

CHAPTER 2 – ADMINISTRATIVE

ARTICLE 1 – ASSEMBLY

Section 2.105 Definitions

The following terms shall have the definitions set out below for the purpose of this Article:

- (a) “Certification” shall mean final determination of an election result as defined in Section 3.725.
- (b) “Notice” shall be complete upon delivery, except that in case of notice given through the U.S. Mail, notice shall be complete twenty-four hours following delivery according to the terms of the appropriate section.

Section 2.110 Assembly – Composition: Term

- (a) The Assembly shall consist of six members elected at large. Each assembly member shall be elected for a term of 3 years to Seat A, B, C, D, E or F. Assembly members shall be elected to staggered terms so that the terms of two seats expire in each year.
- (b) Each assembly member’s term of office shall begin following certification of his or her election and the assembly member’s execution of a written statement, made under oath, swearing to honestly, faithfully and fully perform their duties. Each assembly member’s term shall continue until his or her successor qualifies and takes office, or until the assembly member is disqualified or resigns from office.

Section 2.155 Assembly – Qualifications of Members

- (a) A candidate for assembly member shall be municipal voter of the municipality and shall have been a resident of the municipality for at least the twelve months immediately preceding the general election.
- (b) No assembly member may hold any other compensated municipal employment or any elected partisan political office during her or her term of office. For the purpose of the paragraph, a school district employee is not a municipal employee.
- (c) No assembly member may hold more than one Assembly seat or be a candidate for more than one Assembly seat and Mayor in the same election.
- (d) An assembly member who ceases to be qualified shall immediately forfeit his or her office.

Section 2.125 Assembly – Meetings and Notice

- (a) Regular meetings of the Assembly shall be held on the second Tuesday of each month, unless the Assembly by resolution changes the time or place of the meeting at the preceding regular meeting.
- (b) Special meetings of the Assembly may be called by the mayor or by any four assembly members.
- (c) If a majority of the members of the assembly are given at least twenty-four (24) hours oral or written notice and reasonable efforts are made to notify all members, a special meeting of the Assembly will be held. A special meeting may be conducted with less than twenty-four (24) hours' notice if all members are present, or if absent members have waived in writing the required notice. Waiver of notice shall be made part of the journal for the meeting. Notice of each special meeting shall be given to the general public by posting notice at the Office of the Municipal Clerk and at the U.S. Post Office at Nenana

Section 2.130 Assembly – Vacancies

If a vacancy should occur in any Assembly seat, and there are more than twelve months remaining between the date the vacancy arises and the date of the next general election, then the Assembly shall call a special election for the purpose of filling the vacant seat. If a vacancy arises and there are less than twelve months remaining between the date of the next election, then the Mayor shall nominate a city voter to fill the vacancy, subject to the Approval of the Assembly.

Section 2.135 Assembly – Voting

- (a) Roll call votes shall be taken on adoption of any ordinance before the Assembly. At the request of any assembly member, a roll call vote shall be taken on adoption of any resolution.
- (b) Where voting by secret ballot is permitted under the Charter, the Clerk shall keep the ballots after the vote and preserve the ballots as a portion of the minutes of the meeting.
- (c) Nothing contained in the Section shall authorize an assembly member to vote where he is otherwise disqualified from voting under Section 2.405 – 2.495

Section 2.140 Assembly – Conduct of Meetings

- (a) The Mayor shall preside at meetings of the Assembly and may participate in all Assembly meetings to the same extent as an assembly member, but may not vote except in the case of a tie or to cast the deciding vote if a proposed ordinance or resolution receives the affirmative vote of three assembly members.

- (b) Except as provided in sub-section (c) below, the Mayor may veto any ordinance, resolution or other action of the Assembly, and may by veto strike or reduce items in budget and appropriation ordinances. The veto must be exercised and submitted to the Assembly with a written explanation of the reason for the veto no later than the first regular meeting following the action of the Assembly which the Mayor seeks to veto. The Assembly, by a vote of five assembly members, may override a veto within twenty-one days of its exercise.
- (c) The veto power does not extend to:
 - (1) appropriation items relating to the school budget;
 - (2) determinations of the Assembly sitting as a board of equalization, board of adjustment, election review panel, or any administrative review by the Assembly; or
 - (3) actions relating to the adoption or repeal of a manager plan of government.
- (d) At each regular meeting of the Assembly, the agenda shall provide for an opportunity for the public comment on any issue, whether or not the issue is presently before the Assembly.
- (e) Absent agreement by a majority of the assembly members in attendance at a meeting, no member of the public may testify on any ordinance, resolution, public issue, or other matters for longer than five minutes.

Section 2.142 Approval of Grant Applications

No application for a grant, financial assistance, funding, or other moneys shall be submitted to any person or entity in the name of the Municipality, or a department, office, or division of the Municipality, except after the application or request has been approved by duly adopted resolution of the Municipal assembly. In determining whether or not to approve the application or request, the Assembly shall consider:

- (a) Any requirements for matching or additional funds that may be imposed upon the Municipality;
- (b) Any effect the use of the funds may have on budgeting within the Municipality in the future including, but not limited to, expenses associated with use of any property purchased with the funds; and
- (c) Other effects of use of the funds sought on the Municipality.

Each application or request for funds or equipment submitted in the name of the Municipality must be accompanied by a certified copy of the resolution approving the application or request.

[Reviser's Note: Section 2.145 was amended by amending and adding Subsection a, b and c with adoption of Ordinance 93-07 on 6/4/93. This section was again amended by adoption of Ordinance 94-06 on 8/11/94 amending (b) making compensation for mayor permanent and deleting (c)]

[Reviser's Note: Section 2.145 was amended by changing (c) increasing the meeting stipend for assembly members by adoption of Ordinance 08-02.]

[Reviser's Note: Section 2.145. was amended by removing "a stipend of \$58.80 per city meeting attended" for council members to not receive any compensation. As per Ordinance 2021-06 adopted November 9th 2021.]

Section 2.145 Compensation to Elected Officials.

- (a) Elected official of the Municipality shall receive compensation for performance of the duties of that elective office provided by ordinance.
- (b) Until provided otherwise by ordinance, the Mayor of the City of Nenana shall receive an annual compensation to be determined by the annual budget. The Mayor's salary shall be divided into equal bi-monthly payments. The Mayor shall be entitled to the same employee benefits as any other municipal employee.
- (c) Until provided otherwise by ordinance, assembly members shall receive no monetary nor in-kind compensation beyond reimbursements approved by the mayor.

Section 2.150 Exemption for Reporting Requirements

The elected and appointed municipal officer of the municipality shall be exempted from the requirements of AS 39.50.010 et seq., relating to the reporting of financial and business interests by municipal officers.

CHAPTER 2 – ADMINISTRATIVE

ARTICLE 2 – MUNICIPAL OFFICERS AND DEPARTMENTS

[Reviser's Note – Subsection (c) as codified into the Section 2.205 of Article 2 of Chapter 2 upon adoption of Ordinance 92-08 which was adopted on 9/10/92.]

Section 2.205 Definitions.

- (a) The municipal executive and administrative powers shall be vested in the Mayor. The powers and duties of the Mayor shall include, but are not limited to the power to:
 - (1) appoint all municipal department heads, subject to confirmation by the Assembly;
 - (2) appoint, suspend or remove municipal employees, and administrative officials, subject to Section 2.505 – 2.595, "Personnel";
 - (3) prepare and submit an annual and capital improvement budget to the Assembly, and upon adoption of an annual budget and capital improvement program, implement that budget and program;
 - (4) make periodic financial reports and other reports on municipal finances and operations as required by ordinance and the Assembly;
 - (5) enforce municipal ordinances and regulations;
 - (6) server as municipal personnel officer, subject to Section 2.505 – 2.595, "Personnel"; and
 - (7) perform other duties required by law, charter, ordinance, or the Assembly.
- (b) The Mayor may delegate any power granted to him by charter or by ordinance, except that Mayor may not delegate:
 - (1) the power to appoint, suspend or remove departments heads; and
 - (2) the power to veto, except that the Mayor pro tem shall have the veto power in the absence of the Mayor.
- (c) The city administrator shall serve as the head of each city department. Whenever in this Code of Ordinances reference is made to the term "department head," "director," or the head of a city department, those terms shall be deemed to refer to the city administrator. Under the supervision of the Mayor, the city administrator shall supervise, direct and control the daily activities of all city employees. All city employees shall report to and accept directions from the city administrator. The city administrator may delegate supervisory responsibility and authority to subordinate employees as necessary. The term "all city employees" shall include the city clerk.

Section 2.215 Mayor – Qualifications

The Mayor may not hold any other compensated municipal employment or any elected partisan political office while serving as Mayor. For the purpose of this section, a school district employee is not a municipal employee.

Section 2.220 Mayor Pro Tem

During the absence or disability of the Mayor, the Mayor Pro Tem shall have all of the rights, duties and powers of the Mayor. If at any time it appears probable that the Mayor will be absent from the city or disabled for more than ninety days, then the Mayor Pro Tem shall become acting Mayor and shall provide for the selection of a new Mayor Pro Tem until the absence or disability of the Mayor ceases.

[Revisor's Note: Section 2.225. was amended to add (e) as per Ordinance 2021-06 adopted November 9th 2021]

[Revisor's Note: Section 2.225. was amended by deleting (a) Act as municipal treasurer and is custodian of all municipal funds and pay money on vouchers drawn on principal funds where the vouchers are countersigned by the mayor., and reassigning (b), (c), (d) and (e) as (a), (b), (c), and (d).]

Section 2.225 Municipal Clerk.

The Mayor shall keep and maintain a bond for the full and faithful performance of duties upon the Municipal Clerk and such deputy clerks as may be appointed from time to time. In addition to other duties imposed upon the clerk by statute and ordinance, the clerk shall:

- (a) Keep journals of all ordinances and resolutions adopted or enacted by the Assembly in order of adoption;
- (b) Keep and maintain records of the municipal officers, employees and assembly members or the municipality; and
- (c) Perform such other and further municipal duties as the Mayor may from time to time direct.
- (d) Provide forms, give notice of, and provide for all general and special elections as prescribed in Chapter 3 Elections of this Code of Ordinances.

[Revisor's Note: Section 2.227. (f) was amended by changing shall to may and .25 per copy to .50. It also allows for electronic copies to be used. As per Ordinance 2021-06 adopted November 9th 2021]

[Reviser's Note: The public has a broad right of access to the books and records of the Municipalities. See AS 09.25.110 and .120 and City of Kenai vs. Kenai Peninsula Newspapers, Inc., 642 P. 2nd 1316 (Alaska 1982)]

Section 2.227 Public Access to Municipal Books and Records

- (a) All of the books and records of the Municipality shall be available to the general public during the regular business hours of the Municipal Clerk's office, subject to the terms and conditions of this section.
- (b) The following categories of books and records of the Municipality shall not be available to the general public, notwithstanding anything else contained in this section or elsewhere in these ordinances:
 - (1) records and communications by and between the Municipality and the Municipal Attorney, or other counsel of the Municipality, and matters relating to ongoing litigation involving the Municipality which are privileged under State or Federal law or rule;
 - (2) employee personnel records and files, except with the written consent of the employees;
 - (3) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the Municipality;
 - (4) subjects that tend to prejudice the reputation and character of any person, except with the written consent of the person; and
 - (5) matters which under the Charter, other provisions of these ordinances or State law is required to be confidential.
- (c) Where the records requested are more than thirty (30) days old, the Municipal Clerk may require the person or persons requesting records to return to the Municipal Clerk's office to examine the records not more than two business days following the request.
- (d) Where the records are more than one year old or more than one-half hours will be required to research, locate, and assemble the records, the Municipal Clerk shall require the payment of \$40.00 per hour to research, locate and assemble the records. Research time under this sub-section shall be charged in one-tenth hour increments. When the Municipal Clerk estimates that more than one-half hour will be required to research, locate, and assemble the books and records requested under this sub-section, the Municipal Clerk may require the estimated charges to be paid in advance.
- (e) The Municipal Clerk may require requests to examine books and records or to reproduce books and records, be made in writing, signed by the person requesting the books and records. The Municipal Clerk shall provide forms for such requests to the public. Where any request for books and records will involve research costs under sub-section (d), the request shall be in writing.

- (f) When a person requests copies of the books and records, the Municipal Clerk may assess twenty-five cents (\$.50) per page of copy made. When feasible electronic copies may be provided.
- (g) The Municipal Clerk shall post in the Municipal Officers a prominent notice stating the fees, charges, terms, and conditions set out in this section.
- (h) No person who owes moneys to the Municipality under this section may obtain records without prepayment of the estimated costs.

Section 2.228 Director of Finance

The mayor shall appoint, and the Assembly shall confirm the position of Director of Finance. The mayor shall keep and maintain a bond for the full and faithful performance of duties upon the Director of Finance and such deputy finance clerks as may be appointed from time to time. The Director of Finance shall serve as Treasurer. In addition to other duties imposed upon the Director of Finance by statute and ordinance, the Director of Finance shall:

- (a) Act as municipal treasurer and is custodian of all municipal fund and shall pay money on vouchers drawn on principal funds where he vouchers are countersigned by the mayor.
- (b) Provide or cause to be provided, records of all financial transactions of the municipality.
- (c) Shall produce or cause to be produced financial and budget reports to the mayor and assembly.
- (d) Shall perform such other and further financial duties as the mayor may from time to time direct.

Section 2.230 Municipal Attorney

The Municipal Attorney shall be the legal advisor to the Mayor and the Assembly, and such other officers, boards and commissions as the Mayor of Assembly may direct. The municipal attorney shall be nominated by the Mayor and confirmed by the Assembly. The conflicts of interest provisions of these ordinances shall not apply to the Municipal Attorney.

[Revisor's Note: Section 2.240. Title was amended from Public Safety department to Fire/EMS Department. (a) was amended from "There shall be a Public Safety Department for the Municipality." (b) "A Public Safety Director shall be appointed by the Mayor, subject to confirmation by the Assembly, and shall be charged with control and management of the Public Safety Department under the supervision of the Mayor" was struck from the code. (c) was amended from "Expenditures in support of the Public Safety Department shall be made by the Assembly as required in its judgment." As per Ordinance 2021-06 adopted November 9th 2021]

[Reviser's Note: Former Section 2.240, Police Department and Section 2.245, a were repealed and replaced by Section 2.240, Public Safety Department. (Ref: Ordinance 85-5, adopted 7/11/85).]

Section 2.240 Fire/EMS Department

- (a) A Memorandum of Agreement between a Fire/EMS Department and the City of Nenana shall be instituted and shall provide a clear understanding of the relationship between the City and the Department and provide for an effective date.
- (b) Budgetary expenditures and in-kind support of a Fire/EMS Department shall be made by the Assembly as required in its judgment and/or specified by the Memorandum referenced in (a) of this code.

Section 2.250 Annual Reports

Every department, commission, authority, or permanent committee of the Municipality shall make an annual written report to the Assembly of its activities, duties, membership, functions, and anticipated revenue requirements. Each report shall be filed with the Municipal Clerk on or before June 15 of each year, or such earlier date as the Assembly may set by resolution, in a form and manner prescribed by the Mayor.

[Reviser's Note: Ordinance 85-9 adopting Section 2.255 and 2.260 was adopted 1/2/85 and amended 5/9/85.]

[Reviser's Note: The Charter of the Municipality of Nenana, Section 9.010 (b), authorizes the municipality to create advisory school board seats by ordinance.]

Section 2.255 Prior Acts of School Board

All acts of the school board of the school district of the Municipality of Nenana committed prior to the effective date of this ordinance (1/2/85) and concerning the location, construction, major rehabilitation, and major repair of school buildings and ratified.

Section 2.260 Duties and Responsibilities of School Board and Assembly.

The duties of the Municipal Assembly and School Board shall be divided as follows:

- (a) The Assembly shall determine the location of school buildings and provide for all construction, major rehabilitation, and major repair of school buildings. The School Board may make recommendations concerning the location, construction, major rehabilitation, and major repair of school buildings to the Assembly. The Assembly shall

seriously consider the recommendations of the School Board concerning these matters. All contracts above fifty thousand dollars (\$50,000.00) concerning construction, major rehabilitation and major repair of school buildings shall be authorized by ordinance and entered on behalf of the Municipality of Nenana.

- (b) Subject to the approval of the Assembly, the School Board shall determine the design criteria of school buildings and select the appropriate professional personnel to develop these designs. The School Board shall submit the preliminary design and all subsequent designs for school buildings to the Assembly for approval. If the design is not approved by the Assembly, the School Board shall prepare and submit a revised design for approval. An approved design or revised design shall be submitted by the Assembly to the Board of Education of the State of Alaska.
- (c) The School Board shall provide for custodial services and routine maintenance for school buildings and shall appoint, compensate, and control personnel for these purposes.
- (d) The School Board shall appoint, compensate, and control all employees and administrative officers.
- (e) The School Board shall select and purchase supplies, equipment, textbooks, and instructional materials.
- (f) The School Board shall have custody of, invest and manage all funds for school purposes, including those to be used for construction, rehabilitation, or repair of school buildings.
- (g) The School Board shall account for all school funds using a system of accounting in accordance with accepted principles of government accounting.
- (h) The School Board shall submit the school budget for the following school year and a proposed six-year program for capital improvements and fiscal policies to the Assembly by April 1 of each year for approval. The School Board shall hold at least one public hearing on the proposed budget and program for capital improvements and fiscal policies before they are submitted to the Assembly, and at least one public hearing after Assembly action if they total amount of the budget is different. Within 30 days after the receipt of the budget, the Assembly shall determine the total amount of money to be made available from local sources for school purposes and shall furnish the School Board with a statement of the sum to be made available. If the Assembly does not furnish a statement of sums to the budget, the amount requested shall appropriate local sources by May 31 of each year. The Assembly may increase or decrease the budget only as its total amount.

- (i) The School Board shall provide a summary report and statement of money expended to the Assembly on the first day of each month or as otherwise required by the assembly.
- (j) The School Board shall keep all its non-confidential records and files open for inspection by the public at its principal administrative office during reasonable business hours.
- (k) The Assembly and School Board shall meet at least two times each year in a joint session to discuss and coordinate financial matters of mutual interest.

Section 2.265 Advisory Seats

- (a) In addition to those members required by the Charter and Code of Ordinances of the Municipality of Nenana, the School Board shall include two advisory members for the seats designated as advisory seats "1" and "2" to represent the area north and the area south of the city's limits. Seat "1" shall cover Nenana School Attendance. Area south; seat "2" shall cover Nenana School Attendance north.
- (b) The advisory members shall be elected by the voters of each area. The advisory members shall advise the School Board in the exercise of its powers and duties.
- (c) At the first regular election following passage of this ordinance, the elected members will draw lots for a two-year and three-year term. Thereafter the advisory members will be elected to serve three-year terms.

CHAPTER 2 ADMINISTRATION

ARTICLE 3 – PORT AUTHORITY

Section 2.305 Definitions

- (a) “Franchisee” means any person holding a franchise for the operation of any part of the Port of Nenana, real property, or personal property from the Municipality of the Port Authority.
- (b) “Notice” means the transmittal of information by (I) delivery to the Port Authority Commission, not less than thirty days before the event of the effective date of the subject of the notice, (II) publication at least once not less than thirty days before the event or effective date of the subject of the notice in a newspaper of general circulation in the Municipal area, and (iii) posting at least thirty days before the event or effective date of the subject of the notice in three public places in the Municipality.
- (c) “Personal Property” means property, including motor vehicles, equipment, and vessels, within the Port of Nenana, and includes property based at the Port of Nenana, even if used and operated elsewhere.
- (d) “Port User” means any person or persons leasing any portions of the Port of Nenana, real property, or personal property.
- (e) “Real Property” means realty, including fixtures, within the Port of Nenana

Section 2.310 Creation and Composition

- (a) There is created the Port Authority of the Municipality of Nenana, Alaska, hereinafter referred to as the Port Authority.
- (b) The Port Authority shall be governed by a Board of Directors. The directors shall be appointed by the Mayor, subject to approval by the Assembly. Each Port Authority Director shall serve for a term of six (6) years. Any vacancies on the Port Authority shall be filled by an appointment of the Mayor subject to the approval of the Assembly for the balance of the term of the position on the Port Authority. The Port Authority shall select a presiding officer from among its members.

[Reviser’s Note: Section 2.320 (b) was amended by adoption of Ordinance 88-01 on 1/11/88.]

Section 2.313 Status of Authority

The Port Authority is a public corporation and government instrument of the Municipality of Nenana but having a legal existence independent of and separate from the Municipality. The Port Authority may not be terminated as long as it has bonds, notes or other obligations outstanding. Upon termination of the Port of Authority, its rights and property pass to the Municipality.

[Reviser's Note: Section 2.323 was added by adoption of Ordinance 88-01 On 2/11/88.]

Section 2.315 Delegation of Authority by the Assembly

The Assembly delegates to the Port of Authority all of the power, authority, and responsibilities that the Assembly might exercise with regard to the Port of Nenana, real property, personal property and franchise, reserving unto itself only those powers and rights expressly set out in this Article.

Section 2.320 Planning Power

- (a) Within the Port of Nenana, the Port Authority shall act as the planning commission and platting board for the Municipality. The Port Authority shall coordinate its planning activities with the Planning Commission to assure effective land use planning in the Municipality,
- (b) The Port Authority shall develop a master plan for the Port of Nenana not later than January 1, 1983, in conformity with the laws of the State of Alaska and the obligations of the Municipality under its leases and contracts with the Alaska Railroad. The Port Authority shall give notice of and hold public hearing on the master plan prior to adoption of the master plan.
- (c) The master plan adopted by the Port Authority shall be reviewed not less often than annually by the Port Authority. Each such review shall include notice and a public hearing.

Section 2.325 Real Property

- (a) The Port Authority may provide for the disposal of real property consistent with the terms of a duly adopted master plan according to the terms of this article.
- (b) Any disposal of real property shall be by one of the following methods:
 - (1) competitive bidding, whether for lease or sale, by sealed bid;
 - (2) public outcry auction. Whether for lease or sale;
 - (3) private sale or lease for not less than fair market value; or

- (4) in the case of a real property disposal under an economic development plan.
- (c) In the case of any real property disposal except a disposal under an economic development plan, notice of the real property disposal shall be given thirty days before the disposal. The notice of real property disposal shall set out the terms and conditions of the proposed disposal in sufficient detail to allow potential purchasers to make an informed decision whether or not to purchase the interest in the real property. In the case of property sold under an economic development plan, notice of disposal of the real property shall be in the form and manner required in the economic development plan.
- (d) No disposal of real property by the Assembly shall convey a greater interest than the City possesses in the real property or, in the case of a lease, extend beyond the term of any lease under which the City may own the property.

Section 2.330 Disposal of Personal Property

The Port Authority, after notice, may dispose of personal property in any manner calculated to realize a reasonable economic return to the City.

[Reviser's Note: Section 2.333 was amended by adoption of Ordinance 92-02 on March 12, 1992]

[Reviser's Note: Section 2.333 was added with the adoption of Ordinance 88-01 on 2/11/88]

[Reviser's Note: Section 2.333 was amended by the addition of subsection (h) by adoption of Ordinance 88-04]

Section 2.333 Bonds and Obligations

- (a) The Port Authority, by resolution, may issue bonds, including refunding bonds, and other obligations in order to carry out its corporate purposes.
- (b) Principal and interest on the bonds shall be payable from revenues and assets pledged therefore, and from such other revenues or assets as the Assembly shall elect to place into the Port Authority Debt Retirement Fund for that purpose.
- (c) Bonds and other obligations of the Port Authority may be issued in one or more series and shall be dated, bear interest at the rate or rates per annum or within the maximum rate permitted by law, be in the denomination, be in the form, either coupon or registered, carry the conversion or registration provisions, have the rank or priority, be

executed in the manner and form, be payable from the sources in the medium of payment and place of places within or outside of the Municipality of Nenana, be subject to authentication by a trustee or fiscal agent and be subject to the terms of redemption with or without premium, as a resolution of the Port Authority may provide.

- (d) Bonds and other obligations of the Port Authority may be sold in the manner, on the terms and at the price the Port Authority determines.
- (e) If an officer whose signature or facsimile of whose signature appears on any bonds or other obligations of the Port Authority ceases to be an officer before the delivery of the bond or other obligations, his signature or facsimile is valid the same as if he had remained in office until delivery.
- (f) Bonds and other obligations of the Port Authority issued under this section do not constitute a debt, liability or obligation of the Municipality of Nenana or a pledge of the faith and obligation of the Municipality of Nenana but are payable solely from the revenues of assets of the Authority. Each bond or other obligation issued under this section shall contain on its face a statement that the Port Authority is not obligated to pay it nor the interest on it except from the revenues or assets pledged for it and that neither the faith and credit nor the taxing power of the Municipality of Nenana is pledged to the payment of the principal of or the interest on the bond of other obligation.
- (g) In addition to the issuance of its bonds and other obligations, the Port Authority may seek financing from local, state, and federal grants and loans, from appropriations from the Municipality, and from any other source. The Port Authority may also earn interest income from deposited funds in order to pay both administrative and program costs.
- (h) The borrowing of funds from the Alaska Power Authority pursuant to Section 2.320 to finance the study of feasibility of the constitution of a coal-fired electrical generating plant within the lands under the jurisdiction of the Port Authority is hereby approved.

Section 2.335 Budget

Not later than three months before the end of the fiscal year, the Port Authority shall submit to the Mayor a proposed budget for the following fiscal year. The Port Authority shall observe the provisions of any budget adopted by the Assembly and shall not transfer between items in its budget without the approval of the Assembly.

[Reviser's Note – Section 2.338 was added by adoption of Ordinance 88-01 On 2/11/88.]

Section 2.338 Bylaws

The Port Authority shall govern the conduct of its business in accordance with its duly adopted bylaws.

Section 2.340 Regulations

The Port Authority, after notice and a public hearing, may adopt such regulations as may be necessary for the sale, efficient and economic operation of the Port of Nenana, and the performance of its duties and exercise of its power under this Article. The notice of adoption of regulations shall set out in summary form the terms of the proposed regulations in sufficient detail to allow interested parties to understand the nature of the proposed regulations and their implications.

Section 2.345 Emergency Regulations

The Port Authority may adopt emergency regulations when there is a substantial and immediate threat or danger to persons or property in the Port of Nenana. Emergency regulations are effective twenty-four hours following posting of the regulations in three public places in the City. The notice of adoption of emergency regulations posted under this section shall set out in summary form the terms of the proposed regulations in sufficient detail to allow interested parties to understand the nature of the proposed emergency regulations and their implications. Emergency regulations shall be effective for forty-five days.

Section 2.350 Limitations on Powers.

(a) Assembly approval shall be required for the following acts of the Port Authority to be effective:

- (1) disposal of real property;
- (2) adoption of regulations, except that emergency regulations are effective until the next regular Assembly meeting;
- (3) adoption of a budget, which shall be according to the terms of Article X of the Charter and ordinances adopted under authority of Article X;
- (4) adoption of a master plan, or amendment or modifications of a master plan;
- (5) granting or termination of a franchise granted to a franchisee; or
- (6) removal of a member of the Port Authority for cause;

which approval shall be by resolution affirming the actions of the Port Authority, except in the case of a budget, which shall be approved by the Assembly in according with Article X of the Charter, or a franchise, which shall be approved by ordinance.

- (b) The Port Authority shall not adopt any operating rule or regulation or adopt any internal policy that is inconsistent with the laws of the State of Alaska or the Charter and Code of Ordinances of the Municipality of Nenana, Alaska.

Section 2.355 Conflicts of Interest

No member of the Port Authority shall be a port user of a franchisee or an employee, officer or agent of a port user or franchisee.

Section 2.360 Port Advisory Commission

There is created the Port Advisory Commission consisting of one representative of each port user and each franchisee. The Port Advisory Commission shall select a presiding officer from among its members. The Port Advisory Commission shall advise the Port Authority on the performance by the Port Authority of its duties, but the Port Advisory Commission shall have no power to bind or act for the Port Authority in any way.

Section 2.365 Annual Report

The port Authority shall report not less often than annually to the Assembly on the economic condition, master plan, economic development plans, and other significant aspects of the operation of the Port of Nenana.

[Reviser's Note: Section 3 of Chapter 2 was amended by addition of Section 2.370 upon adoption of Ordinance 92-02 on March 12, 1992.]

[Reviser's Note: Section 2.370 was amended by adoption of Ordinance 98-02 on 3/12/98. Ordinance 98-02 deleted statement dealing with revenue from sales tax being placed in the debt retirement fund.]

Section 2.370 Debt Retirement Fund

This is created a Debt Retirement Fund within the Port Authority Enterprise Fund. Through the budget and appropriation process, the Assembly shall place money into the Debt Retirement Fund to be used solely for the payment of principal and interest on bonds issued by the Port Authority. Money shall be withdrawn from the Debt Retirement Fund only pursuant to the appropriation by the Assembly for such purpose. The Assembly intends to place in the Debt Retirement Fund through the budget and appropriation process the proceeds from the City's barge sale contract with Yutana Barge Lines, the earnings from the City's investments held by Dean Witter, and so much of the Principal of the Dean Witter investments as the Assembly shall deem necessary to meet principal and interest payment on the Port Authority Bonds.

CHAPTER 2 – ADMINISTRATIVE

ARTICLE 4 – LIBRARY

Section 2.410 Nenana Public Library

There shall be a public library in the Municipality to be called Nenana Public Library, operated, and owned by the Municipality.

Section 2.415 Librarian – Powers and Duties

The librarian shall be the director of the library department, responsible to the Mayor. The librarian shall be responsible for the operation of the library, including the control and supervision of its equipment, personnel, and the hours of operation. The librarian shall be responsible for the library department budget and shall submit a proper budget to the Mayor by March 1 for review and discussion and incorporation into an operation budget for the Municipality. The librarian will attend all library board meetings.

[Reviser's Note: Section 2.420 was amended by adoption of Ordinance 98-11 on June 11, 1998. This ordinance changed Senior High School student to high school student. This section was again amended by adoption of Ordinance 98-13 on November 12, 1998. This ordinance eliminates the student member and increases the at large member to six.]

Section 2.420 Library Board – Membership

The library board shall be a seven-member board. The membership shall be as follows:

- (a) Six members from the community at large, and one Assembly member.
- (b) All members shall be nominated by the Mayor, and all are confirmed by the Assembly.
- (c) Members of the library board shall serve until the time at which their term of appointment has expired. As the terms of service of the several members of this first library board shall expire, their respective successors shall be appointed as provided above for three years, and until their successors are appointed.
- (d) Membership is uncompensated; out of pocket expenses may be reimbursed at the discretion of the board and approval of the city administration within budgetary allowances.
- (e) The board shall provide for the acceptance of gifts, endowments, historical documents, and donations.
- (f) The board shall assist the librarian in making library acquisitions.

Section 4.425 Library Board – Powers and Duties

- (a) The library board of Nenana Public Library, organized under the ordinances of the city, is an advisory board. It may take recommendations to the librarian, the Mayor and the Assembly on any matters relating to the public library or to the library service for the city.
- (b) The library board shall adopt its own by-laws and elect officers as it deems necessary from its membership.
- (c) The duties of the board shall be:
 - (1) establishment of policy and procedures for the operation of the library, subject to assembly confirmation;
 - (2) establishment of a regular schedule of meetings;
 - (3) assist the librarian on the preparation and presentation of a proper budget to the Assembly;
 - (4) on or before August 15 of each year, submit to the Assembly a written report of proceedings of the board with reference to the library during the preceding fiscal year;
 - (5) make recommendations to the Mayor on the appointment of the library staff.

Section 2.430 Library Board Meetings

Minutes of board meetings shall be recorded and filed with the Municipal Clerk. Notification shall be publicly posted, and minutes of meetings shall be open to public inspection at the Clerk's office. Special meetings may be called with notification. Four members shall constitute a quorum to conduct business.

Section 2.435 Library Board – Vacancies

In the event of a vacancy on the library board caused by death, resignation, inability to serve, unexcused absences from three consecutive regular meetings or for any other reason before the expiration of the term of any member, the library board shall recommend and the Mayor shall appoint a person to fill such vacancy for the unexpired term, subject to confirmation by the Assembly.

Section 2.440 Use of Library – Prohibited for Certain Misconduct

The librarian may prohibit any person from the use of the Nenana Public Library who willfully or persistently violates any rule of regulation prescribed for operation of such library of whose physical condition is deemed dangerous or offensive to other persons. No person shall fail to leave the library when so ordered by the librarian or other person in charge of the library.

[Revisors Note: Section 2.445 was amended in full by Ordinance 2004-06.]

Section 2.445 Failure to Return Library Property – Additional Penalty

SECTION ONE

- (a) Any person who checks out library property, whether for themselves or another, is hereby presumed to be in possession of said property until said property is returned to the library. No person shall willfully retain possession of library property more than 30 days after being notified that such property is overdue. Notification will be sent to the person who checked out said property.
- (b) Any person who fails to return any library property within the 30 days of receipt of the notice provided herein is liable for the cost of replacing said property, and may, at the discretion of the library director, have his borrowing privileges revoked until said property is either returned or paid for. Any person who destroys or causes to be destroyed whether negligently or intentionally, any library property in his possession, is liable for the cost of replacing said property, and may, at the discretion of the library director, have his borrowing privileges revoked until said property is paid for.
- (c) Any person who is convicted of theft of library property is guilty of a misdemeanor and may be punished by a fine not to exceed one thousand dollars. A person commits theft of library property if the person obtains the property of the Nenana Public Library with the intent to appropriate said property to himself or to deprive the Nenana Public Library of said property.

Section 2.450 Violation

Action contrary to the previous two paragraphs shall constitute a violation of this Ordinance and is subject to prosecution.

CHAPTER 2 – ADMINISTRATION

ARTICLE 5 – PERSONNEL

[Reviser’s Note: Authority to regulate personnel matters derives for Charter Section 4.010. Limits on the Municipality’s authority are at AS 29.20.630. Other limits are imposed by State and Federal law relating to employment. This Chapter is mandated by Charter Section 4.010 (d)]

[Reviser’s Note: Chapter 2, Article 5 of the Code of Ordinances consisting of sections 2.505 through 2.580, and all regulations, rules, policies, and procedures adopted under authority thereof, were repealed and new Chapter 2, Administration, Article 5, Personnel, consisting of sections 2.510.0 through 2.591.0 is hereby enacted with adoption of Ordinance 95-02 on 8/10/95]

Subchapters:

- 2.51 Definitions and Miscellaneous Provisions
- 2.52 Scope and Status of Employees
- 2.53 Organization and Delegation of Authority
- 2.54 Position Classification
- 2.55 Salary and Benefits
- 2.56 Recruitment, Selection, and Performance Evaluation
- 2.57 Termination and Grievance Procedures
- 2.58 Leave and Holiday with Pay
- 2.59 Alcohol and Drug Use

Subchapter 2.51 – DEFINITIONS AND MISCELLANEOUS PROVISIONS

Sections:

- 2.510.0 Definitions
- 2.510.5 No Right to Strike
- 2.511.0 Rejection of Public Employment Relations Act

Section 2.510.0 Definitions

In this article:

- (a) “Full-time” employee means an employee who is normally scheduled to work 40 hours each week.
- (b) “Part-time” employee means an employee whom is normally scheduled to work less than 40 hours each week.
- (c) “Permanent” employee means an employee whose term of employment is indefinite.
- (d) “Probationary” employee shall have the meaning specified in Section 2.530.0
- (e) “Temporary” employee means and employee who is hired with the expectation that his/her term of employment will continue only for

duration of the City's temporary need for an additional employee. The expected length of a temporary employee's employment may be uncertain at the date of hire but will normally be significantly less than the duration of employment of a term of permanent employee.

- (f) "Term permanent" employee means an employee who is employed to perform work for the duration of a particular project conducted by the city which will continue over a substantial length of time. An engineer hired to serve as project manager for the construction of a sewage treatment system for a city is an example of a term employment employee.
- (g) "Volunteer" means a person other than a member of a municipal bond authority or commission who performs services for the city on a volunteer basis, without compensation, or who receives only reimbursement for expenses, reasonable benefits, a nominal fee, or any combination thereof.

Section 2.510.5 No Right to Strike

No City employee shall have the right to strike. A strike is defined as a concerted failure to report for duty, a willful absence from work, a stoppage of work, or an abstinence from the full and proper performance of duties for the purpose of inducing or coercing a change in working conditions or compensation. The term strike includes any refusal to perform regular duties while other city employees, or any other persons, are engaged in picketing or any other work stoppage, slowdown, or refusal.

Section 2.511.0 Rejection of Public Employment Relations Act

Under authority of Section 4, Chapter 113, SLA 1972, the Municipality of Nenana rejects application of the Public Employment Relations Act, which is codified at AD 23.40.070, et. Seq.

Subchapter 2.52 – SCOPE AND STATUS OF EMPLOYEES

Sections:

- 2.520.0 Scope
- 2.520.5 Purpose
- 2.521.0 Appointment of Employees
- 2.521.5 Tenure and Termination of Employees
- 2.522.0 Suspension, Demotion, and Discipline
- 2.522.5 Promotion or Reassignment
- 2.523.0 Probationary Period
- 2.523.5 Term Permanent Employee
- 2.524.5 Residence Within the City Limits
- 2.525.0 Volunteers
- 2.525.5 Incorporation into Employment Contract
- 2.526.0 Availability

Section 2.520.0 Scope

- (a) This article applies to full-time and part-time employees of the city.
- (b) This article does not apply to the following, except as otherwise specifically provided.
 - (1) elected officials/city administrator
 - (2) members of the city boards, commissions and authorities;
 - (3) all persons who perform services for the city as volunteers;
 - (4) elected and appointed officials and employees of the Nenana City Public School District;
 - (5) persons employed by the city under a grant to the extent of any inconsistency between the grant agreement and this article;
 - (6) the city attorney and other persons hired on a contractual basis to perform services for the city.

Section 2.520.5 Purpose

It is the purpose of this article to fulfill the assembly's duty under Section 4.010 (d) of the Municipal Charter to adopt a personnel ordinance.

Section 2.521.0 Appointment of Employees

- (a) Except as otherwise provided by ordinance, the Mayor shall appoint all employees. The city administrator, city clerk, and department heads shall not take office until the Mayor's appointment is confirmed by the assembly. If the assembly declines to confirm the Mayor's appointee, the Mayor shall appoint another person for the assembly's consideration. This process shall continue until the assembly confirms a person appointed by the Mayor. The assembly may not confirm any person as city administrator, city clerk, or a department head unless that person has first been appointed by the Mayor.
- (b) In selecting a person to be appointed to municipal employment, the Mayor may consider and factor he/she deems relevant. The Mayor shall appoint the person whose appointment will, in the Mayor's discretion, be in the best interest of the city.
- (c) The Mayor may not delegate authority for appointment for any city employee.
- (d) No person has a property right in receiving an appointment to city service.

Section 2.521.5 Tenure and Termination of Employees

- (a) Except as otherwise provided in Section 2.523.0, Probationary Period, all city employees can be terminated only for just cause. An employee may be terminated by the Mayor.
- (b) "Just cause" shall mean:
 - (1) failure to comply with generally accepted standards of morality, ethics, decency, or manner performing work to an extent that the failure materially impairs the employee's work performance, the efficiency of the city service, or the reputation of the city; or
 - (2) intentional or negligent damage, destruction, or loss of municipal property; or
 - (3) theft of municipal property; or
 - (4) incompetence, inefficiency, misfeasance, malfeasance, or negligence in the performance of duty; or
 - (5) insubordination, or inability to work in cooperation with other employees of supervisors; or
 - (6) conviction of a felony, or conviction of a misdemeanor involving moral turpitude; or
 - (7) notoriously disgraceful personal conduct which materially impairs the employee's work performance, the efficiency of the city service, or the reputation of the city; or
 - (8) unauthorized absence, repeated tardiness, or abuse of leave; or
 - (9) acceptance of any valuable consideration which the employee has reason to believe was given with the expectation of influencing the employee in the performance of his or her official duties; or
 - (10) Falsification of records; or
 - (11) use of an employee's official position for the employee's personal advantage, or for the improper advantage of any person; or
 - (12) violation of any of the prohibitions or requirements concerning the use of drugs, including alcohol and marijuana contained in Section 2.519.0; or
 - (13) performing any act or omission which materially impairs the employee's work performance, the efficiency of the city service, or the reputation of the city; or
 - (14) reduction in force.
- (c) "Reduction in Force" shall mean a reduction in the number of city employees, or the elimination of one or more positions from the city service, or the change of one or more positions from full-time to part-time status, or the change of one or more positions from permanent status to temporary or term permanent status, for an economic reason. Economic reasons include but are not limited to the following:
 - (1) reduction in the budget or appropriations of the city, or of that portion of the budget or appropriations of the city, which

- (2) applies to a particular position. Determination of the amount of the city's budget, appropriations, or any part thereof is a legislative decision committed to the absolute discretion of the city assembly, which can reduce the amount of the budget, appropriations, or any part thereof for any reason or for no reason.
- (3) Lack of work which the person is needed to perform. Assignment of the workload and distribution of tasks among city employees is an administrative decision committed to the absolute discretion of the Mayor. The Mayor can distribute tasks and workload among city employees in any manner which he/she deems necessary and may change the manner of distribution for any reason or for no reason.
- (4) Any other reason based on economic factors.
- (d) An employee shall be terminated for just cause using the procedure contained in Sections 2.570.0 – 2.572.0. An employee may voluntarily terminate employment with the city by giving written notice of termination to the mayor two weeks prior to the effective date of the termination.
- (e) The grievance procedures contained in Sections 2.572.5 – 2.578.5 do not apply to the termination of an employee's employment with the city. Section 2.522.0 (d) does apply.

[Revisor's Note: Section 2.521.5 subsection (b)(14) violation of the requirements to reside within the city limits as provided in Section 2.524.5; or was removed from the code in accordance with Ordinance 2023-07 adopted 10/10/2023.]

Section 2.522.0 Suspension, Demotion, and Discipline

- (a) Except as otherwise provided in Section 2.523.0, Probationary Period, an employee may be suspended without pay, demoted, or otherwise disciplined only for just cause. "Just cause" shall have the same meaning as contained in Section 2.521.5. The appointing authority may apply any other level of discipline which is commensurate with the severity of the offense under the facts of each particular case.
- (b) The Mayor cannot delegate authority to suspend without pay to demote an employee. The mayor can delegate authority to take other disciplinary action against an employee to the city administrator, or a department head.
- (c) The termination procedures contained in Sections 2.570.0 – 2.572.0 shall be utilized for all suspensions without pay, demotions, and other disciplinary actions which deny any employee the right to receive money, or any other property right protected by the state or federal constitutions. The grievance procedures are contained in Sections 2.572.5 – 2.575.5.

Section 2.522.5 Promotion of Reassignment

- (a) Except as otherwise provided by ordinance, the Mayor may promote or reassign any employee to any position if he determines that such action will enhance the efficiency of productivity of the city service. In making a promotion or reassignment decision, the Mayor may consider a relevant factor.
- (b) The Mayor can delegate promotion or reassignment authority to the City Administrator of a department head. The grievance procedures contained in Sections 2.572.5 – 2.578.5 apply to promotion or reassignment decisions.
- (c) No municipal employee has a property right in being promoted or reassigned within the city service or in being considered for promotion or reassignment to any particular position.

Section 2.523.0 Probationary Period

Every person appointed to a position in the city service, either as a new employee or as a result of reassignment, promotion, demotion reduction in force, or other reason shall serve a probationary period of 90 days following the date of appointment. The Mayor may extend the probationary period for an additional 90 days where an employee would otherwise be removed. During the probationary period, the employee is an at will employee and can be terminated or otherwise disciplined for any reason or for no reason. A probationary employee may be terminated or otherwise disciplined using a procedure consistent with due process. The termination and grievance procedures contained in Section 2.570.0 – 2.578.5 do not apply to the probationary employees. Upon completion of the probationary period, the employee shall attain the status of permanent or term permanent employee, as the case may be.

Section 2.523.5 Term Permanent Employees

A term permanent employee shall be treated for all purposes as a permanent employee, except that a term permanent employee's employment automatically terminates upon the expiration of the term for which the employee was hired.

Section 2.524.0 Residence Within the City Limits

[Revisor's Note: Every person appointed to a full-time permanent position after the effective date of this ordinance shall maintain his/her principal place of residence and shall actually reside within the city limits of the Municipality of Nenana at all times during the person's employment by the city. Each appointee shall have 120 days after the date of appointment in which to locate and obtain housing within the city limits. Any appointee who has not located his principal place of residence and commenced residing within the city limits within 120 days after appointment shall be in violation of this section. Violation shall constitute just cause for terminating an employee. [2.521.5 (b)(12)] was removed in accordance with Ordinance 2023-07 adopted on 10/10/2023.]

Section 2.520.0 Volunteers

Volunteers are not municipal employees, and volunteers do not have a property right in obtaining or retaining the status of volunteer with the city, or any incident or aspect thereof. The Mayor may appoint, terminate, suspend, demote, discipline, promote, and reassign volunteers for any reason or for no reason, and using any procedure. A volunteer may be terminated from volunteer status without notice and is not entitled to two weeks pay in lieu of notice. The Mayor may delegate to the city administrator of a department head, authority to take any action authorized in this section, with respect to a volunteer. Volunteers shall not be authorized to utilize the termination or grievance procedures contained in Section 2.570.0 – 2.578.5 for purpose.

Section 2.526.0 Availability

The city administrator shall provide a copy of this article to each city employee upon its adoption, and to each newly hired city employee. The city administrator shall also provide a copy of the applicable provisions of this article to any volunteer who will perform services for the city on a regular or continuing basis. Failure to provide a copy to an employee or volunteer shall not invalidate this article as to that employee or volunteer.

Subchapter 2.53 – Organization and Delegation of Authority

Sections:

- 2.530.0 Responsibility and Authority of Assembly
- 2.530.5 Authority and Responsibility of Mayor
- 2.531.0 Authority and Responsibility of City Administrator
- 2.531.5 Responsibility of City Employees

Section 2.530.0 Responsibility and Authority of Assembly

The city assembly shall have responsibility and authority regarding personnel matters, in areas which are not assigned by the Municipal Charter to the Mayor or to any other person or instrumentality, including, but not limited to, the following:

- (a) approve the city's budget including requests for personnel management funds;
- (b) approve the Mayor's appointment of the city clerk', city attorney, department heads, city administrator, and other officials requiring confirmation under the Charter;
- (c) enact amendments to the personnel ordinance;
- (d) define the power of the Mayor as provided by the Charter;
- (e) create and abolish municipal departments;
- (f) create additional offices, including legal counsel and other professional advisors and staff.

Section 2.530.5 Authority and Responsibility of the Mayor

The mayor shall have the responsibility and authority to:

- (a) implement and administer this article;
- (b) develop and adopt personnel regulations, policies, procedures and work rules which are required for the efficient and effective implementation of this article;
- (c) provide for the establishment and maintenance records of all employees in the city service;
- (d) serve as personnel officer;
- (e) appoint, suspend, discipline, promote, and reassign employees, subject to limitations imposed by ordinance;
- (f) remove all city employees, subject to limitations imposed by ordinance;
- (g) prepare and adopt such forms and reports as may be necessary to carry out the city's personnel program;
- (h) except as otherwise provided, delegate any of his/her duties to the city administrator.
- (i) shall assume the duties of city administrator when the position of city administrator is vacant or when the city administrator is absent.

[Revisor's Note: added (i) to Chapter 2 Article 5 Section 2530.5 in accordance with Ordinance 2023-08 adopted 10/10/2023.]

Section 2.531.0 Authority and Responsibility of City Administrator

The city administrator shall have the responsibility and authority to:

- (a) supervise city employees on a daily basis;
- (b) keep city employees informed of current personnel policies and procedures;
- (c) participate in the grievance procedures established by this chapter;
- (d) impose disciplinary measure, except termination, suspension and demotion;
- (e) conduct orientation for all new employees;
- (f) evaluate employee performance;
- (g) make recommendations to the Mayor regarding the appointment, suspension, removal, discipline, reassignment, or promotion of city employees;
- (h) make recommendations to the Mayor regarding personnel regulations, policies, procedures and work rules which are required for the efficient and effective implementation of this article;
- (i) provide each new employee with a copy of this article and other applicable personnel regulations, policies, procedures, and work rules;
- (j) provide each new volunteer who will provide services to the city on a regular and continuing basis with the applicable provisions of this

- article and other personnel regulations, policies, procedures, and work rules;
- (k) place the mailing address supplied by each employee, in each employee's personnel file.

Section 2.532.5 Responsibility of City Employees

Every city employee shall:

- (a) read this article and all applicable personnel regulations, policies, procedures, and work rules, and ask the city administrator to explain any provision which the employee does not understand;
- (b) request clarification from the city administrator of any questions relating to the interpretation or application of this article and all applicable personnel regulations, policies, procedures and work rules;
- (c) understand the function of the department to which he/she is assigned and how that function relates to the total mission of the city all of its departments;
- (d) request clarification from the city administrator of any doubts or misunderstandings regarding the function of the employee's department as provided in subparagraph 3
- (e) bring to the attention of the city administrator any change in duties as described in the position described given to the employee at hiring;
- (f) submit in writing recommendations or comments concerning this chapter and any applicable personnel regulations, policies, procedures, and work rules to the city administrator;
- (g) deliver to the city administrator in writing a statement of the employee's mailing address immediately upon appointment to the city service, and not later than five days after any change of mailing address becomes effective. This subsection applies to all employees.
- (h) Shall acknowledge in writing receipt of an understanding of this article and all other applicable personnel regulations, policies, procedures, and work rules.

Subchapter 2.54 – Position Classification

Sections:

- 2.540.0 Classification Plan
- 2.540.5 Position Descriptions
- 2.541.0 Development and Administration

Section 2.540.0 Classification Plan

The classification plan is the grouping of employee positions into classes, in which all of the positions have similar duties and responsibilities. Each class in the classification plan shall be designed with a descriptive title and defined by a position description. "Secretary" and "police officer" are examples of classes.

Section 2.540.5 Position Description

Position description are written descriptions of the duties and responsibilities of each class. These descriptions shall include a class title, a general statement of duties and responsibilities, a typical example of duties performed and minimum qualifications for entrance into a class. Applicable special requirements, such as licensing or certification, shall be included. Any employee may be required to perform additional duties or responsibilities not contained in the position's description.

Section 2.541.0 Development and Administration

- (a) The Mayor shall have authority and responsibility for the overall administration of the classification plan. In administering the plan, the Mayor shall:
 - (1) analyze and evaluate the duties, responsibilities and qualifications required of each position, prepare position description for each position, and allocate each position to the appropriate class;
 - (2) review the position descriptions and classification plan when the Mayor determines in his description, that such review is necessary for the effective implementation of this article;
 - (3) develop a position description for each proposed of newly created position, and classify the position within the classification plan;
 - (4) revise the classification plan and all affected position descriptions as necessary to implement and reorganization of all the part of the city's administrative structure;
- (b) all revisions of the classification plan or any position description shall become effective on the first day of the pay period following the final action by the Mayor;
- (c) The Mayor may delegate all of part of his authority and responsibility under this section to the city administrator.

Subchapter 2.55 – Salary and Benefits

Section:

- 2.550.0 Determination of Salaries
- 2.550.5 Compensation During Temporary Assignment
- 2.551.0 Hours of Work
- 2.551.5 Overtime - Exemptions
- 2.552.0 Payment of Overtime
- 2.552.5 Overtime – Approval
- 2.553.0 Overtime – Method of Payment
- 2.556.0 Retirement
- 2.556.5 Insurance Benefits

Section 2.550.0 Determination of Salaries

- (a) The Mayor shall determine the salary rate of pay to be paid to every city employee based on an assembly adopted salary scale. No salary or other compensation can be paid to an employee unless lawfully appropriated funds are available for that purpose.
- (b) In setting the salary or rate of pay for each employee, the Mayor may consider any factor which he/she deems to be relevant
- (c) No employee shall have a right to receive an increase in salary or rate of pay, or to receive any particular salary or rate of pay. No employee has a right to receive the same salary or rate of pay as other employees in the same classification.
- (d) The Mayor shall establish the date on which a change in an employee's salary or rate of pay shall become effective
- (e) The termination and grievance procedures contained in Sections 2.570.0 – 2.578.5 shall not apply to a decision of the Mayor concerning the salary of the employee.

Section 2.550.5 Compensation During Temporary Assignment

When an employee is temporarily assigned to perform the duties of a different job classification, the employee shall receive the rate of pay assigned to that job classification as appropriate to their classification on the salary scale.

Section 2.551.0 Hours of Work

- (a) Regular work hours of city employees shall consist of a five-day week, eight hours per day, forty hours per week. The standard workweek shall consist of the period from 12:00 a.m. Sunday to the following Saturday at 11:59 p.m. The standard workday shall consist of the period from midnight to midnight.
- (b) Work schedules may be established and altered by the city administrator with the approval of the Mayor.

Section 2.551.5 Overtime – Exemptions

The following city employees are not entitled to receive overtime pay:

- (a) City administrator, city clerk, department heads, and all other employees who are exempt from the requirement to pay overtime under state and federal law.
- (b) Employees involved in law enforcement activities provided that:
 - (1) The City employs not more than 4 persons involved in law enforcement activities including the Chief of Police, in any given week; and

- (2) An individual law enforcement employee spends not more than 20% of his duty time in any given week performing duties which are not related to law enforcement.
- (c) In calculating the number of employees involved in fire protection activities, emergency medical services personnel shall be induced, if
 - (1) they have received training in the rescue of injured persons at fire and accident scenes; and
 - (2) They are regularly dispatched to fire and accident scenes.Emergency medical service employees who do not meet these tests are not engaged in fire protection activities and are not exempt from the payment of overtime.
- (d) In calculating the number of employees engaged in law enforcement or fire protection activities, the following persons are not counted:
 - (1) volunteers; and
 - (2) city employees whose regular duties do not include law enforcement but who volunteer to perform such services in addition to their regular paid employment by the city.

Section 2.552.0 Payment of Overtime

- (a) The city shall pay overtime to any employee who is not exempt under Section 2.5415. Overtime shall be paid at one and one-half times to employee's regular rate of pay for every hour in excess of 40 hours which the employee works in any workweek.
- (b) The City shall not pay overtime for hours worked in excess of 8 hours in any one day, or for hours worked on a Saturday, Sunday, or holiday, so long as the employee does not work more than 40 hours in any workweek.
- (c) In calculating the number of hours worked by an employee, hours during which the employee is "on call" shall be counted and compensable hours if;
 - (1) The employee is not required to remain on or very near the city's premises, even though the employee is required to leave a telephone number where he/she can be contacted or to carry a beeper; and
 - (2) The employee can reasonably use the "on call" time effectively for his own purpose.

Section 2.552.5 Overtime – Approval

No employee may work overtime unless permission has been obtained from the Mayor, city administrator or department head.

Section 2.553.0 Overtime – Method of Payment

The city shall pay overtime in money unless payment by compensatory time off is

authorized by prior approval of the Mayor, city administrator or department head and agreed to by the employee. Compensatory time is discouraged but when used will comply with the rules of Fair Labor Standards.

Section 2.556.0 Retirement

The city is a member of the Public Employees' Retirement System operated by the State of Alaska. All employees who are eligible under the City's agreement with the Public Employees' Retirement System are required to participate in this retirement system. All permanent, full-time employees, having completed probationary 120 days, are required to participate in the retirement system only if they are eligible to participate under state law and regulations.

Section 2.556.5 Insurance Benefits

The city may offer group insurance programs. All permanent employees who have completed his or her probationary period and who are eligible under the terms of each program may participate in that program. Temporary employees and volunteers shall not be entitled to participate in the insurance programs.

[Revisor's Note: Chapter 2 Article 5 Section 2.556.5 "The city maintains group insurance programs. All employees who are eligible under the terms of each program shall participate in that program. Temporary and part-time employees shall be permitted to participate in an insurance program only if they are eligible to participate under the terms of that program and pay the premium. Volunteers shall not be entitled to participate in the insurance programs." was amended in accordance with Ordinance 2023-09 adopted on 10/10/2023.]

Subchapter 2.56 – Recruitment, Selection, and Performance Evaluations

Sections:

- 2.560.0 Recruitment Method
- 2.560.5 Job Announcement and Publicity
- 2.561.0 Application Form
- 2.561.5 Selection Devices
- 2.562.5 Method of Rating
- 2.562.0 Rejection of Applicants
- 2.563.5 Confidentiality
- 2.564.0 Rejection of Applicants
- 2.564.5 Purpose of Performance Evaluation
- 2.565.0 Administration of Performance Evaluation
- 2.565.5 Periods of Evaluation
- 2.566.0 Evaluator and Form of Evaluation
- 2.566.5 Review of Performance Evaluation

Section 2.560.0 Recruitment Method

As necessary, the Mayor shall conduct a recruitment program designed to meet current and projected employee manpower needs. Recruitment will be tailored to the various classes of positions to be filled and may be directed to all sources likely to yield qualified candidates.

Section 2.560.5 Job Announcements and Publicity

In order to attract an adequate number of candidates for presents or anticipated vacancies and to permit successful competition with other employers, the Mayor shall issue job announcements and otherwise publicize vacancies to the public. Job announcements may be published in the Fairbanks Daily News-Miner and/or in such other publications as the Mayor deems necessary. Job announcements shall be clear and readable, and shall include the job title, salary range, job qualification requirements, statements of compliance with Title 1 of the Americans with Disabilities Act (ADA) and Equal Opportunity Employer Regulations, and application procedures. Publicity for job vacancies shall be conducted for a sufficient period of time to ensure reasonable opportunity for persons to apply and be considered for employment. The Mayor may also initiate continuous recruitment programs, as appropriate. All job announcements for permanent appointments shall be posted in three prominent places including the city offices. The Mayor shall post on the city's web page and may post on other social media as he/she deems appropriate. The Mayor may waive, until the next regular scheduled assembly meeting, the requirements of this section in order to meet a bona fide emergency situation.

[Revisor's Note: Chapter 2 Article 5 Section 2.560.5 was amended to remove shall from this sentence to replace it with may and /or was added. Job announcements shall be published in the Fairbanks Daily News-Miner and in such other publications as the Mayor deems necessary. The sentence The Mayor shall post on the city's web page and may post on other social media as he/she deems appropriate. was added. All changes were made in accordance with ordinance 2023-10 adopted on 10/10/2023.]

Section 2.561.0 Application Form

All applications for employment shall be made on forms prescribed by the city administrator. Such forms shall require background information including training, experience, and other pertinent information.

Section 2.561.5 Physical Examination

- (a) During the employee's 90 days probationary period, the Mayor shall require all full-time permanent employees to undergo physical examination at the City's expense.
- (b) The Mayor may require any employee he/she deems appropriate to undergo a physical examination which may include a drug test

- (c) The Mayor shall require each applicant who is selected for appointment to the position of emergency response employee, as defined in Section 2.5905. to submit to a drug test as provided in Sections 2.5900 – 2.5960

Section 2.562.0 Selection Devices

The Mayor shall determine the selection device or devices to be used in evaluating applicants for a position, if any. The Mayor may use any selection device pertinent to the position requirements he/she deems in the best interest of the city so long as such devices are not in conflict with the regulations concerning discrimination. Non-inclusive examples of such selection devices include work samples, performance tests, practical written tests, individual physical examinations, background, and reference inquiries, evaluation of training and experience.

Section 2.562.5 Method of Rating

The Mayor shall determine the method to be used in rating applications, and the minimum scores, which must be achieved on selection devices, if any.

Section 2.563.0 Rejection of Applicants

The Mayor may reject an applicant for any reason he determines to be adequate so long as such reason is not in conflict with the regulations concerning discrimination. The Mayor shall reject an applicant for an emergency response employee or volunteer position, if the applicant tests positive on the drug test required under sections 2.590.0 – 2.596.0.

Section 2.564.0 Application by City Employees.

City employees may apply for any vacancy in the city service in the same manner as non-city employees. City employees are not entitled to priority consideration for vacancies in the city service.

Section 2.564.5 Purpose of Performance Evaluations.

- (a) The purposes of the employee performance evaluation programs are:
 - (1) to enhance communication between supervisors and subordinates; and
 - (2) to assist employees in improving their performance
- (b) The Mayor may, but is not required to, consider performance evaluations as one factor in making any decision relating to termination, suspension, demotion, or other discipline of an employee.
- (c) Completion of performance evaluations in accordance with this article is not a prerequisite for taking any disciplinary or other such

- personnel action affecting any employee under this article. Such actions may be taken whether or not the performance evaluation program has been complied with in relation to a particular employee.
- (d) The contents of performance evaluations shall not alter or amend any of the terms or conditions of an employee's employment.

Section 2.565.0 Administration of Performance Evaluations

The Mayor shall be responsible for overall administration of the employee performance evaluation program. The city administrator shall advise and assist employees, rating officers and reviewing officers in handling performance evaluation procedures in accordance with the provisions of the article.

Section 2.565.5 Periods of Evaluation

Each employee shall have his performance evaluated at the following times:

- (a) An employee shall receive a performance evaluation at the end of his/her probationary period;
- (b) Each employee shall receive an annual performance evaluation on his/her anniversary date of hire;
- (c) A special performance evaluation shall be completed whenever:
 - (1) there is significant change either upward or downward in the employee's performance; or
 - (2) a supervisor permanently leaves his position. The supervisor shall complete a performance evaluation on each employee under his supervision who has not been evaluated within six months prior to the date on which the supervisor will leave his position.

Section 2.566.0 Evaluator and Form Evaluation

- (a) The rating officer shall be the employee's immediate supervisor. The rating officer for the city administrator and city clerk is the Mayor. The rating officer shall be responsible for completing a performance evaluation at the time prescribed for each employee under his supervision.
- (b) The reviewing officer shall be the rating officer's immediate supervisor. The reviewing officer shall review the performance evaluation report completed by each rating officer under his supervision before the report is discussed with the employee. The reviewing officer may consider the performance evaluations completed by the rating officer when evaluating the rating officer's performance. If the city administrator is the rating officer, the Mayor shall be the reviewing officer. There shall be no reviewing officer for the city administrator and city clerk.

- (c) The city administrator shall develop a form to be used for performance evaluations. If the employee's performance is satisfactory, the form may be simple statement to that effect. The form shall provide a method for explaining superior and unsatisfactory performance. The form shall also permit the rating officer to comment on steps that the employee must take to remedy unsatisfactory performance. There shall also be a space for the employees' comments.

Section 2.566.5 Review of Performance Evaluation.

The rating officer shall discuss the performance evaluation with the employee prior to filing the evaluation in the employee's personnel file. After the discussion, the employee shall sign the performance evaluation. The employee's signature certifies only that the employee has received a copy of the evaluation and has had an opportunity to discuss it with the rating officer. If the employee refuses to sign the evaluation, the rating officer shall note that fact on the evaluation form.

Subchapter 2.57 – Termination and Grievance Procedures

Sections:

- 2.570.0 Purpose of Termination Procedure
- 2.570.5 Applicability of Termination Procedure
- 2.571.0 Step One – Notice of Intent to Terminate or Take Other Disciplinary Action
- 2.571.5 Step Two – Pre-termination Hearing
- 2.572.0 Step Three – Post Termination Hearing
- 2.573.0 Responsibility of Mayor and City Administrator
- 2.573.5 Definition of a Grievance Procedure
- 2.574.0 Application of the Grievance Procedure
- 2.274.5 Step 1 – Discussion with Immediate Supervisor
- 2.575.0 Step 2 – Discussion with Department Head
- 2.575.5 Step 3 – Discussion with City Administrator
- 2.576.0 Step 4 – Presentation to Mayor
- 2.576.5 Representation
- 2.577.0 Exclusive Administrative Remedy
- 2.577.0 Extension of Time Limits

Section 2.570.0 Purpose of Termination Procedure

The purpose of the termination procedures contained in Sections 2.570.0 – 2.572.0 is to provide employees with the due process to which they are entitled under the state and federal constitutions.

Sections 2.570.5 Applicability of Termination Procedure

The termination procedure applies to termination, suspension without pay, or

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demotion of an employee, and to any action which denies an employee the right to receive money, or any other property protected under the state or federal constitution, if this article provides that they city must have just cause to take such action. The termination procedure does not apply to constitutionally protected property rights, even if such action can only be taken for just cause. The grievance procedure applies to disciplinary actions that do not adversely affect the employee to the extent that a constitutionally protected property right is injured. Non-inclusive examples of such disciplinary actions are warnings and written reprimands.

Section 2.571.0 Step One – Notice of Intent to Terminate or Take Other Disciplinary Action

- (a) The Mayor may terminate an employee to whom this termination procedure applies, or take other disciplinary action to which this termination procedure applies against such employee; if the Mayor determines that just cause exists for taking said action. The action taken shall be commensurate with the severity of the employee's conduct, based on all the facts and circumstances of the particular case.
- (b) Prior to the time that the Mayor terminates any employee for any reason, the Mayor must consult with council and council must review the grounds and sufficiency of grounds. Council shall provide a copy of his review in writing that will be placed in the employee's file.
- (c) Prior to terminating or otherwise disciplining an employee, the Mayor shall deliver to the employee a written notice of intent to terminate or take other disciplinary action. The notice of intent shall explain the proposed action and whether with or without pay and the reason therefor, and shall state the effective date of termination or discipline which shall be not sooner than 5 p.m. of the fifth working day following the date of delivery of the notice to the employee. The notice shall identify all persons upon whose statements the Mayor intends to rely. The notice shall inform the employee of his/her right to request a pre-termination hearing.
- (d) The termination or other disciplinary action specified in the notice of intent shall become effective upon the date stated in the notice, unless on or before said date the employee delivers a written request for a pre-termination hearing to the Mayor. Delivery of the written request to the city clerk, city administrator, or employee's department head shall constitute delivery to the Mayor.
- (e) If the Mayor determines that the employee's continue presence on duty would significantly impair the efficiency or productivity of the city service or the reputation of the city, the Mayor may suspend the employee immediately with or without pay until the termination or other disciplinary action becomes effective. The Mayor shall notify the employee in writing of the suspension and may use the notice of intent for this purpose.
- (f) The date of delivery to an employee shall be the date on which the notice is placed in the U.S. mail, certified, return receipt requested,

addressed to the mailing address contained in the employee's personnel file. The date of delivery to the Mayor shall be the date on which the notice is personally delivered to the Mayor or any other official authorized to receive the notice, or the date on which the notice is placed in the U.S. mail, certified, return receipt requested, addressed to the Mayor or other authorized official at the city offices. If notice is given by mail, three days shall be added to all time periods which refer to that notice.

Section 2.571.5 Step Two – Pre-Termination Hearing.

- (a) If the employee requests a pre-termination hearing, the Mayor shall schedule such a hearing at a date not sooner than five working days nor later than 15 working days after the date on which the employee delivers his written request for hearing to the Mayor. The Mayor shall schedule the hearing at a time that provides both the employee and the city a reasonable time to prepare for the hearing without unreasonably disrupting the operations of the city.
- (b) The mayor shall serve as hearing officer. At the hearing, both the employee and the city shall have the right to call witnesses, to present evidence, to cross-examine, and to be represented by any person.
- (c) After conclusion of the hearing the Mayor shall determine by a preponderance of the evidence whether just cause to terminate or to otherwise discipline the employee exists. If just cause exists, the Mayor shall impose a level of discipline which is commensurate with the actions of the employee under all the facts and circumstances of the particular case. If just cause for discipline does not exist, the Mayor shall not impose discipline and shall reinstate the employee if he/she has been suspended. If suspension was without pay, pay shall be retroactive to date of suspension. The Mayor shall deliver his/her written decision containing the reasons therefore to the employee. The decision shall notify the employee of his/her right to request a post termination hearing. The effective date of the Mayor's action shall be the date specified in his/her written decision and if no such date is specified it shall be the close of business on the date the Mayor signs the decision.

Section 2.572.0 Step 3 – Post Termination Hearing.

- (a) An employee who has been terminated or otherwise disciplined by the Mayor in accordance with Section 2.561.5 may request a post termination hearing before the city assembly by delivering a written request therefore to the city clerk not later than ten days after the date on which the Mayor delivered his/her written decision to the employee. The post termination hearing shall be conducted at a regular or special meeting of the city assembly held not less than ten

working days nor more than 15 working days after the date on which the employee delivers his/her request to the city clerk. The post termination hearing shall be scheduled at such time as will allow both the city and the employee a reasonable time to prepare for the hearing.

- (b) The city assembly shall serve as the hearing officer. The Mayor shall take no part in the discussion, deliberation, or decision of the city assembly. The Mayor may however, testify as a witness at the hearing. The city assembly shall consider that matter de novo and not on the record made at the pre-termination hearing.
- (c) At the hearing, both the employee and the city shall have the right to call witnesses to present evidence, to cross-examine witnesses, and to be represented by any person.
- (d) After conclusion of the hearing, the city assembly shall determine by preponderance of the evidence whether just cause exists to terminate or otherwise discipline the employee. If the assembly determines that just cause exists, the city assembly shall impose a level of discipline which is commensurate with the employee's conduct considering all the facts and circumstances of the particular case. If the assembly determines that just cause exists, the assembly can affirm the action taken by the Mayor or impose a greater or lesser level of discipline than that imposed by the Mayor. If the assembly determines that just cause does not exist, the assembly shall reinstate the employee. The city assembly shall adopt a written decision stating the reasons therefore and shall deliver a copy to the employee. The assembly's action shall be effective on the date the written decision is adopted by the assembly, and the written decision shall constitute final administrative action on the matter by the city.
- (e) The date of delivery to an employee shall be the date on which the notice is personally delivered to the employee, or the date on which the notice is placed in the U.S. mail, certified, return receipt requested, addressed to the mailing address contained in the employee's personnel file. The date of delivery to the city clerk shall be the date on which the notice is personally delivered to the clerk, or the date on which the notice is placed in the U.S. mail, certified, return receipt requested, addressed to the clerk at the city offices. If notice is given by mail, three working days shall be added to all time periods that refer to that notice.

Section 2.572.5 Purpose of Grievance Procedure

The purpose of the grievance procedure is to provide employees an opportunity to comment on a limited class of decisions that affect their employment to which the grievance procedure applies.

Section 2.573.0 Responsibility of Mayor and City Administrator

The Mayor shall have overall responsibility for administering the grievance procedure. The city administrator shall supervise the operation of the grievance procedure on a daily basis.

Section 2.573.5 Definition of a Grievance

A grievance is a written complaint by an employee alleging a violation of a section or sections of this article to which the grievance procedure applies.

Section 2.574.0 Application of the Grievance Procedure

- (a) The grievance procedure shall not apply to the following:
 - (1) a decision by any person concerning the salary of an employee;
 - (2) a decision by a person concerning the appointment of any person to city employment;
 - (3) any action which is made mandatory by any section of this article;
 - (4) any action to which the termination procedure applies;
 - (5) any section of this article which provides that the grievance procedure shall not apply.
- (b) Volunteers may not utilize the grievance procedure for any purpose.
- (c) The grievance procedure applies to all other sections of this article.

Section 2.574.5 Step One – Discussion with Immediate Supervisor

Not later than five working days after the occurrence of the event that gives rise to the grievance, an aggrieved employee may present his grievance in writing and discuss it with his immediate supervisor. The grievance shall set forth in detail the circumstances that entitle the employee to relief. The supervisor shall give a written reply within three working days after the date of presentation of the grievance. If the grievance is not settled, the employee may proceed to Step two.

Section 2.575.0 Step Two – Discussion with Department Head.

Not later than three working days after receiving the department head's reply under Step two, the aggrieved employee may present his/her grievance to the city administrator in the same manner as provided in Step one. The city administrator shall meet with the employee and shall reply in writing to the grievance within five working days after the date the city administrator received the grievance. If the grievance is not settled, the employee may proceed to Step three.

Section 2.575.5 Step Three – Discussion with City Administrator

Not later than three working days after receiving the department head's reply under Step two, the aggrieved employee may present his/her grievance to the city administrator in the same manner as provided in Step one. The city administrator shall meet with the employee and shall reply in writing to the grievance within five working days after the date the city administrator received the grievance. If the grievance is not settled, the employee may proceed to Step four.

Section 2.576.0 Step Four – Presentation to Mayor

Not later than three working days after receiving the city administrator's reply under Step three, the aggrieved employee may present his grievance to the Mayor in the same manner as provided in Step one. The aggrieved employee shall also present a copy of the city administrator's response to the Mayor. The Mayor may, but is not required to meet with the employee. The Mayor shall reply in writing to the grievance within twenty days after the date the Mayor received the grievance. The Mayor shall determine whether the employee is entitled to relief under the provisions of this article. The Mayor's decision is final and the employee shall not be entitled to appeal from this decision.

Section 2.576.5 Representation

Neither the employee nor the city shall be entitled to be represented by any other person at any stage of the grievance procedure. Both the employee and the city may consult with any person of their choosing. Both the employee and the city may call witness at Step three

Section 2.577.0 Exclusive Administrative Remedy

The grievance procedure shall be the exclusive administrative remedy available to any employee for any action to which the grievance procedure applies.

Section 2.577.5 Time Limits.

- (a) If an aggrieved employee fails to initiate a grievance within the time limits contained in this subchapter, the employee waives his right to pursue the grievance.
- (b) If an aggrieved employee fails to submit the grievance to the next Step within the time limits contained in this subchapter, the grievance is settled on the terms contained in the last reply to the grievance received by the employee.
- (c) If the city fails to reply to a grievance within the time limits contained in this subchapter, such grievance shall automatically advance to the next step.

- (d) If the Mayor fails to reply to a grievance within the time limits contained in this subchapter, the Mayor shall be deemed to adopt the city administrator's reply as the Mayor's reply, and the grievance shall be settled on the terms contained therein.

Section 5.578.0 Extension of Time Limits

The time limits contained in this subchapter may be extended by mutual consent of the employee and the person required to respond to the grievance. Any Step in the grievance procedure may be eliminated by mutual consent of the employee and the person required to respond to the grievance at the next higher Step. Consent shall be expressed in writing signed by both parties.

Subchapter 2.58 - Leave and Holiday with Pay

Sections:

- 2.580.0 Annual Leave
- 2.580.5 Annual leave with pay
- 2.580.0 Medical leave with pay
- 2.581.5 Military leave
- 2.581.0 Jury and Witness leave
- 2.582.5 Voting leave
- 2.582.0 Leave without pay
- 2.583.5 Recognized city holiday
- 2.583.0 Holiday falling on a Saturday or Sunday
- 2.584.5 Holiday falling on a day off a shift worker
- 2.585.0 Mayor's Authority

[Advisors Note: Section 2.580.0 Leave accrual while employee is on paid leave was struck from the code when Ordinance 2020-01 was adopted.]

Section 2.580.0 Annual Leave

- (a) Only full-time regular employees accrue annual leave with pay. Part-time and temporary employees do not accrue annual leave with pay.
- (b) An employee serving a probationary period (180 days) prior to attaining full-time, permanent status accrues annual leave during his/her probationary period. Annual leave may not be taken during the probationary period and shall not be paid out at the end of the probationary period should the employee not attain permanent full-time status.
- (c) An employee who has accrued paid annual leave will be paid out, up to 80 hours of accrued paid annual leave upon termination of employment, if in good standing (Employment is not terminated by the city and at least 2-week notice is given by employee.)

- (d) Only full-time regular employees accrue paid annual leave. Part-time and temporary employees do not accrue paid annual leave.
- (e) Leave continues to accrue during the period of time an employee is on paid leave. Leave does not accrue during periods of leave without pay.
- (f) Employees shall receive full pay while on paid leave.
- (g) A city recognized holiday occurring during an employee's annual leave shall not be counted as a day of annual leave.

[Revisors Note: Section 2.580.5. (a) was amended from 15 working days of annual leave. (b) was amended from 24 working days per year. (c) was amended from working days per year. (d) was amended from 30 working days per year. (e) was amended from mandatory use of 5 days. (f) Leave accrual of 60 days was amended. (g) full pay was amended to holidays. (h) was amended. (i) through (l) was added as per Ordinance 2020-01, adopted on April 14 2020]

Section 2.580.5 Annual Leave with Pay

- (a) An employee begins to accumulate paid time off at a rate of 8- hours for the first year of full-time employment. Paid time off shall be earned at a rate of 3.08 hours per pay period. No paid time off shall be used during the probationary period.
- (b) An employee begins to accumulate paid time off at a rate of 88 hours for the second year of full time employment, paid time off shall be earned at a rate of 3.39 hours per pay period.
- (c) An employee begins to accumulate paid time off at a rate of 96 hours for the third year of full-time employment. Paid time off shall be earned at a rate of 3.7 hours per pay period.
- (d) An employee begins to accumulate paid time off at a rate of 104 hours for the fourth year of full time employment. Paid time off shall be earned at a rate of 4 hours per pay period.
- (e) An employee begins to accumulate paid time off at a rate of 112 hours for the fifth year of full-time employment. Paid time off shall be earned at a rate of 4.3 hours per pay period.
- (f) An employee begins to accumulate paid time off at a rate of 120 hours for the sixth year of full-time employment. Paid time off shall be earned at a rate of 4.62 hours per pay period.
- (g) An employee begins to accumulate paid time off at a rate of 128 hours for the seventh year of full-time employment. Paid time off shall be earned at a rate of 4.92 hours per pay period.
- (h) An employee begins to accumulate paid time off at a rate of 136 hours for the eighth year of full-time employment, Paid time off shall be earned at a rate of 5.23 hours per pay period.
- (i) An employee begins to accumulate paid time off at a rate of 144 hours for the ninth year of full-time employment, Paid time off shall be earned at a rate of 5.54 hours per pay period.

- (j) An employee begins to accumulate paid time off at a rate of 152 hours for the tenth year of full time employment. Paid time off shall be earned at a rate of 5.85 hours per pay period.
- (k) An employee begins to accumulate paid time off at a rate of 160 hours per year after completing the tenth year of full-time employment until termination of employment. Paid time off shall be earned at a rate of 6.16 hours per pay period.
- (l) Paid annual leave may be accrued and carried over from year to year up to a maximum accumulation of twice the yearly rate of the current accrual rate.

[Revisor's Note: Section 2.581.0. was amended from Medical Leave may only be taken for a bona fide medical purpose of the employee. The city may request verification of the medical purpose from the employee's physician. An employee may contribute up to 50% accrued medical leave, with prior approval of the Mayor, to another employee who has used all his/her medical and annual leave. (a) After 180 days from the start of employment, a full-time, permanent employee is eligible to receive 10 working days per year of medical leave regardless of the length of the employee's tenure with the city. Medical leave does not accrue at increased rates according to longevity of employment. (b) An employee who exhausts his/her medical leave and is unable to return to work for medical reasons is placed on annual leave automatically. If the employee is still unable to return to work upon expiration of his annual leave, he/she is automatically placed on leave without pay. (c) Medical leave may not be accrued and carried over from year to year. (d) Employees shall receive full pay while on medical leave. (e) Part-time and temporary employees do not accrue medical leave. (f) Pregnancy, Maternity, and other Family Medical Leave will be administered in accordance with Alaska State Statutes. To what follows. As per Ordinance 2020-01 adopted April 14th, 2020]

Section 2.581.0 Medical Leave With Pay

- (a) An employee begins to accrue paid medical leave at a rate of 80 hours per year regardless of length of employee's tenure with the city. Paid medical leave shall be earned at a rate of 3.08 hours per pay period. No paid medical leave can be used during probationary period. Paid medical leave does not accrue at increased rates according to longevity of employment.
- (b) Paid medical leave may only be taken for a bona fide medical purpose of the employee or immediate family. The city may request verification of the medical purpose from the employee's physician. An employee may contribute up to 50% of his/her accrued paid medical leave, with prior approval of the Mayor, to another employee who has used all his/her paid medical and paid annual leave.
- (c) Medical leave may be accrued and carried over from year to year up to a maximum accumulation of 160 hours.

- (d) Pregnancy, Maternity, and other Family Medical Leave will be administered in accordance with Alaska State Statutes.

Section 5.581.5 Military Leave

- (a) A full-time permanent employee, or a probationary employee who will become a full-time permanent employee at the end of his/her probationary period, who is a member of a reserve component of an armed service of the U.S., or of the National Guard, or of the U.S. Public Health Service, shall be entitled to a leave of absence of not more than 15 calendar days in any year for the purpose of participating in temporary active duty or training duty.
- (b) An employee shall receive military leave only if he/she is subject to bona fide military orders calling him/her to temporary active duty or training duty during the period of the leave.
- (c) An employee shall receive military leave only if he/she is subject to bona fide military orders calling him/her to temporary active duty or training duty during the period of the leave.
- (d) An employee who does not return to duty with the city immediately upon the expiration of his period of temporary active duty or training duty shall not receive payment for military leave.

Section 2.582.0 Jury and Witness Leave

- (a) A full-time permanent employee, or a probationary employee who will become a full-time permanent employee at the end of his/her probationary period, who is called to jury duty, or is subpoenaed to appear in court as a witness shall be entitled to a leave of absence during the time his/her presence in court is required.
- (b) During jury duty and witness leave, an employee shall receive full pay and benefits and shall accrue annual and medical leave to which he/she is otherwise entitled. An employee shall pay to the city any compensation that he/she receives for serving on a jury or testifying as a witness.
- (c) An employee may receive full pay while on jury duty and witness leave for not more than 10 consecutive working days, or a total of 20 working days in any calendar year. Thereafter, the employee may elect to be placed on annual leave or leave without pay, at the employee's option, during the remainder of the employee's service as a juror or witness. If the employee fails to make an election, the Mayor shall first place the employee on annual leave, and then place the employee on leave without pay after the employee's annual leave is exhausted.

Section 2.582.5 Voting Leave

If an employee is unable to vote because of his/her work schedule, he/she shall be given a reasonable time off-duty on which to vote, without loss of pay, benefits, or leave accrual.

[Revisor's Note: Section 2.583.0. was amended by deleting "An employee on leave without pay shall not receive pay from the city and shall not accrue annual or medical leave during the leave without pay." Per Ordinance 2020-01 adopted April 14th 2020.]

Section 2.583.0 Leave Without Pay

The Mayor may grant leave without pay to an employee who has exhausted his/her annual leave, and medical leave, if applicable. Such leave shall be granted in cases of exceptional hardship to the employee, and then only if the needs of the city reasonably allow the leave to be taken.

[Reviser's Note: Section 2.583.5 was amended by adoption of Ordinance 99-03 on March 11, 1999. This ordinance added Martin Luther King, Jr. Day to the list of holidays]

Section 2.583.5 Recognized City Holidays

The following days shall be recognized as holidays with pay for all permanent employees. Full-time employees shall receive full pay. Part-time employees shall be paid in proportion to the number of hours they would normally be scheduled to work if the day were not a holiday.

- A. New Year's Day;
- B. Martin Luther King, Jr. Day;
- C. Presidents Day;
- D. Memorial Day;
- E. Independence Day;
- F. Labor Day;
- G. Alaska Day;
- H. Veterans Day;
- I. Thanksgiving Day; and
- J. Christmas Day

Section 2.584.0 Holiday Falling on a Saturday or Sunday

When recognized holiday falls on a Saturday the proceeding Friday shall be treated as a holiday. When a recognized holiday falls on a Sunday, the following Monday shall be treated as a holiday.

Section 2.584.5 Holiday Falling on Day off of a Shift Worker

If a holiday falls on a shift employee's normal day off, his/her next working day shall be treated as a holiday.

Section 2.585.0 Mayor's Authority

The Mayor shall add or delete holidays to conform to the holiday dates observed by the State of Alaska and the United States Government.

Subchapter 2.59 – Alcohol and Drug Use

Sections:

- 2.590.0 Purpose
- 2.590.5 Definitions
- 2.591.0 Prohibitions and Requirements
- 2.591.5 Duty to Report
- 2.592.0 Disciplinary Action
- 2.592.5 Drug testing based on reasonable suspicion
- 2.593.0 Drug testing which is not based on reasonable suspicion
- 2.593.5 Timing of drug testing
- 2.594.0 Presumptions
- 2.594.5 Implementation
- 2.595.0 Effective Date
- 2.595.5 Confidentiality of test results
- 2.596.0 Use for criminal prosecutions prohibited

Section 2.590.0 Purpose

The purposes of this subchapter are:

- (a) To establish a policy to maintain a workplace that is free from the effects of drug and alcohol abuse in compliance with the federal Drug Free Workplace Act,
- (b) To enhance public safety by ensuring that emergency response to employees and volunteers are free of the influence of drugs, marijuana, and alcohol; and
- (c) By means of a and b, to prevent accidents and injury to persons or damage to property; and
- (d) To enhance the efficiency and integrity of the municipal service by ensuring that all employees and volunteers perform their duties while free of the influence of drugs, including marijuana, and alcohol.

[Revisors Note: Section 2.590.5 (h) was amended to add marijuana.]

Section 2.590.5 Definitions

- (a) “Drugs” means:
 - (1) any drug the use, possession, or sale of which is declared to be illegal under any state or federal law; or
 - (2) any drug the use, possession, or sale of which requires a prescription under state or federal law, if the user, possessor, or seller does not have a valid prescription for the drug under said law.
- (b) “Emergency fire response employees” means any employee of the city who is assigned to, or actually performing the duties of, one of the following job classifications:
 - (1) Firefighter;
 - (2) Fire/EMS chief;
 - (3) Emergency medical technician;
 - (4) Operator or crew member of an emergency fire response vehicle;
 - (5) Deputy fire chief even if this person is a volunteer and not an employee of the city;
 - (6) Deputy emergency medical service chief even if this person is a volunteer and not an employee of the city.
- (c) “Emergency fire response vehicle” means a fire vehicle, or ambulance vehicle owned or operated by the city, and any vehicle operated by an emergency response volunteer while on duty or while responding to the scene of an emergency for the purpose of performing duties at the scene.
- (d) “Emergency police response employee” means any employee of the city who is assigned to, or actually performing the duties or, one of the following job classifications;
 - (1) Police chief;
 - (2) Chief of Police;
 - (3) Police Dispatcher;
 - (4) Operator or crewmember of an emergency police response vehicle.
- (e) “Emergency police response vehicle” means a police vehicle owned or operated by the city, and any vehicle operated by an emergency police response employee while on duty or while responding to the scene on an emergency for the purpose of performing duties at the scene.
- (f) “Emergency response volunteer” means any person specified in subsections (b) and (d)
- (g) “Emergency response volunteer” means any non-employee volunteer who performs any of the duties assigned to the job classifications specified in subsection (b) on behalf of the city.

- (h) “Under the influence of drugs including alcohol and marijuana” means that a person’s breath or bodily fluids contain any measurable quantity of drugs, alcohol or marijuana or the residue, by products, or metabolites thereof.

Section 2.591.0 Prohibitions and Requirements

- (a) No municipal employee or volunteer shall:
- (1) Use, possess, or sells drugs, including marijuana and alcohol on or within city property or while the employee or volunteer is engaged in the performance of his/her duties for the city.
 - (2) If the person is an emergency response employee or volunteer, be on duty or report for duty while under the influence of drugs including alcohol or marijuana.
 - (3) If the person is an employee or volunteer other than emergency response employee or volunteer be on duty or report for duty while under the influence of drugs including alcohol or marijuana
 - (4) Use drugs, marijuana or alcohol at any time and place if said use deteriorates work performance, could place other employees or volunteers of the public in jeopardy, or could harm the reputation of the city.
 - (5) Possess or sell drugs or marijuana at any time or place if said possession or sale deteriorates work performance, could place other employees or volunteers of the public in jeopardy, or could harm the reputation of the city.
 - (6) Fail to report the involvement of another employee or volunteer when there is a duty to report under Section 2.591.5
- (b) No emergency response employee or volunteer shall refuse or fail to submit a sample of the employee’s breath, blood, or urine when required or requested to do so by the Mayor, city administrator or a department head in accordance with the provisions of this subchapter and the regulations adopted hereunder.
- (c) No person may be appointed to a position as an emergency response employee, if the drug test administered to the person under Section 2.5830 D produces a positive result for the presence of a measurable quantity of drugs including alcohol, and marijuana or the residue, by products, or metabolites thereof, in the sample of the person’s breath or bodily fluids which was tested.

Section 2.591.5 Duty Report

- (a) Any city employee or volunteer who observes conduct or circumstances involving another employee or volunteer, which would clearly raise a reasonable suspicion in the mind of a lay person

untrained in the detection of alcohol, marijuana, or drug abuse that the other employee has violated any of the provisions of Section 5.910 A1 – A6, he/she shall require the suspected employee or volunteer to submit a sample of his/her breath, blood, or urine for analysis in accordance with the drug testing program enacted in this subchapter and the regulations adopted hereunder. The reasonable suspicion must be based on specific particular observations of any person, which the person can articulate.

- (b) Each supervisor receiving a report of suspicion shall report the incident to his supervisor until the incident is reported to the city administrator who shall report it to the Mayor. If any supervisor in the chain of command is not immediately available, the person shall report the incident to the next higher supervisor.

Section 2.592.0 Disciplinary Action

For violating any of the prohibitions contained in this section, all employees and volunteers will be subject to disciplinary action, up to and including dismissal from city employment. Such violations include, but are not limited to, possessing illegal or non-prescribed drugs, including narcotics, and alcoholic beverages at work; being under the influence of such substances while working; using them while working; or dispensing, distributing, or illegally manufacturing or selling them on city premises and work sites.

Section 2.592.5 Drug Testing Based on “Reasonable Suspicion”

- (a) If the Mayor forms a reasonable suspicion that any employee or volunteer has violated any of the provisions of Section 2.591.0 A1 – A6, he shall require the suspected employee or volunteer to submit a sample of his breath, blood, or urine for analysis in accordance with the drug testing program enacted in this subchapter and the regulations adopted hereunder. The reasonable suspicion must be based on specific particular observations of any person, which the person can articulate.
- (b) The Mayor is authorized to require drug testing of any employee or volunteer. If the Mayor is not immediately available, the city administrator is authorized to act in his/her stead. If the Mayor and the city administrator are not immediately available any department head is authorized to so act.

Section 2.593.5 Timing of Drug Testing.

Drug testing administered to employees must be conducted at a time which is reasonably calculated to monitor the effect of alcohol, marijuana, or drug use on the employee’s work performance or to monitor the employee’s attendance at work while affected by or under the influence of drugs including marijuana and alcohol. The test

must be administered at a time that is reasonably contemporaneous with the employee's work or duty time. Drug testing administered to an applicant as full-time permanent position or for a position as an emergency response employee or volunteer may be administered only after the applicant has been selected for appointment.

Section 2.594.0 Presumptions

- (a) A positive result for the presence of any measurable quantity of drugs including alcohol and marijuana of the residue, by products, or metabolites thereof, in the sample of the person's breath or bodily fluids which was tested under Sections 2.5825 or 2.5830 within the time specified in Sections 2.593.5, shall create a rebuttable presumption that an employee including emergency response employee or emergency response volunteer violated Section 2.591.0 A1, A2, or A4, whichever is applicable under the circumstances.
- (b) The employee can rebut the presumption in accordance with the procedures adopted under Section 2.5845

Section 2.594.5 Implementation

- (a) The Mayor shall adopt regulations to implement this subchapter. These regulations shall govern the implementation of this chapter and shall provide that:
 - (1) all drug and alcohol testing conducted under this subchapter shall be conducted by a reputable laboratory which conducted said tests as part of its regular course of business; and
 - (2) all tests conducted by a method which is reliable within known tolerance; and
 - (3) all tests conducted under this subchapter shall be chemical tests of the blood, breath, or urine, or any combination thereof; and
 - (4) all samples of blood, breath, or urine shall be collected in such a manner which provides reasonable privacy to the person supplying the sample; and
 - (5) if reasonably practicable, all samples shall be collected by a person who is not an employee or an official of the city; and
 - (6) an employee who tests positive for drugs including marijuana any alcohol shall receive a written report of such results identifying the tests used; and
 - (7) an employee who tests positive under this subchapter shall have a reasonable opportunity to explain the reason for any positive test results prior to the effective date of termination, suspension, or other disciplinary action against the employee; and
 - (8) each sample of breath, blood, or urine shall be clearly identified, and the chain of custody thereof preserved in a reasonable manner; and

- (9) Every sample of blood, breath or urine shall be reasonably protected against adulteration or contamination.
- (b) Upon adoption of these regulations the Mayor shall give notice and a copy thereof to each employee of the city.

Subchapter 2.595.0 Effective Date

This subchapter is effective immediately upon its adoption. However, no drug testing of any person may be conducted under this subchapter sooner than sixty days following the date on which the Mayor mails or delivers notice of these regulations to the employee.

Section 2.595.5 Confidentiality of Test Results

The city may reveal that results of any drug test conducted under this subchapter to any elected official of the city, any person in the supervisory chain of command of the employee, the city attorney, any city employee or volunteer involved in the investigation of any incident which gives rise to the drug testing, any employee or volunteer involved in the application process for emergency response employee position, and any employee or volunteer involved in the maintenance of personnel records of the city. The city may not release the results of a drug test to any other person, except as otherwise provided by law.

Section 2.596.0 Use for Criminal Prosecutions Prohibited

The results of drug tests administered under this subchapter may be used only for administrative disciplinary proceedings and administrative accident investigation purposes. Said test results cannot be used in the criminal prosecution of any person.

Section 5.596.5 Drug and Alcohol Abuse Awareness Program

- (a) The city administrator shall establish a drug and alcohol abuse awareness program. This program must provide information concerning the following to city employees.
 - (1) the dangers of drug and alcohol use;
 - (2) the city's policy for maintaining a drug free workplace;
 - (3) the availability of counseling and rehabilitation programs;
 - (4) the penalties which may be imposed for violations of this drug free workplace policy.
- (b) The city administrator shall notify all employees that they must abide by this drug free workplace policy and that they must notify the city if they are convicted of any criminal drug violation based on conduct occurring in the workplace.

ORDINANCE 99-11

AN ORDINANCE AMENDING THE CITY OF NENANA'S PERSONNEL POLICY BY ADDING CHAPTER 2, ARTICLE 5, SUBSECTION 10: SEXUAL HARASSMENT POLICY.

Whereas, the City of Nenana recognizes that sexual harassment in the workplace is unacceptable, illegal and could place the city in a liable situation, and

Whereas, the City understands the importance of a written policy concerning sexual harassment, and

So Now, Therefore, the following policy is presented to the municipal assembly for adoption into the Nenana Code of Ordinances.

SECTION ONE: Be it enacted by the Municipal Assembly of the Municipality of Nenana, Alaska that the following ordinance be adopted.

SECTION TWO: This ordinance is of a permanent nature and shall be codified.

SECTION THREE: This ordinance shall become effective upon adoption.

Section 2.510.0 Sexual Harassment Policy

The City of Nenana is committed to the maintenance and promotion of the policy of nondiscrimination and incorporates sound merit principles in all aspects of personnel management affecting its employees and applicants. Personnel management shall be implemented free of discrimination, sexual harassment, and any other conduct inconsistent with sound merit principles as defined in the City's Affirmative Action Plan.

The sexual harassment of any employee of the City by any other employee or non-employee is demeaning to both the victim of the harassment and to the City. It can result in high turnover, absenteeism, low morale, and uncomfortable work environment. Some forms of sexual harassment of any of its employees and will take immediate disciplinary action to stop when it occurs.

Section 2.510.5 Definitions.

Unwelcome sexual advance, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- (a) Submission to such conduct is made either explicitly or implicitly on a term or condition of an individual's employment.
- (b) Using coercive sexual behavior to control or affect the career, salary, or performance review of another employee.
- (c) Unreasonably interfering with work performance or creating an otherwise offensive working environment.

Section 2.510.10 Making Sexual Harassment Complaints.

- (a) Any employee who feels he is being subjected to sexual harassment should immediately contact one of the persons below with whom the employee feels the most comfortable. Complaints may be made orally or in writing to:
 - (1) the employee's immediate supervisor
 - (2) the employee's department head
 - (3) the personnel director
 - (4) the mayor
- (b) The employee should be prepared to provide the following information:
 - (1) employee's name, department, and position title,
 - (2) the name of the person or persons committing the sexual harassment,
 - (3) the specific nature of the sexual harassment, how long it has gone on, and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against him or her as a result of the harassment, or any other treats made against him or her as a result of the harassment.
 - (4) names of witnesses to the harassment, if any, and
 - (5) whether he or she has previously reported such harassment and if so, when and to whom.

Section 2.510.15 Reporting and Investigation of Sexual Harassment Complaints

The city personnel director is the person designated by the city to be the investigator of complaints of sexual harassment. The Mayor may delegate the investigation to another city employee at his or her discretion.

- (a) When an allegation of sexual harassment is made by any employee, the person to whom the complaint is made shall immediately prepare a report of the complaint according to the proceeding section and submit it to the city personnel director,
- (b) The investigator shall make and keep a written record of the investigation, including notes of verbal responses made to the investigator by the person complaining of sexual harassment, witness interviewed during the investigation, the person against whom the complaint of sexual harassment was made, and any other person contacted by the investigator in connection with the investigation. The notes shall be made at the time the verbal interview is in progress.
- (c) Based upon the report the personnel director shall determine whether the conduct of the person against whom a complaint or sexual harassment has been made constitutes sexual harassment. In making that determination, the personnel director shall look at the

record as a whole and the totality of circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred. The determination of whether sexual harassment occurred will be made on a case-by-case basis.

- (d) If the personnel director determines that the complaint of sexual harassment is founded, he or she shall take immediate and appropriate disciplinary action against the employee guilty of sexual harassment.
- (e) The disciplinary action shall be consistent with the nature and severity of the offense, whether a supervisory relationship exists, and any other factors the personnel director relate to fair and efficient administration of the City, including the effect of the offense on employee morale, public perception of the offense, and light in which it casts the city. The disciplinary action may include demotion, suspension, dismissal, warning, or reprimand. A determination of the level of disciplinary action shall also be made on a case-by-case basis.

Section 2.510.20 Obligation of Employees.

- (a) Employees are not only encouraged to report instances of sexual harassment, they are obligated to report instances of sexual harassment. Sexual harassment exposes the City liability, and a part of each employee's job is to reduce the City's exposure to liability.
- (c) Employees are obligated to cooperate in every investigation of sexual harassment, including coming forward with evidence, both favorable and unfavorable, to a person accused of sexual harassment, fully and truthfully making a written report or verbally answering questions when required to do so by an investigator during the course of an investigation of sexual harassment.
- (d) Employees are also obligated to refrain from filing bad faith complaints of sexual harassment.
- (e) Disciplinary action may also be taken against any employee who fails to report instances of sexual harassment, or who files a complaint of sexual harassment in bad faith.

SECTION FOUR: This ordinance shall become effective upon adoption.

CHAPTER 2 – ADMINISTRATIVE

ARTICLE 6 – CONFLICTS OF INTEREST

[Reviser’s Note: The Municipality is authorized to adopt conflict of interest ordinances by Charter Section 16.010. See also AS 29.20.410. The voters of the Municipality elected out of the coverage of AS 39.50.10 – .200 under authority of AS 39.50.145. This Article was amended by Ordinance 86-06 to conform with the Title 29 rewrite in 1986.]

Section 2.605 Definitions

In the Article, the following terms shall have the following definitions:

- (a) “Appointed official” is a person holding a municipal position to which he or she has been nominated by the Mayor and appointed by the Assembly, and includes, without limitation, members of all Boards, Commissions and authorities of the Municipality.
- (b) “Conflict of interest” is any situation arising in the course and scope of performance of an elected officials, appointed officials, or a municipal employee’s duties in which the elected official, appointed official or municipal employee has a substantial financial interest, other than the interest that any resident would have in the situation.
- (c) “Elected official” is a person elected to a municipal office by the voters of the Municipality, and includes the Mayor, the members of the Assembly, and other municipal government officials selected by general or special election.
- (d) “Household” means a person actually living with the official or employee, or member of the official’s or employee’s family within the second degree of blood relation.
- (e) “Municipal Employees” are all employees of the Municipality, as defined at Nenana Code of Ordinance, Section 2.505 (g), but does not include contractors or subcontractors with whom the municipality enters into written or oral contract.
- (f) “Substantial financial interest” is a direct monetary consequence related to a matter before the official or employee in his or her official capacity which would cause a reasonable, prudent person to hesitate to act or not act without first considering the effect of the matter upon his or her own financial affairs.

Section 2.610. Requirement of Disqualification

- (a) A member of the governing body shall declare a substantial financial interest the member or a member of his/her household has in an official action and ask to be excused from a vote on the matter. At the time of request to be excused, the official shall state to the body of which he/she is a member the character and details of the conflict of interest, insofar as may be permitted by law.

- (b) The presiding officer shall rule on a request by a member of the governing body to be excused from a vote.

Section 2.615 Waiver by Assembly or Other Body.

- (a) The decision of the presiding officer on a request by a member of the governing body to be excused from a vote may be overridden by the majority vote of the governing body; in which case the official would be allowed to participate in decision of the body.
- (b) A municipal employee or official, other than a member of the governing body, may not participate in an official action in which the employee or official has a substantial financial interest.
- (c) All voting under this section shall be by roll call vote.

[Reviser's Note: Section 2.620 was amended by adoption of Ordinance 89-06 on 6/8/89.]

Section 2.620 Municipal Employees

- (a) No municipal employee or appointed official shall be employed or appointed by the Municipality in any position with regard to which there is a substantial potential for serious, frequent conflict of interest.
- (b) Any municipal employee or appointed official who, in the course and scope of performance of his or her duties as a municipal employee or appointed official, suffers a conflict of interest of the substantial risk of conflict of interest, before acting upon the matter, shall report to his or her immediate supervisor, and to the Assembly, the nature and the character of the conflict of interest to the extent the laws of the State of Alaska may allow. The municipal employee or appointed official may accompany the disclosure of the conflict with a written request that he not be required to act upon the matter creating the conflict.
- (c) The written request by a municipal employee or appointed official that he or she be excused from action because of a conflict of interest shall always be honored. Unless the municipal employee or appointed official requests that he be relieved from acting, if the Assembly fails to prohibit the municipal employee or appointed official from acting within ten days following disclosure of the conflict, then the municipal employee or appointed official shall be empowered to act non-withstanding the conflict of interest.
- (d) If a municipal employee or appointed official disqualifies himself or herself from acting because of a conflict of interest, or if the Assembly disqualifies the municipal employee or appointed official from acting because of a conflict of interest, then that municipal employee's or appointed official's immediate supervisor shall act in his or her place or stead. If the municipal employee or appointed official has no immediate supervisor, then the Assembly shall itself act in the place

and stead of the municipal employee or appointed official. If an appointed official who is a member of a board, commission, or authority of the Municipality disqualifies himself or herself from action because of conflict of interest, or if they Assembly disqualifies such an appointed official from acting because of a conflict of interest, then the remaining members of the board, commission, or authority shall act on the matter, and the disqualified official shall not participate in the action.

Section 2.625 Penalties for Violations

- (a) An elected official, appointed official, or municipal employee who negligently, knowingly, or intentionally fails to comply with this Article shall be guilty of a civil offense, punishable upon conviction by a fine of not more than \$300.00.
- (b) A violation of this section by a municipal employee shall be grounds for disciplinary action under Nenana Code of Ordinance, Chapter 2, Article 5.
- (c) A violation of this section by an appointed official shall be grounds for removal of an appointed official.
- (d) A violation of this section by an elected official shall be grounds for recall under Nenana Code of Ordinance Section 3.340
- (e) The penalties provided by this section shall be cumulative to any remedies, damages, or rights available to the Municipality under common law.

CHAPTER 2 – ADMINISTRATION

ARTICLE 7 – RECORDS MANAGEMENT

[Reviser's Note: The Municipality is authorized to regulate the management and disposal of its public records by AS 40.21.70 through AS 40.21.090. This Article was adopted by Ordinance 83-03]

Section 2.705 Definitions

In this article, the following terms shall have the following definitions:

- (a) "Administration value" means that a record is needed or may be helpful to manage or conduct the functions, affairs, or business of the Municipality.
- (b) "Destruction" means disposal of records in such a manner as to prevent their reconstruction, and may include disposal by burning, automated shredding, or any such manner designated by the Municipal Clerk.
- (c) "Historical value" means that a record will be useful at a later date in reconstructing a general history of the development or government of the Municipality or State of Alaska
- (d) "Legal value" means that a record relates to current or potential legal action by or against the municipality, to land or construction, to legislative or judicial actions to the Assembly, or potential court claims.
- (e) "Public records" means those records generated in connection with the transaction or public business; provided however, that those records which are deemed by law to be confidential, or which are prohibited from being inspected by the public shall be exempted from this definition.
- (f) "Records" means any document, paper, book, letter, drawing, map, plat, photo, photographic file, motion picture film, microfilm, microphotograph, exhibit, magnetic or paper tape, punched card, or other document of any other material, regardless of physical form or characteristic, developed or received under law of in connection with the transaction of official business and preserved or appropriate for preservation by the Municipality, as evidence or the organization, function, policies, decisions, procedures, operations, or other activities of the Municipality or because of the informational value in them, the term does not include library and museum material developed or acquired and preserved solely for reference, historical or exhibition purposes, extra copies of documents preserved solely for convenience of reference, or stock of publication and processed documents.

- (g) "Record classification" means the designation of any record for the purpose of determining its period of retention, manner of storage and time of disposal.
- (h) "Record series" means any group of identical or related records which are normally used and filed as a unit and which permit evaluation as a unit for retention scheduling purposes, and which is segregated according to its series and year of acquisition.
- (i) "Schedule of retention" means that period of time established for the retention of records, according to their classification, ranging from the minimum number of years set by the assembly for particular records series thought infinity.

Section 2.715 Responsible Official

The clerk for the Municipality of Nenana shall be responsible for the development, implementation, and administration of Records Retention Program. The Municipal Clerk shall be advised by each Municipal Department as to the classes of public records in its possession, including a detailed description of the administrative and operation requirements for each class. Each department shall provide the Clerk with an update as to the records in its possession at reasonable intervals and when requested by the Clerk.

Section 2.720 Record Retention Schedule

The Municipal Clerk shall cause to be prepared a Record of Retention Schedule listing each class of public record with sufficient detail to permit identification of records that are not vital for administrative, legal, or historical value. The Retention Schedule shall be formatted to provide the following information for each record class:

- (1) the retention period for both in-office and storage periods;
- (2) the authority for any mandated retention period;
- (3) the recommended maintenance media (paper, microform, magnetic);
- (4) the department and officer having custodial responsibility for the record class during the prescribed in-office retention period;
- (5) any special destructive methods to be employed for sensitive records.

Upon completion of the Record Retention Schedule, the Municipal Clerk shall submit it to the Assembly for adoption by resolution.

Section 2.725 Administration of Program

Upon adoption, the Municipal Clerk shall administer the Retention Schedule by:

- (1) providing the Schedule to all departments and requiring each department to assign a departmental retention coordinator to assist the Clerk in Schedule implementation and maintenance;
- (2) establishing the procedures for routine transfer of records for storage and/or destruction;

- (3) tabulation the records prepared for destruction, assigning the appropriate Schedule citation to each record, and approving each destruction;
- (4) providing witness certification to each authorized destruction;
- (5) preparing and promulgating procedures for Schedule maintenance; i.e., the addition of new record classes, deletion and modification of retention periods. All new record class additions any reduction in retention periods shall be submitted to Assembly for adoption by resolution and
- (6) performing any and all duties of the records management program as directed by the Assembly.

Section 2.730 Copies of Records

Records not otherwise required by law to be preserved in original form, and records that are worn or damaged, may be copied by photostatic, photographic, microphotographic, microfilm or other mechanical process that produces a clear, accurate and permanent copy. When such a copy is retained in accordance with this Chapter, the original may be destroyed. The copy shall be considered as the original record for all purposes.

Section 2.735 Custody and Ownership of Records

All records are the property of the Municipality unless otherwise provided for by law. At the end of his term of office or employment, a Municipal official or employee shall deliver all of the records in his possession to his supervisor or successor. The Municipality may initiate actions to recover records unlawfully removed from Municipal possession.

Section 2.740 Archives

Until such time and if the Municipality decides to establish its own archival services, the Clerk shall utilize the State of Alaska's archives to store records of permanent value.

CHAPTER 2 – ADMINISTRATION

ARTICLE 8 – INVESTMENT GUIDELINES AND POLICIES

[Reviser’s Note: Article 8 was added to the Nenana Code of Ordinance with adoption of Ordinance 94-02 on April 14, 1994. This Section took effect 30 days within adoption.]

Section 2.810 Scope

The ordinance applies to all cash and securities of the City of Nenana hereinafter called the “City”. However, such funds as the Assembly may specifically designated for separate investment may be invested under alternate written guidelines and procedures.

Section 2.815 Authority

- (a) The Assembly shall
 - (1) approve investment policies;
 - (2) approve the selection and appointment of custodians, brokers and investment managers;
 - (3) approve investment goals, objectives, and guidelines for specifies investment pools or funds; and
 - (4) evaluate the results of investment activities
- (b) The City Administrator and/or the Port Director shall:
 - (1) invest funds in accordance with this policy;
 - (2) develop a system of internal controls and procedures for implementation of this policy;
 - (3) select and appoint custodians, brokers, and investment managers subject to assembly approval;
 - (4) establish such bank accounts and depositories as are, in the Administrator’s/Port Director’s opinion, necessary to property manage and account for the City’s funds and investments;
 - (5) endorse securities for sale, transfer, merger, or other lawful purpose, as necessary to implement investment decisions;
 - (6) report investment results to the assembly on a regular basis; and
 - (7) The fund may realize losses on individual investment transactions if such action is consistent with meeting investment goals.

Section 2.820 General Policies – Investment Standards

- (a) The investment of all funds shall be managed not for speculation, but with consideration of the safety of the principal as well as the earnings to be derived from the investment. The “prudent institutional investor” standard shall apply to all funds placed with professional depositories, custodians, brokers, or investment managers.

- (b) All transactions shall be in compliance with applicable laws and regulations.

Section 2.825 General Policies – Diversification

Investments, except as set forth in this policy or approved by the Assembly, shall be diversified to minimize the risk of loss resulting from over-concentration of assets in a specific maturity, a specific issuer, or specific class of securities.

Section 2.830 General Policies – Safekeeping

Any repurchase agreements entered into by the City shall be purchased using the delivery versus payment procedure.

Section 2.835 General Policies – Goals

Managed under the total return concept, the investment goals of the Fund shall be for the market value of the principal, as adjusted for principal additions and withdrawals, to increase, on an average annual basis over a five-year cycle, by an amount equal to at least the GNP deflator.

Section 2.840 General Policies – Authorized Investments

- (a) Fixed Income Investments:
- (1) the fixed income securities may include U.S. Treasury obligations, U.S. Government agency issues, state, municipal and corporate bonds, mutual bond funds and foreign bonds rated “A” or better.
 - (2) State and municipal bonds must have a rating of BBB or better by Moody’s or Standard and Poor’s at the time of purchase, and they must be marketable
 - (3) Fully insured certificates of deposit at commercial banks, credit unions, and savings and loan associations
 - (4) Repurchase agreements collateralized at 105% of market value by U.S. Treasury securities.
 - (5) Commercial paper rated “p-1” by Moody’s or A-1 by Standards and Poor’s.
 - (6) Pooled cash funds and money market mutual funds whose portfolios have an average maturity of less than one year and consist entirely of U.S. Government securities and commercial paper investment quality.
- (b) Equity Investments:
- (1) Equity investments may include common stock, preferred stock, convertible bonds, mutual funds and foreign rated “A” or better.

- (2) The equity securities shall generally possess value and quality with a rating of B+ or better by Standard and Poor's at the time of purchase
- (3) Some equity investments may not be rated or may have ratings that do not meet the guidelines. The Administrator/Port Director may deem these investments to be appropriate investments for the fund. Therefore, up to 10 percent of the allowable equity holdings may be invested in stocks that fall outside the guidelines.
- (4) The maximum amount that may be invested in equity investments is 30% of the market value of the City's portfolio.
- (5) The holdings will be diversified so that no more than 10% of the City's portfolio will be invested in any one industry.

Section 2.845 General Policies – Limitations

- (a) The following list of assets are not considered authorized investments for the purpose of this fund:
 - (1) short sales;
 - (2) option contracts; and
 - (3) purchases on margin
- (b) The following list of assets may not be authorized by the Administrator/Port Director without prior Assembly approval:
 - (1) real estate (land and improvements); and
 - (2) any physical asset (for example – precious metals, oil, etc.)

CHAPTER 2 – ADMINISTRATION

ARTICLE 9 – NENANA HEAT AND POWER AUTHORITY

Section 2.905 Definitions

In this Article, “Authority” shall mean the Nenana Heat and Power Authority created in Section 2.920 hereof.

Section 2.920 Creation and Composition

- (a) There is created the Nenana Power Facility Authority of the Municipality of Nenana, Alaska
- (b) The Authority shall be governed by a board of directors. The initial membership of the board of directors of the Authority shall consist of the Mayor and the members of the Assembly of the Municipality of Nenana in office at the time of the initial adoption of this ordinance. Such members shall serve until the expiration of their terms with the Authority. Thereafter, the Mayor shall appoint members to the board of directors of the Authority.
- (c) The initial members of the board of directors of the Authority shall draw lots for staggering terms, with three members to serve for four years, two members to serve for six years, and two members to serve for eight years. Thereafter, all members shall serve for terms of six years and until then successors are appointed. The Mayor shall appoint a member to fill a vacancy on the board of directors of the Authority for the balance of the term of the position filled.
- (d) The authority shall elect a presiding officer from among its members.

Section 2.930 Status of Authority

The Authority is a public corporation and government instrumentality of the Municipality of Nenana but having legal existence independent of and separate from the Municipality. The Authority may not be terminated as long as it has bonds, notes, or other obligations outstanding. Upon termination of the Authority, its rights and property pass to the Municipality.

Section 2.940 Power of Authority

The purpose of the Authority is to study the feasibility of and acquire and construct the property necessary to provide a power generating facility within the Municipality of Nenana. The power generating facility shall be a coal fired until with an initial capacity of approximately 100 megawatts.

Section 2.950 General Power of Authority

- (a) The Authority shall have all powers permitted pursuant to Section 10.020 of the Home Rule Charter of the Municipality of Nenana
- (b) The Authority may take all actions which it considers necessary or appropriate in connection with the operation (including acquisition and construction) and management of the facility described in Section 2.940 hereof.

Section 2.960 Specific Powers of Authority

Without limiting the generality of the powers granted to the Authority under Section 2.950 hereof, the Authority may:

- (1) Enter into contracts for the purchase of coal to operate the facility described in Section 2.940 hereof;
- (2) Enter into contracts for the sale of power generated by the facility described in Section 2.940 hereof, either on a retail or on a wholesale basis or both as the Authority considers appropriate;
- (3) Take all steps necessary to obtain the necessary real property for the facility described in Section 2.940 hereof, including entering into purchase contracts with respect thereto and applying for any available State or Federal land grants;
- (4) Contract for and hire employees, agents, advisors, and any other assistant that the Authority considers advisable.
- (5) Enter into joint ownership or joint operations agreements, or both, as the Authority considers appropriate, with respect to the facility described in Section 2.940 hereof;
- (6) Issue bonds and other forms of obligations as the Authority considers appropriate to provide financing for the facility described in Section 2.940 hereof;
- (7) Dispose of any of its property, subject to any limitations contained in its covenants to bondholders or any other contractual limitations, by such method as the Authority considers appropriate;
- (8) Take any steps necessary to acquire eminent domain powers under State law, including, but not limited to; establishing itself as a utility

[Reviser's Note: Section 2.965 was enacted by adoption of Ordinance 88-05 on April 21, 1988]

Section 2.965 Purchasing Procedures

The Authority shall utilize the procedures established under Sections 2.1100 through 2.1180 for the purchase or rental of supplies, materials, equipment, or services, except for supplies, materials, equipment, or services purchased or rented with federal funds, in which case the Authority shall utilize the procedures contained in Sections 2.100 through 2.1025.

Section 2.970 Bylaws

The Authority shall adopt bylaws governing the conduct of the Authority's business. The Authority shall give reasonable public notice by newspaper, television, or radio advertisement of the initial adoption of the bylaws. The bylaws shall provide for reasonable public notice with respect to meetings of the board of directors of the Authority and with respect to the adoption, amendment, or repeal of the bylaws.

Section 2.980 Meetings

The Authority shall meet at least annually. The initial meeting of the Authority shall take place at the call of the Mayor within 14 days after the initial adoption of this Ordinance. Thereafter, the Authority shall meet at the time and places and under the circumstances described in its bylaws.

Section 2.990 Budgets and Reports

- (a) No later than three months before the end of the fiscal year, the Executive Director shall submit to the Authority a proposed budget for the following fiscal year. The Executive director shall observe the provisions of any budget adopted by the Authority and shall not transfer between items in the Authority's budget without the approval of the Authority. Revenues generated by the facility described in Section 2.940 hereof, from proceeds of the investment of proceeds of the Authority's bonds and other obligations and from any other assets or activities of the Authority shall be retained by the Authority and used in the manner the Authority considers appropriate.
- (b) The Authority shall report not less often than annually to the Assembly on the significant aspects of acquiring, construction, and managing the facility described in Section 2.940 hereof.

Section 2.995 Bonds and Other Obligations

- (a) The Authority, by resolution, may issue bonds, including refunding bonds, and other obligations in order to carry out its corporate purposes.

- (b) Principal and interest on the bonds shall be payable solely from revenues of the project described in Section 2.940 hereof, from revenues of the Authority generally, or from both.
- (c) Bonds and other obligations of the Authority may be issued in one or more series and shall be dated, bear interest at the rate or rates per annum or within the maximum rate permitted by law, be in the denomination, be in the form, either coupon or registered, carry the conversion or registration provision, have the rank or priority, be executed in the manner and form, be payable from the sources in the medium of payment and place or places within or outside the Municipality of Nenana, be subject to authentication by a trustee or fiscal agent, and be subject to the terms of redemption with or without premium, as the resolution of Authority may provide
- (d) Bonds and other obligations of the Authority may be sold in the manner, on their terms and the price of the Authority determines.
- (e) If an officer whose signature or facsimile of whose signature appears on any bonds or other obligations of the Authority ceases to be an officer before the delivery of the bond or other obligation, his signature or facsimile is valid the same as if he had remained in office until delivery.
- (f) Bonds and other obligations of the Authority issued under this section do not constitute a debt, liability or obligation for the Municipality of Nenana or a pledge of the faith and credit of the Municipality of Nenana but are payable solely from the revenues of assets of the Authority. Each bond or other obligation issued under this section shall contain on its face a statement that the Authority is not obligated to pay it nor the interest on it except from the revenues or assets pledged for it and that neither the faith and credit nor the taxing power of the Municipality of Nenana is pledged to the payment of the principal of or the interest on the bond or other obligation.
- (g) In addition to the issuance of its bonds and other obligations, the Authority may seek financing from local, state, and federal grants and loans, from appropriations from the Municipality, and from other sources. The Authority may also earn interest income from deposited funds in order to pay both administrative and program costs.

CHAPTER 2 – ADMINISTRATION
ARTICLE 10 – FEDERAL PROCUREMENT AND CONTRACTING STANDARDS

[Reviser’s Note: Chapter Two of the Nenana Code of Ordinances was amended by adoption of the following standards and established written procurement and contracting procedures for the expenditure of all Federal financial assistance. The standards have been adopted from OMB’s Circular No. A-102 Attachment O. Article 10 was adopted 12/10/87, Ordinance 87-12. Title to this Article was changed by adoption of Ordinance 88-05 on April 21, 1988]

Section 2.1000 General Provisions

- (a) The standards are applicable for the expenditure of Federal financial assistance for the procurement of services, supplies and other property.
- (b) These standards are furnished to ensure that such material and services are obtained efficiently and economically.
- (c) Written records of all procurement activities will be maintained that include an explanation for the method of procurement, selection of contract type, contractor selection or rejection, and basis for cost or price.

Section 2.1010 Selection Procedures

- (a) Solicitation of offers, whether by competitive sealed bids or competitive negotiation shall:
 - (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured, and when necessary, shall set forth those minimum, essential characteristics and standards to which it must conform it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand, which must be met by offerors, shall be clearly stated.
 - (2) Clearly set forth all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

- (b) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

Section 2.1015 Procurement Methods

The following procurement methods will be used when applicable:

- (a) Small purchase procedures:
 - (1) Applicable for the procurement of services, property, or contracts for supplies costing between \$500 and \$10,000.
 - (2) Price or rate quotations shall be obtained from at least three (3) qualified sources.
- (b) Competitive sealed bids (formal advertising):
 - (1) Applicable for the procurement of services, supplies or other property exceeding \$10,000.
 - (2) Sealed bids may be publicly solicited by formal advertising and a firm fixed-price contract (lump sum or unit price) shall be awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price.
 - (3) a. In order for formal advertising to be feasible, appropriate conditions must be present, including, as a minimum, the following:
 - (1) A complete, adequate, and realistic specification or purchase description is available.
 - (2) Two or more responsible suppliers are willing and able to compete effectively for the Municipality's business.
 - (3) The procurement lends itself to a firm fixed-price contract, and selection of the successful bidder can appropriately be made principally on the basis of price.
 - (3) b. If formal advertising is used for a procurement under a grant the following requirements shall apply:
 - (1) At a sufficient time prior to the date set for opening bids, bids shall be solicited from the adequate number of known suppliers. In addition, the invitation shall be publicly advertised in a newspaper of general circulation in the Municipality of Nenana
 - (2) The invitation for bids, including specification and pertinent attachments, shall clearly define the items or service needed in order for the bidders to properly respond to the invitation.
 - (3) All bids shall be opened publicly at the time and place stated in the invitation for bids.

- (4) A firm fix-price contract award shall be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. Where specified in the bidding documents, factors such as discounts, transportation costs and life cycle costs shall be considered in determining which bid is lowest. Payment discounts may only be used to determine low bid when prior experience of the Municipality indicates that such discounts are generally taken.
- (5) Any of all bids may be rejected when there are sound documented business reasons in the best interest of the program.

(c) Competitive Negotiations:

- (1) Applicable for the procurement of services, supplies or other property exceeding \$10,000 where conditions are not appropriate for use of formal advertising.
- (2) Proposals will be requested from at least three (3) qualified sources.
- (3) Request for proposal shall identify all significant evaluation factors, including price or cost, where required, and their relative importance.
- (4) If competitive negotiation proposals are used, negotiations shall be conducted with more than one of the sources, a fixed-price or cost-reimbursable type contract should be awarded, as appropriate. If competitive negotiation is used for a procurement under a grant, the following requirements shall apply:
 - (a) proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable
 - (b) The Request for Proposal shall identify all significant evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.
 - (c) The Municipality shall provide mechanisms for technical evaluation of the proposals received, determinations of responsible offerors for the purpose of written or oral discussions, and selection for contract award.

- (d) An award may be made to the responsible offeror whose proposal will be most advantageous to the procuring party, price and other factors considered. Unsuccessful offerors should be notified promptly.
- (e) The Municipality may utilize competitive negotiation procedures for procurement or architectural/engineering, and professional services, whereby competitor's qualifications are evaluated, and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation.

(d) Noncompetitive Negotiation:

- (1) Applicable for the procurement of services, supplies or other property exceeding \$10,000 and on of the following conditions exists:
 - (a) The item is available only from a single source;
 - (b) A public exigency or emergency exists when the urgency for the requirement will not permit a delay incident to competitive solicitation;
 - (c) The Federal grantor agency authorizes noncompetitive negotiation; or
 - (d) After solicitation of a number of sources, competition is determined to be inadequate.

Section 2.1020 Contract Pricing

The cost plus a percentage of cost and percentage of construction cost method shall not be used. The Municipality shall perform some form of cost or price analysis in connection with every procurement action, including contract modifications. Costs or prices based on estimated costs for contracts under grant shall be allowed only to the extent that costs incurred, or cost included in negotiated prices are consistent with Federal cost principles.

Section 2.1025 Contract Provisions

The Municipality shall include the following contract provisions in all procurement contracts and subcontracts.

- (a) Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract term and provide for such sanctions and penalties as may be appropriate.

- (b) All contracts in excess of \$10,000 shall contain suitable provisions for termination by the Municipality including the manner by which it will be affected and the basis for settlement. In addition, subcontracts shall describe conditions under which the contract may be terminated for circumstances beyond the control of the contractor.
- (c) All contracts awarded in excess of \$10,000 by the Municipality and their contractors or subcontractors shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR, Part 60).
- (d) All contracts and subcontracts for construction or repair shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 USC 874 as supplemented in Department of Labor regulations 29 CFR, part 3). This Act provides that each contractor or subcontractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The Municipality shall report all suspected or reported violations to the grantor agency.
- (e) When required by the Federal grant program legislation, all construction in excess of \$20,000 awarded by the Municipality and subcontracts shall include a provision for compliance with the Davis-Bacon Act (40 USC 276A to A-7) as supplemented by Department of Labor regulations (29 CFR, Part 5). Under this Act contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less often than once a week. The Municipality shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the awarded of a contract shall be conditioned upon the acceptance of wage determination. The Municipality shall report all suspected or reported violations to the grantor agency.
- (f) Where applicable, all contracts and subcontracts awarded by the Municipality for construction work which are in excess of \$20,000 or involve the employment of mechanics or laborers which are in excess of \$2,500 shall include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 USC 327-330) as supplemented by Department of Labor regulations (29 CFR, part 5). Under Section 103 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workday of eight (8) hours and a standard workweek of 40 hours. Work in excess of the standard workday or workweek is permissible provided that the worker is compensated at a rate of not less than 1 ½ times the basic rate of pay for all hours

- worked in excess of either (8) hours in any calendar day or forty (40) hours in the workweek. Section 107 of the Act is applicable to
- (g) construction work and provides that no laborer or mechanic shall be required to work in surrounding or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of labor. These requirements do not apply to the purchases of supplies or materials or articles ordinary available on the open market, or contracts for transportation or transmission of intelligence.
 - (h) The contract shall include notice of grantor agency requirements and regulations pertaining to reporting and patent rights under any contract involving research, development, experimental or demonstration work with response to any discovery or invention which arises or is developed in the course of or under such contract, and of grantor agency requirements and regulations pertaining to copyrights and rights in data.
 - (i) All negotiated contracts (except those awarded by small purchase procedures awarded by the Municipality) shall include a provision to the effect that the Municipality, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractors which are directly pertinent to that specific contract, for the purpose of making audit, examination, excerpts, and transcriptions. The Municipality shall require contractors to maintain all required records for three years after the Municipality makes final payments and all other pending matters are closed.
 - (j) Contracts, subcontracts, and sub-grants of amounts in excess of \$100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 USC 1857 (h)), Section 508 of the Clean Water Act (33 USC 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR, part 15), which prohibits the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the grantor agency and the USEPA Assistant Administrator for Enforcement (EN-329)
 - (k) Contracts shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

Grantor agencies are permitted to require changes, remedies, changed conditions, access and record retention and suspension of work clauses approved by the Office of Federal Procurement Policy.

CHAPTER 2 – ADMINISTRATION

ARTICLE 11 – PROCEDURES FOR PURCHASE, RENTAL OR SERVICES

Section 2.1100 Statement of Policy

- (a) It is the policy of the Municipality to discourage collusive bidding and sale practices and to encourage full and open competition whenever practical between all Municipal suppliers, vendors, and contractors by competitive bidding practices, and to centralize purchasing, sales and contracting to realize the economies resulting therefrom.
- (b) This article does not apply to:
 - (1) The election of Municipal officials;
 - (2) The hiring of Municipal employees;
 - (3) The purchase or rental of supplies, materials, equipment, or services with grant funds obtained from a federal agency, if the agency requires compliance by the Municipality with federal procurement procedures. Such procurements shall utilize the procedures contained in Sections 2.1000 – 2.1025 of the Code of Ordinances
 - (4) The Municipality's exercise of its powers or performance of its functions and participation in the financing thereof, jointly or in cooperation with the United States, State of Alaska, or any agency, instrumentality, or political subdivision thereof.

Section 2.1105 Applicability to Authorities, Agencies, and Instrumentality of the Municipality

This article shall apply to the purchase of supplies, materials, equipment or services by an authority, agency, or instrumentality of the Municipality. The powers and limitations thereon, granted by this article to the Mayor or his designee shall be exercised by the board of directors of any authority created pursuant to Article 14 of the home Rule Charter of the Municipality of Nenana including, but not limited to, the Port Authority and the Heat and Power Authority, except that pursuant to Section 14.020 (b) and (c) of the Charter, no contract for the purchase or rental of supplies, materials, equipment or services by such as authority shall be valid until approved by ordinance or resolution of the Assembly. All references in this article to municipal officers, employees, or agents shall include officers, employees, or agents of an authority, agency, or instrumentality of the Municipality.

Section 2.110 Unauthorized Contracts

A Municipal officer, employee or agent shall not contract contrary to the provisions of this article. A contract with the Municipality, or change order to a contract, entered in violation of this article is void and is not binding on the Municipality.

Section 2.115 Mayor's Powers

The Mayor or his designee shall, in conformity with this article:

- (a) Purchase, rent or otherwise provide for the furnishing of supplies, materials, equipment and services for the Municipality;
- (b) Prescribe the manner in which supplies, materials, equipment and services shall be purchased, delivered, stored and distributed;
- (c) Prescribe the time, manner, authentication and form of making requisitions for supplies, materials, equipment and services;
- (d) Fix standards of quality and quantity, and develop specifications for materials, supplies, equipment and services;
- (e) Prescribe the manner of inspecting deliveries of supplies, materials and equipment, and of making tests of samples submitted with bids, and samples of deliveries to determine compliance with specifications;
- (f) Prescribe forms for bids, contracts for construction, purchases of supplies and other purposes;
- (g) Adopt regulations, policies, and procedures to implement and interpret the provisions of this article.

Section 2.1120 Conflict of Interest

Municipal officers, employees, agents and consultants may bid on municipal contracts. However, a municipal officer, employee, agent or consultant may not bid or be awarded any municipal contract if performance of the contract by the municipal officer, employee, agent or consultant would materially interfere with said person's ability to perform his official duties for the Municipality; or if the municipal officer, employee, agent, or consultant participants in the Municipality's procurement action by preparing or influencing the contest of any specifications, procurement standard, or procurement document, by administering the procurement process, by evaluating bids or disapproval, or award of the bid, or by acting in any advisory capacity to the Municipality regarding the procurement

Section 2.1125 Open Market Procedure

- (a) The mayor or his designee may procure all materials, supplies, equipment, or services having an aggregate cost for any one contract or purchase of not more than one hundred thousand dollars (\$100,000), on the open market without using competitive bids, competitive proposals, or other formal bidding procedure.
 - (1) If the cost of the materials, supplies, equipment, or service to be procured does not exceed twenty-five thousand dollars (\$25,000), the Mayor or his designee may procure them from any source and in any manner which he deems advantageous to the Municipality, without obtaining informal quotes.

- (2) If the cost of materials, supplies, equipment, or services to be procured exceeds twenty-five thousand dollars (\$25,000), but does not exceeds one-hundred thousand dollars (\$100,000), the mayor or his designee may solicit and receive informal quotes either orally or in writing, but the solicitation must be in a form reasonably calculated to yield the lowest responsive quote by a responsible vendor or supplier. The mayor or his designee may require quotes exceeding a stated price or relating to specified categories of property or services to be in writing. Award shall be made to the responsible vendor or supplier submitting the lowest responsive quote. The mayor or his designee shall keep a written record of all open market quotes received and awards made thereon.
- (b) Regardless of the cost of materials, supplies, equipment, or services to be procured, the mayor or his designee may purchase or rent materials, supplies, equipment, or services which fall into any of the following categories without utilizing competitive bids, competitive proposals, or informal bids:
 - (1) Supplies, materials, equipment, or services which can be furnished only by a single dealer or which have uniform price wherever purchased.
 - (2) Supplies, materials, equipment, or services purchased for the United States, the State of Alaska, or an agency, instrumentality or political subdivision thereof.
 - (3) Supplies, materials, equipment, or services purchased from a public utility at a price or rate determined by a regulatory body.
 - (4) Supplies, materials, equipment, or services which must be purchased from a specific source in order to prevent incompatibility with previously purchased supplies, materials, equipment or services. For the purpose of this subparagraph, the term incompatibility is defined as, (a) the inability to interconnect, combine, interchange or join, or (b) that which causes or necessitates maintenance, expertise, or training where the acquisition of such would result in substantial duplication.
 - (5) Accounting, medical, legal, architectural, engineering, or other similar professional services.
- (c) Regardless of the cost of the supplies, materials, equipment or services to be procured, the Mayor or his designee may purchase or rent supplies, materials, equipment or services without utilizing competitive bids, competitive proposals, or informal quotes, if he determines that an emergency threatening the public health, safety or welfare requires that a contract be awarded without delay, or when required by unforeseeable conditions, if the time required for competitive bidding will produce delays in an ongoing project, or will disrupt the efficient functioning of the Municipality, such that the

efficiency of an open market procurement will outweigh any potential advantage that might be produced by competitive bidding. To the extent practicable under the circumstances, written or verbal proposals shall be solicited. As soon as reasonably practicable, the Mayor or his designees report procurement under this subsection which exceeds one-hundred thousand dollars (\$100,000) to the Assembly

Section 2.1130 Competitive Bid Procedure

- (a) Except as otherwise provided in this article, all purchases and rentals of supplies, materials, equipment, or services shall be made pursuant to the competitive bid procedures.
- (b) The Mayor or his designee shall solicit competitive bids by an invitation of bid which shall state, or incorporate by reference, all specifications, contract terms, conditions, and evaluation criteria applicable to the procurement. The content of that invitation for bids shall be sufficient to inform interested readers of the general nature of the supplies, materials, equipment or services or construction being procured and the procedure for submitting a bid. The invitation for bids shall also specify the date, time and place at which bids must be received. If specifications, contract terms, conditions, and evaluation criteria are incorporated in the invitation for bids by reference, the invitation shall state how these may be obtained.
- (c) The Mayor or his designee shall solicit bids from all prospective bidders listed on the current bidder list maintained pursuant to Section 2.1140.
- (d) The mayor or his designee may solicit bids from persons who have not placed their names on the bidder list if they are known to provide supplies, materials, equipment, or services of the type to be acquired. The failure of any person to receive notice of the invitation for bids under this section shall not affect the validity of a bid award or contract.
- (e) The mayor or his designee shall also solicit by publication of notice thereof for a reasonable time prior to the last day on which bids will be accepted, in a newspaper of general circulation in Nenana, Alaska.

Section 2.1131 Pre-Bid Conference

The Mayor or his designee may provide for a pre-bid conference to hold a reasonable time before the last day for submitting bids. At the pre-bid conference or at other times deemed appropriate by the Mayor or his designee, the terms of an invitation for bids may be modified or interpreted only by written addenda issued by the Mayor or his designee. Addenda to invitations for bid shall be sent to each known recipient of the original invitation for bids. Only a bid acknowledging receipt of all addenda may be considered

responsive, unless the addendum, in the opinion of the Mayor or his designee, would have no material effect on the terms of the bid. If addendum is issued less than five working days before the last day on which bids are to be accepted, the mayor or his designee may extend the time for accepting bids for a reasonable time, by so notifying all known recipients of the invitations for bids.

Section 2.1132 Bid Opening Procedure

- (a) Bids shall be sealed and designated as bids on the outside of the envelope and shall be submitted by mail or in person at the place and not later than the time specified in the invitation for bids. Bids not submitted at the proper place or within the time specified shall not be considered, and shall be returned to the bidder unopened
- (b) Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Any bidder may review bids immediately after opening and prior to tabulation or summary. The Mayor or his designee shall tabulate the amount of each bid and shall record such other information as may be necessary for evaluation together with the name of each bidder. The tabulation shall be opened to the public inspection and a copy of the tabulation shall be furnished to each bidder, upon request.
- (c) Bids shall only be accepted unconditionally without alteration of correction. For purposes of determining the low bidder and the responsiveness of bids, no criteria except that set forth in the invitation for bids, including all specifications and addenda, may be used.

Section 2.1133 Late Bids

- (a) It is the responsibility of the bidder to ensure that his bid is in the proper place before the time scheduled for receipt of bids.
- (b) Bids received after the scheduled time are late. The time shown by the clock used by the mayor or his designee shall be conclusively presumed to be accurate. A postmark, indicating the bid was mailed in advance of the time scheduled for receipt of bids, is irrelevant except as provided in subsection C of this section.
- (c) A bidder who is concerned that his bid, or a change thereto, will not be received timely may reserve the right to have his bid, or the change thereto, read if:
 - (1) in advance of the time for receipt of bids, he gives telegraphic or other written notice to the Mayor or his designee that his bid, or a change thereto, is in the mail; and
 - (2) The envelope containing his bid, or a change thereto, bears a postmark no later than the day preceding the date on which the bids will be opened.

Section 2.1134 Bid Irregularities

- (a) A bid that is unsigned, or which contains a material alteration or erasure that is not initialed by the signer of the bid shall be rejected.
- (b) A bid conditional, qualified, contingent, or alternative bids that are not solicited by the Municipality, or containing unauthorized additions shall be rejected.
- (c) A bid containing material irregularities which would permit the bidder to choose whether to perform if a contract is awarded, or which would otherwise give the bidder a competitive advantage, shall be rejected.
- (d) The mayor or his designee shall have authority to waive all other irregularities in any and all bids if he determines waiver to be advantageous to the Municipality.

Section 2.1135 Bid Bonds

If the mayor or his designee determines that posting of bid bonds is required to ensure that the successful bidder will execute a contract or otherwise perform in accordance with his bid, the mayor or his designee may require that all bids submitted include a bid bond in an amount sufficient to achieve this purpose. The mayor or his designee shall determine the form of payment that is acceptable, and this determination shall apply equally to all bidders. Upon receiving notice of award, if the successful bidder refuses to execute a contract with the Municipality in accordance with the terms of his bid, or otherwise refuses to perform in accordance with said terms; the successful bidder's bond shall be forfeited to the Municipality. The mayor or his designee shall promptly return the bid bonds of all bidders after he determines that the successful bidder has executed a contract or otherwise will perform in accordance with his bid.

Section 2.1136 Payment and Performance Bonds

If the mayor or his designee determines that posting of performance bonds is required to insure that the successful bidder or proposer completes performance of the contract of that posting of payment bonds is required to insure that the successful bidder or proposer pays all persons supplying labor or materials for the contract, the mayor or his designee may require that all bids or proposals submitted include such bonds in amounts sufficient to achieve these purposes. The mayor or his designee shall determine that form of bond which is acceptable, except that a bond issued by a surety company is not acceptable unless said surety company is licensed to do business in the State of Alaska

Section 2.1137 Procedures for Award

- (a) At the discretion of the Mayor or his designee, all bids may be rejected.

- (b) Subject to the bidder preference provisions of Subsection (c) of this section, a contract or purchase, is awarded shall be awarded to the lowest responsible bidder, whose bid conforms to the plans and
- (c) specifications, terms of delivery, and other conditions contained in the invitation for bids.
- (d) In determining the lowest bidder, the following bidder preference shall be applies:
 - (1) The bid shall be awarded to a responsive, responsible Nenana bidder if his bid is not more than the lesser of five percent (5%) or twenty-thousand dollars (\$20,000) higher than the lowest bid by a non-Nenana Alaskan bidder. A bid shall be awarded to a responsive, reasonable Nenana bidder if his bid is not more than the lesser of ten percent (10%) or forty-thousand dollars (\$40,000) higher than the lowest bid by a non-Alaska bidder. A Nenana bidder is a person who maintains a mayor place of business within the city limits of the Municipality of Nenana, and an Alaskan bidder is a person who maintains a major place of business within the State of Alaska outside the city limits of the Municipality of Nenana.
 - (2) Major place of business within the Municipality of Nenana means an office, distribution house, sales house, warehouse, or other similar facility maintained within the Municipality for at least six months immediately preceding submission of a bid by an organization which is registered under Sections 6.305 through 6.330 of the Code of Ordinance of the Municipality of Nenana. Major place of business within Alaska means an office, distribution house, sales house, warehouse, or other similar facility maintained within the State of Alaska outside the Municipality of Nenana for at least six months immediately preceding submission of a bid by an organization which is licensed to conduct business in the State of Alaska.
- (e) If the lowest responsive, reasonable bid exceeds the amount of funds certified by the mayor or his designee to be available for the procurement, and if sufficient additional funds are not available, the scope of the procurement may be reduced to bring its estimated coast within the available funds. The Mayor or his designee shall issue a new invitation for bids for the reduced procurement, or, upon a finding by the mayor or his designee that additional bidding will prevent construction of a needed project during the planned construction season or that the efficient operation of the municipal government requires that the contract be awarded without delay, he may negotiate with the three lowest responsive, reasonable bidders, and may award the reduced contract to the best negotiated proposal.

- (f) If competitive bids are required and all bids are rejected, new bids shall be solicited as in the first instance, unless the mayor or his designee determines, for reasons authorized in subsection (d) above, to negotiate with the three lowest responsible bidders and award a contract to the best negotiated proposal.
- (g) All bids, together with all documents pertaining to the award of a contract, shall be made apart of a file or record and retained for three years and these files or records are open to public inspection at all reasonable times.

Section 2.1138 Determining Responsibility

In determining whether a bidder is responsible, the mayor or his designee may consider the following factors:

- (a) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (b) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (c) The quality of the bidder's performance of previous contracts or services;
- (d) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (e) The sufficiency of financial resources available to the bidder for the performance of the contract of service;
- (f) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
- (g) Whether the bidder has performed in a timely manner on previous and current municipal contracts. If the bidder is more than 30 days past due on a contract delivery date without a written extension of time having been granted by the mayor or his designee, or is otherwise in default on a municipal contract, the bidder is ineligible for the award of any other municipal contract until the bidder complete the existing contract.

Section 2.1139 Bid Protest

Not more than five days following the date on which the act complained of occurred, a bidder may protest the handling of a bid or awarding of a contract by filing a written notice of protest with the Mayor stating the grounds thereof. If the Mayor made the decision which is subject of the protest, the protest shall be deemed a request for reconsideration. The mayor shall promptly hold a hearing at which the protesting bidder may appear and present evidence. If the protesting bidder establishes by clear and convincing evidence that the Municipality's handling of a bid or award of a contract violated this article, the mayor shall grant the protest. Otherwise, the mayor shall deny

the protest. Otherwise, the mayor shall deny the protest. If the mayor grants the protest, the damages recoverable by the protesting bidder against the damages recoverable by the protesting bidder against the Municipality shall not exceed the reasonable cost of preparing his bid.

Section 2.1140 Bidder's List

The Mayor or his designee shall maintain a bidder's list of persons willing to bid or submit proposals to sell or rent supplies, materials, equipment or services to the Municipality of Nenana. To be placed on the bidder's list, a person shall complete and submit to the mayor or his designee a bidder's information form containing the information required by the Mayor or his designee

Section 2.1145 Competitive Proposal Procedure

- (a) If the mayor or his designee determines that procurement of supplies, materials, equipment, or services, using the competitive bid procedure is not practicable or advantageous to the Municipality, the mayor or his designee may utilize competitive proposals for said procurement.
- (b) The mayor or his designee shall solicit competitive proposals by a request for proposals. The request for proposals shall state, or incorporate by reference, all specifications, contract terms, conditions, and evaluation criteria applicable to the procurement. Contents of the request for proposal shall be sufficient to inform interested readers of the general nature of the supplies, materials, equipment, or services being procured and the procedure for submitting a proposal. The request for proposals shall also specify the date, time, and place where proposals by reference, the request for proposals shall state how these may be obtained.
- (c) The mayor or his designee shall solicit proposals from persons known to provide supplies, materials, equipment, or services of the type to be acquired. The bidder list maintained pursuant to Section 2.1140 may be used as a source for identifying such persons. The Mayor or his designee shall also solicit proposals by publication of a notice or request for proposal a reasonable time prior to the last day on which proposals will be accepted, in a newspaper of general circulation in Nenana, Alaska.

Section 2.1146 Pre-Proposal Conference

The mayor or his designee may hold a pre-proposal conference and may issue addends to the request for proposal in the same manner as provided in Section 2.1131 for invitations for bids.

Section 2.1147 Proposal Opening Procedure

Proposal shall be opened in the manner provided in Section 2.1132 for opening competitive bids except that the contest of each proposal shall remain confidential and shall not be revealed to the public or to competing proposers, until after final execution of the contract by the successful proposer. Thereafter, the contents of all proposals shall be available for public inspection.

Section 2.1148 Procedures for Award

Proposals shall be evaluated using only those evaluation criteria specified in the request for proposals. The contract shall be awarded to the proposer whose proposal best meets the requirements of the Municipality at a fair and reasonable cost, as determined by said evaluation.

Section 2.1149 Negotiation with Proposers

After opening proposals, but prior to award of a contract to a proposer, the mayor or his designee may conduct negotiations with one or more proposers whose proposals are reasonably susceptible of award. The purpose of negotiations may be to refine proposals, to establish a contract price which is fair and reasonable, or both. The mayor or his designee may require all proposers with whom negotiations were conducted to submit best and final proposals. At the conclusion of negotiations, the contract shall be awarded to the proposer whose proposal best meets the needs of the Municipality at a fair and reasonable cost, based on the evaluation criteria contained in the request for proposal.

Section 2.1150 Other Bid Procedures Applicable

The following sections relating to the competitive bid procedure, shall also apply to the competitive proposal procedure:

- (a) Section 2.1133. Late Bids;
- (b) Section 2.1134. Bid Irregularities;
- (c) Section 2.1135. Bid Bonds;
- (d) Section 2.1136. Payment and Performance Bonds;
- (e) Section 2.1139. Bid Protest

Section 2.1151 Design/Build Proposals

If the mayor determines that it is advantageous to the Municipality, he may combine in one request for proposals several procurements that would normally be conducted separately and by different procedures. This procedure will normally be utilized in contracts for the construction of public works but may also be used in other situations. A single request for proposals may solicit proposals, from a single entity and/or joint ventures, to finance, design, construct, and operate a public facility, or to perform any combination of these functions.

Section 2.1155 Multi-Step Procurements

If the mayor or his designee determines that it is advantageous to the Municipality to do so, he may conduct any procurement in multiple stages. Such procurements may require an initial submission of sealed bids or proposals which are evaluated according to published criteria, to produce a shortlist of bidders or proposers who will be requested to submit additional bids or proposals. Final award will be made from among the persons on the shortlist according to the procedures established above for competitive bids or competitive proposals, as the cause may be.

Section 2.1160 Contracts Executed by Other Governmental Agencies

If the Mayor or his designee determines that it is advantageous to the Municipality to do so, he may purchase or rent supplies, materials, equipment or services for the Municipality through a contract with a vendor, supplier, or contractor which was executed by the United States, the State of Alaska, or an agency instrumentality or political subdivision thereof, if said contract was executed under circumstances which provided competitive procedures substantially similar to those contained in this article. Such procurements can be made without utilizing competitive bids, competitive proposals or other procurement mechanisms contained in this article.

Section 2.1165 Persons Who May Award Contracts – Change Orders

- (a) The mayor or his designee may award any contract for the purchase of rental of supplies, materials, equipment, or services for the Municipality, if the total amount to be paid by the Municipality to the vendor, supplier, or contractor is one-hundred thousand dollars (\$100,000) or less. Only the Assembly may award such contracts where the amount to be paid exceeds one-hundred thousand dollars (\$100,000)
- (b) The mayor may authorize change orders to any such contract if the amount to be paid to the vendor, supplier, or contractor under the change orders does not exceed one-hundred thousand dollars (\$100,000), and if the change orders does not cause the aggregate amount to be paid to all vendors, suppliers, or contractors under the contract and all change orders to exceed one-hundred thousand dollars (\$100,000) or any multiple thereof. Only the Assembly may authorize change orders which authorize payment in excess of one-hundred thousand dollars (\$100,000), or which cause the aggregate amount to be paid under the contract and all change orders to exceed one-hundred thousand dollars (\$100,000) or any multiple thereof. After the Assembly has approved a change order which causes the aggregate amount to exceed one-hundred thousand dollars (\$100,000), or any multiple thereof, the mayor may approve change orders which produce any aggregate amount which is between multiples of one-hundred thousand dollars (\$100,000)

Section 2.1170 Circumvention of Bidding Requirements Prohibited

No person shall subdivide a procurement of supplies, materials, equipment or services into more than one contract or change order, if the procurement of said items or services would normally, reasonably, and customarily be conducted under a single contract or change order, for the purpose of avoiding or circumventing the competitive bidding requirements, or the limitations on authority to award contracts or change orders, contained in this article.

Section 2.1175 Disqualification of Bidders and Suppliers

- (a) The mayor may qualify a person from selling or renting supplies, materials, equipment, or services to the Municipality if he determines that any of the following circumstances apply. The mayor may not delegate this authority.
 - (1) The person has committed fraud or intentional misrepresentation in procuring or performing a contract with the Municipality, or in an application for payment from the Municipality within the last 10 years;
 - (2) The Municipality has terminated a contract with the person prior to completion because of the person's material breach or nonperformance within the last 3 years;
 - (3) The person has materially breached or failed to perform a contract with the Municipality, whether or not terminated within the last 3 years.
 - (4) The person was convicted of a criminal offense committed in the course of obtaining or performing a public contract within the last 10 years.
- (b) The mayor shall send written notice of the proposed disqualification, including the grounds therefore and the proposed period or disqualification to the person by certified mail at the last address contained in the Municipality's procurement records. The notice shall advise the person of his right to request a hearing on the matter before the mayor and if he serves a written request therefore on the mayor not more than ten (10) days after the date on which he received notice, the mayor shall conduct a hearing. At the hearing the person shall have the opportunity to present evidence concerning the reasons for disqualification. If the mayor determines, based on a preponderance of the evidence, the disqualification is justified under this section, he shall disqualify the person. Otherwise, he shall not disqualify him.
- (c) The mayor may disqualify a person for a period of not more than five (5) years from the date of disqualification. A disqualification shall apply to the disqualified person and to all businesses in which the disqualified person holds a substantial interest or serves in a management position.

Section 2.1180 Audit of Contractor's Records

All vendors, suppliers, or other contractors who sell or rent supplies, materials, equipment, or services to the Municipality under this article shall keep and maintain books and records of its activities under the contract sufficient to enable the Municipality to determine the accuracy of bills and invoices submitted by the contractor and the adequacy of the contractor's performance of its obligations. Contractors shall maintain these records for a period of two years and shall make them available for audit by the Municipality or its agents at reasonable times upon reasonable notice.

CHAPTER 2 – ADMINISTRATION

ARTICLE 12 – DISPOSAL OF MUNICIPAL PERSONAL PROPERTY

Sections:

2.12.010 Surplus Property

2.12.020 Declaration of Obsolescence

2.12.030 Disposal of Personal Property Valued at Under \$1,000.00

2.12.040 Disposal of Personal Property Valued at or Above \$1,000.00

2.12.050 Disposal of Personal Property Valued at or Above \$25,000.00

2.12.060 Revenues

Section 2.12.010 Surplus Property

- (a) All departments of the city shall submit as needed but at least annually, to the City Clerk, a list of recommended supplies, materials and equipment which are no longer used, have become obsolete, worn out or have been scrapped.
- (b) Supplies, materials, and equipment which have been surplus by one department of the city may be reassigned to another department.

Section 2.12.020 Declaration of Obsolescence

No surplus property may be sold until the Municipal Assembly has declared such property to be obsolete and approved for sale.

Section 2.12.030 Disposal of Personal Property Valued at Under \$1,000.00

- (a) Personal property, other than surplus stock, that is valued at less than One Thousand dollars (\$1,000.00) may be disposed of upon such notice and terms considered reasonable, taking into consideration the value of an article, the reason for disposal and the general preference of disposal by competitive bid. The purchasing agent shall report disposals to the Assembly if so requested.
- (b) Personal property valued at more than One Thousand (\$1,000.00) dollars shall be disposed of in a manner provided under Section 2.12.040.
- (c) Personal property valued at more than Twenty-Five Thousand (\$25,000.00) dollars shall be disposed of in the manner provided under Section 2.12.050.
- (d) The power of disposition of personal property is assigned to the Mayor. However, the Assembly may substitute another official, such as a procurement officer or City Manager, in place of the Mayor.

Section 2.12.040 Disposal of Personal Property Valued at Over \$1,000.00

- (a) All personal property that has been recommended as surplus and estimated by the Mayor in concurrence with the department heads as being valued over One Thousand (\$1,000.00) dollars shall be publicly advertised following its declaration of obsolescence by the Municipal Assembly.
- (b) All such obsolete property shall be sold by competitive bid to the highest responsible bidder.
- (c) Obsolete personal property shall be sold at least once a year in a fair and equitable manner.
- (d) Obsolete property may be sold in lots or individually to the benefit of the municipality.

Section 2.12.050 Disposal of Personal Property Valued at or over \$25,000.00

- (a) Personal property estimated by the Mayor in concurrence with department heads as being valued at or over Twenty-Five Thousand (\$25,000.00) dollars shall be publicly advertised following its declaration of obsolescence by the Municipal Assembly.
- (b) All such obsolete property shall be sold by competitive bid to the highest responsible bidder.
- (c) Property with a value at or above Twenty-Five Thousand (\$25,000.00) will carry a minimum bid value equal to its fair assessed value.

Section 2.12.060 Revenues

Revenues generated by the sale of any City personal property shall revert to the General Fund of the City unless otherwise directed by the Assembly.

ARTICLE 13 - ETHICS

Section 2.13.05 Definitions

The following definitions apply to this article:

- (a) "Financial interest" means:
 - (1) An interest held by a person or entity subject to this article or an immediate family member or immediate household member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person have received or expects to receive a financial benefit;
 - (2) Holding a position in a business, such as an officer, director, trustee, partner, or holding a position of management
- (b) "Immediate family member" means an assembly member's or mayor's grandparents, parents, children, grandchildren, siblings, spouse, spouse's children, spouse's of children, or a regular member of the members household.
- (c) "Immediate household member" means a person residing at the residence of the member whether or not the person is an immediate family member as defined above
- (d) "Person" means and includes a corporation, company, firm, partnership, association, organization, business trust or society, joint venture, as well as a natural person.
- (e) "Personal interest" means and an interest held of involvement by a public official or a member of an assembly member's or staff person's immediate family, including membership in any organization, whether fraternal, nonprofit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit
- (f) "Respondent" means the person against whom a complaint is filed with the board of ethics.

Section 2.13.10 Scope of Chapter

This chapter shall apply to members of the city assembly and the mayor. This chapter does not apply to the school board that operates under its own code of ethics.

Section 2.13.15 Purpose

The purpose of this chapter is to set standards for conduct for municipal elected officials.

Section 2.13.20 Misuse of Official Position

An assembly member may not:

- (a) use of attempt to use an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person;
- (b) Seek other employment or contracts through the use or intended use of his or her position.
- (c) Accept, receive, or solicit compensation of any kind for the performance of official duties or responsibilities from any entity other than the city.
- (d) Use city time, property, equipment or other facilities to benefit personal or financial interests;
- (e) Take or withhold official action in order to affect a matter in which the assembly member or the mayor has a personal or financial interest; or
- (f) Attempt to benefit a personal or financial interest through the coercion of a city employee.

Section 2.13.25 Improper Gifts

- (a) An assembly member or mayor may not solicit, accept, or receive directly or indirectly, a gift, in any amount, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions or judgment.
- (b) The restriction relating to gifts imposed by this election does not apply to a campaign contribution to a candidate for assembly or mayor if the contribution otherwise complies with the laws and regulations governing elections and campaign disclosure.

Section 2.13.30 Improper Use or Disclosure of Information

A current or former assemblyperson or mayor may not:

- (a) Disclose or use information gained in the course of his or her duties if that information could in any way result in the receipt of any benefit by any person if the information has not been disseminated to the public; or
- (b) Disclose or use, without appropriate authorization, information that is confidential by law and that is acquired in the course of the assembly's member's official duties.

Section 2.13.35 Improper Influence in Grants, Contracts, Leases, or Loans

- (a) An assembly member or mayor or member of assembly member's or mayor's immediate household may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in or bid award, grant, contract, lease, or loan to which the city is a party.
- (b) The prohibition in subsection (a) of this section does not apply to a bid award, grant, contract, lease, or loan solicited competitively unless the assembly member or mayor takes official action with respect to the award, execution or administration of the grant, contract, lease, or loan.
- (c) An assembly member or mayor shall declare, in writing to the city clerk or in public at an official meeting, a personal interest held by the assembly member or mayor or member of assembly member or mayor's household, in a bid award, grant, contract, lease or loan before it is approved by the Assembly.

Section 2.13.40 Improper Representation

An assembly member or mayor may not represent, advise, or assist a person in any matter pending before the assembly or the administration if the representation, advice, or assistance is:

- (a) For compensation, unless the representation, advice, assistance, or compensation is required by statute, regulation, or court rule; or
- (b) Without compensation but is rendered to benefit a personal or financial interest of the assembly member or mayor or his or her households. This prohibition does not include an assembly member or mayor who is associated with a non-profit organization if the person serves without compensation.

Section 2.13.45 Outside Employment

The mayor may not render services to benefit a personal or financial interest or engage in or accept employment other than for city if the outside service or employment is incompatible or in conflict with the proper discharge of official city duties.

Section 2.13.50 Aiding a Violation

It is a violation of this article for an assembly member or mayor to knowingly aid another member in the violation of this chapter.

Section 2.13.55 Declaration of Potential Violation

- (a) An assembly member or mayor who is involved in a matter that may result in a violation of this chapter shall:

- (1) refrain from taking any official action relating to the matter until a determination of conflict of interest is made under this section; and
- (2) Immediately disclose the matter in writing to the clerk
- (b) if the assembly determines that an assembly member has a conflict of interest, then the assembly member shall, in addition to the requirements set forth in subsection (a) of this section, refrain from voting on the matter that gave rise to the conflict of interest for as long as the conflict shall exist.

Section 2.13.60 Assembly Board of Ethics

- (a) There is established a board of ethics consisting of five (5) members and two (2) alternate members. Three (3) of the regular board members and one (1) alternate shall be members of the assembly and shall be nominated by the mayor and confirmed by the assembly. The two (2) remaining regular members and remaining alternate members shall be members of the public at large and shall be nominated by the mayor and confirmed by the assembly. Terms of office shall be for staggered terms of three year, except that initial appointments shall be:
 - (1) One regular member for at term of one year
 - (2) Two regular members for a term of three years
 - (3) Two regular members for a term of three years
 - (4) The alternate members for a term of two years
- (b) The board shall elect a chair that shall hold office for a term or one-year from the date of election which shall be held in November of each year. Except that the first elected chair shall serve until the following November of his or her election. The chair shall receive all complaints, schedule all board meetings to consider complaints, schedule and provide for investigations and hearings, and shall represent the board to the assembly and the general public.
- (c) The board may schedule meetings or special hearings by a majority vote and appoint a chair pro tempore in the event that the elected chair declines or is unable to attend such special meetings.
- (d) A quorum shall consist of three members of the board. The board shall elect an alternate member to serve in the event a quorum of the board cannot be established.
- (e) Any member of the board who has conflicting interests in any matter under active investigation may not participate in the matter as a board member. "Conflicting Interest" includes, without limitation, an individual filing a complaint. In the event a quorum cannot be met due to disqualification or refusal of members, even after the appointment of alternate members, the case shall be referred to the Assembly for action.

Section 2.13.75 Powers of the Assembly Board of Ethics

The board may:

- (a) Establish administrative rules and procedures for the conduct of its business, conduct preliminary investigations, make reports to the assembly and conduct hearing as provided herein.
- (b) Consider questions as to ethical conduct, conflicts of interest, and the application of the standards set forth in this chapter, and upon the written request of any public official, or without such a request if in the public interest issue an advisory opinion as to any such question.

Section 2.13.70 Support Staff

The clerk shall provide support to the board, shall carefully and completely take and preserve minutes of all meetings, including those deemed confidential, and shall produce all reports.

Section 2.13.75 Cooperation with Board of Ethics Investigations

All borough personnel shall make available to the board all books, papers, documents, information, and assistance requested by the board and which is pertinent or material to any inquiry or investigation being conducted by the board in the performance of its duties under this article.

Section 2.13.80 Initial of Investigation

An investigation into alleged violations of this chapter is initiated by filing with the board a written complaint signed under oath. The complaint must contain a clear statement of the details of the alleged violation of this chapter. A complaint must be filed within two years of the alleged violation. Any person may file a complaint. All complaints filed shall be made public after determination of probable cause has been decided by the board.

Section 2.13.85 Conduct of Investigation

Complaints shall be filed with the city clerk who shall date the complaint and notify the board chair. The chair shall review the complaint and may request public background material associated with the complaint. The chair shall set a date for a complaint-screening meeting. The clerk shall provide the public reasonable notice of the meeting time and date, to be scheduled no more than fourteen-(14) days.

Section 2.13.90 Screening of Complaints

- (a) The board shall screen the complaint in executive session. The chair shall announce the purpose of the executive session before the meeting is closed to the public. The board secretary shall provide all members of the board with a copy of the complaint and associated documentation whether submitted by the complainant or requested by the chair.
- (b) In executive session, the board shall review each complaint to determine whether it is properly completed and if it contains allegations which if true would constitute a violation of this chapter. The board may require the complaint to provide additional information during the screening process before accepting the complaint.
- (c) The board shall only consider complaints which have been signed by the person making the complaint.
- (d) After screening, the board shall, by formal motion either accept or reject the complaint.
- (e) In addition, after the formal screening, the board shall by motion, refer allegations of violations of municipal, state, or federal law outside the board's authority to the borough attorney for appropriate disposition.
- (f) After accepting the complaint, the procedures set forth in Section 2.12.95 shall be followed. If the complaint is dismissed, the board shall notify the complainant and the respondent of the board's disposition of the complaint, including a copy of the complaint, within ten days of the board's decision.

Section 2.13.95 Procedure for Determining Probable Cause

- (a) If the board accepts a complaint, the board shall serve a copy of the complaint upon the respondent. The respondent shall have sixty (60) days from the receipt of the complaint to respond in writing to the allegations in the complaint.
- (b) The respondent may submit affidavits or other written evidence in support of his or her response. Misrepresentation of a material fact in the response to the board is a violation of this section.
- (c) Upon receipt of the response, the board shall review all materials submitted by the complainant and the respondent. The board shall then determine whether or not a violation of this chapter may have occurred.
- (d) Failure to respond within the time specified above, within any additional period, which may be granted by the chair, may be considered an admission of the allegation of the complaint.

Section 2.13.100 Probable Cause for a Hearing

- (a) If the board determines that a violation of this section may have occurred, the board shall initiate formal proceedings and schedule a hearing. If the board determines there is no violation, the complaint is dismissed.
- (b) After the board issues its determination on the issue of probable cause, all documents and research relating to that complaint are public. Before that determination, all such documents and records are confidential. However, the parties may agree to waive the confidentiality of the proceedings prior to determination of probable cause.

Section 2.13.105 Hearings

- (a) The board may convene a pre-hearing conference for the purpose of setting a time and place for the hearing, stipulation as to matters of fact and to simplify issues.
- (b) The board may administer oaths, hold hearings, and take testimony. Upon application by a party to the hearing, the board may issue subpoenas to require the presence of witnesses and the production of records, books and papers at the hearing.
- (c) Subpoenas must be served in the manner prescribed by Rule 45 of the Alaska Rules of Civil Procedure
- (d) Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.
- (e) Service of a complaint must be accomplished in accordance with Rule 4 (c) of the Alaska Rules of Civil Procedure. Service of any other pleading, motion, or other document must be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure
- (f) The board and respondent may each be represented by counsel. Each party shall have an opportunity to be heard, present evidence, and cross-examine witnesses. All witnesses shall testify under oath.
- (g) The Alaska Rules of Evidence do not apply to the admission of evidence in a hearing, but the board's findings must be based upon reliable and relevant evidence. All testimony and written evidence taken at the hearing must be preserved. Upon request, a copy of the testimony and written evidence must be furnished to the respondent.

Section 2.13.110 Report of Investigation

Within thirty (30) days after the conclusion of the hearing, the board shall report its findings of facts and conclusions of law regarding the investigation to the borough assembly.

Section 2.13.115. Actions upon Receipt of Report

- (a) Upon receipt of a report that a violation of this chapter has occurred, the assembly shall discipline the member.
- (b) If the board determines that a former member has violated this chapter in addition to issuing a public statement of its findings, conclusions, and recommendations, the board may request city attorney to seek legal remedies that may be available to the city.
- (c) A member of the assembly or mayor who violates this chapter shall be subject to the remedies available at law and equity. In addition, the violator shall be subject to a penalty of 1) a civil fine of more than five hundred dollars, and of 2) public censure.
- (d) In addition to any other remedy available at law or in equity, any city grant, contract, or lease entered into in violation of this chapter is voidable at the option of the assembly. In determining under this section whether to void a grant contract, or lease, the interest of third parties that may be damaged may be taken into account. The city shall give notice of intent to void a grant, contract, or lease under this section on no later than thirty (30) days after the board's determination of a violation of this chapter.
- (e) A penalty imposed under this section is in addition to and not in lieu of any other penalty that may be imposed according to law. To the extent that violations under this code are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this chapter.
- (f) A decision of the board is final. An appeal from a decision of the board may be taken to the superior court in accordance with the Alaska Rules of Appellate Procedure