

**PERSONNEL POLICIES**  
**OF THE**  
**TOWN OF AMHERST, VIRGINIA**



Effective July 1, 2006  
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# PERSONNEL POLICIES

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## I. PURPOSE

The objective of these Personnel Policies (“Policies”) is to provide a uniform system of personnel administration for the staff of the Town of Amherst (“Town”), based on merit principles, equitable compensation, open competition in hiring and advancement, and equal employment opportunities.

It is the policy of the Town to establish reasonable rules of employment conduct (i.e., guidelines for management and employees to follow) and to ensure compliance with these rules through a program consistent with the best interests of the Town and its employees. THIS MANUAL IS NOT, AND SHALL NOT BE CONSTRUED AS, AN EXPLICIT OR IMPLIED CONTRACT, SHALL NOT MODIFY ANY EXISTING AT-WILL STATUS OF ANY TOWN EMPLOYEE, AND SHALL NOT CREATE ANY DUE PROCESS REQUIREMENT IN EXCESS OF FEDERAL OR STATE CONSTITUTIONAL OR STATUTORY REQUIREMENTS. THE TERM AT-WILL MEANS EMPLOYEES CAN TERMINATE OR BE TERMINATED AT WILL. EXCEPTIONS ARE EMPLOYEES HAVING WRITTEN CONTRACTS APPROVED BY THE TOWN COUNCIL AND SIGNED BY THE MAYOR.

Additionally, it is the policy of the Town to strive for safety in all activities and operations, and to carry out the commitment of compliance with health and safety laws applicable to the Town by enlisting the help of all employees to ensure that public and work areas are free of hazardous conditions.

## II. DEFINITIONS

Whenever responsibilities fall to the Manager under these Policies, he or she may designate another to fulfill his or her responsibilities.

- A. **Exempt Employee** – a salaried employee who performs executive, administrative or professional duties as defined under the Fair Labor Standards Act and its regulations. Full-time, part-time, and temporary employees may be exempt.
- B. **Full-time Employee** – an individual hired on either a salary or wage basis for an established position for an indefinite term who is expected to work a minimum of 28 hours a week.
- C. **Manager** – the Town Manager as appointed by the Town Council.
- D. **Part-time Employee** – an individual hired on either a salary or wage basis for an established position for an indefinite term who is expected to work an established period of time that is less than 28 hours per week.
- E. **Probationary Employee** – a full-time or part-time employee who has worked for the Town for less than three months.
- F. **Supervisor** – an exempt employee that has subordinate employees.
- G. **Temporary Employee** – an individual hired on a term basis, *e.g.*, day, week, period of months or on a project basis.

### **III. EQUAL EMPLOYMENT OPPORTUNITY**

#### **A. Policy Statement**

It is the policy of the Town to provide equal opportunity in employment and to administer employment policies without regard to race, color, religion, sex, age, national origin, or disability. This policy applies to every aspect of employment practices including, but not limited to the following:

1. Recruiting, hiring and promoting in all job classifications without regard to race, color, religion, sex, age, national origin, political affiliation or disability, except where such a factor can be demonstrated as a bona fide occupational qualification.
2. All decisions for hiring or promotions shall be based solely upon each individual's qualifications for the position to be filled.
3. Other personnel actions such as compensation, benefits, transfers, layoffs, training, assignments, will be administered without regard to race, color, religion, national origin, sex, age, political affiliation or disability.

#### **B. Harassment**

The Town of Amherst is committed to maintaining a work environment that is free of discrimination. In keeping with this commitment, the Town will not tolerate unlawful harassment of its employees by anyone, including any supervisor, co-worker, or third party. Harassment consists of unwelcome conduct, whether verbal, physical or visual, that is based on a person's race, color, national origin, religion, age, sex, gender or disability. Harassment that affects job benefits, interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment will not be tolerated.

Harassment may include derogatory remarks, epithets, offensive jokes, the display or circulation of offensive printed, visual or electronic, or offensive physical actions. Unwelcome sexual advances, requests for sexual favors, or other physical, verbal or visual conduct based on sex constitutes harassment when (1) submission to the conduct is required as a term or condition of employment or is the basis for employment action, or (2) the conduct unreasonably interferes with an individual's work performance or creates an intimidating, hostile or offensive workplace. Sexual harassment may include sexual propositions, innuendo, suggestive comments, sexually oriented jokes or teasing, or unwelcome physical contact such as patting, pinching, or brushing against another.

All Town of Amherst employees are responsible for helping to enforce this policy against harassment. Any employee who has been the victim of prohibited harassment or who has witnessed such harassment must immediately notify his supervisor so the situation can be promptly investigated and remedied. If it is the supervisor who is responsible for the harassment or reporting the situation to the supervisor fails to remedy the situation, complaints of harassment must immediately be reported to the Town Manager. If an employee believes it would be inappropriate to discuss the matter with the Town Manager, the employee may report it to the Mayor.

It is the Town of Amherst's policy to investigate all harassment complaints thoroughly and promptly. To the fullest extent practicable, the Town of Amherst will maintain the confidentiality of those involved. If an investigation confirms that harassment has occurred, the Town of Amherst will take corrective action. Corrective action may include discipline up to and including immediate termination of employment. The Town of Amherst forbids retaliation against anyone who has reported harassment or who has cooperated in the investigation of harassment complaints.

**C. Violence in the Workplace**

It is the policy of the Town of Amherst to prohibit workplace violence. Consistent with this policy, acts or threats of physical violence, including intimidation, harassment, and/or coercion, which involve or affect the Town or which occur on Town property, will not be tolerated.

Acts or threats of violence include conduct that is sufficiently severe, offensive, or intimidating to alter the employment conditions at the Town of Amherst, or to create a hostile, abusive, or intimidating work environment for one or several employees. Examples of workplace violence include, but are not limited to, the following:

1. All threats or acts of violence occurring on the Town of Amherst's premises, regardless of the relationship between Town of Amherst and the parties involved.
2. All threats or acts of violence occurring off Town of Amherst 's premises involving someone who is acting in the capacity of a representative of Town of Amherst.

Specific examples of conduct that may be considered threats or acts of violence include, but are not limited to, the following:

1. Hitting or shoving an individual.
2. Threatening an individual or his/her family, friends, associates, or property with harm.
3. Intentional destruction or threatening to destroy any Town of Amherst property.
4. Making harassing or threatening phone calls.
5. Harassing surveillance or stalking (following or watching someone).
6. Unauthorized possession or inappropriate use of firearms or weapons.

The Town of Amherst 's prohibition against threats and acts of violence applies to all persons involved in Town of Amherst 's operation, including but not limited to personnel, contract and temporary workers, and anyone else on Town of Amherst property. Violations of this policy by any individual on Town of Amherst property will lead to disciplinary action, up to and including termination and/or legal action as appropriate.

Every employee is encouraged to report incidents of threats or acts of physical violence of which he/she is aware. The report should be made to the supervisor. If it is the supervisor who is responsible for the alleged harassment or reporting the situation to the supervisor fails to remedy the situation, complaints of harassment must immediately be reported to the Town Manager. If an employee believes it would be inappropriate to discuss the matter with the Town Manager, the employee shall report it to the Mayor.

#### **D. Accommodating Individuals with Disabilities**

The Town provides equal employment opportunities to qualified individuals with disabilities. Reasonable accommodations will be provided to a qualified employee or applicant with a disability when that employee or applicant requests an accommodation. A qualified employee or applicant is one who is able to perform the essential functions of the job with or without accommodation. A request for an accommodation will be denied if the accommodation is not shown to be effective, places an undue burden on the Town, or if the employee poses a direct threat to the health and safety of him or herself or others.

#### **E. Violations**

An employee who believes that any portion of this policy is being violated should (1) inform the offending person(s) that the conduct is unwelcome and (2) report it immediately to the supervisor. **The report should be made in writing;** however, a report will also be accepted by phone or in person.

Charges will be promptly and thoroughly investigated and corrective actions taken if the charge is founded. If it is determined that a violation has occurred, appropriate relief for the employee(s) bringing the complaint and appropriate disciplinary action, up to and including discharge, against the person(s) who violated the policy will follow.

A non-employee who subjects an employee to harassment in the workplace will be informed of the Town's policy and appropriate actions will be taken to protect the employee from future harassing conduct.

In all cases, the Town will make follow-up inquiries to ensure that the harassment has not resumed.

An employee violating this policy will be subject to disciplinary action, including termination. The employee who brought the complaint will be provided information on the outcome of the investigation.

#### **F. Retaliation**

Retaliation is illegal and contrary to the policy of the Town. Employees who bring complaints of discrimination or who identify potential violations, witnesses interviewed during the investigation, and others who may have opposed discriminatory conduct are protected from retaliatory acts.

If an employee believes that he or she is being retaliated against, a written report should be made to the manager. Those who are found to be acting in a retaliatory manner will be disciplined for such conduct.

## **IV. RECRUITMENT AND SELECTION**

### **A. Open Positions**

All positions shall be open to all individuals who meet the minimum requirements for the position. The recruitment objective is to obtain well-qualified applicants for all vacancies and selection shall be based on the best-qualified person available at the pay offered for the particular position.

First consideration will be given to current employees who desire to fill an open position, if the current employee is qualified for the position and if the placement best serves the needs of the Town. The Manager may carry out open competition to fill any vacancy.

Employment decisions shall be handled in a manner consistent with the Virginia Conflicts of Interest Act.

### **B. Probationary Period**

All new full-time and part-time employees serve a three month probationary period. During this period the employee must show that he or she is capable and willing to perform the job satisfactorily. At the end of the probationary period the employee will be evaluated by the manager to determine satisfactory performance. If satisfactory performance is attained the employee will be entitled to all the benefits of non-probationary status including utilization of the grievance procedure. In establishing a probationary period, the Town does not abrogate or modify in any way the employment-at-will status that applies to its employment relationship with all employees.

### **C. Hiring Authority**

The manager has complete authority for hiring, promoting and discharging employees in accordance with these policies. The manager has the responsibility and authorization for administering the personnel system established by these policies.

### **D. Operators of Town-Owned Motor Vehicles**

Any applicant or employee who will operate a Town-owned motor vehicle must possess a valid driver's license.

## **V. OUTSIDE EMPLOYMENT**

The town considers itself to be the primary employer for all employees who are not temporary or part-time, and requires that activities away from the job must not adversely affect the employee's job performance or compromise the Town's interest.

Before seeking or accepting outside or self-employment, employees are cautioned to consider carefully the demands that such additional employment will create. Outside employment will not be considered an excuse for poor job performance, absenteeism, tardiness, refusal to travel,

or refusal to work overtime or different hours. In addition, prior written permission must be obtained from the manager before such activities are commenced.

Employees will also avoid conflicts of interest and situations that give the appearance of the conflict of interest. Except for work done as a Town employee, the Town's public works employees are not to install water or sewer facilities, whether they are to be owned and operated by the Town or privately owned, that are or reasonably could be expected to connect to the Town's system.

In addition, employees are not to conduct any outside business during paid working time.

## **VI. EMPLOYEE COMPENSATION**

The total compensation of employees consists of the regular pay and authorized overtime pay for full-time employees, the employer's contributions to employee benefits, holiday pay, and various forms of leave with pay. Part-time and temporary employees may also receive leave in certain circumstances. Leave policies, found in Section VI, should be reviewed.

### **A. Pay and Classifications; Compensation Plan**

1. The compensation plan for employees of the Town shall consist of:
  - a. A classification system for all classified jobs.
  - b. A pay grade that sets a pay range for each classified position.
2. The rates of pay for each employee within a pay grade shall be set by the manager, upon recommendation from the subordinate supervisor (if any) and subject to approval by the Town Council. The normal entrance rate of pay for new employees shall be at the lower end of the pay grade for the position.
3. The Town Council shall consider updating the compensation plan annually concurrently with the Town budget process.

### **B. Hours of Work**

1. The employee's supervisor shall establish the hours of work for all Town employees under his direction. The standard scheduled workweek for full time employees for which pay is paid consists of 40 hours, generally Monday through Friday.
2. Employees shall have two 15-minute rest breaks per day, which are included within the total required hours of work. Such breaks may not accumulate from one shift or one day to another. Flexible work scheduling may be used for the purpose of extending a meal break with the employee's start time being advanced or end time being extended as approved by his supervisor. Certain employees as approved by the manager have their meal break(s) included as a part of their regularly scheduled workday if required to stay on premises or duty during scheduled lunch breaks.



3. Flexible work scheduling may be considered within the standard workweek so long as the standard hours in a workweek, normally 40, are not altered. Some examples are:
  - a. Arrive earlier in the morning and leave earlier in the afternoon.
  - b. Arrive later in the morning and leave later in the afternoon.
  - c. Work four 10-hour days.
  - d. Work four 9-hour days and one 4-hour day.
  - e. Work some other similar permanent or seasonal scheduling option(s)
  - f. Add time to meal break and arrive earlier and leave later.

Other temporary or occasional flexible work schedules may include some combination of altered work start and stop times to allow employees to have medical appointments or take care of personal business during work hours without being charged leave. If flexible work scheduling or compressed workweeks are instituted on an ongoing basis, the supervisor may approve such only after consultation with the manager.

4. If an employee is unable to report for work or expects to be late, the employee must contact his supervisor as soon as possible but no later than the beginning of his or her scheduled work period, giving the reason for his absence or tardiness. Paid leave may or may not be approved. If an employee has difficulty reaching his supervisor, he should leave a message reporting his absence but continue to attempt to contact with his supervisor. The responsibility to notify a supervisor(s) about absences or about tardiness always rests with the employee.
5. Hours of work, schedules, and duty assignments of short duration of individual employees or work units may be altered under authorization of the supervisor or manager within the established workweek as conditions warrant. Schedules may also be adjusted to meet FMLA and ADA requirements.
6. All Town employees are expected to be available for duty in the event of a weather emergency or civil crisis. In the event of a significant local weather emergency or civil crisis, it is the duty of each employee to (a) contact his supervisor for instruction on emergency work scheduling and (b) to maintain appropriate transportation to and from his residence and the Town/work site.
7. An employee's contact with his supervisor is to be either in person or by telephone. Calls from other individuals (such as family members) or to other individuals (such as co-workers) will not suffice except in the most extreme circumstances. If an employee cannot contact his supervisor, the employee is to leave a voice mail on his supervisor's mobile telephone and follow up with a call to either to the supervisor or the Town Hall to ensure that the supervisor knows the circumstances of the employee's situation and can react accordingly. Failure to adhere to this policy will be considered leave without approval and is therefore subject to an interruption in pay.

### **C. Performance Increases**

The Town promotes excellence in its workforce. Pay increases within budget constraints may be given to that end. Each employee's performance will be reviewed at least annually concurrently with the budget process by his supervisor, and based on satisfactory performance and contributions to the organization pay increases may be given. In exceptional circumstances an employee's pay may be increased in less than a

year for meritorious service or enhanced responsibilities. Pay increases are not automatic or guaranteed.

#### **D. Overtime**

For the purposes of computing overtime under the Fair Labor Standards Act, the work period shall begin at midnight on Friday.

Unless authorized by their supervisor to do so, employees should not work over 40 hours per week. Full-time employees who are not exempt under the Fair Labor Standards Act will accrue compensatory time at the rate of time and a half for all hours actually worked in excess of 40 hours in a week during any work period except for non-exempt full-time police officers who will accrue compensatory time at the rate of time and a half for all hours actually worked in excess of 80 hours in any 14-day work period.

It is the policy of the Town of Amherst to give compensatory time off instead of paying for overtime. Exempt employees who are required to work beyond normal hours or on weekends and holidays shall be given compensatory time off at the discretion of the manager. The manager is responsible for limiting compensatory time accrual and shall report the accrual of any employee's compensatory time above 80 hours to the Town Council. Employees shall be paid for the value of the accrued compensatory time upon termination of their Town employment at their final rate of pay concurrent with the final paycheck. As part of a supervisor's responsibility for meeting departmental budgetary limitations, he is also responsible for limiting compensatory time accrual to that end.

However, when approved full-time staff positions are vacant and increased work hours are required of non-exempt full-time employees due to such full-time staff vacancies, the manager may approve monetary compensation for overtime work subject to limits of the annual operating budget. A written report of any overtime work involving monetary compensation shall be provided to the Town Council at its next regular meeting. The Town Council must approve all other instances of monetary compensation for overtime worked.

*Note: The accrual of compensatory time is limited to 240 hours by the Fair Labor Standards Act except for public safety, emergency response and seasonal activity which is limited to 480 hours (Reference 29 U.S.C. § 207(a), (k) and (o)3A) and § 9.1-701 of the Code of Virginia).*

#### **E. Bonuses**

The Town Council may grant a bonus to an employee to recognize superior service to the Town.

#### **F. Retirement**

The Town participates in the Virginia Retirement System for all employees eligible for retirement benefits pursuant to the rules and policies of VRS.

## VII. HOLIDAYS AND LEAVE

### A. Holidays

The following holidays are observed by the Town. Full-time employees shall be granted time off for these days without charging the time against leave balances:

- The first day of January (New Year's Day).
- The third Monday in January (King/Lee/Jackson Day).
- The third Monday in February (George Washington Day).
- The last Monday in May (Memorial Day).
- The fourth day of July (Independence Day).
- The first Monday in September (Labor Day).
- The second Monday in October (Columbus Day).
- The eleventh day of November (Veterans Day).
- The fourth Thursday in November (Thanksgiving Day).
- The day after Thanksgiving Day.
- The twenty-fifth day of December (Christmas Day).
- Any other day so appointed by the Town Council.

Whenever a holiday falls on a Saturday, the Friday before the actual day shall be observed as the holiday; whenever a holiday falls on a Sunday, the Monday after the actual day shall be observed as the holiday.

Employees who are scheduled by the supervisor to work at least a 40 hour work week during a week in which a holiday falls may receive his or her base rate of pay and an additional 100% (8 hours maximum) of his/her rate of base pay as compensation for that holiday. It shall remain the supervisor's option to allow either monetary compensation in accordance with the terms of this policy or a floater holiday. If an employee receives monetary compensation for the holiday, the employee will not be eligible to receive a floater holiday. Exempt supervisors will not be eligible to receive monetary compensation for a holiday.

Any day so appointed a "holiday" by the Town Council in excess of the eleven specific holidays listed in Section A shall be considered a "Town Hall/Town Shop Closed" day and leave time charged against annual leave for all full-time employees normally scheduled to work but not working that day. Such extra appointed holidays shall have no effect on part-time employees.

### B. Leave

#### 1. Annual Leave

Full-time employees will accrue paid annual leave for personal purposes at the following rates and shall be used on an hour for hour basis.

0 years	(1.85 hours/2 weeks)
1 - 10 years	(3.69 hours/2 weeks)
11 and more	(5.55 hours/2 weeks)

Individuals employed by the Town prior to July 1, 2001 shall be granted 6.46 hours of annual leave per 2 weeks after fifteen (15) years of service.

Annual leave shall be scheduled and approved in advance by the manager or supervisor. Annual leave shall not be used until all compensatory leave is used. Annual leave is not eligible at all times as the manager and supervisors have a primary obligation to insure that the Town's service to the citizens is carried out.

Each employee may accumulate a maximum of 120 hours of annual leave. Annual leave above that amount shall expire and may not be accumulated or used. Employees shall be paid for the value of the accrued vacation upon termination of their Town employment concurrent with the final paycheck.

## **2. Sick Leave**

Sick leave shall accrue at the rate of 3.69 hours per two (2) weeks, and, when taken, shall be used on an hour for hour basis. Sick leave shall be used for:

- a. FMLA leave, pursuant to section D.1.
- b. Illness or injury incapacitating the employee and preventing the employee from performing assigned duties, doctor or dental appointments during working hours. Personal sick leave is charged on an hour-for-hour basis for all employees and is not considered an entitlement.
- c. An employee may elect to charge against earned sick leave credits an absence required by illness or death in the immediate family.

The "immediate family," in this application, includes only: the employee's or spouse's parents, wife, husband, children, brother, or sister, and any relative living in the household of the employee. The period of absence which may be charged against sick leave in this application may not exceed twenty-four work hours for an illness of one cause, for an injury, or for a death. Sick leave used as a result of death shall be continuous and within one week of the death.

An employee away from work for medical conditions which require absence in excess of one week or for FMLA purposes is required to (1) submit to the supervisor a written statement from the attending physician or health care provider, stating the earliest approximate date of return to duty and advising on the ability of the employee to perform the essential functions of his or her job with or without reasonable accommodations, and simultaneously (2) apply for leave under the Family and Medical Leave Act. The supervisor or manager has the prerogative of requiring a physician's or health care provider's letter with the above content prior to an absence of one week if in his or her judgment this information is necessary. Medical information and the personnel needs of the Town will be considered in determining the holding of the employee's position or placement in another position for which the employee qualifies. All medical information will be kept confidential and will be kept separate from the employee's personnel file.

Exceptions to this policy may be considered on a case-by-case basis and approved by the manager. Sick leave is charged on an hour-for-hour basis for all employees and is not considered entitlement.

Each employee may accumulate a maximum of 520 hours of sick leave. Sick leave above that amount shall expire and may not be accumulated or used. All accumulated sick leave is forfeited upon separation from employment with the Town. Accumulated sick leave is not compensable for any reason.

**3. Military Leave**

An employee who is a member of a reserve force of the United States or of the Commonwealth of Virginia and who is ordered by the appropriate authorities to attend a training program or who is called into emergency active duty for the purpose of aiding civil authority under the supervision of the United States or the Commonwealth of Virginia shall be granted a leave of absence with full pay during the period of such activity, not to exceed fifteen (15) consecutive calendar days for training duty and five (5) working days for emergency active duty. The Town may, by motion of council, pay any such employee the difference between his or her pay and the pay received for the military duty.

**4. Military Leave Without Pay**

An employee who leaves the employ of the Town to join the military forces of the United States during the time of war or other declared national emergency or who is called to service in the Virginia Militia by order of the Governor shall be placed on military leave without pay commencing on the first business day following the last day of active employment with the Town. The employee on such leave is entitled to be restored to the position he or she vacated, provided the employee makes application to the Town not later than 90 days after the date of honorable discharge or separation under honorable conditions. Job restoration is further conditioned on the position still existing and the employee being physically and mentally capable of performing the work of the vacated position. This section does not override section VII B.3.

**5. Civil Leave**

An employee will be given time off without charge to leave or loss of pay for (a) performing jury duty, when subpoenaed as a witness to appear before a court, public body or commission, (b) performing emergency civilian duties in connection with national defense. The period of such leave shall be only as necessary for the performance of the activity, plus any necessary travel time.

**6. Workers' Compensation Leave**

When an employee is unable to report to work because of incapacity that is the result of a compensable injury under the Virginia Workers' Compensation Act, the employee will receive for the first seven (7) days of absence full pay minus normal payroll deductions. The first seven days of Workers' Compensation leave will not be charged against the employee's consolidated leave balance.

If the absence is longer than seven days, the employee will receive for the period of absence the full compensation that is provided under Workers' Compensation Act. If the period of incapacity extends beyond twenty-one (21) calendar days, the employee will be required to reimburse the Town the amount of compensation awarded to the employee by the Town's workers' compensation insurance for the employee's first seven days of absence. This is an obligation owed to the Town and one which, if not reimbursed within 30 days, will be deducted from future monies (wages, terminal leave pay, etc.) owed to the employee by the Town.

## **C. Leave Without Pay**

The following are the situations for which an employee may be on leave without pay status.

### **1. Family & Medical Leave**

A. Employees are entitled to participate in the benefits of the Family and Medical Leave Act ("FMLA"). FMLA leave is unpaid leave. The Town requires an employee to use accrued paid leave on an hour for hour basis in conjunction with FMLA leave.

B. *Eligible Employees.* To be covered under the FMLA, an employee must have worked for the Town for twelve (12) months and must have worked at least 1,250 hours within the twelve (12) months preceding the start of the leave. Part-time and temporary employees who meet these requirements are eligible for FMLA leave.

C. *Purposes for Which FMLA Leave May Be Taken.* FMLA leave may be used:

- a. to care for an employee's child after birth, or for the placement with an employee of a child for adoption or foster care (provided that the leave is requested and used within twelve (12) months of the birth, placement, adoption, or foster care),
- b. to care for an employee's spouse, child, or parent (does not include in-laws) who has a serious health condition,
- c. When the employee is unable to work because of a serious health condition.

A serious health condition is an illness, injury, impairment or physical or mental condition that involves inpatient care in a hospital, hospice, or residential medical care facility, or an incapacity lasting more than three consecutive days and involving continuing treatment by a health care provider. Continuing treatment involves two or more treatments (or one treatment when the condition is such that continuing follow-up is or will be required) by a healthcare provider, pregnancy, prenatal care, or other chronic or long-term serious health conditions.

To qualify for leave due to the serious health condition of a family member, the family member must be incapable of self-care. To qualify for leave due to the serious health condition of the employee, the employee must be unable to work at all or unable to perform any of the essential functions of the employee's position.

Employees are required to obtain a health care provider certification for all absences for which FMLA leave is being requested. A chronic or long-term health condition or pregnancy does not require a visit to the health care provider for each absence; however, a statement by the health care provider that the absence was due to the chronic condition or pregnancy may be requested by the Town at its discretion.

D. *FMLA Benefits.*

a. *Leave.*

An eligible employee is entitled to twelve weeks of unpaid leave during a twelve-month period. The twelve-month period begins on January 1 and terminates on December 31 of each year. Employees will be required to use accumulated paid leave (sick, compensatory, annual, etc.) on an hour for hour basis concurrent with the FMLA leave. If FMLA leave is exhausted before the end of the twelve-month period, the employee will not be entitled to further FMLA leave during this period.

An employee is required to request FMLA leave in writing at least thirty days before the leave is to commence if the need for the leave is foreseeable. In circumstances when the leave is not foreseeable thirty days in advance, an employee must request the leave as soon as practicable. The Town may designate leave as FMLA leave without a request from an employee.

FMLA leave taken for a serious health condition of the employee or family member may be taken intermittently or on a reduced hours basis.

FMLA leave taken for birth, adoption, placement, or foster care cannot be taken intermittently unless approved in advance. If both spouses work for the Town, the total FMLA leave that may be taken for this event by both employees is twelve weeks, pro-rated between as the spouses choose. FMLA leave taken for the birth, adoption, placement, or foster care of a child must be taken within the twelve months following the event.

Should the Town obtain information that the employee was not FMLA eligible or the event did not qualify under FMLA, the designation of FMLA leave previously given may be withdrawn.

b. *Job Restoration*

Upon return from FMLA leave, an employee is entitled to be restored to the same position that was held before the start of the FMLA leave, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. If an employee is unable to return to work

after the FMLA leave benefits have been exhausted, the employee will not have a right to return to his or her position even if there are unused accrued leave balances.

Key employees are entitled to FMLA leave but are not entitled to job restoration if re-employment after the conclusion of the leave will cause a substantial and grievous economic injury to the Town. A key employee is a salaried employee who is among the highest paid ten percent of the Town's workforce. A key employee will be notified in writing of his or her status in response to the employee's notice of intent to take FMLA leave, unless circumstances do not permit such notice. If a key employee is already on FMLA leave when s/he receives notice that s/he is a key employee, the employee will be given a reasonable time to return to work before losing the right to job restoration.

*c. Health Benefits.*

If paid leave is used for FMLA purposes, an employee will maintain the same benefits as if working. If the employee is on leave without pay, continuation in the health care plan is permitted, provided that the employee continues to pay for his or her share of the premiums. If the employee fails to make his premium payments, the employee will be provided written notice of this failure and will be given an additional fifteen days to make payment in full. If payment is not made after this notice, health benefit coverage will cease.

If an employee does not return to work after the conclusion of the FMLA leave, the employee is responsible for reimbursing the Town for the Town's share of the health care premiums paid while on FMLA leave.

**2. Extended Leave Without Pay**

When special circumstances require an extended leave, the manager has the authority to grant an employee leave without pay provided that the operations of the Town's program(s) will not be adversely affected.

**3. Disciplinary Leave Without Pay**

An employee who is absent from work without prior approval shall receive no pay for the duration of the absence and may be subject to disciplinary action which may include dismissal. If extenuating circumstances exist for the unauthorized absence, due consideration will be given.

**VIII. EMPLOYEE DEVELOPMENT**

It is the policy of the Town to encourage employees to obtain training designed to develop the employee's value to the organization.



Education leave is discretionary and is normally taken with without pay. When an employee can demonstrate that the pursuit of the educational program will have an immediate and discernable benefit to the Town, leave with full pay may be granted by the manager. The conditions of such leave shall be subject to a case by case determination based on factors which include the nature of the education or training, length of the absence, work record of the employee, work requirements at the time of the request, and value of the education or training to Town.

The cost of training and related expenses undertaken at the direction of the manager shall be paid in full by the Town. In such case, the hours of training count as hours worked. For training requested by an employee, the employee may receive reimbursement of tuition costs if (1) the training was approved in advance by the manager and (2) the employee shows successful completion of the course as evidenced by the grade of C or better. If the training was not required by the Town, the hours do not count as hours worked.

## **IX. PERFORMANCE APPRAISALS**

The work of each employee will be evaluated at least annually concurrently with the budget by his immediate supervisor. The supervisor will meet with the employee to discuss the year's performance. A written report of the appraisal will be prepared with a copy provided to the employee being appraised and a copy for the personnel files. If the employee believes that the report is unfair, he or she may submit comments to be attached to the supervisor's appraisal report within 10 calendar days of being provided a copy of the appraisal.

## **X. HEALTH AND SAFETY**

### **A. Workers' Compensation**

Workers' Compensation provides benefits for an employee in the event of certain occupational illnesses, injuries, or deaths. Any job related accident or workplace injury, no matter how insignificant, must be reported to the supervisor as soon as possible, but within 24 hours.

The Town may select a panel of physicians to whom employees must go for all work-related injuries. Supervisors are to inform employees of the physicians included in the panel. In the event an injury requires immediate medical attention, the employee may go directly to the nearest hospital emergency room; follow-up care must be with the panel of physicians. If the Town selects a panel, all employees will be notified.

### **B. Occupational Safety and Health**

The Town attempts to provide a safe and healthy working environment for all employees by providing the necessary safety education and training. Employees shall follow all prescribed safety procedures when performing their daily activities and shall further exercise all reasonable and prudent judgment to ensure safety.

Each supervisor has the responsibility for ensuring that the various work centers are free from any recognized hazards that might lead to death or injury. Further, it is the responsibility of each employee to perform all work in a safe manner. All hazards, deaths, injuries, and illnesses that occur on Town property must be reported to the supervisor within the same day of the discovery or occurrence.

Employees are directed to utilize all applicable safety procedures and to perform all work in a safe manner. Employees are responsible for bringing to their supervisor's attention any potential hazards that might exist within their work area. Supervisors are responsible for developing and maintaining work safety rules and for providing these rules in writing to their subordinates.

#### **1. Supervisors Safety Responsibilities**

The first line supervisor is essential to the overall program and must be actively involved in loss control activities.

Specifically, the supervisor shall:

- a. Conduct accident investigations to ensure prevention of recurrence.
- b. Provide instructions in accident prevention and hazard recognition to employees.
- c. Enforce all established safety rules and procedures and firmly support and convey all safety policies to all employees.
- d. Take immediate action to ensure correction of all identified unsafe acts or conditions.

- e. Communicate any additional safety needs to the manager.

## **2. Duties of Employees**

Every employee is required to adhere to all safety rules, procedures and practices, and to use personal protective equipment provided by the Town of Amherst.

Specifically, employees shall:

- a. **Report all injuries**, regardless of severity, to his supervisor immediately. If a supervisor is not available, the injury must be reported to the manager before medical treatment is sought, except in the case of emergencies.
- b. Report and, if possible, correct all unsafe conditions, procedures, or acts.
- c. Report for work free from the influence of alcohol or drugs.
- d. Avoid horseplay and mischief which could cause injury.
- e. Take all standard safety precautions to prevent injury to yourself or fellow employees.
- f. Follow all special or departmental safety rules, including personal protective equipment wearing requirements, specifically:
  - A. **HARD HATS** will be worn by all Town employees including supervisors in the following situations:
    - (1) At any work site where hard hat requirements are posted.
    - (2) All water, sewer, and street work.
    - (3) In the presence of high voltage electrical hazards.
    - (4) In any situation where a potential for head injury exists.
  - B. **GOGGLES** as eye protection are required where grinding, cutting, weed eating, blowing leaves, chipping or any other operation presents a potential hazard from flying debris.
  - C. **SAFETY SHOES AND GLOVES** must be worn when appropriate.

## **3. All Employees to Observe Rules**

Failure to conform to the safety policies of the Town of Amherst shall be considered insubordination and, therefore, grounds for suspension or other disciplinary action.

### **C. Medical Insurance**

The Town will endeavor to offer each full time employee a medical and hospitalization plan, the terms of which will be established from time to time by the Town. Coverage under the plan for each full time employee will be provided at no cost to the employee.

In addition, the Town will endeavor to provide optional coverage under the plan for each employee's spouse and dependent children which additional coverage the employee may elect to take by notice to the Town and agreement to pay via payroll deduction all additional premiums attributable to such additional coverage, subject to any conditions imposed by the Town's medical and hospitalization plan provider.

Any full time employee who is a member of the plan upon retirement may elect to continue his or her participation after retirement in the plan provided that such employee agrees to pay, and does pay promptly, any and all premiums attributable to his continued participation in the plan. In addition, any such employee who, at the time of retirement, is participating in any optional coverage under the plan for his or her spouse and/or dependent children may continue to participate in such optional coverage provided that he or she elects to do so by notice to the Town at the time of retirement and agrees to pay, and does pay promptly, any and all premiums attributable to such spousal and dependent children's coverage. It is the retiree's responsibility to deliver premiums to the Town Hall by the 15<sup>th</sup> of the prior month and maintain the appropriate paperwork as required by the Town's health insurance carrier. In other words, the Town staff will advise you when additional paperwork is needed and a check for the July health insurance needs to be received by June 15. For the purposes of this paragraph, retirement shall mean a status in which the former Town employee is eligible to receive retirement benefits from the Virginia Retirement System program.

Any right to participate in the plan shall terminate:

- a. In the case of a full time employee, his or her spouse, and dependent children, upon termination of the employee's employment.
- b. In the case of a retiree, upon notice of withdrawal from the plan by the retiree or failure to pay any premiums when due.
- c. In the case of a surviving spouse who is participating in the plan at the time of the retiree's death, upon notice of withdrawal from the plan, failure to pay any premium when due, or remarriage.

Except for retirees and family members whose health insurance is provided by the Town as of January 1, 2005, the Town of Amherst will not fund any portion of a retiree's health insurance.

#### **D. Employee Assistance Program**

The Town of Amherst provides an employee assistance program (EAP) to all employees.

EAP provides confidential assistance and/or referral to employees when personal problems or concerns are troubling an employee personally or when they are contributing to, or may contribute to, deteriorating job performance. The EAP is provided as a service to employees. In itself, use of the EAP, by self-referral or supervisory referral, is not an indication of illness, inadequacy, or disability. All people have problems in their lives; thoughtful, intelligent people seek appropriate assistance with their problems.

The Town recognizes that a wide range of problems, not directly associated with one's job function, may have an adverse effect on an employee's job performance. Further, personal problems of a family member can also affect an employee's job performance.

When marital or family discord, financial or emotional crises, alcohol or drug problems, illness, or other difficulties interfere with or threaten job performance or conduct, the Town offers assistance through the EAP. There is no desire to intrude on the employee's private life. These problems are recognized as progressive and potentially destructive, but they are also recognized as able to be solved or improved. The Town stands ready to assist employees and their families who are willing to help themselves.

Early recognition of the troubled employee, through application of job performance standards, is a proper function of management.

Employees with identifiable performance problems that are not the result of deficits in knowledge, skills, education, and/or working conditions may have personal problems affecting job performance.

The Town actively supports rehabilitation efforts, when applicable and appropriate, through employee group health benefits, sick leave, and disability policies. An employee may be referred to the EAP by Town supervisory personnel, colleagues, medical personnel, or union personnel, because of a condition that may affect his or her job performance or because the employee is troubled and seeks help. The decision to accept assistance is the responsibility of the employee.

Employees are encouraged to self-refer. Immediate family members are also eligible for employee assistance services.

An employee participating in EAP at the direction of his supervisor or manager shall be considered at work for the first session. Other sessions are to occur on the employee's time; sick leave shall not be use in connection with EAP.

All records and information about referral, assessment, and treatment will be maintained by the EAP and treated as confidential. No information concerning a client's personal problems will become a part of the employee's personnel record. Except as set forth herein and in situations of dangerousness, or as may otherwise be required by law, no information, oral or written, will be disclosed without the express written permission of the employee.

If an employee is referred by the Town to the EAP because of performance-related issues, the only information the EAP will disclose to the referring person is whether the employee has followed through on the EAP referral. Additional information will only be shared as stated in the previous paragraph.

Employees participating in the EAP will not be given preferential treatment, nor will they be subject to any special regulations by the Town. EAP participation will not immunize an employee against discipline, including discharge, by reason of an infraction of work rules or the rules of conduct. All employees will be evaluated strictly on job performance criteria, irrespective of their participation in the EAP. An EAP client may be disciplined for his or her continued unsatisfactory job performance.

An employee's job security or future career advancement will not be jeopardized as a result of

his or her participation in the EAP.

The immediate supervisor is responsible for monitoring an employee's job performance. In the case of deteriorating performance, the supervisor, following established procedures, should work with the employee in an effort to reestablish accepted levels of performance. Whether or not it appears that the substandard performance is or may be due to problems or impairment, the supervisor should refer the employee to the EAP only as part of a performance improvement plan.

In the case of a job-performance-related referral, the supervisor will do all of the following:

- Document, as part of a performance improvement plan, that the employee was made aware of the EAP as a resource
- Notify the EAP that a referral has been made
- Consult with the manager as appropriate.
- Complete an EAP referral form in order to provide relevant documentation of the performance problem to the EAP

The manager may refer an employee to the EAP. He should both:

- Document the referral in the employee's medical record
- Notify the EAP of the referral

Employees and their family members experiencing problems, whether or not they may affect the job performance of that employee, are encouraged to voluntarily seek information, referral, and related services on a confidential basis by contacting the EAP.

## **XI. ELECTRONIC COMMUNICATIONS**

### **A. Internet**

The Town may provide electronic, digital and wire communications equipment for business purposes. The use of this equipment should not be for personal use. Messages received, sent, and stored on this equipment will be subject to monitoring from time to time and in the course of this monitoring may be read for content. Employees should be aware that there are stored records of all communications. There should be no expectation of privacy in any communications received, sent, or stored on equipment or service provided by the Town.

The Town may provide unlimited access to the Internet and the World Wide Web to its employees as one of the many resources available to assist them in doing their jobs better and more efficiently. Therefore, the Town may establish an Internet account that may be accessed by employees.

Employees may be provided with passwords and e-mail addresses to enable them to use the account; these addressees and passwords are not provided to make employees' usage confidential or private. E-mail records are business records of the Town. The usage of the Internet is subject to the same code of conduct which applies to all other actions in the

workplace and using the Town's Internet account in a manner that violates any rules or regulations constitutes grounds for disciplinary action, up to and including discharge. The electronic use, transmission and storage of messages, files, images and sounds are subject to monitoring by the Town.

Employees must not share their passwords with any other individuals, including other employees or outsiders. Nor is it appropriate to attempt to subvert network security either by accessing the Internet without using your password or by seeking to discover other passwords to gain access. Employees are representatives of the Town when using the Town's Internet account. Accordingly, they are expected to act and to communicate professionally on the Internet, not to engage in any commercial or illegal activities, or to use the account for personal business.

The Town will have access to a log of all usage, including a list of employees who have used the Internet and the sites they visited. The Town will monitor this usage from time to time, and employees found to be abusing usage or using the Internet inappropriately will be subject to disciplinary action.

**B. Consent to Monitoring**

Employees will be required to consent to the monitoring of communications sent, received and stored on equipment provided by the Town or an electronic, wire, or digital services provided by the Town as a requirement for employment by the Town. A signed statement acknowledging the receipt of the Personnel Policy document shall be proof of this consent.

## **XII. Alcohol and Drug Free Workplace**

**A. Employee Responsibilities**

1. No employee shall unlawfully manufacture, dispense, possess, use, or distribute any controlled substance, medication, or alcohol.
2. Any employee convicted under a federal or state statute regulating controlled substances shall notify their supervisor and the manager within five days after the conviction.
3. No employee shall consume alcoholic beverages immediately before work, during work hours, or while at work during breaks or lunches.
4. No employee shall be impaired by alcoholic beverages immediately before work, during work hours, or while at work during breaks or lunches.
5. No employee shall represent the Town in an official capacity while impaired by alcohol, illegal drugs, or medication.
6. No employee using medication that may impair performance shall operate a motor vehicle or engage in safety sensitive functions while on duty for Town.

7. If an employee is using prescription or non-prescription medication that may impair performance of duties; the employee shall report that fact to his or her supervisor.
8. An employee who has reason to believe that the performance of another employee is impaired by alcohol, illegal drugs, and/or medication shall immediately notify the supervisor or manager.

**DISCIPLINARY ACTION.** Because of the serious nature of illegal use or abuse of alcohol, controlled substances, and/or non-prescribed use of medication, appropriate employee disciplinary action will be taken, up to and including termination.

**B. Drug & Alcohol Testing**

In order to achieve a drug-free work place, employees in, and applicants for, all positions shall be required to participate in all of the following alcohol and controlled substances testing:

1. When an applicant for a position has been extended a conditional offer of employment but before beginning work.
2. When there is a reasonable suspicion to believe that the employee is in an impaired state.
3. When the employee has been involved in an on-duty serious accident or has endangered others in the workplace.
4. As a condition for return to duty after testing positive for controlled substances or alcohol.
5. As part of follow-up procedures to return-to-duty related drug or alcohol violations.

This policy covers all employees of and applicants to the Town.

**XIII. Political Activity**

- A. An employee shall not be coerced to support a political activity, whether funds or time are involved.
- B. An employee shall not engage in political activity on work premises during work hours, nor shall such activity have any bearing on the employee's normal work schedule.
- C. An employee shall not use Town-owned equipment, supplies or resources, and other attendant material (diskettes, paper, computer online and access charges, etc.) when engaged in political activities.



- D. An employee shall not use, discriminate in favor of or against, any person or applicant for employment based on political activities.
- E. An employee shall not use the employee's title or position while engaging in political activity.
- F. An employee who seeks to hold an elected office shall advise the manager in writing of such an intention. Upon attainment of such office, whether by election or appointment, he shall, at the beginning of every term in such office, supply the manager with a written plan that (a) explains how conflicts of interest will be avoided, (b) an analysis of time and scheduling requirements, and (c) assurances that serving in such elected office will not unreasonably limit the employee's work for the Town of Amherst.

#### **XIV. Smoking – Town-owned and controlled buildings and work places.**

Smoking in public areas in Town owned and controlled buildings is prohibited. The Town Manager may develop and implement policies and procedures governing smoking in parts of Town-owned and controlled buildings or work areas not open to the general public in the normal course of business, except by invitation. The Town Manager shall enforce these policies and procedures through administrative methods. Any total ban on smoking in the workplace shall only be enforced by the Town upon an affirmative vote of a majority of the affected employees voting. [State law reference(s) – §§ 15.2-2801, 15.2-2802]

#### **XV. DISCIPLINE AND GRIEVANCES**

Town employees are expected to conduct themselves in a professional and courteous manner as representatives of the Town. Employees are expected to avoid any action, which might result in giving preferential treatment to any organization or person, losing independence or impartiality of action, or adversely affecting the integrity of the Town.

##### **A. Disciplinary Actions**

If an employee's work performance or behavior is deemed unsatisfactory, the following kinds of disciplinary action may be taken, depending upon the circumstances: oral admonishment, written reprimand, suspension, demotion, or dismissal. Other types of discipline may be used in addition to those listed.

The following are examples of misconduct that may result in discipline. The list is not inclusive and other misconduct may be subject to disciplinary action:

1. Conviction of a felony or of a misdemeanor involving moral turpitude and other criminal acts that continued performance of duties is compromised;
2. Willfully falsifying Town records (including time records, leave records, job applications, or pay or reimbursement vouchers);
3. Gross negligence with Town property or misuse of Town property;

4. Violating any workplace rule;
5. Performing official duties in a rude and discourteous manner, threatening co-workers, or using physical violence while on duty;
6. Violating any lawful official regulation or order or willfully failing to obey a proper direction of the supervisor or the manager;
7. Using or being impaired at work by intoxicants, drugs, or alcohol;
8. Grossly neglecting duty or continually being unable or unwilling to render satisfactory performance;
9. Taking property of the Town for one's personal use, for sale to another or for a gift to another;
10. Inducing, or attempting to induce, an officer or employee in the service of the Town to commit an unlawful act or to act in violation of any lawful or official regulation or order;
11. Accepting a bribe, gift, token, money, or other thing of value intended as an inducement to perform or refrain from performing any official acts, or engages in any action of extortion or other means of obtaining money or other things of value through his/ her position in the Town;
12. Failing to report for work or being absent without prior notice to supervisor;
13. Unsatisfactory attendance, excessive absences, or excessive tardiness.
14. Harassing other employees or the public.
15. Violating the Town's drug free workplace rules.

**B. Notification**

Prior to imposing disciplinary action, including termination, the supervisor shall inform the employee of the reason for the discipline and the employee shall have the right to comment on the discipline. However, the supervisor may have the employee removed from the workplace prior to giving an opportunity to comment if the employee's continued presence poses a safety danger or is disruptive to the workplace.

**C. Grievance**

The Town grievance procedure is available for all eligible employees of the Town. Exceptions are listed in the grievance policy.

## **XVI. TERMINATION OF EMPLOYMENT**

**A. Resignation**

To resign in good standing, an employee must give at least two weeks advance notice. If special circumstances exist, the notice requirement may be waived by the manager. Failure to give the required advance notice will result in forfeiture of compensation for accrued leave. Failure to return to work at the expiration of an approved leave of absence shall be interpreted as a resignation.

**B. Lay-off**

The Town reserves the right to dismiss employees for lack of available work or funds.

**C. Termination for Inability to Perform**

An employee may be terminated if he or she becomes physically or mentally unable to perform the duties of the position. However, any such action shall be taken in a manner that complies with the requirements of the American's with Disabilities Act.

**D. Severance Pay**

An employee terminated due to job elimination shall be paid two weeks severance pay based on average hours worked for the prior 13 weeks.

An employee terminated due to lay-off, where prospects for re-hire are probable, or for cause shall not be eligible for severance pay.

An employee terminating employment at his discretion shall not be eligible for severance pay.

**XVII. IN-SERVICE ACTIVITIES**

**A. Motor Vehicles and Mileage Reimbursement**

Employees are encouraged to have a valid operator license issued by the Virginia Division of Motor Vehicles and, if the employee's duties may involve such, to attain commercial driver's license that would allow for the operation of larger motor vehicles. The Chief of Police will certify validity of driver's licenses for each employee and the Chief of Police must be notified immediately if an employee's driver's license is revoked.

The personal use of vehicles and equipment for bona fide Town business must be approved in advance by the manager with all expenses reimbursed to the employee in each instance. The employee shall be reimbursed at the then-current federal mileage rate.

**XVIII. GRIEVANCES**

The purpose of this grievance procedure is to provide a prompt, fair, and orderly method for the resolution of employee grievances initiated by eligible employees of the Town of Amherst.

I. Definition of Grievance

A. A grievance is a complaint or dispute by an employee relating to his employment, including but not necessarily limited to:

1. Disciplinary actions, including disciplinary demotions, suspensions, and dismissals provided that such dismissals result from formal discipline or unsatisfactory job performance.
2. The application of personnel policies, procedures, rules, and regulations, and the application of ordinances and statutes.
3. Acts of retaliation as the result of the use of or the participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth of Virginia, has reported any violation of such law to a governmental authority, has sought any change in law before the United States Congress or the General Assembly of Virginia, or has reported an incident of fraud, abuse, or gross mismanagement.
4. Discrimination on the basis of race, color, creed, religion, political affiliation, age, disability, national origin, or sex.

B. Management Rights and Prerogatives

The Town reserves to itself the exclusive right to manage the affairs and operations of Town government. Accordingly, complaints involving the following management rights and prerogatives are not grievable:

1. Establishment and revision of wages or salaries, position classification, or general benefits.
2. Work activity accepted by the employee as a condition of employment, or work activity which may reasonably be expected to be a part of the job content.
3. The contents of ordinances, statutes, or established personnel policies, procedures, rules, and regulations.
4. The methods, means, and personnel by which work activities are to be carried on, including but not necessarily limited to:
  - a. The provision of equipment, tools, and facilities necessary to accomplish tasks.
  - b. The scheduling and distribution of manpower/personnel resources.
  - c. Training and career development.
5. The hiring, promotion, transfer, assignment, and retention of employees in positions within the Town's service.

6. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly.
7. The relief of employees from duties, or taking action as may be necessary to carry out the duties, of the Town in emergencies.
8. Direction and evaluation of the work of Town employees.
9. Termination, layoff, demotion, or suspension from duties because of lack of work, reduction in force, or job abolition, except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance. In any grievance brought under the exception to this paragraph, the action shall be upheld upon a showing by the Town that:
  - a. There was a valid business reason for the action, and
  - b. the employee was notified of the reason in writing prior to the effective date of the action.

## II. Coverage of Personnel

- A. Except as noted below, all nonprobationary full-time and part-time employees are eligible to file grievances under this procedure. The following are the exceptions:
  1. Key officials of the Town. For purposes of this procedure, a key official is defined as the head of any separate Town department.
  2. Members of boards and commissions.
  3. Employees whose terms of employment are limited by law.
  4. Officials and employees who serve at the will or pleasure of an appointing authority.
  5. Appointees of elected individuals or elected groups.
  6. Probationary employees in matters concerning their dismissal. Probationary employees may, however, use this procedure for complaints or disputes other than dismissals that are determined to be grievable.
  7. Temporary, limited term, and seasonal employees.
  8. Law enforcement officers as defined in Chapter 10.1 (§2.1-116.1, et seq.) of Title 2.1 of the Code of Virginia whose grievance is subject to the provisions of Chapter 10.1 and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedure in the resolution of his grievance.
- B. The Town Manager shall determine the officers and employees (by position) excluded from this grievance procedure and shall maintain a list of such excluded positions.

## III. Operation of the Grievance Procedure

Step 1. An employee who believes he has a grievance and wishes to utilize this procedure shall discuss the grievance informally with his immediate supervisor within twenty calendar days of the occurrence of the incident giving rise to the grievance or within twenty calendar days following the time when the employee reasonably should have gained knowledge of its occurrence. A response to the grievance shall be communicated, either orally or in writing, to the grievant within ten calendar days.

*Note: If the complaint is alleging discrimination or retaliation by the immediate supervisor the grievance may be presented at Step 1 to the department head or, if there is no department head above the immediate supervisor to the Town Manager. If Step 1 is with the Town Manager, Step 2 is omitted and the written grievance is presented to the Town Manager. The grievance proceeds immediately to Step 3.*

Step 2. If the grievant is not satisfied with and does not accept the Step 1 response, or if a response is not provided within the required time frame, the grievant may proceed by putting the grievance in writing on the Grievance Form which is attached to this procedure. The Grievance Form shall be delivered, by mail or in person, to the department head within ten calendar days of receipt of the supervisor's response or the deadline for that response, whichever occurs first. If the immediate supervisor is the department head, the written grievance should be presented to the Town Manager and it will proceed as if it were at Step 3.

The grievant shall specify the relief that he expects to gain through the use of this procedure. The department head shall promptly meet with the grievant. Normally, the only persons who may be present at the meeting or hearing shall be the agency head, the grievant, and the appropriate witnesses. The department head shall render a written response to the grievance within ten calendar days following receipt of the completed request form with a copy of the response being sent to the manager. By mutual consent of the grievant and the department head, the grievant may skip Step 2 and proceed directly to Step 3.

Step 3. If the grievant does not accept the response at Step 2, or if the department head fails to respond within the required time frame, the grievant shall indicate his desire to advance the grievance to Step 3 on the Grievance Form. The Grievance Form shall be delivered by mail or in person, directly to the Town Manager within ten calendar days following receipt of the Step 2 response or immediately after the deadline for that response, whichever occurs first. If the Town Manager determines (or has previously determined) that the complaint is grievable, a meeting with the grievant, the grievant's representative if there is one, a representative of the affected department and the Town Manager will be held within five days. Appropriate witnesses for each side, and such other persons as the Town Manager or the grievant may want to call, may be present to offer testimony only. The Town Manager shall render a written response to the grievance within ten calendar days following receipt of the completed request form.

In the event that the Town Manager determines that the complaint, or a portion of the complaint, is not grievable, the grievant may appeal that decision to the Circuit Court as set out in Section IV(B) of this procedure.

Step 4. If the grievant does not accept the Step 3 written response, or if the Town Manager fails to respond within the required time frame, and the grievant wishes to advance to a grievance panel hearing, the grievant shall complete step 4 of the Grievance Form.

The Grievance Form shall be delivered, by mail or in person, directly to the Town Manager within ten calendar days following receipt of the Step 3 response or the deadline for that response, whichever occurs first. The Grievance Form shall contain the name of the person whom the grievant desires to serve on the grievance panel. The grievant shall not name a person to serve on the grievance panel unless and until the grievant has received that person's consent to do so. The grievance shall be heard by an impartial grievance panel as set out in Section VI of this procedure.

#### IV. Grievability and Access

- A. Grievability and access are determined by the Town Manager generally after the grievance reaches Step 3. Only after the Town Manager has determined that a complaint is grievable and/or the grievant has access to the procedure may a grievance be advanced through Steps 3 and 4. Should the question of grievability or access arise at Step 2 the grievant or the department head may request a ruling on grievability and/or on access by the Town Manager. The Town Manager shall render a decision within ten calendar days of receipt of the ruling request and shall send a copy of the decision to the grievant and the department head.
- B. The Town Manager's decision on grievability and/or access may be appealed to the Circuit Court of the County. Such appeals shall be instituted by the grievant by filing a notice of appeal with the Town Manager within ten calendar days from the date the grievant received the decision. Within ten calendar days after the filing of the notice of appeal, the Town Manager or his designee shall transmit to the Clerk of the Circuit Court a copy of the Town Manager's decision on grievability or access to the procedure, a copy of the notice of appeal, a copy of the grievance record, and copies of all exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant. The appeal will be heard by the Court as provided by law. The decision of the Court is final and is not appealable.

#### V. General Terms

Except as otherwise noted, the following rules apply to all levels of grievance hearings.

- A. Time intervals specified in Steps 1 through 4 may be extended by mutual consent of the parties.
- B. When a deadline falls on a Saturday, Sunday, or Town holiday, the next calendar day that is not a Saturday, Sunday, or Town holiday shall be considered the last calendar day.
- C. All grievance meeting and hearings shall be held during normal Town working hours unless both the grievant and the Town Manager should mutually agree otherwise.
- D. Town employees who are necessary participants at grievance hearings shall not lose pay for time necessarily lost from their jobs and will not be charged leave because of their attendance at the grievance proceedings.

- E. At the Step 3 meeting, the grievant, at his option, may have present a representative of his choice. If the grievant is represented by legal counsel, the Town likewise has the option of being represented by counsel.
- F. The use of recording devices or a court reporter is not permitted at Step 1, 2, and 3 meetings. Only Step 4 hearings may be recorded.
- H. Hearings are not intended to be conducted like proceedings in court and the rules of evidence do not necessarily apply.
- I. At Step 4, the grievance panel shall have the discretion to limit the attendance at the hearing of persons not having a direct interest in the hearing.
- J. At the request of either party, Step 4 hearings shall be private.
- K. Except in grievances involving discipline or in cases where the grievance panel determines otherwise, the grievant shall present his evidence first.
- L. The grievance panel shall determine the propriety of and the weight to be given the evidence submitted.
- L. Both the grievant and the Town may call appropriate witnesses. All witnesses, including the grievant, shall be subject to examination and cross-examination.
- N. Witnesses shall be present only while actually giving testimony and shall otherwise be excluded from the room.
- O. The grievant shall not be entitled to financially recover more than that which he has lost; the grievant's costs are not to be assessed against the Town.
- P. Where a grievant has obtained partial relief at one level of this grievance procedure but decides to appeal to the next higher level, the filing of a request form to the next higher level shall constitute rejection of, and relinquishment of any claim to, any and all relief granted at the previous level.
- Q. Each party shall bear the costs and expenses, if any, of his legal counsel or representative.

VI. Rules Concerning Grievance Panels and Panel Hearings

A. Selection of Grievance Panel.

1. Within five calendar days of receipt of the Step 4 request form, the Town Manager shall appoint a member to serve on a grievance panel. The member selected by the grievant and the member selected by the Town Manager shall then select a third member.
2. If the panel member appointed by the grievant and the panel member appointed by the Town Manager or his designee cannot agree upon a third panel member within 20 calendar days of the Town's receipt of the selection of the first two panel members, then the chief judge of the



Circuit Court shall choose an impartial, third panel member. The third panel member shall act as chair of the panel.

- B. Eligibility to Serve on Grievance Panel. The panel shall not be composed of any persons having direct involvement with the grievance being heard by the panel, or with the complaint or dispute, giving rise to the grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant, and the following relatives of a participant in the grievance process or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew, and first cousin. No attorney having direct involvement with the subject matter of the grievance, nor a partner, associate, employee, or co-employee of the attorney shall serve as a panel member.
- C. The following rules apply to Step 4 grievance panels and the conduct of Step 4 grievance panel hearings:
1. The grievant shall bear the reasonable costs and expenses, if any, of his panel member.
  2. The Town shall bear the reasonable costs and expenses, if any, of its panel member and those of the third panel member unless the grievant objects. Upon objection, the reasonable costs and expenses of the third panel member shall be shared equally between the Town and the grievant.
  3. No person shall receive any compensation, whether monetary or otherwise, for his time in serving as a member of a grievance panel. Notwithstanding this prohibition, a Town employee serving as a member of a grievance panel may receive his usual Town pay for the period he serves on such a panel.
  4. The panel shall promptly set the date, time, and location for hearing the grievance and shall notify the parties.
  5. The Town shall provide the panel with copies of the grievance record prior to the hearing, and shall provide the grievant with a list of the documents furnished to the panel.
  6. Each party shall furnish to the other with copies of all documents, exhibits, and a list of witnesses it intends to use at the panel hearing seven calendar days in advance of the hearing.
  7. Both the grievant and the Town may be represented by legal counsel or other representative at the panel hearing. Such representatives may examine, cross-examine, question, and present evidence on behalf of the grievant or the Town before the panel without being in violation of the provisions of Virginia Code §54.1-3904.
  8. The panel shall have the authority to determine the admissibility of evidence without regard to the burden of proof so long as a full and equal

opportunity is afforded to all parties for the presentation of their evidence. The Town shall present its evidence first in grievances challenging a disciplinary action and shall have the burden of persuasion on such issue.

10. All evidence shall be presented in the presence of the panel and the parties except by mutual consent of the parties.
11. The decision of the panel should be rendered as soon as possible, but, in any case, not later than five calendar days following the conclusion of the hearing.
12. The panel shall have the authority, if it finds (based on the greater weight of the evidence) that the grievant has been denied a benefit or wrongly disciplined without just cause (where such cause is required) to reverse, reduce, or otherwise modify such action and, where appropriate, to order the reinstatement of such employee to his former position with back pay.
  - a. Back pay shall not exceed pay for time actually lost or paid leave required to be taken due to such suspension or discharge, in an amount the panel believes equitable up to the amount of actual loss.
  - b. Any award of back pay shall be offset by interim earnings the grievant earned during the period of separation.
  - c. The panel also has the power to sustain, modify or reverse the Town's action.
13. The panel shall not have authority to do any of the following:
  - a. Formulate policies or procedures.
  - b. Alter existing policies or procedures.
  - c. Circumscribe or modify the rights afforded the parties in this procedure.
  - d. Grant relief greater than that which the grievant has requested in the request form.
14. The majority decision of the panel, acting within the scope of its authority, shall be final and binding, subject to existing policies, procedures, and law.
15. The question of whether the relief granted by a panel is consistent with written policy shall be determined by the Town Manager or his designee, unless the Town Manager or his designee has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Attorney for the Commonwealth for the County.

16. Either party may petition the Circuit Court for an order requiring implementation of the panel decision.

## VII. Compliance

- A. Except as noted in paragraph VII(B), after the initial submission of the grievance to the immediate supervisor, the failure of either party to comply with all substantial procedural requirements of this procedure without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five work days of receipt of written notification by the other party of the noncompliance. Such written notification by the grievant shall be made directly to the Town Manager.
- B. If one of the management respondents in Steps 1, 2, or 3 does not respond to the grievance, the grievant at his option may move the grievance to the next level by submitting it without the response to the next Step or the grievant can provide the Town Manager notice of the non-compliance as set forth in paragraph VII(A).
- C. The Town Manager shall determine compliance issues. Compliance determinations made by the Town Manager or his designee shall be subject to judicial review, which shall be initiated by the grievant filing a petition with the Circuit Court of the County within thirty calendar days of the compliance determination.

## **XIX. MODIFICATION OF POLICIES**

These policies do not constitute a contract of employment. The policies as a whole, or individually by section, may be modified, amended, or rescinded at the sole discretion of the Town Council without notice.

# Grievance Hearing Form

- Please type or print -

\_\_\_\_\_  
Name of Grievant

\_\_\_\_\_  
Job Title

\_\_\_\_\_  
Department

\_\_\_\_\_  
Telephone Number(s)

**Step 2 – Department Head Meeting:** To be completed by the grievant at Step 2 only and filed with the grievant's department with a copy sent to the Manager.

1. Date of the incident-giving rise to this grievance. \_\_\_\_\_

2. Date of the grievant's first awareness of the incident. \_\_\_\_\_

3. Have you had a Step 1 informal hearing with your immediate supervisor? \_\_\_Yes \_\_\_No (check one)

4. If yes, when? \_\_\_\_\_

5. Person(s) against whom this grievance is directed.

\_\_\_\_\_  
\_\_\_\_\_

6. Specify the incident that resulted in this grievance. (Use separate sheets if necessary.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

7. Specify the policy(ies), rule(s), or regulation(s) at issue. (Use separate sheets if necessary.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

8. Specify why the action taken was not proper. (Use separate sheets if necessary.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Specify the relief sought. (Use separate sheets if necessary.) \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of grievant

\_\_\_\_\_  
Date submitted

\*\*\*\*\*

**Department Head Response:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of departmental head and date

\_\_\_\_\_  
Date grievance was received

\*\*\*\*\*

**Request for Step 3 –Town Manager Meeting:** To be completed by the grievant at Step 3 only and filed directly with the Manager's office.

I wish to have my grievance heard at the Step 3 (Town Manager) level. I understand that, by requesting to have my grievance heard at Step 3, I am giving up the relief, if any, that was awarded to me at Step 2.

\_\_\_\_\_  
Signature of grievant

\_\_\_\_\_  
Date submitted

\*\*\*\*\*

**Town Manager Response:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Signature of Town Manager and date

\_\_\_\_\_  
Date grievance was received

\*\*\*\*\*

**Request for Step 4 – Grievance Panel Hearing:** To be completed by the grievant at Step 4 only and filed directly with the Town Manager.

1. I wish to have my grievance heard at the Step 4 (grievance panel) level. I understand that, by requesting to have my grievance heard at Step 4, I am giving up the relief, if any, that was awarded to me at Step 3.

2. Name of grievant's panel member: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_

\_\_\_\_\_  
Signature of grievant

\_\_\_\_\_  
Date submitted

**Town Panel Member**

Name of Town's panel member: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: (Home) \_\_\_\_\_ (Work) \_\_\_\_\_