

Chapter 29 PERSONNEL

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Article 29.08 Civil Service System

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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

Note: in this article, where City Administrator duties and actions are referred to, such duties and actions will be understood to mean “the City Administrator or his designee”, unless otherwise noted.

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, Code 1637 § 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, Code 1637 § 1)

Section 29.08.02030 Civil service commission--Created

There is hereby established a civil service commission for the city. (Code 1958, § 9-3, Code 1637 § 1)

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 five members, appointed by the Board of City Commissioners, upon recommendation of the City Administrator. Commencing on January 1, 2000, all subsequent appointments shall expire on December 31 of the third year following the appointment. (Code 1958, § 9-4; Ord. No. 1200 § 2; Ord. No. 1217, §1, Code 1637 § 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, Code 1637 § 1.)

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, Code 1637 § 1)

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, Code 1637 § 1) 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, Code 1637 § 1) 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, Code 1637 § 1)

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, Code 1637 § 1)

Section 29.08.02105 Role of the Civil Service Commission

It shall be the role of the Civil Service Commission, from time to time, to recommend to the Board of City Commissioners desirable amendments to the rules, regulations, and ordinances in this Chapter 29. The Role of the Civil Service Commission is to hear appeals to disciplinary matters and grievance appeals, as described in section 29.08.04120 (Grievance and Appeal Procedure). (Ord. No. 1315 §4, Code 1637 § 1)

Section 29.08.02110 Amendments to the Role of Civil Service

The role 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 by ordinance, following such public hearing. (Code 1958, § 9-11; Ord. No. 376; Ord. No. 1315 §5, Code 1637 § 1)

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 and employees, full time, part time, exempt and non-exempt.

Exceptions: The provisions of this article as regards the **Civil Service Classification Plan**, as described in sections 29.08.04050 to 29.08.04120, shall not apply to persons outside of the classification plan -including the following: persons elected to office; persons elected to boards, persons appointed or elected to commissions and committees; the city administrator, volunteer fire department personnel; other volunteers paid or unpaid; 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.

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, Code 1637 § 1)

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.

Section 29.08.04000 Division 29.08.04 Rules and Regulations

Section 29.08.04030 Human Resource Manual

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. To provide a uniform and sound personnel administrative system throughout the City of Dickinson.
2. To inform employees of the general policies and procedures of the City and of the benefits and obligations of employment with the City.
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.
4. To serve as written documentation of the City of Dickinson's commitment to fair employment practices and equal employment opportunity.
5. To assist city administration in carrying out sound, equitable and consistent human resources administration and in making effective use of human resources.
6. To promote and encourage communication between the city administration and the employee(s).
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.

Application The Human Resource ordinance shall apply to all municipal employees except employees as specified in Section 29.08.02.120. In the event of a conflict between this ordinance, (also referred to as the manual, or personnel manual) and any state or federal law, the terms and conditions of such law shall prevail.

Section 29.08.04035 General Provisions of the Civil Service

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.

1. Forms

The City Administrator shall design and implement all forms to be used in connection with the civil service program. Sample forms may be attached as appendices to this personnel manual, but shall not become an official part of the manual. (Code 1637 § 1)

2. Meetings of Civil Service Commission

The civil service commission shall hold meetings as may be necessary to hear appeals or hold other hearings hereinbefore provided, which meetings shall be at the call of the chairman and open to the public. Three members of the civil service commission shall constitute a quorum for the transaction of any business. The City Administrator shall be an ex officio member at civil service meetings. (Code 1637 § 1)

3. General Prohibitions.

3.1 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.

3.2 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.

3.3 Prohibition of Violation of any Provisions

Any willful violation of the above provisions of this rule shall be grounds for summary discharge of the offending party.

4. 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.

5. This Manual is Not a Contract

This manual does not confer a contract of employment. No employee or manager of the city, except the city administrator, acting on behalf of the board of city commissioners, has the authority to enter into a contract or agreement of employment with any employee governed by this personnel manual. This manual is provided as a reference of present provisions and not a guarantee of employment or specific employment benefits.

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 or a witness in an investigation is also prohibited by law and will not be tolerated by the City under any circumstances and is grounds for termination. The City will endeavor to take prompt remedial measures to immediately end the offending action.

2.2 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 appropriate law enforcement authority.

2.3 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.

2.4 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:

2.4.1 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.

2.4.2 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.

2.5 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.

2.6 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 one of the following in order of preference: the City Attorney; the Human Resource Coordinator; the City Administrator; or to a Department Head. Any Supervisor, who becomes aware directly or indirectly, of a potential harassment issue will immediately contact the City Attorney, the Human Resource Coordinator, or 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 president of the City Commission, who will assign a qualified investigator(s) to perform an investigation.

2.7 Complaint Investigation Process

Upon becoming aware of a situation of possible sexual or any other form of harassment, the City Attorney and the City Administrator, or a designee, 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:

- Interview of Complaining Party
- Interview of Offending Party
- Interview of Other Parties as necessary

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.

2.8 Process If the City Administrator is the Offending Party

If the City Administrator is the offending party, the appropriate qualified investigator will turn his/her findings over to the President of the City Commission. It will be the City Commission's responsibility to take appropriate actions.

If at any time criminal charges may become applicable, the appropriate law enforcement authority will take the lead in the investigation.

2.9 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.

2.10 Violence Prevention

The City endeavors to provide a safe workplace for all employees. To ensure a safe workplace and to reduce the risk of violence, all employees should review and understand

all provisions of this workplace violence policy.

2.10.1 Prohibited Conduct

We do not tolerate any type of workplace violence committed by or against employees. Employees are prohibited from making threats or engaging in violent activities. This list of behaviors provides examples of conduct that is prohibited:

- Causing physical injury to another person.
- Making threatening remarks.
- Displaying aggressive or hostile behavior that creates a reasonable fear of injury to another person or subjects another individual to emotional distress.
- Intentionally damaging employer property or property of another employee.
- Possessing an unauthorized weapon while on City property or while on City business.
- Committing acts motivated by, or related to, sexual harassment or domestic violence.

2.10.2 Reporting Violent Situations

Any potentially dangerous situations must be immediately reported to a supervisor or the human resource (HR) department. Reports can be made anonymously, and all reported incidents will be investigated. Reports or incidents warranting confidentiality will be handled appropriately, and information will be disclosed to others only on a need-to-know basis. All parties involved in a situation will be counseled, and the results of investigations will be discussed with them. The City will actively intervene at any indication of a possibly hostile or violent situation.

2.10.3 Risk Reduction Measures

Hiring

The City takes reasonable measures to conduct background investigations to review candidates' backgrounds and to reduce the risk of hiring individuals with a history of violent behavior.

Inspection

The City may conduct periodic inspections of the premises to evaluate and determine any vulnerabilities to workplace violence or hazards, and will endeavor to take corrective action to reduce known risks.

Individual Situations

Although we do not expect all employees to be skilled at identifying potentially dangerous persons, employees are expected to exercise good judgment and to inform the HR department if any employee exhibits behavior that could be a sign of a potentially dangerous situation. Such behavior includes:

- Discussing weapons in a threatening way, or bringing them to the workplace (exceptions for public safety or other authorized personnel in the course of their official duties).
- Displaying overt signs of extreme stress, resentment, hostility or anger.
- Making threatening remarks.
- Showing sudden or significant deterioration of performance.
- Displaying irrational or inappropriate behavior.

Threatening conduct, or any other acts of aggression or violence in the workplace will not be tolerated. Any employee determined to have

committed such acts will be subject to disciplinary action, up to and including termination. Non-employees engaged in violent acts on the employer's premises will be reported to the proper authorities and fully prosecuted.

3. Use of Seat Belts

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 seat 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 all forms of Tobacco Products (as defined in City Code) is prohibited in/on City vehicles, equipment and properties, 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

5.1 Submitting requests

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 requests for business dealings or outside employment must be submitted in writing on a city authorized form, an exhibit of which accompanies this document, and approved by the employee's Department Head prior to an employee engaging in such a relationship. Such approval will be required annually.

5.2 Review by Management

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.

5.3 Disciplinary Matters

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

5.4 Requests by Department Heads

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.

5.5 Reporting injuries while working for others

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

6.1 Purpose and use of 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 opportunities for growth, 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 (for exempt employees) may also serve as the basis and justification for merit based raises and/or promotions awarded to employees.

6.2 Frequency of Performance Evaluations

Performance appraisals will be conducted before the end of the employee's probationary period and at least once each year thereafter. Evaluations may be performed more often as need arises.

6.3 Completion of Evaluation Forms

The first step in the performance evaluation process is completion of evaluation forms. Evaluation forms will be completed by the supervisor, the employee, and others.

6.4 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 supervisor.

6.5 Signing Requirement

Employees are required to sign their evaluations and will receive a copy upon request. Signing does not imply agreement, but that the contents have been made known to and discussed with the employee. If the employee refuses to sign the evaluation form, the supervisor shall document the refusal and submit the evaluation and documentation to Human Resources. (Code 1637 § 1).

6.6 Placement in Personnel File

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

7. Policy on Personnel Records

7.1 Personnel Files

It is the policy of the City to maintain accurate and updated information on each municipal employee in its personnel files. The personnel file will include documents related to the employee's history with the city. Payroll information, I-9 forms and confidential/medical information will be maintained in separate files.

7.2 Maintenance of personnel files

The City Administrator shall be responsible for maintaining personnel records for all current and former employees.

7.3 Employee access to files

The employee shall have reasonable access to his/her personnel records upon

request to the City Administrator. The file will be made available to the employee's representative only upon express written authorization by the employee.

7.4 Placement of documents in files

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.

7.5 Changes of Name, Address, Telephone and Withholding Status

It is the employee's responsibility to inform Human Resources of any changes in name, address, telephone number, marital status, dependent changes, beneficiary changes, withholding status or any other life changing events. An employee must immediately report any of the above or other pertinent changes. Intentional failure to report such information is grounds for disciplinary action.

7.6 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.

7.7 Confidential Personnel Information

Medical information: 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.

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.

7.8 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 29.08.04040.7.7 For employment verification requests, the City will provide only the following information on both present and past employees unless additional information is requested:

- 1) whether a person is or has been employed with the City in municipal government service;
- 2) dates of employment;

- 3) current position or positions at the date of separation from employment and other positions held;
- 4) verification of salary information.

Additional information may be released following a specific request, upon approval of the City Administrator. Only the City Administrator shall give out employee information. All requests for information on an employee's employment shall be immediately directed to the City Administrator. (Code 1637 § 1)

8. Use of City Property by Employees

8.1 Purpose and scope

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

8.2 Use of City Owned Tools, Equipment and Supplies

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

8.3 Use of City Owned Properties, and/or Facilities

Employees are prohibited from using or being in City-owned or leased properties 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.

9. Committees of Management and Employees

9.1 Purpose and limitation

The City shall allow for establishment of management/employee committees, on an as-needed basis, as determined by management and employees together, for the purpose of addressing issues or concerns that may arise. Committee makeup and procedures shall be agreed upon jointly at the creation of these committee(s).

10. Safety

The City of Dickinson cares about the safety of each and every employee. For this reason, it has developed and will enforce a safety program (including a Safety Policy separate from this manual, made available to employees upon hire) designed to prevent accidents, injuries and lost time for employees. . 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.

11. Use of the Internet and E-mail

11.1 General rules

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.

11.2 City Authority to access data

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.

11.3 Who may use city electronic systems

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.

11.4 User responsibilities – passwords, and protection of files

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. Any changes to passwords will be reported to the City Administrator 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.

11.5 User responsibilities – sending emails

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.

11.6 User responsibilities – copies, downloads and copyrights

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.

11.7 User responsibilities – games, attachments and viruses

No software, games or other applications may be installed or downloaded without the authorization of the City Administrator. 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.

11.8 User responsibilities – no illegal activities permitted

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.

11.9 Business Use

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.**

11.10 City's right to access and monitor

The City reserves the right to access, review or otherwise monitor all such use. The City may monitor and conduct audits of computer use and employee use of the World Wide Web.

11.11 Users and offensive materials

Users are hereby advised that there is material on the internet and World Wide Web that is offensive to people. The City has limited ability to control sites that may contain offensive material. Users must use good judgment and common sense to refrain from engaging such activity. The City disavows any liability for harassment by any person who uses the City's system and is offended upon discovering such sites.

11.12 No forwarding of certain materials

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.

11.13 Reporting of violations of this policy

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.

12. Privacy

12.1 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.

12.2 Protected Health Information

Recent HIPAA (Health Insurance Portability and Accountability Act) legislation requires that the City provide a statement to employees regarding Protected Health Information (PHI). The City is a covered entity under HIPAA because we sponsor a health plan and a flex benefits plan which has a medical spending account feature. This means the City is required by law to maintain the privacy of employee health information.

PHI, or Protected Health Information means information that might identify an employee, including past present or future physical or mental conditions; provision of health care; or payment for care.

The City is permitted to use and disclose certain information without authorizations as in the following: to provide patient care through the health plan providers; to obtain payment for services; or to operate a health or flex plan.

Summary plan descriptions (SPD's) through the health care providers describe how employee health information will be protected through methods adopted by them as providers.

The City allows access to PHI only by those persons working on and within the

plan, referred to as the “Plan Workforce”. This includes information that is within payroll, Human Resources, accounting staff who process applications for coverage and billing statements.

In all cases, no PHI will be disclosed by the Plan Workforce outside the HIPAA privacy rules.

Training will be provided to the Plan Workforce.

Sanctions are adopted for violations of this disclosure policy, up to and including termination of employment of the offending party.

Under HIPAA, employees can request their own information and how it is used; they may request that their information be disclosed to others. These requests are to be in writing to one of the privacy officials of the City, which include: The City Administrator, the City Attorney, or the Human Resource Coordinator.

13. Mobile Devices and Related Equipment

13.1 Purpose and scope

This policy outlines the use of personal mobile devices at work, use of city provided mobile devices and all mobile device equipment, safety issues, the issuance of mobile devices and additional information.

13.2 Department Head responsibilities

Each department head is responsible for determining whether an employee’s job duties require the City provide a mobile device or stipend to an employee. Once a department head has made a determination a city issued mobile device is required for an employee to effectively carry out their assigned duties the City will cover all legitimate business charges related to the City issued mobile device. If a department head determines that the issuance of a city mobile device is not essential for an employee but the use of a personal mobile device 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 mobile device for business purposes.

13.3 Stipend conditions

Personal mobile devices, when a stipend is provided, are subject to the provisions of this policy.

Mobile device records, including phone and data transmissions, can be subject to public disclosure under the State of North Dakota Open Records laws.

13.4 Courteous and legal use

In situations where the use of a mobile device could be disruptive, courtesy is expected. Mobile devices cannot be used in an illegal, illicit or offensive manner. 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.

13.5 City Issued Mobile Devices

Mobile devices 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 mobile device 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. 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.

13.6 Access to city server

Only city issued mobile devices or approved personal mobile devices where a monthly stipend has been authorized may access the city's server. All mobile devices must be password protected, per City IT department guidelines (see 13.9 below).

13.7 Personal Mobile Devices

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

13.8 Safety Issues while operating vehicles

Employees whose job responsibilities include regular or occasional driving are encouraged to refrain from using mobile devices 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. 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 mobile device 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. Employees who are charged with traffic violations resulting from the use of a mobile devices while driving on duty may be subject to disciplinary action and personal liability resulting from such traffic violations.

Texting while driving is strictly prohibited, and is a violation of state law; violations of this statute will be subject to disciplinary action, up to and including dismissal.

13.9 Mobile Passwords

13.9.1 General

All Mobile devices containing stored data, calendar and contact information owned by the City of Dickinson must use a password to protect data at rest. This includes all devices accessing City of Dickinson's mail servers. Mobile devices are defined as, but not limited to include tablets, PDA's and cell phones.

13.9.2 Scope

This policy applies to any mobile device issued by the City of Dickinson or personal device used for City of Dickinson business which contains stored data owned by the City of Dickinson.

13.9.3 Mobile Devices

Any City of Dickinson data stored on a mobile device must be saved on a device that is password protected. The City of Dickinson shall employ remote wipe technology to remotely disable and delete any data stored on a City of Dickinson mobile device as necessary.

13.9.4 Required procedures

The policy will require users to set their device to time out in 30 minutes unless they have a more restrictive policy set and they will be required to type in their password to make a call or send a message or email. Please be sure you sync

your mobile device applications periodically to your desktop in order to save a backup so you can restore should your device need to be wiped. A unique character combination that cannot be easily derived (such as 1111 or any single number pattern, your birthday, home address or zip code) and is at least 5 characters long is suggested. We recognize many devices can only store 4 character passwords. In this case, it is important to use all 4 characters.

13.9.5 Loss and Theft

The loss or theft of any mobile device containing City of Dickinson data must be reported to the City of Dickinson Information Technology Department immediately so that they may commence cellular wipe procedures.

13.10 Additional Information

Violations of this policy may be subject to disciplinary action, up to and including dismissal. The City Administrator will determine if the issuance of a city mobile device is required for department directors and may review the issuance of any and all city issued mobile devices or stipends.

The mobile device 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

14. Employee Status and Classification

14.1 Definitions

Municipal Employee

A person employed by the City who is not an independent contractor.

Probationary Employee

An employee who is newly hired by the city in a regular full or regular part-time position (see Section 29.08.04060.15.22).

Regular Full-Time Employee

An Appointive Official or Municipal Employee who is employed by the city to work at least 40 hours per week and has completed their probationary period.

Regular Part-time Employee

An employee who is employed by the city to work in a Civil Service position which requires the employee to work at least 20 hours and less than 40 hours per week on a regular basis.

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.

14.2 Classification Plan

14.2.1 Adoption

A Classification plan has been adopted by the City of Dickinson. 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.

14.2.2 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.

14.2.3 Administration of the Classification Plan

Revision to class descriptions and reallocations within the approved classification plan will be made as follows: 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. All permanent changes or modifications of the responsibilities of a class, will be promptly reported to the City Administrator by the department head.

14.2.4 Review of Classifications

Periodically, the City Administrator will review all classifications and, if necessary, recommend to the City Commission that existing classes be combined, abolished or, if necessary, reclassified.

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

14.2.5 Amendments and Changes to Classification Plan and Class Descriptions

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.

14.2.6 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.

14.2.7 Effect of Reclassifications

If a job is reclassified into a lower pay grade, the employee shall receive a rate of pay no lower than step four in the grade, and progress according to the experience level in the pay schedule. If a job is reclassified to a higher rate of pay, the employee shall receive the pay grade that corresponds with his/her experience level, and will continue progression.

14.2.8 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

15. Recruitment and Hiring

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.

*When considering qualifications, the city will use past work history, depth of experience, quality of work experience, as well as other factors.

15.1 Job Announcements

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

15.2 Internal Announcements

Internal announcements, which include either promotion or transfer from within shall be advertised in all occupied City buildings for a minimum of five calendar days.

15.3 Public Announcements

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

15.4 Recruitment Agencies

If the City Administrator 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.

15.5 Applications for Employment

Individuals interested in applying for a specific position with the City of Dickinson must submit a completed city application, copies of which are available on the City's website.

15.6 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. Exceptions to the age minimum may be considered in work areas that are deemed appropriate and safe for those under 18 years of age.

15.7 Qualifications for Employment

General Skills/Abilities Required, ADA Exception

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

15.8 Veteran's Preference

The City will follow applicable state law regarding the hiring of veterans. Veterans Preference will not be used for promotions, transfer or internal hires.

15.9 Disqualification for Employment

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

be true:

- applicant does not meet the minimum qualifications for appointment;
- applicant knowingly has made a false statement on the application form or resume;
- applicant has committed fraud during the selection process;
- applicant does not meet the eligibility for employment; or
- an unsigned employment application.

Applicants for the positions within the police department may be subject to more stringent disqualifying circumstances, pursuant to Police Department policies.

15.10 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. Competitive examinations may be used in the selection process.

15.11 Limited Hour Schedule and Seasonal Positions

The City will publicly advertise for these positions. Following advertisement, the city Administrator will review the applications, set interviews and fill the positions as needed.

15.12 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.

15.13 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. A process is established by the City Commission which will govern promotions and transfers. 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.

15.14 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.

15.15 Recruitment Agencies

When recruitment agencies are used, following public advertisement, the City Administrator will review the applications, set interviews, and fill the positions as needed.

15.16 List of Eligible Persons

The list of eligible persons will contain up to seven names for all openings. The City's Human Resource staff will maintain the list of eligible persons.

15.17 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 proceeding twelve months for the same position. In that case, the City Administrator

may authorize hiring without need to advertise an opening.

15.18 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.

15.19 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.

15.20 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 the City's Recruitment and Selection policies. This Section shall not apply to seasonal or temporary workers.

Exception for election of immediate family member to City Commission:

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.

15.21 Definition of Immediate Family Member

Immediate family is defined as: parents, spouse, children, siblings, grandparents and grandchildren through blood, marriage or adoption. For the exclusive purpose of bereavement leave, immediate family members shall also include great grandparents, great grandchildren, step-parents, and step-children. (Code 1637 § 1)

15.22 Probationary Period and Trial Period

15.22.1 Term of Probationary Period – New Hire

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 by the employee's supervisor or the Department Head up to six months. Any extensions which would make the probationary period more than six months from the employee's first day shall require the written approval of the City Administrator. (Code 1637 § 1)

15.22.2 Term of Probationary Period – Transfers and Promotions

Transfers and promotions carry a trial period of up to 90 days for the purpose of assessing the individual's ability to perform the assigned duties. 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, if it has not been filled. If after 90 days the new role is not suitable to the employee and the supervisor, the employee may apply for another position within the City. (Code 1637 § 1)

Section 29.08.04070 Hours of Work

16. Hours of Work

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.

16.1 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. Non-exempt Fire Suppression Personnel with a 207(k) work period exemption will work 204 hours in a defined 27 day work period. A full shift shall consist of 24 hours. (Code 1637 § 1)

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.

16.1.1 Paid break times

Paid break times (rest breaks) are scheduled by the department, usually 15 minutes per break, and two per 8 or 10-hour shift. Smoke breaks are included in the allotted time for rest breaks. Employees are expected to remain at the worksite while on this break. Breaks must be taken at the appointed times, and not combined or taken at the beginning or the end of a shift. Breaks must be taken within the allowed time. Flexibility regarding rest breaks must be discussed in advance with the supervisor.

16.1.2 Unpaid lunch breaks

Employees must be required to take an unpaid lunch break of at least 30 minutes during the work schedule if the employee works more than 5 consecutive hours. Lunch breaks are to be taken at or near the middle of ones shift. The employee must be completely relieved of all duties. Employees may leave the worksite for the lunch break. Requests for flexibility regarding the timing of lunch breaks must be discussed in advance with the supervisor. Unpaid lunch breaks may not be applicable to public safety personnel. Scheduling regarding paid or unpaid lunch breaks shall be addressed by the Department Head and clearly communicated to employees.

16.1.3 Nursing Mother Breaks

The City, in accordance with state and federal legislation, allows mothers reasonable paid break time to express breast milk for a nursing child for one year after the child's birth. Employees are provided a flexible work schedule for this purpose, using break times and leave time if necessary. Where flex time is possible, the employee may make up time as approved by the supervisor. The employee should inform Human Resources of her need, and the city will provide suitable room arrangements for expression and storage.

16.2 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.

16.3 On-Call Time

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

16.4 Pay, Restrictions and Allowances of On-Call

Employees on-call will be paid an on-call allowance as set by the City Commission for each day or week on-call. Employees who are on-call will be subject to on-duty employee discipline if determined to have consumed alcohol or taken illegal drugs while serving on-call. The on-call employee is responsible for making sure calls are covered. 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. Public safety positions have separate and unique requirements for on-call reporting, by department policy.

16.5 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.

16.6 Overtime Compensation

Overtime compensation at 1.5 times normal hourly pay will be paid to non-exempt employees for time actually worked in excess of forty hours per work week; 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 in writing, in advance.

Fire Suppression Personnel with a 207(k) work period will receive overtime compensation for time worked in excess of 204 hours in a defined twenty-seven day work period. Overtime will be paid at 1.5 times the normal hourly pay of the employee. The hourly pay of the employee will be either the stated hourly rate of the employee's wage, or shall be calculated by dividing the employee's salary by 2.080 hours. Fire Suppression Personnel scheduled to work on a holiday will receive holiday pay for hours worked on the holiday, up to a maximum of twelve hours of holiday pay, regardless of whether the employee's shift exceeds twelve hours on the holiday, at 1.5 times the normal hourly pay of the employee. (Code 1637 § 1)

16.7 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)

16.8 Exemptions to Overtime (Exempt Employees)

Department of Labor (DOL) Standards for Classifying Exempt Positions will be followed by the City. The City Administrator, along with the City Attorney and the Human Resources Coordinator shall make determinations regarding classification of exempt and non-exempt employees, and shall communicate these determinations to employees upon

hire and/or upon changes to job descriptions.

16.9 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 two (2) consecutive shifts 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.

16.10 Time Sheets

Each non-exempt employee's time sheet is a record of his/her regular hours worked, overtime worked, on-call, call-back, and vacation or sick leave used for the purpose of calculating and issuing pay checks. Exempt employees will record their vacation and other leave time. 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.

An employee may not log in or out for any other employee. Supervisors shall have the authority to adjust employee time sheets or time clock entries for legitimate purposes, including but not limited to call-outs or to correct a mistake on an employee's time sheet.

(Code 1637 § 1)

16.11 Travel Pay

The City will follow state and federal regulations on the compensation of employees for travel pay. Employees who travel will be required to obtain approval in advance from their supervisor. If an employee wishes to be counseled on the travel pay for their instance of travel, the employee should seek assistance from the Human Resources Coordinator. Human Resources will then outline the travel pay that will apply.

16.12 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, Code 1637 § 1)

Section 29.08.04080 Compensation

17. Compensation and Benefits

17.1 Pay Plan - Preparation; amendment

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. 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.

17.2 Pay Plan - Administration

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 or other conditions. 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.

17.3 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 adjustment of an employee. This action may be appealed to the Civil Service Commission.

17.4 Remuneration

17.4.1 Non-Exempt Employees

Any wage rate established for a non-exempt employee shall represent his/her basic pay rate. Full-time employees shall be eligible to receive additional pay for hours worked in excess of 40 hours in any one week as described in Section 29.08.04070.16.6.

EXCEPTION: Police and Fire Suppression Personnel overtime compensation described in section 29.08.04070.16.6. (Code 1637 § 1)

17.4.2 – Exempt Employees

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

17.5 Prohibition on Remuneration from Outside Sources

Under no circumstances shall an employee of the City accept any money, service or other valuable consideration from any source other than the City for performance of their duties or based on the employee's position with the City.

17.6 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. Changes in an employee's Job Title, with no corresponding changes in duties or responsibilities shall not be considered a promotion.

17.7 Shift Differential Pay

"Shift-differential" compensation shall apply to those non-exempt employees working regularly scheduled hours between 6:00 PM and 6:00 AM

Should new alternative shift arrangements be necessary, the City Administrator shall identify for the employees concerned, any differential pay that may apply.

17.8 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 30 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.

17.9 Early Pay Checks

The City of Dickinson does not grant early pay checks to employees under any circumstances.

17.10 Direct Deposit of Paychecks

The City requires direct deposit of the employee’s pay into the bank account(s) designated by the employee.

17.11 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: Employee designated deductions as permitted under the City’s flexible benefits plan, and deductions requested by the employee which have received prior approval for payroll deduction.

18. Benefits

The following benefits are afforded according to individual employee classifications (see Section 29.08.04050).

Regular Full Time:			
Description	Location	Benefit	Eligible for Benefit
Vacation Leave:	Section 29.08.04090	Full benefit	Upon Hire
Sick Leave:	Section 29.08.04090	Full benefit	Upon Hire
Personal Leave:	Section 29.08.04.90	Full benefit	Upon Hire
Holiday Pay:	Section 29.08.04090	Full benefit	Upon Hire
Health Insurance:	Section 29.08.04080	Full benefit	According to insurance provider
Retirement:	Section 29.08.04080	Full benefit	Upon Hire
Life Insurance:	Section 29.08.04080	Full benefit	Upon Hire
Longevity Pay:	Section 29.08.04080	Full benefit	Upon completion of five years
EAP:	Section 29.08.04080	Full benefit	Upon Hire
Flexible Benefits:	Section 29.08.04080	Full benefit	Upon Hire
Med. Spend Acct.:	Section 29.08.04080	Full benefit	Upon Hire

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:	Full Benefit	Upon Hire
Life Insurance	Full Benefit	Upon Hire
Employee Assistance Program	Full Benefit	Upon Hire
Flexible Benefits:	Prorated to average weekly hours	Upon Hire
Med. Spending Acct.:	Full Benefit @ 30 hours avg. weekly	Upon Hire

No benefits are available to limited hour schedule or seasonal employees. (Code 1637 § 1)

18.1 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 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.

18.2 Retirement Plans

Upon hire, eligible employees will be enrolled in the appropriate retirement plan. The City and the employee will contribute to a retirement 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 retirement plan's Summary Plan Description (SPD).

18.3 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.

18.4 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.

18.5 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.

18.6 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.

18.7 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.

18.8 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 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. 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.

18.9 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.

18.10 Employee Assistance Program (EAP)

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 and regular part-time benefited 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.

18.10.1 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:

18.10.2 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.

18.10.3 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, working with the Human Resource Coordinator, may require participation in the EAP as part of an action plan. When the EAP is used in this manner, the city of Dickinson may request of the provider a verification of the employee's appointments and treatment completion. 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 29.08.04110 of this manual.

18.11 Reimbursement for Travel Expenses

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. It should be understood that approval for travel and training will always be subject to budget restrictions. Requests for reimbursement will require that forms and approvals be completed and signed by appropriate individuals.

18.11.1 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 prior to the date of travel except in emergency instances. Only original approval is required for re-occurring meetings.

Employees must purchase reimbursable flight tickets when possible (provided that the extra charge is not more than \$50.00)

Reimbursement is not allowed for the use of a personal vehicle when a city vehicle is available, unless health or safety conditions require it.

Employees are required to reimburse the city for expenses associated with training and education if the employee leaves the city within 90 days of the training event. An

acknowledgement form for this reimbursement will be signed upon the approval of the training event.

18.11.2 In-State Travel Expenses

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

18.11.3 Out-of-State Travel Expenses

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

18.11.3.1 Per diem lodging allowance shall consist of the actual cost of lodging expense.

18.11.3.2 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.

18.11.4 Meal Reimbursements - Schedule for Computation

The times for allowance of paid meals is as follows:

First Reimbursement Period is from 12:00 midnight to 11:00 a.m. First quarter reimbursement may not be made if travel began after 7:00 a.m.

Second Reimbursement Period is from 11:00 a.m. to 5:00 p.m. Second quarter reimbursement may not be made if travel began after 1:00 p.m.

Third Reimbursement Period is from 5:00 p.m. to 12:00 midnight.

If an employee is traveling for less than 3 hours in any quarter, meals will not be reimbursed.

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. (Code 1637 § 1)

18.11.5 Receipts Required

Receipts shall be required for all non-per diem expenses which are to be reimbursed by the City of Dickinson.

18.11.6 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.

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.

18.11.7 Miles driven to and from the workplace are not eligible for reimbursement. Employees are not reimbursed for miles driven to and from work. However, reimbursement is allowed when employees are asked to drive their own vehicles to regularly conduct deliveries or similar situations. Agreements on such reimbursement will be made in advance.

18.11.8 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.

18.11.9 Timing of Reimbursements

Employees will be reimbursed for travel and other reimbursable expenses as soon as practicable following submission of receipts and reimbursement voucher.

18.12 Clothing Allowance: Uniformed Personnel

Due to the fact that the City requires certain 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.

18.13 Longevity Pay: Description of Benefit

Each Regular Full-time employee, as defined in Section 29.08.04050.14.1, 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 City Administrator 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. (Code 1637 § 1)

18.13.1 Rate Schedule for Longevity Pay

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

18.13.2 Time of Payment

Employees receiving longevity pay must be employed at the time that the reimbursement is paid, except as described 18.13. Payments shall be made on or about December 15 of each year. No early payment will be made except as authorized in Subsection 29.08.04080.18.3

18.13.3 Withholding of Payment

Upon a finding that an employee(s) is not in good standing, the City

Administrator may withhold or not authorize longevity payment. Examples of employees who may be considered not in good standing include, but are not limited to employees on work improvement programs, disciplinary suspensions or employees who have a history of the same. The City Administrator may also consider input from the employee's supervisor or the employee's annual evaluation. In this case the employee(s) affected will be notified of the reason for nonpayment.

18.14 (RESERVED)

18.15 Workers' Compensation

The City of Dickinson purchases Worker's Compensation coverage 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.

18.16 Special Benefit to Retiring Public Safety Employees

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:

- have completed a minimum of 20 years of service with the Police Department, and
- be terminating employment with the Police Department under favorable conditions, and
- 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 that the City is terminating employment for cause for violation of policy, procedure or law, or termination is for medical reasons of a psychological nature.

Upon retirement, a member of the Dickinson Fire Department, whether volunteer or full time, will receive their helmet mounted to a presentation plaque in appreciation of their service to the community. To qualify, a member must have completed a minimum of 10 years of service and be at least 55 years of age OR completed 20 years of service with the Dickinson Fire Department. (Code 1637 § 1)

18.17 Sick Leave Bank

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.

18.17.1 Sick Leave Bank Administration

Sick Leave Bank Administration will be conducted by Human Resources and other appointees by the City Administrator.

18.17.2 Membership and Eligibility

Employees will become participants in the SLB by donating hours at the beginning of employment or as provided in Paragraph 18.17.3. 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, not to exceed the employee's original donation.

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. Membership withdrawal, as well as termination of employment, shall result in forfeiture of all hours contributed.

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

- termination of employment, including resignation, involuntary termination, and retirement;
- cancellation of participation;
- refusal to honor such assessment as may be required by the SLB;
- refusal to comply with the policies and procedures of the plan; or
- determination of permanent disability by the Social Security Administration (SSA).

An SLB grant shall only be used by the individual member for his/her personal catastrophic or terminal illness or injury. 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 employee donations of leave through the SLB as described in section 18.17.3.

Persons off work due to a normal pregnancy and delivery shall not be eligible to receive an SLB grant. The SLB shall not be used by a SLB member disabled by an injury covered by Worker's Compensation. 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. (Code 1637 § 1)

18.17.3 Sick Leave Bank Contributions

A 16 hour sick leave assessment shall occur for each participating employee at the beginning of employment. Employees who do not opt into the SLB at the beginning of employment may opt in during the benefit election period for the next two plan years. All employees of the City shall have a one-time opportunity during the 2018 benefit election period to opt into the SLB if they have not done so. Following this one time election opportunity, any employee who is not otherwise entitled to an additional plan year for election as provided hereunder shall have no further opportunities to opt in, except as herein provided. The required initial sick leave assessment will be pro-rated for Regular Part-Time employees to the average number of hours that employee works. If an employee leaves the SLB, they may not re-enter in the future.

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.

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 SLB 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.

All participants of the SLB, who are Regular Full-Time Employees may

be assessed an additional eight hours of sick leave if it is determined to be necessary, but in no case shall a participant be required to donate more than that additional amount per request. There is no limit to the number of times the SLB may assess additional hours from its members. 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.

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.

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

Employees (members or non-members) may donate leave to specific employees upon the request of a specific employee. Employees wishing to request donated leave from other employees must make the request through the Human Resources Coordinator and must have exhausted all of their own accrued leave time (sick, vacation, personal leave, and floating holiday) before requesting donated leave. The Human Resources Coordinator shall submit the request to all City employees. The requesting party's name shall not be included in the request unless the requesting party specifically consents in writing to their name being released with the request. Employees shall not be required to consent to the use of their name in the request. The SLB reserves the right to set a limit on the amount of leave any individual employee may grant per request 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 per request. 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. The maximum number of hours an employee can receive through direct donations during their employment with the City is 320. Should donations of time fall below that needed to maintain the recipient employee on full-time status, said employee will lose that status. Employees who wish to donate leave to a specific employee as provided hereunder may not donate leave in an amount which would cause the donating employee to have less than 160 hours of leave remaining for their own use. (Code 1637 § 1)

18.17.4 Sick Leave Bank Usage

Prior to being eligible to draw any hours from the SLB, or to receive sick leave donations from employees, recipients shall be required to exhaust all accrued sick leave, vacation leave, personal leave, and holidays.

With the exception of specific employee donated grants of sick leave as described in section 18.17.3, any employee requesting an SLB grant must be a member of the SLB.

SLB participants shall not be eligible to receive SLB benefits until the employee has been off work for at least 160 working hours, unless the employee or his/her representative provides adequate evidence to the City Administrator that

recent past major illness(es) have made it impossible to accumulate sufficient accruals to cover the 160 working hours requirement.

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 any holidays.

Not more than 240 hours 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. 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.

Regular Part-Time Employees will be eligible to receive SLB benefits prorated to the average number of hours they work. (Code 1637 § 1)

18.17.5 Maintenance and Reporting of Sick Leave Bank Records

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

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

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

All appropriate SLB forms are available from the City Administrator. City Administrator will annually distribute an administrative report reflective of SLB activity. (Code 1637 § 1)

18.17.6 Dissolution of the Sick Leave Bank

In the event the SLB is dissolved, the Sick Leave Bank Administrators shall determine the terms under which the SLB may be dissolved, and will establish guidelines for distribution of remaining balances.

18.18 Training and Tuition Reimbursement

18.18.1 Objective

The City will endeavor to support employees who wish to continue their education to secure increased responsibility and growth within their professional careers. In keeping with this philosophy, the City has established a reimbursement program for expenses incurred through approved institutions of learning. Full time regular employees who have completed their probationary period are eligible to participate.

18.18.2 Job-Related Training

Department heads may within budgetary constraints, plan, schedule and pay for any job-related training essential to the work assigned for regular full time and regular part time employees. This may include tuition, coursework, seminars, conference fees, as well as travel costs. Normally this training is provided during duty hours. If the training is conducted beyond duty hours, the overtime provisions of the Fair Labor Standards Act (FLSA) for non-exempt employees must be applied.

18.18.3 Tuition Reimbursement Budget

The City will include in its budget annually an amount for continuing education. The City will advise employees of the budgeted amount each year for continuing education. Approvals will be based upon the number of applications

received and the amount budgeted, as well as the City Administrator's discretion in carrying out the vision and mission of the City. A maximum of \$1,500.00 will be available to any one employee per semester (or semester equivalent).

18.18.4 Stipulations for Tuition Reimbursement

These reimbursements are not for job-related training as described above, and are for education events performed on the employee's own time. The employee must be in good standing at the time of the application for tuition reimbursement. The continuing education program must correspond to an accredited program that either offers growth in an area related to the employee's current position, or that might lead to promotional opportunities. This may include courses for college credit, continuing education credit courses, seminars, and certification exams. A grade of "C" or its equivalent is required for reimbursement. Expenses must be validated by receipts, and a copy of the final grade or a completion certificate must be presented. In some cases, books and study materials may be included in the reimbursement request. The City will reimburse up to 70% of approved costs.

18.18.5 Procedures for Applying for Tuition Reimbursement

- The employee provides his or her manager with information about the course of study.
- A tuition reimbursement form will be completed with appropriate signatures prior to the employee enrolling in the course. Final approval will be decided upon by the City Administrator in conjunction with the appropriate department head, and the HR Coordinator.
- The applicant is informed of the approval, and the amount of reimbursement approved.
- The original form is maintained by the employee, with a copy given to Human Resources.
- The employee then enrolls in the course.
- Upon completion, the employee submits the original, along with receipts and other documentation.
- The employee is reimbursed by the payroll department.

18.18.6 Limitations

The City will endeavor to make reimbursements equitable across departments, and to qualifying employees within budgetary restrictions. It shall retain the right to limit approvals or approval dollars so that the tuition reimbursement program will have maximum benefit to the most employees and to the City's needs.

An employee who resigns or is terminated while attending a course previously approved for reimbursement will not receive reimbursement. An employee who leaves employment with the City within one year of receiving tuition reimbursement must repay the tuition on a pro-rated basis. The City will consider exceptions in extreme cases of health or safety.

Section 29.08.04090 Leaves of Absence

19. Leaves of Absence

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, except in cases of emergency.

19.1 Vacation Leave

19.1.1 Vacation Leave Benefits for Regular Full Time Employees

Paid vacation leave will be granted to all qualified employees. 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 8 hour work days)
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. (Code 1637 § 1)

19.1.2 Vacation Leave 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 percentage of benefit will be based on the average of the actual weekly hours the employee worked in the previous year. Allocation of Accruals and Benefits for Regular Part-time Employees: (Code 1637 § 1)

<i>Qualifying Hours</i>	<i>Percent of Benefit</i>
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

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

Employees on leaves of absence without pay, employees who are absent for a full pay period may receive accrual of vacation leave benefits, depending upon

the circumstances and a review by the City Administrator.

For cases of suspensions without pay, employees who are absent for more than a full pay period do not accrue vacation leave benefits.

19.1.4 Accrual and Availability of Vacation Leave

An employee's accrual of vacation leave shall begin upon their first hour of work, and may be used as it is earned, subject to the other requirements of this section.

19.1.5 Rules and Allowances of Vacation Accrual Carry-over

The maximum number of hours of vacation leave an employee shall be allowed to carry over as of December 31 of each year is 240 hours. Employees with a balance of 240 hours may continue to accrue hours at their regular rate of accrual over the year, but will not be permitted to carry over more than 240 hours as of December 31. It is the employee's responsibility to ensure that hours are used on a timely basis according to this Section. (Code 1637 § 1)

EXCEPTION: If an employee is denied vacation leave because of City or Department needs (snow emergencies in which the City needs employees on the job, for example) the Department Head, acting with the City Administrator, may allow carryover of hours – to be determined at the time, and specific to the work requested. Employees must request vacation leave in writing and the Department Head must respond to such request in writing. An email shall be sufficient to satisfy this request.

19.1.6 Benefit Pay-out to Separation Employees

Upon separation of employment, an employee will be paid for up to 240 hours 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. Upon notice to the City by the employee that the employee intends to separate employment, the employee may not utilize accrued vacation leave from the period between the date of the notice to the official date of separation, unless such leave was already scheduled at the time the notice was given, and except in the case of extenuating circumstances. If the employee wishes to request an exception due to extenuating circumstances such request must be approved by the City Administrator.

19.1.7 Allowance for Employees on Vacation on a Recognized Holiday

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

19.1.8 Rules for Submission of Vacation Leave Request 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.

19.1.9 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 29.08.04090.19.1.5. In normal operating situations, the City of Dickinson will make every effort possible to accommodate employee requests for vacation time off.

19.1.10 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 29.08.04090.19.1.5 will not apply to employees who are notified of a year end leave allowance limitation. (Code 1637 § 1)

19.1.11 Minimum Charge to Vacation Leave

Vacation time will be taken in 15 minute increments. Fire Suppression Personnel with a 207(k) work period exemption will receive a leave reduction of 16 hours for any request of a minimum of 16 hours and a maximum of 24 hours. All other leave requests will be deducted at actual hours.(Code 1637 § 1)

19.2 Sick Leave Benefits

19.2.1 Benefits for Regular Full Time Employees

Employees who are eligible for full benefits (see Section 29.08.04050) shall accrue sick leave at a rate of eight (8) hours of sick leave per month.

19.2.2 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. 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 percentage of benefit will be based on the average of the actual weekly hours the employee worked in the previous year. (Code 1637 § 1)

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

<u>Qualifying Hours</u>	<u>Percent of Full Benefit</u>
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

19.2.3 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 a full pay period do not accrue sick leave benefits.

19.2.4 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.

19.2.5 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.

19.2.6 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. In the case of accumulated sick leave paid to a terminating employee, refer to Section 29.08.04090.19.2.10 (Code 1637 § 1)

19.2.7 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:

- Personal illness, injury or medical care appointments.
- To care for an immediate family member when medical care is necessary. Immediate family members are those persons listed in Section 29.08.04060.15.20.

When abuse is suspected as defined in Section 29.08.04090.19.2.9, 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 may be required for any absence lasting more than four consecutive days. (Code 1637 § 1)

19.2.8 Minimum charge to Sick Leave

Sick leave will be taken in 15 minute increments.

19.2.9 Rules Affecting Abuse of Sick Leave

Use of sick leave benefits is permitted for the reasons listed in 29.08.04090.19.2.7. Use of sick leave for other than authorized purposes shall be deemed abuse of sick leave. 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. (Code 1637 § 1)

19.2.10 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.

19.2.11 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. If an employee is collecting benefits from an approved Workers Compensation claim, the employee may use sick leave to supplement payments from Workers Compensation up to the employee's regular rate of pay, based on a standard work week for the employee.

Advancement of Sick Leave Accrual for Illness or Temporary Disability.

REPEALED WITH ORDINANCE NO. 1339 § 6. (May 7, 2007)

19.3 Bereavement Leave

Employee(s) are allowed up to three days (8 hours each) for bereavement in the case of a deceased immediate family member, up to a maximum of 9 days of eight (8) hours each, annually. If leave beyond the three days of bereavement leave is requested by the employee, the request shall be drawn from the employee's accrued vacation or personal leave, or the employee's floating holiday.

Allowances are for:

- A death in the immediate family.
- Immediate family is defined in Section 15.21.

(Code 1637 § 1)

19.4 Personal Leave

Employees are permitted to take up to sixteen (16) hours annually of leave per calendar year and charge such time off against their sick leave accrual. Employees will not be allowed to utilize sick leave for the conversion to personal leave if the conversion would cause their sick leave balance to drop below zero hours of accrued sick leave.

(Ord. No. 1533 § 4)

19.5 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 vacation or personal leave depending on their accrued balances or use their floating holiday.

19.6 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.

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 jury or witness duty as defined in Section 19.8. (Ord. No. 1557 § 1) B.

19.6.1 Eligibility

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

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;

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.

19.6.2 Type of Leave Covered

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

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;

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

- any period of incapacity due to pregnancy or prenatal care;
- 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;

- 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;
- 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.

19.6.3 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.

19.6.4 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 both spouses 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 spouses 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).

19.6.5 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.

19.6.6 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.

19.6.7 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.

19.6.7.1 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.

19.6.7.2 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, re-certifications, and additional opinions are governed by FMLA implementing regulations, and the City shall follow such implementing regulations.

19.6.8 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.

19.6.9 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.

19.7 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 pay period, 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.

EXCEPTION: Employee(s) granted leave without pay by the City Commission in a layoff situation.

19.8 Jury Duty / Witness Duty

Benefit Available to Regular Full-Time Employees Only

Regular Full-time and regular part-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. 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.

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

19.8.2 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.

19.9 Leave for Private Litigation

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

19.10 Voting Leave

Employees are allowed to vote during work hours. Employees who begin their work day less than three hours after polls open and finish less than three hours before polls close are entitled to leave work to vote during work hours. Any time spent voting is not compensable time. Voting leave time must be coordinated and approved by the employee's supervisor.

19.11 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.

19.12 Holidays

Holiday Pay

Eligible employees will be granted the holiday off work and will be paid eight (8)

hours pay for each City recognized holiday. Regular part time employees will have their holiday pay prorated. Holiday pay will not 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 29.08.04090.10.5.

19.12.1 Recognized Holidays

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

New Year's 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. A birthday holiday still on the employee's accrual record at the time of another birthday will be removed from the record.

EXCEPTION: If an employee is denied the birthday holiday leave because of City or Department needs (snow emergencies in which the City needs employees on the job, for example) the Department Head, acting with the City Administrator, may allow carryover of hours – to be determined at the time, and specific to the work requested. (Code 1637 § 1)

19.12.2 Observance When Recognized Holiday Falls on a Weekend

For employees whose shifts or regular working schedule occur Monday through Friday, 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. For all other employees, the holiday will be observed for compensation and payroll purposes on the actual holiday.

19.12.3 Allowance for Employees Ineligible for Holiday Pay

Employees ineligible for paid holiday leave due to employee classification (Section 29.08.04050) will be granted a day off without pay in observance of a holiday. (Code 1637 § 1)

19.12.4 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 29.08.04090.19.12.2.

19.13 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.

19.14 Administrative Leave With Pay

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.

19.15 Administrative Leave Without Pay

Where serious infractions have occurred, or where City officials must conduct investigations which could be of undetermined length, the City Administrator may, at his discretion, invoke the use of administrative leave without pay. The employee(s) will be notified in writing as soon as possible whether the administrative leave is to be with or without pay.

19.16 Leaves Required by City

Employees who hold certain positions, such as accountants and others responsible for significant financial transactions for the City, will be required to take a leave of at least five consecutive business days per year, excluding holidays. Persons holding such positions will be informed of the requirement upon hire, or at the approval of the Personnel Code as amended herein.

(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, Code 1637 § 1)

Section 29.08.04100 Separation From Municipal Service

20. Separation from Service

20.1 Definitions

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

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

20.2 Return of City Property

City of Dickinson employees are expected to return all City property at the time of their separation 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.

20.3 Voluntary Separation

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 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.

Un-notified Absence

If an employee is absent for more than two (2) consecutive shifts 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.

20.4 Involuntary Separation

Layoffs

Employees will be subject to layoff when it is deemed necessary by reason of shortage of work, 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 29.08.04090.19.7).

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

In cases of layoff of employees, consideration will be given to the employee's performance record, their length of service, and the needs of the City and/or Department involved.

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

At the discretion of the City Administrator, 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.

Reductions in Force

It may be necessary for the City to terminate a position within the City due to budgetary constraints or reorganization. An employee terminated as part of a reduction in force is deemed to be terminated and the city will not be required to give the employee preference for other open positions within the City.

The distinguishing factor between a layoff and a reduction in force is the reason for

the termination of employment. In a layoff, an employee is removed from their current position due to a lack of work for that position. A layoff is considered temporary while the City looks for other opportunities within the City, which the employee could fulfill. If a new assignment is offered to an employee, but the employee refuses, the layoff is permanent, and the employee will be removed from layoff status, and deemed to have been terminated.

A reduction in force is due to budgetary constraints, which cause the elimination of a position, or re-organization of a department. Employees who are terminated because of a force reduction are deemed to be terminated, and do not have the position mobility that layoffs afford.

Non-Layoff Involuntary Separation

The City Administrator 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.

Procedures following Involuntary Separation

In cases of involuntary separation for disciplinary reasons, the process set forth in Section 29.08.04110 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.

20.5 Exit Interviews

It is a policy of the City of Dickinson, for Human Resources, to conduct an exit interview prior to an employee's separation from City employment whenever reasonably possible. In the case of a terminating Human Resources employee, the exit interview may be conducted by the City Administrator. 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 29.08.04100.20.2. (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, Code 1637 § 1)

Section 29.08.04110 Disciplinary Process

21. Disciplinary Process

21.1 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, misbehavior, or violation of any ordinance or policy of the City.

21.2 Misconduct

Employee misconduct will not be tolerated and may result in immediate disciplinary action.

21.3 Disciplinary Representation

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

21.4 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.

Disciplinary actions by supervisors will include consultation with the Department Head and the Human Resource Coordinator prior to the execution of written reprimands or other actions.

21.5 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.

21.6 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.

21.7 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.

21.8 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.

21.9 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.

21.10 Maintenance of Disciplinary Records
Formal Disciplinary Records

Records of disciplinary actions are maintained in the employee's personnel file at City Hall. These records will be maintained in the employee's personnel file in accordance with the City's personnel record retention practices. For the purpose of determining pay increases, promotions, advancement, or other enhancements, an employee's disciplinary record which consists only of written reprimands may not be considered if the last written reprimand occurred more than three years prior. Where an employee's record consists of suspension without pay, demotion, or disciplinary reassignment, the record may not be considered if the last disciplinary action occurred more than five years prior.

21.11 Appeals

Grievances and appeals may be submitted for all disciplinary actions, and are described in Section 29.08.04120, (policy 22).

Section 29.08.04120 Grievance and Appeal Procedure

22. Grievance and Appeal

22.1 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.

22.2 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.

22.3 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 stating the reasons for the disagreement on a grievance form. The employee may choose representation at any point during the grievance procedure.

22.4 Appeals 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 stating the reasons for disagreement and the action that the employee desires.

22.5 Appeals regarding Suspensions without Pay, Demotions, Disciplinary Reassignments, or Dismissals

Any regular employee receiving notice of suspensions without pay, demotion, disciplinary reassignment, or dismissal 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.

22.6 Appearance Before the Civil Service Commission

No less than ten (10) nor more than twenty (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. The hearing by the Civil Service Commission, and any meetings of the Commission relating to a specific employee appeal shall be recorded by audio or visual means. 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. The Civil Service Commission shall have the right to retain independent legal counsel to advise them on the procedural matters involved in the appeal at the City's cost, if the City does not voluntarily provide one.

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:

Approve the disciplinary action; Reinstate the employee; or such other action as the commission deems appropriate.

22.7 Final Decisions in the Appeal Process

In the event of a written reprimand, the City Administrator shall be the final decision making authority.

In the event of a suspension without pay, demotion, or disciplinary reassignment, the Civil Service Commission shall be the final decision making authority in the appeal process.

In the event of a dismissal, appeals may be made to the Civil Service Commission, which will render a decision. The employee may appeal the decision of the Civil Service Commission to the City Commission, which will be the final decision making authority in the City's appeal structure.

22.7.1 Process for Appeal to City Commission

Within five days of the entry of the Civil Service Commission's findings of fact and order, the employee may file with the office of the City Administrator the employee's notice of intent to appeal the decision of the Civil Service Commission. The notice shall include the employee's alleged grounds for the appeal. The City Commission shall hear the appeal no sooner than fifteen days and not later than thirty days following the receipt of the employee's notice to appeal. The hearing shall be limited to evidence, witnesses, pleadings, and exhibits used during the Civil Service Commission hearing. The process for the hearing shall be as prescribed for the Civil Service hearing process hereunder. The hearing may occur during a regularly scheduled City Commission meeting, or may be heard at a properly noticed and convened special Meeting of the City Commission, at the determination of the President of the Commission.

22.8 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.

22.9 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.

Section 29.08.04130 Drug and Alcohol Policy

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.

23.1 Drug and Alcohol Abuse Policies

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

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. 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.
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 this Section 29.08.04130. 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.
4. 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.

23.2 Testing for Drugs or Alcohol

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 city employee who operates a vehicle that is designed to transport 15 passengers or more;
- 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; or
- A city employee who operates a vehicle of any size vehicles requiring placards for hazardous materials (hazmat).

Any employee 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 49 CFR 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.

23.3 Alcohol Prohibition Employees must:

- Test when required.
- Not use alcohol, in any form, on the job (including mouthwash or cough syrup containing alcohol).
- Not have even one drink fewer than four hours before work duties begin.
- Not work under the influence of alcohol

- Not remain on duty with a confirmed breath-and/or saliva alcohol concentration of .02 or greater.
- 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.

23.4 Controlled-Substance Prohibition Employees must:

- Test when required.
- Not use illegal controlled substances.
- Not use prescription drugs containing controlled substances contrary to a physician's instructions.
- 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.

23.5 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.

23.6 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.

23.7 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.

23.8 Post-accident Tests

Drivers are responsible for notifying the City of any vehicle accident while on duty. In an accident resulting in a death, the City driver(s) involved must undergo post-accident testing. 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.

23.9 Types of Required Drug Testing

23.9.1 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.

23.9.2 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.

23.9.3 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.

23.9.4 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.

23.9.5 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).

23.9.6 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	Safety sensitive	Taken off duty; referred to EAP for evaluation and treatment; subject to City discipline, up to and including termination

OTHER PROHIBITED CONDUCT		
Prohibited Conduct	Employee Status	Required Action
Refusing to be tested	Applicant	Not hired
Refusing to be tested	Safety sensitive employee	Terminated
Possessing or consuming alcohol on the job	Safety sensitive employee	Taken off duty; referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment
Abusing cough syrup, mouthwash, or any other substance containing alcohol while on the job	Safety sensitive employee	Taken off duty; referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment
Possessing or using a controlled substance without a doctor's permission	Safety sensitive employee	Termination
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	Any Employee	Taken off duty; referred to EAP for treatment; Subject to City disciplinary action up to and including termination of employment

ability to safely operate a motor vehicle		
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23.10 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.

23.11 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.

23.12 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:

- Previous test dates.
- Positive test results.
- Refusals to test.
- Evaluation and rehabilitation results.

23.13 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:

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

23.14 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. Supervisors who have received reasonable suspicion training acknowledge that because non-DOT safety sensitive employees have a

greater right to privacy than DOT safety sensitive employees, the supervisor must observe significant indicators prior to ordering testing. 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). (Code 1637 § 1)

23.15 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.

23.16 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 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.

23.17 Vehicle Accidents

Drivers are responsible for notifying their supervisor of any vehicle accident while on duty. In an accident resulting in a death, all City drivers involved must undergo post-accident testing. 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.

23.18 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).

23.19 Controlled Substances to be Tested

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

23.20 Employee Responsibilities

23.20.1 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.

23.20.2 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.

23.20.3 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.

23.20.4 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. (Code 1637 § 1)

23.21 Management Responsibilities and Guidelines

23.21.1 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. (Code 1637 § 1)

23.21.2 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.

23.21.3 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 29.08.04120. (Code 1637 § 1)

23.22 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 29.08.04110.21.3 and/or referral to SAP or EAP as described in Section 29.08.04080.18.10. (Code 1637 § 1)

23.23 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.

(Code 1958 § 9-28; Ord. No. 454 § 2; Ord. No. 1090 § 2; Ord. No. 1163 § 5; Ord. No. 1347 §1 Code 1637 § 1)

Section 29.08.04140 Americans With Disabilities Act Employment

Grievance Procedure

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. The City of Dickinson has designated its Human Resources Coordinator as its ADA Coordinator.

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, 99 2nd St. E, Dickinson, ND 58601, (701) 456-7801, who has been designated to coordinate ADA compliance efforts.

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. 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. 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.

As an alternative to the above, 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.

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

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 1637 § 1)