

AGENDA	Tuesday, May 24, 2016	
Informational Meeting	4 PM at Carnegie Town Hall	
Sioux Falls City Council	235 West Tenth Street	

1. Call To Order

2. City Council Open Discussion

3. Presentations

A. REVIEWAN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES FOR CHAPTER 39: PERSONNEL REGULATIONS AND BENEFITS; RETIREMENT AND PENSIONS. by Bill O'Toole, Director of Human Resources

4. Executive Session

A. Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters per SDCL 1-25-2 (3).

B. Preparing for contract negotiations or negotiating with employees or employee representatives per SDCL 1-25-2(4).

5. Adjournment

The City Council may include such other business as may come before this body.

Date: 2016-05-24
SIRE Meeting ID: 2418
Meeting Type: Informational Meeting

YouTube:<https://youtu.be/0GvYqzZAvBI>
Agenda Item: Not Assigned
Item ID: 79727

The following document(s) are public records obtained from the
City of Sioux Falls.

1st Reading: _____
2nd Reading: _____
Date Adopted: _____
Date Published: _____
Effective Date: _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SIOUX FALLS, SD, AMENDING THE CODE OF ORDINANCES FOR CHAPTER 39: PERSONNEL REGULATIONS AND BENEFITS; RETIREMENT AND PENSIONS.

BE IT ORDAINED BY THE CITY OF SIOUX FALLS, SD:

Section 1. That the definition of "Appointive Officer" in Section 39.001 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.001 DEFINITIONS.

APPOINTIVE OFFICER. Those employees ~~and in~~ classifications appointed by and subject to the direction and supervision of the mayor ~~and those employees and classifications appointed by and subject to the direction and supervision of or~~ the city council ~~and may that~~ require the advice and consent of the council ~~to be effective.~~ This definition shall also include medical-appointed staff and mayoral-appointed staff that do not require advice and consent of the council.

Section 2. That Section 39.005 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.005 WORKERS' COMPENSATION COVERAGE FOR CITY COUNCIL MEMBERS.

- (a) Members of the city council shall be treated as employees for the purpose of extending the state workers' compensation coverage.
- (b) A council member shall provide written notice of a work-related injury claim to the ~~director of central services~~ human resources department not later than three business days after the actual occurrence of an injury. The notice shall include the date, location and relationship of the injury to the job. Failure to provide the required notice shall result in a denial of the claim. The city shall not be liable if notice is not provided pursuant to this section.

Section 3. That Section 39.035 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.035 SCOPE.

Except as otherwise provided in this section, this subchapter shall apply to all employees, except that it shall not apply to temporary, ~~temporary term, seasonal recreation or occasional~~ employees not under civil service. If an employee is represented by a collective bargaining unit which has entered into an agreement with the city, the terms of the agreement will be controlling if in conflict with the provisions of this subchapter.

Section 4. That Section 39.038 of the Code of Ordinances of Sioux Falls, SD, is hereby repealed.

§ 39.038 ~~POLITICAL ACTIVITY.~~REPEALED.

~~No officer or employee under the civil service or appointive officers shall, directly or indirectly, contribute money or anything of value to or render service in behalf of the candidacy of any candidate for nomination or election to any city office. The expression in private of personal views concerning candidates for political office is not prohibited hereby. Violation of this section shall be grounds for discharge or other disciplinary action.~~

Section 5. That Section 39.042 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.042 DISCRIMINATION.

No person in the civil service or seeking admission thereto shall be appointed, reduced or removed, or in any way favored or discriminated against because of his or her race, color, religion, sex, sexual orientation, gender identity, national origin, creed, ancestry, pregnancy, age, genetic information or disability.

Section 6. That Section 39.047 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.047 PREFERENCE FOR FORMER MILITARY PERSONNEL.

Veterans, ~~as defined in state law, who are citizens and residents of the state shall, where all qualifications are equal,~~ shall be given preference in the hiring process ~~for appointment to civil service consistent with state law.~~

Section 7. That Section 39.048 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.048 MEDICAL EXAMINATIONS; AND/OR ALCOHOL AND DRUG SCREENING.

A preemployment medical examination and/or alcohol and drug screening shall be administered following a conditional offer of employment to all entering employees in a particular classification of the civil service. Temporary, ~~temporary term and seasonal recreation~~ employees shall be subject to the drug screen examination following an offer of temporary employment. The results of all examinations shall be used in accordance with regulations issued under the Americans with Disabilities Act, being 42 U.S.C. §§ 12101 et seq.

Section 8. That Section 39.058 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.058 DEMOTION, DISCHARGE, SUSPENSION; GENERALLY.

No employee shall be suspended, discharged or demoted from his or her position except for just cause, which shall not be race, color, religion, sex, sexual orientation, gender identity, national origin, creed, ancestry, pregnancy, age, genetic information or disability.

Section 9. That Section 39.059 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.059 DEMOTION, DISCHARGE, SUSPENSION; CAUSES.

The following will be considered as causes for discharge, suspension or demotion of an officer or an employee in the classified civil service, although discharges, suspensions or demotions may be made for other causes:

- (a) Has been convicted of a criminal offense or of a misdemeanor involving moral turpitude;
- (b) Has willfully, wantonly or through culpable negligence been guilty of brutality or cruelty to a prisoner or to a person in custody, provided the act committed was not necessarily or lawfully done in self-defense, or to protect the lives of others, or to prevent the escape of a person lawfully in custody;
- (c) Has willfully violated any of the provisions of the civil service or of the rules of the board;
- (d) Has violated any lawful and reasonable official regulation or order, or failed to obey any lawful or reasonable direction made and given by his or her superior officer, where the violation or failure to obey amounts to an act of insubordination or a serious breach of proper discipline, or resulted or reasonably might be expected to result in loss or injury to the city, or to the public or to the prisoners or wards of the city;
- (e) Has been guilty of acts constituting insubordination or of any conduct unbecoming an officer or employee of the city;
- (f) Has committed any one of the following unless it is committed by a public safety officer who is legally or specifically authorized to do so while acting in the line of duty:
 - (1) Has unlawfully used, possessed, manufactured, distributed, dispensed or been under the influence of any controlled substance, on or off the job;
 - (2) Has unlawfully used, possessed, manufactured, distributed or dispensed drug paraphernalia, on or off the job;
 - (3) Has at any time used, possessed or been under the influence of alcohol while working, while performing job duties, while on the city's premises, or while operating city vehicles, machinery or equipment; or
 - (4) Has violated any provision of the city's ~~drug and alcohol free workplace~~ substance abuse prevention policy ~~ies; and.~~
 - ~~(5) The provisions of this division (f) do not apply to legally authorized possession of a controlled substance, drug paraphernalia or alcohol, or the specifically authorized consumption of alcohol by public safety officers while acting in the line of duty.~~
- (g) Is wantonly offensive in his or her conduct or language toward the public or toward city officers or employees;
- (h) Is incompetent or inefficient in the performance of the duties of his or her position;

- (i) Is careless or negligent of the property of the city;
- (j) Has disclosed privileged or confidential city information to unauthorized person(s) without the specific authorization of a director or manager to do so;
- (k) Has used or threatened to use, or attempted to use political influence in securing promotion, leave of absence, transfer, change of grade, pay or character of work;
- (l) Has induced or has attempted to induce an officer or employee in the service of the city to commit an unlawful act or to act in violation of any lawful and reasonable department or official regulation or order; or has taken any fee, gift or other valuable thing in the course of his or her work or in connection with it for his or her personal use from any citizen, when the fee, gift or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens;
- (m) Has induced or attempted to induce any person doing business with the city to give employment to any relative of the city officer or employee, or has induced or attempted to induce any person to show any material favor or consideration of any kind to any relative of the city officer or employee, when the officer or employee holds a position in a department or office having direct contact with the person;
- (n) Has been guilty of an immoral or criminal act; or
- (o) Has been guilty of any other act or omission deemed sufficient cause by the board.

Section 10. That Section 39.060 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.060 DEMOTION, DISCHARGE, SUSPENSION; NOTICE.

- (a) Notice of disciplinary action to include warning, suspension, reduction or discharge from a position in the civil service shall be documented on an incident report form and immediately forwarded to the human resources department. A copy of this incident report shall be provided to the disciplined employee.
- (b) If an employee is being discharged, he or she shall be given a copy of the reasons for his or her discharge in writing and shall be afforded a predetermination opportunity to respond to [intended](#) disciplinary action.

Section 11. That Section 39.062 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.062 DEMOTION, DISCHARGE, SUSPENSION; HEARING.

- (a) Within 30 days after receiving notice of appeal from a person holding a position in the classified civil service of the city, the civil service board shall set a date for hearing on or investigation of the reasons for the removal, discharge, suspension or reduction. Notice of the time and place of the hearing or investigation shall be delivered to the employee appealing either personally or by certified mail. Notice by regular mail shall also be given the officer taking the action appealed from.

- (b) If the conduct which is the subject of the action is pending before a grand jury or court, the board may, upon request by the person subject to the action, postpone consideration of the matter. Upon making the request, the person shall, in writing, waive all right to pay during the postponement. The person may terminate the postponement upon ten days' written notice to the board.
- (c) A hearing panel composed of three board members shall conduct the hearing or investigation. The employee appealing shall have full opportunity to be heard and may be represented by counsel or a union representative. The city attorney or unit director taking the action shall be represented by the office of the city attorney. However, a unit director retains additional counsel, the expense so incurred shall not be paid by the city.
- (d) In the course of the hearing or investigation any member of the board shall have the power to administer oaths and shall have power to secure by subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to the hearing or investigation. The board may order all evidence to be taken by a competent reporter. The investigation shall be confined to the determination of the question of whether the removal, suspension, demotion or discharge was or was not made for race, color, religion, sex, sexual orientation, gender identity, national origin, creed, ancestry, pregnancy, age, genetic information or disability and was or was not made in good faith for cause.
- (e) Failure of the appealing employee to appear before the civil service board at the time, date and place as indicated upon the notice of hearing delivered to the employee will cause the board to find in favor of the city. In addition, the appealing employee will be charged with all expenses connected with arranging a civil service board appeals hearing. The city shall collect those expenses from the appealing employee as the city deems appropriate.

Section 12. That Section 39.063 of the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.063 DEMOTION, DISCHARGE, SUSPENSION; DETERMINATION BY BOARD.

After an investigation into the discharge, removal, suspension or reduction of a person in the civil service, the civil service board may, if in its estimation the evidence is conclusive, affirm the removal, or if it shall find that the removal, suspension or demotion was made for race, color, religion, sex, sexual orientation, gender identity, national origin, creed, ancestry, pregnancy, age, genetic information or disability or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of the person in the office, place, position or employment from which the person was removed, suspended, demoted or discharged. The reinstatement may be retroactive with pay from the time of the removal, suspension, demotion or discharge. The board upon the investigation, in lieu of affirming the removal, suspension, demotion or discharge, may modify the order of removal, suspension, demotion or discharge by directing a suspension without pay for a given period and subsequent restoration of duty or demotion in classification, grade or pay. The findings of the board shall be certified in writing to the director, and shall be forthwith enforced by the officer.

Section 13. That the Code of Ordinances of Sioux Falls, SD, are hereby amended by adding a section to be numbered Section 39.069 to read:

§ 39.069 APPLICATION FOR UNIFORMED POLICE AND FIRE POSITIONS.

In addition to the application requirements in 39.044 Police and Fire applicants must be: (1) at least 21 years of age at the time of the entrance civil service examination, and (2) no greater than 44 years of age at the time of the entrance civil service examination.

Section 14. That the Code of Ordinances of Sioux Falls, SD, are hereby amended by adding a section to be numbered Section 39.070 to read:

§ 39.070 MANDATORY RETIREMENT FOR UNIFORMED POLICE AND FIRE POSITIONS.

Any member of the Class B South Dakota Retirement System, with the exception of uniformed employees of the Fire Prevention Division, who has attained or attains age 60 years shall be retired on the first day of the calendar month following the month in which the member attains age 60 years.

Section 15. That Section 39.121 the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

CLASSIFICATION AND PAY PLAN

§ 39.121 OPERATION OF PLAN; STEP ADVANCEMENT.

- (a) Except as otherwise provided in this section, an employee's eligibility for step advancements within the city's position classification and pay plan is pursuant to the completion of the waiting period within each step as shown in the following table.

From Step	To Step	Waiting Period in Months
1	2	12
2	3	12
3	4	12
4	5	12
5	6	24
6	7	24
7	8	24
8	9	24

- (b) New employees under the city's classification and pay plan will start at step 1 except as specifically provided in § [39.124](#). Upon completing the waiting period in each step as shown in division (a) above, the employee will advance to the next step unless cause for denial is shown by the employer. If cause is shown by the employer and an employee is denied step advancement at the time of eligibility, the employer may grant the employee that step advancement at any time thereafter.

- (c) The employee's anniversary date for purposes of step advancement eligibility will be the month and day of the actual hire date unless cause for denial is shown by the employer. When a step is denied, the anniversary date for future step advancement eligibility will be the effective date of the next step increase that is granted.
- (d) Should an employee be absent from the job on unpaid leave for more than 30 days during the waiting period for step advancement eligibility, the waiting period for that step will be extended for a period of time equal to the absence, and the employee's anniversary date for future step advancement eligibility will be adjusted to the effective date of the next step increase that is granted.
- (e) If step advancement is granted, it shall be granted on the first day of the biweekly pay period which is nearest to the anniversary date of the employee.
- ~~(f) All increases or decreases into a new step shall be recorded on an employee status change form and a new service rating shall accompany this form. The department head and director or designee shall approve all budgeted salary changes.~~
- (fg) A midmanagement employee may be eligible for an annual accelerated step advancement under the city's position classification and pay plan. Accelerated step placement will be based upon documented excellence in employee performance. Any acceleration of step advancement for excellence in performance must be recommended by the director and approved by the director of human resources and the mayor.

Section 16. That Section 39.123 the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.123 REASSIGNMENT; SALARY CHANGES.

Those employees not represented by a collective bargaining unit are subject to the following provisions.

- (a) Reassignment for employees applies to a personnel action where no actual vacancy exists but an employee's job classification and/or pay grade is changed. This personnel action will result from a management-initiated job audit or reorganization.
- (b) When the pay grade for a classification is upgraded or if an employee is reassigned to a classification having a higher maximum or hourly rate of pay, the employee's salary shall:
 - (1) Go to the step with the salary amount in the new pay grade which is ~~next at least and~~ closest to 3% over the salary amount received in the prior pay grade if the employee has not been performing the duties commensurate with their higher pay grade prior to their reassignment; or
 - (2) Go to the ~~same~~-step in the new pay grade which is at least and closest to 5% over the salary amount received~~as it was~~ in the prior pay grade if the employee is, through a management-initiated audit, determined to have been performing duties commensurate with the higher pay grade prior to the reassignment.
- (c) When an employee is reassigned to a job classification due to a management-initiated job audit or reorganization having the same maximum biweekly or hourly rate of pay, the

employee's salary step ~~and~~ rate of pay, and the step anniversary date for future advancement shall remain the same.

- (d) When the pay grade for a classification is downgraded or when an employee is reassigned to a job classification due to a management-initiated job audit or reorganization having a lower maximum biweekly or hourly rate of pay, the employee shall be placed into the salary step of the new pay grade which is next lower than and closest to the salary amount received prior to the reassignment and the step anniversary date for future advancement shall remain the same. When the employee's salary level, prior to reassignment, is greater than step 9 of the newly assigned pay grade, the employee's biweekly or hourly rate of pay shall be frozen as of the date of the reassignment. The employee's salary rate shall remain frozen until a time as step 9 of the pay grade assigned to the employee's classification is equal to or greater than the employee's frozen salary rate of pay. When that occurs, the employee shall be placed into step 9 of the new pay grade assigned to the employee's classification.
- (e) If reassignment occurs, ~~the anniversary date for future step advancement eligibility will not be adjusted, unless~~ and the employee is reassigned to a higher pay grade ~~and has not been performing the duties commensurate with the higher pay grade prior to the reassignment as defined in division (b)(1) above, in which case the~~ employee's anniversary date for future step advancement eligibility will be the effective date of the reassignment.

Section 17. That Section 39.158 the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.158 JURY DUTY AND WITNESS FEES.

- (a) Any nonexempt employee who is called upon for jury duty during regularly scheduled work hours shall not suffer any loss of regular base pay; provided, however, upon the termination of jury duty, the employee shall remit to Human Resources any fees, mileage, or other remuneration received for their participation in jury duty. An employee who is compensated for jury duty on a day that is other than a regular scheduled workday shall retain such compensation for that day ~~performs jury duty shall, upon the termination of jury duty, report all jury duty earnings. That amount shall be deducted from the employee's next paycheck.~~
- (b) Any witness fees, allowances or other remuneration received by an exempt or nonexempt employee for acting as a witness on behalf of and in the course of city duties, must be remitted to the city. Failure to submit the funds to the city will result in the deduction of the amount from the employee's regular compensation.

Section 18. That Section 39.165 the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.165 FAMILY/MEDICAL LEAVE.

- (a) ~~In accordance with the requirements of the Family Medical Leave Act (FMLA), being 29 U.S.C. §§ 2611 et seq.,~~ The mayor and appointive officers and employees, midmanagement and classified employees not covered by a collective bargaining unit shall have eligible family and medical leave administered in a manner consistent with the requirements of the Family Medical Leave Act (FMLA), 29 U.S.C. § 2611 et seq. The City will utilize a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. ~~who have~~

~~been employed by the city for at least 12 months and worked at least 1,250 hours during the 12 months immediately preceding the proposed beginning date of FMLA leave may receive up to 12 weeks of FMLA leave with or without pay within a 12-month period calculated back from the beginning date of the FMLA leave, only for the purpose of caring for their newborn, newly adopted or newly placed foster child, to care for a seriously ill child, spouse or parent, or for a serious personal medical condition rendering the employee temporarily unable to work.~~ If an employee has available paid leave benefits at the time FMLA leave is required, the FMLA leave will run concurrently with the use of those paid leave benefits until they are exhausted or until the available 12-week FMLA leave period ends, whichever comes first. If an employee's available paid leave benefits are exhausted prior to the end of the 12-week FMLA period, the remainder of the period shall be granted as unpaid leave.

- (b) Health and dental insurance benefits will be maintained for the employee/dependents during the FMLA leave period provided that the employee continues to pay the employee portion of the premium for that insurance at least one month in advance of the coverage. If the employee chooses not to return to work from an unpaid FMLA leave for reasons other than a continued serious health condition or other circumstances beyond the employee's control, the employee will be required to reimburse to the city the amount paid by the city for the employee's health insurance premium during the leave.
- (c) Employees returning from FMLA leave shall be returned to their previous or a similar position with the same rate of pay as they received prior to the commencement of the FMLA.
- (d) Except as otherwise provided in this section, all FMLA leave will be administered according to the requirements of the Family and Medical Leave Act.

Section 19. That Section 39.180 the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

VACATION LEAVE

§ 39.180 ELIGIBILITY AND ACCUMULATION; FULL-TIME NON-COLLECTIVE BARGAINING UNIT EMPLOYEES.

- (a) Except as otherwise provided in this section, the mayor, any appointive officer or employee, or any regular full-time midmanagement or classified employee of the city not represented by a collective bargaining unit shall be granted vacation with pay based on the employee's years of service with the city. The vacation leave shall accrue on a monthly basis.
- (b) This vacation leave accrual shall begin with the employee's first day of regular employment with the city, but may not be used until the employee has completed one month of service for accrual purposes.
- (c) The officers and employees shall receive a full or prorated vacation benefit with full pay based on the following schedule. Each level in the schedule shall become effective in the month in which the employee's employment anniversary date occurs. Vacation may be taken beginning the first day of the following month.

Years of Service	Monthly Accrual Level
0 but less than 3	6.75

3 but less than 4	8.00
4 but less than 5	9.00
5 but less than 10	10.00
10 but less than 11	10.75
11 but less than 12	11.50
12 but less than 13	12.00
13 but less than 14	12.75
14 but less than 15	13.50
15 but less than 16	14.00
16 but less than 17	14.75
17 but less than 18	15.50
18 but less than 19	16.00
19 but less than 20	16.75

- (d) Newly hired midmanagement employees [or appointive officers](#) may begin accruing vacation at the monthly accrual level of ten hours per month based upon qualifications as recommended by the director of human resources and approved by the mayor.
- (e) Fire midmanagement employees assigned to a 24-hour shift schedule not represented by a collective bargaining unit shall receive a full or prorated vacation benefit with full pay based on the following schedule. Each new level in the schedule shall become effective in the month in which the employee’s employment anniversary date occurs. Vacation may be taken beginning the first day of the following month.

Years of Service	Monthly Accrual Level
Less than 5	10.00 hours
5 but less than 8	12.00 hours
8 but less than 10	14.00 hours
10 but less than 12	16.00 hours
12 but less than 14	18.00 hours
14 but less than 17	20.00 hours
17 and over	22.00 hours

- (f) A bank of vacation hours may be established for a newly hired appointive officer upon recommendation of the director of human resources and approval of the mayor. Upon the appointive officer’s one-year employment anniversary date, regular monthly accrual of vacation will commence in accordance with the established vacation level. Future advancement to the next level of vacation accrual shall be based upon the employee’s employment anniversary date.

Section 20. That Section 39.182 the Code of Ordinances of Sioux Falls, SD, is hereby amended to read:

§ 39.182 USE.

- (a) Vacation shall be taken at the time the [department](#) director or designee shall designate. In designating vacation time, the seniority and preferences of officers or employees shall be followed unless absence of the employee or officer will impede the operation of the department.

- (b) Employees may schedule vacation prior to its anticipated accrual, but may not use vacation until after it has been accrued as specified in this subchapter.
- (c) Vacation time shall not be scheduled or used in any manner for purposes of extending an employee's official date of separation from the city.

Date adopted: _____.

Mayor

ATTEST:

City Clerk