

RESOLUTION NO. 795

A RESOLUTION OF THE CITY OF GIG HARBOR, WASHINGTON, ACKNOWLEDGING AND APPROVING CERTAIN POLICIES REGARDING VOLUNTARY EMPLOYEE FURLoughS AS CLARIFICATION OF THE CITY'S ANNUAL SALARY ORDINANCE.

WHEREAS, due both to the economy and to the limited revenue sources available to local governments in the state of Washington, the City of Gig Harbor is experiencing budget shortfalls and limitations; and

WHEREAS, the Mayor and City Administrator have implemented layoffs in accordance with the 2009 adopted budget to help address that budget shortfall; and

WHEREAS, the City Council deems it appropriate to create, as an interpretation of the annual salary ordinance, the potential for voluntary furloughs or leaves of absence by City employees in order to potentially avoid mandatory furloughs or further layoffs; Now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
HEREBY RESOLVE AS FOLLOWS:

Section 1. The attached policies shown as Exhibit A to this resolution, promulgated by the Mayor and City Administrator, are hereby approved and acknowledged by the City Council as appropriate interpretations of and supplements to the annual salary ordinance.

Section 2. The City Council acknowledges that these policies have been adopted in order to address unanticipated economic shortfalls and as such, these voluntary furloughs will constitute budget related furloughs within the meaning of 29

C.F.R. §541.710 and are an integral part of the City's expenditure reduction efforts within the meaning of Chapter 430, Washington Session Laws of 2009.

RESOLVED this 22nd day of June, 2009.

CITY OF GIG HARBOR



MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:



CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK: 06/18/09
PASSED BY THE CITY COUNCIL: 06/22/09
RESOLUTION NO. 695

Exhibit A

CITY OF GIG HARBOR

VOLUNTARY FURLOUGH POLICY AND PROCEDURE

Effective: June 23, 2009 **Expiration:** This policy shall expire on December 31, 2009.

The City reserves the right to revise, supplement, clarify or rescind any policy or portion of a policy when deemed appropriate by the Mayor or City Administrator.

1.0 OVERVIEW

1.1 INTENT OF POLICY - This policy is adopted to allow voluntary furloughs and is in addition to the City of Gig Harbor Personnel Policies and serves as a general guide to the City's employment practices and procedures. This policy is not intended to be a contract, express or implied, or any type of promise or guarantee of specific treatment upon which you may rely, or as a guarantee of employment for any specific duration.

Employees who are exempt from collective bargaining representation or otherwise deemed executive, managerial, or confidential by the City are considered at-will employees and may be terminated from City employment at any time with or without cause and with or without notice. All other employees' employment status shall be governed by the personal employment contract, collective bargaining agreement, civil service rules, City Personnel Policies, or other written document applicable to the individual case.

1.2. SCOPE OF POLICY - In cases where this policy conflicts with any City ordinance, Civil Service rule and regulation, the provision of a collective bargaining agreement, state or federal law, the terms of the law or agreement prevail. In all other cases, this policy applies.

In addition, the City Administrator may approve voluntary furloughs upon application by individual employees. The City Administrator reserves the right to approve or deny voluntary furlough requests, based on the business needs of the City.

1.4 DEFINITIONS - The following definitions are meant to clarify the language used in this policy in reference to furlough process and eligibility.

Delayed Furlough Day – A day off without pay taken in place of a designated furlough day.

Furlough – The placement of employees in a temporary status without duties and without pay. Furloughs will temporarily be administered as follows:

1. Approval of furlough is to be processed in writing when possible.
2. During a furlough day, furloughed employees remain City employees.
3. Outside employment for furloughed employees remains subject to the City's policies, procedures, collective bargaining agreements, civil service rules and regulations, and other established guidelines.
4. Furloughed employees may not volunteer to do what the City otherwise pays employees to do.
5. Health insurance will continue in full for a furloughed benefit-eligible employee unless the employee is on unpaid leave more than 30 consecutive days.

FLSA-Exempt Employee – An individual designated by the City Administrator as being employed in a bona fide executive, administrative, or professional capacity, as defined by the Fair Labor Standards Act (FLSA) or the Washington Minimum Wage Act (WMWA), and who is therefore exempt from the overtime pay and minimum wage requirements of the FLSA or the WMWA.

Furlough Day – Any day in which a furloughed employee is placed in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Furlough-Eligible / Must Report Person – Any position that has been identified as furlough eligible, however, due to job necessity, the employee is required to work on a designated furlough day. In this situation, the employee may take a replacement furlough day at an agreed upon later date.

Furlough-Ineligible Positions – Positions with assigned duties which cannot, in the judgment of the City Administrator, take part in furlough days due to public health, safety, and/or workload demands. These positions may change throughout the furlough process.

Furloughed Employee – Any employee who is voluntarily placed in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Hourly – An employee who is entitled to be paid for all actual hours that he/she is required or permitted to work at either the straight time regular hourly rate for hours worked up to and including forty (40) in the workweek or overtime hourly rate at one and one-half times the hourly employee's regular rate of pay for each hour worked in excess of forty (40) in the workweek.

Voluntary Furlough -- A furlough day or days, initiated at the request of an employee in which the employee is in a temporary status without duties and without pay due to a financial need to reduce expenditures caused by declining revenues.

Workweek – A fixed and regularly recurring period of 168 hours during seven consecutive twenty-four hour periods.

2.0 CLASSIFICATION

2.1 FLSA-Exempt Employees – All employees, including FLSA-exempt employees, who are identified as furlough-eligible, will be strictly prohibited from working on furlough days. During weeks in which a furlough occurs, FLSA-exempt employees will be converted to hourly status. FLSA-exempt employees will be required to track their hours consistent with the standard hourly tracking practices used in their home department. During the period when FLSA-exempt employees are converted to hourly, they must subscribe to standard working hours and all other rules (e.g., rest periods and meal periods) which are required in their home department. For example, partial day absences due to medical appointments must be requested in advance and deducted from the employee's sick leave accrual balance.

During weeks in which FLSA-exempt employees are converted to an hourly status, care must be taken to ensure that hourly rules are observed. FLSA-exempt employees converted to an hourly status in a week in which a furlough occurs are specifically directed not to work hours in excess of a standard schedule without the specific authorization of their supervisor or manager. FLSA-exempt employees must observe the agreed upon starting and ending times to each work day. Such work includes being physically present in the office, working at home, working online, working on the telephone, "working lunches", working on a blackberry or working on a cell phone. All work in service of the City for which an individual does not receive compensation through the approval process, including overtime, is prohibited. Attendance at off-hour meetings such as public hearings is compensable and must be recorded during furlough-affected weeks. During weeks in which FLSA-exempt employees are converted to hourly status, they may flex their work schedules, on an hour-for-hour basis within the work week, to make up for time worked off-hours (evening meetings, for example).

FLSA-exempt employees who are otherwise furlough-eligible but who submit an "Intent to Retire" form will not be converted to an hourly status during weeks in which a furlough occurs.

2.2 Regular Part Time / Hourly– Regular part-time and hourly employees will take the furlough days as scheduled. If a regular part-time or hourly employee is working an alternative workweek which provides for a regularly scheduled day off on a scheduled furlough day, an alternate unpaid furlough day will be scheduled preferably within the same week as the standard furlough day. Regular part-time and hourly employees will not be used to substitute for regular full-time employees who are on furlough days.

3.0 PAY AND BENEFITS

Unless otherwise provided for in an applicable collective bargaining agreement, the following applies:

- 3.1 Adjusted Service Date: An employee's adjusted service date (for leave accrual, seniority, and other purposes) shall not be changed due to unpaid furlough days.
- 3.2 Probationary Periods: Probationary periods are generally six (6) months in length. With the institution of furloughs, probationary periods will continue to be six months. Unless an employee is on more than fifteen (15) furlough days during the probationary period, Furlough days will not be considered as a reason to extend a standard probationary period.
- 3.3 Meal/Rest Periods: There will be no change in meal and rest periods due to furlough days being observed in any work week
- 3.4 Workweek: The definition of "workweek" will consist of seven consecutive 24 hour periods or 168 consecutive hours. The Department Heads will be responsible for administering workweeks affected by the furlough program.
- 3.5 Recordkeeping Requirements: Under the FLSA, the City is required to keep records on employee time. For FLSA overtime-eligible employees, this means that records must be kept for hours worked each day and the total hours worked each workweek. Recordkeeping requirements also apply to FLSA-exempt employees who are identified as furlough-eligible because they are converted to hourly employees in a week in which a furlough day occurs. During such weeks, FLSA-exempt employees will be required to conform to all of the policies normally observed by hourly employees. Attendance at off-hour meetings, such as public hearings, are compensable and must be recorded during furlough affected weeks.
- 3.6 Overtime / Compensatory Time: Those terms and conditions describing overtime and compensatory time contained in collective bargaining agreements, City policy, ordinance, or any other recognized guideline will continue to apply. When FLSA-exempt employees are converted to an hourly status during a week when a furlough occurs, hourly terms and conditions will apply to them. For example, an FLSA-exempt employee who, due to business conditions such as an emergency call out, works more than forty (40) hours in a week while in an hourly status will earn overtime payment or compensatory time.

Compensatory time accrual for FLSA-exempt staff converted to hourly during furlough affected weeks will only be approved in rare and unusual circumstances. Managers must consult with the City Administrator prior to making such approvals.

Unpaid leave (furloughs) will not count as hours worked toward the overtime threshold.

- 3.7 Medical, Dental, Vision Benefits: Medical, dental, vision, EAP and other insurance benefits (with the exception of life and disability insurance which is calculated based on

salary) will be unaffected by the furlough except when an employee is in unpaid status for 30 consecutive days or more.

3.8 **401(a) and 457 Retirement Plan Contributions:** The City's 401(a) defined contribution retirement plan is based on earnings. Furloughs will reduce earnings and therefore reduce the City's and the employee's contribution to the 401(a) plan. Employee participation in other plans such as the 457 deferred compensation plan which are contributed as a percentage of income will also be reduced accordingly.

4.0 ALTERNATIVE WORK ARRANGEMENTS

4.1 **Alternate Workweeks:** Individuals working a compressed workweek (e.g., 9/80 or 4/10 hour workweeks) may take unpaid furlough days. Individuals working an alternative workweek who have a normal day off on a scheduled unpaid furlough day may schedule and observe an alternate unpaid furlough day within that same pay period.

4.2 **Timekeeping:** Each department is responsible for establishing methods to ensure voluntary furlough days are observed by each furlough-eligible employee.

5.0 LEAVE ADMINISTRATION:

5.1 **Vacation and Leave Accruals:** The accrual of vacation and sick leave will not be affected by the 2009 furlough days, unless the employee is in unpaid status for 30 consecutive days or more.

5.2 **Vacation.** Employees may not use their paid vacation benefit on a day they would not normally be paid. Furlough days are not paid.

5.3 **Vacation Carryover.** Failure to use vacation leave beyond the maximum accrual amount results in forfeiture of the vacation leave unless specific "carryover" authorization has been provided by the City Administrator. This authorization will generally be granted in instances where, due to the direct result of the voluntary furlough, vacation use was either denied or, due to the furlough, no opportunity was available to schedule or reschedule before the end of the year. It is the responsibility of employees and managers to plan their vacations and workload during the year in order to avoid maximum vacation accrual issues. Departments have the obligation to ensure that the necessary adjustments to employee schedules are made prior to the end of year.

5.4 **Family Medical Leave (FMLA).** Employees will continue to have 12 weeks of protected Family Medical Leave as allowed under the Family Medical Leave Act (FMLA). Employees will not have a right to be paid on any day for which they would not normally be paid. In other words, employees on FMLA are not entitled to a paid day on a furlough day. Employees on FMLA leave will have the equivalent number of protected days for each furlough day added to the end of the 12 weeks of protected FMLA leave.

Eligibility. A furlough day is considered to be a regular day off and should not be counted when calculating leave eligibility. For example, when calculating whether the employee worked 1,250 hours in the previous 12 month period under FMLA, one would not count any furlough days as earned or hours worked.

5.5 Military Leave. The Washington State Legislature changed the number of paid military leave days from 15 to 21 in 2008. Managers and supervisors will continue to grant military leaves in accordance with the law. The annual leave periods are not to exceed 21 work days during each year. Such leaves are made with pay to employees eligible for leave benefits for the purpose of taking part in active duty or military training. Employees are not eligible to be paid for military leave on days when they would not normally be paid. Unless identified as "furlough-ineligible," employees on military leave are not paid on furlough days. Persons taking military leave will continue to receive 21 paid work days per year to take part in active duty or military training. The requirements to submit a written request for military leave to the employee's supervisor and attach copies of military documents that order the active duty will continue to be required.

5.6 Active Military Duty. USERRA provides that employees on a furlough or a leave of absence are to be given the same rights of employees on other types of leave. In the case of a furlough, active military employees do not have any more rights than other employees to use paid leave accruals while on leave for military service. For employees receiving supplemental military pay, furloughs will impact their regular differential pay. Employees will not receive supplemental pay for furlough days.

5.7 Domestic Violence Leave. Effective April 1, 2008, under Washington State law, employees who are victims or who are family members of victims of domestic violence, sexual assault or stalking may take a reasonable period of leave to receive medical treatment, attend legal proceedings or address safety concerns. The employee may elect to use sick leave, other paid time off, compensatory time or unpaid leave time. Managers and supervisors must continue to approve paid or unpaid leave time for domestic violence leave; however, they may not approve the use of paid leave time for those days for which an employee would not normally be paid. Managers and supervisors may not approve the use of paid domestic violence leave for scheduled unpaid furlough days.

5.8 Bereavement Leave. Employees are not eligible to be paid for bereavement leave on days when they would not normally be paid. Managers or supervisors will continue to approve bereavement leave within the limitations established. Managers or supervisors may not approve the payment of bereavement days for scheduled unpaid furlough days.

5.9 Jury Duty. Employees are not eligible to be paid for jury duty on days when they would not normally be paid. Employees called to jury duty during a furlough day would not be eligible to receive their regular compensation on that day but may be eligible to keep their court provided jury duty pay for that day which would otherwise be returned to the City.

5.10 Washington Family Care Act (WFCA). The furloughs should have no impact to WFCA leaves of absence. The WFCA provides that an employee may use paid leave accruals when caring for a qualifying family member with a serious health condition. The WFCA does not overrule a collective bargaining agreement or employer policies regarding the use of paid leaves. As a result, employees are not entitled to paid leave under the WFCA on a furlough day.

5.11 Pregnancy, Childbirth or Pregnancy Related Conditions (PCPRC). Furlough days do not impact PCPRC leave. The City will continue to treat female employees on PCPRC in the same manner as other employees on leave for sickness or other temporary disabilities. PCPRC may be taken the day before and the day following an unpaid furlough day but not on the unpaid furlough day.

5.12 Sick Leave Use. Employees may not use sick leave for furlough days. Employees may use paid leave benefits only on those days they are normally scheduled to work. Employees are not eligible to be paid for sick leave on days when they would not normally be paid.

5.13 Compensatory Time. Employees are not eligible to be paid for compensatory time on days when they would not normally be paid. Compensatory time will not be used in place of designated unpaid furlough days.

FLSA-exempt employees who are permitted to earn compensatory time during a furlough week in which they are designated as hourly must also use compensatory time during a furlough week in which they are designated as hourly. Managers and supervisors must consider very carefully (in advance) whether compensatory time will be approved in lieu of overtime payments. The recommended approach is that all hourly employees work within the forty (40) hour workweek structure and not incur compensatory time or overtime during a designated furlough week. Any furlough-eligible employee incurring unapproved compensatory time or overtime during a designated furlough week will be subject to discipline.

5.14 Holiday Pay. The requirement to be in paid status the day before and the day after a holiday in order to be paid for the holiday will be waived in those circumstances where the unpaid day is a furlough day. If an individual is in an unpaid status on a day before or a day following a holiday not caused by a furlough day, the employee will not be paid for the holiday. If a scheduled furlough day falls on a paid holiday, the employee will receive holiday pay for that day.

6.0 RESCISSON OF APPROVED LEAVES (Not applicable under voluntary furloughs)

7.0 RETIREMENT

In accordance with the provisions of the recently enacted SB 6157, any compensation foregone by a member of the State Retirement System applicable to municipal employees

shall include any compensation foregone by a member during the 2009 to 2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay or temporary furloughs. These rules shall be interpreted in accordance with the state of Washington's DRS rules which are anticipated to be issued on or about July 1, 2009.

8.0 COMMUNICATION.

8.1 New Hires. (not applicable under voluntary furloughs)

9.0 ADDITIONAL.

9.1 Grievance Procedures/Timelines. Grievance procedures typically specify the number of days for each step of a grievance. The number of days are typically specified as "days," "calendar days," or "business days." The terms and conditions of all collective bargaining agreements will be observed unless specifically overridden by a Memorandum of Understanding. Where a collective bargaining agreement specifies "calendar days," furlough days will generally be considered calendar days. Where the collective bargaining agreement specifies "business days," furlough days will be considered business days if the employee is furlough-ineligible and non-business days if the employee is furlough-eligible. Where the collective bargaining agreement specifies "days," the parties will agree on the meaning of the term upon notification of the grievance.

There is no property right to scheduled or substituted furlough days. There is no requirement to hold Loudermill hearings on furloughs for employees who are identified as furlough-eligible.

9.2 Unemployment Compensation. Eligibility is determined by the Washington State Department of Employment Security.

9.3 Emergency Procedure. In those cases where an emergency call out occurs on a furlough day or during a furlough week, employees may be called back to work. Such employees are compensated in accordance with standard compensation procedures and in conformance with the applicable collective bargaining agreement. FLSA-exempt employees may be called back to work on a furlough day. FLSA-exempt employees are compensated on an hourly basis for all time worked within a furlough affected week. FLSA-exempt employees are required to track their time during a furlough affected week consistent with the practices in their department. Overtime pay is paid to such non-represented employees for all hours worked in excess of forty (40) hours within that week including weekend days within the same week. If such employees are represented, they are paid in accordance with their collective bargaining agreements for calculation of overtime.

In the case of an employee being called to work on an unpaid furlough day due to emergency situations, the employee is not required to make up the furlough day at a later date.

10.0 PUBLIC DISCLOSURE ACT.

The term “business day” is not defined under the Public Records Act. When considering whether one should count a furlough day as a business day, one should keep in mind that the act is to be liberally construed. Recognizing that some parts of the city will be open on furlough days, the recommended course of action is to regard all furlough days as business days for public disclosure request purposes.