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## CHAPTER 3. PERSONNEL POLICY

### SECTION 300 – GENERAL

#### 300.01 Purpose:

The purpose of this policy is to establish a uniform and equitable system of personnel administration for employees of the City of Deephaven.

#### 300.02 Authority

The provisions of this Personnel Policy may be revised or amended at any time at the sole discretion of the City Council. Interpretation of these policies or decisions on items not covered within them will be made by the City Council.

#### 300.03 Applicability

**Subd. 1 Personnel Covered.** Except as otherwise authorized and specifically provided, this policy applies to all employees of the City except the following:

- A. All elected officials,
- B. City Attorney, Engineer, Assessor and the Health Officer and any other person providing services on a contractual basis,
- C. Members of city boards, commissions, and committees.

**Subd. 2 Provisions Superseded.** No provision of this Policy is intended to violate, supersede, or conflict with any applicable Constitutional right, statute or regulation, whether state or federal, or any provision of a collective bargaining agreement in effect between the City and any of its employees.

### SECTION 305 - DEFINITIONS

**305.01 Employee.** An employee who has completed an initial probationary period and who fills a position that is continuous in nature on either a full- or part-time basis.

**305.02 Probationary Employee.** An employee appointed to a continuous position that is required to demonstrate fitness for the position by actual performance of the position's duties for a period of six (6) months unless otherwise specified by state statute.

**305.03 Temporary Employee.** An employee appointed on a short-term basis to provide continuity of services or to prevent inconvenience to the public; and who is not a "public employee" as defined by Minnesota Statutes §179A.03, Subd. 14.

**305.04 Full-time Employee.** Any employee who works a regularly scheduled forty (40) hour work week.

**305.05 Part-Time Employee.** An employee who normally works less than a regularly scheduled forty (40) hour work week.

**305.06 Department Head.** An employee occupying the position of Chief of Police, Public Works Director or City Clerk.

**305.07 Seasonal Employee:** A non-tenured employee who fills a position which recurs yearly but which is not continuous in nature and whose appointment does not exceed 100 working days per calendar year.

- 305.08 Over-time.** Hours worked in excess of forty (40) hours within a seven (7) day work period.
- 305.09 Compensatory Time.** Time off in an amount that is equal to the number of irregular or occasional overtime hours worked.
- 305.10 Supervisor.** An employee occupying the position of Police or Public Works Supervisor.

### **SECTION 310 - ORGANIZATION**

(See Appendix A)

### **SECTION 315 - APPOINTMENT**

- 315.01 Appointments.** Appointments to municipal service will be made by the Council on the basis of merit and fitness for the position. When required by law or by the Council, merit and fitness will be determined by written, oral, or other examinations designed to evaluate the ability of the candidate to discharge the position. When the candidate appointed is already an employee of the City, the appointment will be considered a promotional appointment.
- 315.02 Non-Discrimination Policy.** No person will be employed, promoted, demoted or discharged by the City or in any way favored or subjected to discrimination because of political opinions or affiliations, race, color, creed, national origin, religion, gender, marital status, status with regard to public assistance, age or disability or because of the exercise of rights under provisions of the Public Employment Labor Relations Act, Minnesota Statutes Chapter 179A.
- 315.03 Hiring Process.** All appointments to municipal service shall be made after the following steps have been taken, in the order set forth below:
- Subd. 1 Declaration of Vacancy or Need.** The City Council, either upon its own motion or at the request of a Department Head, shall determine whether a vacancy exists within the City's employment roster and/or whether there is a need to hire a new or additional city employee.
  - Subd. 2 Advertisement for Position.** Upon declaring a vacancy or the need for a city employee, the Council shall direct the Clerk to advertise for candidates to fill the vacancy or need. Such advertisement will be made in the Lake Shore Weekly News, along with any other publications as may be determined by the Council.
  - Subd. 3 Application Procedure.** Each applicant for a position with the City shall apply on a form approved by the Council. Applicants must comply with all requirements affecting the prospective employment. An applicant may be required to present a certificate of competency, licenses or other evidence of special qualifications if and as necessary. If it should be determined on a subsequent date that statement(s) made on the application are fraudulent, the applicant will be subject to dismissal.
  - Subd. 4 Development of 100 Point Scoring System.** Before reviewing applications the Council will devise a 100-point scoring system in order to objectively rank applicants. Scores shall be awarded for education, experience, and other objective factors, which are relevant to the position. Veterans shall receive additional points for their military service, in accordance with Minnesota State Statute §43A.11. The Council may delegate responsibility for the creation of this 100-point system to the Department Head, consultant, or other qualified

person.

- Subd. 5 Selections of Finalists.** Using the 100-point scale, the Council shall designate “finalists” who shall be notified and subjected to interviews and testing as the Council may deem appropriate for the position. The Council may delegate responsibility for screening applicants to other qualified persons who shall provide a recommendation to the Council, along with the reasons for recommending the offer of employment to a particular applicant.
- Subd. 6 Background and Reference Checks.** The Council shall conduct a reference check on any designated finalist. Such reference check shall include verification of any licenses held by the finalist. The Council may delegate this responsibility to other qualified persons who shall provide a written report to the Council. A background check may also be conducted concerning any finalist. Such a check shall be conducted at the City’s expense. The Council shall determine the scope and extent of the background check.
- Subd. 7 Pre-Employment Examination.** Following a contingent offer of employment, a finalist may be subjected to a physical medical examination, including alcohol and drug testing, which shall be performed by a physician determined by the Council and paid for by the City. The Council will provide the examining physician with a job description of the position involved. The physician will notify the City Clerk in writing that a candidate either is or isn’t medically able to perform the essential functions of the job, with or without reasonable accommodations. The City Clerk will inform the City Council of the results. If a candidate is rejected for employment based on the results, he/she will be notified of this determination and may request further explanation from the physician.
- Subd. 8 Offer of Employment.** Upon an applicant’s successful completion of the reference check and background check, the Council shall offer employment to the applicant it deems most suited for the position. All offers of employment shall be made by the City Council. The Council may not delegate this responsibility to anyone.
- Subd. 9 Probationary Period.**
- A. Purpose.** The probationary period is regarded as an integral part of the selection process and will be utilized for observing the employee’s work, for securing the most effective adjustment of the employee to the position, and for rejecting any employee whose performance does not meet the required work standards.
  - B. Duration.** Every original and promotional appointment, with the exception of a Police Department appointment, is subject to a probationary period of six (6) months from the date of appointment. Appointments to the Police Department are subject to a probationary period of twelve (12) months from the date of appointment. The Council reserves the right to extend the probationary period.
  - C. Completion of Probationary Period.** Immediately before the expiration of the probationary period, the Department Head will provide the Council with a written recommendation indicating whether the services of the employee have been satisfactory and whether the employee should be continued. An employee will be considered to have successfully completed the probationary period and attained the status of employee only upon a motion adopted by the Council to that effect.
- Subd. 10 Temporary and Seasonal Appointments.** The Council may make temporary appointments. These appointments will terminate by expiration of the period

during which any such appointment is limited by Civil Service or any other law and prior to the date the person would become a “public employee” as defined in Minnesota Statutes §179A.03, Subd. 14. No benefits may be given for service rendered under a temporary appointment.

**Subd. 11 Conditions of Employment.** Certain positions held by a city employee require particular licenses in order to meet the qualifications for that position. Maintaining these licenses shall be the responsibility of the employee and becomes a condition of employment with the City. Failure to do so may result in disciplinary action. The Council reserves the right to prohibit an employee from driving City vehicles if that employee’s driver’s license is restricted to a limited license and/or work permit due to conviction of an enhanced moving violation (as defined in MN Statutes Chapter 169).

Employees who are required to possess a valid driver’s license shall sign a waiver authorizing the City and its agents to check his or her state driving record on an annual basis in order to assure that the employee maintains their drivers’ licenses. Signing the waiver is also a condition of employment.

### **SECTION 320 – EMPLOYEE RECORDS AND PERFORMANCE REVIEWS**

**320.01 Employee Records.** Records containing information pertinent to this employment will be maintained for all employees and will be available at any time for their own review in accordance with the Minnesota Government Data Practices Act.

During the course of City employment, an employee will be asked to provide information which is classified by state law as either private or confidential. Private data is information that generally cannot be given to the public but can be given to the subject of the data. Confidential data is information, which generally cannot be given to either the public or the subject of the data.

**320.02 Employee Performance Evaluations.** Employees will normally have their performance evaluated at least twice during their probationary period and annually thereafter. Performance evaluations will be maintained in the employee’s file.

### **SECTION 325 – COMPENSATION AND WORK HOURS**

**325.01 General Policy.** Employees of the City will be compensated according to the schedule established annually by the Council. Unless approved by the Council, no employee will receive pay from the City in addition to the salary authorized for the position or positions to which the employee has been appointed.

**325.02 Part-Time Employees.** Whenever an employee works for a period of time less than a full-time forty (40) hour work week, the amount paid will bear the same relationship to the full-time rate for the position as the time actually worked bears to the time required for full-time service.

Fringe benefits for permanent and probationary part-time employees will be prorated in the same manner; however, solely for the purposes of calculating insurance benefits, employees working 30 or more hours per week will be considered full-time. Persons employed part-time on less than a two-thirds of full-time basis, temporary employees and seasonal employees are not entitled to sick leave, vacation leave, holiday pay or insurance benefits.

**325.03 Work Hours.** Work schedules for personnel will be established by the appropriate

Department Head subject to the approval of the Council in accordance with the needs of the City.

- 325.04 Rest Periods and Lunch Breaks.** Every employee, when working an eight (8) hour shift and under conditions where a break period is practicable, will be granted a fifteen- (15) minute break period in each half the employee's shift. Each Department Head must schedule rest periods so as not to interfere with work requirements. Breaks may be taken at the employee's desk. All employees will have a one-half hour lunch break. Every employee is encouraged to take lunch breaks.
- 325.05 Paydays.** Employees will be paid on a bi-weekly basis.
- 325.06 Pay Periods.** Pay periods will be 12:00 a.m. Monday through 11:59 p.m. Sunday.
- 325.07 Time Cards and Records.** All non-exempt employees shall maintain accurate time records on a form approved by the City Council. Such time records must be reviewed, approved and signed by the employee's Department Head and the City Administrator every two weeks before payment for said time is made by the City.
- 325.08 Overtime.** Employees to whom the federal Fair Labor Standards Act applies will be compensated at the rate of one and one-half the regular rate of pay for overtime. At the discretion of the Council and to the extent permitted by law, compensatory time may be earned if authorized by the Department Head. No more than 40 hours of compensatory time may be accumulated. Compensatory time must be taken in increments of not less than one hour and must be used within the year it is earned. Employees not covered by the federal Fair Labor Standards Act are not eligible for either overtime or compensatory time.
- Subd. 1 Pre-Approval Required.** No employee shall work overtime unless such work is authorized, in advance, by his or her Department Head.

### **SECTION 330 – EMPLOYMENT BENEFITS**

- 330.01 Eligibility for Employee Benefits.** Employee benefits mentioned in this section apply only to those employees hired for full-time positions or permanent part-time positions and specifically exclude seasonal, contract, part-time, temporary and voluntary positions.
- 330.02 Accrual During Leave.** For the purpose of accumulating additional vacation or sick leave, an employee using earned vacation or sick leave is considered to be working.
- 330.03 Vacation Leave.**
- Subd. 1 Amount Earned for Full-Time and Permanent Part-Time Employees.**
- A. An employee is eligible for 6.67 hours per month of vacation leave from the beginning of the first year of employment to the end of the 5<sup>th</sup> consecutive year of employment, which is ten (10) working days of paid vacation per year.
  - B. An employee is eligible for 10.0 hours per month of vacation leave from the beginning of the 6<sup>th</sup> year of employment to the end of the 15<sup>th</sup> consecutive year of employment, which is fifteen (15) working days of paid vacation per year.
  - C. An employee is eligible for 13.33 hours per month of vacation leave from the beginning of the 16<sup>th</sup> year of consecutive employment and thereafter, which is twenty (20) working days of paid vacation per year.

**Subd. 2 Permanent and Probationary Supervisors and Department Heads.**

- A. An employee is eligible for 6.67 hours per month of vacation leave from the beginning of the first year of employment to the end of the 5<sup>th</sup> consecutive year of employment, which is ten (10) working days of paid vacation per year.
- B. An employee is eligible for 10.0 hours per month of vacation leave from the beginning of the 6<sup>th</sup> year of employment to the end of the 12<sup>th</sup> consecutive year of employment, which is fifteen (15) working days of paid vacation per year.
- C. An employee is eligible for 12.0 hours per month of vacation leave from the beginning of the 13<sup>th</sup> year of employment to the end of the 14<sup>th</sup> consecutive year of employment, which is eighteen (18) working days of paid vacation per year.
- D. An employee is eligible for 13.33 hours per month of vacation leave from the beginning of the 15<sup>th</sup> year of employment to the end of the 19<sup>th</sup> consecutive year of employment, which is twenty (20) working days of paid vacation per year.
- E. An employee is eligible for 16.67 hours per month of vacation leave from the beginning of the 20<sup>th</sup> year of employment and thereafter, which is twenty-five (25) working days of paid vacation per year.

**Subd. 3 Compensation.** During vacation leave, employees will be compensated at their regular rates of pay.

**Subd. 4 Use.** Vacation leave may be used as earned, subject to approval by the Department Head of the time at which it may be taken. No employee will be allowed to use vacation leave until after completion of the initial probationary period. However, leave benefits will accrue from the date of appointment. Promoted employees are permitted to use vacation leave during their probationary period.

**Subd. 5 Part-time Employees.** Part-time employees who earn vacation leave will earn leave on a prorated basis as specified in Section 325.02.

**Subd. 6 Maximum Accrual.** An employee may accrue vacation leave up to one and one-half times the employee's current annual rate of accrual.

**Subd. 7 Terminal Leave.** Any permanent employee leaving municipal service in good standing after giving proper notice as described in Section 385.01 and 385.02 will be compensated for vacation leave accrued and unused to the date of separation.

**330.04 Severance Pay.** Severance pay as authorized in Minnesota Statutes, Section 465.72 will be granted to all permanent employees who have separated from City service in good standing. A qualified employee will receive one-third of accrued sick leave, computed at the base rate of pay for the employee at the time of termination of employment to a maximum of the equivalent of 50-days pay. To comply with state law, funds to finance severance payments will be provided for in the annual City budget.

**330.05 Personal Days.** Full-time employees will receive sixteen (16) hours of paid personal leave each calendar year, and must be scheduled as described in Section 330.03 Subd. 4. The Personal Days must be taken within the calendar year and will be considered surrendered by the employee if not taken in its entirety. Employees will not be paid for any unused personal leave in the event of employee retirement, resignation or termination.

**330.06 Sick Leave.**

**Subd. 1 Purpose.** Sick leave may be granted when the employee is unable to perform work duties due to illness, injury, disability, the necessity for medical or dental care, childbirth, complications of pregnancy, or exposure to contagious disease where such exposure may endanger the health of others with whom the employee would come in contact in the course of performing work duties. A maximum of five days paid sick leave per instance may be granted during the serious illness of an immediate family member within the household where no other responsible adult is available to care for the ill family member. Immediate family member includes mother, father, spouse and children.

**Subd. 2 Use of Sick Leave.** To be eligible for paid sick leave an employee must:

1. report as soon as possible to his or her Department Head the reason for the absence;
2. keep the Department Head informed of his or her condition and anticipated date of return;
3. if requested by the Department Head or Council, submit a medical certificate for any absence.

**Subd. 3 Amount Earned.** Every employee and probationary employee will earn sick leave at the rate of eight (8) hours for each calendar month of full-time service, prorated for permanent part-time service. Sick leave may be accumulated to a maximum of 150 days and will be granted in units of not less than one hour.

**Subd. 4 Penalty.** Use or claiming sick leave for a purpose not authorized by Subd. 1 may be cause for disciplinary action. Employees on paid sick leave or workers' compensation are prohibited from engaging in other paid employment. Those who do may be subject to disciplinary action.

**330.07 Holidays.** The following calendar days are paid holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Good Friday, Veterans' Day, Thanksgiving Day, the day after Thanksgiving Day and Christmas Day. When New Year's Day, Independence Day, Veteran's Day or Christmas Day falls on a Sunday, the following Monday is a paid holiday, and if any such day falls on a Saturday, the preceding Friday is a holiday.

All permanent and probationary employees are entitled to time off with full pay on holidays. The City Hall will be closed for business on each such holiday. Eligible employees will receive pay for official holidays at their normal rates of pay if they are at work or on paid leave the normal working day before and after the holiday. Permanent part-time employees who work at least two-thirds of full time are entitled to pay on a holiday only if they would normally be scheduled to work on the holiday and they will be paid only for the number of hours they would have worked.

Employees who, because of the nature of their duties, are required to work on paid holidays are entitled to another day off in lieu of the regular holiday.

**330.08 Group Insurance.** Provisions for group insurance as authorized and set out in Minnesota Statutes §471.61 may be made for employees of the City by resolution of the Council. The Council may by resolution set the amount of city participation in the payment of any such premiums authorized by law.

**330.09 Retirement Benefits.** Eligibility for retirement benefits shall be determined by P.E.R.A., in accordance with Minnesota Statute §353.

**330.10 Employee Recognition.** An Employee who has been employed by the City for a

continuous length of service shall be recognized, as determined by the Council, for his/her years of service to the City on their five year, ten year, fifteen year, and twenty year anniversary of that employee's hire date.

**330.11 Workers Compensation Act.**

**Subd. 1 Coverage Extended.** All city employees are covered by the Minnesota Workers' Compensation Act and by accident insurance coverage. Pursuant to Minnesota Statutes §176.011 Subd. 9, the elected officials of the City and members of the Planning Commission, Civil Service Commission, Park Committee and Boat Committee and those municipal officers appointed for a regular term of office or to complete an unexpired portion of a regular term also are hereby included in the coverage of the Minnesota Workers' Compensation Act and in the accident insurance coverage.

**Subd. 2 Total Compensation.** Any compensation paid to the employee under workers' compensation insurance must be reported to the Department Head. Employees may use paid leave time in addition to receiving workers' compensation but in no case will total compensation exceed the full pay which the employee would normally receive for the period at the regular rate of pay.

**Subd. 3 Reporting an Injury.** If an employee sustains a life threatening injury, the employee should be transported to the nearest emergency facility.

1. If injured at work, the employee should notify his/her supervisor as soon as possible.
2. The supervisor will seek appropriate medical attention if needed.
3. The supervisor will complete the proper submission of workers' compensation claim paperwork.

**SECTION 335 – LEAVE OF ABSENCES**

**335.01 General.** Employees may request a leave of absence from the employment of the City under certain situations. Such leaves must be pre-approved by the Council and must be requested in writing. The Council may grant a leave of absence, with or without pay, taking into consideration the length of service and job performance of the employee and the general good of the municipal service. This leave will not exceed 90 days, unless it is extended for continued disability or other sufficient reason, in which case it will not exceed one year. No vacation, sick leave, holiday or insurance benefits, except as provided under Family and Medical Leave, shall accrue during leave without pay.

**335.02 Military Leave.** Every employee to whom Minnesota Statutes §192.26 or §192.261 applies is entitled to the benefits afforded by those sections subject to the conditions prescribed in this Section.

**335.03 Court Leave.** When an employee performs jury duty or is subpoenaed as a witness in court or voluntarily serves as a witness in a case in which the City is a party, the employee is entitled to compensation from the City equal to the difference between his or her regular pay and the amount received as a juror or witness. While on such leave, an employee will continue to accrue the benefits to which he or she is regularly entitled.

**335.04 Family and Medical Leave.**

**Subd. 1 General.** The City provides personal unpaid leave for certain family and medical reasons which fall under the Family and Medical Leave Act of 1993. The City will not interfere with, restrain, or deny the exercise of any employee's right to family care and/or medical leave.

**Subd. 2 Use Requirements.** Unpaid family / medical leave is granted for any of the following reasons:

- ◆ to care for the employee's child after birth, or placement with the employee of a child for adoption or foster care;
- ◆ to care for the employee's spouse, child, or parent who has a serious health condition; or
- ◆ care for themselves during a serious health condition that makes the employee unable to perform their job.

**Subd. 3 Eligibility.** An eligible employee is one who has worked for the City for a cumulative period of twelve (12) months and has worked at least 1,560 hours for the City during the twelve (12) month period prior to requesting the leave.

**Subd. 4 Amount of Leave.** Upon pre-approval by the Council an employee is entitled to a total of twelve (12) work weeks of leave during a twelve (12) month period for the reasons set forth above. The twelve (12) month period is measured forward from the date of the employee's first day of leave. Leaves to care for a new child must be concluded within twelve (12) months of the birth, adoption or placement of the child with the employee.

For leaves due to the serious health condition of the employee, child, parent or spouse, the leave may be taken intermittently, or under a reduced leave schedule when medically necessary. The medical necessity of intermittent or reduced leave must be established by a medical certification issued by a health care provider.

**Subd. 5 Advance Notice and Medical Certification Required.** The employee should give as much advance written notice of the request for a leave as is possible. For foreseeable events, the employee should give at least thirty (30) days written advance notice. The notice must specify the reason for the leave, as well as a starting date and an expected return date.

For leaves due to the serious health condition of the employee, child, parent or spouse, the period of disability must be supported by a medical certification issued by a health care provider. The certification must be provided within fifteen (15) calendar days after the leave is first requested. If an employee fails to provide the medical certification in a timely manner, the City may deny the leave until the certification is submitted. The City also reserves the right to require a second medical opinion for leave requests and leave extensions.

The employee should make a reasonable effort to schedule the leave so as to minimize disruption to the City's operations.

**Subd. 6 Pay and Benefits During Leave.** Except for the use of vacation pay and sick pay, the family care and medical leaves of absence are unpaid.

Health insurance will be continued for eligible employees on family or medical leave. The City and the employee will pay their respective portions of the regular monthly premium to the same extent paid prior to taking leave. If the leave exceeds the maximums set forth above, the City will no longer pay its portion of the premium. If coverage is requested to continue at that time, the employee will be expected to pay the entire monthly premiums for health insurance in order to continue coverage.

An employee who fails to return to work after the expiration of the leave may be required to reimburse the City for its share of the premiums paid during the

leave, unless the employee is unable because of a serious health condition or other circumstances beyond the employee's control.

If an employee accepts other employment or fails to return to work on the next regularly scheduled workday following the expiration of the approved leave of absence, the employee will be considered to be on an unauthorized leave of absence and will be subject to the provisions of Section 375 of this policy.

**Subd. 7 Reinstatement.** Employees returning from family care or medical leave by the end of the approved leave will be reinstated to the same position and at the same rate of pay. For a leave due to an employee's own serious health condition, the City reserves the right to require the employee to submit a medical certification that the employee is able to return to work.

**335.05 Personal Leave.** Employees who are faced with a severe personal problem (which does not fall under the Family Medical Leave Act) may request an unpaid leave of absence not to exceed ninety (90) days, at which time another written request may be submitted by the employee. Employees are not permitted to engage in other employment while on a personal leave. No vacation, sick leave, holiday or insurance benefits accrue during unpaid Personal Leave.

#### **SECTION 340 – EMPLOYEE TRAINING/TRAVEL**

**340.01 Training.** Employees are encouraged to take advantage of training opportunities to help them improve the performance of their present work assignments and to prepare them for future assignments. This may include seminars, lectures, or workshops. Cost, staffing issues, need, benefit to the City, and other appropriate issues will be considered by the Department Head/Council in approving requests or assigning training. Time to attend required training will normally be paid time.

**340.02 Reimbursement.** Advance payment may be authorized for conference registration fees.

**Subd. 1 Use of Personal Vehicles.** City employees using their personal vehicles for official City business shall be reimbursed at a rate set annually by the City Council at its organizational meeting in January. Other expenses eligible for reimbursement must be submitted to the City Clerk with the appropriate receipt or documentation.

**Subd. 2 Meals.** City employees who are out of town for seminars, conventions, or training shall be reimbursed for breakfast, lunch, and/or dinner at rates set annually by the City Council at its organizational meeting

**340.03 Additional Education.** The City may assist an employee with tuition for course work at accredited institutions, which improves work performance or gives preparation for future assignments. The City shall reimburse the employee for the cost of the course upon successful completion. The employee is responsible for meals and mileage, and will not be paid for the hours of coursework. Pre-approval by the Council is mandatory.

#### **SECTION 345 - SEXUAL HARASSMENT**

**345.01 Sexual Harassment Guidelines.** Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact and other verbal or physical conduct of a sexual nature constitute harassment when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or

2. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance; or
4. the conduct has the purpose or effect of creating an intimidating, hostile, or offensive working environment.

Other behavior, whether subtle, overt, or otherwise, which constitutes sexual harassment includes, but is not limited to:

1. verbal harassment (epithets, derogatory remarks, or slurs);
2. physical harassment (gestures, assault, impeding or blocking movement, or any physical interference with normal work or movement);
3. visual forms of harassment (derogatory posters, letters, poems, graffiti, cartoons, or drawings); and
4. request for sexual favors or unwanted sexual advances.

**345.02 Need for Written Reports.** Conduct that might be interpreted as sexual harassment can be perceived differently among employees. Anytime an employee feels that he or she is being subjected to sexual harassment in any form, or who believes he or she has witnessed sexual harassment in any form, he or she must bring this to the attention of the City. In order for the City to deal with the problem, employees must report, in writing, such offensive conduct or situation to their Department Head or City Council. All Department Heads are required to immediately report any allegations to the City Council in writing.

**345.03 Procedures.** All employees are expected to cooperate with investigations. If an employee refuses to cooperate with the investigation, he or she may be subject to disciplinary action.

Written complaints submitted to the City will be promptly investigated and resolved. Every attempt will be made to maintain the employee's confidentiality and provide protection against retaliation. A record of the complaint and the findings will become a part of the complaint investigation record and the file will be maintained separately from the employee's personnel file.

If the facts support the allegations, the perpetrator of the sexual harassment will be subject to appropriate disciplinary action, up to and including discharge. Any employee found to have made a false complaint or found to have given knowingly false information during an investigation of such a complaint may also be subject to disciplinary action.

## **SECTION 350 – DRUG-FREE WORKPLACE**

**350.01 General.** The City is committed to providing a work environment free from the effects of alcohol and illegal drugs. Consistent with this philosophy, the City has adopted a policy, in accordance with Minnesota Statutes 181.950 through 181.957, to test for alcohol and drugs in the workplace.

**350.02 Applicability.** All job applicants and employees, as defined in Minnesota Statutes 181.950, are subject to testing.

**350.03 Drug and Alcohol Testing.** Circumstances under which drug and alcohol testing may be requested or required.

**Subd. 1 Job Applicants.** Job applicants may be requested or required to undergo drug

and alcohol testing provided a job offer has been made to the applicant and the same test is requested or required of all job applicants conditionally offered employment for that position. If the job offer is withdrawn, as provided in Minnesota Statutes 181.953, Subd. 11, the City shall inform the job applicant of the reason for its action.

**Subd. 2 Employees.** Employees may be requested or required to undergo drug and alcohol testing as part of a routine physical examination provided the drug or alcohol test is requested or required no more than once annually and the employee has been given at least two weeks written notice that a drug or alcohol test may be requested or required as part of the physical examination.

**Subd. 3 Safety-Sensitive Positions.** Employees in safety-sensitive positions may be requested or required to undergo drug and alcohol testing on a random selection basis. The City declares that all police and all public works positions (including, but are not limited to, union, non-union, supervisory and management positions) are hereby designated as Safety-Sensitive Positions.

**Subd. 4 Reasonable Suspicion.** Employees may be requested or required to undergo drug and alcohol testing if the City has reasonable suspicion that the employee:

- (1) is under the influence of drugs or alcohol;
- (2) has violated the City's written work rules prohibiting the use, possession, sale, or transfer of drugs or alcohol while the employee is working or while the employee is on the City's premises or operating a City vehicle, machinery, or equipment, provided the work rules are in writing and contained in the City's written drug and alcohol policy;
- (3) has sustained a personal injury, as that term is defined in Minnesota Statutes 176.011, Subd. 16, or has caused another employee to sustain a personal injury;  
or
- (4) has caused a work-related accident or was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident.

**Subd. 5 Post Treatment Testing.** Employees may be requested or required to undergo drug and alcohol testing if the employee has been referred by the City for chemical dependency treatment or evaluation or is participating in chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for up to two years following completion of any prescribed chemical dependency treatment program.

**Subd. 6 Random Sampling.** The definition of random sampling shall be the same as given in Minnesota Statutes 181.950, Subd. 11.

**350.04 Right of Refusal.** Any employee or job applicant may refuse to submit to a drug/alcohol screening test that the City has requested pursuant to this policy, but upon such refusal the City may:

- (1) withdraw its offer of employment to a job applicant; or
- (2) subject an existing employee to disciplinary action up to and including discharge.

**350.05 Consequences of a Positive Test Result.** Where a confirmatory test indicates illegal, improper or inadequately explained drug use, and the employee or job applicant either does not obtain a confirmatory retest or the retest is positive:

- (1) The contingent employment offer to a job applicant will be withdrawn and the individual will not be hired.
- (2) An existing employee, where the confirmatory test result is the first positive test result on such individual while employed by the City, will be given an opportunity to participate in, at the employee's expense (or, if covered, pursuant to any applicable employee benefit plan), a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the City after consultation with a certified chemical use counselor or a physician trained in the diagnosis and treatment of chemical dependency. If the employee either refuses to participate in the counseling or rehabilitation program or fails to successfully complete the program (as evidenced by withdrawal from the program before its completion or by a positive result after the program), discipline up to and including discharge may result.
- (3) An existing employee who has had a prior positive confirmatory tests while employed by the City, shall be subject to discipline up to and including discharge.
- (4) The City may temporarily suspend a tested employee, or transfer that employee to another position at the same rate of pay pending the outcome of a confirmatory test, or confirmatory retest elected by the employee, where the City believes that such suspension or transfer is reasonably necessary to protect the health or safety of the employee, other employees, or the public. An employee who has been suspended without pay solely on the basis of suspected drug or alcohol use where the City has chosen to test the employee for drug/alcohol use will be reinstated with back pay if the outcome of the confirmatory test or any requested confirmatory retest is negative.

**350.06 Notice of Test Results.** Within three (3) working days after receipt of a test result report from the testing laboratory, the City shall inform, in writing, an employee or job applicant who has undergone drug or alcohol testing, of the test results, in accordance with and as provided for in Minnesota Statutes 181.953, Subd. 7.

**350.07 Right to Explain a Positive Confirmatory Test or to Request and Pay for a Confirmatory Retest.** Within three (3) working days after notice of a positive test result on a confirmatory test, the employee or job applicant may submit information to the City to explain that result, in accordance with and as provided for in Minnesota Statutes 181.953, Subd. 6. Within five (5) working days after notice of a positive test result, the employee or job applicant may request and pay for a confirmatory retest, in accordance with and as provided for in Minnesota Statutes 181.953, Subd. 9.

### **350.08 Prohibitions**

**Subd. 1 Alcohol / Intoxicating Beverages.** The unauthorized possession, use, sale, or transfer of alcoholic beverages on City property is prohibited. Furthermore, an employee is not permitted to report to work or operate City vehicles, machinery, or equipment while under the influence of alcoholic beverages. The employee will be considered to be "under the influence" when consumption of any alcoholic beverage has impaired or is likely to impair the employee's job performance in the judgment of his or her supervisor. Employees who violate this work rule are subject to disciplinary action up to and including discharge.

**Subd. 2 Drugs.** The use, sale, or unauthorized possession or transfer of controlled substances, or the improper use of other drugs during working hours or on City property is prohibited. The employee is not permitted to report to work or operate City vehicles, machinery, or equipment while under the influence of any drug or controlled substance that could adversely affect performance. Employees who violate this work rule are subject to disciplinary action up to and including discharge.

Employees who are under a physician's care and who are taking prescribed controlled substances that could affect performance should report this treatment to their supervisors. This information is important to the City in ensuring that safety and efficiency are maintained. Employees failing to make such a report and whose performance is adversely affected by their taking prescribed controlled substances shall be subject to disciplinary action up to and including discharge.

**Subd. 3. Tampering.** Any employee who tampers with his or her own urine or blood sample shall be subject to disciplinary action up to and including discharge.

**Subd. 4. Notification of Conviction.** An employee must notify the City of any criminal drug statute conviction for a violation occurring within the workplace no later than five (5) days after such conviction.

**350.09 Confidentiality.** All records pertaining to drug and alcohol testing will be treated as private data as required under Minnesota Statutes 181.954, Subd. 2.

**350.10 Collection Procedures.** Once the circumstances warrant implementation of this procedure, the employee's Department Head or supervisor shall:

1. advise the employee that in accordance with the City's Policy for Drug and Alcohol Testing, the employee is required to submit to testing;
2. provide the employee a copy of the City's Drug and Alcohol Testing Policy and allow the employee a reasonable period of time to review the Policy;
3. provide a consent form to the employee and ask the employee to read the consent form and complete the information as required; and
4. direct the employee to sign and date the consent form.

**Subd. 1 Urine Test.** If it has been determined that a urine test is to be given, the Department Head or supervisor shall:

1. complete the appropriate laboratory form;
2. follow all directions on the kit for a urine sample collection;
3. take the employee to a restroom and observe the employee give the urine sample into the container provided;
4. if the employee is the opposite sex from the observing supervisor, locate a supervisor of the same sex to observe the giving of the urine sample;
5. seal the container in accordance with the kit instructions; and
6. retain the container and consent form until they can be personally given over to the laboratory for analysis.

**Subd. 2 Blood Test.** If it has been determined that a blood test is to be given, the Department Head or supervisor shall:

1. take the employee to the appropriate medical facility;
2. direct that the blood sample be drawn in accordance with the City's Drug and Alcohol Testing Policy by a certified technician; and
3. make certain that the consent form and sample are completed in accordance with the City's chain-of-custody procedure.

The laboratory technician shall be responsible for transportation of the sample.

**Subd. 3 Refusal to Sign Consent Form.** Refusal to sign the necessary consent forms may result in the following:

1. if the employee refuses to give his or her consent, the employee is to be placed on

immediate suspension with pay.

2. documentation is to be completed and filed immediately with the appropriate hiring authority.

**350.11 Chain-of-Custody Procedures.** The City of Deephaven has established chain-of-custody procedures to ensure proper recordkeeping, handling, labeling, and identification of the samples to be tested as follows:

1. possession of the sample must be traceable to the employee from whom the sample is collected, from the time the sample is collected through the time the sample is delivered to the laboratory.
2. the sample must always be in the possession of, must always be in view of, or must be placed in a secured area by a person authorized to handle the sample.
3. a sample must be accompanied by a written chain-of-custody record.
4. the supervisor relinquishing or accepting possession of the sample must record the time the possession of the sample was transferred and must sign and date the chain-of-custody record at the time of transfer.

**350.12 Administrative Responsibility.** Each Department Head shall be responsible for informing and distributing a copy of this Policy to each of his or her employees, and for the implementation and enforcement of the Policy.

### **SECTION 355 – EMPLOYEE CODE OF CONDUCT**

**355.01 Customer Service.** It is important that the City provide excellent service to its residents, while showing the utmost courtesy. There may be times when this is difficult. Nevertheless, there is rarely an excuse for discourtesy to anyone. If an employee believes that he/she has been subject to verbal abuse, the altercation should be reported immediately to his/her supervisor or to the Council for investigation to avoid further problems. The show of abuse or discourtesy to a resident or any member of the public reflects upon the City and is unacceptable.

**355.02 False Statements.** A person may not knowingly make any false statement, certificate, mark, rating or report in regard to any application, test, certificate or appointment held or made under the city personnel system or in any manner commit any fraud preventing the impartial execution of the provisions of this policy.

**355.03 Outside Employment.** The City discourages its full-time employees from additional employment outside of such employee's job with the City. In any event, any employee's outside work must not interfere with the employee's efficient and faithful performance of his or her duties as an employee of the City. Any outside employment must not be conducted during working hours or with City equipment or vehicles.

**355.04 Payments.** A person seeking employment with or promotion with the City may not directly or indirectly give, render or pay any money, service or other valuable consideration to any person or on account of or in connection with a test, appointment or promotion or proposed appointment or promotion.

**355.05 Political Activity.** In the interest of promoting efficiency and preserving political neutrality in the conduct of municipal business, employees are prohibited from engaging in political activity while on city time or while discharging City responsibilities. Employees may not use their position of municipal employment to influence the results of an election. Employees covered by the Federal Hatch Act are subject to the limitations specified therein.

- 355.06 Reasonable Response Time for Critical Employees.** Snowplow operators must live within such a distance from the Public Works garage that will allow them to respond to a snow emergency call within a reasonable response time. A reasonable response time for snow emergency calls shall be thirty (30) minutes under normal daytime driving conditions.
- 355.07 Smoking.** The Minnesota Clean Indoor Air Act governs smoking within City buildings, offices, vehicles, and work sites. There will be no smoking in these areas. Employees may smoke only during rest periods and lunch breaks, and must do so out-of-doors. Smoking in unapproved areas may result in disciplinary action.
- 355.08 Spending Limits.** Department Heads shall not expend department budgeted funds in excess of the amount specified in the annual budget documents when purchasing or ordering supplies, repairs or new equipment which is necessary in order to carry on City business without prior approval of the Council.
- 355.09 Telephone Calls.** The City discourages personal telephone calls during working hours, except in cases of emergency. If a call is necessary, limit it to five (5) minutes. No personal long distance or toll calls are to be charged to the City's phone. Cell phones are considered property of the City, and the same applies to their use. Employees found to be abusing this policy may be subject to disciplinary action and will be required to pay the costs associated with this abuse.
- 355.10 Uniforms.** The Public Works Department shall daily wear uniforms consisting of shirts, pants, jackets and/or coveralls, which adequately display the employee's name and the "City of Deephaven". The cost of the uniforms shall be paid by the City, and are to be worn during work hours only. Employees found to be abusing this policy may be subject to disciplinary action.

#### **SECTION 360 – E-MAIL AND INTERNET USAGE**

- 360.01 General.** The City encourages acceptable use of electronic mail and Internet services when it is suitable for business purposes, supports the goals and objectives of the City, and is consistent with the employee's job responsibilities. While incidental and occasional personal use of the Service is permitted, provided such use is limited to lawful, non-prohibited purposes, the product of such use, including e-mails, is considered public data under the Data Practices Act, and as such, belongs to the City.
- 360.02 Controlled and Prohibited Activities.** The City has the right at all times to appropriately monitor all electronic information. No advance notification or consent is required to the employee prior to such appropriate monitoring. The City reserves the right to reveal information transmitted or received using the Services to individuals with a bona fide need-to-know, including law enforcement agents and other authorized parties. Employees found to be abusing this policy may be subject to disciplinary action. Employees assume personal liability for any and all violations committed while using the Services.

Prohibited uses shall include, but are not limited to, the following:

- ◆ illegal activities
- ◆ harassment of other users
- ◆ advancement of individual views
- ◆ accessing or distributing threatening or obscene material
- ◆ the intentional spread of computer viruses or other destructive information
- ◆ malicious service disruption
- ◆ unauthorized attempts to break into any computer system or use resources

- ◆ unauthorized use or retrieval or distribution of copyrighted material
- ◆ creation of unauthorized web pages or information sites
- ◆ the generation or circulation of any form of “chain letter” or other nonprofessional communication
- ◆ private financial gain, including completion or negotiation of stock or personal business transactions
- ◆ any material that would be considered inappropriate in a professional workplace
- ◆ use of pseudonyms to disguise the identity of the Employee

### **SECTION 365 – CREDIT CARDS**

**365.01 Use Requirements.** The City allows acceptable use of certain credit cards issued in the name of the City when purchasing or ordering supplies, repairs or new equipment which is necessary in order to carry on City business.

Employees shall sign the original purchase receipt and submit it to the Deputy/Treasurer as soon as possible after the purchase. Any employee found to be abusing this policy may be subject to disciplinary action, including personal liability for the expenses charged to the credit card.

### **SECTION 370 - GRIEVANCE**

**370.01 Scope.** Section 370 applies to all employees of the City except elected officials, members of City commissions, boards and committees, emergency employees and other employees not regularly employed in a full-time position. Any employee included in a collective bargaining agreement entered into in accordance with the Public Employment Labor Relations Act, Minnesota Statutes, Section 179A.01 through 179A.25, is exempt from any provision of Section 370 which is inconsistent with any such collective bargaining agreement. Any employee within the jurisdiction of a civil service commission established under Minnesota Statutes, Chapters 44, 419 or 420 is exempt from any provision of Section 370 which is inconsistent with such statutes, or rules and regulations adopted under such statutes. Nothing in Section 370 is intended to modify or supersede any provision of the Veteran’s Preference Act, Minnesota Statutes, Sections 197.455 through 197.481.

**370.02 General.** It is the policy of the City insofar as possible, to prevent the occurrence of grievances and to deal promptly with those which occur. When any employee grievance comes to the attention of a Department Head, the Department Head will discuss all relevant circumstances with the employee and his or her representative if present, consider and examine the causes of the grievance and attempt to resolve it to the extent that the Department Head is authorized to do so. If the grievance is not dealt with satisfactorily at that level, the grievance may be submitted in writing to the Council. If the grievance is between the employee and the Department Head, the employee may submit his or her grievance in writing directly to the Council. The decision of the Council is final and binding in all respects. There is no appeal from the Council decision.

### **SECTION 375 - DISCIPLINE**

**375.01 General.** City employees are subject to disciplinary action for failing to fulfill their duties and responsibilities, including observance of any work rules adopted by the Council. The City reserves the right to make decisions with respect to discipline, including discharge, involving all employees covered by this policy. The Council will determine whether sufficient grounds exist for discipline, including discharge.

**375.02 Cause for Disciplinary Action.** If, in the City Council's judgment the circumstances warrant disciplinary action, it may be made on the following grounds:

- A. Unauthorized possession and/or use of City property.
- B. Refusal to obey an order or to do assigned work.
- C. Unauthorized absence.
- D. Repeated tardiness after warning.
- E. Consuming or being under the influence of alcohol or unlawful drugs while on duty.
- F. Incompetency in performing work duties.
- G. Violation of City's personnel policy.
- H. Offensive or disrespectful conduct or language toward public, or in public, or toward City officials, supervisors, or other employees.
- I. Falsification of personnel records, time reports, or other City records or reports.
- J. Violation of applicable law in any respect.

The above examples are intended to serve only as examples and are not the exclusive grounds for which the City Council may discipline an employee. The City Council reserves the right to decide other conduct, which may also be considered grounds for dismissal or other discipline.

**375.03 Process.** The City will use progressive discipline with all employees. The City retains full authority to take any other disciplinary action it deems appropriate. There may be circumstances that warrant deviation from the suggested order or where progressive discipline is not appropriate. The process is as follows:

**Subd. 1 Oral Warning.** Oral warnings should be given for first infractions to clarify expectations and put the employee on notice that the performance or behavior needs to change, and what the change must be. There shall be a written record of any such oral reprimand, which shall be placed in the employee's personnel file.

**Subd. 2 Written Warning.** There may be times when the first infraction is so serious that an oral warning may be insufficient. A written warning shall state the reason for the warning along with a description of the events/problems that led to the warning. It shall describe action to be taken by the employee to correct the problem. It will indicate further disciplinary action that could result if the problem continues or if related problems occurs. A copy of the document shall be placed in the employee's personnel file.

**Subd. 3 Suspension With or Without Pay.** The employee will be notified in writing of the reason for the suspension. Upon the employee's return to work, the employee will be given a written statement outlining further disciplinary action possible if the problem continues or reoccurs. A copy of the written document shall be placed in the employee's personnel file.

An employee may be suspended pending an investigation of an allegation. If the allegation is proven false after the investigation, the relevant written documents will be removed from the personnel file and the employee will receive any compensation to which he/she would have been entitled had the suspension not taken place.

**Subd. 4. Involuntary Demotion.** Discipline may include demotion.

**Subd. 5. Termination.** Discipline may include termination.

**375.04 Hearing.** In any case of suspension or demotion, the employee will be granted a hearing before the Council if the employee submits a written request within five (5) working days of the notification of the action taken. A hearing will be held at a time determined by the Council. If the disciplinary action involves the removal of a veteran, the hearing will be held in accordance with Minnesota Statutes §197.46.

### **SECTION 380 - TERMINATION**

**380.01 General.** Any employee may be discharged by the City Council for just cause. Violations under Section 375.02 may be considered just cause to discharge an employee.

Pursuant to Minnesota Statute §181.933, an employee who has been involuntarily terminated may, within five (5) working days following such termination, request in writing that the employer inform the employee of the reason for the termination. An employer shall inform the terminated employee in writing of the truthful reason for termination within five (5) working days following receipt of such request.

**380.02 Promoted Employees.** A permanent employee terminated during the probationary period from a position to which the employee was transferred or promoted and not discharged from City service will be placed on a leave of absence without pay. When a vacancy arises in the class from which the employee was promoted or transferred, such employee will be reinstated to that position. This right to reinstatement will expire one year after the date of the leave of absence.

**380.03 Probationary Employee.** The Council may terminate a probationary employee anytime during the probationary period upon recommendation of the Department Head if in the Council's opinion the working test indicates that the employee is unable or unwilling to perform the duties of the position satisfactorily. The employee so terminated will be notified in writing of the reasons for the termination and will not have the right to appeal unless the employee is a veteran, in which case, the procedure prescribed in Minnesota Statutes, Section 197.46 will be followed.

**380.04 Terminal Leave Benefits.** Non-promoted probationary employees will not be eligible for terminal leave benefits.

**380.05 Leaving the City.** Employees are expected to return all City-furnished uniforms, tools, equipment, including keys, credit cards, and cell phones, along with all City files, manuals and data provided to the employee while in the employment with the City. If not returned, the employee must pay to the City the costs of these properties at the time of termination.

A forwarding address and telephone number are requested in the event it is necessary to contact a former employee and for forwarding year-end tax information.

### **SECTION 385 – RESIGNATION/LAY OFF**

**385.01 Non-Department Head Employees.** Any employee wishing to leave the municipal service in good standing must file with the Department Head, at least ten (10) working days before leaving, a written resignation stating the effective date of the resignation and the reason for leaving. Failure to comply with this procedure may be considered cause for denying the employee future employment by the City and denying terminal leave benefits. In extenuating circumstances, the Council may waive the ten (10) day notice requirement.

**385.02 Department Head Employees and Supervisors.** Any Department Head or Supervisor wishing to leave municipal service in good standing must file with the Council, at least twenty (20) working days before leaving, a written resignation stating the effective date of

the resignation and the reason for leaving. Failure to comply with this procedure may be considered cause for denying the employee future employment by the City and denying terminal leave benefits. In extenuating circumstances, the Council may waive the twenty (20) day notice requirement.

- 385.03 Exit Interview.** The City Council reserves the right to require an exit interview with any employee in order for that employee to leave the municipal service in good standing.
- 385.04 Unauthorized Absence.** Unauthorized absence from work for a period of three working days within a thirty-day period may be considered by the Council as a resignation without terminal leave benefits. At the Council's discretion, the employee may be asked to provide an explanation for any unauthorized absence and the Council may elect either to permit the employee to return to work or authorize terminal leave benefits.
- 385.05 Lay-offs.** After at least two (2) weeks notice to the employee, the Council may lay off an employee whenever such action is necessary because of shortage of work or funds, the abolition of a position, or changes in organization. No employee or probationary employee may be laid off while there is a temporary employee in the same class of position for which the employee or probationary employee is qualified, eligible and available.