Standards of Conduct

320.1 PURPOSE AND SCOPE

This policy establishes standards of conduct that are consistent with the values and mission of the Fargo Police Department and are expected of all department members. The standards contained in this policy are not intended to be an exhaustive list of requirements and prohibitions but they do identify many of the important matters concerning member conduct. In addition to the provisions of this policy, members are subject to all other provisions contained in this manual, as well as any additional guidance on conduct that may be disseminated by this department or a member's supervisors.

320.2 POLICY

The continued employment or appointment of every member of the Fargo Police Department shall be based on conduct that reasonably conforms to the guidelines set forth herein. Failure to meet the guidelines set forth in this policy, whether on- or off-duty, may be cause for disciplinary action.

320.3 DIRECTIVES AND ORDERS

Members shall comply with lawful directives and orders from any department supervisor, or person in a position of authority, absent a reasonable and bona fide justification.

320.3.1 UNLAWFUL OR CONFLICTING ORDERS

Command officers, supervisors, Police Training Officers (PTO's), and senior officers shall not knowingly issue orders or directives that, if carried out, would result in a violation of any law or department policy. Command officers, supervisors, PTO's, and senior officers should not issue orders that conflict with any previous order without making reasonable clarification that the new order is intended to countermand the earlier order.

No member is required to obey any order that appears to be in direct conflict with any federal law, state law or local ordinance. Following a known unlawful order is not a defense and does not relieve the member from criminal or civil prosecution or administrative discipline. If the legality of an order is in doubt, the affected member shall ask the issuing supervisor to clarify the order or shall confer with a higher authority. The responsibility for refusal to obey rests with the member, who shall subsequently be required to justify the refusal.

Unless it would jeopardize the safety of any individual, members who are presented with a lawful order that is in conflict with a previous lawful order, department policy or other directive shall respectfully inform the issuing command officer, supervisor, PTO, or senior officer of the conflict. The issuing command officer, supervisor, PTO, or senior officer is responsible for either resolving the conflict or clarifying that the lawful order is intended to countermand the previous lawful order or directive, in which case the member is obliged to comply. Members who are compelled to follow a conflicting lawful order after having given the issuing supervisor the opportunity to correct the conflict, will not be held accountable for disobedience of the lawful order or directive that was initially issued.

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The person countermanding the original order shall notify, in writing, the person issuing the original order, indicating the action taken and the reason.

320.3.2 SUPERVISOR RESPONSIBILITIES

Command officers and supervisors are required to follow all policies and procedures and may be subject to discipline for:

(a) Failure to be reasonably aware of the performance of their subordinates or to provide appropriate guidance and control.

(b) Failure to promptly and fully report any known misconduct of a member to his/her immediate supervisor or to document such misconduct appropriately or as required by policy.

(c) Directing a subordinate to violate a policy or directive, acquiesce to such a violation, or are indifferent to any such violation by a subordinate.

(d) The unequal or disparate exercise of authority on the part of a supervisor toward any member for malicious or other improper purpose.

320.4 GENERAL STANDARDS

Members shall conduct themselves, whether on- or off-duty, in accordance with the United States and North Dakota Constitutions and all applicable laws, ordinances and rules enacted or established pursuant to legal authority.

Members shall familiarize themselves with policies and procedures and are responsible for compliance with each. Members should seek clarification and guidance from supervisors in the event of any perceived ambiguity or uncertainty.

Members shall not commit or omit any act(s) which they know, or should know, violate any City of Fargo employment policy or the written or verbal rules, regulations, procedures, orders, or directives of the department.

Although members shall have regularly scheduled work hours assigned to them, a command officer or supervisor may extend, reschedule, or otherwise alter an employee's work schedule with or without advance notice. This includes postponing, canceling, or rescheduling an employee's leave time in accordance with the Fair Labor Standards Act (FLSA) or other applicable law.

Sworn officers who are off-duty are required to take reasonable and appropriate action, within the scope of their authority, when situations that may compromise public safety come to their attention within the City of Fargo. Officers who take official action while off-duty or out of uniform shall properly identify themselves as a Fargo Police officer and display their badge and/or police identification whenever possible or practical.

Members shall perform their duties without favor or prejudice and always in a professional and respectful manner.

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Members intending on resigning or retiring from the department shall submit written notification to the Chief of Police at least two weeks prior to the effective date, unless a deviation is approved by the Chief of Police.

Discipline may be initiated for any good cause. It is not mandatory that a specific policy or rule violation be cited to sustain discipline. This policy is not intended to cover every possible type of misconduct.

320.5 CAUSES FOR DISCIPLINE

The following are illustrative of causes for disciplinary action. This list is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for violation of other rules, standards, ethics and specific action or inaction that is detrimental to efficient department service.

320.5.1 LAWS, RULES AND ORDERS

(a) Violation of, or ordering or instructing a subordinate to violate any policy, procedure, rule, order, directive, requirement or failure to follow instructions contained in department or City manuals.

(b) Disobedience or undue delay of any legal directive or order issued by any department member of a higher rank.

(c) Violation of federal, state, local or administrative laws, rules or regulations.

(d) When traveling outside of the United States, failure to comply with the laws and regulations of the host country.

(e) Failure to inform their immediate supervisor and the department's Office of Professional Standards (OPS) as soon as possible or practical if they are aware of being the subject of any criminal investigation, if they are arrested, and/or convicted of any criminal offense, or if they receive a summons for any criminal traffic violation, regardless of the location or jurisdiction.

(f) Engaging in any conduct, to include any physical act or verbal expression which threatens, exhibits, or implies any violence towards another department member or any person within the workplace.

(g) A conviction for violating any law shall be prima facie evidence of a violation of this subsection.

Note: The lack of a criminal complaint or an acquittal of an alleged violation of law shall not preclude the department from taking any administrative disciplinary action against an employee.

320.5.2 ETHICS

(a) Using or disclosing one’s status as a member of the Fargo Police Department such as their official position, badge, or police identification in any way that could reasonably be perceived as an attempt to gain influence or authority for non-department business or activity.

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(b) The wrongful or unlawful exercise of authority on the part of any member for malicious purpose, personal gain, willful deceit or any other improper purpose.

(c) The receipt or acceptance of a reward, fee or gift from any person for service incident to the performance of the member's duties unless it is specifically authorized by the Chief of Police.

(d) Acceptance of fees, gifts or money contrary to the rules of this department and/or laws of the state.

(e) Offer or acceptance of a bribe or gratuity.

(f) Misappropriation or misuse of public funds, property, personnel or services.

(g) Members shall not authorize the use of their name, photograph, title, position, or association with the Fargo Police Department in connection with any testimonial or advertisement.

(h) Any other failure to abide by the standards of ethical conduct.

320.5.3 DISCRIMINATION, OPPRESSION, OR FAVORITISM

Discriminating against, oppressing, or providing favoritism to any person because of actual or perceived characteristics such as age, race, ethnicity, religion, sex, sexual orientation, gender identity or expression, national origin, ancestry, marital status, physical or mental disability, medical condition or other classification protected by law, or intentionally denying or impeding another in the exercise or enjoyment of any right, privilege, power, or immunity, knowing the conduct is unlawful.

320.5.4 RELATIONSHIPS

(a) Solicitation of a personal or sexual relationship while on--duty or through the use of one’s official capacity.

(b) Engaging in on--duty sexual activity including, but not limited to, sexual intercourse, excessive displays of public affection or other sexual contact while on duty.

(c) Engaging in any conduct or action, which may be viewed or interpreted as sexual harassment, to include, but not limited to: unwelcome sexual advances, flirtations, touching, propositions, requests, demands or pressure for sexual favors, graphic or suggestive comments about an individual's dress or physical appearance, sexually degrading words used to describe an individual, or display any sexually suggestive objects or pictures anywhere in the workplace.

(d) Establishing or maintaining an inappropriate personal or financial relationship, as a result of an investigation, with a known victim, witness, suspect or defendant while a case is being investigated or prosecuted, or as a direct result of any official contact.

(e) Associating with or joining a criminal gang, organized crime and/or criminal syndicate when the member knows or reasonably should know of the criminal nature of the organization. This includes any organization involved in a definable criminal activity/enterprise, or groups which approve, condone, or engage in acts of violence, criminal behavior, or who seek to deny others of their rights under the United States Constitution, or who seek to alter the form of the United States

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government by unconstitutional means, except as specifically directed and authorized by this department.

(f) Associating on a personal, rather than official basis with persons who demonstrate recurring involvement in serious violations of state or federal laws after the member knows, or reasonably should know of such criminal activities, except where it is unavoidable due to a family relationship, or as specifically directed and authorized by this department.

320.5.5 ATTENDANCE AND READINESS FOR DUTY

(a) Leaving the job to which the member is assigned during duty hours without reasonable excuse and proper permission and approval.

(b) Unexcused or unauthorized absence or tardiness.

(c) Excessive absenteeism or abuse of leave privileges.

(d) Failure to report to work or to place of assignment at time specified and fully prepared to perform duties without reasonable excuse.

1. Members shall be physically and mentally fit to perform their duties to the fullest extent possible.
2. Members shall report for duty as prescribed by the department's uniforms, equipment, and appearance standards.

(e) Subpoenas or other administrative notices received by an employee as a result of any official action shall be considered an order for the member to report for duty under this subsection.

Note: *In the event of a natural or man-made disaster, or any other incident where the adverse impact to the City of Fargo is (or could be) substantial, all department employees, regardless of rank, title, position, or status as a sworn officer or civilian employee, shall presume an order to immediately report for duty has been issued by the Chief of Police.*

320.5.6 UNAUTHORIZED ACCESS, DISCLOSURE OR USE

(a) Unauthorized and inappropriate intentional release of confidential or protected information, materials, data, forms or reports obtained as a result of the member’s position with this department. Members shall treat the official business of the department as confidential.

(b) Disclosing to any unauthorized person any active investigation information to include photographs, video or audio recordings, or information contained in the case report.

(c) Accessing and/or using any information associated with the official business of the department for personal or other non-work related reasons such as reviewing case reports, accessing criminal records, or obtaining any motor vehicle or driver's license information.

(d) The capture or use of any information, photograph, video or other recording obtained or accessed as a result of employment or appointment to this department for personal

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or financial gain or without the express authorization of the Chief of Police or an authorized designee.

(e) Loaning, selling, allowing unauthorized use, giving away or appropriating any Fargo Police Department badge, uniform, identification card or department property for personal use, personal gain or any other improper or unauthorized use or purpose.

(f) Using department resources in association with any non-department related business or event. These resources include, but are not limited to, personnel, vehicles, equipment and non-subpoenaed records.

(g) Using, disseminating, posting, or transmitting any likeness or image associated with the department, to include logos, emblems, uniforms, badges, patches, police vehicles, or other material which specifically identifies the department, for any commercial purpose or personal financial gain, or in any manner which may bring discredit to the department.

320.5.7 DEPARTMENT EQUIPMENT

(a) Utilizing department equipment only for its intended purpose and in accordance with any training and established department policies and procedures.

(b) Abusing, negligently damaging, or losing department equipment. Employees are responsible for maintaining and ensuring all equipment issued or used by them is in proper working order.

(c) Report any damage, defect, or loss of any department equipment to the immediate or other on-duty supervisor as soon as practical

(d) Failure to promptly return any such equipment to the department on or before their last day of employment, or at the direction of a command officer or supervisor.

(e) Members shall not impede or otherwise interfere with any administrative access/ inspection of any equipment or container.

(a) All equipment owned/managed by the department, to included, but not limited to: lockers, vehicles, firearms, desks, file cabinets, computers, cellular phones, other electronic devices,...etc., are subject to administrative access and/or inspection at any time with or without cause and with or without notice.

(b) Any privately or personally owned or maintained container, equipment, or other item, to include but not limited to: a briefcase, purse, duffle-bag, cellular phone, personal electronic device,...etc., brought into or stored in any department building, or motor vehicle, is subject to administrative access and/ or inspection at any time, BUT only if cause exists to believe the item contains contraband or some other material specifically prohibited or otherwise deemed unsuitable for the workplace, such as offensive, obscene, or illegal items.

320.5.8 EFFICIENCY

(a) Neglect of duty.

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(b) Unsatisfactory work performance including, but not limited to, failure, incompetence, inefficiency or delay in performing and/or carrying out proper orders, work assignments or the instructions of supervisors without a reasonable and bona fide excuse.

(c) Failure to complete and submit all reports on time and in accordance with established department policies and procedures relative to the completion and submission of reports. Reports shall be accurate, truthful, and complete and no member shall knowingly enter or cause to be entered any inaccurate, false, or improper information.

(d) Concealing, attempting to conceal, removing or destroying defective or incompetent work.

(e) Failure to process all property or evidence they receive in the performance of their duties in accordance with established department policies and procedures relative to processing any such property or evidence.

(f) Convert to personal use, manufacture, conceal, falsify, destroy, remove, tamper with, modify, or withhold any property or evidence in connection with an investigation or other police action, except as authorized by department policy.

(g) Property or evidence gathered or received by the department shall be purged and/or destroyed in accordance with law and established department policy.

(h) Unauthorized sleeping during on-duty time or assignments.

(i) Failure to notify the Department within 24 hours of any change in residence address, contact telephone numbers or marital status.

(j) Failure for sworn officers to carry their department issued identification cards with them at all times, except when it is impractical or dangerous to do so.

1. All employees shall furnish their name and police ID number to any person upon request when the member is on-duty or otherwise representing the department in an official capacity, except when it is necessary to withhold such information in the performance of an official duty.

(k) Engaging in any activity or personal business while on-duty which could cause them to neglect or otherwise be inattentive to their duties.

320.5.9 PERFORMANCE

(a) Failure to disclose or misrepresenting material facts, or making any false or misleading statement on any application, examination form, or other official document, report or form, or during the course of any work-related investigation.

(b) The falsification of any work-related records, making misleading entries or statements with the intent to deceive or the willful and unauthorized removal, alteration, destruction and/or mutilation of any department record, public record, book, paper or document.

(c) Failure to participate in an investigation, or giving false or misleading statements, or misrepresenting or omitting material information to a supervisor or other person in a position of authority, in connection with any investigation or in the reporting of any -department-related business. Upon the order of the Chief of Police or the Chief's

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designee, members shall truthfully answer any questions relative to a personnel complaint or other administrative inquiry.

(d) Being untruthful or knowingly making false, misleading or malicious statements that are reasonably calculated to harm the reputation, authority or official standing of this department or its members. However, in the lawful performance of an officer's duties it is permissible to use reasonable forms of deception as an investigative technique.

(e) Disparaging remarks or conduct concerning duly constituted authority to the extent that such conduct disrupts the efficiency of this department or subverts the good order, efficiency and discipline of this department or that would tend to discredit any of its members.

1. Department members shall not publicly criticize the department, it's policies, practices, administrative decisions/determinations, or its employees (regardless of rank or assignment) by speech, in writing, or any other expression, where such information is defamatory, obscene, unlawful, or impairs the operation, efficiency, effectiveness, or image of the department , or is made with wanton disregard for the truth.

(f) Members are not prohibited or precluded from discussing or dissemination information which may be of public interest and is not otherwise prohibited by department policy.

(g) Feigning any illness or injury, or falsely report themselves or any member of their family ill or injured, or otherwise deceive or attempt to deceive the department as to their health or ability to report for duty due to illness or injury. A member sustaining any injury while on-duty shall immediately report such injury to their immediate or other on-duty supervisor.

(h) Unlawful gambling or unlawful betting at any time or any place. Legal gambling or betting under any of the following conditions:

1. While on department premises.
2. At any work site, while on--duty or while in uniform, or while using any department equipment or system.
3. Gambling activity undertaken as part of an officer’s official duties and with the express knowledge and permission of a direct supervisor is exempt from this prohibition.

(i) Improper political activity on duty, to include:

1. Unauthorized attendance while on--duty at official legislative or political sessions.
2. Solicitations, speeches or distribution of campaign literature for or against any political candidate or position while on--duty, on department property or while in any way representing him/herself as a member of this department, except as expressly authorized by City policy, an employment agreement, or the Chief of Police.

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3. Managing, organizing, or financing any political party, club, campaign, or other political organization.
4. Soliciting votes for or against any candidate or cause.
5. Serving as a political party delegate.
6. Endorsing or opposing a candidate or cause through advertisement, broadcast, or campaign literature.
7. Initiating or circulating a petition.
8. Organizing or actively participating in any fundraising functions for political candidates, parties, or causes.
9. Addressing political or religious gatherings on topics unrelated to the official business of the department
10. Soliciting participation of endorsement of a political or religious belief, position, or denomination.

(j) Engaging in political activities during assigned working hours except as expressly authorized by City policy, an employment agreement, or the Chief of Police. Except for inclusion in stating their qualifications for political office, department members shall not use their position with the department for any political purpose and shall not hold any political position which may be incompatible or of conflicting interest towards their duties as a department member.

(k) Failure to maintain sufficient competence to adequately perform their duties and responsibilities in a professional and efficient manner. Unsatisfactory performance may be demonstrated by, but is not limited to, the following:

(a) A lack of knowledge of how to apply or enforce laws and/or other regulations, or;

(b) An unwillingness or inability to perform assigned tasks, duties, or to otherwise meet job performance expectations, or;

(c) Failure to conform to the work standards established for the member's rank, position, or assignment, or;

(d) Failure to take the appropriate action to deal with crime, disorder, or other conditions requiring or otherwise deserving police attention, including addressing and/or reporting violations of department policy which come to a members' attention, or;

(e) Being absent from duty without approved leave.

(l) The following shall be ***prima facie*** evidence of unsatisfactory performance:

1. Repeated poor performance evaluations.
2. Documented evidence of repeated violations of department rules, regulations, procedures, orders, or other directives.
3. Failure to satisfactorily complete the department's police training program for newly hired officers or the initial introduction training provided to civilian personnel.

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4. Failure to satisfactorily complete any in-service training, a performance improvement plan, or other remedial training.

320.5.10 CONDUCT

(a) Failure to remain patient, courteous, and respectful when interacting with members of the general public, co-workers, or others in the performance of their duties.

(b) Failure to perform their duties while demonstrating excellent judgment, discretion, and decision making ability.

(c) Unreasonable and unwarranted force to a person encountered or a person under arrest. Failure to respond to any resistance they encounter, either real or perceived, by using only the degree of force (physical or otherwise) which is necessary and reasonable in the lawful discharge of their duties and in accordance with established department policy.

(d) Exceeding lawful peace officer powers by unreasonable, unlawful or excessive conduct.Sworn officers shall only make an arrest or search/seize any person when they know, or should know, it is lawful, and only accordance with established department policy and/or procedure.

(e) Unauthorized or unlawful fighting, threatening or attempting to inflict unlawful bodily harm on another.

(f) Engaging in horseplay that reasonably could result in injury or property damage.

(g) Discourteous, disrespectful or discriminatory treatment of any member of the public or any member of this department or the City.

(h) Use of obscene, indecent, profane or derogatory language while on--duty or in uniform.

(i) Criminal, dishonest, or disgraceful conduct, whether on- or off-duty, that adversely affects the member’s relationship with this department.

(j) Unauthorized possession of, loss of, or damage to department property or the property of others, or endangering it through carelessness or maliciousness.

(k) Attempted or actual theft of department property; misappropriation or misuse of public funds, property, personnel or the services or property of others; unauthorized removal or possession of department property or the property of another person.

(l) Activity that is incompatible with a member’s conditions of employment or appointment as established by law or that violates a provision of any employment agreement contract to include fraud in securing the appointment or hire.

(m) Initiating any civil action for recovery of any damages or injuries incurred in the course and scope of employment or appointment without first notifying the Chief of Police of such action.

(n) Any other on- or off--duty conduct which any member knows or reasonably should know is unbecoming for a member of this department, is contrary to good order, efficiency or morale, or tends to reflect unfavorably upon this department or its members.

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1. On or off-duty members shall not solicit from alcohol establishments for alcohol donations for any department event or any event which could reasonably be associated with the department, unless approved by a Division Commander or Chief of Police.

320.5.11 SAFETY

(a) Failure to observe or violating department safety standards or safe working practices.

(b) Failure to maintain current licenses or certifications required for the assignment or position (e.g., driver’s license, first aid).

(c) It is highly encouraged officers maintain good physical condition sufficient to adequately and safely perform law enforcement duties.

(d) Unsafe, negligent, reckless, careless firearm or other dangerous weapon handling to include loading or unloading firearms in an unsafe manner, either on- or off-duty.

(e) Carrying, while on the premises of the work place, any firearm or other lethal weapon that is not authorized by the Chief of Police.

(f) Unsafe or improper driving habits or actions in the course of employment or appointment.

(g) Any personal action contributing to a preventable traffic accident.

(h) Concealing or knowingly failing to report any on-the-job or work-related accident or injury as soon as practicable but within 24 hours.

(i) Members shall report any suspension, revocation, or cancellation of their driver's license, or if they are arrested, convicted, or issued a summons for any criminal traffic violation, to their immediate or on-duty supervisor, and the departments Office of Professional Standards (OPS) as soon as possible.

(j) Prohibited from engaging in any conduct, to include any physical act or verbal expression which threatens, exhibits, or implies any violence towards another department member or any other person within the workplace. (*Note:This item is not applicable to any act which is consistent with the department's policy or procedures relative to the lawful use of force.)*

320.5.12 INTOXICANTS

(a) Reporting for work or being at work while intoxicated or having any detectable sign of alcohol consumption to include an odor of an alcoholic beverage, physical or mental impairment.

(b) Reporting for work or being at work when the members ability to perform assigned duties is impaired due to the use of , medication or drugs, whether legal, prescribed or illegal.

(c) Possession or use of alcohol at any work site or while on-duty, except as authorized in the performance of an official assignment, and only when acting under the direction or orders of a command officer or supervisor. A member who is authorized to consume alcohol is not permitted to do so to such a degree that it may impair on-

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duty performance. Members in department approved uniforms are prohibited from consuming alcohol or any other intoxicating substances.

(d) Unauthorized possession, use of, or attempting to bring a controlled substance, illegal drug or non-prescribed medication to any work site except when it is legally prescribed and/or administered. Over the counter (OTC) medications which do not cause mental or physical impairment are permitted when taken as directed by the manufacturer.

1. If it becomes necessary for a member to use a controlled substance in the workplace or while on-duty, the member shall notify their immediate or on-duty supervisor as soon as possible if the member's ability to perform their duties *may* be impaired due to the member's use of the controlled substance.

(e) Members shall not store or bring into any police facility or police vehicle any alcohol or other intoxicating substance or any controlled substance except those taken and held as evidence, secured as seized or found property, used for authorized training purposes, or legally prescribed and/or administered to an employee, without authorization from a command officer or supervisor.

(f) Off-duty members shall refrain from consuming any alcohol or intoxicating substance to the extent it results in behavior which discredits the member or the department, or renders the employee unfit to report for the member's next scheduled work shift or assignment.

(g) Members are prohibited from using any smoking or tobacco product, to include any smokeless tobacco product, E-Cigarettes, or any other smoking device within any department facility, department vehicle, or anytime the member is on-duty and in public view.

(h) Members may use tobacco products only in the duly designated area(s) outside of any department facility, or when it is necessary and/or reasonable with the performance of their duties and when acting under the direction or orders of a command officer or supervisor.

(Note: Department members are also required to follow all City of Fargo employment policies relative to alcohol, drugs, or tobacco use in the workplace.)

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