

ORDINANCE NO. 2015-15

AN ORDINANCE PROVIDING FOR THE APPROVAL AND ADOPTION OF AN AMENDMENT TO ARTICLE 5, SECTION 5.07 TO THE CITY OF BALCONES HEIGHTS PERSONNEL POLICY THAT OUTLINES THE POLICY AND PROCEDURES TO ALLOW FULL TIME CITY EMPLOYEES TO DONATE LEAVE TO OTHER FULL TIME CITY EMPLOYEES WHO HAVE DEPLETED THEIR LEAVE FOR AN APPROVED FMLA QUALIFYING EVENT AND SETTING AN EFFECTIVE DATE.

Whereas, the City Council of Balcones Heights wishes to modify the current City of Balcones Heights Personnel Policy for its City employees to allow for a fulltime employee to donate leave to another fulltime employee who has depleted all their leave and the donated leave is to be used for a Family and Medical Leave Act qualifying event; and

Whereas, the amendment to Article 5, Section 5.07 are in the best interest of efficiency and effectiveness of the City to serve all of Balcones Heights City employees;

NOW, THEREFORE BE IT RESOLVED AND ORDERED BY THE CITY COUNCIL OF THE CITY OF BALCONES HEIGHTS, THAT:

SECTION 1. AMENDMENT. That the Personnel Policy of the City of Balcones Heights be amended by adding to Article 5, Section 5.07 (g) "Leave Donation" which will allow for a regular full-time employee to donate some of their accumulated vacation and/or sick leave to a designated regular full-time employee who has depleted all their leave and the leave is to be used for a Family and Medical Leave Act (FMLA) qualifying event. The Personnel Policy is hereby adopted and approved and attached as Exhibit "A" to this Ordinance and is incorporated herein.

SECTION 2. PUBLIC PURPOSE. The City Council declares that the amendments to its Personnel Policy are in the public interest and are necessary for the good government, peace, and order of the municipality.

SECTION 3. REPEALER. All ordinances, code sections, ordinances, or parts thereof in conflict herewith are repealed to the extent of such conflict.

SECTION 4. SEVERABILITY. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional or illegal, such decision shall not affect the validity of the remaining sections of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared void; and that in lieu of each clause or provision of this ordinance that is invalid, illegal, or unenforceable there be added by the Mayor as necessary with the approval of the City Attorney as to form, and the City Council as to substance, and as a part of the ordinance a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

SECTION 6. EFFECTIVE DATE. The ordinance shall be effective upon passage by the City Council.

ORDERED AND APPROVED this 24th day of August, 2015.



Suzanne de Leon
Mayor

ATTEST:


Delia Flores, TRMC
City Secretary

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EXHIBIT “A”
Amending Ordinance Personnel Policy

Article 5. Attendance and Leave

Section 5.07 Sick Leave

(g) Leave Donation

(i) The City will allow for a regular full-time employee (“donor”) to donate some of their accumulated vacation and sick leave to a designated regular full-time employee (“recipient”) who has depleted all their leave. Donated leave is to be used for a Family and Medical Leave Act (FMLA) qualifying event.

(ii) Eligibility of Recipients

- A recipient must be a regular full-time employee and have completed the training and evaluation period as defined in the Employee Manual.
- The recipient must have exhausted all accumulated leave.
- A recipient must not be receiving or be eligible to receive compensation for absence from work under the Workers Compensation benefit plan.
- A recipient must not be receiving Social Security disability benefits or long-term disability benefits for his or her absence from work.
- A recipient must not be under any pending investigation or disciplinary action.

(iii) Restrictions

- While using Donated leave, recipients shall not:
 - accrue Vacation or Sick Leave; or
 - receive paid holidays.
- Once leave has been donated to the eligible employee, neither the donor nor the eligible employee may revoke the transaction.
- A maximum of 480 hours *per rolling 12 month period* may be received by any eligible employee (leave donated or received by a non-exempt Uniformed Fire Department employee will be subject to conversion).
- Upon returning to full duty, the employee may not receive additional donations.
- Employees may not donate leave hours upon notice of termination of employment.
- Employees are prohibited from soliciting, offering, or receiving monetary or any other compensation or benefits in exchange for donating leave hours.

(iv) Administration

- A donor must have a remaining balance of at least 80 hours of combined vacation and sick leave **after making** the leave donation.
- Donors must complete and submit a donation form and specifically designate the recipient(s) of the leave donation before Donated leave is made available to the recipient.
- Donations must be made in one-hour increments and will be transferred on an hour-to-hour basis at the recipient’s regular hourly rate of pay.

- Donated leave will be paid to the recipient on the regular payroll schedule and normal payroll deductions will be withheld.
- Donated leave will be reflected on the recipient's W-2 form.
- Donated leave is not tax deductible to the donor because it is not a gift to a recognized charity.
- All Donated leave will be pooled for use by the approved recipient.
- If unused, a prorated portion of the Donated leave will be restored to the donating employees.
- Under no circumstances will Donated leave be banked for future use.
- Employees receiving Donated leave will continue eligibility for employment benefits and Family Medical Leave as applicable.

(v) Application Process for Donated Leave

- The City Administrator or designee must receive:
 - A completed application for FMLA Leave or Leave Without Pay on a Notice of Leave Form;
 - an Application to Receive Donated leave form; and
 - a Certification of Health Care Provider form (completed by attending physician).
- The City Administrator or designee will determine if the employee qualifies for leave donation.
 - If employee does not qualify for leave donation, a copy of the application form will be returned to the employee with an explanation for denial of benefits.
 - If the employee does qualify for leave donation, the City Administrator shall approve the leave.
 - If approved by the City Administrator, the request shall be submitted to payroll for processing.
- All forms must be completed and received by City Administrator or designee before Donated leave can be used by the employee.
- If there is a lapse of time between the request for leave and the approval and processing of the Donated leave, the Donated leave will be paid retroactively to cover the days between the request approval and the recipient's unpaid time off.
- Once an employee is designated as eligible to receive Donated leave, the employee shall indicate whether a notice announcing the need for leave donation will be posted in all City departments, only the employee's department or no posting at all. The recipient's name and nature of illness, as well as the amount of leave hours donated by one employee to another will be classified as confidential information and will not be divulged.

(vi) Termination of Donated Leave

The City Administrator or designee shall be immediately notified and use of Donated Leave shall be terminated if:

- The designated employee uses the maximum number of Donated leave hours.
- The designated employee returns to full-time duty after being released by a physician.
- The designated employee qualifies for Social Security disability, Long-Term Disability Insurance or Retirement.
- The designated employee resigns or employment is otherwise terminated.

CITY OF BALCONES HEIGHTS
APPLICATION TO RECEIVE LEAVE DONATIONS
TO BE COMPLETED BY EMPLOYEE OR AUTHORIZED REPRESENTATIVE

Name (Please Print)

Social Security Number

Job Title

Department/Division

I request permission to utilize the City's Leave Donation Program as outlined in City policy. I will exhaust all accrued leave and am not eligible for any other salary continuation benefits such as long-term disability benefits, retirement benefits, etc.

_____ I have a FMLA qualifying event which has caused, or is likely to cause, me to go on an absence without pay.

_____ A FMLA qualified family member has a FMLA qualifying event which has caused, or is likely to cause, me to go on an absence without pay.

I understand that I must submit a medical certificate from my physician or my family member's physician verifying eligibility under the FMLA criteria to the Finance Director.

I understand that if I receive, or am eligible to receive, salary continuation benefits from city sponsored long-term disability (LTD), Texas Municipal Retirement Association (TMRS) or benefits under Social Security disability that I am not eligible for leave donations. I understand that I may only receive leave donations up to the amount necessary to cover any applicable waiting period for the above entitlements.

I understand that donated leave may not be used to extend my employment beyond the point that it would otherwise end by operation of law, rule or regulation. (For example, if I would have otherwise been terminated due to layoff or other reasons, donated leave may not be used to extend my employment.)

I understand that when I am using donated leave, I am not on "pay status" and do not accrue annual leave, personal leave or paid holidays (Fire and Police employees do not receive Holiday Pay). However, I will remain eligible for City paid health, vision and dental benefits while using donated leave.

I authorize the posting of notices for donations:

_____ In my department only

_____ In all City departments

_____ Do not post

Employee/Authorized Representative Signature

Date

**CITY OF BALCONES HEIGHTS
LEAVE DONATION FORM**

To be completed by employee donating leave (please print or type).

Name _____ Employee Number _____

Title _____ Department/Division _____

Donations must be made in one (1) hour increments. All types of leave donated will be paid out to the receiving employee as needed and deducted from the donor's specified leave account.

Please indicate the type and amount of leave to be donated:

_____ Hour(s) Compensatory (Comp) Time

_____ Hour(s) Vacation

_____ Hour(s) Sick

Please indicate to whom the leave is to be donated.

Name (Please Print)

Department/Division

I understand that my donation is voluntary and confidential. I understand that my leave balance will be decreased by the amount contributed and that the leave donation is irrevocable. I understand that I must have a remaining balance of at least 80 hours of combined vacation and sick leave after making any leave donation.

Donating Employee Signature

Date

Donated leave time must be approved by the Finance Director prior to being applied to the receiving employee's personal leave account.

APPROVED:

Finance Director Signature

Date