

CITY COUNTERPROPOSAL – TELECOMMUTE PROGRAM

City Proposed Language:

The City will continue to follow the process and guidelines provided in City Policy Manual, Section 4.2.14, Flexible Workplace Policy. The City will provide advance notice of any changes to the Flexible Workplace Policy that are subject to the meet and confer process.

Attachment:

City Policy Manual, Section 4.2.14, Flexible Workplace Policy

Flexible Workplace Policy**4.2.14****PURPOSE**

This policy contains guidelines for the City of San Jose's Flexible Workplace Program. The guidelines and requirements described in this policy are applicable to those City employees participating in the City's Flexible Workplace Program.

The Flexible Workplace Program is intended to:

- Increase productivity by allowing employees to spend less time commuting and more time on job duties
- Support employee work/life balance
- Reduce the workforce carbon footprint by allowing employees to reduce trips
- Decrease traffic congestion by allowing employees to travel during non-peak hours
- Increase employee job satisfaction
- Attract and retain employees
- Protect employee health and safety and reduce the risk of exposure to communicable disease, when necessary
- Allow for the continuity of government services in the event of an emergency

POLICY

The Flexible Workplace Program (FWP) allows employees to enter into an agreement to schedule portions of their work week away from their regular worksite. Participating employees would work a full workday, but the FWP allows times and number of hours in the office to be scheduled differently between individual days of the week.

An ongoing Flexible Workplace schedule (affecting one or more days a week) must be consistent, approved before it commences, and shall be combined with days and hours worked at the worksite. Under special circumstances or in the event of a declared emergency, employees who are able to work a majority or all of their scheduled hours remotely may be required to do so.

Employees, who occasionally work away from the office and not on a regular basis, can do so upon approval and will be compensated according to their applicable MOA. The FWP is not intended to discourage or supplant these infrequent and/or varied arrangements employees make with their supervisors.

The inability to enter into a Flexible Workplace agreement with an employee shall not be subject to the grievance procedure under the employee's applicable bargaining unit agreement.

The duties, obligations, responsibilities and conditions of a Flexible Workplace participant's employment with the City remain unchanged. The participating employee's salary, retirement, benefits and City-sponsored insurance coverage shall remain unchanged. Participants remain obligated to comply with all City, State and Federal rules, policies and practices, including the City's Code of Ethics. Flexible Workplace participants and their supervisors remain obligated to comply with all City of San Jose rules, regulations, policies, procedures, MOA provisions and the Fair Labor Standards Act (FLSA). The violation of any of the above or the misuse of City time or any City-provided equipment may result in preclusion from the FWP and/or disciplinary action, up to and including termination of employment.

Flexible Workplace Policy**4.2.14**Eligibility

Current City employees must meet the eligibility criteria below in order to be considered eligible for the program, unless granted an exception by the Department Director or designee or in the event of a declared emergency and recovery period, during which the eligibility criteria below may be waived:

- Permanent Employee Status. (At department's discretion, an employee who is promoted in a flexibly staffed class who has been participating in the Flexible Workplace Program may continue to participate upon completion of a new agreement.)
- At least six months (1040 hours) of employment with the City of San Jose, and
- An overall rating of "Meets Standard" or higher on the most recent performance appraisal

Employees participating in the FWP must be able perform their job duties as productively off-site as they do at their designated worksite. Employees' participation in the FWP should also not lower the level of service delivery for the participant's work unit. Employees must have adequate internet and telecommunications capabilities to perform job requirements. Positions, especially ones that are chiefly focused on field work or that are directly customer facing, may not be compatible with the FWP. However, efforts should be made to evaluate whether a portion of an employee's work duties that are compatible to be done away from the designated work location can be scheduled as part of the FWP.

Flexible Workplace Approval

City employees may apply for the FWP by completing a Flexible Workplace Agreement and submitting it to the employee's supervisor.

The Flexible Workplace Agreement is a document that acknowledges a clear understanding of the roles and responsibilities between a participating employee and his/her supervisor. It must be signed by both parties prior to the start of the Flexible Workplace Program and renewed annually. The employee must also be granted Remote Access to participate. Please see [City Policy Manual Section 1.7.3, Remote Access](#), for more information.

Approval is granted when the Flexible Workplace Agreement is signed by the employee, the employee's supervisor, manager, and Department Director or designee. The Flexible Workplace Agreement expires one year after the effective date of the agreement, whichever occurs first. To renew the agreement, the participant's supervisor must evaluate the employee's performance on an annual or more frequent basis to ensure the appropriateness of the Flexible Workplace Program.

In the event of an emergency, Department Directors may determine that employees are required to perform all or some of their duties remotely. Employees are expected to abide by the FWP Policy and to any other specific written instructions provided by the City and their department.

Flexible Workplace Policy**4.2.14**Termination of Participation

The FWP is a cooperative effort between the employee and the department. It is not an entitlement.

- The FWP is entirely voluntary and may be suspended or canceled by the employee or the City/Department at any time. Termination of participation in the FWP is administrative and the decision may not be subject to the grievance procedure or appealed.

Scheduling

The operational needs of the City take precedence over an employee's Flexible Workplace schedule. The Flexible Workplace schedule shall be governed by the following guidelines:

- The Flexible Workplace schedule occurs consistently. The specific schedule shall be specified in the Flexible Workplace Agreement.
- The Flexible Workplace schedule may consist of full workdays at an off-site location or portions of workdays in the regular worksite and at an off-site location.
- Flexible Workplace participants shall be as accessible as their on-site counterparts during their agreed upon regularly scheduled hours of work (i.e. FWP participants shall be available for phone calls and/or electronic communication within the hours specified in the Agreement and designated as the work schedule).
- Flexible Workplace Program participants are required to maintain communication (e.g. by phone, by email, etc) with their supervisors during the employee's regularly scheduled hours of work pursuant to the provisions of the Flexible Workplace Agreement.
- A FWP participant must agree to forgo working off-site if he or she is needed in the office or worksite on a day regularly scheduled for remote work. On any specific day, the employee should use good judgment on whether or not it is advisable to forgo off-site work in order to be at the main worksite. If the department deems it necessary that the employee be required to come to the main worksite on a scheduled off-site workday, the FWP participant should be notified no later than the start of the shift for which the supervisor would like the employee to report to the main worksite, if feasible. If such notice is given, the employee's worksite on that day will be the main worksite. However, supervisors should strive to provide as much notice as possible. During an emergency situation, the supervisor may require the employee to report to the main worksite immediately.

Flexible Workplace participants may be required to work beyond the customary 40 hours per week to ensure successful completion of job responsibilities. City policies regarding overtime pay and the application of Fair Labor Standards Act (FLSA) rules will also apply to employees participating in the FWP. For all hourly or FLSA non-exempt employees, overtime work must be preauthorized by the supervisor/manager.

Flexible Workplace Policy**4.2.14**Time Accountability

Employees are responsible for promptly responding to their supervisor and teams during work hours. Where a message has been communicated as urgent, employees shall respond within 30 minutes. Employees are also responsible for reporting to a worksite as directed by their supervisor, manager, and/or Department Director as required to maintain City operations.

The actual time worked by the employee, as established by the Flexible Workplace Agreement, must be accurately recorded on their timesheet. Fraudulent time reporting is subject to discipline, up to and including termination from City service.

Work Environment

The Flexible Workplace participant's workstation is an extension of the City's workspace. Participants shall have a designated workspace approved by the City and maintained by the employee. This workspace must be maintained in a safe condition, free from hazards and other dangers to the employee and the work equipment. This workspace is subject to inspections, upon request, to ensure that safe work conditions exist. If the City has deemed that the employee requires a modified workstation in his or her main place of work, his or her home workstation must be similarly modified. The participant will be responsible for any cost related to remodeling and setup of the designated workspace.

Subject to approval by the Department Director, employees may take minor office equipment home, including computer peripherals and chairs. The employee must follow all department check-in and check-out procedures.

Phone Number

The employee may forward their City assigned phone number to an accessible phone while working away from their City workspace. If the employee has not forwarded their City assigned phone number to another number, the employee shall make a phone number available to City employees and customers as needed and shall check their City assigned phone number regularly for voicemails.

Equipment, Equipment Maintenance, Repair and Replacement

The participating employee is required to have installed and maintained at his/her own expense an Internet enabled device with Internet access and required applications, sufficient power/storage to run programs required for the employee to efficiently perform his/her job, and software necessary for completion of off-site job duties. An employee is also required to be available by phone or electronic communication during the hours of work specified in the Flexible Workplace Agreement. However, a department may decide to provide equipment and/or software to an employee who works at a Flexible Workplace location at least 60% of the time. If so, such equipment and/or software shall remain property of the City. The use of equipment, software, data, supplies and furniture, when provided by the City for use at the Flexible Workplace location, is limited to the employee and only for purposes relating to City business. When City equipment is provided, the employee is responsible for seeing that the equipment is properly used and secured. The City shall provide for repairs to City equipment unless the damage is due to the employee's negligence. When an employee is participating in

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the FWP and uses his/her personal equipment, the employee is responsible for the maintenance and repair of the equipment.

Security Information is a valuable City asset and must be protected from unauthorized, incorrect or accidental access, use modification, destruction or disclosure. Flexible Workplace participants will be held accountable for securing information by taking reasonable and prudent measures to safeguard information on a routine basis in accordance with [City Policy Manual Section 1.7.6, the Information Security Policy](#). Flexible Workplace participants shall store City files in a secured space while working off-site. Please see [City Policy Manual Section 1.7.3, Remote Access](#), for more information.

Expenses

The following are guidelines governing expenses for participating employees:

- Unless otherwise indicated by the department, expenses for long distance calls made out of the designated office location shall be the responsibility of the employee. Out-of-pocket expenses for supplies shall not be reimbursed unless prior approval by the Department Director or designee is obtained.
- All Internet related expenses shall be the responsibility of the employee.
- Individual tax implications related to home workspace modifications shall be the responsibility of the employee.

An employee's expenses not specifically covered in this policy must be pre-approved by the employee's department.

Employees accessing the City's network must follow the guidelines set forth in [City Policy Manual Section 1.7.1, Use of E-Mail, Internet Services, and other Electronic Media](#).

Worker's Compensation

FWP participants are covered under the City's Workers' Compensation Insurance Program. Since the employee's satellite workspace shall be considered an extension of the City's workspace, the City's Workers' Compensation liability for job related accidents or injuries shall continue to exist during the *employee's Flexible Workplace Program work hours*. The employee remains liable for injuries to third party persons and/or members of the employee's family on employee's premises. Any injury or illness that may be related to work-related activities should be immediately reported by the employee to their supervisor so that Workers' Compensation can determine compensability.

Safety Requirements

The City/Department may require that a supervisor or appropriate person conduct a safety inspection of the Flexible Workplace participant's home or satellite office. Employees are encouraged to watch the City's safety, hygiene, and ergonomics training videos to ensure that their flexible workspace is properly set up.

All vendors or outside individual visits must be approved by the City/Department Director or designee prior to conducting City business at the employee's home or satellite office.

Flexible Workplace Policy**4.2.14**Monitoring and Evaluation

Productivity needs to be measured to ensure that the FWP is achieving its objectives to increase or maintain employee productivity, reduce carbon emissions, support work/life balance, increase job satisfaction, and retain and attract employees. Since not every task can be quantifiably measured, the supervisor should establish clear expectations and guidelines.

All employees participating in the FWP shall participate in all studies, inquiries, reports and analyses, including an annual survey, relating to the program for the City. While the employee's individual responses will not be published, the data may be compiled and made available to the public without identification of employees.

In addition, each department will designate a representative to coordinate the participation in the FWP within their respective department. This representative will be responsible for their department's program evaluation such as monitoring changes in employee retention and absenteeism, changes in required parking spaces, and reports of employee productivity. The Office of Employee Relations will serve as the designated record keeper of Citywide participation in the FWP.

PROCEDURES

The following procedure applies to all requests for participation in the FWP:

| <u>Responsibility</u> | <u>Action</u> |
|--|--|
| Employee/Supervisor | 1. Jointly fill out the Flexible Workplace Agreement. |
| Supervisor, Manager, and Department Director | 2. Review the Agreement and provide signature, if approved. Engage in conversation with employee if not approved. |
| Employee | 3. Submit Remote Access request forms for approval to IT Department (See City Policy Manual Section 1.7.3, Remote Access) and Agreement to the Office of Employee Relations. Inform OER if employee cancels Flexible Workplace Program. |
| Office of Employee Relations | 4. Document Agreement and maintain records of employee participation, including cancellation. |

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Approved:

 /s/ Jennifer Schembri
Director of Employee Relations
Director of Human Resources

 July 22, 2020
Date

Approved for posting:

 /s/ Jennifer Maguire
Assistant City Manager

 July 22, 2020
Date

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Flexible Workplace Schedule

| | |
|------------------------|---------------------|
| Name (Last, First, MI) | Department/Division |
|------------------------|---------------------|

Flexible Workplace Schedule is as Follows:

| | Sun | Mon | Tues | Weds | Thur | Fri | Sat | Total: |
|-------------------------------|-----|-----|------|------|------|-----|-----|--------|
| Time Periods Working Remotely | | | | | | | | |
| Time Periods at the Office | | | | | | | | |

Eligibility Criteria

Check all that apply:

- Permanent employee status in current classification
- At least six months (1,040 hours) of employment with the City
- An overall rating of satisfactory or higher on my most recent performance appraisal

OR:

- A declared emergency (completion of the form is generally waived for this reason, but may be required at a Department Director's discretion)

Opportunity Fit Assessment: The fit assessment is comprised of components that may be considered by your supervisor to determine if you are a fit for the Flexible Workplace Program.

| | Yes | No |
|--|-------|-------|
| Are your job duties independent in nature, not requiring frequent face-to-face interaction with supervisors, colleagues, clients, or the public? | _____ | _____ |
| Are your job duties primarily knowledge-based, involving handling of information such as reading, writing, and editing; policy development; research or investigation; data analysis, program analysis, financial analysis, etc.; writing reports; or computer-oriented tasks? | _____ | _____ |
| Does your position regularly require your immediate presence or attendance at work to address unscheduled events? | _____ | _____ |
| Does your position predominantly include job duties that require you to access City databases or programs that are not available remotely? | _____ | _____ |
| Will there be sufficient staff present during your remote work times to cover front-facing services in the event of coworkers' unexpected sick days or approved vacation time? | _____ | _____ |
| I have completed City training for safety/hygiene and ergonomics. | _____ | _____ |

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Employees must perform their work duties as productively off-site as they do their designated work site. What duties are you able to complete remotely?

How will your remote work schedule impact the public, other staff, or work in your unit?

If you are a supervisor; how will you manage your unit remotely?

During an emergency, you may be asked to report to your work site immediately. Approximately how long would it take you to travel from your remote work site to your designated work site? _____

Communication

In the first three (3) months of an employee’s participation in the Flexible Workplace Program, an Assignment Tracker Form must be submitted daily to the employee’s supervisor via email (or any other means mutually agreed to by the supervisor and employee).

In addition to the above, while working remotely as part of the Flexible Workplace Program, the participating employee shall communicate with _____ (specify to whom) in the office _____ (describe frequency and time(s)) by phone or email . Phone messages sent to the employee’s office phone are to be checked _____ (describe frequency, i.e., 2x/day and/or times, i.e., at 8am, 12pm, & 4pm).

The participating employee can be reached at the following phone number during scheduled remote work hours _____.

Acknowledgement of Understanding

I have read and understand the City of San Jose’s Flexible Workplace Policy, a copy of which is attached. I understand that in participating in the Flexible Workplace all remote work hours must be pre-approved. I understand the responsibilities and obligations of Flexible Workplace participants that are expressed in these documents. I realize they are in addition to my normal duties, obligations and responsibilities. I understand that, at a minimum, I am responsible for the following:

- Obtaining approval prior to beginning any remote work associated with the Flexible Workplace
- Obtaining Remote Access approval and set up for internet enabled device
- Establishing a regular schedule
- Maintaining my work space while working remotely in a safe manner according to City standards
- Employing appropriate security measures and protecting City assets and information
- Use of City tools and City equipment solely for City business
- Ensuring that my work station meets any special requirements (i.e. ergonomically correct)

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I also understand that I will be exclusively working on official City business during my remote week schedule.

This Agreement will run a maximum of one year from _____ to _____
(specific start and end dates required), or until, with periodic evaluations every _____ weeks months .

For Supervisor to Fill Out:

The following is a list of meetings/events that the employee must attend at the regular work site, regardless of whether they occur during regularly scheduled remote work days/times (e.g., staff meetings status meetings, etc.):

List here any known additional conditions (if any), for approving the participating employee’s request.

I understand that the Flexible Workplace Program is voluntary and may be terminated by either the employee or the City at any time. I further understand that the City may, at any time, change any or all of the conditions under which approval to participate in the Flexible Workplace Program is granted or cancel the Flexible Workplace Program agreement.

| | | |
|---------------------------------|-----------|------|
| Employee | Signature | Date |
| Supervisor | Signature | Date |
| Program/Division Manager | Signature | Date |
| Department Director or Designee | Signature | Date |

Submit the completed form to the Office of Employee Relations.

Employees should make a copy for their records.

For questions regarding the Flexible Workplace Program:

Office of Employee Relations

Employee.relations@sanjoseca.gov

(408) 535-8150