

KODIAK CITY COUNCIL

WORK SESSION AGENDA

Tuesday, April 24, 2018

Kodiak Public Library Multi-Purpose Room

7:30 p.m.

Work sessions are informal meetings of the City Council where Councilmembers review the upcoming regular meeting agenda packet and seek or receive information from staff. Although additional items not listed on the work session agenda are sometimes discussed when introduced by the Mayor, Council, or staff, no formal action is taken at work sessions and items that require formal Council action are placed on a regular Council meeting agenda. Public comments at work sessions are NOT considered part of the official record. Public comments intended for the "official record" should be made at a regular City Council meeting.

Discussion Items

- 1. Public Comments (limited to 3 minutes)
- 2. Interview Councilmember Applicant(s).....1
- 3. Discuss American President Lines
- 4. Review PR&R Amendments.....2
- 5. Final Review of Senior Exemption Ordinance.....82
- 6. Final Review of Business License Ordinance.....86
- 7. April 26, 2018, Agenda Packet Review

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Daniel Mckenna-Foster
1522 Mission Rd. #2
Kodiak, AK, 99615

April 16, 2018

710 Mill Bay Road
Kodiak, AK, 99615



Dear Kodiak City Council,

I am writing to express my interest in filling the seat that has recently become available on the Kodiak City Council. I would like to be considered for this seat because I believe I have experience and skills that could be beneficial to the Council, and I look forward to the possibility of lending my time and energy towards the continued betterment of our community.

- As a resident of the City, I care deeply about how Kodiak runs and what it is like to live here.
- As a citizen, I do my best to play an active role in this community and am a member of several local organizations.
- As a former cafe owner, I understand the complexities of running a small business, especially in resource-constrained environments.
- As a land-use planner by profession, I always attempt to seek out the true causes of problems, endeavor to ask the right questions, and examine issues both in their micro and macro contexts.
- As a public employee, I am familiar with the processes and procedures of creating and implementing policy and running a municipality.

I am excited about this opportunity to work with others and give back to our community, and I would be glad to provide any additional information that would be helpful to the Council.

Sincerely,
Daniel Mckenna-Foster

A handwritten signature in blue ink, appearing to read "Daniel Mckenna-Foster". The signature is stylized and fluid, with a long horizontal line extending to the right.

MEMORANDUM TO COUNCIL

To: Mayor Branson and City Councilmembers

From: Mike Tvenge, City Manager

Thru: Matthew Van Daele, Deputy City Manager and Nanci Sharratt, Human Resource Manager

Date: April 24, 2018

Agenda Item: **Review Personnel Rules and Regulations (PR&R) Amendments**

SUMMARY: For the last few years, a comprehensive review and update to the City of Kodiak's Personnel Rules and Regulations Manual (the PR&R) has been consistently identified by employees and department heads alike as being a critical need. With new personnel onboard, namely our Human Resource Manager, we now have the expertise in-house to begin this review and updating process. Presented is the first of a multi-phase effort to systematically evaluate the existing PR&R and provide the Council with current information and our suggested changes.

BACKGROUND: The first "Personnel Regulations" manual for the City of Kodiak was adopted in 1971, specifically to codify personnel policies and practices, and to make these available to the public upon request. This initial manual was significantly revamped in 1984 when the original Personnel Regulations was rescinded, and a new Personnel Rules and Regulations Manual was adopted in its place. Since 1984, a total of 49 ordinances have made small changes to the PR&R. The most recent amendment (Ordinance No. 1357) occurred in October 2016 after the affirmative vote for City employees to organize under the Public Employment Relations Act.

DEPUTY CITY MANAGER AND HUMAN RESOURCE MANAGER COMMENTS: It is important for the City of Kodiak to maintain an up-to-date personnel manual for ease of interpretation, applying these regulations in a consistent manner across City departments, and staying up-to-date with changing Federal and State laws and regulations. The PR&R sections discussed here represent a comprehensive overhaul of the entire manual based on input from our department heads, employees, and the City's personnel lawyer. The draft presented tonight is a combination of sections in critical need of revision, areas that needed updating due to changes in City ordinances, State statutes, Federal law, and simple grammatical corrections.

NEXT STEPS: If the Council is in favor of these suggested changes, staff will prepare an ordinance for discussion during packet review at the May 22, 2018, work session, and formal introduction at the May 24 regular meeting.

ATTACHMENTS:

Attachment A: Proposed Personnel Rules and Regulations Amendments

APRIL 24, 2018

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CHAPTER 1

OBJECTIVES AND SCOPE

101 AUTHORITY

The following policies and procedures are promulgated under the authority of Ordinance Number 734 of the City of Kodiak, pursuant to Article IV, Section 1 of the City Charter.

102 PURPOSE

It is the purpose of this manual to establish a system of uniform personnel policies and procedures that shall improve the quality of personnel administration consistent with such merit principles as:

- (a) recruiting, selecting, and advancing employees on the basis of their relative ability, knowledge, and skills including open consideration of qualified applicants for initial appointment;
- (b) providing equitable and adequate compensation;
- (c) training employees, as needed, to assure high quality performance;
- (d) retaining employees on the basis of the adequacy of their performance, correcting inadequate performance, and separating employees whose inadequate performance cannot be corrected;
- (e) assuring fair treatment of applicants and employees in selection, promotion, training, and all other aspects of personnel administration without regard to political affiliation, race, national origin, gender, age, or religious creed and with proper regard for their privacy; and
- (f) assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

103 SCOPE

The scope of this manual includes a compilation of policies and procedures for personnel administration of all non-elected employees of the City, except the City Manager and City Clerk if under agreement or other provisions approved by Council. (Ord. 1307, 2013; Ord. 1038, 1996)

104 AMENDMENTS

Amendments to this manual of personnel policies and procedures shall be made by ordinance only. The pages so affected shall be typed by the City Clerk, upon passage of each ordinance, and copies distributed to each employee for insertion and/or replacement in their copies of the personnel regulations manual.

CHAPTER 2

ORGANIZATION AND DELEGATION OF AUTHORITY

201 PURPOSE

Proper organization and delegation of authority are essential to effective and efficient City government administration and management. The responsibilities and authorities delineated in this Chapter are intended to establish a clear understanding of the role that each segment of City government must play in order to create and administer a sound personnel management program.

202 ORGANIZATION OF THE PERSONNEL BOARD

The City Council shall appoint a Personnel Board consisting of three members serving overlapping two-year terms, with terms commencing on January 1. The City Council shall fill vacancies in unexpired terms.

(Ord. 958, 1993)

203 RESPONSIBILITY AND AUTHORITY

203.1 Personnel Board. The Personnel Board shall have the responsibility and authority to:

- (a) elect a chairman at the time prescribed for the beginning of the term of a newly-appointed member;
- (b) meet as often as necessary to hear grievances filed by City employees (see Section 904);
- (c) following the hearing of a grievance, render an advisory opinion based on its findings to the City Manager, with a copy to the aggrieved employee;
- (d) when requested by the City Manager, review and make recommendations on other personnel issues; and
- (e) submit an annual report to the City Council.

(Ord. 958, 1993)

203.2 City Council. The City Council shall have overall responsibility and authority through the City Manager for personnel matters including, but not limited to, the following:

- (a) appoint members of the Personnel Board;
- (b) assign such additional duties to the Personnel Board as it deems appropriate;
- (c) approve the City's budget, including requests for personnel management funds; and
- (d) approve, disapprove, or amend personnel policies and procedures.

(Ord. 958, 1993)

203.3 City Manager. The City Manager shall have the responsibility and authority to:

- (a) administer the personnel policies and procedures as approved by the City Council;
 - (b) establish and maintain records of all employees in the City service, which shall include all pertinent personnel records (departments may retain copies of those personnel records necessary to comply with regulatory agencies, but originals of all records shall be maintained in the City Manager's office, and upon employee termination, all departmental records shall be forwarded immediately to the primary file);
 - (c) **administer the employee performance evaluation program and advise and assist employees, rating officers, and reviewing officers to assure that performance evaluation procedures follow the provisions of Chapter 7;**
~~— develop and administer an affirmative action program to provide for equal opportunity in all aspects of City personnel administration;~~
 - (d) foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employees' effectiveness and productivity, including training, safety, health, counseling, and welfare;
 - (e) maintain the classification and pay plans;
 - (f) administer the City's recruitment and selection program except for staff identified below under heading 203.6 City Clerk; (Ord. 1090, 1999)
 - (g) **ensure** ~~insure~~ uniformity in the application of discipline and processing of employee grievances;
 - (h) appoint and dismiss all employees under the department heads' jurisdiction other than staff identified below under heading 203.6 City Clerk;
 - (i) prepare and adopt such forms, reports, and procedures as may be necessary to carry out the City's personnel program;
 - (j) establish personnel policies and procedures where needed ~~in order~~ to ensure consistency with state and federal requirements and to provide a more precise and consistent execution of the Personnel Rules and Regulations;
 - (k) appoint and dismiss all City personnel except those appointed by the Council as stated in the Charter and those identified below under heading 203.6 City Clerk;
 - (l) notwithstanding any of these policies and procedures may, in an emergency, request interdepartmental assistance be provided; and see that adopted changes to the Personnel Rules and Regulations or changes to position descriptions are distributed in writing to all affected employees in a timely manner; **and**
 - (m) **develop and administer an affirmative action program to provide for equal opportunity in all aspects of City personnel administration.**
- (Ord. xxxx, 2018; Ord. 1322, 2014; Ord. 1307, 2013; Ord. 958, 1993)

203.4 Deputy City Manager. The Deputy City Manager shall have the responsibility and authority to:

- (a) serve as the deputy chief administrative officer and senior manager and department head of the administrative branch of the City government who reports to the City Manager;
- (b) oversee all human resource functions and assist the City Manager in administering all aspects of the City's human resources program including the maintenance of personnel records;
- (c) enforce the Personnel Rules and Regulations;

- (d) assist department heads and the City Manager in making all hiring, **dismissal termination**, and disciplinary recommendations; **and**
- (e) perform functions of the City Manager when assigned.

(Ord. 1322 §2, 2014)

203.5 Department Heads. Department heads shall have the responsibility and authority to:

- (a) enforce the Personnel Rules and Regulations;
- (b) keep employees in their departments informed of current personnel policies and procedures;
- (c) participate in the grievance procedures as specified (see Chapter 9);
- (d) if approved by the City Manager, appoint employees to vacant positions within their respective departments in accordance with established personnel rules, and procedures;
- (e) develop training programs for employees within their respective departments;
- (f) under the supervision of the City Manger, administer discipline within their respective departments;
- (g) conduct orientation for all new employees **in their departments**, and **have issued** to each a copy of current personnel regulations and position description which outlines job duties; such orientation shall include **topics such as** introductions to fellow workers, work standards, safety regulations, break periods, supplies, etc.; and
- (h) under the direct supervision of the City Manager, be involved in the appointment or dismissal of departmental employees under the department head's jurisdiction.

(**Ord. xxxx, 2018**; Ord. 1322, §2, 2014; Ord. 1307, 2013)

203.6 City Clerk. As the head of the Clerk's department, the City Clerk shall have the responsibility and authority **for all personnel matters pertaining to employees in the Clerk's department, including** to:

- (a) enforce the Personnel Rules and Regulations;
- (b) keep employees in the Clerk's department informed of current personnel policies and procedures;
- (c) participate in the grievance procedures as specified (see Chapter 9);
- (d) recruit and appoint employees to vacant positions within the Clerk's department in accordance with established personnel rules and procedures;
- (e) develop training programs for employees within the Clerk's department;
- (f) administer discipline within the Clerk's department and delegate such authority to supervisory personnel as deemed appropriate;
- (g) conduct orientation for all new employees, and have issued to each a copy of current personnel regulations and position description which outlines job duties; such orientation shall include introductions to fellow workers, work standards, safety regulations, break periods, supplies, etc.;
- (h) **exercise have** discipline and dismissal authority over all employees in the Clerk's department;
- (i) classify positions in the Clerk's department, subject to approval of the City Council

(**Ord. xxxx, 2018**; Ord. 1322, §2, 2014; Ord. 1268(SUB) §3, 2013; Ord. 1090, 1999)

203.7 Supervisory Personnel. Supervisory personnel shall have the responsibility to:

- (a) implement personnel policies, rules and regulations in the units under their supervision;
 - (b) supervise the administration of discipline to employees under their supervision and recommend ~~dismissal termination~~ **when appropriate** (see Sections 708 and 1303);
 - (c) train new employees and participate in the development of other employees;
 - (d) evaluate employee performance and participate in the development of position descriptions (see Chapter 7); and
 - (e) participate in the grievance procedures as specified (see Chapter 9).
- (Ord. 1322, §2, 2014; Ord.1307, 2013)

203.8 All Employees. Employees of the City shall ~~receive be presented with,~~ and sign for, a copy of the personnel rules in effect on the hiring date, and ~~subsequently~~ shall have the responsibility to:

- (a) read and understand these rules and ask the immediate supervisor to explain these rules if questions arise;
 - (b) understand the function of the department assigned and how that function relates to the total mission of the City and all of its departments;
 - (c) discuss with the immediate supervisor any questions relating to the interpretation or application of these rules either informally or formally through the grievance procedure;
 - (d) bring to the attention of the immediate supervisor any change in duties as outlined in the position description form given to the employee at hiring;
 - (e) submit in writing recommended changes to the rules through the appropriate supervisory channels to the City Manager; and
 - (f) ~~all employees shall~~ have access to their personnel files.
- (Ord. 1322 §2, 2014; Ord. 1307, 2013; Ord. 958, 1993)

CHAPTER 3

POSITION CLASSIFICATION

301 THE CLASSIFICATION PLAN

The classification plan is a system by which individual positions are evaluated and assigned a band, grade, and sub-grade to provide internal and external equity for pay purposes.
(Ord. Ord. 1307, 2013; Ord. 1038 §1, 1996)

302 PURPOSE OF THE CLASSIFICATION PLAN

The Classification Plan is a management tool that consistently facilitates pay determination decisions with regard to the mission, philosophy, and needs of the organization. It is critical to the effective administration of personnel activities such as:

- (a) **workforce** ~~manpower~~ planning and budgeting;
- (b) establishing job performance standards; and
- (c) establishing fair and equitable pay.

(Ord. 1307, 2013; Ord. 1038 §3, 1996)

303 DEVELOPMENT AND ADMINISTRATION

The City Manager shall have authority for the overall administration of the classification plan except for staff identified under the heading 203.6 City Clerk.
(**Ord. xxxx, 2018**; Ord. 1307, 2013; Ord. 1268(SUB) §4, 2013; Ord. 1090, 1999)

303.1 Allocation of Positions. The City Manager shall analyze and evaluate the duties, responsibilities and qualifications required of each position in the classified service and then allocate each position to the appropriate band, grade, and sub-grade. Any employee who is dissatisfied with the allocation of ~~his~~ **their** position ~~may shall be given the opportunity to~~ appeal the allocation.

(**Ord. xxxx, 2018**; Ord. 1307, 2013; Ord. 1038 §4, 1996)

303.2 Maintenance of the Classification Plan. The City Manager shall periodically review the entire classification plan or any part thereof. The purpose of such review shall be:

- (a) to ascertain whether ~~or not~~ the plan accurately reflects existing conditions;
- (b) to determine the accuracy of position specifications; and
- (c) to assure that positions are properly graded.

The City Manager shall recommend changes needed in the classification plan to the Council **as needed** ~~to keep it up to date~~.

(Ord. 1307, 2013; Ord. 1038 §4, 1996)

303.3 Position Descriptions. Position descriptions shall be developed and finalized by the City Manager and supplied to City departments for all authorized positions.

303.4 New Positions. When a new position is proposed, the department head shall ~~be required to~~ provide **the City Manager** a written proposal **to include** ~~with financial information on~~ the cost to fill **the proposed** ~~such a~~ position. The City Manager, ~~who~~ shall determine the proper band, grade, and sub-grade and prepare a new position description, if an appropriate description does not exist.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038 §4, 1996)

303.5 Reorganization of Department. Whenever reorganization of a department or action of the City Council causes the duties of a position to change or a position appears to have been incorrectly allocated the City Manager shall, at the request of the department head or a regular employee affected by the reclassification, investigate the duties of the position in question. After conferring with department officials and the employee involved, and reviewing all relevant data, the City Manager shall recommend to the Council any major reclassification of the position to the appropriate salary grade. Reclassification shall not be used to avoid the provisions of the personnel rules dealing with layoffs, demotions, promotions, or dismissals.

(Ord. 1038 §4, 1996)

303.6 Position Review. Each position in the City service shall be reviewed by the City Manager at intervals to ascertain whether it is correctly classified. ~~When a review results in a recommended change in the grade for a position, the evaluation of the position shall be made part of the public record when the recommendation is submitted to the Council.~~

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1275, 2010)

303.7 Effective Date of Change. Classification changes shall **take** ~~become~~ **effective on** the effective date of the enacting ordinance.

(Ord. xxxx, 2018; Ord. 1307, 2013)

304 STATUS OF INCUMBENTS IN RECLASSIFIED POSITIONS

In all cases of reclassification, the employee in the position shall be entitled to examine and compete for the reclassified position. If ineligible for appointment to the reclassified position, the employee shall be transferred, promoted, or demoted by appropriate action in accordance with the provisions of these rules. If the incumbent is ineligible to continue in the position and is not transferred, promoted, or demoted the provisions of these rules regarding separation shall apply.

CHAPTER 4

SALARY ADMINISTRATION

401 PAY PLAN

The pay plan shall include schedules of pay for ~~twenty~~ pay bands, grades, and sub-grades ~~from A11 through E84~~, each with a ~~minimum, midpoint, and maximum~~ rate of pay for all positions in the classified service. The objectives of the pay plan shall be to:

- (a) provide an appropriate salary structure to recruit and retain an adequate number of competent employees; and
 - (b) provide appropriate pay incentives for high employee productivity.
- (Ord. xxxx, 2018; Ord. 1322 §3, 2014; Ord. 1307, 2013; Ord. 1038, 1996)

402 STANDARDS FOR DEVELOPMENT OF THE PAY PLAN

The development of the pay plan shall be directly linked with the classification plan and shall be based on the principle of equal pay for equal work. Pay bands and grades within the pay plan shall be determined with due regard to such factors as:

- (a) the relative relationship between job groups and job duties;
- (b) the relative difficulty and responsibility of work; and
- (c) the internal alignment and external market data in both public service and private industry in the appropriate recruiting market.

(Ord. 1307, 2013; Ord. 1038, 1996)

403 DEVELOPMENT OF THE PAY PLAN AND PAY SCHEDULE

The City Manager shall be responsible for the development of the pay plan and pay schedule through the use of one or more of the standards described above based on consultation with the City Council and employees.

404 ADMINISTRATION OF THE PLAN

The City Manager shall be responsible for administering the pay plan and keeping it current through periodic reviews and comparative studies of pertinent factors affecting levels of pay.

405 ENTRANCE PAY RATE

The entrance pay rate for regular full- and part-time employees shall be the minimum rate in the corresponding band and grade for the position. **At the City Manager's discretion, advertising and hiring for positions above the minimum rate of the corresponding band**

and grade for such positions may occur. Approval of appointments above the minimum pay rate may be granted only when a recommended applicant exceeds the minimum requirements for the position with regard to directly related education and/or experience. In such instances, the department head shall provide a hiring recommendation to the City Manager in writing documenting the applicant's qualifications for a higher starting pay rate. ~~In no instance, shall an entrance pay rate exceed the first quartile of the band and grade except at the department head level.~~ The pay rate for temporary employees shall be the minimum point for the appropriate band and grade of the position in which the temporary worker is being hired. All temporary appointments are subject to the approval of the City Manager.
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

406 MERIT STEP INCREASE

406.1 Regular Merit Step Increases. Regular full-time employees will be eligible for an annual merit increase based on satisfactory performance on their anniversary date of 2-2.5%, or as authorized in the adopted fiscal year budget. An employee who has transferred or been promoted to a new position must serve a probationary period and will be eligible for a merit based increase on the anniversary date in the new position. If a department head feels that an employee has not demonstrated satisfactory service of a progressively greater value to the City during the annual performance review period, the department head may, upon approval of the City Manager, suspend the merit step increase for a period of time during which certain specific improvements must be made. Notice of such deferral and reasons for it shall be given to the employee in writing prior to the end of the anniversary year. The suspended step increase may be approved at any time during the extended period if the department head believes the employee has achieved satisfactory improvement and the City Manager agrees. The suspended merit step increase is *not* retroactive when finally given (see Section 705).
(Ord. 1307, 2013)

406.2 Special Merit Increase. A Special Merit Increase may be granted to an employee for outstanding performance **in recognition of extraordinary service to the City of Kodiak and/or its residents outside the employee's normal or expected job duties, when documented in writing by their department head and approved by the City Manager.** ~~when justified in writing by the department head to the City Manager. This increase is in addition to normal merit increases and does not affect the anniversary date. Department heads may recommend employees for special merit increases in recognition of extraordinary service to the City of Kodiak and/or its residents that is outside the employee's normal or expected job duties.~~ **Additionally, employees will be eligible for Special Merit Increases when they receive eligible certifications and/or qualifications. A list of these eligible certifications and qualifications will be maintained by the Human Resource office and reviewed and approved annually by the City Manager.**
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1061, 1998)

407 REGULAR PART-TIME EMPLOYMENT

Regular part-time employees shall be compensated on an hourly basis equivalent to the hourly rate established for regular full-time employment for the actual number of hours

worked in each period. Appointment shall be in probationary status until a total of 1,040 hours or the equivalent number of probationary hours for that position have been worked.

A merit step increase shall be awarded (if performance is satisfactory) when hours worked have a cumulative total equivalent to the intervals listed in Section 406.1, based on an equivalence of 2,080 to a full-time employment year. If work performance is unsatisfactory, management shall take action as described in Section 406.

(Ord. 1307, 2013; Ord. 1038, 1996; Ord. 1008, 1995)

408 TEMPORARY EMPLOYMENT

Temporary employment is for short term periods, not to exceed six (6) months, or for work on an irregular basis. A person appointed to a temporary position or hired temporarily to replace an absent employee, is not eligible for any fringe benefits **and the Personnel Rules and Regulations do not apply to temporary employees.** ~~Probationary periods shall not be served, and such persons are not eligible for special merit increases, do not have access to the grievance process; nor will temporary employees be considered as internal applicants.~~

(Ord. xxxx, 2018)

409 PAY RATE ADJUSTMENTS

The following personnel actions shall affect the pay status of an employee in the manner described.

409.1 Transfers. When an employee is transferred from one position to another in the same band and grade in which the employee has never held regular status, the City Manager will decide probationary status ~~and step placement.~~

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

409.2 Promotion. When an employee is promoted from one position to another having a higher salary band and grade, the employee shall receive an increase of ~~not less than~~ 5%. If the employee's current rate of pay is below the minimum for the higher salary grade, the pay shall be increased 5% or the minimum of the higher salary band and grade, whichever is greater. If the employee's current rate of pay falls within the matrix of the higher salary grade, the pay shall be increased 5% above the current pay rate. The anniversary date shall change to the effective date of promotion.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

409.3 Demotion and Demotion for Cause.

- (a) When an employee is demoted for administrative purposes, the department head will work with the City Manager to decide probationary **and pay** status ~~and step placement.~~
- (b) When an employee is demoted for cause, the City Manager will decide probationary **and pay** status ~~and step placement.~~

- (c) When an employee accepts a voluntary demotion, the employee's pay will be adjusted according to the band and grade for the new position.
(Ord. xxxx, 2018)

409.4 Reinstatement.

- (a) Reinstatement of regular full-time employees who have resigned: no preferential pay treatment will be given to reinstated employees. The principles of job classification and equal pay for equal work which includes work experience, shall apply as if to a new employee.
- (b) Resignations of a special nature such as, but not limited to, family illness or education leave (up to two (2) years with prior approval of the City Manager) have reinstatement rights according to arrangements in writing at the time of resignation, and if the position is available. Probationary periods will apply as described in Section 606.3.

409.5 Reinstatement of Veteran. A regular full-time City employee who returns from military leave shall be reappointed in accordance with ~~the United States Code Annotated Title 50, War and National Defense Military Selective Service Act of 1967; Section 459, Separation from Service (a),(b),(c),(f), and (g)~~ **the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA")**, 38 U.S.C. 4301 et seq. If the return is in accordance with **USERRA** ~~the Act~~, the employee is entitled to reinstatement into the position held prior to military leave, or into one as nearly like it as possible.

409.6 Layoff. When a regular full-time employee following layoff is re-employed in the same position from which the layoff occurred, re-employment shall be in the same pay **status** ~~step~~ occupied at the time of layoff. When the employee is re-employed in a position having a different salary band and grade, the rate of pay shall be assigned accordingly.
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

410 COMPENSATION DURING TEMPORARY ASSIGNMENT

A regular **full-time** employee who is temporarily assigned to a position with a higher paid band and grade for a period of fifteen (15) calendar days or more shall be granted a five (5) percent pay increase for the full period worked in the temporary assignment. A regular full-time employee who is temporarily assigned to a position with a lower pay band and grade for any period shall not receive a reduction in pay. No temporary assignment shall exceed six (6) months.
(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1008, 1995)

411 HOURS OF WORK

Unless a different schedule is established in accordance with the second paragraph of this section, regular working hours of City employees shall consist of 40 hours a week on a consistent schedule. The standard work week shall consist of the period from midnight Sunday to the following midnight Sunday. The standard work day shall consist of the period

from midnight to midnight. Unless otherwise provided, the hours of regular employment for City employees shall be from 8 a.m. to 5 p.m., with an hour for lunch. For absence from an employee's regular work duties for training purposes, see Subsection 1014.3. For Fire Department employees working the platoon system see Subsection 1605(a).

Different schedules may be established and altered by department heads with approval of the City Manager. Temporary shifting of employees' working hours **and/or locations** to meet routine needs shall be done as necessary and approved by the department head. The department head will inform the employee of shift changes at least one week prior. **In unforeseen or unavoidable circumstances, informing employees of upcoming changes may occur less than one week prior to their new shift.** ~~or as far in advance as possible.~~ (Ord. xxxx, 2018; Ord. 1061, 1998; Ord. 804, 1987)

412 OVERTIME

An employee classified as non-exempt under the federal Fair Labor Standards Act, 29 USC §201 *et seq.*, shall be paid for overtime hours as provided in Section 412.1. Hours **not worked** during a City holiday, or while an employee is on annual leave or sick leave, are not considered hours worked for the purpose of determining whether the employee is entitled to overtime pay. All overtime worked must have the approval of the department head prior to its performance ~~except in emergencies which prevent prior authorization, and shall be paid in accordance with applicable state or federal laws. If emergency overtime is worked, the department head shall see that it is accurately and timely recorded.~~ **Emergency overtime constitutes emergency call-outs that occur outside of normally-scheduled shift hours due to critical life, health, safety, and/or asset protection issues that require a physical response to a scene and must be addressed immediately. Any such emergency call-outs will result in a mandatory minimum of two hours of overtime pay.**

All overtime records are subject to review by the City Manager. Overtime shall be scheduled as fairly and equally as practical among employees, based first on qualifications to perform the work and, secondly, on seniority.

(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1061, 1998; Ord. 869, 1989)

412.1 Overtime Pay. An employee shall receive overtime pay as follows:

- (a) except as provided in (b) and (c) below, an employee is paid at one and one-half times the employee's regular pay rate for hours worked in excess of forty (40) hours in a standard work week, or in excess of eight (8) hours in a standard work day, as each is defined in Section 411;
- (b) while working in the Fire Department platoon system under Section 1605, an employee will receive overtime pay only as provided in subsection 1605(c); and
- (c) an employee is paid for hours worked on a City holiday only as provided in Section 412.2, "Holiday Pay."

(Ord. 1275, 2010)

412.2 Holiday Pay. For purposes of calculating compensation, a holiday is an eight (8) hour period. All regular employees shall receive eight (8) hours of regular pay for each day designated a holiday by the City and shall, in addition, be compensated for all hours of

scheduled and unscheduled work on a holiday, at their regular rate of pay (see Chapter 12). (For application to Fire Department platoon system, see Section 1604.)

412.3 Exceptions for Shift Rotation. An exception to overtime pay for work over eight hours in a twenty-four (24) hour period is that no overtime will be paid for shift rotation, provided there has been time off of at least twelve (12) hours between the shifts.

412.4 Shift Differential.

- (a) "Shifts" apply only to those departments that work "around the clock" or twenty-four (24) hours a day.
- (b) For shifts that are normally scheduled to be eight hours per day, the term "swing shift" is defined as one that starts between 12:01 p.m. and 7 p.m. The term "graveyard shift" is defined as one that starts between 7:01 p.m. and 5 a.m. The term "regular shift" is defined as one that starts between 5 a.m. and noon.
- (c) For shifts that are normally scheduled to be twelve hours per day, the term "overnight shift" is defined as one that starts between 5:01 p.m. and 5:00 a.m. The term "regular shift" is defined as one that starts between 5:01 a.m. and 5:00 p.m.
- (d) The employee who works the swing shift shall receive four (4) percent additional pay to the regular salary for the hours worked on swing shift.
- (e) The employee who works the overnight shift shall receive five (5) percent additional pay to the regular salary for the hours worked on overnight shift.
- (f) The employee who works the graveyard shift shall receive six (6) percent additional pay to the regular salary for the hours worked on graveyard shift.
- (g) For twenty-four (24) hour shifts (platoon system) see Chapter 16.
(Ord. 1082, 1998)

413 CHANGING PAY GRADE ASSIGNMENTS

When a position is re-evaluated and changed to a different band and grade, the base rate of employees occupying positions of that salary grade shall be adjusted as follows:

413.1 Reclassified to Higher Grade. If the position is re-evaluated and assigned to a higher salary grade, all employees in positions affected shall have their base rates increased 2.5% or placed at the first step of the higher grade, whichever is greater, not to exceed the maximum of the new band and grade.

413.2 Reclassified to a Lower Pay Grade. If the position is re-evaluated and assigned to a lower band and grade, all employees in positions affected shall not receive reductions in their base salary upon salary grade reassignment.

(Ord. 1307, 2013; Ord. 1038, 1996)

414 RETIREMENT

The City has in effect a retirement plan for all eligible City employees as set forth under City Council Resolution ~~Number 11-70~~.

415 INSURANCE AND MEDICAL BENEFITS

415.1 Group Life Insurance. The City of Kodiak will pay all City group life insurance premiums for its regular, ~~full-time~~ employees **working 30 or more hours per week**.

415.2 Group Health Insurance. The City of Kodiak will pay City group health insurance premiums for its regular, ~~full-time~~ employees **working 30 or more hours per week** at the coverage costs in effect July 1 each year, as provided for in the adopted budget.

~~(a) Any increases in premium costs over prior year amounts which are attributable to medical inflation or other factors apart from claims experience and so identified by the insurer will be borne by the City.~~

~~(b) Any increases in premium costs over prior year amounts which are attributable to claims experience and so identified by the insurer will be borne by the employees as a group.~~

~~(c) The intent of this section is to abolish a two-tier system that formerly provided different levels of coverage for employees hired before or after April 1, 1992.~~

(Ord. xxxx, 2018; Ord. 1130, 2001; Ord. 1088, 1999; Former Section 419 repealed and replaced by Ord. 1061, 1998; Ord. 959, 1993; Ord. 931, 1992)

416 EFFECTIVE DATE OF CHANGES IN PAY

Effective date of personnel actions implementing classification, reclassification, regular and special merit increases, promotions, demotions, and reinstatements shall be the effective date of change. Nothing in this section shall prohibit retroactive pay approved by Council, or required because of administrative oversight or error.

(Ord. 1061, 1998; Ord. 1024 §2, 1996.)

417 STAND-BY DUTY

~~See Subsection 1605(d).~~ Any employee who is assigned standby duty status prior to any normal shift day shall be paid at a rate equal to five (5) percent of the employee's base hourly rate for every hour of such assigned standby duty. Notwithstanding the payment of compensations for time spent on standby duty status, such time shall not be treated as hours worked within the meaning of the Fair Labor Standards Act and the associated regulations.

(Ord. xxxx, 2018)

CHAPTER 5
RECRUITMENT

501 POLICY

It shall be the policy of the City of Kodiak to recruit and select the most qualified persons for positions in the City's service. To ensure that the policy is carried out, it shall be the responsibility of the City Manager to:

- (a) conduct recruitment and selection ~~in an affirmative manner~~ to ensure open competition;
- (b) provide equal employment opportunity;
- (c) prohibit discrimination because of race, age, politics, religion, gender, national origin, mental or physical handicap, color, marital status, changes in marital status, pregnancy, parenthood, or any other non-merit factors; and
- (d) give preference to local hire when ~~legally permissible ever possible~~.

In the case of staff identified under the heading 203.6 ~~4.5~~ City Clerk, responsibilities identified in this chapter shall be assumed by the City Clerk.
(Ord. xxxx, 2018; Ord. 1090, 1999)

502 RECRUITMENT

The City Manager shall develop and conduct an active recruitment program designed to meet current and projected ~~staffing manpower~~ needs. Recruitment will be tailored to the ~~various~~ salary grades of positions to be filled, and will be directed to all sources likely to yield qualified candidates.

(Ord. xxxx, 2018; Ord. 1038, 1996)

503 JOB ANNOUNCEMENTS AND PUBLICITY

In order to attract an adequate number of candidates for present or anticipated vacancies and to permit successful competition with other employers, the City Manager will issue job announcements and otherwise publicize vacancies. ~~Job announcements shall be made clear and readable. They~~ **Job announcements** shall include the job title, salary range, job qualification requirements, and examination information (including the time, place, manner of completing applications, and other pertinent information). Publicity for job vacancies shall be conducted for a sufficient period of time to insure reasonable opportunity for persons to apply and be considered for employment. In any event, job vacancies shall be formally announced and posted on one or more public bulletin boards maintained by the City at least ten (10) working days prior to the closing date for filing applications. The City Manager may also initiate continuous recruitment programs for any number of positions as appropriate. All job announcements shall be publicized first to all City employees at least five (5) working days prior to being advertised publicly. If, in the judgment of the City Manager, an adequate

number of candidates have applied for a given vacancy prior to expiration of the period within which the job announcement is publicized first to all City employees, the vacancy shall be posted on one or more public bulletin boards maintained by the City, but need not be advertised through local newspapers or other public media. Nothing in this section shall be interpreted as limiting the City Manager's discretion or authority to advertise job vacancies in such public media as deemed appropriate, however. Furthermore, if, after expiration of the deadline for the submission of applications for any vacancy, the City Manager determines that it would be in the City's best interest to re-advertise the vacancy and extend the application period, the City Manager may do so. In such an event, the position need not be re-publicized first only to City employees and it shall be advertised through one or more local newspapers, and such other public media as the City Manager selects (see Section 603). (Ord. xxxx, 2018; Ord. 1038, 1996; Ord. 834, 1988)

504 APPLICATION FORM

All applications for employment shall be made on forms prescribed by the City Manager. Such forms shall require background information to include training, experience, and other pertinent information. All applications must be signed, **and supporting documentation may be requested.** ~~and the City Manager shall require proof of statements.~~ Application forms shall comply with Equal Opportunity Commission regulations. (Ord. xxxx, 2018)

~~505 REJECTION OF APPLICANTS~~

~~The City Manager may reject any application which indicates that the applicant does not have the minimum qualifications established for the position. Applications may also be rejected if the applicant:~~

- ~~—(a) has deliberately falsified any information on the application form;~~
- ~~—(b) does not meet the legal age limits or other requirements established by State law; and~~
- ~~—(c) has established an unsatisfactory employment record of such a nature as to demonstrate unsuitability for the position.~~

CHAPTER 6

SELECTION

601 DEVELOPMENT EVALUATION CRITERIA

The City Manager, **or, for staff identified in Section 203.6, the City Clerk**, shall be responsible for developing realistic job-related evaluation criteria, in addition to the requirements listed in Section 602, to provide a basis for determining a candidate's potential for successful or highly successful performance in the position. ~~Once established for a particular position, the evaluation criteria will remain the same for subsequent filling of that position, unless there is a change in duties or if placement follow up indicates need for revision. In the case of staff identified under the heading 203.6 4.5 City Clerk, responsibilities identified in this chapter shall be assumed by the City Clerk.~~ (Ord. xxxx, 2018; Ord. 1090, 1999)

602 MINIMUM EVALUATION CRITERIA

All of the following methods, and any designated by the City Manager as described in Section 601, will be used in making meaningful distinctions among candidates:

- (a) evaluation of training and experience;
- (b) supervisory appraisals of performance and assessments of employee potential;
- (c) written and/or performance tests, if applicable;
- (d) awards presented to employees; and
- (e) self-development efforts of employees which are job related and enhance the employee's potential.

Supervisory appraisals of performance will be obtained for all candidates, if they can be obtained in a timely manner. All applicants will be ranked according to the following categories:

- (a) ineligible;
- (b) qualified; and
- (c) best qualified. Best qualified will consist of candidates who rank at the top when compared with other eligible candidates.

Normally, three to five of the best qualified group will be referred to the appointed selecting official. The selecting official will not refuse to make selections from this list without justifying such actions, indicating specific reasons for non-selection for each referred candidate. Each candidate's justification actions shall be kept available for inspection and/or duplication, for a period which need not exceed thirty (30) days, in a file kept in the City Manager's office. Each candidate will only be able to review **their his** own justification actions. All applicants shall be notified by the City of selection or non-selection within five (5) working days, if possible, after the decision has been made.

Upon the non-selection of all qualified applicants, the City Manager may decide to re-advertise or hold the position open for an indefinite time.

603 PROMOTIONAL SELECTION

Promotional selection shall be open to all City employees in the classified service who meet the prescribed minimum qualifications for the position.

604 METHOD OF RATING

In all selection procedures, the minimum ratings with which eligibility may be achieved shall be set by the City Manager. A minimum or passing rating shall be established for all devices used in the selection process. The final rating shall be determined for applicants with passing ratings in accordance with the weight established for each device as contained in the job announcement.

605 RE-EMPLOYMENT LISTS

Regular employees who are involuntarily separated from the City service, as a result of layoff or reduction in force, shall be placed on a re-employment list for the position they occupied at the time of separation. Names shall be placed on re-employment lists based, all other things being equal, first on performance and secondly on length of classified service with the City. The eligibility of an individual to remain on the re-employment list shall expire two (2) years from the date of separation from the City.
(Ord. 1038, 1996)

606 PROBATIONARY PERIOD

All employees, upon hiring, promotion, or demotion, shall serve a probationary period of at least six (6) months, but no more than twelve (12) months. Under unusual circumstances, exceptions may be authorized by the City Manager. If an employee takes leave without pay during the probationary period, the probationary period shall be extended by the length of leave without pay. Probationary employees must obtain at least a satisfactory performance rating at the completion of their probationary period in order to obtain regular status. New hires, not including promoted employees in probationary status, may be terminated at any time during their probationary period ~~with no recourse to the grievance procedure.~~
(Ord. xxxx, 2018; Ord. 1008, 1995)

606.1 Promoted Employee Probationary. When it becomes clear that a regular full- or part-time employee serving a promotional probationary period is not performing adequately, the department head will work in conjunction with the City Manager to inform the employee in writing of the performance issues. If demotion is found to be necessary, the employee shall

be demoted to a position in the previously held band and grade, the anniversary date shall remain unaffected, and the demotion shall not be grievable.

606.2 Demoted Employee Probationary. When a regular full- or part-time employee is demoted to a position where regular status was held previously, the employee returns to the **pay status** ~~step~~ previously held and no probationary period will be served. Where an employee is demoted to a position not held before, the department head shall decide subject to approval of the City Manager whether a probationary period shall be served. The employee concerned shall be notified of the decision, in writing, before demotion is accomplished, and in either case the anniversary date shall remain unaffected and the probationary demotion is not grievable.

(Ord. xxxx, 2018)

606.3 Reinstated Employee Probationary. A regular full-time employee reinstated within two years of separation may not be required to serve a probationary period unless rehired into a different position than previously served, or unless the previous probationary period was not completed.

(Ord. 1307, 2013; Ord.1038, 1996)

606.4 Regular Part-Time Probationary. See statement in Section 407.

607 TEMPORARY EMPLOYMENT

Temporary employment may not be counted toward probationary periods nor shall time be credited for such service toward anniversary length of service dates, if temporary employees are later appointed to regular full- or part-time positions. Persons serving in temporary positions shall not be considered as eligible internal candidates when applying for a regular full- or part-time position. However, time served in a temporary capacity may be counted toward experience requirements in minimum qualifications for the position concerned.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

608 EMERGENCY EMPLOYMENT

Emergency employment, not to exceed thirty (30) calendar days, may be authorized by the City Manager without recourse to usual hiring procedures. Such appointments shall be made only in case of an unforeseen emergency and when necessary to prevent impairment of City services. Emergency hires are not entitled to any fringe benefits.

CHAPTER 7

PERFORMANCE EVALUATION

701 PURPOSE

The ~~primary purpose of the~~ employee performance evaluation program for regular full- and part-time employees is to inform employees how well they are performing and to provide direction or advice on how work performance can be improved or corrected. Performance evaluations shall also be considered in decisions affecting salary advancement, promotions, demotions, dismissals, orders of layoff, orders of re-employment, placements, and training needs.

(Ord. xxxx, 2018; Ord. 1307, 2013)

702 PERIODS OF EVALUATION

Each regular employee in the classified service shall have performance evaluated at the following periods.

702.1 End of Probationary Period. Each regular employee shall be evaluated ten (10) days prior to the completion of the probationary period. The employee must have an overall evaluation of at least "satisfactory" in order to become a classified employee (see also Section 406).

702.2 Annual. Each regular employee shall receive an annual performance evaluation one (1) month prior to the date of each potential merit step increase as scheduled in Subsection 406.1.

702.3 Special. A special performance evaluation shall be completed whenever:

- (a) there is a significant change either upward or downward in the employee's performance; and
- (b) a supervisor permanently leaves ~~their~~ ~~his~~ position. The supervisor shall complete a performance report on each employee under ~~their~~ ~~his~~ supervision who has not been evaluated within six (6) months prior to the date the supervisor is to leave ~~their~~ ~~his~~ position.

(Ord. xxxx, 2018)

703 PERFORMANCE EVALUATORS

703.1 Rating Officer. The rating officer shall be the employee's direct supervisor and will have supervised the employee for not less than six (6) months. The rating officer shall be responsible for completing a performance evaluation report, which shall be reviewed and approved by the department head and City Manager or designee at the time prescribed for each employee supervised.

703.2 Review Officer. The reviewing officer shall be the rating officer's immediate supervisor or department head. The reviewing officer shall review the draft performance evaluation report before the report is sent to the City Manager and before it is presented to the employee. The reviewing officer shall consider the performance evaluations completed by the rating officer when evaluating the rating officer's performance.

In the case where the rating officer is the department head, the reviewing officer shall be the City Manager. In the case where the City Manager or City Clerk is the rating officer, there shall be no review.

(Ord. 1307, 2013; Ord. 1090, 1999)

704 REVIEW OF PERFORMANCE REPORT

The rating officer shall discuss the performance evaluation report with the employee before the report is made part of the employee's permanent record. If the rating officer plans to recommend the denial of a merit step increase the report must be discussed and approved with the reviewing officer and the City Manager prior to review with the employee (see Section 406).

(Ord. 1307, 2013)

705 UNSATISFACTORY EVALUATION

A regular employee who receives an overall rating of "unsatisfactory" on their annual evaluation shall not be eligible to receive a merit step increase until the employee successfully completes the assigned performance improvement plan. (see Section 406).

(Ord. 1307, 2013)

706 EMPLOYEE APPEAL PROCEDURE

Performance evaluations are not grievable.

(Ord. 1307, 2013)

707 KNOWLEDGE OF DISCIPLINARY ACTION REGULATIONS

All employees shall be informed of standards of performance and personal conduct of City employees in various positions. Employees shall be acquainted with the various provisions of disciplinary action regulations. All regular city employees shall be given a copy of the updated Personnel Rules & Regulations. A copy is always available in the Human Resource Manager's office and the City Clerk's office (~~see Sections 105 and 203.6~~).

([Ord. xxxx, 2018](#); Ord. 1307, 2013)

708 DISCIPLINARY ACTION ~~PROCEDURE~~

Whenever possible, disciplinary actions shall be a progressive system to maximize the ability for employees to correct adverse, incorrect, or inappropriate behavior and action. Examples of behaviors and actions warranting disciplinary actions include but are not limited to: any conduct detrimental to the best interests of the City; inefficiency or unwillingness to perform duties; tardiness or absenteeism; neglect, failure, or inability to perform duties at an acceptable level of performance; insubordination; dishonesty, theft, or falsification of any reports, records, or documents; assault, fighting, or horseplay; sleeping on the job or taking unauthorized breaks; possession or use of intoxicants or illegal drugs while on duty; conviction of a felony or any criminal conviction involving moral turpitude or reflecting adversely on the City or the employee's fitness for his or her position; reckless or willful damage to or loss of City property; violation of departmental rules of conduct or safety regulations; disrespectful conduct toward the public, or use of profane, abusive, or threatening language toward coworkers; sexual harassment; the uttering of racial or sexual slurs or innuendoes causing emotional discomfort or embarrassment to any other employee or member of the public; and any other conduct reasonably justifying the proposed form of discipline, up to and including dismissal.

When an employee's department head or supervisor determines disciplinary action is necessary for any employee, the department head or supervisor may begin discipline at any of the steps listed below. Steps 1 and 2 may be completed within the department, but steps 3 through 6 must involve and be approved by the City Manager.

- 1) Verbal Warning
- 2) Oral Reprimand, with written note to personnel file
- 3) Disciplinary Action Memorandum
- 4) Suspension Without Pay
- 5) Demotion
- 6) Dismissal

Steps may be skipped in progressive discipline depending on the severity of the offence committed, the employee's overall record of performance, and any other appropriate mitigating or aggravating factors. No dismissal can occur without written approval of the City Manager.

~~All disciplinary actions, oral admonitions and verbal warnings, shall be documented in writing in a Disciplinary Action Memorandum to the employee and placed in the employee's personnel file.~~ The employee shall be given an opportunity to read **Oral Reprimands and Disciplinary Action Memorandum**. ~~These~~ **It** shall ~~then~~ be reviewed with the employee and a sincere effort shall be made to obtain agreement of the employee that the facts are stated correctly, that the inappropriate or incorrect behavior did occur, that it did represent behavior that should be disciplined, that the discipline is appropriate, and that the behavior will not be repeated. If errors are found, the **Oral Reprimand or** Disciplinary Action Memorandum shall be redone and again reviewed. Comments of the employee shall be entered under that heading. The employee shall be requested to sign the memorandum and informed that the

signature only indicates agreement that the memorandum accurately reflects the discussion. If the employee refuses to sign the memorandum, the following statement shall be entered:

"(Employee's name) read the contents on (date) and refused to sign."

The Disciplinary Action Memorandum shall be reviewed and approved by the City Manager before being presented to the employee and placed in the employee's personnel file. A copy shall be given to the employee. The supervisor may, if necessary, complete reviews of the employee's progress in correcting the cause of the original action at three, six, and nine months (see Sections 406 and 702.2). These reports shall be made on the Performance Evaluation Report form. Twelve months from date of the action concerned, the City Manager shall review the disciplinary action, and if no subsequent report of similar violations has been made, the department head shall be notified to return departmental copies to the employee. The original shall be placed in a confidential folder and put in the employee's personnel file. It shall not be referred to again unless there is further trouble. All appeals from disciplinary action shall be initiated at Step 3 of the grievance procedure.

If it becomes necessary at any time to inform a regular full- or part-time employee of impending demotion or **dismissal termination**, such notice shall be in accordance with the disciplinary action procedure outlined above and coordinated through the City Manager's office. The notice shall be in writing with copies to the City Manager and the employee. Such notice shall be for action other than a verbal admonition or verbal warning.

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 834, 1988)

709 RELIEF OF DUTIES

- (a) Upon approval of the City Manager, a department head may at any time suspend a regular full- or part-time employee without pay for cause for a period not to exceed thirty (30) calendar days in any calendar year. **In cases when an employee is behaving in an unsafe manner, or creating an unsafe work environment, the department head may suspend the employee immediately to maintain a safe working environment before consulting with the City Manager, and the department head shall inform and consult the City Manager as soon as the situation permits regarding this immediate suspension.**
- (b) Employees against whom charges are preferred may, at the discretion of the City Manager and department head, be suspended from duty with or without pay pending final disposition of charges. **No employee may be suspended without pay in the absence of a pre-decisional hearing.**
- (c) A suspension under this section shall be recorded on a Disciplinary Action Memorandum. A Performance Evaluation Report form documenting the performance improvement plan shall be completed for any employee suspended without pay. Both documents shall be reviewed with the employee as soon as possible. Following the review, a copy shall be given to the employee and the original forwarded immediately to the personnel file.

(Ord. xxxx, 2018; Ord. 1307, 2013)

710 DEMOTION FOR DISCIPLINARY REASONS

An appointing authority may demote a regular full- or part-time employee for disciplinary reasons in accordance with other provisions of these regulations. Demotion is considered as a more moderate penalty than dismissal and may be offered in lieu thereof, as approved by the City Manager, when mitigating circumstances warrant such leniency (see Section 409.3(b)). (Ord. 1307, 2013)

711 DEMOTION WITHOUT PREJUDICE

Demotion without prejudice shall not be considered a disciplinary action. With approval of the City Manager, an appointing authority may demote an employee in accordance with other provisions of these regulations for any of the following reasons:

- (a) **despite appropriate effort, the employee does not demonstrate capacity to perform the essential functions of the position, with or without reasonable accommodation if indicated; and** ~~inability to perform duties adequately for reasons that are not the fault of the employee, such as, physical or functional disability, lack of necessary qualifications, or lack of aptitude;~~
- (b) layoff because of lack of work or funds, or abolition of position (when regular employees are laid off, the appointing authority shall consider the advisability of demoting to vacant positions at lower salary grades for which they are qualified); and
- (c) ~~personal reasons. There are a variety of reasons why an employee may wish to work in a position at a lower salary grade, such as personality conflicts, or transferring into another department where new experience and greater likelihood of advancement are available.~~

(Ord. xxxx, 2018; Ord. 1307, 2013; Ord. 1038, 1996)

~~712 ADMINISTRATION~~ *(this has been moved to Section 203.3 (c))*

~~The City Manager shall be responsible for overall administration of the employee performance evaluation program and shall advise and assist employees, rating officers, and reviewing officers to assure that performance evaluation procedures are handled in accordance with the provisions stated in this Chapter.~~

CHAPTER 8

EMPLOYEE DEVELOPMENT

801 PURPOSE

The purpose of the employee development program shall be to foster and promote the training and development of employees in order to:

- (a) improve the quality of services rendered to the City;
- (b) equip employees for career advancement within the City service; and
- (c) provide a reservoir of occupational skills necessary to meet current and future employment needs.

802 DEVELOPMENT AND ADMINISTRATION

802.1 City Manager/City Clerk. The City Manager **or City Clerk** shall have overall responsibility for the development, administration, and coordination of the employee development programs **in their respective departments**, and shall:

- (a) assist the department heads in development and implementing employee development programs to meet the current and future needs of their departments and to increase employee efficiency;
- (b) conduct or coordinate employee development programs to meet the common needs of all departments;
- (c) maintain a file of current information and materials on job requirements, training opportunities, employee development manuals, and other employee development literature;
- (d) maintain a record of all training conducted and insure that authorized employee development programs are properly administered;
- (e) periodically analyze and evaluate the overall development needs of employees within the City service;
- (f) assure that all employees receive equal consideration for appropriate training opportunities; and
- (g) assure that employee personnel files are updated upon successful completion of any employee development activities to insure maximum consideration for placements, transfers, and promotions.

~~In the case of employee development relating to staff identified under the heading 203.4.5 City Clerk, these responsibilities shall be assumed by the City Clerk. (Ord. xxxx, 2018; Ord. 1090, 1999)~~

802.2 Department Head. Department heads shall provide active leadership in developing the employees under their supervision. In this capacity, they shall:

- (a) cooperate closely with the City Manager in determining the current and future employee development needs in the department;
- (b) participate with the City Manager in developing and implementing employee development programs;

- (c) budget sufficient funds to secure needed career development programs;
- (d) assess the effectiveness of completed career development programs and make recommendations for improvement where appropriate; and
- (e) assure that employees are provided with sufficient time to participate in career development programs.

CHAPTER 9

GRIEVANCE PROCEDURE

901 POLICY

It is the policy of the City of Kodiak to treat all employees equitably and fairly in matters affecting their employment. Each employee of the City will be provided ample opportunity to understand and resolve matters affecting employment which the employee documents as being a violation of rules and regulations. The presentation of any grievance shall be the right of each employee without fear of reprisal.

902 DISCUSSION OF A PROBLEM WITH SUPERVISOR

Repealed by Ord. 1098, 1999

903 DEFINITION OF A GRIEVANCE

A grievance is a specified complaint by an employee or group of employees that has not been resolved, alleging a violation of a section(s) of the City Charter, ordinances, Personnel Rules and Regulations, or department rules and regulations which pertain to the terms or conditions of such employment by the City of Kodiak. Dismissal, or consideration of dismissal, is not a matter that may be grieved; see Chapter 13 for the procedure established for a pre-decisional hearing in the case of potential dismissals.

904 GRIEVANCE PROCEDURE STEPS

A grievance shall be handled in the following manner:

904.1 Steps of the Grievance Procedure.

Step 1. The aggrieved employee, or group of employees, shall present the problem orally as a specific grievance to the immediate supervisor within ten (10) working days of its occurrence, not including the day of the occurrence. The supervisor shall give a written reply within five (5) working days of the date of presentation of the grievance, not including the date of presentation.

Step 2. If the grievance is not settled in Step 1, it shall be prepared in detail, shall be reduced to writing, including a summary on a form designated by the City Clerk which shall provide space for the grievants name, the specific authority and section alleged to have been violated, and the nature of the perceived violation. The summary form shall be dated, shall be signed by the aggrieved employee or group of employees and shall be presented along with any supplementary

information or other relevant material to the department head within five (5) working days after the supervisor's written reply is given, not including the day the reply is given. The department head shall reply in writing to the grievant(s) within five (5) working days of the date of the presentation of the written grievance, not including the day of presentation.

Step 3. If the grievance is not settled in Step 2, the employee(s) shall present the written grievance along with copies of all pertinent correspondence, records, and information to the City Manager within five (5) working days after the department head's written response was delivered to the employee(s). The City Manager shall reply in writing to the grievant(s) within five (5) working days of the date of the presentation of the written grievance, not including the day of presentation.

Step 4. (a) If the grievance is not settled in Step 3, the employee(s) shall present the written grievance along with copies of all pertinent correspondence, records, and information to the City Clerk within five (5) working days after the City Manager's written response was delivered to the employee(s). The City Clerk shall promptly forward copies of the written grievance and supporting materials filed by the grievant(s) to the Personnel Board, the department head, and the City Manager. The department head and City Manager then have five (5) working days to file any additional pertinent correspondence, records, and information pertaining to the grievance with the City Clerk, who shall promptly forward copies of the same to the Personnel Board and other involved parties. If the grievance relates to disciplinary action exceeding ten day suspension without pay, the Personnel Board may request independent counsel.

(b) The Personnel Board will convene and will determine whether the premise of the grievance is valid. If the grievance is accepted, the grievant(s) and City Manager will be notified in writing. The board shall conduct a hearing involving all parties involved (Section 906).

(c) After conducting a hearing (Section 906) and reviewing the written evidence, the Personnel Board shall submit its recommendation in writing to the City Manager with a copy to the grievant(s) within five (5) working days of receiving the grievance. The deadline for rendering a recommendation may be extended by the Personnel Board or the chairman of the Personnel Board when necessary due to the absence of a quorum or the difficulty of scheduling a hearing reasonably convenient to board members or witnesses.

Step 5. Within five (5) working days after receiving the Personnel Board's recommendation, the City Manager will respond to the Personnel Board's recommendation, with a copy to the grievant(s).

If the Personnel Board determines through a majority vote that the Manager's final determination violates the letter or intent of the City of Kodiak Personnel Rules and Regulations, other City Department regulations, or a point of law, the Board shall submit a report to the City Council identifying the nature of its concern. The Personnel Board's report shall be composed so as to preserve the separation of the Council from

participation in personnel matters, as provided in the City Charter, Article II, and no other material relating to the grievant(s) or the grieved action shall accompany the report.

904.2 Grievance Steps Not Exclusive. The grievance steps described in Section 904 do not exclude the possibility of a mutually agreeable arbitration or legal action; nor are they intended to limit the constitutional rights of an employee in any way. A grievance may be withdrawn at anytime with the consent of all parties.

(Ord. 1098, 1999; Ord.1008, 1995)

905 REPRESENTATION

905.1 Employee Representation. Each employee shall be afforded an opportunity to be represented at each of the above steps. At Steps 1 and/or 2 of the grievance procedure, the employee may be accompanied by a representative of the employee's choice who shall be any other regular employee of the City. At Steps 3 and/or 4 of the grievance procedure, the employee may be accompanied by any representative of the employee's choice. Employees shall contact and discuss their problems with their representative only during break periods, lunch hour, before or after work, or at any other time when they are not on duty. However, grievance hearings may be held during work hours.

905.2 Legal Counsel for Personnel Board. The Personnel Board will obtain, following approval of the expenditure by the City Manager or City Council, legal counsel from the City's legal staff, except the Board will be authorized to select a lawyer outside the City staff when the Board by majority vote determines that legal advice and counsel from the City legal staff may present a conflict of interest to the Board. The cost to the City shall not exceed what is customary and reasonable for such services.

906 GRIEVANCE HEARINGS

Grievance hearings may be conducted by the Personnel Board. The location, procedures, and agenda of all hearings will be determined by the Board. The Board may request that any or all those expected to testify remain in a designated area outside the meeting at all times other than when their testimony is being entered into the record.

The Personnel Board may choose to meet with the aggrieved employee(s), the immediate supervisor, the department head, and the City Manager individually and/or as a group in order to investigate circumstances pertinent to the grievance. The grievant(s) may be accompanied by a representative (Section 905). Either party may make a change in representation at any time, however, such a change will not affect the time limits except as provided in Section 909.

~~907 VIOLATION OF GRIEVANCE PROCEDURE~~

~~Any employee who attempts to resolve employment problems outside of the City government, without first attempting to resolve said problem(s) in accordance with the grievance procedure, shall be subject to disciplinary action. However, nothing in this Chapter shall be deemed to revoke any legal means of redress to the courts.~~

~~(Repealed by Ord. xxxx, 2018)~~

908 TIME LIMITS

If the grievance procedures are not initiated within the time limits established by this Chapter, the employee shall be considered as having waived his right to grieve that particular violation and initiation of a grievance for that act or omission is thereafter barred. As used in this chapter, the term "working day" shall mean any day from Monday through Friday which is not observed as a recognized City holiday (see Chapter 12). For purposes of this definition, however, an employee's birthday is not considered a recognized City holiday. (Ord. 1008, 1995)

909 EXTENSION OF TIME LIMITS

The time limits prescribed in this Chapter for the initiation and completion of the steps of the grievance procedure may be extended by mutual consent of the parties so involved. Likewise, any step in the grievance procedure may be eliminated by mutual consent. Mutual consent shall be indicated in writing, and shall be signed by all parties and then presented to the Personnel Board chairman or secretary.

910 CITY MANAGER

The City Manager shall be responsible for overseeing the handling of all employee grievances to ensure that they are processed in accordance with the procedure stated in this Chapter. Supervisors shall keep the department head informed of all grievances in progress, who, in turn, shall keep the City Manager informed.

CHAPTER 10

ANNUAL AND COMBINED PERSONAL LEAVE

1001 LEAVE ENTITLEMENT

Classified employees shall be entitled to leave accrual benefits. Leave provisions of these regulations are also applicable to the two appointive officers, the City Manager and the City Clerk, if not under agreements or other special provisions approved by the City Council.

1001.1 Leave Program. The City shall provide its classified employees with Annual Leave and Sick Leave benefits.

(a) Annual Leave and Sick Leave will accrue at separate rates.

(b) Employees enrolled in the Combined Personal Leave Program within thirty days of the effective date of this ordinance may remain in the Combined Personal Leave Program, subject to the cap for payment established in Section 1006. Terms of the Combined Personal Leave Program shall be identified in an agreement signed by the employee and retained in the employee's personnel file.

(c) Requests for annual leave shall be made no later than one week prior to the start of the desired leave. In unforeseen or unavoidable circumstances, annual leave requests may be made up to one full working day before the requested start of leave.

(d) Authorization of Annual and Sick Leave is the responsibility of department heads.

(Ord. xxxx, 2018; Ord. 1058, 1998; Ord. 1008, 1995)

1002 ANNUAL LEAVE ACCRUAL RATE

Annual Leave accrues according to the following schedule for classified employees not enrolled in the Combined Personal Leave Program, except Fire Department personnel on the platoon system (*see Section 1603*). ✂ The City Manager may increase the initial annual leave accrual rate of 4.62 hours per pay period when appointing new department heads, but movement to the next accrual rate must be consistent with required time in service.

4.62 hours per pay period—first through twenty-fourth month

6.47 hours per pay period—twenty-fifth through sixtieth month

7.39 hours per pay period—sixty-first through one hundred twentieth month

8.31 hours per pay period—after the one hundred twentieth month

(Ord. 1322 §4, 2014; Ord. 1058, 1998; Ord. 1008, 1995)

1003 LEAVE ACCRUAL WHILE EMPLOYEE IS ON PAID LEAVE

Leave continues to accrue during the period of time an employee is on paid leave. Leave **does not** accrue during periods of leave without pay. (Ord. 1058, 1998)

1004 COMPUTATION OF LEAVE ACCRUAL FOR REGULAR PART-TIME EMPLOYEES

Regular part-time employees shall accrue leave at the same rate as regular full-time employees, except that leave shall be computed on the proportion of actual hours worked to the number of normal duty hours in a pay period. (Ord. 1058, 1998)

1005 TEMPORARY EMPLOYMENT LEAVE ACCRUAL

Temporary employees shall not accrue leave.

1006 MAXIMUM CARRY-OVER OF ACCRUED LEAVE

The maximum amount of accrued unused leave that can be carried over from one calendar year to the next is indicated below:

Leave Program	Maximum Leave Hours Carried over to Next Calendar Year	
	Regular Employee	Fire Department Personnel on Platoon System
Non-Combined Leave	480	638
Combined Leave	587	779

If an employee’s accrued personal leave on the last pay period each December exceeds the maximum hours that may be carried over to the next calendar year, the employee shall be paid for the excess hours in the employee’s paycheck for the last pay period in December. This payment for unused leave in excess of the maximum accrual rate allowed does not affect the twice-yearly leave cash-in provisions outlined in Section 1010.

~~The value of unused accrued leave will be paid out in a lump sum to employees upon termination up to the maximum accrued hours available in the employee’s leave program as listed above.~~

~~Cash in lieu of leave taken shall be subject to all taxation and contributions required of all payroll compensation.~~

(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1061, 1998; Ord. 1058, 1998; Ord. 1008, 1995)

1007 EXCESS HOURS OF ANNUAL LEAVE CONVERT AUTOMATICALLY INTO SICK LEAVE

Repealed by Ord. 1058, 1998

1008 USE OF LEAVE

1008.1 Timing of Use. Employees who are entitled to accrue Annual Leave shall receive

credit for leave accrued from the date of appointment. Leave shall be due and usable upon satisfactory completion of at least three (3) months of the probationary period following the original date of hire (see Section 1103 for exception). ~~Any accrued leave credited to a newly-hired employee who separates prior to the completion of the probationary period shall be forfeit.~~

1008.2 Regular Use of Annual Leave. Annual Leave may be used for any purpose desired by the employee. The employee has the right to use accrued leave, but not the right to determine when it shall be used. The employee shall be allowed to use any amount of accrued leave at the time desired, if it is not detrimental to departmental operations as determined by the department head. The longer the period of leave requested, the longer should be the advance notice to enable scheduling.

1008.3 Amount of Annual or Combined Personal Leave that Must Be Taken Yearly

Repealed by Ord. 1058, 1998

1008.4 Recognized Holiday Occurring in Leave Period. A recognized holiday occurring during an employee's annual, combined personal, or sick leave shall not be counted as a day of leave.

(Ord. 1058, 1998; Ord. 1008, 1995)

1009 EXCEPTIONS

Repealed by Ord. 1058, 1998

1010 LEAVE CASH-IN

1010.1 Accrued Leave Hours. Upon successful completion of the probationary period, a regular full-time employee may cash-in accrued leave hours two times per calendar year, provided that the employee retains a balance of at least 80 accrued leave hours. Upon successful completion of the probationary period, a regular part-time employee may cash in accrued leave hours two times per calendar year, provided that the employee retains a balance of accrued leave hours equal to 80 hours multiplied by the percentage of full time hours that the employee has worked. In addition to the two leave cash-ins per year permitted above, cash in lieu of accrued leave may be obtained under emergency conditions when requested by the employee in writing and approved by the City Manager. "Emergency" as used in this section means a critical situation over which neither the employee nor the City has control.

1010.2 Dismissal or Separation and Leave. The value of unused accrued leave will be paid out in a lump sum to employees upon dismissal. Any accrued leave credited to a newly-hired employee who separates prior to the completion of the probationary period shall be forfeited.

1010.3 Accrued Leave and Taxes. Cash paid for accrued leave shall be subject to all taxation and contributions required of all payroll compensation.

(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1058, 1998; Ord. 1008, 1995)

1011 TERMINAL LEAVE

Repealed by Ord. 1058, 1998

1012 RETIREMENT LEAVE

Repealed by Ord. 1058, 1998

1013 REINSTATED EMPLOYEE LEAVE

Reinstated employees hired within two (2) years of termination, who have successfully completed their probationary period in previous service, shall be permitted to use their accrued leave at any time after reinstatement.

1014 ADMINISTRATIVE LEAVE

Administrative Leave is time off an employee's regular work duties for reasons within the scope and purpose of these rules and regulations. Administrative Leave must be approved in advance by the employee's supervisor, department head, or the City Manager. An employee on Administrative Leave shall be compensated for each day of leave on which the employee would otherwise have been at work at the same rate as for the employee's regular work day, regardless of the number of hours spent in active military service **or training**, jury duty, witness service, training, or related activities. Administrative leave is separate and apart from other kinds of leave, and shall not reduce an employee's accrued annual or sick leave or other benefits.

1014.1 Administrative Leave for Military Service. Absence from City duty for **required attendance at military training, and/or active duty in military service, will be in accordance with relevant State and Federal laws, including AS 39.20.340 and 38 U.S.C. 4301 et seq.** ~~the purpose of participating as a member of the National Guard, the United States armed forces or United States Coast Guard reserve component may be authorized to employees who have completed probationary service. The employee will be authorized a leave of absence status (see Definitions) and shall not suffer a loss of pay or benefits. A maximum of fifteen calendar days during any calendar year may be granted to eligible members of the Alaska National Guard, a reserve component of the United States armed forces or United States Coast Guard to perform active duty. An employee's request for military leave shall be made as far in advance as possible in order to permit proper allowance for their absence. An employee's request for military leave shall be supported by a copy of official military orders for active duty. Employees shall be required to submit a certified copy of their military orders for active duty indicating completion of the duty. Wages paid by the Military (other than travel and subsistence allowances) will be turned in for deposit to the City, except that fees paid for duty that occurs on the employee's normal non work days may be retained by the employee.~~(Ord. xxxx, 2018; Ord. 1112 §2, 2000)

1014.2 Administrative Leave for Jury or Witness Duty. Absence from City duty when summoned for jury duty, when subpoenaed as a witness on behalf of the City, or when called as an expert on a matter of City concern or relating to a municipal function shall be authorized. In order to be entitled to administrative leave for jury or witness duty, written proof of the required number of hours shall be submitted to the City by the employee making the claim. Fees paid by the court (other than travel and subsistence allowances) will be turned in for deposit to the City, except that fees paid for court duty that occur on the employee's normal non-work days may be retained by the employee. Witness service for a purpose other than just described will be covered by annual or combined personal leave, or leave without pay, and any fees received in this connection may be retained by the individual.

1014.3 Administrative Leave for Training. Absence from an employee's regular work duties, not to exceed 120 days, may be authorized to allow the employee to complete advanced training programs providing the work situation permits a temporary absence without serious effect on the department's schedule of activities. Employees taking administrative leave for training may be required to sign an agreement, before the leave is granted, spelling out the employee's obligations **of repayment** to ~~repay any and all costs paid by~~ the City relating to the training. Such costs may include, but are not limited to, ~~salary paid to the employee during the training program,~~ the fees paid by the City for tuition or enrollment, travel and lodging, meal allowances, and other expenses paid or reimbursed; and the employee will be subject to forfeiture of accumulated leave and salary in an amount sufficient to effect this repayment.

(Ord. xxxx, 2018)

1015 JURY LEAVE

Repealed by Ord. 1098, 1999

1016 HEALTH AND FAMILY LEAVE

1016.1 Definitions. For the purposes of this Section the following definitions apply.

- (a) "Child" means the employee's biological, adopted or foster child, stepchild, or legal ward who is under eighteen (18) years of age, or who is eighteen (18) years of age or older and incapable of self-care because of mental or physical disability.
- (b) "Eligible employee" means an employee who has been employed for at least thirty-five (35) hours a week for at least six (6) consecutive months, or for at least seventeen-and-a-half (17-1/2) hours a week for at least twelve (12) consecutive months immediately preceding the leave; provided, however, that with respect to any benefits or provisions of the Section 1016 which are mandated solely by the Family and Medical Leave Act of 1993 (P.L. 103-3) and not also by the Alaska Family Leave Act, then "eligible employee" shall mean an employee who has been employed for at least twelve (12) months and for at least 1,250 hours of service during the twelve (12) consecutive months immediately preceding the leave.
- (c) "Health-care provider" means a dentist licensed under AS 08.36, a physician licensed under AS 08.64, or a psychologist licensed under AS 08.86.
- (d) "Parent" means a biological or adoptive parent, a parent-in-law, or a step-parent.
- (e) "Reduced leave schedule" means a leave schedule that reduces the usual number of

- hours per workweek, or hours per workday, of an employee.
- (f) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice, or residential health care facility or continuing treatment, or continuing supervision by a health-care provider.
 - (g) "Spouse" means a husband or wife, as the case may be.

1016.2 Leave Requirements.

(a) In General.

- (1) An eligible employee is entitled to a maximum of twenty-four (24) workweeks of leave during any twenty-four (24) month period for a serious health condition of the employee or the employee's spouse, child, or parent, but no more than eighteen (18) workweeks in any twelve (12) month period;
- (2) If necessary to care for the child, an eligible employee is entitled to eighteen (18) workweeks of family leave for pregnancy and birth of a child of the employee, or the placement of a child (other than a child or stepchild of the employee) for adoption or foster care. The entitlement to leave for birth or placement of a child expires at the end of the twelve (12) month period beginning on the date of such birth or placement.

(b) Leave Taken Intermittently or on a Reduced Leave Schedule.

- (1) In general. Leave for a birth or placement of a child shall not be taken intermittently, or on a reduced leave schedule, unless the employee and the City Manager agree otherwise in advance. Leave taken in order to care for the employee's spouse, child, or parent, or because of the employee's own health condition may be taken intermittently, or on a reduced leave schedule, when medically necessary. The taking of leave intermittently, or on a reduced leave schedule, pursuant to this paragraph will not reduce the total amount of leave to which the employee is entitled under Subsection 1016.2(a).
- (2) Alternative position. If an employee requests intermittent leave or leave on a reduced leave schedule, the City Manager may require the employee to transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which accommodates recurring periods of leave better than the regular position of the employee.

(c) Paid/Unpaid Leave. Leave authorized under Section 1016 shall be charged first against such accrued paid leave as the employee has available and then to leave without pay. When the employee has both accrued sick leave and accrued annual or combined personal leave available, and when the leave authorized under Section 1016 is for a purpose which would otherwise entitle the employee to use accrued sick leave under the standards set forth in Section 1104, then the Section 1016 leave shall be charged first against accrued sick leave, then against accrued annual or combined personal leave, and then to leave without pay. Nothing in this Section 1016 shall be construed, however, as entitling an employee to use sick leave because of an illness of or injury to a child, spouse or other family member or for any other purpose not specified by Section 1104. An employee requesting leave pursuant to Section 1016 is not eligible to apply for withdrawals from the Sick Leave Bank authorized by Section

1107 unless the leave is being requested because of a serious health condition of the employee.

(d) **Foreseeable Leave.**

(1) Requirement of notice. In any case in which the necessity for leave is foreseeable based on an expected birth or placement, the employee shall provide not less than thirty (30) days notice, before the date the leave is to begin, of the employee's intention to take leave; except, when the date of the birth or placement requires leave to begin in less than thirty (30) days, the employee shall provide notice as soon as is practicable.

(2) Duty of employee. In any case in which the necessity for leave is foreseeable based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the City, subject to the approval of the health-care provider of the employee or that of the child, spouse, or parent. If the date of the treatment requires leave to begin in less than thirty (30) days, the employee shall provide such notice as soon as is practicable.

(e) **When Both Spouses are Employed by City.** ~~When two spouses are~~ **In any case in which the husband and wife are** both employed by the City, the rights of those employees with respect to the amount, timing and coordination of leave authorized by Section 1016 shall be no greater or more extensive than required by otherwise applicable state or federal law.

1016.3 Certification.

(a) **In General.** Unless a written waiver is obtained from the employee's department head or, if the employee is a department head, from the City Manager, a request for leave under Subsection 1016.2(a)(1) shall be accompanied by a certification issued by the patient's health-care provider.

(b) **Sufficient Certification.** Certification provided under Subsection (a) of this Section shall be sufficient if it **appears on a form provided by the City Human Resources office.**

~~(1) the date on which the serious health condition commenced;~~

~~(2) the probable duration of the condition;~~

~~(3) the appropriate medical facts within the knowledge of the health care provider regarding the condition;~~

~~(4) in the case of leave requested because of a serious health condition of the employee's spouse, child or parent, a statement that the eligible employee is needed to care for the spouse, child, or parent, and an estimate of the amount of time that such employee is needed for that purpose, or, in the case of a serious health condition of the employee, a statement that the employee is unable to perform the functions of the employee's position;~~

~~(5) in the case of certification of intermittent leave, or leave on a reduced leave schedule for planned medical treatment, the dates which such treatment is expected to be given and duration of such treatment;~~

~~(6) in the case of certification for intermittent leave, or leave on a reduced leave schedule, because of a serious health condition of the employee, a statement of the medical necessity for the intermittent leave or leave on a reduced leave schedule, and the expected duration of the intermittent leave or reduced leave schedule; and~~

~~(7) in the case of certification for intermittent leave, or leave on a reduced leave~~

~~schedule, because of a serious health condition of a spouse, child, or parent of the employee, a statement that the employee's intermittent leave or leave on a reduced schedule is necessary for the care of the spouse, child, or parent who has a serious health condition, or will assist in their recovery, and the expected duration and schedule of the intermittent leave or reduced leave schedule.~~

- (c) **Second Opinion.** In any case in which the City has reason to doubt the validity of the certification provided under Section 1016.3, the City may, at the City's option and expense, require a second opinion from a health-care provider designated by the City.
- (d) **Resolution of Conflicting Opinions.** In any case in which the second opinion differs from the opinion in the original certification, the City may, at the City's option and expense, require a third opinion from a health-care provider designated or approved jointly by the City and the employee. The opinion of the third health-care provider shall be binding on the City and the employee.
- (e) **Subsequent Recertification.** The City may require ~~an the eligible~~ employee to ~~provide obtain subsequent~~ recertification ~~no more often than every 30 days or the duration noted in the operative certification, whichever is longer, during the employee's use of Health and Family Leave; provided, the City may require recertification in less than 30 days if (a) the employee requests an extension of Health and Family Leave, (b) the circumstances described by the operative certification have changed significantly, or (c) the City has received information that causes it to doubt the employee's stated reason n for the absence or the continuing validity of the operative certification. on a reasonable basis.~~

1016.4 Employment and Benefits Protection.

- (a) **Restoration to Position.**
 - (1) In general. Except as provided in subsection (b) below, any eligible employee who takes leave for its intended purpose under Section 1016 shall be entitled on return from such leave to be restored to the position of employment held by the employee when leave commenced, or, at the City's option, to an equivalent position with equivalent pay, benefits and other terms and conditions of employment.
 - (2) Retention of benefits. The taking of leave under Section 1016 shall not result in the loss of any employment benefits accrued prior to the date of which the leave commenced.
 - (3) Limitation. Nothing in this Section shall be construed to entitle any restored employee to the accrual of any seniority or employment benefits during any period of leave or any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.
 - (4) Certification. As a prerequisite to restoration to the employee's previous position or one equivalent to it, the City may require an employee who has taken leave for the employee's serious health condition to submit certification from the employee's health-care provider that the employee is able to resume work.
- (b) **Exemption Concerning Certain Highly Compensated Employees.** Restoration otherwise required by this Section 1016.4 may be denied to any salaried eligible employee who is among the highest paid 10% of City employees if:
 - (1) such denial is necessary to prevent substantial and grievous economic injury to

City operations;

(2) the City notifies the employee of this intent at the time the City determines that such injury would occur; and

(3) in any case in which the leave has commenced, the employee elects not to return to work after receiving such notice.

(c) Maintenance of Health Benefits.

(1) Coverage. During any period that an eligible employee takes leave under Section 1016, the City will maintain the group health benefits to which the employee is otherwise entitled. ~~If the employee had been employed less than twelve (12) months or had less than 1,250 hours of service during the twelve (12) consecutive months immediately preceding the leave, the employee shall reimburse the City for the cost of maintaining health insurance coverage during any period of unpaid leave.~~

(2) Failure to return from leave. If the employee fails to return from leave after the period to which the employee is entitled has expired and the reason for not returning is other than (i) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under 1016.2 (a)(1), or (ii) other circumstances beyond the control of the employee, the City may take steps to recover the premiums that the City paid for maintaining group health plan benefits during any period of unpaid leave. In this instance, the City reserves the right to require any and all such certification or recertification as may be authorized by law.

1016.5 Employee Transfer.

~~—(a) A pregnant employee may request a transfer to a suitable position under this Section. All such requests shall be in writing and shall be directed to the employee's department head or, if the pregnant employee is a department head, to the City Manager. Upon the receipt of such a request, the City will not fill the position with a person other than the requesting employee until the position has been offered to and refused by the employee. Failure of the employee to accept an offered position by a deadline or in a manner established by the offer shall be deemed a rejection of the offer. A position is suitable if:~~

~~(1) it is an existing unfilled position in the same department in which the employee is currently employed, and is less strenuous or less hazardous than the employee's current position;~~

~~(2) transfer to the position is recommended by a licensed health care provider; and~~

~~(3) the employee is qualified and immediately able to perform the duties of the position.~~

~~(b) The City will compensate the employee who receives a transfer under this Section at a rate at least equal to the lesser of the rate, as adjusted by changes to compensation that apply generally to the work force, at which:~~

~~(1) the employee was compensated immediately before requesting the transfer; or~~

~~(2) the position into which the employee transfers is compensated.~~

1016.5 Intent and Interpretation.

Section 1016 is intended merely to memorialize and interpret the requirements imposed upon the City by the Family and Medical Leave Act of 1993 and by the Alaska Family Leave Act. Therefore, nothing herein shall be construed or interpreted as granting to City

employees greater or more extensive rights than they otherwise are accorded under the foregoing laws.

(Ord. xxxx, 2018; Ord. 1008, 1995)

1017 LEAVE WITHOUT PAY

1017.1 Purpose and Conditions. Leave without pay may be granted to an employee upon recommendation of the department head and approval of the City Manager, **and must be requested no later than two weeks prior to the requested start of leave without pay. In unforeseen or unavoidable circumstances, leave without pay requests may be made up to one full working day before the requested start of leave.** Each request for such leave shall be considered in the light of the circumstances involved and the needs of the organization. Leave without pay shall not be ~~requested nor~~ granted until such time as all accrued annual or combined personal leave has been exhausted, except when an employee is absent and drawing workers compensation benefits, **or when an employee is on leave per the Family and Medical Leave Act of 1993 or the Alaska Family Leave Act.** Normally, not more than sixty (60) calendar days leave without pay may be granted ~~for personal reasons~~. No benefits will accrue while on leave without pay, except insurance which will continue to be paid until the employee terminates (see Sections ~~s-419~~ and 1016).

1017.2 Education Leave Without Pay. Leave without pay may be authorized to include time to complete formal undergraduate or advanced degree requirements. Employees who have demonstrated above average performance with the City for a minimum of two (2) years shall be considered for such leave, providing the work situation permits a temporary absence without serious effect upon the department's schedule of activities. A maximum of one year's absence for college work, or an equivalent thereof, may be granted in such cases. No benefits shall accrue while on this type of leave without pay.

1017.3 Workers' Compensation Leave. Workers' compensation payments **from the insurer** shall be forwarded to the employee (claimant) as full and just compensation for the period stated therein. During periods when an employee is not working, an individual can use leave only for the appropriate waiting period as determined by the insurance carrier. The employee (claimant) will retain the workers' compensation payment and will not receive any supplemental compensation from the City, except the compensation for the appropriate waiting period.

~~No contributions to the retirement plan specified in Section 418 of these regulations shall be made by the City for the period during which the employee receives workers' compensation payments. AS 39.35.330(e) allows an employee to establish an indebtedness with the retirement plan to obtain credit for the employee's workers' compensation time.~~

(Ord. xxxx, 2018; Ord. 1008, 1995)

1018 CHANGE OF ANNIVERSARY DATE BECAUSE OF LEAVE WITHOUT PAY

With the exception of Workers' Compensation Leave, if an employee uses more than thirty (30) calendar days total leave without pay during the leave year, the anniversary and length

of service dates shall be advanced by the number of days such leave without pay exceeds thirty (30). (Ord. 1024 §4, 1996: Ord. 1008, 1995)

1019 UNAUTHORIZED LEAVE

Any absence not authorized and approved in accordance with provisions of these regulations shall be without pay for the period of absence, and may be grounds for disciplinary action. (Ord. 1008, 1995)

1020 EDUCATION LEAVE WITH PAY

Repealed by Ord. 1098, 1999

1021 MATERNITY LEAVE Repealed by Ord. 973 §2, 1993. (See Section 1016.)

1022 ADOPTIVE LEAVE Repealed by Ord. 973 §3, 1993. (See Section 1016.)

1023 DONATION OF ANNUAL OR COMBINED PERSONAL LEAVE

An employee may donate accrued annual or combined personal leave to another employee. The leave will be credited to the donee based on the dollar value of the donation. (Ord. 1008, 1995)

CHAPTER 11

LEAVE FOR ILLNESS OR INJURY

1101 PURPOSE OF SICK LEAVE

The City provides sick leave to eligible employees as a benefit which provides compensation during times of illness. The decision to approve or disapprove requests for sick leave from eligible employees may be made by the department head in consultation with the City Manager or Manager's designee and must be consistent with current federal and state laws and City policies.

(Ord. 1275, 2010; Ord. 1058, 1998; Ord. 1008, 1995)

1102 SICK LEAVE ACCRUAL

Sick leave accrues separately from annual leave at the rate of three and seven-tenths (3.7) hours per pay period, per employee, except Fire Department personnel on the platoon system (see Section 1603). Sick leave accrued, but not used, shall remain credited to the employee until separation from employment with the City. Annual leave may always be used as sick leave when the employee's sick leave account balance is zero.

Regular part-time employees shall accrue sick leave at the same rate as regular full-time employees, except that leave shall be computed on the proportion of actual hours worked to the number of normal duty hours in a pay period.

(Ord. 1275, 2010; Ord. 1008, 1995)

1103 USE OF LEAVE DURING PROBATIONARY PERIOD

Employees may use sick leave during the probationary period. Probationary employees must use all accrued sick leave hours before accrued annual leave is taken, if accrued annual leave is necessary to cover an approved absence consistent with the provisions of this section.

(Ord. 1275, 2010; Ord. 1008, 1995)

1104 USE OF SICK LEAVE

1104.1 Sick leave. An employee may use accrued annual, sick, or combined personal leave when sick, or injured and not in work status. Accrued sick or combined personal leave shall also be granted for medical, dental, or optical examinations or treatment. Except in emergency situations when an employee is unable to submit a signed leave request form in advance, an employee shall submit a leave request for approval in advance of the appointment. Employees shall make every effort to make appointments at hours that will result in the least possible disruption to their department and their work schedules. Leave

taken for the appointment should not exceed the time necessary for examinations or treatment. Employees are expected to return to work upon completion of such appointments. Exceptions may be made at the department head's discretion. (Ord. 1275, 2010)

1104.2 Illness of Spouse or Dependent Children. Sick leave may be used to care for a sick or injured spouse, dependent child, or a resident of the household for which the employee is responsible. Employees who qualify for and are placed on approved family and medical leave may use sick leave, or combined leave if applicable, to attend a seriously ill or injured family member. (Ord. 1275, 2010) (Reinstated by Ord. 1058, 1998, following repeal by Ord. 764, 1985)

1104.3 Imminent Death or Death in Immediate Family. In the event of death **or the Imminent death** in an employee's immediate family, accrued sick leave may be used as follows:

- (a) Up to **seven (7) five (5)** days for **persons employees** traveling outside of the Kodiak **Archipelago Island Borough for funeral or memorial services** per immediate family member;
- (b) Up to **five (5) three (3)** days within the Kodiak **Archipelago Island Borough per immediate family member.**

(Ord. xxxx, 2018; Ord. 1058, 1998; Ord. 1008, 1995)

1104.4 Requiring the Use of Sick Leave. **When an employee's health care provider limits the employee to light duty, and no such light duty is available,** ~~Ordinarily there is no reason for placing an employee on sick leave without the employee's consent. There are, however, situations in which an employee is found unable to perform the normal duties, for either mental or physical reasons. In such cases, it may be possible to temporarily assign different duty which is within the employee's limitations. No employee is entitled to such "light duty" as a matter of right. If the employee cannot be assigned other work,~~ the employee may be placed on sick leave even if refused.

(Ord. 1058, 1998; Ord. 1008, 1995)

1105 BEREAVEMENT LEAVE

In the event of death in an employee's immediate family, up to five (5) days of non-accumulative paid leave days may be allowed for an absence by an employee. In cases of travel outside the Kodiak Archipelago, an additional two (2) days of non-accumulative paid leave may be allowed.

(Ord. xxxx, 2018)

1106 REPORTING AND REQUESTING LEAVE FOR ILLNESS OR INJURY

1106.1 Reporting.

- (a) An employee who is unable to report to work because of illness or injury shall notify their immediate supervisor, or if not available the department head **no later than one hour** prior to the start of the employee's assigned shift ~~or within thirty (30) minutes following the beginning of the assigned shift.~~ If the City has been properly notified, the employee will be placed on sick or combined personal leave by submitting a completed sick leave form.

- (b) The employee is expected to provide the supervisor or department head with as much information as possible as to the reason and length of time he/she expects to be absent from work to allow the department to staff for the absence.
- (c) Employees are expected to provide the City with advance notice of absence. If an employee fails to provide the required notice of absence due to illness or injury, the employee will be placed on unauthorized leave status until the employee contacts the supervisor or department head with the required information. If an employee fails to report to work and does not contact the City for three (3) consecutive days, they will be considered to have “abandoned” their job which may result in disciplinary action up to and including **dismissal termination**.
(Ord. xxxx, 2018; Ord. 1275, 2010)

1106.2 Requesting Leave for Illness or Injury.

- (a) The City may require a medical certification from an employee’s medical provider for an absence of five (5) or more consecutive work days or as a result of excessive absence. Employees who qualify for Family and Medical Leave or leave resulting from Worker’s Compensation injury must provide any additional medical information required by the City.
- (b) Employees are expected to use sick leave if available, or combined leave, if applicable. Employees must use annual leave if they do not have enough sick or combined leave accrued. If neither sick leave, annual leave, or combined leave is available, employees will be placed in leave without pay status. Leave without pay must be approved by the City Manager or Manager’s designee
- ~~(c) The employer may counsel an employee any time there is evidence the employee is abusing the City’s sick leave policy or in the event there is a pattern of leave abuse and may require medical certification for future instances of sick leave.~~
(Ord. xxxx, 2018; Ord. 1275, 2010; Ord. 1008, 1995)

~~**1107—ABUSE OF LEAVE FOR ILLNESS OR INJURY**~~

~~**1107.1 Employee Responsibility.** Employees are expected to report for work as scheduled, and when unable to do so because of illness or injury, or as the result of the use of qualified Family and Medical Leave or leave as the result of a Worker’s Compensation injury, must follow the City’s requirements to provide adequate and timely notification of absence, to supply medical certification if required, and to use the appropriate type of leave as described in Section 1104.
(Ord. 1275, 2010)~~

~~**1107.2 Responsibility of Management.** It is the responsibility of management to monitor employee attendance to ensure operational requirements are met and maintained. Managers and supervisors have the authority to approve sick leave requests and, when necessary, to counsel or discipline employees with a documented pattern of leave abuse after consultation with the City Manager or Manager’s designee.~~

~~If it is necessary to counsel or discipline an employee for documented misuse or abuse of sick leave, the department head shall complete a **Disciplinary Action Memorandum** and submit it to the City Manager or Manager's designee for review prior to presenting the document to the employee. The signatures of the supervisor, department head, City Manager or designee, and the employee are required and the signed disciplinary action form will be retained in the personnel files. A documented pattern of absenteeism or proof of continued or escalating abuse of sick leave may result in further disciplinary action, up to and including termination.~~

~~The employer retains the right to request medical certifications from an employee when necessary as described in Section **1106.2**.~~

~~(Ord. xxxx, 2018; Ord. 1275, 2010)~~

~~**1107.3 Medical Certification.** A written notice requiring a medical certification for leave for illness or injury absences shall be signed by the employee and retained in the employee's personnel file and may be required in the following circumstances:~~

~~(a) When an employee has been counseled and has received a disciplinary action form as a result of problem attendance and/or the abuse of sick leave, the employer may also require the employee to provide medical certification for future absences. If required, the employer will issue a written notice of the need for medical certification, which will be reviewed and approved by the City Manager or designee in advance, and signed by the employee, supervisor and department head and shall be retained in the employee's personnel file.~~

~~(b) Any employee who is known to be leaving City employment for any reason other than retirement shall not be granted sick leave during the last thirty (30) days of service unless the employee produces an acceptable medical certificate for any absences due to sick leave.~~

~~(Ord. 1275, 2010; Ord. 1008, 1995)~~

1108 SICK LEAVE BANK

~~**1108.1 Administration of Bank.** The Sick Leave Bank shall be administered by **the City Manager**, a Sick Leave Bank Committee. The Committee shall be elected employees consisting of one member from each of the following departments: Administrative (City Manager, City Clerk, and Finance), Engineering, Fire, Harbor, Library, Parks and Recreation, Police, and Public Works. At least four members shall be non-supervisory employees. It is the Committee's responsibility to approve or deny requests for Sick Leave Bank usage. The decisions of the Committee are final. The Committee shall formulate guidelines for operation of the Sick Leave Bank. The guidelines shall be subject to Council review. The Sick Leave Bank is an employee benefit intended to be used in cases of catastrophic or unusually lengthy illnesses.~~

~~**1108.2 Enrollment and Mandatory Contributions.** All regular classified employees who have completed at least three months of **employment** ~~satisfactory service~~ shall be eligible to enroll in the Sick Leave Bank. Each employee enrolling in the Bank shall donate sixteen hours (twenty-one hours for Fire Department employees on the platoon system) leave to the~~

Bank upon enrollment. Thereafter, no more days will be added to the Bank until it is depleted to 300 days, except for the initial contribution of new participants within 30 days of eligibility, at which time participating employees will be required to donate eight hours (eleven hours for Fire Department employees on the platoon system) to rebuild the Bank. Open enrollment will be in the month of January.

1108.3 Additional (Voluntary) Contributions. In the event that the Bank becomes totally depleted, each employee enrolled in the Bank may, but shall not be required to, donate up to a maximum of sixteen hours leave (twenty-one hours for Fire Department employees on the platoon system) per year.

1108.4 Withdrawal from Membership. An employee may withdraw from membership in the Bank at any time. An employee withdrawing from membership in the Bank shall not be entitled to withdraw the contributed hours.

1108.5 Requests for Additional Sick Leave from Bank. An employee enrolled in the Sick Leave Bank who is faced with an extended major illness or incapacity which is not covered by Worker's Compensation benefits may request additional sick leave from the Bank by submitting an application to the City Manager showing or including at least the following:

- (a) A physician's statement briefly describing the nature of the employee's illness or incapacity, and including an estimate of the date upon which the employee will be able to return to work;
- (b) The date upon which the employee's accrued annual, sick, and/or combined personal leave was, or is expected to be fully expended;
- (c) The number of days of sick leave withdrawn from the Sick Leave Bank and applied to the benefit of the employee within the immediately preceding twelve months; and
- (d) The number of days of additional sick leave which the employee seeks from the Sick Leave Bank;

Upon verification of the information on the application, the City Manager will consider the request ~~forward the request to the Committee for its determination.~~

1108.6 Number of Available Sick Leave Bank Days. The number of Sick Leave Bank days available to an employee shall be equal to twice the number of days of annual, sick, and/or combined personal leave accumulated by that employee on the first day of **month in which** the ~~illness or incapacity upon which the~~ request is **initiated based.**

1108.7 Maximum Withdrawal of Sick Leave Bank Days. In no event shall an employee be granted more than six consecutive months of additional sick leave from the Sick Leave Bank during any period of twelve consecutive months, and in no event shall any sick leave be withdrawn from the Bank and applied to the benefit of an employee so long as the employee has available any accrued annual, sick, or combined personal leave.

1108.8 Replacement of Sick Leave. An employee who is granted additional days of sick leave from the Sick Leave Bank shall not be required to replace the days used, except as a regular contributing member of the Bank.

1108.9 Eligibility. Only employees enrolled in the Sick Leave Bank are entitled to request sick leave from **the bank** ~~it~~.
(**Ord. xxxx, 2018**; Ord. 1008, 1995)

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CHAPTER 12

HOLIDAYS WITH PAY

1201 RECOGNIZED CITY HOLIDAYS

The following days shall be recognized as holidays with pay for all employees in regular full-time, regular part-time, and trainee positions who are in pay status the day before and the day after the following such days:

- (a) January 1, New Years Day
- (b) January (3rd Monday), Martin Luther King Jr.'s Birthday (Ord. 1112§1, 2000)
- (c) February, (3rd Monday), Presidents' Day
- (d) March (last Monday), Seward's Day
- (e) May (last Monday), Memorial Day
- (f) July 4, Independence Day
- (g) September (1st Monday), Labor Day
- (h) October 18, Alaska Day
- (i) November 11, Veterans Day
- (j) November (4th Thursday), Thanksgiving Day
- (k) December 25, Christmas Day
- (l) Employee's Birthday, which must be taken within the calendar month the actual date occurs, on a date approved by the department head. (Ord. 1024 §5, 1996)

1202 HOLIDAY FALLING ON A SATURDAY OR SUNDAY

When a recognized holiday falls on a Saturday, the preceding Friday shall be recognized in lieu thereof, and treated as a holiday with respect to overtime computation. When a recognized holiday falls on a Sunday, the Monday following shall be recognized in lieu thereof, and treated as a holiday with respect to overtime computation. (See Section 412.2.)

1203 HOLIDAY DURING LEAVE

A recognized City holiday, occurring during an employee's paid leave shall not be counted as a day of leave. (Ord. 1008, 1995)

1204 HOLIDAY IN RELATION TO LEAVE WITHOUT PAY

An employee shall not receive holiday pay for a holiday occurring immediately preceding or immediately following a **full working** day of leave without pay. (Ord. xxxx, 2018; Ord. 931, 1992)

1205 COMPUTATION OF HOLIDAY PAY FOR REGULAR PART-TIME EMPLOYEES

Holiday pay for regular part-time employees shall be prorated, based on the number of hours the employee works per week in relation to the standard work week. (Ord. 1008, 1995)

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CHAPTER 13

SEPARATIONS

1301 NOTICE OF RESIGNATIONS AND RETIREMENTS

To resign or retire in good standing, an employee must present a written resignation to the appointing authority at least fourteen (14) calendar days in advance of the resignation date, except in the case of department heads, assistant harbor masters, police sergeants, and fire marshals who should give at least one (1) month's notice. This requirement may be waived, in writing, by the department head when adequate provisions can be made for a successor in that period of time (if one is needed right away), as well as under extenuating circumstances; e.g., sudden need to go out-of-state for medical reasons, change of residence by unexpected military orders of the spouse, etc. A copy of the employee's resignation shall be supplied by the appointing authority to the City Manager as well as any waiver by the department head. The City Manager may investigate as is deemed warranted for the purpose of verifying the facts as to the reason for such resignation.

1301.1 Withdrawal of Resignation. Upon approval of the appointing authority, an employee may withdraw a resignation at any time prior to the effective date of resignation.

1301.2 Failure to Give Adequate Notice. If the requirement is not waived, failure to give adequate notice shall be noted in a Disciplinary Action Memorandum (See Section 708). This shall prevent the employee from receiving preferential rehire. It may also be cause for denial of any future employment with the City.

1301.3 Eligibility for Rehire. Eligibility for rehire is contingent upon previously leaving employment by the City in good standing, as described in Chapters 7 and 13. (Ord. xxxx, 2018)

1302 LAYOFFS

Examples of layoffs are:

- (a) Abolishment of a position or shortage of work or funds.
- (b) Completion of seasonal work for seasonal employees.
- (c) End of temporary appointment because of reinstatement of regular employee returned from military or other approved leave, and transfer to another position in the same salary grade has not been achieved.

When it is necessary to reduce the number of employees because of lack of work or funds, or abolition of positions, the department head concerned shall make a thorough investigation of the matter and report the findings and recommendations to the City Manager, who shall decide which employees shall be laid off. Analysis of proposed layoffs shall consider first the types of activities to be curtailed and the positions thereby affected. The department head shall then proceed to the selection of individual employees to be released. Employee performance shall be the major factor in determining the order in which employees shall be

released, and considerations shall then be given to the employee's qualifications and longevity. Advisability of demoting employees in higher salary grades to lower salary grades for which they are qualified, and laying off those in lower salary grades shall also be considered. Employees laid off through no fault of their own shall be given preference when new appointments are made. In the event of layoffs in the City Clerk's department, responsibility for deciding which employees shall be laid off shall be assumed by the City Clerk. (Ord. 1090, 1999; Ord. 1038, 1996)

1303 DISMISSAL FOR DISCIPLINARY REASONS

A department head may recommend dismissal an employee for any just cause, including but not limited to documented inefficiency, insubordination, habitual tardiness, ~~excessive use of sick leave~~ and violation of the alcohol and drug policies or other provisions of these Personnel Rules and Regulations. Such a recommendation shall be in writing and shall describe the facts or circumstances upon which it is based. The City Manager shall have the sole authority for any dismissal actions and may take such action with or without a recommendation for dismissal from a department head.

1304 DISMISSAL WITHOUT PREJUDICE

A department head may recommend dismissal an employee without prejudice for reasons that are not directly the fault of the employee but do lower the service or accomplishment of the employee below the acceptable level. Examples are lack of necessary knowledge, skill, ability, understanding or aptitude.

~~(b) Physical or functional sickness that may interfere directly with successful performance of duties, or that may cause so much absence from the job that work is seriously impaired.~~

The City Manager shall have the sole authority for any dismissal actions.

1305 DISMISSAL NOTICE AND SEVERANCE PAY (DISMISSAL WITHOUT PREJUDICE)

In cases where an employee is laid off or dismissed without prejudice, the City shall give the employee two (2) weeks' notice or severance pay not to exceed two (2) weeks. (Ord. 1008, 1995)

1306 RETIREMENT

See Section 414.

1307 PRE-DECISIONAL HEARING AND REVIEW OF DECISION (DISMISSAL FOR DISCIPLINARY REASONS)

Before any decision to dismiss an employee for disciplinary reasons is made, the employee shall be afforded an opportunity for a hearing on the matter; ~~and in the event that a decision is made to dismiss an employee for disciplinary reasons, the City Council shall be given a legal opinion of the decision before it becomes final, as provided below.~~

1307.1 Notice to Employee. An employee who is being considered for dismissal under this section shall be given a clear and concise written statement of the facts and circumstances which the City Manager believes justify the employee's dismissal. The written statement from the City Manager will include a copy of the department head's written recommendation, if applicable, along with stating that the employee's dismissal for cause or disciplinary reasons is being considered and shall notify the employee of the date, time, and place set for the pre-decisional hearing as provided below.

~~An employee who is being considered for dismissal under this section shall be given a clear and concise written statement of the facts and circumstances which the City Manager believes may justify the employee's dismissal. If the employee's department head has submitted to the City Manager a written recommendation that the employee be dismissed, the employee shall also be given a copy of it. If the department head's recommendation adequately describes the facts and circumstances upon which it is based, the City Manager may adopt it by reference with or without supplementing it through an additional statement and supporting materials. In describing the facts and circumstances believed to justify the employee's dismissal, the City Manager is not restricted to matters addressed by the employee's department head and may take action without first receiving a recommendation from the department head. The City Manager's notice to the employee shall state that the employee's dismissal for cause or disciplinary reasons is being considered and shall notify the employee of the date, time and place set for a pre-decisional hearing as provided below.~~

1307.2 Pre-Decisional Hearing. (a) The City Manager shall conduct a pre-decisional hearing at the time and place specified in the notice to the employee. The employee's department head may attend the pre-decisional hearing, which shall not ordinarily be held earlier than five calendar days after delivery to the employee of the notice, unless the employee concurs ~~in~~ with an earlier date. The City Manager shall create a record which identifies all documentary and other evidence reviewed or relied upon and shall conduct the hearing in such a manner as to afford the employee a full and fair opportunity to present a defense by testimonial and other evidence. The employee may be accompanied and assisted by legal counsel or any other representative of the employee's choice. The employee may testify, present other witnesses, and offer other relevant evidence into the record. ~~Unless a court reporter is present, The~~ hearing shall ~~ordinarily~~ be recorded and the audio record kept for at least six months. ~~If requested by either the City Manager or the employee, the testimony of a witness (including the employee) shall be under oath.~~

(b) If the employee wishes to question another City employee who has relevant knowledge or information, the City Manager shall arrange for the attendance of that other employee. If so requested by the employee, the City Manager shall also make reasonable efforts to secure the attendance of any complaining witness or individual who is not a current City employee and whose statement or testimony is a significant focus of the charges against the employee. The City Manager may recess the hearing from time to time in order to schedule the testimony of such an individual or for any other reason. The failure of a complaining witness or other individual to honor a request of the City Manager to appear at the pre-decisional hearing shall not preclude the City Manager from relying upon other

testimony or statements made or information provided by such individual so long as the City Manager finds such other testimony or information to be relevant and credible.

(c) If the employee alleges that the dismissal or any other related actions would violate or have violated the City Charter, City Code, Personnel Rules and Regulations, or department rules and regulations pertaining to the dismissal action being contemplated, the employee shall specify the alleged violation with particularity no later than the close of the pre-decisional hearing.

(d) If the employee declines or fails to attend a pre-decisional hearing, the employee shall be deemed to have waived the right to a hearing.

(e) After considering the submissions and argument at the pre-decisional hearing and reviewing the record as a whole, the City Manager shall prepare written findings of fact and a final decision. If the decision is for dismissal, it shall specify an effective date, subject to the provisions below.

1307.3 Review of Decision to Dismiss. If the City Manager's decision is for dismissal, confidential copies of the findings of fact and the notice of **dismissal termination** shall immediately be provided to the employee, the City Attorney **and City Insurance Provider**, the Mayor, and the City Council. ~~and the termination shall not be made effective earlier than the first day after the next regular meeting of the Council, or the first day after a special meeting of the Council called to consider the issue, whichever is earlier.~~

(Ord. xxxx, 2018)

CHAPTER 14

SPECIAL PROVISIONS

1401 EMPLOYEE DEVELOPMENT

1401.1 Tuition Reimbursement In the event an employee successfully completes course work considered to be of benefit to the City, consideration shall be given toward reimbursement of **up to \$2,000.00** ~~one hundred (100) percent~~ of the tuition expense **per calendar year**. In order to receive consideration for **this** reimbursement of tuition, the employee must obtain the written concurrence of the department head that the proposed course is related to the employee's present duties, and that successful completion of the course will be of mutual benefit to both the City and employee involved. This concurrence shall be obtained in each case before beginning the pertinent course of study. The employee may also be required to sign an agreement that the tuition and other costs borne by the City will be returned to the City in accordance with the repayment provisions of Subsection 1014.3, Administrative Leave for Training.

Upon successful completion of the course involved, the employee shall furnish his department head with evidence of successful completion and amount of course fee. Upon approval of the City Manager, the reimbursed cost is made from funds available in the appropriate department's budget. The City shall pay direct billings from colleges or universities for courses approved in advance by the department head and the City Manager as part of a curriculum leading to a specific college degree, but only if specifically job oriented. The approval will include a stipulation that the employee will repay the cost of the course to the City if the course is not satisfactorily completed. In the event of tuition reimbursement to staff identified in subsection 203.~~64.5~~—City Clerk, responsibility for approving the reimbursement shall be assumed by the City Clerk.

(**Ord. xxxx, 2018**; Ord. 1090, 1999; Ord. 1008, 1995)

1401.2 Required Training If by City direction, or under the direction of a State and/or Federal requirement, an employee is sent to a formalized course of training (other than short workshops or seminars) the City shall pay all direct billings from the agency providing the training. The employee also shall sign an agreement that the full cost of such training will be returned to the City in the event of separation from City employment within twelve (12) months from date of course completion. (Ord. 909, 1991)

1402 GIFTS AND GRATUITIES

It shall be the responsibility of each City employee to remain free from indebtedness or favors which would tend to create a conflict of interest between personal and official interests, or might reasonably be interpreted as affecting the impartiality of the individual employee. **Employees may not accept a gift, loan, gratuity, or other valuable consideration, or a promise of any of them, with the understanding or agreement,**

expressed or implied, that the employee will act to produce or prevent a particular result. ~~If an employee is tendered or offered a gift or gratuity which would, in the eyes of the public or in the eyes of public officials, be construed to be an attempt to bribe, influence or to encourage special consideration with respect to municipal operations, such offer shall be reported without delay to the employee's immediate superior who in turn will inform the department head.~~

~~If there should be any doubt whether a gift or gratuity is of such significance as to create undue influence upon the employee, the matter shall be reported to the department head concerned. If any employee shall knowingly accept any gift or gratuity that is construed by his department head to have created undue influence, or resulted in special consideration benefitting the giver then, with the approval of the City Manager, that employee shall be disciplined up to and including dismissal from City service. In the event of such acceptance by staff identified in sub-section 203.4.5 City Clerk, responsibility for disciplining the employee shall be assumed by the City Clerk. (Ord. xxxx, 2018; Ord. 1090, 1999)~~

1403 OUTSIDE EMPLOYMENT

No employee shall engage in any other employment, whether public, private, or self-employment during scheduled work hours, nor outside scheduled work hours if such employment conflicts with the City's interests or adversely affects the employee's availability and usefulness. Management personnel are responsible for informing all employees under their supervision of the provisions of this Section and for the enforcement of it.

For the guidance of all management personnel and employees, the following types of other employment are considered contrary to the City's interests and to adversely affect the availability and usefulness of employees.

- (a) Preparing financial reports subject to City audit, or review.
- (b) For department or division heads, or comparable level positions, to serve as an officer or director of any union or association of City employees. This provision shall not apply to any employee holding such office at the time of adoption of this provision.
- (c) Actively participating in management of any business organization that obtains, or is attempting to obtain, funds or business from the City.
- (d) Other employment wherein data or information to which access is provided by City employment could be used.

In administering this Section, all management personnel shall encourage their employees to obtain informal clearance from the City Manager, or designee, before accepting other employment.

1404 EMPLOYMENT OF FAMILY MEMBERS NEPOTISM

No person may be employed in a position **directly** supervised by an immediate family member, **by someone who shares the employee's household, or by someone with whom the employee is in a romantic relationship.** **If such supervision occurs, and**

reassignment or assignment to different shifts is feasible, at the discretion of the Department Head this/these employee(s) may be assigned to different supervisors. If such reassignment is not possible, the City Manager shall decide which employee must leave the department, by transfer (if available), or dismissal without prejudice. ~~Additionally, immediate family members shall not be placed in a position such that one member is required or authorized to review the work, personnel documents, expense account, or time records of another immediate family member.~~ An immediate family member is defined in the Definitions section of these Personnel Rules and Regulations.

1405 MOVING EXPENSES FOR NEW EMPLOYEES

Whenever a newly hired person changes ~~their~~ ~~his~~ place of residence, outside the local commuting area, for the purpose of accepting employment with the City, such person shall be reimbursed for actual and necessary expenses under the following conditions:

- (a) The employee must be **a department head or hired for a hard-to-fill position** ~~appointed to a position or salary grade~~ for which the City Manager certifies that such expenditure is necessary to recruit qualified employees. (**Ord. xxxx, 2018**; Ord. 1038, 1996)
- (b) The maximum amount reimbursable to the employee for actual and approved moving expenses for household effects shall not exceed \$3,000.00.
- (c) The amount of one-way air fare reimbursable to the employee shall be computed from the point of actual hire directly to Kodiak by the least expensive fare. Dependents covered for actual one-way air fare will be the employee's immediate family who have resided with the employee for the last six (6) months, and who derive over 50% of their total subsistence from the employee. To be eligible for reimbursable travel expenses, all claimed and approved dependents must accompany or join the employee within one (1) year of the date of employment.
- (d) If the employee elects to travel to Kodiak by other means, reimbursement shall be only for actual and approved travel expenses incurred by direct travel from point of hire directly to Kodiak for an amount not to exceed that of direct air fare (see subsection (c)).
- (e) New employees who are assisted with their moving expenses shall be required to sign a Transportation Agreement prior to employment. The Transportation Agreement shall stipulate that the employee will reimburse the City for all or part of such expenditures in the event the employee voluntarily leaves City service, or is discharged for cause, within a period of two (2) years according to the following schedule:
 - 100% - less than **twelve (12)** months;
 - 50% - more than twelve (12) but less than **twenty-four (24)** months;
 - 0% - **greater than** twenty-four (24) months.
- (f) New employees may not be given an advance against moving expenses without prior written approval of the City Manager.
- (g) New employees shall be advised by the appointing authority of dollar limitations, the need for itemized receipts of invoices, the meaning of the transportation agreement and other pertinent matters prior to their move.

~~(h) Moving expenses for newly hired persons at department head level will be determined by the Council on an individual basis.~~

1406 DRUG-FREE WORKPLACE

Repealed by Ord. 1054, 1997 (See Chapters 18 and 19.)

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CHAPTER 15

SAFETY AND HEALTH PROTECTION

1501 PURPOSE

Alaska Statutes 18.60.010—.105 provides job safety and health protection for workers through protection of safe and healthful working conditions throughout the State. The City shall abide by the Division of Occupational Safety and Health regulations. Department heads shall be responsible for posting safe practice and operations posters and safety and health protection on the job posters distributed by the State Division of Occupational Safety **and Health**. Department heads will promote and encourage safety and health protection on the job and require that supervisors review the provisions of AS 18.60.010—.105.

A copy of applicable occupational, health, and safety regulations shall be available for review by any employee upon request, ~~providing the request is deemed reasonable by the supervisor in regard to frequency of review and permission to be away from the work site.~~

Employees **must use** ~~will not be~~ required **Personal Protective Equipment** to work in ~~unsafe~~ **the** conditions **experienced in the course of their duties**. Supervisors have the responsibility to determine safe and unsafe working conditions in accordance with Alaska Occupational Safety and Health statutes.

~~No established safety and health procedures or programs established by the City shall preclude the right of any employee to file a grievance at the appropriate step of the grievance procedure.~~

(Ord. xxxx, 2018)

1502 SAFETY EQUIPMENT

Any safety equipment required by the Division of Occupational Safety and Health statutes to insure job safety shall be supplied by the City.

CHAPTER 16

FIRE DEPARTMENT SHIFT PERSONNEL

1601 PERSONNEL SHIFT ASSIGNMENTS

- (a) Fire Department employees assigned to the platoon system shall work a twenty-four (24) hour shift schedule within a twenty-eight (28) day work period as determined by the Fire Chief. Within any one twenty-eight (28) day work period the Fire Chief may designate as off-duty time, time which a Fire Department shift employee otherwise would have spent on duty and the employee shall not be subject to stand-by duty requirements during the hours so designated; provided, however, that in no event shall such designation of off-duty hours result in a shift employee having fewer than 212 hours worked during any given twenty-eight (28) day work period.
- (b) Employees on such a shift schedule shall be subject to this chapter.
(Ord. 804, 1987)

1602 STANDBY DUTY RESPONSIBILITY

Shift employees shall be subject to standby duty as determined by the Fire Chief. Such duty shall be assigned fairly and equitably. (Ord. 773, 1985)

1603 LEAVE - ACCRUAL AND USE

Every employee subject to the platoon system shall accrue leave at a multiplier of 1.33 hours, accrued to the nearest tenth of an hour, times the normal rate for a forty (40) hour work week. Leave shall be taken hour-for-hour in accordance with the employee's normally scheduled duty cycle. (Ord. 1008, 1995; Ord. 804, 1987)

1604 HOLIDAYS

- (a) Every employee subject to the platoon system shall be paid for 10.6 hours for each holiday.
- (b) Employees working normally scheduled shifts between the hours of 8:00 a.m. and midnight on a holiday shall receive their regular pay in addition to 10.6 hours holiday pay at the regular rate.
(Ord. 804, 1987)

1605 WAGES FOR FIRE DEPARTMENT PLATOON SYSTEM WORKERS

- (a) Employees working the platoon system shall be paid according to a modified pay schedule based upon 2,764 hours per year. (See Schedule III.)
- (b) Straight time shall be paid to employees who work up to 212 hours during a twenty-eight (28) day work period.

- (c) One-and-one-half times the employee's hourly pay rate shall be paid to any employee who is required to work in excess of 212 hours in any twenty-eight (28) day work period.
- ~~(d) Any employee who is assigned standby duty status prior to any normal shift day shall be paid at a rate equal to five (5) percent of the employee's base hourly rate for every hour of such assigned standby duty except for those hours where straight time or time and one-half is paid under subsections (b) or (c) above. Notwithstanding the payment of compensation for time spent on stand-by duty status, such time shall not be treated as hours worked within the meaning of the Fair Labor Standards Act and the associated regulations.~~
- (e) Any employee who responds to a call-back request shall be compensated for a minimum of one hour worked for calls originating between the hours of 6:00 a.m. and 10:00 p.m., and for two hours worked for calls originating between the hours of 10:00 p.m. and 6:00 a.m. If an employee is called back a second time while still being paid under the minimum call back, he will not be entitled to additional compensation until the minimum call back time has been completed.
- (Ord. xxxx, 2018; Ord. 1008, 1995; Ord. 804, 1987)

~~1606—SPECIAL MERIT INCREASE FOR EMT III TRAINING~~

~~An employees who becomes certified as an Emergency Medical Technician III in the State of Alaska may be eligible for a special merit increase. (Ord. 1033, 1996)~~

CHAPTER 17

EMPLOYEE ORGANIZATIONS

~~1701 EMPLOYEES' RIGHTS OF ASSOCIATION~~

~~Employees of the City of Kodiak and representatives of employee organizations shall be accorded the same rights and privileges as citizens in general with respect to the exercise of First Amendment rights. This includes the right of a city employee to join or associate with employee organizations of his or her choice without fear of discrimination, retaliation, or other adverse action. The policies and procedures set forth in these personnel rules shall not, however, be construed as imposing upon the City of Kodiak an obligation to meet and confer with employee organizations or any other obligation not already imposed by state or federal law with respect to the recognition of such organizations. (Ord. xxxx, 2018; Ord. 834, 1988)~~

1702 PUBLIC EMPLOYMENT RELATIONS ACT

A. The City recognizes the right of its public employees to organize for the purpose of collective bargaining, to form or join employee organizations, and to negotiate with and enter into written agreements with the City on matters of wages, hours, and other terms and conditions of employment.

B. The terms on which City employees may organize and on which the City and its employees will engage in collective bargaining shall be governed by the Public Employment Relations Act (AS 23.40.070-23.40.260) and the regulations promulgated by the Alaska Public Relations Agency pursuant to AS 23.40.380 or other authority granted by the Alaska legislature. The Alaska Labor Relations Agency is designated the administrative agency having jurisdiction to hear and decide questions affecting the employees of the City of Kodiak arising under the Public Employment Relations Act. (Ord. 1357, 2016; 834, 1988)

1703 STAFF MEETINGS

Department heads are encouraged to meet with their employees on a regular basis ~~and to institute appropriate policies and procedures designed~~ to promote free and open communication of information relevant to employee concerns. ~~This section is precatory only.~~ (Ord. xxxx, 2018; Ord. 834, 1988)

CHAPTER 18

FEDERALLY MANDATED ALCOHOL AND DRUG TESTING

~~Chapter 18 was enacted by Ordinance Number 1054, 1997.~~

1801 POLICY

The City of Kodiak is committed to providing a safe, effective and productive work environment, which meets state and federal mandates, including the provisions of the Code of Federal Regulations, 49 CFR Part 382, et. al. Subpart F, “Drug And Alcohol Use And Testing” Federal Highway Administration (FHWA) and the Omnibus Transportation Employee Testing Act of 1991. **The City provides information about the federally-mandated alcohol and drug testing to all affected employees and applicants.** ~~In the event of any conflict between the provisions of this chapter and any other policy of the City, the provisions of this chapter shall apply unless the conflicting policies are more stringent and meet the requirements of the federal regulations cited above, in which case the more stringent policy shall apply.~~

~~1802 AFFECTED INDIVIDUALS~~

~~All employees and job applicants whose job requires them to possess a commercial driver’s license or perform a safety sensitive function on a commercial motor vehicle (CDL/CMV employees) are subject to this policy. Commercial motor vehicle means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle~~

- ~~— (a) has a gross vehicle weight rating of 11,794 kilograms (26,001 pounds) or more, inclusive of a towed unit with a gross vehicle weight rating of more than 4,536 kilograms (10,000 pounds); or~~
- ~~— (b) has a gross vehicle weight rating of 11,794 kilograms (26,001 pounds) or more; or~~
- ~~— (c) is designed to transport 16 or more passengers, including the driver; or~~
- ~~— (d) is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations.~~

~~Affected employees and applicants include but are not limited to operators who drive commercial motor vehicles as:~~

- ~~— (a) their primary duty; or~~
- ~~— (b) mechanics who drive commercial motor vehicles for test purposes; or~~
- ~~— (c) operators of licensed or unlicensed “heavy equipment” if the vehicle they are operating is a commercial motor vehicle as defined above and this vehicle is operated on a public road or roads.~~

~~Certain employees are required to have Alaska Commercial Drivers Licenses to operate vehicles meeting the above specifications. Others may work on servicing such vehicles. Employees in the job classifications listed below are CDL/CMV employees subject to all of the provisions of this chapter:~~

Maintenance Worker	Heavy Mechanic	WWTP Supervisor
Utility Worker	Shop Supervisor	Public Works Director
Equipment Operator	WWTP Operator	Deputy Harbormaster
Public Works Supervisor	WWTP Senior Operator	P&H Maintenance
Auto Mechanic	WWTP Mechanic	Mechanic Senior
		Harbor Officer

~~1803 PROGRAM ADMINISTRATOR~~

~~The City Manager is designated as the City's CDL Alcohol and Drug Testing Administrator, in which capacity he is also responsible for the overall operation of this program as the Program Administrator.~~

~~**1803.1 Counseling and Recovery Resources List.** A list of alcohol and drug counseling and recovery resources shall be maintained by the Program Administrator, and shall be available to all employees. Use of these resources is at the employee's expense.~~

~~**1803.2 Testing Resources.** The Program Administrator shall make arrangements with qualified individuals and organizations to serve in the following capacities:~~

- ~~(a) Drug and Alcohol Testing Collection Site;~~
- ~~(b) Testing Laboratory;~~
- ~~(c) Medical Review Officer(s); and~~
- ~~(d) Substance Abuse Professional(s).~~

~~1804 SELF-REFERRAL AND EMPLOYEE ASSISTANCE~~

~~**1804.1 Self-Referral Prior to Testing.** An employee subject to testing under this chapter who acknowledges having an alcohol or drug problem before being selected for testing shall be permitted to take up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City's leave policies for the purpose of undergoing an approved dependency treatment program. To be eligible, the employee must deliver her or his signed, written request for leave to her/his supervisor. This referral program is only allowed once. Prior to returning to duty, the employee shall be subject to return-to-duty and follow-up testing as described in this chapter. Employees are advised to contact the City Manager's office for details regarding any insurance benefits that may be available.~~

~~1804.2 Employee Assistance Program. The City of Kodiak offers an Employee Assistance Program (EAP) through the Kodiak Mental Health Center designed to assist employees and their families who are experiencing personal or job-related problems, including employees who need assistance in dealing with alcohol or drug problems. Employees are encouraged to contact the EAP for assistance in early detection and referral for substance abuse problems and treatment. Employees who would like more information on benefits of the Employee Assistance Program should contact the City Manager's office.~~

~~1805 GENERAL PROHIBITIONS~~

~~1805.1 Prohibited Drugs. For the purposes of this policy, prohibited drugs include marijuana (THC), amphetamines, opiates, cocaine, and phencyclidine (PCP).~~

~~1805.2 Employees Not to Work Under the Influence of Alcohol or Drugs. No employee shall, while under the influence of alcohol or drugs or within 4 hours of using alcohol or a prohibited drug, operate a commercial motor vehicle, perform a safety sensitive function, nor report for or remain on duty when the employee's job responsibilities require the employee to be prepared to operate a commercial motor vehicle or perform a safety sensitive function. Employees are cautioned that refraining from drug or alcohol use for 4 hours prior to reporting for duty does not in and of itself assure an acceptable blood alcohol level or a negative drug test.~~

~~1805.3 Employees Not to Use Alcohol Prior to Post-Accident Test. No employee required to take a post-accident alcohol or drug test shall use alcohol for 8 hours following an accident, unless the test has been completed.~~

~~1805.4 Employees May Not Refuse Test. No employee may refuse to submit to a lawfully required test. If an employee does so, the refusal will be considered equivalent to a positive test and shall carry the consequences specified in this chapter.~~

~~1805.5 Employees to Report Alcohol/Drug Convictions. CDL/CMV employees must report all convictions for driving while intoxicated or other illegal use or possession of alcohol and all convictions for illegal use or possession of prohibited drugs or other controlled substances to their supervisors no later than the first working day after the conviction is entered. A conviction is considered entered at the time a jury verdict or court finding of guilty is returned or at the time of a guilty or nolo contendere plea even though sentencing is delayed or deferred.~~

~~1805.6 City's Right to Search. CDL/CMV employees must provide access to lockers and all other city owned areas which may be provided for their use. They may not~~

contest the City's right to search or inspect such areas or items stored in them by claiming an expectation of privacy with respect to them.

~~**1805.7 Possession of Alcohol and Drugs Prohibited.** No employee shall possess or carry alcohol or prohibited drugs in a commercial motor vehicle. The only exception is for drugs meeting the requirements of Section 1805.9 below (i.e., they are prescribed, approved as safe, and the employee's immediate supervisor receives a copy of the employee's doctor's written certification).~~

~~**1805.8 Prohibitions Specific to Alcohol:**~~

~~(a) Any CDL/CMV employee with a blood alcohol level of 0.02% to 0.04% is prohibited from operating commercial motor vehicles or performing any safety sensitive function, but such an individual is not, by reason of such a reading alone, considered to have tested "positive" for the purpose of this policy. The employee may be allowed to return to driving duty or duties requiring the performance of a safety sensitive functions once his or her blood alcohol level tests below 0.02%, but no sooner than 24 hours after the test which indicated a level of 0.02% to 0.04%. With the exception of the test or tests required to confirm that the employee's blood alcohol level is below 0.02%, the employee will not be subject to mandatory follow up testing or substance abuse professional (SAP) evaluation but shall be subject to such disciplinary action as the City deems appropriate under the circumstances.~~

~~(b) Alcohol test results are considered positive if they are greater than 0.04%. No CDL/CMV employee shall report for duty nor remain on duty with a blood alcohol level of greater than 0.04%.~~

~~**1805.9 Prohibitions Specific to Prohibited Drugs.** No CDL/CMV employee shall report for duty or remain on duty with any level of a prohibited drug in her or his blood, breath or urine unless:~~

~~(a) the drug was medically prescribed by a state licensed medical doctor; and~~

~~(b) this doctor has certified in writing that use of the drug(s) will not affect the employee's ability to safely operate a commercial motor vehicle.~~

~~A CDL/CMV employee who is taking a prohibited drug in accordance with a prescription shall report this fact to the employee's immediate supervisor. The employee shall, before attempting to operate a commercial motor vehicle or undertake a safety sensitive function, provide the supervisor with a copy of the doctor's certification of the employee's ability to safely operate a commercial motor vehicle notwithstanding use of the drug as prescribed.~~

~~**1806 TESTING**~~

~~All affected individuals as identified in Section 1802 are subject to alcohol and drug testing as described below. Should an employee refuse to be tested or fail to cooperate with testing procedures, or should the test results be positive, the employee will be taken home, if still on duty, and will be subject to the consequences specified in this chapter.~~

~~**1806.1 Pre-Employment Testing.** All applicants offered a job, whether by new hire or transfer, which may require the operation of a commercial motor vehicle or the performance of a safety sensitive function shall be tested for drug use prior to final hire or transfer. No applicant shall be hired or transferred into the covered position unless the test result is negative (i.e., any offer of employment for such a position is a conditional offer of employment and shall be withdrawn or rescinded if the prospective employee fails to return a negative test result). Each potential new hire shall complete and sign a pre-employment drug testing consent form.~~

~~If a positive drug test results in the City's retracting a conditional offer of employment the individual who failed the drug test shall not be eligible to re-apply for a position covered by this policy for six months after the testing date. Employees seeking a transfer or promotion to, or who are subject to demotion to a position covered by this policy, and who return a positive drug test result will be denied the change and the test results may be considered by the City in determining what disciplinary action, if any, is appropriate.~~

~~**1806.2 Random Testing.** At least 25% of the City's CDL/CMV employees will be required to submit to random alcohol tests in any given calendar year. At least 50% of CDL/CMV employees will be required to submit to random drug tests in any given calendar year.~~

~~Testing will occur at random times throughout the year. An employee will not receive notice until immediately before testing. Random alcohol testing will occur immediately prior to, during, or after the employee operates or is on duty and available to operate a commercial motor vehicle. Random drug tests can occur anytime, since use of prohibited drugs is unlawful.~~

~~The employee will be asked to sign an Employee Notification and Consent of Drug/Alcohol Test which acknowledges the employee's consent to testing. The employee must present the collection site with a copy of the form and a picture identification at the time of testing. (A copy of all forms will be kept by the employer.)~~

~~After notification of selection for a drug or alcohol test, the employee must proceed directly to the collection site. The City may require that the employee be accompanied by a supervisor or another designee.~~

~~If the test does not occur within 2 hours of the employee's notification, the supervisor shall document the facts and circumstances giving rise to the delay, following the procedures specified below in Section 1807 Delays in Testing.~~

~~**1806.3 Reasonable Suspicion Testing.** If a supervisor has reasonable suspicion that an employee may be under the influence of alcohol or a prohibited drug, which suspicion is supported by current and specific information concerning the employee's behavior, appearance, speech or body odor, immediately before, during, or after the employee has operated or is scheduled to operate a commercial motor vehicle or has performed or is scheduled to perform a safety-sensitive function, or has been on duty in any job, the supervisor shall:~~

~~(a) immediately stop the employee's work; and~~

~~(b) inform the employee of the suspicion of alcohol and/or drug use and of the supervisor's determination that a drug or alcohol test should be administered. (If possible, the supervisor will arrange for the presence of a second supervisor. It is also recommended that the supervisor complete the Supervisor Reasonable Suspicion Checklist); and~~

~~(c) contact the program administrator to arrange for the employee to be tested; and~~

~~(d) have the employee transported directly to and from the testing facility. If the employee is found to be under the influence of drugs or alcohol, he or she should be driven home after the test. The employee may request a confirmation test. If the test results are not immediately known the employee will be placed on paid administrative leave until the test results are available.~~

~~Supervisors should complete a Reasonable Suspicion Checklist within 24 hours of the supervisor's initial determination that an employee appears to be under the influence of alcohol or drugs, or before the results of the test are released, whichever is later.~~

~~If the test does not occur within 2 hours of the supervisor's initial determination, the supervisor shall document the facts and circumstances giving rise to the delay, following the procedures specified below in Section 1807 Delays in Testing.~~

~~To ensure the safety of others, any employee who knows or suspects that another employee is under the influence of drugs or alcohol shall report this suspicion to the observing employee's supervisor immediately.~~

~~**1806.4 Post-Accident Testing.** A CDL/CMV employee involved in an accident shall submit to alcohol and drug testing within 2 hours after the accident if the accident resulted in~~

~~(a) a loss of human life; or~~

~~(b) the CDL/CMV employee's receipt of a traffic citation for a moving violation and~~

~~(1) a person was injured to the extent of requiring medical attention away from the scene; or~~

~~(2) one or more vehicles involved in the accident required towing from the scene.~~

~~Notwithstanding the foregoing, the requirement of post accident testing does not apply to an occurrence~~

~~(a) involving only boarding or alighting from a stationary motor vehicle; or~~

~~(b) involving only the loading or unloading of cargo; or~~

~~(c) in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR §571.3) unless the motor vehicle is transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR §177.823.~~

~~The fact that an accident does not meet the criteria mandating Post Accident Testing does not, however, preclude the employee's being required to submit to reasonable suspicion testing if the facts otherwise warrant such testing.~~

~~A CDL/CMV employee who is involved in an accident requiring the employee to submit to post accident testing shall notify his or her supervisor as soon as possible. (Employees are permitted to leave the scene of the accident to obtain necessary emergency medical care, or to assist others in responding to the accident, but unnecessary delay will be considered a positive test.) The supervisor will arrange for immediate testing.~~

~~Employees who are subject to post accident testing shall remain readily available for the test. An unexcused failure to remain readily available for a post accident test may be equated with a refusal to submit to testing.~~

~~The results of alcohol or drug tests administered by federal, state, or local officials having independent authority for testing may be used, provided the tests comply with applicable federal, state, and local requirements and the results of the test are obtained by the City. A CDL/CMV employee who tests positive on a post-accident drug or alcohol test required by this section shall be discharged.~~

~~**1806.5 Return-to-Duty Testing.** CDL/CMV employees who engage in conduct prohibited by Subpart B of 49 CFR 382 will be evaluated by a Substance Abuse Professional (SAP) to determine what type of assistance he/she needs to resolve the problem. If the City plans to consider reinstating the employee, the SAP and the supervisor will develop a return to duty contract. This document shall outline specific objectives that the employee in question must complete in order to be considered for reinstatement. Prior to reinstatement, employees will be re-tested.~~

~~This return-to-duty test must register below 0.02% for alcohol and negative for drugs. A CDL/CMV employee who tests positive on a return-to-duty drug or above 0.04% on a return-to-duty alcohol test required by this section shall be discharged. A CDL/CMV employee whose test result on a return-to-duty alcohol test is between 0.02% and 0.04% blood alcohol content may be subject to discharge.~~

~~**1806.6 Follow-up Testing.** An employee will receive at least 6 unannounced tests during the first 12 months after returning to duty following a positive test. Further testing may continue for up to 60 months, if recommended by the SAP. A CDL/CMV employee who, after returning to duty following a positive test, tests positive on a follow-up drug or alcohol test required by this section shall be discharged.~~

~~**1806.7 Confirmation Testing.** All positive drug and alcohol tests shall be verified via approved confirmation test methods, as required.~~

~~1807 DELAYS IN TESTING~~

~~If a required test is not administered within 2 hours following notice of a random, reasonable suspicion, or follow-up test or an accident, the supervisor, in cooperation with the administrator, shall document the reason the test was not administered within that time.~~

~~If a required alcohol test is not administered within 8 hours, or a required drug test is not administered within 32 hours, the test in question shall not be conducted. The administrator shall document the reason(s) the test(s) were not conducted within the required time.~~

~~1808 TYPE OF TESTING REQUIRED~~

~~Drug testing is required for each of the above test types. Alcohol testing is also required for each test type, except Pre Employment Testing. Note that an original alcohol test reading below 0.04% excuses the employee from the alcohol testing requirement of the return-to-duty and follow-up tests.~~

~~**1808.1 After Hours Testing.** If testing is needed outside normal hours of operation of the designated collection site, a supervisor or manager will be responsible for following the procedures established by the testing lab.~~

~~**1808.2 Refusal To Be Tested.** The regulations require the City to treat a refusal to be tested as a positive test. Each of the following constitutes refusal to submit to testing:~~

~~(a) Failure to provide adequate breath for testing without a valid medical excuse from a state licensed medical doctor; or~~

- ~~(b) Failure to provide adequate urine for testing within a reasonable time without a valid medical explanation from a state licensed medical doctor; or~~
- ~~(c) Failure to report on time, or to sign or initial testing documents, as required.~~

~~A CDL/CMV employee who refuses to submit to a drug or alcohol test mandated or authorized by these policies shall be discharged.~~

~~**1809 CONSEQUENCES OF A POSITIVE TEST OR PERFORMANCE OF A PROHIBITED ACT**~~

~~The following table summarizes the consequences of a CDL/CMV employee's having a positive drug or alcohol test or refusing to be tested under the specified circumstances.~~

Type of Test	Positive Test Consequences	Refusal to Test Consequences
Pre-Employment	Not hired/transferred	Not hired/transferred
Random	Discharged/rehabilitation*	Discharged
Reasonable Suspicion	Discharged/rehabilitation*	Discharged
Post-Accident	Discharged	Discharged
Return-to-Duty	Discharged	Discharged
Follow-up	Discharged	Discharged

~~*(Indicates a potential opportunity for rehabilitation, subject to the limitations set out in this chapter.)~~

~~**1809.1 Immediate Removal from Duty.** An employee who tests positive or performs an act prohibited under this chapter will be removed from duty immediately. The employee will be placed on leave without pay pending the determination of the appropriate discipline.~~

~~**1809.2 Referral for Evaluation.** An employee who tests positive (regardless of whether terminated or retained) will then receive a referral to a substance abuse professional (SAP) for evaluation. The employee will also receive a copy of the Counseling and Recovery Resources List specified in Section 1803.1.~~

~~**1809.3 City's Option for Rehabilitation and Retention.** The City may choose to work with the SAP to rehabilitate an employee who has tested positive or otherwise committed one or more acts prohibited by this policy; however, it is under no obligation to retain the employee, even if the rehabilitation is successful. An employee who participates in a rehabilitation plan approved by the SAP and Program Administrator may take up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City's leave policies for the purpose of undergoing the approved dependency treatment program. No other form of paid leave will be allowed for this purpose. Other than the Employee Assistance Program defined in Section 1804.2, no rehabilitation program or~~

~~treatment services will be paid by the City for the purposes outlined in this section.~~

- ~~1809.4 Blood Alcohol Level Between 0.02% to 0.04%. An employee whose test results indicate a blood alcohol concentration of 0.02% to 0.04% shall be prohibited from driving a commercial motor vehicle until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following the administration of the test. Other disciplinary actions may apply.~~
- ~~1809.5 Prerequisites for Return to CMV Driving. If the employee is retained as a commercial driver, he/she may not return to commercial motor vehicle driving or the performance of safety-sensitive functions until~~
 - ~~(a) the SAP determines that the employee has completed all necessary treatment in accordance with the return to duty contract; and~~
 - ~~(b) the employee's return to duty test results are below 0.02% for alcohol and negative for drugs. Follow-up tests will then occur.~~

~~1810 TRAINING FOR SUPERVISORS~~

- ~~Every individual who is in the position of determining "reasonable suspicion" of alcohol misuse or drug abuse will receive a minimum 120 minutes of annual training (60 minutes alcohol related and 60 minutes drug related). The training must cover the physical, behavioral, speech, and performance indicators of alcohol misuse and drug abuse. Supervisors shall sign a sheet acknowledging training.~~

~~1811 NOTIFICATION AND TRAINING OF AFFECTED EMPLOYEES~~

- ~~Prior to testing, employees and job applicants shall receive a copy of this policy. Employees shall sign forms acknowledging receipt of this policy and participation in any required training. Job applicants shall sign a testing consent form which includes acknowledgment that they understand the drug testing requirement.~~

~~1812 RECORD RETENTION AND REPORTING~~

- ~~1812.1 Security of Records All records pertaining to employee and applicant drug testing shall be maintained in a secure location, and access shall be controlled in the same manner as other confidential personnel records.~~
- ~~1812.2 Records Available to Future Employers. Records will be made available to future employers upon written request by the employee.~~

- ~~1812.3 Employee's Right to Copies. Upon written request, employees are allowed to receive copies of the drug and alcohol records pertaining to them.~~
 - ~~1812.4 Records Available to Transportation Investigations. All documents relating to this program which are within the City's possession or control will be made available to state and federal transportation investigation officials, upon written request.~~
 - ~~1812.5 Disclosure of Records in Lawsuit, Grievance, Etc. The City may disclose information pertaining to an employee that is required to be maintained under this policy to the decision makers in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee.~~
 - ~~1812.6 Disclosure of Records to Federal Highway Administration. The Federal Highway Administration (FHWA) may request an annual report for the previous year's drug and alcohol testing activities. If requested, the City will provide it.~~
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CHAPTER 19

GENERAL ALCOHOL AND DRUG TESTING

Chapter 19 was enacted by Ordinance Number 1054, 1997, and xxxx.

1901 POLICY

Inasmuch as the improper use of drugs and the misuse of alcohol by employees can increase the risk of injuries, deaths and other losses to the City, its employees, and the community at large, the City of Kodiak is committed to providing a safe, effective and productive work environment for all employees. The unlawful use or possession of alcohol and drugs by any City employee is prohibited.

1902 AFFECTED INDIVIDUALS

1902.1 Reasonable Suspicion. Supervisors are responsible for monitoring employees for alcohol and drug use. If a supervisor has reasonable suspicion that any employee may be under the influence of alcohol or a prohibited drug, which suspicion is supported by current and specific information concerning the employee's behavior, appearance, speech, communication, or body odor, immediately before, while, or after the employee has been on duty, the employee shall be subject to the provisions for reasonable suspicion testing included in this chapter.

1902.2 Job Applicants Nominated for Hire. Any person who is offered regular, classified employment with the City shall be subject to the Pre-Employment Testing provisions of this chapter. Each potential new hire shall complete and sign a pre-employment drug testing consent form.

1903 PROGRAM ADMINISTRATOR

The City Manager is ~~designated as the City's CDL Alcohol and Drug Testing Administrator, in which capacity he is also~~ responsible for the overall operation of this program as the Program Administrator.

1904 SELF-REFERRAL AND EMPLOYEE ASSISTANCE

1904.1 Self-Referral Prior to Testing. An employee subject to testing under this chapter who acknowledges having an alcohol or drug problem before being selected for testing shall be permitted to take up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City's leave policies for the purpose of undergoing an approved dependency treatment program. To be

eligible, the employee must deliver her or his signed, written request for leave to her/his supervisor. This referral program is only allowed once. Prior to returning to duty, the employee shall be subject to return-to-duty and follow-up testing as described in this chapter. Employees are advised to contact the City Manager's office for details regarding any insurance benefits that may be available.

1904.2 Employee Assistance Program. The City of Kodiak offers an Employee Assistance Program (EAP) ~~through the Kodiak Mental Health Center~~ designed to assist employees and their families who are experiencing personal or job-related problems, including employees who need assistance in dealing with alcohol or drug problems. Employees are encouraged to contact the EAP for assistance in early detection and referral for substance abuse problems and treatment. Employees who would like more information on benefits of the Employee Assistance Program should contact the City Manager's office.

1905 GENERAL PROHIBITIONS

1905.1 Prohibited Drugs. For the purposes of this policy, prohibited drugs include marijuana (THC), amphetamines, opiates, cocaine, and phencyclidine (PCP).

1905.2 Employees Not to Work Under the Influence of Alcohol or Drugs. No employee shall, while under the influence of alcohol or drugs or within 4 hours of using alcohol or a prohibited drug, report for or remain on duty in any capacity. Employees are cautioned that refraining from drug or alcohol use for 4 hours prior to reporting for duty does not in and of itself assure an acceptable blood alcohol level or a negative drug test.

1905.3 Employees Not to Use Alcohol Prior to Post-Accident Test. No employee required to take a post-accident alcohol or drug test shall use alcohol for 8 hours following an accident, unless the test has been completed.

1905.4 Employees May Not Refuse Test. No employee may refuse to submit to a lawfully required test. If an employee does so, the refusal will be considered equivalent to a positive test and shall carry the consequences specified in this chapter.

1905.5 Possession of Alcohol and Drugs Prohibited. No employee shall possess or carry alcohol or prohibited drugs in a City-owned motor vehicle nor in a City office, shop, or other workplace. The only exception is for drugs meeting the requirements of Section 1905.9 below (i.e., they are prescribed, approved as safe, and the employee's immediate supervisor receives a copy of the employee's doctor's written certification).

1905.6 Prohibitions Specific to Alcohol.

- (a) Any employee with a blood alcohol level of 0.02% to 0.04% is prohibited from operating City-owned motor vehicles, but such an individual is not, by reason of such a reading alone, considered to have tested “positive” for the purpose of this policy. The employee may be allowed to return to driving once her or his blood alcohol level tests below 0.02%. With the exception of the test or tests required to confirm that the employee's blood alcohol level is below 0.02%, the employee will not be subject to mandatory follow-up testing or substance abuse professional (SAP) evaluation but shall be subject to such disciplinary action as the City deems appropriate under the circumstances.
- (b) Alcohol test results are considered positive if they are greater than 0.04%. No employee shall report for duty nor remain on duty with a blood alcohol level of greater than 0.04%.

1905.7 Prohibitions Specific to Prohibited Drugs. No employee shall report for duty or remain on duty with any level of a prohibited drug in her or his blood, breath or urine unless

- (a) the drug was medically prescribed by a state licensed medical doctor; and
- (b) this doctor has certified in writing that use of the drug(s) will not adversely affect the employee’s ability to perform her or his job duties.

1906 TESTING

All affected individuals as identified in Section 1902 are subject to alcohol and drug testing as described below. Should an employee refuse to be tested or fail to cooperate with testing procedures, or should the test results be positive, the employee will be taken home, if still on duty, and will be subject to the consequences specified in this chapter.

1906.1 Pre-Employment Testing. Any person not already employed by the City who is offered regular, classified employment with the City shall be tested for drug use prior to final hire. No applicant shall be hired unless the test result is negative (i.e., any offer of employment for such a position is a conditional offer of employment and shall be withdrawn or rescinded if the prospective employee fails to return a negative test result). Each potential new hire shall complete and sign a pre-employment drug testing consent form.

If a positive drug test results in the City's retracting a conditional offer of employment, the individual who failed the drug test shall not be eligible to re-apply for a position covered by this policy for six months after the testing date.

1906.2 Reasonable Suspicion Testing. If a supervisor has reasonable suspicion that an employee may be under the influence of alcohol or a prohibited drug, which suspicion is supported by current and specific information concerning the

- employee's behavior, appearance, speech or **body** odor, immediately before, during, or after the employee has been on duty in any job, the supervisor shall
- (a) immediately stop the employee's work; and
 - (b) inform the employee of the suspicion of alcohol and/or drug use and of the supervisor's determination that a drug or alcohol test should be administered. (If possible, the supervisor will arrange for the presence of a second supervisor. It is also recommended that the supervisor complete the Supervisor Reasonable Suspicion Checklist); and
 - (c) contact the program administrator to arrange for the employee to be tested; and
 - (d) have the employee transported directly to and from the testing facility. If the employee is found to be under the influence of drugs or alcohol, he or she should be driven home after the test. The employee may request a confirmation test. If the test results are not immediately known the employee will be placed on paid administrative leave until the test results are available.

Supervisors should complete a Reasonable Suspicion Checklist within 24 hours of the supervisor's initial determination that an employee appears to be under the influence of alcohol or drugs, or before the results of the test are released, whichever is later.

If the test does not occur within 2 hours of the supervisor's initial determination, the supervisor shall document the facts and circumstances giving rise to the delay, following the procedures specified below in Section 1907 Delays in Testing.

To ensure the safety of others, any employee who knows or suspects that another employee is under the influence of drugs or alcohol shall report this suspicion to the observing employee's supervisor immediately.

1906.3 Return-to-Duty Testing. Employees who engage in conduct prohibited by this chapter will be evaluated by a Substance Abuse Professional (SAP) to determine what type of assistance he/she needs to resolve the problem. If the City plans to consider reinstating the employee, the SAP and the supervisor will develop a return-to-duty contract. This document shall outline specific objectives that the employee in question must complete in order to be considered for reinstatement. Prior to reinstatement, employees will be re-tested. This return-to-duty test must register below 0.02% for alcohol and negative for drugs. An employee who tests positive on a return to duty drug or above 0.04% on a return to duty alcohol test required by this section shall be discharged. An employee whose test result on a return to duty alcohol test is between 0.02% and 0.04% blood alcohol content may be subject to discharge.

1906.4 Follow-up Testing. An employee will receive at least 6 unannounced tests during the first 12 months after returning to duty following a positive test. Further testing may continue for up to 60 months, if recommended by the SAP. An employee

who, after returning to duty following a positive test, tests positive on a follow-up drug or alcohol test required by this section shall be discharged.

1906.5 Confirmation Testing. All positive drug and alcohol tests shall be verified via approved confirmation test methods, as required.

1907 DELAYS IN TESTING.

If a required test is not administered within 2 hours following notice of a reasonable suspicion or follow-up test, the supervisor, in cooperation with the administrator, shall document the reason the test was not administered within that time.

If a required alcohol test is not administered within 8 hours, or a required drug test is not administered within 32 hours, the test in question shall not be conducted. The administrator shall document the reason(s) the test(s) were not conducted within the required time.

1908 TYPE OF TESTING REQUIRED

Drug testing is required for each of the above test types. Alcohol testing is also required for each test type, except Pre-Employment Testing. Note that an original alcohol test reading below 0.04% excuses the employee from the alcohol testing requirement of the return-to-duty and follow-up tests.

1908.1 After Hours Testing. If testing is needed outside normal hours of operation of the designated collection site, a supervisor or manager will be responsible for following the procedures established by the testing lab.

1908.2 Refusal To Be Tested. The regulations require the City to treat a refusal to be tested as a positive test. Each of the following constitutes refusal to submit to testing:

- (a) Failure to provide adequate breath for testing without a valid medical excuse from a state licensed medical doctor; or
- (b) Failure to provide adequate urine for testing within a reasonable time without a valid medical explanation from a state licensed medical doctor; or
- (c) Failure to report on time, or to sign or initial testing documents, as required,
or
- (d) Refusal to be tested; or**
- (e) Leaving the scene of an accident without a valid reason, before tests are conducted.**

An employee who refuses to submit to a drug or alcohol test mandated or authorized by these policies shall be **dismissed** ~~discharged~~.

1909 CONSEQUENCES OF A POSITIVE TEST OR PERFORMANCE OF A PROHIBITED ACT

The following table summarizes the consequences of an employee's having a positive drug or alcohol test or refusing to be tested under the specified circumstances.

Type of Test	Positive Test Consequences	Refusal to Test Consequences
Pre-Employment	Not hired/transferred	Not hired/transferred
Reasonable Suspicion	dismissed discharged /rehabilitation*	dismissed discharged
Return-to-Duty	dismissed discharged	dismissed discharged
Follow-up	dismissed discharged	dismissed discharged

*(Indicates a potential opportunity for rehabilitation, subject to the limitations set out in this chapter.)

1909.1 Immediate Removal from Duty. An employee who tests positive or performs an act prohibited under this chapter will be removed from duty immediately. The employee will be placed on leave without pay pending the determination of the appropriate discipline.

1909.2 Referral for Evaluation. An employee who tests positive (regardless of whether terminated or retained) will then receive a referral to a substance abuse professional (SAP) for evaluation. ~~The employee will also receive a copy of the Counseling and Recovery Resources List specified in Section 1803.1.~~

1909.3 City's Option for Rehabilitation and Retention. The City may choose to work with the SAP to rehabilitate an employee who has tested positive or otherwise committed one or more acts prohibited by this policy, however it is under no obligation to retain the employee, even if the rehabilitation is successful. An employee who participates in a rehabilitation plan approved by the SAP and Program Administrator may take up to 90 days of accrued sick, annual, or combined personal leave in accordance with the City's leave policies for the purpose of undergoing the approved dependency treatment program. No other form of paid leave will be allowed for this purpose.

Other than the Employee Assistance Program ~~defined in Section 1804.2~~, no rehabilitation program or treatment services will be paid by the City for the purposes outlined in this section.

1909.4 Blood Alcohol Level Between 0.02% to 0.04%. An employee whose test results indicate a blood alcohol concentration of 0.02% to 0.04% shall be prohibited from driving a City-owned motor vehicle until the start of the employee's next regularly scheduled duty period, but not less than 24 hours following the administration of the test. Other disciplinary actions may apply.

1910 TRAINING FOR SUPERVISORS

Every individual who is in the position of determining "reasonable suspicion" of alcohol misuse or drug abuse will receive a minimum 120 minutes of annual training (60 minutes alcohol related and 60 minutes drug related). The training must cover the physical, behavioral, speech, and performance indicators of alcohol misuse and drug abuse. Supervisors shall sign a sheet acknowledging training.

1911 TRAINING FOR AFFECTED EMPLOYEES

Prior to testing, employees and job applicants, shall receive a copy of this policy. Employees shall sign forms acknowledging receipt of this policy and participation in any required training. Job applicants shall sign a testing consent form which includes acknowledgment that they understand the drug testing requirement.

1912 RECORD RETENTION AND REPORTING

1912.1 Security of Records All records pertaining to employee and applicant drug **and alcohol** testing shall be maintained in a secure location, and access shall be controlled in the same manner as other confidential personnel records.

1912.2 Records Available to Future Employers. Records **pertaining to an employee's drug and alcohol testing** will be made available to future employers upon written request by the employee.

1912.3 Employee's Right to Copies. Upon written request, employees **will** ~~are allowed to~~ receive copies of the drug and alcohol records pertaining to them.

1912.4 Disclosure of Records in Lawsuit, Grievance, Etc. The City may disclose information pertaining to an employee that is required to be maintained under this policy to the decision makers in a lawsuit, grievance, or other proceeding initiated by or on behalf of the employee.

**CITY OF KODIAK
ORDINANCE NUMBER XXXX**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
THE SENIOR CITIZEN SALES EXEMPTION AND ORDINANCES RELATING TO
THE PROCEDURE FOR VERIFYING EXEMPT BUYERS**

WHEREAS, the City of Kodiak grants exemption from City sales tax to certain buyers;
and

WHEREAS, under the existing ordinances these exemptions are subject to abuse by
ineligible persons; and

WHEREAS, the Council continues to support the policy of exempting certain buyers City
sales tax;

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska,
as follows:

Section 1: Sections 2, 3 and 4 of this ordinance are of a permanent and general nature and
shall be included in the Kodiak City Code.

Section 2: Section 3.08.055 Senior citizen exemption, of the Kodiak City Code, is hereby
amended to read as follows: [deleted text is ~~struck through~~; added text is
underlined]

3.08.055 Senior citizen exemption

(a) A person 65 years of age or older who has resided in the Kodiak Island Borough for a
continuous period of ~~30~~ 365 days or more may obtain a senior citizen sales tax exemption
certificate by submitting a completed application to the finance director on a form
provided by the city. The application must be signed by the applicant under oath and shall
contain information relating to the applicant's residence, marital status, rental or
ownership of occupied dwelling, persons occupying the dwelling, and other information
reasonably necessary to determine the applicant's eligibility and monitor the use of the
exemption certificate. The applicant shall also submit for inspection and copying a birth
certificate, or other evidence determined by the finance director to be adequate, to
establish the applicant's age. The exemption certificate shall be issued without charge in
the name of the applicant and shall be valid for a period of three years.

~~(b) An exemption certificate issued to a person who is prevented or impaired from
personally making purchases or payments by a physical or mental infirmity may
designate not more than two other persons who shall be authorized to utilize the
certificate when making purchases and payments on behalf of and for the sole use and
benefit of the certificate holder or the certificate holder's spouse.~~

(b) When applying for an exemption certificate, a senior may request one other person to be authorized to present the certificate when making purchases and payments on behalf of and for the sole use and benefit of the senior and the senior's spouse by providing a duly authorized power of attorney granting the designated person lawful authority to enter into transactions involving tangible personal property on the senior's behalf as the senior's agent.

(c) (1) No person may utilize a senior citizen tax exemption certificate to purchase or acquire property or rentals that are to be consumed or utilized by a person or persons other than the certificate holder, the certificate holder's spouse, a dependent of the certificate holder, or another person or persons who would be qualified to have a senior citizen exemption certificate issued to them under this section. As used in this section, "dependent" means a child of the certificate holder or the certificate holder's spouse who resides with the certificate holder when not attending school and who receives more than one-half of his or her support from the certificate holder.

(2) Notwithstanding any other provisions of this chapter, no person may utilize a senior citizen tax exemption certificate to purchase or rent an item or service which will be used or consumed in a commercial business or enterprise or for the production of income.

(d) Persons making sales or rentals to or for the benefit of a senior citizen which are exempt from tax under the provisions ~~of this section shall confirm the identity of the person or persons presenting an exemption certificate, if not personally known to them, by requesting identification and shall maintain records of each such exempt sale with an appropriate reference to the senior citizen exemption certificate number. If the person making the sale or rental has~~ with reason to believe that it is not for use or consumption by a senior citizen or other qualified user, because of the volume, type of purchase, or other facts, that person shall promptly report the possible fraudulent use of the exemption certificate to the city finance director. The finance director shall investigate the sale or sales, and if the finance director determines that the exemption certificate is being abused, the matter shall be referred to the city manager, who shall conduct such further investigation as is determined necessary and present the facts to the council for authorization to initiate prosecution or revocation action, or both.

(e) Senior citizen exemption certificates shall be subject to revocation as provided in KCC 3.08.070.

(f) A senior citizen exemption certificate shall not authorize the purchase of any tobacco product, marijuana product, or alcoholic beverage without sales tax having been added to the purchase price and paid by the buyer, and no person shall sell any tobacco product, marijuana product, or alcoholic beverage without collecting taxes otherwise required by this chapter.

Section 3: Section 3.08.090 Addition of tax, of the Kodiak City Code, is hereby amended by the addition of a new subsection (g) to read as follows:

3.08.090 Addition of tax

(g) The seller shall add the tax in accordance with this section unless the buyer is exempt under KCC 3.08.040(f) or presents a certificate of exemption for an exemption under KCC 3.08.040(c) or (v), 3.08.050, or 3.08.055 and the seller confirms the eligibility of the person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the exemption certificate.

Section 4: Section 3.08.190 Failure to collect taxes, of the Kodiak City Code, is hereby amended to read as follows: [deleted text is ~~struck through~~; added text is underlined]

3.08.190 Failure to collect taxes

(a) A person required by this chapter to collect sales taxes levied, who fails to collect such taxes on taxable transactions, shall be assessed with a civil penalty of double the tax that should have been collected, as determined by an audit.

(b) If any of the following defenses are established, the civil penalty imposed by this section shall be waived:

(1) The securing, in good faith, of a certificate of exemption ~~or a statement of eligibility for exemption~~ from the person against whom the tax would have been levied and confirmation of the eligibility of the person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the certificate;

(2) Proof of a belief, based upon advice of legal counsel or the city finance director, that the sale, rental, or rendering of service was not subject to the tax levied by this chapter, accompanied by proof of notification in writing to the city manager based on such belief prior to or immediately following the transaction; or

(3) A reasonable attempt, in good faith, to collect the tax from the buyer.

(c) If a seller is found to have failed to confirm the eligibility of a person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the certificate, the seller, shall be assessed a civil penalty of \$100 per violation or, at the finance director's sole discretion, a written warning in lieu of this penalty.

(1) The finance director shall give written notice to the seller that the seller was found to have failed to confirm the eligibility of the person or persons presenting an exemption certificate by comparing the person's government issued identification to the names of the eligible shoppers appearing on the certificate.

(2) The finance director’s determination that a seller failed to confirm the eligibility of the person or persons presenting an exemption certificate by comparing the person’s government issued identification to the names of the eligible shoppers appearing on the certificate may be appealed by the seller in accordance with 3.08.180(d) and 3.08.070 (c).

(e d) A purchaser, renter, or other person obtaining property or services who fails to pay the tax levied by this chapter on a taxable transaction shall be assessed with a civil penalty of double the taxes that should have been paid.

(d e) The civil penalties imposed by this section shall be in addition to any other civil or criminal penalties imposed by this chapter.

Section 5: Section 6 of this ordinance is of this ordinance is not of permanent and general nature and shall not be included in the Kodiak City Code.

Section 6: All exemption certificates issued prior to the adoption of this ordinance shall remain valid through December 31, 2018.

Section 7: Effective Date. This ordinance shall be effective the later of January 1, 2019, or the date that is one month after final passage and publication in accordance with Kodiak Charter Section 2–13.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date:

**CITY OF KODIAK
ORDINANCE NUMBER XXXX**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF KODIAK AMENDING
TITLE 5 OF THE KODIAK CITY CODE TO ADD A NEW CHAPTER 5.02 REQUIRING
AN ANNUAL BUSINESS LICENSE**

WHEREAS, the City of Kodiak has the legal authority to require those doing business within city boundaries to obtain a local business license; and

WHEREAS, requiring those doing business within the city to obtain a business licenses will assist the City in administration and collection of the City of Kodiak sales tax; and

WHEREAS, it is in the public interest to assist and improve administration and collection of the City of Kodiak sales tax.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Kodiak, Alaska, as follows:

Section 1: Kodiak City Code Title 5 is hereby amended by adoption of a new Chapter 5.02 to read as follows:

5.02.010 Business License Required

- A. Each and every person, wherever located, who engages in any business within the City shall first obtain or renew a business license.
- B. There hereby is levied and assessed an annual business license fee of fifty dollars (\$50) for the privilege of doing any lawful kind of business, trade, profession or other activity in the City.
- C. An application under this section shall be submitted to the Finance Director on a form prepared by the city accompanied by any required fees. The application shall contain the following information:
 - (1) The name, address, telephone number, and email address of the applicant;
 - (2) The business name to be used and the nature of the business;
 - (3) The location where the applicant will conduct the business; and,
 - (4) An acknowledgement by the applicant agreeing to be bound by all of the terms, conditions, and provisions set forth in this Chapter.

5.02.020 Exemptions

- A. All participants in regularly scheduled nonprofit events and nonprofit organizations sponsoring such events where home craft items are sold are not required to obtain a

- business license solely for that event.
- B. This chapter does not apply to supplying services as an employee.

5.02.030 Definitions

Unless the context clearly requires otherwise, the following terms shall have the meaning set forth below:

- A. “Business” means a for profit or nonprofit entity with the goal of receiving a financial benefit who is:
- i. Practicing, engaging in, carrying on or conducting any exhibition, trade, vocation, occupation, or profession; or
 - ii. Offering merchandise for sale, soliciting orders, or making deliveries of any merchandise; or
 - iii. Rendering, giving, or selling services of any kind including storage of personal property; or
 - iv. Taking orders for merchandise to be subsequently delivered by any agency or means, or accepting payments on orders for merchandise to be delivered subsequently by any agency or means, any or all of which acts or transactions are done within the City; or
 - v. Entering the City to do business, to make sales, to make deliveries, or to provide services.
- B. “Business license” means an annual license duly issued by the Finance Director of the City.
- C. “Licensee” means the person issued the business license.
- D. “Profession” means any occupation requiring advanced education and training, including, but not limited to, accountants, attorneys, architects, chiropractors, dentists, engineers, optometrists, physicians, and surgeons.
- E. “Finance Director” means the finance director of the City and any duly authorized auditor, agent, or other person designated by the Finance Director to perform any of the duties conferred by this Chapter, or to enable the Finance Director to enforce the provisions of this Chapter.
- F. “Home craft items” means products (including food, art works and handicrafts) made on premises occupied as the maker’s principal place of residence.

5.02.040 License terms, minimums

- A. Full year: Every person who commences business before the first day of January of any calendar year shall be subject to and shall pay the annual license fee.
- B. Half Year: Every person who commences business on or after the first day of January of any calendar year, shall be subject to and shall pay one-half (1/2) of the

- annual license fee.
- C. The license fee is nonrefundable.
 - D. Annual renewal: The business license fee shall be due on July 1 of each year and the business license shall be renewed annually on or before the thirtieth day of June of each year.
 - 1. If the due date for payment of any business license falls on a weekend or a holiday recognized by the City, the due date shall automatically be extended to the next business day.
 - 2. On or before June 1 of each year, a renewal reminder shall be mailed to each licensee that obtained a business license after July 1 of the previous year. Said renewal notice shall be mailed via regular U.S. mail to the licensee's last known address of record with the City.
 - 3. Licensees shall furnish the City any address changes for their business prior to June 1. Any delays in receipt of a renewal notice due to licensees' failure to furnish address changes shall not extend the due date for license renewal or payment of the annual fee.
 - 4. The failure of the City to mail the renewal reminder shall not prevent the City from enforcing its business license laws against a taxpayer but shall preclude the City from assessing fines and penalties for late payment until thirty (30) days after a renewal reminder is mailed to the taxpayer.
 - E. Business license renewal payments received by the City shall be applied to the current renewal only after all other undisputed debts the licensee owes to the City are first paid in full. No business license shall be issued if the current renewal payment does not meet said prior obligations plus the current renewal fee. Failure to pay such sums shall subject the licensee to penalties for doing business without a license.

5.02.050 Licenses for Each Line of Business

Every person engaged in more than one (1) line of business shall obtain and pay for a license for each line of business.

5.02.060 Changes in Business License; Restrictions on Transfer

- A. A new business license is required if the ownership of the business changes.
- B. A mere change in name of a business owned by a corporation, partnership, limited liability company, or other form of legal entity recognized by the laws of Alaska shall not constitute a transfer for purposes of this chapter, unless the change requires the business owner to obtain a new federal employer identification number.
- C. A business license is not transferable or assignable.

5.02.070 License Register

- A. All of the license fees due the City shall be collected by the Finance Director; it shall

also be his or her duty to keep a correct register of all such licenses.

- B. The Finance Director shall notify all persons who have either failed to pay the annual fee or failed to obtain a business license of their delinquency, and upon failure of those so notified to procure their license, the Finance Director may commence any remedy permitted by law, provided, however, that failure to notify a person of said delinquency does not excuse any violation of this chapter.

5.02.080 Unlawful To Do Business Without a License

It shall be unlawful for any person, or agent of a person to engage in business or vocations in the City for which a license is required without first having procured a license. Violations are punishable as a minor offense with the fine amount set by Section 1.12.040(c) of this Code.

5.02.090 License Must Be Posted

Every license shall be posted in a conspicuous place, where said business, trade, or occupation is carried on.

5.02.100 Procedure for Denial of New Applications

- A. The Finance Director shall have the authority to deny the issuance of any license. The license shall be issued or denied within thirty days after the application has been made and the fee paid. If the license is denied, the reasons for the denial will be stated in writing to the applicant.
- B. If the applicant desires to appeal the denial to the City Manager, he/she shall file a written notice with the City Clerk, no later than two (2) weeks from the date of mailing of the notice of denial.
- C. Upon receipt of the notice, the City Clerk shall promptly schedule a hearing to be held within fifteen (15) days from the date of receipt of the notice, before the City Manager or designee and shall give notice of the date, time, and place of the hearing to the applicant.
- D. The applicant and the finance director shall be given the opportunity to appear personally, or through counsel, or both, and the city manager shall hear any evidence which may be presented both for and against the issuance of the license.
- E. If the city manager determines from the evidence presented that the license should not be granted, the manager shall enter an order to that effect stating the reasons for denial; otherwise, the license shall be ordered issued upon payment of any required license fee.

5.02.110. Revocation, Suspension, or Nonrenewal of a License, and Procedure for Same

- A. Any lawful license issued to any person to conduct any business shall be subject to revocation or suspension by the Finance Director for the violation by the licensee, or the licensee's agent, servant, or employee, of any ordinance of the City, or any

statute of the State relating to the business for which such license was issued; and shall also be subject to revocation or suspension by the Finance Director if, in connection with the issuance or renewal of any license, the licensee or the licensee's agent filed or caused to be filed any application, affidavit, statement, certificate, book, or any other data containing any false, deceptive, or other misleading information or omission of material fact.

- B. All grounds for the revocation or suspension of a license shall also constitute grounds for refusing to renew a license.
- C. The City Clerk shall set a time for a hearing before the City Manager on the matter of revoking, suspending, or refusing to renew a license; and notice of such hearing shall be given to the licensee or the applicant for renewal, at least ten (10) days before the day set for said hearing.
- D. If, following the hearing, the City revokes the license, then no new license shall be issued to the licensee, or to any other entity in which the licensee or any of its stockholders, members, or owners is interested, for a period of twelve (12) months.
- E. No new license shall be issued for a period of twelve (12) months for the operation or conduct of any business that is the same, or of similar nature, as that engaged in by the licensee at the premises or location at which the licensee conducted such business if the revocation or non-renewal of the license is based, in whole or in part, on:
 - (1) A finding that the operation of such business at such premises or location has led to or resulted in the creation of a nuisance; or
 - (2) A finding that the operation of such business at such premises or location has created, caused or led to circumstances that are detrimental to adjacent residential neighborhoods; or
 - (3) A finding that the operation of such business at such premises or location has created, caused or led to circumstances that are detrimental to the public health, safety, or welfare; or
 - (4) A finding that the operation of such business at such premises or location has resulted in a violation of applicable zoning restrictions or regulations; or
 - (5) A finding that a licensee, his agent, servant, or employee has permitted or suffered to allow habitual conduct which violates applicable state laws or regulations or City ordinances relating to the business for which such license was issued.

Section 2: Kodiak City Code Section 1.12.040(c) is hereby amended by adding a new scheduled fine to read as follows:

KCC <u>5.02.080</u>	Business Without a License	\$300.00
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Section 3: Effective Date. This ordinance shall be effective the later of January 1, 2019, or the date that is one month after final passage and publication in accordance with Kodiak Charter Section 2–13.

CITY OF KODIAK

MAYOR

ATTEST:

CITY CLERK

First Reading:
Second Reading:
Effective Date: