

CITY COUNCIL COMMITTEE

POLICY DEVELOPMENT AND INTERNAL OPERATIONS

Mayor Tim Grayson, Chair
Laura Hoffmeister, Committee Member

5:30 p.m.
Thursday, May 14, 2015

Wing A, Garden Conference Room
1950 Parkside Drive, Concord

ROLL CALL

PUBLIC COMMENT PERIOD

- 1. REVIEW** – Proposed Revisions to Policy & Procedure No. 37.4 (“Employment of Relatives”)
- 2. DISCUSSION** – Project Labor Agreements (PLAs)
- 3. ADJOURNMENT**

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**REPORT TO COUNCIL COMMITTEE ON
POLICY DEVELOPMENT & INTERNAL OPERATIONS****TO HONORABLE COUNCIL COMMITTEE MEMBERS:**

DATE: May 14, 2015

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

During the March 12, 2015 meeting of the Policy Development and Internal Operations Council Committee, Mayor Grayson suggested that consideration be given to minor modifications to the existing Employment of Relatives Policy and Procedure (P&P 37.4). Specifically, Mayor Grayson suggested, and Vice Mayor Hoffmeister supported, revising the policy to permit intra-departmental hiring of a related employee¹ where the currently employed family member has provided the City with formal notice of his/her intent to retire or resign, and the separation date is no more than 6 months after the related employee is hired. Adopting this proposal would allow individuals to follow in the footsteps of their relatives working for the City, while at the same time minimizing the negative impacts posed by the employment of family members in the same department.

Discussion

In 2012, the City modified Policy and Procedure 37.4, which at that time gave Department Heads discretion as to whether to “appoint, transfer or promote” related employees working in the same department. The language of the pre-2012 policy provided Department Heads/Appointing Authorities substantial flexibility in hiring decisions, since the determination of whether to appoint an individual related to an existing employee in the same department or an elected/appointed official was somewhat subjective, resting on whether or not the prospective hire was viewed as posing a potential conflict of interest or adverse impact.

In response to complaints about perceived nepotism, conflicts of interest in hiring practices, and the attendant adverse impacts on employee morale, the City revised Policy and Procedure 37.4, instituting an outright ban on the hiring of relatives working in the same department or division. The revisions related only to future hires, and did not directly affect existing employees. Additionally, because California law precludes private and public employers from making hiring decisions based on whether a prospective employee has a spouse (or registered domestic partner) who is presently employed, the revised policy expressly carved out married couples/registered domestic partners from its reach. However, Department Heads and other hiring authorities

¹ The term “related employees/relatives” is defined in P&P 37.4 to include individuals who are related by blood or adoption including the following: child, step-child, parent, step-parent, grandparent, grand-child, 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.

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PROCEDURE NO. 37. 4 ("EMPLOYMENT OF RELATIVES")**

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retained the right, for reasons of supervision, safety, security, or morale, to refuse to place one spouse/registered domestic partner in the same department as the other spouse/registered domestic partner.

The revised Policy and Procedure also instituted an outright ban on the hiring of relatives of elected and appointed officials and members of the City's Executive Team.

During the March 12, 2015 meeting of the Policy Development and Internal Operations Council Committee, Mayor Grayson suggested minor revisions to existing Policy 37.4, to allow intra-departmental hiring of relatives of existing employees, but only when the existing employee has provided the Human Resources Department with a "date certain" notification of their intent to retire or resign. Additionally, the related hires would not be permitted to work in the same chain of command or supervision. Both Mayor Grayson and Vice-Mayor Hoffmeister indicated that they had no desire to change any other aspects of the existing Employment of Relatives Policy.

At the conclusion of the meeting, staff was asked to present the PD & IO Committee with the "pros" and "cons" of this suggested revision. Both categories are set forth below.

Pros

- Would encourage relatives of existing employees to follow in the footsteps of family members, possibly fostering a loyalty to the City that might not otherwise exist in a new hire with no pre-existing affiliation with Concord.
- The fact that a prospective employee wants to emulate his/her relative and pursue the same career path suggests a sincere commitment to the type of work/job at issue.
- May lead to a higher level of success on the part of the incoming employee.

Cons

- Could foster internal and external perception of favoritism in hiring and job assignments, which can lead to poor morale.
- Safety in the Police Department might be compromised, because people inherently behave differently when their relative is involved in an emergency response situation.
- Works against creating diversity in the City workforce.

Staff recommends that if the proposed policy and procedure revision is adopted, the resignation/retirement date of the existing employee should be no more than 6 months after the incoming, related employee is hired.

It should be noted that there is always the possibility that the existing family member will renege on his/her decision to resign/retire. If that occurred, the City would not be able to simply terminate the new, related employee. However, the likelihood of this potential scenario is fairly remote.

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In preparation for this PD & IO Council Committee meeting, staff has drafted a proposed revision to the Employment of Relatives Policy for review and input by the committee members, Mayor Grayson and Vice-Mayor Laura Hoffmeister.

Fiscal Impact

No fiscal impact.

Public Contact

Posting of the Council Committee agenda.

Alternative Courses of Action

1. Retain Policy & Procedure 37.4 in its current form;
2. Revise Policy & Procedure 37.4 to permit the hiring of employees related to an existing employee, so long as the current employee has given notice of his/her intent to retire/resign within 6 months;
3. Adopt other revisions to Policy and Procedure 37.4.

Recommendation for Action

Staff recommends that the PD&IO Committee consider the proposed language changes to Policy and Procedure 37.4, and provide direction to staff as to whether those revisions should be forwarded to the full City Council for review.

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**PROPOSED REVISIONS TO POLICY &
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Attachments:

Attachment 1: Policy & Procedure No. 37.4 ("Employment of Relatives")

Attachment 2: Proposed Revisions to Policy & Procedure No. 37.4 ("Employment of Relatives")



CITY OF CONCORD

Number:	37.4
Authority:	Council Motion
Effective:	02-10-04
Revised:	07-10-12
Reviewed:	2012
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 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.



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- 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.

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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 This policy shall not apply to prospective employees who have a relationship to a current City employee in the same department, division or facility in which the prospective employee is seeking a job position, so long as the current, related employee has provided the Human Resources Department with written notice of his/her intent to resign, retire or otherwise terminate his/her employment with the City, and the separation date provided in such notice is no more than 180 days after the related, prospective employee's date of hire.

4.23 As required under California law, ~~the sole exception to~~ this policy shall ~~not apply to 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 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.

4.45 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.

4.6 Prospective employees falling within the exceptions to this policy (as set forth in Sections 4.2 and 4.3) must meet all applicable job qualifications, and shall be subject to the same competitive service hiring requirements as other prospective employees.

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.

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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.** 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.
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 - 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.
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