Family Medical Leave	Administrative Regulation No. 2.01
Effective Date: 4/6/2021 Revised/Superseded:	

Approved by City Manager: DocuSigned by: Jovan Grogan 7EE68586B744486...

1. Overview of Purpose and Scope of this Regulation.

1.1. The City provides family and medical care leave for eligible employees as required by state and federal law; and the Regulation is supplemented by the Federal Family and Medical Leave Act ("FMLA"), and the California Family Rights Act ("CFRA").

1.2. This Regulation is an implementation of the City Manager's authority derived from the City of San Bruno Municipal Code, resolutions of the City Council, and other minute order direction from the City Council. This policy will supercede any policies or MOU provisions that are inconsistent with state or federal law.

2. Definitions.

2.1. The words, terms and phrases, when used in this Regulation, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. The following definitions shall apply to this regulation:

"Child" means a biological, adopted, or foster child, a stepchild, a legal ward or a child of a person standing in loco parentis (in place of a parent) as well as one who is age 18 or over with a serious health condition in need of care.

"Parent" means biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child. This term does not include parents-in-law.

"Spouse" means husband or wide as defined or recognized under the California State law for purposes of marriage.

"Domestic Partnership" means a Registered Domestic Partnership recognized under the California State law.

"Grandparent" means a parent of the employee's parent.

"Grandchildren" means a child of the employee's child.

"Siblings" means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

3. Reasons for Leave.

3.1. Leave under this Regulation is only permitted for the following reasons:

3.1.1. The birth of the employee's child, or placement of a child with the employee for adoption or foster care (also referred to as "baby bonding" leave) (FMLA/CFRA);

3.1.2. To care for the employee's spouse, child, or parent who has a serious health condition (FMLA/CFRA);

3.1.3. To care for the employee's registered domestic partner with a serious health condition (CFRA only);

3.1.4. For a serious health condition that makes the employee unable to perform his or her job (FMLA/CFRA);

3.1.5 Any period of incapacity or treatment due to pregnancy or prenatal care (PDL/FMLA);

3.1.6 For any "qualifying exigency" (as defined by FMLA regulation) because an employee's spouse, domestic partner, son, daughter, or parent is on active military duty or has been notified of an impending call or order to active duty in a foreign country or in support of a contingency operation involving the United States Armed Forces (FMLA only); or

3.1.7 To care for a spouse, domestic partner, son, daughter, parent, or "next of kin" servicemember or veteran in the preceding five years of the United States Armed Forces who has a serious injury or illness and:

- **a.** The serious illness or injury was incurred in the line of duty while on active military duty; or
- **b.** The serious illness or injury existed before the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces.
- **c.** The amount of leave for this reason is up to 26 weeks of leave in a single 12-month period. (FMLA only)

4. Employees Eligible for Leave.

4.1. An employee is eligible for leave if:

4.1.1. The employee has been employed by the City for at least 12 months; The 12 months need not have been consecutive. Separate

periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to Armed Forces services, including service in the National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. Veterans are entitled to count toward the 12-month requirement for any time spent engaged in Uniformed Services Employment and Reemployment Rights Act-covered service. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.

4.1.2. The employee has worked a minimum of 1,250 hours during the 12-month period immediately preceding the commencement of leave. NOTE: Holidays, vacation, sick, management leave, workers' compensation leave (e.g. 4850 time), authorized leave without pay, military leave, other allowed leaves or absences, and FMLA/CFRA leave do not count as hours worked. Compensatory Time Off (CTO) does count as hours worked.

5. Amount of Leave.

5.1. Eligible employees may receive up to a total of 12 workweeks (26 workweeks to care for an injured servicemember) of unpaid leave during a 12-month period.

5.2. For purposes of calculating the 12-month period during which 12 weeks of leave may be taken, the City uses a "rolling" 12-month period measured backward from the date an employee begins any FMLA and/or CFRA leave. Under the "rolling" 12-month period, each time an employee takes FMLA and/or CFRA leave the remaining leave entitlement would be any balance of the 12 weeks which has not been used during the immediately preceding 12 months.

5.3. Under most circumstances, both FMLA and CFRA leave will run concurrently at the same time and the eligible employee will be entitled to a total of 12 weeks of family and medical leave in the designated 12-month period.

5.4. For leave to care for a covered servicemember, the single 12-month period begins on the first day of the leave, regardless of how the 12-month period is calculated for other leaves. Leave to care for a covered servicemember

is for a maximum of 26 workweeks during the single 12-month period. An employee cannot generally take more than a total of 26 workweeks of FMLA/CFRA leave for any qualifying reason once the single 12-month period begins following the first day of covered servicemember leave.

5.5. Leave because of the employee's disability for pregnancy, childbirth or related medical condition under Pregnancy Disability Leave (PDL) is not counted as time used under CFRA while such conditions do count under FMLA. Employees who take time off for pregnancy disability and who are eligible for family and medical leave will also be placed on FMLA leave that runs at the same time as their PDL. Once the pregnant employee is no longer disabled, she may apply for CFRA leave under CFRA for purposes of baby bonding.

5.6. Please refer to your MOU regarding additional leaves that employee may request.

6. Minimum Duration of Leave.

6.1. If leave is requested for the birth, adoption or foster care placement of a child of the employee (i.e. bonding leave), the leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for bonding for less than two weeks duration on any two occasions with approval from their department director.

6.2. If leave is requested to care for a child, parent, spouse or the employee him/herself with a serious health condition, there is no minimum duration of leave that must be taken. However, compliance with the notice and medical certification provisions in this Regulation are required.

6.3. Employees should make requests for FMLA/CFRA leave or [disability] accommodation to Human Resources at least thirty (30) days in advance of foreseeable events and as soon as possible for unforeseeable events.

7. Intermittent Leave or a Reduced Leave Schedule.

7.1. If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule for his or her own serious health condition, or to care for an immediate family member with serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accommodated through an intermittent or reduced leave schedule. To the extent possible, employees who require intermittent or reduced-schedule leave are

expected to schedule their leave so that it will not unduly disrupt City's operations. Intermittent leave must be taken in increments of at least 15 minutes.

7.2. The City may require an employee who certifies the need for a reduced schedule or intermittent leave to temporarily transfer to an alternate position that better accommodates the leave schedule. The alternate position will have equivalent pay and benefits, but may not have equivalent duties.

8. Parents Both Employed by the City.

8.1. If both parents of a child, adoptee, or foster child are employed by the City and are entitled to bonding leave and both parents are entitled to 12 workweeks during any 12-month period.

8.2. If both parents of a covered servicemember are employed by the City and are entitled to leave to care for a covered servicemember, the aggregate number of workweeks of leave to which both may be entitled is limited to 26 work weeks during the 12-month period. This limitation does not apply to any other type of leave under this Regulation.

9. Employee Benefits While on Leave.

9.1 Health Benefits During Unpaid Leave

9.1.1. Leave under this Regulation is unpaid, although various forms of wage supplement or replacement (e.g. vacation/sick leave, SDI, etc.) may be available or required to be utilized. While on family and medical leave, employees will continue to be covered by the City's group health insurance for up to 12 weeks each leave year to the same extent that coverage is provided while the employee is on the job.

9.1.2. If the employee is disabled by pregnancy, such health insurance coverage will continue up to four months to the extent that the leave is eligible for and runs concurrently with Pregnancy Disability Leave (PDL). If an employee who was disabled by pregnancy also immediately uses baby-bonding leave under the CFRA after she is no longer disabled because of her pregnancy, the City will maintain her health insurance coverage while she is disabled by pregnancy (up to four months or 17 1/3 weeks) and during her CFRA bonding leave (up to 12 weeks).

9.2. Payment of Premiums

9.2.1. The employee will be required to continue to pay his or her contribution to health insurance either through payroll deduction while using leave balances, or by direct payment to the City Finance Department while in unpaid status. Coverage may be dropped if the employee is more than 30 days late making premium payments. The City will notify the employee at least 15 days' notice prior to the loss of coverage. Contribution amounts for all employees are subject to any change if changes in rates occur while the employee is on leave.

9.3. Recovery of Premium if the Employee Fails to Return from Leave

9.3.1. If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control.

10. Substitution of Paid Leaves.

10.1. Employees must use and exhaust their accrued leaves concurrently with family and medical care leave to the same extent that employees have the right to use their accrued leaves concurrently with family and medical care leave with the following exceptions:

10.1.1. Employees are not required to use accrued paid leave if also receiving State Disability Insurance (SDI) or another disability income supplement plan unless the employee agrees to use accrued leave to cover the unpaid portion of the disability leave benefit; (29 CFR § 825.207(d); 2 Cal.Code Regs. § 11092(b)(2) & (3)); and

a) Sick leave is to be used first when leave is required for the employee's own serious health condition. Cal. Govt. Code 12945.2(d). Employees may use their sick leave if the leave is taken for the employee's own serious health condition. Employees shall retain their right to take accrued vacation, comp time and/or management leave, and any other accrued leave balances thereafter.

10.1.2. For non-FMLA or CFRA qualifying leaves, sick leave with pay for family illness shall be limited to up to one-half (1/2) of the

employee's annual accrued leave. (Gov. Code § 12945.2(e); 2 Cal.Code Regs § 11092(b).)

10.1.3. Employees may choose to use floating holidays and any portion of vacation accrual or management leave in excess of the normal accrual cap prior to exhausting sick leave.

10.2. The City's right to require an employee to exhaust FMLA/CFRA leave concurrently with other leaves:

10.2.1. If an employee takes a leave of absence for any purpose which also qualifies under both the FMLA and CFRA, the City will designate that leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for peace officers and firefighters who are on paid industrial injury leave under Labor Code §4850.

10.2.2. *Please refer to the MOU regarding specific use of leave time.*

10.3. Coordination with Workers' Compensation Benefits

10.3.1. In those cases where the employee is eligible for FMLA and Workers' Compensation (WC), the FMLA leave and WC benefits shall run concurrently. The City will require the employee to use injury and accrued paid leave (e.g.sick, vacation, etc.) before taking unpaid FMLA leave. This coordination shall occur when an employee sustains a serious work-related injury resulting in an overnight stay in a medical care facility or misses more than three (3) workdays (in excess of 4 hours a day) due to a compensable work-related injury, but the designation of FMLA leave will beretroactive to the day the employee is initially off work.

11. <u>Employee Notice of Leave.</u>

11.1. Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much verbal or written notice as possible of their need for leave.

11.2. If leave is foreseeable, at least 30 days' notice is required. In addition, if an employee knows that they will need leave in the future, but does not know the exact day(s) (*e.g.*, for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed.

11.3. For foreseeable leave due to a qualifying exigency, an employee must provide verbal or written notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

11.4. Following receipt of a Request for Medical Leave of Absence Form, the Human Resources Department will send the employee a Notice of Eligibility and Rights and Responsibilities. At this time the employee will be given 15 calendar days to return a completed Certification of Health Care Provider, as set forth below.

12. Medical Certification/Recertification Requirements.

12.1. Employees who request leave must provide a medical certification and/or recertification, via the Certification of Health Care Provider form to support the need for the leave as described below:

12.2. Employee's Own Serious Health Condition

12.2.1. Employees who request leave for their own serious health condition must provide written certification from the health care provider within 15 days that contains all of the following:

- **a.** The date, if known, on which the serious health condition commenced;
- **b.** The probable duration of the condition; and
- **c.** A statement that, due to the serious health condition, the employee is unable to work at all or is unable to perform any one or more of the essential functions of his or her position.
- **d.** Upon expiration of the time period the health care provider originally estimated that the employee needed for his/her own serious health condition, the employee must obtain recertification if additional leave is requested.

12.3. Family Member Serious Health Condition

12.3.1. Employees who request leave to care for a child, parent, domestic partner or a spouse who has serious health condition must provide written certification from the health care provider of the family member requiring care that contains all of the following:

- **a.** The date, if known, on which the serious health condition commenced;
- **b.** the probable duration of the condition;
- **c.** An estimate of the amount of time which the health care

provider believes the employee needs to care for the child, parent, domestic partner, or spouse; and

d. statement that the serious health condition warrants the participation of the employee to provide care during a period of treatment or supervision of the child, parent, or spouse. The term "*warrants the participation of the employee*" includes, but is not limited to, providing psychological comfort, and arranging third party care for the covered family member, as well as directly providing, or participating in, the medical care.

e. Upon expiration of the time period the health care provider originally estimated that the employee needed to care for a covered family member, the employer must obtain recertification if additional leave is requested.

12.4. Servicemember Serious Injury or Illness

12.4.1. Employees who request FMLA leave to care for a covered servicemember who is a child, spouse, domestic partner, parent, or "next of kin" of the employee, must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness. The City will verify the certification as permitted by the FMLA regulations.

12.4.2. Qualifying Exigency: the first time an employee requests FMLA leave because of a qualifying exigency, the City may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member's active duty service. A copy of the new active duty orders or similar documentation shall be provided to the City if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member. The City will verify the certification as permitted by the FMLA regulations.

12.5. Time to Provide a Medical Certification

12.5.1. When an employee has provided at least 30 days' notice for a foreseeable leave, the employee must provide a medical certification before the leave begins. When this is not possible, the employee must provide the medical certification to the City within the time frame requested by the City (which will allow at least 15 calendar days after the employer's request). Considerations will

be given by Human Resources if it is not practicable to meet the timeline above under the particular circumstances to do so despite the employee's diligent, good faith efforts.

12.6. Consequences of Failure to Provide an Adequate or Timely Medical Certification

12.6.1. If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established in this Regulation, the City may delay the taking of FMLA/CFRA leave until required certification is provided, or deny FMLA/CFRA protections following the expiration of the time period to provide an adequate certification. However, if FMLA/CFRA leave is ultimately approved, the designation of FMLA leave will be retroactive to the day the employee is initially off work.

12.7. Review of Contents of Medical Certification for Employee's Own Serious Health Condition

12.7.1. The employee must provide a certification for his or her own serious health condition that is complete and sufficient to support the request for leave. A certification is incomplete if one or more of the applicable entries on the certification form have not been completed. A certification is insufficient if the information on the certification form is vague, ambiguous, or not responsive. If the certification is incomplete or insufficient, the Human Resources Department will give the employee written notice of the deficiencies and an opportunity to cure them within a reasonable timeframe. Human Resources will not contact the employee's health care provider other than to authenticate a medical certification.

12.8. Second and Third Medical Opinions for Employee's Own Serious Health Condition

12.8.1. If the City has a good faith, objective reason to doubt the validity of a certification for the employee's serious health condition, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider is binding. The City will provide the employee with a copy of the second and third medical opinions, without cost, upon the request of the employee.

12.8.2. The City may request recertification for the serious health condition of the employee or the employee's family member or if the City receives information casting doubt on the reason given for the absence, or if the employee seeks an extension or additional leave for his or her own serious health condition.

13. Designation of Leave.

13.1. Upon receipt of a Certification of Health Care Provider (or, where applicable, a second or third opinion), the Human Resources Department will send the employee a Family and Medical Care Leave Designation Notice indicating if the leave is approved, conditionally approved, not approved, or if more information is needed. If the leave is approved, the Family and Medical Care Leave Designation Notice will set forth any conditions of the leave which may exist beyond that which is provided in the Notice of Eligibility and Rights and Responsibilities. The designation of FMLA/CFRA leave will be retroactive to the day the employee is initially off work.

14. Reinstatement Upon Return from Leave.

14.1. Reinstatement to Same or Equivalent Position

14.1.1. Upon expiration of leave, an employee may be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent benefits and pay if such leave was taken consistent with FMLA/CFRA requirements and within the applicable time periods as specified under the law. Qualifying FMLA/CFRA leave will not be considered a break in service for purposes of determining seniority. However, employees have no greater rights to reinstatement, benefits, and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

14.2. Date of Reinstatement

14.2.1. If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and the City, the employee will be reinstated within two business days, where feasible, after the employee notifies the City of his/her readiness to return, and has provided the City with sufficient medical clearance and/or other

documentation to enable the City to make a determination with respect to reinstatement.

14.3. Employee's Obligation to Periodically Report on His/Her Condition

14.3.1. Employees are required to periodically report on their status and intent to return to work to [Human Resources]. This will avoid any delays to reinstatement when the employee is ready to return.

14.4. Fitness for Duty Certification

14.4.1. As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform his or her job, the employee must obtain and present a return-to-work certification from their health care provider stating that the employee is able to resume work without any restrictions or any necessary and reasonable accommodations prior to returning to the worksite.

14.4.2. This requirement will be noted in the Designation Notice provided to the employee at the time the employee begins their FMLA/CFRA leave, along with a list of the employee's essential job functions to provide to the employee's health care provider.

14.4.3. Failure to provide a return-to-work certification with full clearance or request for workplace accommodation prior to returning to work upon completion of a FMLA/CFRA leave will result in denial of reinstatement until such information is provided to the City.