



## Legal Department

**DATE:** January 9, 2024

**FROM:** Jannelle Combs, City Attorney

**ITEM:** Public hearing on Ordinance 6567 to amend portions of Title 9 - Personnel Regulations.

**REQUEST:**

Hold a public hearing on Ordinance 6567 to amend portions of Title 9 -Personnel Regulations

**BACKGROUND INFORMATION:**

At the request of the City Commission, I have reviewed Title 9 – Personnel Regulations and attempted to update the language where appropriate based on the current usage of the title (i.e., Human Resources Director, not Personnel Director, performance evaluation, not appraisal, etc.). In addition, I was directed by Mayor Schmitz to draft the responsibilities for the City Administrator to act as the Chief Executive Officer, which includes full employment authority over those they supervise. This was on the regular agenda to receive feedback from the entirety of the City Commission on December 12 and 26, 2023 at regular City Commission meetings. There were also changes where the Civil Service Commission performed duties that the City has paid for many years to be done by professionals like Gallagher for job descriptions and salary plans.

Attached are the ordinance with changes as approved by the Civil Service Commission and the memo with information from the Civil Service Commission regarding options for the City Commission hiring and terminating department directors.

**RECOMMENDED CITY COMMISSION ACTION:**

Hold a public hearing relating to revisions to Ordinance 6567 and consider for final approval.

**STAFF CONTACT INFORMATION:**

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**ATTACHMENTS:**

1. Ord 6567
2. Dec 26 memo from HR

**CITY OF BISMARCK  
ORDINANCE NO. 6567**

<i>First Reading</i>	_____
<i>Second Reading</i>	_____
<i>Final Passage and Adoption</i>	_____
<i>Publication Date</i>	_____

AN ORDINANCE TO AMEND PARTS OF CHAPTER 9 OF THE CITY OF BISMARCK CODE OF ORDINANCES (1986 Rev.), AS AMENDED, RELATING TO PERSONNEL REGULATION AND BENEFITS

BE IT ORDAINED BY THE BOARD OF CITY COMMISSIONERS OF THE CITY OF BISMARCK, NORTH DAKOTA:

Section 1. Amend. Section 9-01-01 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Definition of Terms is hereby amended to read as follows:

9-01-01. Definition of Terms. The following terms in this title shall have the following meaning unless the context clearly indicates otherwise:

1. Appointing Authority: The department ~~head~~director, or with respect to the department ~~heads~~directors, the City Administrator ~~Board of City Commissioners~~.

\* \* \* \* \*

8. Department ~~Head~~Director: A person classified as the ~~head~~director of a department pursuant to the city classification schedule.

\* \* \* \* \*

12. Establishment, installation and maintenance of a performance appraisal evaluation system.

~~13. Gender: The masculine pronoun used in this plan shall include the feminine.~~

4413. Part-time Employee: Any employee employed for less than 40 hours per week or for a period of less than 1200 hours in each calendar year. Part-time employees are not included in civil service and may be terminated at will.

4514. Position: Any office and place of employment where the duties and responsibilities appertaining thereto are exercised by one person.

4615. Probationary Period: A working test period during which the appointing authority is required to note the work and conduct of all new employees and determine whether they merit regular appointments.

4716. Promotion: A change in status from a position in one class to a position in another class having a higher rank, greater duties or responsibilities or a higher maximum salary.

4817. Regular Part-time Employee: Any employee employed for less than 40 hours per week but more than 1200 hours for each calendar year.

4918. Salary Plan: The schedules of pay for each class of positions in such departments, showing minimum and maximum rates.

~~20. Widow or Husband: The surviving spouse of a marriage contracted prior to retirement of a deceased employee from active service, or of a retired employee contracted prior to the date this plan takes effect.~~

(Ord. 4367, 04-23-91)

Section 2. Amend. Section 9-02-09 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Clerk and Duties is hereby amended to read as follows:

9-02-09. Clerk and Duties. The city auditor-administrator is ex officio clerk of the commission.

The ex officio clerk shall be available to the civil service commission and the ~~personnel~~human resources director for consultation and assistance in managing the civil service system.

Reference: N.D.C.C. 40-44-05

Section 3. Amend. Section 9-02-10 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Administrative Officer and Duties is hereby amended to read as follows:

9-02-10. Administrative Officer and Duties. The ~~personnel~~human resources director serves as the administrative officer of the civil service system and is accountable to the civil service commission for all duties relating to administration of the civil service system.

The ~~personnel~~human resources director shall:

\* \* \* \* \*

Section 4. Amend. Section 9-02-11 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Scope of Title is hereby amended to read as follows:

9-02-11. Scope of Title. The rules and regulations provided for by this title shall cover the following:

1. Preparation, installation and maintenance of the ~~duties~~ classification plan covering all positions in the civil service.

\* \* \* \* \*

Reference: N.D.C.C. 40-44-07

Section 5. Amend. Section 9-03-02 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Scope of Title is hereby amended to read as follows:

9-03-02. Prohibition of Discrimination. An employee or applicant for employment may not be appointed, promoted, demoted, dismissed, or in any way favored or discriminated against on the basis of race, color, religion, sex, national origin, age, physical or mental ~~handicap~~ disability or status with regard to marriage or public assistance.

Reference: N.D.C.C. 14-02.4

Section 6. Amend. Section 9-03-05 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Nepotism is hereby amended to read as follows:

9-03-05. Nepotism.

1. A person related by blood or marriage to the president of the board of city commissioners, or any member of the board or the civil service commission, the ~~personnel department~~ human resources director, or the finance director, may not be appointed to any position or service in the city. Under no circumstances will persons who are related be employed in the same department, if one person has supervisory responsibilities in any respect with regard to the other person.

2. If two city employees, one having supervisory responsibilities with regard to the other, employed within the same department, marry, it is required that one or the other of them resign from his or her position with the city government. The person resigning will be eligible to have his or her name placed on the reemployment list for employment with one of the other city departments. No employee with supervisory authority over another individual shall be involved in a dating relationship or are presently residing together with the employee they are supervising.

3. Provisions of these rules do not affect or bar continued employment or promotion of those relatives, as herein enumerated, employed by the city prior to the election or appointment of the city officials or employees specified in paragraph 1 of this section.

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

(Ord. 4301, 10-31-89)

Section 7. Amend. Section 9-03-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Vacancies is hereby amended to read as follows:

9-03-06. Vacancies. The ~~personnel~~ human resources director must make a public announcement of all vacancies in positions in the civil service utilizing ~~bulletin boards, the official city newspaper, professional publications, societies, and/or~~ such other methods as are deemed appropriate for the vacant position.

The announcement shall specify the title and salary range of the position and the typical duties to be performed, the minimum qualifications required, final date on which applications will be received, and any other pertinent data.

Notwithstanding the provisions of this section, the ~~personnel~~ human resources director ~~with the approval of the civil service commission~~ may establish a continuous recruitment program for any classes of positions in which applications may be accepted at any time. ~~With the approval of the civil service commission vacancies may be announced by title of positions only.~~

Section 8. Amend. Section 9-03-07 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Rejection of Application is hereby amended to read as follows:

9-03-07. Rejection of Application. The ~~personnel~~ human resources director shall establish the procedures for notifying applicants of their rejection for employment or acceptance to participate in further tests of fitness based on preliminary examination, and may, for cause, reject any application prior to the date of the tests for which the applicant has filed.

The ~~personnel~~ human resources director, subject to review by the civil service commission, may refuse to examine any applicant, or after examination remove his or her name from an employment list, or refuse to certify for appointment any applicant whom he or she finds lacks any of the preliminary requirements established for class of position.

Section 9. Amend. Section 9-03-09 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Rating is hereby amended to read as follows:

9-03-09. Rating. The ~~personnel~~ human resources director shall establish a system for scoring or rating the competitive examinations, ~~subject to the approval of the commission.~~ Sound measurement techniques and procedures shall be used in rating the results of tests and determining the eligibility of applicants. Minimum ratings for eligibility for any position may be established.

Section 10. Amend. Section 9-03-12 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Rating is hereby amended to read as follows:

9-03-12. Removal from List. The ~~personnel~~ human resources director may remove the name of an eligible from a list if:

1. He or she is found to lack any of the preliminary requirements established for the examination for the class of position.

\* \* \* \* \*

14. If three offers of a probationary appointment to the class job description for which the registrar was established have been declined and satisfactory evidence of such declination submitted to the ~~personnel~~ human resources director.

The ~~personnel~~ human resources director shall notify the eligible of this action and the reasons therefor by mail to the last known address. An eligible's name shall be reinstated on the register upon showing of cause satisfactory to the ~~personnel~~ human resources director or in accordance with a decision of the civil service commission upon appeal.

Section 11. Amend. Section 9-03-14 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Appointment Procedure is hereby amended to read as follows:

9-03-14. Appointment Procedure. Whenever an appointing authority desires to fill a vacancy in any position in the civil service, the appointing authority shall notify the ~~personnel~~ human resources director giving pertinent facts relative to the duties, responsibilities and qualification requirements of the position which is to be filled. The ~~personnel~~ human resources director shall certify to the appointing authority at least the names of the three highest candidates on the employment list.

If the list does not contain three names, the appointing authority may make the appointment only from such lesser number of candidates as are eligible. If more than one vacancy is to be filled, two additional names must be certified for each additional vacancy. The appointing officer shall give notice in writing to the ~~personnel~~ human resources director of the person or persons appointed and effective date.

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

Section 12. Amend. Section 9-03-15 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Probationary Period is hereby amended to read as follows:

9-03-15. Probationary Period. All appointments must be made for a probationary period of at least one year. The probationary period does not include any time served by an employee under a provisional appointment. At the end of every three months during the probationary period the appointing authority should submit a rating of the probationary employee's performance on a report form prescribed by the ~~personnel~~ human resources director. The appointing authority may extend the probationary period beyond one year upon notice given to the ~~personnel~~ human resources director prior to the expiration of the probationary period of one year.

During the probationary period an employee may be dismissed by the appointing authority at will. Notice of such release ~~with the reasons therefor~~ must be immediately submitted to the ~~personnel~~ human resources director who may, in the case of an employee serving a probationary period after promotion, reinstate the name of the employee to the employment list for the former position.

An employee shall retain probationary status until the appointing authority shall certify on a prescribed form to the ~~personnel~~ human resources director, at the end of the probationary period, that the employee be retained and placed in the civil service.

(Ord. 6315, 04-10-18; Ord. 6543, 04-11-23)

Section 13. Amend. Section 9-03-16 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Transfers is hereby amended to read as follows:

9-03-16. Transfers. ~~The civil service commission may authorize the transfer of an employee in the civil service from one position to another position in the same class. Transfers are permitted only with the consent of the civil service commission and the appointing authorities concerned.~~

Transfer of employees from positions in lower to higher classes and from higher to lower positions shall be deemed promotions and demotions ~~respectively~~, respectively and made subject only to the provisions of these rules governing such changes in employees' status.

Section 14. Amend. Section 9-03-17 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Civil Service Ratings is hereby amended to read as follows:

9-03-17. Civil Service Ratings. The ~~personnel~~ human resources director shall prepare, install and maintain a system of service ratings whereby the appointing authority reports on the performance of all employees in the civil service. Such reports shall be a

part of the procedures dealing with promotion, demotion, salary advancement, and other changes in employee status.

Section 15. Amend. Section 9-03-18 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Work Conditions is hereby amended to read as follows:

9-03-18. Work Conditions. The ~~personnel~~ human resources director shall review working conditions and propose to the civil service commission programs designed to make city employment attractive.

Section 16. Amend. Section 9-03-20 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Absence Records and Reports is hereby amended to read as follows:

9-03-20. Absence Records and Reports. The ~~personnel~~ human resources director shall maintain records of the absences of city employees. Each absence from duty of any employee or appointed official must be reported by the administrative officer of each department to the ~~personnel~~ human resources director on the prescribed form.

Section 17. Amend. Section 9-03-21 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Performance Evaluation or Appraisal of Performance is hereby amended to read as follows:

9-03-21. Performance Evaluation or Appraisal of Performance. It is the policy of the City of Bismarck to evaluate on a fair and equitable basis the performance of its employees. ~~Appraisals~~ Performance evaluations must be done in accord with policies and procedures promulgated by the board of city commissioners and without due regard to race, sex, age, national origin, religion, political affiliation or other non-merit factor.

The City of Bismarck will establish and carry out this policy by utilizing the ~~appraisal~~ evaluation system set forth in this section:

1. General purposes of the ~~appraisal~~ evaluation system:

\* \* \* \* \*

- f. Provide supervisors with an opportunity to sense causes of and problems in job satisfaction and morale among employees individually or as a group.

Through proper use of this performance ~~appraisal~~ evaluation system, an increased and meaningful exchange of thoughts and ideas can occur between employees and supervisors.

2. ~~The appraiser~~ evaluator. Each employee covered by this system will be ~~appraised~~ evaluated by that person in the best position to do so. Normally, the ~~appraiser~~ evaluator will be the employee's immediate supervisor who has the responsibility for assigning, directing and reviewing the work of the employee. If, because of rotational assignments or other reasons, it is not clear to whom an employee reports, a decision will be made as to whom is best able to ~~appraise~~ evaluate the employee based on actual observation. An employee's peers may also be utilized in the ~~appraisal~~ evaluation process.

3. ~~Who is appraised~~ evaluated. All regular full time and regular part-time employees will be ~~appraised~~ evaluated.

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

5. Frequency of ~~appraisal~~ evaluation. ~~Appraisals~~ Evaluations will be completed once a year for all regular full-time and regular part-time employees who have completed the probationary period. An appointing authority may order additional ~~appraisals~~ evaluations at appropriate intervals to address substandard performance or as a part of progressive discipline or any disciplinary action.

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

7. ~~The appraisal form~~ performance evaluation system. A separate ~~appraisal form~~ performance evaluation will be completed for each employee. Every supervisor or ~~appraiser~~ evaluator should be thoroughly familiar with the performance evaluation process form, how to use it and its application for employee development and what its performance management purposes are. A "performance appraisal guide" Performance evaluations shall be prepared and available for this purpose. It is important to the validity of the system that supervisors be:

a. As objective as possible in completing ~~appraisal~~ evaluation forms,  
and

b. Realistic in determining performance levels for individual performance.

8. Signatures. The employee and the ~~appraiser~~ evaluator will sign and date the form after they have together discussed the ~~appraisal~~ evaluation form and made written comments.

9. Higher level review. After completion of the performance ~~appraisal~~ evaluation discussion between the ~~appraiser~~ evaluator and employee, there will be at least one further review of the completed performance ~~appraisal~~ evaluation form at a higher level of supervision or management, unless the ~~appraiser~~ evaluator is a department head or city commissioner director.

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

(Ord. 4989, 05-25-99; Ord. 5136, 10-09-01)

Section 17. Amend. Section 9-03-22 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Employee Assistance Program is hereby amended to read as follows:

9-03-22. Employee Assistance Program.

1. Statement of policy:

a. The city has a vital concern for its employees' personal problems when those problems impair an employee's ability to perform satisfactorily in his or her job. These may be problems such as alcohol abuse, drug abuse, or other behavior/medical disorders which either endanger fellow employees, or result in poor interpersonal relations, excessive absenteeism, and/or deteriorating work performance.

b. The purpose of this policy is to assist employees with disabling personal problems, in finding help and assuring that the employee will receive the same careful consideration and assistance that is presently extended to city employees who become ill or disabled.

c. It is expected that a city-wide program will enlighten employees that the social stigma of alcohol and other drug dependence is without foundation and that these conditions are treatable as are most other disorders.

d. The city's concern with alcohol and other drug abuse or dependency is strictly limited to its effects on the employee's performance on the job. Whether an employee chooses to drink or not drink socially is the individual's concern.

e. For the purpose of this policy, alcoholism and other drug dependency is defined as an illness in which an employee's consumption of alcoholic beverage or drugs definitely and repeatedly interferes with his or her job performance and/or health.

## 2. Procedures:

a. It is the responsibility of all supervisors of all departments of the city to implement this policy, and to follow Employee Assistance Program procedures, ~~which assure that no employee with an alcohol or drug dependency will have his or her job security or promotional opportunities jeopardized by referral or request for consultation and/or treatment. (An employee who complies with a request for consultation, submits to an evaluation, and satisfactorily completes treatment as indicated, may not be suspended, demoted or terminated, or have his or her job security or promotional opportunities jeopardized by such referral, evaluation or by any absence from work necessary for treatment.)~~

b. It is recognized that supervisors do not have the professional qualifications to permit judgment as to whether or not an employee has alcohol or other drug dependency. Referral to Human Resources for consultations and subsequent offer of assistance will be based upon unsatisfactory work performance resulting from an apparent medical or behavioral problem, regardless of its nature.

c. An employee must report to Human Resources for consultation when directed to do so by a supervisor or appointing authority.

d. An employee's continued refusal to report for consultation and/or refusal of assistance or refusal to submit to an evaluation and/or treatment if indicated will be dealt with in accord with section 9-06-02.

e. It is expected that through this policy, employees who suspect that they may have a medical, alcohol, or drug-related problem, even in its early stages, will be encouraged to voluntarily seek consultation and, when indicated, follow through with prescribed treatment.

f. The confidential nature of medical records of employees with alcohol or drug-related problems will be preserved to assure privacy in the same manner as all other medical records.

g. Implementation of this policy will not require, or result in, any special social regulations, privileges, or exemptions from the standard administrative practices applicable to job performance requirements, except as provided in paragraph (a) of this section.

3. Applicability. The program and policies contained in this section apply to all full-time employees of the City.

4. Employee Assistance Program.

a. General statement:

City of Bismarck recognizes that some employees may experience a wide range of personal problems that may adversely affect their job performance. It is also recognized that most personal problems can be dealt with successfully when identified early and referred for appropriate care. The purpose of the Employee Assistance Program is to provide these services leading to appropriate care.

The Employee Assistance Program is designed to deal with a broad spectrum of human problems, such as personal problems, interpersonal problems, financial concerns, problems with addiction, parent/child conflict, marital problems, and other concerns. Most employees may overcome personal problems without professional assistance, but at times professional counseling and/or referral to appropriate community agencies may be beneficial. The Program provides problem assessment and short-term counseling, not to exceed five sessions, and referral to community resources when deemed appropriate.

The cost for assessment, short-term counseling, and referral is covered by City of Bismarck. If costs are incurred for other services that are not covered by City of Bismarck or other benefits, those costs will be the responsibility of the employee.

Employees will be given prompt, careful, confidential consideration.

b. Below are the guidelines for utilizing the Employee Assistance Program:

1) City of Bismarck is concerned with an employee's personal problem when the problem adversely affects job performance.

2) The Employee Assistance Program extends to each employee, regardless of job title or responsibility.

3) Since problems at home can affect job performance, the Employee Assistance Program is also available to each employee's immediate family on a self-referral basis. If an employee or immediate family member has personal problems that may benefit from assistance, the employee or immediate family member is encouraged to use the program. Immediate family is defined as spouse and/or children living in the same household as the employee. Dependent children living outside the home, i.e. college students, will be considered eligible for EAP services. Children under age 18 will be provided an initial assessment by phone, however, will be required to have parental permission to receive EAP services beyond the initial phone contact.

4) Should a performance problem occur at work, employees may be encouraged to seek assistance to determine if personal problems are causing unsatisfactory job performance. Supervisors will not be able to insist that the employee seek Employee Assistance Program assistance. If performance problems are corrected, no further action will be taken. If performance problems persist, the employee will be subject to the normal progressive discipline procedures.

5) All employees are responsible for using this program, when appropriate, to assist in resolving job performance deficiencies related to personal problems. Supervisors, and administrative representatives, and employees are provided information ~~have been given a comprehensive orientation session. The session identified the goals and objectives of the Employee Assistance Program. Also, the mechanism for referring employees for services through the Employee Assistance Program was explained. Employees received a general orientation session to provide information regarding the Assistance Program.~~ This information provides an overview of what services are available and how to make use of those services. New employees will receive information about the Employee Assistance Program at the time of their initial orientation provided by Human Resources. ~~Quarterly representatives from the provider will be available to provide a group orientation for all new employees if so requested by Human Resources.~~ Annual supervisory sessions will also be made available for any new supervisory staff.

6) ~~When an employee voluntarily comes for assistance, no contact is made with the supervisor. When the employee comes~~

~~for services at the request or referral of a supervisor, there will be a follow-up contact with the referring supervisor which will discuss whether the employee came for the appointment and whether the employee is following general recommendations relating to treatment/follow-up services.~~

~~76) Participation in the program will not jeopardize an employee's job security or promotional opportunities.~~

All records and discussions of the personal problem will be handled in a confidential manner. These records will be considered as EAP records and will be maintained by the EAP. Records maintained by the EAP are not part of the provider's regular medical record. They will not be released without the expressed, written consent of the employee. These records will not become a part of the employee personnel file.

~~87) Employees and members of their immediate families will receive an assessment and up to four additional counseling sessions for further assessment, evaluation, or treatment of that problem. During the contract period, employees and members of their immediate families may experience multiple problems for which assessment, evaluation or treatment by the program may be appropriate. Under the provisions of this program, an eligible employee and/or member of his/her immediate family would receive additional services from the program providing the new problem is not related to a situation for which services have already been received. The employee and/or family member will receive an assessment of their new problem and up to four additional assessments.~~

Depending on the type of problem experienced, a referral to a community agency or resource may be the most appropriate service provided.

~~98) Where necessary, leave will be granted in accordance with established procedure. If a supervisor refers an individual based on performance concerns or an employee requests of the supervisor to be referred, sick leave will be granted.~~

~~109) The employee may request that his/her supervisor attend counseling sessions with the employee.~~

c. This program and the policies contained herein shall be implemented under a city-wide program under the administration of Human Resources which shall:

~~1) Enlist the active cooperation and participation of the city health officer and all supervisory personnel in the implementation of the program.~~

21) Train supervisory personnel in documentation and referral procedures as set forth in this program on the basis of deteriorating work performance.

~~3) Receive and evaluate (with the aid and counsel of the city health officer) those cases referred by supervisory personnel.~~

42) Refer those cases which indicate a need for professional evaluation and/or treatment to the appropriate community service agencies both public and private, for evaluation and/or treatment.

53) Oversee the implementation of the provisions of this program with supervisory personnel in order to assure (a) the referral of employees with deteriorating work performance and (b) that referred individuals follow through with prescribed treatment.

64) Report progress of referred cases to the appropriate appointing authority.

75) Issue further directives and instructions as are required, consistent with the policies enunciated in this section.

86) Supervisory personnel shall cooperate and actively participate in this program by documenting and referring cases of deteriorating work performance of employees under their supervision.

97) All evaluations ordered by an appointing authority or Human Resources shall be at no cost to the employee.

(Ord. 4126, 2-10-87; Ord. 4382, 07-02-91)

Section 18. Amend. Section 9-04-01 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Development and Implementation of Classification Plan is hereby amended to read as follows:

9-04-01. Development and Implementation of Classification Plan. The ~~personnel~~ human resources director shall analyze all positions in the civil service and develop a duties classification plan which groups together all positions with substantially similar duties and responsibilities, to be known as classes of positions. For each class of position, a class specification shall be prepared which contains a descriptive class title, examples of the work commonly performed in a position in the class, and a statement of the minimum qualifications for appointment to a position in the class.

The ~~personnel~~ human resources director shall present the proposed classification plan to the civil service commission. The plan when adopted by the commission shall constitute the official duties classification plan for the civil service in the city. The ~~personnel~~ human resources director, subject to review by the civil service commission, shall allocate each position to its appropriate class of positions. The class title applying to the various positions shall be used in all payrolls and other official communications. Employees shall be notified of the class to which the position they hold has been allocated and may within five days following such notification submit in writing to the civil service commission a request for a review of the allocation. The civil service commission shall make an allocation of the position and its decision as to the correctness of the allocation shall be final.

Section 19. Amend. Section 9-04-02 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Updating of Plan is hereby amended to read as follows:

9-04-02. Updating of Plan. The duties classification plan must be kept current as follows:

1. The ~~personnel~~ human resources director shall study the duties and responsibilities of all new positions created and place such positions in their appropriate class or grade.

2. Whenever a change is made in the duties and responsibilities of a position which is intended to be permanent, it must be so reported to the ~~personnel~~ human resources director who shall investigate the position and place it in its appropriate class.

3. The ~~personnel~~ human resources director shall periodically check duties classification of any position in the service and may combine existing classes or abolish old ones. The establishment of new classes or the abolition of old ones shall be submitted to the civil service commission for its approval.

4. An employee may at any time request in writing to the civil service commission a review of the allocation of his or her position. Such request shall give the employee's reason for review, and the civil service commission may in its

own discretion proceed to investigate the position. The decision of the civil service commission based on such investigation as to the correctness of the allocation shall be final.

Section 20. Amend. Section 9-04-04 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Development and Implementation of Salary Plan is hereby amended to read as follows:

9-04-04. Development and Implementation of Salary Plan.

1. The ~~personnel~~ human resources director shall prepare and submit annually for the approval of the civil service commission a salary plan applicable to all positions in the civil service. In establishing a salary plan consideration shall be given to wages prevailing in business and industry in this city and vicinity for comparable positions, the pay levels of other municipalities and public units in the area, and the city's ability to pay. The salary plan must be comprised of salary ranges showing minimum and maximum rates for each class of position.

2. Following approval of the salary plan by the civil service commission, the ~~personnel~~ human resources director shall submit the plan to the board of city commissioners for its approval.

3. Upon approval by the board of city commissioners, the plan shall constitute the official salary plan for the civil service of the city, and no base salary in excess of the maximum rate or less than the minimum rate established for a class or position may be paid to any employee holding a position in that class.

Section 21. Amend. Section 9-04-05 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Certification of Payrolls is hereby amended to read as follows:

9-04-05. Certification of Payrolls. The ~~personnel~~ human resources director shall audit the payment of salaries of persons in the civil service for compliance with the salary plan. The ~~personnel~~ human resources director shall require a certificate on all payrolls from the department ~~heads~~directors that persons named therein have complied with the regulations governing uniform hours of work, holidays and leaves of absence.

Section 22. Amend. Section 9-05-01 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Holidays is hereby amended to read as follows:

9-05-01. Holidays.

\* \* \* \* \*

2. Regular full-time employees whose duties require them to work a regular shift on a holiday must be given an additional eight hours of vacation leave at the discretion of the department ~~head~~director.

\* \* \* \* \*

*(Ord. 4367, 04-23-91; Ord. 4493, 04-13-93; Ord. 4707, 07-25-95*

Section 23. Amend. Section 9-05-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Sick Leave is hereby amended to read as follows:

9-05-03. Sick Leave. Sick leave shall accrue and be granted as follows:

\* \* \* \* \*

4. An hour of sick leave shall be used for each hour of absence from employment. Sick leave is granted as a privilege and not as a right, and the claim for such leave is subject to such investigation as the department ~~head~~director deems necessary. If an employee takes sick leave for three or more consecutive calendar days or more than 24 consecutive hours of leave, the department ~~head~~director may request a doctor's certificate stating the cause of the incapacity before the employee may return to work.

\* \* \* \* \*

*(Ord. 4367, 04-23-91; Ord. 4453 and Ord. 4454, 07-21-92; Ord. 4487, 03-30-93; Ord. 4493, 04-13-93; Ord. 5491, 03-28-06; Ord. 5522, 07-27-06; Ord. 5631, 09-11-07; Ord. 5776, 06-22-10; Ord. 5884, 05-22-12; Ord. 6401, 11-26-19)*

Section 24. Amend. Section 9-05-04 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Injury Leave is hereby amended to read as follows:

9-05-04. Injury Leave.

1. Injury leave shall be available to any employee eligible for the City's leave program and who was injured on the job and is receiving Workers Compensation time-loss benefits.

2. Any employee injured on the job and receiving Workers Compensation time-loss benefits will be placed on injury leave until such time a determination is made as to when and if he/she can return to work. While on injury

leave, the employee will use sick leave in an amount that when combined with the Workers Compensation time-loss benefits, will bring the employee to regular salary. All normal benefits (pension, leave, health insurance) will continue to accrue.

~~3. The injured employee on injury leave will have his or her status reviewed on an at least monthly basis by the City Health Officer or his designee and will submit to examinations as requested by the City Health Officer or designee. The City Health Officer may promulgate a policy concerning the review of these cases.~~

43. As opportunities become available, an injured employee may be asked to return to work in a temporary position, doing work that has been cleared by ~~the City Health Officer~~ an appropriate medical provider in writing.

(Ord. 4454, 07-21-92; Ord. 4465, 08-18-92; Ord. 4886, 02-10-98)

Section 25. Amend. Section 9-05-08 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Leave of Absence is hereby amended to read as follows:

9-05-08. Leave of Absence. Leave of absence may be granted as follows:

\* \* \* \* \*

3. Leave of absence or leave without pay may be granted for educational purposes, but only if it is determined by the department ~~head~~director that such leave will be beneficial to the employee's department and that it will not interfere with the normal operation of the department.

\* \* \* \* \*

(Ord. 4593, 03-29-94; Ord. 5884, 05-22-12)

Section 26. Amend. Section 9-06-02 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Causes for Suspension, Demotion or Dismissal is hereby amended to read as follows:

9-06-02. Causes for Suspension, Demotion or Dismissal. An employee may be subject to disciplinary action for conduct impairing their performance or that of the city government, including, but not limited to:

\* \* \* \* \*

4. Being absent from work without permission or failure to report to the supervisor or department ~~head~~director when one is absent.

\* \* \* \* \*

(Ord. 4187, 12-22-87; Ord. 4587, 03-15-94; Ord. 4971, 04-27-99; Ord. 5136, 10-09-01)

Section 27. Amend. Section 9-06-03 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Notice of Suspension, Demotion or Dismissal is hereby amended to read as follows:

9-06-03. Notice of Suspension, Demotion or Dismissal. For all employees covered under Section 9-01-02 of this code, a written notice of proposed suspension, demotion or dismissal, stating the reason for the action and when it is to be effective, must be given to the official or employee or mailed by registered or certified mail to the last known place of residence no later than 48 hours prior to the proposed action. A copy of the notice of suspension, demotion or dismissal must be immediately filed with the ~~personnel~~ human resources director. The notice shall state that the employee has a right to an informal hearing with the ~~personnel~~ human resources director, the appointing authority and the employee and/or employee's representative, and an opportunity to be heard at that hearing prior to termination upon request. Following the hearing, if requested, the proposed action may be affirmed, modified or withdrawn.

(Ord. 6543, 04-11-23)

Section 28. Amend. Section 9-06-04 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Appeal is hereby amended to read as follows:

9-06-04. Appeal.

1. Within five business days after the effective date of suspension, demotion or termination and receipt of written notice of suspension, demotion or termination, issued pursuant to section 9-06-03, or written response to a grievance made pursuant to section 9-06-06(1), any official or civil service employee affected may appeal in writing to the civil service commission for a hearing. The written notice or written response shall contain a statement advising the employee of the right to a hearing upon request made within five days.

2. The commission, upon receiving notice of appeal, shall set a date for a hearing, which may not be less than seven nor more than sixty days after the date of the filing of the notice of appeal, unless otherwise ordered by the commission. Notice of the time and place of the hearing must be served upon the appealing official or employee or his/her legal counsel and upon the authority imposing the suspension, demotion, termination, or other action complained of, personally or by certified mail or to legal counsel by regular mail or to the legal counsel's registered e-mail address for service listed with the North Dakota Board

of Law Examiners ~~with an affidavit of service~~ at least five business days before the date of the hearing.

3. The commission shall hear the appeal at the time set by it. The commission may hear the evidence and facts to be presented by the appealing official or employee and the authority imposing the suspension, demotion or dismissal, or other action complained of in any order it deems appropriate so long as all parties are given a full opportunity to be heard. The evidence of the parties may be through sworn testimony of witnesses or through exhibits introduced through sworn witnesses. After all parties have presented their evidence and have been given a full opportunity to be heard, the commission may call other persons or witnesses to ascertain the on which it deems proper.

4. After having completed the hearing and any investigation which it has chosen to undertake, the commission shall decide the appeal on its merits. The commission can fully uphold the discipline imposed upon the appealing official or employee. The commission can find that there was no just cause for the imposition of the discipline and it can reinstate the employee to the status held immediately prior to the discipline and restore to the employee any pay lost as a result. The commission can also find that it was proper to discipline the employee or official, but that the level of discipline imposed did not fit the offense committed. It may therefore impose upon the employee or official some lesser form of discipline. Or, the commission can issue its findings and an appropriate order with respect to an appeal of a grievance filed pursuant to section 9-06-06(1). In all cases the commission shall issue its written findings, conclusions and order within five days of the hearing. A hearing may be continued from time to time by the commission.

5. The commission shall also hear appeals under the procedures set forth above from any civil service employee or official aggrieved as a result of disciplinary action or from any employee or official who alleges discrimination due to race, color, creed, sex, age, marital status, national origin, or physical disability or other grievance relating to employment laws, rules, regulations or ordinances, or from any civil service employee regarding any other grievance relating to personnel matters.

6. A decision of the commission is final.

(Ord. 4173, 12-08-87; Ord. 5130, 08-28-01; 6543, 04-11-23)

Section 29. Amend. Section 9-06-05 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Compulsory Retirement is hereby amended to read as follows:

9-06-05. Compulsory Retirement. An appointing authority may dismiss or involuntarily retire a full-time employee who is physically or mentally unable to perform the duties of the employee's position. The appointing authority may direct any employee to submit to an examination of ~~a the city health officer and two other~~ physicians named by the ~~personnel~~ human resources director for the purpose of determining if the employee is physically or mentally unable to perform the duties of the employee's position. Refusal to be examined shall be deemed grounds for suspension, demotion or dismissal. Upon the report of the physician that the employee is physically or mentally unable to perform his or her duties, the employee may obtain and provide a report from a different licensed physician within ten business days of the first physician's report at the employee's expense. If the two reports do not concur regarding whether the employee is physically or mentally unable to perform his or her duties, the city health officer or their designee shall examine the employee, which conclusion shall be binding. ~~concurring report of at least two physicians that~~ If the employee is found to be physically or mentally unable to perform his or her duties, the employee may dismissed or involuntarily retired. The employee may appeal the action pursuant to section 9-06-04.

(Ord. 4114, Sec. 1, 12-02-86)

Section 30. Amend. Section 9-06-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Grievance Procedure is hereby amended to read as follows:

9-06-06. Grievance Procedure.

1. An employee who is adversely affected by an action or decision of another employee, other than suspension, demotion or termination that may be in violation of any federal, state or city law, statute, regulation, ordinance or written policy may file a grievance utilizing the following procedures:

a. The employee shall first discuss the grievance with the immediate supervisor or department ~~head~~director, unless the grievance involves unlawful acts or conduct by the supervisor or the department ~~head~~director. If the grievance involves unlawful acts or conduct on the part of the immediate supervisor or department ~~head~~director, the employee shall discuss the grievance with the department ~~head~~director or file a written grievance with the human resources director, respectively.

b. If the grievance is not resolved by informal discussion or agreement, the employee may file a written grievance, setting out in detail the action or decision complained of and the specific law statute, regulation, ordinance or written policy which has been violated, with the human resources director. The human resources director shall immediately provide a copy of the written grievance to the city commissioner assigned the portfolio for the department in which the employee is employed, and the department ~~head~~director. The commissioner, department ~~head~~director, human resources director and the employee and/or the employee's representative, shall meet and attempt to resolve the grievance within ten business days of the filing of the grievance. On or before the fifth business day following the date of the meeting, the human resources director shall issue a written reply to the grievance and provide copies to all of the parties involved in the matter. The written reply shall set forth any agreement that was reached between the parties, or the response of the department ~~head~~director and/or city commissioner to the grievance.

\* \* \* \* \*

2. An employee of the city or any other person who has knowledge of suspected violations of laws, ordinances, city policies or department rules and regulations, sexual harassment, or other misconduct or impropriety by any city employee or department ~~head~~director may file a complaint. A complaint may not be filed regarding a matter of prosecutorial discretion or regarding a case in Municipal Court. A complaint may be filed utilizing the following procedures:

a. The employee or other person shall file a written report setting out in detail the nature of the violation with the human resources director and the department ~~head~~director with responsibility for the employee in question. If the allegations involve misconduct or impropriety on the part of a department ~~head~~director, the commissioner assigned the portfolio for that department shall be substituted for the department ~~head~~director.

The human resources director shall immediately provide a copy of the complaint to the commissioner assigned the portfolio for that department and the city attorney. The city attorney shall promptly review the complaint to determine if it should properly be referred to the state's attorney because it alleges violation of a criminal law or Chapter 34-11.1 of the North Dakota Century Code. Unless the complaint is referred to the state's attorney, within ten business days of the receipt

of the complaint, the human resources director shall meet with the department headdirector or city commissioner and employee or other person to attempt to resolve the complaint. On or before the fifth business day following that meeting, the department headdirector, or city commissioner if the complaint was against the department headdirector, shall issue a written reply to the complaint, and provide copies to all of the involved parties. The written reply shall set forth the agreement or understanding made to resolve the complaint, if one was achieved, or proposed action, including referral to the board of city commissioners.

\* \* \* \* \*

3. Any applicant for employment with the City of Bismarck who may be adversely affected by the decision of an employee of the City of Bismarck relating to alleged protected class discrimination, ADA violations, or other statutory or constitutional violations may file a grievance using the following procedures:

a. The applicant shall file a written report of the grievance with the human resources director. The human resources director shall immediately provide a copy of the report to the city commissioner assigned to the portfolio in which the applicant had applied for employment and to the department headdirector of that department. Within 10 business days of receipt of the written grievance, the human resources director, city commissioner, department headdirector and the applicant and/or the applicant's representative shall meet and attempt to resolve the grievance. Within five business days of the meeting, the human resources director shall issue a written reply to the grievance and provide copies to all involved parties. The reply shall set forth any agreement that was reached between the parties or the response of the department headdirector and/or the city commissioner to the grievance.

\* \* \* \* \*

*(Ord. 4173, 12-08-87; Ord. 4477, 01-19-93; Ord. 5135, 10-09-01; 05-10-05)*

Section 31. Amend. Section 9-06-06 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Grievance Procedure is hereby amended to read as follows:

9-07-02. Board of Trustees and Duties. The superintendent of the park district, and city librarian, and all other department ~~heads~~directors, with the exception of the chief of police, shall constitute the board of trustees for the management of the pension and retirement system and the fund created for the same. The city administrator shall be president and the city investment officer shall be an ex-officio member and act as treasurer of the board. The trustees shall not receive any compensation for their services as members of the board. The director of human resources shall act as clerk of the board and shall keep such records and accounts as the board may direct. The board shall have such powers and perform such duties as may be provided by law. Department ~~heads~~directors shall mean those persons classified as department ~~heads~~directors pursuant to the City Classification schedule.

*(Ord. 5041, 04-11-00; Ord. 5153, 01-08-02)*

Section 32. Amend. Section 9-07-12 of the Code of Ordinances of the City of Bismarck, North Dakota, relating to Notice of Change in Status is hereby amended to read as follows:

9-07-12. Notice of Change in Status. It shall be the duty of the clerk or the department ~~head~~director in the absence of the clerk to give immediate notice of the change in pension status of any employee of the city, other than employees of the police department and fire department, resulting from death or other cause, and he or she shall furnish such other information concerning any employee, other than policemen and firemen, as the board of trustees may require.

Section 33. Severability. If any section, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent remaining portions of this ordinance.

Section 34. Effective Date. This ordinance shall take effect upon passage.



## Human Resources Department

**DATE:** December 15, 2023  
**FROM:** Leanne Schmidt, Human Resources Director  
**ITEM:** Update on Ordinance 6567

**REQUEST:**

Receive additional information regarding personnel regulation changes.

Please place this item on the December 26, 2023, City Commission meeting agenda.

**BACKGROUND INFORMATION:**

The Bismarck Civil Service Commission met December 15, 2023, to review the proposed changes to Ordinance 6567. They agreed that the updates were appropriate in the proposed draft from the last City Commission meeting. At the direction of the Mayor, they were provided with several options for language for the Bismarck City Commission to retain hiring and termination for department directors. The motion of the Civil Service Commission was as follows:

**The ordinance changes should either provide the City Administrator with full authority for hiring and termination and all usual and ordinary supervisory responsibilities in between or the 11 department directors should be removed from civil service and have employment contracts reporting directly to the Board of City Commission.**

Currently there are 13 civil service protected directors, and 3 director level employees with contracts. North Dakota Century Code requires that the chiefs of police and fire are in the civil service system, if one is adopted by a City. The change would impact the following city departments: Community Development, Event Center, Finance, Engineering, Airport, Human Resources, Public Works-Utilities, Public Works-Services and Public Health. The Library Director and Central Dakota Communications Directors both have separate governing boards to which they report. If the wish is to remove individuals currently in civil service protection out of it, there will need to be due process with that protected employee right. In addition, I recommend the City would need to communicate to the two independent boards as to whether

to remove the director designation, remove their employees from City employment or allow those two directors to have employment contracts instead.

I have attached the language drafted that would have tried to provide hiring and/or termination authority only with the City Commission while allowing the City Administrator to exercise all supervision.

Civil Service Chair Roger Krueger will attend the City Commission meeting to answer any questions the City Commission may have. All members of the Civil Service Commission expressed a willingness to provide their experience and advice regarding how the civil service programs work as well as their deep knowledge of human resources if it is helpful.

**RECOMMENDED CITY COMMISSION ACTION:**

Receive additional information regarding Ordinance 6567.

**STAFF CONTACT INFORMATION:**

Leanne Schmidt | HR Director | 701-355-1332 | [lschmidt@bismarcknd.gov](mailto:lschmidt@bismarcknd.gov)

Additional potential restraints on City Administrator:

Hiring options:

9-03-08. Competitive Examinations. The relative fitness of applicants for appointment to or promotion within the civil service must be determined by competitive examinations. Examinations may consist of written applications, written or oral tests, including oral interviews, or any combination thereof, and may include consideration and rating of any or all of the following qualification factors: Education, training, experience, general adaptability, special aptitudes, physical fitness as determined by physical tests and medical examination, knowledge, skill, personality, character and such other qualifications as may be deemed necessary by the clerk and the civil service commission for the satisfactory performance of the duties of the respective positions. The clerk shall see that competitive examinations are administered in a manner to give all applicants equal opportunity to demonstrate their fitness. For all department director examinations, the final oral interview must be with the Board of City Commissioners.

OR

For all department director examinations for non-appointed positions, the final oral interview must be with the portfolio holder for that department from the City Commission, the Mayor, the City Administrator, Human Resources and a member of the public who interacts with that department or has similar professional experience in that area. Any of the five appointees may designate an alternate if they are unable to participate in the interview.

OR

For all department director examinations, the City Commission must approve the process and manner of the examinations for hire.

Termination options:

9-03-21. ~~Performance Evaluation or Appraisal of Performance~~. It is the policy of the City of Bismarck to evaluate on a fair and equitable basis the performance of its employees. ~~Appraisals~~ Performance evaluations must be done in accord with policies and procedures promulgated by the board of city commissioners and without due regard to race, sex, age, national origin, religion, political affiliation or other non-merit factor.

The City of Bismarck will establish and carry out this policy by utilizing the ~~appraisal~~ evaluation system set forth in this section:

1. General purposes of the ~~appraisal~~ evaluation system:

\* \* \* \* \*

- f. Provide supervisors with an opportunity to sense causes of and problems in job satisfaction and morale among employees individually or as a group.

Through proper use of this performance ~~appraisal~~ evaluation system, an increased and meaningful exchange of thoughts and ideas can occur between employees and supervisors.

2. The ~~appraiser~~ evaluator. Each employee covered by this system will be ~~appraised~~ evaluated by that person in the best position to do so. Normally, the ~~appraiser~~ evaluator will be the employee's immediate supervisor who has the responsibility for assigning, directing and reviewing the work of the employee. If, because of rotational assignments or other reasons, it is not clear to whom an employee reports, a decision will be made as to whom is best able to ~~appraise~~ evaluate the employee based on actual observation. An employee's peers may also be utilized in the ~~appraisal~~ evaluation process.

3. Who is ~~appraised~~ evaluated. All regular full time and regular part-time employees will be ~~appraised~~ evaluated.

4. Probationary ~~appraisal~~ Performance Evaluations. ~~An appraisal~~ A performance evaluation of performance ~~will~~ should be made every three months prior to the conclusion of the probationary period. The ~~appraiser~~ evaluator will be geared to helping the new employee, and will allow sufficient time before the end of probationary period for the ~~appraiser~~ evaluator to note improvements in performance. A final ~~appraisal~~ evaluation at the end of the probationary period will be made to provide the basis for retention or termination of the employee, **except that the Board of City Commission shall determine termination for all department directors.**

AND/OR

9-06-03. Notice of Suspension, Demotion or Dismissal. For all employees covered under Section 9-01-02 of this code, a written notice of proposed suspension, demotion or dismissal, stating the reason for the action and when it is to be effective, must be given to the official or employee or mailed by registered or certified mail to the last known place of residence no later than 48 hours prior to the proposed action. A copy of the notice of suspension, demotion or dismissal must be immediately filed with the ~~personnel~~ human resources director. The notice shall state that the employee has a right to an informal hearing with the ~~personnel~~ human resources director, the appointing authority and the employee and/or employee's representative, and an opportunity to be heard at that hearing prior to termination upon request. **If this is a dismissal of department director, the informal hearing shall occur at an open meeting of the Board of City Commission.** Following the hearing, if requested, the proposed action may be affirmed, modified or withdrawn.