



# Personnel Policy Manual

Revised July 2021

## **A Welcome to Our New Employees**

It is with pleasure we welcome you to the staff of the City of Spearfish (City). Your new position with the City is one of which you can be proud.

To our customers and others in the community with whom you will have contact as an employee, *you* are the City. The extent to which the City is considered friendly, knowledgeable, efficient, reliable, and trustworthy will be measured by how others see these qualities in you. We hope you will use your talents in a way that stimulates the citizen and customer relations. If, during your employment, you find a way to improve the City's operations/services or save the City unnecessary expenses, the City welcomes your ideas.

This personnel manual has been prepared to guide you in better understanding our policies, procedures, and practices concerning employment matters. Also, these policies are to ensure fair and consistent administration for the benefit of all employees. You should familiarize yourself with its contents and use it as a reference when needed. As changes are made to this manual, we will ensure replacement pages are added to the departmental copies so they remain current.

As you start employment with the City, you will find your associates are ready to assist you, and you will receive on-the-job guidance to acquaint you with your new duties and responsibilities.

Again, welcome to our team of hard-working and talented staff, and please accept our wish for success in your new position.

Sincerely,

*Mayor and City Council of Spearfish*

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## **Purpose and Use**

### **Purpose of Policies**

The policies for personnel administration are enacted by the City in order to further the following goals:

1. To provide a uniform and sound personnel administration throughout the City.
2. To inform employees of the general policies of the City and the benefits and obligations of employment with the City.
3. To ensure all personnel actions are based upon employee qualifications (knowledge, skills, and abilities) and job performance and in compliance with federal and state law.
4. To serve as written documentation of the City's commitment to fair employment practices and equal employment opportunity.
5. To assist managers in carrying out sound, equitable, and consistent personnel administration and in making effective use of their human resources.
6. To promote and encourage communication between the employer or supervisor and the employee.
7. To protect the rights of the employee and employer throughout the employment relationship and to ensure the responsibilities of both parties are carried out.

### **Applications of Policies**

The personnel policies apply to all municipal employees and will only exclude elected officials, independent contractors, or excluded classes as specified in the policy itself. In the event of a conflict between these policies and state and federal law, the terms and conditions of that agreement or law will prevail.

### **Departmental Policies**

These personnel policies do not limit the authority of any City department head to make departmental rules and regulations. However, departmental rules may not conflict with the provisions of these personnel policies.

### **Revisions**

The City specifically reserves the right to repeal, modify, or amend any of these policies at any time, with or without notice, upon a majority vote of the City council.

### **Employment At-Will**

The City recognizes South Dakota is an employment at-will state and the City is an at-will employer. The manual does not constitute a contract of employment and is not intended to create or confer contractual rights of any kind. The policies, procedures, rules, and benefits contained herein are subject to change at any time by the City council. These policies are provided as a guideline for behavior and a reference of present policies and are not a guarantee of employment or specific employment benefits.

## **Personnel Policy Acknowledgment**

All employees must sign an acknowledgment stating they have read, understand, and will comply with the Personnel Policy Manual. The Personnel Policy Manual is available to all staff on the City's website under the Employee Portal. Employees should contact the human resources department regarding any questions not answered in the manual. Prior to signing the acknowledgment, employees will have the opportunity to review and discuss all sections. This signed acknowledgment will be placed in each employee's personnel file.

## **General Policies**

It is the policy of the City to provide a work environment free from discrimination and harassment, including sexual harassment. The City complies with federal and state employment opportunity laws. To maintain this commitment, the City will not tolerate any form of discrimination, harassment, or bullying behavior. Employees who have been subject to prohibited discrimination, harassment, or bullying behavior should immediately report the incident to their supervisor/department head, human resources director, or City administrator, according to the Complaint Procedure as specified in this manual.

All supervisors are responsible for reminding employees on a recurring basis of this policy, and all are responsible for assuring that this workplace is free from harassment and discrimination. The City will not tolerate discrimination or harassment of or by any non-employees such as customers, visitors, or others.

Failure to comply with these provisions may result in disciplinary action up to and including termination of employment.

### **Non-Discrimination/Equal Employment Opportunity**

It is the policy of the City to provide equal employment opportunity (EEO) to all employees and applicants for employment without regard to race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, creed, ancestry, age (40 or older), genetic predisposition or carrier status, citizenship status, marital status, or disability in employment or the provisions of services, or any other basis prohibited by state or federal laws. Employment decisions will be based upon qualifications, related experience, job pertinence, and relevant individual differences. Equal opportunity applies to all terms and conditions of employment, including recruitment, hiring, placement, promotion, termination, layoff, recall, transfer, leave of absence, compensations, and training.

### **Anti-Harassment**

It is the policy of the City to provide a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits unlawful discriminatory practices, including harassment. Therefore, the City expects all relationships among employees will be business-like and free of bias, prejudice, and harassment. To maintain this commitment, the City will not tolerate any form of unlawful harassment. Unlawful harassment on the basis of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, creed, ancestry, age (40 or older), genetic predisposition or carrier status, citizenship status, marital status, or disability, or any other basis prohibited by state or federal law; and that:

- (a) has the purpose or effect of creating an intimidating, hostile, or offensive work environment;
- (b) has the purpose or effect of unreasonably interfering with an individual's work performance;
- or (c) otherwise adversely affects an individual's employment opportunities.

Employees must avoid any conduct that could be viewed as harassing or offensive even if the conduct does not violate federal or state law. Harassment and offensive behavior may take

different forms and may be verbal, non-verbal, or physical in nature. Harassment includes conduct that belittles or shows hostility or hatred toward an individual because of their protected status or that of their relatives, friends, or associates. Harassing conduct includes, but is not limited to: slurs and negative stereotyping; threatening, intimidating, or hostile acts; demeaning jokes and displays or circulation in the workplace of written or graphic material that denigrates or shows hostility or aversion toward an individual or group (including through email).

### **Bullying**

It is the policy of the City to provide a work environment free from bullying. Bullying is defined as “repeated inappropriate behavior either direct or indirect, whether verbal, physical, or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment.” Such behavior violates the City Code of Ethics, which states all employees will be treated with dignity and respect.

The following types of behavior are examples of bullying and are not intended to be an all-inclusive list:

- Verbal bullying (slander; ridiculing or maligning a person or their family; persistent name-calling that is hurtful, insulting, or humiliating; using a person as the butt of jokes; abusive or offensive remarks)
- Physical bullying (pushing, shoving, kicking, poking, tripping, assault or threats of physical assault, damage to a person’s work area or property)
- Gesture bullying (nonverbal gestures that can convey threatening messages)
- Exclusion (socially or physically excluding or disregarding a person in work-related activities)

### **Sexual Harassment**

It is the policy of the City to provide a work environment free from sexual harassment. Sexual harassment is unwelcome conduct of a sexual nature that is persistent or offensive and interferes with an employee’s job performance or creates an intimidating, hostile, or offensive work environment. Sexual harassment is defined by the federal Equal Employment Opportunity Commission as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when, for example: (a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (c) such conduct has the purpose of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile, or offensive work environment.

Sexual harassment can be physical and/or psychological in nature. An aggregation of incidents can constitute sexual harassment even if one of the incidents considered on its own would not be harassing. Sexual harassment may involve individuals of the same or different genders.

Sexual harassment may include a range of behaviors to include unwanted sexual advances or requests for sexual favors; sexual jokes or innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual ability, or deficiencies; whistling or touching; insulting or obscene comments or gestures; displays in the workplace of sexually suggestive objects or pictures; and other physical, verbal, or visual conduct of a sexual nature.

All employees are expected to avoid any behavior or conduct that could be interpreted as unlawful harassment. All employees should also understand the importance of informing an individual whenever that individual's behavior is unwelcome, offensive, in poor taste, or inappropriate.

### **Complaint Procedure**

The City must be aware of incidents of discrimination or harassment to be able to take appropriate corrective measures. Individuals who believe they have been victims of conduct prohibited by this policy or who believe they have witnessed such conduct should promptly report their concerns through the complaint process outlined in this procedure. The City encourages prompt reporting of complaints or concerns so rapid and constructive action can be taken before relationships become irreparably strained.

When possible, the City encourages individuals who believe they are being subjected to such conduct to promptly advise the offender that their behavior is unwelcome and request it be discontinued. Often this action alone will resolve the problem. The City recognizes individuals may prefer to pursue the matter through the Complaint Procedure.

Any supervisor or department head who becomes aware of any possible discrimination or sexual harassment must immediately advise the human resources director. The City will make a thorough and impartial investigation of the complaint by following the steps outlined in the Complaint Procedure. All employees are expected to cooperate with any such investigation. The City will take prompt remedial measures to immediately end the offending action.

Discrimination and harassment of any kind in the workplace is prohibited by federal and state law, whether committed by elected officials or supervisory or non-supervisory employees and will not be tolerated. Retaliation or intimidation directed toward a complaining party is also prohibited by law and will not be tolerated by the City under any circumstance. A legitimate complaint of discrimination or harassment will not have any bearing on the terms and conditions of employment on the complaining party, including but not limited to: wages, advancement, evaluations, assigned duties, shift assignments, career development, etc.

A formal complaint of harassment may be initiated in lieu of, during, or following the City's Complaint Procedure process as provided by state or federal law.

## **Americans with Disabilities Act (ADA)**

The Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA) are federal laws that require employers with 15 or more employees to not discriminate against individuals with disabilities and, when needed, to provide reasonable accommodations to employees who are qualified for a job, with or without reasonable accommodations, so that they may perform the essential job duties of the position.

It is the policy of the City to comply with all federal and state laws concerning the employment of persons with disabilities and to act in accordance with the regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). Furthermore, it is City policy not to discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training, or other terms, conditions, and privileges of employment.

The City will reasonably accommodate qualified individuals with a disability, as defined by the ADA, who have made the City aware of their disability, so that they can perform the essential functions of their job, provided such accommodations do not constitute an undue hardship on the City or cause a direct threat to workplace safety. Employees with a disability who believe they need reasonable accommodations to perform the essential functions of their job should contact the human resources director. The City is not required to eliminate essential job functions nor to provide personal use items (i.e., eyeglasses, hearing aids, wheelchairs, etc.). The City encourages individuals with disabilities to come forward and request reasonable accommodations.

### **Procedures for Requesting ADA Accommodations**

It is the employee's obligation to request an accommodation. Upon receipt of a request for accommodation, the human resources director, the employee's supervisor, and the employee will meet to discuss and identify the precise limitations resulting from the disability and any potential accommodation(s) the City might make to help overcome those limitations. This process is referred to as the interactive process and involves a good-faith effort by the employer and the employee to discuss the limitations or performance issues the employee's disability may pose. The purpose of this discussion is to determine what (if any) accommodations may be needed. The meeting will also clarify the responsibilities of both the employee and the City. This meeting will include a review of the position description and the essential functions of the position. The employee may be required to provide appropriate documentation from their licensed health care provider regarding the nature of any impairment(s), severity, duration, activities limited by the impairment(s), and the extent to which the impairment(s) limit the employee's ability to perform the essential job functions. In the event the City would need to consult with the employee's health care provider, the City must obtain a written medical release or permission from the employee.

The City will determine the feasibility of the requested accommodations considering various factors, including but not limited to: the nature and cost of the accommodations; the availability of funding and overall financial resources for the City; and the impact the

accommodations would have on the City's operations, on other employees performing their duties, and the ability of the City to conduct business. Once the decision is made, the City will inform the employee in writing of its decision on the accommodations request.

An employee who has questions regarding this policy or believes they have been discriminated against based on a disability should notify the human resources director. All such inquiries or complaints will be treated as confidential to the extent permissible by law.

Any individual who believes that they or a specific class of individuals with disabilities has been subject to unlawful discrimination on the basis of that disability by the City may, by themselves or by any authorized representative, file a complaint using the Complaint Procedure.

For the purpose of this policy regarding employee-related issues, the human resources director and supervisor will assist in the formal investigation.

### **Workplace Violence Policy**

The City does not tolerate workplace violence, or the threat of violence, by any of its employees, customers, the general public, or anyone who conducts business with the City. The City acknowledges many of its employees are exposed to violence by the very nature of their jobs. It is the intent of the City to provide a workplace that is free from intimidation, threats, or violent acts. This includes, but is not limited to: intimidating, threatening, or hostile behaviors; verbal abuse; physical abuse; vandalism; arson; sabotage; use of weapons; or any other act that in management's opinion is inappropriate in the workplace.

The City subscribes to the concept of a safe work environment and supports the prevention of workplace violence. Prevention efforts include, but are not limited to: informing employees of this policy; instructing employees regarding the dangers of workplace violence; communicating the sanctions imposed for violating this policy; and providing a reporting hierarchy within which to report incidents of violence without fear of reprisal. The City will also conduct training for employees related to dealing with workplace violence.

City employees are not permitted to bring or possess firearms, explosives, or other weapons on City property, except those individuals authorized to do so in the course of their duties with the City.

### **Reporting Threats – Internal and External**

Any employee who is a victim or a witness to workplace violence, including supervisors, co-workers, or visitors, are urged to report the threat/violence. All reports of workplace violence will be taken seriously and will be thoroughly investigated.

Employees may bring their complaint to the City administrator, human resources director, department head, or their supervisor. All employees should communicate with each other to be aware of any unusual activity that may identify the potential or actual



occurrence of a violent incident. Any employee who acts in good faith by reporting real or implied violent behavior will not be subjected to any form of retaliation or harassment.

In critical incidents in which serious threat or injury occurs, emergency responders such as police, fire, and/or ambulance personnel must be immediately notified. As necessitated by the seriousness of the incident, the City administrator, human resources director, department head, City attorney, mayor, and others, as deemed necessary, will be responsible for establishing the protocol in the event of a threat or violent incident that may include, but is not limited to:

- Evaluating potential violence problems;
- Assessing an employee's fitness for duty (through mental health professionals);
- Selecting intervention techniques;
- Establishing a plan for the protection of co-workers and other potential targets;
- Coordinating with affected parties such as victims, families, employees, media, or law enforcement personnel;
- Referring victims to appropriate assistance, counseling, or community service programs.

### **Prohibited Actions and Sanctions**

It is a violation of this policy to engage in any act of workplace violence. Failure to comply with these provisions may result in disciplinary action up to and including termination of employment, and depending upon the violent act, may be subject to criminal sanctions.

### **Safety**

The City is committed to providing a safe and healthy workplace for all employees. Safety should never be compromised due to or become secondary to another business priority. Everyone shares in the responsibility for a safe and healthy workplace. The City may request an employee submit to a fitness-for-duty examination if the City believes, based on objective evidence, that either the employee's ability to perform their essential job functions is impaired or the employee poses a direct threat to the safety of others.

The City will make all reasonable efforts to promote safety and health among its employees by the provisions of facilities, equipment, tools, procedures, safety programs, and training for all employees to work injury-free. The City will use due diligence to avoid hazardous conditions and make reasonable efforts to eliminate any conditions that might result in injury or illness to an employee.

The City Safety Program outlines all safety rules and guidelines. The safety manual can be found on the Employee Portal on the City website.

## **Seat Belts**

All City employees and their passengers are required to use seat belts when driving or riding in any City-owned or -leased vehicle (if equipped with seat belts) or while driving or riding in personal vehicles on official City business. Failure to comply with these provisions may result in disciplinary action up to and including termination of employment.

## **Smoking**

It is the policy of the City to prohibit smoking (to include all electronic smoking devices and electronic nicotine delivery systems) in City vehicles, equipment, buildings, and facilities, or while representing the City on official business. Smoking is only permitted in outside designated smoking areas. Failure to comply with these provisions may result in disciplinary action up to and including termination of employment.

## **Gratuities**

The City prohibits all employees from accepting gifts, gratuities, or entertainment from individuals and firms with whom the City does business. It is also a violation to give gifts to individuals or firms with whom the City does business. Excluded from this prohibition is the exchange of normal business courtesies such as luncheons or dinners, when they are proper and consistent with regular business practice. Also excluded is any food, entertainment, or beverage for immediate consumption, advertising or promotional materials, and holiday or other gifts, which are of nominal value (less than \$100.00). Failure to comply with these provisions may result in disciplinary action up to and including termination of employment.

## **City Property**

The use of City property for personal use is prohibited. Failure to comply with this provision may result in disciplinary action up to and including termination of employment.

## **Outside Employment**

Employees are permitted to engage in work or to hold other jobs, subject to certain restrictions as outlined. Activities and conduct away from the job must not compete with, conflict with, or compromise the City's interests or adversely affect job performance and the ability to fulfill all job responsibilities. Employees are prohibited from performing any services for customers on non-working time that are normally performed by the City and that create a conflict of interest with the employee's position at the City. The prohibition also extends to the unauthorized use of City tools and equipment. Employees are not to solicit or conduct any outside business during paid work time. Failure to comply with these provisions may result in disciplinary action up to and including termination of employment.

Employees are cautioned to carefully consider the demands additional work activity will create before accepting outside employment. Outside employment will not be considered an excuse for poor job performance, absenteeism, tardiness, leaving early, refusal to travel, or refusal to work overtime or different hours.

Employees who are employed on a full-time basis should request prior written approval of their immediate supervisor. Such approval will not be granted when additional employment will interfere with, conflict with, or adversely affect the employee's City duties and responsibilities. The supervisor may rescind prior approval if the additional outside employment begins to interfere with the employee's City duties. The supervisor will provide the employee with notification if the approval is to be rescinded.

### **Performance Evaluation Report**

Performance evaluation reports are designed to provide the employee with a record of their performance, to encourage professional growth, and to promote communication between the supervisor and employee. The performance evaluation report will be the responsibility of the employee's supervisor. Performance evaluation reports are a continuous process. Evaluators should carry out informal, regular discussions with their employees throughout the year and summarize progress more formally in writing in the annual performance report. Performance evaluation reports will be completed before the conclusion of the employee's training period and once each year thereafter prior to the end of December.

If an employee receives a performance report with an overall score of "does not meet standards," the employee will not be eligible for an annual step increase. The employee will be given time to correct their performance and must demonstrate a willingness and ability to meet and maintain the conduct and work requirements specified by the supervisor and the City. The length of time will depend on the performance improvement requirements and the department head or supervisor's recommendation. When the employee is re-evaluated, their performance must be raised and then maintained at a rating of "meets standards" or "above standards" to become eligible for a non-retroactive annual pay increase and continued employment.

The performance evaluation reports are to be structured to each employee's position. The purpose of the report is to commend strengths, address weaknesses, suggest ways to improve, and discuss employee goals and objectives. Reports will be conducted in a private meeting between the employee and their supervisor as directed by the department head. Employees will be asked to sign their performance evaluation report and will receive a copy. Signing does not imply agreement with the evaluation, but simply agreement that the contents have been made known or discussed with the employee. The employee performance evaluation report is available on the Employee Portal.

### **Personnel File**

City employee personnel files are maintained by the human resources director. Files will contain employment records, including but not limited to personal data, payroll deductions, W-4 forms, position descriptions, pay rates, applications, performance evaluation reports, disciplinary records, termination records, and other employment-related records. During employment with the City, employees are expected to notify human resources promptly of any change of name, address, phone number, number of dependents, or other applicable information to keep personnel records up to date.

This policy applies to all current and former employees. Because of the confidential nature of information contained in an employee's personnel file, the City limits access to such records to the employee to whom the records pertain and persons with proper authorization, including for the purposes of the legal process.

Documents located in employees' personnel files will not be released without the employee's express written consent, except pursuant to legal process. Additionally, any records of medical evaluation results will be maintained in a separate file, in accordance with applicable legal requirements, and may be reviewed only by authorized individuals with the approval of human resources.

Employees may review their own personnel files with human resources present to answer any questions. Employees may also correct or clarify personal information contained in their personnel files. Additionally, a manager may review an employee's personnel file if the employee has a current reporting relationship to that manager or has been interviewed and is being considered for a position reporting to that manager. Employees' personnel records are also subject to review by investigative agencies or during periodic internal audits conducted by the City.

### **Form I-9 Employment Eligibility Verification**

The City must complete Form I-9 to document verification of the identity and employment authorization of each new employee (both citizen and noncitizen) hired after November 6, 1986, to work in the United States. Employees must be lawfully entitled to work in the United States in order to be employed with the City. Form I-9's will be maintained separately from the personnel file but in confidence due to taxpayer identification numbers. All employees will be required to complete the I-9 form on the first day of employment and provide acceptable documents.

### **Public Relations**

All City employees are hereby responsible for providing their particular City services to the public in a courteous, polite manner. All employees are expected to maintain high standards of conduct and cooperation in their duties for the City. The City feels an individual accepts an additional responsibility to their community by accepting a position in City government and urges employees to act accordingly when off-duty.

### **Code of Ethics**

Because high ethical standards are critical to the City's credibility, all City employees should:

- Uphold the Constitution, laws, and regulations of the United States and the State of South Dakota and never be a party to their evasion;
- Uphold the charter, codes, and regulations of the City and never be a party to their evasion;
- Regard service to the public as the mission of all City employees, and always place service to the public above service to self;

- Treat all members of the public with respect, courtesy, concern, and responsiveness, and never discriminate by dispensing special favors or privileges to anyone;
- Treat all employees with dignity and respect;
- Give a full day's work for a full day's pay, and give earnest effort to the performance of assigned duties as efficiently and economically as possible;
- Accept no special favors, privileges, benefits, or gifts offered by a member of the public or by persons or businesses regulated by the City, doing business with the City, or seeking to do business with the City;
- Use no City property, funds, or time for personal purposes;
- Make no information gained confidentially in the performance of City duties as a means of making private profit;
- Make no private promise of any kind which is binding upon duties performed as an employee;
- Engage in no activity, either directly or indirectly, which is inconsistent with the conscientious performance of City duties;
- Demonstrate the highest standards of personal integrity, honesty, and conduct in all activities in order to inspire public confidence and trust in City employees; and,
- Expose corruption, misuse of official authority, or any action which harms the public interest wherever and whenever discovered.

A violation of any of the provisions of the Code of Ethics may result in disciplinary action up to and including termination.

### **Use of Technology**

The City provides members of its staff access to computers, network, internet, cellular devices, portable computing devices, and email. Every staff member has a responsibility to maintain and enhance the City's public image and to use these systems in a productive business-like manner that complies with City policies and federal, state, and local laws and regulations. To ensure this, the City has established the following guidelines for usage of the City's technology systems. These guidelines do not supersede any local, state, or federal laws.

#### **General Guidelines**

The City internet, email systems, servers, network, computers, laptops, mobile devices, and other similar systems ("technology systems") are City property. Access to and use of technology systems, except in the limited circumstances listed below, are for official City business only. Under no circumstances are employees permitted to use the technology systems for outside business interests. Brief and occasional personal communications and use of technology systems within the confines of professional judgment may be acceptable under certain conditions.

Employees should have no expectation of privacy regarding their use of the City's technology systems whether such is for personal communications or personal use or for work-related use. All uses of the City's technology systems are subject to monitoring,

inspection, and audit by management or its representatives at any time, with or without notice. By use of these systems, the employee indicates that they understand and consent to the City inspecting, auditing, or monitoring the use.

Employees must exercise discretion in using technology systems. Communications should be professional and appropriate in tone and content. Always spellcheck and proofread electronic communications as they are official City correspondence. Electronic communication can be saved and forwarded to unintended recipients.

Employees may not use another person's assigned account, password, or other credentials or lend any of these to any other person to gain access to the employee's or another employee's account.

Employees are prohibited from downloading software or other program files or online services from the internet without prior approval from the City's IT service provider.

Employees may not use the technology systems in a way that results in intentional damage to any City property, including any hardware or software, nor may they knowingly introduce a computer virus or other destructive program or file.

Under local, state, or federal law, unauthorized access or interference with computer systems, computer data, or other computer users may be a criminal offense. In cases where this is suspected, information may be referred to law enforcement without the employee's knowledge or permission.

Accessing, posting, or sharing any racist, sexist, threatening, offensive, obscene, or other objectionable material (visual, textual, or auditory) via the City's technology systems is strictly prohibited and will be treated as a violation of policy.

Employees may only use licensed software in accordance with the terms of the City's license agreement. Employees are responsible for being aware of and complying with the licensing and copyright restrictions applicable to the software and data files they access. Copying, modifying, or distributing any of these materials without the owner's consent may be a copyright infringement.

### **Mobile Devices**

Personal mobile devices should be used with discretion while at work so as not to interfere with productivity or be distracting to others. Personal calls should be made on non-working time. Employees must be respectful of others, professional, and not engage in non-emergency mobile device use during meetings, presentations, or trainings. Notifications should be silenced while at work to avoid disturbing others.

The City may issue a City mobile device to an employee for work-related communication. Mobile devices issued by the City are City property. Employees must comply with City requests to make their City-issued mobile devices available for any reason, including upgrades, replacement, or inspection. Employees who leave the City for any reason must return their City-issued mobile devices. Employees are expected to

reimburse the City for any costs or charges relating to personal use of their mobile device.

Employees may have the opportunity to use their personal mobile device for work-related purposes when authorized in writing, in advance, by the employee and the department director or City administrator.

Employees are prohibited from using any City-issued or personal mobile devices for any reason, including calls and texting, while operating any moving vehicle or machinery for work-related purposes. Safety must come before all other concerns. Regardless of the circumstances, including slow or stopped traffic, employees must pull off to the side of the road and safely stop the vehicle before using a mobile device. Employees may use hands-free equipment to make or answer calls while driving without violating this policy.

### **Monitoring, Violations, Penalties**

Any person who observes or has knowledge of a violation of this policy is encouraged to immediately report such a violation to their immediate supervisor. Any employee who retaliates against another employee for reporting a possible violation of this policy or for cooperating in an investigation will be subject to disciplinary action up to and including termination.

The City's overtime rules apply to any type of work done after hours, including using a City-issued mobile device, including a laptop, for work. All overtime work, including work done on a City-issued personal device, must be approved in advance.

Working overtime without permission violates City policy and may result in disciplinary action up to and including termination.

### **Social Media**

To minimize risks, avoid loss of productivity and distraction from employees' job performance, and ensure that the resources and technology systems of the City are used appropriately, the City expects its employees to adhere to the following procedures, guidelines, and rules regarding the use of social media.

The same principles and guidelines found in this manual apply to employee activities online. Employees are ultimately responsible for what they post online. Before creating online content, employees should consider the potential risks and rewards. Any employee conduct that adversely affects that employee's job performance, the performance of fellow employees, or otherwise adversely affects vendors, people who work on behalf of the City, or the business interests of the City, may result in disciplinary action up to and including termination. At all times, including off-duty hours, employees are prohibited from using social media to violate any City policies, procedures, and practices, including but not limited to: provisions prohibiting discrimination or harassment; the use of technology systems; local, state, and federal confidentiality laws, rules, and policies; and any other City policy pertaining to employee conduct.

## **Official City Social Media**

The City will designate employees authorized to represent the City on social media sites. Only authorized employees may represent the City on social media sites.

## **Personal Use of Social Media**

Employees should refrain from using social media during work hours or on City-owned equipment unless such use is work-related or authorized by the employee's supervisor and is consistent with the City's policies. Employees should not use their City email address for personal use of social media. Under no circumstances may personal use of social media interfere with job duties or performance.

If an employee does disclose in social media that they are an employee of the City, the employee should include a disclaimer that their views do not represent those of the City.

## **Social Media Conduct**

Employees should always be fair and courteous to fellow employees, vendors, and individuals who work on behalf of the City. Employees should keep in mind that work-related complaints are most likely to be resolved by speaking directly to their co-workers or other individuals to address misunderstandings or conflicts. Posting work-related complaints to a social media site is less likely to resolve conflicts or concerns.

If an employee decides to post complaints or criticism, they must avoid using statements, photographs, and video or audio that could be reasonably viewed as malicious, defamatory, obscene, threatening, or intimidating towards employees, vendors, or individuals who work on behalf of the City, or that may constitute harassment or bullying. Examples of such conduct may include, but are not limited to, offensive posts meant to intentionally harm someone's reputation or posts that could contribute to a hostile work environment based on race, color, religion, sex, national origin, disability, age, genetic information, military or veteran status, or any other status protected by applicable law. Discriminatory remarks, harassment, and threats of violence or similar conduct will not be tolerated and may subject employees to disciplinary action up to and including termination.

City employees are entrusted with sensitive and confidential information. Employees must refrain from disclosing confidential or legally protected information. Disclosing confidential or legally protected information to parties not entitled to receive that information may subject the employee to disciplinary action up to and including termination.



The City expects the same level of professionalism and honesty in social media as it requires in all business communications. Employees should use good judgment about the content of posts and remember that anything they say can reflect on the City if they include a disclaimer. Employees should always strive to be accurate in every communication about the City and should keep in mind that their statements could result in liability for themselves or the City.

## **Training/Education**

The City recognizes the importance of encouraging and supporting employees to pursue training, professional certifications, and educational opportunities related to their employment. The City's success depends on the professionalism, skills, and commitment of its employees.

The City will be responsible to assist an employee in maintaining all certifications needed for their job which are approved by the City or required by the State of South Dakota. Conferences, professional associations, and training not associated with maintaining certifications may be allowed on a department basis, if budgets allow.

Departments should manage costs associated with training/education to achieve the desired outcome.

### **Training Time**

Training time will be compensated according to applicable laws. Employees with questions should visit with human resources. Some basic guidelines to determine compensability of training time are below.

As a general rule, the following factors must be met for the activity *not* to be considered working time:

- Attendance occurs outside the employee's regular working hours; and attendance is voluntary; and
- The employee does not perform productive work while attending the training; and
- The training or meeting is not directly related to the employee's job.

The City will pay employees for their regular work hours in situations where the out-of-town training plus travel time is not equal to their regular working hours. Such time needs to be documented on the employee's timesheet as "compensable hours not worked." The employee's department head, prior to the employee completing their timesheet, must approve compensable hours not worked by the employee that are paid.

### **Employee Educational Loan Program**

To further encourage educational opportunities, the City offers the Employee Educational Loan Program to all regular full-time employees of the City. The total outstanding balances for educational loans may not exceed \$2,000.00 plus a simple interest rate of 1 percent at the time of the loan. Expenses must be directly related to an educational program in an associate's, baccalaureate, or postgraduate degree program of an

accredited educational institution; a program granting college credit transferable to one of the South Dakota state-supported universities; or job-related vocational/technical training. The employee's authorization for payroll deductions of the educational loan plus interest will be documented with certainty at the time the authorization is signed as to the amount of each payroll deduction. Educational loans plus interest must be repaid by payroll deduction as follows: \$1.00 - \$1,000.00, within one year of the date of the loan; and \$1,001.00 - \$2,000.00, within two years of the date of the loan. Any outstanding balance at the time of termination of employment will be immediately due and payable in full. The Educational Loan Application is available on the Employee Portal.

## **Uniforms**

The City agrees if any regular employee is required to wear any kind of uniform as a condition of employment, such uniform will be purchased by the City free of charge at the standard required by the City. All items furnished will remain the property of the City, will be worn only in connection with duties required by the City, and before replacement of any item will be made, the employee must return the issued article to the City. Uniforms will be replaced on an as-needed basis with the authorization of the department head. In cases of gross negligence or improper use and care on the part of the employee, employees must replace lost or damaged items at their own expense. All items issued must be returned to the City upon termination of employment prior to settlement of wages or other payments due.

Employees Required to Wear Safety Boots/Shoes: For full- and part-time regular positions predetermined to require safety boots/shoes, the City will provide an allowance of up to \$100.00 to purchase initial/replacement safety boots/shoes for employment. Safety boots/shoes will be replaced as needed, but no more than annually. Supervisors will authorize the replacement purchases of such safety boots/shoes. Any amount exceeding \$100.00 will be paid by the employee. This policy does not apply to temporary/seasonal positions.

Sworn Police Employees: The City will furnish, at no expense to the employee, police equipment required in connection with official duties. Police equipment will be deemed to include but is not limited to, sidearm, ammunition, leather, and clothing, as determined by the City. The City will provide, for sworn personnel of the police department, an allowance of up to \$100.00 to purchase boots. Boots will be replaced as needed, but no more than annually. Supervisors will authorize the replacement purchase of boots. Any amount exceeding \$100.00 will be paid by the employee.

Fire Department Employees: The City will furnish, at no expense to the employee, fire equipment required in connection with official duties. Fire equipment will be deemed to include but is not limited to, structural and wildland firefighting equipment per departmental issue sheet, departmental clothing, badge, collar brass, pager with charger, radio with charger, and mobile radio, as determined by the City. The City will provide an allowance of up to \$100.00 to purchase boots for employees of the fire department. Boots will be replaced as needed, but no more than annually. Supervisors will authorize the replacement purchase of such boots. Any amount exceeding \$100.00 will be paid by the employee.

## **Purchases with City Funds**

All purchases made with City funds must be made strictly based on economic and business merit in order to promote the best interests of the citizens of Spearfish. Employees should refer to the current purchasing policy adopted by the City council, which is on file in the Finance Office.

## **Break Requirements for Nursing Mothers**

The Patient Protection and Affordable Care Act's (PPACA) break-time requirement for nursing mothers to express breast milk for their children became effective when the PPACA was signed into law.

The provision requires covered employers to allow reasonable break time for an employee to express breast milk for her nursing child. The provision is for one year after the child's birth each time such employee has need to express the milk, according to the Wage and Hour Division of the U.S. Department of Labor (DOL).

The City provides to all employees a compensable 15-minute break for each four hours worked. Additional break times to express milk beyond the allotted break time per shift will not be compensable. The DOL suggests that typically two or three breaks in an eight-hour shift would be sufficient to comply with this break-time requirement for nursing mothers.

The City will provide a place, other than a bathroom, that is shielded from view and free from intrusion from co-workers and the public, which may be used by an employee to express breast milk. A bathroom, even if private, is not a permissible location under the PPACA. According to the DOL, a space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient, provided the space is shielded from view and free from any intrusion from co-workers and the public. This means the room should have seating, a door that locks, and windows that can be covered. An employer does not have to provide refrigeration, but there should be a space in which to store the expressed milk.

## **On-the-Job Political Activity**

To serve the best interests of employees, citizens, and the City, it the policy of the City to restrict certain types of political activity while at work, while representing the City during a work-related function, or while using City resources. The purpose is to safeguard the employee from political pressure to support any political party, political cause, candidate for office, or elected official. Also, this policy will safeguard the interests of the public, which all municipal employees must serve without political bias and without regard to political opinions or affiliations.

The policy has been developed not to restrict an employee's constitutional rights, but to protect the neutrality of public service personnel. The following restrictions apply:

- Employees are prohibited from using their position to sell, solicit, or distribute tickets, badges, pamphlets, handbills, or any other material not pertaining to City employment during working hours.
- Employees may not introduce, guide, or recommend any candidate for public service on City property.

- Employees may not participate in any partisan or non-partisan political activity while on duty or off duty in a uniform required by, used by, or identified with any department of City government.
- Employees may not use municipal vehicles for any partisan or non-partisan political activities.

Failure to comply with these provisions may result in disciplinary action up to an including termination of employment.

### **Employee Recognition Program**

The Employee Recognition Program is divided into three categories: retirement, length of service, and outstanding performance recognition/acknowledgment. Periods of legally protected leave will not be deducted from time of service. Cost of these programs will be paid by the honoree's department. Internal Revenue Service (IRS) taxation rules apply to certain types of recognition awards.

- Retirement recognition – To be eligible for retirement recognition, the employee must have reached the retirement age recognized by the South Dakota Retirement System (SDRS). They must also have been employed by the City for a minimum of 10 years for a normal retirement. The cost for this recognition will be \$25 per completed years of service, up to a maximum of \$500.00 per employee. A sworn police officer may receive, in lieu of the monetary recognition, their badge and firearm used during City employment.
- Length of service award – All regular full-time and regular part-time employees of the City with specified years of service will be eligible to receive a length of service award. Eligibility is determined by length of service computed from the date of the beginning of their last continuous employment. Service awards recognizing five years of service and continuing in five-year intervals will be formally presented to the employee by the mayor at a regularly-scheduled meeting of the City council. Awards are as follows, with the monetary award in reward program points or equivalent gift card:
  - 5 years of service: \$50.00
  - 10 years of service: \$100.00
  - 15 years of service: \$150.00
  - 20 years of service: \$200.00
  - 25+ years of service: \$250.00 (The cost of recognition for 25+ years of service gifts will not exceed \$250.00 per award in reward program points or equivalent gift card.)
- Outstanding performance recognition/acknowledgment – All employees are eligible for recognition for outstanding performance and contributions. Rewards can range from simple spoken or written thank-you notes, City council meeting recognition, or up to eight (8) hours of administrative leave. This award is intended for individual employees or teams who make exceptional contributions, such as providing outstanding service, implementing a new idea that saves significant time and money, completing a significant project, contributing to the success of a team initiative, or contributing above and beyond what is

expected. Rewards must be recommended by the department head and approved by the City administrator.

### **Special Circumstances**

In special circumstances, the City administrator or department heads may approve the payment of lodging and meals for employees when circumstances exist that are outside of normal policy.

In special circumstances, the City council may approve the payment of overtime for exempt employees.

On August 7, 2017, the City council approved the payment of overtime to exempt fire department employees when they are performing duties on state and federal assignments through the Great Plains Dispatch (GPD) in accordance with the cooperative agreement between the South Dakota Department of Agriculture and the City. Any hours worked as part of such employee's normal duties are not eligible for overtime pay, but they do count toward the base of 40 hours in the week to determine GPD incident overtime pay. The employee will be paid their base rate for the first 40 hours worked in a week even if they are on a GPD incident. When an exempt employee is on a GPD incident, all hours in excess of 40 hours will be paid at the overtime rate. While on GPD incident assignment from the beginning of a calendar week, an exempt employee will be paid their base rate for the first 40 hours worked on the GPD incident, but no overtime will be paid for hours worked in performance of their normal duties.

### **Meal and Rest Breaks**

All employees are permitted a 15-minute paid rest break for each four (4)-hour work period. Breaks are not permitted at either the beginning or the end of the workday to offset arrival and departure times. Employees who voluntarily work through their rest break will not be paid additional compensation.

Departments within the City have different operational requirements; therefore, meal breaks are managed on a departmental basis. All employees who work eight (8) or more hours in a day may take an unpaid meal break of 30 minutes to one (1) hour depending on department operations. Meal breaks are not counted as hours worked. Employees are to be relieved from duty during their meal break.

### **Attendance and Punctuality**

Punctual and regular attendance is an essential responsibility of each employee at the City. Employees are expected to report to work as scheduled, on time, and prepared to start working at their scheduled time. Employees are also expected to remain at work for their entire work schedule. Late arrival, early departure, or other absences from scheduled hours are disruptive and must be avoided.

This policy does not apply to absences covered by the Family and Medical Leave Act (FMLA) or leave provided as a reasonable accommodation under the Americans with Disabilities Act (ADA). These exceptions are described in separate policies.

## **Absence**

Absence is when an employee is not available for their assigned work schedule regardless of the reason. The two types of absences are defined below:

Scheduled absences occur when an employee has arranged in advance and has been granted supervisory approval to be absent from work. Examples of scheduled absences are vacation, scheduled medical appointments, holidays, leaves of absence, and absence due to work-related injury, jury duty, or military duty.

Unscheduled absences occur when an employee's absence was not approved in advance (i.e., calling in sick, emergency situations, etc.). An unscheduled absence may involve consecutive days. However, only the first day will be viewed as unscheduled provided the employee follows the specific department policy regarding calling in to inform their supervisor no later than the employee's scheduled starting time on the same day of the unscheduled absence. If the employee is unable to call, they must have someone make the call on their behalf.

Chronic absenteeism is defined as three or more unscheduled absences in any consecutive rolling three-month period (measured backwards). Chronic absenteeism will be managed by the employee's supervisor and may result in counseling or disciplinary action up to and including termination of employment.

Employees with three (3) or more consecutive days of absences because of illness or injury may be required to provide the City proof of physician's care and a fitness-for-duty release prior to returning to work.

Benefit-eligible employees must use accrued paid leave for absences as provided by City policy.

## **Tardiness and Early Departures**

Employees are expected to report to work and return from scheduled breaks on time. If employees cannot report to work as scheduled, they must notify their supervisor no later than their regular starting time. This notification does not excuse the tardiness.

Employees who must leave work before the end of their scheduled shift must notify a supervisor immediately.

Chronic tardiness is defined as three or more late arrivals during a rolling three (3)-month period (measured backwards). Employees are considered tardy when they fail to report to the assigned work area after 15 minutes of the scheduled time, including reporting late after break or meal periods. A late arrival of one (1) hour or more will be considered an unscheduled absence. Chronic tardiness will be managed by the employee's supervisor and may result in counseling or disciplinary action up to an including termination of employment.

## **Media Policy**

The purpose of this policy is to inform employees of the proper steps to follow when contacted by representatives of the media, including but not limited to, newspaper reporters, television and radio reporters, and other news people. The mayor, City administrator, and department director level of management, or approved knowledgeable designee assigned by department director who has been trained by the City to speak to the media, will be the authorized spokesperson for the City in the event of communication with the media. Therefore, employees who are not one of the spokespersons listed above should refer the media to one of the approved designees by providing their name, title, phone number, and email address. In addition to referring members of the media to authorized spokespersons, notify the authorized spokesperson immediately of any media contact.

## Employee Classifications

### Employee Classification as Related to Benefits

#### Full-Time Employee (Benefit-Eligible)

An employee who is employed by the City to work a predetermined schedule of at least 40 hours per week. Full-time, benefit-eligible employees must complete their employee-in-training period.

#### Benefits:

Vacation leave:	Full benefit
Sick leave:	Full benefit
Holiday pay:	Full benefit
Health, dental, and vision insurance:	Eligible
Life insurance:	Eligible
Employee Assistance Plan:	Eligible
Personal emergency leave:	Full benefit
SD Retirement System:	Participating
SDRS Special Pay Plan:	Participating
FICA:	Participating
Unemployment insurance:	Provided
Workers' Compensation:	Provided
Rec center membership:	Eligible
Supplemental retirement plans:	
Traditional 457(b):	Eligible
Roth 457(b):	Eligible

#### Part-Time Employee (Benefit-Eligible)

An employee who is employed by the City to work at least 20 hours but fewer than 40 hours per week on a regular basis and has completed their employee-in-training period, or an employee who is employed by the City to average 30 hours per week over the entire year. Part-time, benefit-eligible employees must complete their in-training period.



Benefits:

Vacation leave:	Based on benefit classification
Sick leave:	Based on benefit classification
Holiday pay:	Based on benefit classification
Health, dental, and vision insurance:	Employees who work 20 hours/week are not eligible; those who work 30 hours/week are eligible
Life insurance:	Employees who work 20 hours/week are not eligible; those who work 30 hours/week are eligible
Employee Assistance Plan:	Employees who work 20 hours/week are not eligible; those who work 30 hours/week are eligible
SD Retirement System:	Participating
SDRS Special Pay Plan:	Participating
FICA:	Participating
Unemployment compensation:	Provided
Workers' Compensation:	Provided
Rec center membership:	Eligible
Eligible supplemental retirement plans:	
Traditional 457(b)	Eligible
Roth 457(b)	Eligible

**Part-Time Employee (Not Benefit-Eligible)**

An employee who is employed by the City to work fewer than 20 hours per week. Part-time, not-benefit eligible employees must complete their in-training period.

Benefits:

Rec center membership                      Eligible

No other benefits, other than those provided by statute

**Temporary or Seasonal Employee:**

An employee who performs labor that by its nature is not performed continuously throughout the year and may only be performed at certain times during the year. Temporary or seasonal employees will work a variety of hours per week for a time period of no more than 165 days or five-and-a-half (5.5) months per calendar year. In this classification, scheduled work hours are for a specified and definable project or based

upon seasonal needs and workloads within the department. There must be a minimum cessation of 13 weeks in service before a seasonal/temporary employee may be rehired. The 165-day count starts at orientation, the first day the employee is paid for hours worked.

Benefits:

No benefits, other than those provided by statute

**Standard Measurement Period for Variable-Hour Employees**

For the purposes of the Patient Protection and Affordable Care Act (PPACA), the City will use the following measurement period, along with administrative and stability periods, to determine if a variable-hour employee (part-time or seasonal) is a full-time equivalent (FTE) to whom insurance coverage must be offered.

- Measurement period – November 1 through October 30 of the following year
- Administrative period – November 1 through December 30
- Stability period – January 1 through December 31

If during the measurement period, an employee works 30 hours or more per week on average, that employee becomes eligible for coverage (i.e., is treated as an FTE) during a subsequent coverage period called a stability period. The City has also implemented an administrative period between the measurement and stability periods, wherein the City calculates the hours during the measurement period, notifies eligible employees of FTE status, and provides an opportunity for them to elect coverage during an open enrollment. The measurement periods vary for ongoing employees versus newly hired employees.

## **Recruitment and Selection**

### **Recruitment and Hiring Policy**

It is the policy of the City to hire the best candidate to fill an open position, as identified through a fair and credible process, to perform the duties and responsibilities established in the position description corresponding to the position being hired. All recruitment efforts are based upon equal employment opportunity and conducted without regard to race, color, religion, sex, sexual orientation, national origin, creed, ancestry, pregnancy, age, genetic information, disability, or any other basis prohibited by state or federal law.

If in the best interest of the City, promotions or transfers of individuals already employed with the City will be given consideration. This consideration, however, does not entitle the individual to an automatic promotion or transfer to a higher level of employment. The City reserves the right to announce and advertise any vacant position outside of the City, even if there is a qualified employee who may be promoted. After reviewing all applicants, the City may choose to promote, transfer, or hire from outside the City based upon the most qualified candidate and the best interest of the City. The recommendation to promote, transfer, or hire will be made by the supervisor or department head in charge of such position and will be subject to City council approval. The City will not post or allow transfers of regular employees into temporary/seasonal positions.

### **Job Announcement**

All regular full-time and part-time openings are posted internally through the application tracking system for employees to review. These internal job postings will remain open for five (5) business days. Jobs do not have to be posted externally. If posted externally, the City may choose to post simultaneously internally and externally.

All announcements and advertisements must state the City is an “Equal Opportunity Employer” and “individuals with disabilities who need reasonable accommodations to complete the job application process should contact the human resources director to commence the accommodations interactive process.”

### **Applications for Employment**

Individuals interested in applying for a specific position with the City will be required to complete the online application process. This process includes creating a profile and submitting an online application detailing their employment history, education, and other relevant experience or pertinent information. Any requirements for the submission of a resume, cover letter, letters of reference, work samples, or other supplemental material will be identified in the job posting.

Individuals with disabilities who need reasonable accommodations to complete the job application process should contact the human resources director to commence the accommodations interactive process.

Online applications are stored in a secure location. Only authorized employees and hiring authorities have access to the submitted employment application. It is important that applications show all the relevant education and experience. Applicants will be rejected (not considered for employment) if any employment application is not completed.

A separate application must be submitted for each position for which the individual wishes to be considered.

### **Qualification**

The City will recruit, hire, or promote the most qualified candidates into all job levels. The City maintains a position description on each position within the City. This description establishes the essential functions of each position, the minimum qualifications, and the knowledge, skills, and abilities to qualify for employment.

### **Veterans' Preference**

Preference in employment will be given to veterans as defined by SDCL 33A-2-1. All veterans who possess at least the minimum qualifications necessary to fill a position will receive an interview. A veteran who has a service-connected disability will be given a preference over a nondisabled veteran. It is the candidate's responsibility to make the City aware of their preferential status by providing a copy of their DD-214 (separation papers) along with the application.

### **Disqualification**

An applicant is disqualified from employment by the City if they do not complete an employment application, do not meet the minimum qualifications for employment, knowingly have made a false statement on the application form or resume, have committed fraud during the selection process, or refuse to sign the application or release of information.

### **Employment Offers**

Successful candidates will be given a conditional offer of employment from the human resources director. Offers will be in writing or by personal contact. There will be no such offer or hint of employment with the City conferred to an applicant until the final decision has been approved by the hiring authority. Offers of employment are conditional offers inasmuch as they are contingent upon verification of several items that are preventative in nature and will be conducted for the sole purpose of protecting all City employees, elected officials, and appointees, as well as the residents of the City from workplace violence, theft of City property, misuse or abuse of City equipment and resources, and other problems that may arise in today's workplace. Once all verifications are complete with acceptable outcomes, the City council will approve or deny the hiring of the candidate. These verifications include:

#### **Driving History**

This policy applies to all City employees who are required to possess a valid driver's license and are required to drive City-owned/leased vehicles or equipment. This policy

also applies to all applicants who seek employment with the City. Motor Vehicle Records (MVR) will be obtained on all candidates for employment who receive a conditional offer, monthly on Class 3 operators, and annually on Class 1 and 2 operators.

It is the employee's responsibility to inform their supervisor of any incidents that could potentially change their status as an employee who is authorized to operate a vehicle on City business. Any employee who fails to report incidents that affect driving status will be subject to disciplinary action up to and including termination of employment.

- Class 1 Operator – Maintains a current/active eligible driver's license allowing them to operator passenger cars and light duty trucks for City purposes. Class 1 operators operate vehicles either regularly or occasionally, but driving is not considered an essential function of their position. If a Class 1 operator becomes uninsurable through the City insurance carrier and is unable to drive City vehicles, the employee's supervisor will review the position and make a recommendation, to the City administrator for approval, on whether a reasonable accommodation is available and whether employment will continue or be terminated.
- Class 2 Operator – Maintains a current/active eligible driver's license allowing them to operate passenger cars and light duty trucks for City purposes. Class 2 operator is a non-commercial driver's license (CDL) employee who operates vehicles daily in their regular course of employment, and driving is an essential function of their position. If a Class 2 operator becomes uninsurable through the City insurance carrier or is unable to perform the essential functions of their position, the employee's employment with the City may be terminated depending on the circumstances surrounding the loss of insurability.
- Class 3 Operator – Maintains a current/active eligible Class B CDL allowing them to operate gross vehicle weight rating vehicles (GVWR) over 26,001 pounds and not pull a trailer over 10,000 pounds, or an employee who maintains a current/active eligible Class A CDL allowing them to operate any combination vehicle with a GVWR over 26,001 and pull a trailer in excess of 10,000 pounds. Class 3 operators operate City-owned/leased vehicles and equipment on a daily/regular basis, and driving is considered an essential function of their position. If a Class 3 operator becomes uninsurable or is unable to perform the essential functions of their position, the employee's employment with the City will be terminated.

MVR's will be examined prior to the start of employment and at least annually thereafter. Any conditional employment offer made for a position with driving duties will be contingent upon an MVR meeting the required minimum standards set forth in this policy.

The following table will assist in the review of the MVR. The City will review the last five (5) years of driving history. A score of 10 points and above, accumulated over the last five (5) years, will be uninsurable.

<b>Violation</b>	<b>Points Assigned</b>
Driving Under the Influence (DUI)	10
Reckless driving	8
Eluding/attempting to elude a police officer	6
Drag racing	6
Accident/failure to report	5
Careless driving	5
Failure to yield right-of-way	4
Improper passing	4
Driving on the wrong side of the road	4
Driving while license revoked/suspended	4
Stop sign/light violation	3
Speeding in a school zone in excess of the posted speed limit	3
All other motor vehicle related violations	2

### **Pre-Employment Drug Testing**

All applicants who seek employment with the City (except temporary Sturgis Motorcycle Rally police officers) will be required to submit to pre-employment drug testing within two (2) days of the conditional offer unless an unusual circumstance exists. A conditional offer is contingent upon a negative drug test. To review the City’s policies on drug testing, please refer to the City of Spearfish Drug and Alcohol-Free Workplace Plan.

### **Background Investigation**

All applicants who seek employment with the City are required to submit to a limited criminal background investigation. Applicants of the police department will submit to a background investigation that is more extensive due to the nature of law enforcement. The human resources director will gather background information on the applicant. Information may be attained on work history, education, criminal records, and financial history. The City will comply with federal laws protecting applicants from discrimination. The same standards will be applied to everyone.

Limited criminal background investigations will be conducted on employees throughout their tenure with the City.

Upon completion of the background investigation, appropriate and authorized City personnel, or their designees, will evaluate the information. Applicants for employment and employees will be provided an opportunity to explain or correct negative results of the background investigation as related to criminal records and financial history.

### **Physical Examinations**

Law enforcement and any other positions, as decided by the City, may be required to undergo a post-offer, pre-employment physical examination. The cost of the pre-employment physical examination will be borne by the City.

### **Psychological Examinations**

Employees of the police department may be required to undergo a post-offer, pre-employment psychological evaluation and may be required to repeat such examinations every five (5) years. The cost of the examination will be paid for by the City. No police department employee will become a regular employee of the City until this initial psychological examination has been completed and a positive recommendation received and accepted by the City administration.

### **Confirmation of Employment Offer**

Once human resources receive satisfactory results from all the post-offer testing and investigation, human resources or the hiring manager will notify the candidate and confirm the initial offer. In cases where the candidate is unsuccessful in the post-offer testing/investigation, the offer of employment may be withdrawn. Consideration will be given for potential accommodations.

### **Response Time Requirements**

City employees will not be subject to a residency policy, but certain positions within the City require residency within a certain distance from the City adequate to meet a 30-minute response time. Positions chosen to have a response time are those positions responsible for a department within the City, positions required to be on-call, and departments with emergency response employees. Positions include:

- City administrator
- Department heads (City attorney, City engineer, City planner, finance officer, fire chief, human resources director, library director, police chief, public works director, parks and recreation director, public safety director, and building official)
- Facility maintenance staff
- Hydroelectric plant staff
- Shop supervisor and mechanics
- Parks maintenance and forestry/cemetery department staff
- Police department sworn members and police department dispatch
- Recreation facility superintendent, recreation facility maintenance supervisor, recreation and campground coordinator, and fitness and aquatics coordinator
- Street department staff
- Solid waste operators
- Wastewater treatment facility staff
- Water and wastewater utilities department staff

The City administrator or department head will make the final determination regarding the 30-minute response time feasibility from the residence. Applicants will not be discriminated against based on the response time in the selection process.

### **Employment of Relatives (Nepotism)**

The City's policy in employment is to hire and promote on the basis of an individual's merit, knowledge, skills, and abilities and to avoid circumstances of favoritism and discrimination. Thus, the employment of immediate family members within the same department or other areas where an immediate family member would hire, supervise, discipline, or otherwise judge the performance of the above is prohibited. The City also reserves the right to prohibit such working relationships beyond the department level if potential for conflict exists. Extended family will be reviewed on a case-by-case basis. The City administrator will review the hire of any immediate family members within the City prior to City council approval.

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

### **Employee In-Training Period**

Every full- and part-time employee hired by the City must complete a training period for the purpose of assessing the individual's ability to perform their assigned duties. The training period will be six (6) months for all employees, except police officers, who must complete a one (1)-year training period. Prior to the end of the training period, the employee's supervisor will complete a performance evaluation based on the supervisor's assessment of the employee's performance. Training periods may be extended based on the supervisor's assessment of the employee's performance. Training periods may be extended by the department head with approval from the City administrator.

Employees who are assigned to a different position must also complete a training period for assessing their ability to perform the duties of the new position assigned.



## **Hours of Work**

### **Standard Work Week**

The standard 40-hour work week, unless otherwise stated, for the purpose of calculating pay and overtime, will begin at 12:00 a.m. (midnight) Sunday and end at 11:59 p.m. Saturday. Sworn officers of the police department who are scheduled under FLSA Exemptions will work a 40-hour, seven (7)-day work period for the purpose of calculating overtime. Stated work period will coincide with the pay period of the remainder of the City.

### **Call-Out Pay**

The purpose of call-out pay is to adequately compensate the employee for inconvenience caused by unscheduled work. Call-out is unscheduled and not contiguous with the regularly assigned work hours and subject to response time requirements. When an hourly/non-exempt employee is called out to work, they will receive a minimum of three (3) hours of regular pay to be applied to their total compensation for the work week. Compensable time begins when the employee leaves their home and continues until the call-out is complete. Travel time home is not compensable.

### **On-Call Pay**

During off-duty hours, an employee who is required to carry a mobile device and is required to respond to emergency calls during regularly scheduled on-call rotations is considered on-call. On-call employees will receive one (1) hour of compensatory time per regularly scheduled seven-day rotation. Regularly scheduled on-call rotations of three-and-a-half (3.5) days will receive one half-hour (30 minutes) of compensatory time for each regularly scheduled on-call rotation. Salaried/exempt employees will receive this benefit through administrative leave.

### **Flex Time**

The City reserves the right to authorize flexible work hours within the 40-hour work week in situations where it is appropriate or necessary. Employees must still adhere to the standard 40-hour work week unless flex time or overtime has been approved by their supervisor.

### **Overtime**

For all hourly/non-exempt employees, overtime compensation is paid at the rate of one-and-one-half (150 percent) of the normal hourly rate. Salaried/exempt employees are not eligible for paid overtime. Eligible employees may be required to work overtime when determined necessary by their supervisor, department head, City administrator, or the mayor. Overtime will be defined as time worked in excess of the first 40 hours within the standard work week, defined in the above Standard Work Week policy, and does not include hours paid but not worked, such as holidays, vacation days, sick days, call-out time compensated but not worked, compensatory time, administrative leave, or court time pay not worked. All overtime must be authorized by the employee's immediate supervisor prior to the working of such hours except in an emergency situation. Supervisors may only authorize overtime if the work cannot otherwise be done during normal work hours. Insofar as possible, the opportunity to work overtime should be distributed

as equally as practicable among the employees in each department. Accrual of overtime without prior authorization may result in disciplinary action. If an employee is required to work on a holiday, the City will follow the “Holidays” policy in this manual.

### **Overtime for Salaried/Exempt Employees**

Salaried/exempt employees are paid on a bi-weekly basis and are not eligible for overtime. Compensation is not based on the number of hours worked, nor will they accrue compensatory time for hours worked in excess of 40. Exempt employees may use administrative leave in lieu of other paid leaves. In special circumstances, the City council may approve the payment of overtime for exempt employees as stated in the “Special Circumstances” policy.

### **Court Time Pay**

When an hourly/non-exempt employee is required to appear in court on behalf of the City outside of their regularly scheduled work hours, and not contiguous with regularly scheduled hours of work, they will receive a minimum of three-and-one-half (3.5) hours of regular pay to be applied to their total compensation for the work week.

### **Compensatory Time**

Compensatory time may be earned on call-out pay hours not worked, on-call pay, and holiday hours, as outlined in the “Work on the Holiday” policy. Compensatory time is for full- and part-time benefit eligible hourly/non-exempt employees.

The maximum amount of compensatory time is 40 hours. When the amount of compensatory time reaches 40 hours, all additional time earned will be paid. The City administrator and mayor have the authority to extend the maximum amount on an individual basis. Compensatory time must be used before using accrued vacation. Payment for compensatory time may be made at any time and shall be paid at the regular rate earned by the employee at the time the employee receives such payment. Upon separation from City service, the employee will be paid for any unused compensatory time at their final rate of pay.

### **Time Keeping**

To comply with legal obligations to maintain accurate time records and to ensure employees are paid for all hours worked, the City requires employees to accurately record their hours worked during each workday and paid leaves using an electronic time-keeping system. Employees are required to submit/approve their time records promptly following the close of the pay period. “Hours worked” under the Fair Labor Standard Act (FLSA) are defined to include all hours an employee is “suffered or permitted to work for the employer,” whether or not required to do so. The City will use 15-minute increments and round to the nearest increment. The cutoff point for rounding down is seven (7) full minutes, and if the employee works eight (8) minutes, the City will round up to the nearest 15-minute increment. At no time may any employee perform off-the-clock work or otherwise alter, falsify, or manipulate any aspect of their time-keeping records to inaccurately reflect or hide hours worked, meal periods taken, or time spent working during meal

periods. The obligation to accurately record all hours worked does not relieve employees of their obligations to obtain advance approval from their supervisor before working overtime or hours beyond the regular work schedule. Employees who work beyond their regularly scheduled work hours, including overtime or off-schedule hours, without prior authorization by their supervisor are subject to disciplinary action up to termination of employment. When an employee approves their electronic timesheet, they will be agreeing to “I certify the hours worked are true and correct,” which notifies the supervisor the employee’s electronic timesheet is ready for supervisor approval. Under no circumstances may any employee record another employee’s time, other than a supervisor. Any misrepresentation of time worked or falsification of any time record will result in disciplinary action up to and including termination.

### **Daylight Savings Time**

During shifts when Daylight Savings Time is adjusted, employees who are working will be paid for actual hours worked. Daylight Savings Time begins on the second Sunday in March and ends on the first Sunday in November. The time change takes effect at 2 a.m. local time.

## Compensation

### Pay Period and Pay Day

City employees are paid on a bi-weekly basis. All City employees are paid through the direct deposit of their wages into their account at the financial institution of their choice on the Friday after the end of the bi-weekly period. If a pay period falls on a holiday, the City will pay the day prior to the holiday, unless it would cause payroll to be paid in the wrong calendar year, at which point it would be paid on the next business day following the holiday.

### Job Classification and Compensation Plan

The City contracts with an outside consultant to classify each of the positions within the City and maintain the current compensation scale to a level which will attract and retain qualified professional employees. Positions are evaluated and placed within the grade system by the consultant, based on responsibilities and requirements of each position. The pay plan consists of 27 grades and 18 steps. A copy of the job classification and compensation plan is available on the employee portal.

Movements within the current job classification and compensation plan are outlined below:

- **Scale adjustment** – Each year, the grade and step scale, if authorized by the City council, will be adjusted by the Cost of Living Adjustment (COLA)/inflation rate designated by the Consumer Price Index for employment and multiplied by .75. This adjustment should allow the scale to remain at a market level within the industry, thereby reducing the overall impact of a scale adjustment during the periodic analysis years.
- **Step adjustment** – An employee receiving a “meets standards” performance evaluation score or higher will be recommended for a step increase in the upcoming year.
- **Promotion** – When an employee is moving to a classification with a higher-grade level than originally held, the employee will be promoted based on the below scale:
  - 1-2 grades – will receive a five (5%) percent promotional increase, but not to exceed the grade range maximum of their new grade or a promotional increase to step one of the grade range of their new classification, whichever is greater.
  - 3-4 grades – will receive a ten (10%) percent promotional increase, but not to exceed the grade range maximum of their new grade or a promotional increase to step one of the grade range of their new classification, whichever is greater.
  - 5 or more grades – will receive a fifteen (15%) percent promotional increase, but not to exceed the grade range maximum of their new grade or a promotional increase to step one of the grade range of their new classification, whichever is greater.
- **Lateral Transfer** – When an employee is transferred to a position within the same grade, that employee’s salary will remain unchanged.
- **Transfer to a lower grade** – When an employee is moving to a classification with a lower grade level than originally held, the employee will be placed on the step closest to their current salary but may not exceed mid-point on the lower grade. Consideration must be given to the employee’s years of service, and the learning curve in the lower position.

Exceptions from this policy may be recommended by the City administrator and must be approved by City council.

### **Grade and Step Scale Analysis**

The City analyzes its grade and step scale on a periodic basis to ensure the Job Classification and Compensation Plan remain within the industry standards for all jobs to attract and retain qualified, professional employees. The analysis will look at salaries statewide and in the surrounding region for comparable market data. Supervisors will be required to review all position descriptions to assure the essential functions listed in each position description match the actual position. Once the data is reviewed in the analysis, a determination on grade adjustments will be made.

### **Early Wage Payment**

The City does not grant early payment of wages to employees under any circumstances.

### **Benefits**

Benefits that follow are those offered by the City to employees. These benefits are based on an employee's classification as noted in the "Employee Classifications" section.

#### **Health/Dental/Vision Insurance**

The City offers group health insurance for employees and their dependents. If an employee elects to enroll in the City's health insurance plan, the City will cover 100 percent of the Health Savings Account (HSA) health plan for the employee and 60 percent of the HSA dependent-covered plans (employee + one; employee/child(ren); family) if allowed by the budget. If the employee elects to enroll in the lower deductible health plan, the contributions applied to the HSA health plan will be applied to the lower deductible health plan. If the employee elects to waive the health insurance plan, they will be eligible to use a portion of the health insurance premium for dental and vision coverage for individual up to family coverage. The amounts and types of insurance coverage and other benefits provided to employees will be at the sole discretion of the City.

The City offers group dental insurance as an elective coverage for employees and their dependents. The City offers group vision insurance as an elective coverage for employees and their dependents.

An employee who retires from the City and is eligible for public employee's retirement benefits may elect to remain on the health, dental, and vision insurance plans until they reach the age of 65, or otherwise qualify to enroll in the Medicare program, provided the employee pays 100 percent of all premium costs for the employee and any dependents. If the employee or dependents, at any time, decline health, dental, or vision insurance, they are no longer eligible for such retirement benefits. Employees must complete 10 years of service with the City prior to retirement to be eligible to retain health, dental, and/or vision insurance coverage after retirement.

When an employee leaves employment with the City, their health, dental, and vision insurance will end on the last day of the month of employment, unless they elect to continue coverage through COBRA. COBRA information will be provided by the insurance carriers.

### **Employee Assistance Program (EAP)**

The City provides all eligible employees an Employee Assistance Program (EAP) to assist employees with personal problems or work-related problems that may impact their job performance, health, and mental and emotional wellbeing. This plan offers counseling, family caregiving, legal, financial, and convenience services for the employee.

### **Life Insurance**

The City provides eligible employees a life insurance policy. Dependent coverage is not provided. The amounts and types of life insurance coverage will be at the sole discretion of the City. The life insurance policy will terminate on the employee's last day of employment.

### **Spearfish Recreation Center Memberships**

The City provides eligible employees with memberships at the Spearfish Recreation Center. Memberships are on an annual basis.

### **South Dakota Retirement System**

The City is a member of the South Dakota Retirement System (SDRS) and follows the Retirement System law as set forth in SDCL Chapter 3-12C. All eligible employees (those who work 20 or more hours per week for more than six (6) months in a regular position (not temporary or seasonal employees) will be members of the SDRS immediately upon hire. SDRS is a 401(a) defined benefit pension plan that provides retirement, survivor, and disability benefits for South Dakota's public employees. Depending on the employee classification, according to SDRS, Class A employees will contribute 6 percent, with the City matching 6 percent, and Class B employees (public safety) will contribute 8 percent, with the City matching 8 percent, each payroll period, toward the retirement account of the employee. Members are classified as either Foundational Members who joined SDRS prior to July 1, 2017, or Generational Members who joined SDRS on/after July 1, 2017.

### **Supplemental Retirement Plan 457(b)**

All regular employees have the option to participate in a Supplemental Retirement Plan 457(b). This is an optional retirement plan that offers employees the ability to participate in the Traditional 457(b) and the Roth 457(b) by payroll deduction. This is an investor directed, professionally managed annuity. The entire cost is paid by the employee.

## **Special Pay Plan**

The City is a Special Pay Program employer unit under the terms and conditions of SDCL Chapter 3-13A. The SDRS Special Pay Plan (SDRS-SPP) is an additional retirement plan funded by an eligible employee's special pay (vacation and sick leave payout), which is a compensation other than regular salary or wages accumulated by an employee and converted to a lump-sum amount at termination of employment. Only terminated employees who qualify pursuant to SDCL 3-13A will participate. A qualified applicant is defined as a terminated employee of a participating unit who has reached the first day of the calendar month prior to their 55<sup>th</sup> birthday and is receiving \$600.00 or more in special pay. Special pay contributed to the SDRS-SPP is permanently exempt from Social Security taxes and free from federal income taxation until distributed from the Special Pay Plan. Special pay may include unused vacation or sick leave pay that is eligible for contribution into the SDRS-SPP. Only payments made to an employee at the time of the employee's termination are transmitted to the SDRS-SPP. Contributions to the SDRS-SPP are subject to IRS Code Section 415(c) limits. The contributions and any earnings will have the opportunity to grow tax-deferred until they are distributed from the plan. SDRS-SPP provides a variety of investment options and benefit payment choices. If the employee qualifies, transmission of such special pay to the Special Pay Program is mandatory. The City will pay to SDRS an initial, one-time fee per participant. A SDRS Special Pay Plan account must be established for each participant, and the account will be fully vested as soon as the employer transmits the funds to the SDRS-SPP and is eligible for an immediate distribution from the plan upon written request at age 55. There is no cost to the employee to be in the SDRS-SPP for the first 12 months the account is open as this cost is paid by the City. All distributions from the SDRS-SPP are subject to federal income tax withholding unless they are rolled into another eligible retirement plan or IRA.

## **Workers' Compensation Coverage**

The City will provide Workers' Compensation coverage as mandated in South Dakota Codified Law. This coverage is designed to protect employees against medical costs and salary loss as a result of injuries while on the job.

Employees must report a work-related injury to their department head immediately, or as soon thereafter as practical. Injured employees, regardless of whether they seek treatment for their injury, must submit a First Report of Injury to the human resources director no later than three (3) business days after the injury. The required forms and instructions are available on the employee portal.

If an employee is unable to work because of a work-related injury for a period of seven (7) consecutive calendar days, they are entitled to temporary disability benefits. The benefit is computed at two-thirds of the employee's average weekly wage up to a state maximum per week. The employee's average weekly wage is calculated off the wage at the time of injury. This benefit continues until the employee is released by a doctor to

return to work in a full or partial capacity or until it is determined that the employee's condition has reached a point of maximum medical improvement. Employees will be compensated up to a maximum of accrued sick leave, compensatory time, administrative leave, and vacation leave, less the amount the employee receives from Workers' Compensation coverage.

### **COBRA Continuation Coverage**

Federal law requires most group health plans (including the City's plan) to give employees and their families the opportunity to continue their health care coverage through COBRA (Consolidated Omnibus Budget Reconciliation Act) continuation coverage when there is a "qualifying event" that would result in the loss of coverage under the City's plan. COBRA continuation coverage is the same coverage that the plan gives to other participants or beneficiaries who are not receiving continuation coverage. Each qualified beneficiary who elects COBRA continuation coverage will have the same rights under the plan as other participants or beneficiaries covered under the plan, including special enrollment rights. COBRA continuation coverage is offered on a self-pay basis to eligible employees or their qualified beneficiaries following termination of employment (other than for gross misconduct), a reduction in hours, retirement, death, or change in family status. COBRA establishes required periods of coverage for continuation of health benefits. In the case of loss of coverage due to end of employment or reduction in hours of employment, coverage generally may be continued for up to a total of 18 months. An 11-month extension of coverage may be available if any of the qualified beneficiaries are determined by Social Security Administration to be disabled. Certain qualifying events, or a second qualifying event during the initial period of coverage, may permit a beneficiary to receive a maximum of 36 months. Coverage begins on the date it would otherwise have been lost by reason of qualifying event and will end at the end of the maximum period. It may be earlier if premiums are not paid, employer ceases to maintain any group health plan, coverage is obtained with another employer, or the beneficiary becomes entitled to Medicare benefits. The full policy monthly premium plus a 2 percent administration fee will be paid by the employee or eligible dependent to the City or the company administering COBRA for the City. The employee or beneficiary may waive all rights to continuation coverage.

### **Special Enrollment Periods for Qualifying Events**

Qualifying events for health insurance can grant special enrollment periods that allow employees to sign up or change health insurance elections outside of the annual enrollment periods. To qualify for a special enrollment period, an employee must have a life-changing event. Events include but are not limited to: marriage; death; birth of a child; adopting/fostering a child; losing existing health insurance under certain conditions such as divorce, loss of group coverage through an employer, COBRA coverage expired, or dependent child reaching the dependent limiting age.



The employee must submit a request for a special enrollment period in writing and within 31 days of the qualifying event date.

## **Travel and Reimbursement of Expenses**

### **General Policy**

It is the policy of the City 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 travel expenditures. All travel will be completed by the most economical method.

Expenses associated with travel and meals will be compensated at the current state rates. Travel and reimbursement forms are available on the Employee Portal.

### **Travel Approval Required**

All travel must be approved by the department head prior to the date of travel except in an emergency instance. The following procedures will be used when requesting travel:

- Department heads and the City administrator are authorized to approve all budgeted travel as outlined in the Purchasing Policy.
- Travel and training expenditures that exceed a department's budgeted travel and training line item may not be made without prior approval of the City council. A copy of the agenda or program schedule must be included with the travel request.

### **In-State Travel Expenses**

Per diem rates for approved in-state travel are set forth and adopted by the State of South Dakota. If documented rates below differ from the state rates, the City will follow state rates. Rates include:

- The actual cost of reasonable lodging plus tax
- An allowance for meals (\$40.00 maximum per day) of:
  - \$6.00 for breakfast
  - \$14.00 for noon lunch; and
  - \$20.00 for evening dinner

### **Out-of-State Travel Expenses**

Per diem rates for approved travel outside of South Dakota are set forth by the state. If documented rates below differ from the state rates, the City will follow state rates. Rates include:

- The actual cost of reasonable lodging plus tax
- An allowance for meals (\$56.00 maximum per day) of:
  - \$10.00 for breakfast
  - \$18.00 for noon lunch; and
  - \$28.00 for evening dinner

### **Meal Allowance – Schedule for Computation**

The times for allowance of paid meals is as follows:

- Breakfast: Leave before 5:31 a.m.; Return after 7:59 a.m.
- Lunch: Leave before 11:31 a.m.; Return after 12: 59 p.m.
- Dinner: Leave before 5:31 p.m.; Return after 7:59 p.m.

Meals included in registration fees will not be reimbursed by the City.

### **Receipts Required for Lodging**

Receipts will be required for all lodging expenses to be reimbursed by the City. The City prefers and encourages employees to have lodging expenses billed directly to the City. Employees must ensure the lodging establishment does not charge sales tax.

### **Mileage Rate**

When employees must use their private vehicles for City business, mileage will be paid as set forth and adopted by the State of South Dakota at the current state rate (42 cents per mile). If the documented rate differs from the state rate, the City will follow state rates.

The City prefers and encourages employees to use City-owned vehicles whenever available.

## Leaves

### General Policy

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

Employees anticipating a leave are encouraged to request such leave as soon as possible.

### Vacation Leave

Paid vacation leave will be granted to all eligible employees as outlined in the “Employee Classifications” section. Vacation leave will accrue according to the following:

Employees will be granted 3.08 hours of paid vacation per pay period, to begin accruing immediately upon work with the City. Upon completion of six (6) full and continuous years of service, 40 additional hours of vacation will be granted, and 4.62 hours of paid vacation per pay period will be accrued. Upon completion of 10 full and continuous years of service, 40 additional hours of vacation will be granted, and 6.15 hours of paid vacation per period will be accrued. Upon completion of 25 full and continuous years of service, 40 additional hours of vacation will be granted, and 7.70 hours of paid vacation per pay period will be accrued.

Employees on a part-time status of 20 or 30 hours per week who accrue vacation will receive a pro-rated accrual based off their part-time status hours and will be given the lump sum additional hours of vacation at the completion of six (6), ten (10), and twenty-five (25) years of service based off the part-time status hours. All benefit eligible status counts toward accrual rates.

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

Vacation hours not used during the calendar year earned may be carried over into successive years subject to the maximum accrual limits. Eligible employees may accrue a maximum of 240 hours or 30 working days of vacation leave.

Upon accrual above the maximum vacation leave hours, hours accrued will automatically be subtracted down to the maximum allowable hours without time being granted for leave. It is the employee’s responsibility to ensure hours are used on a timely basis according to this policy.

Upon separation from employment, an employee will be paid for any accumulated vacation time. Reimbursement for vacation leave will be at the employee’s hourly rate per their last day of employment.

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

Vacation leave must be scheduled with the employee's department head at the earliest possible time prior to the use of such leave. The City reserves the right, within reason, to deny requested time for vacation leave for the purposes of maintaining the workforce during heavily scheduled work periods. However, the City will make every effort possible to accommodate employee requests for time off.

Vacation leave will generally be granted on a first-come, first-served basis, based on operational needs; however, when conflicts exist, other criteria may be used. Vacation leave must be taken in quarter-hour (0.25 hours) increments.

Vacation hours combined with hours worked may exceed 40 hours in any work week if vacation was requested and taken for a regularly scheduled workday and subsequently the employee is requested/required to work extra hours to assist in covering shifts. Vacation hours (or other paid hours, i.e. holiday or administrative leave) and hours worked may not be combined to exceed regularly scheduled hours on a daily basis. Payment of hours exceeding 40 will follow the Overtime policy.

### **Sick Leave**

Sick leave will be granted to all eligible employees to use for illnesses and injuries of the employee. Sick leave will accrue at a rate of 3.69 hours per pay period for employees with zero to two (0-2) years of service, and 4.62 hours of sick leave per pay period for employees with more than two (2) years of service.

Employees on a part-time status of 20 or 30 hours per week who accrue sick leave will receive a pro-rated accrual based off the part-time status hours. All benefit eligible status counts toward accrual rates.

Employees on leaves of absences without pay, suspensions without pay, or who are absent for a full pay period without pay do not accrue sick leave benefits.

Earned sick leave benefits not used during the calendar year may be carried over and used during the succeeding calendar years. Employees may accumulate unlimited hours of sick leave. Sick leave must be taken in quarter-hour (0.25 hours) increments.

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

Sick leave hours combined with hours worked may exceed 40 hours in any work week if sick leave was requested and taken for a regularly scheduled workday and subsequently the employee is requested or required to work extra hours in that work week to assist in covering shifts. Sick leave hours (or other unpaid hours, i.e. holiday or administrative leave) and hours worked may not be combined to exceed regularly scheduled hours on a daily basis. Payment of hours exceeding 40 will follow the Overtime policy.

An employee absent from work due to illness or disability must notify their immediate supervisor or department head before they are scheduled to work, or as soon as possible if an

emergency situation exists, and indicate the nature of the illness or disability and the expected length of absence.

Employees with three (3) or more consecutive days of absences because of an illness or injury may be required to provide the City with proof of physician's care and a fitness-for-duty release prior to returning to work.

However, the department head may request a physician's statement concerning such absence at any time.

Any employee found to have abused sick leave privileges may be subject to disciplinary action up to and including termination of employment.

An employee will be paid for one-fourth (.25) of their unused sick leave, but not more than 480 hours, at their current base rate of pay upon termination of employment, provided:

- There has not been a break in service in the past seven (7) years of benefit-eligible status or the break in service was due to layoff and for less than one (1) year; and
- Employee is actively employed on their seven (7)-year work anniversary; and
- The employee has not been rehired prior to payment of sick leave; and
- Termination was for other than cause.

Payment for unused sick leave will be made in a lump sum on:

- The first pay period following the date of termination; or
- The employee's normal payday if the employee retired; or
- The employee's normal payday if the employee is deceased.

#### **Use of Sick Leave for Inclement Weather**

If City offices are closed by the City administrator due to inclement weather, all benefit-eligible employees will be allowed to use their sick leave, if accrued, for hours the employee would have normally worked. Sick leave for inclement weather and hours worked may not exceed 40 hours within the standard work week.

#### **Family and Medical Leave Act (FMLA)**

The City will provide Family and Medical Leave Act (FMLA) leave to its eligible employees. The City posts the mandatory FMLA Notice in each department's common bulletin board area. Upon hire, the City provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by the law.

If an employee has any questions, concerns, or disputes with this policy, they must contact the human resources director in writing.

## **General Provisions**

Under this policy, the City will grant up to 12 weeks of leave during a 12-month period to eligible employees (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness). 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. In certain cases, leave extensions may be an accommodation under the Americans with Disabilities Act (ADA), and the City will administer FMLA in accordance with the ADA. An employee who is unable to return to work within the 12-week duration should contact the human resources director.

### **Eligibility**

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

1. The employee must have worked for the City for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided the break in service does not exceed seven (7) years. Separate periods of employment will be counted if the break in service exceeds seven (7) years due to National Guard or Reserve military service obligations.
2. The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
3. The employee must work in a worksite where 50 or more employees are employed by the City within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

### **Type of Leave Covered**

To qualify as FMLA leave under this policy, the leave must be for one of the reasons listed below:

1. The birth of a child and in order to care for that child.
2. The placement of a child for adoption or foster care and to care for the newly placed child.
3. To care for a spouse, child, or parent with a serious health condition (described below).
4. The serious health condition (described below) of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of their position.

Under the FMLA, a “spouse” means a husband or wife. Husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered

into, or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state. This definition includes an individual in a same-sex or common law marriage that either:

- Was entered into in a state that recognizes such marriages; or
- If entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

This policy covers illnesses of a serious condition and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three (3) consecutive days of incapacity with the first visit to the health care provider within seven (7) days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

Employees with questions about what illnesses are covered under this FMLA policy or under the City's sick leave policy are encouraged to consult with the human resources director.

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 policy, to the extent that the earlier leave meets the necessary qualifications.

1. Qualifying exigency leave for families of members of the National Guard or Reserve or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

An employee whose spouse, son, daughter, or parent either has been notified of an impending call or order to covered active duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service.

The qualifying exigency must be one of the following:

- Short-notice deployment
- Military events and activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation

- Post-deployment activities
- Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of leave

Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserve, or a member of the Armed Forces, the National Guard, or Reserve, who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which they are undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Force, former members of the National Guard and Reserve, or members on the permanent disability retired list.

2. To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next-of-kin of the covered service member.
  - A “son or daughter of a covered service member” means the covered service member’s biological, adoptive, step-, or foster child or legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
  - A “parent of a covered service member” means a covered service member’s biological, adoptive, step-, or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents-in-law.
  - The “next of kin of a covered service member” is the nearest blood relative, other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as their nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member’s next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. Alternatively, where a covered service member has siblings and designates a cousin as their next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member’s next of kin. An employer is permitted to require an employee to



provide confirmation of covered family relationship to the covered service member pursuant to § 825.122(k).

“Covered active duty” means:

- “Covered active duty” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.
- “Covered active duty” or “call to covered active duty status” in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.  
The leave may commence as soon as the individual receives the call-up notice. (“Son” or “daughter” for this type of FMLA leave is defined as the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

3. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.  
An employee whose son, daughter, parent, or next of kin is a covered service member may take up to 26 weeks of leave in a single 12-month period to care for that service member.

Next of kin is defined as the closest blood relative of the injured or recovering service member.

The term “covered service member” means:

- A member of the Armed Forces (including a member of the National Guard or Reserve) who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list, for a serious injury or illness; or
- A veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

The term “serious injury or illness” means:

- In the case of a member of the Armed Forces (including a member of the National Guard or Reserve), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was

aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating;

- In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserve) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of their office, grade, rank, or rating.
- Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

### **Amount of Leave**

An eligible employee can take up to 12 weeks for the FMLA circumstances (1-5 above) under this policy during any 12-month period. Each time an employee takes leave, the City will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

An eligible employee can take up to 26 weeks for the FMLA military caregiver leave during a single 12-month period to provide care to an injured covered service member. This leave can be used only once per veteran, per injury, and must be used within on 12-month period. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

The City will measure the 12-month period as a rolling 12-month period measured backward from the date the employee uses any leave under this policy.

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

### **Employee Status and Benefits During Leave**

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

If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family members or a circumstance beyond the employee's control, the City will require the employee to reimburse the City the amount it paid for the employee's health insurance premium during the leave period.

Under current City policy, if the employee pays a portion of the health care premium, while on paid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the finance office by the 1<sup>st</sup> day of each month, for coverage for that month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The City will provide 15 days' notification prior to the employee loss of coverage.

If the employee contributes to other elective benefits, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay their portion of the premiums to the finance office by the 1<sup>st</sup> day of each month, for coverage that month. If the employee does not continue these payments, the employer may discontinue coverage during the leave.

### **Employee Status After Leave**

An employee who takes leave under this policy may be asked to provide a fitness for duty clearance from a health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equal status, pay, benefits, and other employment terms. The position will be the same or one that is virtually identical in terms of pay, benefits, and working conditions. The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position when doing so will cause substantial and grievous economic injury to the business operations. Key employees will be given written notice at the time FMLA leave is requested of their status as a key employee.

### **Use of Paid and Unpaid Leave**

FMLA leave at the City runs concurrently with paid leave (sick, vacation), compensatory time, administrative leave, and workers' compensation.

An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation, compensatory time, administrative leave, and sick leave prior to being eligible for unpaid leave. Sick leave may be used if the reason for the FMLA leave is covered by the established sick leave policy.

Leave for the birth of a child and for an employee's serious health condition, including workers' compensation leave (to the extent it qualifies), will be designated as FMLA

leave and will run concurrently with FMLA. The employee will be required to use accrued paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An employee who is taking leave for the adoption or foster care of a child must use all allowed paid leave including allowed sick, vacation, compensatory time, and administrative leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation, compensatory time, administrative leave, and sick leave (if the reason for the absence is covered by the sick leave policy) prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, compensatory time, administrative leave, and personal emergency leave (if the reason for the absence is covered by the personal emergency leave policy) prior to being eligible for unpaid leave.

### **Intermittent Leave or Reduced Work Schedule**

The 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 work week 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 military caregiver over a 12-month period).

The City may temporarily transfer an employee to an available alternate position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances when leave for the employee or employee's family is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth or placement for adoption or foster care.

For the birth, adoption, or foster care of a child, the City and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced-hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one (1) year of the birth or placement of the child.

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 try to reach agreement with the City before taking intermittent leave or working a reduced-hour schedule. If this is not possible, then the employee must prove that the use of leave is medically necessary.

### **Certification for Employee's Serious Health Condition**

The City will require certification for the employee's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition.

The City's human resources director may directly contact the employee's health care provider for verification or clarification purposes. Prior to the City contacting the employee's health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the City will obtain the employee's permission for clarification of individually identifiable health information.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee to get a certification from a second doctor, which the City will select. The City may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

#### **Certification for Family Member's Serious Health Condition**

The City will require certification for the family member's serious health condition. 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 a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

The City's human resources director may directly contact the employee's family member's health care provider for verification or clarification purposes. Before the City makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the City will obtain the employee's family member's permission for clarification of individually identifiable health information.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee's family member to get a certification from a second doctor, which the City will select. The City may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

### **Certification of Qualifying Exigency for Military Family Leave**

The City will require certification of the qualifying exigency for military family leave. 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 a denial of continuation of leave. This certification will be provided using the DOL certification of Qualifying Exigency for Military Family Leave.

### **Certification for Serious Injury or Illness of Covered Service Member for Military Family Leave**

The City will require certification for the serious injury or illness of the covered service 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 a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

### **Recertification**

The City may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of their leave. Otherwise, the City may request recertification for the serious health condition of the employee or the employee's family member every six (6) months in connection with an FMLA absence. The City may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

### **Procedure for Requesting FMLA Leave**

All employees requesting FMLA leave must provide verbal and written notice of the need for the leave to the human resources director. Within five (5) business days after the employee has provided this notice, the human resources director will complete and provide the employee with the DOL Notice of Eligibility and Rights.

When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day the need for leave is discovered or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the City's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

### **Designation of FMLA Leave**

Within five (5) business days after the employee has submitted the appropriate certification form, the human resources director will complete and provide the employee

with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

### **Intent to Return to Work following FMLA Leave**

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

### **Leave for Maternity/Paternity/Adoption**

Maternity/paternity/adoption leave under this policy is a leave associated with the birth of an employee's own child or the placement of a child with the employee in connection with adoption or foster care. Eligibility requirements for maternity/paternity/adoption leave are the same eligibility as those for FMLA. All FMLA provisions apply to maternity/paternity/adoption leave. This leave is charged against the employee's sick leave and must be accrued in order to use. If this leave is exhausted within a calendar year period, personal emergency leave is not available for that calendar year. Payment of maternity/paternity/adoption leave will follow the rules outlined in the Sick Leave policy. Maternity/paternity/adoption leave will run concurrently with FMLA.

- **Paternity leave** allows employees to use up to 240 hours (six weeks) of sick leave, if accrued.
- **Adoption leave** allows employees to use up to 240 hours (six weeks) of sick leave, if accrued.
- **Maternity leave** allows employees to use up to 480 hours (12 weeks) of sick leave, if accrued.

### **Medical Leave (Non-FMLA) and Personal Leave**

Medical (non-FMLA) leave may be granted to employees who don't qualify under FMLA due to reasons other than already having exhausted their FMLA leave. Personal leave may be granted to employees who do not qualify for leave under FMLA for reasons other than their FMLA leave has been exhausted. These reasons may include special circumstances such as personal crisis, family catastrophe, or other personal issues. Personal leave may be granted for up to 30 days, subject to approval by the City administrator. Such leave may be extended at the discretion of the City administrator.

An employee requesting leave under this policy is required to exhaust all accrued paid leave, as appropriate under the provisions of this Personnel Manual.

Taking approved leave under this policy will not result in the loss of any employment benefits accrued prior to the date on which leave began. No additional leave or other benefits will accrue during leave without pay. The employee's coverage under the City's group health plan, if any, may be maintained for the duration of the personal leave. During unpaid leave, however, benefits will only be continued if the employee chooses to pay the full premiums.

Requests for personal leave will be considered individually along with the special circumstances related to the leave. Requests for leave should be turned in to the human resources director. To the extent it is possible to do so, a 30-day notice is required. The City may require the employee to provide certification from the employee's health care provider prior to leave and a fitness-for-duty certification upon return to work.

### **Jury Duty**

Full- and part-time benefit-eligible City employees will be granted leave with pay for jury duty or if subpoenaed to testify in court on behalf of the City. Jury duty summons must be submitted to the human resources director prior to jury duty. During such periods of absence, employees will receive their regular rate of pay. An employee who is being paid their regular rate of pay while on jury duty will submit the jury duty payment back to the City upon return to work. The employee will retain the mileage and meal reimbursement. If the employee is not selected for jury duty, the employee must report back to the workplace with reasonable travel time allowed.

Employees who are absent from work due to jury duty will not be dismissed or suspended from employment and will retain and be entitled to the same job status and pay as they had prior to performing jury duty. Persons who are absent due to jury duty must notify their department head in advance. If no prior notification is given, the employee is subject to disciplinary procedures.

Vacation and sick leave benefits will accrue at the normal rate for eligible employees during jury duty. City employees involved in private litigation are required to use vacation leave.

### **Voting Leave**

Full- and part-time City employees whose work schedules do not enable them time to vote during the time polls are open will be allowed up to two consecutive hours to vote. Such time will be treated as regular work time for the purpose of pay and accrual leaves.

### **Military Leave**

The City is committed to protecting the job rights of employees absent on military leave. In accordance with federal and state law, it is the City's policy no employee or prospective employee will be subjected to any form of discrimination on the basis of that person's membership in or obligation to perform service for any Uniformed Services of the United States. Specifically, no person will be denied employment, reemployment, promotion, or other benefit of employment action because such person has exercised their rights under applicable law or this policy. If an employee believes they have been subjected to discrimination in violation of the policy, the employee should immediately contact the human resources director.

Employees taking part in a variety of duties are eligible for benefits under this policy. Such military duties include leaves of absence taken by members of the uniformed services, including Reservists and National Guard members, for training, periods of active military service, and funeral honor duty, as well as fitness to perform such service. Subject to certain exceptions under the applicable laws, these benefits are generally limited to five (5) years of leave of absence.



## **Request for Military Leave of Absence**

An employee who wishes to be granted military leave of absence must submit a copy of their official orders or other records from the military service to the human resources director prior to the dates of absence, unless giving notice is impossible, unreasonable, or precluded by military necessity. Notice may be provided by the employee or by an appropriate corporate officer of the branch of the military service in which the employee will be serving. If the Reservist or National Guard member submits a copy of their official annual training schedule prior to the beginning of the year's military activities, the employee need only submit separate requests and orders for those training duties not included on the annual schedule, or when the annual training schedule is modified.

## **Benefits**

If an employee is absent from work due to military service, benefits will continue as follows:

1. Group Insurance – An employee on extended military leave may elect to continue group insurance coverage for the employee and covered dependents under the same terms and conditions for a period not to exceed 31 days from the date the military leave of absence begins. The employee must pay, per pay period, the premium normally paid by the employee. After the initial 31-day period, the employee and covered dependents can continue group insurance up to 24 months at 102% of the overall premium rate (COBRA). After the initial 31-day period, monthly insurance allotment will be suspended until the employee returns from military leave.
2. Life/AD&D – The group term Life /AD&D insurance provided by the City will terminate if/when the employee becomes active military.
3. Vacation and Sick Leave Accruals – Employees do not accrue vacation or sick leave while on unpaid military leave.
4. South Dakota Retirement System (SDRS) – Upon reemployment, employees who have taken military leave will follow South Dakota Codified Law 3-12-86b which provides for SDRS service credit upon return to employment after military service, authorized in advance by the employer, without contributions by the employee or employer if the member returns to the employ of a participating unit within one (1) year from the member's date of discharge from the member's initial period of active military service, and if the member remains in employ of a participating unit for at least one (1) year.

## **Reemployment**

Upon an employee's prompt application for reemployment (as defined below), an employee will be reinstated to employment in the following manner depending upon the employee's period of military service

1. Less than 91 days of military service – (a) in a position that the employee would have attained if employment had not been interrupted by military service; or (b) if found not qualified for such position after reasonable efforts made by the City, in the position which the employee had been employed prior to military service.
2. More than 90 days and less than 5 years of military service – (a) in a position that the employee would have attained if employment had not been interrupted by military service or a position of like seniority, status and pay, the duties of which the employee is qualified to perform; or (b) if proved not qualified after reasonable efforts by the City, in the position the employee left, or a position of like seniority, status and pay, the duties of which the employee is qualified to perform.
3. Employee with a service-connected disability – if after reasonable accommodation efforts by the employer, an employee with a service connected disability is not qualified for employment in the position they would have attained or in the position they left, the employee will be employed in (a) any other position of similar seniority, status, and pay for which the employee is qualified or could become qualified with reasonable efforts by the City; or (b) if no such position exists, the nearest approximation consistent with the circumstance of the employee’s situation.

### **Application for Reemployment**

An employee who has engaged in military service must, in order to be entitled to the reemployment rights set forth above, submit an application for reemployment according to the following schedule:

1. If service is less than 31 days (or for the purpose of taking an examination to determine fitness for service), the employee must report for reemployment at the beginning of the first full regularly scheduled working period on the first calendar day following completion of service and the expiration of eight (8) hours after a time for safe transportation back to employee’s residence.
2. If service is for 31 days or more but fewer than 181 days, the employee must submit an application for reemployment with human resources no later than 14 days following completion of service.
3. If service is more than 180 days, the employee must submit an application for reemployment with human resources no later than 90 days following the completion of service.
4. If the employee is hospitalized or recovering from a service-related injury, the employee must submit an application for employment with human resources no later than two (2) years following completion of service.

### **Exceptions to Reemployment**

In addition to the employee's failure to apply for reemployment in a timely manner, an employee is not entitled to reinstatement as described above if any of the following conditions exist:

1. The City's circumstances have so changed as to make reemployment impossible or unreasonable.
2. Reemployment would pose an undue hardship upon the City.
3. The employee's employment prior to the military service was merely a brief, non-recurrent period and there was no reasonable expectation that the employment would have continued indefinitely or for a significant period.
4. The employee did not receive an honorable discharge from the military service.

### **Reserve or National Guard Training Leave**

The City allows up to 15 working days per year, based on average hours, for full- and part-time benefit-eligible employees required to participate in annual active duty training with a reserve component of the United States Armed Forces. Base compensation for this interval will be the normal rate less military compensation. Employees who are not compensated by the City during this interval will have the option to use vacation or take unpaid leave. Once 15 unpaid working days have been exhausted, applicable benefits will be adjusted.

### **Personal Emergency Leave**

Benefit-eligible City employees may use accrued sick leave for personal emergency leave for the following:

1. Death in the immediate family. To include funeral arrangements and to care for the estate of the deceased. Immediate family is defined as employee's spouse, parents, step-parents, children, step-children, brothers, sisters, step-brothers, step-sisters, grandparents, and grandchildren. The term also includes a spouse's equivalent of the above.
2. Service as a pallbearer.
3. Temporary care of members of the immediate family due to illness or injury. Lack of daycare or school closures or late starts do not qualify for personal emergency leave.

The amount of sick leave that can be used for personal emergency leave is limited to 80 hours per year of accrued sick leave. Of the annual 80-hour allotment, eight (8) hours may be granted for funeral leave for services of individuals who are not covered under the definition of "immediate family." Personal emergency leave does not accumulate from year to year. Such time needs to be documented on the employee's timesheet as "personal emergency leave" or "funeral leave" when used. If an employee has used 80 hours of maternity, paternity, or adoption leave, personal emergency leave is not available for that calendar year.

## **Holidays**

The City recognizes and observes the following as paid holidays for benefit -eligible employees:

New Year's Day	January 1
Martin Luther King Jr. Day	3 <sup>rd</sup> Monday in January
Presidents' Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1 <sup>st</sup> Monday in September
Native American Day	2 <sup>nd</sup> Monday in October
Veterans Day	November 11
Thanksgiving	4 <sup>th</sup> Thursday and Friday in November
Christmas Day	December 25

Upon approval by the mayor, additional holiday hours or days may be granted.

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.

Police department and Spearfish Recreation and Aquatic Center hourly/non-exempt benefit-eligible shift employees will observe holidays on the actual date of the holiday rather than those that are rescheduled weekend holidays.

If the paid holiday falls on an hourly/non-exempt benefit-eligible employee's regular day off, the employee will have the option of receiving holiday pay as compensation or be granted an alternative paid day off in lieu of the holiday. If an employee elects to take an alternate paid day off in lieu of the holiday and it is within the same pay period, the holiday hours may be recorded on that day. If the employee does not use the paid holiday within the same pay period, they will record the unused holiday hours as comp time earned, and the time will be added to their compensatory time. Overtime governs the payment of hours exceeding 40 hours. Employees ineligible for paid holiday leave will be granted a day off without pay in observance of a holiday.

### **Work on a Holiday**

An hourly/non-exempt benefit-eligible employee required to work on Christmas Day, Thanksgiving Day, and the Fourth of July will receive holiday pay plus time-and-one-half pay for those hours worked on these three (3) holidays. Time-and-one-half hours worked on the holiday will count toward the base 40 hours for the week. Part-time employees who are not benefit eligible (fewer than 20 hours per week) will be eligible to receive time-and-one-half pay for hours worked on Christmas Day, Thanksgiving Day, and the Fourth of July. This does not include seasonal and temporary employees.

An hourly/non-exempt benefit-eligible employee required to work all other paid holidays observed by the City will record all hours worked on the holiday as worked time. The employee may elect to add holiday pay hours to get to their base 40 hours for the week, elect to add holiday pay hours as regular pay over the base 40 hours, or choose to list holiday pay hours as “comp time earned” and take an alternate day off in lieu of the holiday.

When a salaried/exempt benefit-eligible employee is required to work on any of the paid holidays, they will be granted an alternative day off in lieu of the holiday. If the alternate day off is within the same pay period, the holiday hours may be recorded on the alternate day. If the employee does not use the paid holiday hours within the same pay period, they will use administrative leave when taking the paid holiday. Salaried/exempt employees will not be paid for unused holiday hours upon separation from City service.

### **Appointive or Elective Boards**

At the discretion of the City administrator, City employees may serve on elective or appointive boards which have a relationship to municipal government.

### **Service on Spearfish Fire Department or Lawrence County Search and Rescue**

The City allows full- and part-time employees to serve as fire personnel and officers of the Spearfish Fire Department without loss of compensation or benefits for responding to emergency calls during work hours. These service hours will not go to accumulate overtime for the week but would be used if the employee is short hours for the week, due to the emergency call.

Responding to emergency calls during working hours must be approved by the employee’s department head or City administrator on an each occurrence basis. Volunteer duties begin when the employee leaves the employer premises. Volunteer duties end when the volunteer leaves the fire station at the end of the emergency call. The volunteer will receive the volunteer reimbursement fee if the volunteer does not use these service hours to make their average/required hours for the week. If the volunteer uses service hours to make their average/required hours for the week, they will not receive the volunteer reimbursement fee.

### **Leave Requests**

Submission of leave requests differ by department, ranging from submitting the request through our electronic time clock, email, or other means. Please check with your supervisor on your department’s preferred method. The request will indicate the type of leave to be taken (e.g., vacation, sick, personal emergency, administrative, compensatory, military, jury duty, and Family Medical Leave Act), the dates of the leave, and the total hours to be taken from the designated leave category. The request will be submitted to the supervisor for approval.

Before requesting paid leave, employees must confirm that the leave to be requested is available by checking the leave balances on their most current direct deposit notice or through the electronic time clock.

To assist with scheduling and operational requirements, all foreseeable leave must be requested at least two (2) weeks prior to the requested leave date. If the leave is unforeseeable, the leave request should be completed and submitted to the supervisor as soon as the employee returns.

The supervisor independently verifies whether the employee has the leave available before approving a request for paid leave. Once confirmed, the supervisor will notify the employee of the approved leave request. If the leave is not approved, the supervisor will notify the employee of the reason the leave was not approved.

### **Administrative Leave**

Administrative leave is a general paid leave status with multiple applications as described below. Administrative leave may be given by a department head and approved by the City administrator as recognition for outstanding job performance.

For salaried/exempt employees, administrative leave may be used on an occasional basis in lieu of other paid leaves. Administrative leave in this context is not an hour-for-hour benefit but is available to benefit salaried/exempt employees who work in excess of 40 hours per week on a regular basis. Administrative leave will be approved and managed by the City administrator and department head overseeing a salaried/exempt employee.

Employees may be placed on paid administrative leave by the department head or City administrator. Examples of when an employee may be placed on administrative leave include but are not limited to an internal review or investigation or for an investigation of an external event. Supervisors should consult with the human resources director before placing an individual on leave to determine the appropriate type of leave and to coordinate the appropriate payroll processing information. The City administrator may place an employee on unpaid administrative leave.

## **Separation from Municipal Service**

### **General Policies**

Separation of employment can occur for several different reasons. Employment may end as a result of resignation, retirement, release (end of season or assignment), reduction in workforce, or termination. An employee's last day of actual work will be recorded as the last day of employment. Paid leave cannot be taken to extend the last day of employment.

### **Voluntary Separation**

#### **Resignation**

Resignation is a voluntary act initiated by the employee to end employment with the City. Hourly employees are encouraged to provide a minimum of two (2) weeks' notice. Salaried/exempt employees are encouraged to provide a minimum of four (4) weeks' notice. Resignations should be in writing and submitted to the employee's supervisor. Oral resignations may be considered binding. If an employee provides less notice than requested, the City may deem the individual ineligible for rehire depending on the circumstances regarding the notice given. Upon receiving notice of resignation, the supervisor will refer the employee to human resources, where all benefit information will be provided to the employee, along with an exit interview.

#### **Retirement**

Employees who wish to retire are encouraged to notify their department head in writing at least one (1) month before the planned retirement date.

#### **Job Abandonment**

Employees who fail to report to work or notify their supervisor for two (2) consecutive workdays will be considered to have abandoned their job without notice, effective four hours after the start of their shift on the second day. Employees who abandon their job under this provision are ineligible for rehire. The supervisor must notify the human resources department at the end of the second workday to initiate the paperwork to terminate the employee.

### **Involuntary Separation**

#### **Termination**

Employees of the City are employed on an at-will basis, and the City retains the right to terminate an employee at any time.

#### **Reduction in Workforce**

An employee may be laid off because of change in duties, organizational changes, lack of funds, or lack of work.

## **Release**

Release is the end of seasonal or temporary employment.

## **Out-Processing**

### **Payment of Final Wages**

Final payment of wages will be paid on the regular pay day after the employee's separation from service.

### **Return of City Property**

City employees must return all City property at the time of their departure from City employment, including but not limited to uniforms, mobile devices, keys, key fobs, and identification cards. Failure to return City property may result in the employee's final paycheck being withheld until the employee returns City property.

### **Exit Interviews**

The human resources director will conduct an exit interview prior to an employee's separation from the City. The exit interview is conducted for several purposes, including to advise the employee of the effect their separation will have upon all benefits and the benefits to which the employee is entitled upon separation and to aid the City in gathering information to help improve the working environment and other employment relationships.

### **Termination of Benefits**

Benefit-eligible employee separating from the City are eligible to receive certain benefits as stated below:

Vacation leave: Accrued vacation leave will be paid out to the employee by direct deposit, or if eligible, deposited into SDRS Special Pay Plan on behalf of the employee.

Sick leave: If the employee is eligible, accrued sick leave will be paid to the employee by direct deposit, or if eligible, deposited into SDRS Special Pay Plan on behalf of the employee.

Compensatory time: Upon separation from City service, the employee will be paid for any unused compensatory leave at their final rate of pay.

Health/dental/vision insurance: Health, dental, and vision insurance will terminate on the last day of the month of employment. Information for Consolidated Omnibus Budget Reconciliation (COBRA) continued coverage will be provided.

Life insurance: Life insurance will terminate on the last day of employment.

South Dakota Retirement System: The City is a member of South Dakota Retirement System (SDRS) and follows the retirement system laws set forth in SDCL Chapter 3-



12C. All eligible employees will be directed to contact SDRS as all benefits will be administered through the office in Pierre.

### **Unemployment Compensation**

Eligibility for unemployment compensation is governed by state law, SDCL Title 61.

### **Employment References**

Absent a written authorization from the employee authorizing the City to provide more information, the City will only disclose to a prospective employer the following information about current and former employees: (1) dates of employment, (2) current and past positions, and (3) salary information.

The current/former employee authorizing the City to release the requested information must furnish a signed Release and Waiver Employment Reference Release Form. The City will only respond to written requests seeking more than general reference information. These requests should be mailed to the City of Spearfish, Human Resources Director, 625 N. 5<sup>th</sup> Street, Spearfish, SD 57783. The Employment Reference Release Form is located on the Employee Portal.

## **Disciplinary Action and Complaint Procedure**

### **Disciplinary Action**

The employment relationship between the employee and the City is based on mutual consent, and both the employee and the City have the right to terminate employment at will, for any reason and no reason consistent with applicable law, and with or without cause or advance notice. The employment relationship is “employment at will.” The guidelines in this policy address formal disciplinary measures for City employees who violate policies, fail to perform work satisfactorily, or behave in a manner detrimental to the City.

All disciplinary actions are at the discretion of the City. While the City may have a disciplinary system in place identifying various levels of discipline, the levels do not have to be followed in order and do not constitute a progressive disciplinary process. The City may decide to skip steps or to terminate an employee without first taking any disciplinary steps. Disciplinary action may be in the form of a documented verbal warning, written warning, suspension, demotion, or termination. A documented verbal warning is when a supervisor verbally counsels an employee about an issue of concern. A written record of the discussion, noting the date, event, recommended actions, and employee acknowledgement of the verbal warning will be placed in the employee’s file. Suspensions, demotions, and terminations require, at a minimum, signatures from the City administrator, department head, and human resources director, unless the City administrator, department head, or human resources director is the subject of the disciplinary action. Disciplinary action will be administered as uniformly and indiscriminately as possible, consistent with the particular situation and the facts/circumstances. Disciplinary actions, including verbal warnings, should be documented by the immediate supervisor taking the action. The documentation should include a signed acknowledgement by the employee, and a copy should be placed in the employee’s personnel file. The employee should receive a copy of any disciplinary action.

Nothing in this policy abrogates or alters the employment-at-will relationship. Employment will remain at the will of the City, and nothing in this Personnel Policy Manual creates a “for cause” or “just cause” suspension or termination policy. Any prior writing, policy, practice, or statement to the contrary, whether set forth herein or based on past practice, is hereby expressly revoked and rescinded.

The work rules and standards of conduct for the City are important, and the City regards them seriously. All employees are urged to become familiar with these rules and standards. In addition, employees are expected to follow the rules and standards faithfully in doing their jobs and conducting business on behalf of the City. Please note that any employee who deviates from these rules and standards may be subject to disciplinary action up to and including termination of employment.

Disciplinary actions may entail verbal or written warnings, suspensions, demotions, and termination. The City reserves the right to exercise its discretion in administration of discipline. Prior warning is not a requirement for termination.

The City reserves the right to take any disciplinary action it considers appropriate, including termination, at any time. In addition to those situations discussed elsewhere in this manual, listed below are some examples where disciplinary actions, including immediate termination, could result. While not intended to list all the forms of behavior that are considered unacceptable in the workplace, the following are some examples of misconduct:

- Excessive absenteeism;
- Tardiness;
- Leaving work without permission of the immediate supervisor;
- Failure to report absence properly;
- Use of profane language;
- Smoking in unauthorized areas;
- Disruptive behavior, including but not limited to fighting, horseplay, or other physical violence;
- Failure to observe and follow safety policies or rules;
- Removal of a safety device;
- Creating unsafe or unsanitary conditions;
- Careless/reckless use of equipment;
- Failure to report damaged equipment or hazardous conditions to a supervisor;
- Failure to provide a reasonable quantity and quality of work product/substandard work;
- Extending length of rest breaks or lunch periods beyond the time limits;
- Quitting work early for rest breaks, lunch periods, or the end of shift;
- Reporting to work in undesirable attire or without required full uniform;
- Unkempt appearance or poor personal hygiene;
- Violating supplemental departmental rules or regulations;
- Intentional transmission of misinformation;
- Discourtesy or rudeness to the public or fellow employees;
- Conducting unreasonable or excessive personal business during working hours;
- Conducting outside professional business during City paid time;
- Abuse of telephone privileges in duration or frequency of personal calls;
- Intimidating, coercing, or interfering with other employees in the discharge of their duties;
- Unauthorized use of City equipment or property;
- Abuse of City tools, equipment, or materials;
- Willful damage to or destruction of City property;
- Violating the policies within the Personnel Policy Manual (e.g., retaliation, anti-harassment, drug/alcohol, etc.);
- Being absent two (2) or more days without notification or permission (also referred to as “job abandonment”);
- Unauthorized overtime;
- Unlawfully using, possessing, manufacturing, distributing, or selling drug paraphernalia, on or off the job;

- Being under the influence of alcohol while performing job duties;
- Insubordination;
- Refusal to work overtime when a reasonable request is made;
- Disobeying direct orders such as refusal to accept reasonable and proper job assignment from immediate supervisor;
- Having a poor outlook, poor performance, or showing physical aggression;
- Being dishonest, including deception, fraud, lying, or cheating;
- Falsifying an application for employment;
- Falsifying time records, work records, or work documents;
- Theft of City property;
- Unlawful possession or use of firearms or other weapons while on the job;
- Unauthorized use, misuse, removal, or disclosure of personnel records, departmental records, or confidential information; or
- Failure to comply with license and certification requirements.

### **Suspension**

An employee may be suspended for up to five (5) working days without pay by the City administrator, human resources director, and department head or supervisor who received authority from the department head. Suspensions may be extended upon approval of the City administrator. Such suspension will take place immediately or begin the next working day as determined by the department head or other authorized official. The suspending authority must provide the employee in writing the reasons for suspension. Suspensions without pay must be approved by the City administrator, human resources director, and department head prior to the suspension unless any of those officials are the subject of the disciplinary action.

A department head may suspend an employee with pay. After suspending an employee with pay, the department head must immediately notify the human resources director and City administrator to determine the appropriate next steps.

### **Demotion or Termination of Employment by City**

An employee may be demoted or terminated at any time and without any cause upon the recommendation or approval of the City administrator, department head, or supervisor who received authority from the department head and the human resources director. An employee may be demoted or terminated without first receiving any other form of discipline. At the time of the demotion or termination, the employee will be given a written statement setting forth the reason(s) for such action. Any notice of demotion or termination will be in writing from the City administrator, human resources director, or department head.

### **Signing Requirements**

In all cases of formal disciplinary action, the employee will be requested to sign an acknowledgment of the discipline. Such acknowledgment will be placed in the

employee's personnel file. If the employee refuses to sign the acknowledgment, those administering the action will write on the acknowledgment "employee refused to sign." The employee may submit a written statement of response to the disciplinary action which will be attached to and remain with the disciplinary action in their personnel file. The employee's signature does not imply agreement with the action, only that the contents have been made known to or discussed with the employee.

## **Complaint Procedure**

The complaint procedure is intended to provide fair and prompt consideration to all employee complaints. The City encourages all employees to use the complaint procedure without fear of prejudice or retaliation. Employees may use the complaint procedure for issues and concerns to include working conditions, performance, policies, procedures, or problems with co-workers or supervisors. This complaint procedure does not apply to complaints about employment actions based on reorganization, financial necessity, budget determinations, or termination of employment.

The City cannot guarantee or promise confidentiality in the complaint procedure. To the extent possible and allowed by law, certain information will be kept confidential. Retaliation of any kind by any City employee against another employee because of that employee's use of the complaint procedure in good faith, cooperation in an investigation, or participation in the complaint procedure is prohibited and may result in disciplinary action, up to and including termination.

### **Informal Complaint Procedure**

Step 1 – Discussion with supervisor: City employees who have a work-related concern are encouraged to discuss the concern with their supervisor as soon as possible after the event(s) that cause concern. Supervisors should address the issues as soon as practicable.

Step 2 – Discussion with human resources director: If the concern is not resolved with the employee's supervisor, employees may bring the concerns to the human resources director. They will attempt to mediate and facilitate a solution satisfactorily to all parties.

If the parties cannot reach a satisfactory solution, the employee may file a formal complaint with the human resources director.

### **Formal Complaint Procedure**

Step 1 – Written complaint: City employees must submit all formal complaints in writing. The document should describe the incident or complaint and the information upon which it is based. The document should include specific facts such as others involved, events, dates and other information relating to the complaint. The complaint should be filed with the human resources director. If the complaint is about the human resources director, the complaint should then be filed to the City administrator.

Step 2 – Human resources director inquiry and investigation: The human resources director or an investigator assigned by the City will investigate the complaint. The

investigation will be completed as soon as practicable. The employee who submitted the complaint may request a status update. The human resources director or investigator will report all findings of the investigation to the City administrator. The City administrator will determine a resolution based on the results of the investigation. If the complaint is against the City administrator, the mayor will recommend a complaint resolution.

## **City of Spearfish Drug and Alcohol Free Workplace Plan**

### **Policy Statement**

All employees of the City are strictly prohibited from unlawfully using, possessing, manufacturing, distributing, or dispensing any controlled substance or drug paraphernalia at any time on or off the job, or from unlawfully having any detectable level of any controlled substance in the body at any time on or off the job. Employees are prohibited from being under the influence of or impaired by any drug or medication while engaging in City business, performing job duties, or while operating City vehicles, machinery, or equipment regardless of whether the employee has a prescription for the drug or medication, including medical marijuana. Employees are also strictly prohibited from using, possessing, or having a detectable level of alcohol (defined as .02 or greater) in the body while engaging in City business, performing job duties, or while operating City vehicles, machinery, or equipment. Additionally, employees who have a license or certification required for their position are required to comply with all applicable state and federal regulations, including regulations which prohibit any use of marijuana. Any employee found to be in violation of this policy or any of the provisions set forth in the plan below may be subject to discipline up to and including termination of employment with the City. This policy does not apply to public safety officers in situations when they are in possession of an illegal controlled substance, drug paraphernalia, or alcohol as legally authorized while acting in the line of duty.

Nothing in the plan is to be interpreted as constituting any waiver of or limitation on the City's responsibility to maintain discipline, or the right to invoke disciplinary measures when justified.

The following plan is not intended to restrict rights guaranteed to the City or the employees pursuant to federal or state laws.

The goals of this plan are prevention and rehabilitation when possible, rather than discipline or termination. Employees needing help with dealing with substance abuse, behavioral, and/or personal problems that interfere with the employee's job performance are encouraged to use a Substance Abuse Professional (SAP) to aid them in overcoming their illness. Conscientious efforts to seek such help will not jeopardize any employee's job. It is ultimately the responsibility of the employee to seek or accept help and return to "meets standards" job performance. While the City is supportive of those employees who seek help voluntarily, the City is equally firm in identifying and disciplining those who continue to abuse drugs and alcohol and do not seek help.

When employees have substance abuse, behavioral, and/or personal problems and don't seek help, they will be evaluated on the basis of their job performance or inappropriate personal conduct.

All costs of testing will be paid by the City; however, the City is not required to pay for the SAP evaluation services or any of the SAP's recommended education or treatment for an employee who has violated a Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol regulation.

Any questions regarding implementation of the federal regulations, the content of this policy, and/or approved substance abuse professionals should be directed to the human resources department. All applicable forms related to this policy are available on the Employee Portal.

### Who is Covered?

The City's Drug and Alcohol Free Workplace Plan covers full- and part-time and temporary employees of the City. When used throughout this policy, the term "employee" refers collectively to those employees defined above unless specified otherwise.

The City adheres to regulations set forth in 49CFR Part 40 *Procedures for Transportation Workplace Drug and Alcohol Testing Programs*. Employees who are covered under the U.S. Department of Transportation/Federal Motor Carrier Safety Administration (DOT/FMCSA) regulations must comply with the DOT-regulated rules as well as the City's Drug and Alcohol Free Workplace Plan.

The plan applies to any employee while they are on or using City property and while they are conducting City business.

### **Circumstances Under Which Drug and Alcohol Testing will be Required or Requested**

#### **Pre-Employment/Pre-Assignment**

1. All applicants for temporary or regular employment with the City will be required to submit to pre-employment drug testing if a conditional job offer is made. Temporary rally police officers are excluded from this requirement. Any current employee with the City who is not currently in a position with safety-sensitive functions and who applies for a position with safety-sensitive functions will be required to submit to a pre-assignment drug and alcohol test, according to FMCSA requirements, if a conditional job offer is made.
2. Any job offer is contingent upon a negative drug test.
3. Any applicant offered a job with safety-sensitive functions requiring a Commercial Driver's License (CDL) will be required to provide authorization for the City to search the FMCSA Drug and Alcohol Clearinghouse and for former employers to release records of previous FMCSA drug and alcohol test results. Failure by the applicant to provide this authorization and accurate information regarding previous employment will result in withdrawal of the job offer.
4. Any employee who has not submitted to FMCSA pre-assignment drug testing will not be permitted to perform any safety-sensitive function requiring possession of a CDL.

#### **Reasonable Suspicion**

All City employees are subject to reasonable suspicion drug and alcohol testing. If the City has reasonable suspicion that an employee has violated the provisions of this plan regarding the use of alcohol or controlled substances, the employee will be required to submit to drug and alcohol testing. The following applies:



1. Reasonable suspicion alcohol and drug tests should be administered as soon as practicable following the determination of reasonable suspicion. Both alcohol and controlled substance tests will be completed on all reasonable suspicion testing.
2. If the alcohol test is not administered within two (2) hours of the determination of reasonable suspicion, the reason for the delay will be documented by the attending supervisor. If the alcohol test is not administered within eight (8) hours of the determination of reasonable suspicion, all attempts to conduct the alcohol test will cease, and the reason for the failure to test will be documented by the attending supervisor.
3. If the controlled substances test is not administered within eight (8) hours of the determination of reasonable suspicion, the reason for the delay must be documented by the attending supervisor. Attempts must still be made to administer the controlled substance test. If the controlled substance test has not been administered within 32 hours of the determination of reasonable suspicion, all attempts to conduct the controlled substances test will cease and the reasons will be documented by the attending supervisor.

#### **Post-Accident**

1. Any City employee driving a City-owned/leased vehicle or driving a personal vehicle while on City business, will be subject to post-accident testing when the accident results in:
  - The death of a person or persons regardless of the amount of vehicle or property damage;
  - The employee receives a citation for a moving traffic violation arising from the accident;
  - Bodily injury to any person involved in the accident requiring emergency medical care; or
  - One or more vehicles incurred disabling damage as a result of the accident.
2. If the employee is not tested for alcohol within two (2) hours of the accident, the reason will be documented by the attending supervisor. After eight (8) hours, all attempts to conduct the alcohol test will cease, and the reasons will be documented by the attending supervisor.
3. If a urine sample for controlled substance testing has not been collected from the employee within 32 hours following the accident, all attempts to conduct the controlled substances test will cease, and the reasons will be documented by the attending supervisor.
4. An employee subject to post-accident testing must remain available for testing following the accident, or the employee will be considered to have refused to submit to testing.

5. The employee is prohibited from using any alcohol for eight (8) hours following the accident or until the employee has undergone a post-accident alcohol test, whichever comes first.
6. Nothing in this section should delay necessary medical attention for injured people following an accident or prohibit an employee for leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain emergency medical care.

### **Return to Duty Testing**

Any employee found to have violated this plan may be subject to disciplinary action up to and including termination and in no event will the employee be permitted to return to work until after undergoing return-to-duty tests indicating an alcohol concentration of less than 0.02 and a verified negative result for controlled substances.

### **Follow-up Testing**

Following a determination by an SAP that an employee is in need of assistance in resolving problems with alcohol abuse or controlled substances use, an employee may be subject to unannounced follow-up alcohol or controlled substances testing. Follow-up testing will not exceed 60 months from the date of the employee's return to duty, so long as the employee remains drug and alcohol free. A safety-sensitive employee is required to be subject to no less than six (6) unannounced follow-up alcohol and controlled substances tests within 12 months following the employee's return to work, provided the employee remains employed and drug and alcohol free for that period. Non-safety-sensitive employees may be subject to these same requirements.

### **Random Testing**

All safety-sensitive employees of the City must be placed into a random pool and are required to submit to random alcohol and controlled substances testing upon request. Safety-sensitive employees placed into the random pool will be randomly selected for unannounced alcohol and controlled substances testing using a computer-based random selection process administered by a service provider. Upon notification by the City, employees selected for testing must proceed immediately to the testing site.

FMCSA rules require the City to conduct random controlled substances testing on 50 percent of the average number of safety-sensitive employees and random alcohol testing on 10 percent of the average number of safety-sensitive employees. Employees in the pool might be selected for more than one (1) test per year. These percentages are subject to change from year to year as required by the FMCSA.

Under no circumstances will an employee who is not included in the random selection pool be permitted to perform safety-sensitive functions.

## Reasonable Suspicion Standard

The City's determination that "reasonable suspicion" exists to require an employee to submit to alcohol and controlled substances tests will be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, conduct, speech, or body odors of the employee. This plan includes a form titled "Characteristics, Effects, and Symptoms of Alcohol and Controlled Substance Abuse," which provides a description of characteristics associated with drug and alcohol abuse. Observed behaviors and symptoms which could constitute a basis for determining reasonable suspicion might include, but are not limited to:

- A pattern of abnormal or erratic behavior which is so unusual for the employee that it warrants summoning a supervisor, department head, or someone else for assistance.
- Direct observation of drug, alcohol, or other controlled substance use or possession.
- An accident involving City or private property that appears to be causally related to the abnormal or impaired conduct or judgment of the employee.
- Possession of controlled substances or drug paraphernalia in violation of the City's Drug and Alcohol Free Workplace Plan.
- Presence of the physical or behavioral symptoms of drug and alcohol use, such as:
  - Alcohol or other unusual odors;
  - Glossy or bloodshot eyes;
  - Blank glassy-eyed stare;
  - Slurred or thick speech;
  - Unusually erratic or rapid speech;
  - Poor coordination and/or reflexes;
  - Unsteady walking and movement;
  - Physical or verbal altercation, or unusually aggressive behavior;
  - Wide and severe mood swings;
  - Abnormal inability to perform work properly.

Reasonable suspicion will, whenever possible, be evaluated based on personal observation by a supervisor who is familiar with the employee's normal behavior. If no one is available who is familiar with the employee's normal behavior, then, when practicable, one other manager or supervisor may be consulted before an alcohol and substance test is required. Information obtained from a reliable person with personal knowledge of the employee might also be utilized in appropriate circumstances. If a supervisor concludes that reasonable suspicion, as defined under this plan, exists for the use of alcohol or controlled substances by an employee, the supervisor should use the following steps as a guide in handling such situations:

1. Safety should always be the first consideration. If the employee is responsible for the operation of a motor vehicle or works in a work environment potentially hazardous to the employee or others in the area, the employee should immediately be directed to cease activities and move to a safe area such as a supervisor's office or vehicle.

2. If possible, the supervisor should ask another available supervisor or manager to verify their observation leading to the reasonable suspicion of the employee and to be present during the discussion with the suspected employee, as a witness.
3. If possible, the supervisor should direct the employee to a private area. Preferably with a witness present, the supervisor should discuss with the employee the factual observations causing suspicion and ask the employee if any explanation can be offered. The supervisor should not attempt to diagnose the cause of the observed irregularities with the employee, nor should the employer be accusatory. If it is revealed that the employee has possession of an illegal controlled substance or item, the guidelines set forth above should be used.
4. If suspicion still exists, the supervisor should ask the employee to submit to “reasonable suspicion” drug and alcohol testing informing the employee that refusal to submit to testing will result in a presumption of a positive test result, which could result in disciplinary action up to and including termination.
5. The supervisor should contact the lab to make arrangements with the designated collection/testing site for the arrival of the employee. Please review available collection sites on the Employee Portal.
6. Alcohol and drug tests should be administered as soon as practicable following the determination of reasonable suspicion. The supervisor should transport the employee to the collection site and escort them with the signed Reasonable Suspicion Testing and Release of Information Authorization Form to the registration area. A copy of the signed form should be obtained from the collection site to be forwarded to designated employer representative (DER) following testing. The supervisor should wait for the employee to complete the collection/testing process.
7. If it is determined that reasonable suspicion exists for the use of alcohol or controlled substances by an employee, the employee should not be permitted to drive their vehicle home following testing. The supervisor should make arrangements to have the employee transported safely home.
8. The supervisor must complete a report using the Reasonable Suspicion Report Form to record the specific facts and observations contributing to the findings of reasonable suspicion of the employee. This form should then be forwarded along with any other documentation to the human resources department.
9. In the event an employee suspects that their manager or supervisor is illegally using controlled substances or is using alcohol in violation of this plan, the employee may submit a written or oral complaint which contains detailed observation or evidence supporting the person’s reasonable suspicion of substance abuse to their department head, City administrator, or the human resources director. Such complaints, if made in good faith, may be made without fear of reprisal. If the written or oral complaint and subsequent investigation establishes reasonable suspicion, the manager or supervisor will be requested to submit to controlled substances and alcohol tests.

10. Any complaint or reports which are filed as a result of this plan and are determined to be malicious or not in good faith will not be tolerated. In such cases, the complaining individual will be subject to disciplinary action. This applies to all managers, supervisors, and other employees who file a report or complaint which relates to drug and alcohol use.

## **Prohibitions**

### **On-the-Job Use or Possession:**

#### Alcohol

- Consumption or unauthorized possession of alcohol while on duty, in any City vehicle or personal vehicle while engaged in City business, or on any business property owned or leased by the City is prohibited and may result in disciplinary action up to and including termination. This does not apply to public safety officers who are in possession of alcohol as legally authorized while acting in the line of duty.
- Reporting to work with any detectable level of alcohol in an employee's system is prohibited and will be proper cause for disciplinary action up to and including termination.
- Possession of any alcohol or alcohol-based product by a safety-sensitive employee while on duty or while operating a commercial class vehicle is prohibited and will be proper cause for disciplinary action up to and including termination. No supervisor having actual knowledge that a safety-sensitive employee possesses or has consumed alcohol may permit the employee to drive or continue to drive a commercial motor vehicle.

#### Illegal Use of Controlled Substances

- It is a condition of employment that all City employees abide by the City's Drug and Alcohol-Free Workplace Plan and notify the City through the employee's immediate supervisor or the human resources director of any criminal statute conviction for a violation occurring in the workplace, no later than five (5) days after such conviction. Within 10 days of receiving such notice of conviction, the City will notify the appropriate federal contracting or granting agency as required by law.
- The illegal manufacture, distribution, dispensing, possession, or use of controlled substance(s) or drug paraphernalia by an employee while on duty, in any City vehicle or personal vehicle while engaged in City business, or on any property owned or leased by the City, is strictly prohibited. Under these circumstances, the employee and any evidence will be turned over to 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 controlled substance or drug paraphernalia as legally authorized while acting in the line of duty.

- Reporting to work by an employee with any detectable level of illegal controlled substances in their system is strictly prohibited.

### Prescription Drugs

- The legal use of controlled substances prescribed by a licensed provider is not prohibited, except as limited by federal or state regulations for CDL holders, certified law enforcement, and communications officers. Before any employees perform their duties, employees must notify their supervisor if they are taking any legally prescribed or therapeutic drug or any non-prescription drug which is known to or likely to adversely affect or impair the employee's mental functioning, motor skills, or judgment. This notification should be accompanied by a provider's written report on the pharmaceutical prescription and how the prescribed medications will affect the employee's ability to safely perform their essential job functions.
- Failure to inform one's supervisor of the use of prescribed controlled substance which is known to cause impairment, and which does negatively impact the employee's performance or safety, may be proper cause for disciplinary action.
- Note that the FMSCA regulations regarding safety-sensitive employees should include prescription or nonprescription medications containing alcohol among the substances banned from use in the workplace. Therefore, employees should not report for duty while taking prescription or nonprescription medication if such medication contains any measurable amount of alcohol.

### **Off-the-Job Use or Presence:**

#### Alcohol

- Employees designated on call or standby are prohibited from consuming any alcohol throughout the entire period of on-call or standby status and must not report to work with detectable alcohol level in the body.
- The use of any alcohol by a safety-sensitive employee within four (4) hours prior to the performance of safety-sensitive functions is strictly prohibited.
- A safety-sensitive employee is prohibited from the use of any alcohol within eight (8) hours following their involvement in a commercial motor vehicle (CMV) accident, or until a post-accident alcohol test has been conducted, whichever comes first.
- Safety-sensitive employees who are assigned to perform snow removal duties and who have received notice from the City that impending winter weather could require call in for snow removal duty within the following 24-hour period are prohibited from consuming any alcohol until the snow emergency has passed or the employee is released from snow removal duty.
- Off-duty employees not otherwise restricted by this section or plan may be permitted to consume or possess alcoholic beverages while at property or

facilities owned, operated, or supervised by the City only under the following circumstances:

- When an alcohol license has been issued to the property or facility for the special event;
- While using a park facility for off-duty recreational purposes, where alcohol consumption in that park is provided by City ordinance.

#### Controlled Substances

The illegal use, sale, manufacture, distribution, dispensing, or possession of controlled substances while off duty and off City premises is prohibited. Off-duty drug or alcohol-related criminal convictions are also unacceptable. Such unlawful off-the-job conduct by a City employee may be proper cause for disciplinary action up to and including termination, since such conduct or the consequences thereof are likely to have a detrimental effect upon the employee's job performance and the confidence of the public and other governmental agencies in the City's ability to meet its responsibilities and mission.

#### **Unscheduled Call-In and Off-Duty Use**

Employees called in for unscheduled duty to work outside of their regular work hours must not report to work with any detectable level of alcohol or controlled substance in their body. If an employee is called to report to work but is unable to report for work due to their consumption of alcohol and/or legal or illegal use of controlled substances, the employee must inform the supervisor of their alcohol or controlled substance use at the time they are called into work. An employee notifying a supervisor of an inability to report to work due to alcohol consumption when called for unscheduled call-in duty will not face disciplinary action.

#### **Refusal to Consent or Submit to Testing**

Refusal by an applicant or employee to complete and sign the required authorization and test forms, failure to provide an adequate amount of breath or urine without a valid medical explanation, or otherwise failure to cooperate with the testing process in a way that prevents the completion of the test will be considered a refusal to submit to the required testing. If an applicant or employee refuses to undergo drug and alcohol testing required by this plan, the testing will not be conducted, and the applicant or employee will be treated as if the test were positive.

Supervisors encountering an employee who refuses to consent to a controlled substance and alcohol test when such a test is required by this plan:

- Will remind the employee of the requirements of this plan and that they may be subject to disciplinary action up to and including termination;
- Will document the reason(s) for the refusal, if given, to be considered in determining the appropriate disciplinary action;

- Will remove the employee from work and make arrangements to have them transported home based upon the reasonable suspicion;
- Will complete a report using the Reasonable Suspicion Report Form to record the specific facts and observations contributing to the findings of reasonable suspicion of the employee, even if the testing did not occur. This form should then be forwarded along with other documentation to the human resources department.

### **Right to Search**

All City-owned/leased lockers, cabinets, desks, closets, vehicles, computer files, or data storage devices, or any other jointly or fully controlled areas or property owned by the City and the contents thereof, are subject to search by City management at any time with or without notice to or consent of the employee. Refusal to cooperate with such a search of City-controlled areas or property may result in disciplinary action up to and including termination. When a search is to be conducted, the employee will be given a reasonable opportunity to be present, unless the supervisor is directed otherwise by the City administrator or the employee cannot be located after reasonable effort has been made.

### **Adulteration or Specimen Substitution**

Any report from the City's Medical Review Officer (MRO) or any representative from the medical provider employing the MRO, which indicates a urine specimen has been adulterated, or an attempt has been made to adulterate a urine specimen, will be treated as a positive test, and appropriate disciplinary action up to and including termination of employment may occur. This provision will also apply to any situation wherein any employee attempts to or provides a substitute specimen.

In pre-employment testing, an adulterated or substituted urine specimen will be treated as a positive test and will disqualify the applicant for employment for 18 months.

## **Consequences to Employees Engaging in Prohibited Conduct**

### **Positive Result Pre-Employment**

If the result of a confirmatory pre-employment controlled substances test is positive, the applicant will be disqualified for employment and will be disqualified for application for employment with the City for 18 months following a positive result.

### **Positive Result Safety-Sensitive Pre-Assignment**

If a pre-assignment test is conducted on a current employee as the condition of assignment to a position requiring the performance of safety-sensitive functions, and the results of the alcohol or controlled substances tests are confirmed to be positive, the employee:

1. Will be disqualified for the reassignment (promotion/reclassification/transfer, or snow removal duty);
2. Will not be permitted to perform safety-sensitive functions; and



3. May be subject to disciplinary action up to and including termination.

#### **Positive Alcohol Less Than +0.04 Concentration**

An employee who tests positive for alcohol with a concentration between 0.02 and 0.039, who has never tested positive for controlled substances or alcohol in the past, will not be terminated and may or may not be suspended. If suspended, the first suspension will not be less than the FMCSA mandatory minimum 24-hour period before being permitted to return to work, unless additional circumstances are involved. Circumstances which may preclude lenience may include, but are not limited to:

- A severe on-the-job incident or vehicular accident involving fatality or serious injury;
- A preventable accident caused by employee neglect, impaired judgment, or misconduct;
- Consumption of alcohol or illegal use of controlled substances on the job;
- Possession of alcohol or illegal controlled substances on the job;
- Or other misconduct, or illegal or inappropriate behavior.

#### **Positive Alcohol +0.04 or more or Second +0.02 Concentration; Positive Controlled Substance**

An employee who tests positive for alcohol with +0.04 concentration or higher, who tests positive for alcohol a second time with any concentration at or above +0.02, or who tests positive for the presence of an illegal controlled substance will be subject to disciplinary action up to and including termination.

#### **Return to Work Following Positive Results**

1. If an employee has been found to have violated the requirements of this plan, such as testing positive for the presence of alcohol or controlled substances while on duty, the employee may in certain circumstances be permitted to return to their position. Determination of whether or not an employee will be returned to work will be made on a case-by-case basis by the City, taking into consideration:
  - a. The severity and nature of the violation or offense;
  - b. The employee's performance and employment record;
  - c. The impact of the violation upon the organization and the employee's future job performance;
  - d. The recommendations of the MRO or SAP;
  - e. The employee's willingness to accept and participate in controlled substance or alcohol abuse treatment and rehabilitation, and any other factors that may be relevant.
2. If an employee is permitted to return to work following a positive drug or alcohol test, their continued employment may be strictly conditioned upon very specific requirements including but not limited to:

- a. An employee may be required to submit to an alcohol and controlled substance abuse assessment with a designated SAP (required for safety-sensitive employees);
- b. An employee may be required to successfully complete an inpatient or outpatient chemical dependency treatment program as recommended by an SAP and/or the MRO (required for safety-sensitive employees);
- c. An employee may be required to continue participation in aftercare treatment programs, counseling, support groups (such as AA), or other rehabilitation/maintenance programs as may be recommended by the SAP (required for safety-sensitive employees);
- d. An employee may be required to meet very specific on-the-job requirements involving performance, sick leave use, attendance, etc.;
- e. An employee may be required to submit to a return-to-work alcohol and controlled substance test, with negative results, before being permitted to return to work (required for safety-sensitive employees);
- f. An employee may be required to submit to a number of unannounced follow-up alcohol and controlled substance tests for an extended period following return to work, with consistently negative outcomes. (Safety-sensitive employees must be tested no less than six (6) unannounced times in the first 12 months following return to work.)

### **Plan Violation by Safety-Sensitive Employees**

A safety-sensitive employee who has engaged in conduct prohibited in this plan must be subject to the following consequences pursuant to FMCSA rules:

- 1. The safety-sensitive employee will not be permitted to perform safety-sensitive functions.
- 2. FMCSA rules require that in the event of an alcohol test result with a concentration over 0.02 but less than 0.04, a safety-sensitive employee must not be permitted to perform safety-sensitive functions for not less than 24 hours.
- 3. The safety-sensitive employee must be advised by the City of the resources available to them, such as the City's employee assistance plan (EAP), to aide in evaluating and resolving problems associated with misuse of alcohol or use of controlled substances.
- 4. The safety-sensitive employee will be evaluated by an SAP who will determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse and/or controlled substance use.
- 5. Before the employee may be permitted to return to duty requiring performance of safety-sensitive functions, the employee must be required to undergo a return-to-duty alcohol and controlled substance test with a result indicating a breath alcohol level of less than 0.02 if the conduct involved alcohol, and/or a controlled substance test with a verified negative result if the conduct involved controlled substance use.

6. Before being permitted to return to duty requiring performance of a safety-sensitive function, the employee identified as needing assistance with resolving problems associated with controlled substances will be evaluated by an SAP to determine that the employee has followed the prescribed rehabilitation and treatment program.
7. Upon return to duty, the safety-sensitive employee will be subject to no less than six (6) unannounced follow-up alcohol and controlled substance tests within the first 12 months following a return to work, and then as recommended by an SAP for up to 60 months with consistent negative results.

## **Test Procedures**

### **Controlled Substances Testing**

1. The FMCSA controlled substances regulation 49 CFR, section 40.85, requires laboratory testing for five (5) types of controlled substances (or their metabolites): marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

The City reserves the right to test for other specific controlled substances under the provision of the City's Drug and Alcohol-Free Workplace Plan. Testing would be completed when there is reason to believe an employee is abusing a controlled substance other than one of those substances already included in the specific test normally performed.

2. Controlled substance testing is conducted by analyzing the employee's urine specimen. Split urine samples will be collected according to FMCSA regulations. The employee will provide a urine sample at the designated collection site. The collection site technician will divide the urine sample into two (2) bottles labeled "primary" specimen and "split" specimen, seal the specimens, complete a chain of custody document, and prepare the bottles for shipment to the testing laboratory for analysis.
3. If the employee is unable to provide the adequate quantity of urine, the collection site technician will instruct the employee to drink not more than 40 ounces of fluids and, after a period of no more than three (3) hours, again attempt to provide an adequate sample. If the employee is still unable to provide an adequate sample, the testing will be discontinued, and the City notified. The employee will be referred for a medical evaluation to determine if the employee's inability to provide an adequate specimen is genuine or constitutes a refusal to test. For pre-employment testing, the City may elect to not have the referral made and revoke the employment offer.
4. The results of controlled substances testing for applicants to non-safety-sensitive positions are reported directly to the DER by the testing laboratory or a representative of the designated collection site. If the results are negative, no further action is necessary. If the test result is confirmed positive, the employment offer will be revoked.

5. Controlled substances test results for current City employees or any employee in a safety-sensitive position are reported directly to the MRO or designee by the testing laboratory, and these procedures will be followed:
  - a. If the results are negative, the MRO or designee will report the results to the DER, and no further action is necessary.
  - b. If the test result is confirmed positive, the MRO will attempt to give the employee an opportunity to discuss the test result. The MRO will review any medical information supplied by the employee to determine whether there is an acceptable, verifiable medical reason for the positive test result. The MRO will verify and report a confirmed positive test result to the City when no legitimate medical reason for a false positive test result has been identified within a reasonable period following receipt of results from the testing laboratory.
  - c. If after making reasonable efforts to contact the employee, and documenting these efforts, the MRO is unable to reach the employee directly, the MRO must contact the DER, who will attempt to contact and direct the employee to contact the MRO. If the DER is unable to contact the employee, the employee will be placed on suspension, if not already on suspension for reasonable suspicion or post-accident, pending receipt of the verified results of the tests.
  - d. The MRO may verify a positive test to the City without having first communicated directly with the employee about the test results under the following circumstances: the employee expressly declines the opportunity to discuss the test results; the employee has not contacted the MRO within five (5) days of being instructed to do so by the DER; or the DER, after making reasonable efforts to do so, has not been able to reach the employee after being asked to do so by the MRO.
6. The DER or MRO will notify an employee with a confirmed positive test result that they have 72 hours in which to request a test of the split a specimen at a Department of Health and Human Services (DHHS)-certified laboratory at their own expense. If the employee fails to request the test of the split specimen within 72 hours after being notified of the results of the test, they will be deemed to have waived any right to seek testing of the split specimen. If the employee does elect to have the split urine sample tested at their own expense at a DHHS-certified laboratory, and the results of that test are confirmed to be negative in contradiction of the original confirmed positive test result, the City will reimburse the employee for the cost of the split specimen test up to the amount paid by the City for controlled substance testing.

### **Alcohol Testing**

1. The FMCSA alcohol test rules require that confirmatory breath testing be administered by a breath alcohol technician (BAT) using an Evidential Breath

Testing Device (EBT). Two breath tests are required to determine if a person has a prohibited alcohol concentration: the initial screening test and a confirmatory test in the case of a positive screening test. FMCSA regulations provide that the initial alcohol screening test can be administered using one of the alternative field alcohol testing devices approved by the FMCSA for that purpose. Any result less than 0.02 alcohol concentration is considered a “negative” test result. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted.

2. If an employee attempts and fails to provide an adequate amount of breath, the City will refer the employee for a medical evaluation to determine if the employee’s inability to provide an adequate volume of breath is medically genuine or constitutes a refusal to test.
3. Blood alcohol testing for non-safety-sensitive employees is authorized for screening and confirmatory alcohol testing only in the following circumstances:
  - a. When circumstances under this plan require a post-accident or reasonable suspicion alcohol test and an EBT is not readily available for testing.
  - b. When an employee attempts and fails to provide an adequate amount of breath for a required alcohol test for verified medical reasons.
  - c. When requested by an employee who has tested and been confirmed positive using the EBT device, for purposes of a third confirmatory test at the employee’s expense at a DHHS-certified laboratory. Under such circumstances, the employee must specifically request the collection and testing of a blood sample, at their own expense, immediately following the positive EBT test. Failure to make such a request at that time will waive the employee’s right to make such a request.

Alternative alcohol testing methods for employees when subject to FMCSA requirements may be authorized for screening and confirmatory alcohol testing as authorized by FMCSA regulations. Such alternative methods may be used by the City.

4. Upon collection, a blood specimen will be divided into “primary” and “split” specimens as noted above under urinalysis testing for controlled substances and shipped to the testing laboratory for testing. Upon being notified of a confirmed positive blood test result (0.02 percent or greater of blood alcohol concentration), the employee will have 72 hours in which to request retesting of the split blood specimen, at their own expense, at another DHHS-certified laboratory. An employee who fails to request the test of the split specimen within 72 hours after receiving the results of a confirmed positive blood alcohol test will be deemed to have waived their right to seek testing of the split specimen. If an employee who has received a confirmed positive test result does elect to have the split blood sample tested at their own expense at a DHHS-certified laboratory, and the results of that test are confirmed to be negative in contradiction with the original

confirmed positive test result, the City will reimburse the employee of the cost of the split sample test up to the amount paid by the City for alcohol testing.

5. Alcohol test results will be reported directly to the City DER.

### **Laboratory Testing Requirements/Licensed Testing Laboratory**

The City will use only DHHS-certified testing laboratories to conduct all controlled substances testing under this plan. DHHS laboratories are certified and licensed to conduct controlled substance testing according to DHHS regulations.

### **Confidentiality of Test Results**

1. Laboratory or medical reports regarding the results of alcohol or controlled substance testing will not appear in an employee's official personnel file. Information of this nature will be contained in a separate file that will be securely kept under the control of the human resources director.
2. Alcohol and controlled substances test results and associated medical records are confidential. Test results will be disclosed to City management or supervisory personnel on a strictly need-to-know basis and to the employee upon request. Disclosure of test results or other medical records to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee, or as otherwise provided under this plan or by law.
3. Disclosure of test results, without employee consent, may also occur when:
  - a. The information is compelled by law or by judicial or administrative process;
  - b. The information has been placed at issue in a formal dispute between the City and the employee.

### **FMCSA Drug and Alcohol Clearinghouse**

The City is required by regulation to utilize the FMCSA Drug and Alcohol Clearinghouse, an online database which contains information pertaining to violations of the U.S. Department of Transportation (DOT) controlled substances and alcohol testing program for holders of CDL's.

The City must perform a full query of the Clearinghouse when hiring a new CDL driver. The new CDL driver must sign a full consent with the Clearinghouse to enable the City to perform this full query. The search must be complete before permitting those employees to operate a CMV on public roads.

The City must perform a limited query of the Clearinghouse on all existing CDL drivers who work for the City annually. All City employees must sign a consent to allow the City to obtain limited Clearinghouse reports that indicate whether there is information about an employee in the Clearinghouse.

If the City learns there is a change in an employee's Clearinghouse record, then the City will be required to do a full query from the Clearinghouse. In this case, employees must sign a consent (electronically) for a full query from the Clearinghouse. If an employee refuses to sign the

consent, they will not be allowed to continue safety-sensitive duties including operating equipment that requires a CDL.

### **Management Responsibilities and Guidelines**

The City encourages early diagnosis and treatment for drugs and alcohol related conditions and supports employees to voluntarily seek help. To support employees in obtaining treatment, the City offers the services of an EAP. This service provides assessment, counseling, and referral services for employees with drug and alcohol related conditions. EAP provides experienced counselors to help with identification of and support for recovery from drugs and alcohol. Anonymity and confidentiality are assured.

EAP is available to all eligible City employees and their dependents. EAP services provide employees and their dependents each with a limited number of professional counseling sessions per calendar year at no charge.

When performance or conduct have been identified with an employee which could be related to personal problems or substance abuse, a supervisor's primary responsibility is to observe, document, and discuss the performance or conduct problems with the employee. The supervisor must not attempt to engage in counseling the employee on suspected personal problems or substance abuse related issues, as that role should be left to counseling professionals who are trained to provide such assistance. In such circumstances, however, the supervisor does have a responsibility to make the employee aware and encourage them to take advantage of the services available through the EAP and document that such suggestions have been made.

### **Suspected Possession On or Off City Property**

If through observation, a supervisor has reason to suspect an employee may have illegal controlled substances, drug paraphernalia, unauthorized alcohol, or other prohibited items in their possession or in a location jointly or fully controlled by the City, the supervisor should use the following guidelines in handling the situation. Human resources may be contacted at any time to assist in such matters.

1. Ask or arrange for another supervisor or manager to be present to witness and document what takes place. If possible, this should be done without alerting the employee that suspicion exists.
2. Ensure the employee is not left unobserved by a supervisor at any time once the suspicion has been established, especially if the employee has been alerted to the suspicion. The employee should be given no opportunity to dispose of the suspected item or substance.
3. As soon as possible after making the observation causing suspicion, confront the employee to produce and/or explain what was observed. Whenever possible, this confrontation should take place outside the presence of other employees, except for management personnel and an employee representative if requested by the employee.

4. If the employee refuses to cooperate or otherwise resists the direction, the employee should be informed that their refusal or resistance will be insubordination which could result in disciplinary action up to an including termination.
5. Under no circumstances should the supervisor or other management attempt to physically search or restrain the employee, unless physical self-defense is unavoidable.
6. If the employee is suspected to possess an illegal substance or item on themselves, in a personal vehicle, or in their belongings in an area not jointly or fully controlled by the City, and the employee continues to resist or attempts to leave, the employee should be informed that law enforcement will be contacted to assist in the matter. If the suspected prohibited item does not appear to be illegal in nature, such as a flask or bottle which appears to contain alcohol, the employee should be told their refusal to cooperate is insubordination and action will be determined based upon the known facts.
7. If possession of prohibited substances or items are suspected to be in a particular area jointly or fully controlled by the City, and the employee continues to refuse to cooperate, the employee should be reminded that employee consent is not required for access to vehicles, lockers, desks, cabinets, etc., or other areas fully or jointly controlled by the City and the contents thereof. The employee should be cooperative with any such search of the City-controlled areas in question without resistance. The search may be conducted in the presence of a witness and the employee.
8. If any prohibited substances or items are revealed as the result of cooperation on the part of the employee, or search of an area jointly or fully controlled by the City, those items or substances should be confiscated by the supervisor in the presence of a witness and placed in a secure area.
9. If any of the confiscated items appear to be illegal, or if the employee has retained personal possession of a substance or item which could be illegal and/or if the employee refused to remain in the area and has left the premises with the suspected illegal substance or item after refusing to cooperate, the supervisor must contact the police department via 9-1-1 for assistance. Any confiscated substances or items should be turned over to the law enforcement officers for evidence.
10. If possession of a prohibited substance or item is confirmed or suspected, the employee should be asked to submit to a reasonable suspicion drug and alcohol test following the procedures set forth below. If the employee is to be placed under arrest by law enforcement officers for possession of an illegal substance or item, reasonable suspicion testing may or may not be possible within a reasonable period following the incident, in which case the facts should be documented by the supervisor and sent to the human resources director.
11. Following the incident, the supervisor must complete a detailed report of all relevant facts including the employee's first and last name, when and where the observations were made, what was observed, what happened during the



confrontation, a physical description of what was confiscated/found, names of any other witnesses, etc., using the Search/Evidence Documentation Form.

**Definitions:**

Adulterated Specimen: A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Alcohol: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

Breath Alcohol Technician (BAT): An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).

City Property: Includes buildings, offices, storage locations, plants, facilities, land, equipment, motor vehicles (henceforth referred to as “vehicles”) which are owned, leased, rented, or used for City business; and parking lots owned, utilized, or leased by the City or any customer or supplier of the City. It also includes any other site at which City business is transacted, whether on or away from City-owned/leased property.

City Business: City business is any activity performed by an employee on behalf of the City. City business includes, but is not limited to, maintaining business relationships and transactions on behalf of the City, entertaining, traveling, driving, and conducting City business in City-owned/leased/rented vehicle, or a personal vehicle being used for City business related activities.

Commercial Motor Vehicle (CMV): A motor vehicle or combination of motor vehicles used to transport passengers or property if the motor vehicle meets any one of the following criteria:

1. Has a gross combination rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
2. Has a gross vehicle weight rating of 26,001 or more pounds; or
3. Is designed to transport 16 or more passengers including the driver; or
4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded.

Confirmation or Confirmatory Drug Test: A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or drug metabolite.

Controlled Substance: Has the meaning assigned by 21 U.S.C. 802 and includes all substances listed on Schedules 1-5 as they may be revised from time to time (21 CFR Part 1308).

Detectable Level: An amount for which current testing procedures for controlled substances produce a positive result. For purposes of alcohol, “detectable level” means 0.02 or greater.

Designated Employer Representative (DER): The City’s DER’s shall be the human resources director or designee. The DER is authorized to receive communications and test results and

support any other identified processes associated with the plan. The human resources director or designee is authorized to receive communications and test results from service providers and is authorized to take immediate actions to remove employees from safety-sensitive duties and make decisions in the testing and evaluative process.

DHHS: The Department of Health and Human Services or any designee of the Secretary of the Department of Health and Human Services.

Dilute Specimen: A specimen that has an abnormally low level of the natural substance creatinine in the urine that is either caused by internal dilution (drinking large amounts of fluids), or by adding fluid to the sample that results in a “negative dilute” result.

Direct Observation: Observation or monitoring of the provision of a urine specimen, which includes failing to follow the observer’s instructions to raise clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine whether there is any prosthetic or other device that could be used to interfere with the collection process. Direct observation is conducted as required by law and in all Return-to-Duty and Follow-Up testing situations.

Drug(s): Any substance (other than alcohol) that is a controlled substance as defined in this section and 49 CFR Part 40.

Employee Assistance Program (EAP): This service provides assessment, counseling, and referral services for employees with drug and/or alcohol related problems and other personal problems. This service should be accessed directly by employees. EAP provides experienced counselors to help with personal problems, including those related to drugs or alcohol. Anonymity and confidentiality are assured. All eligible employees and their dependents have access to the Employee Assistance Program (EAP) for a limited number of sessions at no charge in a calendar year.

Evidential Breath Testing Device (EBT): An EBT approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath.

FMCSA: The Federal Motor Carrier Safety Administration of the Federal Department of Transportation (DOT) which regulates mandatory drug and alcohol testing for safety-sensitive employees. The abbreviations “DOT” or “non-DOT” may be used in this document to indicate whether or not FMCSA provisions regulating safety-sensitive employees apply to the particular issue being addressed (i.e., DOT testing or non-DOT testing).

Illegal Drug: Any of the substances specified in Schedule I or Schedule II of the Federal Controlled Substances Act.

Illegally Used Drug: Any prescribed drug which is legally obtainable but has not been legally obtained or is not being used in the manner or for the purpose for which it was prescribed. All designer drugs and any other over-the-counter or nondrug substances, such as airplane glue, used for other than their intended purpose or in a manner that is not consistent with package inserts or

the manufacturer's instructions. This includes over-the-counter drugs purchased in a foreign country that require a prescription in the United States.

Incident: An unplanned, unexpected, unintended, or unintentional event which occurs on City property, on City business, or during working hours, or which involves City-supplied motor vehicles or personal motor vehicles being used for City purposes as a regular part of performing the essential functions of the job.

Initial Drug Test (also known as "screening drug test"): Used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Invalid Drug Test: The result reported to the DHHS-certified laboratory in accordance with the criteria established by DHHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory: Any U.S. laboratory certified by DHHS under the National Laboratory Certifications Program as meeting the minimum standards of Subpart C of the DHHS Mandatory Guidelines for the Federal Workplace Drug Testing Programs, or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this section.

Limit of Detection: The lowest concentration at which a measure can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

Limit of Quantitation: For quantitative assays, the lowest concentration at which the identity and concentration of the measure can be accurately established.

Medical Review Officer (MRO): Licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with their medical history and any other relevant biomedical information.

Negative Result: The result reported by a DHHS certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the alcohol, drug, or drug class, and the specimen is a valid specimen.

Positive Result: The result reported by a DHHS-certified laboratory when a specimen contains alcohol, drug, or drug metabolite equal to or greater than the cutoff concentrations.

Random Selection: Mechanism for selection of employees for testing where each employee has an equal chance of being tested each time selections are made.

Reasonable Suspicion: The appearance, behavior, speech, or body odors of an employee that appear to be indicative of the use of a controlled substance or alcohol based on the observation of at least one supervisor or person who has received training in the identification of characteristics indicative of drug and alcohol use.

Reconfirmed: The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

Refuse to Submit: The refusal of an employee to submit to an alcohol and/or drug test means that an employee:

1. Fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing; or
2. Fails to provide adequate urine for drug testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; or
3. Engages in conduct that clearly obstructs the testing process.

Safety-Sensitive Function: All time from the time an employee begins to work or is required to be in readiness to work until the time they are relieved from work and all responsibility for performing work and includes the following:

1. All time at any City facility, work site, or other property, waiting to or subject to being required to operate a CMV, unless the employee has been relieved from duty by the City.
2. All time inspecting equipment as required by the DOT/FMCSA regulations, or otherwise inspecting, servicing, or conditioning a CMV at any time.
3. All time spent operating or at the driving controls of a CMV.
4. All time, other than operating time, in or upon a CMV.
5. All time loading or unloading a CMV, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in processing documentation relating to the vehicle or load.
6. All time spent performing the driver requirements on the DOT/FMCSA regulations relating to accidents.
7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
8. All time on standby to perform any of the work noted above in 1-7.
9. Any function deemed safety-sensitive by the City in a non-DOT safety-sensitive position.

Safety-Sensitive Position: Any job position, full-time, part-time, or temporary/seasonal, determined by the City which by nature of the work involved is accompanied by such risk, that even a momentary lapse of attention could have serious consequences to the safety of the employee, coworkers, customers, the City, or the general public; and all employees of the City in positions requiring possession of a commercial driver's license (CDL), all employees who hold a CDL for purposes of being temporarily assigned to perform safety-sensitive functions, even if a CDL is not required for their regular position. Safety-sensitive positions requiring the possession of a CDL are governed by the DOT regulations.

Split Specimen Collection: A collection in which urine collected is divided into two separate specimen bottles: the primary specimen (Bottle A) and the split specimen (Bottle B).

Substance Abuse Professional (SAP): Licensed physician or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug related disorders.

Substituted Specimen: A specimen where something other than human urine has been submitted for testing, and specimens that do not exhibit the clinical signs or characteristics associated with normal urine.