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TITLE 4

PERSONNEL REGULATIONS AND BENEFITS

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## **Chapter 4-01 DEFINITIONS, COVERAGE AND SCOPE OF TITLE**

### **Section 4-01-01 Definition of terms.**

The following terms in this title shall have the following meaning unless the context clearly indicates otherwise:

"Allocation" means the assignment of a position to an appropriate class on the basis of the kind, difficulty and responsibility of the work actually performed in the position.

"Appointing authority" means the department head, or with respect to department heads, the board of city commissioners.

"Beneficiary" means any person in receipt of the benefit provided by the city employee pension plan or any person designated by a participating member of the plan to receive benefits.

"Benefits" means benefits offered by the city to its eligible employees, including hospitalization insurance, workers compensation coverage, unemployment compensation, leave and participation in the city employee pension plan.

"Board" means the board of city commissioners.

"Classification" means grouping positions which are substantially similar in duties and responsibilities into classes.

"Class of positions" means a group of one or more positions sufficiently similar in duties, authority and responsibility to justify the positions in the class, and the same class title, qualifications and schedule of pay to all positions in the group.

"Commission" means the civil service commission.

"Compensation" means the actual dollars paid to an employee or participant in the pension plan for his services.

"Demotion" means a change in status from a position in one class to a position in another class having a lower rank, lesser duties or responsibilities or lower maximum salary.

"Department head" means a person appointed by the board of city commissioners and classified as the head of a department pursuant to the city classification schedule.

"Disability" means a physical or mental condition which in the judgment of the appointing authority, based on medical reports and other evidence satisfactory to the appointing authority, presumably permanently prevents the employee from satisfactorily performing his usual duties for the city or the duties of such other positions or jobs which the city makes available to him and for which such employee is qualified by reason of his training, education or experience.

"Eligible" means a person whose name is on an original entrance, promotional or re-employment register for a specific class.

"Employee" means any person employed by the city of Mandan.

"Employee contribution account" means the account maintained by the trustee of the employee pension plan for the participant to record his contributions and adjustments relating thereto.

"Employer contribution account" means the account maintained by the trustee of the employee pension plan for the participant to record the contributions of the city and adjustments relating thereto.

"Examination" means employment applications, written or oral tests, background investigations, oral interviews, fitness tests, or any other device used to determine the fitness or qualifications of applicants for a position.

"Forfeiture" means that portion of the participant's employer contribution account which is forfeited because of termination of employment before full vesting.

"Former participant" means a participant whose employment with the city has terminated but who has a vested account balance under the employee pension plan which has not been paid in full and, therefore, continues to participate in the allocation of trust fund income.

"Full-time employee" means any employee employed for forty hours per week or more, and whose retention following a probationary period is approved by the appointing authority. Employees employed for a temporary period of less than one year are not considered full-time employees.

Gender. The masculine pronoun used in this title shall include the feminine.

"Income" means the net gain or loss of the trust fund from investments as reflected by interest payments, dividends, realized and unrealized gains and losses on securities, other investment transactions and expenses paid from the trust fund.

"Participant" means an employee participation in the employee pension plan in accordance with the resolutions of this title.

"Part-time employee" means any employee employed for less than forty hours per week or for a temporary period of less than one year. Part-time employees are not covered by the provisions of this title and may be terminated at will.

"Position" means any office and place of employment where the duties and responsibilities appertaining thereto are exercised by one person.

"Prior service" means service or employment with the city prior to the effective date of the creation of the employee pension plan.

"Prior service credit" means such credit towards retirement benefits and vesting as determined by the employee pension plan.

"Probationary period" means a working test period during which the appointing authority is required to note the work and conduct of all new employees and determine whether they merit permanent appointments.

"Promotion" means a change in status from a position in one class to a position in another class having a higher rank, greater duties or responsibilities or a higher maximum salary.

"Register" means a list of eligibleø for a specific class within the city's civil service system.

"Regular part-time employee" means any employee employed for more than twenty-one hours but less than forty or more hours per week for a continuous period of twelve or more months.

"Salary plan" means the schedules of pay for each class of positions in the city's classification plan, showing minimum and maximum salary rates.

"Seasonal administrative employee" means an employee who is responsible for the administrative functioning of seasonal activities.

"Temporary employee" means any part-time or full-time employee whose duration of employment is limited to a period of need not to exceed one year. Temporary employees are not covered by the provisions of this title and may be terminated at will.

"Transfer" means a change of an employee from one position to another position in the same or another class having essentially the same rank, duties, responsibilities, and same maximum salary rate. Provided, that an employee may request a transfer to a position with a lower maximum salary rate subject to his meeting the qualifications for the position.

"Trustee" means the corporation appointed by the board to administer the employee pension plan.

"Trust fund" means the fund maintained in accordance with the terms of a trust agreement, as from time to time amended, which supplements the employee pension plan.

"Valuation date" means the last day of each year or the date on which special valuation is made relating to the employee pension plan.

*Source: Amended during 1994 codification; Ord. 737 §1 (part), (1988); MCC 16-01-01 (1979)*

#### **Section 4-01-02 Employees covered--Exceptions.**

All full-time, regular part-time and seasonal administrative employees, appointive employees and department heads of the city are included in, and come under the provisions of this title except:

1. Elected officers and officials;
2. Members and employees of commissions and board appointed by the board of city commissioners;
3. Part-time employees, temporary employees, or other employees who have not been in continuous employment of the city for a period of more than one year;
4. Persons retained by or employed to perform professional services under contract with or appointment by the city;
5. Volunteers appointed to serve without salary or other compensation, except per diem or other reasonable expenses.

*Source: Amended during 1994 codification; Ord. 737 §1 (part), (1988); MCC 16-01-02 (1979)*

#### **Section 4-01-03 Scope of title.**

The rules and regulations provided for by this title shall cover the following:

1. Preparation, installation and maintenance of the classification plan covering all positions in the civil service system;
2. Establishment of procedures governing the public announcement of vacancies and competitive examinations and application for employment;
3. Selection and/or preparation of examinations and the development of other techniques designed to assist in passing on the qualification of applicants for original appointment to, or promotion within, city departments;
4. Establishment of original entrance, promotional and reemployment lists containing the names of eligibleø;
5. Certification and appointment of eligibleø to fill vacancies;
6. Provision for a probationary period;
7. Promotion from a position of lesser to one of greater responsibility;
8. Demotion from a position of greater to one of lesser responsibility;
9. Transfer from a position in one department to a position in the same class in another department;
10. Standardization of hours to work;
11. Attendance and leave regulations;
12. Establishment, installation and maintenance of a performance appraisal system;
13. Establishment, installation and maintenance of employee health and welfare programs;
14. Termination of the service of employees including layoffs due to lack of work or funds, suspension for disciplinary purposes and dismissals for just cause;
15. Certification of payrolls;
16. Preparation, installation and maintenance of necessary personnel records and forms;
17. Establishment of procedures governing the city employee pension plan.

*Source: Amended during 1994 codification; Ord. 737 §1 (part), (1988); MCC 16-01-03 (1979)*

#### **Section 4-01-04 Nonguaranty of employment--Amendments to title.**

Nothing contained in this title shall be construed as a contract of employment between the city and any employee, or as a right of any employee to be continued in the employment of the city, or as a limitation of the right of the city to discharge its employees with or without cause. The board of city commissioners may amend this title at any time, provided that the laws pertaining to the enactment and amendment of ordinances are followed.

*Source: Amended during 1994 codification; Ord. 737 §1 (part), (1988); MCC 16-01-04 (1979)*

#### **Section 4-01-05 Application of Fair Labor Standards Act.**

All employees are covered by the Fair Labor Standards Act which includes provisions governing minimum and maximum ages, minimum wages, requirements for overtime for exempt and nonexempt positions and other work-related requirements. Notwithstanding any provision herein, if any section or part of this title is in conflict with the minimum requirements of the Fair Labor Standards Act, the laws of the state or federal government, or any agency thereof, said Act, state or federal law or rule shall supersede the provisions of this title.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-01-05 (1979)*

**Section 4-01-06**      **Application of title in times of state and national emergency, military mobilization of war.**

Whenever a job vacancy is caused by the declaration of state or national emergency, military mobilization or the declaration of war, the provisions of this title shall not apply and the position may be filled or reclassified on a case-by-case basis as recommended by the civil service commission and approved by the board.

*Source: Amended during 1994 codification; Ord. 776 §1, (1991); Ord. 737 § 1 (part), (1988); MCC 16-01-06 (1979)*

**Section 4-01-07**      **Application of Americans With Disabilities Act.**

All employees and applicants for employment are covered by the Americans With Disabilities Act which includes provisions to eliminate artificial impediments to the employment and advancement of disabled workers by striving to remove barriers to employment, whether physical, social, or arising from misconceptions concerning the abilities of disabled persons. Notwithstanding any provision herein, if any section or part of this title is in conflict with the minimum requirements of the Americans With Disabilities Act, the laws of the state and federal government, or any agency thereof, said Act, state or federal law or rule shall supersede the provisions of this title.

*Source: Amended during 1994 codification; Ord. 801 § 1, (1992); MCC 16-01-07 (1979)*

**Chapter 4-02 CIVIL SERVICE COMMISSION**

**Section 4-02-01**      **Creation.**

There is created for the city a civil service commission of three members to be appointed by the board of city commissioners, on recommendation of the mayor, for a term of five years. At the time of the creation of the commission the members shall be appointed to fill terms of one year, three years and five years and thereafter at the completion of the one-year and three-year terms, the appointment shall be for a term of five years. Any vacancy on the commission shall be filled by the same process of appointment for the balance of the unexpired term.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-02-01 (1979)*

**Section 4-02-02**      **Organization.**

The civil service commissioners shall meet and organize as a commission fifteen days after their appointment, and shall hold regular meetings at least every third month. They shall hold such other meetings as may be necessary or when called by the personnel director for special business. The commission shall elect its own chairman and vice-chairman each year in January. Two members of the commission shall constitute a quorum for the transaction of official business. A member of the civil service commission shall be deemed to have automatically resigned should the member have missed three consecutive meetings.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-02-02 (1979)*

**Section 4-02-03**      **Salary of civil service commissioners.**

The salary of civil service commissioners shall be fixed by resolution of the board of city commissioners.

*Source: Amended during 1994 codification; Ord. 737 1 (part), 1988; MCC 16-02-03 (1979); Ord. 869 (2/3/98)*

#### **Section 4-02-04 Duties of civil service commission.**

The duties of the commission shall be as follows:

1. To recommend such rules and regulations as may be necessary and proper to implement the intent and purposes of this title. These rules shall be submitted for adoption by ordinance of the board of city commissioners, and upon adoption shall have the full force and effect of law. Amendments to the rules shall be made in accordance with the same procedure. Provided, that the commission shall be empowered to put into effect any necessary details to carry out the general rules and regulations adopted by the board;
2. To make investigations, either on complaint or on its own motion, concerning any matters relating to the administration of the civil service system, and otherwise to represent the public and the city interest in the improvement of personnel administration and the protection of the merit principle;
3. To hear appeals on disciplinary matters as specified in this title;
4. To make an annual report to the Board on activities of the commission, together with any special analysis or reports requested by the board or the mayor;
5. To perform such other duties relating to personnel administration of the city, not inconsistent with this title, as the board may require by ordinance.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-02-04 (1979)*

#### **Section 4-02-05 Personnel director.**

The city auditor shall serve as the personnel director responsible for the administration of the provisions of this title and is accountable to the civil service commission for all duties relating to the administration of the civil service system. It shall be the duty of the personnel director to maintain a record of the official proceedings of the commission. He shall present to the commission all matters arising in the course of administration which require consideration by the commission and shall do such other tasks as the commission may direct or the circumstances indicate as necessary and proper in order to facilitate and implement the actions of the commission within the scope of its powers and duties.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-02-05 (1979)*

#### **Section 4-02-06 Forms and records.**

The commission shall develop and implement the appropriate forms and records for the various personnel activities. Every appointment, transfer, promotion, demotion, suspension, dismissal, change of salary rate, and other temporary or permanent change in status of employees under the civil service system must be reported to the personnel director on such forms as the commission may prescribe.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-02-06 (1979)*

#### **Section 4-02-07 Annual review of civil service system.**

The commission shall meet at least once a year with the finance committee of the board, the department heads and an employees' committee consisting of one representative from each department, selected by the employees of each department, and at such other times as may be deemed necessary for the purpose of reviewing the civil service system, amendments to rules and regulations, improvement to employer-employee relations and any other matters related to the

civil service system. The department heads and employee representatives shall submit one week in advance of the meeting and in writing to the personnel director the recommendations and suggestions to be reviewed. Following the employees' meeting, the commission shall present their recommendations to the board. Amendments to this title or the rules and regulations of the commission may be adopted by the board in accordance with the regular procedure for enactment of ordinances.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-02-07 (1979)*

## **Chapter 4-03 GENERAL PROVISIONS**

### **Section 4-03-01 Political activity.**

1. An employee may not engage in political activities while on duty or in uniform. However, nothing in this section shall prevent any employee from becoming or continuing to be a member or officer of a political club or organization, from attendance at a political meeting, from contributing to or otherwise supporting candidates of his or her choice, or otherwise engaging in political activities while off duty, or from enjoying entire freedom from all interference in casting his or her vote or favoring candidates.

2. For the purposes of this section, "political activities" means those activities defined in Section 39-01-04 of the North Dakota Century Code.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-01 (1979)*

### **Section 4-03-02 Prohibition of discrimination.**

An employee or applicant for employment may not be appointed, promoted, demoted, dismissed, or in any way favored or discriminated against on the basis of race, color, religion, sex, national origin, age, physical or mental handicap or status with regard to marriage or public assistance.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-02 (1979)*

### **Section 4-03-03 Prohibition of corruption and fraud.**

A person may not willfully make any false statement, certificate, mark rating or report in regard to any test, certificate or appointment held or made under the civil service system or in any manner commit or attempt to commit any fraud preventing the impartial execution of the personnel rules or the provisions of this title. A person seeking employment or promotion may not either directly or indirectly give, tender or pay any money, service or other valuable consideration to any person for or on account of or in connection with a test, proposed appointment, promotion or proposed promotion. Provided, however, that nothing in this title shall prohibit persons from securing such employment through duly licensed employment agencies, and paying reasonable fees therefore.

1. The City of Mandan is committed to protecting its revenue, property, information and other assets from any attempt, either by members of the public, contractors, sub-contractors, agents, intermediaries or employees of the City.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-03 (1979)*

### **Section 4-03-04 Prohibition of private work--Exceptions.**

No department head may authorize or provide, nor may any employee perform any work on behalf of any private business, organization or individual during working hours, nor may any

city equipment or service be provided or utilized on behalf of same even though the work is performed outside of regular working hours. The board of city commissioners may by resolution approve exceptions to this general rule if the work to be performed meets any of the following criteria:

1. There is an emergency situation or exigent circumstances and the portfolio commissioner has been consulted and given prior approval.
2. The work is being performed at the request and on behalf of another public subdivision.
3. The work is being performed at the request and on behalf of a nonprofit association.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-04 (1979)*

#### **Section 4-03-05**      **Membership in organizations.**

No employee may be denied the right to be a member of an organization of employees or be intimidated or coerced in a decision to communicate or affiliate with such an organization. Employees have the right to request payroll deduction of dues for membership in an organization of employees if a minimum of five employees have requested the deduction.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-05 (1979)*

#### **Section 4-03-06**      **Residence requirements.**

Residence requirements for entrance to examinations or as a condition of appointment may be determined by resolution of the board of city commissioners.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-06 (1979)*

#### **Section 4-03-07**      **Nepotism.**

1. No head of any executive or administrative department either elected or appointed, nor any person which has a supervisory capacity within the city, shall hire, employ or appoint any person related by blood or marriage to any position under the control or direction of said department head or supervisor.

2. If two city employees, one having supervisory responsibilities with regard to the other, employed within the same department, marry, it is required that one or the other of them resign from his or her position with the city government. The person resigning will be eligible to have his or her name placed on the reemployment list for employment with one of the other city departments.

3. Any salaries or moneys paid out, in violation of this section, shall be deducted from the salary of the department head or supervisor.

4. Provisions of this section do not affect or bar continued employment or promotion of those relatives, as herein enumerated, employed by the city as of October 19, 1982, the original effective date of the adoption of this rule.

5. For the purposes of this section, "related by blood" means spouse, child, parent, grandchild, grandparent, brother, sister, half-brother, half-sister, or the spouse of any of them. All relationships include those arising from adoption.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-07 (1979)*

#### **Section 4-03-08**      **Conflict of interest.**

1. An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his government employment whether on his behalf, or for private individuals, firms, companies, institutions, professional societies, or county or state governments. Incompatible activities include but are not limited to:

- a. Outside employment or activity, (including the acceptance of a fee, compensation, gift, payment of expenses or any other thing of monetary value) which may result in or create the appearance of a conflict of interest;
- b. Outside employment or activity which tends to impair the employee's mental or physical capacity to perform his government duties and responsibilities in an acceptable manner;
- c. Outside employment or activity that takes the employee's time and attention during his official working hours;
- d. Outside employment or activity which may be construed by the public to be official acts of the city, or of a nature closely paralleling the work of the city;
- e. Outside employment or activity which results in or creates the impression of a conflict of interest with the regulatory or enforcement responsibilities of the employee or the employee's department;
- f. Outside employment or activity which involves the use of information secured as the result of employment in the city and to the detriment of public service;
- g. Any outside employment or activity which may tend to bring criticism of, or cause embarrassment to, the city;
- h. Outside employment or activity which would involve the use by the employee of official facilities, e.g., office space, office machines, supplies, telephones, or the services of other employees.

2. An employee of the city may not receive remuneration in any form from any individual, business or corporation for services rendered while as an agent or employee of the city.

3. With the prior approval of the appointing authority, an employee of the city may hold outside employment or engage in other activities, provided that it does not conflict with other requirements of this title, or tend to create a conflict of interest, or an appearance of conflict of interest, between the private interest of an employee and the employee's official responsibilities. The employee's outside employment or activity shall not reflect discredit on the city.

4. The term "outside employment or activity" as used in this section does not include:

- a. Memberships in, or volunteer work with, charitable, religious, social, fraternal, recreational, public service, civic, political, or similar nonbusiness and nonprofit organizations;
- b. Memberships in professional organizations;
- c. Performance of duties in the Armed Forces, the Reserve or the National Guard; or
- d. Acting as an officer of an employee organization or union.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-03-08 (1979)*

**Section 4-03-09 Use of alcohol and drugs by employees prohibited.**

Consistent with the provisions of the Drug-Free Workplace Act, the purpose of this section is to provide a safe and healthy work environment and to have all employees report to work in a condition to perform their duties safely and efficiently. The presence of alcohol and/or drugs on the job, and the influence of these substances on employees during work hours are inconsistent with this objective and the city's responsibility to the community. For the purposes of this section, "illegal drug" means any drug which is not legally obtained and prescription drugs not prescribed for the employee.

1. The use, possession, distribution or sale of illegal drugs, including but not limited to marijuana, cocaine, crack, phencyclidine (PCP), heroin and hallucinogens, LSD, amphetamines, and other stimulants and barbiturates, and other depressants, during work hours, on city property is strictly prohibited, and employees who engage in these acts shall be subject to discharge. Any illegal drugs found on city property will be turned over to the appropriate law enforcement agency and may result in criminal prosecution.

2. Alcohol may not be brought onto city property, nor consumed during work hours, including meal time; violations of this policy will subject employees to discharge.

3. In the event of a city-sponsored or related activity on or off city property at which alcoholic beverages may be served or allowed, employees are expected to conduct themselves in such a manner so they do not represent a danger to themselves, to other employees, to the general public, or to the city's reputation. For any city-sponsored activity at which alcohol will be served or allowed the alcoholic beverages may only be dispensed by an alcoholic beverage licensee pursuant to a catering permit issued by the board.

4. Employees will not be permitted to work while under the influence of alcohol or with a detectable level of illegal drugs in their systems. Individuals who appear unfit for work will be subject to a fitness-for-duty examination. Violations of this fitness-for-duty policy will result in discharge.

5. Employees taking controlled substances, which may include prescription medications prescribed by a licensed physician, shall not be subject to discipline nor considered to be in violation of this section. Employees taking over-the-counter medications which could impact on vigilance, judgment, coordination or job performance, may also be compromising fitness-for-duty and should consult with their physician when in doubt. Instructions provided by the manufacturer on such over-the-counter medications should be followed.

6. Employees arrested, indicted or convicted off the job for alcohol or drug-related offenses raise a question as to compliance with city policy. In determining what action to take, the city will consider the nature of the charge, the circumstances of the arrest, the employee's record with the city, current job assignment, and the impact the arrest may have on other employees, the public, and the city's general reputation.

7. Contractors, vendors and suppliers will be expected to observe the city alcohol and drug policy and will be required to be fit for duty while on city property, in city vehicles, or on city assignment.

*Source: Amended during 1994 codification; Ord. 801 § 2, (1992); MCC 16-03-09 (1979)*

**Section 4-03-10 Sexual harassment prohibited--Policy required.**

Department heads and employees shall not engage in any activity constituting sexual harassment. Anyone engaging in activity constituting sexual harassment will be subject to disciplinary action, including demotion or dismissal. The board shall adopt a policy to prevent sexual harassment by education and training of all employees and to establish a procedure for processing complaints and investigations of sexual harassment.

*Source: Amended during 1994 codification; Ord. 801 § 3, (1992); MCC 16-03-10 (1979)*

## **Chapter 4-04 HIRING AND APPOINTMENT PROCEDURES**

### **Section 4-04-01 Public announcement of vacancies.**

The commission shall make public announcements of vacancies in positions in the civil service and the schedule of examinations for entrance into the classified service. Such announcements shall include posting notices in the city hall and publishing notices in at least one newspaper of general circulation or other places as is deemed advisable, such as professional publications. The announcements shall specify the title and salary range of the class for which the examination is announced; the nature of the work to be performed and the minimum qualifications required; the time, place and manner of making applications; the closing date for receiving applications; and any other pertinent information. Examinations and newspaper publication are not required for a temporary position, the duration of which does not exceed one year, provided the department head has received the written permission of the portfolio commissioner and has filed the written approval with the personnel director.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-01 (1979)*

### **Section 4-04-02 Application forms.**

Application for employment with the city shall be made on forms approved by the commission and provided by the city personnel director. Such forms shall require information covering training, experience, references, and other pertinent information, and may include a photograph and fingerprinting.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-02 (1979)*

### **Section 4-04-03 Disqualification and rejection of applications.**

The commission may reject any application if any of the following reasons exist:

1. The person is found to lack any of the preliminary requirements established for the class of position.
2. The person is so disabled as to be unable to perform essential job functions, for the position, with reasonable accommodation.
3. The person has been convicted of any felony or other crime involving moral turpitude within the previous ten years.
4. The person has made a false statement of material fact in application.
5. The person has previously been dismissed from any public service for delinquency, misconduct, or other similar cause.
6. The person has used or attempted to use political pressure or bribery to secure an advantage in the examination appointment.
7. The person has directly or indirectly obtained information regarding examinations to which an applicant is not entitled.
8. The person has failed to submit an application correctly or within the prescribed time limits.

9. The person has taken, without permission, part of the compilation, administration or correction of the examination.
10. The person is not a citizen of the United States of America.
11. The person has otherwise violated provisions of these regulations.
12. The person cannot be located by postal authorities.
13. The person declines an appointment or states that he no longer desires consideration for a position with the city.

Whenever an application is rejected, notice of such action with a statement of the reason shall be mailed to the applicant.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-03 (1979)*

#### **Section 4-04-04 Competitive examinations.**

1. The relative fitness of applicants for appointment to or promotion within the civil service system must be determined by competitive examinations. The personnel director may conduct the examination; or the city may contract with the governing body of any other municipality or with any state department or other agency or person for the holding of competitive examinations. Examinations may consist of written applications; written or oral tests, including personal interview; or any combination thereof; and may include consideration and rating of any or all of the following qualification factors: education, training, experience, general adaptability, special aptitudes, physical fitness as determined by physical tests and medical examination, knowledge, skill, personality, character and such other qualifications as may be deemed necessary by the appointing authority and the commission for the satisfactory performance of the duties of the respective position.

2. The personnel director shall see that competitive examinations are administered in a manner to give all applicants equal opportunity to demonstrate their fitness. In order to avoid the possibility of discrimination, the identity of applicants will be concealed in all written examinations. The commission may require applicants to submit proof of their age, citizenship, and military service at the time of application or examination and shall keep a record of this information.

3. Competitive examinations shall be open to all applicants who meet the standards or requirements fixed by the commission with regard to residence, experience, character, age, education, physical condition and such other factors as may be held to be related to the ability of the applicant to perform with reasonable efficiency the duties of the position.

4. Promotional examinations may be limited to a single department. Competitive examinations shall take into consideration the quality of employment of the individual in the civil service system.

5. Present employees will be given first consideration when filling vacancies. When this becomes impractical, any person with the required abilities will be considered.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-04 (1979)*

#### **Section 4-04-05 Methods of rating.**

Sound measurement techniques and procedures shall be used in rating the results of tests and determining the eligibility of the applicants for employment and promotion. In all written examinations the minimum rating by which eligibility may be achieved shall be established by the commission prior to the administration of the examinations and filed with the personnel director. Applicants may be required to attain at least a minimum rating on each part of the test

in order to receive a passing grade or to be rated on the remaining parts of the test. The final earned rating of the applicant shall be determined by computing the earned rating on each part of the examination. Each person who takes a written examination shall be given written notice as to whether he passed or failed the examination.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-05 (1979)*

#### **Section 4-04-06 Ranking of applicants.**

On the basis of ratings obtained in the competitive examinations, applicants must be ranked in the relative order of their final earned rating. In case two or more applicants obtain the same or equivalent final earned rating, applicants shall be given preference and ranked ahead of other applicants obtaining the same or equivalent final earned rating in the following order:

1. Full-time employees of the city;
2. Former employees who held a position in the civil service system who were laid off without cause or who resigned in good standing within the previous twelve months;
3. Part-time or provisional employees of the city employed continuously for a period of three months or more;
4. Other applicants.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-06 (1979)*

#### **Section 4-04-07 Veterans' preference.**

Notwithstanding the provisions of Section 4-04-06, veterans who are North Dakota residents shall be entitled to preference, over all other applicants for original employment examinations, pursuant to NDCC 37-19.1-02, as follows:

1. No distinction or discrimination may be made in the administration of an examination because the applicant may be a veteran. Upon completion of an examination with a passing grade, the applicant must be informed of a veteran's right to employment preference. The applicant shall be required to furnish proof of his status as a veteran and, if disabled, proof of disability. Proof of eligibility for veterans' preference shall be provided in the form of a certified copy of his discharge papers, or other satisfactory evidence of honorable discharge.

2. Upon receipt of required proof, five percentage points must be added to the examination grade of a nondisabled veteran and ten percentage points shall be added to the examination grade of a disabled veteran.

3. Upon request for certification of eligible persons to employment pursuant to Section 4-04-08, such persons must be identified as veterans, disabled veterans or nonveterans.

4. In the event the certified list of eligible persons includes veterans, the selection must be made as follows:

a. A disabled veteran, without regard to examination grade, shall first be entitled to the position and, in the absence of justifiable cause, documented in writing, for not making such selection, shall be appointed.

b. If the list does not include disabled veterans and includes only veterans, then the one with the highest rating shall first be entitled to the position and, in the absence of justifiable cause, documented in writing, shall be appointed.

c. If the list includes both veterans and nonveterans, but not disabled veterans, the one with the highest rating, whether veteran or nonveteran, shall be entitled to the position, and in the absence of justifiable cause, documented in writing, shall be appointed.

5. The provisions of this section do not apply to the appointment of a chief deputy, assistant department head, or private secretary of an elected or appointed official.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-07 (1979)*

#### **Section 4-04-08      Employment registers.**

1.      Eligible Register--Original Employment. The commission shall establish and maintain such eligible registers for various classes of positions subject thereto as it deems necessary or desirable to meet the needs of the civil service system. Qualified applicants may be placed on the register in the order of the rating as established by the commission.

2.      Re-Employment Register. An employee who has resigned in good standing may request to have his name placed on a re-employment register in the classification formerly held, subject to approval or disapproval of the appointing authority, provided that the employee presents his request in writing to the commission prior to the date that his resignation becomes effective. The ranking of the individual on the register shall be in the order of the length of service with the city. Any individual whose re-employment eligibility expires, or who fails to request re-employment eligibility within the specified time period, shall be treated as a new applicant.

3.      Promotional Register. The commission shall establish and maintain such promotional registers as it deems necessary and desirable to meet the needs of the civil service system. On each promotional register, the eligibleø shall be ranked in the order of their ratings earned in the tests given for this purpose. In the case of ties in the final ratings of eligibleø on the promotional register, all other factors being equal, seniority shall prevail. An employee appointed from a promotional register who does not successfully complete his probationary period shall be reinstated to the former position in the class occupied by the employee immediately prior to his promotion if said position is available.

4.      Duration of Employment Registers. All registers shall be open and continuous and shall be supplemented from time to time as the needs of the civil service system require; however, any applicant who is placed on the register and is not selected for a period of one year shall be dropped from the register. Provided that the commission may, before the expiration of the register, extend the time during which such register shall remain in force when the needs of the civil service system so require. In no event shall the total period during which an individual remains on the register exceed two years from the date on which he was originally placed on the register.

5.      Removal From the Registers. The name of any person appearing on a register shall be removed by the commission if the individual requests in writing that his name be removed or if he cannot be located by ordinary means within five days following the date of notification, except for employees on approved leave. The name of an individual may be removed if the eligible has waived appointment twice in the same class of positions. Any cause specified in this Chapter for rejection of applications may likewise be cause for the removal of the name from the eligible register on which it appears.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-08 (1979)*

#### **Section 4-04-09      Appointment procedure.**

1.      Requisition. Whenever a vacancy occurs, the appointing authority shall notify the personnel director giving pertinent facts relative to the duties, responsibilities and qualification requirements of the position which is to be filled. The appointing authority shall request the commission to certify the names of the individuals on the appropriate register for his final selection and appointment, provided that the appropriate register has been established.

2. Priority of the Registers. The employments registers will be used by the commission in the following order: (1) Re-employment, (2) Promotion, (3) Eligible.

3. Certification. Upon receipt of the appointing authority's request for certification, the commission shall immediately furnish him the names and addresses of the individuals having the three highest standings on the register. These names shall be certified in alphabetical order. Whenever there is more than one vacancy in the same class, in the same department for which the appointing authority requests certification, the number of names to be certified in the foregoing procedures shall be increased by the number of additional vacancies. Three names must be certified, this shall be in order of the priority established by the provisions of this chapter. If less than the required number of names are on one register, additional names will be certified from the next register. Promotional registers will be ranked in numerical order and the commission will certify to the appointing authority only the person standing the highest on the proper register.

4. Exception. This section does not apply to recruitment and appointment of department heads.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-09 (1979)*

#### **Section 4-04-10 Transfers.**

Transfers may be made by the appointing authority to fill vacancies whenever deemed necessary to meet the needs of the city or when requested by an employee, provided that such transfers are in the proper class. Transfers may also be made by the appointing authority to adjust personnel within or between departments, provided that such transfers are in the proper class or the employee has requested transfer to a position with a lower maximum salary rate. All transfers are subject to approval by the commission. Transfers shall be given preference ahead of re-employment, promotion or eligible employment.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-10 (1979)*

#### **Section 4-04-11 Appointments.**

1. Probationary. After appointment, the appointing authority shall immediately notify the commission of the person or persons appointed. If the applicant accepts the appointment and presents himself for duty within such period of time as the appointing authority shall prescribe, he shall be deemed to receive a probational appointment, otherwise he shall be deemed to have declined the appointment.

2. Temporary. Temporary appointments for short-term employments may be made when necessary. If no register exists or if certification from registers is impracticable because of nonavailability of eligible persons for temporary work, a temporary appointment of an individual to be designated by the appointing authority may be made. Successive appointments of the same person to the same position shall not total more than one year. The acceptance or refusal by an eligible of a temporary appointment shall not affect his standing on the register.

3. Emergency. When an emergency makes it impossible to fill a position in the competitive service, the appointing authority may appoint any person to such position in order to prevent stoppage of public business or loss or serious inconvenience to the public. Any such person shall be employed only during such emergency and for a period not exceeding three days. A vacancy of which the appointing authority has had a reasonable notice, or an employment condition of which he had or might with due diligence have had previous

knowledge, shall not be considered an emergency under this section. Emergency appointments shall be reported immediately to the board and to the commission.

4. Provisional Appointments. If necessary to prevent the stoppage of public business or inconvenience to the public, but not otherwise, provisional appointments of persons not on the eligible list may be approved by the appointing authority in the event that no appropriate eligible list has been prepared for the position or that those on the eligible list are not immediately available. Provisional appointments may be made for a term of no longer than three months. Pension rights or civil service benefits may not be given for service rendered under the provisional appointment.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-04-11 (1979)*

#### **Section 4-04-12 Fingerprinting and Criminal History Records of Applicants.**

1. Each applicant for a job with any department of the city, may be required to provide two sets of fingerprints with the application form. A determination of whether the applicants for a job position will be required to provide fingerprints for the purpose of conducting a criminal history background check will be made by the appointing authority in consultation with the city administrator. The fingerprinting shall be done by the city's police department or for applicants living outside the city by any police department or sheriffs office, which shall certify the training and qualification of the officer or deputy performing the fingerprinting service. The city may charge the applicant a reasonable fee to offset the cost of fingerprinting and fees charged by the bureau of criminal investigation for criminal history information.

2. The city may submit these fingerprints to the bureau of criminal investigation for nationwide criminal history record information that includes resubmission of the fingerprints by the bureau of criminal investigation to the federal bureau of investigation. Federal bureau of investigation criminal history record information obtained by the city is confidential. For a request for nationwide criminal history record information made by the city under this section, the bureau of criminal investigation is the sole source to receive fingerprint.

*Source: Ord. 971 (10/21/03)*

### **Chapter 4-05 CONDITIONS OF EMPLOYMENT**

#### **Section 4-05-01 Probationary period.**

1. Objective. The probationary or working period shall be regarded as an integral part of the examination process and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to his position, and for rejecting any employee whose performance does not meet the required work standards.

2. Duration. Every person appointed to a regular position, including those appointed from the re-employment register, and those receiving a different classification, shall be required to complete successfully, a working test during a probationary period which shall be of sufficient length to enable the appointing authority to observe the employee's ability to perform the various principal duties pertaining to the position. Except as provided herein, the working test or probationary period shall begin immediately upon appointment, and shall continue for a period of six months. The working test or probationary period shall continue for one year for full-time employees of the fire department and for sworn officers in the police department. The probationary period for a sworn officer shall begin immediately after his certification or licensure. Provided that, if the appointing authority requests an extension, the commission may

approve the extension of the probationary period up to a total of eighteen months from the date the probation started. No period of employment under an appointment, temporary in character, whether temporary, provisional or emergency, shall be counted as part of the working test or probationary period.

3. Dismissal. At any time during the probationary period the appointing authority may remove an employee, if in his opinion the working test indicates that such employee is unable or unwilling to perform the duties of the position satisfactorily, or that his habits and dependability do not merit his continuance in the service. Upon such removal the appointing authority shall forthwith report in writing to the commission and to the employee removed, his action and reasons therefore, but no right to review of any kind shall be given to the employee, provided that the commission may cause the name of the individual to be reinstated to its position on the register. No more than three employees shall be removed successively from the same position during their probationary period without the approval of the commission. An employee who is found to have been appointed through fraud or error shall be removed within ten days of notification to this effect by the appointing authority.

4. Probationary Period Reports. At the end of every three months during the probationary period, the appointing authority shall submit to the commission a rating of the probationary employee's performance on a form prepared or approved by the commission. At least ten days prior to the expiration of an employee's probationary period, the appointing authority shall notify the commission in writing that the services of the employee have been satisfactory and that he will be retained in the position, or file a request for an extension of the probationary period or file a written notice of dismissal. Failure to file such a report shall automatically extend the probationary period until such report has been filed, but shall not adversely affect the status of the employee as to the date of completion if the late filing was through no fault of the employee.

5. Restoration of Dismissed Employee to Appropriate Register. If an employee is removed from his position during or at the end of his probationary period and the commission determines that he is suitable for appointment to another position, his name may be restored to the register from which it was certified.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-01 (1979)*

#### **Section 4-05-02 Employee rating.**

The commission shall prepare, install and maintain a system of service ratings whereby the appointing authority reports on the performance of all employees in the city's civil service system. Such reports shall be made a part of the procedures dealing with promotion, demotion, salary advancement, and other changes in employee status.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-02 (1979)*

#### **Section 4-05-03 Work conditions.**

The commission shall review working conditions and propose to the board of city commissioners programs designed to attract the best-qualified persons into the city's employment.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-03 (1979)*

#### **Section 4-05-04 Standard work week and time of work period.**

1. Civilian Personnel. The normal work period for employees shall consist of seven days beginning at 12:01 a.m. Sunday and ending at midnight the following Saturday. The workweek shall consist of forty hours.

2. Fire Department. The normal work period for fire fighters shall consist of nineteen days with the work time beginning at eight a.m. and ending at 7:59 a.m. for a twenty-four-hour period. The period shall consist of one hundred forty-four hours in the nineteen-day period.

3. Police Department.

a. The normal work period for a police patrol officer shall consist of twenty-eight days with the work time beginning at seven a.m. and ending at 6:59 a.m. for a twenty-four-hour period. The work period shall consist of one hundred sixty-eight hours in the twenty-eight-day period.

b. The normal work period for police officers who hold the rank of sergeant and above and who perform patrol duties, shall consist of fourteen days beginning at seven a.m. Sunday and ending at 6:59 a.m. the second following Sunday. The workweek shall consist of eighty-four hours for the police officers who hold the rank of sergeant and above and who perform patrol duties.

c. The normal work period for a police patrol officer, patrol supervisor and detective shall consist of twenty-eight days with the work time beginning at seven a.m. and ending at 6:59 a.m. for a twenty-four-hour period. The work period shall consist of one hundred sixty-eight hours in the twenty-eight-day period.

d. The normal work period for police department employees who perform work as dispatchers and employees who perform clerical and administrative duties, shall consist of seven days beginning at seven a.m. Sunday and ending at 6:59 a.m. the following Sunday. The workweek shall consist of forty hours.

*Source: Amended during 1994 codification; Ord. 778 § 1, (1991); Ord. 746 1, 1989; MCC 16-05-04 (1979)*

#### **Section 4-05-05 Modified workweek.**

With prior appointing authority approval, an employee may be required to work at other than usual working hours, or in excess of the standard workweek and specified work period, whenever necessary to fulfill the work requirements of the department or to facilitate the efficient use of equipment or personnel. An employee who works in excess of the standard workweek or specified work period will be compensated or provided the option of compensatory time in accordance with the provisions of this title.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-05 (1979)*

#### **Section 4-05-06 Substitution of work schedules.**

An employee may substitute scheduled work times with another employee if the substitution is voluntarily undertaken and agreed to by the employees and if prior approval of the department head is obtained. The hours worked by the substituting employee shall be excluded from any overtime calculation.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-06 (1979)*

**Section 4-05-07 Pay days.**

An employee will receive his pay on a biweekly basis on the Friday following the completion of the pay period.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC16-05-07 (1979)*

**Section 4-05-08 Coffee breaks.**

An employee may be allowed a fifteen-minute coffee break or rest period during each one-half shift period, subject to the work load requirements or emergency conditions within the department on any given day. The coffee break or rest period, if taken, must be scheduled near the middle of each one-half shift period whenever this is feasible. The appointing authority may promulgate other reasonable rules relating to coffee breaks or rest periods in order to promote the efficiency and public image of the department's operation.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-08 (1979)*

**Section 4-05-09 Absence records and reports.**

The personnel director shall maintain records of the absences of city employees. Each absence from duty of any employee, appointed official or department head must be reported biweekly by the administrative officer of each department to the personnel director on the prescribed forms.

*Source: Amended during 1994 codification; Ord. 746 § 2, (1989); Ord. 737 § 1 (part), (1988); MCC 16-05-09 (1979)*

**Section 4-05-10 Evaluation or appraisal of performance.**

It is the policy of the city to evaluate on a fair and equitable basis the performance of its employees. Appraisals must be done in accord with policies and procedures promulgated by the commission and without due regard to race, sex, age, national origin, religion, political affiliation, physical or mental handicap or status, marital status, or other nonmerit factor.

The commission will establish and carry out this policy by utilizing the appraisal system set forth in this section.

1. General purposes of the appraisal system are to:
  - a. Provide supervisors and employees with an opportunity to discuss work and related matters;
  - b. Inform employees as to how well they are performing their present duties and responsibilities and to offer suggestions, assistance and support in helping employees perform their job more effectively;
  - c. Encourage employees to evaluate their own performance, in terms of specific or general problems, work unit and individual objectives, and career goals and interests;
  - d. Provide meaningful data to administrators in making key personnel management decisions such as salary increases, transfers, promotions, layoffs and disciplinary actions;
  - e. Assist supervisors in recognizing employee capabilities, potential, interests and goals;

- f. Provide supervisors with an opportunity to sense cause of and problems in job satisfaction and morale among employees individually or as a group;
- g. Provide department heads with an opportunity to discuss with their portfolio commissioner the department's annual work plan, including goals and objectives as well as the personal and professional goals of the department head.

Through the proper use of this performance appraisal system, an increased and meaningful exchange of thoughts and ideas can occur between employees and supervisors and between department heads and the board of city commissioners.

2. The Appraiser. Each employee and department head covered by this title will be appraised by the person in the best position to do so. Normally, the appraiser will be the employee's immediate supervisor who has the responsibility for assigning, directing and reviewing the work of the employee. If, because of rotational assignments or other reasons, it is not clear to whom an employee reports, a decision will be made by the appointing authority as to whom is best able to appraise the employee based on actual observation.

Department heads will be appraised by their portfolio commissioner, one other city commissioner and the chairman of the civil service commission. Any city commissioner may provide input for the appraisal.

3. Who is Appraised. All full-time and regular part-time employees and department heads will be appraised.

4. Probationary Appraisal. An appraisal of performance will be made every three months prior to the conclusion of the probationary period. The appraisal will be geared to helping the new employee, and will allow sufficient time before the end of the probationary period for the appraiser to note improvements in performance. A final appraisal at the end of the probationary period will be made to provide the basis for retention or termination of the employee.

5. Frequency of Appraisal. Appraisals will be held once a year during the month of the hiring anniversary date for all employees who have completed the probationary period, unless the department head or personnel director schedules all appraisals for the same period of the year.

6. Appraisal Follow-up. A periodic discussion between the supervisor and the employee will be part of the formal appraisal system. This discussion will focus on progress the employee has made in improving performance in weak areas, where job assignments can be changed to better meet employee goals, where progress can be made in meeting work objectives, and other areas of interest or concern.

7. The Appraisal Form. A separate appraisal form will be completed for each employee. Every supervisor or appraiser should be thoroughly familiar with the form, the form's purposes and how to use it. A "performance appraisal guide" shall be prepared or approved by the commission and available for this purpose. It is important to the validity of the system that supervisors be:

- a. As objective as possible in completing appraisal forms; and
- b. Realistic in determining performance levels for individual performance.

8. Signatures. The employee and the appraiser will sign and date the form after they have made comments. They will again sign the form after they have reviewed and discussed the appraisal form together.

9. Higher-Level Review. After completion of the performance appraisal discussion between the appraiser and employee, there will be at least one further review of the completed performance appraisal form at a higher level of supervision or management, unless the appraisee is a department head.

10. Distribution of Employee Appraisal Form. After all levels of review have taken place, the employee will receive a copy of his or her appraisal, a copy will be retained internally within the department and a copy will be placed in the employee's personnel file.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-10 (1979)*

#### **Section 4-05-11 Employee training and development.**

It is the responsibility of each employee to acquire the training needed to adequately perform his job and to qualify for promotions as they occur. In order that employees may perform their work more efficiently and be able to qualify for positions of increasing difficulty and responsibility, the appointing authority and commission shall cooperate to promote a system of employee training. The appointing authority may encourage employees to take courses in night schools; suggest programs of supervisory and foremanship training; provide for necessary facilities to accommodate employee education; ensure the employees are informed on activities and functions of the various departments of the city government; promote employee training programs; encourage, counsel and advise employees about the possibilities of advancement in the city service; and suggest required additional training. Training of individual employees shall be conducted as needs require and the availability of training shall be provided all employees on an equitable basis.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-05-11 (1979)*

### **Chapter 4-06 CLASSIFICATION AND SALARY PLANS**

#### **Section 4-06-01 The classification plan.**

The classification plan, allocations of positions, class of positions and class specification, now established, shall remain in effect subject to amendments as hereinafter provided.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-01 (1979)*

#### **Section 4-06-02 Updating of classification plan.**

The classification plan shall be kept current. Revisions of class specifications and re-allocations of positions within the approved plan shall be made in the following manner:

1. The commission shall study the duties and responsibilities of each new position as it is created, allocate the position in the appropriate class, and shall be responsible for establishing class specifications.

2. Whenever a change is made in the duties and responsibilities of a position, involving the addition, subtraction or modification of such duties and responsibilities, such changes shall be reported to the commission, which shall investigate the position and, when appropriate, re-allocate it to the appropriate class.

3. When an employee is transferred permanently to another position, the commission shall investigate the duties of the new position to determine if the employee is still properly classified, and shall take the necessary action to ensure proper classification.

4. An employee, may, at any time, submit a written request to the commission for a review of the allocation of his position. This request must set forth the employee's reasons for the review. The decision of the commission shall be final.

5. The commission periodically shall check the classification of positions, and upon the basis of these investigations recommend such alterations or corrections to the overall classification plan as may be deemed necessary and desirable to the board for approval.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-02 (1979)*

#### **Section 4-06-03 Effect of re-allocation of positions.**

1. Any employee occupying a position re-allocated to a different class shall continue in the position only if he is eligible for and actually appointed to the position in the new class in accordance with the regulations governing promotion, transfer or demotion. Provided, that any employee whose position is so re-allocated may compete in any test held to fill the re-allocated positions, or, upon approval of the commission, he may attain status in the re-allocated position if he achieves a satisfactory grade on a noncompetitive test for fitness for the class to which the position was re-allocated.

2. If the incumbent of any position develops his position by the assumption of additional and progressively more difficult duties and responsibilities, so that it warrants a higher classification, a re-allocation of his position may be made, but in all such instances the effect of the re-allocation shall be as determined above.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-03 (1979)*

#### **Section 4-06-04 Use of class titles.**

The class title set forth in the classification plan shall be used to designate such positions in all official records, vouchers, payrolls and communications. No person shall be appointed to, or employed in, any position under class title, except temporarily, provisionally, or on an emergency basis, who has not been approved by the commission in the manner prescribed in Chapter 4-04 of this title.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-04 (1979)*

#### **Section 4-06-05 Job descriptions.**

Each appointing authority shall develop and maintain current clearly defined job descriptions for each employee, which shall be filed with the commission. Employees shall not be required to perform those duties that do not pertain to their job description without a change in the job description or a change in job classification. At no time will an employee be required to perform personal duties of another not related to city business.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-05 (1979)*

#### **Section 4-06-06 Age limits.**

The class specifications for positions in the civil service system may contain age limits as may be determined by the board of city commissioners, provided such limits are consistent with federal and state laws and regulations.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-06 (1979)*

#### **Section 4-06-07 Preparation of salary plan.**

A salary committee of the board of city commissioners shall meet with employees' representatives, after consultation with the department heads, and shall be responsible for the development of a uniform and equitable salary plan which shall consist of minimum and maximum rates of pay for each class of positions and such intermediate rates as they consider necessary or equitable. Salary ranges shall be linked directly to the position classification plan and shall be determined with due regard to ranges of pay for other classes, requisite qualifications, prevailing rates of pay in other public and private employment in the area, cost of living factors, the financial policy of the city, and other economic considerations. They may consult with the commission in the preparation of the salary plan.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-07 (1979)*

#### **Section 4-06-08      Adoption of salary plan.**

The proposed pay plan shall be submitted by the salary committee to the board for adoption. In increasing or decreasing items in the city budget, the board shall not increase or decrease any individual salary item but shall act solely with respect to classes of positions as established by the classification and salary plans. After adoption by the board, no positions shall be assigned a salary higher than the maximum or lower than the minimum salary provided for the class of position unless the salary schedule for the class is amended.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-08 (1979)*

#### **Section 4-06-09      Amendment.**

The salary committee shall submit to the board amendments to the salary plan when changes in responsibilities or work or classes, living costs, recruiting experience, prevailing rates of pay, the city's financial condition and policies, or other pertinent conditions warrant such action.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-06-09 (1979)*

#### **Section 4-06-10      Administration of salary plan.**

1.      Pay Rate. The minimum rate of pay for a class shall be paid upon appointment to the class. Appointment at a rate above the minimum may be paid if in the opinion of the appointing authority it is justified on the basis of exceptional qualifications of an eligible or a lack of available eligible~~s~~ at the minimum rate. Appointments above the minimum rate shall not be a rate above that paid to those presently employed in the same class and department for positions below the grade of foreman. If a former employee is re-employed in a class in which he was previously employed, the appointing authority may make an appointment at the same rate of pay which the employee had been receiving at the termination of his service.

2.      Total Remuneration. Any salary rate established for an employee shall represent the total remuneration for the employee, not including reimbursement for official travel. Except, as otherwise provided in this title, no employee shall receive pay from the city in addition to the salary authorized under the schedule provided in the salary plan for services rendered by him or which he may undertake or volunteer to perform. Provided, that any cost of living adjustment authorized by the board shall not be considered as additional pay. No reward, gift or other form of remuneration in addition to regular compensation shall be received from any source by employees for the performance of their duties. If a reward, gift or other form or remuneration is made available to any employee, it shall be credited to an employee's fund.

3. Pay for Part-Time Work. Whenever an employee works for a period less than the regularly scheduled number of hours a day, days a week, or weeks a month, the amount paid shall be proportionate to the time actually worked. The payment of a separate salary from two or more departments for duties performed in each is permissible if the total salary received is not in excess of the maximum rate of pay for the class.

4. Salary Increases. Subject to the level of municipal appropriations, and the approval of the board, step increases will be granted based upon a merit system. Appraisers will recommend, to the commission, employees for a step increase. The commission will in turn forward its list of employees recommended for step increases to the board for final approval. Salary increases approved by the board must meet the following criteria:

- a. No salary advancement shall be given an employee until the employee has successfully completed the probationary period with the exception of probationary employees who were laterally transferred.
- b. A two-step increase may be granted to an employee for exceptional performance.
- c. Increases shall be more difficult to obtain the higher the step an employee is in the classification grade.
- d. Employees who have been promoted or demoted shall not be eligible for a merit increase until six months after the action was taken.
- e. Employees in steps one or two of a classification, who meet performance expectations, are annually eligible to receive a salary increase.
- f. Salary increases beyond step 3 must be justified with performance that exceeds expectations and are classified as merit increases.

5. Salary Increases Due to Change in Status. If an employee is transferred, promoted or demoted, his rate of pay for the new position shall be determined as follows:

- a. The salary shall remain the same if the action is a transfer, except as described in subdivision b of this subsection. The salary shall be adjusted to the next higher dollar amount in the grade (or one step higher with department head and portfolio commissioner written approval) if the action is a promotion, or adjusted to a lower dollar amount if the action is a demotion. In promotions or transfers, if the rate of pay in the former class is less than the minimum rate established for the class of the new position, the rate of pay shall be advanced to the minimum rate of the new class. In demotions, if the rate of pay in the former is more than the maximum rate established for the class of the new position, the rate of pay shall be reduced to the maximum rate of the new class.
- b. If an employee requests a transfer to a position in a lower pay range and if he is qualified for that position, the salary shall be set commensurate with the employee's experience and qualifications.

6. Hourly and Daily Rates. The hourly and daily rates shall be determined by dividing the annual salary based on the current wage being paid, by the number of work hours/days in the year. All personnel, except those enumerated herein, shall be paid on the basis of an eight-hour day, forty-hour week, fifty-two-week year. The hourly and daily rates for police officers shall be based upon one hundred sixty-eight hours in a twenty-eight-day period and for fire department employees the basis shall be one hundred forty-four hours in a nineteen-day work period.

7. Overtime - Holiday - Call Out - Emergency Pay Rates.
- a. All personnel may be required to work by the appointing authority at other than usual working hours, in excess of the standard workweek or regularly scheduled weekly shift, whenever it is necessary to carry out the work of the department or to facilitate the efficient use of equipment or personnel. Work performed by employees in excess of the standard workweek or regularly scheduled weekly shift within the department will be compensated as provided in this subsection. The salaries of employees which are classified as "exempt" from the overtime provisions of the Fair Labor Standards Act contemplate and include all anticipated overtime work, and additional pay for overtime will not be made to these employees.
  - b. Additional hours over the standard workweek or period for the department shall be paid at a rate of one and one-half of the regular hourly salary. To determine the number of hours worked by an employee within a week or work period, time spent on vacation, personal days, sick and holiday leave will not be counted as time worked in calculating overtime. Compensatory leave and funeral leave will not be counted as time worked in the calculation of overtime. Authorized leave must be included in straight time pay for employees but is not included in calculating overtime pay.
  - c. Holiday pay will be paid to all employees required to work on a holiday at the rate of one and one-half of the regularly hourly salary. The holidays are on the dates specified in Section 4-07-02 and not when actually observed.
  - d. A nonexempt employee called to work, with supervisor approval during non-scheduled hours, will be paid as overtime with a minimum two hours paid.

*Source: Amended during 1994 codification; Ord. 801 § 5, (1992); Ord. 746 § 3, (1989); Ord. 737 § 1 (part), (1988); MCC 16-06-10 (1979); Ord. No. 831 §1 (12/20/94); Ord. 1043 §6 (9/2/08); Ord. 1050 §7 (2/3/09)*

## **Chapter 4-07 EMPLOYEE BENEFITS AND LEAVE PROGRAM**

### **Section 4-07-01 Eligibility for benefits.**

1. Full-time employees shall be eligible for all employee benefits and privileges. These benefits include all leave and holiday privileges, workers compensation coverage, unemployment compensation and participation in the city's group hospital insurance program and employee pension plan.

2. Regular part-time employees are eligible for participation in the city's group hospital insurance program and in the employee pension plan subject to the plan's eligibility requirements. Regular part-time employees are entitled to holidays, annual, sick, personal and funeral leave on a pro rata basis to be calculated as follows: fifty percent of leave benefits if the employee works twenty-one to twenty-nine hours per week and seventy-five percent of leave benefits if the employee works thirty to thirty-nine hours per week.

3. Seasonal administrative employees are entitled to full benefits during the period of seasonal employment if the employee works forty hours per week, and if not, the employee is entitled to holidays, annual and sick leave on the same pro rata basis as regular part-time employees.

4. Part-time employees, temporary employees, provisional employees and those employees whose duration of employment is limited to a period of need not to exceed one year will not be eligible for any leave or benefit programs.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-01 (1979)*

#### **Section 4-07-02      Holidays.**

1. Holidays for eligible city employees are as follows:

- a. New Year's Day, January 1st;
- b. Martin Luther King Day, third Monday in January;
- c. President's Day, third Monday in February;
- d. Good Friday, the Friday preceding Easter Sunday;
- e. Memorial Day, last Monday of May;
- f. Independence Day, July 4th;
- g. Labor Day, first Monday in September;
- h. Veteran's Day, November 11th;
- i. Thanksgiving Day, fourth Thursday in November;
- j. Christmas Eve, December 24th (four hours);
- k. Christmas Day, December 25th;

1. Any day declared by the city commission, governor or president to be a holiday, excluding the state-declared holiday of every Sunday.

2. The four hours granted for holiday on Christmas Eve only occur when it falls on a Monday through Thursday.

3. With the exception of Christmas Eve, when any of the above-cited holidays falls on a Saturday, the preceding Friday shall be observed as the holiday, and when any of the above holidays falls on a Sunday, the following Monday is considered the holiday.

4. Full-time employees whose duties require them to work a regular shift on a holiday, excluding fire department personnel, must either be given the following day off as a holiday or be given eight hours of annual leave at the discretion of the department head.

5. Fire department employees who have a regular workweek in excess of the forty hours per week are granted additional time at a rate adjusted to take into account the extra hours so that their holiday computation is comparable to a forty-hour-per-week employee.

6. Shift workers whose duties require them to work an irregular workweek, excluding fire department personnel, must be given additional hours of annual leave if they do not work on a holiday because the holiday coincides with a regularly scheduled time off. If an employee is on annual or sick leave at the time of the holiday, the day will be credited as a holiday and not deducted as annual or sick leave.

*Source: Amended during 1994 codification; Ord. 743 § 1, (1988); Ord. 737 § 1 (part), (1988); MCC 16-07-02 (1979)*

#### **Section 4-07-03      Annual leave.**

1. Annual leave is a part of an employee's compensation. All full-time employees are encouraged to take at least eighty hours annual leave per year with department head approval.

2. Based on the standard forty-hour workweek, annual leave shall accrue on the following basis:

YEARS OF SERVICE	HOURS PER MONTH	DAYS PER YEAR
1 through 3 years	8 hours	12 days
4 through 7 years	10 hours	15 days
8 through 12 years	12 hours	18 days
13 through 18 years	14 hours	21 days
19 through 24 years	16 hours	24 days
Beginning at 25 years	18 hours	27 days

3. New employees must begin employment prior to the fifteenth of the month in order to accrue the benefit for the first month of employment.

4. Days of annual leave shall be working days only. Holidays shall not be considered workdays, which are credited against the employee's annual leave account. Annual leave hours shall not be computed on overtime hours.

5. Years of service shall be computed from beginning employment dates, which shall become each employee's anniversary date.

6. Annual leave must be taken in increments of one-half hour or more but not more than eighty hours at one time unless approved by the department head.

7. The vacation period will be determined by consulting with the department head, who will take into consideration the work load at the time of the vacation request. Vacation requests must be in writing and submitted to the payroll office.

8. Employees shall be credited with annual leave which may be earned during the year; however, only that portion earned may be used.

9. Unused annual leave up to a total of one hundred twenty hours (fifteen days) may be carried forward at the end of each year. The cutoff date for leave purposes shall be the employee's date of hire for new employees after September 6, 2011. For current employees as of September 5, 2011, carryover will take effect on their hire date beginning after December 31, 2011.

10. An employee who works on a temporary basis and later becomes regular without a break in employment shall be entitled to earn benefits for the most recent continuous period of active temporary employment, but not exceed that which would be earned while on a comparable probationary status.

*Source: Amended during 1994 codification; Ord. 801 § 6, (1992); Ord. 737 § 1 (part), (1988); MCC16-07-03 (1979); Ord. 1103 §9 (9/6/11)*

**Section 4-07-04 Sick leave.**

1. Sick leave is a privilege granted to all regular employees, and is not a benefit considered to be earned by the employee such as annual leave. Sick leave enables employees to build a reserve of days that may be used for illnesses or medical reasons. Abuse of this privilege may be grounds for disciplinary action or dismissal.

2. There shall be no restriction as to the number of sick leave days which can be accumulated by an employee. Based on the standard forty-hour workweek, sick leave will accrue on the following basis:

- a. Eight hours (one working day) per month for all full-time employees with unlimited accumulation;
- b. Regular part-time employees will accrue sick leave on the same prorated percentage as for annual leave with the exception that accrual is not to exceed eight hours or one working day per month with unlimited accumulation.

3. Sick leave may be used for employee's illnesses where the employee is unable to work, and for medical and dental appointments. An employee absent for three days or more due to illness must return to work with a medical certificate from an attending physician. Where deemed necessary an employee may be required to undergo a physical examination at his expense and by a physician designated by the department head. An employee returning to work after using three or more days of sick leave who does not submit a medical certificate from an attending physician to the payroll office will have subtracted from his next paycheck the hourly salary rate for each hour claimed in excess of the third day of sick leave absence.

4. Sick leave shall be granted for treatment of chemical dependency for the duration of inpatient care at a hospital or treatment facility provided that the employee completes said treatment as certified by the attending physician of the institution. Such leave shall be granted not more than two times.

5. Up to forty hours of sick leave, per calendar year, may be used for illness of a family member who requires care from the employee. Family member shall mean the employee's spouse, child, step-child, parent or step-parent.

6. When an employee is on extended sick leave compensation and certified by the attending physician, the employee will receive full compensation and accrual of benefits and sick leave.

7. Sick leave slips shall be in writing and submitted to the payroll office. Sick leave must be taken in increments of one-half hour or more and subject to the approval of the department head. Any employee injured while under their scope of employment must make written notification to the personnel department within twenty-four hours of the incident during which the injury occurred.

*Source: Amended during 1994 codification; Ord. 801 § 7 (part), (1992); Ord. 737 § 1 (part), (1988); MCC 16-07-04 (1979)*

#### **Section 4-07-05      Payback of annual and unused sick leave.**

1. Employees terminating their employment shall be paid for all earned and unused annual leave. Employees earning this benefit must terminate employment after the fifteenth of the month in order to accrue the benefit for the last month of employment. Any authorized but unearned annual leave taken shall be deducted from the employee's last paycheck. Upon the death of an employee, the employee's beneficiary or estate shall be entitled to payment for all unused annual leave.

2. Upon retirement, employees who are age sixty-two through sixty-four will be compensated for one-third of their accumulated sick leave up to sixty days. An employee who is age sixty-five or older will be compensated for all accumulated sick leave not exceeding sixty days.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-05 (1979)*

#### Section 4-07-06      Compensatory leave.

1.      Compensatory leave may be permitted upon mutual agreement of the employee and appointing authority. All compensatory leave is time off in lieu of payment for overtime pay. Compensatory leave for all employees, except as provided herein, shall be allocated at the premium rate of one and one-half hours for each hour worked in excess of the standard workweek or work period. To determine the number of hours worked by an employee within a week or work period, time spent on annual, sick or personal leave and holidays will be counted as time worked in calculating compensatory leave.

2.      All compensatory leave earned, except as provided herein, by an employee constitutes a financial liability of the city subject to the following restrictions:

- a.      No employee may carry more than sixty hours of compensatory leave.
- b.      There will not be an annual carryover of unused compensatory leave.
- c.      The city will pay compensatory leave annually. The cash out period for compensatory leave shall be the last pay period in June for employees within the building inspection and assessing department, and December for all other employees.

3.      The city has exempted elected, appointed, executive and administrative employees from overtime payment requirements of the Fair Labor Standards Act. However, these exempt employees may also accumulate compensatory leave at an hour-for-hour rate for time worked beyond the standard workweek. These exempt employees will not be permitted to carry more than sixty hours. Exempt employees will not be paid for unused compensatory leave and all unused compensatory leave will be forfeited at the end of each calendar year.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-06 (1979)*

#### Section 4-07-07      Maternity leave.

1.      Pregnant employees are encouraged to report the existence of pregnancy to their department head. A female employee of the city may work as long as she desires before childbirth. Prior to or after childbirth the employee may use sick leave, annual leave and leave without pay for a maximum of up to six weeks. Approved leave without pay may be utilized only when there is no reserve of sick or annual leave. The employee will receive full pay compensation during the use of sick and annual leave. The employee will also continue to accrue leave and benefits during this maternity leave period.

2.      A doctor's report will be required for any leave of absence in excess of six weeks. This leave will be granted at the discretion of the appointing authority.

3.      All leave, in excess of six weeks, with or without pay, must be in written form, submitted to the appointing authority, and then forwarded to the payroll office to be filed in the employee's personnel file. This written request should state the expected delivery date, length of absence, and approximate date of return.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-07 (1979)*

#### Section 4-07-08      Jury and witness leave.

1.      An employee called for jury duty or subpoenaed as a witness before a court or other public body in the public interest but not for personal violations shall be granted time off with pay, but if a jury fee is received, it must be reimbursed to the city. Jury fees may be retained if the employee is on authorized annual leave.

2. When an employee is called as a witness on behalf of the city, where the city is a party to the action and the city reimburses the employee for mileage, sustenance and room, which it may do, no fees or mileage shall be charged by said employee as a witness, and no time shall be deducted for the absence of such employee, and such employee shall be deemed to be performing duties or services for the city.

3. When an employee is called as a witness when the city is not a party to the action and does not reimburse such employee for mileage, sustenance and room, the employee may collect witness fees and mileage from the party issuing the subpoena. The employee will take appropriate leave or leave without pay.

4. When law enforcement personnel are called as witnesses in a criminal case as a result of matters arising out of official duties, they are deemed to be performing duties and services for the city, and as such shall not be subject to any loss of time or pay. If they received reimbursement for travel, sustenance and room from the city, they shall not collect witness fees or mileage as a witness. Where witness duties are performed during off-duty time, the employee may receive witness fees and mileage. When the witness fee is returned to the city, an employee may receive additional hours paid at a rate of one and one-half time in either compensatory time or overtime salary.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-08 (1979)*

#### **Section 4-07-09 Military leave.**

All military leave shall match laws established by the state of North Dakota for state employees.

See Adjutant General, Armed Forces, National Guard; State Guard; Veterans in the Index of the North Dakota Century Code. Also see NDCC 37-01-25 (Leave of Absence for Public Employees in Active Service) and 37-01.25.1 (Reinstatement to former position).

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-09 (1979)*

#### **Section 4-07-10 Funeral leave.**

1. Funeral leave shall be granted to employees up to six days per year based upon the following relationship to the employee: spouse, child, parent, sister, brother, grandparent, grandchild, son-in-law or daughter-in-law; a grandparent, parent, sister or brother of the employee's spouse; and step relatives with the aforementioned relationships.

2. Funeral leave shall not be cumulative from year to year. Funeral leave must be taken in increments of one-half hour or more and with the prior approval of the department head. Upon the employee's return to work, a leave slip shall be completed and forwarded to the payroll office at city hall.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-10 (1979)*

#### **Section 4-07-11 Personal leave.**

1. All employees may be granted approval, at the discretion of their department head, for personal leave with pay up to a maximum of two days per year.

2. Personal leave shall not be cumulative from year to year. Upon the employee's return to work a leave slip shall be completed and forwarded to the payroll office at city hall. Personal leave must be taken in increments of one-half hour or more and subject to the approval of the department head.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-11 (1979)*

**Section 4-07-12 Storm day policy.**

1. All employees shall make every effort to get to work each day of his/her employment with the city. The mayor or designated representative will make the decision and announcement if there is no work or a delay in work due to bad weather. If this should happen, every effort will be made to put this announcement over local radio and TV stations by seven a.m.

- a. Any full-time or regular part-time employee on an undeclared storm day who can't make it to work because of bad weather will have to use annual leave or will be docked time on their next paycheck for all time missed.
- b. Part-time employees working on an hourly basis will only be paid for time in which they actually work.
- c. All regular part-time or full-time employees who are absent on sick leave during which time only an hourly portion of storm leave is authorized are to receive no credit time privilege.
- d. All full-time and regular part-time employees receive complete credit if the entire workday is designated as a storm day.
- e. Full-time employees who work at least fifty percent of the normal workday, however, elect to go home on annual leave before storm leave is authorized should receive credit for the time that is authorized.
- f. The above guidelines apply only to those employees whose services are not essential to maintain the safety and welfare to the citizens of Mandan.
- g. Full-time and regular part-time (pro rata basis) employees whose service is essential during a full declared storm day shall receive a personal day of leave. Part days will be prorated. Storm day hours shall be considered from eight a.m. to five p.m. unless specifically noted otherwise by the mayor or designated representative. All employees, part-time or full-time, who are absent on sick leave are to receive no credit time privilege.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-12 (1979)*

**Section 4-07-13 Leave of absence.**

1. Leave without pay may be granted to regular employees who have maintained a satisfactory service record.

2. All leave without pay exceeding three days must be approved by the board of city commissioners and shall not be granted for a period longer than six months unless an extension is approved by the board of city commissioners.

3. All leave requests must be in writing. After thirty days, benefits cease.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-13 (1979)*

**Section 4-07-14 Absence without leave.**

An absence of an employee from duty, including any absence for a single day or part of a day, that is not authorized by a specific grant of leave of absence under the provisions of these rules shall be deemed to be an absence without leave. Any such absence shall be without pay and may be subject for disciplinary action. In the absence of such disciplinary action, any employee

who absences himself for three consecutive days without leave shall be deemed to have resigned. Such action may be reconciled by a subsequent grant of leave if the condition warrants. Source: *Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-14 (1979)*

**Section 4-07-15      Group hospital insurance.**

1. Employees who work 17.5 or more hours per week and who are eighteen years of age or older shall be eligible to enroll in the group hospital insurance program. The city will pay the premium of the insurance according to the following schedule:

<b>YEARS OF EMPLOYMENT</b>	<b>PREMIUM COST</b>
0 to less than 1 year	100% of Single policy
1 to less than 2 years	(Family or Single Plus Dependent Policy Less Single Policy) multiplied by 10% plus single policy
2 to less than 3 years	(Family or Single Plus Dependent Policy Less Single Policy) multiplied by 20% plus single policy
3 to less than 4 years	(Family or Single Plus Dependent Policy Less Single Policy) multiplied by 30% plus single policy
4 to less than 5 years	(Family or Single Plus Dependent Policy Less Single Policy) multiplied by 40% plus single policy
5 to less than 6 years	(Family or Single Plus Dependent Policy Less Single Policy) multiplied by 60% plus single policy
6 to less than 7 years	(Family or Single Plus Dependent Policy Less Single Policy) multiplied by 80% plus single policy
7 years or more	100% of a Family or Single Plus Dependent Policy

2. Upon termination of employment, except for cause, an employee may be eligible for insurance coverage as provided by law. All continuation of coverage shall be at the expense of the former employee, who shall arrange for payment of the monthly premium with the city auditor. No late payments will be accepted.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-15 (1979); Ord. 914, (6/01/00)*

**Section 4-07-16      Workers compensation.**

In the event an employee is injured on the job and cannot report to work, compensation will be paid in accordance with the state workers compensation laws. To be compensated, an employee must report the injury to the appointing authority immediately and file a claim on forms prescribed, signed and kept on file by the personnel director. During the time it takes to process the workers compensation claim, the city will continue paying the employee's regular salary and will deduct time absent from work from the employee's accumulated balance of sick leave. Thereafter, payments received from workers compensation will be assigned to the city and the appropriate amount of sick leave will be credited to the employee's account. If the period of disability exceeds the employee's accrued sick leave, only the actual accrued sick leave will be credited back to the employee. Employees must notify the personnel director of all payments

made by workers compensation. Workers compensation also pays medical bills for the treatment of injuries which occur on the job; however, the employee is responsible for filing the claims for medical care either directly with the provider or utilizing claim form available from the personnel director.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-07-16 (1979)*

#### **Section 4-07-17 Reimbursement of employee expenses.**

All city employees who have prior approval of the appointing authority for travel shall be reimbursed for travel expenses at the rate established by resolution of the board of city commissioners. Canadian travel shall be reimbursed at regular out-of-state rates rather than international rates. Employees claiming travel expense reimbursement shall submit only one voucher for each month. Verification of meal costs is not required, but a lodging receipt must be attached to the voucher as well as an itemized statement of mileage.

*Source: Amended during 1994 codification; Ord. 774 § 1, (1990); Ord. 737 § 1 (part), (1988); MCC 16-07-17 (1979)*

#### **Section 4-07-18 Employee assistance program.**

The board may offer as part of its employee benefit package an employee assistance program for all full-time and regular employees, which provides confidential counseling and referral to treatment for substance abuse and other personal problems. Participation in any employee assistance program shall be confidential. Volunteering to participate in an employee assistance program shall neither cause nor prevent discipline for violations of city policy. Participation in an employee assistance program does not relieve the employee from job performance requirements. Coverage of treatment costs will be subject to individual employee medical benefit plans.

*Source: Amended during 1994 codification; Ord. 801 § 4, (1992); Ord. 737 § 1 (part), (1988); MCC 16-07-18 (1979)*

#### **Section 4-07-19 The Family and Medical Leave Act of 1993.**

The city will follow the requirements of the Family and Medical Leave Act of 1993.

*Source: Added during 1994 codification: MCC 16-07-19 (1979)*

### **Chapter 4-08 EMPLOYEE SEPARATION AND DISCIPLINE**

#### **Section 4-08-01 Employee separation.**

An appointing authority may:

1. Lay off an employee in the civil service system whenever necessary because of a change in duties or organization, shortage of work or funds, the abolition of the position or other material change in the duties or organization, or for related reasons which are outside the employee's control and which do not reflect discredit upon the service of the employee.
2. Suspend an employee without pay up to a period of thirty days within one calendar year.
3. Demote an employee from a position in one class to a position in a lower class.
4. Dismiss an employee for cause.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-01 (1979)*

#### Section 4-08-02 Layoff.

The appointing authority may lay off any employee for any of the reasons listed in this chapter. The duties performed by an employee laid off may be reassigned to other employees in appropriate classes. Provided, that no regular employees shall be laid off while another person is employed on a temporary or provisional basis in the same class in that department. Provided further, that no separation as a penalty of disciplinary action shall be considered as a layoff. All employees laid off shall, if qualified, be entitled to transfer if available, and the department head and commission shall, on request of the employee, enter such employees' names on the re-employment register.

1. Order of Layoff. The order in which employees will be laid off must be determined in accordance with the employee's evaluation reports and ratings, if such have been adopted, and length of service with the city. The evaluation reports and ratings will be given greater weight than length of service in the determination of the layoff order. A temporary or provisional employee shall be laid off before a probationary employee, and a probationary employee shall be laid off before a regular employee in the same class.

2. Notice of Layoff. The appointing authority shall give written notice to the commission and to the employee of the proposed layoff and the reasons therefor not less than fourteen calendar days before the effective date of the layoff.

*Source: Amended during 1994 codification; Ord. 801 § 7 (part), (1992); Ord. 737 § 1 (part), (1988); MCC 16-08-02 (1979)*

#### Section 4-08-03 Seniority.

1. Seniority of an employee shall be established by computing the amount of continuous service, including vacation, sick leave and authorized leave of absences, since the completion of the first year of employment, or his date of re-employment, whichever is applicable.

2. Any and all seniority rights accrued during any period of employment shall be automatically terminated and forfeited by the resignation of the employee, and in the event of his future re-employment in the same or any other position, the resignation shall be considered a break in continuous service for purpose of computation of seniority. Provided, however, that an employee reinstated to a former position as a result of failure to successfully complete his probationary period upon appointment to a higher classification or position as provided in this title shall not be considered to have incurred a break in continuous service thereby.

3. Leave of absence without pay shall not be considered a break in continuous service to warrant forfeiture of previously earned seniority rights, but the period of such leave of absence without pay shall not be included in the computation of seniority. Provided, however, that such leave of absence taken for military service during time of an emergency, plus six months thereafter, shall be included in computation of seniority.

4. The rules providing for computation of seniority shall apply in all situations in which seniority rights and privileges are involved. Specifically, the rules shall apply in any consideration of seniority for promotional purposes, to computation of years of service for purposes of allowed annual vacations of employees with pay, and to priority of selection of time for annual vacation in the event of otherwise unresolved conflicts pertaining thereto.

5. Employees under temporary, provisional or emergency appointment shall not accrue seniority by virtue of such appointments.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-03 (1979)*

#### **Section 4-08-04      Suspension.**

When in the judgment of the appointing authority an employee's work performance or conduct justifies disciplinary action short of dismissal, the employee may be suspended without pay for such length of time as is considered appropriate but not exceeding thirty calendar days in any twelve- month period. The commission shall be furnished with a written statement specifically setting forth the reasons for the suspension and a copy of such statement shall be furnished to the affected employee. With the approval of the commission, the suspension period may be lengthened pending an investigation or hearing of the charges. A regular employee who is suspended may appeal to the commission under the procedures outlined in this chapter. Provided, that if the suspension is found to be unwarranted following a hearing, the employee shall suffer no loss in pay. Health insurance will continue during the suspension period. Annual and sick leave will not accrue during the suspension period.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-04 (1979)*

#### **Section 4-08-05      Demotion.**

The appointing authority may, for cause, reduce the salary of an employee within the range provided for his class, or demote an employee from a position in one class to a position in a lower class. A written statement of the reasons for such action shall be furnished to the employee and a copy filed with the commission, at least five days prior to the effective date of the action. No demotion shall be made for disciplinary action unless the employee to be demoted is eligible for employment in the lower class, and shall not then be made if any regular employee in the lower class would be laid off by reason of this action. An employee demoted may appeal to the commission under the procedures outlined in this chapter. Provided, that if no hearing is requested within the period of time allotted, the proposed action shall then be final. Provided further, that if the employee is reinstated by the commission following a hearing, he shall suffer no loss of pay.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-05 (1979)*

#### **Section 4-08-06      Dismissal.**

The appointing authority may for misconduct, inefficiency or other just cause, dismiss any employee at any time, effective immediately, without pay, with the approval of the city attorney as to legality. The employee being dismissed shall be furnished a written statement of the reasons for the dismissal and a copy shall be filed with the commission. An employee who has been dismissed may file an appeal with the commission under the procedures outlined in this chapter. If the commission determines following a hearing, that the dismissal is not warranted, the employee shall be reinstated to his former position with full restitution of salary, seniority status and all other benefits.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-06 (1979)*

#### **Section 4-08-07      Resignation.**

To resign in good standing, an employee must give the appointing authority fourteen calendar days' prior notice; provided, that the appointing authority may, because of extenuating circumstances, agree to a shorter period of notice. A written resignation shall be supplied by the

employee, and a copy filed with the commission. Failure to comply with this section shall be entered on the service record of the employee and may be cause for denying future employment by the city. Any unauthorized absences from work for a period of three or more consecutive working days may be considered by the appointing authority as a resignation, and he shall report the same to the commission.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-07 (1979)*

#### Section 4-08-08 Cause for suspension, demotion or dismissal.

An employee may be subject to disciplinary action for conduct impairing performance of the employee or that of the city government, including, but not limited to, the following:

1. Consumption of alcoholic beverages or unlawful use of any drugs, narcotic or other controlled substance while on duty, or reporting to work when under the influence of intoxicants or any narcotic or controlled substance;
2. Failure to follow orders of superiors;
3. Inability to get along with fellow employees, resulting in interference with the performance of duties of any employee;
4. Being absent from work without permission or failure to report to the supervisor or department head when one is absent;
5. Being habitually tardy;
6. Continued failure to perform the assigned work in a satisfactory manner;
7. Being habitually wasteful of material, property or working time;
8. Failure to pay just debts to the best of one's ability and means, if such failure impairs job performance or interferes with normal and efficient city government;
9. Conviction of a felony or conviction of a misdemeanor involving dishonesty or moral turpitude;
10. Engaging in criminal, infamous, dishonest or notoriously disgraceful conduct, or other conduct prejudicial to the government;
11. Violation of city ordinances or official written policies adopted by the board of city commissioners or departments;
12. Careless or negligent operation of city vehicles or equipment;
13. Engaging in conduct or making public statements which adversely affect the confidence of the public in the integrity of the board of city commissioners, the department heads or city government or which directly or indirectly condemns or criticizes the policies of the city or any of its departments;
14. Taking any action which might prejudice the city's interest in a criminal or civil action;
15. Betting or participation in any gambling activity, including the operation of a gambling device, conducting a lottery or pool, or selling or buying a number slip or ticket while on city- owned or city-leased property or while on duty for the city;
16. Displaying discourtesy or disrespect to a member of the public when acting in an official capacity;
17. Having a suspended or revoked driver's license when a current license is required as part of the employee's job description and responsibilities.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-08 (1979)*

#### Section 4-08-09 Notice of layoff, suspension, demotion or dismissal.

A written notice of proposed layoff, suspension, demotion or dismissal, stating the reason for the action and when it is to be effective, must be given to the official or employee or mailed by registered or certified mail to the last known place of residence, or personally served upon the employee within the required time period set out in this chapter, depending on the nature of the action. A copy of the notice of layoff, suspension, demotion or dismissal must be immediately filed with the commission. The notice shall state that the employee has a right to file an appeal under the procedures of this chapter and the right to an opportunity to be heard at a hearing before the commission, upon request.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-09 (1979)*

#### **Section 4-08-10 Grievances which may be appealed to commission.**

1. The commission is authorized to review grievances which are characterized as alleged violations of departmental rules and regulations, city personnel policies or allegations of impropriety and to make recommendations to the board of city commissioners. If the commission believes any grievance violates a criminal law or Chapter 34-11.1 of the North Dakota Century Code, said grievance shall be reviewed by the city attorney to determine whether it should be properly referred to the State's Attorney.

2. The commission is not authorized to review allegations of criminal acts. Any alleged violation by any city employee or department head of state law or municipal ordinances for which a criminal penalty applies shall be reported to the city attorney's office or the State's Attorney's office. Allegations of criminal violations reported to the city attorney's office shall be promptly investigated and a report of the action taken shall be made to the board of city commissioners.

3. The commission is authorized to hear appeals under the procedures set forth herein from any employee or official who alleges discrimination due to race, color, creed, sex, age, marital status, national origin, or physical or mental disability, or other grievance relating to employment law, rules, regulations or ordinances, or any other grievance relating to personnel matters.

4. Additional matters over which appeals may be filed include, but are not limited to, the following: working conditions; unfair treatment, including coercion, restraint or reprisal; failure to follow promotion plans and procedures; personnel actions which are based on marital status, political affiliations, or other nonmerit factors; layoff decisions; and disciplinary actions, including suspensions, demotions and dismissals.

5. The commission is not authorized to consider appeals concerning prohibited political activities as defined in state law; retirement, life insurance or health insurance; the classification of any position that does not result in the reduction in grade or pay of an employee; the content of published city or departmental regulations and policies; an action which terminates a temporary promotion within a maximum period of two years and returns the employee to the position from which the employee was temporarily promoted; or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted; and the separation of any employee serving a probationary, provisional, temporary or emergency, or trial period; or the termination of a nonpermanent employee.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-10 (1979)*

#### **Section 4-08-11 Grievance and appeal procedure.**

1. Notice of Grievance--Attempt to Resolve--Written Reply. Within fifteen days after its occurrence, an employee who is adversely affected by a decision of his immediate supervisor or appointing authority shall submit a written grievance report to the employee's appointing authority. The written grievance report shall identify the decision in question and the employee's requested relief. The appointing authority shall immediately provide a copy of the grievance to the city commissioner assigned the portfolio for the department. The commissioner shall meet with the employee and appointing authority to clarify the issue, identify if the issue relates to city or departmental policy, and attempt to resolve the matter. Within five working days after receiving a written grievance, the appointing authority shall furnish the employee and commissioner with a written reply to the grievance. If the issue relates to the layoff, suspension, demotion or dismissal of an employee, the employee may immediately appeal to the commission and need not attempt to resolve the matter by way of this step.

2. Appeal to the Civil Service Commission. If the written reply of the department head to the grievance is not satisfactory to the employee, he or she may, within five working days of receipt of the decision on the grievance, submit an appeal in writing to the commission. This appeal shall be filed with the personnel director and be referred forthwith to the commission for its review and recommendations. Following the commission's review, its written findings and recommendations shall be transmitted to the aggrieved employee, his department head and the board of city commissioners.

3. Report to Board when Policy Revision Recommended. Following the meeting with aggrieved employee and the department head, if the city commissioner assigned the portfolio determines that the issue is related to city or departmental policy, which policy is in need of revision, the commissioner shall report to the board of city commissioners for its review and any appropriate action. The review of the policy by the board shall not interrupt the grievance procedure and is not intended to circumvent the commission. Any revision of the policy shall not be applied retroactively to the grievance which prompted its review, unless specifically approved by the board following the report of the commission.

4. Commission Review--Written Findings.

- a. The commission, upon receiving notice of the appeal, shall set a date for a hearing, which may not be less than five or more than twenty days after the date of the filing of the notice of appeal. Notice of the time and place of the hearing must be served upon the appealing official or employee and upon the authority imposing the layoff, suspension, demotion or dismissal, personally or by certified mail at least five business days before the date of the hearing.
- b. The commission shall hear the appeal at the time set by it. The commission may hear the evidence and facts to be presented by the appealing officer or employee and the authority imposing the layoff, suspension, demotion or dismissal, in the order it deems appropriate so long as all parties are given a full opportunity to be heard. The evidence of the parties may be through sworn testimony of witnesses or through exhibits introduced through sworn witnesses. After all parties have presented their evidence and have been given a full opportunity to be heard, the commission may call other persons or witnesses to ascertain the facts and may make any further investigation which it deems proper. A hearing may be continued from time to time by the commission. After

having completed the hearing and any investigation which it has chosen to undertake, the commission shall issue written findings and recommendations. In all cases the commission shall issue its findings and recommendations within five days of the close of the hearing. Copies shall be sent to the appealing employee, or official, the appointing authority and the board of city commissioners.

5. Findings and Recommendations of Commission. If the appeal is related to the reprimand, suspension, demotion or dismissal of an appealing employee or official, the following findings and recommendations may be made to the board of city commissioners:

- a. There was just cause for the imposition of the discipline imposed upon the appealing employee or official, and recommend upholding the decision.
- b. There was not just cause for the imposition of the discipline, and recommend that the employee be reinstated to the status held immediately prior to the discipline and restore to the employee any pay lost as a result of the discipline.
- c. There was just cause to discipline the employee or official, but the level of discipline imposed did not fit the offense committed, and recommend a different form of discipline.

6. Final Action By Board of City Commissioners--Appeal. Upon receipt of the findings and recommendations of the commission, the board shall set a date and time to consider the report and to take appropriate action on the grievance, which decision shall be final. The board may affirm, reverse or modify the recommendations of the commission. No hearing need be scheduled by the board unless an appeal has been timely filed. Within five working days of the receipt of the written findings and recommendations of the commission, any employee aggrieved by the decision of the commission may file a written notice of appeal with the city auditor. The notice of appeal shall set forth any facts that the employee believes the commission did not consider in reaching its findings and recommendations. The board at the date and time set for consideration of the report, may receive additional information and testimony relating to the grievance and the commission's findings and recommendations before reaching its decision. The hearing before the board shall be governed by the same rules as apply before the commission, to assure that all parties have a full opportunity to be heard.

7. Time Extensions. The time limits in this section may be extended for good reason and for specified time periods by agreement between the grievant and management or between the grievant and the commission. An employee may withdraw his grievance at any time. If at any level of the grievance procedure set forth herein the aggrieved employee accepts the decision rendered by management or the commission, the grievance will be considered resolved. For the purposes of this section, "management" includes the department head, portfolio commissioner and the board of city commissioners.

8. Conflict of Interest. If the employee's grievance involves the personnel director, the board shall appoint another department head to serve as the clerk of the commission.

9. Standard Grievance Form Adopted. In order to facilitate the procedures provided herein, a standard form for reporting any grievance, a copy of which is attached to the ordinance codified in this title, is adopted. The personnel director shall make copies of such form available to all city employees.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-08-11 (1979)*

## Chapter 4-09 CITY EMPLOYEE PENSION PLAN

### Section 4-09-01 Participation and employee contribution.

1. Participation. On October 9, 1977, by resolution of the board of city commissioners, the city established a pension plan for the employees of the city. This plan was amended effective January 1, 1989 in order to comply with TRA-86 IRS requirements. All full-time employees with six months' service to the city as of the date of the adoption of the city employee pension plan became participants of the plan. Any employee who meets the plan's eligibility requirements may participate in the city employee pension plan. An employee who elects to join the plan will be unable to terminate or withdraw from the plan unless he resigns, retires or dies.

2. Eligible Employee. All full-time, regular part-time, and seasonal administrative employees who are eighteen years of age or older and who have completed the probationary period are eligible to participate in the plan at their discretion.

3. Employee Contribution. Each participating employee shall be required to make a contribution of not less than a minimum of two percent of the employee's compensation each month to the trustee, provided that if an employee desires to increase the contribution above the minimum, the employee shall notify the trustee in writing on or before the first day of June of the amount of additional contribution the employee desires to make, which must be for not less than a twelve-month period commencing as of that date of the first pay period in July of that year. In the event an employee desires to decrease the contribution (but in no event less than two percent of the employee's compensation), the employee shall notify the trustee in writing on or before the first day of June of the employee's desire to reduce the contribution to become effective on the first pay period of the following July. Any increase or decrease in an employee's contribution must be increments of two percent.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-01 (1979)*

### Section 4-09-02 Pension committee.

1. The city shall appoint a committee, which committee shall be designated as the pension committee. At least three persons appointed by the board shall constitute the pension committee. All committee members shall be participants in the city employee pension plan. The city will file the designation of the committee with the trustee. The trustee is authorized to rely solely on the committee to determine matters concerning benefits and payments. The committee shall have the following duties:

- a. To construe and interpret the plan, decide all questions of eligibility and determine the amount, manner and time of payment of any benefits hereunder;
- b. To prescribe procedures to be followed by participants or beneficiaries filing application for benefits;
- c. To prepare and distribute in such manner as the committee determines the appropriate information explaining the plan;
- d. To receive from the employer and from participants such information as shall be necessary for the proper administration of the plan;
- e. To furnish the employer upon request such annual reports with respect to administration of the plan that is reasonable and appropriate. The

committee may rely on the trustee to furnish the information for such reports, to receive, review and keep on file the reports of benefit payment by the trustee and reports of disbursements for expenses directed by the committee;

- f. To appoint or employ individuals to assist in the administration of the plan and other agents it deems advisable, including legal and accounting counsel;
- g. To consult with the trustee relating to an investment policy to be pursued by the trustee.

2. The committee shall have no power to add or subtract from or modify any of the terms of the plan or to change or to add to the benefits provided for the plan or to waive or to fail to apply any requirements of eligibility for benefit under the plan.

3. The committee shall issue directions to the trustee concerning all benefits which are to be paid from the trust fund pursuant to the origins of the plan and shall warrant that all such directions are in accordance with this plan.

4. The committee may require a participant to complete and file with the committee an application for a benefit on the forms approved by the committee and furnish all pertinent information requested by the committee. The committee may rely upon all such information so furnished it, including the participant's current mailing address.

5. The committee and the individual members thereof shall be indemnified by the city and not from the trust fund against any and all liabilities arising by reason of any act or failure to act made in good faith pursuant to the provisions of this plan, including expenses recently incurred in defense of any claims relating thereto.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-02 (1979)*

#### **Section 4-09-03 Trust fund.**

All contributions under the city employee pension plan shall be paid to a trustee and deposited in the trust fund. Except as provided above, all assets of the trust fund including investment income shall be retained for the exclusive benefit of the participants, former participants and beneficiaries and shall be used to pay benefits to such persons or may be used to pay administrative expenses of the plan and trust fund to the extent not paid by the city.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-03 (1979)*

#### **Section 4-09-04 Fiscal year.**

The city employee pension plan will be kept on a twelve-month period commencing on January 1st and ending on December 31st.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-04 (1979)*

#### **Section 4-09-05 Contributions of city.**

The city shall each year pay to the trustee an amount for allocation, which amount shall be six percent of the compensation of the employees.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-05 (1979)*

#### **Section 4-09-06 Designation of beneficiary.**

1. Each participant or former participant from time to time may designate any person or persons as his beneficiary or beneficiaries to whom his plan benefits are to be paid if he dies

before receipt of all such benefits. Each beneficiary designation shall be in the form prescribed by the trustee which shall be effective only when filed with the trustee during the participant's lifetime, and if the trustee allows, may specify the method of payment of benefits to his beneficiary.

2. If any participant or former participant fails to designate a beneficiary in the manner prescribed above or if the beneficiary designated by a deceased participant dies before the participant or before complete distribution of the participant's benefits, the trustee in his discretion may distribute such participant benefits either:

- a. To one or more of the next of kin;
- b. To the estate of the last to die of such participant and his beneficiary or beneficiaries.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-06 (1979)*

#### **Section 4-09-07 Allocation to participant's accounts.**

1. Individual Account. The trustee shall create and maintain adequate records to disclose the interest in the trust of each participant, former participant and beneficiary. Such records shall be in the form of individual accounts and shall reflect credits and charges made to such accounts in the manner herein described. When appropriate, a participant shall have two separate accounts: an employer contribution account and an employee contribution account. The maintenance of individual accounts is only for accounting purposes and the segregation of the assets of the trust fund to each account shall not be required. Distribution and withdrawals made from an account shall be charged to the account as of the date paid.

2. Account Adjustments. The accounts of the participants, former participants or of a participant's beneficiary shall be adjusted in accordance with the following:

- a. The income for the trust fund for each year shall be allocated to the account participants, former participants and beneficiaries whose unpaid balances in their account on the last day of the year are in proportion to the balances in such accounts at the beginning of the year but, after first reducing each such account balance by any distribution from the account during the year. The valuation shall be based on the fair market value of the trust fund on the valuation date.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-07 (1979)*

#### **Section 4-09-08 Computation of benefit distributions.**

1. Retirement or Disability. If a participant's employment with the city is terminated at or after he attains age sixty-five or if his employment is terminated at an earlier age because of disability, he shall be vested in and entitled to receive the entire amount of contributions in each of his accounts. The entire amount in a participant's account at termination of employment shall include any city contributions.

2. Death. In the event of a participant's death, his beneficiary shall be vested in and paid the entire amount of his accounts.

3. Termination for Other Reasons. If a participant's employment with the city is terminated before age sixty-five for any reason other than disability or death, the participant shall be entitled to:

- a. The entire amount credited to his employee contribution account;

- b. He shall be vested in and entitled to receive an amount equal to a percentage of the value of his employer contribution account, if any. Such percentage is to be determined in accordance with the following schedule:

Value of Service	Vested Percentage	Forfeited Percentage
Less than 1	0%	100%
1 but less than 2	10%	90%
2 but less than 3	20%	80%
3 but less than 4	30%	70%
4 but less than 5	40%	60%
5 but less than 6	50%	50%
6 but less than 7	80%	20%
7 or more	100%	0%

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-08 (1979)*

**Section 4-09-09 Payment of benefits.**

Upon a participant's entitlement to payment of benefits, he shall file with the trustee his written election as to such form or forms of distribution and subject to what conditions he wishes to distribute the amounts due from his accounts in one of the following methods:

1. A lump sum distribution;
2. A monthly payment distribution.

The amount which a participant, former participant or beneficiary is entitled to receive at any time and from time to time, may be paid in cash or securities or any combination thereof, provided no discrimination in value results there from.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-09 (1979)*

**Section 4-09-10 Recognized service.**

A participant's eligibility for benefits under the plan shall be based on his period of service determined in accordance with the following:

1. **Service Prior to Adoption of the Plan.** For a participant as of the effective date who has been an employee of the city, the last period of continuous employment with the city prior to the adoption date, shall be counted as service including such periods of authorized leaves of absence which did not break continuity of employment. A partial year of participant's last period of continuous employment shall be deemed one full year of service as of the adoption date.

2. **Service for Employees Participating From and After the Effective Date.** A participant shall acquire a year's service for each year in which he has one thousand or more hours employment, except that for employees who become participants on or after the effective date, only the last continuous period of employment prior to the effective date shall be counted.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-10 (1979)*

**Section 4-09-11 Amendments.**

The city reserves the right to make from time to time any amendment or amendments of this plan which do not cause any part of the trust fund to be used for or diverted to any purpose other than the exclusive benefit of the participant, former participants or their beneficiaries, provided however that the employer may make any amendment it determines necessary and desirable with or without retroactive effect, to comply with ERISA. XI. The city is authorized to execute a trust agreement with the trustee to establish the trust fund. The city may change trustees by amending the trust instrument at any time.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-11 (1979)*

**Section 4-09-12 Nonguaranty of employment.**

Nothing contained in this plan shall be construed as a contract of employment between the city and any employee or as a right of any employee to be continued in the employment of the city, or as a limitation of the right of the city to discharge its employees with or without cause. In the event of a permanent discontinuance of contributions to the plan by the city, the accounts of all participants shall be as of the date of discontinuance one hundred percent vested and nonforfeitable.

*Source: Amended during 1994 codification; Ord. 737 § 1 (part), (1988); MCC 16-09-12 (1979)*