

**City of Lewiston, Idaho**

**PERSONNEL POLICY**

Effective **January 11, 2022**

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## CITY OF LEWISTON PERSONNEL POLICY

This Policy sets forth the personnel policies and procedures of the City of Lewiston. This Policy is designed to familiarize City employees with such policies and procedures and to provide fair and equal treatment of City employees.

The official, up-to-date Personnel Policy is available on the City of Lewiston website at [www.cityoflewiston.org](http://www.cityoflewiston.org). Questions about the Personnel Policy should be directed to the Human Resources Department.

All City employees are responsible for reading, understanding, and complying with the policies and procedures set forth in this Policy. Directors and supervisors, in particular, are expected to be familiar with the contents of this Policy in order to be able to answer questions and apply the appropriate policies and procedures as personnel issues arise.

The City reserves the right to modify the policies and procedures set forth in this Policy at any time, without prior notice to or consent from City employees. Employees are responsible for knowing about and understanding those changes once they have been disseminated. The City also reserves the right to interpret the provisions of this Policy. Changes may be made at the sole discretion of the City Council.

Employees should not interpret anything in this Policy as creating a contract or guarantee of continued employment. Employees of the City may only be terminated for cause, except as provided in Section 409 (Introductory Probationary Period) of this Policy. This Policy is not a contract of employment and is not intended to specify the duration of employment or limit the reasons for which an employee may be discharged. All provisions of this Policy shall be interpreted in a manner consistent with this paragraph. In addition, this Policy is not intended to cover all possible situations that may arise in an employee's relationship with the City.

Many matters covered by this Policy, such as benefit plan descriptions, are also described in separate City documents. Such documents are always controlling over any statement made in this Policy or by any member of management.

The City is a political subdivision of the State of Idaho, though it is not a part of the State government. The City Council serves as the governing body of the City and is the general policymaker for the City. The Mayor has the primary authority to establish terms and conditions of employment with the City. Pursuant to Idaho Code § 50-204 and subject to Idaho Code § 50-205 (Refusal to Confirm Appointments – Vacancies) and § 50-206 (Removal of Appointive Officers), as amended from time-to-time, the Mayor appoints and removes the City Clerk, City Treasurer, City Attorney, and such other officers designated by City ordinance. The Mayor has superintending control of all other City employees, unless otherwise provided by State or local law (such as the Library Director) or City policy. Pursuant to Idaho Code §§ 33-2607 and 33-2608, the Library Board of Trustees hires, supervises, and removes the Library Director; provided, however, prior to removing the Library Director, the Library Board of Trustees must confer with the Mayor, City Attorney, and Human Resources Director.

Each employee should recognize that although he/she may be directly supervised by a Director or supervisor, he/she remains an employee of the City and not of the person who supervises his/her work. The terms and conditions set forth in this Policy cannot be superseded by the Mayor, a Director, or a supervisor without the express written authorization of the City Council. Employees may, however, work for a department with an operational policy that provides additional direction to employees on expectations and procedures unique to that department. This Policy is the property of the City, and it is intended for the personal use and reference by employees of the City.

## **Policy Revisions**

The City reserves the right to make changes to this Policy and to any employment policy, practice, work rule, or benefit, at any time without prior notice. Any other change to this Policy or any employment policy, practice, work rule, or benefit is effective only if it is in writing, and is signed or authorized by the City Council. Except as otherwise provided in this Policy, no one has the authority to make any promise or commitment contrary to what is in this Policy.

This Policy replaces all earlier Policies and supersedes all prior inconsistent policies, practices, and procedures.

# **CHAPTER 1 - GENERAL**

## **SECTION 101 SCOPE OF APPLICATION**

It is in the best interest of the City of Lewiston, its citizens, and its employees that there be rules and regulations adopted by the City Council that promote full communication between the City, as the employer, and its employees. This policy is intended to provide policies promoting fairness and consistency in the treatment of employees and to articulate rules and standards intended to guide and measure performance. These policy statements are not intended to be an exclusive source of rules and regulations concerning employment. The Mayor and Department Directors are entitled to establish work standards and procedures necessary to implement these policies or to efficiently carry out the functions of their departments and general City operations, provided such standards do not diminish the benefits or protections granted to employees by City policy.

This policy shall apply to all offices, positions and employees in the service of the City except:

1. Elective offices.
2. Positions on appointive boards, commissions and committees.
3. Independent Contractors

However, in the event of any conflict between this policy and a collective bargaining agreement or an employment contract, the collective bargaining agreement or employment contract shall control.

## **SECTION 102 EQUAL EMPLOYMENT OPPORTUNITY**

It is The City's policy to provide equal employment opportunity for all applicants and employees. The City does not unlawfully discriminate on the basis of actual or perceived race, color, religion, religious creed (including religious dress and religious grooming practices), sex (including pregnancy, perceived pregnancy, childbirth, breastfeeding, or related medical conditions), gender, gender identity (including transgender identity, status and transitioning), gender expression and sex stereotyping, national origin, ancestry, citizenship, age, physical or mental disability, legally protected medical condition or information (including genetic information), family care or medical leave status, military caregiver status, military status, veteran status, marital status, domestic partner status, sexual orientation, status as a victim of domestic violence, sexual assault or stalking, enrollment in a public assistance program, engaging in protected communications regarding employee wages, requesting a reasonable accommodation on the basis of disability or bona fide religious belief or practice, or any other basis protected by local, state, or federal laws. Consistent with the law, The City also makes reasonable accommodations for disabled applicants and employees; for pregnant employees who request an accommodation with the advice of their health care providers, for pregnancy, childbirth, or related medical conditions; for employees who are victims of domestic violence, sexual assault, or stalking; and for applicants and employees based on their religious beliefs and practices.

The City will endeavor to accommodate the sincere religious beliefs of its employees to the extent such accommodation does not pose an undue hardship on The City's operations. If employees wish to request such an accommodation, they should contact the Human Resources Department.

The City prohibits sexual harassment and the harassment of any individual on any of the other bases listed above. For information about the types of conduct that constitute impermissible harassment and The City's internal procedures for addressing complaints of harassment, and the legal remedies available through and complaint procedures of the appropriate state and federal agencies and directions on how to contact these agencies, please refer to The City's Policy Against Harassment, Discrimination, and Retaliation. .

This policy applies to all areas of employment including recruitment, hiring, training, promotion, compensation, benefits, transfer, disciplinary action, and social and recreational programs. It is the responsibility of every manager and employee to conscientiously follow this policy. Any employee having any questions regarding this policy should discuss them with the Human Resources Department.

## **SECTION 103 OPEN COMMUNICATION AND NON-DISCRIMINATION**

At the City of Lewiston, we believe that communication is at the heart of good employee relations. Employees should share their concerns, seek information, provide input, and resolve work-related issues by discussing them with their supervisor until they are fully resolved. It may not be possible to achieve the result an employee wants, but the supervisor needs to attempt to explain in each case why a certain course of action is preferred. If an issue cannot be resolved at this level, the employee should discuss the issue with the Division Manager then, if needed, with the Department Director. If the employee's concern cannot be resolved with the supervisor, manager, or Department Director, then the employee may discuss such concern with the Human Resources Director. If the employee's concerns cannot be resolved or the issue relates to something or someone related to Human Resources, the employee may discuss such concerns with the Mayor.

Regardless of the situation, the employee should be able to openly discuss any work-related concerns without fear of retaliation. Directors, Managers, and Supervisors are expected to listen to employee concerns, encourage employees' input, and seek resolution to employees' concerns. Often this will require setting a meeting in the near future. Directors, managers, and/or supervisors are to set these meetings as quickly as possible, and employees are expected to understand that issues and concerns may not always be addressed at the moment they arise. Discussing these issues and concerns with management will help to find a mutually acceptable solution for nearly every situation.

If an employee has a concern about discrimination and/or harassment, the employee should follow the procedures set forth in the City's non-discrimination policy (section 203), below. The City is committed to the following:

1. Recruiting, hiring, training, and promoting persons in all job titles, without regard to actual or perceived race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation, gender identity/expression, or veteran's status, unless based on a bona fide occupational qualification.
2. Making employment decisions in a manner that furthers the principle of equal employment opportunity.
3. As opportunities for transfer, advancement, or promotion occur, including promotions into and within management, conducting periodic performance reviews and analysis of personnel records to ensure that all employees continue to receive equal considerations and that only valid requirements are imposed for these opportunities.



Any employee or applicant who believes that he/she has not been afforded treatment conforming to the policy of equal employment should contact the Human Resources Director.

## **SECTION 104 POWERS OF MAYOR**

The Mayor is the chief administrative official of the City and has all powers as set forth in Idaho Code Title 50, Chapter 6, as amended from time-to-time. The Mayor may establish administrative rules, policies, and procedures as he/she deems necessary for the control and supervision of the affairs of the City, so long as such administrative rules, policies, and procedures are not in conflict with this Policy.

The Mayor has the authority to hire and terminate the employment of all City employees, unless otherwise provided by State or local law or City policy. The Mayor may delegate the authority to hire City employees to Department Directors.

The Mayor is authorized to issue additional administrative policies to supplement this Policy. Administrative policies are created when the City has identified a need to expand in explanation and/or procedure. They are in effect until either repealed or amended. Administrative Policies can be found on the City website and in the Human Resources Department. All new Administrative Policies are emailed to City employees and City Councilors through City emails when such policies become effective.

## **SECTION 105 COMPLIANCE WITH THIS POLICY**

In accepting employment with the City of Lewiston, each employee agrees to be governed by and to comply with: (a) this Policy and all administrative rules, policies, and procedures established by the Mayor pursuant thereto; (b) any applicable collective bargaining agreement; and (c) all rules, regulations, and directives of the department in which the employee is works. While performing their duties on behalf of the City, volunteers are expected to adhere to the same rules of conduct as City employees, as outlined in this Policy.

## **SECTION 106 DEPARTMENT RULES AND REGULATIONS**

Department Directors may create rules and regulations that are more specific to their department's operation. Department rules and regulations should not conflict with this Policy or Administrative Policies.

## **SECTION 107 APPLICANTS AND EMPLOYEES WITH DISABILITIES**

The City is committed to providing equal employment opportunities for all qualified individuals with disabilities in accordance with the federal Americans with Disabilities Act and applicable State disability laws. In accordance with these laws, The City strictly forbids all forms of unlawful discrimination, harassment, or retaliation against qualified applicants or employees with disabilities, and for pregnant employees who so request for pregnancy, childbirth, or related medical conditions, and requires reasonable accommodation if necessary for such individuals to perform the essential functions of their jobs safely and efficiently without undue hardship to The City and without serious risk to the health and safety of others.

Applicants and employees who require accommodation of any disability should inform The City of their needs. The City may have no way of knowing whether an individual requires an accommodation unless they bring it to the attention of The City. The City will engage in an interactive conversation to determine if there is a reasonable accommodation that can be provided that will not cause The City undue hardship and will treat all such information as confidential to protect privacy rights under laws such as HIPAA, but some disclosure will be necessary to fulfill the purposes of this policy.

Employees who are made aware that an applicant or employee has a disability should presume that the information is confidential and discuss it only with upper management and Human Resources, unless the employee has disclosed or consented to further disclosure.

Discrimination, harassment, or retaliation against an individual because they are considered disabled or has been given accommodation for a disability is absolutely forbidden and grounds for immediate termination. Employees who believe they have been harassed in violation of this policy may file a complaint under The City's policy on Equal Employment Opportunity.

## **CHAPTER 2 – CODE OF CONDUCT**

Employees are expected to conduct themselves in a professional manner that is both civil and cooperative. City employees are public employees and therefore are exposed to additional public scrutiny in both their public and personal conduct. This Code of Conduct has been established to aid employees in understanding both expected and prohibited conduct. Violations of the Code of Conduct will be grounds for disciplinary action up to and including termination of employment. This list is illustrative and not all inclusive. Other behaviors and acts of misconduct not specifically detailed here may be grounds for disciplinary action as well.

### **SECTION 201 CONDUCT**

#### **EXPECTED CONDUCT**

Each employee is expected to conduct himself/herself in a professional manner. In order to accomplish this, each employee must:

1. Be respectful, courteous and professional. Work cooperatively and constructively with fellow workers and members of the public.
2. Be prompt and regular in attendance at work for defined work schedules or other required employer functions, and follow procedures for exceptions to the normal schedules, including the scheduling and taking of vacation and sick leave.
3. Comply with dress standards established in the department for which the employee works. In the absence of any departmental dress standards, clothing will be appropriate for the functions performed and will present a suitable appearance to the public.
4. Abide by all departmental rules and direction of a supervisor whether written or oral. No employee will be required to follow the directive of a supervisor that violates the laws of the local jurisdiction, state or nation.
5. Maintain the confidential nature of records that are not open to the public in accordance with the direction of the responsible official.
6. Maintain a current appropriate driver's license when work for the City requires the employee to drive a vehicle as part of his/her responsibilities. Each such employee must report any state-imposed driving restrictions to his/her immediate supervisor and notify his/her supervisor if his/her driving abilities are impaired.
7. Follow all workplace safety rules whether established formally by the department or by outside agencies.
8. Report all accidents that occur or are observed on the job, or that involve City property, and cooperate as requested in the reconstruction of any such accident.
9. Avoid conflicts of interests in appointments and working relationships with other employees, contractors and potential contractors in the City and related agencies.
10. Adhere to any code of ethics in the employee's profession, to the extent that such code of ethics does not conflict with the City's policies or regulations.

## PROHIBITED CONDUCT

Employees are required to refrain from behaviors that reflect adversely upon the City, including:

1. Not initiate or participate, or encourage others, in acts or threats of violence, bullying, malicious gossip, spreading of rumors, or any other behavior designed to create discord and lack of harmony, or that willfully interferes with another employee's ability to do his/her job.
2. Not engage in abusive conduct or language, including profanity and loud, threatening or harassing speech, toward or in the presence of fellow employees or the public.
3. Not engage in conduct at or away from work that may reflect adversely upon the City or its officials or otherwise impair the employee's ability to perform.
4. Not engage in prolonged visiting with co-workers, children, friends or family members that interfere with work in the department in which the employee serves.
5. Not use work time for personal business, including the selling of goods or services to the general public.
6. Not use phones or computers in the workplace in a manner that violates policy or that disrupts workplace productivity, including time spent on social media.
7. Not use work time or public premises to promote religious beliefs to members of the public or fellow employees.
8. Not have non-City employment, or serve on any board or commission, that conflicts with duties performed for the City in any meaningful way. Individual offices/departments may determine permissible examples of outside employment.
9. Not knowingly make any false report or complaint regarding behavior of others or participate in such report or complaint.
10. Not use any substances, lawful or unlawful, that will impair the employee's ability to competently perform his/her work or threaten the safety and well-being of other workers or the public. If the employee is prescribed a medication that may impair the employee's ability to safely do his/her job, the employee is required to provide a physician's note explaining the possible effects of the medication on the employee's ability to do his/her job and the length of the time that the employee will be required to take the medication. The employee may be required to take leave while taking the medication.
11. Not destroy, alter, falsify or steal the whole or any part of a police report or any record kept as part of the official governmental records of the City (I.C. §§ 18-3201 and 18-3202).
12. Not engage in political activities while on duty. This rule does not apply to Elected Officials.
13. Not provide false or misleading information on employment applications, job performance reports or any other related personnel documents or papers.
14. Not engage in conduct that violates the laws of the state of Idaho, including, but not limited to: I.C. 18-1301 *et seq.* (Bribery and Corruption), I.C. § 74-101 *et seq.* (Public Records Act), I.C. § 74-401 *et seq.* (Ethics in Government Act), I.C. § 74-501 *et seq.* (Prohibitions Against Contracts With Officers), and I.C. § 18-1359 (Using Public Position for Personal Gain).
15. Employees should be careful to avoid the appearance of impropriety, even if accepting a gift is legal under the acts cited above. Thus, employees should not accept a gift that, although may be legal, could create the appearance of impropriety or the impression that the giver was seeking favor. The Ethics in Government Act establishes a floor for conduct by public officials. It should not be read, interpreted, or analyzed in an attempt to find loopholes or technicalities by which an employee can take advantage of the City or their position. Even if contemplated conduct is not technically prohibited by the Act, an employee's conduct may still be considered unethical, and an employee should avoid the appearance of impropriety.
16. Not engage in criminal conduct of any kind while on or off duty.

Obviously, not every type of misconduct can be listed. The City reserves the right to impose whatever discipline it chooses, or none at all, in a particular instance. The City will deal with each situation individually

and nothing in this Policy should be construed as a promise of specific treatment in a given situation. However, The City will endeavor to utilize progressive discipline. The observance of these rules will help to ensure that our workplace remains a safe and desirable place to work.

### **JOB PERFORMANCE**

Employees may be disciplined for poor job performance, including but not limited to the following:

1. Unsatisfactory work quality or quantity;
2. Excessive absenteeism, tardiness, or abuse of rest break and meal period policies;
3. Failure to follow instructions or City procedures; or
4. Failure to follow established safety regulations.

### **ATTENDANCE**

In addition to the general rules stated above, employees may be disciplined for failing to observe the following specific requirements relating to attendance:

1. Reporting to work on time, observing rest break and meal period policies, recording all time worked, and obtaining approval to leave work early; and
2. Notifying the supervisor in advance of anticipated tardiness or absence.

## **SECTION 202 WORKPLACE VIOLENCE**

### **STATEMENT OF POLICY**

The City recognizes that workplace violence is a concern among employers and employees across the country. The City is committed to providing a safe, violence-free workplace. In this regard, The City strictly prohibits employees, consultants, customers, visitors, or anyone else on City premises or engaging in a City-related activity from behaving in a violent or threatening manner. Moreover, The City seeks to prevent workplace violence before it begins and reserves the right to address certain behaviors, even in the absence of violent behavior.

The City believes that prevention of workplace violence begins with recognition and awareness of potential early warning signs and has established procedures within Human Resources for responding to any situation that presents the possibility of violence.

### **WORKPLACE VIOLENCE DEFINED**

Workplace violence includes, but is not limited to, the following:

- 1) Threats of any kind;
- 2) Threatening, physically aggressive, or violent behavior, such as intimidation of or attempts to instill fear in others;
- 3) Other behavior that suggests a propensity towards violence, which can include belligerent speech, excessive arguing or swearing, sabotage, or threats of sabotage of City property, or a demonstrated pattern of refusal to follow City policies and procedures;
- 4) Defacing City property or causing physical damage to the facilities; or
- 5) With the exception of security personnel, bringing weapons or firearms of any kind on City premises, in City parking lots, or while conducting City business.

### **REPORTING**

If any employee observes or becomes aware of any of the above-listed actions or behavior by an employee, customer, consultant, visitor, or anyone else, they should notify Human Resources immediately.

Further, employees should notify Human Resources and their supervisor if any restraining order is in effect, or if a potentially violent non work-related situation exists that could result in violence in the workplace. No

adverse employment action will be taken against an employee because they notify The City of a potentially violent non-work situation.

#### INVESTIGATION

All reports of workplace violence will be taken seriously and will be investigated promptly and thoroughly. In appropriate circumstances, The City will inform the reporting individual of the results of the investigation. To the extent possible, The City will maintain the confidentiality of the reporting employee and of the investigation. The City may, however, need to disclose results in appropriate circumstances, for example, in order to protect individual safety. The City will not tolerate retaliation against any employee who reports workplace violence.

#### CORRECTIVE ACTION AND DISCIPLINE

If The City determines that workplace violence in violation of this policy has occurred, The City will take appropriate corrective action and will impose discipline on offending employees. The appropriate discipline will depend on the particular facts but may include written or oral warnings, probation, reassignment of responsibilities, suspension, or termination. If the violent behavior is that of a non-employee, The City will take appropriate corrective action in an attempt to ensure that such behavior is not repeated.

Under certain circumstances, The City may forego disciplinary action on the condition that the employee takes a medical leave of absence. In addition, The City may request that the employee participate in counseling, either voluntarily or as a condition of continued employment.

#### EMPLOYEE ASSISTANCE PROGRAM

Any employee who believes that they may have a problem that could lead to violent behavior is encouraged to use The City's Employee Assistance Program. The EAP is a professional, confidential counseling service that is available to all personnel and members of their household to assist in resolving emotional difficulties, marital and family conflict, stress, chemical dependency, conflicts at work, and other concerns. The EAP counselor can help to clarify a problem and to develop an action plan during the counseling session. EAP services are prepaid by The City. Further information regarding The City's Employee Assistance Program may be obtained from your supervisor or from Human Resources.

### **SECTION 203 POLICY AGAINST HARASSMENT, DISCRIMINATION, AND RETALIATION**

#### PURPOSE OF POLICY

The City is committed to providing a workplace free of unlawful harassment and discrimination. This includes sexual harassment (which includes harassment based on pregnancy, perceived pregnancy, childbirth, breastfeeding, or related medical conditions) and harassment based on actual or perceived gender, gender identity (including transgender identity, status and transitioning), gender expression and sex stereotyping, as well as harassment based on such factors as race, color, religion, religious creed (including religious dress and religious grooming), national origin, ancestry, citizenship, age, physical or mental disability, legally-protected medical condition or information (including genetic information), family care or medical leave status, military caregiver status, military status, veteran status, marital status, domestic partner status, sexual orientation, status as a victim of domestic violence, sexual assault or stalking, enrollment in a public assistance program, engaging in protected communications regarding employee wages, requesting a reasonable accommodation on the basis of disability or bona fide religious belief or practice, or any other basis protected by federal, state, or local laws. The City strongly disapproves of and will not tolerate harassment of or discrimination against applicants, employees, interns, or volunteers by managers, supervisors, co-workers or third parties with whom employees come into contact. Similarly, The City will not tolerate harassment by its employees of non-employees with whom The City employees have a business, service, or professional relationship.

## HARASSMENT DEFINED

Harassment includes verbal, physical, and visual conduct that creates an intimidating, offensive, or hostile working environment or that interferes with an employee's work performance. Such conduct constitutes harassment when (1) submission to the conduct is made either an explicit or implicit condition of employment; (2) submission or rejection of the conduct is used as the basis for an employment decision; or (3) the harassment interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Harassing conduct can take many forms and may include, but is not limited to, the following: slurs, jokes, insults, statements, gestures, teasing, assault, impeding or blocking another's movement or otherwise physically interfering with normal work, pictures, posters, symbols, drawings, or cartoons, violating someone's "personal space" (for example by blocking someone's way) foul or obscene language, leering, stalking, staring, unwanted or offensive letters or poems, offensive email or voicemail messages, or any kind of verbal, visual or physical conduct that denigrates or shows hostility or aversion towards an individual because of any protected characteristic.

Sexually harassing conduct in particular may include all of these prohibited actions, as well as other unwelcome conduct, such as requests for sexual favors, conversation containing sexual comments, and other unwelcome sexual advances. Sexually harassing conduct can be by a person of either the same or opposite sex. Sexually harassing conduct need not be motivated by sexual desire to violate this policy.

## REPORTING AND INVESTIGATING HARASSING, DISCRIMINATORY AND RETALIATORY CONDUCT

Employees shall immediately notify their supervisor or Human Resources regarding any known or alleged violations relating or similar to the types of harassment/discrimination prohibitions described in this regulation. When the alleged violations are against a Human Resources employee, reports should be made to the Mayor or City Attorney. When a harassment/discrimination complaint is received, the complainant will be encouraged to place their concerns in writing. Upon notification of a complaint, it will be determined whether an investigation is warranted, and if so the extent of such an investigation.

If it is determined an investigation is warranted, the supervisor or designee shall arrange for an investigation with the assistance of Human Resources. In the case where the complainant's supervisor is the cause of the complaint, the complainant may file a complaint with Human Resources who will arrange for the investigation with the appropriate supervisor or department.

The procedures available under this regulation do not preempt or supersede any legal procedures or remedies otherwise available to a victim of discrimination or harassment under state or federal law. Should a complaint be received by a department directly from a compliance agency, the complaint shall be forwarded to the Human Resources Department immediately. A substantiated charge of harassment or discrimination against an employee of the City shall subject that employee to disciplinary action, up to and including termination. Complaints of discrimination or harassment will be handled with sensitivity, discretion and confidentiality to the extent allowed by the circumstances and the law. This means that allegations of harassment will only be shared with those who have a need to know so that the City can conduct an effective investigation. The complainant will be requested to provide as many details as possible, such as date(s), location(s), name(s) of witnesses, and information about the alleged harasser(s).

As a condition of employment all employees, supervisors, and managers shall fully cooperate with investigations. This includes, but is not limited to:

- A. Answering all questions completely and truthfully
- B. Not withholding information or evidence

### C. Not covering up or disposing of evidence

In addition to being obligated to fully cooperate with investigations, employees are prohibited from interfering with investigations in any way. This includes, but is not limited to, contacting (directly or through others) potential witnesses to seek information, influence their statements, or solicit support, and failing to fully disclose all information known about the incident or event.

### CORRECTIVE ACTION

The City prohibits conduct severe enough to be unlawful. Yet even more, The City's workplace conduct standards also prohibit conduct and comments which are not severe enough to violate state or local or federal law but which are still inappropriate in the workplace. For example, The City prohibits abusive conduct in the workplace whether or not it is based on a protected category.

As a result, The City will take prompt, appropriate, and effective corrective action (e.g., remedial measures) any time it is established that discrimination, harassment, or retaliation in violation of this policy has occurred whether or not such violation also violates the law.

If it is determined that unlawful discrimination, harassment or retaliation has occurred, an appropriate course of action will be taken by the City. If problematic conduct is revealed in the investigation, corrective action may be taken even if the investigation is inconclusive or if it is determined that there has been no unlawful discrimination, harassment or retaliation.

Corrective action may include, for example: training, referral to counseling, or disciplinary action ranging from a verbal or written warning to termination of employment, depending on the circumstances. With regard to acts of harassment or discrimination by customers or vendors, corrective action will be taken after consultation with the appropriate management personnel.

The City will not tolerate retaliation against any employee for making a good faith complaint of harassment, discrimination, or retaliation, or for cooperating in an investigation.

### CONFIDENTIALITY

All inquiries, complaints, and investigations are treated confidentially to the extent possible. Information is revealed on a need-to-know basis. However, the identities and statements of all the parties involved in an investigation may be revealed as a result of the investigatory or appeal process. Employees who are interviewed as a part of an investigation are encouraged to keep the nature of the investigation confidential including not sharing unauthorized information with others about the investigation or their interview.

### ANTI-RETALIATION

The City of Lewiston strictly prohibits any form of retaliation against a person who has reported a concern in good faith, or has provided information in an investigation, hearing or other form of administrative review. Retaliation includes, but is not limited to, adverse employment actions, direct or indirect threats, teasing, taunting, negative or derogatory comments about or to the person, silent treatment, refusal to work with or avoiding the person. Retaliation also includes informing others about the complaint, portraying the claimant and/or witnesses in a negative light, or soliciting support for one side versus the other. All incidents of retaliation shall be reported to Human Resources immediately. All employees, including supervisors and managers, who engage in retaliation or discriminating/harassing conduct are subject to disciplinary action, including possible termination of employment.

### ANTI-HARASSMENT TRAINING

Every City employee is required to undergo Sexual Harassment training within his/her first three (3) months of employment and at least once every two (2) years thereafter. In addition, all employees hired as or

promoted to a supervisory or management position must undergo at least two (2) hours of interactive sexual harassment training within the first six (6) months of assuming a new supervisory or management position. Additionally, all supervisors and managers must complete at least two (2) hours of interactive sexual harassment training at least once every two (2) years thereafter. An employee who fails to comply with this section may be subject to disciplinary action, up to and including termination of employment.

## **ZERO TOLERANCE**

The City does not tolerate and prohibits discrimination, harassment or retaliation of or against job applicants, contractors, interns, volunteers or employees by another employee, supervisor, vendor, customer or any third party on the basis of race, color, creed, religion, age, sex or gender (including pregnancy, childbirth and related medical conditions), sexual orientation, gender identity or gender expression (including transgender status), national origin, ancestry, marital status, protected medical condition as defined by state law (cancer or genetic characteristics), physical or mental disability, military and veteran status, genetic information, or any other characteristic protected by applicable federal, state or local laws and ordinances. The City is committed to a workplace free of discrimination, harassment and retaliation.

The City's management is dedicated to ensuring the fulfillment of this policy as it applies to all terms and conditions of employment, including recruitment, hiring, placement, promotion, transfer, training, compensation, benefits, employee activities and general treatment during employment.

## **SECTION 204 ATTENDANCE AND PUNCTUALITY**

It is important for employees to report to work on time and to avoid unnecessary absences. The City recognizes that illness or other circumstances beyond an employee's control may cause him/her to be absent from work from time to time. However, frequent absenteeism or tardiness may result in disciplinary action, up to and including discharge. Excessive absenteeism or frequent tardiness puts an unnecessary strain on co-workers and can have a negative impact on the success of the City.

Employees are expected to report to work when scheduled. Employees unable to report to work at their scheduled time must call in per their department policies or collective labor agreement. Whenever an employee knows in advance that he/she is going to be absent, the employee should notify his/her immediate supervisor or the designated manager. If the absence is unexpected, the employee should attempt to reach his/her immediate supervisor as soon as possible, but in no event later than one hour before the employee is due at work. In the event the immediate supervisor is unavailable, the employee must speak with the Department Director or his/her designated representative. If the employee must leave a voicemail, he/she must provide a phone number where the employee may be reached if need be.

## **SECTION 205 DRUGFREE WORKPLACE**

The purpose of this policy is to provide a drug and alcohol free workplace for the protection and well-being of the City, its employees, property, equipment, operations, and the public it serves. Employees are expected to report to work drug and alcohol free in order to enable safe and efficient job performance. Employees are expected to engage in activities while on-the-job, while on City premises, or in the scope and course of employment, which are appropriate for the work environment and do not compromise the City's integrity or interest in maintaining a safe, secure and drug and alcohol free workplace.

Employees being treated with a drug or controlled substance that might adversely affect their ability to perform their essential job duties shall provide a written statement from their doctor regarding their ability to safely and effectively perform these duties. Employees are not required to divulge what drug or controlled substance they are being treated with or the medical condition necessitating the need for treatment, unless the City requests this information in accordance with applicable laws.



## SUBSTANCES TESTED

The City will test for the following substances:

- A. Alcohol;
- B. Marijuana;
- C. Cocaine;
- D. Amphetamines;
- E. Opioids;
- F. Synthetic Opioids; and
- G. Phencyclidine (PCP).

## ALCOHOL USE

Employees are prohibited from consuming alcohol while working or while on-call. Employees are also prohibited from reporting to work under the influence of alcohol. This policy includes unanticipated call-in situations. If an employee cannot meet this requirement, it is his or her responsibility to tell their supervisor, or person initiating the call-in, that they cannot report to work. Alcohol is a legal substance therefore it is not the intention of this policy to prohibit employees from consuming alcohol when not on duty, or while participating in activities or events at City facilities while not on duty. Listed below are examples of situations in which the responsible use of alcohol by employees during the course and scope of City business may be acceptable. However, employees are expected to seek prior direction from their Department Director regarding the appropriateness of consuming alcohol in these situations.

- A. While attending a seminar or conference function where alcohol is being served.
- B. While traveling on business, provided all work duties for the day have been completed.

Although alcohol use may be permitted under limited circumstances, employees are expected to use good judgment and behave in a professional and respectable manner while in the course and scope of City business. Misuse of alcohol under these circumstances is a violation of this policy and may result in disciplinary action up to and including termination. Employees are required to abide by all terms of the vehicle usage policy.

## RESERVATIONS

This Drug-Free Workplace policy is not intended to replace or supersede testing, reporting, and procedures mandated by applicable laws. Employees who are enrolled and are participating in, or have completed a supervised rehabilitation program and are no longer engaging in the use of illegal drugs or substances shall be protected from discrimination and harassment through the Americans with Disabilities Act of 1990. All situations will be handled in accordance with this policy and in consultation with representatives of Human Resources. Situations not specified by policy will be referred to and reviewed by Human Resources in consultation with the employee's Department Director or designee.

## SAFE HARBOR REFERRAL

A fundamental purpose of the City's Drug-Free Workplace Policy is to assist employees who themselves are seeking treatment for alcohol or illegal drug use. For this reason, the City will not initiate disciplinary action against any employee regarding the disclosure of his or her drug or alcohol related problem who meets all three of the following conditions:

- A. Voluntarily identifies him/herself to Human Resources as a user of alcohol and/or illegal drugs, as they apply to this policy, prior to being identified through other means, or prior to being asked to provide a urine and/or breath sample for testing;
- B. Obtains evaluation, counseling or rehabilitation from an approved facility; and
- C. Thereafter refrains from using illegal drugs or misusing prescription drugs and/or alcohol.

This provision is not intended to allow an employee to evade disciplinary action. The key to this provision's rehabilitative effectiveness is an employee's willingness to admit their problem. This provision is not available to an employee who requests protection under this provision after:

- A. Being identified through other means; or
- B. Being asked to provide a urine sample for testing; or
- C. Having had a verified positive test result for alcohol and/or illegal drugs pursuant to this policy.

Drug or alcohol related incidents that are subject to discipline and occurred prior to seeking Safe Harbor are not covered by Safe Harbor protections. An employee who requests Safe Harbor will be required to sign an agreement outlining his or her obligations under Safe Harbor.

#### NEW EMPLOYEE NOTIFICATION

Applicants for safety sensitive positions will be informed about the City's drug testing program on the vacancy announcement for each applicable position. During the screening process applicants will be notified of the testing requirements for particular positions and that appointment to the position is contingent upon a negative post-offer drug test. Upon hiring, new employees will receive an electronic or printed copy of the Personnel Policy.

#### SAFETY SENSITIVE POSITIONS

For purposes of this policy, a safety sensitive position will be defined as a position in which the duties performed as a regular part of the job could reasonably expect to affect health, safety, and security of employees and citizens. Safety sensitive positions are those in which the responsibilities of the position require employees to:

- A. Qualify and maintain qualification standards to carry firearms,
- B. Perform emergency medical, lifesaving, and/or fire suppression activities;
- C. Supervise employees during the performance of critical incident functions which require employees to qualify to carry firearms, perform emergency medical, lifesaving and/or fire suppression activities;
- D. Operate, maintain or inspect emergency vehicles, heavy equipment, or vehicles having a gross combination weight rating of 26,001 or more pounds and/or lifesaving equipment used for emergency services;
- E. Obtain a national security clearance as a condition of employment;
- F. Exercise custodial responsibility for illegal drugs or precursors;
- G. When the responsibilities of the position require the person to work with minors or individuals with disabilities;
- H. Handle hazardous materials that if mishandled, place the general public at risk of serious injury; or
- I. Other positions deemed safety sensitive by the City of Lewiston.

These positions are characterized by critical safety or security responsibilities. The job functions associated with these positions directly and immediately relate to public health and safety, the protection of life, and law enforcement.

#### TYPES OF TESTING

##### **Post-Offer Applicant Testing – Safety-Sensitive Positions**

Persons applying for safety sensitive positions who are given a conditional offer of employment will be subject to testing for illegal drugs. Vacancy announcements for safety sensitive positions shall contain a statement informing all applicants that the successful candidate will be given a conditional offer of employment for the position and will be required to submit to screening for illegal drug use prior to hire. Failure of the vacancy announcement to contain this statement notice will not preclude applicant testing if advance written notice is provided to applicants in some other manner. In addition, each applicant will be notified that appointment to the safety sensitive position will be contingent upon a negative drug test result. Individuals must submit to drug testing at a City approved facility within 24 hours of being sent for testing or

as directed by Human Resources. No applicant shall begin work until Human Resources notifies the supervisor that the individual is cleared for work.

Applicants shall be deemed ineligible for employment if they:

1. Fail to report for a test in a timely manner;
2. Refuse to take a test;
3. Tamper with a test specimen;
4. Receive a positive test result; or
5. Fail to provide adequate specimen volume without a verified medical explanation.

Applicants who are deemed ineligible for employment under any of these circumstances may be disqualified for future City employment. The applicant shall be informed of a positive screening result by the medical tester or a Medical Review Officer. Because of the contingent nature of the offer, a positive screening result or other ineligibility will automatically revoke the offer of employment. Safety sensitive employees, including Temporary employees, returning to work for the City within 90 days of active paid employment with the City are not required to undergo a post-offer applicant drug test.

### **Reasonable Suspicion Testing**

Both safety sensitive and non-safety sensitive employees will be tested for alcohol and/or illegal drugs when there is reasonable suspicion of on-duty use or impairment. Reasonable suspicion testing may be based upon, among other things:

1. observable phenomena, including but not limited to direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol;
2. a pattern of abnormal conduct or erratic behavior;
3. arrest or conviction for a drug or alcohol-related offense, or the identification of an employee as the focus of a criminal investigation into illegal drug possession, use or trafficking;
4. information provided by reliable and credible sources or which is independently corroborated; or
5. newly discovered evidence that the employee has tampered with a previous alcohol or drug test.

Although reasonable suspicion testing does not require certainty, mere hunches alone are not sufficient to meet the standard for a test. If an employee is suspected of using alcohol or illegal drugs pursuant to this policy, the appropriate supervisor will gather all information, facts, and circumstances leading to and supporting this suspicion and present them for higher level concurrence. Concurrence may be from a Department Manager, Department Director, or representative from Human Resources. The employee shall not be allowed to operate a vehicle or perform sensitive duties until the circumstances are evaluated and the supervisor receives higher concurrence.

Human Resources is to be notified prior to any Reasonable Suspicion Testing, absent any exigent circumstances. The appropriate supervisor will complete a Reasonable Suspicion Form identifying the signs which formed the basis to warrant the testing and forward the form to Human Resources as soon as practical.

### **Post-Accident Testing**

The City is committed to providing a safe and secure work environment. Employees involved in on-the-job accidents or who engage in unsafe on-duty job-related activities that pose a danger to themselves or others or the overall operation of the City, may be subject to testing. Based on the circumstances of the accident or unsafe act, the City's Risk Manager, Human Resource representative, Department Director or designee may initiate testing when such circumstances involve:

1. Death; or
2. Serious personal injury requiring immediate emergency room or urgent care center treatment; or
3. Employees are subject to testing when they cause or are involved in an accident that damages a City vehicle, machinery, equipment or property and/or result in an injury to themselves or another

individual requiring off-site medical attention. In any of these instances, the investigation and subsequent testing must take place within two (2) hours following the accident, if not sooner.

An employee subject to post-accident testing shall remain available for such testing, or the City may consider the employee to have refused to submit for testing. An employee subject to post accident testing shall not consume alcohol or drugs, either legal or illegal prior to the testing. Exceptions may be made for prescribed maintenance medications and/or medications administered to treat an injury related to the accident. If a post-accident test is not administered within two (2) hours of the occurrence, the supervisor shall document the reason(s) why it was not promptly administered. If more than eight (8) hours pass, then no alcohol test shall be administered and/or if more than thirty-two (32) hours pass, no drug test shall be administered.

Employees who as a requirement of their position have a Commercial Driver's License, are involved in an on the job accident in which there was a human fatality, bodily injury with immediate medical treatment away from the scene, or disabling damage to any motor vehicle requiring tow away are to undergo a DOT drug and alcohol test. All other accidents who meet the above provisions will provide for a non DOT drug and alcohol test.

### **Random Testing**

Random testing for alcohol and/or illegal drugs will be conducted on employees whose positions are designated as safety sensitive as defined in this policy. Random tests will be unannounced and occur throughout the calendar year. The random selections will be conducted by the designated drug testing contractor using a lottery system and Human Resources will notify the individual's supervisor or designee and provide the name of the individual selected for random testing. The employee shall not be given advance notice of the scheduled testing.

To ensure that all employees in sensitive positions that have been designated for testing have an equal chance of being randomly tested, a scientifically valid random process is used by the testing contractor. The annual number of random tests will be no more than ten percent (10%) of the average number of employee's subject to random testing for alcohol and illegal drugs.

### **Return to Duty and Follow-up Testing**

After a verified positive test result for illegal drugs or alcohol, employees shall have a negative test result before returning to work. All employees referred through administrative channels that undergo counseling or rehabilitation programs for alcohol with a Substance Abuse Professional will be subject to unannounced alcohol testing by the City of Lewiston from the time they return to work for a period of at least one year following completion of such a program. Such testing is distinct from testing which may be imposed as a component of a rehabilitation program. Confirmation of or continuing participation in an alcohol rehabilitation program, as recommended by a Substance Abuse Professional, is required of an employee returning to duty. The employee will provide documentation to Human Resources from a Substance Abuse Professional when an employee has completed a rehabilitation program. After an employee returns to work, a single positive test result for alcohol or illegal drugs or failure to successfully complete the recommended rehabilitation program will be grounds for disciplinary action up to and including termination.

Employees who as a requirement of their position have a Commercial Driver's License will be required to follow the return to duty provisions as provided by the Federal Motor Carrier Safety Administration (FMCSA), except Transit who is required to follow the Federal Transit Authority. Return to duty testing is required for drivers who test positive, refused, or otherwise violated the prohibitions of 49 CFR Part 382 Subpart B; and who have completed the return to duty process with a DOT qualified Substance Abuse Professional. This test is directly observed and a negative result is required before resuming driving duties. Follow up testing will be required as prescribed by the Substance Abuse Professional for a minimum of six (6) directly observed tests in twelve (12) months, but can be extended an additional four years.

## TEST PROCEDURES

The City's alcohol and drug testing program services shall be provided by a designated contractor in accordance with U.S. Department of Health and Human Services (HHS) standards and analyzed by an independent HHS certified lab. The personnel involved in testing and processing results are not employees of the City.

### **Procedures for Alcohol Testing**

An initial test for the presence of alcohol will be conducted using an Evidential Breath Testing Device (EBT) as approved by the National Highway Traffic Safety Administration (NHTSA). If the result of the first screening EBT is an alcohol concentration of .02 or greater, a confirmatory test shall be conducted. The confirmatory test may be conducted on the same EBT as the initial test. Before the confirmatory test is given, the employee will, as instructed by the Breath Alcohol Technician (BAT), wait a minimum of 15 minutes and not eat, drink, belch or put any object or substance into their mouth during that time.

### **Procedures for Drug Testing**

Any individual subject to testing for illegal drugs under this Policy shall be permitted to provide urine specimens in private and in a restroom stall or similar enclosure so that the employee is not observed while providing the sample. Collection site personnel of the same gender as the individual tested, however, may observe the individual provide the urine specimen when such personnel have reason to believe the individual may alter or substitute the specimen to be provided. Collection site personnel may have reason to believe that a particular individual has or may alter or substitute the specimen when the individual has previously been found by the City to be an illegal drug user; or has previously tampered with a sample; or facts and circumstances suggest that the individual is an illegal drug user; or is under the influence of drugs at the time of the test; or has equipment or implements capable of tampering with or altering urine samples. If the temperature of the specimen is outside the range of 32-38 degrees C / 90-100 degrees F or shows signs of contaminants, then there is reason to believe the individual may have altered or substituted the specimen and another specimen shall be collected for testing under the direct observation of a representative from the collection facility. Samples testing positive for illegal drugs will undergo further testing to identify the specific type of drug(s) in the specimen in accordance with HHS requirements. The cutoff levels used by the City's HHS certified lab may change and will be published in the Code of Federal Regulations and Federal Register. The applicant or employee will be contacted by the Medical Review Officer (MRO) and have the opportunity to provide an explanation of a positive result to the MRO. The MRO may choose to conduct employee medical interviews, review employee medical history, or review any other relevant biomedical factors. The MRO shall review all medical records made available by the tested employee when a verified positive test could have resulted from legally prescribed medication or some other legal substance. Individuals will be afforded the opportunity to submit medical documentation of lawful use of an otherwise illegal drug.

Evidence to justify a positive result may include, but is not limited to:

1. a valid prescription; or
2. a verification from the individual's physician verifying a valid prescription.

If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result. The MRO shall refer written determinations regarding all verified positive test results to Human Resources when the MRO is convinced a verified positive result has been determined. Once notified of a verified positive test result for illegal drugs, employees may within 72 hours of notification, at their own expense, request the confirmation specimen be tested by another HHS certified lab. If the MRO certifies that the second drug test is negative, an employee will be reimbursed for the cost incurred including any lost compensation.

### **Test Refusal**

Employees will be considered to have refused testing if they:

1. Refuse to test;
2. Fail to report for a required test at the scheduled time;
3. Engage in conduct that clearly obstructs the testing process;
4. Tamper with the test; or
5. Fail to provide adequate breath or specimen volume without a verified medical explanation.

Employees who refuse to be tested, as described in the test procedures, when so required, shall be subject to the full range of disciplinary consequences up to and including termination. Attempts to alter or substitute the specimen provided will be deemed a refusal to take the test when required.

### **Deferral of Testing**

An employee selected for random drug and alcohol testing may obtain a deferral of testing if Human Resources concurs that a compelling need necessitates a deferral on the grounds that the employee is:

1. In a leave status (sick, annual, compensatory, administrative or leave without pay); or
2. In official travel status away from the test site or about to embark on official travel scheduled prior to testing notification. An employee whose random drug and alcohol test is deferred will be subject to an unannounced test within the following 60 days.

### **FINDINGS AND ADMINISTRATIVE ACTION**

An employee may be found in violation of this policy on the basis of any appropriate evidence including, but not limited to:

1. direct observation of prohibited alcohol use or illegal drug use including misuse of prescription medication;
2. evidence obtained from an arrest or criminal conviction that is related to the workplace, or affects the employee's ability to perform job duties;
3. a verified positive test result;
4. an employee's voluntary admission, unless the employee is meeting the requirements as outlined under the Safe Harbor referral; or
5. test refusal.

### **Administrative Action**

Administrative action is not required for an employee who voluntarily admits to alcohol use or illegal drug use through the Safe Harbor provision of this policy, and obtains counseling or rehabilitation, and thereafter refrains from using illegal drugs and using alcohol in violation of this policy. The Safe Harbor provision is not intended to allow an employee to evade disciplinary action. Any employee receiving a verified positive test for illegal drugs, including misuse of prescription medication, may be terminated.

When an employee is found to be in violation of the alcohol or illegal drug provisions of this policy, mandatory administrative action will result such as referral to a Substance Abuse Professional and disciplinary action, including the full range of consequences, up to and including termination. The City may also initiate action to terminate an employee for refusing to obtain counseling or rehabilitation through a state licensed facility; and/or not refraining from misuse of alcohol/illegal drugs after a first finding of such use.

The severity of the action chosen will depend on the circumstances of each case. The facts and circumstances leading to a reasonable suspicion test will be taken into account in determining disciplinary consequences. Any rehabilitation recommended will be a condition of continued employment and the cost of rehabilitation will be the responsibility of the employee. The employee remains responsible for successful completion of a treatment program, and assertions regarding the effectiveness of a program shall not constitute either an

excuse for continuing to misuse alcohol/illegal drugs or a defense to disciplinary action if the employee does not complete treatment. Any employee receiving a verified positive test for illegal drugs or alcohol shall be placed on leave without pay, unless the employee notifies his/her supervisor of his/her desire to use accrued vacation or accrued compensatory leave.

### **Effects of Positive Alcohol Testing Results**

In addition to the mandatory administrative actions outlined in the previous section, any employee with a breath alcohol test which results in a reading as set out below shall be subject to the following:

1. Employees testing .02 or greater may be subject to discipline up to and including termination.
2. If the results of the test are .02 or greater but less than .04 alcohol concentration the employee shall be removed from the work site and, if retained, may be required to go to a Substance Abuse Professional for assessment, at the employee's expense. The employee may not return to duty for the remainder of the scheduled work day and may be required to have a negative test result before returning to work. The decision to return the employee to duty shall be at the discretion of the Department Director or designee in concurrence with Human Resources.
3. If the results of the test show an alcohol concentration of .04 or greater, the employee shall be subject to the same conditions as set out in above, and in addition, within two (2) business days of the test the employee shall be evaluated by a Substance Abuse Professional, at the employee's expense.
4. Any employee receiving a verified positive test for alcohol .02 or greater shall be placed on leave without pay unless the employee notifies his/her supervisor of his/her desire to use accrued vacation or accrued compensatory leave.

### **Other Alcohol and/or Drug-Free Workplace Requirements**

Any employee who admits to violating a criminal drug statute, or is convicted of violating a criminal alcohol or drug statute that is related to the workplace or affects the employee's ability to perform job duties will be subject to disciplinary action up to and including termination and/or be evaluated by a Substance Abuse Professional. It will be required that the employee complete any recommended rehabilitation program(s) from the Substance Abuse Professional. A conviction, a plea of guilty, a plea of no contest, receiving a suspended imposition of a sentence, and a withheld judgment will all be considered the same as a conviction.

### **RECORDS AND REPORTS**

The employee's privacy shall be maintained. All testing information specifically relating to individuals pursuant to this Policy and any intervention steps, including referral for treatment, counseling or rehabilitation programs, is confidential and should be treated as such by everyone authorized to review or compile program records. In order to efficiently implement this requirement and to make information readily retrievable, Human Resources shall maintain records relating to testing, suspicion of tampering, and any other authorized documentation necessary to implement this policy. All records and information of personnel actions taken on employees with verified positive test results should be forwarded to the Human Resources Department. Such information shall remain confidential, with only authorized individuals who have a need-to-know having access to them. The results of a test for alcohol or illegal drugs of a City employee may not be disclosed without the prior written consent of such employee, unless the disclosure would be:

1. to the Medical Review Officer;
2. to the Substance Abuse Professional in which the employee is receiving counseling or treatment or is otherwise participating;
3. to Human Resources and/or to any supervisory or management official within the City having authority to process or take adverse personnel action against such employee; or
4. pursuant to the order of a court of competent jurisdiction, where required by the City to defend against any challenges of adverse personnel action, or pursuant to applicable law.

Test results with all identifying information removed may be used for data collection and other activities necessary to comply with testing requirements. Employees who are the subject of a test for alcohol or illegal drugs shall have access to the results of their alcohol or drug tests.

## ROLES AND RESPONSIBILITIES

Employees: are expected to report to work drug and alcohol free in order to enable safe and efficient job performance. Employees are expected to engage in activities while on-the-job, while on City premises, or while in the scope and course of employment, which are appropriate for the working environment and do not compromise the City's integrity or interest in maintaining a safe, secure and drug-free workplace.

Supervisors/Managers are expected to:

1. attend training sessions on alcohol misuse and illegal drug use in the workplace;
2. when reasonable suspicion is confirmed, initiate an alcohol/drug test as described in this policy;
3. in conjunction with Human Resources, refer employees to a Substance Abuse Professional for assistance in obtaining counseling and rehabilitation upon a finding of alcohol misuse;
5. initiate appropriate disciplinary action upon a finding of alcohol or illegal drug use;
6. in conjunction with Human Resources, assist higher-level supervisors in evaluating employee performance and/or personnel problems that may be related to alcohol misuse or illegal drug use; and
7. ensure confidentiality of all information regarding employee testing, disciplinary action and rehabilitation.

Department Directors shall:

1. implement the Drug-Free Workplace policy within their respective department, and ensure that it is efficiently and effectively accomplished in accordance with this Policy and all other applicable policies;
2. in conjunction with Human Resources assist in determining appropriate action for employee performance and/or personnel problems that may be related to alcohol or illegal drug use;
3. attend training sessions on alcohol and illegal drug-use in the workplace and encourage supervisors and employees to attend training on these issues; and
4. ensure that all information regarding employee testing, disciplinary action and rehabilitation remains confidential.

Human Resources shall:

1. direct and implement this Policy to ensure it is administered consistently among employee groups and in accordance with all of the provisions of this policy;
2. consult with the Department Director or designee in determining appropriate action for situations related to this program; and
3. ensure that all records and information of personnel actions taken on employees with verified positive test results remain confidential and only shared with individuals having a need-to-know.

Collection Company is expected to:

1. provide specimen collection and alcohol testing as outlined in this policy;
2. maintain an accurate record keeping system which includes safeguards against the unauthorized release of information, proper chain of custody documentation, protection of the privacy of the employee and the overall program effectiveness;
3. work with Human Resources to provide educational materials and training to managers, supervisors, and employees on alcohol and illegal drugs in the workplace including training on the recognition and documentation of facts and circumstances that support a reasonable suspicion that an employee may be using alcohol or illegal drugs;



4. ensure all collection personnel are appropriately trained and maintain certification standards as required by National Highway Traffic Safety Administration (NHTSA) and/or Substance Abuse and Mental Health Services Administration attend training sessions on alcohol misuse and illegal drug use in the workplace;
5. when reasonable suspicion is confirmed, initiate an alcohol/drug test as described in this policy;
6. in conjunction with Human Resources, refer employees to a Substance Abuse Professional for assistance in obtaining counseling and rehabilitation upon a finding of alcohol misuse;
7. initiate appropriate disciplinary action upon a finding of alcohol or illegal drug use;
8. in conjunction with Human Resources, assist higher-level supervisors in evaluating employee performance and/or personnel problems that may be related to alcohol misuse or illegal drug use;
9. ensure confidentiality of all information;
10. implement the Drug-Free Workplace policy within their respective department, and ensure that it is efficiently and effectively accomplished in accordance with this program and all other applicable policies;
11. in conjunction with Human Resources assist in determining appropriate action for employee performance and/or personnel problems that may be related to alcohol or illegal drug use;
12. attend training sessions on alcohol and illegal drug-use in the workplace and encourage supervisors and employees to attend training on these issues;
13. ensure that all information regarding employee testing, disciplinary action and rehabilitation remains confidential;
14. direct and implement this program to ensure it is administered consistently among employee groups and in accordance with all of the provisions of this policy;
15. consult with the Department Director or designee in determining appropriate action for situations related to this program; and
16. ensure that all records and information of personnel actions taken on employees with verified positive test results remain.

MRO shall:

1. receive all laboratory test results;
2. assure that an individual who has tested positive has been afforded an opportunity to discuss the test result in accordance with test procedures outlined in this Policy;
3. consistent with confidentiality requirements, refer written determinations regarding all verified positive drug test results to Human Resources, including a verified positive drug test result form indicating that the positive result has been verified, together with all relevant documentation; and
4. confirm to Human Resources whether an individual who has been tentatively selected for employment with the City has obtained a verified positive test result.

## DEFINITIONS

**Administrative Action:** For an alcohol violation may include referral to a Substance Abuse Professional and/or disciplinary action including a range of consequences such as written reprimand, suspension, etc. up to and including termination. For a drug violation the employee will be terminated.

**Adulterant:** Adulterating substance or agent aimed to corrupt, debase, or make impure.

**Alcohol:** Ethyl alcohol (ethanol) in a beverage or medication.

**Breath Alcohol Technician (BAT):** An individual employed by the collection facility who is trained and certified in the use of a U. S. Department of Transportation approved evidential breath testing device.

**Evidential Breath Testing Device (EBT):** An instrument reliable in measuring alcohol concentration in breath that meets the National Highway Traffic Safety Administration specifications, and is included in the conforming products list of evidential breath testing devices.

**Medical Review Officer:** An independent licensed physician responsible for receiving laboratory results generated pursuant to this Policy who has knowledge of substance abuse disorders and the appropriate

medical training to interpret and evaluate all positive test results together with an individual's medical history and any other biomedical information.

**Illegal Drugs:** A controlled substance included in Schedule I or II, as defined by section 802 (6) of Title 21 of the United States Code, the possession of which is unlawful under chapter 13 of that Title. The term illegal drugs does not mean the use of a controlled substance in the prescribed dosage amount pursuant to a valid prescription or other uses authorized by law. However, misuse of a controlled substance is considered an illegal drug in violation of this policy.

**Precursors:** A biochemical substance which can be processed or synthesized into one of the categories of drugs to be tested under this policy.

**Random Testing:** A system of drug and alcohol testing imposed without individualized suspicion that a particular individual is using illegal drugs or alcohol, and a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

**Return-to-Duty Agreement:** An agreement between the City and an employee which allows an employee continued employment under stringent guidelines prohibiting use of drugs and alcohol. An employee's failure to meet the terms of the agreement, which includes successfully passing tests for alcohol and/or illegal drugs, shall result in termination.

**Safety Sensitive Position:** Employment position within the City which has been designated for pre-employment and random testing in accordance with this policy.

**Supervisor:** An employee having authority to hire, direct, assign, promote, reward, transfer, layoff, discipline, conduct evaluations, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment.

**Unannounced Test:** A test for alcohol and/or illegal drugs previously scheduled and announced only to the employee just prior to the scheduled time, allowing only appropriate time for the employee to immediately proceed directly to the scheduled testing site.

**Verified Positive Test Result for Alcohol:** The presence of alcohol in the breath at a level of .02 or greater as measured by an evidential breath testing device and administered by a trained and certified Breath Alcohol Technician.

**Verified Positive Test Result for Drugs:** A test result that was positive on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmation tests approved by the U.S. Department of Health and Human Services), and reviewed and verified by the Medical Review Officer in accordance with this policy and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

## SECTION 206 TRANSIT DRUG AND ALCOHOL POLICY

This policy complies with 49 CFR Part 655, as amended and 49 CFR Part 40, as amended. Copies of Parts 655 and 40 are available in the Transit Operations Supervisor and Transit Manager office's and can be found on the internet at the Federal Transit Administration (FTA) Drug and Alcohol Program website, <http://transit-safety.fta.dot.gov/DrugAndAlcohol/>.

All covered employees are required to submit to drug and alcohol tests as a condition of employment in accordance with 49 CFR Part 655. Portions of this policy are not FTA-mandated, but reflect City of Lewiston policy. These additional provisions are identified by **bold text**.

In addition, DOT has published 49 CFR Part 32, implementing the Drug-Free Workplace Act of 1988, which requires the establishment of drug-free workplace policies and the reporting of certain drug-related offenses to the FTA.

**All Safety Sensitive employees are subject to the provisions of the Drug-Free Workplace Act of 1988.** The unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the covered workplace. An employee who is convicted of any criminal drug statute for a

violation occurring in the workplace shall notify the Transit Manager or Operations Supervisor no later than five days after such conviction.

### COVERED PERSONS

This policy applies to every person, including an applicant or transferee, who performs or will perform a “safety-sensitive function” as defined in 49 CFR 655.4. You are a covered employee if you perform any of the following:

- Operating a revenue service vehicle, in or out of revenue service
- Operating a non-revenue vehicle requiring a commercial driver’s license
- Controlling movement or dispatch of a revenue service vehicle
- Maintaining (including repairs, overhaul and rebuilding) of a revenue service vehicle or equipment used in revenue service
- Carrying a firearm for security purposes

Covered positions by job title:

- Transit Manager
- Transit Operations Supervisor
- Transit Dispatcher
- Transit Dispatcher/Driver
- Transit Driver

### PROHIBITED BEHAVIOR

Use of illegal drugs is prohibited at all times. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug or alcohol in the body at or above the minimum thresholds defined in 49 CFR Part 40. Prohibited substances include:

- Alcohol
- Marijuana
- Cocaine
- Phencyclidine (PCP)
- Opioids
- Amphetamines

All covered employees are prohibited from performing or continuing to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater. All covered employees are prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. If the on-call employee claims the ability to perform his or her safety-sensitive function, he or she must take an alcohol test with a result of less than 0.02 prior to performance. All covered employees are prohibited from consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions. All covered employees are prohibited from consuming alcohol for eight (8) hours following involvement in an accident or until he or she submits to the post-accident drug and alcohol test, whichever occurs first.

### CONSEQUENCES OF VIOLATIONS

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, the employee will be immediately removed from safety-sensitive duty and referred to a Substance Abuse Professional.

Following a BAC of 0.02 or greater, but less than 0.04, the employee will be immediately removed from safety-sensitive duties for at least eight hours unless a retest results in the employee’s alcohol concentration being less than 0.02.

### **Treatment/discipline**

Per Lewiston Transit System policy, any employee who tests positive for drugs or alcohol (BAC at or above 0.04) or refuses to test will be referred to a Substance Abuse Professional (SAP) and bear the total cost of treatment. Employees may use accrued leave during this time, but will not be eligible for use of the Sick Leave Bank to cover time off during treatment.

## **CIRCUMSTANCES FOR TESTING**

### **Pre-Employment Testing**

A negative pre-employment drug test result is required before an employee can first perform safety-sensitive functions. If a pre-employment test is cancelled, the individual will be required to undergo another test and successfully pass with a verified negative result before performing safety-sensitive functions.

If a covered employee has not performed a safety-sensitive function for 90 or more consecutive calendar days, and has not been in the random testing pool during that time, the employee must take and pass a pre-employment test before he or she can return to a safety-sensitive function.

A covered employee or applicant who has previously failed or refused a DOT pre-employment drug and/or alcohol test must provide proof of having successfully completed a referral, evaluation, and treatment plan meeting DOT requirements.

### **Reasonable Suspicion Testing**

All covered employees shall be subject to a drug and/or alcohol test when there is reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. A reasonable suspicion referral for testing will be made on the basis of specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the covered employee.

Covered employees may be subject to reasonable suspicion drug testing any time while on duty. Covered employees may be subject to reasonable suspicion alcohol testing while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions.

Human Resources is to be notified prior to any Reasonable Suspicion Testing, absent any exigent circumstances. The appropriate supervisor will complete a Reasonable Suspicion Form identifying the signs which formed the basis to warrant the testing and forward the form to Human Resources as soon as practical.

### **Post-Accident Testing**

Covered employees shall be subject to post-accident drug and alcohol testing under the following circumstances:

#### **Fatal Accidents**

As soon as practicable following an accident involving the loss of a human life, drug and alcohol tests will be conducted on each surviving covered employee operating the public transportation vehicle at the time of the accident. In addition, any other covered employee whose performance could have contributed to the accident, as determined by the Transit Operations Supervisor or Transit Manager using the best information available at the time of the decision, will be tested.

#### **Non-fatal Accidents**

As soon as practicable following an accident not involving the loss of a human life, drug and alcohol tests will be conducted on each covered employee operating the public transportation vehicle at the time of the accident if at least one of the following conditions is met:

- (1) The accident results in injuries requiring immediate medical treatment away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident; or
- (2) One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident.

In addition, any other covered employee whose performance could have contributed to the accident, as determined by the Transit Operations Supervisor and/or Transit Manager using the best information available at the time of the decision, will be tested.

A covered employee subject to post-accident testing must remain readily available, or it is considered a refusal to test. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

### **Random Testing**

Random drug and alcohol tests are unannounced and unpredictable, and the dates for administering random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of the day when safety-sensitive functions are performed.

Testing rates will meet or exceed the minimum annual percentage rate set each year by the FTA administrator. The current year testing rates can be viewed online at [www.transportation.gov/odapc/random-testing-rates](http://www.transportation.gov/odapc/random-testing-rates).

The selection of employees for random drug and alcohol testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator. Under the selection process used, each covered employee will have an equal chance of being tested each time selections are made.

A covered employee may only be randomly tested for alcohol misuse while the employee is performing safety-sensitive functions, just before the employee is to perform safety-sensitive functions, or just after the employee has ceased performing such functions. A covered employee may be randomly tested for prohibited drug use anytime while on duty.

Each covered employee who is notified of selection for random drug or random alcohol testing must immediately proceed to the designated testing site.

### **Random Testing – End of Shift**

Random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than three hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift. Verifiable documentation of a previously scheduled medical or child care commitment, for the period immediately following an employee's shift, must be provided at least no later than two hours before the end of their shift.

### **Return to Duty Testing**

Any employee who is allowed to return to safety-sensitive duty after failing or refusing to submit to a DOT drug and/or alcohol test must first be evaluated by a substance abuse professional (SAP), complete a SAP-required program of education and/or treatment, and provide a negative return-to-duty drug and/or alcohol test result. All tests will be conducted in accordance with 49 CFR Part 40, Subpart O.

### **Follow-up Testing**

Employees returning to safety-sensitive duty following leave for substance abuse rehabilitation will be required to undergo unannounced follow-up alcohol and/or drug testing for a period of one (1) to five (5) years, as directed by the SAP. The duration of testing will be extended to account for any subsequent leaves of absence, as necessary. The type (drug and/or alcohol), number, and frequency of such follow-up testing shall be directed by the SAP. All testing will be conducted in accordance with 49 CFR Part 40, Subpart O.

## **TESTING PROCEDURES**

All FTA drug and alcohol testing will be conducted in accordance with 49 CFR Part 40, as amended.

## **Dilute Urine Specimen**

**If there is a negative dilute test result, Lewiston Transit System will accept the test result and there will be no retest**, unless the creatinine concentration of a negative dilute specimen was greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL.

Dilute negative results with a creatinine level greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL require an immediate recollection under direct observation (see 49 CFR Part 40, section 40.67).

## **Split Specimen Test**

In the event of a verified positive test result, or a verified adulterated or substituted result, the employee can request that the split specimen be tested at a second laboratory. Lewiston Transit System guarantees that the split specimen test will be conducted in a timely fashion. The employer will be responsible to pay for any costs associated with re-testing.

## **TEST REFUSALS**

As a covered employee, you have refused to test if you:

1. Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by Lewiston Transit System.
2. Fail to remain at the testing site until the testing process is complete. An employee who leaves the testing site before the testing process commences for a pre-employment test has not refused to test.
3. Fail to attempt to provide a breath or urine specimen. An employee who does not provide a urine or breath specimen because he or she has left the testing site before the testing process commenced for a pre-employment test has not refused to test.
4. In the case of a directly-observed or monitored urine drug collection, fail to permit monitoring or observation of your provision of a specimen.
5. Fail to provide a sufficient quantity of urine or breath without a valid medical explanation.
6. Fail or decline to take a second test as directed by the collector or Lewiston Transit System for drug testing.
7. Fail to undergo a medical evaluation as required by the MRO or Lewiston Transit System's Designated Employer Representative (DER).
8. Fail to cooperate with any part of the testing process.
9. Fail to follow an observer's instructions to raise and lower clothing and turn around during a directly-observed test.
10. Possess or wear a prosthetic or other device used to tamper with the collection process.
11. Admit to the adulteration or substitution of a specimen to the collector or MRO.
12. Refuse to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
13. Fail to remain readily available following an accident.

As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

As a covered employee, if you refuse to take a drug and/or alcohol test, you incur the same consequences as testing positive and will be immediately removed from performing safety-sensitive functions, and referred to a SAP.

## **VOLUNTARY SELF REFERRAL**

Any employee who has a drug and/or alcohol abuse problem and has not been selected for reasonable suspicion, random or post-accident testing or has not refused a drug or alcohol test may voluntarily refer her or himself to the Transit Manager or Operations Supervisor, who will refer the individual to a substance abuse counselor for evaluation and treatment. The substance abuse counselor will evaluate the employee and make a specific recommendation regarding the appropriate treatment. Employees are encouraged to

voluntarily seek professional substance abuse assistance before any substance use or dependence affects job performance. Any safety-sensitive employee who admits to a drug and/or alcohol problem will immediately be removed from his/her safety-sensitive function and will not be allowed to perform such function until successful completion of a prescribed rehabilitation program.

For questions about Safety Sensitive anti-drug and alcohol misuse program, contact the Transit Manager or Transit Operations Supervisor.

## **SECTION 207 INSPECTIONS AND SEARCHES ON CITY PREMISES**

The City believes that maintaining a workplace that is free of drugs, alcohol, and other harmful materials is vital to the health and safety of its employees and to the success of The City's business. The City also intends to protect against the unauthorized use and removal of City property. In addition, The City intends to assure its access at all times to City premises and City property, equipment, information, records, documents, and files. At times, it may be necessary for The City to provide records, information or assistance in accordance with the terms of a warrant, court order, or other order issued by law. Accordingly, The City has established this Guideline concerning inspections and searches on City premises. This Guideline applies to all employees of The City.

### **DEFINITIONS**

For purposes of this Guideline:

1. "Prohibited materials" means firearms or other weapons; explosives and/or hazardous materials or articles; illegal drugs or other controlled substances as defined in this Policy; drug-related paraphernalia; the unauthorized use or consumption of alcoholic beverages on City property; or City property and/or proprietary and confidential information belonging to a third party that an employee is not authorized to have in their possession.
2. "City property" includes all documents, records, software, electronic codes, data, and files, in both hard copy and electronic form, relating to The City's business; and all equipment, hardware, and other property of any kind, whether owned, leased, rented, or used by The City.
3. "City premises" includes all premises and locations owned or leased by The City or under the control of The City, including parking lots, lockers, and storage areas.
4. "Reasonable suspicion" is suspicion that is based on specific objective, articulable facts that a person has engaged in misconduct or that such person is in possession of prohibited materials. Reasonable suspicion may be based on, but is not limited to, personal observations such as an employee's manner, disposition, muscular movement, appearance, behavior, speech or breath odor; information provided to management by an employee, by law enforcement officials, by a security service, or by other persons believed to be reliable; or a suspicion that is based on other surrounding circumstances.
5. "Possession" means that an employee has the prohibited material or City property on their person or otherwise under their control.

### **INSPECTIONS AND SEARCHES**

#### **Access to City Property**

1. In order to ensure access at all times to City property, and because employees properly in possession of City property or information related to City business may not always be available to produce the property or information when needed in the ordinary course of The City's business, The City reserves the right to conduct a routine inspection or search at any time for City property on City premises. In addition, The City reserves the right to access at all times information and communications stored in City computer files, on City mobile devices and in employee voicemail boxes and electronic-mail systems.
2. Routine searches or inspections for City property may include an employee's office, desk, file cabinet, closet, computer files, voice mail, electronic mail, City-issued mobile device or similar places where

employees may store City property or City-related information, whether or not the places are locked or protected by access codes and/or passwords.

3. Because even a routine search for City property might result in the discovery of an employee's personal possessions, all employees are encouraged to refrain from bringing into the workplace any item of personal property that they do not wish to reveal to The City.

### **Inspections and Searches for Prohibited Materials**

1. Inspections or searches for prohibited materials in or on City premises also will be conducted whenever The City has reasonable suspicion to believe that a particular employee or group of employees may be in possession of materials in violation of this Guideline.
2. Inspections or searches for prohibited materials may be conducted by an independent security service or by City personnel.
3. Inspections or searches for prohibited materials may include an employee's office, desk, file cabinet, closet, computer, City-issued mobile device or similar places where employees may place personal possessions or information, whether or not the places are locked or password protected. Inspections or searches for prohibited materials also may include an employee's locker, or an employee's pockets, purse, briefcase, lunch box, or other item of personal property that is being worn or carried by the employee while on City premises.
4. In cases involving an inspection or search of an employee's pockets, purse, briefcase, or other item of personal property that is being worn or carried by the employee, the employee will be requested to conduct a self-search (i.e., by turning out or emptying pockets, purses, etc.) in the presence of an observer who will be a person of the same gender.
5. Absent exigent circumstances, employees who refuse to cooperate during an inspection or search will not be forcibly detained or searched. They will be informed, however, that The City will base any disciplinary decision on the information that is available, including their refusal to consent to the search as well as the information that gave rise to a reasonable suspicion that the employees were in possession of prohibited materials, if applicable, and that their failure or refusal to cooperate could deprive The City of information that may clear them of suspicion. In addition, The City reserves the right to take appropriate action to prevent the unauthorized removal from City premises of City property.

### **APPROVALS FOR INSPECTIONS**

1. In instances in which the inspection or search is conducted because there is reasonable suspicion that a particular employee or group of employees may be in possession of prohibited materials in violation of this Guideline or may be using City property in an unauthorized manner, and in instances in which an item of the employee's personal property will be searched, the inspection or search will be approved in advance by the highest ranking member of management in the Division who is available at the time the inspection or search is to be conducted and by the Human Resources Director or their designated alternate(s) in the event of unavailability.
2. All inspections or searches that are conducted as part of The City's program of periodic (and unannounced) inspections will be approved in advance by the Human Resources Director, who will inform the Division Manager of the impending inspection prior to its occurrence.

### **DISCIPLINARY ACTION**

Employees who are found to be in possession of prohibited materials in violation of this Guideline and/or in violation of City Property; Proprietary and Confidential Information Guideline, the Technology Use and Privacy Guideline, and the Drug-Free Workplace Guideline, or employees who are found to have used City property in an unauthorized manner, will be subject to discipline, up to and including discharge, regardless of The City's reason for conducting the search or inspection.



## CONFIDENTIALITY

Managers and supervisors will make their best effort to restrict communications concerning a violation or possible violation of this Guideline to persons who have an important work-related reason to know.

## SECTION 208 RELATIONSHIP POLICY

A work environment where employees maintain clear boundaries between employee personal and business interactions is necessary for effective business operations. Although this policy does not prevent the development of friendships or romantic relationships between co-workers, it does establish boundaries as to how relationships are conducted during working hours and within the working environment. This policy does not preclude or interfere with the rights of employees protected by any applicable statute concerning the employment relationship.

- During working time and in working areas, employees are expected to conduct themselves in an appropriate workplace manner that does not interfere with others or with overall productivity.
- During nonworking time, such as lunches, breaks, and before and after work periods, employees engaging in personal exchanges in non-work areas should observe an appropriate workplace manner to avoid offending other workers or putting others in an uncomfortable position.
- Employees are strictly prohibited from engaging in physical contact that would in any way be deemed inappropriate in the workplace by a reasonable person while anywhere on City premises, whether during working hours or not.
- Employees who allow personal relationships with co-workers to adversely affect the work environment will be subject to the City's disciplinary policy, including counseling for minor problems. Failure to change behavior and maintain expected work responsibilities is viewed as a serious disciplinary matter.
- Employee off-duty conduct is generally regarded as private, as long as such conduct does not create problems within the workplace. An exception to this principle, however, is romantic or sexual relationships between supervisors and subordinates.
- Failure to cooperate with the City of Lewiston to resolve a conflict or problem caused by a romantic or sexual relationship between co-workers or among managers, supervisors or others in positions of authority in a mutually agreeable fashion may be deemed insubordination and result in disciplinary action up to and including termination.
- The provisions of this policy apply regardless of the sexual orientation of the parties involved.

Individuals in supervisory or managerial roles and those with authority over others' terms and conditions of employment are subject to more stringent requirements under this policy due to their status as role models, their access to sensitive information, and their ability to affect the employment of individuals in subordinate positions. Any supervisor involved in a romantic relationship with a subordinate must immediately notify his/her supervisor of the existence of any such relationship. Efforts should be made to eliminate supervisory responsibility for one who is romantically involved with a subordinate. Employees involved in such relationship bear a responsibility to the City to cooperate in any effort to avoid the potential conflicts that can arise from such personal relationships in the workplace. Such relationship may result in a change of employment duties.

When a conflict-of-interest or potential risk is identified due to an employee's relationship with a co-worker, the employees involved will need to participate with the City in options for resolving the problem. The initial solution may be to make sure the parties no longer work together on matters where one is able to influence the other or take action for the other. Matters such as hiring, firing, promotions, performance management, compensation decisions and financial transactions are examples of situations that may require reallocation of duties to avoid any actual or perceived reward or disadvantage. In some cases, other measures may be necessary, such as transfer of one or both parties to other positions or departments, if a transfer is available.

If one or both parties refuse to accept a reasonable solution, such as a transfer or if a transfer is not available, then one or both parties could voluntarily resign or be terminated. There may be a consideration for agreement between parties involved and the City wherein employees maintain their position under defined rules (dependent on the circumstances). In this situation if the established rules are broken then the agreement would no longer be considered and one or both parties would need to accept a transfer, if available, voluntarily resign, or be terminated.

Due to the nature of their position Directors are not to engage in romantic relationships with City employees, whether in direct supervisory capacity or not. In the event a relationship is established the Director is to notify the Mayor immediately for further discussion and review of options. This policy applies to relationships formed after the effective date of this policy.

Where doubts exist as to the specific meaning of the terms used above, employees should make judgments based on the overall spirit and intent of this policy. Any concerns about the administration of this policy should be addressed to the HR Director.

## **SECTION 209 IDAHO WHISTLEBLOWER PROTECTION**

Idaho Code, Title 6, Chapter 21, provides protections to public employees who experience adverse employment actions as a result of the good faith reporting of the existence of any waste of public funds, property or manpower, or of a violation, or suspected violation, of law, rule or regulation of the City, state of Idaho or the United States of America. Any such report must be made at a time, and in a manner, which gives the City a reasonable opportunity to correct the waste or violation. The City may not take adverse action against an employee because the employee in good faith reports the suspected waste or violation, or participates or gives information in an investigation, hearing, court proceeding or any other form of administrative review of the report. If the employee believes that he/she has experienced an adverse employment action protected by the Whistleblower Act, he/she may bring a civil action in District Court within 180 days of the occurrence of the violation of the Act.

## **SECTION 210 EMPLOYEE ACTIVITY AND CONDUCT**

An employee shall not engage in any employment, activity, or enterprise that is inconsistent, incompatible, or in conflict with his/her duties as a City officer or employee. Each Department Director shall determine which activities, engaged in by employees under his/her jurisdiction, will be considered inconsistent, incompatible, or in conflict with their duties as City employees. In making this determination, a Department Director shall prohibit any employment, activity, or enterprise that:

1. Involves the use for private gain or advantage of City time, facilities, equipment and supplies, or the badge, uniform, prestige or influence of one's City office or employment.
2. Involves the soliciting or the acceptance by the employee of any money, gift, gratuity, or other consideration from anyone other than the City for the performance of an act that the employee would be required or expected to render in the regular course or hours of his/her City employment, or as part of his/her duties as a City officer or employee.
3. Involves the performance of an act other than his/her capacity as a City employee, which act may later be subject to direct or indirect control, inspection, review, audit or enforcement by such employee or the agency by which he/she is employed. (See outside employment, Section 212)

During his/her hours of duty as a City employee, each City employee shall devote his/her full time, attention, and efforts to his/her City office or employment. Prior approval from the Department Director and Mayor must be obtained before any outside employment or work activity is undertaken.

1. Requests for permission to accept outside employment, including self-employment, shall be submitted in writing to the employee's Department Director. The request shall state the name and

address of the outside employer, the nature of the job, and the hours of employment. The Department Director will forward the request for permission and the Director's recommendation to the Mayor.

2. The Mayor will approve or reject the request. The Mayor may place conditions on an approval for outside employment.

## **SECTION 211 USE OF CITY PROPERTY AND MATERIALS; CONFIDENTIAL AND PERSONAL INFORMATION**

The security of City property is of vital importance to The City. City property includes not only tangible property, like desks and computers, but also intangible property such as confidential information. It is critical for The City to preserve and protect its confidential information, as well as the confidential information of customers, suppliers, and third parties. All employees are responsible for ensuring that proper security is maintained at all times.

Nothing in this policy or in related policies is intended to interfere with an employee's right to discuss working conditions within the organization or with members of the public nor is there any restriction on an employee's right to labor organize.

### **CITY OFFICE PROPERTY AND MAIL**

The use of City stationery and/or the postage meter for personal correspondence is strictly forbidden. The personal use of the City's facsimiles or copying machines, phone, and other office equipment is allowed with de minimis use, first receiving management approval, and when there is no additional cost to the City. Receiving personal mail at the City's address is strongly discouraged.

### **CONFIDENTIAL AND PERSONAL INFORMATION**

"Confidential Information" means all information, not generally known, belonging to, or otherwise relating to the business of The City or its clients, customers, suppliers, vendors, affiliates or partners, regardless of the media or manner in which it is stored or conveyed, that The City has taken reasonable steps to protect from unauthorized use or disclosure.

"Personal Identification Information" includes individually identifiable information about employees, customers, consultants, or other individuals, such as Social Security numbers, background information, credit card or banking information, health information, or other non-public information entrusted to The City regarding an individual's personal identity.

While employed by The City, employees must not use or disclose any Confidential Information or Personal Identification Information that they produce or obtain during employment with The City, except to the extent such use or disclosure is required in connection with performing their jobs or required by court order or applicable law. Employees may not use or disclose Confidential Information or Personal Identification Information for any reason after the employment relationship with The City ends. Misuse or unauthorized disclosure of Confidential Information or Personal Identification Information may result in immediate termination, as well as potential personal and criminal liability. Nothing in this Guideline restricts an employee from discussing their wages or other terms and conditions of employment with coworkers or others, to the extent protected by law.

### **OBLIGATIONS ON TERMINATION**

On termination of employment, whether voluntary or involuntary, all tangible and intangible City property must be returned to The City immediately. This includes documents, materials, data files, and records of any kind, including any that contain Confidential Information or Personal Information, and any copies thereof. Also, the terminating employee must immediately notify The City if the employee has Confidential

Information or Personal Information stored in the employee's personal computer, or in a mobile, cloud, or other storage medium, and work with The City to identify all such Information and its location, and help ensure it is retrieved and/or permanently deleted by The City (or The City's designated agent).

## SECURITY

Employees are expected to comply with City policies regarding the authorized and secure use of The City's computer technology. Employees are expected to abide by all of The City's security procedures.

Avoiding loss or theft of Confidential Information or Personal Identification Information is an important part of each employee's job. Accordingly, employees must observe good security practices. Employees are expected to keep Confidential Information secure from outside visitors and all other persons who do not have legitimate reason to see or use such information. Employees are not to remove City property without authorization. Failure to adhere to City policies regarding Confidential Information and Personal Identification Information will be considered grounds for dismissal.

Given the sensitivity of Confidential Information and Personal Identification Information, employees may only dispose of such information by secure methods approved by The City and in accordance with the City's Records Retention Policy and Schedule, as may be amended from time-to-time. If an employee has any doubt or question about how to handle Confidential Information or Personal Identification Information, the employee should consult with The City's Human Resources Department.

## SECTION 212 SELLING/SOLICITATIONS AT WORK

No peddling, soliciting, or sale for charitable or other purposes shall be allowed among or by employees during working hours unless permitted by this policy. Violation of this policy or concerns related to a solicitation should be reported to Human Resources and/or the Mayor. School fundraising and community fundraising solicitations may be allowed and the following behaviors must be followed:

- The employee must not be disruptive or interruptive to other employees
- Nonexempt employees may not solicit during paid work hours
- The solicitation and employee may not be coercive
- The solicitation may not be discriminatory
- The solicitation may not be offensive or insulting to others
- Employees may not use City resources such as paper or email when soliciting
- Allowed solicitations should be made rarely

Examples of solicitations that may be allowed are school and community fundraisers such as Rotary Rose Sale, Holiday Poinsettia Sale, Girl Scout Cookie Sale, School Fundraising Catalogues, and 4-H/FFA fundraising sign ups. These examples generally are sign-up sheets, do not demand employees time, and are voluntary.

## SECTION 213 POLITICAL ACTIVITIES OF PUBLIC EMPLOYEES

The use of City facilities or resources by City employees for political activity is prohibited. An employee may, on personal off-duty time, engage in political activities, provided he/she does not disturb any on-duty employee. No person who holds an office or employment with the City of Lewiston or who is seeking office or employment with the City of Lewiston may use that office to influence another person for political purposes.

## SECTION 214 EXPECTATION OF PRIVACY IN THE WORKPLACE

As a public entity, the City of Lewiston is required to comply with various laws regulating access to public records and open meetings. Notwithstanding, a variety of areas of City business and documents are of a confidential nature, proprietary, and/or exempt from public disclosure. Additionally, employees are expected to make use of City of Lewiston facilities and equipment only for purposes of City business. As such, employees are to expect that supervisors or the appropriate managers may monitor the use of City facilities and equipment during the course of employment, including the performance of duties. This includes all City business conducted on personal computers, laptops, cell phones, and tablets over the City server or through the City's cell phone carrier. This also includes all City business conducted on personal electronic devices, even if such business is not conducted on the City server or through the City's cell phone carrier.

Additionally, employees are expected to respect the workplace privacy and environment of coworkers and supervisors given the fact that certain employees engage in business that may be of a confidential or sensitive nature not otherwise subject to public records or open meeting laws. As such the following workplace behavior is deemed unacceptable:

1. Eavesdropping.
2. Reading or copying papers left on desks, in garbage cans, in mailboxes, or in shredding baskets.
3. Accessing another employee's computer or office without prior approval from the employee or their supervisor.
4. Disclosing confidential information to unauthorized persons without the appropriate consent or permission.
5. Other similar breaches of trust or confidentiality related to workplace privacy or confidential City business, including enforcement or personnel matters.

Given the serious nature of potential violations of this policy, an employee who violates this policy will be subject to appropriate discipline, up to and including discharge.

## **SECTION 215 COMMERCIAL DRIVER'S LICENSE**

This policy is furnished as a guide to comply with the federal regulations required for commercial drivers' licenses. This regulation applies to all persons who are applying for or who are employed in positions with duties or activities that involve the requirement of a commercial drivers' license (CDL). The requirements contained in this regulation are under the authority of the Department of Transportation. The Human Resource Department maintains a list of all CDL holders and oversees the drug and alcohol testing for CDL holders. For questions regarding this program contact Human Resources.

### **WHEN A CDL IS REQUIRED**

A commercial driver's license is required for operation of City vehicles that drive on public roads and meet the following commercial motor vehicle definition:

- Have a gross combination weight rating of 26,001 or more pounds inclusive of the towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
- Have a gross vehicle weight rating of 26,001 or more pounds; or
- Is designed to transport 16 or more passengers, including the driver; or
- Is of any size and is used in the transportation of materials that are found to be hazardous for purposes of the Hazardous Materials Transportation Act and require the motor vehicle to be placarded under the Hazardous Material Regulations (49 CFR, Part 172, subpart F).

Drivers of firefighting or other emergency equipment used in response to emergencies involving the preservation of life or property are exempt from having to possess a commercial driver's license.

## APPLICANT REQUIREMENTS FOR CDL POSITIONS

Any person applying for employment as an operator of a commercial motor vehicle who possess a valid commercial driver's license prior to hire shall provide the following at the time of application for employment:

1. Employment history information for the 10 years preceding the date of the application;
2. List of the names and addresses of the applicant's previous employers for which the applicant was an operator of a commercial motor vehicle;
3. Dates the applicant was employed by these employers; and
4. Reason for leaving such employment.

All applicants who have been conditionally accepted for employment in positions that involve the duties or activities that require a commercial driver's license (CDL) shall take a post-offer Department of Transportation (DOT) test for illegal drugs. A verified negative test result shall be received before the applicant may begin work. This includes current employees who transfer, promote, demote or are reassigned from a non-safety sensitive position into a position requiring a Commercial Driver's License (CDL). The Idaho Transportation Department, Federal Motor Carrier Safety Administration, and Federal Transportation Department will be a central source of information regarding Commercial Driver License's (CDL) and interpreting rules as they pertain to commercial driver's license issues.

All job applicants for positions requiring a commercial driver's license (CDL) will be responsible for all fees associated with obtaining such license and/or endorsements to be eligible for employment. The City will reimburse all current employees the difference between a regular (Class D) driver's license and any fees associated with renewal of a CDL and endorsements, provided the license and endorsements are a requirement of the position per the official job description. Should an employee's position description be modified to add the requirement of a CDL, the City will reimburse the employee for the initial CDL, endorsements and renewal.

## LAWS AFFECTING CDL DRIVERS

Commercial driver's license drivers are subject to all laws affecting all drivers. In addition, there are several federal and state laws that affect commercial driver's license drivers. The following are important regulations employees with commercial driver's licenses are responsible for:

- An employee cannot have more than one driver's license.
- It is the employee's responsibility to keep a current address on file with their state's Transportation Department.
- Effective January 26, 2010, texting while operating a commercial vehicle is prohibited and may be subject to civil or criminal penalties.
- A commercial driver's license holder shall notify their state's Transportation Department and the City within 30 days if he or she is convicted in any other state of any traffic violation except parking. This applies no matter what type of vehicle the driver is driving at the time of the infraction.
- An employee shall immediately notify the City if his or her license is suspended, revoked, or cancelled, or if he or she is disqualified from driving.
- No employee shall drive a commercial vehicle without a valid commercial driver's license.
- If an employee's position requires a commercial driver's license and the employee's commercial driver's license is revoked, the employee's employment is subject to termination.
- Ongoing medical certification exams are not required for drivers of local government entities who drive commercially only in Idaho.

## CLEARINGHOUSE

As required by the Federal Carrier Motor Safety Administration (FCMSA) the City will conduct pre-employment driver investigations and annual queries with the FCMSA Clearinghouse. The Clearinghouse is a centralized database that employers use to report drug and alcohol program violations and to conduct queries,

which check that current or prospective employees are not prohibited from performing safety-sensitive functions, such as operating a commercial motor vehicle (CMV), due to an unresolved drug and alcohol program violation, that is, a violation for which the driver has not completed the return-to-duty (RTD) process. The Clearinghouse is in addition to the existing requirements in the U.S. Department of Transportation (DOT)-wide procedures for transportation workplace drug and alcohol testing.

At the time of hire, an applicant with a CDL will be asked to provide contact information for at minimum the previous three years of employers as well as a consent and background check form. The City will contact the applicant's previous employers about prior drug and alcohol tests as is required by the Department of Transportation.

A copy of all CDL licenses will be maintained in the Human Resources Department. Regular checks with the Idaho Supreme Court Repository and/or the Idaho Department of Transportation may be made to verify the status of such licenses. Some of the required processes may not be conducted for those applicants and employees who have a CDL regulated under provisions of the Federal Transit Administration (FTA).

## **SECTION 216 LICENSED EQUIPMENT OPERATORS**

In order to provide a safe working environment, equipment operators must be properly trained and licensed. All equipment operators must be at least eighteen (18) years of age and have a valid driver's license. On a regular basis, each operator must successfully complete the City's instructional course and a drug screening for certification to operate equipment.

Any unsafe actions by a licensed operator may lead to corrective action, up to and including termination. Any employee choosing to operate equipment without proper training, license, and the consent of his/her supervisor may be subject to corrective action, up to and including discharge.

## **SECTION 217 USE OF CITY VEHICLES AND EQUIPMENT**

At no time will any employee or volunteer transport persons not employed by the City, with the exception of Transit, Police, and Fire in the capacity of their jobs. Employees are to transport persons in seated position with a securely fasten seat belt. No person will be transported in the bed, box, or cargo area of a truck. It is the responsibility of the employee to report all missing or defective safety devices or restraints so that equipment can be removed from service and repaired as needed.

The equipment, tools, and supplies of the City of Lewiston are acquired and maintained to support the delivery of public services to the citizens of our community. City employees are entrusted with these items with the expectation that they will be used wisely and properly to serve their intended purposes over a normal life span. City employees shall not allow members of the public to borrow City tools or equipment on or off City property at any time, nor shall City employees borrow or utilize City-owned tools, supplies, or equipment for personal purposes.

- A. Operators of City of Lewiston-owned or leased motor vehicles shall always drive safely, legally and courteously, remembering that they are directly responsible for maintaining both City of Lewiston-owned property and public trust.
- B. Employees are expected to operate vehicles safely. It is the policy of City of Lewiston to provide a safe working environment that protects our employees and our citizens from injury and property loss. The City of Lewiston considers the use of vehicles part of the working environment. The City of Lewiston is committed to safe responsible employee driving behavior that reduces the risk of personal injury and property loss.
- C. This policy applies to all employees who operate vehicles on City business. These drivers will be reviewed by managers and supervisors to ensure full implementation and compliance.

Vehicles owned or leased by City of Lewiston are to be used only for the functions of City of Lewiston.

Some employees may be assigned a vehicle that is driven home.

- Employees must be authorized by their supervisor to operate a City vehicle.
- Vehicles over 26,000 gross vehicle weight, Buses, and Vans over 15 passengers require a commercial driver's license (CDL).

**Employees who drive their personal vehicles on City business are subject to the requirements of this policy including:**

- Maintaining auto liability insurance with minimum state limits.
- Providing proof of liability insurance to their department on an annual basis.
- Maintain vehicle in a safe operating condition when driven on City business.

Each employee assigned to a City of Lewiston vehicle or employees who operate a City of Lewiston fleet vehicle are required to have a valid driver's license. Should an employee's Driver's License expire, be revoked or suspended, the employee shall immediately notify his or her supervisor. At the time of the suspension, the employee's City of Lewiston vehicle-use privileges will be suspended until the employee's Driver's License has been fully restored and validated.

Each employee assigned or permitted to operate a City of Lewiston vehicle shall be responsible for the following:

- Proper and safe operation of the vehicle;
- Service and maintain the vehicle in accordance with the manufacturer's recommendations;
- Maintain vehicle registration, license plates and inspections; and
- Participate in vehicle safety and defensive driving training as required by City of Lewiston.

**Impaired Driving:** The driver must not operate a vehicle when his/her ability to do so is impaired or influenced by: alcohol, illegal drugs or other illegal substances, prescribed or over-the-counter medication, or illness, fatigue or injury. The employee driver is obligated to report to his/her supervisor any reason that may affect his/her ability to drive safely.

**Proof of Insurance:** Employee drivers must make sure that the current insurance card is kept in the vehicle at all times.

**Vehicle Maintenance:** If the City of Lewiston vehicle is in need of repairs, the vehicle should be taken to the City's Service Center for repair. Prior to scheduling major repairs or major maintenance needs, the driver must advise the City's Service Center for approval and any further instructions.

## DRIVER EVALUATION

Employees will be evaluated and selected based upon their driving ability. To evaluate employees as drivers, management may:

- Review past driving performance and work experience through reference checks with previous employers.
- Review the employee's Driver's License Record (DLR).
- Ensure the employee has a valid driver's license.
- Ensure the employee is qualified to operate the type of vehicle he/she will drive.

## SEATBELT USE

Except as authorized herein, all drivers and passengers are required to utilize seatbelts as mandated by law. Exception: Sworn law enforcement officers may dispense with wearing safety restraints in specific tactical situations or when it reasonably appears that, due to unusual circumstances, wearing a seatbelt would hinder rather than increase safety (Idaho Code 49-673(2)(b)).



## MOBILE COMMUNICATION DEVICE, CELL PHONE AND COMPUTER USE

City employees shall not use cell phones, hands free or otherwise, for any purpose while driving a City vehicle or while driving a personal vehicle on City business. This applies to both City issued and personal cell phones. The term cell phones shall include tablets, laptops, or any other mobile devices used for communication of any sort.

Only in extreme emergencies involving law enforcement and emergency medical services personnel can such use be justified. Even then, it is incumbent upon the Police and Fire Departments to establish department policies for such use and to limit such use to specifically defined emergency situations.

## ACCIDENT REPORTING

All traffic accidents occurring during working hours and/or involving a City vehicle or piece of equipment, regardless of severity, must be reported to the employee's immediate supervisor, the City's Risk Manager, and appropriate law enforcement agency. Drivers shall cooperate fully with the City's Risk Manager and Insurance Carrier in the handling of the claim.

In the event of an accident, the driver shall, when possible, first check on the safety and welfare of all persons involved and seek immediate medical attention should it be required for themselves or others. If possible, move the vehicle to a safe location out of the way of traffic. Under no circumstance should an employee transport an injured person needing emergency assistance from an accident scene or from the work location. Always contact 911 for transport.

Drivers shall always have a police officer investigate any accident that involves a City of Lewiston vehicle. An employee operating a City-owned vehicle involved in an accident shall not make any statement of liability to anyone other than City representatives. Employees shall cooperate fully with all law enforcement officials investigating the accident. Vehicle accident report forms will be carried in each City vehicle. The employee will complete the appropriate forms (accident and/or injury) the same day and forward such forms to the Department Director, and then to the Risk Manager within three (3) days of the accident or injury. In the event of employee injury, Worker's Compensation procedures apply.

If a City employee is issued a traffic citation as the result of an accident occurring during working hours, the payment of the citation shall be the responsibility of that employee unless the cause of the accident is attributed to the City's vehicle or equipment failure. These costs are not reimbursable by City of Lewiston and must be paid promptly by the driver.

Employees involved in an accident on City time involving any person or vehicle of the general public while using City vehicles or equipment or on City time and in their own personal vehicle on City business will be required to submit to testing for the presence of drugs or alcohol.

## SECTION 218 MOTOR VEHICLE RECORD CHECK

The City of Lewiston seeks to safeguard its employees and others when driving a motor vehicle is required while conducting City business. Following a conditional offer of employment, a motor vehicle record check will be conducted on all final job candidates for whom driving a motor vehicle is an essential job function. Thereafter, checks will be run annually for these employees.

Motor vehicle record checks will also be conducted on employees who will be covered by City insurance to drive motor pool vehicles during City business travel. The Human Resource Department will review motor vehicle records and decide as to drivers' status for applicants and employees in accordance with this policy.

An applicant for employment will not be hired due to an unsatisfactory driving record; some examples of unacceptable infractions include but are not limited to:

- Conviction for an alcohol and/or drug related driving offense
- Refusal to submit to a Blood Alcohol Content (BAC) test
- Conviction for reckless driving
- Suspended or revoked license
- Any combination of three or more moving violations, “At Fault Accidents” or “Preventable Accidents” within the most recent three years.
- Suspension, revocation or administrative restriction within the last three years
- Leaving the scene of an accident as defined by state laws
- At fault in a fatal accident
- Felony committed involving a vehicle
- Three or more “City vehicle” physical damage claims in any twelve-month period
- Any violations involving drugs, alcohol, controlled substances, etc. within the past 24 months.
- Reckless driving within the past 24 months.

## PROCEDURES

The City will check the motor vehicle records annually each January for all current employees with driving responsibilities or those who use motor pool cars for travel purposes. Any covered employee without a valid driver's license will not be allowed to operate a City vehicle or drive on City business. If driving is an essential job function and the employee cannot be reasonably accommodated, employment may be terminated. If an existing employee has a valid driver's license but the employee's driving record falls at marginal or unacceptable status criteria, the employee will be placed on a probationary status and will be subject to the requirements of that status until the end of the probation. If a subsequent periodic motor vehicle record check reveals further violations, the City will review the specific circumstances surrounding the individual and determine appropriate action.

The City will check the motor vehicle records of any job applicant when driving is an essential job function or when a motor pool car may be needed for City travel purposes. The applicant's job offer is contingent on eligibility under the City policy outlined above. The motor vehicle record check will include a review of all states listed on the individual's employment application and resume. If the applicant does not have a valid driver's license or has a driving record that falls at or below the criteria listed under the unacceptable status (defined above), the applicant will not be hired for positions where driving is an essential job function. If the applicant's or employee's driving record indicates more than one moving violation in the past 12 months but no more than two moving violations in the past 24 months, any additional violations may result in an applicant not being hired, termination of employment, or other disciplinary action. Applicants who have marginal driving records will be counseled and have their Motor Vehicle Records monitored more frequently. Motor Vehicle Records (MVR's) will be maintained in the Human Resource Department. Copies of employees MVR's will be placed in their personnel file.

## SECTION 219 TOBACCO USE PROHIBITED

For the purpose of this policy, the “use of tobacco products” is defined as smoking, chewing, sniffing, or any other use of cigarettes, cigars, chewing tobacco, snuff, pipe tobacco, e-cigarettes, or other products made or derived from tobacco. The use of tobacco products by City employees during working hours is only permitted during employees' designated break times or during lunch hours at a minimum distance of twenty (20) feet from any facility, equipment, vehicle, or building owned, rented, leased, or under the control of the City of Lewiston. Violations of this policy will be cause for disciplinary action.

## SECTION 220 FIREARMS IN THE WORKPLACE

Employees are prohibited from bringing or possessing firearms, weapons, explosives, or similar items into the workplace on City property without authorization. Only City law enforcement personnel are authorized to bring or possess a firearm in their workplace and in the performance of their duties. However, other City employees may bring firearms to their workplaces so long as the firearms remain in their personal vehicles and are properly placed in their vehicles in accordance with Idaho law while parked on City property.

## **SECTION 221 SOCIAL MEDIA**

The City respects the rights of its employees to use social media to communicate, share information, and work together. In order to protect the City's interests and ensure employees focus on their job duties, employees must adhere to the rules set forth in The City's Social Media Administrative Policy.

## **SECTION 222 ATTIRE AND GROOMING**

City of Lewiston strives to maintain a workplace environment that functions well and is free from unnecessary distractions and annoyances. As part of that effort, the city requires employees to maintain a neat and clean appearance that is appropriate for the workplace setting and for the work being performed. To that end, City of Lewiston Department Directors may determine and enforce guidelines for workplace-appropriate attire and grooming for their areas; guidelines may limit natural or artificial scents that could be distracting or annoying to others.

All City of Lewiston employees are expected to present a professional, businesslike image to visitors, customers, and the public. Acceptable personal appearance, including proper maintenance of work areas, is an ongoing requirement of employment with City of Lewiston. Supervisors should communicate any department-specific workplace attire and grooming guidelines to staff members during new-hire orientation and evaluation periods. Any questions about the department's guidelines for attire should be discussed with the immediate supervisor.

Any staff member who does not meet the attire or grooming standards will be subject to corrective action and may be asked to leave the premises to change clothing. Hourly paid staff members will not be compensated for any work time missed because of failure to comply with designated workplace attire and grooming standards.

Nothing in this dress code is intended or should be construed to violate, restrict or discriminate against any employee's actual or perceived race, religion, religious creed, sex, sexual orientation, gender, gender identity or status, gender expression, national origin, ancestry, age, nursing mothers, or any other basis protected by local, state, or federal laws. If any employee believes that their protected rights based upon a protected class are being restricted or violated in some manner by the dress code, please contact your manager or human resources so that these concerns can be addressed. Any employee who needs a medical or religious accommodation to the City's dress and grooming standards should contact the Human Resources Department.

### **SPECIFIC REQUIREMENTS**

Certain staff members may be required to meet special dress, grooming and hygiene standards, such as wearing uniforms or protective clothing, depending on the nature of their job. Uniforms and protective clothing may be required for certain positions and will be provided to employees by the City of Lewiston. At the discretion of the Department Director, in special circumstances, such as during unusually hot or cold weather or during special occasions, staff members may be permitted to dress in a more casual fashion than is normally required. On these occasions, employees are still expected to present a neat appearance and are not

permitted to wear ripped, frayed or disheveled clothing or athletic wear. Likewise, tight, revealing or otherwise workplace-inappropriate dress is not permitted.

#### **POLITICAL ATTIRE**

The City of Lewiston must maintain a politically neutral position. Employees, while at work or at a City sponsored event, should not wear political attire. This includes attire that displays an employee's position on candidacy, initiative, or other political stance.

#### **OFFENSIVE ATTIRE**

An employee may not wear, while at work or at a City sponsored event, attire that contains words, symbols, or images that would be regarded as lewd, obscene, vulgar or plainly offensive.

#### **ADDRESSING WORKPLACE ATTIRE AND HYGIENE PROBLEMS**

Violations of the policy can range from inappropriate clothing items to offensive perfumes and body odor. If a staff member comes to work in inappropriate dress, he or she will be required to go home, change into conforming attire or properly groom, and return to work. If a staff member's poor hygiene, smell, or use of too much perfume/cologne is an issue, the supervisor should discuss the problem with the staff member in private and should point out the specific areas to be corrected. If the problem persists, supervisors should follow the normal corrective action process.

## **CHAPTER 3 – POSITIONS**

### **SECTION 301 EMPLOYEE CLASSIFICATIONS**

The Fair Labor Standards Act requires all employees to be classified according to the overtime provisions of the law. For the purpose of paying any compensation, all employees are either "exempt" or "nonexempt" from overtime compensation. Exempt employees, by definition, are exempt from earning overtime compensation and generally receive the same weekly salary regardless of hours worked. Nonexempt employees are employees who are eligible to be paid for overtime work in accordance with the provisions of applicable wage and hour laws. Overtime pay requirements are set forth in this Policy. Employees will be informed of these classifications upon hire and informed of any subsequent changes to the classifications. Additionally, employee classifications must be organized by classes in order to administer employee policies, benefits or otherwise address employment issues. All determinations of wage classification status are made through the job evaluation process. The Human Resources Department is responsible for classifying all employees into one of four categories for eligibility to receive certain benefits offered by the City. These categories are defined as:

1. **FULL-TIME REGULAR EMPLOYEE:** An employee who is regularly scheduled to work thirty (30) or more hours per week for fifty-two (52) weeks per year.
2. **PART-TIME REGULAR EMPLOYEE:** An employee who is expected to establish a continuity of service, but is scheduled to work for less than thirty (30) hours per week for fifty-two (52) weeks per year.
3. **TEMPORARY EMPLOYEE:** An employee whose work schedule is irregular and/or for a temporary duration. For example, an on-call transit driver who only works when called into work has an irregular work schedule and is, thus, classified as a temporary employee. Other examples of temporary employees are seasonal employees and paid interns who are hired to work for a temporary

duration of time. Seasonal employees generally work less than five (5) months and for only one season in a calendar year. Benefits eligibility for temporary employees will be determined in accordance with the Affordable Care Act, PERSI, and the City of Lewiston Employee Benefit Trust.

## **SECTION 302 DESIGNATION OF POSITIONS**

Each City employee position shall have an appropriate title and job description. The Human Resources Director shall research and propose changes to job titles to the Mayor. The Mayor shall approve all job titles. Each employee position shall be assigned a grade, and each employee shall be assigned to a specific step within his/her applicable grade. Salary scales are updated on the City website as well as the Human Resource and Finance departments.

## **SECTION 303 JOB DESCRIPTIONS**

All job descriptions shall accurately describe the duties and responsibilities of each employee position. Supervisors should review job descriptions on an annual basis to ensure that the job descriptions reflect the current duties and responsibilities of each position. Supervisors should update job descriptions as needed and submit such revised job descriptions to the appropriate Department Director and Human Resources Director for approval.

## **SECTION 304 COMPENSATION REVIEW**

From time-to-time, changes occur in the responsibilities of a position that require review in order to determine whether such changes merit an adjustment to an employee's job description, title, and/or compensation. Such adjustments may be made through a job audit or the discretion of the Mayor. Because job audits have budgetary impacts, a request for a job audit should be initiated prior to the commencement of the annual budget process. The following steps should be followed in regard to a job audit:

### **STEP 1: Request for Job Audit**

A request for a job audit may be made by an employee, a Department Director, or the Mayor. A job audit request should only be made when an employee's responsibilities have changed as a result of reorganization, enhanced job duties, or change in work complexity. Although important, increase in work volume or outstanding performance is not a basis for a job audit.

When an employee requests a job audit, the employee must first submit such request to his/her Department Director for approval. If the Department Director approves of the job audit request, then the Department Director shall forward the request to the Human Resources Director.

When a Department Director requests a job audit of another employee, the Department Director shall notify the employee of the request and submit the request to the Human Resources Director. A Department Director may also request a job audit for his/her position.

In all cases, the following information shall accompany the job audit request:

- A copy of the most recently approved job description for the position subject to the job audit,
- A red-lined job description indicating the specific changes that have been made to the position since the most recently approved job description,
- Any additional background material that the employee or Department Director thinks is relevant to the requested job audit, and

- A completed “Position Description Questionnaire,” form which can be obtained through the Human Resources Department.

#### STEP 2: Review by External Agency

Upon receipt of a job audit request and the additional information listed above, the Human Resources Director may submit the request and additional information to an external agency.

#### STEP 3: Final Decision by Mayor

The Mayor shall review such recommendation and approve or deny the request with or without modification. The Mayor shall make a decision on a job audit request within fifteen (15) calendar days of receiving a recommendation. The Mayor’s decision is final.

#### STEP 4: Placement in Salary Matrix

If a job audit request results in a change in compensation, the Mayor shall assign the position to the proper grade and step in the salary matrix. The employee shall be assigned a new salary date coinciding with the new placement in the salary matrix.

### **SECTION 305 NEW POSITIONS**

The Mayor and Department Directors may request new positions. When requesting a new position, the Mayor or Department Director shall provide the following information to the Human Resources Director:

- A description of the position requirements and responsibilities, including required education, experience, and descriptions of the working conditions and physical requirements;
- Suggested salary and position title;
- A statement regarding the budget impact of the new position and proposed method of paying for such position;
- An organizational chart indicating the relationship of the new position to existing positions; and
- Any other relevant information that would justify the need for the new position.
- Upon receipt of such information, the Human Resources Director shall forward the request to the Mayor for consideration. If the Mayor approves of the request, and if the new position is included in the City’s budget, then the Mayor shall assign the new position to the proper grade and step in the salary matrix. A job audit may also be requested for new positions in order to determine proper placement in the salary matrix.

### **SECTION 306 EMERGENCY EMPLOYEES**

In emergency conditions, such as a natural or manmade disaster when circumstances require immediate additional personnel, a Department Director, or his/her designee, may hire emergency employees, upon the written approval of the Mayor, or his/her designee. An emergency employee shall be placed in an appropriate grade and be provided with appropriate benefits, as approved by the Mayor or his/her designee.

### **SECTION 307 TELECOMMUTING AGREEMENT**

Telecommuting allows employees to work at home, on the road or in a satellite location for all or part of their workweek. City of Lewiston considers telecommuting to be a viable, flexible work option when both the employee and the job are suited to such an arrangement. Telecommuting may be appropriate for some employees and jobs but not for others. Telecommuting is not an entitlement, it is not a citywide benefit, and it in no way changes the terms and conditions of employment with City of Lewiston.

Temporary telecommuting arrangements may be approved for circumstances such as inclement weather, special projects or business travel. These arrangements are approved on an as-needed basis only, with no expectation of ongoing continuance. Other informal, short-term arrangements may be made for employees on family or medical leave to the extent practical for the employee and the organization and with the consent of the employee's health care provider, if appropriate. All informal telecommuting arrangements are made on a case-by-case basis, focusing first on the business needs of the organization.

## PROCEDURES

Telecommuting can be informal, such as working from home for a short-term project, or a formal, set schedule of working away from the office as described below. Either an employee or a supervisor can suggest telecommuting as a possible work arrangement.

Any telecommuting arrangement made will be on a trial basis and may be discontinued for any reason and at any time at the request of either the telecommuter or the City. Every effort will be made to provide notice of such change to accommodate commuting, child care and other issues that may arise from the termination of a telecommuting arrangement. There may be instances, however, when no notice is possible.

## ELIGIBILITY

Individuals requesting formal telecommuting arrangements must be employed with the City for a minimum of 12 months of continuous, regular employment and must have a satisfactory performance record. Before entering into any telecommuting agreement, the employee and manager, will evaluate the suitability of such an arrangement, reviewing the following areas:

- Employee suitability. The employee and manager will assess the needs and work habits of the employee, compared to traits customarily recognized as appropriate for successful telecommuters.
- Job responsibilities. The employee and manager will discuss the job responsibilities and determine if the job is appropriate for a telecommuting arrangement.
- Equipment needs, workspace design considerations and scheduling issues. The employee and manager will review the physical workspace needs and the appropriate location for the telework.
- Tax and other legal implications. The employee must determine any tax or legal implications under IRS, state and local government laws, and/or restrictions of working out of a home-based office. Responsibility for fulfilling all obligations in this area rests solely with the employee.

If the employee and manager agree, a draft telecommuting agreement will be prepared and signed by all parties with final approval from the employee's Department Director. Human Resources will serve as a resource with the employee and manager on the telecommuting agreement. Evaluation of telecommuter performance will include regular interaction by phone and e-mail between the employee and the manager, weekly face-to-face meetings to discuss work progress and problems, and will be consistent with that received by employees working at the office in both content and frequency but will focus on work output and completion of objectives rather than on time-based performance.

An appropriate level of communication between the telecommuter and supervisor will be agreed to as part of the discussion process. The manager and telecommuter will communicate at a level consistent with employees working at the office or in a manner and frequency that is appropriate for the job and the individuals involved.

## EQUIPMENT

On a case-by-case basis, the City will determine, with information supplied by the employee and the supervisor, the appropriate equipment needs (including hardware, software, modems, phone and data lines and other office equipment) for each telecommuting arrangement. The human resource and information system departments will serve as resources in this matter. Equipment supplied by the organization will be maintained by the organization. Equipment supplied by the employee, if deemed appropriate by the

organization, will be maintained by the employee. The City of Lewiston accepts no responsibility for damage or repairs to employee-owned equipment. The City reserves the right to make determinations as to appropriate equipment, subject to change at any time. Equipment supplied by the organization is to be used for business purposes only. The telecommuter must sign an inventory of all City property received and agree to take appropriate action to protect the items from damage or theft. Upon termination of employment, all City property will be returned to the City, unless other arrangements have been made.

The City will supply the employee with appropriate office supplies (pens, paper, etc.) as deemed necessary. The employee will establish an appropriate work environment within his or her home for work purposes. The City will not be responsible for costs associated with the setup of the employee's home office, such as remodeling, furniture or lighting, nor for repairs or modifications to the home office space.

## SECURITY

Consistent with the organization's expectations of information security for employees working at the office, telecommuting employees will be expected to ensure the protection of proprietary City and customer information accessible from their home office. Steps include the use of locked file cabinets and desks, regular password maintenance, and any other measures appropriate for the job and the environment.

## SAFETY

Employees are expected to maintain their home workspace in a safe manner, free from safety hazards. Injuries sustained by the employee in a home office location and in conjunction with his or her regular work duties are normally covered by the City's workers' compensation policy. Telecommuting employees are responsible for notifying the employer of such injuries as soon as practicable. The employee is liable for any injuries sustained by visitors to his or her home worksite.

Telecommuting is not designed to be a replacement for appropriate child care. Although an individual employee's schedule may be modified to accommodate child care needs, the focus of the arrangement must remain on job performance and meeting business demands. Prospective telecommuters are encouraged to discuss expectations of telecommuting with family members prior to entering into an agreement.

## TIME WORKED

Telecommuting employees who are not exempt from the overtime requirements of the Fair Labor Standards Act will be required to accurately record all hours worked using the City's time-keeping system. Hours worked in excess of those scheduled per day and per workweek require the advance approval of the telecommuter's supervisor. Failure to comply with this requirement may result in the immediate termination of the telecommuting agreement.

## SECTION 308 INTERNS, EXTERNSHIPS, AND VOLUNTEERS

The Mayor must approve all interns. Interns may receive pay for their services and if so are considered temporary employees. Paid interns may not work full time more than five (5) months less two (2) days. An internship might include:

- Substantial, project-based tasks allowing the intern to witness the primary business functions of the organization
- Working with team members to produce a project
- Networking and making connections with team members and/or clients
- Taking part in staff meetings

If an intern is working unpaid the following requirements are needed in order to be authorized:

1. Both parties understand that the intern is not entitled to compensation.
2. The internship provides training that would be given in an educational environment.<sup>403</sup>



3. The intern's completion of the program entitles him or her to academic credit.
4. The internship corresponds with the academic calendar.
5. The internship's duration is limited to the period when the internship educates the intern.
6. The intern's work complements rather than displaces the work of paid employees while providing significant educational benefits.
7. The intern and the employer understand that the internship is conducted without entitlement to a paid job at the internship's end.

Externships are typically an unpaid shadowing of a respected industry professional during which the extern will observe daily duties. Externships are typically shorter than an internship, ranging from a day to about eight weeks. They are typically students and are conducted during winter break or spring break.

An externship might include:

- Observing and networking with professionals
- Taking a tour of City facilities
- Conducting informational interviews
- Sitting in on staff meetings
- Reviewing City literature

Volunteers can be individuals, unpaid interns, or organized community groups. Volunteers assist City employees with programs, special events, and service projects, and serve on various boards and committees. Volunteers may serve for a single event, or on a continual basis throughout the year. Volunteers are individuals who perform services for the City of Lewiston without compensation. Volunteers serve “at-will” and are not considered employees of the City. Accordingly, the City has the discretion to dismiss a volunteer at any time with or without cause and without prior notice. Each volunteer must complete a volunteer application, available on the City website, submit to a background check, and comply with all other requirements of the department for which the volunteer will be volunteering. The department Director must approve all volunteers prior to volunteering. The department shall maintain records of volunteers’ hours.

## **SECTION 309 RESIDENCY REQUIREMENT**

Employees are encouraged to live within the City limits. Employees who live outside City limits must be responsive to specific departmental policies and the needs of the City for emergency callback.

# **CHAPTER 4 – EMPLOYMENT**

## **SECTION 401 PROOF OF RIGHT TO WORK**

Under federal law, all new hires must produce original documentation establishing their identity and right to work in the United States, and complete INS Form I-9, swearing that they have a right to work in the United States. New hires may establish their identity and right to work in the United States by (1) providing documentation that establishes both their identity and employment authorization (“List A” documents) or (2) providing documentation that separately establishes their identity (“List B” documents) and their employment authorization (“List C” documents). All documents must be unexpired. Documentation must be produced within three business days of hire, or on the first day of any employment that is less than three business days. Required documentation must be presented to the Human Resources Department, which will be responsible for processing the documents.

Any one of the following documents may be used to establish both identity and employment authorization (“List A” documents):

1. United States passport;
2. Permanent Resident Card (Form I-551); Alien Registration Receipt Card (I-551);
3. Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa;
4. An Employment Authorization Document that contains a photograph (Form I-766);
5. In the case of a nonimmigrant alien authorized to work for a specific employer incident to status, a foreign passport with (Form I-94 or Form I-94A) bearing the same name as the passport and containing an endorsement of the alien's nonimmigrant status, as long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified on the form; or
6. Passport from the Federated States of Micronesia or Republic of the Marshall Islands with Form I-94A indicating non-immigrant admission under the Compact of Free Association between the U.S. FSM or RMI.

If an applicant cannot produce one of the documents listed above, two documents are required: one to prove identity and another to prove employment authorization.

The following documents are acceptable as proof of identity, but not employment authorization ("List B" documents):

1. A driver's license or I.D. card issued by a state or outlying possession of the United States, provided it contains a photograph or identifying information such as name, date of birth, gender, height, eye color, and address;
2. I.D. card issued by federal, state, or local government agencies or entities provided it contains a photograph or identifying information such as name, date of birth, gender, height, eye color, and address;
3. School I.D. card with photograph;
4. Voter's registration card;
5. U.S. military card or draft record;
6. Military dependent's ID card;
7. Merchant Mariner Card issued by the United States Coast Guard;
8. Native American tribal document;
9. Canadian driver's license; or
10. Individuals under the age of 18 who are unable to produce any of the identification documents listed in (1)-(9) may present a: a) school record or report card, b) daycare or nursery school record, or c) clinic doctor or hospital record only.

The following documents are acceptable to establish employment authorization, but not identity ("List C" documents):

1. A social security card, other than one that specifies on the face that the issuance of the card does not authorize employment in the U.S.;
2. A Certification of Birth Abroad issued by the Department of State (Form FS-545);
3. A Certification of Report of Birth issued by the Department of State (Form DS-1350);
4. An original or certified copy of a birth certificate issued by a state, county, municipal authority, or outlying territory of the United States, and bearing an official seal;
5. A Native American tribal document;
6. A United States Citizen Identification Card (INS Form I-197);
7. An Identification card for use of resident citizen in the United States (INS Form I-179); or
8. An employment authorization document issued by the Department of Homeland Security.

Authorization documents will be copied and placed with the employee's Form I-9 in a special file separate from the employee's Personnel File. These documents will be retained at least three years after the date of hire or one year after an employee's employment terminates, whichever is later.

## **SECTION 402 APPLICATION**

All candidates for employment shall submit an application provided by the Human Resources Department of the City. The content of such application shall be as prescribed by Human Resources and approved by the Mayor. The City relies upon the accuracy of information provided by an applicant in the employment application, as well as the accuracy of other data presented throughout the hiring process and employment. Any misrepresentation, falsification, or material omission by an applicant in any of this information or data may result in revocation of any offer or immediate termination of employment, regardless of when it is discovered.

## **SECTION 403 SELECTION PROCESS**

The selection process may consist of an evaluation of the candidate through personal interviews, performance, work samples, physical agility tests, written tests, references, medical examinations, or any combination thereof. All selection of employees and all employment decisions including classification, transfers, discipline, and discharge will be made without regard to race, color, national origin, ancestry, religion, creed, sex, age, marital or familial status, physical or mental disability, sexual orientation or gender identity/expression, or veteran's status. No job or class of jobs will be closed to any individual except where a mental or physical attribute, sex or age is a bona fide occupational qualification.

Selection techniques shall be impartial and shall relate to those areas which, in the opinion of the Mayor or Human Resources Director, will adequately and fairly indicate the ability and quality of candidates under consideration to execute the duties and responsibilities of the position to which they seek to be appointed.

### **INTERVIEW CONSIDERATIONS TO BE AWARE OF**

Special considerations may arise before or during the interview process. Some of those considerations include:

- A. **Applicants with Disabilities:** The City provides reasonable accommodations for applicants with disabilities. Accommodations might include a sign language interpreter, written rather than oral responses, large print or Braille material, or an accessible interview location. Interviews should be held in an office or conference room that is private and easily accessible to applicants with disabilities.
- B. **Prohibited Questions:** Human Resources pre-approves questions to be asked during interview sessions. Interviewers shall not ask questions about an applicant's age, birthplace, height, weight, marital status, child care arrangements, religion, sexual orientation, or financial status. Interviewers shall not ask questions about an applicant's health, medical conditions, job injuries, or workers' compensation claims.
- C. **Pre-Interview Tests:** A department may choose to administer a job-related test prior to the interview process to assist in screening applicants. The same test must be administered to all applicants who continue in the selection process. The test must be relevant to the knowledge, skills, and abilities required for the position. Tests must be reviewed and approved in advance by Human Resources.
- D. **Post-Interview Tests:** A department may choose to administer a job-related test to each applicant after the interview process. The same test must be given to all applicants who continue in the selection process. The test must be relevant to the knowledge, skills, and abilities required for the position. Tests must be reviewed and approved in advance by Human Resources.
- E. **Veteran's Preference Idaho law (Idaho Code §§ 65-503A and 65-504, as amended from time-to-time)** requires that qualified applicants who are war and disabled veterans be given preferential treatment when being considered for initial employment. An individual who qualifies for a veteran's

employment preference is entitled to a preference over other applicants for the same position who are not more qualified.

Upon completion of the selection process, the Mayor may make appointments from candidates based on the results of the testing and other relevant considerations. Such appointments will usually be upon the recommendation of the Department Director of the department in which the new appointee will be assigned and the Human Resources Director. All such appointments will only become effective after all necessary documents have been signed by the appropriate City officials and the new employee. Some positions may also require criminal background checks.

It is the standard practice of the City of Lewiston to recruit for every vacant position. However, after completion of a recruitment, the Human Resources Department may prepare and keep available an eligibility list consisting of the names of candidates who have been determined to be qualified for the position referred to as a "Open Employment List". A department may refer back to an Open Employment List to fill vacant positions. The City may provide qualified City employees preference over outside applicants without following the standard recruitment practice, see section 413~~2~~ Promotion.

The types of eligibility lists shall be as follows:

- LAYOFF-REINSTATEMENT LIST: Consists of employees who have been laid off. Such employees ~~shall~~may be considered for reinstatement on the basis of length of service and prior job performance.
- PROMOTIONAL LIST: Consists of employees who have qualified through the selection process and from which promotions or advancements to classes with higher salary ranges will be made.
- OPEN EMPLOYMENT LIST: Consists of candidates who have qualified through the application/interview process and from which appointments may be made.

The City will make reasonable accommodations for qualified individuals with known disabilities, unless doing so would result in an undue hardship. An employee should advise the Human Resources Director if he/she 407requires an accommodation to enable the employee to perform the essential tasks of the job.

## **SECTION 404 INELIGIBILITY OR DISQUALIFICATION**

The Mayor may withdraw a candidate from consideration whose appointment is deemed to be contrary to the best interests of the City. Reasons for disqualification may include, but shall not be limited to, the following:

1. Failure to meet any of the requirements established for the examination or position for which he/she applies including failure to meet deadlines of the application process.
2. Failure to pass pre-employment drug testing.
3. Conviction of a felony or conviction of a misdemeanor involving behavior that is dishonest or immoral, deception, fraud, violence, or threats of violence.
4. Dismissal from a former position for any reason that would be cause for dismissal by the City.
5. Resignation from any position to avoid dismissal.
6. Deception or fraud in content of the application.
7. Disqualification or unsuitability for employment as specified in any City or applicable department rule or regulation.
8. Any other reason as determined by the Mayor.

## **SECTION 405 BACKGROUND CHECKS**

The City of Lewiston is committed to hiring the most qualified applicants. Consequently, all offers of full time and part time employment are conditioned on an applicant successfully passing the City's reference and

other background check processes. Additionally, certain volunteer positions are also subject to a background check process.

All offers of employment are conditioned on an applicant successfully passing the City's background investigation. The City's background investigation may include one or more of the following:

- **Criminal History Check:** At its discretion the City may conduct a criminal history check on all applicants or volunteers regardless of age. This check provides information regarding such things as warrants, civil and criminal filings, and driving records.
- **Fingerprint Check:** The City conducts fingerprint checks on all applicants and some volunteers 18 years of age or older. This check provides information regarding state and national criminal history records.
- **Polygraph Examination:** The City conducts polygraph examinations on positions assigned to the Police Department.
- **Miscellaneous Checks:** For certain jobs additional background investigations are conducted. For jobs involving significant financial accountability, the City may request a consumer report for employment purposes. This may include, but is not limited to information regarding the applicant's credit worthiness, credit standing, and/or credit capacity. Additionally, based on the required education qualifications of a position, the City may request a verification of education.

Applicants shall not begin work until after successfully passing all of the background investigations applicable to the position they will hold. Applicants that do not successfully pass these investigations are ineligible for hire or continued employment and the City's conditional offer of employment will be retracted.

The City retains sole discretion to determine whether to eliminate from consideration for further employment or volunteer service any individual who provides false, misleading, or willfully deceptive information. Employees hired based on false information discovered after employment begins are subject to discipline, up to and including termination. Volunteers may be dismissed from service at any time.

## DRUG TESTS

Applicants for safety sensitive positions within the City are required to take a post offer drug test. Current employees who are transferring, promoting, demoting, or being reassigned from a non-safety sensitive position to a safety sensitive position are required to take a post offer drug test. A verified negative test result shall be received before an applicant may begin safety sensitive duties. Applicants for positions that require a commercial driver's license are required to take a post offer Department of Transportation (DOT) drug test. Current employees who are transferring, promoting, demoting, or being reassigned to a position that involves the duties or activities that require a commercial driver's license (CDL) shall take a post offer Department of Transportation (DOT) drug test. A verified negative test result shall be received before the applicant may begin work. Supervisor shall refer to the City's Commercial Driver's License Regulation for more information.

## PROHIBITED CRIMINAL OFFENSES

An applicant, volunteer, or employee shall be disqualified for employment and volunteer service if the individual's record reveals any felony conviction within the individual's lifetime; any misdemeanor conviction related to sexual misconduct, violence, or crimes against children or a vulnerable adult within the individual's lifetime; two or more drug or alcohol related misdemeanors in the last five years, including convictions from foreign jurisdictions. If an applicant's, volunteer's, or employee's record reveals any other misdemeanors that individual may be disqualified for employment and volunteer service. For these crimes, Human Resources in conjunction with the applicable Department Director will consider the following factors in determining whether to disqualify the individual:

- A. The severity or nature of the crime and/or conviction;
- B. The period of time since the incident(s) under review occurred;

- C. The number and pattern of incidents;
- D. Activities since the incident, such as continuous employment, education, participation in treatment, payment of restitution, or any other factors that may be evidence of rehabilitation;
- E. The individual's criminal and employment record since the conviction, including withheld judgment, dismissal, suspension, deferral, commutation, or a plea agreement where probation or restitution was or was not required, a sealed record, or an order according to Section 19-2604, Idaho Code, or other equivalent state law;
- F. The falsification or omission of information on the application form and other supplemental forms submitted.

This term "conviction" includes: a guilty plea; "no contest" or similar plea; plea agreement where probation or restitution was or was not required; a sealed record according to Section 19-2604, Idaho Code, or other equivalent state law or similar result; suspension; commutation; pre-trial diversion; withheld or deferred judgment; bail forfeiture; or guilty finding.

The disqualifying crimes listed in this regulation are not intended to be all inclusive. The City reserves the right to consider additional criminal offenses as disqualifying. The City retains sole discretion to disqualify anyone from employment or volunteer service. If an applicant or volunteer is identified as having a pending criminal action for a crime, the City may consider this as disqualifying.

## SECTION 406 TEMPORARY ASSIGNMENTS

During an emergency or during any period of unusual workloads, the Mayor or the Director of any department may temporarily assign City personnel within any department or from one department to another department within the City. Requests for personnel shall be approved by the appropriate Department Directors. Interdepartmental charges shall not be made for employees so assigned. Employees who have been temporarily assigned hereunder shall receive their normal hourly rate of pay and benefits. Department Directors shall administer and coordinate a program for training City employees to ensure maximum utilization of employees during periods of temporary assignment.

## SECTION 407 EMPLOYMENT OF RELATIVES

For the purposes of this section, "relatives" shall mean those relatives to the second degree of consanguinity (blood relation) or affinity (marital relation), which shall include spouses, children, brothers, sisters, half-brothers, half-sisters, step-brothers, step-sisters, parents, step-parents, aunts, uncles, nephews, nieces, first cousins, grandparents, grandchildren, and spouses of those persons.

1. Relatives of elected City officials shall not be appointed to employment with the City as per Idaho Code 18-1359(3).
2. An employee holding a position prior to the election of a local government official, who is related within the second degree, shall be entitled to retain his or her position as per Idaho Code 18-1359(5a).
- ~~3. Relatives of the Mayor and Department Directors shall not be appointed to employment with the City.~~
- ~~4.3.~~ Relatives of employees shall not be appointed, transferred, promoted, or demoted or work in any position where a relative would be in a supervisory chain of the current employee.
- ~~5.4.~~ Relatives of employees will not be given preferential treatment.
- ~~6.5.~~ If two employees marry and are in the same chain of command, the City may select either employee at its discretion and require the selected employee to transfer or leave the organization. The City reserves the right to determine in all cases if a close enough familial relationship exists to prohibit a supervisory relationship. While the organization has no prohibition against hiring relatives of

employees, close family members such as parents, children, spouses, siblings, or in-laws will not be hired into or transferred to positions where they directly or indirectly supervise or are supervised by another close family member.

~~7.6.~~ The provisions of the foregoing sections apply to temporary employees.

~~8.7.~~ Employees or relatives of employees are prohibited from contracting with the City for the provision of goods and services unless there are no other vendors available for the specific goods or services within a one hundred fifty (150) mile radius or the contract is approved by the Mayor.

## **SECTION 408 EMPLOYMENT OF MINORS**

Employees in Idaho under age 18 are considered minors and may be employed only under the following guidelines. The duties and days and hours of work by minors are restricted by the terms and conditions of the provisions of Idaho and federal law.

Minors under the age of 16 may not work:

- More than 54 hours in any week;
- More than nine hours in a day;
- Before 6:00 a.m.; or
- After 9:00 p.m.

## **SECTION 409 INTRODUCTORY PROBATIONARY PERIOD**

The introductory probationary period shall be regarded as part of the testing process. This period shall be utilized for closely observing the employee's work, to determine whether the employee has the skills and other qualifications needed to succeed, and for rejecting any introductory employee whose performance does not meet acceptable standards of work.

All new regular employees and employees who have been promoted to new positions shall successfully complete the introductory probationary period in order to retain their positions. The introductory probationary period shall be for a minimum of twelve (12) consecutive months of actual service from the date a new employee begins work or the date a promoted employee begins his or her new position. Upon written request of a Department Director, the Mayor may grant an extension of the introductory probationary period up to a maximum of three (3) months beyond the end of the original introductory probationary period. If an employee has served in an "Acting" capacity, that period of time served shall apply to their promotional introductory probationary period.

If the service of the introductory probationary employee has been satisfactory, the Department Supervisor shall submit a performance evaluation to such effect to Human Resources. All actions changing an employee's status from introductory probationary to regular must be approved by the Mayor.

During the introductory probationary period, a new employee may be released from employment at any time without cause by the Mayor. Written notification of such a release shall be served on the introductory probationary employee and a copy filed with Human Resources. An employee who fails to satisfactorily complete the introductory probationary period of a promotion may be returned to his/her previous position, provided a position is available. If the former position has been filled, other vacancies for which the employee is qualified may be considered for placement by the Mayor. If no positions are available for which the employee is qualified, he/she may be discharged from employment, subject to sections 1105 (Demotion and Termination), 1106 (Right of Appeal), and 1107 (Name Clearing Hearing) of this policy.

## **SECTION 410 PERFORMANCE EVALUATIONS**

The City will ~~attempt to~~ conduct periodic performance reviews for employees annually, at minimum. ~~Employees generally receive performance evaluations annually.~~ New employees may receive a 6-month probationary check in evaluation.

The purposes of the review are to evaluate the employee's current level of performance, to examine the progress made since the last review, and to establish goals for the employee's next review. During their performance reviews, employees are encouraged to discuss any issues raised, as well as any opportunities for advancement or career development within The City.

After receiving their performance evaluations, employees will be required to sign the evaluation acknowledging that they have received the evaluation and are aware of its contents. A copy of the performance evaluation will then be placed in the employee's personnel file. In addition to these formal performance evaluations, The City encourages employees and supervisors to discuss job performance on a frequent and ongoing basis.

Satisfactory performance reviews will not necessarily result in wage increases. Likewise, unsatisfactory performance reviews typically will not result in wage decreases. Rather, wage adjustments may be made at any time in the sole discretion of The City and depend on a number of factors, including for example, performance, productivity, seniority and other lawful factors contemplated by The City.

## **SECTION 411 REAPPOINTMENT**

Any regular employee who has resigned from the City's service in good standing may, upon his/her written request, be considered for reappointment to a position in the same or similar position in the City service within one (1) year of such resignation. Such reappointment may be made without benefit of additional examination and may take precedence over eligibility lists; but in no event shall it be mandatory for any Department Director to reappoint a former employee should he/she desire not to do so.

Any employee who is reappointed shall be considered a new employee and shall have no vested interest in or be entitled to any benefits accrued during any previous employment with the City except retirement system benefits. The reappointed employee shall be subject to the requirements of the appropriate retirement system of which the employee was a previous active member.

## **SECTION 412 TRANSFER**

No regular employee shall be transferred to a vacant position for which he/she does not possess the minimum qualifications. Upon approval by the Mayor, the Department Director may transfer an employee at any time from one position to another. The transfer of a regular employee from one department to another may only be made with the consent of the employee and the approval of the Department Director, unless the Mayor orders the transfer for purposes of economy and efficiency.

If within six (6) months of the effective date of a transfer, the transferred employee is found not suitable in the new position, or if that position is eliminated and the employee's performance in the original position had been satisfactory, the employee may be transferred back to his/her original or a similar position, provided that position is still vacant. Transfers shall not be used to effect a promotion, demotion, advancement or reduction, each of which may be accomplished only as provided in this Policy.

## **SECTION 413 PROMOTION**



Promotional selection for vacancies shall be conducted as the needs of the City require. The City encourages the advancement of personnel within City service. Qualified City employees may be given preference over outside applicants to fill vacancies without following the notice and selection procedures normally required for hiring new employees. If the internal preference process is used, it should be completed prior to seeking outside applicants for the position.

## **SECTION 414 DEMOTION**

The Mayor may demote an employee for any of the following reasons:

1. An employee's ability to perform his/her required duties falls below acceptable standards,
2. Disciplinary reasons set forth in Section 1101 of this Policy,
3. When his/her position is eliminated,
4. When an employee requests such demotion, and/or
5. For any other reasonable grounds approved by the Mayor.

No employee shall be demoted to a classification for which he/she does not possess the minimum qualifications. Written notice shall be given to an employee with the appropriate facts at least fourteen (14) days before the effective date of the demotion.

## **SECTION 415 WORK BREAKS**

Non-exempt employees that work eight (8) continuous hours or longer a day are eligible to receive two fifteen minute paid breaks during the scheduled workday. Unless the supervisor schedules otherwise, one break is to be taken during each half-day or shift. Non-exempt employees working more than four (4) hours, but less than eight (8) hours are eligible to receive one fifteen minute paid break during the scheduled work day. Non-exempt employees working four (4) continuous hours a day or less, may receive one paid fifteen-minute break at the supervisor's discretion. Or as otherwise written in an employee's Collective Bargaining Agreement.

The time of a break is at the supervisor's discretion. Accumulating any unused break periods or using break periods as the basis for starting late, leaving early, or extending a meal period is prohibited.

### **BREAK TIME FOR NURSING MOTHERS**

Departments are expected to provide reasonable break time for an employee to express breast milk for her nursing child for one year after the child's birth each time such employee has need to express the milk. The frequency of breaks needed to express milk as well as the duration of each break will likely vary.

Departments shall provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk. A bathroom, even if private, is not a permissible location under the Patient Protection and Affordable Care Act. The location provided must be functional as a space for expressing breast milk. If the space is not dedicated to the nursing mother's use, it must be available when needed in order to meet the statutory requirement. A space temporarily created or converted into a space for expressing milk or made available when needed by the nursing mother is sufficient provided that the space is shielded from view, and free from any intrusion from co-workers and the public. Breaks taken for the purpose of expressing milk are unpaid.

### **MEAL PERIODS**

Supervisors may authorize an unpaid 30 minute or longer meal period for nonexempt employees. Non-exempt employees shall be paid for any meal period during which the employee is not completely relieved from duty or that is less than 30 minutes. The time of a meal period is at the supervisor's discretion.

Employees are not permitted to use meal periods as the basis for starting late, leaving early, or extending a meal period, unless authorized by the Department Director or designee.

## **SECTION 415 REHIRE ELIGIBILITY AND SERVICE RECOGNITION**

Where business needs dictate, it is the policy of The City to rehire former employees who: a) voluntarily left City employment or b) were laid off due to business slowdown(s). To be eligible for rehire, former employees must have possessed a satisfactory record of service. This policy sets forth The City's philosophy governing eligibility for reemployment and associated bridging of service (service recognition), where appropriate.

### **ELIGIBILITY FOR REHIRE**

Employees who were part of a reduction in force, as well as those employees who voluntarily resigned, will be eligible for rehire as long as they had a satisfactory work record while employed by The City and separated employment with The City in good standing.

### **INELIGIBILITY FOR REHIRE**

Former employees who had a less-than-satisfactory work record appropriately noted at termination as not being eligible for rehire are excluded from rehire consideration.

Employees who were involuntarily terminated by The City, or who separated employment not in good standing, or who were laid off (with a less-than-satisfactory work record) will not be considered for rehire.

### **SERVICE RESTORATION RULES FOR ELIGIBLE EMPLOYEES**

If a former employee with less than one year's prior service is rehired, the employee will be considered a new employee and will not be eligible for prior service recognition for seniority or benefits plan participation purposes.

If a former employee with more than one year's prior service is rehired, the employee's seniority and eligibility to participate in City benefits plans will be bridged if the employee is rehired and the period of prior City service exceeded the duration of the period of absence. Service recognition will include prior service recognition for accrued leave plans.

If a former employee with more than one year's prior service is rehired and the duration of the period of absence exceeded the period of prior City service, the employee will be considered a new employee and will not be eligible for prior service recognition for seniority or benefits plan participation purposes.

### **REHIRE SERVICE DATE ADJUSTMENT**

When recognition of prior service is granted, a rehired employee's City service date will be adjusted in accordance with the service restoration rule.

## **CHAPTER 5 – COMPENSATION**

### **SECTION 501 COMPENSATION PLAN PREPARATION**

The Mayor, or such other person or agency selected for that purpose, shall prepare a Compensation Plan showing for each grade minimum and maximum salary steps and such intermediate steps as deemed desirable. The City may change general compensation for any reason deemed appropriate by the City Council. Compensation may also be adjusted based upon job performance and the availability of funds to maintain a solvent City budget. Hours worked may be reduced or employees may be laid off as necessary to

meet budgetary constraints or as work needs change. In arriving at ranges for positions, the following shall be taken into consideration:

1. Prevailing rate of pay for comparable work in other public agencies,
2. Difficulty and responsibility of work,
3. The City's financial condition and policies, and
4. Other applicable conditions.

The Compensation Plan shall comply with all state and federal pay acts governing compensation. After consideration and adoption by the City Council, the Compensation Plan shall be applied to all applicable positions.

## **SECTION 502 ADMINISTRATION OF COMPENSATION PLAN**

The Mayor shall administer the Compensation Plan for all employees.

1. The Mayor may make an appointment to a position on the scale based on the candidate's qualifications and experience.
2. Salary dates shall be established as follows: Employees appointed, promoted or who are granted a step increase, shall have a new salary date for the purpose of eligibility for consideration of future salary step increases.
3. The Mayor may adjust salary practices consistent with the Compensation Plan.

## **SECTION 503 ADVANCEMENT WITHIN SALARY RANGE**

In order to properly compensate an employee, advancements in pay shall be based on the employee's satisfactory work performance, time in service, and completion and attainment of other specific advancement requirements outlined for the position. No movement in the salary matrix will occur without an employee achieving a "competent" performance rating in their annual evaluation. An employee's step increase will take place annually on the employee's anniversary date, or last pay increase. Last pay increase could be an employee's promotion date or approved midyear pay increase. Supervisors are responsible for providing a Change of Status form prior to an employee's step date.

## **SECTION 504 SALARY FOLLOWING PROMOTION**

When an employee is promoted to a position in a higher pay range, that employee shall be assigned to the first step in the higher pay range above his/her current pay. The Mayor may approve assignment to any other step in the higher pay range dependent upon internal equity and/or external market conditions. A new salary date shall be established for the purpose of eligibility for consideration of future step increases.

## **SECTION 505 SALARY FOLLOWING DEMOTION**

In the case of a demotion of any employee to a class with a lower maximum pay rate, such employee shall be assigned to the appropriate pay step in the new class as recommended by the Human Resources Director and approved by the Mayor. The employee shall retain his/her previous salary date.

## **SECTION 506 SALARY FOLLOWING TRANSFER/ACTING APPOINTMENTS**

In the case of the transfer of any employee from one position to another, the employee shall receive pay in the grade and step appropriate to his/her qualifications. In some cases the transfer may result in a loss of pay, when the transfer is to a lower classification. A new salary date will be established following a transfer. When an extended illness, leave of absence or a resignation creates a need to fill a position, the Mayor may appoint a qualified employee to that vacancy on an “Acting” basis. During the term of employment, the employee shall receive such rate of pay commensurate with his/her qualifications and consistent with his/her responsibilities. The “Acting” appointment shall not exceed five (5) months without reappointment by the Mayor.

## **SECTION 507 REVISION OF RANGES**

When a range for a given grade is revised upward or downward, the employees in the grade affected shall have their salary adjusted to the appropriate step in the new range.

## **SECTION 508 SALARY ON POSITIONS “AT MAXIMUM STEP”**

If a position is reallocated to a range that has a higher maximum pay rate, the employee shall have her/his salary adjusted to a step in the higher range that is closest to, but not less than, the employee’s current salary and the employee shall be assigned a new salary date.

If an employee is reallocated to a position in a lower range, the salary of the incumbent shall be considered at the step closest to, but not less than, the current step unless they are over the maximum step for the new range (AT MAX). The salary date of the incumbent shall not change. Such AT MAX salary shall remain in effect until the salary increases accordingly by a market adjustment, compensation review, or some other method approved by the Mayor.

## **SECTION 509 SAFE HARBOR POLICY FOR EXEMPT EMPLOYEES**

It is The City’ policy and practice to accurately compensate employees and to do so in compliance with all applicable state and federal laws. To ensure employees are paid properly and no improper deductions are made, employees must review their pay stubs promptly to identify and to report all errors.

If the employee believes a mistake has occurred or if the employee has any questions, the employee should use the reporting procedure outlined below.

Exempt salaried employees receive a salary which is intended to compensate for all hours worked for The City. This salary will be established at the time of hire or when the employee becomes classified as an exempt employee. While it may be subject to review and modification from time-to-time, such as during salary review times, the salary will be a predetermined amount that will not be subject to deductions for variations in the quantity or quality of the work performed.

Under state law, salary is subject to certain deductions. For example, the employee's salary can be reduced for the following reasons:

- full-day absences for personal reasons;
  - full-day absences for sickness or disability, if the available paid sick leave has been exhausted;
  - intermittent absences, including partial-day absences, covered by the federal Family and Medical Leave Act, if other available paid leave has been exhausted;
  - to offset amounts received as payment for jury and witness fees or military pay;
  - during the first or last week of employment in the event the employee works less than a full week;
- and

- any work week in which the employee performs no work for The City.

Salary also may be reduced for certain types of deductions, such as the employee portion of health, dental or life insurance premiums; state, federal or local taxes, social security; or, voluntary contributions to a 401(k) or pension plan.

In any workweek in which the employee performed any work, the employee's salary will not be reduced for any of the following reasons:

- partial-day absences for personal reasons, sickness or disability;
- absence on a holiday when the facility is closed or because the facility is otherwise closed on a scheduled workday;
- absences for jury duty, attendance as a witness or military leave in any week in which the employee has performed any work; and
- any other deductions prohibited by state or federal law.

If employees believe they have been subject to any improper deductions, they should immediately report the matter to the Human Resources Manager. If the Human Resources Manager is unavailable or if employees believe it would be inappropriate to contact that person (or if they have not received a prompt and fully acceptable reply), they should immediately contact the Finance Department.

Every report will be fully investigated and corrective action will be taken where appropriate, up to and including termination for any employee who violates this policy. In addition, The City will not allow any form of retaliation against individuals who report alleged violations of this policy or who cooperate in the investigation of such reports. Retaliation is unacceptable, and any form of retaliation in violation of this policy will result in disciplinary action, up to and including termination.

## **SECTION 510 ESTABLISHED WORK HOURS/WORK WEEK**

City business hours are from 8 a.m. to 5 p.m., Monday through Friday. Employees will be assigned a work schedule and will be expected to begin and end work according to the schedule. To accommodate the needs of the business, at some point The City may need to change individual work schedules on either a short-term or long-term basis.

The established workday for employees shall be eight (8), nine (9), or ten (10) hours. The established workweek for employees shall be eighty (80) hours within a fourteen (14) consecutive day period. A Department Director ~~and/or the City Mayor~~ may modify employee work hours consistent with the needs of the City. For the purposes of payroll, the workweek begins on Saturday at 12:01 am and runs through 12:00 (midnight) on Friday.

## **SECTION 511 TIME AND ATTENDANCE REPORTS**

Employees are expected to report for their work assignments at the time and place designated by their supervisors. Employees are to accurately report their time. Each supervisor shall review and approve attendance records for all employees. Regular time and attendance reports will be provided by each department to the finance department, within payrolls required submittal time for processing before the end of each pay period. Employees are to review their pay and deductions and contact Payroll immediately of any discrepancies in regards to time worked, leave hours, or deductions.

## **SECTION 512 PAYROLL**

An annual calendar is published establishing payroll dates, including deadlines to submit time, to ensure that pay is processed in a timely manner. Salaries and wages are paid biweekly (26 pay periods), every other Thursday. Should the payday fall on a holiday, the previous workday shall be the payday. Under no circumstances will the City make advance payments to any employee. Employees are to keep information with the City current including address and contact information.

### **DIRECT DEPOSIT**

It is the City's preference that an employee request direct deposit as their method of pay. Direct Deposit Forms should be completed with designated financial accounts. Employees may designate no more than three (3) bank accounts into which their net pay can be electronically deposited. Direct deposit elections remain in effect until the employee files a change authorization or cancellation.

If an employee selects to not participate in direct deposit their paycheck will be mailed each payday to the address that Human Resources has on file. Checks may not be picked up and will not be provided to departments for distribution. Checks will not be distributed prior to the scheduled pay date.

When an employee separates or retires their payouts for Vacation Leave, earned Wellness Day, Floating Holiday, and earned Compensatory Time will be paid out in a separate paycheck or direct deposit from their regular earnings.

### **PAYROLL DEDUCTIONS**

Concerted effort is made for the City's Payroll division that they are not over burdened with individual requests for miscellaneous deductions. Therefore, the following payroll deductions are allowed:

- a. Deductions required by law and contracts. For example, Federal and State withholding tax, Social Security Tax, City and or State Retirement Systems and Group medical premiums.
- b. Court ordered deductions such as child support garnishments.
- c. Deductions made on the written authorization from each employee, such as supplemental insurance deductions like life insurance or deferred compensation plans.
- d. Any such other deductions as approved by the Mayor.

### **GARNISHMENTS**

The City complies with applicable state and federal laws regarding the garnishment and assignment of wages. Repeated garnishments for multiple debts can be grounds for discharge or other discipline as provided by applicable laws.

## **SECTION 513 DIRECTED TIME OFF**

Except as otherwise provided in a collective bargaining agreement, when a nonexempt employee is required by his/her supervisor to work beyond his/her regular work hours during a forty (40) hour workweek, the supervisor may direct the employee to take time off during that same workweek equal to the extra time worked. If the supervisor is unable to direct the time off during the same workweek, the hours worked beyond forty (40) hours within the workweek shall be compensated at the rate of 1½ times the employee's regular hourly rate of pay, or compensatory time may be elected by the employee at 1½ times for those hours worked beyond the forty (40) hours. The foregoing section does not apply to FLSA exempt employees.

## **SECTION 514 OVERTIME POLICY**

It is the policy of the City to avoid the necessity for overtime work. Overtime work shall be authorized when overtime is necessary and consistent for the efficient operation of the various departments and when in the best interest of the City, but shall be kept at the minimum necessary to accomplish the project, event, or particular need.

In order to earn compensation for overtime, an employee must have his/her supervisor's and/or Department/Division Manager's prior approval. Overtime work required to meet an emergency situation does not require advance approval, but must be approved by the immediate supervisor for payroll purposes. Approval for overtime will be documented and retained by each department, subject to audit. It shall be the responsibility of the Department Director or Division Manager to see that overtime hours are reported and submitted on the employee's time card for payment of all overtime and compensatory time earned during the appropriate work week.

In accordance with the Fair Labor Standards Act (FLSA), as amended from time-to-time, the City shall compensate covered employees for authorized overtime as follows: Overtime work for all covered employees shall be defined as any time worked beyond (40) hours within a workweek. Except as provided in Section 514, Directed Time Off, overtime shall be compensated for at the rate of 1½ times the employee's regular hourly rate. When necessary to call out employees for emergency overtime work, minimum payment for each call out shall be two (2) hours pay at 1½ times their regular hourly rate of pay.

Authorized overtime for work performed on recognized holidays shall be compensated for at the rate of twice the employee's regular hourly rate for the standard work day, except for those employees who are regularly scheduled to work on holidays. The foregoing section does not apply to FLSA exempt employees or certain part-time employees per federal or state law and regulations.

## **SECTION 515 COMPENSATORY TIME**

Except as provided in Section 513, Directed Time Off, upon approval of the Department Director or designee an employee may elect to receive compensatory time at the rate of 1½ for hours worked in excess of forty (40) hours in a workweek. Accrual of compensatory time shall not exceed one hundred twenty (120) hours. The City shall have the right to schedule employees for and to require the use of compensatory time. The employer and employee shall try to mutually agree on the scheduling of compensatory time. The accumulation and use of compensatory time will be documented and approved by a supervisor. Such records will be retained by each department, subject to audit. Regular reports of the accumulation and use of compensatory time will be submitted to the Finance Department as part of the regular payroll reporting activity. The foregoing section does not apply to FLSA exempt employees.

Temporary employees are unable to accrue compensatory time. In accordance with FLSA, for any hours worked in excess of forty (40) in a workweek the Temporary employee shall be compensated Overtime pay, at a rate of 1½ times the employees regular rate of pay.

## **SECTION 516 STANDBY STATUS AND STANDBY PAY**

When it is necessary to require an employee to be available for emergency call out or other services, such employee shall be on a standby status. The Mayor shall establish policies and procedures setting forth the conditions and obligations of standby status.

Except as otherwise provided in a collective bargaining agreement, compensation for standby duty will be granted at the rate of one (1) hour of payment at the employee's normal rate of pay for each six (6) hours on standby duty. When called to work during standby periods, the employee will receive a minimum credit of two (2) hours for each call out and will be paid at 1½ times his/her regular hourly rate of pay for each hour worked. The foregoing section does not apply to FLSA exempt employees.

## **SECTION 517 TRAVEL TIME FOR NON-EXEMPT EMPLOYEES**

Non-exempt employees are paid for travel time in accordance with state law. Please see The City's Travel Administrative Policy for additional information regarding travel for City employees.

## **CHAPTER 6 – LEAVE PROVISIONS**

### **SECTION 601 SICK LEAVE**

Sick Leave is a benefit to provide relief to the employee when an illness or injury prevents the employee from working productively or safely, or when an immediate family member's (spouse/domestic partner, child, and parent) illness presents no practical alternative for necessary care. Sick leave shall be requested only in cases of actual sickness or disability, medical or dental treatment, and Bereavement Leave (see Section 610). The employee requesting sick leave shall notify his/her supervisor or Department Director at least one (1) hour prior to time set for reporting to work. Sick leave with pay shall not be allowed unless the employee has accrued sick leave and his/her Department Director has approved such payment.

For the purpose of this policy domestic partner is defined as someone who meets the criteria as listed in Section 601 Benefits.

#### **ELIGIBILITY**

Regular employees shall be eligible to accrue sick leave. Regular Part-Time employees (scheduled 52 weeks per year and work 20 hours or more per week) shall be eligible to accrue sick leave in the same proportion as their regularly scheduled work hours per week are to a forty (40) hour work week. Temporary employees, and part time employees who work less than 20 hours per week shall not earn sick leave.

#### **EARNED SICK LEAVE**

Sick leave earned for regular Full-time employees shall be earned at the rate of eight (8) hours each calendar month that an employee has worked regularly scheduled hours and/or has been on an authorized leave that provides for full pay for at least ten (10) working days in that month. Regular Part-Time employees who work 20 hours or more per week, 52 weeks of the year, with consistently the same hours and schedule shall earn Sick Leave prorated to the amount of hours the employee works. An employee is not eligible to earn Sick Leave while in an unpaid leave status, or on an extended leave of absence greater than 12 weeks even if utilizing accrued leave.

#### **USE OF SICK LEAVE**

Sick leave may be requested and used as approved by the Department Director or the Mayor. FLSA exempt employees may use sick leave in half-day increments per FLSA laws regarding public employees. The City may require the employee to provide a doctor's note, or require, at the City's expense, an independent review of reported illness by a competent medical authority. In cases of illness, disability, or injury, when an employee has exhausted his/her Sick leave, he/she may request earned Vacation Leave and/or Compensatory hours be used. If an employee has exhausted all available sick leave under this policy, The City reserves the right to apply accrued Vacation or PTO for any absences related to the outlined sick leave usage above.

#### **ACCUMULATION AND SICK LEAVE BENEFITS UPON SEPARATION**

Sick leave may be accumulated up to nine hundred sixty (960) hours. Employees who separate from the City in good standing after five (5) years of service will be eligible for payment of twenty-five percent (25%) of their earned sick leave to a tax-free medical expense reimbursement account (VEBA).

An employee who meets the PERSI retirement age requirements and retires in good standing from the City is eligible for payment of thirty-five percent (35%) of his/her earned sick leave into a tax-free medical expense



reimbursement account (VEBA). “In good standing” is defined as an employee that has been subject to a reduction in force (layoff) or has resigned and given a written notice of at least fourteen (14) calendar days prior to the effective date of their resignation or as otherwise approved by the Mayor.

## **SECTION 602 SICK LEAVE INCENTIVE PROGRAM**

~~This policy sets forth the Sick Leave Incentive Program which is intended to help reduce absenteeism and provide additional encouragement for employees who use their sick leave as intended. The program includes tax-free employer contributions to a Health Reimbursement Account (HRA-VEBA) for employees who meet the requirements.~~

~~All regular full-time employees (excludes Fire employees covered under IAFF Collective Bargaining Agreement) have the opportunity of receiving employer contributions that can be used for payment of medical expenses including insurance premiums after retirement. Unlike the city’s Flexible Spending Account (Cafeteria 125 Plan), these VEBA contributions are not subject to “use it or lose it” rules.~~

~~There are two components of the Sick Leave Incentive Program.~~

- ~~1. If an employee uses 30 hours or less of sick leave during the fiscal year, October 1 through September 30, the City will contribute \$200 to the employee’s VEBA account.~~
- ~~2. For employees who have reached the maximum 960 hours of sick leave accrual and lose their earned 8 hours per month the City will contribute 25% of the amount of lost hours (up to 25% of 96 hours) into their VEBA account. The employee will only receive 25% of the amount of hours that “dropped off” beyond the 960 through the fiscal year. The benefit will be based on the employee’s hourly rate of pay as of September 30<sup>th</sup>.~~

~~**Example 1:** Employee is at maximum 960 hours each month throughout the entire fiscal year. They will receive 25% of 96 hours (8 hours X 12 months = 96 hours that have “dropped off” throughout the year).~~

~~**Example 2:** Employee reaches max 960 hours’ mid-year and maintains maximum accrual until end of fiscal year, for the remaining 6 months. They will receive 25% of 48 hours (8 hours X 6 months = 48 hours).~~

~~**Example 3:** Employee at max of 960 hours but uses total of 24 hours of sick leave throughout fiscal year. They will receive 25% of 72 hours (96 hours earned during fiscal year – 24 hours’ sick leave used = 72 hours).~~

~~The Human Resources Department shall administer the Sick Leave Incentive Program. The calculations will be for the fiscal year, October 1<sup>st</sup> through September 30<sup>th</sup>. The monetary benefit will be calculated after the end of the fiscal year and be placed into the employee’s personal VEBA account by January 1<sup>st</sup>. Employees must be employed for the entire fiscal year in order to receive the benefit from this program.~~

## **SECTION 6032 VACATION LEAVE**

### **ELIGIBILITY**

Regular Full-time employees shall earn accrued Vacation Leave each pay period based on the below schedule. Regular Part-Time employees who work 20 hours or more per week, 52 weeks of the year, with consistently the same hours and schedule shall earn Vacation Leave prorated to the amount of hours the employee works. As an example, a regular part-time employee who works 32 hours each week (80% of a 40-hour work week), will accrue 80% of the vacation hours outlined in the below schedule. Employees can take vacation based on hours accrued and subject to the Department Director's approval. Paid vacation shall not exceed the amount of vacation time the employee has actually accrued. Temporary and Part-Time employees working less than 20 hours per week or inconsistent hours shall not earn vacation. An employee is not eligible to earn Vacation Leave while in an unpaid leave status or on extended leave of absences greater than 12 weeks, even if utilizing accrued leave.

Years of Service	Annual Hours Earned	Hours Earned per Pay-Period	Maximum Accrual Limit
1 – 4	96 hours	3.692	192
5 – 9	120 hours	4.615	240
10 – 14	160 hours	6.154	320
15 – 19	176 hours	6.769	352
20 +	200 hours	7.692	400

## USE OF VACATION

The time that an employee may use accrued Vacation Leave and the amount to be taken at any one time require prior approval by the Department Director and/or Division Manager with due regard for the wishes of the employee and particular regard for the needs of the City. Paid Vacation Leave shall not exceed the amount of vacation time the employee has accrued.

It is the employee's responsibility to request Vacation Leave from their supervisor as per their department's established procedure. Employees shall be allowed to accumulate up to twice their annual earned vacation. Hours may be accumulated over the maximum accrual limit each year until December 31<sup>st</sup>. As of December 31<sup>st</sup> each year any vacation leave over an employee's maximum accrual limit will automatically be removed. Removal of vacation leave over an employee's maximum accrual leave will be reflected on the second pay-period of January each year. Those hours that exceed an employee's maximum limit after December 31<sup>st</sup> of each year will be lost and cannot be utilized. The Mayor may extend earned limits when circumstances justify the extension.

Employees are prohibited from working for the City while taking Vacation Leave. FLSA exempt employees shall only be allowed to use Vacation Leave in increments equal to the length of his/her regular workday. If an employee exhausts their accrued Vacation Leave they are not allowed to use Sick Leave, unless the employee is off work due to a Sick Leave related event or Family Medical Leave, and has received supervisor approval. An employee may utilize earned Compensatory time, earned Wellness Day, Floating Holiday, or request Leave without Pay when Vacation Leave is exhausted.

An employee who is granted Military Leave exceeding 180 calendar days may request payment for accrued Vacation Leave that remains unused. If the employee chooses to not receive payment for their accrued Vacation Leave or if their leave is less than 180 calendar days, then their accrued leave will be available to them to use when they return from leave at the same balance as when the employee went on Military Leave.

## VACATION ACCRUAL DURING LEAVES OF ABSENCE

Employees do not accrue vacation during an unpaid leave of absence. Vacation accruals recommence when the employee returns to work.

## HOLIDAYS OCCURRING DURING VACATION

If an observed City holiday occurs during an employee's scheduled vacation, no deduction from accrued vacation will be made for the holiday. An employee may add to their vacation period by using the holiday in place of accrued vacation time.

## VACATION FOR FAMILY CARE AND MEDICAL LEAVE PURPOSE

Employees who request family care or medical leave pursuant to The City's FMLA policy generally must apply any accrued vacation pay to the unpaid portion of their family or medical leave, as permitted by law; please see Human Resources for more information.

## VACATION PAY AT SEPARATION

Upon separation from working for the City, employees shall be paid for earned vacation up to the employee's maximum accrual limit or within the limits of any applicable collective bargaining agreement.

In the event of the death of an employee, pay for earned vacation shall be paid to the beneficiary the employee has designated. Such designation shall be in writing, signed by the employee and filed with Human Resources. In the event that an employee has not designated a beneficiary, the payment shall be made to the estate of the employee.

## SECTION 6043 PAID HOLIDAYS

### REGULAR HOLIDAYS FOR PAY PURPOSES

Regular and exempt employees shall have the following holidays off with pay: New Year's Day, Idaho Human Rights Day/MLK Day, President's Day, Memorial Day, Juneteenth, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve Day, Christmas Day, one (1) day of the employee's choice (floating holiday), and any other day declared a holiday by the Governor of the State of Idaho in response to a specific event or Presidential Declaration, i.e. a day of mourning for a sitting President. An employee eligible for holidays shall not receive holiday pay if the employee is on leave without pay status.

Regular Part Time employees who work 20 hours per week or more, working consistently the same hours per week, 52 weeks of the year, will receive holiday pay prorated to their hours worked in a workweek. Part time regular employees may need to supplement their holiday pay with vacation in order to receive pay for their regular hours on the day of the holiday. Part time regular employees whose regular day off falls on a holiday shall be allowed to take the holiday on another day in the week. Part time regular employees will not receive pay for the holiday plus hours worked for the same day. Non-exempt employees must work their scheduled workday before and after the holiday in order to be eligible for holiday pay, unless the employee is absent with prior permission from their supervisor.

When any day recognized as a holiday by the City falls on a Sunday, the following Monday shall be considered the holiday. When any day recognized as a holiday by the City falls on a Saturday, the preceding Friday shall be considered the holiday. Holidays that occur during an eligible employee's vacation/PTO will not be counted as vacation days taken. In the event Christmas Eve and Christmas occur on Friday and Saturday or Sunday and Monday, the Mayor may designate appropriate days for the official City holidays. Some divisions may require modification of City-wide holidays based on operation and the needs of the City. Advance notification will be provided to employees affected as soon as reasonably practical.

### EMPLOYEE FLOATING HOLIDAY

An employee is provided one (1) Floating Holiday each year. To be eligible for a holiday of his/her choice (floating holiday), the employee must have successfully completed six (6) months of continuous employment and received advance approval from his/her supervisor to have the day off with pay. The employee's choice of a floating holiday must be used by December 31 of the calendar year.

### RELIGIOUS HOLIDAYS

The City will make reasonable accommodations for an employee's religious observances. An employee who wishes to be excused from work in observance of a religious holiday shall request approval for such absence from his/her Department Director prior to the holiday with sufficient notice time. An employee may elect to utilize their earned Vacation Leave, earned Compensatory time, earned Wellness Day, or Floating Holiday. If the employee making such request has exhausted all paid time-off benefits, the employee may choose to take Leave without Pay.

### EMPLOYEES REQUIRED TO WORK HOLIDAYS

Any employee normally eligible for holiday benefits who is required to work on a day designated as a holiday shall be paid at twice the employee's hourly rate of pay for the hours worked. The employee may elect to

take an additional day off in lieu of the double time, with the approval of the Department Director, during the same pay period unless addressed by other contracts or agreements.

When a day designated as a holiday under the provisions of this policy falls on a normally assigned day off of an employee who is eligible for holiday benefits, said employee shall receive either additional pay equal to and in lieu of time off for said holiday, or an additional day off to be taken during the same pay period.

## **SECTION 60~~5~~4 FAMILY MEDICAL LEAVE (FMLA)**

The City will provide Family and Medical Leave to its eligible employees. The City posts the mandatory FMLA Notice in each City building and upon hire provides all new employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under the Family and Medical Leave Act.

The function of this policy is to provide employees with a general description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. If you have any questions, concerns, or disputes with this policy, you must contact the Human Resource Director in writing.

### **GENERAL PROVISIONS**

Under this policy, the City will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

### **ELIGIBILITY**

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

- 1) The employee must have worked for the City for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement, including a collective bargaining agreement, stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.
- 2) The employee must have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.
- 3) The employee must work in a worksite where 50 or more employees are employed by the City within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

### **TYPE OF LEAVE COVERED**

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

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

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position. This includes leave taken due to a worker's compensation claim that makes the employee unable to perform job functions.

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

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

Employees with questions about what illnesses are covered under this FMLA policy or under the City's sick leave policy are encouraged to consult with the Human Resource Director.

If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, the City may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

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

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

- a. short-notice deployment
- b. military events and activities
- c. child care and school activities
- d. financial and legal arrangements
- e. counseling
- f. rest and recuperation
- g. post-deployment activities, and
- h. additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

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

In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered service member.

- a) A “son or daughter of a covered service member” means the covered service member’s biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.
- b) A “parent of a covered service member” means a covered service member’s biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents “in law.”
- c) Under the FMLA, a “spouse” means a husband or wife, including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015.
- d) The “next of kin of a covered service member” is the nearest blood relative, other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member’s next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member’s only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member’s next of kin. Alternatively, where a covered service member has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member’s next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered service member pursuant to § 825.122(k).

“Covered active duty” means:

- (a) “Covered active duty” for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.
- (b) (2) Covered active duty or call to covered active duty status in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.

The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

- 6) Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran.

An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to take care of leave to care for that service member.

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

The term “covered service member” means:

- (a) a member of the Armed Forces (including a member of the National Guard or Reserves) who is

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

The term “serious injury or illness means:

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

#### AMOUNT OF LEAVE

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

An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the City will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

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

#### EMPLOYEE STATUS AND BENEFITS DURING LEAVE

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

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

Under current City policy, the employee pays a portion of the health care premium. While on paid leave, the

employer will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Finance Department by the 1<sup>st</sup> day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave.

The employer will provide 15 days' notification prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the employer will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the employer may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the employer may discontinue coverage during the leave. If the employer maintains coverage, the employer may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

#### EMPLOYEE STATUS AFTER LEAVE

An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from the health care provider. This requirement will be included in the employer's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions. The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

#### USE OF PAID AND UNPAID LEAVE

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

Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. For example, if an employer provides six weeks of pregnancy disability leave, the six weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An employee who is taking leave for the adoption or foster care of a child must use all paid vacation, personal or family leave prior to being eligible for unpaid leave.

An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or sick leave (as long as the reason for the absence is covered by the City's sick leave policy) prior to being eligible for unpaid leave.

#### INTERMITTENT LEAVE OR A REDUCED WORK SCHEDULE

The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in



instances of when leave for the employee or employee's family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

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

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the City before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

#### **CERTIFICATION FOR THE EMPLOYEE'S SERIOUS HEALTH CONDITION**

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

The City may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The City will not use the employee's direct supervisor for this contact. Before the City makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the City will obtain the employee's permission for clarification of individually identifiable health information.

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

#### **CERTIFICATION FOR THE FAMILY MEMBER'S SERIOUS HEALTH CONDITION**

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

The City may directly contact the employee's family member's health care provider for verification or clarification purposes using a health care professional, an HR professional, leave administrator or management official. The City will not use the employee's direct supervisor for this contact. Before the City makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the City will obtain the employee's family member's permission for clarification of individually identifiable health information.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay

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

#### **CERTIFICATION OF QUALIFYING EXIGENCY FOR MILITARY FAMILY LEAVE**

The City will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

#### **CERTIFICATION FOR SERIOUS INJURY OR ILLNESS OF COVERED SERVICEMEMBER FOR MILITARY FAMILY LEAVE**

The City will require certification for the serious injury or illness of the covered service member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

#### **RECERTIFICATION**

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

#### **PROCEDURE FOR REQUESTING FMLA LEAVE**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Director. Within five business days after the employee has provided this notice, the HR Director will complete and provide the employee with the DOL Notice of Eligibility and Rights.

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

#### **DESIGNATION OF FMLA LEAVE**

Within five business days after the employee has submitted the appropriate certification form, the HR Director will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

#### **INTENT TO RETURN TO WORK FROM FMLA LEAVE**

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

## **SECTION 6065 REASONABLE ACCOMMODATION**

City of Lewiston is committed to complying fully with the Americans with Disabilities Act (ADA) and other applicable federal, state, and local laws. We are also committed to ensuring equal opportunity in employment for qualified persons with disabilities. We make our employment decisions based on the merits of the situation in accordance with defined criteria, not the disability of the individual. Further, the City is committed to not discriminating against any qualified employee or applicant because the person is related to or associated with a person with a disability.

The purpose of this document is to provide all employees with a detailed guide on the reasonable accommodation process. There are important steps that must be taken to ensure reasonable accommodations are documented, communicated, and provided in a timely fashion. These steps insure equal opportunity for applicants, candidates, and employees with disabilities as well as insure City of Lewiston meets its legal obligations.

City of Lewiston is committed to processing requests for reasonable accommodation and will provide reasonable accommodations where appropriate, in a prompt and efficient manner in accordance with the time frames set forth in the following Procedures.

**Who is covered by this guidance:** Applicants, candidates, and employees with physical or mental conditions that substantially limits one or more major life activities or have a record of such a substantially limiting condition.

**What is workplace reasonable accommodation:** Workplace reasonable accommodation, sometimes called workplace adjustments, are any changes in the workplace or the way job duties are customarily performed that provides an equal employment opportunity to an individual with a disability. (This process does not cover requests that would pose an undue hardship or fundamentally change the essential functions of a job.) Sometimes an applicant or an employee may ask for an accommodation that is not reasonable or necessary, that poses an “undue hardship” (i.e. too costly or disruptive to business) on the City or its employees or that might threaten the safety of the individual who has made the request or of others. In those cases, the City will discuss whether some other form of workplace accommodation may be effective.

When is reasonable accommodation provided;

- when an applicant with a disability needs an accommodation to have an equal opportunity to compete for a job;
- when an employee with a disability needs an accommodation to perform the essential functions of the job or to gain access to the workplace; and
- when an employee with a disability needs an accommodation to enjoy equal access to benefits and privileges of employment (e.g., productivity tools, trainings, City sponsored events).

What are common types of accommodations:

- Acquisition or modification of equipment
- Changes in the physical layout of a work environment to eliminate or reduce barriers
- Elimination of non-essential job duties
- Modifications of an individual’s work schedule while continuing to meet business requirements
- Modifications to the building where an individual performs work
- Leave of absence
- Reassignment to a vacant position

Note: Leave time and/or reassignment to another vacant position are accommodations of last resort and require the approval of the Mayor.

**Responsibilities:**

The applicant, candidate, or employee has the responsibility to request an accommodation. Managers are responsible to receive, begin documentation for, and communicate all accommodation requests to the Human Resources Department (HR). HR and/or the manager is responsible for initiating the interactive process with the person who requests an accommodation, to involve only those who are necessarily involved to insure an effective and timely accommodation is provided. They also must inform the employee or applicant of the outcome of their request.

All requests for reasonable accommodation are handled by or in conjunction with HR. HR will work with the individual's Department Director and/or Manager to ensure that an appropriate accommodation is provided that meets the individual's disability-related needs and enables the individual to perform the essential functions of the position.

### **What is the interactive process (IP)**

The interactive process is a collaborative effort between the employee and City of Lewiston to discuss the need for an accommodation as well as identify effective accommodation solutions. The interactive process begins when an employee discloses a disability/health condition and requests an accommodation, a manager or HR representative recognizes an obvious challenge of an applicant, candidate, or employee due to a disability, or when an employee returns to work with an on-going health care condition or disability. A robust interactive process demonstrates good faith and promotes a disability inclusive workplace.

### **Confidentiality in the reasonable accommodation process**

Ensuring the confidentiality of all medical information obtained in connection with a request for reasonable accommodation, as well as the confidentiality of all associated communications during the interactive process is required by federal law.

All documentation must be kept in a file separate from an individual's personnel file. Non-medical information obtained during this process is shared on an as needed basis with those involved in providing a reasonable accommodation.

### **Procedure for Reasonable Accommodations**

Most accommodation requests are initiated by the applicant, candidate, or employee. That said, it is important to recognize that Supervisors, Managers, and/or Department Directors should not assume that because an individual has a physical or mental disability that he or she will necessarily require or want an accommodation. An individual may have a disability that does not limit the employee's ability to perform the essential functions of their job or require a workplace modification. Because each individual's abilities and needs are different, each accommodation request will be handled on a case-by-case basis.

In *rare* instances, when a disability and associated need for an accommodation is obvious (e.g. an applicant is blind and cannot access an applicant tracking system, an employee who uses a wheelchair cannot access a restroom) a hiring manager or manager may initiate the reasonable accommodation process and begin the interactive discussion with the person with a disability.

### **Requesting a Reasonable Accommodation (RA)**

The process begins when the City becomes aware that an employee may need an adjustment or change concerning some aspect of the application process, the job, or a benefit of employment for a reason related to a disability or chronic medical condition. Notification may include documentation from the employee directly and/or from the employee's physician. An **applicant or employee** may request a reasonable accommodation at any time, **orally or in writing**. A request for an accommodation can also be made by an employee representative (e.g. family member). If the request comes in through a third party, the request should be confirmed with the applicant or employee. Request for Accommodation can be found on the City's website under the HR page.

In most situations, employees should notify their manager directly if they believe they need an accommodation or other workplace adjustment because of a health condition. The manager should communicate the request immediately to HR. The employee can contact HR directly to discuss a reasonable accommodation as well.

If an employee makes a reasonable accommodation request to someone other than the manager or HR such as facilities personnel, or information technology staff, these City representatives should also communicate the request to the HR immediately.

An accommodations request does not have to include any special words, such as “reasonable accommodation,” “disability,” or “ADA.” A request is any communication in which an individual asks or states that the applicant or employee needs a change because of a medical condition. A manager or HR needs to ask an individual whether they are requesting a reasonable accommodation if the nature of the initial communication is unclear.

**Important Note:** It is best for employees to ask for accommodations *before* any work related issues or concerns arise: While an employee does not have to disclose his/her disability until he/she feels they need an accommodation it is highly recommended that employees not wait until their performance appraisal meeting or during a disciplinary proceeding as the City of Lewiston does not have to rescind disciplinary actions administered prior to a request for an accommodation.

Once the City receives notice of a need for accommodation, it will provide the employee with the Accommodation Request form which the employee (and/or the employee’s physician) must complete and return as indicated.

If the disability or need for accommodation is obvious or adequate medical documentation has already been provided for other reasons (i.e. Family Medical Leave Act, Workers Compensation), no medical documentation will be required. However, a request form still needs to be filled out by the applicant or employee. Whenever the disability or need for accommodation is not obvious, the employee will be asked to sign a release form authorizing the City to secure additional medical information from the employee’s health care provider to provide job relevant information as to the nature of the employee’s medical condition, and/or whether the requested modification/accommodation is necessary. A request for Medical Inquiry form can be found on the City’s HR website page. A Medical Inquiry form specific to leave as an accommodation can be found on the same site.

Note that the health care provider should be provided with information as to the essential duties of the individual’s job, in order to have an informed opinion as to any accommodations that will both meet the job requirements, and help to maintain positive health.

HR may also give the individual a list of questions to give to the health care provider or other appropriate professional to answer. If sufficient medical information is not provided by the individual after several attempts, HR may ask the individual requesting accommodation to sign a limited release form permitting the HR to contact the provider for additional information. HR may also elect to have the medical information reviewed by a doctor of the organization’s choosing, at the City’s expense.

Employees are obligated to cooperate with this process. A failure to do so could result in delayed consideration of a request or in its denial.

### **Initiation of the Interactive (IP) Process**

After a request for accommodation has been made, and confirmed by a health care provider, the next step is to begin the interactive process to determine what, if any, accommodation should be provided. HR will

contact the applicant or employee after establishing the need for the accommodation. It is expected that in the case of accommodations for applicants or candidates the process would begin immediately upon request and receipt by HR so that the individual does not lose out on the opportunity to compete for the job. During the interactive process, the individual requesting the accommodation, HR, the manager, and at times the Department Director will need to clearly discuss key aspects with each other including:

- the nature of the job related challenge that is generating the request
- confirming that a disability is prompting the need for an accommodation
- the accommodation solution(s) that may be effective in meeting an individual's needs to successfully meet the requirements of the job

All accommodation requests are handled on a case by case basis. A robust IP frequently requires input from the department manager, HR, the employee and/or the employee's physician. Other departments, a third party vendor, as well as outside disability-related organizations, may be consulted depending on the type of request sought.

### **Processing Requests**

HR will process requests and, where appropriate, provide accommodations in as short a period as reasonably possible. Everyone involved in processing a request should respond as quickly as possible. This includes referring a request to HR, contacting a health care provider if medical information or documentation is needed, and receiving technical assistance from outside parties. It is therefore recommended that the requestor work closely with their health care provider to expedite their response to the City's inquiry. In certain circumstances, a request for reasonable accommodation requires an expedited review and decision.

This includes where a reasonable accommodation is needed:

- **to enable an applicant to apply for a job.** Depending on the timetable for receiving applications, conducting interviews, taking tests, and making hiring decisions, there may be a need to expedite a request for reasonable accommodation to ensure that an applicant with a disability has an equal opportunity to apply for a job.
- **to enable an employee to attend a meeting scheduled to occur soon.** For example, an employee may need a sign language interpreter for a meeting scheduled to take place in 5 days.
- To address a safety related concern in the workplace

An extension of the time frame for providing an accommodation will be considered in extraordinary circumstances that **could not reasonably have been anticipated or avoided in advance** of the request for accommodation, **or that are beyond City's ability to control.** When extenuating circumstances are present, the time for processing a request for reasonable accommodation and providing the accommodation will be extended as reasonably necessary. In such circumstances the requestor, manager and other need to know individuals will be informed as to the reason for the delay and anticipated delivery of solution.

### **Determination**

Once HR receives all of the medical and other information deemed necessary, they will determine in consultation with others on a need-to-know basis whether the workplace modification/accommodation sought will be granted, or, whether an alternative modification/accommodation is appropriate. HR will first inform the employee's manager and/or Department Director. HR will then communicate the decision to the employee and discuss the employee's questions/concerns, if any, about that decision and steps for implementation.

A decision to provide an accommodation other than the one specifically requested will be considered a decision to grant an accommodation. If HR or the manager offers an accommodation other than the one requested, but the alternative accommodation is not accepted by the employee, HR or the manager will record the individual's rejection.

Medical information will be disclosed only on an “as need to know” basis. Accommodations may be provided without informing the employee’s manager or supervisor without disclosing the employee’s diagnosis or disability.

Note: An individual’s receipt or denial of an accommodation does not preclude the individual from making another request at a later time if circumstances change and they believe that an accommodation is needed due to workplace needs associated with evolving limitations from a disability (e.g., the disability worsens or an employee is assigned new duties that require an additional or different reasonable accommodation). It is important to note that City cannot refuse to process a request for reasonable accommodation, and a reasonable accommodation may not be denied, based on a belief that the accommodation should have been requested earlier (e.g., during the application process).

### **Temporary of Trial Accommodations**

Many accommodations are implemented long-term, while some accommodations last for only a temporary period. Every situation is unique and requires case-by-case analysis of the individual’s limitations, restrictions, specific accommodation needs, and the impact accommodation will have on job performance and business operations.

Implementing a temporary change offers the opportunity to evaluate an accommodation for effectiveness before making the decision to implement the change long-term and also demonstrates good faith.

Situations that can warrant provision of a temporary or trial accommodation may include, *but are not limited to*:

- when time is needed to research a permanent accommodation solution, to acquire equipment, arrange a service, or identify an alternative vacancy;
- when it is necessary to test an accommodation to determine if it is effective;
- when the medical impairment is temporary but sufficiently severe enough to entitle the employee to accommodation;
- when it is necessary to avoid temporary adverse conditions in the work environment; or
- when an accommodation can currently be provided, but may eventually pose an undue hardship if provided long-term.

### **Monitoring an Accommodation**

It is the obligation of the manager to monitor the effectiveness of the accommodation. This monitoring should occur outside of the City’s Performance Evaluation process. While employees with disabilities must be able to perform essential functions of their job with or without accommodation, it is also the responsibility of the manager to insure an accommodation is effective for the employee. If an accommodation is no longer effective, then the interactive process should re-visited.

### **Accommodation Request Denial**

If the City **denies a request for accommodation**, HR and/or the manager will notify the employee of the reason for the denial of the individual’s specific accommodation and the process for appealing the decision. If there are any questions or concerns, those will be discussed with the employee.

### **Appeals Process**

An individual dissatisfied with the resolution of a reasonable accommodation request can ask the Mayor to reconsider that decision. An individual must request reconsideration within **10 business days** of receiving the notice of denial.

### **Inquiries and Distribution**

Any employee wanting further information concerning these procedures may contact the Human Resources Department at [hr@cityoflewiston.org](mailto:hr@cityoflewiston.org) or 208-746-3671. These guidelines will be provided in alternative formats (e.g. large print or Braille) when requested. Reasonable Accommodation forms are available on the City’s Human Resources website.

## SECTION 606 WORKER'S COMPENSATION

Providing the best care to our injured employees is our highest priority. The City of Lewiston has established the following procedures for treatment of industrial injuries, as provided by Title 72, Idaho Code. Employees who sustain work-related injuries are required to stay within the following established network of healthcare providers for the care and treatment of workers' compensation claims. Exceptions to this policy must have the prior approval of the Risk Manager or Human Resources Director.

### ACCIDENT REPORTING PROCEDURES

1. If the injury occurs while at work, the employee will immediately report the injury to their direct supervisor. If the supervisor or manager is not available, the injured employee is required to report the injury to the person "in charge."
2. An Accident Report must be filled out and submitted to the Risk Manager or Human Resources Director as soon as possible, but no later than three (3) days of the accident/injury. An employee could lose all benefits if they wait longer than 60 days to report their injury.
3. Report ALL injuries – even minor injuries. To protect your right to receive worker's compensation benefits, the employee must report any job-related injury or disease to the employer.
4. Supervisors must fill out an Accident Investigation Form which is intended to identify accident root causes and to determine any action necessary to prevent recurrence.
5. If the injury requires emergent treatment or has the potential of causing loss of limb, sight or life, the supervisor or the person in charge will have the employee immediately transported, by ambulance, to St. Joseph Regional Medical Center (SJRMC).
6. If the injury does not fit within the description of Step 5 (above), but does require treatment or time away from work, the City of Lewiston's Occupational Health Care Provider is Valley Medical Express Care located at 2318 Vineyard Avenue. Express Care is open Monday through Saturday from 7:00 a.m. to 7:00 p.m. and from 12:00 Noon to 5:00 p.m. on Sunday. Dr. Cheryl Mallory is generally providing occupational medical services on a full-time basis, Monday through Friday, from 8:00 a.m. to 5:00 p.m. However, it may be another provider on duty. Occupational Medicine is located on the second floor of Valley Medical Center. As an alternative to Express Care, an injured employee may call to make an appointment with Dr. Mallory, or if immediate attention is needed, may check in at the front desk for availability. If the accident occurs at a time services at Valley Medical are not available, please report to St. Joseph Regional Medical Center's Emergency Department.
7. The employee must inform their supervisor and provide either the Risk Manager or Human Resources Director with any work status/restriction updates received from the physician.
8. Employees sustaining on-the-job injuries requiring treatment are required to make an appointment with the Risk Manager or Human Resources Director on the next regular work day (if injury permits). During this appointment, any additional information necessary to file the Worker's Compensation Claim with Intermountain Claims, Inc. (IPA) and the Industrial Commission will be obtained.

### REFERRALS AND RETURN APPOINTMENTS WITH HEALTH CARE PROVIDERS

Before making or keeping any appointment for consultation or referral for treatment, the employee must communicate the need and receive authorization from Intermountain Claims, the Risk Manager or the Human Resources Director.

### REFUSING TREATMENT

Refusal to follow prescribed physician-ordered treatment may be grounds for denial of benefits under Worker's Compensation Law.



## BENEFITS

1. Under Idaho Workers Compensation law, employees do not receive income benefits for the first five (5) days they are off work due to an injury, unless the injury requires overnight hospitalization or the time loss exceeds 14 days.
2. The City of Lewiston requires employees to use sick leave during the first five (5)-day waiting period. If the on-the-job injury requires overnight hospitalization, no sick leave will be charged.
3. If the leave exceeds fourteen (14) days, the first five (5)-day waiting period charged to sick leave will be returned.
4. In the event of a work related disability in which the employee is unable to return to work after the initial five (5) day waiting period the employee will be paid approximately thirty-three (33%) percent of his/her regular pay by the City, and approximately sixty-seven (67%) percent from Worker's Compensation for a cumulative period not to exceed six (6) months. The combined total of Worker's Compensation and City pay shall not exceed one hundred percent (100%) of the pay to which the employee would otherwise be entitled. If, at the end of the six (6) months the employee is still unable to return to work, the approximately thirty-three (33%) percent of regular salary or wage paid by the City will then be charged against the employee's Sick Leave, or vacation and compensatory time earned should Sick Leave be unavailable. If no accrued leave is available employees will receive leave without pay. Those employees who do not earn accrued leave will only be eligible for compensation at the required Workers Compensation rate for the period of their absence greater than five (5) days.  
OR
- ~~3.5.~~ In the event of a work related disability in which the employee is unable to return to work beyond five (5) days the employee will be paid approximately sixty-seven (67%) percent of their regular wages from Workers Compensation. The employee can choose to supplement their Workers Compensation benefit with approximately 33% sick leave, or vacation or compensatory time if sick leave is exhausted. The combined total of Workers Compensation and accrued leave is not to exceed one hundred (100%) percent of the pay which the employee would otherwise be entitled.

## RETURN TO WORK

It is the policy of the City of Lewiston to allow employees who have been seriously injured or who are seriously ill to return to their full responsibilities as soon as they are able to perform the essential functions of their job.

### Purpose

- a. To ensure that employees are able to return to either their full responsibilities or to *temporary* light duty work, as soon as it is appropriate, after a serious illness or injury.
- b. To protect the employee from further injury or illness resulting from returning to work too early.
- c. To protect the city from potential workers' compensation liability resulting from requiring or allowing an employee to perform functions which should not be performed due to medical limitations.
- d. To ensure that reasonable accommodations are made for employees where appropriate.
- e. To discourage abuse of illness leave.

### Guidelines

- For purposes of this policy, "serious injury or illness" shall mean any injury, illness or medical condition which is serious enough to affect the performance of any essential function of the job, as determined by the city. The determination shall be made by the employee's department manager or his/her designee, in consultation with the Risk Manager or Human Resource Director.
- When an employee has had a serious injury or illness, whether work related or not, the employee shall not return to work until a physician who has treated or examined the employee releases the employee for a return to work. The release shall specifically address the physical capabilities of the employee and shall unequivocally state the physical restrictions, if any, the employee has. Both the

employee and the city have rights and obligations for providing and receiving releases from treating physicians.

- Employees are responsible for obtaining and submitting detailed information from their physician concerning their injury or illness. This information must be provided to the city in a timely manner and will include the physician's recommendation as to whether the employee may return to full or light duty, or should remain off work. If any physical restrictions are placed on the employee, they must be listed in sufficient detail for the city to make an informed decision regarding the employee's suitability to return to work. The city must also be notified of all follow-up appointments with any medical provider who will provide treatment for the injury or illness. The injured employee should follow the procedure outlined below:
- Tell your doctor that the City of Lewiston has a return to work program and ask the following questions:
  - Can I return to my original job with no changes?
  - Can I return to my original job under special conditions, such as reduced work hours or using modified equipment?
  - Can I return to work doing an alternative job assignment, if one can be made available to me?
- Have your doctor complete a Return to Work Form, which lists the employee's medical restrictions and current capabilities. Have your doctor update this form each time you have an appointment. (If you are unable to personally deliver the completed form to the Risk Manager or Human Resources Director, you should ensure that it is either e-mailed, faxed or mailed promptly.)
- Failure of the employee to provide the required information may result in the city's representative contacting the treating physician and obtaining necessary information. The city will not, under any circumstances, place an employee in a work situation where they must perform physical activities that exceed their physical restrictions. Work assignments will remain the right of the city; however, employees are encouraged to discuss any concerns they may have about work assignments and/or physical limitations with their supervisor.
- If the City or the Worker's Compensation Third Party Administrator (TPA) has reason to believe, based on knowledge of the type of injury or illness, observation of the employee, or any other physical evidence or information, that the employee may not be able to perform the essential functions of his/her job, the TPA may require the employee to undergo a job-related independent medical examination (IME) by a physician selected by the TPA.
- In cases where the physician(s) performing the IME has a different opinion than the employee's treating physician, the decision of the TPA will prevail.
- Before the employee returns to work, the physician release and the employee's return must be approved by the employee's department manager or his/her designee and the Risk Manager. The decision to approve the release shall be made based upon all of the information available to the city regarding the job and the employee's medical condition. The release shall be included in the employee's Workers Compensation Medical File.
- The city shall allow the employee to return to full duties once the release has been submitted and approved. Employees are encouraged to pursue any recommended therapy in order to accelerate their return to work.
- Employees returning to work after a serious injury or illness are expected to perform all the required functions and duties of their job.
- In cases where an employee cannot return to full duty because of limitations caused by the serious injury or illness, the city may allow a return to temporary light duty for a period of time not to exceed six (6) months, in cases where (1) there is legitimate light duty available without displacing another employee, (2) the employee is qualified to do the light duty, and (3) the employee's physician releases the employee to perform the light duty. In unusual cases, such as where the employee is undergoing therapy and the employee is an active and committed participant in the therapy and the expectation of a recovery allowing the full performance of the essential job functions is verified by the

employee's physician, the light duty may be extended upon approval by the Mayor. In no case will the extension of light duty exceed an additional two months.

- At the end of the temporary light duty assignment, or in cases where there is no light duty available, the following options are available to the employee:
  - a. Return to work in the same job held previously, performing the full duties of the job, with a physician's release as required above.
  - b. Reassignment to another position available in the city, for which the employee possesses the minimum qualifications, and the essential functions of which the employee is able to perform. Availability shall be determined by the human resources director and the department manager(s) involved. Reassignment to a position in a different department must be approved by the Mayor.
  - c. Return to the same job held previously with reasonable accommodations to help in the performance of the essential functions, as set forth below.
  - d. Medical leave of absence (either using accrued leave or workers' compensation benefits, or without pay if benefits or leave have been exhausted or are not applicable).
  - e. Apply on a competitive basis for any open position in the city.
  - f. Retirement or other separation from city employment.
- The city shall make reasonable accommodations for the performance of essential functions by employees who have suffered a qualifying disability under the ADA. Reasonable accommodations do not include creating another position or having another employee perform the essential functions of a position but may include changes in the physical or functional work methods or the work conditions or environment.

## **SECTION 6087 RETURN TO WORK – NON WORK RELATED**

### **RETURN TO WORK FOLLOWING INJURY/ILLNESS**

It is the policy of the City of Lewiston to allow employees who have been seriously injured or ill to return to their full responsibilities as soon as they are able to perform the essential functions of their job. The determination shall be made by the employee's Department Director or his/her designee, in consultation with the city's Human Resources Department.

When an employee has had a serious injury or illness the employee shall not return to work until a treating physician releases the employee for return to work. The release shall specifically address the physical capabilities of the employee and shall state any restrictions. If any restrictions are listed, they must be stated in sufficient detail for the City to make an informed decision regarding the suitability to return to work.

The return to work release must be submitted to Human Resources as soon as possible but in all cases prior to the employee returning to work. Employees returning to work with no restrictions are expected to perform all the required functions and duties of their job.

### **TEMPORARY MODIFIED DUTY**

The City may provide work, when possible, for employees who have been restricted by a physician or a health care provider. Such work will be provided subject to availability. Work related injury restrictions will have priority in available work over non work related injuries. Work will be assigned according to the nature of the injury or illness and the limitations set forth by the treating physician or health care provider.

Employees on temporary modified duty must furnish a written update of their medical condition to Human Resources from the treating physician or health care provider after each visit in order to remain in the reassigned job. Being placed on a temporary modified-duty assignment does not excuse an employee from following all City rules and regulations.

In cases where an employee cannot return to full duty because of restrictions, the City may allow a return to modified duty for a period of time not to exceed six (6) months, in cases where: (1) there is a legitimate modified duty available without displacing another employee; (2) the employee is qualified to perform the modified duty; and (3) the employee's physician releases the employee to perform the modified duty. If no modified duty is available, and/or the employee cannot return to perform the essential functions of their position, and/or is unable to return to work refer to Section 6065 Reasonable Accommodation.

## **SECTION 6098 AUTHORIZED LEAVE WITHOUT PAY**

Leave without Pay (LWOP) is a temporary non pay status absence from work that in most cases is at the employee's request. Reasons for LWOP may be for absences due to approved FMLA, exhaustion of employee's accrued leaves, Furlough, or extended periods of Medical Leave. LWOP absences may be granted by the Mayor in cases where such absence would not be contrary to the best interest of the City, or in accordance with federal law. Applicable to this policy section, full time leave without pay means a pay period in which no hours of work were accounted for or accrued leave was used.

### **REQUESTS FOR LEAVE WITHOUT PAY**

LWOP may be requested Full Time or Part Time depending on the needs and circumstances surrounding an employee's request. No LWOP shall be granted except upon written request of the employee, setting forth the reason for the leave. Requests should be made to the employees Department Director, Human Resources Director and Mayor at least two (2) weeks prior to the anticipated beginning of LWOP. LWOP for any period requires approval of both the Department Director and Mayor. It is the supervisor's responsibility to communicate leave without pay to Payroll prior to any period of leave without pay.

### **BENEFITS AND ACCRUED LEAVE WHILE ON LEAVE WITHOUT PAY**

Sick and Vacation Leave shall not be earned during periods of full time LWOP. Employees who utilize the Short Term Disability (STD) benefit, in which they receive 60% wage replacement through the City's benefit vendor, will receive full accruals. During periods of full LWOP an employee will be allowed to maintain their medical and dental insurance only when they are on a job protected period of FMLA, in accordance with federal provisions. If on full time LWOP, outside of an FMLA period, the employee's health and dental insurance and voluntary benefits shall be termed the last day of the month in which they were last in a paid status. The employee will be allowed to enroll in COBRA as required by federal provisions.

An employee is responsible for arranging payment with the City's Finance office for his/her portion of any elective benefits during such unpaid leave. If payment is not received benefits may be terminated or the City may collect additional deductions upon the employee's return to work.

## **SECTION 6090 BEREAVEMENT LEAVE**

Employees may be granted up to three (3) working days leave with pay by the Department Director in the event of a death in the employee's immediate family to be utilized within 6 months of the employee's family members passing. Such leave shall be at full pay and shall not be charged against the employee's earned vacation or sick leave. Additional time off in excess of three (3) days may be taken by an employee with prior approval of his/her Department Director and the Mayor. Such additional time off shall be charged, in order, to accrued sick leave, accrued vacation time, compensatory time, and/or leave without pay when no other accrued leave is available.

For purposes of this section, "immediate family" shall mean the employee's current spouse or domestic/civil union partner, employee's children, current spouses of the employee's children, children of either spouse, parents of either spouse; grandparents and grandchildren of either spouse; brothers, sisters (including step-brothers and sisters and half brothers and sisters and spouses thereof), legal guardians and legal wards.

For the purpose of this policy domestic partner is defined as someone with whom the employee shares a close personal relationship and are each other's sole domestic partner, is responsible for each other's common welfare, is not legally married to anyone else, not related by blood closer than would bar marriage in state of residence, currently shares same and regular permanent residence and intend to do so indefinitely, jointly share financial responsibility for "basic living expenses" including cost of food, shelter, and other costs such as medical expenses, and is 18 years of age or older.

## **SECTION 61041 MILITARY LEAVE OF ABSENCE**

Military leave will be granted in accordance with the provisions of federal and state law. An employee who is ordered to report for active duty or to take part in active training duty, who are members of the National Guard or the Army, Navy, Air Force, Coast Guard, or Marine Corps Reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted unpaid Military Leave of absence from such employment for a period not exceeding 60 months.

All employees entitled to Military Leave shall give the Mayor an opportunity, within the limits of military regulations, to determine when such leave shall be taken. Whenever possible, the employee involved shall notify his/her Department Director and Human Resources Director of such leave request at least ten (10) working days, if not more, in advance of the leave. A copy of the order requiring the employee to report for active duty must be provided to the Human Resources Director as supporting documentation.

- For periods of full time Military Leave in which an employee is expected to be gone for 180 days or more, an employee is able to request payout of their Vacation Leave, Floating Holiday, earned Wellness Day, and earned Compensatory Time. Payouts will occur on the last pay period in which the employee has submitted time for hours worked. If a Vacation Leave payout is not requested the balance of an employee's Vacation Leave will remain until the employee returns from duty, though they will not have accrued Vacation Leave while on Military Leave. An employee's health and elective benefits will be termed at the end of the month in which an employee last worked. The employee will be able to enroll in COBRA if they would like to continue their medical and dental coverage.
- Employees who are on Military Leave part time or intermittently can utilize hours of Vacation Leave, earned Compensatory Time, Floating Holiday, and earned Wellness Day in increments equal to the difference between what an employee's pay is with the City and what the employee is paid by the Military agency in which they are serving, assuming the Military agency is paying less than an employee's earnings with the City. An employee who is on Military Leave part time or intermittently are utilizing their accrued to leave only to supplement their Military pay to reach their regular City wages.

## **SECTION 6121 ADMINISTRATIVE LEAVE**

The Mayor may grant Administrative Leave when it is in the best interest of the City that such leave occurs. Administrative Leave of an employee from his/her position is leave without loss of pay, benefits, and/or accrual of same. The Department is responsible for providing notification to the City's Payroll Department in instances when an employee has been placed on an Administrative Leave and when/if they are taken off a period of Administrative Leave. During any period of Administrative Leave an employee is required to be accessible during their work days and hours and to be responsive when contacted by the City.

## **SECTION 6132 EXECUTIVE LEAVE**

FLSA exempt employees may be authorized leave (time off with pay) in the event of unusual demands requiring excessive hours of work beyond the normal work schedule. Requests for a full workday of Executive Leave must be in writing, and requires approval from the Department Director and Mayor.

Normally, Executive Leave should not exceed one (1) day at a time and should not exceed three (3) days per year.

## **SECTION 6134 COURT APPEARANCES**

Employees who are subpoenaed to appear in court as witnesses in a matter arising out of their employment with the City shall be granted leave with pay when the employee is appearing during his/her work hours. If the employee is appearing on his/her off duty time, he/she shall receive overtime pay or compensatory time. Compensation received by the employee for witness/subpoena fees or mileage when traveling in a City-owned vehicle must be remitted to the City. Compensation for mileage when traveling in a private vehicle or subsistence allowance shall be retained by the employee. Prior to being granted leave, overtime, or compensatory time, the employee must provide to his/her immediate supervisor a copy of the subpoena or court notice. Employees who are to appear in court as a result of a personal lawsuit shall use available accrued vacation leave or comp time for hours missed.

## **SECTION 6154 JURY DUTY**

Any employee required to report for jury duty during his/her work hours for the City shall be granted leave with pay. Said employee shall receive full pay from the City for the time served on the jury, provided the employee remits to the City all compensation received by the employee for such duties. The employee may keep any compensation for mileage (when employee uses his/her own vehicle) or subsistence allowance. Employees shall not be allowed to utilize a City-owned vehicle when serving jury duty.

## **SECTION 6156 UNAUTHORIZED LEAVE OF ABSENCE**

Unauthorized leave of absence shall be considered as days, or portions of days, not worked that are normal working days and will cause the deduction from an employee's pay of an amount equivalent to the time absent. Supervisors may discipline in accordance with Chapter 11 of this Personnel Policy, up to and including termination, for any periods of unauthorized leave. Unauthorized leave of absence for three (3) or more days, whether consecutive or not, shall be cause for automatic termination of employment. Unauthorized leave may not be filled using accrued leave.

## **SECTION 6167 SICK LEAVE BANK**

The City of Lewiston maintains a Sick Leave Bank to assist employees who have encountered a catastrophic illness or injury. This program provides eligible employees with sick leave donations (who have exhausted all paid leave due to a non-work related catastrophic illness or injury incurred by the employee or an immediate family member). Employees are encouraged to manage their sick leave appropriately. In most cases, time off as a result of general surgery, pregnancy, or worker's compensation are not eligible for sick leave from the sick leave bank.

This policy provides the following:

- Defines eligibility for Sick Leave Bank benefits and the process for applying and receiving those benefits.
- Identifies the staff responsible for the administration of the Sick Leave Bank.
- Provides examples of eligible catastrophic illnesses and injuries as well as exclusions.

This policy applies to the City of Lewiston and its full time benefited employees within all departments and divisions. The Human Resources Director or designee is the person responsible for answering questions relating to the provisions of this policy.

**City:** City of Lewiston, Idaho and its employees, department, and divisions.

**Eligible Employee:** Any full time employee with at least twelve (12) continuous months with the City.

**Immediate family:** Includes the employee's spouse, parents, and children (natural, step, adopted, and foster children).

**Catastrophic illness and/or injury:** Acute or prolonged illness or injury that is considered life-threatening or with the threat of serious residual disability

### ELIGIBILITY

The Sick Leave Bank provides up to a maximum of six (6) weeks of paid leave in a twelve (12) month period (max 240 hours except for Firefighters who have a max of 336 hours) only after the exhaustion of an employees accrued leave. These benefits are paid at the employee's regular rate of pay and are subject to the same payroll tax liabilities as the employee's normal salary. Existing payroll deductions including benefit premiums will continue to occur.

- Short-term disability (STD) or any other circumstance that reduces the normal amount of City pay to an employee does not add to or extend the maximum six (6) week benefit. Sick Leave Bank will run concurrent with STD benefits and only be utilized for the difference between the benefit (60%) and normal wages (40%).
- Use of Sick Leave Bank runs concurrent with FMLA provisions, and may only be utilized during an approved FMLA period. Sick Leave Bank is not applied to periods of leave that extend beyond an employee's period of approved FMLA. The Mayor may approve use beyond FMLA only due to extraordinary circumstances and at his or her discretion.
- Sick Leave Bank may not be used during any period of leave for a worker's compensation injury or claim. Any Sick Leave Bank benefits approved but not used will remain the property of the Sick Leave Bank.

To receive leave from the Sick Leave Bank, an employee must:

- Have exhausted all accrued paid leave (i.e. sick, vacation, comp, wellness day, and floating holiday(s)).
- Have a catastrophic illness or injury to the employee or immediate family member that has been documented by a health care provider and provide that documentation to Human Resources along with a completed ***Sick Leave Bank Benefits Request Form***.
- Expect to be absent from the workplace for a minimum of thirty (30) continuous calendar days or sixty (60) days intermittently for the condition documented above.

While receiving Sick Leave Bank benefits employees do not accrue normal vacation or sick leave.

### APPLYING FOR SICK LEAVE BANK

An eligible employee must request Sick Leave Bank benefits by completing the ***Sick Leave Bank Benefits Request Form*** and submitting it to Human Resources. All applications must be accompanied by a health care provider's statement which includes the beginning date of the condition, expected duration of leave, and a description of the illness or injury. All applications must indicate the number of sick leave days being requested. The application form will be reviewed by Human Resources and the Mayor for consideration.

## ADMINISTRATION

The Human Resources Director shall administer the Sick Leave Bank policy. The Mayor shall hear all appeals and may waive policy guidelines under extraordinary circumstances.

Human Resources staff will:

- Accept Sick Leave Bank Request Forms and maintain records of all submissions
- Ensure all medical information is kept confidential
- Forward enrollment forms and approved benefits requests to Payroll
- Forward all appeals to the Mayor

Payroll staff will:

- Process Sick Leave Bank Enrollment Forms after each enrollment period
- Maintain Sick Leave Bank balance records

Department responsibility:

- During an employee's Sick Leave Bank usage, the compensation of such wages, benefits, taxes, and the employee's share of PERSI will continue to be paid from the department's budget, as if they were using accrued leave.

## EXAMPLES AND EXCLUSIONS

Examples of catastrophic illness or injury:

- Serious, debilitating illness, impairment, or physical/mental condition that involves treatment in connection with an overnight stay in a hospital, hospice, or residential medical facility.
- High intensity/high frequency of treatment encounters necessary for a chronic or long-term condition that is so serious that, if not treated, would likely result in an extended period of incapacity or death.
- Terminal illness, such as cancer, etc.

Exclusions:

- Elective surgery does not qualify as a catastrophic illness or injury. If complications arise resulting in a serious health condition, the situation may qualify as a catastrophic illness or injury.
- Most leave associated with pregnancy does not qualify as a catastrophic illness or injury. If complications arise resulting in a serious health condition for the mother or child, the situation may qualify as a catastrophic illness or injury.
- Employees on Workers' Compensation are not eligible for Sick Leave Bank benefits.
- An employee must not have a written record of disciplinary action for leave abuse or misuse of leave within the past twelve (12) months.

## BENEFITS TERMINATION

Sick Leave Bank hours terminate in the following situations:

- The employee separates from employment with the City.
- Upon the death of the employee or qualified individual.
- When a health care provider releases the employee or qualified individual to return to work.
- The maximum benefit has been exhausted.

## APPEALS

If an employee who has requested the sick leave bank feels that they were denied the benefit but met eligibility or have an extraordinary circumstance can make an appeal to the Mayor.



- An appeal must be submitted to HR in writing and have sufficient explanation and information as to determine what is being disagreed or requested. This may include a letter, supporting medical documentation, or any evidence to explain or clarify the denial or request.
- Understanding that the appeals may impact payroll, benefits, and/or leave processing, appeals must be made timely. An appeal will only be considered when received within five (5) days of denial of Sick Leave Bank or onset of extraordinary circumstance.

Dependent on the information provided it is at the Mayor's discretion if he or she requests a meeting with the employee. The Mayor will review the information provided and/or consider the information obtained in the meeting and issue a final written decision within 10 working days of receipt of an employee's appeal. In all cases, the Mayor may affirm, modify, or reverse the denial or approve the request.

If the employee's request for Sick Leave Bank, supporting medical documentation, and or usage of Sick Leave Bank is determined to be fraudulent the City will issue discipline to the employee in accordance with the Personnel Policy and/or Collective Bargaining Agreement, up and to discharge. Questions regarding this and any other policy can be directed to the Human Resource office.

## CHAPTER 7 – BENEFITS

### SECTION 701 BENEFITS

#### WORKERS' COMPENSATION INSURANCE

The City carries workers' compensation insurance coverage as required by law to protect employees injured on the job. This insurance provides coverage for certain medical, surgical, and hospital treatment in addition to payment for a portion of any lost earnings that result from work-related injuries. Compensation payments generally begin on the first day of an employee's hospitalization or on the fourth day following the injury if an employee is not hospitalized. The cost of this coverage is paid completely by The City.

Any leave of absence due to a workplace injury runs concurrently with all other City leaves of absence. Employees who need to miss work due to a workplace injury must also request a formal leave of absence. See the Leave Provisions and Worker's Compensation sections of this Policy for more information.

The City does not provide workers compensation benefits, or accept any liability, for any illness or injury that arises from an employee's voluntary participation in any off-duty recreational, social, or athletic activity or event that is not an expected or required as part of the employee's work-related duties. Employees who choose to participate in any such off duty activities may be required to sign a written agreement to confirm that they are voluntarily assuming the risk of injury or illness and releasing The City from any such liability.

#### PUBLIC EMPLOYEE RETIREMENT SYSTEM (PERSI)

The PERSI Base Plan is a defined benefit, taxed deferred plan, under IRS Code Section 401(a) plan. The plan allows for a lifetime allowance at retirement that is not dependent on the amount of money an employee contributes to PERSI. PERSI provides pension benefits to public employees. In order to receive a lifetime benefit retirement an employee needs to contribute for at least 60 months to be vested. The 60 months need not be all at once or with one employer.

Regular employees working more than twenty (20) hours per week for more than one-half of the pay periods in any consecutive five (5) months will be covered in accordance with PERSI. Specific Seasonal positions that allow for work up to six (6) consecutive months are an exception to these eligibility criteria; they are not eligible to participate with PERSI.

## PERSI CHOICE 401K

The Choice 401(k) Plan is an optional defined contribution (DC) retirement savings plan available to active PERSI members. Unlike the Base Plan, participation in the Choice 401(k) Plan is completely voluntary. It allows an employee to contribute a portion of their salary on a tax-deferred basis via payroll deductions. This means an employee's contributions come out of their paycheck before taxes, thereby reducing the amount of taxes you pay during the year.

## SOCIAL SECURITY

Federal Insurance Contribution Act (FICA) tax is the money that is taken out of employee's paychecks to pay older Americans their Social Security retirement and Medicare benefits. It is a mandatory payroll deduction. FICA doesn't only prescribe tax obligations that support Social Security, but also Medicare. Both employees and employers share these costs to guarantee supplemental income and health coverage in old age. FICA taxes include the withholding of employee compensation, as well as the payment of an employer's portion.

Employee compensation withholding:

- 6.2 percent Social Security tax
- 1.45 percent Medicare tax
- 0.9 percent Medicare surtax on employees earning more than \$200,000

Employer obligations:

- 6.2 percent Social Security tax
- 1.45 percent Medicare tax

The City and all employees contribute social security premiums in accordance with the federal social security premium schedule, unless exempt by Idaho Code or a Collective Labor Agreement (IAFF).

## GROUP LIFE INSURANCE

The City provides a City-paid group life insurance policy for all Full-Time regular employees, Reserve Firefighters, and City Council members. The City provides a basic policy of \$20,000 Life and \$20,000 Accidental Death and Dismemberment. Full-Time regular employees, at time of new hire and Open Enrollment, are able to request additional life insurance coverage at the employee's expense. Premiums for additional coverage will be payroll deducted.

## MEDICAL, DENTAL, AND VISION INSURANCE

Regular employees working thirty (30) hours or more each week and their eligible dependents are covered by the City's medical, dental, and vision insurance (City of Lewiston Employee Benefit Plan Trust) per the Affordable Care Act (ACA). The contribution payments for employees and their dependents shall be subject to review by the Plan's Trustees annually, and shall be paid according to payroll deduction practices.

Eligible dependents include:

**Spouse:** person to who an employee is legally married

**Domestic Partner** (Affidavit required) who meets the following criteria:

- 18 years of age or older;
- Share a close personal relationship and are each other's sole domestic partner;
- Responsible for each other's common welfare;
- Not legally married to anyone else;
- Not related by blood closer than would bar marriage in state of residence;
- Currently shares same and regular permanent residence and intend to do so indefinitely; and
- Jointly share financial responsibility for "basic living expenses" including cost of food, shelter, and other costs such as medical expenses.

**Children:** Employee's (or spouses/domestic partner's) child who is under age 26 and who meets the following criteria:

- Employee's (or spouses/domestic partners) natural child, step child, adopted child or child legally placed with the employee or spouse for adoption;
- a child for whom the employee (or employees spouse/domestic partner) have court-appointed legal guardianship; or
- a child for whom the employee (or employee's spouse/domestic partner) are required to provide coverage by a legal qualified medical child support order (QMCSO).
- Employee's (or spouse's/domestic partner's) child who is age 26 or over and incapable of self-support because of intellectual disability or physical handicap that began before his or her 26th birthday. Employee must complete and submit the Claims Administrator's affidavit of dependent eligibility form, with written evidence of the child's incapacity, within 31 days of the later of the child's 26th birthday or employees effective date and either: he or she is a Beneficiary immediately before his or her 26th birthday; or his or her 26th birthday preceded the employees effective date and he or she has been continuously covered as a dependent on group coverage since that birthday.

### **Retiree Coverage**

Eligible employees who retire from the City of Lewiston may be able to continue their medical, dental, and vision coverage through participation in the retiree health plan. Plan and participation eligibility subject to plan trustee determination. Employees should contact Human Resources with questions or to confirm eligibility.

### **PREMIUM PAYMENTS FOR EMPLOYEES ON LEAVE**

The City will pay the employer's portion of premiums for continuation of City-sponsored group health plan benefits through the last day of the month in which an employee is in paid status, of any authorized leave without pay. Thereafter, the employee may only continue coverage under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) and must pay the full cost of doing so.

If an employee is on an approved FMLA leave, The City will permit the employee to continue coverage under City-sponsored group health plans by paying only the amount charged to similarly-situated active employees. If an employee does not return to work at the expiration of an FMLA leave, regardless of whether they continued coverage during the FMLA leave, they normally will be eligible to elect COBRA continuation coverage with respect to City-sponsored group health plans, with the COBRA qualifying event normally being the expiration of the leave.

### **Conversion/Post-employment Insurance Options**

Pursuant to COBRA eligible employees and their dependents may be entitled to continue certain benefit coverage after employment with The City ceases or certain other qualifying events occur. COBRA information is provided separately. In addition, you also can contact the Human Resources Department to obtain COBRA information.

### **Insurance Coverage Information**

Eligibility requirements and further information concerning insurance coverage are fully explained in the applicable plan documents, summary plan descriptions, and any applicable summaries of material modification, available from the Human Resources Department. In all cases, however, the applicable plan document controls over any summary or other communication for purposes of determining your rights and benefits.

## DEFERRED COMPENSATION RETIREMENT PROGRAM

Deferred compensation plans are available to regular Full Time employees through PERSI Choice, International City Management Association (ICMA) Retirement Corporation, or Nationwide Retirement Corporation.

## FLEXIBLE SPENDING ACCOUNT

A flexible spending account is available to regular full-time employees only. According to Internal Revenue Service (IRS) Code Section 125, this benefit plan establishes a cafeteria or flexible spending account where certain nontaxable expenses (e.g., qualified health expenses, dependent care expenses, and payroll deducted group premium expenses) may be deducted on a pretax basis each plan year. Employees are eligible to participate as a new hire and during Open Enrollment.

## SUPPLEMENTAL BENEFITS

Supplemental optional benefits, such as cancer, accident, critical illness, and short or long-term disability insurance, are available to employees through various vendors for these and other types of insurance coverage. Human Resources maintains enrollment applications for supplemental benefits. Supplemental benefits are to be considered by employees during open enrollment, typically October of each year. New employees have up to thirty (30) days after hire date to enroll in supplemental benefits.

## HRA VEBA

Health Reimbursement Arrangement Voluntary Employee's Beneficiary Association (HRA VEBA) Trust is a non-profit, multiple employer voluntary employees' beneficiary association authorized under Internal Revenue Code 501(c)(9). HRA VEBA Trust offers a funded health reimbursement arrangement (HRA) plan available to certain governmental employers in the Northwest (Washington, Oregon, and Idaho).

## EMPLOYEE ASSISTANCE PROGRAM

### **Purpose of Guideline**

The City recognizes that personal problems may have a negative impact on an employee's attendance, job performance, or behavior at work. The City also recognizes that everyone may occasionally benefit from professional assistance with personal problems. Accordingly, The City provides an Employee Assistance Program (EAP) for employees. The EAP provides confidential and professional counseling and when appropriate, referral to other services to deal with personal problems, such as chemical dependency, marital or family conflict, and emotional problems. The EAP is offered to enhance personal well-being and as a means of improving individual attendance, performance, and productivity.

All counseling through this program is on a voluntary basis. Employees who suspect they may have an alcohol, drug, emotional, marital, family, or other personal problem, even in the early stages, should contact the EAP, seek a diagnosis, and follow through with the program as prescribed by qualified professionals. Although employees are encouraged to use the EAP, participation in the program does not relieve employees of their obligation to perform their work in a satisfactory manner and to comply with other City rules and guidelines including The City's Drug-Free Workplace guideline.

### **Eligibility**

The EAP is offered to all employees and members of their immediate families. For purposes of this Guideline, the phrase "members of their immediate families" means the employee's spouse, registered domestic partner, dependent children and stepchildren, and adult children living at home.

### **Counseling and Referral Services**

The EAP program provides for up to three (3) paid EAP sessions per problem per year, as clinically appropriate, for employees and members of their immediate families. These sessions include problem assessment, professional consultation, counseling, information, and/or referral. EAP counseling is typically a

three-stage process that includes: (1) clarifying the problem; (2) identifying the possible solutions; and (3) developing an action plan. If the action plan calls for treatment by another resource, participating employees will be responsible for paying those fees. To determine whether The City's group health plan may cover some of those costs, employees should contact the Human Resources Department. EAP brochures that describe the program in more detail are available through supervisors or the Human Resources Department.

### **Use of the EAP**

Employees should make every effort to schedule EAP appointments before or after working hours, or during meal periods. EAP appointments scheduled during working hours will be treated the same as medical appointments and may be charged against sick leave. In order to protect the confidentiality of the program, employees may refer to EAP appointments as "medical appointments" when filling out time cards or obtaining permission to be absent.

### **Self-Referral**

Any employee or member of their immediate family who desires confidential assistance for a personal problem should call the EAP. Assistance is available seven days a week, 24 hours per day. The EAP will arrange for a counselor to see the individual for confidential consultation, or will provide limited counseling by telephone.

### **Supervisor Referral**

Supervisors may refer employees to the EAP when they believe that an attendance, behavior, or work performance problem may be the result of a personal problem. Even in this situation, all counseling through the EAP is on a voluntary basis. The City may take such steps as it deems appropriate in response to the underlying attendance, behavior, or work performance problem.

### **Confidentiality**

All EAP records and services are treated as confidential. The EAP will not share information concerning an individual's involvement in the program without the individual's written permission unless life, safety, or national security is seriously threatened, or disclosure is otherwise required by law.

If an employee is referred to the EAP by the employee's supervisor because of an attendance, behavior, or work performance problem, the EAP will confidentially inform the supervisor whether the employee attends the EAP session(s) and cooperates with the counseling plan. However, no further information will be shared by the EAP without the employee's written permission.

### **Questions Regarding EAP Program**

Questions regarding EAP services should be directed to the Human Resources Department.

## **CHAPTER 8 – SEPARATION FROM CITY EMPLOYMENT**

### **SECTION 801 RESIGNATION**

In order to be considered as having resigned in good standing, an employee shall be required to submit a written notice of his/her resignation to his/her Department Director at least fourteen (14) calendar days prior to the effective date of their resignation. Both written and oral resignation are effective upon receipt by a supervisor. Oral resignations should be documented by the supervisor after consultation with the Human Resources Director. Evidence of the written or oral resignation should be provided to the employee and placed in the employee's personnel file. The Mayor may authorize the resignation in good standing when in their opinion there are sufficient reasons to waive the requirements of this section. If an employee separates not in good standing, the employee is unable to return to employment with the City.

The separation date will be the last day/shift the employee reports to his/her work site. When an employee is granted permission by the Department Director to take accrued leave in excess of thirty (30) or more consecutive days prior to the employee's last day, in lieu of taking the payout upon termination, no vacation or sick leave will accrue during the granted period of leave.

Employees who have an unexcused or unauthorized absence of 3 or more working days in a row may be considered to have resigned through abandonment of his/her position. If an employee's words or actions indicate an intent to resign, including having an unexcused or unauthorized absence of 3 or more working days in a row, the City will consider the employee as having resigned and immediately notify him/her of such.

## **SECTION 802 REDUCTION IN FORCE**

On occasion, the City may need to reduce staff. Some business reasons for this may be economic need, restructuring of operations, combining of departments or functions, and streamlining or elimination of departments, functions, or positions. If a reduction in staff is deemed necessary, the Department Director of the department to be affected will work with the Mayor and Human Resources Director to document the reason and process for the reduction in force.

In some cases, the City may be able to transfer an employee whose position is being eliminated into another area. Employees offered positions elsewhere in the City will not be eligible for any severance payments.

## **SECTION 803 DISCIPLINARY ACTION**

An employee may be discharged at any time as a form of disciplinary action, as provided in Chapter 10 of this Policy.

## **SECTION 804 RETIREMENT**

All regular employees who retire under the provisions of the PERSI retirement plan and provide the City with at least fourteen (14) days' notice of their intent to retire, shall be deemed to have been separated from the City service in good standing.

## **SECTION 805 PAYMENT ON RESIGNATION, TERMINATION, OR COMPLETION OF ASSIGNMENT OR TERM**

If an employee resigns or is terminated involuntarily, he or she will be paid on the next regularly schedule payday, or within 10 days of the separation, whichever is earlier. Employees are entitled to make a written request to be paid sooner and must be paid within 48 hours of that written request being received.

## **SECTION 806 EXIT INTERVIEW**

Employees who leave The City for any reason may be asked to participate in an exit interview. This interview is intended to permit terminating employees the opportunity to communicate their views regarding their work with The City, including job duties, job training, job supervision, and job benefits. At the time of the interview, employees are expected to return all City-furnished property, such as uniforms, tools, equipment, I.D. cards, keys, credit cards, documents, and Manuals. Arrangements for clearing any outstanding debts with The City and for receiving final pay also will be made at this time.

## **CHAPTER 9 – GRIEVANCE PROCEDURE**

### **SECTION 901 NON DISCIPLINARY MATTERS**

Employees should have an opportunity to present their work related complaints and to appeal employment related non disciplinary management decisions other than discharge, through a grievance procedure. The City will attempt to resolve promptly all grievances that are appropriate for processing under this Policy. Use of the grievance procedures shall not reflect unfavorably on the employee, the supervisors, the Department Director, or the general management of the City. Retaliatory or discriminatory action against an employee for using the grievance procedure is prohibited and shall be a violation of City policy.

### **SECTION 902 GRIEVANCE PROCEDURE**

The grievance procedure is not available to an employee recommended for discharge or selected for layoff. The grievance procedure is available to regular employees who express dissatisfaction concerning an interpretation or application of an adopted City policy by the Mayor, a supervisor, or other employee. All grievances must be in writing.

Examples of matters that are appropriate to grieve include:

1. A belief that adopted City polices, practices, rules, regulations, or procedures have been improperly applied in a manner detrimental to an individual or employee;
2. Treatment considered unfair by an employee, such as coercion, reprisal, harassment, or intimidation;
3. Alleged discrimination because of actual or perceived race, color, national origin, ancestry, religious creed, gender, martial or familial status, physical or mental disability, sexual orientation or gender, identity, expression or veteran's status; and
4. Improper or unfair administration of employee benefits or conditions of employment, such as vacations, promotions, holidays, or salary.

The grievance procedure has a maximum of three steps, but grievances may be resolved at any step in the process. Grievances should be fully processed until the employee is satisfied with the result, the employee fails to file a timely appeal, or the employee exhausts the right of appeal. A decision becomes final when an employee fails to file a timely appeal or when a decision is made in step three.

An employee who thinks he/she has an appropriate grievance should:

1. Promptly bring the grievance to the attention of the immediate supervisor. If the grievance involves the supervisor, then it is permissible to proceed directly to step two. The supervisor is to investigate the grievance, attempt to resolve it, and notify the employee of the supervisor's decision within seven (7) calendar days. The supervisor shall prepare a written and dated summary of the grievance and proposed resolution. A copy of the written summary shall be provided to the Department Director and Human Resources Director.
2. Appeal the supervisor's decision to the Department Director if dissatisfied with the supervisor's decision, or initiate the procedure with the Department Director if the first step has been bypassed. An appeal must be made in writing within seven (7) working days of receipt of the supervisor's decision. The Department Director will, within ten (10) calendar days from the date the complaint or appeal is received, confer with the employee, the supervisor, and any other persons considered appropriate; investigate the issues; and communicate a decision in writing to all parties involved.
3. Appeal the Department Director's decision to the Mayor, if dissatisfied with the Department Directors decision. Such appeal must be made in writing within seven (7) working Days of receipt of the Department Director's decision. The Mayor will review and investigate the grievance and issue a

written, final, and binding decision within ten (10) working days of the Mayor's receipt of the written appeal.

Employees are encouraged to consult with the Human Resources Director and/or their supervisors regarding employee complaints or disputes. A final decision on grievances will not be precedent setting or binding on future grievances.

Information concerning an employee grievance is to be held in confidence to the greatest extent possible while allowing a thorough investigation of the circumstances involving the grievance. Supervisors and Department Directors who investigate a grievance are to discuss it only with those individuals who have a need to know or who are needed to supply necessary background information or advice. Time spent by employees in grievance discussions during their normal working hours will be considered hours worked for pay purposes.

Employees are not to be penalized for proper use of the grievance procedure. However, it is not considered proper use if an employee raises grievances in bad faith or solely for the purpose of delay or harassment. At its discretion, the City may refuse to proceed with a grievance that is made in bad faith or solely for the purpose of delay or harassment.

## **CHAPTER 10 – DISCIPLINARY ACTION**

The following framework provides discipline options that may be taken when an employee violates employment policies or fails to adequately perform his/her duties and doesn't respond sufficiently to counseling and coaching. Progressive steps may be implemented in order to encourage improved performance or attitude but are not required. The City may take any of the following disciplinary actions, or any other action, in any order when a supervisor deems an action or performance of the employee to be serious enough to warrant a certain discipline. Supervisors are to notify Human Resources of disciplinary proceedings and provide copies of written record.

### **SECTION 1001 RECORD OF DISCUSSION**

An infraction of City policy or continued performance deficiencies may be dealt with, by an employee's supervisor, through the use of a written record of discussion. Record of Discussions are issued when an employee's performance deficiencies warrant a disciplinary action more severe than supervisory counseling and coaching. Its purpose is to get the employees attention when normal managerial discussions, meetings, and suggestions have failed to have a beneficial effect. The written documentation shall be considered confidential. The written Record of Discussion shall be placed in the employee's permanent personnel file maintained by Human Resources.

### **SECTION 1002 OFFICIAL REPRIMAND**

After a supervisor has written a record of discussion as described in section 1001 of this chapter and the employee's performance deficiencies continue to be poor, or if the performance deficiencies are serious enough to constitute moving to this section first the supervisor may provide for an Official Reprimand. The reprimand shall be written, discussed with the employee, and then placed in the employee's permanent personnel file maintained by Human Resources.

### **SECTION 1003 DISCIPLINARY PROBATION**



The purpose of disciplinary probation is to provide a final opportunity for an employee to correct performance issues and/or unacceptable behavior prior to consideration of disciplinary demotion or discharge. In essence, disciplinary probation is a “last chance” for an employee after other disciplinary actions have been unsuccessful in effecting the necessary changes in an employee’s behavior or performance. An employee may only be placed on disciplinary probation by the Mayor.

Disciplinary probation may include a written Performance Improvement Plan (PIP). A PIP, is a tool to give an employee with performance deficiencies the opportunity to succeed. It may be used to address failures, to meet specific job goals, or to ameliorate behavior-related concerns. PIP’s should be written with effective goals and sufficient time to address deficiencies.

While on disciplinary probation, the employee shall continue to earn vacation and sick leave, but shall not earn time for the purpose of step increases or promotion; nor shall he/she be allowed to compete in promotional examinations. Disciplinary probation shall not be less than three (3) months or more than six (6) months. A new salary review date will be established upon successful completion of the probation period by adjusting the former salary date by the same number of days the employee was on disciplinary probation.

## **SECTION 1004 SUSPENSION**

While on suspension, an employee suspended from the City service shall forfeit all rights, privileges, and salary, except that the employee shall not forfeit his/her health plan, pension plan, or life insurance. No employee shall be suspended without pay for more than sixty (60) calendar days.

## **SECTION 1005 DISCIPLINARY DEMOTION**

Disciplinary demotion is the change in status of an employee resulting from a disciplinary action to a lower pay step in the same range or to a position in a different range with lesser duties and responsibilities and a lower rate of pay. A new salary date will be established.

## **SECTION 1006 TERMINATION**

A termination is the involuntary separation of an employee from City employment. An employee may be terminated for failure to meet standards of job performance, attendance and behavior; misconduct; failure to follow employment-related policies and procedures; or for any other reason the Mayor deems sufficient. Except as otherwise provided by State or local law or City policy, an employee may only be terminated by the Mayor. The Mayor will consider the recommendation of the Department Director and Human Resources Director, and such other information as he/she deems appropriate.

# **CHAPTER 11 – DISCIPLINARY PROCEEDINGS**

Retaliatory or discriminatory action against an employee for using this procedure or discrimination in the application of this policy shall be a violation of City policy.

## **SECTION 1101 CAUSES FOR DISCIPLINARY ACTION**

While not all inclusive, the following list provides examples of impermissible conduct or performance that may lead to disciplinary action up to, and including, immediate discharge.

1. Obtaining employment based on false information or by making material omissions;

2. Theft or misuse of City resources or equipment or the unauthorized removal or possession of another person's property from City premises;
3. Bringing or possessing firearms, weapons, explosives, or similar items into the workplace on City property without authorization;
4. Being under the influence of unauthorized controlled substances or alcohol on the job; failing or refusing a drug test; using, being under the influence of, or possessing illegal drugs while performing City business, or on City time, or on City premises;
5. A plea of or finding of guilt, or conviction for official misconduct in office, or conviction of a crime that has a negative impact on an employee's ability to perform the job or which has a negative impact on the City as an employer;
6. Insubordination, including improper conduct toward a supervisor or refusal to do work as assigned without proper justification;
7. Intimidation, fighting, provoking a fight, bullying, verbal or physical violence toward another employee or member of the public;
8. Misusing, abusing, destroying or damaging City property or equipment, including electronic devices and/or communication;
9. Violations of safety standards that result in carelessness or negligence in performance of work, which compromises or jeopardizes the safety of the employee or others, including repeated injuries from failing to follow safety in the workplace practices;
10. Failure to report a job injury or accident; making false claims or inaccurate statements in the reporting of job injury or accident;
11. Habitual tardiness, absenteeism, job abandonment, unexcused or unauthorized absence or leave from work;
12. General dishonesty or the falsification or destruction of records;
13. Unauthorized disclosure of confidential City information;
14. Failure to obtain and maintain licensure requirements lawfully required as a condition of employment in the position;
15. Loss of a driver's license, when required by the job description;
16. Use of public office or position to obtain personal or financial gain, accepting gifts in exchange for influence or favors given as a City employee;
17. Unlawful job discrimination or harassment towards other employees;
18. Failure to satisfactorily complete any disciplinary probation period;
19. Unsatisfactory or poor performance;
20. Failure to comply with or disregard of City and/or Department employment-related rules, policies, and prohibitions.

## **SECTION 1102 DISCIPLINARY ACTIONS**

Disciplinary action shall result in one or more of the following actions:

1. Withdrawal of the disciplinary action against the employee.
2. Record of discussion, as described in Section 1001 of this policy.
3. Official reprimand, as described in Section 1002 of this policy.
4. Disciplinary probation, as described in Section 1003 of this policy.
5. Suspension, as described in Section 1004 of this policy.
6. Disciplinary demotion, as described in Section 1005 of this policy.
7. Termination, as described in Section 1006 of this policy.

## **SECTION 1103 PERSONS WHO MAY TAKE DISCIPLINARY ACTION**

The Mayor may place an employee on Administrative Leave at any time, pending the result of disciplinary action. A Department Director may delegate to supervisory employee(s) the authority to relieve an employee

of his/her duties in an emergency situation pending further action by the Department Director. A Department Director may suspend an employee under his/her supervision for not more than three (3) working days at any one time without the approval of the Mayor. Written notice of suspension shall be given to an employee at the time the action is taken or as soon thereafter as practical. Disciplinary probation, demotion, and discharge are actions that can only be taken by the Mayor.

## **SECTION 1104 NOTICE OF DISCIPLINARY ACTION**

Prior to disciplinary action being taken, the Department Director shall advise the employee in writing of the nature of the allegations and that disciplinary action is contemplated. The employee shall meet with the Department Director and may provide any information that he/she may consider appropriate. Disciplinary action is valid only if a written notice is served on the employee and filed with the Mayor as soon as reasonably possible. This notice shall be served on the employee either personally or by certified mail and shall include:

1. A written report, in common and concise language, of the acts or conduct upon which the disciplinary action is based. This report will also cite the policy and/or procedures(s) violated.
2. A report detailing the nature of the proposed disciplinary action, which may include conditions or future actions to be taken. This report will include the effective date of the disciplinary action.
3. A copy of Section 1106, Right of Appeal, of this Policy.

## **SECTION 1105 DEMOTION AND TERMINATION**

A Department Director may recommend demotion or termination of an employee by submitting a written request to the Mayor, Human Resources Director, and City Attorney. The recommendation shall include the specific allegation and the basis of the recommendation, and a copy shall be provided to the employee. The Mayor shall advise the employee in writing of a pre-discharge or pre-demotion hearing. The employee shall be notified in writing of the basis of the recommendation for discharge or demotion and shall be advised when the employee will meet with the Mayor to discuss the proposed action. A pre-discharge or pre-demotion hearing will be held no sooner than three calendar (3) days after the written notification of the proposed action has been served on the employee. No hearing will be held for a disciplinary probation.

At a pre-discharge or pre-demotion hearing, the employee may present information in response to the charges, including witness testimony. The hearing shall be informal. Human Resources and the City Attorney may be present. This is an employment matter and the employee's attorney, if one is obtained, will not be permitted to attend.

The Mayor shall conduct the pre-discharge or pre-demotion hearing without swearing of witnesses, without allowing cross-examination, and without observing formal rules of evidence. The basis for the recommendation to discharge or demote shall not be made public unless made so by the employee. After reviewing the information provided by the Department Director and the employee, the Mayor shall make a decision within ten (10) working days. The employee shall be given written notice of the Mayor's decision and the basis for such decision. The decision of the Mayor is final and binding.

## **SECTION 1106 RIGHT OF APPEAL**

All employees shall have the right of appeal to the Mayor from any disciplinary action taken by his/her Department Director under this chapter, other than a recommendation for disciplinary probation, demotion, or termination, which are to be addressed in accordance with Section 1105. Such appeal must be filed with the Mayor with a copy to the Department Director and Human Resources Director within ten (10) calendar

days after receipt of written notice of disciplinary action. The appeal must state specifically the facts upon which it is based.

The Mayor shall render a final decision on the matter within ten (10) work days after receipt of the appeal, with or without a hearing in the discretion of the Mayor. Failure of an employee to file an appeal within the period specified constitutes a waiver of a right to appeal. At any time after an appeal has been filed, an employee shall have the right to withdraw his/her appeal by written notification to the Mayor.

## **SECTION 1107 NAME CLEARING HEARING**

An employee who has been terminated from employment based upon public allegations of dishonesty, immorality, or criminal misconduct is entitled to a name-clearing hearing. An employee must request a name clearing hearing in accordance with the requirements set forth below. Failure to request a name-clearing hearing constitutes a waiver of this opportunity.

The procedure for a name-clearing hearing is as follows:

- a. Within fourteen (14) calendar days of his/her termination the employee may submit a written request for a name-clearing hearing, stating with particularity the basis for the requested hearing. The written request must be submitted to the Mayor and Human Resources Director. Written requests that are untimely submitted or that fail to state a particular, legally recognized basis will not be granted. An employee will be promptly notified if a requested hearing is denied.
- b. An employee who is legally entitled to a name-clearing hearing, will meet with the City Council in executive session.
- c. An audio recording of the hearing, capable of being transcribed, will be made and maintained as part of the personnel record.
- d. The employee's supervisor, Department Director, and/or the Mayor may provide a written statement at least twenty-four (24) hours prior to the hearing in response to the employee's allegations. The City Council may require the employee's supervisor, Department Director, Human Resources Director, and/or the Mayor to participate in the hearing.
- e. The employee will be provided an opportunity to present evidence upon which the allegations are based.
- f. The City Council may ask questions during this process.
- g. The employee may question participants during this process.
- h. The Idaho Rules of Evidence do not apply during the name-clearing hearing.

After the hearing, the City Council will consider the information submitted, and such other information as might be in the City's records, to arrive at a decision concerning the employee's allegations. The City Council's decision will set forth in writing the reasons for the City Council's determination. Issues involving job performance or employee attitude, without allegations of dishonesty, immorality, or criminal misconduct, are not the proper subject of a name clearing hearing and will not be heard.

## **CHAPTER 12 - PERSONNEL RECORDS, REPORTS, AND NOTICES**

### **SECTION 1201 OBJECTIVES OF MAINTAINING ADEQUATE PERSONNEL REPORTS AND RECORDS**

Objectives of maintaining adequate personnel records and reports shall be:

1. The documentation necessary to show that the legal, regulatory, and procedural requirements have been met in all personnel actions.
2. A basis for preparing annual evaluations and making decisions. involved in personnel actions and for planning operations.
3. A basis for reports on personnel activities.
4. Training and development.

## **SECTION 1202 PERSONNEL ACTION FORMS**

Every appointment, transfer, promotion, demotion, change of salary, resignation, retirement, discharge, suspension, and any other temporary or permanent personnel action shall be reported to the Mayor and the Human Resources Department and a record including effective date of the same shall be kept by the Human Resources Department.

## **SECTION 1203 PERSONNEL FILES**

The Human Resources Department is responsible for overseeing record keeping for all personnel information and shall maintain the official personnel files on employees, showing each employee's name, address, emergency information, position title, salary, assigned department, changes in salary, performance evaluations, record of personnel actions, employment status, benefit forms, and such other information as may be considered pertinent. The form and manner in which such information shall be maintained shall be determined by the Mayor. Employees have a responsibility to keep their personnel records up-to-date and are to notify the Human Resources Department, as appropriate, in writing of any changes including name, address, phone numbers, marital status (for benefits and tax withholding purposes only), beneficiary designations for any of the City's insurance, disability, pension, and deferred compensation plans, and person to be notified in case of an emergency.

Personnel records are stored digitally and are confidential. An employee's personnel record may be examined by the employee, immediate supervisor, Department Manager, Mayor, City Attorney's office, Human Resources, and any other person authorized by law to access the record. Upon separation of an employee, the Human Resources Department shall retain personnel records in accordance with State law and the City's Records Retention Policy and Schedule, as may be amended from time-to-time.

## **SECTION 1204 ACCESS TO DEPARTMENT RECORDS**

Each department may keep and maintain such personnel records as may be deemed necessary for the purpose of carrying out the provisions of this Policy and the functions of the department. A supervisor's file on an employee shall contain information necessary to complete the annual performance evaluation. Once the evaluation is completed for that period, supplemental notes, records of discussion, or dated material used to prepare the evaluation, other than those that are considered permanent per the City's Records Retention Policy and Schedule, will be destroyed or archived with Human Resources in an appropriate and secure manner, in accordance with the City's Records Retention Policy and Schedule, as may be amended from time-to-time. The Mayor shall have access to all department reports, records and documents dealing with personnel matters, the examination of which will aid him/her in the discharge of his/her duties.

## **SECTION 1205 PUBLIC RECORDS REQUESTS & CONFIDENTIALITY**

The disclosure of records and information prepared and maintained by the Human Resources Department shall be governed by the Idaho Public Records Act.

Neither the Human Resources Department nor anyone in the City service shall be allowed to make known the gender, race, marital status, birth date, home address, phone number, Social Security number, application forms, testing and scoring materials, grievances, correspondence, and performance evaluations, as contained in the personnel records of any employee, officer, or appointed official without the prior approval of that employee, officer, or appointed official, unless otherwise required by law or court order.

## **SECTION 1206 RECORD KEEPING**

Personnel files and payroll records shall be retained pursuant to the laws of the State of Idaho and the City's Records Retention Policy and Schedule, as may be amended from time-to-time.

## **SECTION 1207 EMPLOYEE REFERENCES**

Unless otherwise required by law or a court order or subpoena, or authorized in writing by an applicant or employee, the Human Resources Department will furnish only the following information regarding applicants or former or current employees in response to a request for references:

1. Job title
2. Pay grade and step
3. Hire date
4. Hourly salary
5. Status
6. Workplace

## **CHAPTER 13 - EMPLOYEE TRAINING AND EDUCATION**

The City shall encourage the training, self-improvement, and personal development of all employees, which includes two general phases: on-the-job training and education programs.

### **SECTION 1301 ON-THE-JOB TRAINING**

Responsibility for developing training programs for employees shall be assumed jointly by the Department Director, Mayor, and supervisor. Such training may include demonstrations, assignments of reading matter, lecture courses, or other strategies to improve the effectiveness and broaden the knowledge of employees.

### **SECTION 1302 IN-HOUSE EDUCATION PROGRAMS**

Personal, professional development, workplace, diversity, and other training is vital to the success of each employee and to the City. Employees will be given advanced notice when courses are offered, such as Safety, Wellness, Risk Insurance, and Leadership and Managerial Instruction. In addition, training such as Harassment, Diversity, Workplace Violence, or other training may be required for all employees by the Mayor from time-to-time. A supervisor or Department Director can require an employee to attend in house training programs or other outside training opportunities.

### **SECTION 1303 SAFETY AWARENESS & EDUCATION**

The City of Lewiston is committed to workplace safety and strives to provide a safe and healthy work environment for all employees. The Risk Manager will constantly evaluate working conditions and develop safety training and education for the prevention of occupational injury and property damage.

Department Directors, managers, supervisors, foremen, and work leaders are responsible and accountable for a safe working environment and safe work practices. In addition, it is the responsibility of all employees to consider safe practices in all aspects of planning, design, supply, construction, operation, and administrative work. Departments may have specific policies related to their function dealing with personal protective equipment, work practice controls, decontamination, occupational exposure and accident reporting or testing, and general safety measures, as applicable to each department. Employees must read, understand, and comply with such departmental policies.

## **SECTION 1304 TUITION REIMBURSEMENT PROGRAM**

Advanced education programs are available throughout the region, and the City offers financial support, subject to available funds, to full-time regular employees for approved courses. Tuition reimbursement should not be construed as a commitment from the City to fund an employee's secondary education. Employees must keep in mind that, due to budgeting and department restraints, the City is under no obligation to approve employee requests for tuition reimbursement. Funds allocated shall be divided among those employees making the request in a fair and equitable manner. A course completion grade of "C" or better is required for reimbursement. Courses taken at any accredited college, university, high school, business or technical school, or courses given by a recognized correspondence school may be approved when they are:

1. Related to the employee's present position with the City of Lewiston, and,
2. Required to obtain any license or certification applicable to the employee's present position.

An employee may qualify for a maximum of one thousand (\$1000) dollars of tuition reimbursement per fiscal year plus up to one hundred (\$100) dollars in text books. In the event an employee receives assistance under federal or State government legislation or other student aid programs for education, only the difference between actual charges and the amount of other assistance will be eligible for reimbursement under this program.

### **APPLICATION PROCEDURE**

1. A Tuition Reimbursement Request form with any supporting documentation (see # 2 below) must be approved and signed by the Department Director and the Mayor. A separate form is required each fiscal year and should only list courses to be taken during the fiscal year. Forward the completed form, with your Department Director's recommended approval, to Human Resources at least thirty (30) days before the start of classes. Human Resources will verify expected availability of funds and forward to the Mayor for final approval of the Tuition Reimbursement request. All requests are subject to available funds.
2. Courses will be taken on an employee's own time. If a course is to be taken during the day, the employee shall submit a memo with his/her application explaining how the employee will make up any time missed from work. The Department Director may recommend approval or denial of the request at the first level should any absence be expected to result in a negative impact on departmental operation.
3. Following course completion, the employee will submit to the Human Resources Department: (a) a copy of the employee's course grades, (b) a copy of the entire semester tuition charges listed with all courses taken, (c) a list of all fees charged for the courses and any tuition assistance provided - from the institution, and (d) all book receipts. Funds available for reimbursement will be apportioned by the Mayor in a fair and equitable manner until those funds are exhausted for the year.

The Tuition Reimbursement Request form is provided on the City's website or may be obtained from the Human Resources Department.

## CHAPTER 14 – HIPAA, ILLNESS, & LIFE-THREATENING, CONTAGIOUS, AND/OR DEBILITATING ILLNESS

### **SECTION 1401 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

The City of Lewiston is committed to ensuring the privacy of all individuals regarding their protected health information (PHI) and follows established procedures as required by federal, state, and local laws and regulations, in the collection, use, disclosure, and maintenance of PHI including but not limited to:

- City-provided emergency medical services (EMS)
- Employee assistance programs (EAPs)
- Employee health and disability insurance programs
- Employee records involving medically-related leave (Sick Leave, FMLA, and worker's compensation)
- Any other employee records that may contain PHI

This policy is promulgated to comply with the federal mandate to protect the privacy of individually identifiable health information and medical records known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The City of Lewiston reserves the right in its sole discretion to change or modify this policy at any time in the future.

#### **SCOPE**

This policy applies to the City of Lewiston and its employees, elected officials, appointed officials, independent or private contractors, student and legal interns, and volunteers.

#### **DEFINITIONS**

**Authorization:** Written permission from an individual for use and disclosure of their PHI for a specific purpose and timeframe. To be valid, an authorization must be signed and dated by the individual.

**Breach:** Breach means the acquisition, access, use, or disclosure of PHI in a manner not permitted under this policy and law which compromises the security or privacy of the PHI.

**City:** City of Lewiston, Idaho

**CFR:** Code of Federal Regulations

**Consent:** Statutory permission for the City to use and disclose PHI for payment operations. Consent does not generally allow the City to obtain PHI from other parties without authorization from an individual to whom the records pertain.

**Covered Entity:** Any health plan, healthcare clearinghouse, or healthcare provider, that transmits to the City, or receives from the City, PHI in various forms.

**Disclose, Disclosure:** To release, transfer, send, or provide access to PHI.



**Employees:** Any individual performing work on behalf of the City, whether paid or not including, but not limited to, elected officials, appointed officials, independent or private contractors, student and legal interns, and volunteers.

**EMS:** Emergency Medical Services provided by the City.

**HIPAA:** Health Insurance Portability and Accountability Act of 1996

**Individuals:** A person who is the subject of PHI including employees and users of EMS provided by the City.

**Internal Use:** Collecting, using, disclosing, and maintaining PHI within and between City departments and employees.

**Law Enforcement Official:** A person who is empowered by law to investigate and/or prosecute violations of the law.

**Legal Representative:** A person who is legally authorized to act on behalf of an individual for healthcare decisions. A legal representative includes parents or legal guardian of a minor child, a person holding power of attorney, a legally appointed guardian or conservator, or a person appointed by a court of competent jurisdiction, as long as the power granted to the legal representative includes managing the individual's healthcare.

**Minimum Necessary:** The least amount of disclosure of PHI necessary to achieve the intended purpose of the disclosure.

**Notice of Privacy Practices (NPP):** The NPP provides information regarding the City's practices in the collection, use, disclosure, and maintenance of PHI and related rights.

**OSHA:** Occupational Safety and Health Administration of the federal government.

**Payment:** Funds paid to the City/ for EMS performed by the City or a bill for EMS performed by the City.

**Protected Health Information (PHI):** Health-related information, in any form, which identifies the individual or provides a reasonable basis by which to identify an individual.

**Privacy Officer:** Human Resources Department.

**Public Health Authority:** A government agency that is responsible for public health matters as part of its official duties.

**Redacted Information:** PHI where the following identifiers have been removed: name, street address, birth date, date service provided, death date, telephone and/or facsimile numbers, electronic mail address, Social Security number, health plan or insurance plan number, vehicle identification number (VIN), vehicle license plate number, photographs, finger or voice prints, or any other unique identifying number, characteristic, or code.

**Required by Law:** A legal mandate or requirement which is enforceable by a court.

**Workforce:** Employees, volunteers, trainees, and others who perform work on behalf of the City, whether paid or not and who have access to PHI collected, used, disclosed, and maintained by the City.

## RESPONSIBILITIES

**Executive/Management:** The City Attorney and the Mayor. Duties generally include:

- Establishment of program objectives
- Approval of this privacy policy
- Enforcement of sanctions related to this policy
- Designation of the Privacy Officials

**Privacy Officials:** The Human Resource Department employees are designated as the Privacy Officials. Duties generally include:

- Answer questions related to this policy
- Development of privacy policies and procedures
- Coordination and implementation of policy throughout City departments
- Oversight of training in HIPAA compliance
- Receiving and processing privacy complaints

- Receiving and processing individual rights requests
- Ensuring retention of HIPAA policies and procedures, complaints, and investigative materials to meet compliance requirements

**Employee:** Understand and comply with the City's policies regarding the appropriate handling of PHI.

#### DESIGNATED RECORD SET

Human Resources, Ambulance Billing Division, Executive, Finance, and City Attorney have PHI information within the City of Lewiston and its offices both physical and electronic.

#### NOTICE OF PRIVACY PRACTICES (NPP)

At the time of hire, employees who in the course of their work may encounter employee or patient PHI, the City shall provide a written Notice of Privacy Practices (NPP) and receive acknowledgment of receipt. At the first billing, the City shall provide a written NPP and receive acknowledgment of receipt from all users of EMS. The NPP provides information regarding the City's practices in the collection, use, disclosure, and maintenance of PHI and their related rights. The City will collect, use, disclose, and maintain PHI only in the performance of authorized human resource functions and billing and payment operations by the Ambulance Billing Division and will do so in the conformance with the contents of this notice and this policy. The City will also provide such notice to any person upon request. The Ambulance Billing Division will make two (2) attempts to receive acknowledgment of receipt of the NPP from each user of EMS and document such in the individual's medical record.

#### MINIMUM NECESSARY POLICY

City employees will access, collect, use, disclose, and maintain only the minimum necessary PHI needed to perform any authorized human resource function and to perform billing and payment operations. City employees shall not attempt to access, collect, use, disclose, and maintain more than the minimum necessary PHI needed to perform any authorized human resource function or to perform the billing and payment operations of the City. Any City employee who has questions regarding this section should consult with their supervisor and/or a HIPAA Privacy Officer.

#### USE AND/OR DISCLOSURE OF PHI

City employees shall not disclose PHI to any other person not employed by the City, or to any outside entity, including for research, marketing sales, or fundraising purpose unless the City is in possession of valid written authorization from the individual in question or the individual's legal representative. All authorizations shall be in writing and shall contain an expiration date and an event for which the authorization is valid. An individual may withdraw authorization at any time by giving the City a written notice of withdrawal or revocation. The City will retain any signed authorization or revocation for six (6) years from the date it was last in effect. Use and disclosure restrictions in this policy also apply to deceased persons for a period of fifty (50) years.

**Identity verification:** City employees will make a good faith attempt to verify the identity and authority of any person requesting PHI prior to disclosing the information.

**Minors' rights:** The City will not disclose the PHI of a minor to a parent or custodial or legal guardian without authorization if the EMS provided by the City resulted from a treatment or procedure that did not require parental or guardian within the state they were treated. The City will not disclose the PHI of a minor to a parent or custodial or legal guardian without authorization if the City has a reasonable belief the disclosure of the PHI would endanger the minor.

**Non-authorized individuals:** The City will generally not disclose PHI to a spouse, friend, family member, adult child, or other persons identified by a patient without signed authorization as provided above. However, the City may disclose PHI that is directly relevant to the involvement of such persons in the patient's care or

payment or billing operations for health care. If the patient is present, or is otherwise available prior to the disclosure, and has the capacity to make health care decisions, the City may discuss this information with the family and these other persons if the patient agrees or, when given the opportunity, does not object. The City may also share relevant information with these persons if it can reasonably infer, based on professional judgment and experience, the patient does not object. An individual may specifically restrict any disclosure of PHI.

## EXCEPTIONS TO AUTHORIZATION

HIPPA provides for numerous exceptions to authorization. They include the following:

**Internal Use:** City employees whose job responsibilities include human resource functions, EMS billing and payment operations, or other treatment, payment and healthcare operations will have access to, and may use and disclose to other City employees the minimum necessary PHI needed to effectively conduct their job functions such as human resource functions, EMS billing and payment operations, or other treatment, payment and healthcare operations, except psychotherapy notes.

**Authorization from another agency:** The City may disclose PHI upon receipt of an authorization from another entity, unless the authorization is incomplete, contains false information, has been revoked, or is expired. The City will rely on the outside entity that obtained the authorization to have requested the minimum necessary PHI needed. 10.3: Redacted information: The City may disclose redacted PHI where the following identifiers have been removed: name, street address, birth date, date service provided, death date, telephone and/or facsimile numbers, electronic mail address, Social Security number, health plan or insurance plan number, vehicle identification number, vehicle license plate number, photographs, finger or voice prints, or any other unique identifying number, characteristic, or code.

**Public health activities:** The City may disclose PHI to a public health authority that is authorized to collect, use, disclose, and maintain such information for activities preventing or controlling disease, the reporting of disease, maintaining vital statistics, conducting public health surveillance or interventions, or reporting adverse health events with respect to food or other products.

**Domestic abuse, neglect, violence:** As required by mandatory reporting laws, the City will disclose the PHI of an individual to the government law enforcement agencies authorized by law to receive such information if the City, or its representative, reasonably believe the individual to be a victim of domestic abuse, neglect, or violence. If the individual is a legal adult; the City will advise the individual the report was made.

**Coroners and medical examiners:** The City may disclose PHI to a coroner, medical examiner, or funeral director for identifying deceased persons, determining cause of death, or other legally authorized duties.

**Fiducial and administrative proceedings:** The City may disclose PHI by order of a court or administrative agency of competent jurisdiction. Disclosures in response to court orders will be made in accordance with the policies and procedures of the specific state's laws. The City may also disclose PHI as required by the law of any state.

**Inmates of correctional institutions:** The City may disclose the PHI of an inmate to a correctional institution or jail having lawful custody of that inmate.

**Military personnel:** The city may disclose the PHI of any military personnel for activities deemed necessary for military purposes by the appropriate military authority.

**Other covered entities:** The City may disclose PHI to providers, health plans, and/or healthcare clearinghouses for treatment, billing and payment operations except for psychotherapy notes.

**Minors:** The City may disclose the PHI of a minor child to the parent or the custodial or legal guardian. If insurance coverage is obtained through a non-custodial parent, the City may disclose to the custodial and non-custodial parent the minimum necessary PHI required to ensure payment for EMS.

## INDIVIDUAL RIGHTS

HIPPA provides for numerous individual rights. They include the following:

**Right to access/copy:** Individuals may request a copy of any of their PHI records created and/or maintained by the City. The request must be in writing and must be signed by the individual. The City may charge a reasonable fee to recover the cost of copying the records.

**Right to amend:** Individuals have the right to seek amendment or clarification of their PHI created and/or maintained by the City. The City in its sole discretion may amend an individual's PHI if it is demonstrated that those records are inaccurate. In the event the City declines to amend the individual's PHI, the individual has the right to append a written statement to the City's record of the individual's PHI. The request to append a written statement must be in writing and signed by the individual.

**Right to restrict use or disclosure:** Individuals have the right to request the City restrict the use and/or disclosure of their PHI. However, the City may deny this request if the information is required to perform any authorized human resource function or EMS billing and payment operations. The request must be in writing and must be signed.

**Right to confidential communications:** Individuals have the right to request that the City use alternative means or alternative locations when communicating PHI or billing information to the individual. However, the City may deny this request if it interferes with the City's ability to perform any authorized human resource function or EMS billing or payment operations. The request for the use of alternative means or locations must be in writing and signed by the individual.

**Right to an accounting of disclosures:** Individuals have the right to an accounting of all disclosures the City has made regarding their PHI within the six (6) years prior to the request. The City is not required to account for disclosures made by the City pursuant to a request before the effective date of this policy or to track disclosures made to carry out authorized treatment, payment or healthcare operations. The City may temporarily suspend an individual's right to receive and accounting of disclosures made if the City receives a notice in writing from any duly constituted law enforcement agency stating disclosure would impede law enforcement activities.

**Right to file a complaint:** Individuals and employees have the right to make a written complaint directly to a Privacy Officer concerning the City's policies and procedures with respect to the collection, use, disclosure, and maintenance of their PHI and/or concerns they have regarding the City's compliance with the policies and procedures in this regard. All complaints shall be in writing, signed by the complainant, and delivered to a Privacy Officer. The Privacy Officers will investigate the complaint and advise the complainant of the results of the investigation. However, any disciplinary actions taken against City employees as a result of the investigation shall be confidential and will not be disclosed to the complainant. The City's Privacy Offices shall be the Human Resources Department or designee at P.O. Box 617, Lewiston, Idaho 83501, (208)746-3671. Individuals and employees also have the right to make a complaint directly to the Secretary of the U.S. Department of Health and Human Services.

**For details on filing a complaint go to:** [www.hhs.gov/ocr/privacy/hipaa/complaints/index.html](http://www.hhs.gov/ocr/privacy/hipaa/complaints/index.html)

Note: Requests may take up to thirty (30) days to process and the results of any request or investigation will be made in writing.

## SAFEGUARDS FOR THE PROTECTION OF PHI

The City has established certain safeguards to protect the collection, use, disclosure, and maintenance of PHI within the City's offices. They include the following:

**Administrative safeguards:** Access to PHI maintained and stored by the City is limited to certain employees and those employees have been trained in the use and disclosure of PHI specific to their job function including the use of phone, facsimile, email, and other electronic or computer disclosure of PHI and verifying the identity of individuals requesting PHI.

**Physical safeguards:** All City office areas where PHI is maintained have restricted public access by means of locked doors, counters, and other physical barriers, and are monitored by employees during normal business hours. All City-owned buildings containing offices where PHI is maintained are locked during non-business hours. City Hall also has security cameras in specific places to record access to its facility. File cabinets where PHI is maintained are kept locked at all times.

**Technical safeguards:** Computer access to systems where PHI is maintained is limited to certain employees and is restricted by password protection. Outgoing facsimile transmissions containing PHI are prefaced by a cover sheet that contains a HIPAA warning. Incoming facsimile transmissions to the Ambulance Billing Division are received at a location continually monitored by Ambulance Billing Division personnel during normal business hours. Restricted access to this area is accomplished by employee monitoring and signage.

## NOTIFICATION OF BREACH OF PHI

Except for exclusions listed below, in the event of a breach of PHI, as defined by this policy, the City will notify individuals of the breach in accordance with CFR 45 164.404 through 164.412. To the extent Practicable, the City will mitigate any harmful effect that is known to it of a use or disclosure of PHI in violation of its policies and procedures or the requirements of HIPAA by the City or its business associates.

**Exclusions:** The following are excluded from the notification of a breach of PHI: 1) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of the City, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted by this policy; 2) Any inadvertent disclosure by a person who is authorized to access PHI at the City to another person authorized to access PHI at the City, or organized health care arrangement in which the City participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under this policy; 3) A disclosure of PHI where the City has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

## DOCUMENT RETENTION AND DISPOSAL OF PHI

The City has established certain policies to guide the retention and disposal of documents containing PHI. They include the following:

**Retention:** Documentation required by HIPAA and this policy will be maintained by the City, in a secure fashion, for six (6) years after the date of the document's creation or the last date action was taken on the document, whichever is later. However, PHI related to employee exposure to communicable diseases will be maintained by the City, in a secure fashion, for thirty (30) years per the requirements of 19 CFR 1910.1020.

**Disposal:** All PHI will be destroyed in a manner that protects its confidentiality and in accordance with Idaho state law and the City's document destruction policies and procedures unless otherwise in conflict with HIPAA requirements.

## WORKFORCE TRAINING

The City shall provide training to employees who are likely to have access to PHI in the course of their duties such as authorized human resource functions and in billing and payment operations for EMS. The training will be as necessary and appropriate for the employees to perform their job responsibilities pursuant to this policy. The training may be in-house or contracted out to a private entity specializing in such training.

## BUSINESS ASSOCIATE AGREEMENTS

The HIPAA Rules generally require that covered entities and business associates enter into contracts with their business associates to ensure that the business associates will appropriately safeguard PHI. The City makes every attempt to obtain such agreements and contracts with its business associates.

## SANCTIONS

Employees having been investigated and found to have violated this policy will be disciplined in accordance with the City of Lewiston Personnel Policy and/or any applicable collective bargaining agreement to which they are subject.

## PROHIBITION OF RETALIATORY ACTS/WAIVER OF RIGHTS

Neither the City nor its employees will intimidate, threaten, coerce, discriminate against or take other retaliatory action against any individual for the exercise by the individual of any right established, or for participation in any process provided for, by this policy, including the filing of a complaint under this section; nor for testifying, assisting or participating in an investigation, compliance review, proceeding or hearing; nor for opposing any act or practice made unlawful HIPAA, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of PHI in violation of this policy.

The City will not require individuals to waive their rights to complain to either the HIPAA Privacy Officer or to the Secretary of the U.S. Department of Health and Human Services as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits.

## SECTION 1402 LIFE THREATENING, CONTAGIOUS, AND/OR DEBILITATING ILLNESSES

The City recognizes that employees with life-threatening, contagious, and/or debilitating illnesses, such as cancer, heart disease, hepatitis, acquired immune deficiency syndrome (AIDS), and other medical conditions, may wish to continue working. The City respects and supports this wish, provided the employee can maintain required performance and attendance standards and the condition does not pose a health or safety threat to the employee, his/her fellow employees, or the general public.

The City recognizes that an employee's health condition generally is a private and personal matter and, consequently, will protect the confidentiality of the situation and any information or documentation relating to it. The City will instruct its employees to do the same to the extent consistent with the City's obligation to the employee, the general public, and the City itself. The City recognizes and retains the right to request medical examinations and/or consultations at the employee's expense, regarding an employee's medical condition.

When management becomes aware of potentially life-threatening, contagious, and/or debilitating conditions, the Human Resources Department should be consulted as soon as possible. The evaluation of the potential challenges that accompany these conditions will be handled on a case-by-case basis and will consider existing medical and scientific evidence. The Human Resources Department will consult with legal counsel regarding the applicable employee and safety-related laws and regulations.

When dealing with situations involving life-threatening, contagious, and/or debilitating illnesses, managers should:

1. Contact the Human Resources Department if there is a concern that the nature of an employee's illness may endanger the employee, fellow employees, or the general public;
2. Contact Human Resources to determine if a statement should be obtained from the employee's attending physician that continued presence at work will pose no danger to the employee, fellow employees, or the general public;
3. Make reasonable accommodations for employees with these illnesses consistent with business needs and the Americans with Disabilities Act, as amended from time-to-time (ADA);
4. Consider transfer of an employee with a life-threatening, contagious, and/or debilitating illness who requests such a transfer. Unless there is objective evidence of an illness and/or disability posing a threat to fellow employees, the City will not transfer other employees out of the work area except by normal practice and procedure;
5. Be sensitive and responsive to fellow employees' concerns and utilize the employee education available through Human Resources;
6. Arrange for any leave time the employee may need, including FMLA

## **CHAPTER 15 - MISCELLANEOUS**

### **SECTION 1501 RECYCLING AT CITY FACILITIES**

It is the policy of the City of Lewiston to promote recycling at City facilities, including City Hall, Bell Building, Police Department, Fire Stations, Community Center, and the Library. Employees will place recyclable materials in appropriate containers provided by the respective departments or the Sanitation Division.

### **SECTION 1502 PRESS RELEASES**

Press releases to the media will be released by the Public Information Officer (PIO), with the exception of those relating to specific law enforcement or fire scene and hazardous materials incidents of the Police and Fire Departments. Specific programs of the Library, Parks & Recreation, Community Development, Public Works, and Administrative Services may be released by the appropriate department, in collaboration with the PIO.

### **SECTION 1503 INCLEMENT WEATHER**

The City of Lewiston recognizes that inclement weather and other emergencies can affect its ability to be open and/or for services to continue. The purpose of this policy is to establish specific guidelines and procedures in the event of inclement weather or other emergency situations.

#### **DEFINITIONS**

**City:** City of Lewiston, Idaho and its employees, departments, and divisions.

**Essential employees:** Personnel within departments that are needed in order for continued necessary services and public protection. Directors and Chiefs will determine essential personnel for their departments.

***Inclement Weather:*** Severe weather. Examples are significant snow fall that limits the public and employees to safely travel on city roadways or inhibits city staff to clear the roadways, extreme storms involving high winds, lightning, or rain, downed power lines or trees creating an unsafe travel and/or work environment.

***Emergency:*** Events either weather, chemical, or environmental that are serious, possibly unexpected, and dangerous. Examples include power failures, fires, chemical spills, natural disasters, etc.

## POLICY

It is the policy of the City to remain open during most periods of inclement weather or emergency events. On occasion, inclement weather or other unforeseen occurrences will prevent normal City operations and necessitate the closing of a City facility or service during a workday. Essential personnel will be maintained in all weather or emergency conditions. However, where extraordinary circumstances warrant, due to weather or other unforeseen business interruption, the City reserves the right to close specific operations and facilities. In the event of inclement weather or emergency the Mayor, or his or her designee, will determine if and what City operations and/or services will be closed. In the event of a closure, prior to the work day or as soon as practical, the department manager or their designee will contact each employee to provide official notice of department closure. Essential personnel will be determined at that time by department heads in conjunction with the Mayor.

- If the facility is closed in advance of the scheduled shift, affected employees can elect to use vacation, comp time, floating holiday, or wellness day for the missed day or can choose to not be paid for the day of closure. Sick Leave will not be allowed to be utilized due to facility closure.
- If the facility is initially open, weather conditions worsen as the day progresses, and then closes early during the work day, the Mayor, or his or her designee, will notify non-essential personnel of the any closures. Any affected employees scheduled to work that day will receive regular pay for the remainder of their shift. Employees already scheduled for paid time off (i.e. on vacation, sick leave, compensatory time, etc., including FMLA) will not be paid regular pay.
- If the facility remains open on an adverse weather day or other unforeseeable event, employees who report to work will receive their normal pay for the day. If an employee elects not to work or is unable to come to work (schools or day care close, road/highway conditions are poor, employee lives outside city limits, etc.) on a facility open day, pay will come from any vacation, comp time, floating holiday, or wellness day for the missed work time. If an employee elects not to work on a given day, normal absence notification rules apply. This decision needs to be determined with the employee's supervisor's knowledge and approval. If the employee does not have vacation, comp time, wellness day, or floating holiday available to cover this time off, it will be recorded as leave without pay on the timesheet or approval may be given by the department manager to let the employee make the time up during the workweek.
- Time absent from work due to inclement weather or emergency event is not counted as hours worked when computing weekly overtime, unless otherwise stated in an employee's Collective Bargaining Agreement.

Regardless of whether the facility remains open or closed on an inclement weather day, it is each employee's decision to determine if they can safely arrive at work under the conditions. Questions about this policy should be addressed to the department manager or to the Human Resources Department.

## SECTION 1504 ELECTRONIC SURVEILLANCE

The City reserves the right to install security cameras in work areas for specific business reasons, such as security, theft protection or protection of proprietary information. The City may find it necessary to monitor work areas with security cameras when there is a specific job or business-related reason to do so. The City will do so only after first ensuring that such action is in compliance with state and federal laws. Employees should not expect privacy in work-related areas. Employee privacy in nonwork areas will be respected to the



extent possible. The City's reasonable suspicion of an onsite drug use, physical abuse, theft or similar circumstances would be possible exceptions. Employees should contact their supervisor or the Human Resources Department if they have questions about this policy.

## **SECTION 1505 EXTERNAL COMMUNICATIONS**

Occasionally employees may be contacted by outside sources requesting information about City matters, including information regarding current or former employees, City projects, or other workplace issues. In order to avoid providing inaccurate or incomplete information to outside sources, and the possible negative exposure that may result from providing information about The City to outside sources, any employee asked to speak for or on behalf of The City by any outside source should immediately contact the appropriate City official, as detailed below. Employees violating this policy may be subject to discipline, up to and including termination of employment.

This policy is in no way intended to prohibit an employee from documenting and speaking with outside third parties regarding perceived or alleged unacceptable or illegal working conditions. The policy is also in no way intended to deter any employee from speaking with any individual regarding labor organizing.

### **MEDIA CONTACTS**

The City will respond to media inquiries in a timely and professional manner only through the designated spokesperson. If an employee is contacted by a representative from any media organization (e.g., television, radio, or newspaper reporters) to speak for or on behalf of The City, the employee should notify the media representative that they are not authorized to make a public comment on behalf of The City and immediately refer the media representative to the City's Public Information Officer. No employee may communicate with media agents on behalf of The City without prior authorization from the Mayor.

### **OUTSIDE ATTORNEYS AND INVESTIGATORS**

If an employee is contacted by an outside attorney or investigator regarding City business, including information regarding current or former employees, City projects, or other workplace issues, the employee must inform the outside attorney or investigator that they first need to contact the City Attorney's Office for guidance before speaking with the outside attorney or investigator. The employee must then contact the City Attorney's Office and follow the direction from the City Attorney's Office. Nothing in this policy restricts an employee from discussing their wages or other terms and conditions of employment with coworkers or others, to the extent protected by law.

### **EMPLOYMENT REFERENCES AND VERIFICATIONS**

Employees contacted by outside sources requesting an employment reference or employment verification for a current or former employee should not provide any information to the requesting individual or organization. Instead, employees should refer the requesting individual or organization to the Human Resources Department. No employee, other than Human Resources, is authorized to provide employment references or employment verifications for any current or former employee. The City's authorized representative(s) may verify dates of employment and last position held, but will not disclose any other information unless the current or former employee provides written authorization to The City to provide additional detail or unless otherwise required by law.

### **UNAUTHORIZED AUDIO/VIDEO RECORDING**

The State of Idaho is a "one-party" consent state and therefore, generally permits individuals to record conversations so long as one party consents to the recording. However, the City of Lewiston has established that recording or monitoring employee conversations and/or actions has a chilling effect in the work place and causes discord and distrust among employees.

The purpose of this policy is to encourage and promote candid and honest communications. Unauthorized audio and/or video recording or monitoring of employees is disruptive to employee morale and inconsistent with the respectful treatment the City of Lewiston expects of all employees. For this reason, no employee may record or monitor the conversations and/or actions of another employee without his or her full knowledge and consent.

No employee may record and/or monitor, by any means, the conversations and/or actions of another employee unless all of the following criteria are met:

1. There is a stated legitimate reason for the recording and/or monitoring,
2. The recording and/or monitoring device is in plain view of all parties, and
3. The employee is informed that their conversations and/or actions are being recorded and/or monitored and that the employee may request a copy of any recordings of said conversations and/or actions.

Violation of this policy may result in disciplinary action, up to and including termination. This policy does not apply to criminal investigations being conducted by the Lewiston Police Department. This policy applies to all City of Lewiston officers, employees, interns, and volunteers. Questions relating to this policy may be directed to the City Attorney or Human Resources.

## **SECTION 1506 BUSINESS EXPENSE REIMBURSEMENT**

The City will reimburse employees for reasonable expenses incurred for business purposes including, but not limited to, meals, lodging, and transportation. Mileage driven in a personal automobile for business purposes will be reimbursed at the current IRS-approved rate per mile. All business travel and business purchases must be approved in advance by the employee's Supervisor. Additional information regarding travel and travel reimbursements can be found in the Travel Administrative Policy.

## **SECTION 1507 USE OF COMMUNICATIONS AND COMPUTER SYSTEMS**

City-provided portable communication devices (PCDs), including cell phones, should be used primarily for business purposes. Employees have no reasonable expectation of privacy in regard to the use of such devices, and all use is subject to monitoring, to the maximum extent permitted by applicable law.

All conversations, text messages and e-mails must be professional. When sending a text message or using a PCD for business purposes, whether it is a City-provided or personal device, employees must comply with applicable City guidelines, including policies on sexual harassment, discrimination, conduct, confidentiality, equipment use and operation of vehicles.

The City's communication and computer systems are intended primarily for business purposes; however, limited personal usage is permitted if it does not hinder performance of job duties or violate any other City policy. This includes the voice mail, e-mail and Internet systems. Users have no legitimate expectation of privacy in regard to their use of The City's systems.

The City may access the voice mail and e-mail systems and obtain the communications within the systems, including past voice mail and e-mail messages, without notice to users of the system, in the ordinary course of business when The City deems it appropriate to do so. The reasons for which The City may obtain such access include, but are not limited to: maintaining the system; preventing or investigating allegations of system abuse or misuse; assuring compliance with software copyright laws; complying with legal and regulatory

requests for information; and ensuring that City operations continue appropriately during the employee's absence.

Further, The City may review Internet usage to ensure that such use with City property, or communications sent via the Internet with City property, are appropriate. The reasons for which The City may review employees' use of the Internet with City property include, but are not limited to: maintaining the system; preventing or investigating allegations of system abuse or misuse; assuring compliance with software copyright laws; complying with legal and regulatory requests for information; and ensuring that City operations continue appropriately during the employee's absence.

The City may store electronic communications for a period of time after the communication is created. From time to time, copies of communications may be deleted.

The City's policies prohibiting harassment, in their entirety, apply to the use of City's communication and computer systems. No one may use any communication or computer system in a manner that may be construed by others as harassing or offensive based on race, national origin, sex, sexual orientation, age, disability, religious beliefs or any other characteristic protected by federal, state or local law.

Further, since The City's communication and computer systems are intended for business use, all employees, upon request, must inform management of any private access codes or passwords. Unauthorized duplication of copyrighted computer software violates the law and is strictly prohibited. No employee may access, or attempt to obtain access to, another employee's computer systems without appropriate authorization.

For additional information see the Use of Personal Devices for City Business Administrative Policy and the Acceptable Use and Device Administrative Policy. Violators of these policies may be subject to disciplinary action, up to and including discharge.

## **SECTION 1508 SAFETY PROGRAM**

The City is committed to providing and maintaining a healthy and safe work environment for all employees. Every department will receive a copy of The Safety Manual and will receive health and safety training.

You are required to know and comply with The City's Safety Manual and to follow safe and healthy work practices at all times. You may be subject to discipline for engaging in any unsafe or unhealthy work practice or for violating established safety rules. You also are required to report immediately to your supervisor any potential health or safety hazards, and all injuries or accidents. First aid supplies are located in each City building.

## **SECTION 1509 SAVING CLAUSE**

If any section, subsection, paragraph, sentence, or phrase is found by a court to be invalid or unconstitutional, such findings shall not affect the remainder of this Policy.