

**STATE OF COLORADO
COUNTY OF GILPIN
CITY OF BLACK HAWK**

COUNCIL BILL NUMBER: 34

ORDINANCE NUMBER: 2023-34

**TITLE: AN ORDINANCE AMENDING VARIOUS SECTIONS OF THE BLACK
 HAWK EMPLOYEE HANDBOOK**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BLACK HAWK,
GILPIN COUNTY:

Section 1. Pursuant to Article VIII, Section 18 of the City of Black Hawk Home Rule
Charter, Section 111 of the City of Black Hawk Employee Handbook is hereby amended to read
as follows:

111 HARASSMENT POLICY

The City of Black Hawk fully supports the Equal Employment Opportunity regulations. It is the City of Black Hawk's intent that all employees enjoy a safe work environment free from all forms of discrimination including harassment. Discrimination, inappropriate behavior or harassment based on race, creed, color, sex (including pregnancy), sexual orientation (including transgender status), age (40 or older), genetic information, MARITAL STATUS, marriage to a co-worker (within parameters listed in Section 106), physical or mental disability, religion, Vietnam era or veteran status, national origin, or any other status protected under applicable federal, state, or local law is considered a violation of its policies and practices.

The City of Black Hawk believes it is all employees' singular and collective responsibility to deal fairly and honestly with their peers, subordinates, and superiors as well as applicants to ensure a work environment free of discrimination and harassment. Disrespect for or abuse of anyone's dignity through verbal, physical, or visual slurs of a sexual or intimidating nature through derogatory or other inappropriate conduct is unacceptable and may result in termination of employment.

Sexual harassment is a specific form of discrimination/harassment that undermines the integrity of the employment relationship. The City of Black Hawk will not tolerate harassment by City of Black Hawk employees or by those who work with the City of Black Hawk including suppliers, general public, consultants, or any other vendors. Unwelcome sexual advances, requests of sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when one or more of the following examples exist:

- 1) Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment.

- 2) Submission to or rejection of the conduct is the basis for an employment decision affecting the employee.
- 3) The conduct substantially interferes with an employee's work performance or creates an intimidating, hostile, or offensive work situation or atmosphere.

Harassment and/or discrimination based on race, creed, color, sex (including pregnancy), sexual orientation (including transgender status), age (40 or older), genetic information, MARITAL STATUS, marriage to a co-worker (within parameters listed in Section 106), physical or mental disability, religion, Vietnam era or veteran status, national origin, or any other factors protected by law undermines the employment relationship. ~~Harassment may take the form of verbal or physical conduct that disparages, threatens, or shows aversion to an individual because of the aforementioned factors. Harassment may also include slurs, jokes, degrading comments, degrading pictures, degrading symbols, or other written, verbal, or physical conduct because of the aforementioned factors. This form of harassment may exist if one or all of the following exist:~~

- ~~1) The conduct substantially interferes with an employee's work performance or creates an intimidating, hostile, or offensive work situation or atmosphere.~~
- ~~2) The conduct adversely affects an employee's employment or work opportunities.~~

HARASSMENT IS ANY UNWELCOME PHYSICAL OR VERBAL CONDUCT OR ANY WRITTEN, PICTORIAL, OR VISUAL COMMUNICATION DIRECTED AT AN INDIVIDUAL OR GROUP OF INDIVIDUALS BECAUSE OF THAT INDIVIDUAL'S OR GROUP'S MEMBERSHIP IN, OR PERCEIVED MEMBERSHIP IN, A PROTECTED CLASS AS DEFINED HEREIN THAT IS SUBJECTIVELY OFFENSIVE TO THE INDIVIDUAL ALLEGING HARASSMENT AND OBJECTIVELY OFFENSIVE TO A REASONABLE INDIVIDUAL WHO IS A MEMBER OF THE SAME PROTECTED CLASS, AS OTHERWISE DEFINED IN C.R.S. § 24-34-400.2(2)(B), AS AMENDED. THIS EXCLUDES PETTY SLIGHTS, MINOR ANNOYANCES, AND LACK OF GOOD MANNERS UNLESS THAT BEHAVIOR WHEN TAKEN INDIVIDUALLY OR IN COMBINATION AND UNDER THE TOTALITY OF THE CIRCUMSTANCES MEETS THE DEFINITION OF HARASSMENT ABOVE.

CONDUCT OR COMMUNICATION CONSTITUTES ACTIONABLE HARASSMENT IF: (1) SUBMISSION TO THE CONDUCT OR COMMUNICATION IS EXPLICITLY OR IMPLICITLY MADE A TERM OR CONDITION OF THE INDIVIDUAL'S EMPLOYMENT; (2) SUBMISSION TO, OBJECTION TO, OR REJECTION OF THE CONDUCT OR COMMUNICATION IS USED AS A BASIS FOR EMPLOYMENT DECISIONS AFFECTING THE INDIVIDUAL; OR (3) THE CONDUCT OR COMMUNICATION HAS THE PURPOSE OR EFFECT OF UNREASONABLY INTERFERING WITH THE INDIVIDUAL'S WORK

PERFORMANCE OR CREATING AN INTIMIDATING, HOSTILE, OR OFFENSIVE WORKING ENVIRONMENT.

Any employee, applicant, or candidate, who feels that they may have encountered harassing circumstances, shall without fear of reprisal contact City of Black Hawk management as outlined below.

- 1) If employed, contact the: 1) Immediate Supervisor or 2) Department Head or 3) City Manager in the respective order shown, unless the situation warrants skipping a level of supervision.
- 2) If an applicant or candidate, contact the City Manager.
- 3) If the City Manager is a party, contact the City Attorney.

The City of Black Hawk will, upon receipt of information that indicates a possible lack of support of its Equal Employment Opportunity practices, investigate the circumstances and if needed, take appropriate actions to eliminate the persistence of such circumstances. The employee, applicant, or candidate may be asked to provide additional information for the investigation. The City of Black Hawk will attempt to maintain confidentiality of the situations and parties involved, but it makes no guarantee of absolute anonymity. Employees and external parties may be provided with information on a "need to know" basis as a part of the investigative process. Proof of discrimination, harassment, or a false accusation may result in termination of employment for employees and/or legal action for employees, applicants, and/or candidates.

ALL REPORTS SHALL BE CONFIDENTIALLY MAINTAINED FOR A MINIMUM OF FIVE YEARS, IN ACCORDANCE WITH ESTABLISHED RECORDS RETENTION REQUIREMENTS PURSUANT TO C.R.S. § 24-34-408.

Section 2. Pursuant to Article VIII, Section 18 of the City of Black Hawk Home Rule Charter, Section 302 of the City of Black Hawk Employee Handbook is hereby amended to read as follows:

302 PAID TIME OFF (PTO) BENEFITS

The City of Black Hawk recognizes that employees have diverse needs for time off from work, and, as such, the City has established this Paid Time Off (PTO) policy. Employees are accountable and responsible for managing their own PTO hours to allow for adequate reserves if there is a need to cover observed holidays, vacations, personal appointments, or other situations that require time off from work outside sick leave.

PTO is accrued upon hire or transfer into a benefits-eligible position. Eligible employee classifications:

- Full-time employees
- Introductory full-time employees

Eligible employees begin accruing PTO leave from the date of hire. Accruals are available for use in the pay period in which they are accrued. Eligible employees accrue PTO at the rates listed in the table below. The accrual rates are based on twenty-six (26) bi-weekly pay periods within the calendar year.

| Years of Service | Bi-Weekly Accrual Rate | Annual PTO Accrual |
|-------------------------|-------------------------------|---------------------------|
| 0-5 years | 8.31 hours | (216 hours) |
| 6-10 years | 9.23 hours | (240 hours) |
| 11-15 years | 10.77 hours | (280 hours) |
| 16-20 YEARS | 11.54 HOURS | (300 HOURS) |
| 20+ YEARS | 12.31 HOURS | (320 HOURS) |

In the event that available PTO is not used by the end of the year, employees may carry unused time forward to the next calendar year. However, if an employee's PTO accrual balance is 320 hours or more on January 1 of the following year, biweekly accruals will be discontinued until such time as the PTO accrual balance is under 320 hours. Once below 320 hours, an employee will resume accumulation of PTO accruals without limit until the January 1 of the following year.

Employees are required to use available PTO when taking time off from work outside of sick leave. PTO may be taken in increments of as low as one-half (½) hour. Whenever possible, PTO must be scheduled at least two-weeks in advance. PTO is subject to supervisory approval, department staffing needs, and established departmental procedures.

When PTO is used, an employee is required to use PTO hours according to their regularly scheduled workday. For example, if an employee works a ten-hour day, they would request ten hours of PTO when taking that day off. PTO is paid at the employee's base rate. PTO is not part of any overtime calculation.

Employees may not borrow against their PTO banks; therefore, no advance leave will be granted without City Manager approval.

An employee will be paid upon resignation, separation, or retirement for all PTO hours accumulated but not used.

When an employee's PTO leave benefit accrues beyond 240 hours as of seven days prior to the first pay date in December of each year, and only in the event that the employee has completed five (5) years of service as a full-time employee, all hours above 240 may be

cashed out or converted to sick leave at the employee's then current base rate in an amount equal to one (1) hour for every two (2) PTO hours accrued over the 240-hour minimum.

Section 3. Pursuant to Article VIII, Section 18 of the City of Black Hawk Home Rule Charter, Section 308 of the City of Black Hawk Employee Handbook is hereby amended to read as follows:

308 BEREAVEMENT LEAVE

If an employee wishes to take time off due to the death of an immediate family member, they shall notify their supervisor immediately.

Upon Department Director approval, eligible employees may receive up to three (3) days or THIRTY (30) HOURS of paid bereavement leave per bereavement to employees in the following classifications:

- Full-time employees
- Introductory full-time employees

Approval of bereavement leave will occur in the absence of unusual operating requirements. Any employee may, with the supervisor's approval, use any available paid leave for additional time off as necessary.

Section 4. Pursuant to Article VIII, Section 18 of the City of Black Hawk Home Rule Charter, Section 318 of the City of Black Hawk Employee Handbook is hereby amended to read as follows:

318 LIFE INSURANCE

The City covers the premium for every eligible employee's term life insurance policy equal to two (2) times the employee's annual base wage rate up to a maximum of three hundred thousand dollars (\$300,000.00 FOR CLASS I EMPLOYEES) AND FIVE HUNDRED THOUSAND DOLLARS (\$500,000 FOR CLASS III EMPLOYEES). Employees shall refer to the information provided by the City for more information on this benefit. This guideline may be changed only with the approval of the City Council and may be changed at budget time. Coverage begins the first day of the month after the date of hire.

Section 5. Pursuant to Article VIII, Section 18 of the City of Black Hawk Home Rule Charter, Section 320 of the City of Black Hawk Employee Handbook is hereby amended to read as follows:

320 LONG-TERM DISABILITY

The City provides Long-Term Disability coverage at no cost to full-time City employees. Eligible employees shall refer to the information provided by the City for more information on this benefit. The City Council may increase or decrease this benefit at any time. The City will not pay Disability Insurance for employees on Long-Term Disability. ~~Employees may also utilize the Sick Leave Donation Program (Section 321) if approved.~~ This guideline may be changed only with the approval of the City Council and may be changed at budget time. Coverage begins the first day of the month after the date of hire.

Section 6. Pursuant to Article VIII, Section 18 of the City of Black Hawk Home Rule Charter, Section 707, subsection 8 of the City of Black Hawk Employee Handbook is hereby amended to read as follows:

Section 8 - Tests Required for Employees

Methods for testing for alcohol may include a Portable Breath Test (PBT), Breathalyzer, Evidential Breath Testing device (EBT), or other test authorized for all alcohol testing. For drug testing, urine specimen collection, and testing shall be conducted by a laboratory capable of analyzing samples and keeping such samples in a safe and secure manner. The drugs to be tested include any scheduled controlled substance.

1) Pre - Employment:

Before performing any job duties, an employee must submit to testing for drugs and alcohol. Prior to performing a pre-employment drug and alcohol test, the City must notify the applicant that testing is required under this guideline. The City will not hire applicants to whom a contingent offer of employment has been made who test positive for controlled substances or alcohol for positions requiring a CDL. For all other positions, post-offer testing will include controlled substances (excluding marijuana) and alcohol.

2) Post-Accident Testing:

As soon as possible following an accident, the City shall test each surviving employee for alcohol and drugs when either:

- a. The accident involved a fatality or serious injury requiring immediate medical attention;
- b. The employee received a citation under state or local law for a moving traffic violation arising from the accident;
- c. The accident violated a significant department safety guideline or procedure;

- d. The accident involved significant property damage; or
- e. Any accident where there is reasonable belief that an employee may be under the influence of alcohol or drugs at the time of the accident or near accident.

Alcohol tests shall be conducted within two (2) hours of the accident if possible. A test administered by on-site police or public safety officials under separate authority may be used, and a blood or breath alcohol test and a urine drug test performed by such local officials, using procedures required by their jurisdictions, shall be acceptable. The staff member shall remain in the presence of the immediate supervisor or designated authority until testing is complete.

Drug tests shall be completed within thirty-two (32) hours of the accident. Beyond this period, attempts to test shall cease and a record prepared and maintained by the Police Chief or his designee indicating why the test was not performed.

An employee who is subject to post-accident testing must remain available, or the City may consider the employee to have refused to submit to testing. The employee subject to post-accident testing must refrain from consuming alcohol for eight (8) hours following the accident, or until they submit to an alcohol test, whichever comes first.

NOTE: Nothing in this guideline shall be construed to require the delay of necessary medical attention for injured people following an accident. Also, the employee is not prohibited from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency care.

3) Post-Critical Incident Testing:

As soon as practical, the City may require a test of each employee involved in a critical incident. Those procedures and time periods set forth under the requirements for post-accident testing shall also apply to post-critical incident testing.

4) Reasonable Suspicion Testing:

The City may initiate a drug or alcohol test when there is reasonable suspicion to believe the employee has violated the prohibitions of this guideline. The decision to test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The documentation for suspicion testing must be completed within twenty-four (24) hours of the observed behavior or before the results are released, whichever is earlier.

5) Random Testing:

Random drug testing shall be administered by Employee Services as required by federal law for those employees required to possess Commercial Drivers' License (CDL) as more particularly described in their approved Job Description.

The conditions for selection and notification of random testing are:

- a. Selection of employees shall be made by a scientifically valid method.
- b. Employees Services shall assure that random tests are unannounced and spread reasonably throughout the year.
- c. Employees Services shall ensure that the employees selected for random tests PROCEED immediately to the collection site upon notification of selection.

In the event an employee who is selected for a random test is on PTO, layoff, or an extended medical absence, Employee Services can select another employee for testing or keep the original selection confidential until the employee returns to duty. If an employee is skipped, Employee Services must document the reason why.

6) Return-to-Duty Testing:

In the event an employee who has violated these alcohol or drug prohibitions is permitted to return to their position, they shall complete a return-to-duty test which need not be confined to the substance involved in the violation.

7) Follow-Up Testing:

If an employee who has violated these alcohol or drug prohibitions is returned to their position, the City may require the employee to undergo unannounced follow-up testing following the employee's return to duty. The number and frequency of the tests are to be determined by the City.

8) Testing Safeguards:

Urine, saliva, breath testing, and/or portable breath testing shall be used to collect specimens for testing of the presence of alcohol or controlled substances. The City shall ensure the integrity of the collection system to maintain confidentiality and ensure that the test results are attributed to the correct employee.

Although other departments in the City may use other, different or more restrictive specimen collection procedures, it is the express intent of the City that the collection procedures under this guideline be less restrictive and limiting.

Section 7. Pursuant to Article VIII, Section 18 of the City of Black Hawk Home Rule Charter, the definition of "Holiday pay" in Chapter 9, subsection (9) of the City of Black Hawk Employee Handbook is hereby amended to read as follows:

"Holiday pay" is defined as one-and-one-half (1½) the employee's regular rate for the actual hours worked, up to the amount of hours recognized for that holiday, UP TO A MAXIMUM OF TEN (10) HOURS DEPENDING ON ASSIGNED WORK SCHEDULE. All hours worked on a holiday in excess of the recognized hours will be paid at the employee's straight-time rate.

Section 8. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Black Hawk, that it is promulgated for the health, safety, and welfare of the public, and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.


Section 9. Severability. If any clause, sentence, paragraph, or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

Section 10. Effective Date. The City Clerk is directed to post the Ordinance as required by the Charter. This Ordinance shall become effective upon posting by the City Clerk.

READ, PASSED AND ORDERED POSTED this 13th day of December 2023.


David D. Spellman, Mayor

ATTEST:


Melissa A. Greiner, CMC, City Clerk

