

TOWN OF BOONE
PERSONNEL POLICY

BE IT RESOLVED by the Town Council of the Town of Boone that the following policies apply to the appointment, classification, benefits, salary, promotion, demotion, dismissal, and conditions of employment of the employees of the Town of Boone.

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ARTICLE I. GENERAL PROVISIONS

Section 1. Purpose of the Personnel Policy.

It is the purpose of this Personnel Policy to establish a fair and uniform system of personnel administration for all employees of the Town under the supervision of the Town Manager. This Personnel Policy is established under authority of Chapter 160A, Article 7, of the General Statutes of North Carolina.

Section 2. Responsibilities of the Town Council.

The Town Council establishes and approves personnel policies and with reasonable advance notice to current employees, may change the policies and benefits as necessary, with such effective date(s) as they may designate.

Section 3. Responsibilities of the Town Manager with Respect to Personnel Policy.

The Town Manager is responsible to the Town Council for implementation of the personnel policy. The Town Manager shall hire, fire and discipline employees in accordance with this Policy and relevant law.

The Town Manager shall:

- a. recommend revisions to the Personnel Policy, as necessary and/or desirable;
- b. maintain a current and accurate position classification plan;
- c. prepare necessary revisions to the pay plan;
- d. apply the Fair Labor Standards Act (hereafter, the "FLSA");
- e. maintain a roster of all persons and authorized positions in the municipal service, setting forth each position and employee, class title of position, salary, changes in class title and status, and such other information as may be desirable or useful as to each position;
- f. develop and administer appropriate recruiting programs to ensure an effective Town workforce;
- g. develop and coordinate employee training and educational programs;
- h. perform such duties as may be assigned by the Town Council, so long as they are not inconsistent with this Policy; and
- i. perform such other duties as reasonably necessary to carry out this policy.

The Town Manager may delegate or assign any of the above responsibilities to the Director of Human Resources or to another position in the Town, but shall retain final authority and responsibility for all decisions.

Section 4. Application of Policies, Plan, Rules, and Regulations.

This Personnel Policy and department rules and regulations shall be binding on all Town employees, **but shall not create contractual rights.**

Section 5. Departmental Rules and Regulations.

Subject to the prior approval by the Town Manager, each department is authorized to establish consistent supplemental written rules and regulations applicable only to the personnel of that department.

Section 6. Definitions.

The following words and phrases shall have the following meanings. Any terms which are not specifically defined shall have their common meaning, giving due regard to the context in which they are used.

Full-time employee. An employee whose position requires an average work week of 40 or more hours and who has successfully completed the designated probationary period.

Part-time employee. An employee whose position requires an average work week of 29 hours or less who has successfully completed the designated probationary period.

Probationary employee. An employee hired to a full or part-time position who has not yet completed the designated probationary period.

Temporary employee. An employee hired to a position expected to last for less than 12 months.

Trainee. An employee who has been hired or promoted to a new position, who does not yet meet all of the requirements for the position. While a “trainee,” an employee is on probationary status.

Section 7. Reserved.

ARTICLE II. POSITION CLASSIFICATION PLAN

Section 1. Position Classification Plan Purpose.

The position classification plan is intended to provide a complete inventory of all authorized positions in the Town, an accurate description of each class of employment, and standardized job titles.

Section 2. Composition of the Position Classification Plan.

The classification plan shall include:

- a. a grouping of positions in classes which are approximately equal in difficulty and responsibility, which call for the same general qualifications, and which can be equitably compensated within the same range of pay under similar working conditions;
- b. class titles descriptive of the work of the class;
- c. descriptions for each class of positions; and
- d. an allocation list showing the class title and grade of each position.

Section 3. Use of the Position Classification Plan.

The classification plan is to be used as a guide in:

- a. recruiting and evaluating applicants for employment;
- b. determining lines of promotion and developing employee training programs;
- c. determining salaries for various types of work;
- d. determining personnel costs in departmental budgets; and
- e. providing uniform job terminology.

Section 4. Administration of the Position Classification Plan.

The Town Manager shall assign each position to its appropriate class and shall be responsible for administration of the position classification plan. The Town Manager shall periodically review the classification plan and recommend necessary changes to the Town Council.

Section 5. Adoption of the Position Classification Plan.

The position classification plan must be adopted by the Town Council and must be on file with the Director of Human Resources. Copies shall be available to all Town employees upon request. New positions in the plan shall be established upon recommendation of the Town Manager and approval by the Town Council. The Town Manager shall either assign any new position into the appropriate existing class, or shall revise the position classification plan to add the new position and/or classification.

Section 6. Request for Reclassification.

Any employee who considers the position in which he/she is classified to be incorrect shall submit a request in writing for reclassification to his/her immediate supervisor, who shall transmit the request through the department head to the Director of Human Resources, who shall make a recommendation to the Town Manager. Upon receipt of such recommendation, the Town Manager shall review the request, determine the merit of the reclassification, and decide whether to revise the classification and pay plan. The decision of the Town Manager shall be final.

ARTICLE III. THE PAY PLAN

Section 1. Pay Plan Definition.

“The Position Classification Pay Plan (hereafter, the “Pay Plan”) establishes the Town’s basic salary schedule, including Hiring Rate, Midpoint, and Maximum rates of pay for all classes of positions. Salary increases within the pay range are based on performance. The Pay Plan must be adopted by the Town Council.

Section 2. Administration.

The Town Manager, or the Director of Human Resources, as directed by the Town Manager, shall be responsible for the administration of the Pay Plan. Each employee shall be paid at a rate listed within the salary range for his or her respective position classification, except for trainees or for employees whose existing salaries are above the established maximum rate following adoption of a new Pay Plan.

The Pay Plan is designed and intended to provide equitable compensation for all positions, reflecting differences in duties and responsibilities, changes in the cost of living, the financial condition of the Town, and other factors. The Town Manager, or the Director of Human Resources, as directed by the Town Manager, may study the Pay Plan and recommend to the Town Council such changes as may be appropriate. Those changes may increase or decrease salary ranges or grades for a class and the rate of pay for employees in the class.

Section 3. Starting Salaries.

A new employee shall normally be paid the Hiring Rate salary for his or her position classification; however, exceptionally qualified applicants may be employed at a starting salary above the Hiring Rate salary of the established salary range, but only with written justification from the department head and approval by the Town Manager.

Section 4. Trainee Designation and Provisions.

A new employee, or a Town employee who does not meet all of the requirements for the position to which he or she is being transferred, may be designated by the Town Manager as a “trainee.” In such cases, a training plan, which includes a time schedule for meeting specified training objectives, must be prepared by the department head. “Trainee” salaries may be no higher than two grades below the minimum salary established for the position for which the person is being trained. A “trainee” is always considered a probationary employee.

If the training plan is not successfully completed by the trainee to the satisfaction of the department head or Town Manager, the trainee may be transferred, demoted, or dismissed. If the training plan is successfully completed, “trainee” status will be discontinued, and the employee shall thereafter be paid at least the Hiring Rate established for the position for which the employee was trained.

Section 5. Performance Evaluation.

Supervisors or department heads shall conduct performance evaluation conferences with every employee at least once a year. Each employee shall be evaluated in all areas designated by the Director of Human Resources, as well as in any areas established by the department head or

Town Manager. Performance evaluations shall be documented in writing and placed in the employee's personnel file.

Section 6. Performance Raises and Performance Pay Bonuses.

An employee may be considered for advancement within the established salary range based on the quality of his or her overall work performance, subject to the availability of funds. Each fiscal year, the Town Manager shall issue instructions, based on the approved Town budget, advising department heads of the availability of funds for Performance Pay increases and the percentage increases which may be approved.

An employee who is at the top step of the salary range for his/her position classification is eligible to be considered for a Performance Pay bonus subject to the availability of funds. Performance Pay bonuses shall be awarded based upon the performance of the employee as described in the performance evaluation. Any Performance Pay Bonus awarded shall be in a lump sum payment and will not become part of the employee's base pay. The amount of the Performance Pay Bonus, if any, must be approved each year by the Town Manager, based on the recommendation of the department head, the availability of funds and such other factors as the Town Manager may identify.

Section 7. Effects of Promotion, Demotion, Transfer, and Reclassification Upon Salary of Employee.

a. **Promotion.** Promotion is the movement of an employee from one position in a class assigned to one salary range, to a vacant position in a class assigned to a higher salary range. When an employee is promoted, the employee's salary shall normally be advanced to the minimum level of the new position, but this may be adjusted either upward or downward by the Town Manager to cure perceived inequities in the department or to recognize the probationary status of the promoted employee, provided, however, that the new salary may not exceed the maximum rate of the new salary range.

b. **Demotion.** Demotion is the movement of an employee from a position in a class assigned to one salary range to a position in a class assigned to a lower salary range. An employee whose work or conduct in the current position is unsatisfactory or who is subject to disciplinary action for any other reason may be demoted, but demotion shall not be required if the conduct of the employee constitutes a basis for termination. When an employee is demoted, unless the demotion is the result of disciplinary action taken against the employee, the salary shall be set at the rate in the lower pay range at the same percentage above the base rate for the new position as the percentage above the base rate for the original position at the time of the demotion. If the demotion is the result of disciplinary action, the salary may be decreased to a level commensurate with the rate established for an employee of equivalent years of service with the Town in the lower range, or may be adjusted downward, as determined by the Town Manager, to recognized the probationary status of the demoted employee in the new position.

c. **Transfers.** Transfer is the movement of an employee from a position in one salary grade to a position in the same salary grade. The salary of an employee reassigned to a new position in the same salary grade shall not be changed by the reassignment. An employee who has successfully completed a probationary period may be transferred into a position with the same classification without serving another probationary period.

1. **Voluntary Transfer.** If a vacancy occurs and an employee in one department is eligible for a transfer to another department, the employee may apply for the

transfer using the usual application process.

2. **Involuntary Transfer.** Should a department head wish to transfer an employee, the department head shall make a request for such transfer to the Director of Human Resources, who must give a preliminary approval for the transfer. If there is preliminary approval, the department head then must request approval for the transfer from the Town Manager, and if the Town Manager approves the transfer, the department head must obtain the consent of the receiving department head to accept the transfer. Any regular employee transferred without having requested the action may appeal the transfer in accordance with the grievance procedure.

d. **Reclassification.** An employee whose position is reclassified to a class having a higher salary range shall receive a pay increase to the minimum of the new pay range if that minimum is higher than the employee's current salary. Otherwise, the salary shall remain the same. If the position is reclassified to a lower pay range, the employee's salary shall remain the same. If the employee's salary is above the maximum established for the new range, the salary of that employee shall be maintained at the current level until the range is increased above the employee's salary.

Section 8. Effective Date of Salary Changes.

Salary changes approved after the first working day of a pay period shall become effective at the beginning of the next pay period, or at such specific date as may be set by the Town Manager.

Section 9. Salaries of Supervisory Personnel and Department Heads.

Nothing herein shall limit the authority of the Town Manager to extend such employment benefits, including salary, to supervisory personnel and department heads, as the Town Manager may deem necessary to the recruitment and retention of qualified personnel to supervisory and leadership positions.

Section 10. Overtime Pay.

An employee of the Town may be required to work overtime hours as necessitated by the needs of the Town and determined by the department head. If the departmental budget for overtime has been exhausted, before requiring an employee to work overtime, except in an emergency situation, the department head shall obtain the prior approval of the Town Manager.

The Town will comply with the Fair Labor Standards Act (FLSA). The Town Manager shall establish the "workweek" for each department, and any changes to an employee's work schedule must be approved in advance by the Town Manager. An FLSA "non-exempt" employee will be paid at a straight time rate for hours up to the FLSA established limit for the position, forty hours per workweek for non-police and fire department employees.

Department heads shall avoid the unnecessary expenditure of Town funds on overtime pay. Therefore, whenever possible, to offset extra hours worked within that workweek, department heads will schedule time off within the workweek. When time off within the workweek cannot be granted, overtime worked will be paid or accumulated as compensatory time in accordance with FLSA. Hours worked beyond FLSA established limits will be compensated in either time or pay at the appropriate overtime rate, but in determining eligibility for overtime in a workweek, only hours actually worked shall be considered; in no event will vacation, sick leave,

school, holiday, compensatory or other category of leave be included in the computation of hours worked.

Compensatory time may be accumulated by non-exempt employees up to 100 hours, unless specific authorization is obtained from the Town Manager to exceed that amount. Any time accumulation over this limit must be paid. With the approval of the Town Manager, department heads may pay an employee for all or part of accumulated compensatory time even below this limit when it is not possible or feasible to permit an employee's absence for the purpose of taking compensatory time or in order to control departmental liability.

In emergency situations, where employees are required to work long and continuous hours, the Town Manager may approve compensation at time-and-one-half for those hours worked and/or grant time off with pay for rest and recuperation to ensure safe working conditions.

Employees in positions "exempt" from the FLSA will not receive pay for hours worked in excess of their normal work periods.

Section 11. Call-Back Pay.

a. **Employee's Responsibility to Respond to Call-Back.** Because the Town provides a continuous twenty-four hour a day, seven day a week, service to its citizens, it may be necessary for an employee to report for duty at any hour of the day or night. An employee must accept his or her share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails or refuses to report for duty when requested, the employee shall be subject to disciplinary action up to and including dismissal.

b. **Minimum Compensation for Call-Back.** Non-exempt employees will be guaranteed a minimum payment of one hour's wages for being called back to work outside of normal working hours. However, this minimum does not apply to previously scheduled overtime work.

Section 12. Payroll Deductions.

Deductions shall be made from each employee's salary as required by law. Additional voluntary deductions may be made if approved by the Town Manager.

Section 13. Payroll Procedure.

Pay periods begin on Monday at 12:00 a.m. and end on Sunday at 11:59 p.m. two weeks later, unless otherwise designated. Paychecks are issued on the first Friday after the end of each pay period. If payday falls on a holiday, employees will be paid on the last working day prior to the holiday.

ARTICLE IV. RECRUITMENT AND EMPLOYMENT

Section 1. Promotion from Within Policy.

When appropriate, as determined by the Town Manager, the Town shall give current employees the first opportunity to apply for positions as they become available, in order to reward and promote efficiency, dedication, loyalty and good will among employees. The Town reserves the right to publicly advertise any vacant position and to fill a position from outside the Town's workforce whenever the Town Manager determines it is in its best interests to do so. When a current employee applying for a vacant position is well-suited for the position, and that employee's qualifications are comparable to the most qualified of the other applicants for the position, the current employee shall be favored over non-employee applicants. Candidates for promotion shall be chosen on the basis of their qualifications and their work records. Candidates shall apply for promotions using the same application process as external candidates.

Section 2. Equal Employment Opportunity Policy.

It is the policy of the Town and the Town is committed to fostering, maintaining and promoting equal employment opportunity. The Town shall therefore select employees solely on the basis of their qualifications for the job and award them compensation and opportunities for training and advancement, including promotion, without regard to age, sex, gender identity or sexual orientation, race, color, religion, creed, national origin, disability, political registration, marital status or any other reason prohibited by law. Qualified applicants with disabilities shall be given equal consideration with other applicants for positions unless their disabilities create an unreasonable barrier to their satisfactory performance of duties, and cannot be overcome with reasonable accommodation. All personnel responsible for recruitment and employment will review regularly the implementation of this Personnel Policy and relevant practices to assure that equal employment opportunity based on reasonable, job-related requirements is being actively observed.

Section 3. Recruitment, Selection and Appointment.

a. **Recruitment Sources.** When a vacancy occurs, the department head shall notify the Director of Human Resources concerning the position to be filled and shall take no steps to fill the vacancy until authorized by the Director of Human Resources. The Director of Human Resources may publicize any job opening, including applicable salary information and employment qualifications, by providing the job opening information to recruitment sources, including the Employment Security Commission, appropriate newspaper(s), and any other places which may assist in attracting qualified applicants. Notice of any vacancy shall also be posted at designated sites within each department. Individuals shall be recruited from a geographic area as wide as necessary to ensure that the Town receives an adequate number of qualified applicants for each vacancy.

b. **Job Advertisements.** Employment advertisements shall contain assurances of equal employment opportunity and non-discrimination in employment.

c. **Application for Employment.** Any qualified person may file an application for employment for any job vacancy. An applicant for employment must provide all information requested by the Town, including references, or will not be considered for the position.

d. **Retention of Applications.** Applications shall be retained for a period of three years.

e. **Selection.** The Town Manager shall make the final hiring decision and determine the starting salary. Hiring factors may include, but are not limited to the following: the written recommendation of the relevant department head; the requirements and demands of the position,

including, where appropriate, the skills needed to interact with the public; and the relevant and comparative qualifications of the applicants, including past work experience and performance, educational background, and suitability for the position. Should the Town Manager, at any time before a position is filled, determine that the position should not be filled at that time, he or she may suspend or discontinue the hiring process. In such event, all applicants shall be notified in writing that the hiring process has been suspended or discontinued. Neither the advertising of a position, the acceptance of applications for a position, nor any steps taken to fill a position, including the extension of an offer of employment to an applicant, shall create any contractual rights between the Town and any applicant, nor shall any action related to the recruitment or selection of employees create in any person a property interest in any position.

f. **Offers of Employment.** All offers of employment are conditional and shall only become final after a post-employment medical examination to determine if the applicant has the ability to safely perform the job, and to determine, if a medical condition which may interfere with that ability exists, whether the Town can make a reasonable accommodation to the employee to enable the employee to safely perform the job. In addition, the applicant must submit to a pre-employment alcohol and controlled substance screening. Failure to submit to either examination, or a positive alcohol or controlled substance screening shall be considered a withdrawal by the applicant of his or her application. Each employee hired to a full-time position must join the North Carolina Local Government Retirement System as a condition of employment.

Section 4. Probationary Period.

Any employee hired, demoted, promoted or transferred to a new position, except for a non-probationary employee who is transferred to a position of the same grade, must serve a minimum probationary period of six months. Such probationary period may be extended for such additional period(s) as may be determined by the Town Manager, in accordance with the following provisions.

DURING THE PROBATIONARY PERIOD, THE EMPLOYEE IS AN “EMPLOYEE AT WILL” AND CAN BE DISMISSED WITHOUT CAUSE FOR ANY REASON.

During the probationary period, supervisors shall monitor an employee’s performance and communicate with the employee concerning performance progress. Before the end of the probationary period, the supervisor shall conduct a performance evaluation conference with the employee and discuss accomplishments, strengths, and needed improvements. A summary of this discussion shall be documented in the employee’s personnel file. The supervisor shall recommend in writing whether the probationary period should end according to schedule or be extended, or whether the employee should be transferred, demoted, or dismissed. Probationary periods will generally be extended no more than six additional months following the initial six-month period.

Disciplinary action, including demotion and dismissal, may be taken at any time during the probationary period of a new hire, **and the provisions of Articles XI & XII of this Policy shall not apply to the disciplinary action.** A promoted, demoted or transferred employee who does not successfully complete the probationary period may be transferred or demoted to a position in which the employee shows promise of success. If no such position is available, the employee shall be dismissed.

ARTICLE V. CONDITIONS OF EMPLOYMENT

Section 1. Work Schedule.

Subject to the approval of the Town Manager, department heads shall establish work schedules for all employees in their respective departments. Work schedules should meet the operational needs of the departments in the most cost effective manner possible. The department heads must

provide current schedules for all employees within their departments to the Director of Human Resources who will keep them on file. Department heads shall immediately notify and request approval from the Town Manager, through the Director of Human Resources, of any change in an employee's schedule.

Section 2. Political Activity.

Each employee has a responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan, non-partisan, or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations and run for or hold a non-partisan position in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States. However, no employee shall:

- a. Engage in any political activity while on duty;
- b. Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for political office;
- c. Be required as a duty of employment or as condition for employment, promotion or tenure of office, to contribute funds for political or partisan purposes;
- d. Use any funds, supplies or equipment of the Town for political or partisan purposes, except where such political uses are otherwise permitted by law;
- e. While on duty or in the workplace, solicit contributions from another employee of the Town for political or partisan purposes; or at any time coerce or compel contributions from another employee of the Town for political or partisan purposes;
- f. Make preparations to be, be a candidate for, or hold any elective office of the Town of Boone, or
- g. Make preparations to be, be a candidate for, or hold, any partisan elective office, unless the employee first presumptively establishes, as provided for herein, that the employee is not subject to the provisions of the Hatch Act, 5 U.S. C. §§ 1501, et seq. In order to presumptively establish that he or she is not subject to the Hatch Act, an employee must, prior to engaging in preparations to be a candidate, running for, or holding any partisan elective office, obtain and provide to the Town Manager a written advisory opinion issued by the United States Office of Special Counsel in Washington, D.C., that the individual employee in question is not subject to the prohibitions of the Hatch Act.

Any violation of this section shall subject the employee to disciplinary action, including dismissal.

Section 3. Outside Employment.

The work of the Town shall take precedence over all other occupational interests of employees. Before accepting outside employment, each employee must report all outside employment for salary, wages, or commission, and all self-employment, in advance to the employee's supervisor,

who in turn must report it to the department head. The department head will review such employment for possible conflicts of interest and then submit a record of the employment and the department head's review to the Director of Human Resources for further review and recommendation to the Town Manager. Outside employment will not be approved if it involves an actual conflict of interest, a potential conflict of interest, or the appearance of a conflict of interest. Outside employment will not be approved if it might cast the Town in a negative light. Impermissible conflicts include, but are not limited to:

- a. working for an employer who is in conflict with the Town or could likely come into conflict with the Town;
- b. working in a position that creates potential liability against the Town;
- c. working in a capacity which could affect the decisions of the employee in the normal course of his or her duties, or the decisions of other Town employees in the conduct of their duties, or which gives the appearance of such influence.

The Town Manager must approve any outside employment before it begins. Engaging in conflicting or unreported outside employment may subject the employee to disciplinary action up to and including dismissal.

Section 4. Employment of Relatives.

The Town prohibits the hiring and employment of immediate family within the same work units. "Work units" are those units, more than one of which may exist in a single department, specified as separate budgetary units within the Town's annual budget. For purposes of this section, "immediate family" is defined as the spouse, person living with the employee in a "common law" or spousal relationship without the benefit of marriage, also known as the "domestic partner," child, parent, grandparent, brother, sister, grandchild, legal guardian, or step, in-law, or adoptive relationship of any of these named relationships. The Town also prohibits the employment of any person who is an "immediate family" member of individuals holding the following positions: Mayor, Mayor Pro-Tem, Town Council Member, Town Manager, or Town Attorney. The Town will consider employing related persons who are not "immediate family" in the service of the Town provided that such employment does not result in a relative supervising a relative.

Should two unrelated employees within the same department enter a relationship which creates a prohibited employment situation, both employees are responsible for promptly reporting the relationship to the department head. If neither an appropriate transfer to another department nor to another unit is available or possible, one of the employees must resign or both shall be terminated. Once informed of the relationship, the department head shall take all reasonable steps to transfer one of the employees into a different department. When transfer to another department is not reasonably available, the employees in question may remain within the same department, if approved by the Town Manager, under the following conditions:

- a. There are separate "work units" within the department;
- b. An appropriate position is available in another work unit within the department;
- c. The employees will not be under the same immediate supervisor, nor under any circumstance be in any supervisory capacity to the other;

- c. One employee agrees to be reassigned to the available position in the other work unit;
- d. After reassignment, the employees' duties can be and are separated so that there can be no preferential treatment as a result of their relationship (It is generally expected that if one of the persons involved is in any supervisory position within the department, even if not in the same work unit, the positions cannot be adequately separated so that such an arrangement would ordinarily not be approved); and
- e. The employees' job performances do not suffer as a result of the relationship.

Section 5. Harassment Policy.

The Town opposes harassment by supervisors and/or co-workers in any form, and prohibits conduct which illegally discriminates or harasses on the basis of age, sex, race, color, religion, national origin, disability, or any other reason prohibited by law.

Any employee asserting illegal discrimination or harassment may follow the Grievance Procedure or may file a complaint directly with the Town Manager. The Town Manager, through the Director of Human Resources, shall investigate any allegation of illegal discrimination or harassment and take whatever action he deems appropriate and necessary, up to and including dismissal of any employee engaging in illegal harassment and of any supervisor failing to properly report such conduct.

Illegal discrimination or harassment may take a variety of forms, and supervisory personnel and department heads should, if they have any doubt about whether particular conduct constitutes illegal discrimination or harassment, therefore err in favor of reporting such conduct to the Director of Human Resources and/or the Town Manager. By way of example, sexual harassment includes but is not limited to unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when: 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Conduct of a sexual nature or content between a person in a supervisory capacity and a person in a non-supervisory capacity within the **same** department shall be conclusively presumed to be improper harassment. Conduct of a sexual nature or content between a person in a supervisory capacity and a person in a non-supervisory capacity within a different department shall be highly suspicious for improper harassment. Conduct of a sexual nature or content between two employees in non-supervisory capacities or two employees in supervisory capacities will be closely scrutinized for evidence of improper harassment.

Section 6. Acceptance of Gifts and Favors.

No employee of the Town shall accept any gift, favor, or thing of value that may tend to influence such employee in the discharge of the employee's duties. No employee shall grant any improper favor, service, or thing of value in the discharge of the employee's duties. No employee shall accept a gratuity.

Section 7. Safety.

An employee shall follow the safety policies and procedures established by the Town and his or her department, and as a condition of employment, must attend all required safety training programs. An employee who violates such policies and procedures shall be subject to disciplinary action up to and including dismissal.

Section 8. Request for Medical Information.

An employee may be requested to provide medical documentation or undergo a medical examination by a physician of the Town's choice, whenever a question arises as to the physical or psychiatric ability of the employee to safely perform his or her job. If it determined that such a condition limits the employee's ability to safely perform his or her job, the medical information obtained will be used by the Town to determine whether a reasonable accommodation can be made to the employee to enable the employee to safely perform the job.

Section 9. Travel Expense and Reimbursement.

Town vehicles will be provided for certain personnel for Town business. Town vehicles may not be used for personal business.

Travel on official Town business outside the corporate limits and Extra Territorial Jurisdiction of the Town must be authorized by the department head, with approval by the Town Manager. A request for such travel must describe the purpose and destination of the proposed trip, and the period of time for which the employee will be away from the Town. Town employees traveling outside the Town on authorized Town business will be reimbursed for lodging, meals, and other expenses at rates established by the Town Council. Reimbursements may only be paid if accompanied by a written travel reimbursement form signed by the employee and approved by the department head and Town Manager. Receipts for the costs of hotels and related travel expenses must be attached to the form. When a Town employee uses a personal vehicle, because no Town vehicle is available, to travel outside the Town on authorized Town business, he or she will be reimbursed for mileage.

ARTICLE VI. EMPLOYEE BENEFITS

Section 1. Eligibility for Employee Benefits.

All full-time employees of the Town are eligible for employee benefits as provided for in this Article, but all such benefits are subject to change at the Town's discretion. Except for worker's compensation benefits, temporary and part-time employees are ineligible for employee benefits.

Section 2. Group Health and Hospitalization Insurance.

The Town currently provides group health and hospitalization insurance for those employees qualified under the terms of its group insurance contract. A full-time employee may purchase available group health insurance coverage for a qualified spouse and dependent(s). The Director of Human Resources shall make available to all employees information concerning the costs and benefits of this insurance coverage.

Section 3. Retiree Health Insurance.

Until a retiree is eligible for Social Security retirement or disability benefits, and Medicare benefits, employees who wish to retain health insurance benefits through the Town and who retire from the Town under the North Carolina Local Government Employees' Retirement System with 20 years of service with the Town, shall have 50% of their health insurance premiums paid by the Town; and for each additional year of service after twenty, the Town will pay an additional 2.5% of the premium up to a maximum of payment of 75% of the total premium for 30 years or more of service. Other retired employees with less than 20 years of service may continue health care insurance for themselves as allowed under the Town's group policy; however, these employees must pay for the full cost of such coverage. Entitlement for continuation coverage for health benefits is conditioned upon a retiring employee's timely submission of a written request, on such form as may be provided by the Town for that purpose, indicating his or her wish to continue health insurance coverage. Once continuation coverage is elected, the retired employee must pay his or her portion of the premium by the first of each month. Failure to timely pay the required premium may result in termination of coverage. Once coverage has been discontinued, it cannot be reinstated. The spouse of a retiring employee is eligible for continuation coverage of health insurance, assuming such coverage is available through the plan, only when the spouse has elected and maintained health insurance coverage for at least five continuous years before the employee's retirement date. However, the spouse of a retiring employee is not entitled to continued health care coverage after the retiring employee's health care coverage ends. The employee is responsible for 100% of the costs of post-retirement spousal health insurance coverage.

Section 4. Dental Insurance.

The Town currently makes available dental insurance for those employees qualified under the terms of its group insurance contract. A full-time employee may obtain dental coverage for a qualified spouse and dependent(s). The Director of Human Resources shall make available to all employees information concerning the costs and benefits of this insurance coverage.

Section 5. Group Life Insurance.

The Town provides group life insurance for each full-time employee subject to the stipulations of the insurance contract, which are subject to change. Group life insurance ends at retirement or separation from employment with the Town.

Section 6. Other Optional Group Insurance Plans and Benefits.

The Town may make other employee benefit plans available to employees upon authorization of the Town Manager or Town Council. The Director of Human Resources will make available to all employees information concerning the costs and benefits of any other benefit made available to employees.

Section 7. Participation in State Retirement System.

Each full time employee must participate in the North Carolina Local Government Retirement System as a condition of continued employment.

Section 8. Town Contributions to 401K Supplemental Retirement Plan.

For sworn law enforcement personnel, as defined by N.C. Gen. Stat. § 143-166.50(a)(3), the Town shall make contributions to the 401k supplemental retirement plan in the amount required and authorized by N.C. Gen. Stat. § 143-166.50 (e). For other regular, full-time employees, the Town shall contribute 5% of the employee’s annual salary, paid on a bi-weekly basis, unless otherwise modified by the Town Council.

Section 9. Social Security and Medicare Taxes, State and Federal Withholding.

The Town shall pay its portion of Social Security and Medicare taxes for its eligible employees and shall withhold, in accordance with law, the employee’s portion of these taxes and required federal and State income tax withholding.

Section 10. Worker’s Compensation.

All employees of the Town are covered by the North Carolina Worker’s Compensation Act. Worker’s compensation provides a weekly payment, based upon a percentage of the employee’s normal pay, to an employee who has suffered a work-related injury or illness. Except for payment of medical expenses, compensation is not paid until an injury or illness prevents an employee from returning to work for more than seven days. Only if the injury or illness prevents a return to work for more than twenty-one days, the employee is entitled to compensation for the first seven days following the injury or illness.

An employee must immediately report to the supervisor or department head any injury arising out of and in the course of employment. The Safety/Risk Management officer will assist any requesting employee in filing the claim for worker’s compensation by providing the necessary claim forms and necessary information as to the procedure for filing a claim. However, the responsibility for claiming compensation under the Worker’s Compensation Act is on the injured employee.

Upon notification to the supervisor or department head, a full-time employee absent from duty because of sickness or disability covered by the North Carolina Worker’s Compensation Act may elect:

- a. to use accrued sick or vacation leave during the waiting period until the worker’s compensation begins;
- b. to use accrued sick or vacation leave during the waiting period and then supplement worker’s compensation payments with sick or vacation pay after worker’s compensation begins, provided that the combination of leave pay and worker’s compensation payments does not exceed employee’s normal pay.
- c. to use no leave pay during the waiting period until the worker’s compensation begins;

An employee solely receiving worker’s compensation under State law is eligible for the Town’s group insurance plans, but **shall not accrue vacation and sick leave.**

Section 11. Tuition Assistance Program.

A full-time employee who has completed the initial probationary period may apply for tuition reimbursement for a class taken during non-work time which is expected to improve job skills. Requests for tuition assistance shall be submitted to the department head and approved by the Town Manager prior to class registration. Subject to the availability of funds, an employee may be reimbursed for eligible expenses, including tuition, fees, and books, for one class per academic semester or quarter. Satisfactory completion (achieving a grade of at least "C" or its equivalent) of the class is required for reimbursement, and the employee must commit to remain in the employment of the Town for a period following the end of the class equal to the length of the class. Should an employee leave employment before fulfilling that commitment, he or she must reimburse the Town for the cost of any tuition assistance paid, including tuition, fees, and books.

Section 12. Employee Assistance Program.

Every employee is entitled to use the Town's Employee Assistance Program (EAP) to obtain confidential assistance to deal with personal matters such as family or marital conflicts, death, divorce, serious financial difficulties, and drugs and other chemical dependencies. Although referral is not required to participate in the program, an employee seeking this assistance may contact the Director of Human Resources for a confidential referral.

Section 13. Unemployment Compensation.

Any separated employee is entitled to apply for unemployment compensation through the North Carolina Employment Security Commission. The Town will oppose such application only when the Town Manager concludes that there are legal or factual questions concerning the employee's entitlement to such compensation.

Section 14. Separation Allowances for Law-Enforcement Officers.

- (a) Every sworn law enforcement officer, as defined by N.C. Gen. Stat. § 128-21(11b) or N.C. Gen. Stat. § 143-166.50, shall be eligible for a separation allowance, as provided by N.C. Gen. Stat. § 143-166.42. Beginning in the month in which the officer retires on a basic service retirement under the provisions of N.C. Gen. Stat. 128-27(a), the Town shall pay an annual separation allowance equal to eighty-five hundredths percent (0.85%) of the annual equivalent of the base rate of compensation most recently applicable to the officer for each year of creditable service. The allowance shall be paid in equal installments on the payroll frequency used by the employer. To qualify for the allowance, the officer shall:
 - (1) Have:
 - (i) completed 30 or more years of creditable service; or
 - (ii) have attained 55 years of age and completed five or more years of creditable service; and
 - (2) Not have attained 62 years of age; and

- (3) Have completed at least five years of continuous service as a law enforcement officer as herein defined immediately preceding a service retirement. Any break in the continuous service required by this subsection because of disability retirement or disability salary continuation benefits shall not adversely affect an officer's qualification to receive the allowance, provided the officer returns to service within 45 days after the disability benefits cease and is otherwise qualified to receive the allowance.
- (b) As used in this section, "creditable service" means the service for which credit is allowed under the retirement system of which the officer is a member, provided that at least fifty percent (50%) of the service is as a law enforcement officer as herein defined.
- (c) Payment to a retired officer under the provisions of this section shall cease at the first of:
 - (1) The death of the officer;
 - (2) The last day of the month in which the officer attains 62 years of age; or
 - (3) The first day of reemployment by a local government employer in any capacity, except that a retired officer may be employed in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System without disqualifying him or herself from receiving the allowance.
- (d) This section does not affect the benefits to which an individual may be entitled from State, local, federal, or private retirement systems. The benefits payable under this section shall not be subject to any increases in salary or retirement allowances that may be authorized by local government employers or for retired employees of local governments.
- (e) The law enforcement officer, after separation from employment with the Town, must notify the Town of any new employment by a local government employer in any capacity. In the event a former law enforcement officer fails to notify the Town of employment, the Town may suspend further payments until information is provided which establishes that the new employment is non-disqualifying, at which point the individual shall be paid any funds which were withheld, and payments shall resume.
- (f) This amendment shall not entitle any law enforcement officer to retroactive payments of any benefit for the period prior to the effective date, nor prospectively deny payment of a separation allowance to an officer who was previously determined to be eligible, unless a change in eligibility occurs subsequent to enactment.

ARTICLE VII. TYPES OF LEAVE

Section 1. Holidays.

The following days, and such other days as the Town Council may designate, are paid holidays for all full-time employees:

New Year's Day - (January 1)
Martin Luther King, Jr.'s Birthday - (third Monday in January)
Good Friday - (Friday before Easter)
Memorial Day - (last Monday in May)
Independence Day - (July 4)
Labor Day - (first Monday in September)
Veterans' Day - (November 11)
Thanksgiving Day and the day after - (fourth Thursday in November
and fourth Friday in November)
Christmas - (see schedule below)

When any recognized holiday, except Christmas, falls on Saturday, the holiday will be observed

on the prior Friday. When a holiday falls on a Sunday, the subsequent Monday shall be observed as the holiday.

When Christmas Day falls on the day of the week indicated below, the days set forth will be observed as holidays:

| | | |
|-----------|---|----------------------------------|
| Sunday | - | Friday and Monday |
| Monday | - | Monday and Tuesday |
| Tuesday | - | Monday, Tuesday and Wednesday |
| Wednesday | - | Tuesday, Wednesday, and Thursday |
| Thursday | - | Wednesday, Thursday, and Friday |
| Friday | - | Thursday and Friday |
| Saturday | - | Friday and Monday |

A full-time employee required to work on any of these holidays shall receive holiday pay of eight hours, plus regular pay for the hours actually worked.

Section 2. Holidays: Effect on Other Types of Leave.

A Town holiday which occurs during an employee’s vacation, sick or other leave period shall not be considered as vacation, sick, or other leave.

Section 3. Adverse Weather Conditions.

During inclement weather, Town offices and departments shall remain open for the full scheduled working day unless the Town Manager or his designee authorizes early closing or other deviation in the work schedule. An employee who leaves work early, who reports for work late or does not report for work at all as a result of adverse weather conditions, is required to use earned annual or compensatory leave for days or hours missed. A Town employee required to work on a day or part of a day when the Town is closed as a result of adverse weather conditions shall receive compensation for the time worked.

Section 4. Vacation Leave.

Vacation leave may be used for rest and relaxation, for medical purposes in lieu of sick leave, and for any other purpose not prohibited by this Policy.

Section 5. Vacation Leave: Use by Probationary Employees.

An employee serving a probationary period following initial employment will conditionally earn vacation leave time, but it shall not vest and cannot be used unless the probation is successfully completed. An employee shall be allowed to use accumulated vacation leave after six months of service and completion of his or her probationary employment, subject to the other requirements of this Policy.

Section 6. Vacation Leave: Accrual Rate.

Each non-probationary employee of the Town shall earn annual leave at the following schedule for a 40 hour per week employee, prorated for employees regularly scheduled for more (when appropriate under FLSA) or less than forty hours per week:

| Years of Service | Vacation Leave Earned | |
|---------------------|-----------------------|-----------------|
| | Days Per Year | Hours Bi-Weekly |
| 1 but less than 2 | 10 | 3.08 |
| 2 but less than 5 | 12 | 3.69 |
| 5 but less than 10 | 15 | 4.62 |
| 10 but less than 15 | 18 | 5.54 |
| 15 but less than 20 | 21 | 6.46 |
| 20 years or more | 24 | 7.38 |

Section 7. Vacation Leave: Maximum.

Vacation leave may accrue without any maximum until December 31 of each year. Any employee who has accrued in excess of 240 hours on December 31 may transfer the excess hours into sick leave, **provided that during the course of the calendar year, the employee has actually used no less than five days of vacation leave.** Effective **December 31st** of the calendar year, all other employees with more than 240 hours of accrued leave shall have the excess leave subtracted so that only 240 hours are carried forward to January 1 of the next calendar year. Employees subject to readjustment rights pursuant to Title 38 of the United States Code, as provided in Article VI, Section 28 of this policy, insofar as they have no opportunity to take vacation time in a particular calendar year, shall automatically have excess vacation leave transferred to sick leave.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at the same time. If an employee has excess leave during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration in having vacation leave scheduled.

Section 8. Vacation Leave: Manner of Taking.

So long as it does not obstruct normal operations of the Town and is requested in advance, earned vacation leave may ordinarily be taken by an employee. A department head may deny a request for vacation leave when he or she determines that granting a leave request will hinder the effectiveness of service delivery.

Section 9. Vacation Leave: Payment upon Separation.

An employee, other than a department head, who has successfully completed six months of the probationary period will be paid for accrued vacation leave upon separation, provided the employee gives notice to the supervisor at least two weeks in advance of the effective date of resignation. A department head must give four weeks' notice in advance of the effective date of a resignation. Any employee failing to give the notice required by this section shall forfeit payment for accrued leave. The Town Manager may waive the notice requirement. Employees who are involuntarily separated after six months of employment will be paid for accrued vacation leave.

Section 10. Vacation Leave: Payment upon Death.

When an employee dies while employed by the Town, the Town will pay the appropriate person all the accrued vacation leave credited to the employee's account subject to the 240 hour

maximum. For purposes of this section, the appropriate person shall be the beneficiary designated by the employee or the appointed representative of the estate.

Section 11. Vacation Leave: Advancement.

Vacation leave normally can only be taken **after** it has been credited to an employee. The department head, with the approval of the Town Manager, may advance vacation leave in an amount not to exceed the amount of vacation leave the employee can earn during the current calendar year. If the employee leaves employment with the Town before the advanced vacation leave has been earned, the employee must repay the Town the value of any unearned vacation leave.

Section 12. Sick Leave.

Sick leave is not a right, but a gift by the employer and thus, a privilege. Sick leave may be granted to an employee absent from work for any of the following reasons: sickness, bodily injury, quarantine, required physical or dental examinations or treatment, or exposure to a contagious disease which can be passed onto other workers through normal work interaction. Sick leave may also be used when the employee is required to attend to a sick immediate family member. "Immediate family" for this purpose shall be defined as spouse, child, parent, grandparent, brother, sister, grandchild, legal guardian, and step-, -in-law, or adopted relationship of any these named.

Sick leave may also be used in connection with a death in the employee's immediate family, but may not exceed five days for any one occurrence. Additional leave time required for such occurrence may be charged to vacation, compensatory leave when approved by the department head and Town Manager, or unpaid leave, when approved pursuant to *Article VII, Section 25* of this Policy.

Sick leave may also be used to supplement worker's compensation leave both during the waiting period before worker's compensation benefits begin, and after worker's compensation benefits are paid, and to supplement worker's compensation payments, except that the combined sick leave pay and worker's compensation pay together may not exceed the employee's regular salary amount.

Except in an emergency where no prior notification is possible, an employee must request sick leave **prior** to the leave or within two hours of the beginning of the workday from the employee's supervisor. In an emergency, notification must be submitted as soon as possible.

Sick leave will only be approved during the final two weeks of a resignation notice with a physician's certification or comparable documentation that the leave was taken because of illness or injury and was not anticipated at the time notice of resignation was given.

Section 13. Sick Leave: Accrual Rate and Accumulation.

Sick leave shall accrue for full-time employees at the rate of eight hours per month of service or ninety-six hours per year. Sick leave for full-time employees working other than the basic work schedule shall be pro-rated as described in *Article VII, Section 6* of this Policy. Sick leave may be accrued without limit and may be converted upon retirement to service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System. Except for a retiring employee, all sick leave accrued by an employee shall end, terminate and be

forfeited without compensation when the employee resigns or is separated from employment with the Town.

Upon request a new Town employee hired directly from a local governmental entity may obtain Town credit for accrued sick leave from the previous employer if the local government is covered by the North Carolina Local Government Employees' Retirement System.

Section 14. Sick Leave: Advancement.

Sick leave normally can only be taken **after** it has been credited to an employee. The department head, with the approval of the Town Manager, may advance sick leave in an amount not to exceed the amount of sick leave the employee can earn during the current calendar year. If the employee leaves employment with the Town before the advanced sick leave has been earned, the employee must repay the Town the value of any unearned sick leave.

Section 15. Sick Leave: Medical Certification.

The employee's supervisor, department head or the Director of Human Resources may require a physician's certificate stating the nature of the employee's illness and the employee's capacity to resume duties when an employment-related basis exists for requesting such information. An employment-related basis exists for such a request when the supervisor, department head or Director of Human Resources deems the information necessary to ascertain the health of the employee in order to:

1. Prevent employees from working when they might endanger their health or safety or the health or safety of other employees or members of the public; or
2. Prevent abuse of leave privileges by an employee.

Claiming sick leave under false pretenses shall subject the employee to disciplinary action up to and including dismissal.

Section 16. School Leave.

Town employees shall be permitted up to eight hours of leave each year to participate in the educational processes of a child. Requests for such leave must be approved in advance by the supervisor, department head and the Director of Human Resources.

Section 17. Family and Medical Leave.

For cause identified in Section 19, *infra*, subsections a, b, c, and f, the Town will grant up to twelve weeks of family and medical leave during any twelve-month period to eligible employees in accordance with the Family and Medical Leave Act of 1993 (hereafter, the "FMLA"). For cause identified in Section 19, *infra*, subsections d and e, the Town will grant up to 26 workweeks of leave during any single 12-month period to care for the servicemember. Leave under Section 19 (d) may be taken intermittently or on a reduced leave schedule. The leave may be paid vacation or sick leave, unpaid leave, or a combination of paid and unpaid leave. Worker's compensation leave may also be designated by the Town as family and medical leave, thereby reducing the family and medical leave available. When an employee uses paid leave during the family and medical leave, the employee's balance of accrued vacation and/or sick leave is reduced concurrently with the balance of family and medical leave. Additional time

away from the job beyond the twelve-week FMLA period may be approved in accordance with *Article VII, Section 25*.

Section 18. Family and Medical Leave - Eligibility and Certification.

To qualify for FMLA coverage, the employee must have worked for the Town a minimum of 52 weeks, although these do not have to be consecutive. In addition, the employee must have worked 1,250 hours during the twelve-month period immediately before the date when the FMLA leave begins.

In order to qualify for FMLA leave for a serious health condition of the employee, or the employee's spouse, child or parent, the employee must provide the Town with medical certification from the employee's or the family member's physician. The certification must include the date when the condition began, its expected duration, diagnosis, and a brief statement of the treatment required or expected. For the employee's own health condition, it must state that as a result of the condition, the employee is unable to perform the essential functions of his/her position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and the employee's presence is necessary.

In order to qualify for FMLA leave to care for a servicemember, the employee must provide a certification issued by the health care provider of the servicemember being cared for by the employee that the servicemember is in need of care by the employee.

An employee seeking FMLA leave because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation must provide a certification, in a timely manner of such active duty or impending call to active duty.

This certification should be furnished at least thirty days prior to the needed leave unless the employee's or family member's condition is a sudden one, in which case the certification must be furnished as soon as possible, but no later than fifteen days from the date of the employee's request. The certification and request must be made to the department head, and provided to the Director of Human Resources. The FMLA leave must be approved by the Town Manager.

Section 19. Family and Medical Leave - Purpose.

Family and medical leave can be used in the following circumstances or for the following reasons:

- a. the birth or adoption of a child in order to care for that child;
- b. the placement of a child with the employee for adoption or foster care;
- c. to care for a spouse, child, or parent with a serious health condition;
- d. because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation, or

- e. for a spouse, son, daughter, parent, or next of kin to care for a servicemember, or
- f. the serious health condition of the employee.

A serious health condition is defined as a condition which requires in-patient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider for a condition of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which results in a period of incapacity of more than three days is considered a serious health condition.

Section 20. Family and Medical Leave - Simultaneous Requests by Husband and Wife.

If a husband and wife both work for the Town and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (not parent-in-law) with a serious health condition, the husband and wife together may take a total of only twelve weeks leave under FMLA.

Section 21. Family and Medical Leave - Birth of a Child.

An employee taking leave for the birth of a child may use paid sick leave for the period of actual disability, based on medical certification. Assuming adequate accrued vacation leave time, the employee may then use all paid annual leave for the remainder of the twelve-week period. If the employee has insufficient accrued leave time to cover the entire twelve-week period, the employee may take unpaid leave for the remainder of the twelve weeks.

Section 22. Family and Medical Leave - Request.

The request for the use of FMLA leave must ordinarily be made in advance and in writing by the employee and approved by the department head and Town Manager. In an emergency situation, the request for the use of FMLA leave must be made as soon as reasonably practical. On its own initiative, the Town may designate leave as FMLA.

Section 23. Family and Medical Leave - Return to Work.

An employee taking FMLA leave for a serious health condition or the serious health condition of a spouse, child or parent is expected to return to work at the end of the leave period stated in the medical certification, unless the Town has approved additional unpaid leave or the use of available sick or vacation leave.

Prior to an employee returning to work after an FMLA leave, the employee's supervisor, department head, or the Director of Human Resources may require a physician's certification that the employee can safely resume employment and has regained the ability to effectively perform the essential functions of the job. An employee who returns to work after an FMLA leave will return to the same job, if available, or a job with equivalent status, pay, benefits, and other employment terms and requirements. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority.

Section 24. Unpaid Family and Medical Leave: Benefit Continuation.

Unpaid FMLA leave is subject to the normal requirements of leave without pay (*Article VII, Section 25*). The Town will continue the employee's health benefits during an unpaid FMLA

leave period at the same level and under the same conditions as if the employee had continued to work. If an employee chooses not to return to work for reasons other than a continued serious health condition, the employee must repay the Town the amount paid for the employee's health insurance premiums during the FMLA leave period.

While on unpaid FMLA leave, the employee must timely make all payments necessary for the continued coverage of all employee benefits other than health insurance, which will continue to be paid by the Town. The taking of unpaid FMLA leave does not constitute a break in service for purposes of vesting and eligibility to participate in the Town's pension and retirement plans.

Section 25. Leave Without Pay.

The Town Manager may approve a request by a full-time employee for a leave of absence without pay for a period of up to six months. Leave without pay is available only after all appropriate earned leave has been exhausted, and an employee shall not accrue leave time while on unpaid leave. Leave without pay may be requested for reasons of personal disability, sickness or disability of immediate family members, continuation of education, special work that will permit the Town to benefit by the experience gained or the work performed, or for other reasons deemed justified by the Town Manager.

Any employee who requests leave without pay shall first apply in writing to the supervisor, who must forward the request to the department head. The department head shall, in turn, forward the request to the Director of Human Resources with the department head's recommendation. The Director of Human Resources shall review the request and forward the request, along with the department head's recommendation and the Director of Human Resources' recommendation to the Town Manager for action. If such leave is approved, the employee must return to duty before or at the end of the approved leave. After a leave without pay, the employee shall be entitled to return to a position, if available, of the same grade and pay as the position held before the leave. If no such position is available, the employee may be placed in the closest comparable position which is available. The employee must immediately notify the supervisor if he/she decides not to return to work. Failure to report at the expiration of a leave of absence shall be considered a resignation.

Section 26. Military Leave.

Regular employees who are members of an Armed Forces Reserve organization or National Guard shall be granted fifteen (15) workdays per calendar year for military leave with full pay. If military duty is required beyond the fifteen (15) workdays per year, the employee will be placed on Leave Without Pay status. However, the employee can opt, prior to being placed on Leave Without Pay Status, to use any and all accrued annual leave as the employee chooses.

While taking military leave, the employee's leave credits and other benefits shall continue to accrue as if the employee were actively working with the Town during this period. Employees who are eligible for military leave have all job rights specified by the Veterans Readjustment Assistance Act.

Section 27. Reinstatement Following Military Service.

An employee who is absent from employment due to service in the United States uniformed services, as defined in 20 C.F.R. Part 1002, shall be entitled to full reemployment and relevant reemployment benefits provided by the Uniformed Services Employment and Reemployment

Rights Act of 1994, as Amended, so long as the following criteria are met:

- a. Proper advance notice is provided by the employee to the Town. Proper notice, for purposes of this section, is notice as far in advance as is reasonable under the circumstances. Notice may be verbal or written, and may be provided by either the employee or an appropriate officer of the pertinent uniformed service, unless such notice is prevented by military necessity, as determined by a designated military authority, is otherwise impossible or is unreasonable under all the circumstances.
- b. The employee remains away from employment for a period which includes no more than five years of service in the uniformed services, except for service excluded from consideration under the Uniformed Services Employment and Reemployment Rights Act of 1994, as Amended (See 20 C.F.R. § 1002.103);
- c. The employee applies for reinstatement to the Director of Human Resources or reports to work within the following time periods, based upon the length of service in the uniformed services:
 1. For periods of service of less than 31 days, the employee must generally report back to work on the next regularly scheduled work day after the employee's return, as specified in 20 C.F.R. § 1002.115(a).
 2. For periods of service between 30 and 181 days, the employee must generally apply for reinstatement within fourteen days of the employee's return, as specified in 20 C.F. R. § 1002.115(b).
 3. For periods of service greater than 180 days, the employee must submit either a written or verbal application for reemployment not later than ninety days after the completion of service.
- d. For periods of service exceeding thirty days, the employee provides the Director of Human Resources with documentation to establish that the reemployment application is timely, the five-year limit for service has not been exceeded and that the separation from the service was not disqualifying.
- e. The employee is not separated or dismissed from the uniformed services:
 1. With a dishonorable or bad conduct discharge,
 2. Under other than honorable conditions,
 3. As the result of a general court-martial,
 4. For any other reason specified in 20 C.F. R. §1002.124.

Section 28. Civil Leave.

A Town employee called for jury duty or subpoenaed as a witness in the federal or state courts, or in an unemployment, worker's compensation or other proceeding where subpoena authority is created under State law, may attend such jury duty or proceeding without penalty, but, except for

jury duty, shall only receive leave with pay for such duty during the required absence if the appearance as a witness arises from the employee's performance of his or her duties for the Town. The employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation, except that employees must turn over to the Town any witness fees or travel allowance awarded by that court for court appearances in connection with their official duties. While on civil leave, benefits and leave shall accrue as though on regular duty. Civil leave may also be granted by the Town Manager if the employee's participation in the proceeding in question benefits the Town. Participation as a witness on behalf of the Town in litigation wherein the Town is a party shall require advance approval of the Town Manager and when approved, civil leave will not be required.

**ARTICLE VIII
LIGHT DUTY FOR INJURED OR ILL EMPLOYEES**

Section 1. Purpose.

When an employee is capable of providing a needed service to the Town during the rehabilitation process, the Town will seek to place the employee in a light duty status.

Section 2. Light Duty Defined.

Light duty is non-strenuous work which is restricted to the capacities of the employee.

Section 3. Eligibility for Light-Duty Status.

- a. An employee is eligible for light-duty status when the employee suffers from either a job-related or non-job related injury or illness which restricts the employee's ability to perform the essential functions of his or her job. The employee must provide the Town with the certification of a licensed physician knowledgeable about the employee's condition(s) and the requirements of the job, which sets out a definite time after which the employee should be able to return to full duty. The physician must also certify that in the interim the employee can safely perform duties as described.
- b. In a worker's compensation situation, if the examining physician certifies that the employee is able to safely resume light duty work, upon the Town's request that the employee return to light duty work, the employee must do so.
- c. In a non-worker's compensation situation, at the request of the Town, an employee must submit to an evaluation by a physician chosen and paid for by the Town, and if that physician certifies that the employee is capable of light duty work, the employee must report for light duty upon the Town's request.
- d. In order to be allowed light-duty status, duties must exist which can safely be performed by a person with the restrictions indicated by the physician.

Section 4. Approval Process for Light Duty Status.

- a. Light duty status will only be approved if the proposed duties are needed by the Town.
- b. Light duty status must be approved by the Town Manager, following consideration of recommendations by the department head, Safety/Risk Management Officer and the Director of Human Resources.
- c. Light duty status may not extend for more than thirty days without review, an updated medical certification and approval by the Town Manager, following consideration of recommendations by the department head, Safety/Risk Management Officer and the Director of Human Resources. If extended, similar reviews must occur every thirty days.

Section 5. Options Available for Light-Duty Status.

Light duty status may deviate from an employee's normal position, including, but not limited to

the following ways:

- a. The employee's schedule may provide for fewer working hours and/or different working hours.
- b. Duties may be different and/or the same as required in the employee's normal position.
- c. Light duty may be performed under different supervision than the employee's normal position.
- d. Light-duty responsibilities may be adjusted as the employee's recovery progresses.

Section 6. Return from Light Duty Status to Regular Duty.

An employee will be returned to regular duty as soon as the employee's conditions permit. However, before an employee placed on light duty status may be transferred back to regular duty, the employee must provide a physician's certification that he or she can return to work without restrictions. Transfer back to regular duty must be approved by the Town Manager, following consideration of recommendations by the department head, Safety/Risk Management Officer and the Director of Human Resources. Once approved, the employee must immediately return to regular duty. Failure to comply is grounds for discipline, including dismissal.

ARTICLE IX. WORKPLACE VIOLENCE

Section 1. Acts or Threats of Violence Defined.

Acts or threats of violence include, but are not limited to, conduct against persons or property that is sufficiently severe, offensive, or intimidating to alter the employment conditions at the Town, or to create a hostile, abusive, or intimidating work environment for one or more employees. Acts or threats of violence shall constitute conduct subjecting an employee to disciplinary action.

Section 2. Scope of Prohibition against Workplace Violence.

The Town will not tolerate:

- a. Threats or acts of violence occurring on Town property, regardless of the relationship between the Town and the parties involved in the incident;
- b. Threats or acts of violence not occurring on Town property, but committed by one employee of the Town of Boone against another employee of the Town of Boone, except in self-defense;
- c. Threats or acts of violence, resulting in the criminal conviction of an employee or of an individual performing services on the Town's behalf on a contract or temporary basis, that adversely affect the legitimate interests and goals of the Town.

Section 3. Examples of Acts or Threats of Violence.

Conduct that is considered an act or threat of violence includes but is not limited to, the following:

- a. Hitting or shoving an individual;
- b. Threatening to harm an employee or official of the Town or his/her family, friends, associates, or their property;
- c. The intentional destruction or threat of destruction of property;
- d. Making harassing, intimidating or threatening telephone calls, letters or other forms of written or electronic communications;
- e. Intimidating or attempting to coerce an employee to do wrongful acts;
- f. Harassing surveillance, also known as "stalking," the willful, malicious and repeated following of another person and making a threat with intent to place the other person in reasonable fear for his or her safety;
- g. Stating or suggesting that an act to injure a person(s) or property is "appropriate;"
- h. Inappropriate possession, brandishing or use of firearms, weapons, and objects whose purpose is violent or threatening, including knives, dangerous chemicals, explosives, chains and other objects, when carried, brandished or used for intimidating another, except as necessary for the proper functioning of the police and fire departments, or for purposes of self-defense.

While employees of the Town may be required as a condition of their work assignment to possess firearms, weapons or other dangerous devices, or permitted to carry them as authorized by law, employees must use them only in accordance with departmental operating procedures and all applicable State and Federal laws.

Section 4. Employee Obligations.

Each employee of the Town is required to report an incident(s) of a threat(s) or act(s) of violence which violate this policy to his or her supervisor, department head, the Director of Human Resources or the Town Manager. Each supervising employee to whom such report is made shall promptly notify the department head. Concurrent with the initiation of any investigation leading to a proposed disciplinary action, the department head shall report the incidents of threats or acts of physical violence to the Town Manager, the Director of Human Resources and the Boone Police Department.

In cases where the offending action(s) is perpetrated by a person who is not a Town employee, the employee shall report such incident to the department head, who shall concurrently report the incident to the Town Manager and the Town of Boone Police Department.

Nothing in this policy alters any other reporting obligation established in Town policies or in state, federal or other applicable law.

ARTICLE X. ALCOHOL AND CONTROLLED SUBSTANCE TESTING

Section 1. Purpose.

The Town of Boone seeks to protect its employees and the public and to provide employees with a drug-free, healthy, safe, and secure work environment. The Town is committed to developing and administering a fair and consistent policy to promote and maintain a drug-free work environment. Employees who abuse alcohol and/or controlled substances are encouraged and may be required to use the Town's Employee Assistance Program. Conscientious efforts to seek and use such help will not jeopardize an employee's job. However, failure to seek and use such help may subject the employee to disciplinary procedure including, but not limited to, termination.

Section 2. Definitions.

- a. **Reasonable Suspicion** means an expressible belief based on specific objective facts and rational inferences drawn from those facts that an employee has consumed or is under the influence of alcohol or improper use of drugs while at work. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:
 1. Direct observation of drug use or alcohol use and/or the physical symptoms of being under the influence of a drug or alcohol;
 2. A pattern of absenteeism, tardiness, or deterioration of work performance and abnormal conduct or erratic behavior while at work;
 3. A pattern of accidents and/or information that an employee has caused or contributed to an accident at work while under the influence of drugs or alcohol;
 4. Evidence that an employee is involved in the unauthorized possession, sale, solicitation, or transfer of drugs or alcohol while working, or while on the Town's premises or while operating a Town vehicle, machinery or equipment.
- c. **Approved Laboratory** means a laboratory approved and certified to conduct employee and applicant drug testing by the North Carolina Department of Human Resources or the National Institute on Drug Abuse, the College of American Pathology, the American Association for Clinical Chemistry or the equivalent.
- d. **Controlled Substance** means any substance regulated by state or federal law which has been determined to have a potential for abuse and that may lead to physical or psychological dependence. This includes all forms of marijuana (THC metabolite), cocaine, amphetamines, opiates (including heroin), phencyclidine (PCP), barbiturates and benzodiazepine.
- e. **Positive Drug Test** means a chemical test on one's urine or blood sample performed by a certified laboratory which confirms the presence of a controlled substance. A test shall be declared positive after two tests confirm the presence of drugs in the sample.
- f. **Positive Alcohol Test** means a Breathalyzer or blood test which confirms the

presence of alcohol at a level 0.02 or greater. To ensure maximum validity, the test shall be conducted under the generally accepted test procedures accepted under the Department of Transportation (Federal Highway Administration) and North Carolina General Statutes.

Section 3. Workplace Use of Prescription or Ability-altering Drugs.

The employee is responsible for ascertaining from a health care professional the effects of any prescribed drug or over-the-counter medication. Any employee with knowledge that the use of a prescribed or over-the-counter medication could alter the employee's ability to perform the duties of the position must notify the appropriate supervisor before undertaking his or her job duties. Failure to obtain or communicate such information may result in disciplinary action.

Section 4. Employee Testing.

Employees shall be tested when there is reasonable suspicion of improper use of alcohol and/or a controlled substance, and after accidents involving a fatality, bodily injury or property damage. Employees are also required to submit to random drug testing on the following basis: fifty percent (50%) of all CDL employees and twenty five percent (25%) of all safety-sensitive employees shall be randomly tested annually for illegal controlled substances. Twenty-five percent (25%) of all CDL employees and ten percent (10%) of all safety-sensitive employees shall be tested annually for alcohol.

Section 5. Retesting of Employees who have Tested Positive.

If an employee is allowed to continue employment after testing positive for drugs, he/she will be subject to unannounced and random testing. An employee who tests positive for alcohol (0.04 or greater) will be tested a minimum of four times for the first year. After this period, the Substance Abuse Professional will determine when follow-up testing should end.

Section 6. Consent.

Before a test is administered, an employee will be asked to sign a consent form, authorizing the test and permitting the release of test results to those Town officials with a need to know as defined by North Carolina Gen. Stat. § 160A-168. The consent form shall provide space for employees to indicate current or recent use of prescription or over-the-counter medication. Consent forms shall also set forth the following information:

- a. The procedure for confirming an initial positive test result;
- b. The consequences of a positive test result;
- c. The right of an employee to explain a positive test result and the appeal procedures available to employees; and
- d. The consequences of refusing to undergo a test.

Section 7. Refusal to Consent.

Refusal to consent to testing will subject an employee to immediate dismissal. In addition, failing to appear for a scheduled the test will be considered to have refused to consent to the test.

An employee who requests a delay of a test scheduled under the provisions of this section will be considered to have violated expected work behavior.

Section 8. The Drug Test.

Normally, a urine test will be used to determine the presence of drugs. Guidance and instructions in administering the drug test will be provided by an approved laboratory to ensure that proper steps are followed in collecting and evaluating samples. A strict chain of custody will be maintained by the approved testing laboratory. If the result is positive, the employee shall be notified in writing by the Director of Human Resources. A letter of notification shall identify the particular substance found. Within 72 hours of notification of a positive drug-test result, an employee or applicant may request that the original sample be sent to an approved laboratory for another test at the employee's own expense. The results of this test will be taken into consideration in any appeal of a disciplinary action taken against the employee.

Section 9. Consequences of a Positive Drug Test.

An employee who has a positive drug test will be subject to disciplinary action up to and including dismissal. The employee may request continued employment and assistance under the Employee Assistance Program. When making recommendations for disciplinary action, supervisors and department heads shall consider factors which include the following: (1) the employee's work history; (2) the job assignment; (3) the length of employment; (4) the current job performance; (5) the existence of past disciplinary action; and (6) the danger or potential danger to other employees and the public at large due to employee's job duties.

Pursuant to N.C. Gen. Stat. § 20-37.19(c), the Town will notify the North Carolina Division of Motor Vehicles in writing within five business days following the positive drug test of an employee who operates commercial motor vehicles for the Town and who is required as a condition of his or her job to have, hold or maintain a commercial drivers licence. The Town shall provide the Department of Motor Vehicles with the employee's name, address, drivers license number, social security number and the results of the drug test.

Section 10. The Alcohol Test.

Normally, an evidential breath-testing device will be used to determine the presence of alcohol. The test will be administered by a Breath Alcohol Technician (BAT) following procedures accepted by the Department of Transportation.

Section 11. Consequences of a Positive Alcohol Test.

- a. **0.02 or greater, but less than 0.04** - An employee testing positive in this range may be subject to disciplinary action up to and including dismissal. Arrangements for safe transportation to the employee's home shall be made. If the employee refuses transportation, this shall be documented.
- b. **0.04 or greater** - An employee testing positive in this range will be subject to disciplinary action up to and including dismissal. Arrangements for safe transportation to the employee's home shall be made. If the employee refuses transportation, this shall be documented and the Town of Boone Police

Department notified.

Pursuant to N.C. Gen. Stat. § 20-37.19(c), the Town will notify the North Carolina Division of Motor Vehicles in writing within five business days following the positive alcohol test of an employee who operates commercial motor vehicles for the Town and who is required as a condition of his or her job to have, hold or maintain a commercial drivers licence. The Town shall provide the Department of Motor Vehicles with the employee's name, address, drivers license number, social security number and the results of the alcohol test.

Section 12. Mandatory Participation in Employee Assistance Program.

An employee permitted to continue employment after a positive alcohol or drug test or after voluntarily identifying himself/herself as a drug user or alcohol abuser will be required to participate and cooperate fully with the provisions of a recommended rehabilitation program as prescribed by the Employee Assistance Program, or comply with any long-term treatment programs which are recommended either through the Employee Assistance Program or another counseling program. Disciplinary action is not automatically suspended by an employee's participation in the Program and may be taken against employees for performance issues or conduct violations, but the employee's participation in the Program will be considered in any decision regarding disciplinary action.

Those employees participating in the Program will be subject during that participation to unannounced and random alcohol and drugs tests. Upon a positive test result, the employee will be subject to dismissal. Those employees who satisfactorily complete the rehabilitation program prescribed by the Employee Assistance Program will be subject to unannounced and random drug and alcohol tests for a period of two years after completion. Satisfactory completion of the rehabilitation program shall be determined by the Town with the guidance of staff of the program. Failure to enter or complete the prescribed program shall be considered by the Town as voluntary termination of employment by the employee.

The Town will pay for the first visit of an employee to the Employee Assistance Program during the calendar year. **The cost of all other visits, be they voluntary or mandatory, will be the responsibility of the employee.**

Section 13. Use of Results in Criminal Action.

No test results of the Town's drug testing program may be used as evidence in a criminal action against an employee except by order of a court of competent jurisdiction.

Section 14. Notification of Charge.

An employee charged with or convicted of an alcohol-related crime or charged with or convicted of a drug-related crime shall notify his/her department head no later than twenty-four hours after such charge or conviction. Failure to notify one's department head of such charge or conviction shall be grounds for dismissal.

Section 15. Accident Involving Town Vehicles.

Alcohol tests following a traffic accident involving a Town vehicle shall be administered no later

than eight hours from the time of the accident. Drug tests following a traffic accident involving a Town vehicle shall be administered no later than thirty-two hours from the time of the accident.

ARTICLE XI. DISCIPLINARY ACTIONS

Section 1. Basis for Disciplinary Action; Disciplinary Actions Available.

An employee may be reprimanded, suspended, with or without pay, demoted, or dismissed by the Town Manager for acts of misconduct, acts or omissions which violate expected work behavior(s), or for repeated minor infractions of work rules. An employee may be reprimanded by the employee's supervisor, department head or the Town Manager for minor infractions of work rules or for acts or omissions which violate expected work behavior(s), but which do not rise to the level of misconduct.

Section 2. Misconduct.

a. Definition of Misconduct.

Generally, a deliberate violation of Town rules or policies, or conduct based on wrongful intent by an employee, will be considered misconduct. In other words, behavior evincing a wanton or willful disregard by an employee of the interests of the Town will subject an employee to the most severe disciplinary actions. Examples of misconduct include, but are not limited to, the following:

1. Fraud or theft;
2. Conviction of a crime, prayer for judgment, or plea of *nolo contendere* to a crime involving moral turpitude. A crime involves moral turpitude if it consists of serious wrongful behavior, such as murder, theft, fraud or assault.
3. Intentional falsification of work records;
4. Willful misuse or gross negligence in the handling of Town funds;
5. Intentional or reckless destruction of Town property;
6. Intentional or reckless act(s) while on duty with the Town that endanger the lives or property of others;
7. Possession of unauthorized firearms or other unauthorized weapons on the job;
8. Unnecessary brutality or excessive force in the performance of duties;
9. Using alcohol, illegal drugs, or prescribed medication in excess of limits set by a physician, which impairs job performance, while on duty;
10. Using alcohol within eight hours following an accident or prior to undergoing a post-accident alcohol test, whichever comes first;
11. Reporting to work or remaining at work, driving a Town vehicle or operating any vehicle on Town property while under the influence of any controlled substance or alcohol, except when a physician has advised the employee and the Town that the substance does not adversely affect the employee's ability to safely work or operate a vehicle.

12. Refusing to submit to a required alcohol or drug test, or failing to appear for a required alcohol or drug test;
13. Engaging in incompatible employment or serving a conflicting interest;
14. Requesting or accepting gifts in exchange for favors or influence;
15. Engaging in political activity prohibited by this Policy;
16. Engaging in acts of harassment or violence toward another employee;
17. Using profanity toward a member of the public;
18. Engaging in acts of harassment or violence toward a member of the public;
19. Failure to report his or her arrest for a criminal act to a supervisor within twenty-four (24) hours;
20. Failure to report to a supervisor within 24 hours his or her citation for a traffic violation while operating a town vehicle;
21. Engaging in acts of violence toward another employee;
22. Intentional use of Town property for unauthorized purposes;
23. Use of the Town's Internet services to conduct personal business for compensation or to access inappropriate information, such as pornography;
24. Absence without approved leave;
25. Intentional violation of work rules and regulations;
26. Unauthorized and intentional or illegal release of confidential information or official records;
27. Insubordination toward a supervisor, department head, Town official, or Town Manager; or
28. Behavior outside work that is so detrimental as to be obviously contrary to the image and interests of the Town.

b. Disciplinary Procedure for Misconduct.

Disciplinary action may be taken against an employee for misconduct without prior warning. In such instances, the supervisor, department head or Town Manager shall provide a written notice of the misconduct to the employee. If the notice is not from the Town Manager, the notice shall advise the employee that a copy of the notice is being provided to the Town Manager for consideration of disciplinary action. A copy of the notice and the recommendations of both the

supervisor and the department head for disciplinary action shall then be transmitted to the Director of Human Resources, who shall deliver the employee's personnel file and the notice to the Town Manager, along with the recommendations of the supervisor and department head for disciplinary action. In matters directly involving an employee and the Town Manager, or where the employee's conduct gives rise to significant safety concerns, the notice may be given verbally, but should promptly be followed with a written memorandum to the employee documenting the misconduct, and by the transmittal of the recommendations of the supervisor and department head to the Town Manager.

Although misconduct should normally result in suspension without pay, demotion or dismissal, if there are mitigating circumstances involved in the employee's actions, the Town Manager may instead choose to reprimand the employee or suspend the employee with pay, and shall notify the employee of the Town Manager's intention to take the disciplinary action in question. Such notice shall be hand delivered to the employee, and the date of delivery shall be noted in the personnel file, or the notice shall be sent by certified mail to the employee at the employee's last known address, return receipt requested, or shall be sent by regular mail to the employee's last known address. If sent by regular mail, receipt will be presumed two days after mailing. The date of mailing shall be noted in the personnel file, and any return receipt from certified mail shall likewise be filed in the personnel file. In matters directly involving an employee and the Town Manager or where the employee's conduct gives rise to significant safety concerns, the notice may be given verbally, but should promptly be followed with a written memorandum documenting the Town Manager's intention to take disciplinary action.

1. Reprimand for Misconduct.

A reprimand shall consist of a statement, dated and signed by the Town Manager, advising the employee that the Town Manager has concluded that the employee has engaged in misconduct. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. A copy of the reprimand shall be delivered to the employee, and a copy shall be placed in the employee's personnel file, where it **shall** be considered in decisions concerning bonus pay, merit pay, promotion and future disciplinary actions.

2. Suspension for Misconduct.

A suspension for misconduct may be for a period of up to 180 days, and may be with or without pay. The Town Manager's decision to suspend an employee, with or without pay, shall be made in writing, and shall explain the basis for the Town Manager's decision. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. A copy of the suspension decision shall be delivered to the employee, his or her supervisor, and the department head, and a copy shall be placed in the employee's personnel file, where it **shall** be considered in all decisions concerning bonus pay, merit pay, promotion, and future disciplinary actions.

3. Demotion.

A demotion may be to a position within the same department or unit, or within another department or unit, and the employee's salary shall be adjusted in accordance with **Article IV, Section 6** of this Policy. The Town Manager's decision to demote an employee shall be made in writing, signed and dated, and shall explain the basis for the Town Manager's decision. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this

Article, the Town Manager's decision shall be the final decision of the Town of Boone. A copy of the demotion decision shall be delivered to the employee, his or her supervisor, and both the department head in the department from which the employee is being removed, if applicable, and the department head in the department into which the employee is being placed, if applicable. A copy of the decision shall be placed in the employee's personnel file, where it **shall** be considered in all decisions concerning bonus pay, merit pay, promotion, and future disciplinary actions.

4. Dismissal.

The Town Manager may, without prior warning or notice, and without giving the employee an opportunity to take corrective action, dismiss an employee for misconduct. The Town Manager's decision to dismiss an employee shall be made in writing, signed and dated, and shall explain the basis for the Town Manager's decision. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. A copy of the dismissal decision shall be delivered to the employee, his or her supervisor, and the department head and placed in the employee's personnel file.

Section 3. Acts or Omissions Which Violate Expected Work Behavior.

a. Definition of Acts or Omissions Which Violate Expected Work Behavior.

An act or omission which violates expected work behavior is an act or a failure to act which, while not rising to the level of misconduct, violates established work rules or expectations. Such act or failure to act may be unintentional or negligent. Examples of such acts or omissions include, but are not limited to, the following:

1. Chronic inefficiency, negligence, or incompetence in the performance of duties;
2. Careless or negligent use of Town property or equipment;
3. Discourteous treatment, not rising to the level of insubordination or misconduct, toward the public, Town officials, or other Town employees;
4. Improper use of leave privileges;
5. Negligent failure to report for duty at the assigned time and place;
6. Failure to complete work within time frames established in work plans or work standards;
7. Failure to meet work standards;
8. Unintentional violation of the Personnel Handbook, departmental rules or procedures, or directives from a supervisor, department head, or the Town Manager;
9. Unintentional neglect of safety rules, or behavior that unintentionally contributes to a hazardous condition;

10. Failure to promptly report a work-related injury or accident;
11. Failure to follow the proper chain of command;
12. Chronic unexcused tardiness for work;
13. An inappropriate request to delay an alcohol or drug test.
14. Failure to meet fitness requirements.
15. Violation of the Municipal Code.

b. Disciplinary Procedure for Acts or Omissions Which Violate Expected Work Behavior.

Disciplinary action may be taken against an employee, after prior written warning, for one or more acts or omissions which violate expected work behavior not rising to the level of misconduct, as defined in this Policy. In such instances, the supervisor or department head shall provide a written notice of the violation to the employee. The department head, upon written recommendation of the supervisor, may then either reprimand the employee or may notify the employee of his or her intention to recommend disciplinary action to the Town Manager. The notice shall advise the employee that a copy of the notice is being provided to the Town Manager for consideration of disciplinary action. A copy of the notice and the recommendations of the supervisor and the department head for disciplinary action shall then be transmitted to the Director of Human Resources, who shall deliver the employee's personnel file and the written notice to the Town Manager, along with the recommendations of the supervisor and department head for disciplinary action.

Although ordinarily the first violation of expected work behavior after warning will not result in dismissal, if there are aggravating circumstances, the Town Manager may dismiss the employee. Absent aggravating circumstances, the Town Manager may reprimand, suspend with or without pay, or demote the employee. Following review, the Director of Human Resources shall notify the employee of the Town Manager's intention to take such disciplinary action. Such notice shall be hand delivered to the employee and the date of delivery shall be noted in the personnel file, or shall be sent by certified mail to the employee at the employee's last known address, return receipt requested, or shall be sent by regular mail to the employee's last known address. If sent by regular mail, receipt will be presumed two days after mailing. The date of mailing shall be noted in the personnel file, and any return receipt from certified mail shall likewise be filed in the personnel file.

1. Reprimand.

A reprimand shall consist of a statement, dated and signed by the department head or Town Manager, as appropriate, advising the employee that the department head or Town Manager has concluded that the employee has committed one or more serious violations of a work rule, not rising to the level of misconduct. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the department head or Town Manager's decision shall be the final decision of the Town of Boone. A copy of the reprimand shall be delivered to the employee, and a copy shall be placed in the employee's personnel file, where it **shall** be considered in decisions concerning bonus pay, merit pay, promotion and future

disciplinary actions.

2. Suspension.

A suspension may be for a period of up to one-hundred-and-eighty (180) days, and may be with or without pay. The Town Manager's decision to suspend an employee, with or without pay, shall be made in writing, and shall explain the basis for the Town Manager's decision. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. A copy of the suspension decision shall be delivered to the employee, his or her supervisor, and the department head, and a copy shall be placed in the employee's personnel file, where it **shall** be considered in decisions concerning bonus pay, merit pay and future disciplinary actions.

3. Demotion.

A demotion may be to a position within the same department or unit, or within another department or unit, and the employee's salary shall be adjusted in accordance with **Article IV, Section 6** of this Policy. The Town Manager's decision to demote an employee shall be made in writing, signed and dated, and shall explain the basis for the Town Manager's decision. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. A copy of the demotion decision shall be delivered to the employee, his or her supervisor, and both the department head in the department from which the employee is being removed, if applicable, and the department head in the department into which the employee is being placed, if applicable. A copy of the decision shall be placed in the employee's personnel file, where it **shall** be considered in decisions concerning bonus pay, merit pay, promotion and future disciplinary actions.

4. Dismissal.

The Town Manager may dismiss the employee where there have been repeated violations, after warning, by the employee of the conduct giving rise to the discipline or where there are other aggravating circumstances involved in the matter. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. The Town Manager's decision to dismiss an employee shall be made in writing, signed and dated, and shall explain the basis for the Town Manager's decision. A copy of the dismissal decision shall be delivered to the employee, his or her supervisor, and the department head. A copy of the decision shall be placed in the employee's personnel file.

Section 4. Minor Infraction of Work Rules.

a. Minor Infraction of Work Rules Defined.

A minor infraction of a work rule is generally an act or omission which has only a minimal impact on job performance or the efficient operation of the Town, about which the employee has not been warned and which does not rise to the level of acts or omissions which violate expected work behavior, as defined in Section 3.

b. Disciplinary Procedure for Minor Infraction(s) of Work Rule(s).

1. **Warning.**

If an employee commits a minor infraction of a work rule(s), the employee's supervisor shall provide the employee with a verbal or written warning. This warning should identify the unsatisfactory conduct and recommend corrective action. The supervisor shall prepare written documentation of such warning and place it in the employee's personnel file.

2. **Formal Written Notice.**

If, after warning, the employee violates either the same work rule, or the employee's job performance is unsatisfactory in some other respect which doesn't rise to the level of misconduct or violation of expected work behavior, as defined in Section 3, above, the supervisor shall provide the employee with a written notice of the infraction, conduct or violation. The notice shall describe what corrective action must be taken and warn the employee that failure to take corrective action shall result in disciplinary action. The notice will also advise the employee that any additional infraction of any work rule within twenty-four months shall result in disciplinary action. A copy of the formal written notice shall be placed in the employee's personnel file.

3. **Reprimand, Suspension, Demotion or Dismissal.**

If, after the initial warning and the formal written notice to the employee, the employee again violates the same work rule, or if, over a period of twenty-four months, the employee violates any other work rule, the supervisor shall provide a final written notice of the infraction, conduct or violation to the employee. If each of the acts or omissions in question consists of a minor infraction of a work rule, the supervisor or department head may reprimand the employee, or may refer the matter to the Town Manager for disciplinary action, in the discretion of the department head. If any of the acts or omissions in question consists of misconduct or an act or omission which violates expected work behavior, as those terms are defined in this policy the department head must refer the matter to the Town Manager with the supervisor and department head's recommendation for disciplinary action.

When a referral to the Town Manager is made, the department head must notify the employee of the referral. The notice shall state the dates and infractions, conduct or violations of which the employee is accused. A copy of the notice and the recommendations of the supervisor and the department head for disciplinary action shall then be transmitted to the Director of Human Resources, who shall transmit the employee's personnel file and the final written notice to the Town Manager, along with the recommendations of the supervisor and department head. Following review, the Town Manager may reprimand the employee, suspend the employee with or without pay, demote the employee or dismiss the employee, and, shall notify the employee of the Town Manager's intention to take such action. Such notice shall be hand delivered to the employee and the date of delivery shall be noted in the personnel file, or shall be sent by certified mail to the employee at the employee's last known address, return receipt requested, or shall be sent by regular mail to the employee's last known address. If sent by regular mail, receipt will be presumed two days after mailing. The date of mailing shall be noted in the personnel file, and any return receipt from certified mail shall likewise be filed in the personnel file.

A. **Reprimand for Repeated Minor Infractions of Work Rules.**

A reprimand shall consist of a statement, dated and signed by the supervisor, department head, or Town Manager, as appropriate, advising the employee that the supervisor, department head or

Town Manager has concluded that the employee has repeatedly violated minor rules or norms of expected behavior. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the decision to reprimand the employee shall be the final decision of the Town of Boone. A copy of the reprimand shall be delivered to the employee, and a copy shall be placed in the employee's personnel file, where it may be considered in decisions concerning bonus pay, merit pay, promotion and future disciplinary actions.

B. Suspension.

A suspension for repeated minor infractions of work rules may be for a period of up to thirty days, and may be with or without pay. The Town Manager's decision to suspend an employee with or without pay shall be made in writing, and shall explain the basis for the decision. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the decision shall be the final decision of the Town of Boone. A copy of the suspension decision shall be delivered to the employee, his or her supervisor, and the department head, and a copy shall be placed in the employee's personnel file, where it may be considered in decisions concerning bonus pay, merit pay, promotion and future disciplinary actions.

C. Demotion.

A demotion for repeated minor infractions of work rules may be to a position within the same department or unit, or within another department or unit, and the employee's salary shall be adjusted in accordance with *Article IV, Section 6* of this Policy. The Town Manager's decision to demote an employee shall be made in writing, signed and dated, and shall explain the basis for the decision. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. A copy of the demotion decision shall be delivered to the employee, his or her supervisor, and both the department head in the department from which the employee is being removed, if applicable, and the department head in the department into which the employee is being placed, if applicable. A copy of the decision shall be placed in the employee's personnel file, where it may be considered in decisions concerning bonus pay, merit pay, promotion, and future disciplinary actions.

D. Dismissal.

The Town Manager may dismiss the employee where the repeated infractions of minor work rules leading to the final notice indicate the employee's inability or unwillingness to satisfactorily conform to expected work behaviors, or when there have been other disciplinary actions previously taken against the employee. Unless modified following a hearing, requested by the employee in accordance with Section 7 of this Article, the Town Manager's decision shall be the final decision of the Town of Boone. The decision to dismiss an employee shall be made in writing, signed and dated, and shall explain the basis for the decision. A copy of the dismissal decision shall be delivered to the employee. A copy of the decision shall be placed in the employee's personnel file and provided to the supervisor and department head.

Section 5. Immediate Disciplinary Suspension.

A. Basis for Immediate Disciplinary Suspension.

When necessary to avoid undue disruption of work, to protect the safety of persons or property, or for other similarly serious reason, the Town Manager or department head may immediately

verbally suspend an employee, and may tell the employee to leave Town property at once until further notice.

b. Procedures Following Immediate Disciplinary Suspension.

When the immediate suspension action is taken by a department head, he or she shall promptly provide the Director of Human Resources and the Town Manager with a written summary stating the circumstances leading to the immediate suspension. The summary shall identify the work rule(s) violated or conduct in question. A copy shall be delivered to the employee by certified mail or hand delivery, a copy transmitted to the Director of Human Resources for inclusion in the employee's personnel file, and a copy shall be provided to the Town Manager. When the immediate suspension action is undertaken by the Town Manager, the Town Manager shall prepare a written summary stating the circumstances leading to the immediate suspension, and shall identify the work rule(s) violated or conduct in question. A copy shall be delivered to the employee by certified mail or hand delivery and a copy transmitted to the Director of Human Resources for inclusion in the employee's personnel file.

Any immediate disciplinary suspension of an employee shall be with pay until the employee has been given an opportunity for a hearing and the time to request the hearing has lapsed, or the final disciplinary decision has been issued following a hearing. An appeal from an immediate suspension shall follow the time periods and procedures for pre-disciplinary suspensions, except that the hearing shall be conducted by the Town Manager, instead of the department head, and law enforcement personnel may be present to maintain order.

Section 6. Effective Date of Dismissal.

A dismissal of an employee is effective when communicated to the employee, unless a different effective time is designated. An employee who is dismissed should leave Town property immediately after being provided a reasonable opportunity to gather and remove his or her personal belongings. All compensation to a discharged employee shall cease at the time of dismissal. However, should the employee request a hearing to challenge the dismissal, and should the decision to dismiss the employee be reversed, the employee shall receive pay for the unpaid period between the dismissal and final decision.

Section 7. Hearing to Challenge Proposed Disciplinary Action.

An employee may request a hearing to challenge a proposed disciplinary action. The request for a hearing must be in writing and must be submitted to the department head within five (5) working days of the employee's receipt of the notice of the proposed disciplinary action. The department head shall promptly notify the Director of Human Resources of the request. The hearing shall be conducted by the department head or the Town Manager, within the discretion of the Town Manager. The Director of Human Resources shall be present for all hearings conducted by a department head and may be present for hearings conducted by the Town Manager. Such hearings shall not be open to the public. The hearing will be held within seven (7) working days of the employee's request for the hearing unless a later date is agreed to, in writing, by both the employee and the department head or Town Manager. At the hearing, the employee may be present, may be represented by a licensed attorney, and may present any reason(s) why the proposed disciplinary action should not be taken. In hearings before the Town Manager, if the disciplinary action was recommended by the employee's supervisor and/or department head, the individual(s) recommending such action should likewise be present, as well as any other employees who witnessed the alleged conduct, if their presence is requested by the employee, supervisor, department head, Director of Human Resources or Town Manager.

At the hearing, the employee or his or her representative may question and cross-examine any witnesses against him or her, but at all times the parties, representatives and witnesses shall conduct themselves in a proper and respectful manner to each other and to the supervisor, department head, Director of Human Resources and Town Manager. Should any participant fail to conduct himself or herself in an appropriate manner, the department head or Town Manager may discontinue the hearing or exclude the offending participant from further participation in the hearing. Within ten (10) working days after the hearing, if the hearing has been conducted by the department head, the department head shall issue his or her findings to the Town Manager, and shall identify any aggravating or mitigating circumstance(s) for the Town Manager to consider in imposing disciplinary action. The Town Manager, within ten(10) working days of the post-hearing recommendation of the department head, shall issue the final disciplinary decision, which shall be mailed to the employee at the address designated by the employee. The Town Manager's decision is final.

If the Town Manager conducts the disciplinary hearing, the Town Manager shall, within ten (10) working days after the hearing, issue the final decision, which shall be mailed to the employee at the address designated by the employee. It shall state the Town Manager's findings, the discipline to be imposed, if any, and the effective date of such disciplinary action. A copy of the hearing decision shall be placed in the employee's personnel file. The Town Manager's decision is final.

Section 8. Non-disciplinary Suspension.

The Town Manager, on his or her own initiative, or upon recommendation of the department head, may suspend an employee as a non-disciplinary action under the following circumstances:

- a. During the investigation, hearing, or trial of an employee on any serious criminal charge;
- b. During the investigation related to alleged conduct giving rise to serious criminal charges; or
- c. During the course of any civil action involving an employee when suspension would, in the judgment of the Town Manager, be in the best interests of the Town.

In such cases, the Town Manager may temporarily relieve the employee of all duties and responsibilities and place the employee on leave for the duration of the suspension, or assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities.

Ordinarily, leave shall be unpaid during a non-disciplinary suspension due to pending serious criminal charges or where a civil action involves job-related considerations. Otherwise, the leave may be paid or unpaid, as determined by the Town Manager, in light of the seriousness of the allegations involved in the pending action, the expected length of time the procedure will involve, and the past work record of the employee. If the employee is reinstated following the suspension, any benefits to which the employee would have been entitled had the suspension not occurred will be restored, other than lost pay where the leave has been designated unpaid. If the employee is terminated following unpaid suspension, the employee shall not be eligible for any pay or benefits from the date of suspension.

ARTICLE XII. GRIEVANCE PROCEDURE

Section 1. Grievance Procedure.

It is the policy of the Town to provide a just procedure for the presentation, consideration, and disposition of employee grievances. The purpose of this Article is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

Section 2. Grievance Defined.

A grievance is a claim or complaint by an employee objecting to an action, event or condition, other than a pay issue, which affects the circumstances under which the employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to a particular employment condition(s). **The Grievance Procedure is not available to challenge a final disciplinary action by the Town Manager.**

Section 3. Purposes of the Grievance Procedure.

The purposes of the grievance procedure include, but are not limited to:

- a. Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;
- b. Encouraging employees to express themselves about the conditions of work which affect them as employees;
- c. Promoting better understanding of policies, practices, and procedures which affect employees;
- d. Increasing employees' confidence that personnel actions taken are in accordance with established, fair, and uniform policies and procedures; and
- e. Increasing the sense of responsibility exercised by supervisors in dealing with employees.

Section 4. Grievance Procedure.

The following steps must be taken by an employee wishing to use the grievance procedure. Every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent of the employee and the Director of Human Resources. If an employee discontinues the grievance procedure prior to review by the Town Manager, the Town will assume that the employee is satisfied with the last response he or she has received.

Step 1. The first step when an issue is perceived by an employee, and prior to the submission of a written grievance, is for the employee and supervisor to meet to discuss the issue to attempt to resolve it informally. Either the employee or the supervisor may involve the department head or the Director of Human Resources as a resource to help resolve the grievance.

Step 2. If the issue is not resolved at Step 1, the employee may file a written grievance to the supervisor. The grievance must be submitted within fifteen (15) working days of the matter giving rise to the grievance. The supervisor shall acknowledge receipt of the grievance and shall respond to the grievance within ten (10) working days after receipt. The supervisor may consult

with other employees of the Town in order to reach a correct and fair determination concerning the grievance. Any employee consulted by the supervisor is required to cooperate.

All responses from the supervisor shall be in writing and signed by the supervisor. The employee must acknowledge receipt of the supervisor's determination by endorsing the Town's copy. All grievance documents must be provided to the Director of Human Resources.

Step 3. If the grievance is not resolved at Step 2, the employee may appeal, in writing, to the appropriate department head within ten (10) working days after receipt of the Step 2 decision. If mailed by regular mail, the response shall be presumed to have been received two days after mailing. The department head shall decide the appeal within ten working days after receipt of the appeal.

Step 4. If the grievance is not resolved at Step 3, the employee may appeal in writing to the Director of Human Resources within ten working days after receipt of Step 3 decision. If mailed by regular mail, the response from Step 3 shall be presumed to have been received two days after mailing. The Director of Human Resources shall notify the Town Manager of the appeal, and the Town Manager shall respond to the appeal, make arrangements to hear the grievance, and render a decision within ten (10) working days after hearing of the appeal, which shall be scheduled within ten days (10) days of the receipt of the request. The Town Manager's decision shall be the final decision of the Town.

Section 5. Procedure for Alleged Discrimination.

When an employee or former employee believes that any employment action or policy discriminates against him/her based on age, sex, race, color, national origin, religion, political registration, non-job related disability, or job related disability where the employee believes that with a reasonable accommodation, he or she could perform the job, he or she has the right to appeal such action using the grievance procedure outlined above. While such persons are encouraged to use the grievance procedure, they shall also have the right to appeal directly to the Town Manager when the aggrieved party alleges that a supervisor or department head is the wrong doer, or where other good cause exists to avoid the grievance procedure. An employee should generally file a grievance regarding an alleged act of discrimination within thirty (30) calendar days of the alleged act, but is not prohibited from filing until 180 days have elapsed.

ARTICLE XIII. SEPARATION AND REINSTATEMENT

Section 1. Types of Separations.

All separations of employees from positions in the service of the Town shall be designated as one of the following: resignation, reduction in force, disability, retirement, death or dismissal.

- a. **Resignation.** An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. The minimum notice requirement is two weeks, but for department heads, it is four weeks. Failure to provide minimum notice shall result in forfeiture of payment for accrued vacation leave, unless the notice is waived by the Town Manager upon recommendation of the department head. Three consecutive days of absence without contacting the immediate supervisor or department head shall be considered and designated a voluntary resignation.
- b. **Reduction in Force.** An employee is separated as the result of a reduction in force when the Town discontinues the employee's position, either because the employee's position is no longer needed, or because of the elimination of a group of positions as the result of budgetary or other considerations. In the event that a reduction in force becomes necessary, in determining those employees to be retained, consideration shall be given to the quality of each employee's performance, organizational needs, seniority, and such other criteria as may be designated by the Town Council. Employees who are separated because of a reduction in force shall be given at least ten (10) working days notice of the anticipated action. No full time employee whose performance is satisfactory shall be separated because of a reduction in force while there are temporary or probationary employees serving in a position for which the employee is qualified, unless the regular employee is not willing to transfer to the position held by the temporary or probationary employee.
- c. **Disability.** An employee who, because of a physical or mental condition, cannot perform the required duties of the employee's job with reasonable accommodation may be separated for disability. Action may be initiated by the employee or the Town, but in all cases, consideration for disability separation shall be supported by medical evidence as certified by a licensed physician familiar with the employee's condition. Before designating a separation from employment as a "disability" separation, the Town may require a physical and/or mental examination, at the Town's expense, performed by a physician of the Town's choice, if the Town has a reasonable concern that due to physical and/or mental conditions, the employee can no longer safely and/or effectively perform the employee's job duties. Before an employee is separated for disability, a reasonable effort shall be made to locate alternate positions within the Town's service for which the employee may be qualified.
- d. **Retirement.** An employee who meets the conditions set forth under the provisions of the North Carolina Local Government Employee's Retirement System may elect to retire and receive all benefits earned under the retirement plan.
- e. **Death.** An employee who dies while employed by the Town shall be considered separated effective the date of the employee's death. All compensation due shall

be paid to the designated beneficiary or appointed representative of the estate of the employee.

- f. **Dismissal.** A non-probationary, non-temporary employee may only be dismissed in accordance with the provisions and procedures of Article IX. All other employees are considered employees at will and are not entitled to utilize the procedures set out therein.

Section 2. Reinstatement.

An employee who is rehired after voluntary separation is considered a new employee, unless during the period the employee was separated from Town employment, he or she was continuously employed in a position participating in the a local/state North Carolina retirement system, and the period of separation does not exceed one year.

Section 3. Exit Interview and Process.

Upon separation from Town employment, an exit interview shall be held with the Director of Human Resources. The interview shall normally be held during the last week of employment and shall document the return of any Town property issued to the employee, the reason for leaving, counseling on continuation of fringe benefits, and final payroll computation and payment information, including the employee's forwarding address. The Director of Human Resources may solicit information from the employee which may be helpful to the improvement of working conditions within the employee's former department.

ARTICLE XIV. PERSONNEL RECORDS AND REPORTS

Section 1. Personnel Records and Reports - Public Information.

In compliance with N.C. Gen. Stat. §160A-168, the following information with respect to each Town employee is a matter of public record: name; age; date of original employment or appointment to the service; current position title; current salary; date and amount of the most recent increase or decrease in salary; date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification; and the office to which the employee is currently assigned. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town may adopt, as well as such copying charges as may be generally assessed by the Town for copies of public records.

Section 2. Access to Confidential Records.

All information contained in an employee's or former employee's personnel file, other than the information identified in Section 1, is confidential and shall be open to inspection only in the following instances, in accordance with N.C. Gen. Stat. §§160A-168(c) and (c1):

- a. The employee or his/her agent, duly authorized in writing by the employee, may examine all portions of his/her personnel file except:
 1. Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the Town's service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.
 2. Investigative reports or memoranda and other information concerning the investigation of possible criminal actions of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded,

Information that might identify an undercover law enforcement officer or a law enforcement informer,

Notes, preliminary drafts and internal communications concerning an employee. In the event such materials are used for any official personnel decision, then the employee or his duly authorized agent shall have a right to inspect such materials,

Letters of reference solicited prior to employment, and

Information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient, or the disclosure of which is prohibited by law.

- b. A licensed physician designated in writing by the employee may examine the employee's medical record.
- c. A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.

- d. By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the Court.
- e. An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the Town Manager to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability, absent a court order. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- f. An employee may sign a written release to be placed with his/her personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- g. The Town Manager, with the concurrence of the Town Council, may inform any person of the employment, nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a Town employee, and the reasons for that action. Before releasing that information, the Town Manager shall determine in writing that the release is essential to maintaining public confidence in the administration of Town services or to maintaining the level and quality of Town services. The written determination shall be retained in the office of the Town Manager or Town Clerk, as a record for public inspection, and shall also become a part of the employee's personnel file, pursuant to N.C. Gen. Stat. § 160A-168(c)(7).
- h. Each individual requesting access to confidential information will be requested to submit satisfactory proof of identity.

Section 3. Remedies of Employees Objecting to Material in File.

An employee, former employee or applicant for employment who objects to material in his/her file may place a statement in the file relating to the material considered to be inaccurate or misleading. Except for decisions resulting from a disciplinary action or the appeal procedures used in connection with disciplinary actions, the employee may seek removal of such material through the grievance procedure.

Section 4. Records of Applicants.

Applications and other information gathered with respect to an applicant will be kept confidential in accordance with N.C. Gen. Stat. § 160A-168. The Town will not release this information without written permission from the applicant.

Section 5. Internal Investigation Records.

Records relating to an internal investigation into the conduct of employee shall be kept separate from the personnel file. Such records shall be kept confidential, and no person may have access

to such records or disclose any information contained therein without the approval of the Town Manager.

If an internal investigation is undertaken in response to a complaint by a citizen, then the Town Manager may disclose to the complainant at the conclusion of the investigation that an investigation was completed and whether the charge was founded or unfounded. The Town may not disclose the nature of any disciplinary action taken except as required by Section 1, or in 2.

Section 6. Penalties for Permitting Access to Confidential Records.

Pursuant to Section 160A-168(e) of the North Carolina General Statutes, any public official or employee who knowingly, willfully, and with malice permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized, is guilty of a Class 3 misdemeanor and upon conviction may be fined in an amount of up to \$500.00.

Section 7. Examining and/or Copying Confidential Material without Authorization.

Pursuant to Section 160A-168(f) of the North Carolina General Statutes, any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine it in its official filing place, remove or copy any portion of a confidential personnel file, shall be guilty of a Class 3 misdemeanor and upon conviction may be fined in an amount up to \$500.00.