

## RESOLUTION NO. 2024-035

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FULLERTON, CALIFORNIA, REGARDING NON-REGULAR EMPLOYEE COMPENSATION AND REPLACING RESOLUTION NO. 2020-104

THE CITY COUNCIL OF THE CITY OF FULLERTON RESOLVES AS FOLLOWS:

#### Section 1: Non-Regular Appointments

Each person employed in a classification listed in Appendix A or to a regular classification on a temporary, hourly basis shall be a non-regular employee. Such employees are at-will (without vested property rights and subject to termination without cause) and shall work on a part-time, temporary, seasonal, on-call, emergency, intermittent, substitute or other irregular basis.

The hourly compensation for a non-regular employee appointed to a regular classification shall be set in accordance with the City Council approved salary range for the classification as set forth in the City of Fullerton Schedule of Base Salary Rates and Allocation of Classes to Salary Ranges.

#### Section 2: Overtime Pay

##### (A) Fair Labor Standards Act (FLSA) - Non-Exempt Employees

Except for those described in paragraph (C), non-regular employees are covered by the FLSA.

Non-exempt non-regular employees shall receive overtime pay in accordance with the FLSA for all hours actually worked in excess of 40 hours in a seven-day work period.

##### (B) Work Period

The FLSA work period for non-regular employees not on a 9/80<sup>1</sup> schedule shall be seven days in length commencing at 12:01 a.m. each Saturday. For non-regular employees on a 9/80 schedule, the work period shall be seven days in length commencing at the end of the fourth hour of the shift on their alternate day. For example, a non-regular employee working Monday to Thursday from 7:00 a.m. to 5:00 p.m. and 7:30 a.m. to 4:30 p.m. on alternate Fridays, the seven-day work period shall begin at 11:31 a.m. each Friday.

##### (C) FLSA- Exempt Employees

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<sup>1</sup> Employees on a 9/80 work schedule work 80 hours over nine workdays during a two-week period. The schedule typically consists of eight nine-hours days, one eight-hour day and one day off. The day off is the same as the eight-hour day of the alternate week and is referred to as the alternate day.

Any non-regular employee in a professional, administrative or management capacity as defined within the FLSA is not covered by the FLSA and therefore exempt from it.

(D) If the FLSA is invalidated, set aside or otherwise held inapplicable to local governments, this Section shall not apply.

### Section 3: Special Event Pay

Any non-regular employee assigned to work either:

- a. the City sponsored Fourth of July celebration or First Night celebration
- or
- b. on the days of the Fourth of July or First Night events staffing City facilities rented for private events shall be entitled to receive their regular compensation at a rate of one- and one-half time their base hourly rate for any hours worked on the days of the events. This compensation is limited to only the days of the City sponsored Fourth of July and the First Night events.

### Section 4: Emergency Pay

Any non-regular employee required to work a shift that includes a least two full hours between the hours of 12:00 a.m. and 6:00 a.m. on a single day or that extends for a period of more than 12 consecutive hours in an emergency situation to ensure the continuance of City business may be granted compensation at a rate of one- and one-half time their base hourly rate for all or a portion of such hours. Such Emergency Pay compensation requires written City Manager authorization.

### Section 5: California Public Employees' Retirement System (CalPERS) and Federal Insurance Contribution Act (FICA) Replacement Plan

Any non-regular employee employed in a classification listed in Appendix A - Group A is excluded from membership in CalPERS in accordance with the contract between the City of Fullerton and CalPERS. Such non-regular employees shall be enrolled in the City's FICA replacement plan.

Any non-regular employee employed in a classification listed in Appendix A - Group B or in a regular classification as a non-regular employee shall be enrolled in the City's FICA replacement plan unless or until they qualify for membership and are required to enroll in CalPERS. Enrollment in the FICA replacement plan shall cease when CalPERS enrollment becomes effective.

Non-regular employees enrolled in the FICA replacement plan shall contribute 3.75% of earnings in accordance with Resolution No. 8266. Matching City contributions will also be deposited in the employee's deferred compensation account.

Non-regular employees who qualify for membership in CalPERS and are not “new members” as defined by the Public Employees’ Pension Reform Act of 2013 (PEPRA) shall contribute seven percent of total compensation earnable (as defined in Government Code Section 20636) toward their retirement benefit. Such non-regular employees shall contribute an additional 1.958% of compensation earnable through an applicable “cost sharing” provision in the contract between the City and CalPERS until such time that “cost sharing” is eliminated.

Non-regular employees who qualify for membership in CalPERS and are “new members” as defined by PEPRA shall contribute an amount stipulated by CalPERS of total compensation earnable toward their retirement benefit.

#### Section 6: Sick Leave

In accordance with the Healthy Workplaces, Healthy Families Act of 2014, California Labor Code Sections 245 through 249, non-regular employees shall be eligible for paid sick leave hours subject to the following terms:

- a. The City shall establish for each non-regular employee a bank of paid sick leave hours for use subject to the terms specified in subsections b. through l. below.
- b. A bank shall be established for a non-regular employee as follows:
  - i. Upon initial hire, the sick leave bank shall be established within 30 calendar days of the hire date.
  - ii. For a non-regular employee rehired after July 1, 2015, with a period greater than 12 months since separation from the City, the sick leave bank shall be established within 30 calendar days of the rehire date.
  - iii. For a non-regular employee rehired by the City after July 1, 2015, with a break in service of less than 12 months, the bank of sick leave hours shall be established upon rehire in accordance with subsection l. below.
- c. A non-regular employee shall be eligible to use hours within their sick leave bank in accordance with the following:
  - i. Upon initial hire, a non-regular employee shall be eligible to use hours from their bank after the 90<sup>th</sup> calendar day following their date of hire.
  - ii. For a non-regular employee rehired after July 1, 2015, with a period greater than 12 months since separation from the City, the non-regular employee shall be eligible to use hours from their bank after the 90<sup>th</sup> calendar day following their date of rehire.
  - iii. For a non-regular employee rehired by the City after July 1, 2015 with a

break in service of less than 12 months, the non-regular employee shall be eligible to use hours from their bank immediately if they met the 90 calendar day waiting period during their previous employment with the City or after the 90<sup>th</sup> calendar day following their date of rehire if they did not previously fulfill the 90 calendar day waiting period.

- d. Upon initial establishment, a non-regular employee's sick leave bank shall be credited with either 40 hours or five times their regularly scheduled daily work shift, whichever is greater. For a non-regular employee with regular work shifts of varying length, the sick leave bank shall be established using the length of the longest regularly scheduled work shift. To the extent possible, scheduled work shifts shall be of equivalent lengths.

Non-regular employees who were provided sick leave hours between July 1, 2023, and December 31, 2023, will be provided an additional 16 hours of sick leave or two times their regularly scheduled daily work shift, whichever is greater, retroactive to January 1, 2024.

- e. After the 90 day waiting period described in subsection c. above and upon written or verbal request to their supervisor, a non-regular employee may utilize paid sick leave hours within their leave bank for the purpose of diagnosis, care, or treatment of an existing health condition of, or preventive care for, themselves or their family member as defined in Labor Code Section 245.5 or if they are a victim of domestic violence, sexual assault, or stalking, for the purposes described in Labor Code Section 230, subdivision (c) and Labor Code Section 230.1 subdivision (a).
- f. The number of sick leave hours a non-regular employee may request for use during a scheduled work shift may not exceed the number of hours scheduled during the shift for which a request is made. For example, a non-regular employee scheduled to work a four-hour shift who requests sick leave for the day, may use no more than four hours of sick leave for the day.
- g. A non-regular employee absent during a scheduled work shift for reasons for which paid sick leave may be used shall use available paid sick leave hours to cover all scheduled hours not worked to the extent hours are available.
- h. Each fiscal year, effective the pay period during which July 1 falls, a non-regular employee's sick leave bank shall be reset to the appropriate limit determined in subsection d. above. Unused sick leave hours will not carryover from one fiscal year to the next.
- i. Prior to resuming work after taking three or more consecutive shifts of sick leave, a non-regular employee shall submit a physician's written certification of the medical necessity for their absence from work and a written release stating

that they are able to perform their normal or modified job duties.

If the absence of three or more consecutive shifts is for family illness, the non-regular employee shall submit certification from the family member's attending physician of the medical condition during the length of absence for which paid leave is requested. The physician's certification shall verify that the family member had an illness, injury or medical procedure during the period for which paid leave is requested. However, the certification shall not be required to include a diagnosis or description of injury or treatment.

- j. A non-regular employee who has worked for the City for at least 12 months and has at least 1,250 hours of service for the City during the 12-month period immediately preceding the sick leave is eligible for provisions of the Family Medical Leave Act (FMLA).
- k. Unused hours remaining in a non-regular employee's leave bank at the time of separation from the City shall have no cash value to the employee.
- l. If a non-regular employee who has qualified for use of their sick leave bank under subsection c. above separates from employment with the City of Fullerton and subsequently is rehired within one year of their separation date, their sick leave bank shall be reestablished with the balance of hours remaining in their bank upon separation if the reinstatement occurs in the same fiscal year as the non-regular employee's separation date. If the rehire date is less than one year from their separation date but falls within a new fiscal year, their sick leave bank will be reinstated with the full fiscal year's value of sick leave as determined in subsection d. above.

#### Section 7: Bereavement Leave

This program shall provide that a non-regular employee be permitted an absence with pay for the lesser of three shifts or 18 hours following the death of an immediate family member. Such time shall be paid at the non-regular employee's regular base hourly rate and shall not be charged to sick leave.

The definition of "immediate family" for the purposes of bereavement leave shall include the non-regular employee's spouse, parents, children, stepchildren, brother, sister, mother-in-law, father-in-law, grandparent, grandchild, stepparent, legal guardian and others as required by law.

#### Section 8: Medical Insurance - Eligibility and Non-regular Employee Contributions

Any non-regular employee who meets the definition of "full-time employee" under the Federal Patient Protection and Affordable Care Act (ACA) shall be eligible for enrollment in the City sponsored medical plan designed to meet the requirements of the ACA. The plan shall be referred to as the ACA Minimum Value Plan.

Under the ACA, a full-time employee is defined as anyone who works an average of 30 hours or more per week within a 12-month period or is expected to work at least 30 hours per week upon initial appointment.

To determine full time status, the City shall use the look back measurement period for non-regular employees who have been employed for the prior November to October period each year as follows:

Standard Measurement Period:	November 1 through October 31
Administrative Period:	November 1 through December 31
Stability Period:	January 1 through December 31

For all other non-regular employees, the City shall use the look back measurement period in accordance with the following rules:

Initial Measurement Period:	Twelve months (beginning on the first of the month following the start date, unless the start date is the first of a calendar month in which case the period will start on that date)
Administrative Period:	60 calendar days (beginning the first of the month following the end of the Initial Measurement Period)
Stability Period:	Twelve months following the administrative period unless the new variable hour employee does not measure as being a full-time employee during the Initial Measurement Period, then the Stability Period associated with the Initial measurement Period must not exceed the remainder of the Standard Measurement Period (plus any associated Administrative Period)

Upon hire of a non-regular employee, the employing Department will determine whether the employee will be assigned a full-time work schedule as defined by the ACA. If the non-regular employee is expected to be a full-time employee as defined by the ACA, the City shall offer the ACA Minimum Value Plan within 60 days of appointment. For non-regular employees who are not assigned full time work schedules, eligibility determination for the ACA Minimum Value Plan will be based on



an analysis of the appropriate look back measurement periods described above.

All non-regular employees will be measured over two periods: during the 12-month period beginning on the first day of the month following the date of initial employment and then again during the standard measurement period. The initial measurement period and the standard measurement period will be applied to all non-regular employees.

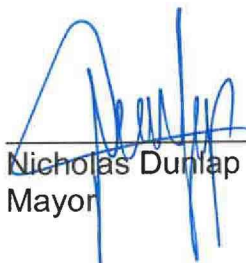
A non-regular employee's health benefit eligibility status may change each year if they do not meet the minimum requirement of working 30 or more hours per week as defined by the ACA.

Non-regular employee premium contributions for eligible non-regular employees shall be set annually utilizing the "federal poverty line safe harbor" (FPL) method. Under this method, the non-regular employee's required contribution for a calendar month for non-regular employee-only coverage shall be set at the nearest whole dollar less than the applicable FPL maximum contribution. Eligible non-regular employees may choose to enroll eligible dependents on the plan at the non-regular employee's own cost.

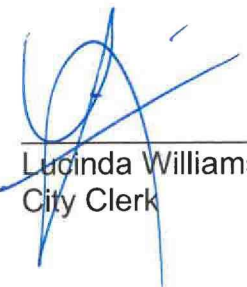
Section 9: Cancellation

This Resolution supersedes Resolution No. 2020-104. Provisions of the Resolution become effective June 22, 2024 unless otherwise stated.

ADOPTED BY THE FULLERTON CITY COUNCIL ON JUNE 18, 2024.

  
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Nicholas Dunlap  
Mayor

ATTEST:

  
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Lucinda Williams, MMC  
City Clerk

July 3, 2024  
Date



CITY OF FULLERTON  
RESOLUTION CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) SS  
CITY OF FULLERTON )

RESOLUTION NO. 2024-035

I, Lucinda Williams, City Clerk and ex-officio Clerk of the City Council of the City of Fullerton, California, hereby certify that the whole number of the members of the City Council of the City of Fullerton is five and that City Council adopted the above and foregoing Resolution No. 2024-035 at a regular meeting of the City Council held June 18, 2024 by the following vote:

COUNCIL MEMBERS IN FAVOR: Dunlap, Charles, Jung, Whitaker, Zahra

COUNCIL MEMBERS OPPOSED: None

COUNCIL MEMBERS ABSTAINED: None

COUNCIL MEMBERS ABSENT: None

  
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Lucinda Williams, MMC  
City Clerk