed to stay home and is allowed to use vacation or other leave for the duration of the time they are not at work, they will be given due process rights as described in Section III(c).

Employees with no leave balances or who exhaust their leave balances, may be allowed, at the discretion of the City Manager, to draw up to 80 hours of future leave accruals. Employees who reach the 80-hour limit and require additional leave will, at the discretion of the City Manager, either be placed on paid administrative leave or will be placed on an unpaid leave of absence. Employees placed on unpaid leave will be given due process rights as described in Section III(d.).

**c. Family Medical Leave Act/California Family Rights Act**

If an employee who is diagnosed with the COVID-19 virus and is sent home or, during the isolation period, the employee's treating physician diagnoses the employee with COVID-19, the City may designate the leave as FMLA/CFRA leave, according to the City's FMLA/CFRA Leave policy.

**III. Due Process Rights**

- a. Employees who are sent home who are either (1) at-will with no property rights in employment; or (2) put on a fully paid leave not requiring them to draw down leave balances are not entitled to due process.
- b. Given the exigent circumstances presented by COVID-19 in the workplace, no due process is required *before* the City sends an employee home.
- c. If the employee is directed to stay home and is allowed to use leave balances for the duration of the time they are not at work, within a reasonable amount of time after an employee is sent home, the City will provide the employee with a notification explaining the reasons for the decision to send them home and an opportunity to respond in writing or by a telephonic meeting. The employee may respond with additional information from their treating physician.
- d. If an employee is directed to stay home and is placed on unpaid leave for the duration of the time they are not at work, the City will provide a full evidentiary hearing according to City of Delano Rules and Regulations 13.09 City Manager Hearing.

**IV. Employees 65 Years older or with Pre-existing Medical Conditions**

- a. Consistent with California Governor Gavin Newsome's Order, employees who do not meet the criteria in Section I above but are of the age of 65 and older, or have a preexisting medical condition may request to work from home. Requests must be submitted to the Human Resources Department. The City will evaluate each request to work from home on a case-by-case basis and the City Manager shall have the sole discretion to approve, deny, or revoke such requests based on the City's operational necessities.
- b. Employees' whose requests to work from home are denied may request to self-isolate and utilize their paid sick and other leave accruals consistent with Section II above. Such employees may have to provide medical documentation from a treating physician documenting that they have a qualifying condition.

**IV. Employees Impacted Due to School Closure**

Employees with dependents who are impacted by school closures may request to work from home consistent with the City's remote working policy. Request for remote working which

are denied will be allowed to use their available paid leave sick and other leave accruals, only to the extent necessary to care for the dependent. If an employee is out of available leave balances, their unpaid leave requests would be approved during this time only, and only to the extent necessary to care for the dependent. This is applicable for non-essential personnel, as determined by each Department Head. Employees must submit their request to Human Resources on a weekly basis. Employees may still be called back if deemed necessary to provide services. The City will evaluate each request to work from home on a case-by-case basis, and the City Manager shall have the sole discretion to approve or deny such requests based on the City's operational necessities.

Executive Order issued by: \_\_\_\_\_ Date: \_\_\_\_\_

Maribel Reyna, City Manager