

TITLE III: ADMINISTRATION

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CHAPTER 30: OFFICERS AND DUTIES

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§ 30.01 ELECTIVE OFFICERS.

The elective officers of the city shall be a Mayor and two Council members from each ward.
(Prior Code, § 1:1:1)

§ 30.02 TERM OF OFFICE.

The term of the elective officers of the city shall be for two years and until their successors are elected or appointed and qualified; provided, that one Council member from each ward shall be elected each year at the annual election. Each elective officer, when elected to fill a vacancy, shall enter upon the discharge of his or her duties as soon as he or she shall have qualified and shall serve until the next annual election at which the vacancy could be filled. Every officer elected for a full term shall enter upon the discharge of his or her duties on the first Monday of May after his or her election or as soon thereafter as he or she shall have duly qualified.
(Prior Code, § 1:1:2)

§ 30.03 APPOINTIVE OFFICERS.

The appointive officers of the city shall be a City Finance Officer, City Attorney, a Chief of Police, police officers and other officers as may be provided for by ordinance.
(Prior Code, § 1:1:3)

§ 30.04 SALARY OF APPOINTED OFFICERS.

The annual salary of appointed officers shall be set by resolution of the City Council and may be modified at any time.
(Prior Code, § 1:1:4)

§ 30.05 MODE OF APPOINTMENT; TERM OF OFFICE AND QUALIFICATIONS.

The mode of appointment of all appointive officers, their terms of office and the manner of their qualifications shall be as provided by statute and applicable ordinance. Unless otherwise provided, all appointive officers shall qualify by furnishing the bond required conditioned upon the faithful performance of their duties, and be approved by the Council and shall take and subscribe to the oath of office. Each appointive city officer shall enter into the discharge of his or her duties as soon as he or she shall have duly qualified and shall hold office until a time as his or her successor shall be appointed and qualified, or until removed from office by the Council for cause or the office is eliminated.
(Prior Code, § 1:1:5)

§ 30.06 CERTIFICATES OF APPOINTMENT.

All appointive officers, except the Finance Officer, shall be commissioned by certificate of appointment under the corporate seal, signed by the Mayor and Finance Officer. The Mayor shall issue certificate of appointment under the seal of the municipality to the Finance Officer.
(Prior Code, § 1:1:6)

§ 30.07 CITIZENSHIP.

All officers of the city, whether elective or appointive office, shall be citizens of the United

States and qualified registered voters of the city.
(Prior Code, § 1:1:7)

§ 30.08 VACANCIES.

The removal of any city officer from the ward for which he or she was elected or appointed or his or her failure for ten days after notice of his or her election or appointment to qualify and enter upon the duties of his or her office or the conviction of any officer of any public offense other than a misdemeanor shall cause a vacancy in the office.
(Prior Code, § 1:1:8)

§ 30.09 VACANCIES; HOW FILLED.

In case of a vacancy in an appointive office, the vacancy shall be filled by an original appointment until the next election. Vacancies in the office of Council member shall be filled by the City Council until the next regular election by the appointment of some qualified person from the ward in which the vacancy exists.
(Prior Code, § 1:1:9)

§ 30.10 REMOVAL OF APPOINTIVE OFFICERS.

The Mayor shall have the power to temporarily suspend with pay from office any officer appointed by him or her whenever he or she shall be of the opinion that the interests of the city demand a temporary suspension. He or she shall report the reasons for temporary suspension in writing to the Council at its next meeting. The Council may continue the suspension pending hearing or end the suspension.
(Prior Code, § 1:1:10)

§ 30.11 CERTAIN OFFICERS NOT TO HOLD OTHER OFFICE.

The Mayor, Council member and Finance Officer may not hold another city office. Except that any person, including any city employee, may be appointed as enforcer of city ordinances and be compensated therefor as determined by the Council.
(Prior Code, § 1:1:11)

§ 30.12 PRESIDENT AND VICE PRESIDENT

OF COUNCIL.

At the first regular meeting after the annual election and after the qualification of the newly elected Council members, the City Council shall elect from among its own members, a President and Vice President who shall hold their respective offices for the municipal year.
(Prior Code, § 1:1:12)

§ 30.13 DUTIES OF APPOINTIVE OFFICERS.

The duties of the various appointive officers of the city shall be those assigned to them by the Council.
(Prior Code, § 1:1:13)

§ 30.14 MAYOR; DUTIES.

The Mayor shall:

(A) Preside at all meetings of the City Council but he or she shall have no vote except in case of a tie;

(B) See that the ordinances of the city are faithfully executed;

(C) Regularly give the Council information relative to the affairs of the city and shall recommend for their consideration, those measures as he or she may deem expedient;

(D) Have power to sign or veto any ordinance or resolution passed by the City Council and the power to veto any part or item of an ordinance or resolution appropriating money;

Statutory reference:

Similar provisions, see SDCL 9-8-3

(E) Be the recognized head of the city for service of civil process and for military and ceremonial purposes;

(F) Take command of the police of the city, appoint special police and govern the city by proclamation during times of public danger or emergency, and during those times shall have the power when necessary, to call upon every male inhabitant of the municipality over the age of 18 years to aid in enforcing the laws and ordinances, and to call out any organized militia within the county in suppressing riots, and other disorderly conduct or carry into effect any law or ordinance, subject to the authority of the Governor as Commander-in-Chief thereof; and

(G) Perform other duties as may be prescribed by the laws of this state or ordinances of the city.
(Prior Code, § 1:1:14)

§ 30.15 POLICE; DUTIES AND POWERS.

The Chief of Police shall perform duties as prescribed by the City Council for the preservation of peace and other duties as required by law.
(Prior Code, § 1:1:15)

§ 30.16 PRESIDENT AND VICE PRESIDENT OF COUNCIL; DUTIES.

The President of the Council, in the absence or disability of the Mayor, shall be the presiding officer of the Council and acting Mayor and possess all of the powers of the Mayor. In the absence or disability of the Mayor and President of the Council, the Vice President shall perform the duties of the Mayor and President of the Council.
(Prior Code, § 1:1:16)

§ 30.17 COMPENSATION OF OFFICERS.

The compensation of elected officers of the city shall be prescribed by the City Council.
(Prior Code, § 1:1:17)

§ 30.18 POWERS OF THE COUNCIL.

The Council shall be the judge of the election and qualifications of its own members. It shall determine its own rules of procedure, punish its members for disorderly conduct and by a vote of two-thirds of the Council members may expel a member for cause.
(Prior Code, § 1:1:18)

§ 30.19 PUBLIC RECORDS.

Every municipal officer shall keep a record of the official acts and proceedings of his or her office. These records shall be open to public inspection during the business hours under reasonable restriction. These records are subject to the open records laws of the state. See SDCL Ch. 1-27.
(Prior Code, § 1:1:19)

§ 30.20 CONFLICT OF INTEREST.

(A) No municipal official may participate in discussing or vote on any issue in which the official has a conflict of interest. Each official shall decide if any potential conflict of interest requires such official to be disqualified from participating in discussion or voting. However, no such official may participate in discussing or vote on an issue if the following circumstances apply:

(1) The official has a direct pecuniary interest in the matter before the governing body; or

(2) At least two-thirds of the governing body votes that an official has an identifiable conflict of interest that should prohibit such official from voting on a specific matter.

(B) If an official with a direct pecuniary interest participates in discussion or votes on a matter before the governing body, the legal sole remedy is to invalidate that official's vote.
(SDCL § 6-1-17)

§ 30.21 MEMBERS OF GOVERNING BODY NOT TO HOLD OTHER OFFICE--LIQUOR LICENSE NOT DISQUALIFYING--AUDITOR OR CLERK NOT TO SERVE AS TREASURER.

No mayor, alderman, commissioner, or trustee may hold any other office under the municipality while an incumbent of such office. The term office does not include membership on any municipality board, if the ordinance or resolution establishing the board specifically includes the mayor, an alderman, commissioner, or trustee in the membership of the board. No mayor, alderman, commissioner, or trustee is disqualified from holding such office in any municipality as a result of holding any liquor license or being the spouse of a person holding any liquor license. No mayor, alderman, commissioner, or trustee who is the holder of a liquor license may vote on the issuance or transfer of any such license. No auditor or clerk may hold the office of treasurer under the municipality while an incumbent of such office.

CHAPTER 31: COUNCIL MEETINGS

Section

- 31.01 Meetings of the Council
- 31.02 Special meetings
- 31.03 Adjourned meetings
- 31.04 Parliamentary rules
- 31.05 Order of business
- 31.06 Manner of voting
- 31.07 Reconsideration
- 31.08 Quorum
- 31.09 Attendance compelled
- 31.10 Expulsion of members
- 31.11 Meetings open to public
- 31.12 Publication of proceedings

§ 31.01 MEETINGS OF THE COUNCIL.

(A) The City Council shall hold its regular meetings on the first Monday of each month at 7:30 p.m. at the City Hall or another place as may be determined by the Council.
(Prior Code, § 1:2:1)

(B) Meetings may be rescheduled upon lack of a quorum or when a regular meeting date falls on a legal holiday.

§ 31.02 SPECIAL MEETINGS.

(A) Special meetings of the City Council may be called by the Mayor or by any two Council members at any time to consider only those matters as shall be mentioned in the call for the meeting. Personal notice of special meetings shall be given either in writing or by telephone to each member of the City Council by the Finance Officer. The order of business provided for regular meetings need not be observed at special meetings of the Council.
(Prior Code, § 1:2:2)

(B) Notice the public of regular and special meetings shall be as provided in SDCL Ch. 1-25.

§ 31.03 ADJOURNED MEETINGS.

The City Council may take an adjournment of a meeting to a later date, in which event the adjourned meetings shall be considered as a part of the first meeting.
(Prior Code, § 1:2:3)

§ 31.04 PARLIAMENTARY RULES.

(A) *Robert's Rules of Order, Revised* shall be the rules to govern the deliberations of the City Council, in so far as they are applicable.
(Prior Code, § 1:2:4)

(B) The Council by majority vote may disregard any such rules at any time.

§ 31.05 ORDER OF BUSINESS.

(A) At all regular meetings of the City Council, the business of the meeting shall be considered in the following order:

- (1) Calling the roll of members;
- (2) Correction and approval of the minutes of the last regular meeting and of any intervening special meeting or meetings;
- (3) Presentation of claims and communications;
- (4) Introduction and first reading of ordinances;
- (5) Introduction of resolutions;
- (6) Reports of standing and special committees;
- (7) Second reading and final passage of ordinances;
- (8) Reports of city officers;
- (9) Unfinished business; and
- (10) Miscellaneous business.

(B) This order of business may be temporarily suspended at any meeting by the affirmative vote of a

Council Meetings

majority of the City Council.
(Prior Code, § 1:2:5)

§ 31.06 MANNER OF VOTING.

The “yeas” and “nays” shall be taken upon the passage of all ordinances and resolutions and upon any proposal to create a liability against the city for the expenditure or appropriation of its money and in all other cases at the request of any member and a record of the vote of each Council member, when required, shall be entered in the journal of its proceedings. The concurrence of the majority of all the Council members shall be necessary for the passage of any ordinance, resolution or proposal to create a liability against the city for the expenditure or appropriation of its money and in all other cases at the request of any member and a record of the vote of each Council member, when required, shall be entered in the journal of its proceedings. The concurrence of the majority of all the Council members shall be necessary for the passage of any ordinance, resolution or proposal to create a liability against the city for the expenditure or appropriation of its money. It shall require a two-thirds vote of all the Council members to sell any property. All other matters may be approved by a majority of the quorum.
(Prior Code, § 1:2:7)

§ 31.07 RECONSIDERATION.

No vote of the City Council shall be reconsidered or rescinded at a special meeting unless at the special meeting there be present as large a number of Council members as were present when the vote was taken.
(Prior Code, § 1:2:8)

§ 31.08 QUORUM.

A majority of the City Council shall constitute a quorum for the transaction of all business, but a lesser number may adjourn from time to time and compel the attendance of absentees.
(Prior Code, § 1:2:9)

§ 31.09 ATTENDANCE COMPELLED.

The City Council may compel the presence of

absent members by sending the Chief of Police or any police officer to require their attendance. If any member refuses to attend after being notified, he or she shall state his or her reasons to the City Council at its next meeting. If the City Council deems these reasons insufficient, the City Council shall impose a penalty as in their wisdom the case warrants.
(Prior Code, § 1:2:10)

§ 31.10 EXPULSION OF MEMBERS.

Whenever two-thirds of the whole number of the City Council concur, the City Council may expel any member of the City Council for gross misconduct, disorder or repeated violation of duty.
(Prior Code, § 1:2:11)

§ 31.11 MEETINGS OPEN TO PUBLIC.

The meetings of the City Council shall be open to the public, but it shall be unlawful for anyone to interfere in any way with the deliberations of the City Council. No person shall address or deliver any remarks to the City Council without first being recognized.
(Prior Code, § 1:2:12) Penalty, see § 10.99

§ 31.12 PUBLICATION OF PROCEEDINGS.

The City Auditor shall cause to be published in the official newspaper within 30 days after each meeting of the City Council, a full account of the proceedings at the meeting giving a detailed statement of all expenditures of money, the names of the persons to whom payment is made and showing the services rendered therefor.
(Prior Code, § 1:2:13)

CHAPTER 32: FINANCIAL REGULATIONS

Section

General Provisions

- 32.01 Payment of money
- 32.02 Revenues and special funds
- 32.03 Annual reports by Boards
- 32.04 Contracts by member of Council
- 32.05 Sale of personal property
- 32.06 Claims
- 32.07 Funds
- 32.08 Use of funds for political activities

Warrants

- 32.20 Payment of warrants
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- 32.22 Registration of warrants
- 32.23 Notice to holder of warrants

Capitalization Policy

- 32.35 Interest
- 32.36 Mileage
- 32.37 Accounting of books
- 32.38 Capital asset limit
- 32.39 Inventory policy

GENERAL PROVISIONS

§ 32.01 PAYMENT OF MONEY.

No money shall be paid out of the treasury except upon the warrant of the Mayor, countersigned by the Finance Officer, except bonds and interest coupons, which, when due, may be paid upon presentation and in case the same are payable at some place other than within the city, the money for their redemption shall be sent to the place where they are payable in time to meet the payment when due. (Prior Code, § 1:3:5)

§ 32.02 REVENUES AND SPECIAL FUNDS.

All moneys belonging to the city derived from taxation, licenses, fines, forfeitures, the operation of the municipal liquor store or any public utility owned or operated by the city, or from any other source, shall be paid into the city treasury, and the Council shall designate by the annual appropriation ordinance to what fund or funds the moneys shall be applied. (Prior Code, § 1:3:6)

§ 32.03 ANNUAL REPORTS BY BOARDS.

Each of the boards appointed and acting for the city in the administration of the city shall make an annual report of its receipts, disbursements and activities to the City Council as soon as possible after the close of the fiscal year. The report shall be filed with the City Finance Officer. (Prior Code, § 1:3:7)

§ 32.04 CONTRACTS BY MEMBER OF COUNCIL.

No officer or member of the Council shall enter into any contract, make any purchase or create any indebtedness against the city in excess of \$2,500 without first having submitted the matter of incurring the indebtedness or making the contract to the City Council and receiving authority of the City Council therefore. (Prior Code, § 1:3:8)

§ 32.05 SALE OF PERSONAL PROPERTY.

(A) Whenever the city deems it in the best interest of the city that personal property belonging to the city be sold, the property shall be sold to the highest bidder upon terms as may be determined by the laws of the state.

(B) Notice of sale of surplus property appraised to a value of not more than \$500 may be sold without notice. Notice of the sale of all other property shall be given by publishing a notice of the sale at least twice, with the first publication not less than ten days prior to the date of the sale. The first publication shall be in the official newspapers of the political subdivision and the second publication may be in any legal newspaper of the state chosen by the Council. The

notice shall contain a description of the personal property to be sold and the time and place where bids will be received by the Council. The Council may, in its discretion, reject all bids.
(Prior Code, § 1:3:9)

§ 32.06 CLAIMS.

All claims against the city shall be in writing and upon forms provided by the Finance Officer and in a form as required by statutes of the state. Prior to passage or approval by the City Council, claims shall bear the approval of the Council member or person in charge of the department for which the services or supplies are furnished.
(Prior Code, § 1:3:10)

§ 32.07 FUNDS.

The Finance Officer shall keep full, true and just accounts of all financial affairs of the city as required by the Auditor General of the state.
(Prior Code, § 1:3:11)

§ 32.08 USE OF FUNDS FOR POLITICAL ACTIVITIES.

It is the policy of the city that no federal or state grant or loan funds may be expended on any political or lobbying related activities unless so allowed by a specific federal or state grant or loan agreement.
(Ord. 2065, passed 8-16-1993)

WARRANTS

§ 32.20 PAYMENT OF WARRANTS.

All warrants shall be paid out of the fund on which they are drawn and in order of their presentation.
(Prior Code, § 1:3:1)

§ 32.21 WARRANT REGISTER.

The Finance Officer shall keep a warrant register which shall show the number, date and amount of each warrant presented, the name of the person to whom the warrant was issued, the name of the person

presenting the same, the date notice for payment is made, the amount of interest and the total amount paid thereon.
(Prior Code, § 1:3:2)

§ 32.22 REGISTRATION OF WARRANTS.

In the event that there are no funds in the treasury appropriated to pay a warrant presented for payment, the Finance Officer shall enter the warrant in his or her warrant register. He or she shall endorse thereon "Registered for payment" together with registry number, the date of registration and notation "Not Paid for Want of Funds" and shall sign the endorsement.
(Prior Code, § 1:3:3)

§ 32.23 NOTICE TO HOLDER OF WARRANTS.

As soon as funds are received sufficient for the payment of a warrant, the Finance Officer shall notify by mail the holder of the warrants, or, in case the holder is not known, then the person who registered the same, that the warrant will be paid upon presentation. Interest shall thereupon cease. The notice shall be given in the order in which warrants are registered.
(Prior Code, § 1:3:4)

CAPITALIZATION POLICY

§ 32.35 INTEREST.

All interest shall be receipted into the General Fund (101) from all accounts, even if the interest in generation from another fund unless otherwise specified to be receipted into a different fund that the General Fund by resolution of the City Council.
(Ord. 2116, passed 1-5-2004)

§ 32.36 MILEAGE.

Mileage reimbursement to city employees or Council for travel to a meeting or function approved by the City Council and/or Mayor shall be set by resolution of the Council from time to time. Should no rate be set by the Council, the rate shall be the then current rate set by the state for official travel. This shall be effective unless otherwise altered by

resolution of the City Council.
(Ord. 2116, passed 1-5-2004)

§ 32.37 ACCOUNTING OF BOOKS.

Accounting of the books of the city shall be kept on a cash basis of accounting, following the general accounting principles established by the South Dakota Department of Legislative Audit.
(Ord. 2116, passed 1-5-2004)

§ 32.38 CAPITAL ASSET LIMIT.

The amount for depreciation of a capital asset for the city shall be set at \$500 unless otherwise changed by resolution of the City Council.
(Ord. 2116, passed 1-5-2004)

§ 32.39 INVENTORY POLICY.

All items of a value at or above the capital asset limit shall be inventoried by the department annually. Items below that shall be inventoried and kept on file for insurance purposes. That inventory list shall be updated as changes are made.
(Ord. 2116, passed 1-5-2004)

CHAPTER 33: TAXATION

Section

General Provisions

- 33.01 Definitions

COUNCIL, or ***COUNCIL MEMBERS*** or ***COMMITTEE OF THE WHOLE***. The City Council.

Municipal Sales and Use Tax

- 33.15 Purpose
33.16 Effective date and enactment of tax
33.17 Use tax
33.18 Collection
33.19 Interpretation

COUNCIL MEMBERS. Refers to the members of the City Council.

LOT. Includes tract or parcel of ground.

PERSON. Includes natural persons, partnerships, associations and corporations.

Municipal Gross Receipts Tax

- 33.30 Purpose
33.31 Effective date and enactment of tax
33.32 Collection
33.33 Interpretation
33.34 Use of tax

STREET. Includes alley, avenue and traveled road.

(B) The provisions, regulations, restrictions, requirements and prohibitions contained in this chapter apply to the area within the territorial limits of the city unless otherwise specifically provided.

(C) Reference to any office or officer is to an office or officer of the city unless otherwise specifically provided.

(D) The powers conferred on an officer may be exercised by his or her duly authorized deputy, representative or employee acting under him or her, unless otherwise provided.
(Prior Code, § 11:1:1)

Discretionary Tax Formula

- 33.45 Commercial residential structures
33.46 Discretionary formula applied

- 33.99 Penalty

Cross-reference:

Financial regulations, see Ch. 32

GENERAL PROVISIONS

§ 33.01 DEFINITIONS.

(A) For the purposes of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Masculine gender includes the feminine and neuter. Words used in the singular number include the plural and the plural the singular.

CITY or ***MUNICIPALITY***. The City of Murdo and the area within the territorial limits of the city.

COUNCIL, CITY COUNCIL COMMON

MUNICIPAL SALES AND USE TAX

§ 33.15 PURPOSE.

The purpose of this subchapter is to provide additional needed revenue for the municipality by imposing a municipal retail sales and use tax pursuant to the powers granted to the municipality by the state by SDCL § 10-52 entitled the Uniform Municipal Non-Ad Valorem Tax Law and acts amendatory thereto.
(Ord. 2000, passed 3-7-1988; Ord. 2024, passed 6-4-1990; Ord. 2109, passed 8-18-2003; Ord. 2112, passed 9-3-2003; Ord. 2128, passed 9-6-2005; Ord. 2130, passed 12-28-2005)

§ 33.16 EFFECTIVE DATE AND ENACTMENT OF TAX.

From and after January 1, 2006, there is hereby imposed as a municipal retail occupational sales and service tax upon the privilege of engaging in business a tax measured by 2% on the gross receipts of all persons engaged in business within the jurisdiction of the municipality who are subject to the State Retail Occupational Sales and Service Tax, SDCL § 10-45 and acts amendatory thereto.

(Ord. 2000, passed 3-7-1988; Ord. 2024, passed 6-4-1990; Ord. 2109, passed 8-18-2003; Ord. 2112, passed 9-3-2003; Ord. 2128, passed 9-6-2005; Ord. 2130, passed 12-28-2005)

§ 33.17 USE TAX.

In addition there is hereby imposed an excise tax on the privilege of use, storage and consumption within the jurisdiction of the municipality of tangible personal property or services purchased from and after January 1, 2006, at the same rate as the municipal sales and service tax upon all transactions or use, storage and consumption which are subject to the State Use Tax Act, SDCL § 10-46 and acts amendatory thereto.

(Ord. 2000, passed 3-7-1988; Ord. 2024, passed 6-4-1990; Ord. 2109, passed 8-18-2003; Ord. 2112, passed 9-3-2003; Ord. 2128, passed 9-6-2005; Ord. 2130, passed 12-28-2005) Penalty, see § 33.99

§ 33.18 COLLECTION.

The tax is levied pursuant to authorization granted by SDCL § 10-52 and acts amendatory thereto, and shall be collected by the State Department of Revenue and Regulation in accordance with the same rules and regulations applicable to the state sales tax and under additional rules and regulations as the Secretary of Revenue and Regulation of the state shall lawfully prescribe.

(Ord. 2000, passed 3-7-1988; Ord. 2024, passed 6-4-1990; Ord. 2109, passed 8-18-2003; Ord. 2112, passed 9-3-2003; Ord. 2128, passed 9-6-2005; Ord. 2130, passed 12-28-2005)

§ 33.19 INTERPRETATION.

It is declared to be the intention of this subchapter and the taxes levied hereunder that the

same shall be interpreted and construed in the same manner as all sections of the State Retail Occupational Sales and Service Act, SDCL § 10-45 and acts amendatory thereto and the State Use Tax, SDCL § 10-46 and acts amendatory hereto, and that this shall be considered a similar tax except for the rate thereof to that tax.

(Ord. 2000, passed 3-7-1988; Ord. 2024, passed 6-4-1990; Ord. 2109, passed 8-18-2003; Ord. 2112, passed 9-3-2003; Ord. 2128, passed 9-6-2005; Ord. 2130, passed 12-28-2005)

MUNICIPAL GROSS RECEIPTS TAX

§ 33.30 PURPOSE.

The purpose of this subchapter is to provide additional needed revenue for the municipality by imposing a municipal gross receipts tax pursuant to the powers granted to the municipality by the state by SDCL § 10-52A and acts amendatory thereto.

(Ord. 2113, passed 9-3-2003)

§ 33.31 EFFECTIVE DATE AND ENACTMENT OF TAX.

From and after January 1, 2004, there is hereby imposed as a municipal gross receipts tax of 1% upon the gross receipts from the sale of leases or rentals of hotel, motel, campsites or other lodging accommodations within the municipality for periods of less than 28 consecutive days, the sale of alcoholic beverages as defined in SDCL § 35-1-1, establishments where the public is invited to eat, dine or purchase and carry out prepared food for immediate consumption, the ticket sales or admissions to places of amusement, athletic and cultural events. The tax applies to the gross receipts of all persons engaged in business within the jurisdiction of the municipality who are subject to the State Retail Occupational Sales and Service Tax SDCL § 10-45 and acts amendatory thereto.

(Prior Code, § 11:3:1) (Ord. 2113, passed 9-3-2003)

§ 33.32 COLLECTION.

The tax is levied pursuant to authorization granted by SDCL § 10-52A and acts amendatory thereto, and shall be collected by the State Department of Revenue and Regulation in accordance

with the same rules and regulation applicable to the state sales tax and under additional rules and regulation as the Secretary of Revenue and Regulation of the state shall lawfully prescribe. (Ord. 2113, passed 9-3-2003)

§ 33.33 INTERPRETATION.

It is declared to be the intention of this subchapter and the taxes levied hereunder that the same shall be interpreted and construed in the same manner as all sections of the State Retail Occupational Sales and Service Act, SDCL § 10-45 and acts amendatory thereto and that this shall be considered a similar tax except for the rate thereof to that tax. (Ord. 2113, passed 9-3-2003)

§ 33.34 USE OF TAX.

Any revenues received under this subchapter may be used only for the purpose of land acquisition, architectural fees, construction costs, payment for civic center, auditorium or athletic facility buildings, including the maintenance, staffing and operations of the facilities and the promotion and advertising of the municipality, its facilities, attractions and activities. (Prior Code, § 11:3:2) (Ord. 2113, passed 9-3-2003) Penalty, see § 33.99

DISCRETIONARY TAX FORMULA

§ 33.45 COMMERCIAL RESIDENTIAL STRUCTURES.

All new commercial residential structures or additions to existing commercial residential structures which add a true and full value of \$30,000 or more as defined in SDCL § 10-6-35.25 will be valued in the usual manner but specially classified for tax purposes as authorized by SDCL § 10-6-35.4. (Ord. 2089, passed 4-14-1989)

§ 33.46 DISCRETIONARY FORMULA APPLIED.

The true and full values of all structures defined in § 33.45 will be established for tax purposes at 20% for the first year, 40% for the second year, 60% for the third year, 80% for the fourth year and 100% each year thereafter. (Ord. 2089, passed 4-14-1989)

§ 33.99 PENALTY.

(A) *Generally.* Any person violating any provision of this chapter, for which no other penalty is provided, shall be subject to the penalty provisions of § 10.99.

(B) *Municipal sales and use tax.* Any person failing or refusing to make reports or payments prescribed by §§ 33.15 through 33.19 and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$200 or imprisoned in the municipal jail for 30 days or both a fine and imprisonment. In addition, all collection remedies authorized by SDCL § 10-45 and acts amendatory thereto and SDCL § 10-46 and acts amendatory thereto are hereby authorized for the collection of these excise taxes by the Department of Revenue and Regulation.

(C) *Municipal gross receipts tax.* Any person failing or refusing to make reports or payments prescribed by §§ 33.30 through 33.34 and the rules and regulations relating to the ascertainment and collection of the tax herein levied shall be guilty of a misdemeanor and upon conviction shall be fined not more than \$200 or imprisoned in the municipal jail for 30 days or both a fine and imprisonment. In addition, all collection remedies authorized by SDCL § 10-45 and acts amendatory thereto, are hereby authorized for the collection of these excise taxes by the Department of Revenue. (Ord. 2000, passed 3-7-1988; Ord. 2024, passed 6-4-1990; Ord. 2109, passed 8-18-2003; Ord. 2112, passed 9-3-2003; Ord. 2113, passed 9-3-2003; Ord. 2128, passed 9-6-2005; Ord. 2130, passed 12-28-2005)

CHAPTER 34: WARDS AND PRECINCTS

Section

- 34.01 Ward boundaries
- 34.02 Voting precincts
- 34.03 Representation on Election Board
- 34.04 Combining election

Avenue going north of Second Street to the city limits. (204 registered voters as per 2000 Census). (Prior Code, § 1:4:1) (Ord. 2096, passed 3-4-2002)

§ 34.02 VOTING PRECINCTS.

The three wards of the city as provided for in § 34.01 of this chapter can be combined into one precinct for all election purposes. (Prior Code, § 1:4:2) (Ord. 2096, passed 3-4-2002)

§ 34.01 WARD BOUNDARIES.

The city shall be divided into three wards which are located as follows:

(A) *Ward 1.* An area south of the centerline of Second Street to Garfield Avenue and west of the centerline of Garfield Avenue to the city limits;

(B) *Ward 2.* An area east of the centerline of Garfield Avenue and south of the centerline of Third Street extending to the center of the east alley that lies between Jackson Avenue and Kennedy Avenue then the area that lies east of the centerline of that alley and Kennedy Avenue to the city limits (197 registered voters as per the 2000 Census); and

(C) *Ward 3.* An area north of the centerline of Second Street as far as Garfield Avenue then following the centerline of Garfield Avenue to the centerline of Third Street as far as the center of the east alley that lies between Jackson Avenue and Kennedy Avenue north to the centerline of Second Street one-half block to the centerline of Kennedy Avenue then extending on the east side of Kennedy

§ 34.03 REPRESENTATION ON ELECTION BOARD.

At all elections in the city, each of the wards where an election is taking place shall be represented on the Election Board. There shall be one election judge chosen from each of the wards if available. (Prior Code, § 1:4:3) (Ord. 2096, passed 3-4-2002)

§ 34.04 COMBINING ELECTION.

The City Council by resolution at the beginning of each year may choose, according to state statute, to combine the city election with the school district election in June and/or with the county primaries on the first Tuesday in June. (Ord. 2096, passed 3-4-2002)

CHAPTER 35: AUDITS

Section

- 35.01 Internal audits
- 35.02 General audits

§ 35.02 GENERAL AUDITS.

§ 35.01 INTERNAL AUDITS.

The Mayor shall appoint three Council members to perform an internal audit of all payroll including vouchers and time sheets anytime the Mayor or Council deems needed.
(Prior Code, § 1:5:1) (Ord. 2022, passed 3-9-1990)

A general audit of the city will be performed as required by state law by a certified public accountant. A change in Finance Officers will also require a general audit performed by a certified public accountant.
(Prior Code, § 1:5:2) (Ord. 2022, passed 3-9-1990)

CHAPTER 36: FIRE DEPARTMENT

Section

Fire Department

- 36.01 Department established
- 36.02 Members; compensation
- 36.03 Duties and powers of Chief
- 36.04 Chief may remove buildings
- 36.05 Interference with Fire Department
- 36.06 False alarm of fire
- 36.07 Duties of police
- 36.08 Operational agreements
- 36.09 Control of property
- 36.10 Submission of budget request

Fire Regulations

- 36.25 Bonfire near structure
- 36.26 Burning rubbish
- 36.27 Waste burners
- 36.28 Unsafe chimneys
- 36.29 Inspection of premises
- 36.30 Parking near hydrants

Fire Code

- 36.45 Adoption of Fire Code
- 36.46 Enforcement powers
- 36.47 Compressed and liquified gases
- 36.48 Storage
- 36.49 Plan approval

FIRE DEPARTMENT

§ 36.01 DEPARTMENT ESTABLISHED.

The City Council is hereby empowered to continue the Volunteer Fire Department of the city as it now exists and under restrictions and grants of authority as it deems proper.
(Prior Code, § 4:1:1)

§ 36.02 MEMBERS; COMPENSATION.

The Volunteer Fire Department of the city shall consist of not more than 40 members, one of which shall be chosen as “Chief of the Fire Department” in a manner to be determined by the Fire Department. Other officers shall be chosen as the Department deems proper.
(Prior Code, § 4:1:2)

§ 36.03 DUTIES AND POWERS OF CHIEF.

The Fire Chief shall be responsible for the discipline and proper conduct of the Fire Department, the enforcement of all laws and regulations pertaining thereto and for the care and condition of the property of the Department. He or she shall have command of all members of the Fire Department. In case of the absence or inability of the Fire Chief, the Assistant Fire Chief or officer in command, shall have the same powers as the Fire Chief. At fires, he or she shall have full power of a police officer. He or she shall report to the Council upon request each year an accurate list of all fires that may have taken place within the city with the causes thereof, if known; the number and description of all buildings destroyed or damaged with names of owners and occupants and amount of loss. The Fire Chief may prescribe limits in the vicinity of a fire within which no person shall be permitted except by permission of the Fire Chief or his or her designee. The Fire Chief or officer having charge at any fire may call upon any person present to assist the firefighters in their duties.
(Prior Code, § 4:1:3)

§ 36.04 CHIEF MAY REMOVE BUILDINGS.

During a fire, the Fire Chief whenever in his or her judgment it becomes necessary to check or control the same, shall have power to order any fence, building or structure of any kind to be torn down and removed. He or she shall have power to cause any building or structure to be destroyed for the purpose

of checking or extinguishing a fire.
(Prior Code, § 4:1:4)

§ 36.05 INTERFERENCE WITH FIRE DEPARTMENT.

No person shall willfully hinder or interfere with any city officer or firefighter in the performance of his or her duty at, going to or returning from any fire or while attending to his or her duty as a member of the Fire Department, nor willfully or negligently drive any motor vehicle or other vehicle across or upon any hose, nor willfully destroy any of the property or fixtures belonging to or connected with the Fire Department or the fire alarm system.
(Prior Code, § 4:1:5) Penalty, see § 10.99

§ 36.06 FALSE ALARM OF FIRE.

No person shall knowingly make a false alarm of fire, nor shall any person meddle with any fire alarm box.
(Prior Code, § 4:1:6) Penalty, see § 10.99

§ 36.07 DUTIES OF POLICE.

The police shall preserve order and protect property at and in the vicinity of a fire.
(Prior Code, § 4:1:7)

§ 36.08 OPERATIONAL AGREEMENTS.

The Fire Chief shall have authority to enter into agreements with any county, town, fire protection district, township, federal agency or Indian tribe, subject to approval by the City Council, for the provision or mutual provision of fire protection services. Any agreement shall provide for compensation intended to recoup costs the Fire Department shall incur under the agreement.
(Prior Code, § 4:1:8) (Ord. 2046, passed 4-7-1992)

§ 36.09 CONTROL OF PROPERTY.

(A) Ownership of all property now in the possession of, purchased by or transferred to the Fire Department is vested in the city trust for the Fire Department and shall be used by and disposed of for the benefit of the Fire Department. All titles to vehicles, trailers and similar titled equipment shall be

in the name "The Murdo City Fire Department" or the "City of Murdo" which terms shall have the same effect.

(B) Whenever the Fire Chief determines that there is property or equipment in the possession of the Fire Department which is no longer useful for Fire Department purposes, he or she shall notify the City Council and provide a list of property items for disposal. If the property sought to be declared surplus is valued at less than \$500, the Fire Chief shall attach a statement listing the items and their value, signed by three property owners within the city and stating their opinion that the property is valued less than \$500. Upon receipt of the list, upon approval by the Council, the list referred to above shall be deemed an appraisal, the materials shall be declared surplus and the Fire Department may dispose of it at public or private sale, subject to final approval by the city.

(C) (1) In the event property to be disposed of is of a value more than \$500, the Fire Chief shall notify the City Council of the Fire Department's determination that the property is no longer useful for Fire Department purposes and the city shall dispose of the property as provided in SDCL Ch. 6-13.

(2) All proceeds received from the sale of surplus property shall be deposited in the Fire Department account.
(Prior Code, § 4:1:9) (Ord. 2046, passed 4-7-1992)

§ 36.10 SUBMISSION OF BUDGET REQUEST.

On or before August 1 of each year, the Fire Department shall submit to the City Council an amount in dollars required for operation of the Fire Department for the next calendar year. The budget request shall identify projected equipment needs, cash on hand and projected income from provision of fire protection services pursuant to agreement. All appropriated Fire Department funds shall be maintained in the city account and expenditures therefrom shall be supported by voucher and expended upon check signed by the Mayor and the Finance Officer.
(Prior Code, § 4:1:10) (Ord. 2046, passed 4-7-1992)

FIRE REGULATIONS

§ 36.25 BONFIRE NEAR STRUCTURE.

It shall be unlawful for any person to burn any material in an open fire or bonfire in close proximity to any structure so as to create a fire hazard.
(Prior Code, § 4:2:1) Penalty, see § 10.99

§ 36.26 BURNING RUBBISH.

It shall be unlawful for any person to burn any combustible material on the streets, alleys or any vacant place, within the city unless the material is burned in a standard waste paper burner approved by the City Council; provided, however, that an attendant above the age of 14 years of age shall attend to the burner and remain in attendance from the time the waste material is ignited until it is wholly consumed or until the fire is extinguished.
(Prior Code, § 4:2:2) Penalty, see § 10.99

§ 36.27 WASTE BURNERS.

All waste burners constructed within the city shall be built under the direction of and be approved by the City Council. Before constructing any waster burner, a permit shall be secured for the construction of the same in the same manner as all other building permits and as set forth in Chapter 150 of these ordinances.
(Prior Code, § 4:2:3) Penalty, see § 10.99

§ 36.28 UNSAFE CHIMNEYS.

Whenever it shall be brought to the notice of the Chief of the Fire Department that any chimney or flue of any building in the city is in an unsafe condition, he or she shall serve a notice in writing upon the owner, occupant or agent in charge of the building, specifying that the chimney or flue is dangerous or unsafe. He or she may require the owner, occupant or agent to repair the chimney or flue so as to make the same safe from danger of fire and to cease at once the use of the same. Each day that a defective chimney or flue is used after the service of notice shall constitute a separate offense, for which the owner, occupant or agent of the building shall be subject to the penalties provided for herein.
(Prior Code, § 4:2:4) Penalty, see § 10.99

§ 36.29 INSPECTION OF PREMISES.

Any authorized officer of the city shall have power and authority to inspect all buildings and premises in the city and to order and require that all waste paper, sweepings and other trash be removed. Authorized officers shall include the Chief of Police, the Fire Chief and other officers as the Council may designate.
(Prior Code, § 4:2:5)

§ 36.30 PARKING NEAR HYDRANTS.

It shall be unlawful for any person to park any vehicle within 15 feet of a fire hydrant.
(Prior Code, § 4:2:6) Penalty, see § 10.99

FIRE CODE

§ 36.45 ADOPTION OF FIRE CODE.

The city hereby adopts the most current edition of the Uniform Fire Code except any portions deleted, modified or amended by the City Council. A current copy of the Uniform Fire Code must be maintained by the Fire Chief and the City Finance Officer.
(Prior Code, § 4:3:1)

§ 36.46 ENFORCEMENT POWERS.

The Fire Chief or any officer of the city is hereby empowered to enforce the Uniform Fire Code and may issue notices of noncompliance, orders to correct deficiencies and whatever actions are necessary to ensure compliance including sign complaints or close the structure to public occupancy until the violation is corrected.
(Prior Code, § 4:3:2)

§ 36.47 COMPRESSED AND LIQUIFIED GASES.

No person, firm, company corporation or partnership shall engage in the installation of equipment using any type of compressed or liquified gas without complying with the regulations established by the State Fire Marshal and the laws of the state.

(Prior Code, § 4:3:3) Penalty, see § 10.99

§ 36.48 STORAGE.

Liquified petroleum gases shall be stored in compliance with the laws of the state and rules and regulations promulgated by the State Fire Marshal.

(Prior Code, § 4:3:4)

§ 36.49 PLAN APPROVAL.

(A) Any person wishing to construct a storage facility for any combustible liquid or liquified petroleum gas in excess of 2,000-gallons' capacity must apply to the City Council for approval of the site of the facility prior to issuance of a building permit. An application for site approval under this section shall contain the information required in ARSD Chapter 61:15:03. At minimum, an application for site approval of storage for flammable or combustible liquids or liquified petroleum gas must show the name of the person, firm or corporation proposing the

installation, the location of the installation and adjacent streets, highways and structures. In all cases, the distances from the proposed installation to each property line and adjacent structure must be shown. In addition, underground storage system drawings must show the location and capacity of each tank, the class of liquid to be stored in the tank, the clearances and requirements and location of fill, gauge, vent pipes and all other openings.

(B) Any application for site approval seeking waiver of or a variance in setback requirements shall be accompanied by an easement of the adjoining land owner allowing the applicant with the Council's approval to encroach upon the setback requirement. Variances from setback requirements of city streets or property owned by the city need not be by easement but shall be by separate resolution of the Council.

(C) If an application is approved, Council may by resolution grant a building permit for the facility conditioned upon approval by the Department of Commerce and Regulation, Office of the State Fire Marshal, of all plans and Fire Code requirements. (Prior Code, § 4:3:5) (Ord. 2045, passed 4-7-1992)

CHAPTER 37: OTHER CITY DEPARTMENTS

Section

Street Department

- 37.01 Department established
- 37.02 Street Superintendent; duties, salaries,
other employees

STREET DEPARTMENT

§ 37.01 DEPARTMENT ESTABLISHED.

There is established in the city a Street Department which shall consist of the Street Superintendent and two members of the City Council to be appointed by the Mayor. The Department is to have charge and control of the municipal streets of the city and to make regulations for its operation and service as it deems necessary in addition to the regulations hereinafter established.
(Ord. 2023, passed 3-9-1990)

§ 37.02 STREET SUPERINTENDENT; DUTIES,

SALARIES, OTHER EMPLOYEES.

(A) The Superintendent of Streets shall have the immediate control, protection and management of the streets of the city and have all the powers and duties and shall discharge his or her duties under the direction and control of the City Council and Street Department of the city. He or she shall be appointed in the same manner as all other appointive officers. Duties and salaries will be set by resolution by the City Council.

(B) All other regular employees of the Street Department shall be appointed in the same manner as other appointive officers and shall receive compensation as the City Council may determine.

(C) The Superintendent shall at the end of each year make and file with the City Finance Officer a complete inventory in detail of all tools, implements, furniture and other articles of personal property belonging to the Department with which he or she shall be charged.
(Ord. 2023, passed 3-9-1990)

CHAPTER 38: EMPLOYMENT POLICIES

Section

Code of Conduct

- 38.01 Purpose
- 38.02 Application
- 38.03 Requirements
- 38.04 Remedy
- 38.05 Lobbying restrictions
- 38.06 Disclosure
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Drug and Alcohol Abuse Policy

- 38.20 Purpose
- 38.21 City's commitment to drug and alcohol free workplace
- 38.22 Drug and alcohol abuse policies
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Sexual Harassment Policy

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- 38.42 Sexual harassment
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- 38.62 Lifeguards
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CODE OF CONDUCT

§ 38.01 PURPOSE.

The purpose of this Code of Conduct is to ensure the efficient, fair and professional administration of federal grants in compliance with Federal Office of Management and Budget (OMB) Circular A-102, Attachment 0, Paragraph 7 and other applicable federal and state standards, regulations and laws. (Prior Code, § 1:6:1) (Ord. 2024, passed 7-2-1990; Ord. 2025, passed 7-2-1990; Ord. 2064, passed 8-16-1993)

§ 38.02 APPLICATION.

This Code of Conduct applies to all officers, employees or agents of the city engaged in the award of administration of contracts supported by federal grant funds. (Prior Code, § 1:6:2) (Ord. 2024, passed 7-2-1990; Ord. 2025, passed 7-2-1990; Ord. 2064, passed 8-16-1993)

§ 38.03 REQUIREMENTS.

(A) No officer, employee or agent of the city shall participate in the selection, award or administration of a contract supported by federal grant funds, if a conflict of interest, real or apparent, would be involved.

(B) A conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer or agent;
- (2) Any member of his or her immediate family;

(3) His or her partner; or

(4) An organization which employs or is about to employ any of the above.

(C) The city officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors or subcontractors.
(Prior Code, § 1:6:3) (Ord. 2024, passed 7-2-1990; Ord. 2025, passed 7-2-1990; Ord. 2064, passed 8-16-1993)

Statutory reference:

Similar provisions, see SDCL 5-18A-17, effective 7-1-2010

§ 38.04 REMEDY.

To the extent permitted by federal, state or local laws or regulations, violations of these standards may cause penalties, sanctions or other disciplinary actions to be taken against the city's officers, employees or agents or the contractor, potential contractors, subcontractors or their agents.
(Prior Code, § 1:6:4) (Ord. 2024, passed 7-2-1990; Ord. 2025, passed 7-2-1990; Ord. 2064, passed 8-16-1993)

§ 38.05 LOBBYING RESTRICTIONS.

No federal appropriated funds will be paid to any person for influencing or attempting to influence, on behalf of the city, an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in the connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement.
(Prior Code, § 1:6:5) (Ord. 2064, passed 8-16-1993)

§ 38.06 DISCLOSURE.

If the City Council authorizes the expenditure of any funds to any person for influencing or attempting to influence, on behalf of the city, an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress, in connection

with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, the Mayor shall complete and submit Standard Form-LLL, *Disclosure Form to Report Lobbying*, in accordance with its instructions.

(Prior Code, § 1:6:6) (Ord. 2064, passed 8-16-1993)

§ 38.07 DOCUMENTATION REQUIRED.

The Mayor shall require that the language of this subchapter of the municipal code be included in the award documents for all sub-awards at all tiers (including subgrants and contracts under grants, subgrants, loans and cooperative agreements) which exceed \$100,000 and that all subrecipients shall certify and disclose accordingly
(Prior Code, § 1:6:7) (Ord. 2064, passed 8-16-1993)

DRUG AND ALCOHOL ABUSE POLICY

§ 38.20 PURPOSE.

The purpose of this subchapter is:

(A) To provide the city employees with a safe, drug-free workplace and promote employee health; and

(B) To comply with the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690 Subtitle D).
(Prior Code, § 12:15:1) (Ord. 2062, passed 8-16-1993)

§ 38.21 CITY'S COMMITMENT TO DRUG AND ALCOHOL FREE WORKPLACE.

(A) The city has a strong commitment to its employees to provide a safe, healthful and productive work environment and to promote high standards of employee health. Consistent with the spirit and intent of this objective, the city will act to eliminate any substance abuse which could impair an employee's ability to safely and effectively perform a particular job and which increases the potential for accidents, absenteeism, substandard performance and tends to undermine public confidence in the city's work force. The city's goals are to establish and maintain a work environment that is free from the effects of alcohol and drug abuse and to maintain the reputation and

integrity of the city by preventing unacceptable behavior by its employees that discredits the city and its employees.

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

(Prior Code, § 12:15:2) (Ord. 2062, passed 8-16-1993)

§ 38.22 DRUG AND ALCOHOL ABUSE POLICIES.

The following are the policies of the city regarding drug and alcohol abuse.

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

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

(C) It is not permitted for an employee to be under the influence of controlled drugs or substances or alcohol on the job, except as provided in division (D) below.

(D) The legal use of controlled drugs or substances prescribed by a licensed physician is not prohibited, but employees in positions where side effects of the prescribed medication could affect performance and safety on the job are required to make the use known to their supervisor.

(E) The illegal use, sale and possession of controlled drugs or substances while off duty and off city premises which results in criminal conviction is unacceptable. Off-duty, alcohol-related criminal convictions are also unacceptable. They may affect the job performance and the confidence of the public in the city's ability to meet its responsibilities. Off the

job conduct may be proper cause for disciplinary action.

(Prior Code, § 12:15:3) (Ord. 2062, passed 8-16-1993)

§ 38.23 TESTING FOR DRUGS OR ALCOHOL.

(A) The city may request that the employee undergo drug and alcohol testing if there is a reasonable suspicion that the employee is under the influence of drugs or alcohol during working hours. **REASONABLE SUSPICION** means an articulable belief based on specific facts and reasonable inferences drawn from those facts that an employee is under the influence of drugs or alcohol. Circumstances which constitute a basis for determining **REASONABLE SUSPICION** may include, but are not limited to:

(1) A pattern of abnormal or erratic behavior which is so unusual that it warrants summoning a supervisor, department head or other individual for assistance;

(2) Information provided by a reliable and credible source with personal knowledge;

(3) Direct observation of drug or alcohol use;

(4) Presence of the physical symptoms of drug or alcohol use; (i.e. glossy or blood-shot eyes, alcohol odor on breath, slurred speech, poor coordinations and/or reflexes); and/or

(5) Possession of substances in violation of the city's drug and alcohol policy.

(B) The employee, where reasonable suspicion exists, may be asked to submit to blood and urine testing by a qualified medical physician or hospital at the city's expense. Prior to testing, the proper authority shall secure a signed release statement from the employee to have the hospital/physician release medical information to the city.

(C) An employee who refuses to consent to a drug and alcohol test when reasonable suspicion exists may be subject to disciplinary action.

(D) A positive result from the drug and/or alcohol test confirming the reasonable suspicion may result in disciplinary action.

(E) The property authority is required to detail in writing the specific facts, symptoms or observations which led to the reasonable suspicion. This documentation shall be given to the Finance Officer and placed in the employee's personnel file only if confirmed by the drug and/or alcohol test.

(F) All information from an employee's drug and/or alcohol test is confidential, and only those with a need to know are to be informed of the results. Disclosure of test results to any other person, agency or organization is prohibited unless written authorization is obtained from the employee.

(G) Employees holding a commercial driver's license or engaged in safety sensitive activities are subject to random testing pursuant to a contract entered into by the city with a drug testing organization. The contract is on file in the city office. (Prior Code, § 12:15:4) (Ord. 2062, passed 8-16-1993)

§ 38.24 DRUGS TO BE TESTED FOR.

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

(A) Alcohol, ethyl;

(B) Amphetamines/methamphetamine; i.e., speed;

(C) Barbiturates; i.e., to include but not limited to amobarbital, butabarbital, phenobarbital or cecobarbital;

(D) Cocaine and cocaine metabolites;

(E) Benzodiazepines;

(F) Opiates; i.e., to include, but not limited to, codeine, heroin, morphine, hydromorphone and hydrocodone;

(G) Phencyclidine (PCP); and

(H) THC (marijuana) metabolite. (Prior Code, § 12:15:5) (Ord. 2062, passed 8-16-1993)

§ 38.25 EMPLOYEE RESPONSIBILITIES.

(A) An employee must not report to work while his or her ability to perform his or her job duties is impaired due to on or off duty alcohol or drug use. Employees called in for emergency duty to work outside their regular work schedule must not report to work impaired by off duty alcohol or drug use.

(B) An employee must not possess or use alcohol or illegal drugs or prescription drugs without a prescription during working hours or while subject to duty, on breaks or during meal periods.

(C) An employee must notify his or her supervisor, before beginning work, when taking any medication or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of municipal equipment.

(D) An employee must notify his or her immediate supervisor of any drug or alcohol related criminal statute conviction for a violation occurring in the workplace no later than five days after the conviction.

(E) Any violations of the above stated may result in immediate disciplinary action, which may include termination. (Prior Code, § 12:15:6) (Ord. 2062, passed 8-16-1993)

§ 38.26 MANAGEMENT RESPONSIBILITIES AND GUIDELINES.

(A) (1) Supervisors and department heads shall not physically search the persons of employees nor shall they search the personal possessions of employees without the freely given consent of, and in the presence of, the employee.

(2) Computers, smart phones or cell phones provided by the city are subject to inspection at any time and no employee shall have any expectation of privacy therein.

(B) Supervisors and department heads shall notify the appropriate law enforcement agency when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area jointly or fully controlled by the city.

(C) Any supervisor or department head

encountering an employee who refuses to consent to a drug and/or alcohol analysis when reasonable suspicion has been identified, shall remind the employee of the requirements of the policy and he or she may be subject to disciplinary action. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action. Where there is reasonable suspicion that the employee is under the influence of alcohol or drugs, the manager or supervisor should direct the employee to remain at work for a reasonable time until the employee can be safely transported home.

(D) Nothing in this policy shall be interpreted as constituting any waiver of or limitation on the city's responsibility to maintain discipline, or the right to invoke disciplinary measures, nor the employee's right to due process and the processing of grievances concerning disciplinary measures in accordance with the grievance set forth in § 39.135.

(E) Whenever disciplinary action is used in this policy, it shall include, but not be limited to, oral reprimand, written reprimand, suspension, demotion or discharge.

(G) Each employee will be given a copy of the city's policy on Drug and Alcohol Substance Abuse. (Prior Code, § 12:15:7) (Ord. 2062, passed 8-16-1993)

offensive to its recipient. It is a form of employee misconduct which is demeaning to another person and undermines the integrity of the employment relationship.

(Prior Code, § 12:16:2) (Ord. 2063, passed 8-16-1993)

§ 38.42 SEXUAL HARASSMENT.

Unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of sexual nature constitutes sexual harassment when:

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

(B) Any conduct or communication of a sexual nature has the purpose or effect of substantially interfering with work performance or of creating a

SEXUAL HARASSMENT POLICY

§ 38.40 PURPOSE.

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

(Prior Code, § 12:16:1) (Ord. 2063, passed 8-16-1993)

§ 38.41 DEFINITION.

For the purposes of this policy, the following definition shall apply unless the context clearly indicates or requires a different meaning.

SEXUAL HARASSMENT. Behavior of a sexual nature which is unwelcome and personally

hostile, intimidating or offensive employment environment that may be considered offensive to another employee, including, but not limited to:

- (1) Repeated sexual flirtations, advances or propositions;
 - (2) Continual or repeated verbal abuse of a sexual nature;
 - (3) Foul language;
 - (4) Unwanted physical advances;
 - (5) Graphic verbal commentaries about an individual's body or manner;
 - (6) Sexually degrading words used to describe the individual; and/or
 - (7) The display of sexually explicit pictures, cartoons or other materials.
- (Prior Code, § 12:16:3) (Ord. 2063, passed 8-16-1993)

§ 38.43 EMPLOYEE RESPONSIBILITIES.

Any employee who feels he or she has been sexually harassed or that his or her personal rights have been violated should immediately report the matter to the immediate supervisor unless the supervisor is the offending party. If the supervisor is unavailable, or the employee believes that it would be inappropriate to contact his or her supervisor, the employee should immediately contact the Council Vice President, Council President or Mayor.

(Prior Code, § 12:16:4) (Ord. 2063, passed 8-16-1993)

§ 38.44 SUPERVISOR/DEPARTMENT HEAD RESPONSIBILITIES.

Any supervisor or department head who becomes aware of any possible sexual harassment shall immediately advise the Council Vice President, Council President or Mayor. The city will make a thorough, confidential and impartial investigation of the complaint. All complaints and investigations will be held personal and confidential. All employees must cooperate with any investigation. The city will take prompt remedial measures to immediately end the offending action.

(Prior Code, § 12:16:5) (Ord. 2063, passed 8-16-1993)

§ 38.45 SEXUAL HARASSMENT PROHIBITED.

(A) Sexual harassment of any kind in the workplace is prohibited by federal and state law, whether committed by supervisory or nonsupervisory employees and will not be tolerated. Retaliation or intimidation directed toward a complaining party is also prohibited by law and will not be tolerated by the city under any circumstances. A complaint of sexual harassment will not have any bearing on the terms and conditions of employment of the complaining party, including, but not limited to, wages, advancement, evaluations, assigned duties, shift assignments, career development and the like.

(B) The city will not tolerate sexual harassment of or by any nonemployees, such as customers, visitors or others.

(C) A formal complaint of sexual harassment may be initiated in lieu of, during or following this informal process as provided by state or federal law.

All employees, including supervisors and department heads, are responsible for reminding employees on a reoccurring basis of this policy, and all are responsible for assuring that this workplace is free of sexual

harassment.

(D) Violations of the above stated policy by any employer, supervisor, department head, co-worker or other employee may be cause for immediate disciplinary action.
(Prior Code, § 12:16:6) (Ord. 2063, passed 8-16-1993)

CITY POOL AND POLICIES

§ 38.60 PUBLIC RELATIONS.

(A) *What is a citizen?*

(1) A citizen is not a person with whom you argue or match wits. Arguing wastes time and convinces no one of anything but your own lack of intelligence.

(2) A citizen is the most important person to enter a city recreation facility in person, by mail or by telephone.

(3) A citizen is not dependent upon you, on the contrary, you are dependent upon the citizen.

(4) A citizen is not an interruption of your work, but rather the purpose of it.

(5) A citizen is not an outsider in your work, but rather a part of it.

(6) A citizen is not, and this is the most important thing to remember, a cold statistic. He or she is flesh and blood, a human being with feelings and emotions.

(7) A citizen is the most important person with whom you deal.

(8) A citizen is a person who comes to you for assistance. It is your job to help in such a way as to be beneficial.

(B) *Courtesy.* Courtesy is essential, but it must reflect naturalness and sincerity. It must not appear cold, impersonal, affected or overdone. No one could be better aware that those of us engaged in working with the public of how difficult it sometimes is to meet criticism, often unjustified, with a smile. However, all criticism, whether right or wrong, should be received with individual consideration and with a genuine spirit of willingness to correct whatever might be wrong. Each contact, whether face-to-face, by telephone or by correspondence, should be regarded as presenting an opportunity to build up a liking for and a confidence in this Department. It is most important that you remain relaxed, self-confident and natural.

(C) *Perfection not expected.* None of us is perfect and perfection is not expected. It is impossible for us to go along day after day and week after week without ever being “short” with someone, griping or losing our temper. Being pleasant is a habit which is easy to form and one whose company you should strive to constantly keep!

(D) *Punctuality and attire.* Lifeguards must be punctual, properly attired, courteous to all, alert to responsibilities and ever mindful of the purpose and value in protecting human life. The job is a commitment of time, which ironically requires the utmost in responsibility for the most modest pay. Few people will say thanks, no one will offer a tip, yet everyone will complain if the pool opens late or does not open at all. Few patrons recognise the value of a good lifeguard until the lifeguard becomes the force which reverses the direction of a victim traversing the pathway from life to death. Unlike other jobs, the opportunity to “do it again until you get it right” is not applicable in lifeguarding because in many cases there is only one opportunity. Therefore, recognize

that there is no other choice than to be prepared to do it right the first time. You will appreciate it and the results will be apparent for a long time.

(E) *Public employee.* You are a public employee identified with the city. Your conduct, comments, appearance, organization and ability will be scrutinized by the public.

(F) *Qualities.* Sound judgement, self control and tact are essential at all times. It is an asset to be able to mix well with others, but it must be remembered that over-familiarity is not conducive to a good leadership/patron relationship.

(Ord. 2047, passed 6-1-1992)

§ 38.61 OBJECTIVES.

(A) To provide the citizens of the city and the surrounding area a safe and comfortable place to enjoy the sport of swimming;

(B) To maintain a disciplined environment for both the safety and instructional programs;

(C) To encourage interest in the activity of swimming and water safety in our community; and

(D) Rules of conduct will be based upon safety first.

(Ord. 2047, passed 6-1-1992)

§ 38.62 LIFEGUARDS.

(A) *Lifeguard job description.*

(1) *Primary.*

(a) Identify potential accident hazards.

(b) Be alert to prevent accidents.

(c) Enforce all pool rules in a consistent manner.

(d) Handle discipline situations with courtesy and fairness.

(e) Respond quickly, intelligently, decisively and in accordance with established emergency accident procedures.

(f) Administer first aid and CPR as required.

(g) Never leave the pool unattended with patrons in the pool area.

(2) *Secondary.*

(a) Communicate with other lifeguards and supervisor.

(b) Be available to substitute for other staff members.

(c) Fill out appropriate reports, including accident reports, immediately.

(d) Carry out additional duties as assigned by supervisors.

(B) *Job assignments.*

- (1) Guards have daily pre-opening assignments:
 - (a) Check locker rooms and shower room drains for litter, cleanliness and dangerous conditions;
 - (b) Pick up litter and check wading pool;
 - (c) Skim pools;
 - (d) Handle any duty the pool managers ask; and
 - (e) Guards are responsible for cleaning all areas when closed.
- (2) Before guards leave the pool, the pool must be cleared, circled, all doors locked and all lights turned out.

(C) *Conditions for closing.*

- (1) Guidelines only.
 - (a) Rain or threatening weather, including any lightning activity.
 - (b) Air temperature of less than 70°F.
 - (c) Water temperature of less than 70°F.
 - (d) Any condition that may cause a safety hazard.
- (2) If the pool is closed because of inclement weather before 6:00 p.m., and the weather then clears, the guards will be called back and the pool will reopen. If the pool is closed after 6:00 p.m. because of inclement weather, the pool will remain closed for the day.

(D) *Guard hours.* 12:45 p.m. to 9:15 p.m. (one-half-hour supper breaks to be taken between 5:00 p.m. and 6:00 p.m.).

(E) *Guidelines for guards.*

- (1) Your first obligation is the protection of the swimmer.
- (2) Be vigilant and alert at all times.
- (3) Strive to help the swimmer out before he or she gets into trouble.
- (4) Act in ways to eliminate any chance of drownings.
- (5) Thoroughly check bottom of pool regularly.
- (6) Lifeguards are not to participate in games or social conversations with the patrons in or out of the water.
- (7) Prohibit any boisterous or rough play on the deck and in the pool, such as:
 - (a) Running on deck;

- (b) Tag games, wrestling or scuffling; or
- (c) Pushing persons into the water, dunking or water fights.

(8) Prohibit misuse of the diving boards, such as:

- (a) Double springing of boards;
- (b) Sitting, lying or hanging from end of boards; and
- (c) Diving or jumping from the sides of the board.

(9) Watch for open sores, rashes, band aids and the like.

(F) *Authority of lifeguards.*

(1) In order to maintain order and a safe environment, the lifeguard must have authority to require obedience to rules and appropriate order.

(2) An on-duty lifeguard may:

- (a) Require any patron to observe pool rules;
- (b) Require a patron to leave the water and remain poolside for up to 15 minutes as discipline for failure to follow pool rules;
- (c) Require a patron to leave the pool area for the remainder of the day for repeated violations of pool rules; and
- (d) With approval of the pool manager, deny use of the pool for up to five days for repeated violations of pool rules in a manner that threatens the safety of any patron or for any attack by a patron upon a lifeguard.

(Ord. 2047, passed 6-1-1992)

§ 38.63 CHLORINE GAS EMERGENCY POLICY.

In the event of a chlorine gas leak, the following will be initiated.

(A) The person either finding or suspecting a gas leak shall clear the contaminated area, clear the pool area and notify the pool manager or city office.

(B) The pool manager will:

- (1) Immediately investigate the contaminated area to determine the extent of the leak. If possible without risk to employees, the leak should be sealed and the chlorine turned off;
- (2) If the chlorine leak is major or its source is not located, notify the lifeguards to begin emergency evacuation procedures; and
- (3) Call the City Finance Office (669-2272) or the Fire Department immediately.

(C) The lifeguards will move the patrons at least 100 yards upwind of the chlorine leak.

(D) Notify patrons in locker room areas to evacuate.

(E) Lifeguard closest to exit will unlock the gate and maintain order until the “all clear” signal is given.

(F) When dealing with the public during this type of emergency, staff members must stress the fact that evacuation procedures are preventative measures taken to ensure public safety. Be calm but forceful. Panic is “catchy.”

<i>Emergency Numbers</i>	
Fire	911
Police	911
Ambulance	911
City office	911

(Ord. 2047, passed 6-1-1992)

§ 38.64 LIFEGUARD DUTIES.

(A) Maintain order and prevent accidents.

(B) Maintain pool area in clean and respectable manner.

(C) Recommended disciplinary measures; make them sit out; as a last resort, send them to the shower room to dress and leave the pool. See § 38.62(F).

(D) Keep eyes, ears and mind on the pool at all times while on duty. The unguarded moment may mean a life.

(E) You may not leave the pool area while on duty unless you are relieved by another guard.

(F) At no time while on duty are you allowed to do any reading or writing. The whole staff is being judged by the public on the actions of every member while on duty.

(G) Take receipts and distribute baskets.

(H) It is your responsibility to refuse admittance to the pool if:

(1) To those physically unfit for swimming; i.e., colds, inflamed eyes, open sores, bandages and the like; and

(2) To persons barred from the pool because of failure to comply with pool regulations.

(I) Refer to the pool manager those patrons who feel they have problem or criticism concerning pool operation or policies.

(J) When business is slack, you may be assigned to work on other duties.

(Ord. 2047, passed 6-1-1992)

§ 38.65 RULES AND REGULATIONS; DAYS AND HOURS OF OPERATION; FEES.

The rules and regulations, days and hours of operation and fee for daily admittance and season passes will be set by the City Council and the pool manager by resolution at the first meeting scheduled in May of each year. (Ord. 2047, passed 6-1-1992)

CHAPTER 39: PERSONNEL POLICY

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GENERAL PROVISIONS

§ 39.001 GENERAL PROVISIONS.

(A) State and federal laws applying to municipal employees shall supersede the provisions of this policy. Where the provisions of this policy conflict with the provisions of any collective bargaining agreement adopted by the city, the provisions of the collective bargaining agreement prevail.

(B) The City Council is responsible for the administration of this policy. The practices and procedures stated herein shall be the established personnel policy for all employees of the city.
(Prior Code, § 12:1:1)

§ 39.002 POLITICAL ACTIVITY.

Employees are encouraged to exercise their right to vote in municipal elections, but shall not engage or participate in any other way in these elections, except with permission of the City Council. Immediate dismissal from city employment may result from failure to comply with this provision.
(Prior Code, § 12:12:1)

§ 39.003 SAFETY.

Employees shall promote safety within their respective departments. Employees share responsibility for observing safety rules and practices and are to report unsafe working conditions or equipment to the department head and/or City Council.

(Prior Code, § 12:12:2)

§ 39.004 PUBLIC RELATIONS.

All employees are responsible for providing their particular municipal services to the public in a courteous and 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 the community by accepting a position with municipal government and urges its employees to act accordingly.
(Prior Code, § 12:12:3)

§ 39.005 COMMUNICATIONS.

(A) Employees shall inform their department heads of illness, absence from work or tardiness.

(B) Employees shall inform the City Finance Officer of any change in their personnel status.
(Prior Code, § 12:12:4)

APPLICATION AND SELECTION

§ 39.020 APPLICATION AND SELECTION.

It is the policy of the city to carry on recruitment programs as are necessary to seek out and secure the most qualified individuals to apply for city positions.

(A) Applications for positions with the city shall be made on forms provided by the city. These forms are available at the City Finance Officer's office.

(B) Where a physical examination is a prerequisite for employment, the city will bear the cost of the physical examination.

(C) In selecting a candidate, the city may use any combination of written, oral or performance tests, plus an evaluation of the candidates' training and experience. Investigation into character, personality, education and financial status also will be made when the nature of the position warrants an investigation.

(D) If the employee is required to drive in situations or locations where a driver's license is

necessary, then the applicant shall have and must maintain a valid state driver's license. Failure to maintain a valid driver's license shall be cause for dismissal.

(E) The city is an Equal Opportunity Employer. No applicant for employment with the city shall be favored or discriminated against because of race, color, political or religious affiliations, national origins, sex, age, handicapped status or other non-merit factors. Employees of this city are free to join or refrain from joining any employee union or association.

(F) Blood relatives (parents, children, sisters, brothers, aunts, uncles) or married couples may not be employed if employment would result in an employee supervising a member of his or her immediate family.
(Prior Code, § 12:2:1)

PROBATIONARY PERIOD

§ 39.035 PROBATIONARY PERIOD.

All new or rehired employees shall be on a probationary status for a period of six months after hiring after which he or she shall become a permanent employee.
(Prior Code, § 12:3:1) (Ord. 2021, passed 3-9-1990)

§ 39.036 DISMISSAL OR DEMOTION DURING PROBATIONARY PERIOD.

The Mayor may dismiss or demote any employee during the probationary period for any reason without cause. Dismissal during the probationary period may not be appealed.
(Prior Code, § 12:3:2) (Ord. 2021, passed 3-9-1990)

§ 39.037 CERTIFICATION.

(A) In all positions requiring certification, the employee shall not be removed from probationary status until certification is achieved. If certification is not achieved within an appropriate length of time, the probationary employee may be dismissed without further cause.

(B) All police officers shall be formally trained

before being armed and assigned street duty. All police officers will be trained and qualified before using firearms, batons and mace.

(1) *Firearms qualification.* Officers must meet minimum requirements as set forth by the City Council. The officer must qualify once a year to carry a weapon on duty. Failure to comply with this minimum requirement within ten days of the qualifying period may result in suspension of the assignment to duty where the use of a firearm is required, pending subsequent qualification. Continued failure to qualify may lead to dismissal.

(2) *Baton and mace; qualifications.* All police officers shall be formally trained before using the equipment and will use the equipment only when necessary and after other reasonable efforts to control a violent person have failed.
(Prior Code, § 12:3:3) (Ord. 2021, passed 3-9-1990; Res. 1994-22, passed 4-4-1994)

ATTENDANCE

§ 39.050 WORK WEEK AND WORK DAY.

The normal work week is from 12:01 a.m. Sunday to 12:00 midnight the following Saturday. The schedule of hours to be worked each day will be set by the department head or City Council and will be considered as the normal work day unless specific provision is made to the contrary and approved by the City Council.
(Prior Code, § 12:4:1)

§ 39.051 REST PERIODS AND LUNCH HOUR.

All employees will receive a paid 15-minute rest period during each one-half shift and one hour per day for lunch.
(Prior Code, § 12:4:2)

§ 39.052 OVERTIME.

(A) Employees and department heads will be required to work overtime in excess of their required work schedule in the event of an emergency situation.

(B) Opportunity to work overtime will be distributed equally among the employees in each

department whenever possible.
(Prior Code, § 12:4:3)

§ 39.053 COMPENSATION TIME.

Except with prior approval of the Mayor, compensation time or comp time approved in lieu of overtime pay in any department with two employees in excess at two consecutive hours must be taken when the other employee in the department is regularly scheduled to be on duty. Comp time for employees in departments with only one employee shall be taken with approval of the Mayor.
(Prior Code, § 12:4:4) (Ord. 2037, passed 6-3-1991)

COMPENSATION

§ 39.065 COMPENSATION.

The City Council has the authority to establish municipal salaries and fringe benefits. The City Finance Officer will be responsible for the administration of municipal salaries.
(Prior Code, § 12:5:1)

§ 39.066 PAY PERIOD.

Employees will be paid monthly. Timesheets will be turned in to the Finance Officer on the first working day of each month. Timesheets and vouchers will be signed and approved, and checks issued as soon as possible, but no later than five working days after submittal. Timesheets will be signed by appropriate supervisors, employees, the Finance Office and the Mayor. Pay vouchers will be signed by employees before a paycheck is issued.
(Prior Code, § 12:5:2)

§ 39.067 RATE OF PAY.

Employees will be paid at the regular rate of pay for all hours worked as set forth in resolution yearly.
(Prior Code, § 12:5:3)

§ 39.068 OVERTIME.

(A) Work authorized by a department head in excess of the normal work day or work week will be paid at a rate of one and one-half times the employee's regular rate. A department head may authorize overtime when he or she believes there will be a substantial impairment of vital city service if overtime is not worked.

(B) Police officers will not be paid overtime unless otherwise qualified when they work on holidays or work on days off.
(Prior Code, § 12:5:4) (Ord. 2057, passed 1-4-1993)

§ 39.069 HOLIDAY PAY.

All work authorized by a department head on holidays or regular days off is to be compensated at the rate of overtime pay. Police officers will not receive holiday pay at the overtime rate unless entitled pursuant to § 39.068.
(Prior Code, § 12:5:5)

§ 39.070 CALL BACK PAY.

Any employee ordered by the department head to return to work outside of his or her regular working hours will be paid a minimum of one hour overtime and thereafter whatever hours or portions thereof actually worked.
(Prior Code, § 12:5:6)

§ 39.071 PAYROLL DEDUCTIONS.

The Finance Officer is authorized to make deductions from an employee's gross pay required by federal and state law. Subject to the authorization of the employee, the City Finance Officer may also make payroll deductions for other purposes as approved by the City Council.
(Prior Code, § 12:5:7)

§ 39.072 INSURANCE.

All employees will pay the percentage set by resolution of the Council from time to time of the health insurance premium for each employee plus spouse and family participating in the group health insurance plan.
(Prior Code, § 12:5:8)

§ 39.073 RETIREMENT PLAN.

All employees are required to participate in the city's retirement program which is administered by the State Division of Insurance and Retirement. Contribution rates, retirement dates and other regulatory matters are controlled by the Division and not the city.
(Prior Code, § 12:5:9)

§ 39.074 UNIFORM ALLOWANCE.

All employees required to wear uniforms will receive a yearly uniform allowance determined by the City Council.
(Prior Code, § 12:5:10)

§ 39.075 SAFETY GLASSES.

Employees required to wear safety glasses shall have established an account for the purchase of safety glasses in the sum of \$50 per year. These funds can be carried over for a period of four years, but in no event can they exceed \$200. This money will be disbursed for safety glasses ordered by the employee but payments may not exceed the funds in the employee's account.
(Prior Code, § 12:5:12)

§ 39.076 PAYROLL DISCREPANCIES.

The Finance Officer will issue a pay check on what he or she believes to be the correct amount. Any payroll discrepancies will be brought to the attention of the City Council at the regular scheduled City Council meeting following the pay period. Any overpayment or underpayment will be discussed at the request of the employee or Finance Officer. A decision will be made at the same meeting.
(Prior Code, § 12:5:13)

LEAVE AND HOLIDAYS

§ 39.090 VACATION.

(A) Employees with less than ten years of continuous service and working a 40-hour work week schedule will earn 80 hours of paid vacation per year at the rate of 1.54 hours per work week. Those

employees working a 48-hour work week schedule will earn 96 hours of paid vacation per year at the rate of 1.85 hours per work week. Employees with ten or more years of continuous service and working a 40-hour work week schedule will earn 120 hours of paid vacation per year at the rate of 2.3 hours per week. Those employees working a 48-hour work week schedule will earn 144 hours of paid vacation per year at the rate of 2.77 hours per week. If the City Council chooses they may allow an employee to carry over vacation leave when an employee is on a leave of absence for a work-related injury.

(B) Employees accruing:

80 hours of annual vacation leave	May carry 1/2 or 40 hours into the following year
96 hours of annual vacation leave	May carry 1/2 or 48 hours into the following year
120 hours of annual vacation leave	May carry 1/2 or 60 hours into the following year
144 hours of annual vacation leave	May carry 1/2 or 72 hours into the following year
The amount carried over into the following year must be used within the first six months of that year or will be lost.	

(C) Department head vacation will be approved in advance by the City Council. The Mayor may waive the advance notice requirement in special circumstances.

(D) Vacation may not be taken in less than four-hour increments, unless approved by the department head. No vacation may be taken during the first year of employment.

(E) Vacation dates should be set as far in advance as possible and must be approved by the department head and the City Council.

(F) Non-working Saturdays, Sundays and legal holidays occurring within a period of annual leave will not be charged to annual leave. Annual leave will accrue during annual leave.

(G) If the nature of the work makes it necessary to limit the number of employees on vacation at any one time, or in the event there is a conflict over vacation periods, the employee with the most seniority will be given preference provided the

employee has complied with the vacation request deadline. Failure to comply with the vacation request deadline will result in vacation dates assigned on a first request basis.

(H) An employee may only use his or her seniority once for the selection of a vacation period. After the seniority is used once during that calendar year, that employee's name goes to the bottom of the seniority list for selection of additional vacation periods. The employer and the employee will agree upon the best time to take vacation leave. In the event vacation leave exceeds three days, the employee must give a two-week notice to his or her department head regarding the date or dates selected. A department head may waive the two-week notice requirement in special circumstances.

(I) If an employee is not employed by the city for more than one year, accumulated vacation leave is lost.
(Prior Code, § 12:6:1) (Ord. 2048, passed 8-3-1992; Ord. 2055, passed 1-4-1993; Ord. 2085, passed 12-1-1997; Ord. 2117, passed 1-5-2004)

§ 39.091 SICK LEAVE/FMLA LEAVE.

Employees earn one day per month or 12 days per year paid sick leave accruable to a maximum of 1,040 hours. An employee may be required to furnish a physician's statement in support of his or her absence.

(A) Three days of sick leave per anniversary year may be used in the event of a death in the employee's immediate family. The City Council may authorize the employee to exceed the three-day limitation. **IMMEDIATE FAMILY** is defined as parents, children, spouse, brother, sister, mother-in-law, father-in-law and grandparents.

(B) Up to three days of sick leave may be used for personal emergency per anniversary year.

(C) There is no entitlement to cash equivalent reimbursement of accrued sick leave upon separation of employment.

(D) Since the city is subject to the Federal Family Medical Leave Act (FMLA), eligible employees under the Act are entitled to take FMLA leave provided all other types of accrued leaves have been taken. All such leaves will reduce the days of FMLA leave to which the employee is entitled.
(Prior Code, § 12:6:2) (Ord. 2054, passed 2-1-1993)

§ 39.092 MATERNITY LEAVE.

Maternity leave, using accrued sick leave, will be granted to a maximum of 20 working days. Additional accrued sick leave may be used upon certification from a doctor stating an inability to return to work and upon approval of the City Council. Vacation leave or leave without pay may be used in lieu of sick leave. Maternity leave will be granted only for pregnancy, delivery and recovery. Leave will not be granted for child rearing.
(Prior Code, § 12:6:3)

§ 39.093 COURT AND JURY LEAVE.

If an employee is subpoenaed to testify in court, he or she may receive both his or her salary and witness fees without loss of leave credits. If subpoenaed in his or her official capacity, he or she shall not receive witness fees. If the employee is a party to the litigation, he or she must use vacation leave or leave without pay. Employees summoned to jury duty shall receive salary without loss of leave credits and shall be entitled to the per diem and mileage provided by law without reduction in pay.
(Prior Code, § 12:6:4)

§ 39.094 MILITARY LEAVE.

(A) A record of leave will be maintained with the regular vacation and sick leave account of each city employee. Employees requesting military leave for training will obtain a written order or letter from the commander of their Reserve or National Guard unit showing the dates of the training period. This notice is to be submitted to the City Council 30 calendar days prior to the date of the employee's departure for training. Military leave for training shall not be granted to an employee who is on vacation leave and terminating employment, nor shall it be accumulated. Temporary full-time or part-time employees are not entitled to military leave for training. The term **TEMPORARY** does not include new employees on six months probationary period.

(B) Employers and employees should note the difference between units called for military training up to 15 working days with pay and the status of those called for active duty.
(Prior Code, § 12:6:5)

SEPARATIONS AND DISCIPLINE

§ 39.095 LEAVE WITHOUT PAY.

Leave without pay must be approved by the City Council. Leave without pay shall not be granted until all vacation leave has been used. No additional leave or other benefits shall accrue during leave without pay.

(Prior Code, § 12:6:6)

§ 39.096 HOLIDAYS.

(A) Legal holidays are as follows:

- (1) January 1, New Year's Day;
- (2) Third Monday in January, Martin L. King, Jr. Day;
- (3) Third Monday in February, Presidents Day;
- (4) Last Monday in May, Memorial Day;
- (5) July Fourth, Independence Day;
- (6) First Monday in September, Labor Day;
- (7) Second Monday in October, Native American's Day;
- (8) November 11, Veteran's Day; (or Friday following Thanksgiving as set yearly by resolution);
- (9) Fourth Thursday in November, Thanksgiving Day;
- (10) December 25, Christmas Day; and
- (11) One personal day, employee's choice, paid straight time and must be used in its entirety.

(B) When any holiday falls on Saturday, the preceding Friday shall be observed as the holiday; and when any holiday falls on Sunday, the following Monday is considered the holiday.
(Prior Code, § 12:6:7) (Ord. 2033, passed 2-4-1991; Ord. 2088, passed 11-2-1998)

§ 39.110 LAY OFFS.

The Mayor or supervisor may lay off an employee whenever necessary for the following reasons: shortage of funds or work, abolishment of a position, inefficient or nonproductive position or material change in duties or organization. The City Council shall designate where reductions in force will occur. The City Council may designate specific positions as exempt from lay off consideration because of a special need. Criteria used to identify employees to be laid off include, but are not limited to, performance, seniority with the city, employment status and special knowledge, skills, abilities and potential of employees. Employees shall be notified at least 14 calendar days prior to the effective date of the layoff and shall be given written notice of the reasons for the lay off. If a laid off employee's position is reestablished or if another position of the same type becomes available within one year of lay off, the employee shall be offered reinstatement to that position, provided the employee has maintained a current mailing address with the city. If more than one person is eligible for reinstatement, the Mayor shall determine which person will be reinstated. The hire date for employees who return to employment after a lay off of more than one year shall be the new date of employment. Lay offs of 40-hours' duration or less do not require prior notice to the employee.
(Prior Code, § 12:7:1)

§ 39.111 FORMS OF DISCIPLINARY ACTION.

Disciplinary action may include suspension without pay, dismissal, demotion or reduction in salary.
(Prior Code, § 12:7:2)

§ 39.112 CAUSES FOR DISCIPLINARY ACTION.

Causes for disciplinary action include, but are not limited to:

- (A) Conviction of a felony;

(B) The employee has willfully, wantonly, unreasonably, unnecessarily or through culpable negligence been guilty of brutality or cruelty to an inmate or prisoner, a person in custody or other persons, provided the act committed was not necessarily or lawfully done in self-defense, to protect the lives of others or to prevent the escape of a person lawfully in custody;

(C) Violation of any provisions of this chapter or the ordinances of the city;

(D) Violation of any order of the city or any proper oral or written directions given by a supervisor or person in authority;

(E) Consumption of alcohol or other intoxicants while on duty, intoxication while on duty or while operating city equipment;

(F) Insubordination;

(G) Disruption of the efficiency or morale of the city;

(H) Theft of money or property belonging to the city or careless or negligent handling of money or property belonging to the city;

(I) Use, threatened use or attempted use of unreasonable personal or political influence in securing a promotion, leave of absence, transfer, change of pay or character of work;

(J) Inducement or attempted inducement of another city employee to commit an unlawful act or to act in violation of city ordinance or regulation;

(K) Acceptance of any fee, gift or other valuable thing in the course of employment when the gift, fee or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded others;

(L) Failure to maintain a valid state driver's license if the employee is required to drive in situations or locations where a driver's license is necessary;

(M) Participation in any activity, additional employment or enterprise which is inconsistent, incompatible or in conflict with the duties and responsibilities of the employee's position. The City Council shall make the ultimate determination as to whether or not a specific activity is prohibited;

(N) Any action causing hazard to public health and/or safety; and

(O) Make any knowingly false statements pertaining to employment or assigned duties.
(Prior Code, § 12:7:3)

§ 39.113 DISCIPLINARY ACTION BASED ON JOB PERFORMANCE; WORK IMPROVEMENT PLAN.

When in the performance of the duties of his or her position an employee's work is unsatisfactory, the Mayor or supervisor shall issue to the employee a written notice that disciplinary action will be taken unless performance improves. The notice shall outline the areas where performance is unsatisfactory and a work improvement plan with the level of performance which is expected. If, after a 30-day work improvement period, performance has not reached acceptable levels according to the work improvement plan or if at any later date performance falls below standard, disciplinary action may be taken. An employee who is serving a work improvement period may be disciplined during the work improvement period for other specific causes. Placement on a work improvement plan or notice of unsatisfactory work performance is not appealable to the City Council. However, any action taken as a result of unsatisfactory completion of the work improvement plan may be appealed to the City Council.
(Prior Code, § 12:7:4)

§ 39.114 NOTICE OF INTENDED DISCIPLINARY ACTION.

The Mayor or supervisor may discipline a permanent employee for cause at any time. Before an employee is disciplined, he or she shall be given notice and an opportunity to present reasons in person at a meeting why the proposed disciplinary action should not be taken. The employee shall be provided with a written statement of the specific reasons for the proposed disciplinary action and shall be advised that he or she has five working days from receipt of notice to request a meeting to respond to the proposed action.
(Prior Code, § 12:7:5)

§ 39.115 MEETING ON PROPOSED

DISCIPLINARY ACTION.

If the employee requests a meeting to respond to the proposed disciplinary action, the Mayor or supervisor shall schedule the meeting within five working days.

(Prior Code, § 12:7:6)

§ 39.116 DECISION ON DISCIPLINARY ACTION.

Proposed disciplinary action may be taken after five working days have expired following notice of the proposed disciplinary action or, if a meeting is requested by the employee, after the meeting. The employee shall be given written notice of the decision, with a copy to the City Council, within five working days after the date of the meeting or within five working days after expiration of the time in which the employee may request a meeting. The decision shall inform the employee of the disciplinary action taken and that the employee has 15 working days to appeal to the City Council.

(Prior Code, § 12:7:7)

§ 39.117 DISCIPLINARY SUSPENSIONS.

Disciplinary suspensions may occur prior to the meeting. The meeting may follow the dates of suspension and a determination shall then be made whether the suspension should be with or without pay. Any suspension after the meeting is without pay.

(Prior Code, § 12:7:8)

§ 39.118 PAY PRIOR TO DISMISSAL OR SUSPENSION.

In the case of dismissal or suspension, the employee must be paid for all hours worked up to the effective date of the action. Payment may be conditioned on return of city property and payment of any amounts the employee owes to the city.

(Prior Code, § 12:7:9)

§ 39.119 RESIGNATION.

(A) An employee who desires to terminate his or her service with the city shall submit a written resignation to his or her department head. Resignations shall be submitted at least ten working days before the final work day.

(B) A department head shall give 30-days' written notice prior to the date that the resignation is to be effective and if the department head intends to use vacation time prior to the effective date of the resignation, then the department head shall give as many additional days written notice as the department head intends to use for vacation so that in all cases the actual notice shall be at least 30 days plus the day of accrued vacation to be used prior to the effective date of the resignation.

(Prior Code, § 12:7:10) (Ord. 2014, passed 8-7-1989)

§ 39.120 DISABILITY.

(A) An employee may be dismissed by the Mayor or supervisor when he or she cannot perform his or her required duties because of physical or mental impairment. The city may at any time require an employee to be examined by a physician of the city's choice for the purpose of determining his or her physical or mental ability to perform the duties of his or her position. The examination, if required by the city, shall be made at the expense of the city. Dismissal for disability may be appealed to the City Council within 15 working days.

(Prior Code, § 12:7:11)

(B) Dismissal for disability may not occur if reasonable accommodations requested by the employee, consistent with § 504 of the Rehabilitation Act of 1973, will allow the employee to perform essential job functions.

§ 39.121 REFERRAL TO COUNSELING.

If the Mayor or supervisor has reason to believe that an employee has personal problems which are causing poor work performance or poor attendance, the employee may be referred to a counseling service or program as a condition of continued employment, including treatment for alcohol or other chemical abuse.

(Prior Code, § 12:7:13)

GRIEVANCE PROCEDURE

§ 39.135 GRIEVANCE PROCEDURE.

(A) *Generally.* Any employee may submit to the Mayor or supervisor a written grievance and proposed remedy sought within 15 working days of the events causing the grievance. The Mayor or supervisor shall respond to the employee in writing within 15 working days after receipt of the written grievance. If the employee is not satisfied with the response, he or she may appeal to the City Council within 15 working days.
(Prior Code, § 12:8:1)

(B) *Grievance defined.* The term **GRIEVANCE** means a complaint by a public employee or group of public employees based upon an alleged violation, misinterpretation, or inequitable application of any existing agreements, contracts, ordinances, policies, or rules of the city as they apply to the conditions of employment.

(C) *Nonexisting agreements and the like.* Negotiations for, or a disagreement over, a nonexisting agreement, contract, ordinance, policy, or rule is not a grievance and is not subject to this section.

APPEALS AND HEARINGS

§ 39.150 APPEALS FROM APPLICATION PROCEDURE.

An applicant who believes he or she is not being treated fairly during the application process may appeal to the City Council, within 15 working days of the event giving cause to the complaint. The City Council shall hear the complaint and render a decision within 15 working days of receipt of the complaint. If the decision of the City Council results in a change in the standing of the applicant and the position has not been filled, the applicant shall be interviewed for the position.
(Prior Code, § 12:9:1)

§ 39.151 APPEALS FROM DISMISSAL, DEMOTION, SUSPENSION OR REDUCTION IN PAY OR GRIEVANCE.

A permanent employee may appeal to the City Council from any discipline, dismissal or grievance.
(Prior Code, § 12:9:2)

§ 39.152 EMPLOYEE TO GIVE NOTICE OF APPEAL.

The employee shall give notice of appeal to the City Council, in writing, within 15 working days of the action appealed. An appeal to the City Council shall detail the nature of the appeal and the remedy sought.
(Prior Code, § 12:9:3)

§ 39.153 NOTICE OF HEARING.

Notice of the time and place set for hearing shall be given promptly by the City Council to the employee at least eight working days prior to the hearing.
(Prior Code, § 12:9:4)

§ 39.154 HEARING.

Hearings on appeals may be closed to the public upon good cause shown. If the employee fails to appear in person or by counsel at the time and place set for hearing, he or she shall be presumed to have waived his or her right to further hearing and the City Council may dismiss or act on the appeal. The City Council may reschedule the hearing upon presentation by the employee or counsel of written evidence of extenuating circumstances which prevented the appearance of the employee.
(Prior Code, § 12:9:5)

§ 39.155 REPRESENTATION.

(A) Any employee may be represented by legal counsel or other representation at the employee's expense.

(B) The city may be represented by counsel.
(Prior Code, § 12:9:6)

§ 39.156 CONDUCT OF HEARINGS.

The Mayor may appoint a hearing examiner for the purpose of ruling on evidentiary questions and motions raised by the parties. Otherwise, the Mayor shall conduct the hearings on appeal.
(Prior Code, § 12:9:7)

SENIORITY

§ 39.170 SENIORITY.

Seniority of an employee is to be established by computing the amount of continuous service, including vacation, sick leave and leave of absence with pay taken since the date of employment. Leave without pay will not be considered in the computation of seniority, except when an employee is called to active military duty. Any and all seniority privileges are forfeited by the resignation or dismissal of an employee. Seniority shall be considered but is not controlling for promotional purposes, in determining priority of selection of time for annual vacations and in other situations as deemed advisable by the City Council.

(Prior Code, § 12:10:1)

PERSONNEL RECORDS

§ 39.185 PERSONNEL RECORDS.

(A) A personnel history file shall be kept for every employee. Information contained in this file include the employee's background, family, education, employment experience and performance appraisals. The file shall also contain the employee's original application and interview. A record of the employee's subsequent change of status shall also be noted (e.g., salary increases, promotions and the like). Finally, a record of the employee's sick leave, vacation leave, military leave and the like, shall be kept current. Records shall be accessible only to the individual employee, the department head, the City Finance Officer and the City Council. The employee's file is open to inspection by the employee during business hours provided the employee does not neglect his or her duties while inspecting the employee's personal file.

(B) The City Finance Officer is responsible for seeing that required forms are completed and submitted to the Council and that changes of personnel status are reported immediately.
(Prior Code, § 12:11:1)

§ 39.186 REFERENCES AND RECOMMENDATIONS.

Requests for information concerning former and current employees by prospective employers or any other person will be considered only if made in writing. All responses to written request for references or recommendations concerning former or current employees must be in writing and signed by the Mayor.

(Prior Code, § 12:11:2) (Ord. 2036, passed 6-3-1991)

TRAVEL

§ 39.200 TRAVEL.

Expenses for out of city travel will be reimbursed in accordance with current regulations on file with the City Finance Officer. All out of city travel must be authorized by the City Council prior to the trip being taken. Vouchers will be completed by the employee and submitted to the City Council for approval with the appropriate signature affixed. In cases of extreme emergency, when approval may be given by the Mayor and Council member in charge, travel shall be scheduled in a manner most economical to the city.

(Prior Code, § 12:13:1) (Ord. passed 3-9-1990)

§ 39.201 REIMBURSEMENT.

Reimbursement will be made according to the schedule in the City Finance Officer's office.
(Prior Code, § 12:13:2) (Ord. passed 3-9-1990)

§ 39.202 ADVANCE PAYMENT.

Eighty percent of the total cost of room, transportation and meals may be obtained one day in advance of travel, by presenting a signed voucher to the City Finance Officer.
(Prior Code, § 12:13:3) (Ord. passed 3-9-1990)

