

## SPECIAL MEETING

- I. CALL TO ORDER
- II. ROLL CALL
- III. REVIEW AGENDA
- IV. NEW BUSINESS
  - a. Approve/Disapprove October 4, 2016 Minutes
  - b. Approve/Disapprove Private Event Permit Del Norte Bank
- V. ADJOURN

## REGULAR WORK SESSION

- Two Bank Signatures
- 2017 Farmers Market & Seasonal Fee
  - Gazebo Update
- Employee Handbook Update
  - VC Questions?
  - Any Other Business

## BUDGET WORK SESSION

- General Fund

Posted 10/14/16



Trustee Kim reported that there would be a property walk through at 10 a.m. the following day for anyone interested in the upcoming work taking place there. She also asked that the trustees approve paying for half of the LWCRCo expenses later in the meeting.

#### 2015 AUDIT

Manager Dooley described to the Trustees a discrepancy in the 2015 Audit in the revenue reported and the distribution from the Virginia Christensen trust fund to the Virginia Christensen bank account. The auditors were contacted and staff was waiting for a response. Staff was directed to pass the response along to the trustees once received.

#### PUBLIC HEARINGS AND RELATED ACTIONS

##### APPROVE/DISAPPROVE ORDINANCE 398 AMENDING THE CREEDE DEVELOPMENT CODE BY UPDATING ARTICLE 7 ON FLOODPLAIN REGULATIONS

Mayor Larson opened the public hearing. Ed Vita commented that the regulations were inappropriate for Creede. Input from the City Manager and the City Attorney was considered and discussed. No written material was received in support or against the Ordinance. Mayor Larson closed the public hearing. Trustee Freer moved and Trustee Wyley seconded to Approve Ordinance 398 Amending the Creede Development Code by Updating Article 7 on Floodplain Regulations. The vote was unanimous. Mayor Larson declared the motion carried.

#### OLD BUSINESS

##### APPROVE/DISAPPROVE ORDINANCE 399 AMENDING CHAPTER 8 OF THE CREEDE DEVELOPMENT CODE REGULATING THE OPERATION OF OHVS

Trustee Dooley moved and Trustee Brink seconded to approve Ordinance 399 Amending Chapter 8 of the Creede Development Code Regulating the Operation of OHVs. There were four yes votes and one no vote (Freer). Mayor Larson declared the motion carried.

##### APPROVE/DISAPPROVE MEMORANDUM OF UNDERSTANDING CDOT & EXPENDITURE OHV CROSSING SIGN COSTS

Trustee Dooley moved and Trustee Brink seconded to approve the Memorandum of Understanding with CDOT and the associated OHV Crossing Sign Costs. There were four yes votes and one no vote (Freer). Mayor Larson declared the motion carried.

#### NEW BUSINESS

##### APPROVE/DISAPPROVE RESOLUTION 2016-10 AUTHORIZING A CORPORATE AUTHORIZATION RESOLUTION WITH DEL NORTE BANK

Trustee Dooley moved and Trustee Wyley seconded to approve Resolution 2016-10 Authorizing a Corporate Authorization Resolution with Del Norte Bank. The vote was unanimous. Mayor Larson declared the motion carried.

##### APPROVE/DISAPPROVE RESOLUTION 2016-11 AUTHORIZING ACH ORIGINATION AGREEMENT WITH DEL NORTE BANK

Trustee Brink moved and Trustee Dooley seconded to approve Resolution 2016-11 Authorizing ACH Origination Agreement with Del Norte Bank. The vote was unanimous. Mayor Larson declared the motion carried.

##### APPROVE/DISAPPROVE RESOLUTION 2016-12 GOCO

Trustee Dooley moved and Trustee Brink seconded to approve Resolution 2016 Authorizing a Grant Application to Great Outdoors Colorado. The vote was unanimous. Mayor Larson declared the motion carried.

##### APPROVE/DISAPPROVE ½ LWCRCo 2017 EXPENSES

Trustee Brink moved and Trustee Freer seconded to approve ½ of LWCRCo 2017 Expenses. The vote was unanimous. Mayor Larson declared the motion carried.

DISCUSS 2017 PROPOSED BUDGET & SCHEDULE

Trustee Dooley moved and Trustee Brink seconded to publish the notice of budget as presented. The vote was unanimous. Mayor Larson declared the motion carried.

APPROVE/DISAPPROVE BANK ACCOUNT SIGNERS

Trustee Dooley moved and Trustee Freer seconded to designate Randi Snead, Clyde Dooley, Jeffrey Larson, and Kay Wyley as signers for accounts at Del Norte Bank. The vote was unanimous. Mayor Larson declared the motion carried.

APPROVE/DISAPPROVE DIRECTING CLERK TO SWITCH BANKS

Trustee Dooley moved and Trustee Wyley seconded to direct the City Treasurer to close PRVB accounts and move to Del Norte Bank in a timely but practical manner as determined by the City Treasurer. The vote was unanimous. Mayor Larson declared the motion carried.

APPROVE/DISAPPROVE TRANSFERRING MATURING CD TO COLOTRUST

Trustee Wyley moved and Trustee Dooley seconded to transfer the maturing CD at Community Banks of Colorado in the amount of \$69901.63 to the COLOTRUST savings account. The vote was unanimous. Mayor Larson declared the motion carried.

MANAGER'S REPORT

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**Budget Work Sessions:** There were no objections to the budget work session schedule as presented.

**Manger & Clerk Evaluations:** Evaluations for the manager and the clerk were scheduled for the December Work Session.

ADJOURN

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There being no further business to come before the Board of Trustees at this time, Trustee Brink moved and Trustee Dooley seconded that the meeting be adjourned at 6:50 p.m. The vote was unanimous. Mayor Larson declared the motion carried.

Respectfully submitted:

/Randi Snead/  
Randi Snead, City Clerk/Treasurer



# PRIVATE EVENT PERMIT APPLICATION

City of Creede  
2223 N Main Street  
Creede, CO 81130  
(719-)658-2276

Name: Del Norte Bank

Address: 106 S. Main, Creede

Business/Organization (if applicable): Creede Branch of Del Norte Bank

Phone: 719.657.3376 Email: mike@truelocalbank.com

Description of Event: Open House for bank. will use park to cook hamburgers and to have space for folks to eat. (the branch lobby is small)

Date and Times of Set-Up: 9:00am 10/21/16

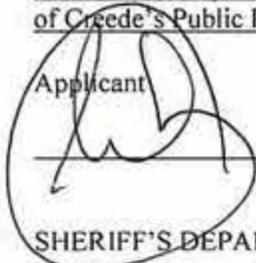
Dates and Times of Event: 11-2 on 10/21/16

Dates and Times of Tear-Down: 3pm 10/21/16

Location of Event: Town Park  
(attach map if applicable)

Estimated Number of People Expected to Attend this Event: 200

I have read, fully understand, and agree to the terms of this Private Event Permit, any attached pages, and the City of Creede's Public Property Event Policy and Procedures:

Applicant  


10/11/16  
Date

City Clerk

Date

SHERIFF'S DEPARTMENT NOTIFICATION: Will procure before 10/18  
Date

Pre-Event Site inspection by: City \_\_\_\_\_ Applicant \_\_\_\_\_ Date and Time: \_\_\_\_\_

Post-Event Site inspection by: City \_\_\_\_\_ Applicant \_\_\_\_\_ Date and Time: \_\_\_\_\_

### FOR ADMINISTRATIVE USE ONLY

Application Received 10/14/16 Fee \$50.00 Date Paid \_\_\_\_\_ To pay 10/18

License Agreement Attached? Y  N  Proof of Insurance Attached? Y  N  To provide 10/18

Board of Trustees Meeting Date 10/18/16

Approved by Board of Trustees this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

Attest: \_\_\_\_\_ City Clerk

# CLERK'S MEMO

## City of Creede

DATE: October 14, 2016  
TO: Mayor Larson and Trustees Dooley, Kim, Wall, Wyley, Brink and Freer  
CC: Clyde, Eric H.  
FROM: Randi Snead, Clerk/Treasurer  
SUBJECT: 10/18/16 Agenda Items

**10/4/16 MINUTES:** Del Norte Bank needs the minutes which authorized me to switch bank accounts and approved our signers on file, so I need you to approve them a little early.

**PRIVATE EVENT PERMIT:** Due to their small size, Del Norte Bank requested using the park for their upcoming open house which takes place prior to our next regular meeting, so I've included it for your approval here.

**TWO BANK SIGNATURES:** We will keep going with the Del Norte Bank theme. They gave us an option of keeping two-signature verification on our two checking accounts but it incurs a two-dollar fee each month per account. Two signatures are required for all checks per our Financial Policy & Procedures, and we can just control the two-signature requirement on our end, but I'm not sure this is enough of a fee to risk not keeping that verification. I've asked the auditor and the attorney to weigh in.

**FARMERS MARKET:** You might remember that the Farmer's Market requested early approval of their event to begin planning & registration for 2017. That application is in your packet. Additionally, we discussed the possibility of adopting some kind of seasonal event fee since we've never had a weekly event before. Up to this point, we have used a \$50 application fee for events ranging from a few hours to several days. We can also consider doing a separate license agreement as our Private Event Policy allows for that is specific to the Farmer's Market. You can review that online under I Want to-> Apply for -> Private Event or Parade Permit if you wish.

**GAZEBO UPDATE:** Just wanted to let you know that planning for the Gazebo and park path update is going very well and I should have the draft of the GOCO grant available for your review in a week or two. To fulfill the public participation component required by GOCO, I've launched an interactive online platform with a survey for the project and scheduled a public meeting. Could you take the online survey [here](#), and if you can, attend the public meeting for this project on November 3 at 4:30 pm at Town Hall? FYI, the survey has gotten over 70 responses in just 24 hours and in addition to this project, has garnered tons of insight about how people use and feel about Basham in general. I'll be sharing those results-the mostly great and good with some bad and some ugly-with you soon as well once participation seems to be winding down.

### EMPLOYEE HANDBOOK

You requested at the September regular meeting that I research drug testing policies that other towns use for possible use in our handbook as well as any housekeeping items I have for that document. I've attached it in its entirety with the policies in discussion highlighted, and we can consider any changes you are comfortable with at the 11/1/16 meeting.

### -DRUG TESTING

Here is what currently exists in our handbook on page 8:

### DRUGS AND ALCOHOL

The City of Creede is a drug-free workplace as required by the Drug-Free Workplace Act of 1988, 41 U.S.C. 702. It is both the City of Creede's and each employee's responsibility to maintain such an environment. The manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. An employee's violation of this prohibition, or any other drug abuse violation, may result in disciplinary action up to and including immediate discharge. Alcohol, its influence or affect will not be permitted during on-duty hours, which include overtime and response to off duty calls. Violation of this requirement may be cause for immediate discharge. The City Manager or an immediate supervisor may require drug testing when he/she has a reason to believe that an employee is under the influence, has been engaging in illegal drug activity, or has been involved in an incident/accident. Refusal to take a test when required may lead to consequences up to and including separation from employment.

I have the full text of the employee handbooks from the towns I've listed below, most of which are similar to us in size and snow removal needs. I thought I would get us started with quick survey of what they are doing, but if you would like to see the full text of any of these policies, please let me know and I can get them to you electronically. They vary in quality and thoroughness, so I can pull out some decent ones based on your direction....

NEDERLAND: Random consortium (third-party randomized) testing for CDL employees, reasonable suspicion and post-accident testing for all others.

PARACHUTE: Random consortium for police and CDL, reasonable suspicion and post-accident testing for all others.

SNOWMASS VILLAGE: Random consortium testing for CDL employees.

IDAHO SPRINGS: Random for CDL employees, pre-employment, reasonable suspicion, and post-accident for all others.

SILVERTON: CDL Only

CRIPPLE CREEK: Reasonable suspicion, pre-employment, and post-accident.

CALHAN: Random consortium for CDL, reasonable suspicion and post-accident testing for all others.

MT. CRESTED BUTTE: CDL Random, pre-employment, reasonable suspicion, post-accident, and return-to-work/follow up/rehab program for failed drug tests.

OAK CREEK: Reasonable suspicion & post accident.

PAONIA: Reasonable suspicion & post accident.

KIOWA: Police random & reasonable suspicion for other employees.

KREMMLING: Reasonable suspicion, post accident, in conjunction with required medical examinations, CDL random and pre-employment.

SHERIDAN: All employee pre-employment, reasonable suspicion, post-accident, police, fire, and CDL randoms.

SILT: Random consortium for CDL, reasonable suspicion and post-accident testing for all others.

I did have trouble finding policies for all-employee random testing, not to mention that there aren't many towns which do not utilize CDL drivers for their public works activities. This certainly isn't every handbook in CO, just the ones that I've saved back from various clerk email inquires over the years. I can reach out and find more employee handbooks to get their policies if you wish. I did notice in a few policies that managers are trained in reasonable suspicion; I didn't get a chance to do research on this possibility, but I sure can.

If you need a refresher, please reference Eric H's and Tami T's info on drug testing in the 9-6-16 packet. I've also tracked down the CIRSA Coverage Now article on drug testing that wasn't in that material and included it in the packet.

### **-FSLA CHANGES**

You've most likely heard about this by now, but our handbook will soon be out of compliance with new labor act regulations. As of Dec 1, (overtime) exempt employees must be reclassified as non-exempt or paid a much higher minimum salary (\$47,476) than was previously mandated (\$23,660). Please see the areas I've highlighted on page 3 and page 7 to see how we currently classify employees. Currently, I am the only employee affected by these regulations, but our recreation director will also fall under a questionable exempt status. The only practical solution for now, I think, is to reclassify these two positions as non-exempt. I am right at forty hours per week typically now that we close the office a little earlier, and I can make sure to stay under. As far as the recreation director goes, I do think they will run into overtime quite often at least in the beginning. However, their starting salary is low enough that it will certainly not exceed the \$47k we would otherwise be required to pay them. I've asked Eric Heil to weigh in on this.

### **-FMLA CORRECTION**

Our extended medical leave policy is great, but I noticed that it isn't actually compliant with the Family & Medical Leave Act of 1993 which requires employers to allow up to 12 weeks of unpaid leave for these types of circumstances. We just need to adjust the first sentence from "An extended medical leave of absence is available to eligible employees for up to 4 weeks paid leave and up to 2 additional unpaid weeks for a total of up to 6 weeks in a calendar year under particular circumstances that are critical to the employees or their family members" to "an extended medical leave of absence is available to eligible employees for up to 4 weeks paid leave and up to 8 additional unpaid weeks for a total of up to 12 weeks in a calendar year under particular circumstances that are critical to the employees or their family members" to bring that up to speed.

### **GENERAL FUND BUDGET**

Please keep your eye out this weekend or Monday for a memo regarding the General Fund Budget scheduled for discussion Tuesday night after our meeting.

July 19, 2016

City of Creede

RE: Creede Farmers, Local Artisan and Antique Market

I am submitting a permit for the remainder of the 2016 summer season for the Creede Farmers, Local Artisan and Antique Market. It has been held since June at The Village across from the Mountain View RV Park because Roland Zimmerman called me over a year ago and asked if I would try to set one up there. I did try this year but it hasn't had the response that I was hoping for and I think part of the reason is it may just be too far out of town for people to find and want to drive, especially during their lunch hours. The vendors are a little frustrated because they aren't getting the business they need to make it worth it to drive up to Creede from Pagosa, Mosca, Moffat and other areas. I would also appreciate being able to use a small amount of electricity because I make coffee in the morning for the vendors and occasionally we might have a singer during the market that may need to plug in his guitar. I hope this is ok. I am also attaching a copy of the market insurance which will change over to the town as an additional insured. There is also a Facebook page and a website.

I would appreciate your consideration to letting the market continue in town, preferably at Basham Park, and the more visible the tents and goings on, the better turnout we will have. Being in town will really help with customers and I believe that it will increase our vendors so there will be a lot more choice of produce and crafts.

I am currently working on getting SNAP for the market which will include the low income population so they will be able to get fresh produce for their families.

I'm also submitting an application for the 2017 season so we can start planning. If the market goes like we think it will, the hours may increase a little, possibly until 4 or so, but everything else will probably be the same.

We appreciate your consideration. I'm excited to work with the town and have a great event! Thank you.



Karen E. Miller, Market Director  
719-873-5466  
[Mkmillermink@aol.com](mailto:Mkmillermink@aol.com)



PRIVATE EVENT PERMIT APPLICATION

City of Creede
2223 N Main Street
Creede, CO 81130
(719)658-2276

For 2017

Name: Karen E. Miller

Address: 283 County Road 63, South Fork, Co 81154

Business/Organization (if applicable): Creede Farmers, Local Artisan and Antique Market

Phone: 719-873-5466 Email: mkmillermink@aol.com

Description of Event: Produce, crafts, possible workshops, entertainment, possible antiques

Date and Times of Set-Up: 9:00 - 10:00 am every Friday June - September

Dates and Times of Event: 10:00 - 3:00 pm " " " "

Dates and Times of Tear-Down: 4:00 - 5:00 pm " " " "

Location of Event: lot: Basham Park, 2nd: first street near Centurylink Building, (attach map if applicable) 3rd: 2nd street near Ruth Theater

Estimated Number of People Expected to Attend this Event: hoping for at least 50+

I have read, fully understand, and agree to the terms of this Private Event Permit, any attached pages, and the City of Creede's Public Property Event Policy and Procedures:

Applicant: Karen E. Miller Date: 7-19-16 City Clerk: RS Date: 7-19-16

SHERIFF'S DEPARTMENT NOTIFICATION: Will be procured by 10/18. Date

Pre-Event Site inspection by: City Applicant Date and Time:

Post-Event Site inspection by: City Applicant Date and Time:

FOR ADMINISTRATIVE USE ONLY

Application Received 7/19/16 Fee TBD Date Paid

License Agreement Attached? Y X Proof of Insurance Attached? Y N

Board of Trustees Meeting Date 10/18/16

Approved by Board of Trustees this day of , 20

Attest: City Clerk

# COLORADO INTERGOVERNMENTAL RISK SHARING AGENCY COVERAGE LINE

## LEGAL LINES SPECIAL INSERT



## THE INS AND OUTS OF DRUG & ALCOHOL TESTING

This Legal Lines article was written by J. Andrew Nathan & Marni Nathan Kloster of the law firm Nathan, Bremer, Dumm & Myers, P.C. The firm is a member of CIRSA's defense counsel panel and provides legal services to CIRSA and its members in a wide variety of claims. Mr. Nathan and Mrs. Kloster welcome any questions regarding this article and will be happy to provide additional information upon request. They can be reached at 303.691.3737.

### INTRODUCTION

Drug and alcohol policies, and particularly those dealing with the testing of government employees, are important tools in trying to mitigate the effects that drug and alcohol use and misuse have on the work place. Although such policies may implicate the Americans with Disabilities Act ("ADA") and other constitutional rights, such as the Fourteenth Amendment right to privacy, the case law primarily focuses on the policies and their interaction with the Fourth Amendment protection against unreasonable search and seizure. This article provides an introduction to some of the key legal principles that apply to drug and alcohol testing policies. The courts have generally taken a fairly stern view of such policies, and uncertainty as to the state of the law in particular areas has made the drafting and implementing of these types of policies difficult indeed.

This article does not specifically deal with employees subject to Department

of Transportation ("DOT") procedures, including those subject to the Federal Transit Administration ("FTA"), for which there are additional rules and limitations.<sup>1</sup>

The Fourth Amendment to the United States Constitution has generally been interpreted as requiring a governmental entity to obtain a search warrant before it requires a government worker take a drug or alcohol test, as such a demand likely constitutes a search.<sup>2</sup> There are, however, three main exceptions to the warrant requirement. First, testing without a warrant is appropriate if based upon individualized suspicion of wrongdoing.<sup>3</sup> Second, courts have recognized limited circumstances where "special needs" of the public employer may require drug and alcohol tests without any individualized suspicion or a warrant.<sup>4</sup> Third, another less frequently used exception, related to consent, also exists. Moreover, the courts have treated pre-employment screening and post accident testing somewhat differently from other types of testing, although they are more

akin to the special needs exception.

### REASONABLE SUSPICION TESTING

Reasonable suspicion testing is the primary example of the individualized suspicion exception to the warrant requirement. The standard used to judge if there is valid reasonable suspicion is whether the information available creates a reasonable suspicion that the employee used, possessed or was impaired by illegal drugs or alcohol while on the job.<sup>5</sup> Actual observation or physical evidence is significant, but they are not the only way to justify such testing. Rather, any information that would cause a reasonable person to believe an employee was using or was affected by drugs or alcohol at work is sufficient grounds to order testing, including such things as an employee's admission.

While the DOT regulations do not apply to all public entity employees, the DOT regulations regarding reasonable suspicion

testing offer a potentially valid set of methods for public entities to apply to non-DOT covered employees. For example, the DOT requires that those persons who are designated to make reasonable suspicion observations receive at least 60 minutes of training on alcohol misuse and an additional 60 minutes of training on controlled substance use. Training must include the physical, behavioral, speech and performance indicators of probable alcohol or controlled substance use.<sup>6</sup> Having similar training for public entity supervisors tasked with making reasonable suspicion determinations for non-DOT employees can be an important tool in defending testing decisions.

If a public entity undertakes testing based on reasonable suspicion, it is critical that there be detailed documentation of the basis for the reasonable suspicion. The articulation of reasonable suspicion should be based on specific, contemporaneous observations concerning the appearance, behavior, speech, body odors or the admissions of the employee.<sup>7</sup>



## RANDOM DRUG TESTING

Subjecting every government employee to random drug or alcohol testing has generally been held to violate the Fourth Amendment, unless the employer can show a special need. The showing of a special need is a prerequisite to further analysis by the Court.<sup>8</sup> If a special need can be shown, courts then balance the competing interests of an individual's privacy rights versus the promotion of legitimate government interests. The mere fact that the individual's privacy rights are minimal or even virtually non-existent is not dispositive, as the "special need requirement prevents suspicionless searches where the government has failed to show either that it has a real interest in testing or that its test will further its proffered interest."<sup>9</sup> As such, if a court concludes that the employer's concerns are real and that the challenged test is an effective means of addressing the concerns, then a special need showing has been made.<sup>10</sup>

In utilizing this test, the Tenth Circuit struck down a drug testing policy requiring mechanics to take a drug test when obtaining or renewing a CDL. The Court's rationale was that while the employer did have a significant interest in ensuring that its mechanics did not operate heavy machinery in a dangerous manner, the predictable testing interval provided in the policy was ineffective in addressing drug use in the workplace.<sup>11</sup>

In another decision, the court described the criteria that could justify a random test to detect illegal drug use by a public sector employee, as follows:

(1) The employee holds a "safety sensitive" position; and,

(2) The test is performed following a random or uniform selection method.<sup>12</sup>

In determining which positions are "safety sensitive," courts have upheld random drug testing for government employees in positions as varied as transit employees and customs agents. Courts have struck down random drug testing for positions such as custodians and some court employees.<sup>13</sup>

The determination of which classes of public entity employees can be legally subject to random drug testing is of primary importance. Employee classes that are most likely to be upheld are those involving public safety and other clearly "safety sensitive" positions, such as police officers and firefighters.

## CONSENT

Another exception to the warrant requirement of the Fourth Amendment is when a governmental employee voluntarily consents to drug and alcohol testing. A governmental entity does not violate an employee's Fourth Amendment rights if it first obtains voluntary consent from an employee.<sup>14</sup> However, as with the other exceptions to the warrant requirement, the consent exception is not without its pitfalls.

The government bears the burden of proof in showing that the consent given was voluntary.<sup>15</sup> Whether consent to a search is valid turns heavily on its voluntariness, which is determined by looking at the totality of all circumstances surrounding the consent.<sup>16</sup> The use of a consent form or a general policy providing that employees must submit to drug and alcohol testing does not automatically make consent voluntary. For example, a university policy requiring student athletes to sign drug testing consent forms was

held invalid due to the coerciveness of the circumstances surrounding the athletes' signing of the consent forms.<sup>17</sup> In contrast, the Tenth Circuit held that a City employee voluntarily signed an agreement with the City to submit to random testing as a condition of reinstatement following termination for drunk driving charges because the evidence suggested that he fully understood the agreement, and he signed the agreement after meeting with union representatives.<sup>18</sup> In another case, the court found it important that the consent form included a clause that stated the job applicant was under no obligation to provide a urine sample for purposes of drug testing.<sup>19</sup>

As a result, due to the factually-dependent nature of the cases discussing voluntary consent to drug testing, public entities which rely solely on the consent exception to the Fourth Amendment could nonetheless face a later judicial determination that the consent obtained was invalid. It is therefore better to use the consent exception in conjunction with other appropriate policies, which are likely to make the test valid in any event.

## PRE-EMPLOYMENT DRUG SCREENING APPLICANTS

The case law on the subject of pre-employment drug screening of applicants generally holds that such screening must be reasonable because it still qualifies as a search under the Fourth Amendment. However, the Fourth Amendment protects only an "expectation of privacy that society is prepared to consider reasonable."<sup>20</sup> In this regard, there have been decisions which held that applicants may have a lesser expectation of privacy than current employees.<sup>21</sup> One court explained that applicants have a lesser expectation of privacy because:

- (1) They know in advance that they will be required to undergo the testing;
- (2) They have some control about whether they agree to undergo the testing; and
- (3) As part of a background check they likely provided other personal information.<sup>22</sup>

The Supreme Court has also recognized that the use of blood tests done in the context of pre-employment medical examinations, such as before entering military service, is commonplace.<sup>23</sup> However, the Supreme Court has yet to definitively determine the validity of pre-employment drug screening, which is completely independent from pre-employment physicals.

While there are several cases which have approved pre-employment drug screening, the courts appear to be utilizing a case by case analysis, similar to the approach the Supreme Court has approved for a determination of whether there are special needs.<sup>24</sup> What the current state of the case law teaches is that the principal factor with respect to the validity of pre-employment drug screening is the justification provided by the government

in support of the testing. Pre-employment testing for safety sensitive or public safety positions is probably justified. Testing for non-safety sensitive positions, where there is no other articulable reason for the testing, may be held to be invalid, as courts have upheld such testing in very limited circumstances. That being said, testing can be appropriate if the employer can articulate a substantial need for the testing, such as a valid and supportable need to minimize costs associated with hiring and retention, dealing with a department or job duties with higher drug or alcohol concerns, or maintaining a public image of integrity.<sup>25</sup>

## POST ACCIDENT TESTING

Courts have been somewhat inconsistent regarding the validity of post accident testing. In one case, the United States Supreme Court upheld rules promulgated by the Federal Railroad Administration that imposed mandatory drug testing of railroad employees following a serious accident or serious incident or following other rule violations.<sup>26</sup> The Court held that the government's interest in such testing was justified because the testing:



(1) Improved its ability to investigate railway accidents by being able to either attribute or eliminate drugs and alcohol as a cause or contributing factor;

(2) Discouraged railway employees from being impaired on the job by providing notice to the employee that post accident screening will occur following an accident or violation; and

(3) Was appropriate because the aftermath of a railway accident was usually so chaotic that it would be impractical to impose reasonable suspicion testing.<sup>27</sup>

Subsequent case law has indicated that post accident testing policies are typically upheld when they either:

(1) Apply only to a portion of employees who are involved in safety sensitive positions (and in some cases only when fault was apparent or at least in question); or

(2) Applied to all employees, but only in those circumstances where serious accidents occurred.

A history of drug and alcohol use in a

particular sector of employees or for a particular employer may also be an important factor supporting the validity of testing.

## CONCLUSIONS AND RECOMMENDATIONS

The prevailing pattern in the current judicial analysis of most drug and alcohol testing policies is as follows:

(1) Drug and alcohol testing policies that apply to all public entity employees regardless of the situation are likely invalid as violative of the Fourth Amendment and perhaps privacy rights inherent in the Fourteenth Amendment, or in certain cases, the ADA.

(2) Reasonable suspicion testing is valid, provided the reasonable suspicion is articulable and supportable. It is best if the employer has records of that support on which it can rely in the event of a later challenge.

(3) Drug and alcohol policies are more likely to be valid if they apply to employees who legitimately hold safety sensitive or public safety positions and if they extend to others, there need to be

valid reasons supporting the need for the extended policies.

(4) Employees and applicants should receive advance notice of the applicable policies and any amendments to them and the employer should keep records confirming the notice and acknowledgement of receipt of new policies or amendments by employees.

Having an unconstitutional drug and alcohol policy or implementing a constitutional policy in an unconstitutional way can easily lead to liability on the part of the public entity, as well as individual liability on the part of public entity supervisors. Claims made under 42 U.S.C. §1983 for violation of civil rights not only subject public entities to significant potential liability for damages, but allow successful plaintiffs to recover attorney's fees under 42 U.S.C. §1988. Frequently those attorney's fees will involve substantially more money than the actual damages awarded. It is therefore important that public entities periodically review and provide training on their drug and alcohol testing policies, as the law is constantly undergoing change in both significant and subtle ways.

<sup>1</sup> 49 C.F.R. Part 382; 49 C.F.R. Part 655.3 et. seq.

<sup>2</sup> *Chandler v. Miller*, 520 U.S. 305, 313 (1997); *Skinner v. Ry. Labor Executives' Ass'n*, 489 U.S. 602, 617 (1989).

<sup>3</sup> *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 652-53 (1995); *City & County of Denver v. Casados*, 862 P.2d 908, 911 (Colo. 1993).

<sup>4</sup> *Skinner*, 489 U.S. at 608-612; see also *Vernonia*, 515 U.S. 646; *Nat'l Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989).

<sup>5</sup> *Benavidez v. City of Albuquerque*, 101 F.3d 620 (10th Cir. 1996).

<sup>6</sup> 49 C.F.R. § 382.603.

<sup>7</sup> 49 C.F.R. § 382.307.

<sup>8</sup> *Solid Wate Dept. Mechanics v. City of Albuquerque*, 156 F.3d 1068 (10th Cir. 1998).

<sup>9</sup> *Id.* at 1073.

<sup>10</sup> *Id.* at 1074.

<sup>11</sup> *Id.*

<sup>12</sup> *Benavidez*, 101 F.3d at 625.

<sup>13</sup> See *Bolden v. SEPTA*, 953 F.2d 807 (3rd Cir. 1991); *Romaguera v. Gegenheimer*, 798 F.Supp. 1249 (E.D.La. 1992).

<sup>14</sup> *Schneekloth v. Bustamonte*, 412 U.S. 218 (1973).

<sup>15</sup> *Derdeyn v. Univ. of Colorado, Boulder*, 832 P.2d 1031 (Colo. App. 1992).

<sup>16</sup> *Schneekloth*, 412 U.S. at 227, 229.

<sup>17</sup> *Derdeyn*, 832 P.2d at 1035 ("[B]ecause of economic or other commitments the students had made to the University, they were not faced with an unfettered choice in regard to signing the consent.").

<sup>18</sup> *Jinzo v. City of Albuquerque*, 185 F.3d 874 (10th Cir. 1999) (unpublished).

<sup>19</sup> *Mack v. United States*, 814 F.2d 120 (2d Cir. 1987).

<sup>20</sup> *O'Connor v. Ortega*, 480 U.S. 709, 715 (1987).

<sup>21</sup> *Willner v. Thornburgh*, 928 F.2d 1185 (D.C. Cir. 1991).

<sup>22</sup> *Id.* at 1188-1193.

<sup>23</sup> *Schmerber v. California*, 384 U.S. 757, 771 n.13 (1966).

<sup>24</sup> *Von Raab*, 489 U.S. 656 (1989).

<sup>25</sup> *Willner*, 928 F.2d at 1192-1993.

<sup>26</sup> *Skinner*, 489 U.S. 602.

<sup>27</sup> *Id.* at 630-32. Obviously, the aftermath of a municipal vehicle accident.

*The Knowledge Now series features practical research on timely topics from the Colorado Municipal League.*

## LABOR ACT CHANGES: WHAT PUBLIC OFFICIALS SHOULD KNOW

*By Lauren Mueller, Frederick director of human resources and S. Lorrie Ray, Mountain States Employers Council (MSEC) director of membership development. MSEC staff Kristina Kelley, Barbara Wyngarden, and Curtis Graves also contributed.*

The Department of Labor (DOL) has doubled the minimum salary for white-collar exempt employees starting Dec. 1, 2016: For employees exempt under the executive, administrative, or professional exemptions, the minimum salary requirement is currently \$455 per week (\$23,660 annually), but will increase to \$913 per week (\$47,476 annually). This means that employers who classify employees as “exempt” under the Federal Labor Standards Act (FLSA) must either increase those exempt employees’ salaries to \$47,476 per year or reclassify them as “nonexempt” and pay them overtime for all time worked in excess of 40 hours per week.

It is important to note that not only will the salary rates change in 2016, but the DOL has established a formula for automatically updating the salary and compensation levels every three years to ensure that they will continue to provide a useful and effective test for the exemption. Therefore, when reviewing salaries, anticipate that this will be a regular process; the DOL’s proposal is to set the standard salary level that will be reviewed on an annual basis.

### Reviewing Current Practices

The first step to check the impact of this change on the municipality is by determining if there are exempt employees paid less than \$913 a week. If there is no impact, it is still important to check compliance with the exemptions under the FLSA.

To do this, a review of job descriptions is in order. Tasks change over time, and it is wise to periodically update and review job descriptions. Not only is it important to properly designate a position as “exempt” or “nonexempt,” but if the job is determined to be “exempt,” to place it under the correct exemption type. Although not legally required, this step will help anyone reviewing job descriptions for exempt/nonexempt status. In determining whether a position is exempt, an individual must, in addition to being paid the appropriate salary, meet all of the duties tests, as summarized below.

#### Executive Exemption

- The employee’s primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent; and
- The employee must have the authority to hire or fire other employees, or the employee’s suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

#### Administrative Exemption

- The employee’s primary duty must be the performance of office or nonmanual work directly related to

the management or general business operations of the employer or the employer’s customers (this includes tax; finance; accounting; budgeting; auditing; insurance; purchasing; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; computer network, Internet and database administration); and

- The employee’s primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

When it comes to the public sector, inspectors or investigators of various types, such as fire prevention or safety, building or construction, health or sanitation, environmental or soils specialists, and similar employees, generally do not meet the duties requirements for the administrative exemption because their work typically is not directly related to the management or general business operations of the employer.

#### Professional Exemption

- The employee’s primary duty must be the performance of work requiring advanced knowledge, defined as work that is predominantly intellectual in character and includes the consistent exercise of discretion and judgment;

- The advanced knowledge must be in a field of science or learning; and
- The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.

Two unique exemptions under this category are the creative and computer professional exemptions. Creative professionals must be doing work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical, or physical work. The exemption does not apply to work that can be produced by a person with general manual or intellectual ability and training. To qualify for exemption as a creative professional, the work performed must be “in a recognized field of artistic or creative endeavor.” This includes such fields as music, writing, acting, and the graphic arts.

Computer professionals must be paid on a salary or at an hourly rate of not less than \$27.63 an hour. In addition, the primary duty must consist of:

- The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;
- The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;
- The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
- A combination of these duties, requiring the same level of skills.

If there is a misclassification, addressing it at the same time as making other changes can be helpful. Employees may feel more comfortable if this is part of a larger review due to

the changes in the regulations.

## Planning Pay Changes

It is important to review salaries or salary ranges to determine which employees will need adjustments to comply with the new regulations. Employers must choose whether to increase the exempt employee’s salary to the minimum threshold of \$47,476 per year or to change the employee’s status to nonexempt, where they will be eligible to receive overtime pay for any hours worked in excess of 40 in a week. These adjustments could wreak havoc not only with the budget, but also with employee morale issues as word gets out that some employees, but not others, are receiving pay increases.

In reviewing the previous suggestions an employer might want to look at the number of hours that an individual is working in order to determine the most cost-effective avenue to take. If an exempt employee’s pay is less than the new threshold, it may or may not be cost-effective to increase their salary, depending on the number of hours they work per week. This of course could be challenging to analyze as typically exempt employees do not keep track of the hours they work. Speaking to a supervisor might be helpful. Other methods are outlined below.

To determine whether to reclassify exempt employees as nonexempt, employers should calculate the exempt employee’s salary as an hourly rate of pay. The most common and administratively easiest approach is to simply divide employees’ current salary by 2,080 (40 hours times 52 weeks) to determine an hourly rate. For employees who regularly work more than 40 hours per week, such an approach could result in a significant pay raise if no operational changes are made to reduce or eliminate overtime work. While employees will be happy to receive such a raise, more cost-effective approaches exist. In fact, other pay alternatives cannot only be more cost-neutral, but provide greater

scheduling flexibility to employees: a win-win. As such, employers would be wise to consider the following payment options.

A cost-neutral and perhaps least administratively burdensome approach is to estimate the number of overtime hours an employee is expected to work and then calculate an hourly rate that will match the employee’s current salary. In other words, lower the hourly rate to offset any overtime you expect the employee to work. (Do be sure that the new hourly rate does not fall below Colorado’s minimum wage which is currently \$8.31 per hour and to be increased in January). Given that many employers do not track exempt employees’ hours, this may be difficult. Employers may therefore want to begin observing and documenting at-risk exempt employees’ work hours. Alternatively, employers can monitor employee pass-key entries and exits as well as computer log-ins and log-outs to formulate an estimate of overtime hours regularly worked.

Another option is to pay nonexempt employees a salary. That nonexempt employees cannot be paid a salary is a common misconception. Employers may, in fact, pay nonexempt employees a salary and designate, in writing, how many hours the salary is intended to compensate. The salary need not be payment for 40 hours a week, but can be for any number of hours the employer chooses. Paying nonexempt employees a salary, however, does not eliminate the requirement to pay overtime for any hours worked over 40 in a workweek. That being said, an employer need only pay an employee “half-time” for any overtime hours worked for which the salary was intended to compensate. For example, if an employee’s salary represents payment for 50 hours of work each week and the employee works 45 hours one week, the employer need only pay the employee half-time for the five hours of overtime worked. However, if the salary represents payment for 40 hours of work each week, the

employer must pay time-and-a-half for the five hours of overtime worked. An employee's regular rate of pay is determined by dividing the employee's weekly salary by the number of hours the salary is intended to compensate. An example of this is how firefighters are often paid. Because their schedules naturally take them into overtime, their annual salary folds in overtime expected to be earned. If a firefighter works more hours, all hours worked are overtime, and if the firefighter is not working full time it is either substituted with vacation or personal time off (PTO), or it is unpaid, and a new rate is calculated if overtime is not to be included.

Employers also can pay by the "fluctuating workweek" method. This method may only be used for employees whose work hours actually fluctuate from week to week below and above 40 hours. An employee must agree and understand that the salary constitutes straight-time pay for all hours worked each workweek regardless of whether the employee actually works 15, 30, or 70 hours. Because the salary provides straight-time pay for all hours worked, an employer need only pay half-time for any hours worked over 40 in a workweek. An employee's regular rate of pay is determined by dividing the employee's salary by the number of hours worked each week. As a result, the more hours an employee works, the lower the regular rate of pay and the lower the employer's overtime liability. An employee, however, must always be paid at least minimum wage. While this method provides the employee with the greatest work schedule flexibility and can lessen employers' overtime costs, it does present an administrative burden in that an employee's regular rate of pay must be calculated for each week in which the employee works overtime. This is most successful when trying to incent work to get done more quickly. For example, some municipalities have wanted meter readers to get the meters read early in the week, and

would appreciate this approach.

Because the fluctuating workweek method has strict compliance requirements, it is best to get legal advice on a particular set of circumstances before moving forward.

### **Understanding Part-time Status and the Highly Compensated Employee**

A common question is with the minimum salary requirements, is there any consideration for part-time status. The short answer is no. The purpose of the so-called white-collar exemptions is to allow employers to know with certainty how much it will cost to compensate certain very-hard-working employees week in and week out without unpleasant surprises. An uncertain number of hours is at the very heart of this concept, and in fact, the presumption has always been that exempt professionals typically work more — sometimes much more — than 40 hours per week. Therefore, whether the employee works 20 hours a week or 50, the minimum salary requirement is always the same. In other words, employers may not prorate the weekly salary for part-time exempt employees.

There is a little used exemption for highly compensated employees making at least \$134,004, as of Dec. 1, 2016. It only requires that the employee meet any one of the tests bulleted under the exemptions described above. Highly compensated employees who do not meet the duties test are rare at municipalities. Occasionally, there is news of a snow-plow driver making more than the governor in a heavy snow year, but this is because they earned overtime, not because they enjoy a six-figure salary.

### **Addressing Common Complaints and Issues**

An employee that is changing from exempt to nonexempt may have several questions regarding this change in status that an employer should be prepared to answer. The

following is a list of questions the employer might ask upon being notified of this change.

- Why me?
- Why now?
- How does this impact my opportunities for growth?
- Will this impact my benefits?
- Does this mean you don't value my skills/contributions?
- How will I get my work done if overtime is prohibited or limited?
- What about checking and responding to email after hours?

### **Pay Compression**

Pay compression is defined as narrow or inappropriate pay differentials among jobs at different levels in the organization that result in inequity. Compression could occur between the pay of supervisors and subordinates, the pay of experienced and newly hired employees, or the salary range midpoints in successive salary grades. It may also occur when employees are moved from exempt to nonexempt status.

### **Communicate**

It is important that employees understand the reason for any changes to their pay. Train and involve managers in this process, so that they can assist with communications, as employees often turn to supervisors and managers for knowing what is going on in the workplace.

#### *Sample Communication*

Because of [a recent audit, changes in your job duties, or changes in regulations] your classification is being changed from exempt to nonexempt effective [date].

Because of this change, you will no longer be paid on a salary basis, and will now be paid on an hourly basis and eligible for overtime after 40 hours in a workweek. Additionally you will be required to accurately report your time via [insert company method].

Or

Because of this change, you will now be paid on a salary basis and eligible for overtime after 40 hours in a workweek. Additionally, you will be required to accurately report your time via [insert company method].

All overtime, in accordance with company procedures must first be authorized by your supervisor.

### **Recordkeeping**

The perception that exemption equals higher status is not as strong in the public sector. It does exist, but employees who earn overtime because they do not meet the salary-basis test seem to view the extra compensation as a benefit more readily than their private-sector counterparts. Nevertheless, some employees may be very disappointed to find out that they are no longer allowed to work a schedule that suits them and may be in excess of 40 hours, without keeping record of hours worked.

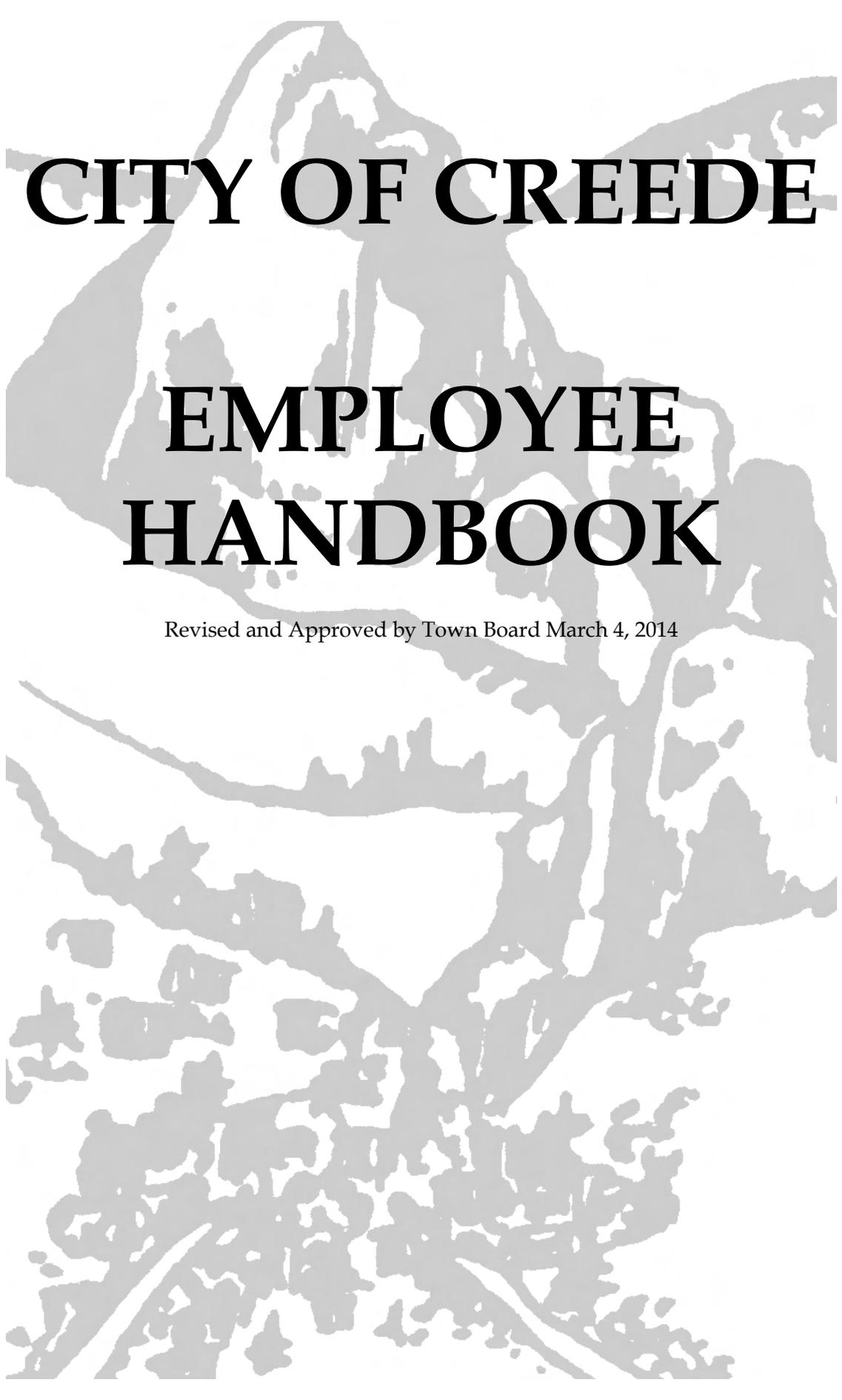
The DOL only requires that an employer track hours worked of its nonexempt employees. They do not proscribe how this must be done. While there are a number of methods, some employers want to ease the frustration for employees moving from exempt to nonexempt and only require those employees to make changes on a prefilled form, noting when the employee did not work the standard hours already filled out on the form, and instead worked other hours.

For more information on this issue, visit the U.S. Department of Labor website at [www.dol.gov/whd/overtime/final2016](http://www.dol.gov/whd/overtime/final2016).

## **FOLLOWING SPECIAL RULES FOR THE PUBLIC SECTOR**

Municipalities are creatures of state government, and special regulations apply. These are more relaxed rules, likely written into the regulations because employees are paid with tax dollars.

1. Under certain circumstances, exempt employees may have their pay docked for not working a 40-hour week. The government entity must have a written policy, and the reason must be allowable under the regulations. For example, pay cannot be docked for serving on a jury.
2. If an employee earns overtime, they can be paid in compensatory time instead of money. Employers must provide it at time-and-one-half, meaning that the employee gets 1.5 hours off for every hour of overtime worked. There are limits on how much time can be accrued, (240 for regular employees and 480 for safety employees) and any time on the books must be paid out at separation. For this reason, many employers cap compensatory time at 60 or 80 hours. To take advantage of this exception, the employer must have a written policy.
3. Full-time employees who occasionally volunteer to work in another job in another department need not be paid overtime. This must be applied carefully, because the work must truly be occasional or sporadic, meaning there is no set schedule, and the employee cannot be "voluntold."
4. Shift-swapping also is allowed. Again, it must be voluntary and the employer must keep records of the swap. Some employers have expressed issues with this, such as when the employee who wanted time off and was able to get a colleague to swap, and then never worked the shift of the kindly employee who was willing to help out.
5. Those reporting directly and only to an elected official may be exempt. It will depend upon certain factors, and it is important to look at the requirements carefully.
6. Law enforcement officers and firefighters may have work periods up to 28 days, and may work more hours in those work periods before earning overtime. In addition, if a municipality or special district has fewer than either five firefighters or law enforcement officers, no payment of overtime is required.



**CITY OF CREEDE**

**EMPLOYEE  
HANDBOOK**

Revised and Approved by Town Board March 4, 2014

CITY OF CREEDE  
HANDBOOK FOR EMPLOYEES  
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CITY OF CREEDE  
HANDBOOK FOR EMPLOYEES

## INTRODUCTION

Thank you for being a part of Creede's great team of employees!

It is the purpose of this manual to provide a modern, comprehensive system of personnel administration for the City of Creede, A Colorado Town, whereby economy, efficiency and effectiveness in the service rendered by the City and consistent treatment of the employees and the taxpayers of the City may be promoted. To accomplish this end, the provisions of this document shall be observed as basic requirements for employment with the City of Creede.

The City of Creede subscribes to the concept that our employees are our most important asset. To every degree possible, they will be treated fairly and with respect. City of Creede employees will be offered the opportunity for growth as desires and qualifications dictate, and as promotional opportunities become available.

## GENERAL PROVISIONS

1. This handbook has been prepared to provide information about the City of Creede's personnel policies of general applicability. This handbook is not all-inclusive, but addresses those topics most likely to be of interest to employees in the course of day-to-day operations.
2. The policies in this handbook are not intended to supersede the City of Creede's ordinances, resolutions or other applicable laws; in the case of any conflict between these policies and such ordinances, resolutions or laws, the latter shall prevail.
3. The policies in this handbook are not intended, and shall not be construed, to vest any employee in the City of Creede with any rights arising from any expressed or implied contract of employment. The City of Creede reserves the right to change or rescind these policies and to determine the application of these policies to specific circumstances. The City of Creede further reserves the right to alter or eliminate any benefits provided to its employees. Any alterations, eliminations, or revisions may be made applicable to current as well as future employees.
4. The provisions of this handbook apply to all employees of the City of Creede except as otherwise specified.
5. If an answer to a particular question cannot be found herein, or an employee has not received satisfactory answers to questions concerning information in this handbook, the employee may ask their immediate supervisor.

## EMPLOYEE ADMINISTRATION

The City Manager shall be primarily responsible for the administration of employee selection matters in accordance with this Handbook. The responsibilities of the Manager shall include, but not be limited to, the following duties:

1. To approve the hiring, promotion, demotion, or transfer of each employee.
2. To cause to be prepared job descriptions for each position of employment, and to review and amend such descriptions from time to time.

3. To ensure that no person is hired or promoted into any position of employment unless the position and the compensation therefor have been provided for in the City's pay plan and budget.
4. To carry out employee reviews, arrange employee meetings as necessary, assist with employee training, and all other day-to-day personnel matters.

As set forth in Article 2-3-60 of the Creede Municipal Code, the City Manager shall be appointed by the Creede Board of Trustees. The Creede Board of Trustees shall be responsible for making any determination concerning the employment or disciplinary matters, including discharge, relating to the City Manager. Pursuant to and as may be allowed by the Colorado Open Meetings law, the Creede Board of Trustees may be consulted on other employment issues in the discretion of and as determined necessary by the City Manager.

### EMPLOYEE CLASSIFICATIONS

Except as otherwise required by law, all employees of the City of Creede serve "at-will." Any employee may be terminated with or without cause, a statement of reasons, or a hearing. Any employee may resign at any time, for any reason. Nothing in these policies is intended to modify the City of Creede's at-will employment policy.

Full-time administrative employees designated as executive, administrative, or professional, such as the City Manager and the City Clerk, are considered exempt from the overtime pay provisions of the Federal Fair Labor Standards Act (FLSA) and its regulations. Exemptions are listed in Section 13 of the FLSA and further defined in 29 CFR 541. At times, it may be necessary for exempt employees to work overtime, and while the employee is not entitled to overtime pay, the City of Creede provides compensatory leave as defined in "Compensatory Time."

Other employees, including maintenance and public works employees, part-time, and seasonal employees are considered non-exempt from the overtime pay provisions of the Federal Fair Labor Standards Act (FLSA) and its regulations, and are entitled to overtime pay at the rate of 1.5 times their regular hourly pay rate for hours worked in a seven-day period in excess of 40 hours. In lieu of overtime, full time non-exempt employees may wish to receive compensatory time as defined in "Compensatory Time." Non-exempt employees are expected to accurately record all work time, overtime, compensatory time, and any leave time on their timecards.

### EMPLOYEE RECORDS

The City Clerk, as the Record Custodian of the City of Creede, will keep and maintain each employee's official personnel records. No information concerning an employee's employment status may be released in response to a reference request except the employee's beginning and ending date of employment, any items covered under the Open Records Act and the positions held with the City.

No documents shall be released from a personnel record except as required by the Open Records Act without a written request from the employee designating the documents to be released, the person or entity to which the release is to be made, and indemnifying and holding harmless the City from any liability, claims and demands resulting from such release.

An employee may request copies of his or her personnel file through the City Clerk. The original of all personnel files will be kept by the City Clerk.

## EQUAL EMPLOYMENT OPPORTUNITY

The City of Creede is dedicated to the principles of equal opportunity employment in any term, condition, or privilege of employment. We do not discriminate against applicants or employees on the basis of age, race, gender, color, religion, national origin, disability, sexual orientation, or any other status protected by federal, state or local law.

This prohibition includes unlawful harassment based on any of these protected classes. Unlawful harassment includes verbal or physical conduct which has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment. This policy applies to all City employees and the City's customers, clients, vendors, consultants, etc.

The City will make reasonable accommodation for qualified individuals with known disabilities as long as the accommodation will not impose an undue hardship to the City. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, promotion, termination, and access to benefits and training.

## ANTI-VIOLENCE POLICY

The City of Creede has a zero tolerance policy with regard to workplace violence. Employees are entitled to a work environment free of harassment, intimidation, stalking, threats of violence, and violence. Any employee, who experiences any of the foregoing, whether from a member of the public, a co-worker, a supervisor, or other person, should report the same promptly to a supervisor or the City Manager. The notification may be in the form chosen by the employee, but the employee is urged to put the notification in writing. No employee shall be subjected to reprisal or retaliation for making such notification. The employee should report immediately any incidents of reprisal, retaliation, or harassment which occur as a result of making such a notification.

Upon notification, an investigation will be undertaken promptly. Disciplinary and/or corrective action will be taken when determined to be warranted pursuant to the investigation. The complaining employee will be notified of the results of the investigation. To the extent possible, complaints and investigations will be handled in a confidential manner. If it is determined that any employee's conduct violates the City of Creede's workplace violence and/or sexual harassment policies, the employee shall be subject to corrective and/or disciplinary action. That action may include verbal or written reprimand, suspension, or discharge as justified based on the findings of the investigation.

## PROHIBITED HARRASSMENT POLICY & PROCEDURE

It is the policy of the City of Creede that all employees are entitled to work in an environment free of prohibited harassment as defined below. Prohibited harassment will not be tolerated. A prompt investigation of all claims and complaints of prohibited harassment will be undertaken and effective and appropriate corrective action will be taken when determined to be warranted based on the investigation.

### DEFINITIONS

- a. "Age harassment" means harassment because an individual is 40 years of age or older.
- b. "Disability harassment" means harassment because of an individual's physical or mental impairment that substantially limits one or more of the individual's major life activities, because

- the individual has a record of such impairment, or because the individual is regarded as having such and impairment. "Disability" does not include current illegal use of drugs, or impairment on the job by alcohol.
- c. "Gender harassment" means harassment because of an individual's male or female gender.
  - d. "Marital or family status harassment" means harassment because an individual is a parent or non-parent, married, single, divorced, separated or widowed.
  - e. "National origin harassment" means harassment because of an individual's place or origin; or because an individual has the physical, cultural or linguistic characteristics (such as language, accent or manner of speaking) of a national origin group. Examples of "national origin groups" include but are not limited to Hispanic (i.e., persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish culture or origin), Pacific Islander, Asian, Eastern, Middle Eastern and Southern European origin.
  - f. "Prohibited harassment" means unwelcome conduct, including physical, verbal or written conduct that constitutes race/color harassment, national origin harassment, gender harassment, sexual harassment, sexual orientation harassment, religious harassment, disability harassment, age harassment, marital/family status harassment or that constitutes harassment based on other status under the equal employment opportunity laws, including but not limited to protection against retaliation for activities such as opposing a practice made unlawful by an equal employment opportunity law or participation in an investigation or other proceeding under the equal employment opportunity laws or association with a protected individual.
  - g. Examples of "prohibited harassment" include but are not limited to: slurs, jokes, degrading comments, degrading pictures, degrading symbols or other written, verbal or physical conduct based on race/color, national origin, gender, sex, religion, disability, age or marital/family status which has the purpose or effect of unreasonably interfering with an individual's work performance, creates an intimidating, hostile or offensive work environment, results in a tangible employment action or is sufficiently severe or pervasive to alter the conditions of employment.
  - h. In addition, examples of prohibited conduct which constitutes "sexual harassment" include but are not limited to sexual advances, requests for sexual favors, or other physical, verbal, or written conduct of a sexual nature, when submission to the conduct is made either explicitly or implicitly a term or condition of an individual's employment, submission to or rejection of the conduct by an individual is used as the basis for employment decisions affecting that individual or submission to or rejection of the conduct by an individual otherwise results in a tangible employment action.
  - i. "Race/color harassment" means harassment because of an individual's race or skin color. Examples of "race" include, but are not limited to, African American/Black, Caucasian/White, Asian/Pacific Islander, Hispanic, Latino and Native American.
  - j. "Religious harassment" means harassment because of an individual's traditional religious views or moral or ethical beliefs as to what is right and wrong, which beliefs are sincerely held with the strength of traditional religious views.
  - k. "Sexual orientation harassment" means harassment because of an individual's sexual orientation.

## PROCEDURES

1. Any employee who believes that he or she is being subjected to prohibited harassment should inform the person responsible for the conduct that such conduct is unwelcome and plainly request that it stop immediately.

2. The employee shall inform their immediate supervisor or department head of his/her choice. The notification may be in the form chosen by the employee; the employee is encouraged to put the notification in writing.
3. No employee shall be subjected to reprisal or retaliation for making a notification or prohibited harassment. The employee should report immediately any incidents of reprisal, retaliation or harassment, which occurs as a result of making such a notification.
4. Upon notification under Paragraph 2 or 3 above, an investigation will be undertaken promptly. The appropriate supervisor when determined to be warranted pursuant to the investigation will take disciplinary and/or corrective action. The complaining employee will be notified of the results of the investigation.
5. To the extent possible, complaints and investigations will be handled in a confidential manner.
6. If it is determined that any employee's conduct constitutes prohibited harassment, the employee shall be subject to corrective and/or disciplinary action by the appropriate supervisor. That action may include verbal or written reprimand, suspension or discharge as determined appropriate based on the findings of the investigation.
7. No employee shall make a false report of prohibited harassment.

#### EMPLOYEE CONDUCT & EXPECTATIONS

The City of Creede expects all of its employees to act in the best interest of the City of Creede and of the members of the public served by the City of Creede. It is the responsibility of all employees to observe all rules, policies, operating procedures, and directives of the City of Creede.

All employees are expected to behave with courtesy and respect toward other employees and members of the public. Specific rules of conduct adopted by the City of Creede or described in these policies are not meant to be all-inclusive, but rather to address some common and serious potential problems.

#### EMPLOYEE ORIENTATION & TRAINING

The City Manager or appropriate department head shall provide orientation to all new employees. Such orientation shall include information concerning the City of Creede's pay plan, personnel policies, employee benefits, safety and training programs, and other City of Creede policies or programs having a bearing on employment.

The City of Creede provides various employee training opportunities to promote efficiency, economy, safety, and professional development amongst employees. Participation is strongly encouraged and in some cases may be mandatory.

#### TRAVEL AND COST REIMBURSEMENT

Employees of the City of Creede will occasionally have to travel for trainings, conferences, or other trips as needed. Employees must adhere to the City of Creede's Travel Policy and complete a Travel Expense Report while traveling. Please contact the City Manager or the City Clerk for more information.

## EMPLOYEE JOB EVALUATION

All year-around, full-time and part-time employees will be evaluated on a yearly basis, with quarterly updates as necessary. An interview will be scheduled with the employee's immediate supervisor to review these evaluations, and the employee's input will be a part of the evaluation process. The City Manager and/or the City Clerk may be evaluated in a similar manner by the Board of Trustees.

## WORK HOURS

For FLSA purposes, the workweek is hereby defined as a seven day period beginning at 12:00 AM on Sunday and ending at 11:59 PM on Saturday. For Administrative staff, work hours are Monday through Friday from 8:00 a.m. to 4:00 p.m. with an unpaid one hour lunch period from 12:00 p.m. to 1:00 p.m. for a total of 8 hours actual work time per day. For year-around, full-time Maintenance staff, work hours are Monday through Friday from 7:00 a.m. and to 4:00 p.m. with an unpaid one hour lunch period from 12:00 noon to 1:00 p.m. for a total of 8 hours actual work time each day. For non-exempt employees, any time worked over 40 hours in a workweek is considered overtime. It may, from time to time, be necessary to work hours outside these guidelines. Employees are entitled to a fifteen-minute break for each four hours worked per shift. Lactating employees are permitted to take breaks as required to express milk and are additionally entitled to an appropriate location to express milk according to applicable state and federal law. Any changes from these stated times must be approved in advance by the City Manager. Seasonal employees' hours of work will be determined at the time of employment by the City Manager.

## ACCOMMODATIONS FOR NURSING MOTHERS

The Colorado Nursing Mothers Act, which can be found at C.R.S. § 8-13.5-101 requires that the City as an employer provide reasonable paid or unpaid break time for an employee who is a nursing mother to express milk for up to two years after the child's birth. The City Manager or immediate supervisor must provide the nursing mother with a private location in close proximity to the work area, other than a toilet stall, in which to express milk.

## EMPLOYMENT RELATED ACCIDENTS, INJURIES AND ILLNESSES

Any employment-related accident involving any injury or property damage whatsoever must be reported to the immediate supervisor by each employee involved in or witnessing the accident. Such reports shall be made immediately. Failure to report any accident involving injury or property damage may result in disciplinary action up to and including discharge.

Employees are covered for employment-related injury or illness by the Colorado Workers' Compensation Act. Under the Act, an employee may receive certain benefits pertaining to an employment-related injury or illness. Under the Act, a work-related injury or illness must be reported within four (4) working days.

To the extent practicable, the employee will be reinstated to the employee's position upon return from leave for an employment-related injury or illness. Where the operations of the City of Creede permit, modified duty may be also available to facilitate a return to work by an employee. The City of Creede's designated medical provider for employment-related injury or illness is the Creede Family Practice, 802 Rio Grande Avenue, Creede, CO 81130.

## DRUGS AND ALCOHOL

The City of Creede is a drug-free workplace as required by the Drug-Free Workplace Act of 1988, 41 U.S.C. 702. It is both the City of Creede's and each employee's responsibility to maintain such an environment. The manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace. An employee's violation of this prohibition, or any other drug abuse violation, may result in disciplinary action up to and including immediate discharge. Alcohol, its influence or affect will not be permitted during on-duty hours, which include overtime and response to off duty calls. Violation of this requirement may be cause for immediate discharge. The City Manager or an immediate supervisor may require drug testing when he/she has a reason to believe that an employee is under the influence, has been engaging in illegal drug activity, or has been involved in an incident/accident. Refusal to take a test when required may lead to consequences up to and including separation from employment.

## USE OF CITY OF CREEDE PROPERTY AND VEHICLES

City of Creede property is to be used only for official City of Creede business, in an appropriate and safe manner, and in accordance with all applicable rules, operating procedures, and directives. No employee shall remove City of Creede property or the property of any other employee from the City of Creede premises or the City of Creede work sites without proper authorization. Any employee who steals City of Creede property or the property of any other employee, or who abuses, misuses, damages, or destroys City of Creede property, shall be subject to discipline, up to and including discharge.

Only authorized, qualified, and licensed City of Creede employees may operate City of Creede vehicles. All vehicles shall be operated in accordance with all applicable traffic laws, and vehicle operators shall be responsible for the condition and proper use of their vehicles. Employees receiving traffic tickets or other citations involving the operation of City motor vehicles are responsible for the paying of all fines and other punishments resulting from such traffic tickets or citations. All employees operating City vehicles are required to use seat belts. No cell phones or texting on a mobile device are to be used when operating City Vehicles unless an emergency exists. No personal errands are permitted while using a City Vehicle. Unauthorized or improper use of City of Creede vehicles may result in discipline, up to and including discharge. The City of Creede reserves the right to review an employee's driving record at any time.

City personnel have no expectation of privacy in City property and equipment. Such property and equipment include, but are not limited to any electronic resources provided by the City, such as computers, telephones, cell phones, smart phones, and pagers. Furthermore, City personnel have no expectation of privacy in any messages, data files, programs, or information stored in, transmitted in, or received by such electronic resources. The City reserves the right to monitor, access, use, and disclose all messages, data files, programs, and information sent, received, or stored in such electronic resources for any business-related purpose. City management reserves the right to monitor, inspect, and examine any such electronic resources at any time and without notice.

The City may monitor or access an employee's usage of such electronic resources, including information received or transmitted thereby, with or without notice, for any business-related purpose, including any situation in which a supervisor has reason to believe that an employee is misusing or abusing the privilege of using such resources, or is violating any other City policy.

Employees are further advised that correspondence of an employee in the form of e-mail may be a public record under the public records law, and may be subject to public inspection under C.R.S. Section 24-72-203, unless an exception provided by law applies. The City may monitor or access an employee's e-mail, with or without notice, for any business-related purpose, including any situation in which a supervisor has reason to believe that an employee is misusing or abusing e-mail privileges, or is violating any other City policy.

#### DRESS CODE

The City of Creede represents the citizens of Creede and their visitors. Employees are required to dress in appropriate attire at all times.

#### TELEPHONE

The telephones at the City of Creede are for City use, and employees are requested to keep personal calls to a minimum. Personal toll calls are forbidden.

#### GOOD HOUSEKEEPING

All employees are requested to practice good housekeeping as a general courtesy to others, and to maintain a professional appearance of the properties of the City of Creede at all times.

#### OUTSIDE EMPLOYMENT

The City of Creede employees may desire outside employment. Such employment will be permitted so long as said outside employment does not in any way interfere with the employee's ability to perform his or her assigned position at the City of Creede. Such outside employment shall in no way violate conflict of interest or confidentiality with the City of Creede. Outside employment must be approved by the City Manager prior to beginning such employment.

#### SUGGESTIONS AND COMPLAINTS

The City of Creede employees are encouraged to offer any constructive suggestions regarding the operations and policies of the City of Creede. These suggestions can be brought up in employee meetings, discussed with an immediate supervisor, or sent to the City Manager in writing.

Should a problem arise that is job related, an employee discuss the problem frankly with an immediate supervisor. After every effort has been made to discuss and solve a problem with a supervisor, an employee may choose to follow the procedure outlined in "Grievance Procedures."

#### SEPARATION FROM EMPLOYMENT

Resignation is a voluntary act of separation from employment initiated by the employee. The employee shall give the employee's supervisor at least ten (10) working days' prior notice of resignation. An employee in an administrative or supervisory position shall give at least thirty (30) days notice of resignation. An employee who is retiring from the City of Creede should give ninety (90) days notice of such retirement if at all possible. Upon resigning or retiring, employees shall be paid the appropriate value for vacation leave, sick leave, holiday pay, compensatory time and overtime. Total benefits to be paid upon termination will be paid out

incrementally in a manner that does not exceed the amount equal to a pay period unless prior arrangements are made. An employee, who, without prior authorization, fails to report for work for three consecutive working days, shall be considered to have abandoned the position as of the end of the third consecutive day. Pay will not be granted for the three days of absence unless covered by earned vacation time or one-day personal time.

When warranted by changes in the City of Creede's operations or by fiscal circumstances, the City of Creede's pay plan may be amended to impose a reduction in force in one or more departments. The City Manager shall then notify the affected employee or employees at least thirty (30) days in advance of such reductions.

#### DISCIPLINARY ACTION & DISCHARGE

Occasionally, management determines that disciplinary measures are necessary. Disciplinary actions can range from a formal discussion with an employee about a matter to immediate termination. Action taken by management in one individual case does not establish a precedent in other circumstances.

#### EMPLOYEE COMPENSATION AND BENEFITS

##### PAY SCHEDULE

Unless otherwise authorized by the Creede Board of Trustees, pay periods for all City of Creede employees are the 1<sup>st</sup> day through the 15<sup>th</sup> day of each month, and the 16<sup>th</sup> day through the last day of each month. Employees will be paid on the 15<sup>th</sup> day and the last day of each month. It is the responsibility of each supervisor to have all time reports on the desk of the City Clerk no later than 10:00 a.m. on the 14<sup>th</sup> and day prior to the last day of the month. If either of these days falls on a weekend or holiday, paychecks will be issued the last workday before the scheduled payday. Direct deposits are available to all employees on a voluntary basis and will allow for an employee's earnings to be deposited directly into the bank of their choice.

##### SALARY REVIEW

Compensation of employees of the City is set on an annual basis by the Creede Board of Trustees of the City of Creede, and made a part of the annual budget. The Creede Board of Trustees adopts the City budget each December for the following year. Changes in employee salaries are recommended by the City Manager to the Board of Trustees during the budget process. Any adjustment made in employee's salary either by way of increase, decrease, or no change, are at the complete discretion of the Creede Board of Trustees.

##### GROUP BENEFITS

Upon completion of three months of employment, full-time employees are currently eligible to participate in a variety of group benefit programs including medical insurance, dental insurance, vision insurance, life insurance, and 401(a) plan retirement contribution matches.

Employees are encouraged to become familiar with and take advantage of these benefits. For further information describing available plans, please see the City Clerk.

Employee benefits are subject to changes in providers, value and coverage subject to the approval of the Board of Trustees.

## VACATION

The City of Creede grants vacation periods with pay in accordance with two convictions: 1) that our employees will be benefited mentally and physically by a period of rest and relaxation during the year, and 2) that our employees are entitled to vacation based upon length of continuous service. Employees may begin accruing vacation days upon employment, but may not use any accrued time until after three months of employment. An employee who is terminated from or leaves employment during the first three months of employment is not eligible for payment of any unused vacation time. Employees receive the following vacation accruals, prorated by pay period:

EMPLOYEE	YEARS OF SERVICE	ACCRUAL
Full Time Employees	0-1	5 days/year
Full Time Employees	1-4	10 days/year
Full Time Employees	5-9	15 days/year
Full Time Employees	10+	20 days/year
Part Time Employees	1	1/4 day per 173 hours
Part Time Employees	2+	1/2 day per 173 hours

Employees may carry over up to 10 vacation days at the end of the year. Accrued vacation days in excess of 10 days will be paid out at the end of the year at the regular rate of pay. An employee who terminates employment with accrued but unused vacation shall be paid at the employee's regular rate for such accrued vacation time only when 10 working days notice of termination has been submitted. Temporary and on-call employees do not accrue vacation time. Vacations should be scheduled in a way that minimizes the effect the absence will have. Employees are required to notify the City Manager of vacation as soon as possible, and at least 10 working days in advance to the vacation.

Vacation pay will be included with the regular paycheck for the period of time vacation is taken. Vacation time may not be taken in less than quarter-day increments nor exceed the amount of vacation time earned at the beginning of the vacation time to be used.

## HOLIDAYS

The City of Creede provides paid holidays as set forth by the Creede Board of Trustees, which may be amended from time to time according to the day on which a given holiday falls. If the named holiday falls on a workday then the scheduled days are:

The first day of January (New Years Day)	The second Monday of October (Columbus Day)
The third Monday of January (Martin Luther King Day)	The eleventh day of November (Veterans Day)
The third Monday of February (President's Day)	The fourth Thursday of November (Thanksgiving Day)
Good Friday beginning at Noon	Friday after Thanksgiving Day
The last Monday of May (Memorial Day)	Christmas Eve beginning at Noon
The fourth day of July (Independence Day)	The twenty-fifth day of December (Christmas Day)
The first Monday of September (Labor Day)	New Years Eve from Noon

When the holiday listed above falls on a Saturday, the preceding Friday shall be considered a holiday, and when the holiday listed above falls on a Sunday, the following Monday shall be considered a holiday. A holiday falling within an employee's pre-approved scheduled vacation will not be charged as vacation time.

Full time employees are eligible for these paid holidays immediately upon hire. Hourly part-time, temporary or on-call employees are not eligible for holiday pay. Holiday pay will be included with the regular paycheck for the period of time in which the holiday falls. No advance payment of holiday pay will be granted.

#### COMPENSATORY TIME

Compensatory time is available to all full-time employees who work in excess of 40 hours per week. Compensatory hours must be accounted for either on timecards or on a City of Creede Compensation Time Worksheet available from the City Clerk. Compensatory time may only be taken after approval by the City Manager, and may only be used after it is earned.

#### PERSONAL DAYS

Each full-time employee may take a total of seven personal days each calendar year with pay. Personal days may not be used in conjunction with any vacation time or holiday. Any day(s) taken before or after a holiday must use earned and available vacation time. Employees are expected to use personal days for reasons other than illness or vacation, i.e., appointments, errands, or parental involvement activities. Employees may begin accruing personal days upon employment, but may not use any accrued time until after three months of employment. Personal days cannot be accumulated from year to year and are not eligible for pay out at the end of each year or upon separation or termination. Personal days may not be taken in less than quarter-day increments and may not exceed two consecutive days. Seasonal and part-time employees do not qualify for personal days.

#### SICK LEAVE

Short term sick leave is permitted to promote the health of our employees. If an employee is ill, he or she should not come to work and spread the illness to other employees. Employees are expected to notify an immediate supervisor of illness at the earliest possible time. Employees are permitted up to 5 sick days per year. Sick days cannot be accumulated from year to year and are not eligible for pay out at the end of each year or upon separation or termination. Abuse of this policy is grounds for disciplinary action.

If an employee is ill for four or more consecutive workdays, a doctor's release (or notification from the Mineral County Health Clinic) must be obtained stating that the employee is fit to return to work and submitted to the City Manager immediately upon return. For illnesses lasting five or more consecutive workdays, please see "Extended Medical Leave."

#### EXTENDED MEDICAL LEAVE

An extended medical leave of absence is available to eligible employees for up to 4 weeks paid leave and up to 2 additional unpaid weeks for a total of up to 6 weeks in a calendar year under particular circumstances that are critical to the employees or their family members.

Leave may be taken:

- On the birth of an employee's child;
- On the placement of a child for adoption or foster care with an employee; or
- When an employee is unable to perform at least one of the essential functions of their position because of the employee's own serious health condition.

To be eligible for leave under this policy, an employee must be a full-time, year round employee, and employed at the City of Creede for at least 12 months prior to a request for paid leave.

The City will require medical certification to support a claim for leave for an employee's own serious health condition. The certification for an employee's own personal medical leave must include a statement that the employee is unable to perform at least one of the functions of his/her position. Employees who are ill will be required to provide a Doctor's report on their health status every two weeks.

When the need for leave is foreseeable, such as the birth of a child, the employee must provide 30 days notice to the City Manager. A spoken or written leave agreement may be reached between the employee and the City Manager addressing minimization of impact of the employee's leave, plans for temporary fulfillment of duties, an anticipated return-to-work timeline, accommodations for intermittent or reduced-leave or working from home, and any other concerns either party may have. In the event that leave is required but not foreseeable, verbal and written notice should be given to the City Manager, as soon as practicable.

Employees can use available Vacation and Personal leave to extend paid leave. All Vacation and Personal days must be used to extend paid leave before any unpaid leave can be taken, and the combination of paid leave, unpaid leave, and vacation and personal leave may not exceed 6 weeks in one year.

Group health care coverage will continue for employees on extended leave as if they were still working for 6 weeks. Employees who are granted an approved leave of absence beyond 6 weeks under this policy must make arrangements to pay their share of premiums, if there are any, during the absence.

The provisions of this policy will govern all paid family and medical leave unless modified in the employee's contract or negotiated by the employee and City Manager before or at the time of required leave.

## OTHER LEAVE

### MILITARY LEAVE

Employees on a military leave of absence are re-instated and paid in accordance with applicable state and federal law. Please refer to the Department of Labor ([www.dol.gov](http://www.dol.gov)) for information on current laws governing employee rights.

### VOTING

Voting is an important responsibility we all assume as citizens. We encourage employees to exercise voting rights in all municipal, state, and federal elections. Under most circumstances, it is possible for employees to vote either before or after work. If it is necessary for an employee to arrive late or leave work early to vote in any election, arrangements should be made with a supervisor prior to Election Day.

### BEREAVEMENT

In the event of a death of an immediate family (spouse, child, parent, grandparent, brother, sister, or immediate family of spouse) year-around full-time employees are eligible for up to three days absence with pay. Bereavement leave shall not be granted for settlement of estates or for any other matter except required time to travel to, attend, and return from the funeral/memorial service. Leave taken in excess of that required

to attend the funeral/memorial service or three (3) days, whichever is less, shall be charged as vacation leave, personal day, or leave without pay, as appropriate. Employees are asked to inform his or her immediate supervisor of bereavement leave as soon as possible.

## DOMESTIC ABUSE LEAVE

Subject to the provisions of this policy, Employees may be eligible for time off if they are victims of the following statutorily defined events:

1. Domestic violence or abuse;
2. Stalking;
3. Sexual assault; or
4. A crime found by a court on the record to include an act of domestic violence.

If an employee has been with the Employer for more than twelve (12) months and has been the victim of one of these statutorily defined events then he or she may request up to three working days off in a 12-month period.

The Employee must use leave for one or more of the following reasons:

1. Seeking a civil restraining order to prevent domestic abuse;
2. Seeking services from a domestic violence shelter, program or rape crisis center as a result of domestic violence;
3. As a result of domestic abuse, stalking, sexual assault, or any other crime involving domestic violence:
  - a. Obtaining medical care mental health counseling for himself or herself or his or her children to address physical or psychological injuries arising from the act or crime;
  - b. Making his or her home secure from the perpetrator or seeking new housing to escape the perpetrator;
  - c. Seeking legal assistance to address the issues and attending and preparing for court-related proceedings arising from the act or crime.

Domestic Abuse Leave will consist of available accrued paid leave and unpaid leave. The Employee must use all available accrued paid leave (annual leave, sick leave, holiday leave and compensatory time) before unpaid leave can be utilized.

Calculation of the Twelve Month Period: A “rolling” twelve (12) month period is measured backward from the date an employee used any Domestic Abuse Leave. Each time the employee takes Domestic Abuse Leave, the remaining leave would be the balance of the three days which has not been used during the preceding twelve (12) months. Example: an employee takes one day on February 1, 2012; one day beginning June 1, 2012 and one day on December 1, 2012. On February 2, 2013, the employee would be eligible for a new period of Domestic Abuse Leave.

Notification Requirement: The Employee completes the “Request for Domestic Abuse Leave” form and forwards said form to his or her supervisor. The supervisor acknowledges the request by signing the form and forwards the form to Human Resources for recordkeeping purposes. An Employee must notify his or her immediate supervisor of his or her need for leave at least twenty four (24) hours in advance of the use of leave except in cases of imminent danger to the health or safety of the Employee. Please note that some departments may require a longer period of advance scheduling.

The supervisor may require the Employee submit one or more of the following types of documentation to support the request for leave:

1. A police report indicating that the Employee was a victim of domestic violence;
2. A court order protecting or separating the Employee from the perpetrator of an act of domestic violence, or other evidence from the court or prosecuting attorney that the Employee appeared in court; or
3. Documentation from a medical professional, domestic violence advocate, health care provider, or counselor that the Employee was undergoing treatment for physical or mental injuries or abuse resulting in victimization from an act of domestic violence.

#### PARENTAL INVOLVEMENT IN K-12 EDUCATION LEAVE WITHOUT PAY

An employee who works a full-time schedule may take 18 hours of leave (“parental leave for involvement in K-12 education”) from work in any academic year for the purpose of attending an academic activity for his or her child, so long as the leave is taken in accordance with the criteria outlined in § 8-13.3-101, Colorado Revised Statute (C.R.S.), and the employee meets all other requirements of the statute. An employee who works less than a full-time schedule will be eligible for a pro-rata share of the leave as outlined in the statute.

Nothing prevents the City from invoking any and all limitations of parental leave as outlined in the statute, including but not limited to, requesting that an employee obtain written verification of the activity from the school and limiting leave in cases of emergency or other situations that may endanger a person’s health or safety or in a situation where the absence of the employee would result in a halt of service or production.

Employees who take parental leave will be required to use paid vacation or compensatory leave time. If the employee does not qualify for paid leave of absence or the employee does not accrue paid leave, the leave of absence shall be without pay.

#### ALL OTHER LEAVE

If an employee requires leave and circumstances do not fall within the guidelines established in this handbook, he or she can meet with the City Manager to make alternative arrangements.

#### REPORTING AN ABSENCE

If it is necessary to be absent due to illness, emergency, or other absence, an employee must notify his or her immediate supervisor or the City Manager as soon as practicable. Unless an emergency exists, failure to contact the City of Creede when absent may result in disciplinary action up to and including termination.

**ACKNOWLEDGEMENT OF RECEIPT  
OF THE CITY OF CREEDE'S  
EMPLOYEE HANDBOOK**

This acknowledges that I have received a copy of the City of Creede's Employee Handbook, dated March 2014. I understand that this Handbook is only a guide to the ordinances, resolutions, and other laws applicable to my employment, and that this Handbook is neither an express nor implied contract of employment and that the City remains free to make such changes in its personnel policies, including but not limited to any matters addressed in this Handbook, without prior notice and in its sole discretion.

I understand that it is my responsibility to read and become familiar with this Handbook's contents. I agree to abide by the above, as a condition of my employment, as well as all written policies, rules, and regulations that are in effect or that may become effective during my employment.

Printed Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_