

CITY COUNCIL COMMITTEE

SPECIAL MEETING

POLICY DEVELOPMENT AND INTERNAL OPERATIONS

Mayor Tim Grayson, Chair
Laura Hoffmeister, Committee Member

7:00 p.m. (please note later start time)
Thursday, March 12, 2015

Wing A, Garden Conference Room
1950 Parkside Drive, Concord

ROLL CALL

PUBLIC COMMENT PERIOD

- 1. REVIEW** – Policy & Procedure No. 37.4 Employment of Relatives.
- 2. ADJOURNMENT**

In accordance with the Americans with Disabilities Act and California Law, it is the policy of the City of Concord to offer its public programs, services and meetings in a manner that is readily accessible to everyone, including those with disabilities. If you are disabled and require a copy of a public hearing notice, or an agenda and/or agenda packet in an appropriate alternative format; or if you require other accommodation, please contact the ADA Coordinator at (925) 671-3361, at least five days in advance of the meeting. Advance notification within this guideline will enable the City to make reasonable arrangements to ensure accessibility.

Distribution: City Council
Valerie Barone, City Manager
Jovan Grogan, Deputy City Manager
Mark Coon, City Attorney
Laura Brunson, Human Resources Director
Joelle Fockler, City Clerk
Administrative Services



MEMORANDUM

To: Mayor Grayson and Vice Mayor Hoffmeister
Policy Development & Internal Operations Committee

From: Laura Brunson, Human Resources Director

Date: March 12, 2015

Re: PP 37.4 Employment of Relatives

At the February 24, 2015 Council meeting, Council directed staff to bring the City's current Employment of Relatives policy and procedure to the Policy Development & Internal Operations Committee for discussion. The next meeting of this committee is scheduled for March 12, 2015 at 7:00 P.M. in the Garden Conference Room.

Attached is the July 10, 2012 staff report that was presented when the Council adopted the current policy. Also attached is a copy of the current policy.

If you need anything else prior to the March 12, 2015 committee meeting, please let me know.

cc: Valerie Barone, City Manager
Mark Coon, City Attorney

EMPLOYMENT OF RELATIVES

1. POLICY STATEMENT

- 1.1 To avoid the potential for creating an adverse impact on supervision, safety, security or morale, actual or perceived conflicts of interest, and the potential for nepotism and/or favoritism, the City of Concord shall not appoint or employ any person to a position in any department, division or facility, whenever that person has a relationship to a current employee in the same department, division or facility, or a relationship to a currently elected or appointed official, or any member of the City's Executive Team.

2. PURPOSE

- 2.1 The purpose of this Policy & Procedure is to ensure that appointments and advancements are made on the basis of merit and that an individual should not be appointed solely because that individual is a relative of a member of the City's Executive Team, or an elected or appointed official. This Policy and Procedure also is adopted to avoid the potential for creating an adverse impact on supervision, safety, security or morale, actual or perceived conflicts of interest, and the potential for nepotism or favoritism.

3. DEFINITIONS

- 3.1 **Supervisor:** For purposes of this policy, "supervisory employee" or "supervisor" means any employee, regardless of job description or title, having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action if the exercise of this authority is not of a routine or clerical nature, but requires the use of independent judgment.
- 3.2 **Relationship:** As used in this policy, refers to the affiliation between individuals who are related by blood, or adoption including the following: child, step-child, parent, step-parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, parent-in-law, daughter-in-law, son-in-law, brother-in-law and sister-in-law.
- 3.3 **Spouse** means a partner in marriage as defined in California Civil Code 4100.
- 3.4 **Marital Status** is an individual's state of marriage, non-marriage, divorce or dissolution, separation, annulment or other marital state.
- 3.5 **Domestic Partners** are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, as defined in California Family Code Section 297.
- 3.6 **Appointing Authority** is the Department Head and any other person or group of persons so designated in Section 50-147 of the Municipal Code as having the power to make an appointment to any position in a specified department of the City of Concord.
- 3.7 **Executive Team** is the City Manager, Assistant City Manager, City Attorney, and any Department Director.

4. POLICY

- 4.1 While the City of Concord does not discriminate in its employment and personnel actions with respect to its employees, prospective employees, and applicants on the basis of marital status (Government Code 12940), the City shall not appoint, employ, re-employ or reinstate any person:
- 4.1.1 Whenever that person has a relationship to a current employee in the same department, division or facility to which the person would be assigned if appointed/employed/reinstated, or a relationship to any elected or appointed City official, or a member of the City's Executive Team.
- 4.2.2 To a position in any City department, division or facility where, because of that person's relationship to a current employee, there is the potential for creating adverse impact(s) on supervision, safety or morale, or a potential conflict of interest.
- 4.2 As required under California law, the sole exception to this policy shall be prospective employees who are a spouse or domestic partner of an existing City employee, elected or appointed official, or member of the City's Executive Team. In the event that an employee who has such a spousal/domestic partnership relationship is hired or appointed, the Department Head shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale. The City reserves the right, for business reasons of supervision, safety, security, or morale, to refuse to place one spouse/domestic partner under the direct supervision of the other spouse. or in the same department. If the City is unable to make an acceptable accommodation, the City may refuse to hire spouses, domestic partners of an existing City employee, elected or appointed official, or member of a board or commission.
- 4.3 When two employees marry, or have established the status of domestic partners, and a determination has been made that the potential for creating adverse impact as described above exists, the department head in consultation with the Human Resources Department, shall make reasonable efforts to minimize problems of supervision, or safety, security or morale through reassignment of duties, relocation or transfer. If the City is unable to make an acceptable accommodation then the Department head will notify the two individuals that one of the employees must separate from City employment within 60 days. The choice of who shall separate from City service shall be the employees'. In the event the employees do not agree with respect to which one shall resign, the employee with the least seniority shall be separated from City service pursuant to Policy No. 37.33.
- 4.4 In implementing this policy, it is lawful to ask an applicant to state whether he or she has a spouse, domestic partner or relative as defined in this policy who is presently employed by the City, but such information may not be used as a basis for an employment decision except as stated herein.

5. SCOPE

- 5.1 This policy will apply to all new hire, rehire, reinstatement, transfer, promotion and demotion actions in the Competitive, Exempt, Contractual, and Limited Service. In cases where this policy conflicts with Policy & Procedure No. 37.33, Layoff, Displacement, Re-Employment, the latter will prevail.
- 5.2 This policy applies to the selection of persons for a training program leading to employment in addition to the above-designated persons.
- 5.3 Employees hired prior to the effective date of this policy, who are impacted by these provisions, will have their individual situations reviewed in accordance with Section 4.1. Employees who know that one of their relatives has been placed on an Employment List or is being considered for other employment in a position to which section 4.1 would apply shall report the relationship to the Human Resources Department and/or appointing authority.

- 5.4 Nothing in this policy will preclude any relative of the City of Concord employee from applying for and competing in an examination, being placed on an employment list, or being certified to the hiring authority for employment consideration.

6. ROLES AND RESPONSIBILITIES

- 6.1 **City Manager.** The City Manager is designated by the City Council to implement the City's Employment of Relatives Policy. The City Manager establishes, administers, and provides policy direction by:
- 6.1.1 Ensuring that all appointing authorities are aware of their responsibilities not to appoint a person to a position in the same department, division or facility, wherein his/her relationship to another employee has the potential for creating adverse impact on supervision, safety, security or morale, or involves a potential conflict of interest.
 - 6.1.2 Ensuring that all employees are aware of this policy and those who possess such knowledge have the responsibility to identify relatives who have been placed on Employment Lists or are being considered for other employment to the Human Resources Department and/or appointing authority.
 - 6.1.3 Assigning the Human Resources Department, with the primary staff responsibility for administering the details of this Policy.
 - 6.1.4 Reviewing determinations and/or recommendations of the Department Head and Human Resources Department and making the final determination of appointment, when applicable.
- 6.2 **Human Resources Department.** In this role, The Human Resources Department acts as the administrator of the policy and shall be the City's source for interpretation and clarification in the administration of this policy.
- 6.2.1 The Human Resources Department will provide any available information concerning the relative status of a certified eligible candidate to the appropriate appointing authority.
 - 6.2.2 The Human Resources Department will review the determination of the Department Head and concur (with or without restrictions) or not concur with the decision. If the Human Resources Department does not concur, the matter will be elevated to the City Manager for final consideration.
- 6.3 **Appointing Authorities.** Department Heads are the "appointing authorities" in the City of Concord municipal government. They are responsible for hiring, transfer and promotion decisions, (subject to review by the Human Resources Department and final approval by the City Manager), and ensuring that City and departmental personnel policies are enforced.
- 6.4 **Hiring Manager.** The hiring manager is the person with responsibility for the program to which the position is assigned and who may recommend an applicant for employment to the appointing authority. Specifically, the hiring manager shall be responsible for:
- 6.4.1 Informing the Department Head in the following situations:
 - 6.4.1.1 Prior to hiring, that an applicant is related to a City employee. The hiring manager will need to obtain the proper authorization prior to the hiring effective date.
 - 6.4.1.2 Prior to any personnel action, when a City employee who is related to another City employee moves from one position to another position.

6.4.1.3 When two City employees who work in the same department, division, or facility marry, or establish status as domestic partners.

6.5 **Employees.** Employees who marry or who establish status as domestic partners are responsible for reporting this relationship to their department head or the Human Resources Department. Employees who know that one of their relatives has been placed on an Employment List or is being considered for other employment in a position to which section 4.1 would apply shall report the relationship to the Human Resources Department and/or appointing authority.

**REPORT TO MAYOR AND COUNCIL****TO THE HONORABLE MAYOR AND COUNCIL:**

DATE: July 10, 2012

SUBJECT: PROPOSED REVISIONS TO POLICY & PROCEDURE NO. 37.4 ("EMPLOYMENT OF RELATIVES")**Report in Brief**

Staff is proposing revisions to the City's existing Policy & Procedure pertaining to the employment of relatives ("P & P 37.4"). That policy currently permits, but does not require, Department Heads ("Appointing Authorities") to refuse to hire a person who is related to an existing employee in the same department, or an elected or appointed official/member of a board or commission, where the potential for an adverse impact or a conflict of interest exists.

At the direction of former City Manager Dan Keen, the City has been following a more rigorous policy, precluding the hiring of *any* person related to a City employee or an elected or appointed official/member of a board or commission, as well as any Department Head, the City Attorney or the City Manager (collectively referred to in this report as "City Officials"). At its May 14, 2012 meeting, the City Council Committee on Policy Development and Internal Operations¹ considered whether to revise Policy & Procedure 37.4 to reflect this change in implementation, to return to the currently written Policy & Procedure's mandates, or to adopt an alternative Policy & Procedure. The Council Committee ultimately recommended that staff revise Policy & Procedure 37.4 rescinding the outright ban on hiring of relatives, but adopting language precluding the hiring of related employees in the same department, and barring any hiring of relatives of members of the City's Executive Team, and relatives of elected and appointed officials except where required by law.

Discussion

Under existing Policy and Procedure 37.4, the City may refuse to "appoint, transfer, promote... a person in the same department, division or facility, whenever that person's 'relationship' to an employee, elected or appointed official, or member of a board or commission has the potential for creating adverse impact on supervision, safety, security or morale, or involves a potential conflict of interest." Policy and Procedure 37.4 defines "relationship" fairly broadly, including within its scope:

[I]ndividuals who are related by blood, marriage or adoption including the following: spouse, domestic partner, child, step-child, parent, step-parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, parent-in-law, daughter-in-law, son-in-law, brother-in-law and sister-in-law.

¹ The May 14, 2012 Policy Development and Internal Operations Committee meeting was attended by Chairman Ron Leone, and by Councilmember Dan Helix, substituting for Committee member Bill Shinn who was absent.

**REVISIONS TO POLICY & PROCEDURE NO. 37.4
("EMPLOYMENT OF RELATIVES")**

July 10, 2012

Page 2

The language of this policy provides Department Heads substantial flexibility in hiring decisions, since the determination of whether to appoint a person related to an existing employee in the same department or an elected/appointed official is somewhat subjective, resting on whether or not the prospective hire is viewed as posing a potential conflict of interest or adverse impact.

In response to complaints about perceived nepotism and conflicts of interest in hiring practices, and the attendant adverse impacts on employee morale, former City Manager Dan Keen instituted an across-the-board ban on hiring any relatives of current employees, department heads, or elected/appointed officials, including the City Manager and the City Attorney. Spouses and domestic partners are partially exempt from this restriction, since California law precludes employers from instituting an outright ban on their hiring. Specifically, Title 2, Section 7292.5 of the California Code of Regulations provides that "An employment decision shall not be based on whether an individual has a spouse presently employed by the employer." On the other hand, Section 7295.2 also requires that with respect to married employees, an employer "shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale."

Upon consideration of the existing Policy & Procedure and the more rigorous hiring practices implemented by former City Manager Dan Keen, the Council Committee on Policy Development and Internal Operations recommended a middle ground. Specifically, the Council Committee proposed elimination of the outright ban on hiring any relatives of existing City employees, but also urged adoption of revisions to Policy and Procedure 37.4 precluding any intra-departmental hiring of relatives, and the hiring of relatives of members of the Executive Team (the City Manager and Assistant City Manager, the City Attorney, and all Department Directors) and elected/appointed officials.

If adopted by the City Council, this policy would apply on a going forward basis, and would not require reassignment of existing relatives in the same department, absent operational needs or adverse impacts. Moreover, Policy & Procedure 37.4 would retain its language providing appointing authorities with discretion not to hire relatives posing the potential for negative impacts to supervision, safety, security or morale, or involving a potential conflict of interest.

It should be noted that the City may legally impose such a policy. In the key federal case addressing this subject, *Parsons v. County of Del Norte*, 727 F. 2d 1234 (9th Cir. 1983), the court indicated that anti-nepotism policies do not necessarily impinge upon constitutionally protected rights. Accordingly, they typically are analyzed under a "rational basis" test, and not the harsher "strict scrutiny" measure. Under the rational basis test, a government imposed rule or requirement is valid so long as it is rationally related to achieving a legitimate government purpose or objective.

Applying this standard, the court in *Parsons* upheld Del Norte County's anti-nepotism policy that precluded hiring an applicant who: (a) was an immediate family member of any member of the Board of Supervisors; (b) had an immediate family member in the same department where employment was sought; (c) or was an immediate family member of *any* county employee unless the County Administrator affirmatively found that there was no conflict. The court concluded that this policy was constitutionally permissible because it bore a rational relationship to the legal objective of avoiding conflicts of interest and favoritism in employee hiring, supervision, and the allocation of duties.

**REVISIONS TO POLICY & PROCEDURE NO. 37.4
("EMPLOYMENT OF RELATIVES")**

July 10, 2012

Page 3

Separate and apart from legal considerations, the proposed P & P 37.4 revisions offer many advantages. Certainly the potential for adverse impacts from hiring relatives is most pronounced where both employees work in the same department; thus retaining a uniform ban would address the more likely conflicts posed by permitting related employees to work for the City. Moreover, there is considerable merit to utilizing a "bright line" hiring limitation, since its uniform application promotes fairness and reduces the chance for lapses in hiring judgment. It is unlikely that the adoption of such a policy will meaningfully impact the available applicant pool for City jobs. Moreover, the likelihood of a workplace conflict may not be clear when a hiring decision is made; yet when problems surface, it is often difficult to re-assign the involved employee to a different department.

With respect to relatives of Executive Team members and elected/appointed officials, the dangers that would be eliminated by this policy are twofold: even absent any attempted influence, appointing authorities may well feel pressure to hire employees who are family members of high-ranking City representatives. Moreover, hiring such relatives can create the perception of favoritism and unfairness by both the public and City staff, leading to morale problems and possible adverse impacts.

Fiscal Impact

To the extent that the City Council approves revisions to the Employment of Relatives Policy and Procedure, such revisions would not have an immediate fiscal impact.

Public Contact

Posting of the City Council agenda.

Alternative Courses of Action

1. Retain Policy & Procedure 37.4 in its current form;
2. Revise Policy & Procedure 37.4 to reflect the City's current practice barring the hiring of any relatives of existing employees and City Officials.
3. Adopt other revisions to Policy and Procedure 37.4.

**REVISIONS TO POLICY & PROCEDURE NO. 37.4
("EMPLOYMENT OF RELATIVES")**

July 10, 2012

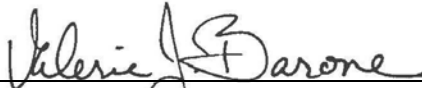
Page 4

Recommendation for Action

Adopt the recommendations of the Policy Development and Internal Operations Council Committee and revise Policy & Procedure 37.4 to preclude the hiring of related employees in the same department, the hiring of relatives of the Executive Team and elected/appointed officials, and relatives of existing employees irrespective of department where there is the potential for creating an adverse impact on supervision, safety, security or morale, or a conflict of interest exists.

Prepared by: Mark S. Coon
Acting City Attorney
Mark.Coon@ci.concord.ca.us

Kathy Ito
Director of Human Resources
Kathy.Ito@ci.concord.ca.us



Valerie J. Barone
Interim City Manager
Valerie.Barone@ci.concord.ca.us

Attachment 1: Policy & Procedure No. 37.4 ("Employment of Relatives") showing additions and deletions
Attachment 2: Proposed Revision of Policy & Procedure No. 37.4 ("Employment of Relatives") finalized



Number: 37.4
Authority: Council Motion
Effective: 02-10-04
Revised:
Reviewed: 2004
Initiating Dept.: HR

EMPLOYMENT OF RELATIVES

1. POLICY STATEMENT

1.1 ~~To avoid the potential for creating an adverse impact on supervision, safety, security or morale, actual or perceived conflicts of interest, and the potential for nepotism and/or favoritism, the~~The City of Concord ~~shall not may refuse to~~ appoint ~~or employ any~~a person to a position in ~~any department, division or facility, whenever that person has a relationship to a current employee in~~ the same department, division or facility, ~~or a whenever that person's relationship to a currently an employee, elected or appointed official, or any member of the City's Executive Team a board or commission, has the potential for creating adverse impact on supervision, safety, security or morale, or involves a potential conflict of interest.~~

2. PURPOSE

2.1 The purpose of this Policy & Procedure is to ensure ~~that~~ appointments and advancements are made on the basis of merit and that an individual should not be appointed solely because that individual is a relative of a ~~member of the City's Executive Team, or an elected or appointed official. This Policy and Procedure also is adopted to avoid the potential for creating an adverse impact on supervision, safety, security or morale, actual or perceived conflicts of interest, and the potential for nepotism or favoritism~~City employee, elected or appointed official, or member of a board or commission.

3. DEFINITIONS

3.1 **Supervisor:** For purposes of this policy, "supervisory employee" or "supervisor" means any employee, regardless of job description or title, having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend this action if the exercise of this authority is not of a routine or clerical nature, but requires the use of independent judgment.

3.2 **Relationship:** As used in this policy, refers to the affiliation between individuals who are related by blood, ~~marriage~~ or adoption including the following: ~~spouse, domestic partner,~~ child, step-child, parent, step-parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, parent-in-law, daughter-in-law, son-in-law, brother-in-law and sister-in-law.

~~3.3~~ Spouse means a partner in marriage as defined in California Civil Code 4100.

~~3.4~~ Marital Status is an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state.

~~3.4~~ Spouse means a partner in marriage as defined in California Civil Code 4100.

3.5 **Domestic Partners** are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, as defined in California Family Code Section 297.

3.6 **Appointing Authority** is the Department Head and any other person or group of persons so designated in Section 50-147 of the Municipal Code as having the power to make an appointment to any position in a specified department of the City of Concord.

3.7 **Executive Team** is the City Manager, Assistant City Manager, City Attorney, and any Department Director.

4. POLICY

4.1 While the City of Concord does not discriminate in its employment and personnel actions with respect to its employees, prospective employees, and applicants on the basis of marital status (Government Code 12940), the City shall not appoint, employ, re-employ or reinstate any person~~retains the right not to appoint, transfer, promote, demote, reinstate, or re-employ relatives of presently employed personnel to a position in the same department as follows:~~

4.1.1 Whenever that person has a~~To a position where one employee will have direct supervision of another employee when the relationship to~~(as defined in Section 3.2) ~~has the potential for creating adverse impact on supervision, safety, security or morale.~~

4.1.2 To a current employee position ~~in the same department, division or facility to which the person would be assigned if appointed/employed/reinstated, or a relationship to any elected or appointed official, or a member of the City's Executive Team.~~

4.2.2 To a position in any City department, division or facility where, because of that person's relationship to a current employee, there is~~with~~ the potential for creating adverse impact(s) on supervision, safety,~~security~~ or morale, or ~~involves~~ a potential conflict of interest.

4.2 As required under California law, the sole exception to this policy shall be prospective employees who are a spouse or domestic partner of an existing City employee, elected or appointed official, or member of the City's Executive Team. In the event that an employee who has such a spousal/domestic partnership relationship is hired or appointed, the Department Head shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale. The City reserves the right, for business reasons of supervision, safety, security, or morale, to refuse to place one spouse/domestic partner under the direct supervision of the other spouse, or in the same department. If the City is unable to make an acceptable accommodation, the City may refuse to hire spouses, domestic partners of an existing City employee, elected or appointed official, or member of a board or commission.

~~4.34.2 The department head shall have the authority and responsibility for determining if potential for adverse impact exists or does not exist. Where the department head has made a determination that such adverse impact does not exist, the Human Resources Department shall review the determination prior to the appointment. If a determination is made that an adverse impact would in fact occur, the department head and City Manager shall be notified. The City Manager shall make the final decision.~~

~~4.3 In cases where a department wishes to request an exception to the provisions of this policy (i.e., critical skills shortages, etc.) the appointing authority shall submit a request to the Human Resources Department, that will prepare a recommendation and forward it with the original request to the City Manager for final consideration.~~

4.4 When two employees marry, or have established the status of domestic partners, and a determination has been made that the potential for creating adverse impact as described above exists, the department head in consultation with the Human Resources Department, shall make reasonable efforts to minimize problems of supervision, or safety, security or morale through reassignment of duties, relocation

or transfer. If the City is unable to make an acceptable accommodation, then the ~~Department~~^{department} head will notify the two individuals that one of the employees must separate from City employment within 60 days. The choice of who shall separate from City service shall be the employees'. In the event the employees do not agree with respect to which one shall resign, the employee with the least seniority shall be separated from City service pursuant to Policy No. 37.33.

~~4.4.5 Relatives of elected officials, members of board and commissions, City Manager, City Attorney and Department Heads, shall not be appointed to any form of permanent employment with the City of Concord without competitive examination.~~

4.6 In implementing this policy, it is lawful to ask an applicant to state whether he or she has a spouse, domestic partner or relative as defined in this policy who is presently employed by the City, but such information may not be used as a basis for an employment decision except as stated herein.

5. SCOPE

5.1 This policy will apply to all new hire, rehire, reinstatement, transfer, promotion and demotion actions in the Competitive, Exempt, Contractual, and Limited Service. In cases where this policy conflicts with Policy & Procedure No. 37.33, Layoff, Displacement, Re-Employment, the latter will prevail.

5.2 This policy applies to the selection of persons for a training program leading to employment in addition to the above-designated persons.

5.3 Employees hired prior to the effective date of this policy, who are impacted by these provisions, will have their individual situations reviewed in accordance with Section 4.1. Employees who know that one of their relatives has been placed on an Employment List or is being considered for other employment in a position to which section 4.1.1 or 4.1.2 would apply shall report the relationship to the Human Resources Department and/or appointing authority.

5.4 Nothing in this policy will preclude any relative of the City of Concord employee from applying for and competing in an examination, being placed on an employment list, or being certified to the hiring authority for employment consideration.

6. ROLES AND RESPONSIBILITIES

6.1 **City Manager.** The City Manager is designated by the City Council to implement the City's Employment of Relatives Policy. The City Manager establishes, administers, and provides policy direction by:

6.1.1 Ensuring that all appointing authorities are aware of their responsibilities not to appoint a person to a position in the same department, division or facility, wherein his/her relationship to another employee has the potential for creating adverse impact on supervision, safety, security or morale, or involves a potential conflict of interest.

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6.1.3 Assigning the Human Resources Department, with the primary staff responsibility for administering the details of this Policy.

6.1.4 Reviewing determinations and/or recommendations of the Department Head and Human Resources Department and making the final determination of appointment, when applicable.

- 6.2 **Human Resources Department.** ~~The Human Resources Department is responsible for assuring compliance with this Policy & Procedure. In this role, the~~ Human Resources Department acts as the administrator of the policy and shall be the City's source for interpretation and clarification in the administration of this policy.
- 6.2.1 The Human Resources Department will provide any available information concerning the relative status of a certified eligible candidate to the appropriate appointing authority.
- 6.2.2 The Human Resources Department will review the determination of the Department Head and concur (with or without restrictions) or not concur with the decision. If the Human Resources Department does not concur, the matter will be elevated to the City Manager for final consideration.
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- 6.4.1 Informing the Department Head in the following situations:
- 6.4.1.1 Prior to hiring, that an applicant is related to a City employee. The hiring manager will need to obtain the proper authorization prior to the hiring effective date.
- 6.4.1.2 Prior to any personnel action, when a City employee who is related to another City employee moves from one position to another position.
- 6.4.1.3 When two City employees who work in the same department, division, or facility marry, or establish status as domestic partners, ~~and the relationship has the potential for creating adverse impact on supervision, safety, security or morale, or involves a potential conflict of interest.~~
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Number: 37.4
 Authority: Council Motion
 Effective:
 Revised:
 Reviewed: 2012HR
 Initiating Dept.:

EMPLOYMENT OF RELATIVES

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- 3.4 **Marital Status** is an individual's state of marriage, non-marriage, divorce or dissolution, separation, annulment or other marital state.
- 3.5 **Domestic Partners** are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring, as defined in California Family Code Section 297.
- 3.6 **Appointing Authority** is the Department Head and any other person or group of persons so designated in Section 50-147 of the Municipal Code as having the power to make an appointment to any position in a specified department of the City of Concord.
- 3.7 **Executive Team** is the City Manager, Assistant City Manager, City Attorney, and any Department Director.

4. POLICY

- 4.1 While the City of Concord does not discriminate in its employment and personnel actions with respect to its employees, prospective employees, and applicants on the basis of marital status (Government Code 12940), the City shall not appoint, employ, re-employ or reinstate any person:
- 4.1.1 Whenever that person has a relationship to a current employee in the same department, division or facility to which the person would be assigned if appointed/employed/reinstated, or a relationship to any elected or appointed City official, or a member of the City's Executive Team.
 - 4.2.2 To a position in any City department, division or facility where, because of that person's relationship to a current employee, there is the potential for creating adverse impact(s) on supervision, safety or morale, or a potential conflict of interest.
- 4.2 As required under California law, the sole exception to this policy shall be prospective employees who are a spouse or domestic partner of an existing City employee, elected or appointed official, or member of the City's Executive Team. In the event that an employee who has such a spousal/domestic partnership relationship is hired or appointed, the Department Head shall make reasonable efforts to assign job duties so as to minimize problems of supervision, safety, security or morale. The City reserves the right, for business reasons of supervision, safety, security, or morale, to refuse to place one spouse/domestic partner under the direct supervision of the other spouse. or in the same department. If the City is unable to make an acceptable accommodation, the City may refuse to hire spouses, domestic partners of an existing City employee, elected or appointed official, or member of a board or commission.
- 4.3 When two employees marry, or have established the status of domestic partners, and a determination has been made that the potential for creating adverse impact as described above exists, the department head in consultation with the Human Resources Department, shall make reasonable efforts to minimize problems of supervision, or safety, security or morale through reassignment of duties, relocation or transfer. If the City is unable to make an acceptable accommodation then the Department head will notify the two individuals that one of the employees must separate from City employment within 60 days. The choice of who shall separate from City service shall be the employees'. In the event the employees do not agree with respect to which one shall resign, the employee with the least seniority shall be separated from City service pursuant to Policy No. 37.33.
- 4.4 In implementing this policy, it is lawful to ask an applicant to state whether he or she has a spouse, domestic partner or relative as defined in this policy who is presently employed by the City, but such information may not be used as a basis for an employment decision except as stated herein.

5. SCOPE

- 5.1 This policy will apply to all new hire, rehire, reinstatement, transfer, promotion and demotion actions in the Competitive, Exempt, Contractual, and Limited Service. In cases where this policy conflicts with Policy & Procedure No. 37.33, Layoff, Displacement, Re-Employment, the latter will prevail.
- 5.2 This policy applies to the selection of persons for a training program leading to employment in addition to the above-designated persons.
- 5.3 Employees hired prior to the effective date of this policy, who are impacted by these provisions, will have their individual situations reviewed in accordance with Section 4.1. Employees who know that one of their relatives has been placed on an Employment List or is being considered for other em-

ployment in a position to which section 4.1 would apply shall report the relationship to the Human Resources Department and/or appointing authority.

- 5.4 Nothing in this policy will preclude any relative of the City of Concord employee from applying for and competing in an examination, being placed on an employment list, or being certified to the hiring authority for employment consideration.

6. ROLES AND RESPONSIBILITIES

- 6.1 **City Manager.** The City Manager is designated by the City Council to implement the City's Employment of Relatives Policy. The City Manager establishes, administers, and provides policy direction by:

6.1.1 Ensuring that all appointing authorities are aware of their responsibilities not to appoint a person to a position in the same department, division or facility, wherein his/her relationship to another employee has the potential for creating adverse impact on supervision, safety, security or morale, or involves a potential conflict of interest.

6.1.2 Ensuring that all employees are aware of this policy and those who possess such knowledge have the responsibility to identify relatives who have been placed on Employment Lists or are being considered for other employment to the Human Resources Department and/or appointing authority.

6.1.3 Assigning the Human Resources Department, with the primary staff responsibility for administering the details of this Policy.

6.1.4 Reviewing determinations and/or recommendations of the Department Head and Human Resources Department and making the final determination of appointment, when applicable.

- 6.2 **Human Resources Department.** In this role, The Human Resources Department acts as the administrator of the policy and shall be the City's source for interpretation and clarification in the administration of this policy.

6.2.1 The Human Resources Department will provide any available information concerning the relative status of a certified eligible candidate to the appropriate appointing authority.

6.2.2 The Human Resources Department will review the determination of the Department Head and concur (with or without restrictions) or not concur with the decision. If the Human Resources Department does not concur, the matter will be elevated to the City Manager for final consideration.

- 6.3 **Appointing Authorities.** Department Heads are the "appointing authorities" in the City of Concord municipal government. They are responsible for hiring, transfer and promotion decisions, (subject to review by the Human Resources Department and final approval by the City Manager), and ensuring that City and departmental personnel policies are enforced.

- 6.4 **Hiring Manager.** The hiring manager is the person with responsibility for the program to which the position is assigned and who may recommend an applicant for employment to the appointing authority. Specifically, the hiring manager shall be responsible for:

6.4.1 Informing the Department Head in the following situations:

6.4.1.1 Prior to hiring, that an applicant is related to a City employee. The hiring manager will need to obtain the proper authorization prior to the hiring effective date.

- 6.4.1.2 Prior to any personnel action, when a City employee who is related to another City employee moves from one position to another position.
 - 6.4.1.3 When two City employees who work in the same department, division, or facility marry, or establish status as domestic partners.
- 6.5 **Employees.** Employees who marry or who establish status as domestic partners are responsible for reporting this relationship to their department head or the Human Resources Department. Employees who know that one of their relatives has been placed on an Employment List or is being considered for other employment in a position to which section 4.1 would apply shall report the relationship to the Human Resources Department and/or appointing authority.