

Chapter 29 PERSONNEL

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This section was repealed in 1998. (Ord. No. 1163 § 1)

Section 29.04.020 Same--Qualification; rate; time of payment; withholding of payment

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Section 29.08.00E Editor's note to Article 29.08

For provisions of state law as to civil service systems in cities, see NDCC, § 40-44-01 et seq.

Section 29.08.02000 Division 29.08.02 Generally

Section 29.08.02010 Adoption

Pursuant to the authority granted to the board of city commissioners under the provisions of state law a civil service system to conform to the provisions of this chapter is hereby adopted. (Code 1958, § 9-1.)

Section 29.08.02020 Purpose

The purpose of the civil service system is to increase the efficiency of city government and to promote the fair treatment of municipal employees by providing a personnel system to govern the appointment, promotion, transfer, layoff, removal and discipline of employees in the city civil service system. (Code 1958, § 9-2; Ord. No. 1315 §1.)

Section 29.08.02030 Civil service commission--Created

There is hereby established a civil service commission for the city. (Code 1958, § 9-3.)
For state law as to authority of city to create a civil service commission, see NDCC, § 40-44.04.

Section 29.08.02040 Same--Composition; appointment terms of office

The civil service commission currently consists of three members. Commencing January 1, 2001, the Civil Service Commission shall be increased to five members, appointed by the Board of City Commissioners. The terms of office of the existing commissioners shall be for the remainder of the terms for which they were appointed. The terms for the two additional commissioners shall be for two years and three years, respectively; thereafter all appointments shall be for three-year terms. Commencing on January 1, 2000, all subsequent appointments shall expire on December 31 of the third year following the appointment, except that all members of the Civil Service Commission as of January 1, 2000 shall continue to serve the terms which they were appointed. Any person appointed to fill a vacancy occurring prior to the expiration of the term of a commissioner shall be appointed for the remainder of the term. (Code 1958, § 9-4; Ord. No. 1200 § 2; Ord. No. 1217, § 1.)

For similar state law, see NDCC, § 40-44-05.

Section 29.08.02050 Same--Qualifications of members

The members of the civil service commission shall be citizens of the United States. No person shall be eligible to be a member of the civil service commission who is a member of any local, state or national political party committee or is a candidate for or holds any political office. (Code 1958, § 9-5; Ord. No. 1315 §2.)

Section 29.08.02060 Same--Removal of members

Any member of the civil service commission may be removed by a majority of the board of city commissioners for any act contrary to the best interest of the city civil service system. Such member sought to be removed shall be first given a copy of the charges against him and he shall have ten days from the date of service of such charges within which to request an opportunity to be publicly heard. (Code 1958, § 9-6.)

Section 29.08.02070 Same--Compensation of members

Each member of the civil service commission shall receive such compensation as determined by the board of city commissioners. (Code 1958, § 9-7; Ord. No. 775, § 1; Ord. No. 1063, § 1; Ord. No. 1315 §3.)

For state law as to compensation of commission members, see NDCC, §40-44-06.

Section 29.08.02080 Same--Ex officio clerk

The city administrator shall be ex officio clerk of the civil service commission. (Code 1958, § 9-8; Ord. No. 1163 § 2.)

For similar state law, see NDCC, § 40-44-05.

Section 29.08.02090 Same--Chairman

The civil service commission shall elect its chairman from among its own members and shall determine the length of his term of office as such. (Code 1958, § 9-9.)

Section 29.08.02100 Same--Meetings; quorum; order of business

The civil service commission shall hold such meetings as are called by the chairman. Three members of the civil service commission shall constitute a quorum for the transaction of official business.

The civil service commission shall determine the order of business for the conduct of its meetings. (Code 1958, § 9-10; Ord. No. 1217, § 2.)

Section 29.08.02105 Rules and Regulations

The Rules and Regulations of the Civil Service Commission are comprised of sections 29.08.04030 (Classification Plan), 29.08.04050 (Employee Classifications), 29.08.04060 (Recruitment and Selection) and 29.08.04120 (Grievance and Appeal Procedure).

(Ord. No. 1315 §4.)

Section 29.08.02110 Amendments to rules and regulations

It shall be the duty of the civil service commission, from time to time, to recommend to the board of city commissioners desirable amendments to the rules and regulations. Such rules and regulations may be amended at any time by the board of city commissioners by ordinance; provided, however, that before any official action is taken by the board of city commissioners, the civil service commission shall first hold a public hearing on such proposed amendments after giving five days' notice of such hearing; such notice shall be given by publication one time in the official newspaper of the city. Such notice need not describe in detail the proposed amendments but need refer only briefly to the general subjects to be considered. The board of city commissioners shall have the authority to make any amendments or changes in such rules and regulations by ordinance, following such public hearing.

(Code 1958, § 9-11; Ord. No. 376; Ord. No. 1315 §5.)

For similar state law, see NDCC, § 40-44-04.

Section 29.08.02120 Officers and employees covered-- Generally

The provisions of this article shall apply to all departments, employees, and appointive officials thereof; except, that the provisions of this article shall not apply to the following: persons elected to office; persons elected to boards, commissions and committees; the city attorney and the public health officer; the city administrator, and part time employees hired outside the civil service system described as seasonal and limited hour schedule employees who are hired to work no more than six months in any 12 month period or average less than 20 hours per week on an hourly basis and are paid on an hourly rate. All classes of employees and appointive officials not excepted above shall constitute the civil service system of the city. (Code 1958, § 9-12; Ord. No. 362, § 1; Ord. No. 1028, § 1; Ord. No. 1139 § 1; Ord. No. 1156 § 1; Ord. No. 1162 § 1.; Ord No. 1374 §1)

For state law as officers and employees covered by the system, see NDCC, § 40-44-08.

Section 29.08.02130 Fire department personnel and employees - Repealed with Ord. No. 1315 (May 1, 2006)

This section was repealed with Ordinance No. 1315 (May 1, 2006).

Section 29.08.02140 Status of persons holding positions at time of adoption

Any person who held a position subject to the civil service system when the provisions of this article became effective and who shall have served in such position for a period of one year shall be retained without preliminary or performance tests and shall thereafter be subject in all other respects to the provisions of this article. Any other person employed by the city and who by the terms of this article comes under the civil service system of the city shall be considered as having been given probationary appointment as defined by the rules and regulations relating to this subject. (Code 1958, § 9-14.)

Section 29.08.02150 Violation of article by officer or employee

Any willful violation of the provisions of this article or any violation of such provisions through culpable negligence shall be grounds for removal from office of a city official or for summary discharge of a city employee. (Code 1958, § 9-15.)

Section 29.08.04000 Division 29.08.04 Rules and Regulations

Section 29.08.04010 Definitions

This section was repealed in 1998. (Ord. No. 1163 § 3.)

Section 29.08.04020 Human Resource Committee

A Human Resources Committee is hereby established to review and offer input regarding any proposed changes, additions and amendments to the Human Resources Code, Section 29.08.04. The Human Resources Committee shall be comprised of the City Administrator or his designee, two exempt employees, and three hourly employees, one from each of the major divisions: public works, public safety, and finance and administration. The employee members

will be selected by election of employees within their individual divisions. The terms of employee members of the committee shall be two years. (Code 1958, § 9-17; Ord. No. 376; Ord. No. 420, § 1; Ord. No. 1163 § 4; Ord. No. 1315 §7.)

Section 29.08.04030 Human Resource Manual

1. Purpose of this Manual

This manual, which provides for human resources administration is enacted by the City of Dickinson in order to further the following goals:

- 1.1 To provide a uniform and sound personnel administrative system throughout the City of Dickinson.
- 1.2 To inform employees of the general policies and procedures of the City and of the benefits and obligations of employment with the City.
- 1.3 To ensure that all personnel actions are based upon employee qualifications (knowledge, skills and abilities) and job performance and are in compliance with federal and state law.
- 1.4 To serve as written documentation of the City of Dickinson's commitment to fair employment practices and equal employment opportunity.
- 1.5 To assist city administration in carrying out sound, equitable and consistent human resources administration and in making effective use of human resources.
- 1.6 To promote and encourage communication between the city administration and the employee(s).
- 1.7 To protect the rights of the employee(s) and employer throughout the employment relationship and to ensure that the responsibilities of both parties are carried out.

2. Application

The Human Resource ordinance shall apply to all municipal employees except: employees as specified in Section 29.08.04.150 of this manual; elected officials; independent contractors; and excluded positions as specified in Section 29.08.02.120. In the event of a conflict between this ordinance and manual and any state and federal law, the terms and conditions of such law shall prevail.

3. At-Will Status

The City of Dickinson recognizes that North Dakota is an employment at-will state and the intent of this municipality is to maintain that employment at-will status for employees who are probationary, seasonal and limited hour employees.

4. This Manual is Not a Contract

This manual, does not confer a contract of employment. The policies, procedures, rules and benefits contained herein are subject to change upon passage of an ordinance amendment by the City Commission following review and prior approval of the Civil Service Commission of the change(s). This manual is provided as a reference of present policies and not a guarantee of employment or specific employment benefits.

(Code 1958, § 9-19; Ord. No. 376; Ord. No. 967, §§ 1 to 3; Ord. No. 1163 § 5; Ord. No. 1307 § 1; Ord. No. 1331 §1.)

Section 29.08.04040 General Provisions

1. Equal Employment Opportunity

It is the policy of the City of Dickinson to recruit, hire, train, promote, discipline and discharge all applicants and employees equally and without regard to race, religion, creed, color, national origin, sex, age, disability, political affiliation, marital or veteran status, or any other basis prohibited by state or federal law. Violations of this policy by any municipal employee may be cause for immediate disciplinary action. Any employee who feels he/she has been discriminated against should bring this concern to his/her supervisor or higher authority according to the appeals procedure specified in Section 29.08.04.140 of this manual.

2 Sexual and Other Harassment

The City of Dickinson is committed to providing a work environment that is free from discrimination and harassment. To maintain this commitment, the municipality will not tolerate any form of harassment, including sexual harassment.

2.1 Statement of No Tolerance

Sexual or any other form of harassment in the work place is prohibited by Federal and State law, whether committed by supervisory or non-supervisory employees, and will not be tolerated. Retaliation or intimidation directed toward a complaining party is also prohibited by law and will not be tolerated by the City under any circumstances. The City will take prompt remedial measures to immediately end the offending action.

2.1.1 Harassment by Non-Employees

The City will attempt to eliminate sexual or any other form of harassment of or by any non-employees, such as customers, visitors, or others, including the referral of appropriate matters to the Police Department.

2.2 Employment Protections to Complaining Party

A true complaint of sexual or any other form of harassment will not have any bearing on the terms and conditions of employment of the complaining party, including but not limited to wages, advancement, evaluations, assigned duties, shift assignments, and career development.

2.3 Definition of Behavior Constituting Sexual Harassment

Under this policy, sexual harassment is defined as behavior of a sexual nature which is unwelcome and personally offensive to its recipient. It is a form of employee misconduct which is demeaning to another person and undermines the integrity of the employment relationship.

Sexual Harassment is specifically defined as unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:

2.3.1 By threat or insinuation, either explicitly or implicitly, an employee's refusal to submit to sexual advances or refusal to tolerate or participate in unwanted conduct or communication of a sexual nature will adversely affect the employee's terms and conditions of employment, including but not limited to wages, advancement, evaluation, assigned duties, shift assignment, and career development.

2.3.2 Any conduct or communication of a sexual nature that has the purpose or effect of substantially interfering with work performance or of creating a hostile, intimidating, or offensive employment environment that may be considered offensive to another employee, including but not limited to:

- repeated sexual flirtations, advances, or propositions;
- continual or repeated verbal abuse of a sexual nature;
- foul language;

- unwanted physical contact;
- graphic verbal commentaries about an individual's body or manner;
- sexually degrading words used to describe the individual;
- the display of sexually explicit pictures, cartoons, or other materials.

2.4 Definition of Other Harassment

Under this policy, other harassment is defined as behavior of a nature, which is unwelcome and personally offensive to its recipient. It is a form of employee misconduct, which is demeaning to another person and undermines the integrity of the employment relationship. Other Harassment includes action(s) by another person which in the opinion of the employee violate his/her personal rights. This includes one person bullying another person or persons through actions which demean the other employee through repeated use of demands, language, threats to control the other person's behavior or attitude.

2.5 Method of Filing a Complaint

Any employee who feels he/she has been sexually harassed or that his/her personal rights have been violated through some other form of harassment, should immediately report the matter to the City Administrator or any exempt employee. Any exempt employee, who becomes aware directly or indirectly, of a potential harassment issue will immediately contact the City Administrator, who will initiate an investigation. The obligation to report the potential harassment issue is absolute and not discretionary. If the City Administrator is the offending party, the exempt employee should immediately notify the Police Chief, who will assign a qualified investigator(s) to perform an investigation.

2.6 Complaint Investigation Process

Upon becoming aware of a situation of possible sexual or any other form of harassment, the City Administrator will turn the issue over to the Chief of Police who will assign a qualified investigator(s) to perform an investigation. The person or persons tasked with investigating the complaint will make a thorough and impartial investigation of the complaint, which will include the following:

- (1) Interview of Complaining Party
- (2) Interview of Offending Party
- (3) Interview of Other Employees

All employees must cooperate with any such investigation. If the person or persons tasked with investigating the complaint finds through investigation that the complaint has grounds, the City Administrator will decide the appropriate disciplinary action for the offending party, keeping in mind the serious nature of this type of offense and will detail the findings of the investigation and outcome in a written notice, which will include the investigator's report. If the City Administrator is the offending party, the Police Chief will turn his/her findings over to the President of the City Commission. It will be the City Commission's responsibility to decide appropriate discipline if the complaint is found to have grounds.

2.6.1 Referral of Investigative Process to City Administrator

This paragraph was repealed with Ordinance No. 1224, approved May 7,

2001

2.6.2 Investigation in Case of Criminal Harassment Case

If criminal charges may be applicable, the Police department will take the lead in the investigation.

2.7 Rights of Offending Party

The person about whom any sexual or any other harassment complaint has been filed will receive notice and an opportunity to appeal as described in Section 29.08.04.120 of this manual.

3 Seat Belt Policy

The City of Dickinson is committed to doing everything possible to prevent injury to employees, prevent damage to property and to protect the employees and the public from the results of accidents. The City realizes that safety belts are an important and efficient means to accomplish this goal. Thus, it is the policy that all City employees and their passengers shall be required to use seat belts when driving any city owned or leased vehicle (if equipped with seat belts) or while driving their personal vehicle on official municipal business. Failure to comply with this policy may result in disciplinary action.

EXCEPTION: Police Officers may follow seat belt regulations specifically set out for law enforcement needs in the departmental policy manual.

4 Use of Tobacco Products

Use of Tobacco Products is prohibited in/on City vehicles, equipment and properties including Police Department Controlled areas in the Law Enforcement Center, unless the area is clearly marked by the City as a tobacco use area.

5 Conflicts of Interest Considerations of Outside Employment and/or Business Dealings

Although the City does not forbid off hours employment by employees, employees are prohibited from having business dealings or seeking or maintaining employment, which conflicts with the responsibilities or performance of the employee's City position. Therefore any request for outside employment must be submitted and approved by the employee's Department Head prior to an employee engaging in such a relationship. Following a review of the request, the Department Head will determine whether such employment interferes or negatively impacts the performance of the employee's duties with the City or results in a conflict of interest. Based on his/her review of the facts, the Department Head will notify the employee in writing of his/her decision to approve of the outside employment/business dealings or not. If the Department Head refuses to approve of the outside employment/business dealing, the employee may file a grievance as described in section 29.08.04.120. If the Department Head refuses to approve of the outside employment/business dealing and the employee pursues the outside employment/business dealings, said employee may be subject to disciplinary action.

In the case of a Department Head seeking approval of outside employment, the request will be made to the City Administrator, who will decide the appropriateness of the request.

An employee performing outside employment or business on City time may be subject to disciplinary action.

Employees must report illness or injury due to secondary employment to their supervisor. The City's Workers' Compensation insurance coverage will not be extended to outside employment.

6 Performance Evaluations

Performance evaluations are designed to provide the employee with a record of his/her performance, to encourage professional growth and to promote communication between the supervisor and employee.

Performance evaluations are to be structured to each employee's position. The purpose of the evaluation is to commend strengths, address weaknesses, suggest ways to improve, discuss employee goals and objectives, and discuss any difficulties and positive aspects the employee may be experiencing on the job. Completed evaluations may also serve as the basis and justification for merit based raises and/or promotions awarded to employees.

6.1 Frequency of Performance Evaluations

Performance appraisals will be conducted a minimum of twice during the employee's probationary period (at the mid-point and at the conclusion of the probationary period) and once each year thereafter. Evaluations may be performed more often as need arises.

6.2 Completion of Evaluation Forms

The first step in the performance evaluation process is completion of evaluation forms. Evaluation forms will be completed by both the supervisor and the employee. Co-workers may also be asked for input regarding an employee's performance. Evaluations forms are to be based on performance standards set and agreed to by the employee and the supervisor at the most previous performance evaluation.

6.3 Performance Evaluation Conference

The purpose of the performance evaluation conference is to discuss the written evaluation forms completed by the supervisor, the employee, and others. The performance evaluation conference will be conducted by the employee's department head, lacking a department head, said conference will be conducted by the City Administrator or his designee. Evaluation conferences will be conducted in a private meeting between the employee and his/her department head or City Administrator or his designee whichever is applicable.

6.4 Establishment of New Performance Standards and Renewal of Existing Ones

As part of the performance evaluation, the supervisor and the employee will discuss and establish performance standards for the employee for the ensuing evaluation period. A copy of the performance standards will be attached to the performance evaluation documents.

6.5 Signing Requirement

Employees are required to sign their evaluations and will receive a copy. Signing does not imply agreement, but that the contents have been made known to and discussed with the employee.

6.6 Placement in Personnel File

Completed evaluation forms shall be submitted to the City Administrator or his designee for placement in the employee's personnel file.

7 Personnel Records

7.1 Personnel File

It is the policy of the City to maintain accurate and updated information on each municipal employee in its personnel files. The personnel file may include the following, but will not include any information contained in the employee's confidential medical file listing (see Section 29.08.04.040-8):

- The employee's application and/or resume
- References and/or background checks
- Benefit forms (retirement, health and life insurance, etc.)
- Letters of commendation

- Payroll deduction authorizations
- I-9 and W-4 form
- Leave and absence slips
- Formal Disciplinary actions
- Termination or discharge record
- Previous positions held with the City
- Rates of pay
- Work hour records
- Overtime records
- Performance appraisals
- Exit interviews

The City Administrator or his designee shall be responsible for maintaining personnel records for all current and former employees. Duplicate and other personnel records may also be maintained at the Department level.

The employee shall have reasonable access to his/her personnel records upon request to the City Administrator or his designee. The file will be made available to the employee's representative only upon express written authorization by the employee.

No written incident report or records of disciplinary action shall be placed in an employee's personnel file unless the City first advises the employee of its intent to enter such document into the file and affords him/her an opportunity to read and sign such material. Signing does not imply agreement, only that the contents have been made known to or discussed with the employee.

The employee shall have the express right to submit a letter of rebuttal to his/her file regarding any information contained in his/her file that is in dispute.

7.2 Changes of Name, Address, Telephone and Withholding Status

It is the employee's responsibility to inform the City Administrator or his designee of any changes in name, address, telephone number or withholding status. An employee must immediately report any of the above or other pertinent changes. Intentional failure to report such information is grounds for disciplinary action.

7.3 Personnel Record Retention

Personnel records are maintained in accordance with the records retention and destruction manual for cities published by the North Dakota Division of Management and Budget. The City permanently keeps an employee's name, social security number, dates of employment, positions held and salary history, all of which are listed in the city's employment history index.

7.4 Confidential Personnel Information

7.4.1 Confidential Medical File and Records

The City of Dickinson maintains a separate confidential medical file on each employee, which is not considered part of the employee's personnel record and is confidential. Except as otherwise authorized by law, the information in this file may not be used or disclosed without written authorization of the employee. Access to this file is limited to the employee and the City Administrator or his designee.

7.4.2 Personal Information

Personal information regarding a public employee contained in an employee's personnel record or given to the state or a political subdivision by the

employee in the course of employment is exempt from open records laws. As used in this context, "personal information" means a person's home address; home telephone number; photograph; medical information; motor vehicle operator's identification number; social security number; payroll deduction information; the name, address, phone number, date of birth, and social security number of any dependent or emergency contact; any credit, debit, or electronic fund transfer card number; and any account number at a bank or other financial institution.

7.5 Dissemination of Employment Information - Limitations and Rules

In accordance with the North Dakota Open Records Laws employee records are open to public inspection, with the exception of the employee's personal information and confidential medical file, described in section 29.08.04.090-4. However the City's normal policy is to provide only the following information on both present and past employees unless additional information is requested:

- whether a person is or has been employed with the City in municipal government service;
- dates of employment
- current position or positions at the date of separation from employment and other positions held;
- verification of salary information.

Additional information may be released following a specific request, upon approval of the City Administrator or his designee. Only the City Administrator or his designee shall give out employee information. All requests for information on an employee's employment shall be immediately directed to the City Administrator or his designee.

8 B29.08.04140 General Provisions of the Civil Service

8.1 Records of the Civil Service Commission

The city administrator is the custodian of the records of the civil service commission as well as the ex officio secretary thereto. He shall keep and maintain employees' employment records as well as such other records as may be necessary for the proper administration of the civil service.

8.2 Forms

The city administrator shall design all forms to be used in connection with the civil service program, which forms will become official when approved by resolution of the civil service commission.

8.3 Meetings of Civil Service Commission

The civil service commission shall hold meetings as may be necessary to establish employment registers, hear appeals or hold other hearings hereinbefore provided, which meetings shall be at the call of the chairman and open to the public. Two members of the civil service commission shall constitute a quorum for the transaction of any business including the conduct of hearings. The city administrator shall be present and shall keep the minutes of each meeting but shall have no vote.

8.4 General Prohibitions.

8.4.1 Prohibition of Consideration of Political Endorsements

In no event shall any political endorsement be considered in connection with the appointment to any position in the civil service of the city.

8.4.2 Prohibition of Providing Influence for Personal Gain

No person shall, for the purpose of influencing the vote or political action of any other person, promise or use, directly or indirectly, any official authority to secure or attempt to secure an appointment, promotion, increase in salary or any other preferment in the city civil service.

8.4.3 Prohibition of Violation of any Provisions

Any willful violation of the above provisions of this rule shall be grounds for summary discharge of a city employee.

9 Use of City Property by Employees

9.1 Introduction

The purpose of this section is to clarify and misunderstanding employees may have regarding the use of City owned or leased property, including tools, equipment, supplies, sites and facilities.

Managers in individual areas of the City may develop more specific policies that address their particular operations, within the bounds of this general policy.

9.2 Use of City Owned Tools, Equipment and Supplies

Employees of the city of Dickinson are prohibited from removing any City owned tools or supplies from City premises for personal use.

EXCEPTION: Employees may remove from the premises any tools, equipment or supplies that are assigned to them by their department head, division head, or the City Administrator or any tools, equipment or supplies made available to the general public. The removal of tools, equipment or supplies that are available to the general public will be permitted under the same terms and restrictions placed on the public.

9.2.1 Occupation of Unoccupied City Owned Properties, Facilities

Employees are prohibited from using or being in unoccupied, fenced City owned or leased properties or in unoccupied City leased or owned facilities or unoccupied portions closed to the public for non-work related reasons. This includes, but is not limited to using any of the above for storage, housing, repair or maintenance of vehicles or other property.

EXCEPTION: Employees may enter unoccupied City property or buildings during off-duty hours to obtain personal property or to occupy City buildings and facilities in the manner available to the general public.

10 Meet and Confer Committee

The City shall allow for establishment of a committee to provide a forum to promote open communication between City Commissioners, the City Administrator, and non-exempt employees.

10.1 This committee will not serve as a means to avoid the normal chain of command. Hence, issues that may be resolved through the normal chain of command should first be brought to the attention of the appropriate supervisor.

10.2 Employees are encouraged to seek Meet and Confer Committee members for information regarding discussions and recommendations of the committee.

10.3 The Committee shall be comprised of up to six non-exempt employee representatives, up to two City Commissioners and the City Administrator. From time to time, depending on need, additional hourly employees will be permitted to participate in the process.

10.4 Meetings will be scheduled at least monthly at a regular time and date established by the committee.

11 Safety Policy

The City of Dickinson is sincerely interested in the safety of each and every employee. For this reason, it has developed and will enforce a safety program designed to prevent accidents and thus reduce Worker's Compensation claims. Everything reasonably possible will be done to maintain safe working conditions. Each individual in a supervisory position will be responsible for enforcing the City's safety program. Each employee shall be familiar with the City's safety policy and will be expected to cooperate fully in helping to protect the employee and co-workers.

A city employee shall be designated as the City Safety Coordinator. The Safety Coordinator shall have such powers reasonably necessary to enforce this policy including the power to appoint such assistants and delegate responsibility as necessary.

12 Internet and E-mail Policy

This policy applies to employees, contractors, consultants, service providers and temporary workers (collectively, "users") on city of Dickinson ("City") premises or using the City system.

Users are granted access to the internet, intranet, World Wide Web, e-mail and other applications through use of the City system. This access is granted for the business use of the City. This access may be denied at any time, for any reason. Users are responsible at all times for using the system in a manner that is ethical, legal and consistent with the best interest and policies of the City. Any violation of this section is subject to disciplinary action.

All information created, accessed or stored using the City applications and systems is the property of the City. Users do not have a right to privacy to any activity conducted using the City system. The City can review, read, access or otherwise monitor all activities on the City system or on any other system accessed by the use of the City system.

Only users who are authorized by the City may use the system. A user may not allow any other person, including authorized users, to access any application through the user's account or system. Users may not impersonate another user by modifying e-mail header information, or otherwise hide the user's identity.

Users are responsible for any and all activity initiated from their accounts. Therefore, users should protect their passwords, change them regularly, not reveal them to others, except that all passwords will be filed with the City Administrator or his designee. Any changes to passwords will be reported to the City Administrator or his designee immediately. Users shall not leave their computers on and open for non-authorized users to access. Users are responsible for protecting their own files (e-mail, word processing, spreadsheets, etc.) from unauthorized persons.

If a user inadvertently access another user's files, the user must immediately discontinue access, and refrain from revealing any personal information discovered.

Users must not use e-mail to send confidential information to any unauthorized person. Such information may be sent to authorized persons in encrypted files if sent over publicly accessible media such as the internet or broadcast media such as wireless communication. Such information may be sent in unencrypted files only within the City system. Users are responsible for properly labeling such information.

Users may not make copies of computer software applications running on City systems for use at home, on laptops or for other reasons, without authorization. Users may not import,

download, copy or store copyrighted material without permission from the author. Doing so may violate application licensing agreements or copyright law.

No software, games or other applications may be installed or downloaded without the authorization of the City Administrator or his designee. No e-mail attachments received from unknown persons shall be opened. Doing so leaves the City vulnerable to viruses, and also may violate application licensing agreements or copyright law.

Users shall never harass, intimidate, threaten others or engage in other illegal activity (including pornography, terrorism, espionage, theft or drugs) by e-mail or other postings. All such instances shall be reported to management for appropriate action. In addition to violating this policy, such behavior also may violate other City policies, or civil or criminal laws.

E-mail and internet access is intended for the business use. Non-business use includes, but is not limited to interfering with the City's business, interfering with the user's ability to perform his or her job, interfering with the ability of other users to perform their jobs, exposing the City to liability or embarrassment, using it for external political purposes or financial gain, violating the laws of the location information is transmitted to or from, or violating any other policies of the City. Users may never use the system for soliciting other employees for any reason including but not limited to soliciting funds for school fundraising drives or selling products or merchandise. It is specifically prohibited for employees to knowingly visit sites that feature pornography, terrorism, espionage, theft or drugs unless approved for business by the City Administrator or his designee.

The City reserves the right to access, review or otherwise monitor all such use. The City may monitor all web sites that are visited.

Users are hereby advised that there is material on the internet and World Wide Web that is offensive to people. The City does not have the ability to control this information and does not screen it out. Users must use good judgment and common sense to stay away from those sites. The City disavows any liability for harassment by any person who uses the City's system and is offended upon discovering such sites.

Users may not create or forward nuisance e-mail, including jokes and chain letters. If users receive unsolicited e-mail (SPAM) nuisance e-mail, including jokes, they shall immediately delete it without attempting to open any attachment.

Users are responsible for reporting to management any violation of this policy. Violations of this policy will be investigated and evaluated. Depending upon the nature of the offense, appropriate corrective action will be taken, up to and including immediate termination. Violators also may be subject to penalties imposed by U.S. state and federal laws, and/or the laws of jurisdictions outside of the U.S.

13. Privacy

There is no right to privacy for office spaces, lockers, work areas, vehicles or grounds owned, or leased by the City for its employee use.

14. Cell Phone and Cell Phone Equipment Policy

14.1 Policy

This policy outlines the use of personal cell phones at work, use of city provided cell phones and all cell phone equipment, safety issues, the issuance of cell phones and additional information.

14.2 Procedure

14.2.1 General

- a. Each department director is responsible for determining whether an employee's job duties require the City provide a cell phone or stipend to an employee. Once a department director has made a determination a city issued cell phone is required for an employee to effectively carry out their assigned duties the City will cover any and all charges related to the City issued cell phone. If a department director determines that the issuance of a city cell phone is not essential for an employee but the use of a personal cell phone is desired they can authorize a monthly stipend which will be taxed as an income event on the employee's paycheck. The monthly stipend will be set annually during the budget process. When a stipend is provided it represents the total compensation an employee will receive regarding the use of a personal cell phone for business purposes.
- b. Personal cell phones, when a stipend is provided, are subject to the provisions of this policy.
- c. Cell phone records, including phone and data transmissions, can be subject to public disclosure under the State of North Dakota Open Records laws.
- d. In situations where the use of a cell phone could be disruptive, courtesy is expected.
- e. Cell phones cannot be used in an illegal, illicit or offensive manner.
- f. Excessive personal calls (including text messaging) during the work day can interfere with employee productivity and be distracting to others. Employees are expected to make personal calls on non-work time when possible.

14.2.2 City Issued Cell Phones

- a. Cell phones shall remain the sole property of the City and shall be subject to inspection or monitoring (including related records) at any time if requested by the employee's supervisor or City Administrator. Upon separation of employment or when an employee's supervisor deems it necessary, the employee will be required to return the city issued cell phone and related equipment. Employees unable to present the phone/equipment in good working condition within one (1) business day may be required to bear the cost of replacement.
- b. Employees who separate from employment with outstanding debts for equipment loss or unauthorized charges may be considered to have left employment on unsatisfactory terms and may be subject to legal action for recovery of loss.
- c. Only city issued cell phones or personal cell phones where a monthly stipend has been authorized may access the city's server.

14.2.3 Personal Cell Phones

- a. The City is not responsible for loss or damage to personal cell phones while on or off duty. If an individual releases a personal cell phone number to conduct City business where a stipend is not provided, the City will NOT reimburse any expense occurred.

14.2.4 Safety Issues

- a. Employees whose job responsibilities include regular or occasional driving are encouraged to refrain from using a cell phone while driving. Employees are strongly encouraged to pull off to a reasonably safe location and safely stop the vehicle before placing or accepting a call.
- b. If acceptance of a call is unavoidable while driving and pulling over is not an option, employees are strongly encouraged to use hands-free devices. In situations where a City cell phone has been issued and the employee's job responsibilities include regular driving and accepting of business calls, hands-free equipment will be provided to facilitate the provisions of this policy.
- c. Employees who are charged with traffic violations resulting from the use of a cell phone while driving on duty may be subject to disciplinary action and personal liability resulting from such traffic violations.

14.2.5 Additional Information

- a. Violations of this policy may be subject to disciplinary action, up to and including dismissal.
- b. The City Administrator will determine if the issuance of a city cell phone is required for department directors and may review the issuance of any and all city issued cell phones or stipends.
- c. The cell phone policy will comply with all current IRS regulations.

(Code 1958, § 9-29; Ord. No. 376; Ord. No. 1163 § 5; Ord. No. 1201, § 1; Ord. No. 1224, § 1, 4 & 5; Ord. No. 1307 § 2, 3, 4 & 5; Ord. No. 1379 §1)

Section 29.08.04050 Employee Status and Classification Plan

1 Definitions

- 1.1 Municipal Employee
Anyone employed by the City who is not an independent contractor.
- 1.2 Probationary Employee
An employee who is newly hired by the city in a regular full or regular part-time position (see Section 29.08.04.060-12).
- 1.3 Regular Full-Time Employee
An Appointive Official or Municipal Employee who is employed by the city to work at least 40 hours per week.
- 1.4 Regular Part-time Employee
An employee who is employed by the city to work in a Civil Service approved position which requires the employee to work at least 20 hours and less than 40 hours per week on a regular basis. Holiday time is credited for time worked.
- 1.5 Limited Hour Schedule or Seasonal Employee
An employee who is employed by the municipality to work for less than 20 hours per week or less than 6 months in any 12 month period.
- 1.6 Employee Benefits

(1) Regular Full-Time:

Description	Location	Benefit	Eligible for Benefit
Vacation Leave:	Section 29.08.04.090-2	Full benefit	Upon Hire

Sick Leave:	Section 29.08.04.090-3	Full benefit	Upon Hire
Personal Leave:	Section 29.08.04.090-3.13	Full benefit	Upon Hire
Holiday Pay:	Section 29.08.04.090-10	Full benefit	Upon Hire
Health Insurance:	Section 29.08.04.080-7.1	Full benefit	According to insurance provider
Retirement:	Section 29.08.04.080-7.2	Full benefit	Upon Hire
Life Insurance:	Section 29.08.04.080-7.3	Full benefit	Upon Hire
Longevity Pay:	Section 29.08.04.080-11	Full benefit	Upon completion of five years
Employee Assistance Program:	Section 29.08.04.080-7.6	Full benefit	Upon Hire
Employee Paid Flexible Benefits:	Section 29.08.04.080-7.4(1)-(4)	Full benefit	Upon Hire
Employer Paid Med. Spend Acct.:	Section 29.08.04.080-7.4 (5)	Full benefit	Upon Hire

(2) Regular Part-Time:

Description	% of Benefit	Eligible for Benefit
Vacation Leave:	Prorated to average weekly hours	Upon hire
Sick Leave:	Prorated to average weekly hours	Upon hire
Holiday Pay	Prorated to average weekly hours	Upon hire
Health Insurance:	Prorated to average weekly hours	According to insurance provider
Life Insurance	Full benefit	Upon Hire
Employee Assistance Program	Full benefit	Upon Hire
Employer Paid Medical Spending Acct.:	Full Benefit to Employees averages at least 30 hours per week in prior calendar year.	Upon Hire
Employee Paid Flexible Benefits:	Prorated to average weekly hours	Upon Hire

(3) No benefits available to limited hour schedule or seasonal employees.

(Ord. No. 1533 §1; Ord. No. 1603 §1)

2 Classification Plan
2.1 Preparation

The City Administrator, after consultation with the various department heads, shall prepare and submit to the Civil Service Commission a position classification plan which shall group all positions in the competitive Civil Service system into classes based on duties, authority and responsibilities. For each class the class specification shall be prepared.

2.2 Adoption

The Civil Service Commission shall consider the proposed classification plan, and shall hold a public hearing thereon after giving at least five days' public notice thereof by a publication in the official newspaper of the city. After the basic classification plan is adopted, any future changes or amendments thereto shall likewise be considered by the Civil Service Commission at a public hearing of which official notice shall be given as provided in this section. Before the plan or any changes or amendments thereto shall become effective, they shall be subject to the approval of the board of City Commissioners by resolution. It shall not be necessary for the board of City Commissioners to hold a public hearing thereon, unless they deem it advisable, inasmuch as adequate opportunity for hearing is otherwise afforded the public before the Civil Service Commission.

2.3 Original Allocation of Classifications

After adopting the classification plan, the Civil Service Commission shall allocate each position in the Civil Service System of the city to its appropriate class.

2.4 Interpretation of Class Descriptions

The class descriptions for any class of positions shall be considered as descriptive and explanatory of the kind of work required in positions of a particular class, but not necessarily inclusive of all duties to be performed.

2.5 Administration

Revision to class descriptions and reallocations within the approved classification plan will be made as follows:

(1) As a new class is created within the civil service system, the city administrator will study the duties and responsibilities thereof and on the basis thereof allocate the same to the appropriate grade. If a new position is to be created, the City Administrator, with the assistance of the appropriate department head and others as deemed necessary, is to prepare a class description, which is to be submitted to the Civil Service Commission for review and approval.

(2) The City Administrator will recommend reclassification to the Civil Service Commission for any existing class for which there is a significant permanent change in responsibility. All permanent changes or modifications of the responsibilities of a class, will be promptly reported to the City Administrator by the department head.

2.6 Review of Classifications

At least once every three years, the City Administrator will review all classifications and, if necessary, recommend to the Civil Service Commission that existing classes be combined, abolished or, if necessary, reclassified.

At least once every three years, each department must review and update class descriptions. Each department head shall submit verification of no change or changes to the City Administrator by March 1st of each year for consideration in the ensuing budget. The City Administrator shall review the class descriptions submitted by the department

heads. The City Administrator shall submit recommendations to the Civil Service Commission for their review.

Review of a job classification shall be made anytime a separation from employment occurs and replacement is desired.

2.7 Amendments and Changes to Classification Plan and Class Descriptions

(1) Changes or amendments to the Classification Plan shall be considered by the Civil Service Commission at a public hearing for which official notice shall be provided by publication. Before the plan or any changes or amendments thereto shall become effective, they shall be subject to approval, by motion, of the board of City Commissioners. It shall not be necessary for the board of City Commissioners to hold a hearing thereon, unless they deem it advisable, inasmuch as adequate opportunity for hearing is otherwise afforded the public before the Civil Service Commission.

(2) Changes to the class description are not a change to the classification plan, but require Civil Service Commission approval.

2.8 Employee Requests for Reclassification

Any employee employed under Civil Service may at any time submit to the City Administrator a written request for a reclassification stating the reasons for said request. Any such request will become a part of the annual review or considered during the annual review process.

2.9 Effect of Reclassifications

A regular employee whose class description is reclassified to a different grade shall continue in that class if the qualifications meet or exceed those of the newly reclassified class.

2.10 Use of Class and Working Titles

Following the adoption of the classification plan and the allocation of class descriptions therein to grades in the competitive Civil Service System, the class titles as therein set forth shall, unless working titles are assigned to specific positions, be used to designate such positions in all official records, vouchers, payrolls and communications. (Code 1958, § 9-20; Ord. No. 376; Ord. No. 634 § 1; Ord. No. 1163 § 5; Ord. No. 1224 § 6; Ord. No. 1330 §1; Ord No. 1370 §1.)

Section 29.08.04060 Recruitment and Selection

1 Recruitment and Hiring Policy

It is the policy of the City of Dickinson to recruit and fill job vacancies with the most qualified individuals for the positions. The city has four methods of recruiting qualified applicants to fill job vacancies in city employment. These are: 1) promotion from within; 2) transfer from within; 3) public announcement and advertisement; or 4) recruitment agencies.

If it is in the best interest of the city, promotions or transfers of individuals already employed with the city shall be given first consideration. This consideration, however, does not entitle an individual employee to an automatic promotion or transfer to a higher level of employment.

All selections shall be based on merit and fitness to fill the job vacancy. All recruitment efforts are based upon state and federal equal employment opportunity (EEO) laws.

2 Job Announcement

If the City Administrator or his designee determines it is appropriate to fill a vacant regular full-time or regular part-time position, the City Administrator or his designee may initiate

any of the hiring methods available. Exception: Full-time, non-civil service positions will be advertised as deemed appropriate by the City Commission.

2.1 Internal Announcements

Internal announcements, which include either promotion or transfer from within shall be advertised in all occupied City buildings.

2.2 Public Announcements

Public announcement of employment opportunities will be advertised in the official newspaper, other places and means deemed appropriate by the City Administrator or his designee, and posted in a visible location in each occupied city building.

1.3 Recruitment Agencies

If the City Administrator or his designee determines it is in the best interest of the city, recruitment agencies that charge a fee for service may be used to fill job vacancies for exempt positions. Public announcements shall also be made to ensure the public has the opportunity to know of and apply for the position.

3 Applications for Employment

Individuals interested in applying for a specific position with the City of Dickinson must submit a completed city application.

4 Eligibility for Employment

To be eligible for employment with the City of Dickinson in addition to other qualifications an individual must:

1) be legally eligible to be employed in the United States as proven by completion of a federal I-9 form, 2) if a male born after December 31, 1959, be registered for the selective service, and 3) be 18 years of age or older at the time of employment.

5 Qualifications for Employment

5.1 General Skills/Abilities Required, ADA Exception

All employees must be able to perform the essential functions of their job with or without reasonable accommodation. The city will make reasonable accommodations pursuant to ADA.

6 Veteran's Preference

The City will follow applicable state law regarding the hiring of veterans. Veteran's Preference will not be used for promotions, transfer or internal hires. For the application of the North Dakota state law, the certified list of applicants given by the City Administrator to the department head for development of a final hiring recommendation will be considered the "certified list of eligible persons."

7 Disqualification for Employment

Applicants for employment may be disqualified if any of the following is proved to be true:

- 1) applicant does not meet the minimum qualifications for appointment;
- 2) applicant knowingly has made a false statement on the application form or resume;
- 3) applicant has committed fraud during the selection process;
- 4) applicant does not meet the eligibility for employment. See subsection 29.08.04060-4; or
- 5) an unsigned employment application.

8 Normal Selection Process

8.1 Selection Criteria

Selection to fill a job vacancy is made on the basis of knowledge, skills, education, experience, and ability to perform the duties of the specific position.

8.2 Examinations

Competitive examinations may be used in the selection process.

8.3 Standard Selection Procedures

8.3.1 Civil Service Positions

The Civil Service Hiring process as formally approved by the Civil Service Commission will be used to fill all publicly advertised positions under Civil Service Authority. No changes shall be made to the Civil Service Hiring Process without a hearing before the Civil Service Commission. Notification of the hearing shall be posted in all occupied City buildings.

8.3.2 Limited Hour Schedule and Seasonal Positions

The City will publicly advertise for these positions. Following advertisement, the city Administrator or his designee(s) will review the applications, set interviews and fill the positions as needed.

8.4 Exceptions to Standard Selection Process

8.4.1 Hiring of Full-Time Non-Civil Service Positions

The process for filling non-Civil Service positions will be established by the City Commission.

8.4.2 Temporary Appointments

The City Administrator may offer a temporary appointment for a position to a current full-time employee in order to prevent a stoppage of municipal services, public business, or inconvenience to the public. A period of employment under a temporary appointment may not be counted as part of the probationary period in case of a subsequent appointment to a regular position.

An employee accepting a temporary appointment shall be paid an amount which is not less than that employee's current regular pay. Compensation will be determined by the current pay scale for the appointed position.

8.4.3 Promotions/Transfers

It is the policy of the City of Dickinson to generally promote or transfer from within when such promotion or transfer is in the best interest of the city. The Civil Service Promotion/Transfer process as formally approved by the Civil Service Commission, will be used to fill all internally posted positions under Civil Service Authority. No changes shall be made to the Civil Service Promotion/Transfer process without a hearing before the Civil Service Commission. Notification of the hearing shall be posted in all occupied City buildings.

8.4.4 Re-employment of Persons Laid-off

Any person who is separated from service due to lay-off may within one year from the date of lay-off be rehired without loss of seniority and without a selection process if an opening occurs in the same or a similar position.

8.4.5 Recruitment Agencies

When recruitment agencies are used, following public advertisement, the City Administrator or his designee(s) will review the applications, set interviews and fill the positions as needed.

8.5 List of Eligible Persons

8.5.1 Composition

The list of eligible persons will contain seven names for all openings. The Civil Service Commission shall review and approve the Certified List of Eligible Persons (CLEP).

8.5.2 Duration

A new certified list of eligible persons shall be developed for every opening unless a hiring manager requests consideration of hiring an applicant on a list established within the preceding twelve months for the same position. In that case, the City Administrator or his designee may authorize hiring without need to advertise an opening.

9 Pre-Offer/Hint of Employment Prohibited

There shall be no offer or hint of employment, promotion or transfer with the city conferred to a current employee, an applicant or potential applicant before or during a selection process.

10 Requirement to Report to Work

If the applicant fails to report to work on the date agreed, it shall be deemed that the applicant has declined the offer of employment.

11 Employment of Relatives

The employment of immediate family members is prohibited where one immediate family member would supervise the other. The employment of immediate family members of the City Commission members is prohibited. If a relationship change causes one employee to be supervised by an immediate family member, one of the employees must resign or be laid-off. The resigning/laid-off employee may apply for any open position subject to section 29.08.04.060-8.4.4 Re-employment of Persons Laid-off.

11.1 Election of Immediate Family Member to City Commission Exception

In the case where a current employee is in a situation wherein an immediate family member is elected to the City Commission, that employee will not have his/her employment position challenged or placed in jeopardy under this rule.

11.2 Definition of Immediate Family Member

Immediate family is defined as: parents, spouse, children, siblings, grandparents and grandchildren through blood, marriage or adoption.

12 Probationary Period and Trial Period

12.1 Term of Probationary Period

Every employee hired by the City of Dickinson must complete a probationary period of not less than 90 days, for the purpose of assessing the individual's ability to perform the assigned duties. The probationary period may be extended past the six months limit upon approval of the City Administrator.

12.2 At-Will Employment Status

Probationary Employees are considered to have at-will employment status and therefore may be terminated if either the municipality or the employee feels this is the appropriate action. There is no notice required of either party for such termination.

12.3 Employee Benefits to Probationary Employees

Please refer to section 29.08.04.050 for probationary benefit information.

12.4 Trial Period

Transfers and promotions carry a trial period of up to 60 days. A trial period is not a probationary period.

During the trial period the supervisor or the employee receiving a transfer or promotion may choose to remove the employee from the new position. In this case, the employee will be permitted to return to his/her former position.

(Code 1958, § 9-21; Ord. No. 376; Ord. No. 1087 § 1; Ord. No. 1163 § 5; Ord. No. 1224 § 7; Ord. No. 1307 § 6; Ord. No. 1326 §1; Ord. No. 1330 §2; Ord. No. 1349 §1.)

Section 29.08.04070 Hours of Work

1 General Policy

It is the City Commission's intent to create a standard work week within which an employee is expected to perform municipal services. The City Commission also realizes that emergency and extenuating circumstances may arise in which an employee is required to work variable hours. Nothing within this policy is meant as a guarantee to the number of hours, either daily or weekly, that an employee may be required or allowed to work. However, it is the City Commission's policy that every employee be treated equally and fairly when expected to work odd or extended hours.

2 Standard Work Period

The standard work period for licensed police officers shall consist of 80 hours in any standard 14-day period. For all other employees, the standard work period shall consist of 40 hours during a seven day period between 12:00 a.m. Sunday and 11:59 p.m. Saturday.

The City has no established standard work day for all employees. Rather the standard work day for individual employees is set by departmental policy and procedure and may change from time to time depending on departmental need.

3 Emergency Call-Out and Special Schedule Time Pay

An employee called out to work or required to work according to a special schedule with less than 24 hours notice of the schedule change shall receive a minimum of one hour of pay at one and one-half times the employee's normal hourly wage. Any call-out and special schedule time worked in addition to the initial hour will be also paid at one and one-half times the employee's normal hourly wage.

4 On-Call Time

Certain departments, depending on the duty needs of the department may require employees to accept assignment to On-Call duties.

4.1 Pay, Restrictions and Allowances of On-Call

- (1) Employees on-call will be paid an on-call allowance as set by the City Commission for each week on-call.
- (2) Employees on-call will be subject to on-duty employee discipline if determined to have consumed alcohol or taken illegal drugs while serving on-call.
- (3) The on-call employee is responsible for making sure calls are covered.
- (4) Employees accepting positions that are subject to on-call requirements must be able to report to work within one-half hour of call under normal conditions at legal speed limits.

5 Flex Time

The Department Head may authorize flexible work hours within the applicable work week in situations where it is appropriate or necessary. Full-time employees must still adhere to their standard work week unless flex time or overtime has been approved by the Department Head. In all cases, the needs of the City will take first priority in determining flex time applications.

6 Overtime Compensation

Overtime compensation at 1 1/2 times normal hourly pay will be paid to non-exempt employees for time actually worked in excess of hours in a normal work day; time paid in excess of 80 hours paid at normal hourly rate in any standard 14 day work period for licensed police officers; hours paid in excess of 40 hours paid at normal hourly rate in the standard seven day work period for all other eligible employees. Overtime work must be approved by the employee's supervisor.

7 Compensation Time

Compensation Time is eliminated as City employment benefit as of December 31, 2013. Previously accrued compensation time shall be paid out to employees as of December 31, 2013. (Ord. No. 1533 § 2)

8 Exemptions to Overtime (Exempt Employees)

Department of Labor (DOL) Standards for Classifying Exempt Positions will be followed by the City.

The following employees are exempt from the overtime standards as mentioned in the above sections:

- 1) City Administrator, Public Works Director.
- 2) Department Heads, Assistant Department Heads and other employees if determined to be FLSA exempt.

All Other City employees are considered non-exempt for purposes of being eligible to earn overtime.

9 Attendance

All municipal employees are expected to be at work on time and during their regularly scheduled hours. Employees who are unable to report for work on time are required to notify the appropriate Department Head or his pre-established designee prior to their being late or absent, unless an emergency arises. In the case of an emergency situation, the employee is expected to notify the appropriate Department Head or his pre-established designee as soon as reasonably possible.

If an employee is absent more than three (3) consecutive days without proper notification, the employee will be considered to have voluntarily resigned their position.

Failure to observe the attendance regulations may result in disciplinary action.

10 Time Sheets

Each non-exempt employee's time sheet is a record of his/her regular hours worked, overtime worked, and vacation or sick leave used for the purpose of calculating and issuing pay checks. Every employee must sign his/her time sheet to verify that all entries are accurate. Intentional falsification of time sheets may result in disciplinary action.

11. Travel Pay

The City encourages employees to seek job related training that will improve their competency. For this reason, the City will pay straight time for hours spent at job related training requested by the employee and approved by the employee's supervisor up to eight hours for any day of training. If training occurs on the employee's normal day off, the employee may be provided the opportunity to rearrange time off that week, if possible.

The City will not pay for time spent traveling to or from job related training during non-scheduled work hours. When possible, supervisors may arrange for all or a portion of travel to occur during working hours. The supervisor may also reschedule work hours to accommodate

time spent traveling, when the nature of the travel requires the employee to travel on a normal day off.

12 Pay Situations Not Covered in this Section

Pay Situations not addressed in this section of this policy will be addressed on a case by case basis. Such decisions will serve as the basis for changes to this policy in the future. (Code 1958 § 9-22; Ord. No. 376; Ord. No. 721 § 1; Ord. No. 967 §§ 4, 5; Ord. No. 1053 §1; Ord. No. 1077 § 1; Ord. No. 1087 § 2; Ord. No. 1163 § 5; Ord. No. 1201, § 2; Ord. No. 1224, § 8.; Ord. No. 1307 § 8; Ord. No. 1308 § 1; Ord. No. 1339 § 1, Ord. No. 1533 §2.)

Section 29.08.04080 Compensation

1 Pay Plan - Preparation; amendment

1.1 The board of city commissioners shall be responsible for the development of a uniform and equitable pay plan which shall consist of minimum and maximum rates of pay for each class of positions and such intermediate steps as may be necessary and equitable. After the adoption of such plan no class shall be assigned a higher than maximum or lower than the minimum wage or salary provided for that grade, unless the schedule for the whole grade be amended.

1.2 When changes in responsibilities or work of positions, living costs, recruiting experience, prevailing rates of pay, the City's financial condition and policies or other pertinent conditions warrant such action, the board of city commissioners shall consider changes to such a plan and shall adopt any such changes as they deem necessary and advisable. Such amendments of the pay plan may be done at any time by the board of city commissioners without consultation with the civil service commission, other provisions of this policy notwithstanding.

2 Pay Plan - Administration

2.1 Appointment Rate.

The minimum rate of pay for a class shall normally be paid upon appointment to the position. Appointment rate above the minimum rate, however, may be paid if in the opinion of the City Administrator it is justified on the basis of exceptional qualifications of an eligible or lack of eligible candidates at the minimum rate. If a former employee is re-employed in a class or similar class in which he was previously employed, the City Administrator may make an appointment at the same rate of pay which the employee had been receiving at the termination of his services. Additionally, the City Administrator may, with the advice and consent of the Board of City Commissioners, establish a uniform system of signing bonuses for selected staff position, by class and grade.

2.2 Pay Increases

Adjustments to the salary and wage schedules shall be reviewed by the board of city commissioners at least annually, at or prior to the time of adoption of the budget for the following calendar year of the city. Any change to the salary and wage schedules shall be effected only by affirmative action of the board of city commissioners and such board shall prescribe in its action the effective date of such change. The City Administrator, based on recommendation of the Department Head, may withhold a salary or wage adjustments, if any, of an employee. This action may be appealed to the Board of City Commissioners.

2.3 Total Remuneration

2.3.1 Remuneration - Non-Exempt Employees

Any wage rate established for a non-exempt employee shall represent his/her basic pay rate. In addition to that rate, the employee shall be eligible to receive additional pay for hours in excess of the individual full-time employee's standard work day. In addition, the full-time employee shall be eligible to receive additional pay for hours worked in excess of 40 hours in any one week as described in Section 29.08.04.070-6.

EXCEPTION: Police employees working a 14 day pay period shall be eligible for overtime compensation to hours in excess of 80 in any one period.

2.3.2 Remuneration - Salaried Employees

Any salary rate established for exempt employees shall represent their total remuneration except for reimbursement of official travel, car allowances, and reimbursement for other allowable expenses, if applicable.

2.3.3 Prohibition on Remuneration From Outside Sources

Under no circumstances shall an employee of the City accept any reward, gift, or other form of remuneration in addition to allowable compensation as described in Sections 29.08.04.080-2.3.1 or 29.08.04.080-2.3.2 from any source other than the City for performance of their duties or based on the employee's position with the City.

2.4 Pay rates on Promotion

An employee will receive a pay increase upon promotion taking into account the pay they were receiving prior to promotion and the experience/education he/she brings to the classification into which he/she has been promoted.

2.5 Shift Differential Pay

Certain city departments are required to provide 24-hour service to the City. Accordingly, the City shall pay all non-exempt employees an additional "shift-differential" compensation of One Dollar (\$1.00) per hour, as follows:

Non-exempt sworn Police Department Personnel: for all regularly scheduled hours worked between 6:00 PM and 6:00 AM

Communications Specialists: for all regularly scheduled hours worked between 7:00 P.M. and 7:00 A.M.

Non-exempt Fire Department Personnel: for all regularly scheduled hours worked between 6:00 P.M. and 6:00 A.M.

Shift differential pay shall not be available for overtime or call out compensation. (Ord. No. 1536§ 1.)

3 Pay Period and Pay Day

The City will pay employees at least twice each month. If, for some reason, the City anticipates the need to enact a change to pay schedules or pay day, that alters the timing of such payments, the City shall provide employees with at least 90 days notice before enacting the change, except when such change is mandated by the State or Federal Government. In the event the payday falls on a Saturday, Sunday or holiday, checks will be distributed on the nearest workday preceding the payday.

4 Early Pay Checks

The City of Dickinson does not grant early pay checks to employees under any circumstances. If an employee is to be absent on pay day, and has chosen to not participate in the City's available direct deposit plan, it is his/her responsibility to ensure that his/her pay check is properly handled. Alternate arrangements must be made with the City Administrator, department head, or his/her designee prior to payday. Otherwise an employee's pay check shall be given to the employee at the earliest possible time upon his/her return.

5 Direct Deposit of Paychecks

Upon request of the employee, the City will make arrangements to direct deposit the employee's paychecks the bank account designated by the employee.

6 Payroll Deductions

The municipality is required to withhold Federal Income Tax, Social Security Taxes, Medicare Taxes, and North Dakota Income Tax from each employee's pay check.

Other deductions may include:

- 1) Employee designated deductions as permitted under the City's flexible benefits plan.
- 2) Deductions requested by the employee which have received prior approval for payroll deduction by the City Commission

7 Benefits

The following benefits are afforded according to individual employee classifications (see Section 29.08.04.050).

7.1 Health Insurance

This is a flex-plan benefit. Therefore if an employee chooses this benefit through submission of the annual flex plan election sheet, the City of Dickinson pays for 80% of Health Insurance costs for the coverage the employee requests, regardless whether said request is single, single parent with dependents, or family coverage. The extents and limitations of the policy are negotiated by the City and a private carrier and approved by the City Commission. The 20% portion of the coverage which the employee pays is deducted from the employee's paycheck as a pre-tax benefit.

Each member of the City's group health insurance plan will receive a copy of the health insurance policy.

7.2 Pension Plans

Upon hire, eligible employees will be enrolled in the appropriate pension plan. The City and the employee will contribute to a pension plan operated on the City's behalf by an administrator designated by the City or the City itself. Each regular full-time employee will receive a copy of their pension plan's Summary Plan Description (SPD).

7.3 Life Insurance

The City offers employees a \$60,000 group term life insurance policy with the City paying 50% of the single person policy and the employee paying the remaining 50%. Of the total policy amount, the first \$50,000 of coverage is pre-tax and the remaining premium is subject to payroll taxes. In addition to the single coverage, the employee may pick up dependent care coverage at the employee's cost. The dependent coverage has a face value of \$5,000 on the spouse and \$2,500 on each child.

7.4 Other Flexible Benefits

(1) Employee Paid Medical/Dental Expense Benefit Account

The City permits employees to have designated amounts of money deducted from each paycheck based on an employee designated annual amount on a pre-tax basis and placed in a medical/dental expense spending benefit account. The employee is permitted to withdraw money from this account on an as needed basis to pay medical/dental bills throughout the year up to the annual deduction amount. Each employee will receive a copy of this plan. For more detail, employees are encouraged to refer to the actual plan.

(2) Daycare Expenses Benefit Account

The City permits employees to have designated amounts of money deducted from each paycheck based on an employee designated annual amount on a pre-tax basis and placed in a daycare expense benefit account. The employee is permitted to withdraw money from this account on an as needed basis to pay daycare costs throughout the year up to the annual deduction amount.

(3) AFLAC Coverage

The City makes available to the employees coverage in plans of AFLAC insurance at the employee's cost. Employees indicating interest in participating in any of the AFLAC programs will have premium amounts deducted from their paychecks.

(4) U.S. Savings Bonds

The City permits the employees to have amounts deducted from their paychecks, which is then invested in U.S. Savings Bonds as designated by the employee.

(5) Employer Paid Medical Spending Account

Beginning January 1, 1997, the City makes available up to \$450 annually per employee on permanent status, who average at least 30 hours per week on an annual basis, as a separate plan from that described in the paragraph above. For more detail, employees are encouraged to refer to the actual plan.

7.5 Extended Health Benefits

7.5.1 COBRA Allowances

In compliance with COBRA (Consolidated Omnibus Budget Reconciliation Act) requirements, the City of Dickinson will offer continuing health care coverage on a self-pay basis to employees or their qualified beneficiaries following termination of employment (for reasons other than other than for gross misconduct), a reduction in hours, retirement, death, or change in familial status. These health benefits will be identical to the coverage offered to full time employees.

For terminated or reduced-hour employees, the coverage may last up to 18 months, (29 months for disabled employees or qualified beneficiaries if under Federal COBRA requirements), or until they become eligible for other health insurance coverage, whichever is earlier. In the event of the employee's retirement, divorce, separation or death, the coverage may last up to 36 months for a qualified beneficiary. The full policy monthly premium plus a 2% administration fee will be paid by the employee or the beneficiary to the City of Dickinson. The 2% administration fee may be waived by the City Commission. The employee or beneficiary may waive all rights to continuation coverage. Notification procedures and time limits are outlined in the continuation coverage "Notification of Rights" letter.

7.5.2 Special Benefits for Retirees

Any full-time City employee, who is at least 62 years old or who is at least 55 years old and has completed 25 years of service and retires from City employment is eligible for a benefit consisting of a subsidy of their actual monthly health insurance cost based on the type of benefit plan, either a single or family, the retiree carried at the time of retirement from the date of retirement until the retiree is eligible for federal Medicare. The benefit will consist of a

subsidy of 2% of the retiree's actual monthly health insurance cost for each full year of employment with the City to a maximum of 50% of the retiree's actual monthly health insurance cost. At no time will the monthly subsidy exceed the City's actual group premium cost for a comparable type of policy times the applicable percentage. If an employee covered by the City's group plan dies while employed by the City or a retiree covered by this subsection dies before attaining federal Medicare eligibility or becomes eligible for federal Medicare benefits, the person(s) covered under the employee's or retiree's health insurance benefit at the time of death or federal Medicare eligibility of the employee or retiree may continue to receive said benefit for the remainder of the employee's/retiree's benefit allowance period or three years or until that person(s) dies or becomes eligible for federal Medicare benefits whichever is less.

7.6 Employee Assistance Program (EAP)

7.6.1 Purpose

It is recognized that most people face personal difficulties at some point in their lives. Given this reality, the city of Dickinson EAP is committed to assisting employees with distress as a means of facilitating 1) a resolution of problems and 2) the maintenance of satisfactory job performance. For this reason, the City is offering all regular full-time employees access to an Employee Assistance Program, the use of which is described in this subsection.

In pursuing the above objective, the EAP can be used by employees to help prevent problems from hindering one's capacity to fulfill job requirements.

7.6.2 Use of the Program

Employees wishing to use this program may contact the EAP provider in accordance with the provisions of the program.

EAP may be used in one of two primary ways:

7.6.2.1 Confidential Use

An employee experiencing difficulties may, on his/her own initiative, seek information, guidance, or personal therapy. In this pursuit of assistance, the employee's confidentiality will be maintained.

The city of Dickinson EAP is a pre-paid benefit for regular Full-Time employees and their family members. If services are needed beyond the scope of the EAP, a recommendation to a preferred provider will be made. If this occurs and the employee accepts the referral, the employee will be financially responsible and may be able to use their health insurance based on approval of the insurer.

7.6.2.2 Employer Involvement

When an employee's job performance is determined to be unsatisfactory as a result of personal difficulties caused by on or off the job circumstances, the employee's supervisor has the option of encouraging the use of the EAP. In cases where there is a serious concern, as determined by the Department Head, about the employee's performance, the Supervisor can require participation in the EAP as part of an action plan. When the EAP is used in this manner, the city of Dickinson has the right to require the provider to provide:

*Notification of the employee's follow through for initial and subsequent appointments to the employee's Supervisor.

*Treatment recommendations to the employee's Supervisor.

*Treatment follow-through/completion to the employee's Supervisor.

The city of Dickinson EAP is a pre-paid benefit for regular Full-Time employees and their family members. If services are needed beyond the scope of the EAP, a recommendation to a preferred provider will be made. If this occurs and the employee accepts the referral, the employee will be financially responsible and may be able to use their health insurance based on approval of the insurer.

Further, if such an employee refuses the referral to the EAP as part of an action plan, the employee may be subject to disciplinary action in accordance with Section 29.08.04.110 of this manual.

8 Changes of Employee Status & Address

It is the employee's responsibility to inform the City Administrator or his designee of any changes in the employee's name, address, telephone number or change of withholding status. Employees are required to report any of the above changes immediately following the change. Failure to report or the intentional withholding of such information may result in disciplinary action.

8.1 Seasonal Employees (Request to not Withhold Taxes)

Employees who indicate on their W-4 form that they should not have any income taxes withheld from their paychecks must file a new W-4 form each year.

9 Travel and Reimbursement of Expenses

9.1 General Policy

It is the policy of the City of Dickinson that employees be fully reimbursed for necessary and reasonable job related travel expenses. Every effort will be made to treat all employees fairly and equally when granting reimbursements for travel expenditures.

9.2 Travel Approval Required

All in-state travel must be approved by the appropriate Department Head prior to travel except in emergency instances. All out-of-state travel must be approved by the appropriate Department Head and the City Administrator prior to the date of travel except in emergency instances. Only original approval is required for re-occurring meetings.

9.3 In-State Travel Expenses

Per diem rates for approved in-state travel are as follows:

(1) The state of North Dakota lodging rate as listed in NDCC 44-08-04 and any subsequent amendments thereto. Unless the hotel/motel providing lodging is unwilling, the City of Dickinson will be billed directly by the establishment for lodging costs. In the case where the employee is required to pay for lodging, said employee will be reimbursed through the accounts payable process following submission of a signed travel voucher. Receipts are required. In the case of extenuating circumstances, wherein the employee is unable to obtain lodging at the state rate, the City Administrator may approve lodging costs higher than the state rate.

(2) Per diem payment for meals at the current State Rate as listed in NDCC 44-08-04 and any subsequent amendments thereto. The City Administrator may approve reimbursements above the state rate when necessary.

Meals purchased within the City are not reimbursable unless included as part of conference or convention registration or meetings set by the City Administrator or City Commission which require attendance.

(3) Commercial transportation will be reimbursed based on receipts submitted, with the exception of taxi fares of \$10.00 or less.

9.4 Out-of-State Travel Expenses

Per diem rates for approved travel outside the state of North Dakota are as follows:

(1) Per diem lodging allowance shall consist of the actual cost of lodging expense.

(2) The per diem allowance for meals shall be:

Continental United States

The allowance for out-of-state meals, within the continental United States, is equal to the per diem meals rate in the city for which a claim is made on that day as established by rule for federal employees by the United States general services administration and must be allocated 20% to the first quarter, 30% to the second quarter, and 50% to the third quarter.

Canada, Alaska, and Hawaii

The allowance for meals in Canada, Alaska, and Hawaii may not exceed one and one-half time the current continental United States standard rate for federal employees established by the United States general services administration.

Outside Continental United States, Canada, Alaska, and Hawaii

The allowance for meals outside the continental United States, Canada, Alaska, and Hawaii may not exceed two time the current continental United States standard rate for federal employees established by the United States general services administration.

9.5 Meal Reimbursements - Schedule for Computation

The times for allowance of paid meals is as follows:

(1) First Quarter is from 6:00 a.m. to 12:00 noon. First quarter reimbursement may not be made if travel began after 7:00 a.m.

(2) Second Quarter is from 12:00 noon to 6:00 p.m. Second quarter reimbursement may not be made if travel began after 1:00 p.m.

(3) Third Quarter is from 6:00 p.m. to 12:00 midnight.

9.6 Receipts Required

Receipts shall be required for all non-per diem expenses which are to be reimbursed by the City of Dickinson. EXCEPTION: Necessary taxi fares under \$10.00 do not require a receipt.

9.7 Mileage and Air Travel Reimbursement Rate

When employees must use their private vehicles for approved travel, mileage shall be paid at the current state rate or other rate approved by the City Commission.

If reimbursement is properly authorized, passenger reimbursement must be paid on a per-mile basis as provided in this subsection.

In order to be reimbursed for on the job mileage, the employee must submit a travel voucher showing date of travel, odometer readings at beginning and end of trip, miles driven, destination, and purpose of the travel.

Miles driven to and from the workplace are not eligible for reimbursement.

Those eligible to receive a car allowance, as described in Section 29.08.04.080-12 may choose instead to be reimbursed for actual miles driven rather than receive a car allowance or City vehicle. If the eligible employee chooses actual mileage reimbursement, miles driven during their normal work day will be considered business related. Therefore, these employees must complete mileage data forms which show, date, beginning odometer reading for day and ending odometer reading, actual miles driven, and general description of travel for day. Miles driven out of the Dickinson area or during non-work hours for City business must have specific information per trip as described in this subsection.

9.8 Travel Cost Advances

When an employee is required to travel by plane or will be traveling for a period exceeding one day may receive, upon request, an advance of 80% of estimated travel costs plus per diem. Upon submission of travel reimbursement request, the actual reimbursement will be adjusted based on the amount that was advanced to the employee.

9.9 Timing of Reimbursements

Employees will be reimbursed for travel and other reimbursable expenses within two weeks of submission of receipts and reimbursement voucher.

10 Clothing Allowance

10.1 Uniformed Police Officers and Fire Department Personnel

Due to the fact that the City requires Uniformed Police Officers and Fire Department Personnel to wear Department designated uniforms while on duty, the City will pay the cost of cleaning and replacement of said uniforms as approved by the department head.

11 Longevity Pay

11.1 Description of Benefit

Each Regular Full-time employee, as defined in Section 29.08.04.050-1.2, who has been employed with the City for a period of five consecutive years or more shall be considered qualified and shall receive, in addition to his regular pay, a longevity payment. An employee who leaves his employment in good standing as determined by the governing body and who has completed fifteen years of service shall be entitled to percentage pay-out of his longevity pay based on the percentage of calendar year completed at the time of termination.

11.2 Rate

Each qualified employee shall receive a longevity payment each year, for each month's service completed, computed as follows:

One through ten years of service	\$3.00/month
Eleven through twenty years of service	\$3.50/month
Twenty-one years and over service	\$4.00/month

11.3 Time of Payment

Payments shall be made on or about December 15 of each year. No early payment will be made except as authorized in Subsection 29.08.04.080-11.1.

11.4 Withholding of Payment

Upon a finding that an employee(s) is not in good standing, the board of City Commissioners may withhold or not authorize longevity payment to any one, several, or all

employees. In this case the employee(s) affected will be notified of the reason for non-payment.

12 Car Allowance or City Vehicle

The City Administrator, department heads, and others so designated by the City Commission may elect to be paid a monthly allowance for operation of their private vehicles for official business within the City limits and jurisdiction, for normal day to day business mileage in the vicinity of Dickinson. The amount of the car allowance will be set by the City Commission and may be adjusted from time to time. The car allowance will be paid without need of the recipient to justify miles. Hence, if requested said allowance will be treated as regular wages of the recipient with appropriate payroll taxes deducted.

As an alternative to a car allowance, the City will consider requests by employees, who demonstrate need to receive a designated City vehicle supplied by the City.

13 Workers' Compensation

The City of Dickinson purchases Worker's Compensation covered from the state of North Dakota which is designed to protect employees against medical costs and salary loss as a result of injuries while on the job. The municipality pays the contribution cost for this coverage.

14 Special Benefit to Retiring Police Officers

Retiring, full time, sworn police officers, who meet the requirements listed in this subsection will receive their service weapon as part of the service award recognition process upon retirement.

In order to be eligible to receive their service weapon, the retiring officer must:

- (1) have completed a minimum of 20 years of service with the Police Department, and
- (2) be terminating employment with the Police Department under favorable conditions, and
- (3) that the appropriate Federal Firearms paperwork identifying the owner of the weapon is completed prior to actually receiving the weapon.

For purposes of this subsection, leaving under unfavorable conditions means:

- (1) that the City is terminating employment for cause for violation of policy, procedure or law, or
- (2) termination is for medical reasons of a psychological nature.

15 Sick Leave Bank

15.1 Purpose

The purpose of the Sick Leave Bank (SLB) is to provide sick leave to participating employees who have suffered an unplanned, non-work-related personal illness, injury, disability or quarantine and whose accumulated leave is exhausted and, more specifically, to provide a last resort source of leave in cases of catastrophic illnesses.

15.2 Sick Leave Bank Committee (SLBC)

The Sick Leave Bank Committee (SLBC) will be a co-designation of the Human Resources Committee established by ordinance for the purpose of reviewing and recommending changes to the Human Resources Manual as described the Civil Service portion of the Dickinson Municipal Code.

15.3 Membership And Eligibility

15.3.1 Employees whose employment status is either Regular Full-time and Regular Part-time at the time the Human Resources Manual receives initial final approval will have a one-time opportunity during the initial enrollment period to become members of the city of Dickinson SLB.

15.3.2 New hires and employees on probation at the time the Human Resources Manual receives initial final approval will have thirty (30) calendar days in which to join the bank upon completion of their probationary period.

15.3.3 Donations of sick leave to the SLB are non-refundable, except in the event of the termination of the SLB. In the event the SLB is terminated, the total number of hours on deposit shall be returned proportionately to the then participating members and credited to their sick leave accumulation.

15.3.4 Employees participating in the SLB may cancel their participation in the SLB at any time, by submitting written notice of cancellation to the City Administrator or his designee. Membership withdrawal, as well as termination of employment, shall result in forfeiture of all hours contributed.

15.3.5 A member shall lose the right to obtain the benefits of the SLB by:

1. termination of employment, including resignation, involuntary termination, and retirement;
2. cancellation of participation;
3. refusal to honor such assessment as may be required by the SLB;
4. refusal to comply with the policies and procedures of the SLBC; or
5. determination of permanent disability by the Social Security

Administration (SSA).

15.3.6 Employees who have an ongoing catastrophic or terminal illness prior to the date of initial adoption of the Human Resources Manual are eligible to apply to the SLBC for coverage under Section 29.08.04.080-15.4.4.

15.3.7 An SLB grant shall only be used by the individual member for his/her personal catastrophic or terminal illness or injury or, with prior review and approval of the SLBC, for absences due to illnesses of members of the individual member's immediate family as defined in the Human Resource Manual.

15.3.8 Participation in the SLB is voluntary, but requires an initial contribution to the SLB and subsequent contributions as assessed in accordance with this policy. Only contributors will be allowed to receive grants from the SLB with the exception of specific grants of leave through the SLB as described in this policy.

15.3.9 Persons off work due to a normal pregnancy and delivery shall not be eligible to receive an SLB grant.

15.3.10 The SLB shall not be used by a SLB member disabled by an injury covered by Worker's Compensation.

15.3.11 The existence of the SLB and participation by an employee does not negate or eliminate any other sick leave policies of the City, nor does it in any way negate the rights of an individual who participates in the SLB to any other sick leave benefits.

15.4. Sick Leave Bank Contributions

15.4.1 A 16 hour (two day) sick leave assessment shall occur when a Regular Full-Time employee joins the SLB. The required initial sick leave assessment will be pro-rated for Regular Part-Time employees to the average number of hours that employee works, similar to the standards set for accrual benefits described in Section 29.08.04.080 of this manual. If an employee joins the SLB but for some reason has exhausted all sick leave and has no sick leave to contribute, the employee shall contribute the initial assessment and any following assessment as determined

necessary by the SLBC as soon he/she has accrued the assessment amount. Continued use of accrued sick leave and thereby continued inability to contribute will be considered an action that must be reviewed by the SLBC to determine whether the employee's actions constitute a cancellation of participation. Eligibility for benefits from the SLB shall be suspended until the employee has contributed required sick leave.

An employee drawing SLB benefits shall not be required to contribute any assessment or make back payments for assessments required while that person was drawing SLB benefits.

15.4.2 Upon initial adoption of the Human Resources Manual, the City shall contribute 800 hours (100 days) to the SLB. The Board of City Commissioners may be requested by the SLBC to contribute additional time as necessary at future dates to keep the plan solvent depending on the number of employees receiving benefits following adoption of the plan.

15.4.3 All members of the SLB, who are Regular Full-Time Employees shall be assessed eight hours of sick leave any time the SLBC determines it is necessary to require such assessment. This assessment will be pro-rated for members, who are Regular Part-time employees based on the average number of hours that employee worked per week for the year prior to the assessment.

15.4.4 Active employees (members or nonmembers of the SLB) may directly donate their accrued sick leave via the SLB in eight (8) hour increments to specific employee(s) who have used up all of their sick leave, annual leave, personal leave, holidays, and SLB benefits. Donated leave will be forwarded to the benefited employee based on the actual hours used each pay period. Any unused donated leave will remain in the SLB.

15.4.5 Any employee who is rehired within one year of being laid off, who was a member of the sick leave bank prior to lay-off, will not be required to again make an initial time donation to the SLB in order to be a member. Likewise, any employee who is laid off and rehired within one year, who was not a member of the SLB prior to the lay-off will be ineligible to become a member upon rehire.

15.5 Sick Leave Bank Usage

15.5.1 Prior to being eligible to draw any hours from the SLB, members shall be required to exhaust all accrued sick leave, vacation leave, personal leave, and holidays.

15.5.2 With the exception of specific grants of sick leave as described in Section 29.08.04.080-15.4.4, any employee requesting an SLB grant must be a member of the SLB.

15.5.3 SLB members shall not be eligible to receive SLB benefits until the employee has been off work for at least 20 working days, unless the employee or his/her representative provides adequate evidence to the City Administrator or his designee that recent past major illness(es) have made it impossible to accumulate sufficient accruals to cover the 20 working day requirement.

15.5.4 Member employees may donate leave to specific employees with ongoing catastrophic or terminal illnesses when the employee, who will benefit from the specific donation has exhausted all accrued leave, holidays, and SLB benefits as determined by the SLBC.

15.5.5 Member employees may make general donations of leave to the SLB that is not directed to any specific employee whenever an employee so desires.

15.5.6 The SLBC reserves the right to set a limit on the amount of leave any individual employee may grant at any one time to a specific employee with ongoing catastrophic or terminal illnesses, in order to insure that no more than 160 donated sick leave hours are on the books for any one Regular Full-Time Employee at one time. Likewise, the maximum hours of donated sick leave carried on the books at any one time for a Regular Part-time Employee will not exceed the equivalent of four weeks at the average number of hours said employee worked for the year prior to receiving SLB or donated sick leave hours. There is no maximum number of donated hours that an employee may receive through successive donations.

However, should donations of time fall below that needed to maintain the recipient employee on full-time status, said employee will lose that status.

15.5.7 While receiving SLB benefits or a specific donation of leave, an employee shall not accrue any sick leave or vacation leave, nor will the employee be eligible to receive compensation for an holidays.

15.5.8 Not more than 240 hours (30 working days) shall be granted in any one grant even though an individual may be eligible to receive multiple grants up to a total of 720 hours (90 working days). Applicants may submit requests for a SLB grant(s) or extensions of a SLB grant(s) before the prior grant(s) or other requirements of this policy have expired.

15.5.9 Regular Part-Time Employees will be eligible to receive SLB benefits prorated to the average number of hours they work, similar to accrual benefits described in Section 29.08.04.080 of this manual.

15.6 Procedures

15.6.1 Any employee desiring to may a specific donation of leave to another employee must indicate such interest on a completed, signed City Leave Donation Form.

15.6.2 Sick Leave Bank Committee Responsibilities

15.6.2.1 The SLBC shall be wholly responsible for the proper administration of the SLB, the maintenance of sick leave hours in the SLB, the promotion of enrollment in or donations to the SLB, and the submission to the SLB members of the annual report on the status of the SLB.

15.6.2.2 The SLBC shall approve all grants and specific donations before they are forwarded to the City for payment through payroll.

15.6.2.3 The SLBC will only consider whether an application for a SLB grant will be granted after applicant has provided all information necessary to determine whether member has been subjected to a catastrophic illness or injury.

15.6.2.4 All decisions of the SLBC may be reconsidered by the SLBC not less than 30 days following a decision. In addition, all decisions of the SLBC may be appealed in accordance with the procedure described in Section 29.08.04.120 of this manual.

15.7 SLB Grants

15.7.1 All requests for grants from the SLB shall be made on a City Sick Leave Bank Withdrawal Form.

15.7.2 All requests for grants from the SLB must be accompanied by a confirmation from the City attesting to the requester’s disability status, based on a physician’s statement of catastrophic illness or injury and the amount of available leave the employee has on the books at the time of the application for a grant.

15.7.3 Grants denied by the SLBC may be re-submitted thirty (30) days from the date of denial.

15.8 Maintenance and Reporting of Sick Leave Bank Records

15.8.1 The City Administrator or his designee shall maintain the records of all applications for donations, applications for withdrawal grants, and all cancellations.

15.8.2 The City Administrator or his designee shall maintain records of all SLB participants as well as their contributions and successful withdrawal grants, and the status of the SLB.

15.8.3 The City Administrator or his designee shall provide information to the SLBC about applications for grants at the time an application is being considered. All SLBC members shall submit upon election to the SLBC a written statement that all information obtained in regard to employees shall be kept confidential and shall be used only for the reason of making appropriate grant decisions as a member of the SLBC.

15.8.4 If a SLB grant recipient does not use all of the hours granted from the SLB, the unused hours shall remain in the SLB.

15.8.5 All appropriate SLB forms are available from the City Administrator or his designee.

City Administrator or his designee will annually distribute an administrative report reflective of SLB activity.

(Ord. No. 376; Ord. No. 967, § 6; Ord. No. 1163, § 5; Ord. No. 1201, § 3; Ord. No. 1224, § 9; Ord. 1242 § 1; Ord. No. 1307 § 10; Ord. No. 1308 § 2 & 3 Ord. No. 1395 § 1, Ord. No. 1533 § 3-4)

Section 29.08.04090 Leaves of Absence

1 General Policy

Leaves of absence are considered a benefit and privilege offered by the City of Dickinson. Leaves are not granted automatically, but are to be requested by the employee. Every effort will be made to ensure that all employees are treated equally and fairly. In some instances it may not be possible to grant all leaves requested during busy times or emergency situations, however every effort will be made to grant requests.

Employees anticipating a leave of absence are encouraged to apply for such leave as early as possible prior to taking leave. Five days prior notice is required in the case of leaves extending more than one day.

2 Vacation Leave

2.1 Benefits for Regular Full Time Employees

Paid vacation leave will be granted to all qualified employees (Section 29.08.04.050). Vacation leave for Regular Full-Time Employees will accrue at a rate according to an employee's tenure with the City based on the following schedule:

Employment Year	Monthly Accrual (in hours)	Annual Accrual (in hours)	Annual Accrual in Days/Year
1 - 5	8.00	96.0	12

6 - 9	9.33	112.0	14
10 -13	12.00	144.0	18
14 -17	14.00	168.0	21
18 - 21	15.33	184.0	23
22 & over	16.00	192.0	24

Additionally, at the discretion of the City Administrator and with the concurrence of the Board of City Commissioners, the City may grant additional vacation days to certain executive level employees upon their hire to such executive level position. Such additional vacation days shall be granted irrespective of the vacation accrual schedule set forth in this section, and shall be granted only as an additional inducement to employment in such position.

2.2 Benefits for Regular Part Time Employees

For Regular Part-time Employees, vacation accruals during the initial year of employment will be based on the estimated weekly hours the employee was hired to work. The average hours worked in a week will be compared to the 40 hours worked by a full-time employee and a percentage of benefit will be determined from that comparison. After the first year, the average annual hours will be based on average weekly hours based on the actual average weekly hours the employee worked in the previous year.

Allocation of Accruals and Benefits for Regular Part-time Employees:

Qualifying Hours	Percent of Benefit
Average Weekly Hours > 20	50% of Full Benefit
Average Weekly Hours > 24	60% of Full Benefit
Average Weekly Hours > 28	70% of Full Benefit
Average Weekly Hours > 32	80% of Full Benefit
Average Weekly Hours > 36	90% of Full Benefit

2.3 Suspension of Accrual for Employees on Leave of Absence without Pay

Employees on leaves of absence without pay or suspensions without pay who are absent for more than a full pay period do not accrue vacation leave benefits.

EXCEPTION: Employees on Family Medical Leave Act (FMLA) leave.

2.4 Accrual and Availability of Vacation Leave

An employee's accrued vacation leave shall be available for the employee's use in the month following such accrual.

2.5 Rules and Allowances of Vacation Accrual Carry-over

Employees are permitted to accumulate unused vacation hours year to, however any hours on an employee's record in excess of 240 at year end in any given year are lost. It is the employee's responsibility to ensure that hours are used on a timely basis according to this Section.

EXCEPTION: If, due to operating limitations, a department head determines that it is in the City's best interest to deny a hourly employee(s) already requested leave or the ability to request vacation leave and by denying such it is understood that the hourly employee(s) will not have the opportunity to reschedule an alternative leave time and

therefore lose vacation hours at year end, the department head may request in writing to the City Administrator that the hourly employee(s) should be permitted to carry-over the vacation leave, that would otherwise be lost, into the next year. If the City Administrator agrees with this recommendation, he/she will issue permission for the hourly employee to carry-over said vacation leave into the next year. If the City Administrator disagrees with the recommendation, the hourly employee will be permitted to take vacation leave as originally requested. This allowance does not pertain to leave requested or intended to be requested near the end of the year based on the limitation in Section 29.08.04.090-2.8.

2.6 Benefit Pay-out to Terminating Employees

Upon termination of employment, an employee will be paid for any accrued but unused vacation time at the time of separation. Reimbursement for vacation leave will be at the employee's rate of pay on their last day of employment.

2.7 Allowance for Employees on Vacation on a Recognized Holiday

When an employee's vacation time falls on a holiday, such time will not to be subtracted from an employee's vacation leave balance.

2.8 Rules for Submission of Vacation Leave Request

2.8.1 Prior Notice of Leave Required

Vacation leave must be scheduled with the appropriate Department Head at the earliest possible time prior to the vacation leave requested. All employees requesting vacation leave shall complete a Request for Leave form and submit same with their request. Unless the employee can show extenuating circumstances, five days prior notice is required for vacation leave extending more than one day.

EXCEPTION TO FIVE DAY NOTICE REQUIREMENT: The City recognizes that extenuating circumstances may present themselves wherein the employee is not able to provide the normal notice. In this case, the Department Head may approve an exception to the five day notice requirement.

2.8.2 Right of City to Deny Request for Leave

The City of Dickinson reserves the right, to disapprove requested time for vacation leave for the purposes of maintaining the work force during heavy scheduled work periods. In the case where a denial of vacation leave would cause an employee to lose vacation leave at year end due to vacation accrual carry-over rules, refer to Section 29.08.04.090-2.5. In normal operating situations, the City of Dickinson will make every effort possible to accommodate employee requests for vacation time off.

2.8.3 Limitations on Ability to Have Leave Request Approved

Vacation leave will be granted on a first come first serve basis, based on operational needs. If the appropriate department head can anticipate the need to limit vacation leave to all but a certain number of employees during the last two months of the year, he/she is required to inform the employees of this situation and clearly establish and notify his/her employees in writing how many employees will be permitted to take said leave during those months by September 1 of the year. The exception to Section 29.08.04.090-2.5 will not apply to employees who are notified of a year end leave allowance limitation.

2.9 Minimum Charge to Vacation Leave

The minimum amount that may be charged to an employee's vacation leave is 15 minutes per leave period.

3 Sick Leave

3.1 Benefits for Regular Full Time Employees

Employees who are eligible for full benefits (see Section 29.08.04.050) shall accrue sick leave at a rate of eight (8) hours of sick leave per month.

3.2 Benefits for Regular Part Time Employees

For Regular Part-time Employees, sick leave accruals during the initial year of employment will be based on the estimated weekly hours the employee was hired to work. No sick leave will be accrued during the probationary period as described in Section 29.08.04.090-3.4. The average hours worked in a week will be compared to the 40 hours worked by a full-time employee and a percentage of benefit will be determined from that comparison. After the first year, the average annual hours will be based on average weekly hours based on the actual average weekly hours the employee worked in the previous year.

Allocation of Accruals and Benefits for Regular Part-time Employees:

Qualifying Hours	Percent of Full Benefit
Average Weekly Hours > 20	50% of Full Benefit
Average Weekly Hours > 24	60% of Full Benefit
Average Weekly Hours > 28	70% of Full Benefit
Average Weekly Hours > 32	80% of Full Benefit
Average Weekly Hours > 36	90% of Full Benefit

3.3 Suspension of Accrual for Employees on Leave of Absence Without Pay

Employees on leaves of absence without pay or suspensions without pay who are absent for a full pay period do not accrue sick leave benefits. EXCEPTION: Family Medical Leave Act (FMLA) leave.

3.4 Accrual and Availability of Sick Leave

An employee's accrued sick leave shall be available for the employee's use in the month following such accrual.

3.5 Rules and Allowances of Sick Leave Carry-over

Sick leave benefits not used during the calendar year in which they are earned may be carried over and used during the succeeding calendar years. There is no limit to the number of sick leave hours employees may accumulate.

3.6 Sick Leave Rate of Pay

Sick leave benefits shall be paid to non-terminating employees at the employee's regular rate of pay at the time the leave is taken. The minimum charge to sick leave is one hour per leave period. In the case of accumulated sick leave paid to a terminating employee, refer to Section 29.08.04.090-3.10.

3.7 Rules for Reporting Off Work Due to Sickness

An employee absent from work due to illness or disability shall notify their Department Head or his designee before scheduled to work, or as soon as reasonably possible if an emergency situation exists, and indicate the nature of the illness or disability and the expected length of absence. Failure to report an illness in a timely manner may be cause to consider the absence as unauthorized and without pay.

Use of Sick Leave is allowed only for:

1. Personal illness, injury or medical care appointments.
2. To care for an immediate family member when medical care is necessary. Immediate family members are those persons listed in Section 29.08.04090-3.13.
3. As Funeral or Personal Leave as described in Section 29.08.04090-

3.13.

When abuse is suspected as defined in Section 29.08.04090-3.9, the City Administrator or appropriate Department head may require a medical doctor's written statement to verify that a legitimate illness exists. A medical doctor's written statement will be required for any absence lasting more than four consecutive days.

3.8 Minimum charge to Sick Leave

The minimum amount that may be charged to an employee's sick leave accrual is 15 minutes per leave period.

3.9 Rules Affecting Abuse of Sick Leave

Use of sick leave benefits is permitted for the reasons listed in 29.08.04090-3.7. Sick leave benefits are intended to protect an employee's earnings in the event of an illness, injury or authorized event. Abuse of sick leave benefits will not be tolerated and may prevent an employee from receiving pay increases or lead to disciplinary action.

3.10 Benefit Pay-Out to Terminating Employee

It is the policy of the City of Dickinson that upon termination of employment employees shall be eligible for the payment of accrued sick leave at the rate of 1/4 of the employee's hourly wage at the time of separation for each hour of accrued sick leave.

3.11 Benefits Available to Employee Claiming On-the-Job Injury

The ultimate goal for the City is a no lost time rule, which means when feasible as determined by the City, the City will make accommodations for workers injured on the job making it possible for them to work while injured. It is possible the work assignment will be different from the employee's normal job assignment. During such assignment, the employee will be compensated at his/her normal rate of pay. However, if a Workers Compensation claim is approved for an on the job injury, which includes time lost from work and the employee had any hours charged to their accrued sick leave balance for the period before the claim was approved, the leave charged will be credited back to the employee's sick leave accrual balance for the time covered by the Workers Compensation benefits for the initial period. An employee off work due to a Workers Compensation claim may choose to turn all Workers Compensation payments over to the City. In this case sick leave will be charged to the employee's sick leave accrual balance to augment Workers Compensation payments to equal the employee's normal gross pay.

If an employee on Workers Compensation leave elects to keep any of their payments from Workforce Safety and Insurance, said employee will be required to retain all pay from Workers Compensation and pay to the City, in cash, employee paid benefits as requested by the City.

3.12 Advancement of Sick Leave Accrual for Illness or Temporary Disability.
REPEALED WITH ORDINANCE NO. 1339 § 6. (May 7, 2007)

3.13 Funeral / Personal Leave

A qualified municipal employee(s) may use accrued sick leave for funeral / allowable personal leave. Allowances and limitations on these use of sick leave are:

(1) Death in the immediate family.

Immediate family is defined as an employee's spouse, parents, step-parents, children, step-children, brothers, sisters, step-brothers, step-sisters, grandparents, grandchildren and great grandchildren. The term also includes a spouse's equivalent of the above.

(2) Personal Leave

Employees are permitted to take up to two (2) unexplained days of leave per calendar year and charge such time off against their sick leave accrual.

(Ord. No. 1533 § 4)

4 Natural or Man-made Events

Employees who are not needed to address or mitigate a natural or man-made event may be sent home or directed to not report to work. Employees directed not to work during such an event may request leave depending on their accrued balances.

5. Family and Medical Leave (FMLA) Benefits

The City complies with the U.S. Family and Medical Leave Act, and it's implementing regulations, as may be amended from time to time. This policy is intended to provide employees with a general description of rights and obligations under FMLA. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law.

A. General Provisions

The City shall grant to employees up to 12 weeks of leave (or up to 26 weeks of military caregiver leave for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid, or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

Employees who are on approved FMLA leave may not engage in any form of self-employment or perform work for any other employer during that leave, except when the leave is for military or public service or when the employment has been approved by the City Administrator, or his designee, under the City's policy regarding Conflicts of Interest – Considerations of Outside Employment and/or Business Dealings and the employee's reason for leave does not preclude the outside employment.

(Ord. No. 1557 § 1)

B. Eligibility

To qualify for FMLA leave, the employee must meet all of the following conditions:

(1) The employee must have worked for the City for 12 months. The 12 months need not have been consecutive. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not be counted unless the break in service is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement outlining the City's intention to rehire the employee after the break in service;

(2) The employee must have worked for the City at least 1,250 hours during the 12-month period immediately before the date when the leave is requested. Time spent on paid or unpaid leave is not counted as hours worked.

C. Type of Leave Covered

To qualify for FMLA leave, the employee must be taking leave for one of the following reasons:

(1) The birth of a child and to care for that child, or placement of a child with the employee for adoption or foster care and to care for the newly placed child;

(2) To care for a spouse, son, daughter, or parent who has a serious health condition (as defined in FMLA and its implementing regulations);

(3) For a serious health condition (as defined in FMLA and its implementing regulations) that makes the employee unable to perform the essential functions of his or her job; or

(4) For any qualifying exigency arising out of the fact that a spouse, son, daughter, or parent is a military member on covered active duty or call to covered active duty status.

A serious health condition is defined by FMLA and its implementing regulations as:

(1) a condition that requires an overnight stay in a hospital, hospice, or other residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care;

(2) a condition that incapacitates the employee or a family member for more than three consecutive full calendar days and any subsequent treatment or a period of incapacity relating to the same condition that also involves: (a) treatment two or more times within 30 days of the first day of incapacity (unless extenuating circumstances exist) by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider; or (b) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider. The first (or only) treatment by a health care provider must be an in-person visit and take place within seven days of the first day of incapacity. A “regimen of continuing treatment” includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition.

(3) any period of incapacity due to pregnancy or prenatal care;

(4) any period of incapacity or treatment for such incapacity due to a chronic serious health condition that requires periodic visits at least twice per year to a health care provider, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity;

(5) a period of incapacity that is permanent or long-term due to a condition for

which treatment may not be effective, but requires continuing supervision of a health care provider;

(6) any period of absence to receive multiple treatments by a health care

provider for (a) restorative surgery after an accident or other injury or (b) a condition that would likely result in a period of incapacity of more than three consecutive full calendar days without the treatments.

Employees with questions about what conditions are covered under this FMLA policy or under the City's sick leave policy are encouraged to consult with the City's Human Resources Coordinator.

If an employee takes paid sick leave for a condition that progresses into a serious health condition, and the employee requests unpaid leave as provided under this policy, the City may designate all or some portion of related leave taken as leave under this FMLA policy, to the extent that the earlier leave meets the necessary qualifications.

D. FMLA Qualifying Leave for Families of Members of the National Guard or Reserves

The City shall follow the requirements of FMLA and the Uniformed Services Employment and Reemployment Rights Act (USERRA), and their respective implementing regulations, with respect to qualifying exigency leave for families of members of the National Guard or Reserves.

E. Amount of Leave

An eligible employee can take up to 12 weeks of FMLA qualifying leave under this policy (and up to 26 weeks of FMLA qualifying military care giver leave) during any 12-month period. The 12-month period is measured as a rolling 12-month period, measured backward from the date on which the employees uses any FMLA leave under this policy. Each time the employee takes qualifying FMLA, the City shall compute the amount of FMLA leave the employee has taken in the previous 12 months and subtract it from the 12 weeks of available

FMLA leave. The balance remaining is the amount of FMLA leave that the employee is entitled to take at that time.

If a husband and wife both work for the City, and each wishes to take FMLA leave for the birth of a child, adoption or placement of a child in foster care, or to care for any parent (but not a "parent-in-law") with a serious health condition, the husband and wife may only take a combined 12 weeks of FMLA leave (or a combined 26 weeks of qualifying FMLA leave to care for a covered injured or ill service member).

F. Employee Status and Benefits During Leave

While an employee is on qualifying FMLA leave, the City will continue the employee's health insurance benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

Under current City policy, the employee pays a portion of the health care premium. While on paid leave, the employer will continue to make payroll deductions to collect the employee's portion of the premium. While on unpaid leave, the employee must make this payment to the City, either in person or by mail. The payment must be received in the Finance Department by the 5th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be discontinued for the duration of the leave. The City shall provide at least 15 days' notice prior to the employee's loss of coverage.

If the employee contributes to other employer-sponsored employment benefits (such as life insurance or supplemental insurance), the City will continue to make payroll deductions for such benefits while the employee is on paid leave. While on unpaid leave, the employee may elect to maintain such benefits and pay the employee's portion of the premiums. The payment must be received in the Finance Department by the 5th day of each month. If such payment is not received, the employee shall be deemed to have elected to terminate participation in such employer-sponsored employment benefits.

G. Employee Status After Leave

An employee who takes qualifying FMLA leave may be asked to provide a fitness for duty clearance from a health care provider prior to returning to work. The City may also require a fitness for duty certification up to once every 30 days for an employee taking intermittent or reduced schedule FMLA leave if reasonable safety concerns exist regarding the employee's ability to perform his or her duties based on the condition for which leave was taken.

Generally, an employee who takes qualifying FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits, or other employment terms. Pursuant to FMLA regulations, the City may choose to exempt certain key employees from this requirement and not return them to the same or a similar position.

H. Use of Paid and Unpaid Leave

An employee who is taking FMLA leave must use all accrued leave time (whether vacation leave, sick, leave, personal leave, or otherwise) prior to being eligible for unpaid leave. Use of such accrued leave time shall run concurrently with qualifying FMLA leave.

I. Intermittent Leave or a Reduced Work Schedule

An employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks for qualifying military care giver leave) over a 12 month period.

In instances where the FMLA leave is foreseeable (including recovery from an employee's serious health condition, the serious health condition of a family member, or to care for a child after birth or placement for adoption or foster care) the City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule.

For the birth, adoption or foster care placement of a child, the City and the employee must mutually agree to the intermittent or reduced schedule prior to the

employee taking FMLA leave. Leave for the birth, adoption or foster care placement of a child, must be taken within one year of such birth, adoption, or foster care placement.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should attempt to reach agreement with the City prior to taking intermittent leave or a reduced hour schedule. If this is not possible, the employee must prove that such intermittent leave or reduced hour schedule is medically necessary.

J. Certification of Serious Health Condition

Pursuant to FMLA implementing regulations, the City will require certification of an employee's serious health condition or the serious health condition of an employee's family member. The employee must respond to such a request within 15 days or provide a reasonable explanation for the delay. Failure to provide certification may result in denial of continuation of leave. The City may ask for a second opinion or third opinion of a medical professional if the City has reason to doubt the certification given. The City may request recertification of a serious health condition, but no more frequently than once every 30 days. Such certifications, recertifications, and additional opinions are governed by FMLA implementing regulations, and the City shall follow such implementing regulations.

K. Procedure for Requesting FMLA Leave

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Coordinator. The HR Coordinator shall notify the employee of his or her eligibility to take leave, and inform the employee of his or her rights and responsibilities under the FMLA. Absent extenuating circumstances, the City shall notify the employee of whether the employee is eligible to take FMLA leave within five business days of the employee requesting leave or the employer learning that an employee's leave may be for a FMLA-qualifying reason. If the City determines that the employee is not eligible for FMLA leave, the City shall provide the employee with the reason why the employee is ineligible.

When the need for FMLA leave is foreseeable, the employee must provide the City with at least 30 days' notice. When the employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide the City with notice of a need for FMLA leave as soon as practicable (normally the same day or the next business day). If the need for FMLA leave is not foreseeable, the employee shall comply with the City's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

L. Intent to Return to Work from FMLA Leave

On a basis that does not discriminate against employees on FMLA leave, the City may require that an employee on FMLA leave report periodically on the employee's status and intent to return to work.

6 Voluntary Leave Without Pay

Any request for leave without pay must be submitted to the Department Head on a Request for Leave form. Requests for such leave not exceeding two (2) working days shall be permitted at the discretion of the appropriate Department Head. Requests for such leave exceeding two (2) working days, shall be at the discretion of the City Administrator. It is the policy of the City of Dickinson that in circumstances such as these, vacation will be used in full before leave without pay is granted. In no case shall the City permit leave without pay to

continue longer than six months. During any such leave lasting more than one month, the employee will be ineligible for employer paid benefits and accruals of leave benefits will halt during the leave. In the case of health insurance, the employee will be permitted to stay on the City policy, but must pay the policy in full during the time of leave, with the choice to stay on the policy being made before commencement of the leave.

EXCEPTION: Family Medical Leave Act leave as described in Section 29.08.04.090-.5.

EXCEPTION: Employee(s) granted leave without pay by the City Commission in a lay-off situation as described in Section 29.08.04.100-3.1.

7 Jury Duty / Witness Duty

7.1 Benefit Available to Regular Full-Time Employees Only

Regular Full-time employees will be granted leave with pay for jury duty or if they are subpoenaed to testify in court at their regular rate of pay.

Regular full-time Employees shall be granted leave with pay for witness duty only if they are testifying in a job related situation or a non-related party relationship to the case being heard.

7.2 Policy Regarding Jury / Witness Pay

Any pay received by the employee from the court system for jury or witness pay during granted leave with pay shall be returned to the City. If the employee fails to return such pay, the amount of the pay shall be deducted from the employee's regular pay check.

Any payment for mileage, lodging, and other costs reimbursed by the court may be retained by the employee. Additional reimbursement may not be requested from the City.

7.3 Retention of Job Status While on Jury Duty

Employees who are absent from work due to jury duty will not be dismissed or suspended from employment and shall retain and be entitled to the same job status and pay as he/she had prior to performing jury duty. Persons who are to be absent due to jury duty must notify their Department Head in advance of Jury Duty service. If no prior notification is given the employee may be subject to disciplinary procedures.

7.4 Notification to Finance Department of Employee on Jury / Witness Duty

It is the Department Head's responsibility to notify the Finance Department when an employee is on jury duty.

7.5 Accrual of Vacation, Sick Leave Benefits

Vacation and sick leave benefits shall accrue at the normal rate for eligible employees during jury / witness duty for which leave with pay has been granted.

7.6 Leave for Private Litigation

Employees involved in private litigation are required to use vacation leave or be granted leave without pay.

8 Voting Leave

Employees are allowed to vote during work hours.

9 Military Leave

The City follows and enforces allowances and restrictions described in NDCC Chapter 37 and the Uniformed Services Employment and Reemployment Rights Act of 1994 and subsequent amendments thereto.

10 Holidays

10.1 Holiday Pay

Eligible employees will be granted the holiday off work and will be paid eight (8) hours pay for each City recognized holiday. Holiday pay will be counted toward total hours in the week or overtime period for the purposes of determining overtime eligibility. Employees required to work on a holiday will receive additional pay as per Section 29.08.04.090-10.5.

10.2 Recognized Holidays

The City of Dickinson recognizes and observes the following as paid holidays for eligible employees:

New Years Day	January 1
Martin Luther King Day	3rd Monday in January
President' s Day	3rd Monday in February
Good Friday	The Friday preceding Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veterans' Day	November 11
Thanksgiving Day	4th Thursday in November
Christmas Day	December 25

Eligible employees will be permitted one paid birthday holiday each year. This holiday must be taken within one year following the employee's birthday. A birthday holiday still on the employee's accrual record at the time of another birthday will be removed from the record.

10.3 Observance When Recognized Holiday Falls on a Weekend

When a holiday falls on a Saturday, the preceding Friday is observed as the paid holiday for eligible employees. If a holiday falls on a Sunday, it is observed on the following Monday.

10.4 Allowance for Employees Ineligible for Holiday Pay

Employees ineligible for paid holiday leave due to employee classification (Section 29.08.04.050) will be granted a day off without pay in observance of a holiday.

10.5 Work on a Holiday

An hourly employee, eligible to receive holiday pay, will receive overtime for actual hours worked on a holiday plus the standard holiday pay benefit paid to all eligible employees as described in Section 29.08.04090-10.

11 Request for Leave

Employees are required to submit a request for leave to their direct supervisor before taking said leave with the exception of sick leave where prior notice is not possible. In that case of sick leave, employees must notify their supervisor as soon as possible when said leave is needed.

12 Absence Without Leave

Any employee, who takes leave without proper prior notification and grant of permission, except in the cases of emergencies as described herein, shall be subject to disciplinary action.

13 Administrative Leave

The appropriate Department Head or his designee may place an employee on administrative leave with pay for up to three working days in accordance with written departmental policy or in other situations when the Department Head determines it is in the best

interest of the City to remove an employee from a work situation. If three working days is not sufficient to meet the needs of the situation, the appropriate Department Head may increase the duration of administrative leave with pay for a period not to exceed 30 days with prior approval of the City Administrator.

(Code 1958 § 9-24; Ord. No. 376; Ord. No. 675 § 1; Ord. No. 967 §§ 7, 8; Ord. No. 1028 § 2; Ord. No. 1053 § 2; Ord. No. 1163 § 5; Ord. No. 1201, § 4; Ord. No. 1224, § 3 & 10; Ord. No. 1307 § 11 & 12; Ord. No. 1308 § 4; Ord. No. 1339 § 5-10, Ord. No. 1499 § 1-2, Ord. No. 11533§ 4)

Section 29.08.04100 Separation From Municipal Service

1 General Policies

1.1 Definitions

(a) Voluntary Separation: Written resignation, extended absence without proper notification, or retirement. Voluntary separation is initiated by the employee.

(b) Involuntary Separation: Layoff or discharge. Involuntary separation is initiated by the employer.

1.2 Return of City Property

City of Dickinson employees are expected to return all City property at the time of their departure from municipal service. The City of Dickinson reserves the right to withhold from the employee's final paycheck the amount for any property that is not returned or for which there is no explanation for the absence of the property. The City of Dickinson may take further action if necessary to recover municipal property.

2 Voluntary Separation

2.1 Resignation

A City of Dickinson employee, in order to resign in good-standing and be eligible for re-employment must resign from municipal service by giving their Department Head written notice of his/her resignation at least two weeks in advance of their leaving municipal service. In extenuating circumstances, the City Administrator or his designee may accept an employee's resignation with less than two weeks notice and retain their good standing status upon separation.

It is the Department Head's responsibility to forward the original letter of resignation to the City Administrator within two working days of submission by the employee.

2.2 Un-notified Absence

If an employee is absent for more than three (3) consecutive days without proper notification in accordance with the attendance policy, they shall be considered to have voluntarily resigned their position with the City. Re-instatement upon presentation of extenuating circumstances or reason for such absence shall be at the discretion of the City Administrator. Any un-notified absence may result in disciplinary action.

3 Involuntary Separation

3.1 Layoffs

Employees will be subject to layoff when it is deemed necessary by reason of shortage of work or funds, the abolition of the employee's position or other material changes in the duties or organization of his department. The duties performed by an employee so laid off may be reassigned to other employees already working in appropriate employment classes. No regular or probationary employee shall be laid off

while another person in a competitive position is employed on a provisional or temporary basis in the same class in that department. At the discretion of the City Commission, any employee subject to such layoff may be granted a leave of absence without pay (see Section 29.08.04.090-6).

3.1.1 No temporary or permanent separation of an employee from employment as a penalty or disciplinary action shall be considered as a layoff.

3.1.2 Layoffs of employees shall be made in inverse order of the length of service in the class and in the department involved.

3.1.3 The City Administrator shall give written notice to the affected employee(s) of any proposed layoff with reasons therefor a reasonable time period prior to the effective date thereof.

3.1.4 At the discretion of the Civil Service Commission, an employee on lay-off may be offered positions that come open for which he/she is qualified to fill. The employee on lay-off, who is offered an open position, will have two weeks from the date of offer to accept the position. If the position offered to an employee on lay-off is equal in grade to the position which the employee lost and the employee fails to accept the position offered, said employee shall be removed from lay-off status. If the employee on lay-off accepts the position offered within the two week time frame, the employee will be permitted up to two additional weeks to report to work. Unless stated extenuating circumstances are agreed to by the City, if the employee fails to start the job within the two week time frame, the employee will lose his/her opportunity to receive the position and will lose his/her lay-off status. Employees will be offered positions, based on availability and qualification in reverse order of the lay-off process.

3.2 Non-Layoff Involuntary Separation

The City Administrator or his designee may terminate the employment of an employee for disciplinary reasons, poor performance, failure or inability to perform the essential duties of his/her assigned classification.

4. Procedures following Involuntary Separation

In cases of involuntary separation for disciplinary reasons, the process set forth in Section 29.08.04.110 Disciplinary Process will be followed. In cases of involuntary separation for disciplinary reasons, poor performance, failure or inability to perform the essential duties of his/her assigned classification and the procedures in Section 29.08.04.120 Grievance and Appeal Procedures will be available.

5 Exit Interviews

It is a policy of the City of Dickinson, for the City Administrator or his designee, and a department head, usually the supervising department head to conduct an exit interview prior to an employee's separation from City employment. In the case of a terminating department head, the third party will be another department head or a City Commissioner. The exit interview is conducted for several purposes, including: 1) to resolve all outstanding matters between the City and the employee; 2) to advise the employee of the affect their separation will have upon all benefits and what benefits they have coming upon separation; and 3) to aid the City in gathering information to help improve the municipality's working environment and other employment relationships.

At the time or prior to the time of the exit interview, employees are expected to return all municipal property as specified in Section 29.08.04.100-1.2. (Code 1958 § 9-25; Ord. No. 376;

Ord. No. 721 § 4; Ord. No. 918 § 1; Ord. No. 920 §§ 1, 2; Ord. No. 967 § 9; Ord. No. 1090 § 1; Ord. No. 1163 § 5; Ord. No. 1307 § 13)

Section 29.08.04110 Disciplinary Process

1 Misconduct Defined

Employee misconduct is defined as being any action or non-action of an employee deserving of disciplinary action, including but not limited to substandard performance, substandard attendance or violation of any ordinance or policy of the City.

2 Misconduct

Employee misconduct will not be tolerated and may result in immediate disciplinary action. A partial listing of employee misconduct offenses and recommended application of disciplinary action for each offense is listed in one of the appendices of this manual. This list is not intended to completely list all employee misconduct that may result in disciplinary action, but rather is provided as a guideline by which employees can judge actions.

3 Disciplinary Representation

At any point in the disciplinary process, an employee may select a personal representative at the employee's expense.

4 Disciplinary Action

Disciplinary actions shall be applied when the appropriate supervisory authority, as described in this subsection, determines such actions are necessary. A disciplinary action may be in the form of written reprimand, suspension, demotion or reassignment, or dismissal as defined below. The City of Dickinson may, but is not required to, apply these actions progressively.

4.1 Written Reprimand

The appropriate supervisor may discipline an employee by written reprimand as warning that behavior is considered misconduct. Signing requirements will apply. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in his/her permanent personnel file. The employee may appeal this action to a City Grievance Board. The Grievance Board will hold a hearing and support, reverse or modify the disciplinary action. The decision of a City Grievance Board may be appealed to the Civil Service Commission. The Civil Service Commission is the final decision making body in the case of discipline involving a written reprimand.

4.2 Suspension without Pay

The appropriate Department Manager, with approval of the City Administrator, may suspend an employee without pay for employee misconduct for a period not to exceed 30 days. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in his/her permanent personnel file. The employee may appeal this action to the Civil Service Commission. The Civil Service Commission is the final decision making body in the case of discipline involving a suspension without pay.

4.3 Demotion or Disciplinary Reassignment

The City Administrator, may reduce an employee's wage or salary, assign the employee to a lower position, or change the employee's duties within his/her current position or use any combination of the above for employee misconduct. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in the employee's permanent

personnel file. The employee may appeal this action to the Civil Service Commission. The Civil Service Commission is the final decision making body in the case of discipline involving demotion or disciplinary reassignment.

4.4 Dismissal

The City Administrator may terminate an employee from municipal employment for employee misconduct. The employee may submit a written statement of response to the disciplinary action which shall be attached to and remain with the disciplinary action in his/her permanent personnel file. The employee may appeal this action to the Civil Service Commission. The decision of the Civil Service Commission may be appealed to the City Commission, which will review the papers and proceedings considered during the Civil Service Commission hearing and render a final decision.

5 Dismissal of Appeals of Disciplinary Action Upon Voluntary Separations

Appeals of disciplinary action will be immediately dismissed if the appealing employee(s) voluntarily terminates employment with the City during the appeal process.

6 Signing Requirements

In all cases of disciplinary action the employee will be required to sign the written notice of discipline and such notice shall be dated and placed in the employee's permanent personnel file. If the employee refuses to sign the notice, a notation to that effect shall be made by the supervisor, who notified the employee of the disciplinary action. If the affected employee refuses to sign a disciplinary action, another city employee may be asked to sign the notice as witness to the fact that the disciplined employee was informed of the disciplinary action. The disciplinary action shall be final unless appealed as provided in Section 29.08.04120.

In all instances in this policy where an employee is required to sign, signing does not imply agreement with the action, only that the contents have been made known to or discussed with the employee.

7 Maintenance of Disciplinary Records

7.1 Formal Disciplinary Records

Records of disciplinary actions are maintained in the employee's personnel file at City Hall.

Three years after the date of a disciplinary action the employee may request the Department Manager to review the employee's personnel file to determine whether removal of the record of disciplinary action is warranted. If the supervisor deems removal is warranted, the Department Manager may recommend the City Administrator purge the related record.

(Code 1958 § 9-26; Ord. No. 376; Ord. No. 417 §§ 1 to 3; Ord. No. 445 § 1; Ord. No. 468 § 1; Ord. No. 565; Ord. No. 602 § 1; Ord. No. 617 § 1; Ord. No. 621; Ord. No. 721 §§ 2, 5; Ord. No. 733 § 1; Ord. No. 802 § 1; Ord. No. 815 § 1; Ord. No. 864 § 1; Ord. No. 875 § 1; Ord. No. 901 §§ 1 to 3; Ord. No. 912 § 1; Ord. No. 949 §§ 1, 2; Ord. No. 967 §§ 10, 11; Ord. No. 971 § 1; Ord. No. 980 § 1; Ord. No. 1163 § 5; Ord. No. 1224 § 11; Ord. 1331 §2; Ord. No. 1365 § 1).

Section 29.08.04120 Grievance and Appeal Procedure

1 Purpose

The purpose of this grievance procedure is to provide a just and equitable method for the resolution of disciplinary action appeals and/or employee disputes resulting from an action or inaction of one of their superiors or fellow employees without discrimination, coercion, restraint,

or reprisal against any employee or group of employees who may submit to or be involved in an appeal. The term appeal shall be synonymous with that of grievance.

2 The City Grievance Board

2.1 Rules Governing Make-up of the Board

The City will maintain a City Grievance Board composed of the City Administrator, two exempt employees and two non-exempt full-time employees. Persons selected for the board must have at least two years tenure with the City. In addition, all selected board members must complete an orientation session regarding the grievance process before serving on the board. With the exception of the City Administrator, members of the City Grievance Board will be chosen by lot. A new Grievance Board will be chosen for each grievance filed.

2.2 Rules Governing Meetings of the City Grievance Board

Meetings of the City Grievance Board will be called on an as needed basis. Once a grievance is filed the Grievance Board must meet within five (5) business days. Members of the board must be willing to attend and participate in meetings of the board with as little as two days notice. The City Administrator or his designee will chair meetings of the board. The chairperson will not have a vote in decisions of the board. If the City Administrator is unavailable to attend a meeting or is disqualified from serving, his designee will serve in his place.

2.3 Rules Governing Disqualification From Serving

Any person who is a party to a grievance, a co-worker within the same department, an immediate family member of the grievant as defined in Section 29.08.04060-11.2, the domestic partner of the grievant(s), or a witness to the situation will be ineligible to serve on the City Grievance Board for that grievance.

3 Definition of a Grievance

A grievance is an action or decision of a supervisor or department head or other employee, other than suspension, demotion or termination, that may be in violation of any federal, state or city law, rule, regulation, ordinance or policy, relation to employment or personnel matters, sexual harassment or who alleges discrimination due to race, color, creed, sex, age, marital status, national origin or physical disability.

4 Employee Notice of Grievance or Disagreement

4.1 Procedure For Filing a Grievance

If an employee wishes to file a grievance, the employee must submit a written notice of grievance to the City Administrator or his designee stating the reasons for the disagreement on a grievance form. The employee may choose representation at any point during the grievance procedure.

4.2 Procedure For Filing a Grievance regarding Written Reprimand

If an employee disagrees with a written reprimand, the employee may, within five (5) business days, from the signing date of the written reprimand, submit a written notice of grievance with the City Administrator or his designee stating the reasons for disagreement and the action that the employee desires.

4.3 Procedure of City Grievance Board

The City Grievance Board will review the grievance and supporting documentation. Following their review, the board will either issue a decision based on the facts as presented, request additional information, or set a formal appeal hearing. The board will issue a decision within five (5) business days of the initial meeting or the

formal hearing, unless they notify the grievant in writing of the need to extend the deadline. Any extension will be time certain.

5 Appeal to Civil Service Commission

Any regular employee receiving notice of demotion, disciplinary reassignment, suspension without pay, dismissal or learns that a written reprimand was upheld by the Grievance Board provided for in this chapter may appeal therefrom to the Civil Service Commission by filing with the city administrator a notice of appeal within five (5) business days after receiving such notice. If the employee fails to meet the filing deadline, the right to appeal shall be considered waived.

5.1 Appearance Before the Civil Service Commission

No less than ten (10) nor more than 20 business days after an appeal has been filed, the Civil Service Commission shall hold a hearing thereon. At such hearing, the employee must appear personally with or without representation. The employee, his/her representative and the City will then be heard publicly on the matter in issue. Firstly, each side will be provided the opportunity to make an opening statement. Each side may present evidence and call witnesses. Each side will also be provided the opportunity to cross examine the other side's witnesses. The technical rules of evidence shall not apply. The city attorney may be called upon to represent the City. If the employee(s) fails to appear before the Civil Service Commission on the employee's scheduled date of hearing, the employee shall be deemed to have waived any disagreement with the disciplinary action and shall waive all rights to appeal such decision.

Within ten (10) business days after the hearing, the Civil Service Commission shall file its findings of fact, conclusions, and order in writing serving a copy thereof upon the affected employee or the employee's representative. The order may consist of the following:

- (1) Approve the disciplinary action;
- (2) Reinstate the employee; or
- (3) Such other action as the commission deems appropriate.

5.2 Other appeals to Civil Service Commission

Other appeals where permitted by these rules shall be heard by the civil service commission in the same manner as provided in this subsection.

6 Dismissal of Grievances Upon Voluntary Separations

Ongoing grievances will be immediately dismissed if the appealing employee(s) voluntarily terminates employment with the City during the appeal process.

EXCEPTION: If the Civil Service Commission so agrees, the appeal of any employee(s) who submitted a claim of extenuating circumstances at the time of resignation may be allowed to continue through the normal appeal process outlined in this section.

(Code 1958 § 9-27; Ord. No. 335 §§ 1, 2; Ord. No. 376; Ord. No. 417 §§ 4, 5; Ord. No. 454 § 1; Ord. No. 503 § 1; Ord. No. 815 § 2; Ord. No. 908 § 1; Ord. No. 967 § 12; Ord. No. 1087 § 3; Ord. No. 1163 § 5; Ord. No. 1224 § 12; Ord. No. 1307 § 14; Ord. No. 1331 §3.)

Section 29.08.04130 Drug and Alcohol Policy

1 City of Dickinson's Commitment to Drug and Alcohol Free Workplace

The City of Dickinson has a strong commitment to its employees to provide a safe, healthful, and productive work environment and to promote high standards of employee health. Consistent with the spirit and intent of this objective the City will act to eliminate any substance

and alcohol abuse which could impair an employee's ability to safely and effectively perform a particular job and which increases the potential for accidents, absenteeism, sub-standard performance, and tends to undermine public confidence in the City's work force. The City's goals are to establish and maintain a work environment that is free from the effects of alcohol and drug abuse and to maintain the reputation and integrity of the City of Dickinson by preventing unacceptable behavior by its employees that discredits the City and its employees.

While the City has no intention of unreasonably intruding into the private lives of its employees, the City expects employees to report for work in a condition to perform their duties, make the work environment safe for other employees, and represent a proper image to the citizens. It is clear that employee off-the-job, as well as on-the-job, involvement with drugs and alcohol can have an impact on the City's goals.

2 Drug and Alcohol Abuse Policies

The following are the policies of the City regarding drug and alcohol abuse:

2.1 The unlawful manufacture, distribution, dispensing, possession or use of controlled drugs or substances, or the use of alcohol while on duty, on or off property owned or leased by the City is proper cause for disciplinary action.

2.2 Any illegal controlled drug or substance possessed while on duty by employees will be turned over to the appropriate criminal justice agencies and may result in criminal prosecution. This does not apply to public safety officers who are in possession of an illegal or controlled drug or substance while acting in the line of duty.

2.3 It is not permitted for an employee to be under the influence of controlled drugs or substances or alcohol on the job, except as provided for in Section 29.08.04.130-2.4.

2.4 The use of controlled drugs or substances prescribed by a licensed physician is not prohibited, but employees in positions where side effects of the prescribed medication could affect performance and safety on the job are required to make such use known to their immediate supervisor. Any employee misusing a prescription drug may be disciplined up to and including termination.

2.5 The illegal use, sale, and possession of alcohol, controlled drugs or substances while off duty and off City premises which results in a criminal conviction is unacceptable. They may affect the job performance and the confidence of the public in the City's ability to meet its responsibilities. Such off-the-job conduct may be proper cause for disciplinary action up to and including termination.

3 Testing for Drugs or Alcohol

3.1 Alcohol/Controlled Substance Testing Program for Employees with Commercial Driver's Licenses (CDL) in Safety Sensitive Positions

In an effort to prevent injuries and deaths due to drug or alcohol-impaired drivers operating commercial vehicles, the United State Congress enacted the Omnibus Transportation Employee Testing Act of 1991 (the Act). This federal law mandates drug and alcohol testing for certain classes of transportation employees.

Department of Transportation (DOT) defines the following as safety sensitive positions:

- (a) A city employee who operates a vehicle that is designed to transport 15 passengers or more;
- (b) A city employee who operates a vehicle that weighs 26,001 pounds or more singular or articulated (tractor trailer) and the trailer weight is in excess of 10,000 pounds or more;

- (c) A city employee who operates a vehicle of any size vehicles requiring placards for hazardous materials (hazmat).

Any employees of the city of Dickinson, who, as a requirement of the job, operates a vehicle classified as commercial and has a commercial driver's license, is considered to be in a "safety-sensitive position" and is subject to the Department of Transportation 49CFR part 40 of the Federal Motor Carrier Safety Administration regulations (regulations). Provisions for disciplinary actions are based on the independent authority of the City.

This portion of the Human Resources Manual covers only employees subject to the regulations and describes City implementation of the regulations. Employees in the safety sensitive positions listed below are subject to the controlled substance requirements of the regulations and to this policy at all times when on duty, regardless of the task they are performing. Employees subject to alcohol testing requirements will be subject to testing while on duty or just prior to, just after, or when performing safety-sensitive functions are:

- Equipment Operators operating commercial vehicles
- Engineering Technicians operating commercial vehicles
- Other employees operating commercial vehicles
- Temporary and seasonal employees operating commercial vehicles.

All safety sensitive employees are subject to controlled substance testing while on or off duty.

Designated employer representative (DER) is an individual identified by the employer as able to receive communications and test results from service agents and who is authorized to take immediate actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The individual must be an employee of the City.

3.1.1 Alcohol Prohibition

Employees must:

1. Test when required.
2. Not use alcohol, in any form, on the job (including mouthwash or cough syrup containing alcohol).
3. Not have even one drink fewer than four hours before work duties begin.
4. Not work under the influence of alcohol
5. Not remain on duty with a confirmed breath-and/or saliva alcohol concentration of .02 or greater.
6. Not use alcohol within eight hours after an accident or until undergoing a post-accident alcohol test.

The regulations require that covered employees be available to be tested for alcohol while on duty just prior to, just after, or while performing a safety-sensitive function. Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results, are subject to disciplinary procedures, which may include termination.

3.1.2 Controlled-Substance Prohibition

Employees must:

1. Test when required.
2. Not use illegal controlled substances.
3. Not use prescription drugs containing controlled substances contrary to a physician's instructions.
4. Notify their supervisor if using a prescription containing a controlled substance. The safety sensitive employee must, upon request also provide documentation that use of the drug does not adversely affect the safety sensitive employee's ability to operate a commercial motor vehicle as described in the regulations.

Employees who refuse to be tested or to cooperate in testing, or who attempt to alter test results, are subject to immediate removal from safety sensitive function and are subject to disciplinary procedures which may include termination.

No employee shall report for duty or remain on duty requiring the performance of safety sensitive functions when the employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner, who has advised the employee that the substance will not adversely affect the employee's ability to safely operate a motor vehicle.

3.1.3 Alcohol and Controlled-Substance Tests

All applicants and employees who undergo City mandated tests will be notified if the test result is positive by the testing contractor before the City's designated reporting person is notified.

The City or a contractor of the City performing the tests will follow specific procedures if an alcohol-test result is .02 or greater. The procedures are required by federal guidelines and are intended to make sure that the test result is .02 or greater.

Tests required by the City, except for pre-employment tests and return-to-duty tests, are considered a duty assignment. Time for travel and time spent in providing the specimen at the collection site will be with pay.

Any action which indicates a refusal to test will result in the employee being terminated.

3.1.4 Definition of Positive Alcohol or Controlled-Substance Test

Alcohol concentration is defined by the Federal Department of Transportation Regulations.

Alcohol tests will be considered positive if the breath and/or saliva test indicates an alcohol presence of .04 or greater. If the test results are positive, the employee and supervisor will be notified before the employee leaves the test site.

If an alcohol test indicates an alcohol concentration of at least .02, but less than .04, the test is considered negative, but the safety sensitive employee will be taken out of service for 24 hours.

A controlled substance drug test will be considered positive if a controlled substance for which no legitimate explanation is determined by the Medical Review Officer (MRO) is found in the test specimen.

3.1.5 Testing Responsibilities in Alcohol and Controlled-Substance Testing

If the initial alcohol test results are .02 or greater, the City or a contractor of the City performing the tests will wait 15 minutes and then issue a confirmation test. During the 15-minute waiting period before the confirmation test, the employee will be given a set of instructions (for example, no eating or drinking) that must be followed. If the employee does not follow these instructions, it may be considered an attempt to alter the test results. The confirmation test result is used for disciplinary purposes.

Controlled-substance tests must use proper laboratory procedures.

If a test is confirmed positive, it will be reviewed by the physician serving as the testing vendor's MRO. The MRO will follow specific procedures required by the federal guidelines. These procedures are intended to make sure that the test result is a true positive. The MRO will call the employee who has tested positive, discuss what might have caused the test result to be positive before calling the City's contact person, and make sure of the result before notifying the City. If the test remains positive, the employee may request, at his/her expense, that a second independent analysis be performed on the untested portion of the sample. This is considered a split test.

3.1.6 Post-accident Tests

Drivers are responsible for notifying the City of any vehicle accident while on duty.

1. In an accident resulting in a death, the City driver(s) involved must undergo post-accident testing.
2. In an accident which does not result in a death, but in which the City driver is cited for a moving traffic violation that either resulted in vehicles involved in the accident being towed from the scene or injuries as a result of the accident being treated away from the scene, the driver must undergo post-accident drug and alcohol testing.

Employees must be tested for controlled substances within 32 hours after all accidents resulting in a death or where the driver is cited for a moving violation if the accident resulted in injuries needing to be treated away from the scene or vehicles involved in the accident are required to be towed from the scene. If the controlled-substance test is not administered within 32 hours, no test will be given, and the manager must file and maintain records stating the reason for the delay and the lack of testing.

Employees must be tested for alcohol within two hours of the accident. If the alcohol test is not administered within two hours, the manager must file and maintain records stating why. Once documented, the City has six additional hours to perform the test. If an alcohol test is not administered within eight hours of the accident, no test will be given, and the manager must file and maintain records stating the reason for the delay and lack of testing. Employees must remain at work, but must not perform safety-sensitive functions, until the post-accident alcohol test is administered or eight hours since the accident have lapsed, or an unimpaired adult agrees to pick the employee up from work and transport that employee home.

3.1.7 Types of Required Drug Testing

3.1.7.1 Pre-Employment Tests

New employees will be hired for safety-sensitive positions on the condition of a negative controlled substances test (administered after being chosen but before being hired) and after obtaining a controlled substances and alcohol testing record from previous employers that shows the employee has been in a random drug and alcohol program for the past 12 months and/or has been selected over the last six months in the time period between the end of their work performance at the previous job and application for the city's position has not exceeded 30 days.

City job announcements will indicate if the position is safety-sensitive and requires pre-employment drug testing.

3.1.7.2 Random Testing

A minimum number of random alcohol tests, equal to 10 percent of the average number of City safety sensitive employees covered under the regulations will be conducted each year. The City or a contractor of the City performing the tests will select safety sensitive employees using a computerized random-selection program or other random selection method approved by the City. Safety sensitive employees selected will be tested prior to going on duty, while performing safety sensitive functions or just after.

A minimum number of random controlled-substance tests equal to 50 percent of the average number of safety sensitive employees, will be performed each year. Tests may be performed at any time the safety sensitive employee is on or off duty, regardless of the duties being performed at the time of testing.

Safety sensitive employees may potentially be tested at any time, even if there is a recent previous test. Once a safety sensitive employee is notified of the testing, he or she must report immediately to the testing site.

3.1.7.3 Reasonable Suspicion Tests

A safety sensitive employee must undergo alcohol or controlled-substance testing when any supervisor who has received the mandatory reasonable suspicion training has reason to believe that the safety sensitive employee has used alcohol or controlled substances in violation of the regulations. An alcohol test may be administered just prior, just after, or while the safety sensitive employee is performing a safety-sensitive function.

All supervisors will be given adequate training to make judgments about a reasonable suspicion of controlled substance or alcohol use. The supervisor's judgment must be based on specific observations relating to appearance, behavior, speech, or body odors, including indications of the chronic and withdrawal effects of alcohol and/or controlled substances. The supervisor must document the observations fully notifying the employee that testing is required. Supervisors will be trained regarding

physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

All employees, including non-supervisory employees, may call their supervisor, the manager or the City Administrator to ask any questions about the program, or to state their suspicions about another employee, including a supervisor. The employee who calls must give his/her name, but the names will be kept confidential to the extent possible under the open records law of North Dakota.

3.1.7.4 Return-To-Duty Tests

If any test result is positive and the course of treatment recommended by a substance abuse professional (SAP) with the City EAP has been completed, the safety sensitive employee must submit to return-to-duty alcohol or controlled substance tests prior to resuming duties.

The return-to-duty alcohol test must indicate a breath-alcohol concentration of less than .02.

Controlled-substance test results must be negative.

The employee will be required to pay for the return-to-duty test.

3.1.7.5 Follow-up Tests

Unannounced follow-up tests are required for a minimum of six months or as high as 60 months for any safety sensitive employee who, after a positive test result, is determined by a SAP to need help with alcohol or controlled-substance abuse. The City shall pay for the SAP and follow up test(s).

3.1.8 Test Results-Required Action

ALCOHOL TEST

Results (Blood Alcohol Concentration)	Employee Status	Required Action
>0.00	applicant	not hired
0.02-0.039	any safety sensitive	Taken out of service for 24 hours without pay
0.04+	any safety sensitive	Remove from safety sensitive duty and notify employee of EAP program and employee is subject to discipline up to termination

CONTROLLED SUBSTANCE TEST

Results	Employee Status	Required Action
Positive	applicant	not hired
Positive	any safety sensitive employee	taken off duty; referred to SAP for evaluation and treatment; subject to City discipline, up to

		and including termination.
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3.1.9 Other Prohibited Conduct - Required Action

Employee Status	Prohibited Conduct	Required Action
applicant	refusing to be tested	not hired
any safety sensitive employee	refusing to be tested	terminated
any safety sensitive employee	possessing or consuming alcohol on the job	taken off duty; referred to SAP for treatment; and be subject to City disciplinary action up to and including termination of employment
any safety sensitive employee	abusing cough syrup, mouthwash or any other substance containing alcohol while on the job	taken off duty; referred to SAP for evaluation and possible treatment and be subject to City disciplinary action up to and including termination of employment
any safety sensitive employee	possessing or using a controlled substance without a doctor's permission	termination
any employee	performing a safety-sensitive function while using a prescription containing a controlled substance when a physician has instructed the employee that the substance may adversely affect the employee's ability to safely operate a motor vehicle.	taken off duty; referred to SAP for evaluation and possible treatment and be subject to City disciplinary action up to and including termination of employment

3.1.10 Out-of-Service Request

All safety sensitive employees subject to call for emergency duties, who are not actually listed on-call, who have had one or more drink(s) in the four

hours prior to an emergency call-out, or suspects that he/she may have a breath-alcohol concentration of 0.02 or above, must take him/herself out of service. No disciplinary measures will be taken when the safety sensitive employee, who is not listed as on-call requests to take him/herself out of service for an emergency call-out.

3.1.11 Required Records and Records Retention

The City, or a contractor of the City performing the tests under this section, will maintain necessary records as required by federal DOT regulations either at City Hall or the primary contractor's place of business. In all cases, information must be available at the City within 24 hours if requested by officials of the U.S. Department of Transportation responsible for the testing program.

3.1.12 City Requirements to Inquire With Previous Employers

The City must inquire with previous employers before hiring someone to fill a safety-sensitive position. Prior to being hired by the City, applicants must sign a release of information allowing the City to inquire with previous employers about the applicant's controlled substance and alcohol testing history during the previous three years. Information that may be requested includes:

1. Previous test dates.
2. Positive test results.
3. Refusals to test.
4. Evaluation and rehabilitation results.

3.1.13 Release of Information to Prospective Employers

All testing information about individual employees is confidential and is not in the public domain. Such information may not be released except as required by law or expressly authorized by 49 CFR 382.405.

If requested in writing and proper release of information is provided, the City will disclose the following information to any potential future employees.

1. Alcohol tests with a result of 0.04 or higher alcohol concentration;
2. Verified positive drug tests;
3. Refusals to be tested (including verified adulterated or substituted drug test results);
4. Other violation of DOT agency drug and alcohol testing regulations;
5. Documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests).

3.2 Non DOT Safety Sensitive Employees

The City may request that the employee undergo drug and alcohol testing if there is a "reasonable suspicion" that the employee is under the influence of drugs or alcohol during work hours. "Reasonable suspicion" means an articulated belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of controlled substances or alcohol. All possible indicators must be observed by a supervisor who has received reasonable suspicion training. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

- A pattern of abnormal or erratic behavior which is so unusual that it warrants summoning another employee, a supervisor, a police officer or other individual for assistance.
- Information provided by a reliable and credible source with personal knowledge.
- Direct observation of drug or alcohol use.
- Presence of the physical symptoms of drug or alcohol use; (i.e. glossy or blood-shot eyes, alcohol odor on breath, slurred speech, poor coordination and/or reflexes).

3.2.1 *Pre-Employment Drug Testing*

The City may at its discretion implement a pre-employment drug testing program for all classifications of employees. Upon implementation all employees will be required to pass a pre-employment drug test as a condition of employment.

3.2.2 *Possession of substances in violation of the City's drug and alcohol policy.*

The employee, where "reasonable suspicion" exists, may be asked to submit to a breath and/or saliva alcohol testing by the City's drug and alcohol contractor. Controlled substance urine and/or hair follicle testing will be conducted by the City's drug and alcohol contractor at the City's expense.

Any action which indicates a refusal to test will result in the employee being terminated.

A positive result from the controlled substance and/or alcohol test confirming the reasonable suspicion will result in disciplinary action up to termination.

The supervisor who has received reasonable suspicion training is required to document in writing, the specific facts, symptoms, or observations which led to the reasonable suspicion. The City Administrator or his/her designee shall place this documentation in the employee's medical personnel file only if confirmed by the controlled substance and/or alcohol test.

All information from an employee's controlled substance and/or alcohol test is confidential, and only the City's DER will be informed of the test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee.

3.2.3 *Vehicle Accidents*

Drivers are responsible for notifying their supervisor of any vehicle accident while on duty.

1. In an accident resulting in a death, all City drivers involved must undergo post-accident testing.
2. In an accident which does not result in a death, but in which the City driver is cited for a moving traffic violation that either resulted in vehicles involved in the accident being towed from the scene or injuries as a result of the accident being treated away from the scene, the driver must undergo post-accident drug and alcohol testing.

Employees must be tested for controlled substances within 32 hours after all accidents resulting in a death or where the driver is cited for a moving violation if the accident resulted in injuries

needing to be treated away from the scene or vehicles involved in the accident are required to be towed from the scene. If the controlled-substance test is not administered within 32 hours, no test will be given, and the manager must file and maintain records stating the reason for the delay and the lack of testing.

Employees must be tested for alcohol within two hours of the accident. If the alcohol test is not administered within two hours, the manager must file and maintain records stating why. Once documented, the City has six additional hours to perform the test. If an alcohol test is not administered within eight hours of the accident, no test will be given, and the manager must file and maintain records stating the reason for the delay and lack of testing. Employees must remain at work, but must not perform safety-sensitive functions, unless the post-accident alcohol test is administered or eight hours since the accident has lapsed, or an unimpaired adult agrees to pick the employee up from work and transport that employee home.

3. **Return to Duty Testing and Follow Up Tests**

If any test result is positive and the course of treatment recommended by a substance abuse professional (SAP) with the City EAP has been completed, the employee must submit to return-to-duty alcohol or controlled substance tests prior to resuming duties.

The return-to-duty alcohol test must indicate a breath-alcohol concentration of less than .02.

Controlled-substance test results must be negative.

The employee will be required to pay for the return-to-duty test.

Unannounced follow-up tests are required for a minimum of six months or as high as 60 months for any employee who, after a positive test result, is determined by a SAP to need help with alcohol or controlled-substance abuse. The City shall pay for the SAP and follow up test(s).

4 ***Controlled Substances to be Tested For***

The following drug groups were selected based on the ability of each drug to adversely affect physical/mental performance. All are controlled substances under state and federal law.

- Alcohol
- Amphetamines, Methamphetamines
- Cocaine
- Opiates
- Marijuana

5 ***Employee Responsibilities***

5.1 ***Reporting Off When Alcohol/Drug Impaired***

An employee must not report to work while his/her ability to perform his/her job duties is impaired due to on or off duty alcohol or prescription drug use. Employees

called in for emergency duty to work outside their work schedule who are impaired by off-duty alcohol or prescription drug use shall be required to decline the offer of work.

5.2 Possession of Controlled Substance

An employee must not possess or use alcohol or controlled substance without a prescription during working hours or while subject to duty.

5.3 Reporting Controlled Substance Use

An employee required to operate vehicles or equipment while on the job is required to notify his/her immediate supervisor, before beginning work, when taking any legal medication or controlled substance, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment.

5.4 Reporting Alcohol/Controlled Substance Related Charges and Convictions

An employee, required to operate a motor vehicle as part of his/her job must notify his/her immediate supervisor of any controlled substance or alcohol related charge which has resulted in the employee losing his/her driving privileges prior to beginning the next regularly scheduled shift or call-out.

An employee must notify his/her immediate supervisor of any controlled substance or alcohol related criminal statute conviction no later than five (5) days after such conviction.

Any violations of the above stated may result in immediate disciplinary action.

6 Management Responsibilities and Guidelines

6.1 Searches

Any municipally owned property provided to or utilized by an employee during the course of employment with the City is subject to unannounced and unrestricted search to include items contained in and on the same property. These items include but are not limited to: City owned vehicles, offices, desks, lockers and their related contents.

Searches of persons and their personal possessions held on or about their person are prohibited.

6.2 Notification of Law Enforcement

Supervisors shall notify the police department when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area jointly or fully controlled by the City.

6.3 City's Responsibility, Employee Rights

Nothing in this Section shall be interpreted as constituting any waiver of or limitation on the City's responsibility to maintain discipline, or the right to invoke disciplinary measures, nor the employee's right to due process and the processing of appeals concerning such disciplinary measures in accordance with the appeal procedure set forth in Section 29.08.04.120.

6.4 Forms of Discipline

Whenever disciplinary action is used in accordance with this Section, it may include but not be limited to any or all of the following: written reprimand, suspension, demotion or discharge as set forth in Section 29.08.04.110-3 and/or referral to SAP or EAP as described in Section 29.08.04.080-7.6.

6.5 Copies of This Section to be Given to All Employees

Each employee will be given a copy of the City's policy on Drug and Alcohol Substance Abuse.

Section 29.08.04140 Americans With Disabilities Act Employment Grievance Procedure

1 ADA Employment Grievance Procedure

The Americans with Disabilities Act (ADA) provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services and programs, and telecommunications. Title II of the ADA states, in part, that "no otherwise qualified disabled employee or prospective employee shall, solely by reason of such disability, be excluded from the participation in, be denied the benefits of, or be subject to discrimination" in programs or activities sponsored by a public entity.

The City of Dickinson has adopted this grievance procedure to provide prompt and equitable resolution of complaints alleging any action prohibited by the U.S. Department of Justice regulations implementing Title II of the ADA. The language included here is drawn from the ADA policy adopted by the City in September, 1994.

Any employee or prospective employee who believes that (s)he or a specific class of individuals with disabilities has been subjected to unlawful discrimination on the basis of that disability by the City of Dickinson may, by himself or herself or by any authorized representative, file a complaint.

Complaints should be addressed to: ADA Coordinator, City of Dickinson, P.O. Box 1037, Dickinson, ND 58602, (701) 264-7744, who has been designated to coordinate ADA compliance efforts.

1.1 A complaint must be submitted in writing to the City ADA Coordinator and contain: the name and address of the individual or representative filing the complaint, a description of the alleged discriminatory action in sufficient detail to inform the entity of the nature and date of the alleged violation, and be signed by the complainant or authorized representative. Complaints filed on behalf of third parties must describe or identify the alleged victims of the discrimination.

A decision by the ADA Coordinator regarding the complaint will be made within ten (10) working days after its receipt. The ADA Coordinator will submit written notice of the decision to the complainant.

1.2 If the complaint is not resolved to the satisfaction of the complainant by the ADA Coordinator, the complainant may request the complaint be forwarded to the ADA Compliance Committee.

The Committee will hear the complaint at a public meeting, after adequate notice is given. The Committee will issue a written decision within thirty (30) after receiving the complaint.

1.3 If the complaint cannot be resolved to the complainant's satisfaction by the Committee, the complaint may be heard by the City Commission upon written request by the complainant.

The City Commission will consider the complaint at any regular or special meeting, after adequate public notice is given. A written determination by the City Commission will be rendered within thirty (30) days after receipt of the complaint. The decision of the City Commission is a final administrative decision.

1.4 As an alternative to Section 29.08.04.140-1.3, complaints regarding testing, selection, promotion, separation, and other employment policies or working conditions may be submitted to the Civil Service Commission in lieu of the Dickinson City Commission. In such an instance, the Commission shall consider the complaint during a regular or special meeting. A written decision by the Commission must be rendered within thirty (30) days after receipt of the complaint. The decision of the Civil Service Commission is a final administrative decision.

1.5 Files and records of all complaints filed shall be maintained regarding each level of the grievance process.

1.6 Nothing in this grievance procedure shall be construed as preventing an individual from pursuit of other remedies including filing the complaint with any federal agency (s)he believes is appropriate or with the U.S. Department of Justice. This procedure also does not preclude the individual's right to file a lawsuit in federal district court.

(Code 1958 § 9-29; Ord. No. 1163 § 5).

Section 29.08.04150 Specific Exceptions from Certain Sections

Applicability of Sections of this Policy to FLSA exempt employees:

29.08.04030: All sub-sections

29.08.04040: All sub-sections

29.08.04050: All sub-sections

29.08.04060: All sub-sections EXCEPTION: City Administrator's supervisor is the City Commission, hence all sub-sections referring to City Administrator shall be interpreted as City Commission for this employee.

29.08.04070: Not applicable to the City Administrator, Public Works Director, Department Heads, the Finance Director, and the Assistant Police Chief if determined to be FLSA exempt.

29.08.04080: All sub-sections

29.08.04090: All sub-sections

29.08.04100: All sub-sections

29.08.04110: All sub-sections EXCEPTION: City Administrator's supervisor is the City Commission, hence all sub-sections referring to City Administrator shall be interpreted as City Commission for this employee.

29.08.04120: All sub-sections EXCEPTION: City Administrator's supervisor is the City Commission, hence all sub-sections referring to City Administrator shall be interpreted as City Commission for this employee.

29.08.04130: All sub-sections

29.08.04140: All sub-sections

(Ord. No. 721 § 3; Ord. No. 1163 § 5)

Section 29.08.04160 Penalty

The penalty for any violation of this chapter shall be as set forth herein. (Ord. No. 1163 § 7)

Section 29.08.04170 Nepotism

This section was repealed in 1998. (Ord. No. 1163 § 6).