

**TOWN OF Erwin  
PERSONNEL POLICY**

BE IT RESOLVED by the Town Board of Commissioners of the Town of Erwin 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 Erwin.

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## **ARTICLE I. GENERAL PROVISIONS**

### **Section 1. Purpose of the Chapter**

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

### **Section 2. At Will Employment**

The Town of Erwin is an at will employer. Nothing in this policy creates an employment contract or term between the Town and its employees. No person has the authority to grant any employee any contractual rights of employment.

All Town positions are subject to budget review and approval each year, and salary advancement is subject to annual funding and approval by the Board.

### **Section 3. Merit Principle**

All appointments and promotions shall be made solely on the basis of merit. All positions requiring the performance of the same duties and fulfillment of the same responsibilities shall be assigned to the same class and the same salary range. No applicant for employment or employee shall be deprived on employment opportunities or otherwise adversely affected as an employee because of such individual's race, color, religion, sex national origin, political affiliation, non-disqualifying disability, or age.

### **Section 4. Responsibilities of the Town Board of Commissioners**

The Town Board of Commissioners shall be responsible for establishing and approving personnel policies, the position classification and pay plan, and may change the policies and benefits as necessary. They also shall make and confirm appointments when so specified by the general statutes.

### **Section 5. Responsibilities of the Town Manager**

The Town Manager shall be responsible to the Town Board of Commissioners for the administration and technical direction of the personnel program. The Town Manager shall appoint, suspend, and remove all Town employees except those whose appointment is otherwise provided for by law. The Town Manager shall make appointments, dismissals and suspensions in accordance with the Town charter and other policies and procedures spelled out in other Articles in this Policy.

The Town Manager shall supervise or participate in:

- a) Recommending rules and revisions to the personnel system to the Town Board of Commissioners for consideration;
- b) Making changes as necessary to maintain an up to date and accurate position classification plan;
- c) Preparing and recommend necessary revisions to the pay plan;
- d) Determining which employees shall be subject to the overtime provisions of FLSA;
- e) establishing and maintaining a roster of all persons and authorized positions in the municipal service, setting forth each position and employee, class title of position, salary, any changes in class title and status, and such data as may be desirable or useful;

- f) Developing and administering such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town;
- g) Developing and coordinating training and educational programs for Town employees;
- h) Investigating periodically the operation and effect of the personnel provisions of this chapter; and
- l) performing such other duties as may be assigned by the Town Board of Commissioners not inconsistent with this Chapter.

## **Section 6. Application of Policies, Plan, Rules, and Regulations**

The personnel policy and all rules and regulations adopted pursuant thereto shall be binding on all Town employees. The Town Manager, Town Attorney, members of the Town Board of Commissioners and advisory boards and commissions will be exempted except in sections where specifically included. An employee violating any of the provisions of this policy shall be subject to appropriate disciplinary action, as well as prosecution under any civil or criminal laws which have been violated.

## **Section 7. Departmental Rules and Regulations**

Because of the particular personnel and operational requirements of the various departments of the Town, each department is authorized to establish supplemental written rules and regulations applicable only to the personnel of that department. All such rules and regulations shall be subject to the approval of the Town Manager, and shall not in any way conflict with the provisions of this Policy, but shall be considered as a supplement to this Chapter.

## **Section 8. Definitions**

For the purposes of this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

**Full-time employee.** An employee who is in a position for which an average work week equals at least 35 hours, and continuous employment of at least 12 months, are required by the Town.

**Part-time employee.** An employee who is in a position for which an average work week of at least 20 hours and less than 40 hours and continuous employment of at least 12 months are required by the Town.

**Regular employee.** An employee appointed to a full or part-time position who has successfully completed the designated probationary period.

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

**Limited service employee.** A person hired by the Town to perform designated services. Many work on a seasonal or short-term basis. Limited service employees are paid on an hourly basis only for hours actually worked and appointed to a position for which either the average work week required by the Town over the course of a year is less than 20 hours, or continuous employment required by the Town is less than 12 months. They are not eligible for benefits except those mandated by State and Federal government. If work continues for more than 12 months hours worked in a 12 month period cannot exceed 1000 hours.

**Trainee.** An employee status when an applicant is hired (or employee promoted) who does not meet all of the requirements for the position. During the duration of a trainee appointment, the employee is on probationary status.

## **ARTICLE II. POSITION CLASSIFICATION PLAN**

### **Section 1. Purpose**

The position classification plan provides a complete inventory of all authorized and permanent positions in the Town service, and an accurate description and specification for each class of employment. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities.

### **Section 2. Composition of the Position Classification Plan**

The classification plan shall consist of:

- 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) Written specifications for each class of positions; and
- d) An allocation list showing the class title of each position in the classified service.

### **Section 3. Use of the Position Classification Plan**

The classification plan is to be used:

- a) As a guide in recruiting and examining applicants for employment;
- b) In determining lines of promotion and in developing employee training programs;
- c) In determining salary to be paid for various types of work;
- d) In determining personnel service items in departmental budgets; and
- e) In providing uniform job terminology.

### **Section 4. Administration of the Position Classification Plan**

The Town Manager shall allocate each position covered by the classification plan to its appropriate class, and shall be responsible for the administration of the position classification plan. The Town Manager shall periodically review portions of the classification plan and recommend appropriate changes to the Town Board of Commissioners.

### **Section 5. Adoption of the Position Classification Plan**

The position classification plan shall be adopted by the Town Board of Commissioners and shall be on file with the Town Clerk. Copies will be available to all Town employees for review upon request. New positions shall be established upon recommendation of the Town Manager and approval of the Town Board of Commissioners after which the Town Manager shall either allocate the new position into the appropriate existing class, or revise the position classification plan to establish a new class to which the new position may be allocated.

## **Section 6. Request for Reclassification**

Any employee who considers the position in which classified to be improper shall submit a request in writing for reclassification to such employee's immediate supervisor, who shall immediately transmit the request through the department head to the Town Manager. Upon receipt of such request, the Town Manager shall study the request, determine the merit of the reclassification, and make a decision to revise the classification and pay plan where necessary.

# **ARTICLE III. THE PAY PLAN**

## **Section 1. Definition**

The pay plan includes the basic salary schedule and the "Assignment of Classes to Grades and Ranges" adopted by the Board of Commissioners. The salary schedule consists of rates of pay for minimum or beginning, maximum, and may include intervening rates of pay for all classes of positions, and a designation of the standard hours in the work week for each position.

## **Section 2. Administration and Maintenance**

The Town Manager shall be responsible for the administration and maintenance of the pay plan. All employees covered by the pay plan shall be paid at a rate listed within the salary range established for the respective position classification, except for employees in trainee status or employees whose existing salaries are above the established maximum rate following transition to a new pay plan.

The pay plan is intended to provide equitable compensation for all positions, reflecting differences in the duties and responsibilities, the comparable rates of pay for positions in private and public employment in the area, changes in the cost of living, the financial conditions of the Town, and other factors. To this end, each budget year the Town Manager shall make comparative studies of all factors affecting the level of salary ranges including the consumer price index, anticipated changes in surrounding employer plans, and other relevant factors, and will recommend to the Town Board of Commissioners such changes in salary ranges as appear to be pertinent. Such changes shall be made in the salary ranges such that the hiring rate, all intervening rates and the maximum change according to the market.

Periodically, the Town Manager shall recommend that individual salary ranges be studied and adjusted as necessary to maintain market competitiveness. Such adjustments will be made by increasing or decreasing the assigned salary grade for the class and adjusting the rate of pay for employees in the class when the action is approved by the Town Board of Commissioners.

## **Section 3. Starting Salaries**

All persons employed in regular positions approved in the position classification plan, including temporary employees (such as Reserve Police Officers) employed to perform the same duties as full and part-time regular positions, shall be employed at the minimum salary for the classification in which they are employed; however, exceptionally well qualified applicants may be employed above the minimum of the established salary range upon approval of the Town Manager.

## **Section 4. Trainee Designation and Provisions**

Applicants being considered for employment or Town employees who do not meet all of the requirements for the position for which they are being considered may be hired, promoted, demoted, or transferred by the Town Manager to a "trainee" status. In such cases, a plan for training, including a time schedule, must be prepared by the department head. "Trainee" salaries may be no more than two grades below the minimum salary established for the position for which the person is being trained. A new employee designated as

"trainee" shall be regarded as a probationary employee.

If the training is not successfully completed to the satisfaction of the Town Manager, the trainee shall be transferred, demoted, or dismissed. If the training is successfully completed, the employee shall be paid at least at the minimum rate established for the position for which the employee was trained.

### **Section 5. Probationary Pay Increases**

Subject to the availability of funds, employees hired, promoted, or reclassified into the minimum rate of the pay range shall receive a salary increase within the pay range of up to 5% upon successful completion of the probationary period, upon completion of six months of satisfactory service if the employee is not on probation.

Employees serving a twelve-month probationary period may be considered for this increase after six months of employment. Employees hired or promoted more than 15% above the hiring rate of the pay table are not eligible for a probationary increase.

### **Section 6. Merit Pay**

Subject to availability of funds, upward movement within the established salary range for an employee is not automatic, but rather based upon specific performance-related criteria. Procedures for determining performance levels and performance pay increases or other performance-related movement within the range shall be established in procedures approved by the Town Manager.

### **Section 7. Merit Pay Bonus**

Subject to availability of funds, employees who are at the top rate of the salary range for their position classification are eligible to be considered for a Merit Bonus at their regular performance evaluation time. Merit bonuses shall be awarded based upon the performance of the employee as described in the performance evaluation and in the same amounts as employees who are within the salary range. Merit bonuses shall be awarded in lump sum payments and do not become part of base pay.

### **Section 8. Salary Effect of Promotions, Demotions, Transfers, and Reclassifications**

**Promotions.** When an employee is promoted, the employee's salary shall normally be advanced to the minimum level of the new position, or to a salary which provides an increase of at least 5% over the employee's salary before the promotion, provided, however, that the new salary may not exceed the maximum rate of the new salary range. The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility.

**Demotions.** When an employee is demoted to a position for which qualified, the salary shall be set at the rate in the lower pay range which provides a salary commensurate with the employees' qualifications to perform the job when the demotion is not the result of discipline. If the current salary is within the new range, the employee's salary may be retained at the previous rate if appropriate. If the demotion is the result of discipline, the salary shall be decreased at least 5%, but may be no greater than the maximum of the new range.

**Transfers.** The salary of an employee reassigned to a position in the same class or to a position in a different class within the same salary range shall not be changed by the reassignment.

**Reclassifications.** An employee whose position is reclassified to a class having a higher salary range shall receive a pay increase of 5% or an increase to the minimum of the new pay range, whichever is higher. If the employee has completed probation, the employee's salary shall be advanced to at least the probation completion amount in the new range.

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 9. Salary Effect of Salary Range Revisions**

When a class of positions is assigned to a higher salary range, employees in that class shall receive a pay increase of at least 5%, or to the minimum step of the new range, whichever is higher. If the employee has passed probation, the employee's salary shall be advanced at least to the probation completion amount in the new range. When a class of positions is assigned to a lower salary range, the salaries of employees in that class will remain unchanged. If this assignment to a lower salary range results in an employee being paid at a rate above the maximum step established for the new class, the salary of that employee shall be maintained at that level until such time as the employee's salary range is increased above the employee's current salary.

### **Section 10. Transition to a New Salary Plan**

The following principles shall govern the transition to a new salary plan, subject to availability of funds:

- 1) No employee shall receive a salary reduction as a result of the transition to a new salary plan.
- 2) All employees who have completed probation and are being paid at a rate lower than the probationary rate established for their respective classes shall have their salaries raised to the new probationary for their classes.
- 3) All employees being paid at a rate above the maximum rate established for their respective classes shall be maintained at that salary level until such time as the employees' salary range is increased above the employees' current salary.

### **Section 11. 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 provided by procedures approved by the Town Manager.

### **Section 12. Fair Labor Standards Act and Overtime Compensation**

Employees of the Town can be requested and may be required to work in excess of their regularly scheduled hours as necessitated by the needs of the Town and determined by the Manager.

The Town will comply with the Fair Labor Standards Act (FLSA). The Town Manager shall determine which jobs are "non-exempt" and are therefore subject to the Act in areas such as hours of work and work periods, rates of overtime compensation, and other provisions.

Employees are expected to work during all assigned periods exclusive of breaks or mealtimes. Employees are not to perform work at any time that they are not scheduled to work, unless they receive approval from their immediate supervisor, except in cases of emergency.

Non-exempt employees: Non-exempt employees will be compensated at a straight time rate for hours up to the FLSA established limit for their position. For most positions the limit is 40 hours in a 7 day period. Sworn Police and uniformed Fire employees have longer pay cycles for determining eligibility of overtime—Police up to 171 hours worked in a 28 day cycle / Fire 212 hours in a 28 day cycle.

Hours worked beyond the FLSA established limit will be compensated in either time off or pay at the appropriate overtime rate. Compensatory leave requires approval by the Manager when creating a balance that exceeds 100 hours.

In determining eligibility for overtime in a work period, only hours actually worked shall be considered; in no event will vacation, sick leave, or holidays be included in the computation of hours worked for FLSA purposes. Nonexempt employees separating from employment shall be paid for their compensatory time balances.

Whenever practicable, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of paying overtime. When time off within the work period cannot be granted, overtime worked will be compensated – pay or time off at a time and a half rate -- in accordance with the FLSA..

When employees are required to work long and continuous hours, the Board may approve compensation at time and a half or double time for those hours worked and/or grant time off with pay for rest and recuperation to ensure safe working conditions.

Exempt employees: Employees in positions determined to be "exempt" from the FLSA (as Executive, Administrative, or Professional staff) are paid on a salary basis and will not receive pay for hours worked in excess of their normal work periods. These employees may be granted compensatory leave by their supervisor on an hour for hour basis where the convenience of the Town allows and as approved the Board. Such compensatory time is not guaranteed to be taken and ends without compensation upon separation from the organization.

The Town intends to make deductions from the pay of exempt employees for authorized reasons and prohibits improper pay deductions. Exempt employees who wish to question deductions they believe to be improper may use the Town's Grievance procedure, as explained in this policy. If the deduction is found to be improper the Town will reimburse the employee for lost pay.

In declared disaster or emergency situations requiring long and continuous hours of work, exempt employees may be compensated at a rate of up to double time and/or be granted time off with pay for rest and recuperation to ensure safe working conditions for the duration of the emergency period, at the approval of the Board.

Employees of the Town can be requested and may be required to work in excess of their regularly scheduled hours as necessitated by the needs of the Town and determined by the Department Head. In any emergency situation, salaried employees may be switched from salary to hourly wages for the duration of the emergency period if their predominant duties are of a non-exempt nature.

### **Rest Periods and Breaks**

Due to the variation in work schedules and needs among departments, the Town makes no attempt to define a uniform policy for rest periods or breaks. Department supervisors may establish appropriate rest period practices which best serve the Town's interest within the work units under their supervision. Such practices shall be subject to review of t he Manager, and shall be limited to one rest period or break in the morning and in the afternoon no longer than 15 minutes each. Each employee's regular work day schedule will include a meal break (normally mandatory) of at least 30 minutes, but not more than one hour, near the middle of their shift. The meal breaks are unpaid time and the two 15 minute rest periods are paid time. If an employee must miss a meal break due to an emergency situation, the supervisor will make a reasonable effort to accommodate a meal break later in the shift.

### **Break Time for Nursing Mothers**

Pursuant to the Fair Labor Standards Act, the Town will provide a break time for any employee to express fresh milk for her nursing child for one year after the child's birth each time such employee has the need to express milk. The Town will provide an employee with a place other than a bathroom that is shielded from co-workers and the public which may be used by an employee to express breast milk.

### **Section 13. Call-back and Stand-by Pay**

The Town provides a continuous twenty-four hour a day, seven day a week service to its customers. Therefore, it is necessary for certain employees to respond to any reasonable request for duty at any hour of the day or night. One of the conditions of employment with the Town is the acceptance of a share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails to respond to reasonable calls for emergency service, either special or routine, the employee shall be subject to disciplinary actions up to and including dismissal by the Town Manager.

**Call-back.** Non-exempt employees will be guaranteed a minimum payment of two hour's wages for being called back to work outside of normal working hours. "Call-back" provisions do not apply to previously scheduled overtime work.

**Stand-by.** Non-exempt employees required to be on "stand-by" duty will be paid for five *hours* of work for each week (approximately 128 hours, excluding work time) of stand-by time they serve. Stand-by compensation for less than one full week shall be determined by the ratio of .04 hours of pay per one hour of stand-by time. Hours actually worked while on stand-by are calculated beginning when the employee reports to the work site and are added to the regular total of hours worked for the week. Stand-by time is defined as that time when an employee must remain near an established telephone or otherwise substantially restrict personal activities in order to be ready to respond when called.

### **Section 14. Payroll Deduction**

Deductions shall be made from each employee's salary, as required by law. Additional deductions may be made upon the request of the employee on determination by the Town Manager as to capability of payroll equipment and appropriateness of the deduction.

### **Section 15. Hourly Rate of Pay**

Employees working in a part-time or temporary capacity with the same duties as full-time employees will work at a rate in the same salary range as the full-time employees. The hourly rate for employees working other than 40 hours per week, such as police officers working an average 42 hours per week, will be determined by dividing the average number of hours worked scheduled per year into the annual salary for the position.

### **Section 16. Longevity Pay**

Subject to availability of funds, full-time and part-time employees of the town are compensated for years of service by payment of a longevity supplement based on the following table:

<u>Years of Service</u>	<u>Longevity Amount</u>	<u>Years of Service</u>	<u>Longevity Amount</u>
Less than 5 years	\$100	15-19	1.50%
5-9	1.00%	20-24	1.75%
10-14	1.25%	25 plus	2.00%

Years of service are calculated on a calendar year basis as of June 30 of each year. Longevity pay will be issued on the last regular pay period in November or on a date in November designated by the City Manager.

### **Section 17: Payment of Travel Expenses**

Expenses incurred as a part of the job for the Town will be reimbursed at the rate set by the IRS, and meals and lodging reimbursed at actual reasonable costs, or an established per diem. When anticipated that the per diem will be exceeded, the Board may elect to increase the rate before the travel is incurred. To receive a cash advance the appropriate travel authorization form must be completed by the employee

and submitted to the Manager no later than 5 working days prior to the date upon which travel will commence.

All travel claims must be supported by detailed documentation, usually in the form of receipts or similar vouchers.

The Manager may deny reimbursement of any questionable, unsupported or excessive expense claim submitted by the employee.

Each trip to a destination outside the state must be authorized by the Manager.

### **Section 18: Certification Salary Increases**

Subject to availability of funds, employees who achieve certifications above those required by their classifications or which are directly related to higher skills or different potential tasks may be rewarded with a pay increase in an amount recommended by the Town Manager. The bonus may be either in the form of a salary increase within the range, or a one-time payment not a part of base pay. Employees are eligible for these increases for achieving certifications directly related to their work as such as code enforcement, utility plant operations, utility collection and distribution system operations, inspections, and for advanced or specialized law enforcement training.

### **Section 19: Reimbursement of Training Expenses**

An employee who enters a voluntary but job-related training program or educational course, with the prior approval of the Manager, may be reimbursed for expenses such as tuition and books upon successful completion of the program. The Board may set annual limits for the amount of reimbursement. If the employee leaves employment with the Town within twenty-four months thereafter, the employee shall reimburse the Town for such expenses.

### **Section 20. Pay for "Interim" assignment in a Higher Level Classification**

An employee who is formally designated for a period of at least one month to perform the duties of a job that is assigned to a higher salary grade than that of the employee's regular classification shall receive an increase for the duration of the "acting" assignment. The employee shall receive a salary adjustment to the entry level of the job in which the employee is acting or an increase of 10%. Criteria involved in determining the amount of compensation shall include

- a) The difference between the existing job and that being filled on a temporary basis, and
- b) The degree to which the employee is expected to fulfill all the duties of the temporary assignment.

The salary increase shall be temporary and the employee shall go back to the salary he or she would have had if not assigned to the "acting" role upon completion of the assignment.

## ARTICLE IV. RECRUITMENT AND EMPLOYMENT

### Section 1. Equal Employment Opportunity Policy

It is the policy of the Town to foster, maintain and promote equal employment opportunity. The Town shall select employees on the basis of the applicant's qualifications for the job and award them, with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, sex, race, color, religion, national origin, disability, political affiliation, genetic predisposition or marital status. Applicants with physical disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of duties with or without reasonable accommodation.

### Section 2. Implementation of Equal Employment Opportunity Policy

All personnel responsible for recruitment and employment will continue to 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 to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, disability, national origin, political affiliation, genetic predisposition or marital status. Notices with regard to equal employment matters shall be posted in conspicuous places on Town premises in places where notices are customarily posted.

### Section 3. Recruitment, Selection and Appointment

**Recruitment Sources.** When position vacancies occur, Department Heads shall publicize these opportunities for employment, including applicable salary information and employment qualifications. Information on job openings and hiring practices will be provided to recruitment sources, including organizations and news media available to minority applicants. In addition, notice of vacancies shall be posted at designated conspicuous sites within departments. Individuals shall be recruited from a geographic area as wide as necessary to ensure that well-qualified applicants are obtained for Town service. The North Carolina Employment Security Commission shall normally be used as a recruitment source.

**Job Advertisements.** Jobs will be advertised in local newspapers, professional publications, and other relevant publications in order to establish a diverse and qualified applicant pool. Employment advertisements shall contain assurances of equal employment opportunity and shall comply with Federal and State statutes.

**Application for Employment.** All persons expressing interest in employment with the Town shall be given the opportunity to file an application for employment for positions which are vacant.

**Applicant Interest Card.** Persons interested in employment with the Town may complete an applicant interest card concerning all of the positions for which they wish to apply. These cards will be maintained for a period of six months. When a vacancy occurs in positions of interest, the card will be sent, notifying the person and requesting that the person complete an application before the designated deadline.

**Application Reserve File.** Applications for candidates not selected shall be kept in an inactive reserve file for a period of two years, in accordance with Equal Employment Opportunity Commission guidelines.

**Medical Examination, Physician's Certification and Drug Testing.** Prospective or current employees may be required to submit to a medical and/or psychological examination or inquiry to determine if they are able to perform the essential duties and responsibilities of the job.

Candidates for Town employment will also be required to pass a drug test prior to employment, and may be required to take a drug or alcohol test based on reasonable suspicion of use or impairment on duty. Employees in designated safety-sensitive positions will be subject to random drug testing.

**Selection.** Department heads shall make such investigations and conduct such examinations as necessary to assess accurately the knowledge, skills, and experience qualifications required for the position, including criminal history where job-related using the DCI when needed. All selection devices administered by the Town shall be valid measures of job performance.

**Appointment.** Before any commitment is made to an applicant either internal or external, the Department Head shall make recommendations to the Town Manager with a recommendation of the position to be filled, the salary to be paid, and the reasons for selecting the candidate over other candidates. The Town Manager shall approve appointments and the starting salary for all applicants.

#### **Section 4. Probationary Period**

An employee appointed or promoted to a permanent position shall serve a probationary period. Employees shall serve a six month probationary period, except that emergency personnel such as sworn police personnel, and department heads shall serve a twelve month probationary period. During the probationary period, supervisors shall monitor an employee's performance and communicate with the employee concerning performance progress. Employees serving a twelve-month probation shall have a probationary review at the end of six months as well as before the end of twelve months.

An important purpose of the probationary period is to provide an opportunity for the appointee to adjust to the new job. Likewise it serves as a trial period during which the employee demonstrates his or her ability to perform the work, to accept additional responsibility, to demonstrate good work habits and to work well with the public and fellow employees. 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 should be documented in the employee's personnel file. The supervisor shall recommend in writing whether the probationary period should be completed, extended, or the employee transferred, demoted, or dismissed. Probationary periods may be extended for a maximum of six additional months.

Disciplinary action, including demotion and dismissal, may be taken at any time during the probationary period of a new hire without following the steps outlined in this policy. A promoted 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. Promoted and demoted employees who are on probation retain all other rights and benefits such as the right to use of the grievance procedures.

Upon successful completion of the probationary period, the employee is eligible to be considered for a probationary pay increase as outlined in Article III, and to use annual leave as outlined in Article VII.

#### **Section 5. Promotion**

Promotion is the movement of an employee from one position to a vacant position in a class assigned to a higher salary range. It is the Town's policy to create career opportunities for its employees whenever possible. Therefore, when a current employee applying for a vacant position is best suited of all applicants, that applicant shall be appointed to that position. The Town will balance three goals in the employment process: 1) the benefits to employees and the organization of promotion from within; 2) providing equal employment opportunity and a diversified workforce to the community; and 3) obtaining the best possible employee who will provide the most productivity in that position.

Therefore, except in rare situations where previous Town experience is essential or exceptional qualifications of an internal candidate so indicate, the Town will consider external and internal candidates for selection rather than automatically promote from within. Candidates for promotion shall be chosen on the basis of their qualifications and their work records. Internal candidates shall apply for promotions using the same

application process as external candidates.

Department heads are responsible for developing staff capacity to provide back-up for coworkers and higher level positions; to prepare staff and the organization for smooth transitions; and to insure capability to cover interim absences and vacancies.

### **Section 6. Demotion**

Demotion is the movement of an employee from one position to a position in a class assigned to a lower salary range. Demotion may be voluntary or involuntary. An employee whose work or conduct in the current position is unsatisfactory may be demoted provided that the employee shows promise of becoming a satisfactory employee in the lower position. Such disciplinary demotion shall follow the disciplinary procedures outlined in this chapter.

An employee who wishes to accept a position with less complex duties and reduced responsibilities may request a voluntary demotion. A voluntary demotion is not a disciplinary action and is made without using the above-referenced disciplinary procedures.

### **Section 7. Transfer**

Transfer is the movement of an employee from one position to a position in a class in the same salary range. If a vacancy occurs and an employee in another department is eligible for a transfer, the employee shall apply for the transfer using the usual application process. The Department Head wishing to transfer an employee to a different department or classification shall make a recommendation to the Town Manager with the consent of the receiving department head. Any employee transferred without requesting the action may appeal the action in accordance with the grievance procedure outlined in this chapter. An employee who has successfully completed a probationary period may be transferred into the same classification without serving another probationary period.

## ARTICLE V. CONDITIONS OF EMPLOYMENT

### Section 1. Work Schedule and Employee Attendance

Department heads shall establish work schedules, with the approval of the Town Manager, which meet the operational needs of the department in the most cost effective manner possible.

Because Town services are essential and continuous, an employee shall avoid unnecessary absences and tardiness. Attendance and punctuality are important responsibilities of the employee which may influence his/her future eligibility for a merit pay increase for promotion.

The employee shall be required to call his supervisor in advance to advise him/her when illness prevents reporting to work, or when the employee expects to be late for work because of unusual and unavoidable circumstances.

If an employee is away from the job for 3 consecutive work days without notice, it may be presumed that the employee has resigned and forfeited any claim to terminal pay for accumulated vacation.

### Section 2. Political Activity

Each employee has a civic 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 or political nature, may attend political meetings, may advocate and support the principles or policies of civic or political organizations 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 or partisan 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 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) Coerce or compel contributions from another employee of the Town for political or partisan purposes;
- e) Use any supplies or equipment of the Town for political or partisan purposes; or
- f) Be a candidate for nomination or election to office under the Town Charter;

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

### Section 3. Outside Employment

The work of the Town shall have precedence over other occupational interests of employees. All outside employment for salaries, wages, or commissions and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the Department Head. The Department Head will review such employment for possible conflict of interest and then submit a record of the employment and review to the personnel file. Conflicting or unreported outside employment are grounds for disciplinary action up to and including dismissal. Documentation of the approval of outside employment will be placed in the employee's personnel file.

Examples of conflicts of interest in outside employment *include but are not limited to:*



- a) Employment with organizations or in capacities that are regulated by the employee or employee's department; or
- b) employment with organizations or in capacities that negatively impact the employee's perceived integrity, neutrality, or reputation related to performance of the employee's Town duties .(such as working for a company where significant Town purchases are ordered by the employee).

The Town may require that employees report outside employment including salaries, wages, or commissions and all self-employment in advance to the employee's supervisor. The supervisor would review such employment for possible conflict of interest and then submit a record of the employment and review to the personnel file. Documentation of the approval of outside employment would be placed in the employee's personnel file.

This section does not apply to volunteers performing work for the Town, nor to volunteer activities of employees.

**Off the job injuries:** An employee who sustains an injury or illness in connection with outside employment and is receiving Workers' Compensation from that employer shall not be entitled to receive Town Workers Compensation benefits or use accrued Town sick leave.

In cases where that off the Town job employment-related injury or illness results in temporary disability, an employee must either

- a) request and obtain a leave of absence without pay;
- b) request and use accrued vacation leave or compensatory time; or
- c) Be subject to termination by the Town due to lack of availability for work, following a three month absence.

#### **Section 4. Dual Employment**

A full or part-time employee of the Town may simultaneously hold another position with the Town if the temporary position is in a different department and clearly different program area from that of the full or part-time position. However, the work of the full or part-time position shall take precedence over the temporary position, and such work will not count toward the calculation of overtime for pay or time off.

#### **Section 5. Employment of Relatives**

The Town prohibits the hiring and employment of immediate family in permanent positions within the same work unit. "Immediate Family" is defined in Article VII, Section 12. The Town also prohibits the employment of any person into a permanent position who is an immediate family member of individuals holding the following positions: Mayor, Mayor Pro Temp, Town Board of Commissioners Member, Town Manager, Town Clerk, or Town Attorney. Otherwise, the Town will consider employing family members or related persons in the service of the Town, provided that such employment does not:

- 1) Result in a relative supervising relatives;
- 2) result in a relative auditing the work of a relative;
- 3) Create a conflict of interest with either relative and the Town; or
- 4) Create the potential or perception of favoritism.

This provision shall not apply retroactively to anyone employed when the provision is adopted by the Town.

#### **Section 6. Harassment Prohibited**

The Town prohibits harassment by supervisors and co-workers in any form that is based on sex, race, color, religion, national origin, age, and/or disability. Harassment is defined as conduct that culminates in tangible employment action or is sufficiently severe or pervasive to create a hostile work environment. In addition, bullying of other employees is also prohibited.

A particular form of harassment, sexual harassment is defined as 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.

Sexual harassment includes repeated offensive sexual flirtations, continual or repeated commentaries about an individual's body, offensive sexual language, and the display in the workplace of sexually suggestive pictures of objects.

Any employee who believes that he or she may have a complaint of harassment may follow the Grievance Procedure described in this Chapter or may file the complaint directly with the Town Manager, department head, or other Town official. The Town Manager will insure that an investigation is conducted into any allegation of sexual harassment and advise the employee and appropriate management officials of the outcome of the investigation.

Employees who are found to be engaged in harassment are subject to disciplinary action up to and including dismissal. Employees making complaints of sexual harassment are protected against retaliation alleged harassers or other employees.

## **Section 7. Expectation of Ethical Conduct**

The proper operation of Town government requires that public officials and employees be independent, impartial, and responsible to the people; that governmental decisions and policy be made in the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

As stewards of public resources and holders of the public trust, Town employees are expected to uphold the highest standards of ethical conduct while fulfilling their job duties and responsibilities.

Employees shall not accept gifts, loans or thing of value (more than \$25) from organizations, business firms, or individuals with whom they have official relationships because of Town business. These limitations do not prohibit the acceptance of articles of negligible value which are distributed generally, nor prohibit employees from accepting social courtesies that promote good public relations, nor prohibit employees from obtaining loans from public lending institutions. It is particularly important that inspectors, contracting officers, and enforcement officers guard against relationships that might be construed as evidence of favoritism, coercion, unfair advantage, or collusion.

## **Section 8. Performance Evaluation**

Supervisors and/or Department Heads shall conduct Performance Evaluation conferences with each employee at least once a year. These performance evaluations shall be documented in writing and placed in the employee's personnel file. Procedures for the performance evaluation program shall be published by the Town Manager.

## **Section 8. Performance Evaluation**

The supervisor shall evaluate performance beginning with the employee's first day on the job. Through open communications with the supervisor, the employee should obtain a clear understanding of what is expected related to job performance, and a periodic assessment of his or her job strengths and areas for improvement.

The supervisor shall conduct performance evaluation conferences with employees prior to the completion of the probationary period and at least once each year thereafter. The performance evaluation conferences shall consist of two-way discussions between employee and supervisor(s). The discussions should cover areas of accomplishment and performance strengths, areas for improvement, training needs, and goals for the upcoming year. The overall purpose of performance evaluation will be to improve the employee's performance. A summary of these performance evaluation conferences shall be documented in writing.

## **Section 9. Safety**

Safety is the responsibility of both the Town and employees. It is the policy of the Town to establish a safe work environment for employees. The Town shall establish a safety program including policies and procedures regarding safety practices and precautions and training in safety methods. Department Heads and supervisors are responsible for insuring the safe work procedures of all employees and providing necessary safety training programs. Employees shall follow the safety policies and procedures and attend safety training programs as a condition of employment. Employees who violate such policies and procedures shall be subject to disciplinary action up to and including dismissal.

## **Section 10. Substance Abuse Policy**

The Town may establish policies and procedures related to employee substance abuse in order to insure the safety and well-being of citizens and employees, and to comply with any state, federal, or other laws and regulations.

The Town:

- a) prohibits employees from being under the influence of legal or illegal substances while on duty,
- b) is authorized to conduct pre-employment drug tests for all full-time and part-time positions,
- c) is authorized to random drug tests for full-time and part-time positions designated as safety sensitive positions
- d) is authorized to conduct drug and alcohol tests based on a reasonable suspicion that the employee in any Town position is under the influence of substances on the job, and
- e) Where authorized by federal law, is authorized to conduct both random and post accident drug tests for any employees subject to federal Department of Transportation drug-testing regulations.

## **Section 11. Smoking and Tobacco Use**

Tobacco use (smoking and/or use of tobacco products) is prohibited within municipal buildings and in municipal vehicles.

Department Directors are authorized to designate outside areas at least twenty (20) feet away from any entry into those municipal buildings under the control of such department to accommodate employees who use tobacco products.

## **Section 12. Use of Town Property and Equipment:**

Town equipment, materials, tools and supplies shall not be available for personal use and are not to be removed from Town property except in the conduct of official Town business. No employee shall purchase for personal use any equipment or supplies through Town purchase accounts.

**Vehicles:** An employee shall care for vehicles and equipment owned by the Town in the same responsible manner in which he/she should care for his/her own. Vehicles are to be used for official Town business, and personal use of Town vehicles and use of Town gasoline in privately owned vehicles is strictly prohibited. Under extraordinary circumstances such as weather related emergencies (snow storms, hurricanes or flooding events) the Town Manager may temporarily authorized the use of Town vehicles for commuting to and from work or for shuttle runs to pick up employees whose personal vehicles are not suited for use in such conditions.

No Town-operated vehicle shall be permitted to idle for prolonged periods of time. Situations where idling is permitted and prohibited are spelled out in administrative procedures available from the Manager.

**Telephones, e-mail and Internet:** Usage of Town telephones and computers for personal communications and Internet connections or e-mail for personal reasons should be brief. Employees should not access pornographic sites or access personal networking sites through Town equipment, or use Town phones for personal long-distance calls.

Under North Carolina law e-mail sent or received by the Town is considered a public record and is subject to inspection upon request.

**Social Networking sites:** The Town recognizes that employees may choose to use social media sites (such as networking sites, personal email, personal websites, blogs, comment boards, chat rooms, and other social media resources) off the job. We value employee interest in engaging in these forms of personal expression, as long as they are on the employee's own time, and utilizing their own computer resources.

However, employees should be mindful that they are representatives of the Town of Erwin at all times and their actions, whether on or off duty, can affect the Town and its ability to serve the citizens effectively. Specifically, when utilizing the internet, social media sites or personal email on the employee's own time and using personal computer resources, employees should be mindful and respectful to others in regard to what they post. Personal posts should not create a harassing, demeaning, or hostile work environment for any employee, interfere with another employee's work, or erode the public's confidence in the Town organization. Embarrassing or inappropriate posts or comments about other Town employees, officials, customers, or citizens are prohibited under this policy, as are pictures of the employee or coworkers in Town uniform without permission of the Town Manager. Employees are also cautioned not to purport to represent the Town on personal networking sites.

Finally, accessing social media sites is not a job requirement for most positions, and such assessing is prohibited while on Town time unless it is necessary for the completion of legitimate work purposes. Requests for access to any social media site using Town equipment should be requested in writing to the Town Manager's office by the department head.

**Surrender of property:** An employee who is terminated shall be required to return all items of equipment, including uniforms, owned by the Town. Return of such equipment in good condition may precede the issuance of an employee's final paycheck.

## **Section 13. Immigration Law Requirements**

All employees are required to furnish proof of citizenship or other required documents indicating a legal right to work in the United States. Copies of the completed I-9 form shall be a permanent part of their personnel file.

#### **Section 14. Credentials and Certifications**

Some duties assigned to positions in local government service may be performed only by persons who are duly licensed, registered or certified as required by the relevant law, rule or regulation. Employees in such classifications are responsible for maintaining current, valid credentials as required by law, rule or regulation, and must inform their supervisor immediately of any change in certification or license. Failure to obtain or maintain the required credentials is a basis for immediate dismissal without prior warning.

The Town will periodically check the driving records of employees to assure that appropriate licenses are still valid. Employees with marginal records (points or violations) may be removed from operation of vehicles at the discretion of the Manager, and may be terminated if a non-driving position is not available.

An employee who is dismissed shall be given a written statement of the reason for the action and his/her appeal rights.

#### **Section 15. Weapons Policy**

No person employed by the Town, either paid or volunteer, is permitted to possess any firearm or other dangerous weapon while performing duties, including while on Town property or any Town-owned vehicle or in any personal vehicle used by the employee to perform duties. (Law enforcement officers are exempt from this policy while performing their law enforcement tasks.)

Violation of this policy will result in mandatory disciplinary action, up to and including dismissal for the first offence.

#### **Section 16. Genetic Information Non-Discrimination Act**

Pursuant to the Genetic Information Non-Discrimination Act of 2008 (hereinafter "GINA"), the Town of Erwin does not and will not discriminate against applicants, employees, former employees, and all such individual and members with regard to genetic information that may have been inadvertently or otherwise obtained by the Town. Furthermore, the Town will take every action possible to avoid requesting, purchasing, requiring or in any way discriminating or retaliating against an active employee or former employee with regard to genetic information.

From time to time the Town may request specific healthcare information from an applicant which could result in the Town requiring genetic information. The Town will take every possible action to avoid obtaining genetic information. To that end, the Town will include the following language in all requests for any medical information to an applicant, employee, former employee or healthcare provider:

The Genetic Information Nondiscriminatory Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of employees or their family members. In order to comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. "Genetic Information" as defined by GINA, and includes an individual's family medical history, the results of an individual's family medical history, the results of an individual's or family member's genetic test, the fact that an individual or individuals family members sought or seek genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by individual with family members receiving assistive reproductive services.

## ARTICLE VI. EMPLOYEE BENEFITS

### Section 1. Eligibility

All full-time and part-time employees of the Town are eligible for employee benefits as provided for in this Article which are subject to change at the Town's discretion. Temporary employees are eligible only for workers' compensation and FICA.

### Section 2. Group Health and Hospitalization Insurance

The Town provides group health and hospitalization insurance programs for full-time employees and their families, and part-time employees.

Employees who are scheduled to work 20 hours or more per week on a continuous year-round basis may, if they so desire, purchase available group health through the Town for themselves or for themselves and qualified dependents. A pro-rated amount of the cost of coverage paid for a full-time employee shall be paid by the Town with the remainder of the cost being paid by the employee. This pro-rated amount shall be based on regularly scheduled hours.

Information concerning cost and benefits shall be available to all employees.

### Section 3. Group Life Insurance

The Town may elect to provide group life insurance for each employee subject to the stipulations of the insurance contract. Employees may elect to purchase additional coverage and/or to insure other family members under this plan at their expense subject to the stipulations of the insurance contract.

**Retiree health insurance:** An employee of the Town of Erwin who applies for and receives full Local Government Employee Retirement System benefits will receive the following benefits:

- a. Retiring employees with 30 years or more of creditable service, with a minimum of 10 years of service with the Town of Erwin, may continue individual coverage on the group health insurance plan of the Town at no charge until they become eligible for Medicare.
- b. Retiring employees with 25 years or more of creditable service, with a minimum of 10 years of service with the Town of Erwin, may continue individual coverage on the group health insurance plan of the Town and pay 25 % of the cost and the Town will pay the remaining 75% of the cost until they become eligible for Medicare.
- c. Retiring employees with 20 years or more of creditable service, with a minimum of 10 years of service with the Town of Erwin, may continue individual coverage on the group health insurance plan of the Town and pay 50 % of the cost and the Town will pay the remaining 50% of the cost until they become eligible for Medicare.

The above provisions apply to employees hired before July 1, 2013; for employees hired after that date the following provisions apply

**Retiree health insurance:** Until they become eligible for Medicare, an employee of the Town of Erwin who applies for and receives full Local Government Employee Retirement System benefits will be able to continue health insurance coverage on the Town's group insurance plan (if allowed by the carrier) by paying the full employee rate.

### Section 4. Other Optional Group Insurance Plans

The Town may make other group insurance plans available to employees upon authorization of the Town Manager or Town Board of Commissioners.

## **Section 5. Retirement**

Each employee hired into a regular full-time or part-time position and who is expected to work for the Town more than 1,000 hours annually shall join the North Carolina Local Governmental Employees' Retirement System upon hiring into that position as a condition of employment.

## **Section 6. Supplemental Retirement Benefits**

The Town may provide supplemental retirement benefits for its full and part-time employees. Each law enforcement officer shall receive 401-K benefits as prescribed by North Carolina State Law. Each general employee may receive supplemental benefits as approved by the Town Board of Commissioners.

## **Section 7. Social Security**

The Town, to the extent of its lawful authority and power, has extended Social Security benefits for its eligible employees and eligible groups and classes of such employees.

## **Section 8. Workers' Compensation**

All employees of the Town (full-time, part-time, and temporary) are covered by the North Carolina Workers' Compensation Act and are required to report all injuries arising out of and in the course of employment to their immediate supervisors at the time of the injury in order that appropriate action may be taken at once.

Responsibility for claiming compensation under the Workers' Compensation Act is on the injured employee, and such claims must be filed by the employee with the North Carolina Industrial Commission within two years from date of injury. The department head will assist the employee in filing the claim.

This provision also applies to reactions to small pox vaccinations administered to Town employees under Section 304 of the Homeland Security Act. Such reactions shall be treated the same as any other workers' compensation claim as regards leave and salary continuation.

## **Section 9. Unemployment Compensation**

In accordance with Public Law 94-566 and subsequent amendments, local governments are covered by unemployment insurance. Town employees who are terminated due to a reduction in force or released from Town service may apply for benefits through the local Employment Security Commission office, where a determination of eligibility will be made.

## **Section 10. Tuition Assistance Program**

Full-time employees who have completed initial probation may apply for tuition reimbursement for courses taken on their own time, which will improve their skills for their current job or prepare them for promotional opportunities within the Town service. Tuition, registration, fees, laboratory fees, and student fees are eligible expenses. Employees may be reimbursed eligible expenses up to a total of five hundred dollars (\$500) per fiscal year. Satisfactory completion of the courses will be required for reimbursement. Requests for tuition assistance shall be submitted to the Department Head prior to course registration and are subject to the review and approval of Town Manager, subject to availability of funds.

## ARTICLE VII. HOLIDAYS AND LEAVES OF ABSENCE

### Section 1. Policy

The policy of the Town is to provide annual leave, sick leave, and holiday leave to all full-time and part-time employees, and to provide proportionately equivalent amounts to employees having average work weeks of different lengths. Employees shall accrue leave proportionately with each payroll.

### Section 2. Holidays

The Town of Erwin shall observe the annually established North Carolina State Government Holiday Schedule.

In order to receive a paid holiday, an employee must have worked the day before and the day after the holiday(s), or have been given approved leave.

New Years Day	Martin Luther King Jr. Day	Thanksgiving (2 Days)
Memorial Day	Good Friday	Christmas (2 or 3 Days)
Independence Day	Labor Day	
Veterans Day		

### Section 3. Holidays: Effect on Other Types of Leave

Regular holidays which occur during a vacation, sick or other leave period of any employee shall not be considered as vacation, sick, or other leave.

### Section 4. Holidays: Compensations When Work is required or regularly scheduled Off for Shift Personnel

Employees required to perform work on a designated holiday shall receive time and a half pay for each hour worked on the holiday, and shall receive straight-time hours of pay equivalent to the work week equivalent average day (8.4 hours for Police) in compensation for the holiday.

If a holiday falls on a regularly scheduled off-duty day for shift personnel, the employee shall receive straight-time hours of pay equivalent to the work week equivalent average day (8.4 hours for Police) in compensation for the holiday.

This Section of the policy will be in effect as of July 1, 2013.

### Section 5. Vacation Leave

Vacation leave is intended to be used for rest and relaxation, and may be used for medical appointments.

Vacation leave may also be used by employees who wish to observe religious holidays other than those granted by the Town. Employees who wish to use leave for religious observances must request leave from their respective department heads. The department head will attempt to arrange the work schedule so that an employee may be granted vacation leave for the religious observance. Annual leave for religious observance may be denied only when granting the leave would create an undue hardship for the Town.

### Section 6. Vacation Leave: Use by Probationary Employees

Employees serving a probationary period following initial employment may accumulate vacation leave but shall not be permitted to take vacation leave during the probationary period. This provision may be waived by the Town Manager for special circumstances such as a death in the family or other family emergency. Employees who have preplanned family vacations, family weddings, etc., at the time of employment will be



allowed to use leave without pay for such events.

Employees shall be allowed to take accumulated vacation leave after six months of service.

**Section 7. Vacation Leave: Accrual Rate**

Each full and part-time employee of the Town shall earn annual leave at the following schedule, prorated by the average number of hours in the workweek:

<b>Years of Service</b>	<b>Days Accrued Per Year</b>
0 - 2	10
3 - 9	12
10 - 14	15
15 - 19	18
20 plus	21

**Section 8. Vacation Leave: Maximum Accumulation**

Vacation leave may be accumulated without any applicable maximum until December 31 of each year. However, if the employee departs from service, payment for accumulated vacation leave shall not exceed 30 days. Effective the last payroll in the calendar year, any employee with more than 30 days of accumulated leave shall have the excess accumulation transferred to sick leave so that only 30 days are carried forward to January 1 of the next calendar year. Employees are not eligible to receive pay for vacation time not taken.

Employees with excess vacation leave (over 30 days) are converted 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 any one time. If an employee has excess leave accumulation 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 either in having vacation leave scheduled or in receiving any exception to the maximum accumulation.

**Section 9. Vacation Leave: Manner of Taking**

Employees shall be granted the use of earned vacation leave upon request in advance at those times designated by the Department Head which will least obstruct normal operations of the Town. Department heads are responsible for insuring that approved vacation leave does not hinder the effectiveness of service delivery. Vacation may be taken in one hour (1 hour) increments.

**Section 10. Vacation Leave: Payment upon Separation**

An employee who has successfully completed six months of the probationary period will normally be paid for accumulated vacation leave upon separation not to exceed 30 days, provided notice is given to the supervisor at least two weeks in advance of the effective date of resignation (4 weeks for department heads).. Any employee failing to give the notice required by this section shall forfeit payment for accumulated leave. The notice requirement may be waived by the Town Manager when deemed to be in the best interest of the Town. Employees who are involuntarily separated shall receive payment for accumulated annual leave subject to the 30 day maximum.

**Section 11. Vacation Leave: Payment upon Death**

The estate of an employee who dies while employed by the Town shall be entitled to payment of all the accumulated vacation leave credited to the employee's account not to exceed the maximums established in Section 8 of this Article.

## **Section 12. Sick Leave**

Sick leave may be granted to a probationary or regular employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease, when continuing work might jeopardize the health of others.

Sick leave may be used when an employee must care for a member of his or her immediate family who is ill but may not be used to care for healthy children when the regular caregiver is sick.

Sick leave may also be used for death in the employee's immediate family, but may not exceed three days for any single occurrence. Additional leave time required for such occurrence may be charged to vacation or other approved leave when approved by the department head and/or Town Manager.

Sick leave may also be used to supplement Workers' Compensation Disability Leave both during the waiting period before Workers' compensation benefits begin, and afterward to supplement the remaining one-third of salary, except that employee may not exceed the regular salary amount using this provision.

"Immediate family" shall be defined as spouse, child, parent or step-parent, brother, sister, grandparent, grandchild, son-in-law or daughter-in-law, aunt, or uncle of the employee or spouse of the employee, or guardian.

Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave or according to departmental procedures.

## **Section 13. Sick Leave: Accrual Rate and Accumulation**

Sick leave shall accrue at a rate of one day per month of service or twelve days per year. Sick leave for full-time and part-time employees working other than the basic work schedule shall be pro-rated as described in this Article. Sick leave will be cumulative for an indefinite period of time and may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System.

All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from the Town, except as stated for employees retiring or terminated due to reduction in force.

However, employees who resign in good standing or are dismissed from employment because of reduction in force and are reinstated within 3 years shall be credited with their previously accumulated sick leave. Employees who are dismissed from employment for reasons other than reduction in force or who are not reinstated within 3 years shall lose all sick leave credits.

## **Section 14. Transfer of Sick Leave from Previous Employer**

The Town will accept the transfer of sick leave for employees from other employers who are participants of the Local or State Employees Retirement System. The sick leave will be treated as though it were earned with the Town of Erwin. The sick leave amount must be certified by the previous employer.

## **Section 15. Sick Leave: Medical Certification**

The employee's supervisor or Department Head may require a physician's certificate stating the nature of the employee's or family member's illness and the employee's capacity to resume duties, for each occasion on which an employee uses sick leave or whenever the supervisor observes a "pattern of absenteeism." The employee may be required to submit to such medical examination or inquiry as the Department Head deems desirable. The Department Head shall be responsible for the application of this provision to the end that:

- 1) Employees shall not be on duty when they might endanger their health or the health of other employees; and
- 2) There will be no abuse of leave privileges.

Claiming sick leave under false pretense to obtain a day off with pay shall subject the employee to disciplinary action up to and including dismissal.

#### **Section 16. Leave Pro-rated**

Holiday, annual, and sick leave earned by full-time and part-time employees with fewer or more hours than the basic work week shall be determined by the following formula:

- 1) The number of hours worked by such employees shall be divided by the number of hours in the basic work week (usually 40 hours).
- 2) The proportion obtained in step 1 shall be multiplied by the number of hours of leave earned annually by employees working the basic work week.
- 3) The number of hours in step 2 divided by 12 shall be the number of hours of leave earned monthly by the employees concerned.

#### **Section 17. Leave Without Pay**

A full or part-time employee may be granted a leave of absence without pay for a period of up to twelve months by the Town Manager. The leave shall be used for

- reasons of personal illness or injury after both sick leave and desired amount of compensatory time and/or annual leave have been exhausted,
- 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.

The employee shall apply in writing to the supervisor for leave. The employee is obligated to return to duty within or at the end of the time determined appropriate by the Town Manager. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification, seniority, and pay. If the employee decides not to return to work, the supervisor shall be notified immediately. Failure to report at the expiration of a leave of absence, unless an extension has been requested, shall be considered a resignation.

#### **Section 18. Workers' Compensation Leave**

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accrued sick leave or vacation during the first waiting period. The employee may also elect to supplement workers' compensation payments after they begin with sick leave, vacation, or compensatory time, provided that the combination of leave supplement and workers' compensation payments does not exceed normal compensation. An employee on workers' compensation leave may be permitted to continue to be eligible for benefits under the Town's group insurance plans.

When worker's compensation leave extends long enough for the waiting period to be reimbursed, the employee shall return the reimbursement check to the Town and have leave hours reinstated for all time covered by paid leave. In such cases, the Town will pay the employee for any unpaid time that is owed the employee.

A health care provider must certify the need for the employee to be out of work longer than 24 hours. The Town reserves the right to have any employee get a second opinion on a medical condition by a doctor chosen by the Town.

The leave cannot exceed 480 employment hours.

The Town will cover any medical expenses incurred by the employee due to an adverse reaction to the smallpox vaccination. The method of payment or the source of funds expended will be at the exclusive discretion of the Town.

Adverse reaction to smallpox vaccine: if an employee is absent from work due to receiving the smallpox vaccination under the Homeland Security Act (42 U.S.C. Section 233 (p) and has:

- (a) an adverse reaction to the vaccination; or
- (b) an adverse reaction caused by exposure to an employee who has received such vaccination in employment of the Town of Erwin,

Then it shall be considered an occupation disease under the Workers' Compensation program. Therefore, the absence from work will not count against the employee's sick leave, Family Medical leave or vacation leave and the employee's salary shall continue during such absence

### **Section 19. Short-term Disability and Family Leave**

Provided that the Town has 50 or more full-time equivalent employees, the Town will grant up to 12 weeks of family and medical leave per twelve (12) months to eligible employees in accordance with the Family and Medical Leave Act of 1993 (FMLA). Until such time as the Town reaches that threshold, leave may be granted in a manner similar to FMLA as described below.

The leave may be paid (coordinated with the Town's vacation, compensatory time and sick leave policies), unpaid, or a combination of paid and unpaid. As in the sick leave policy, sick leave is available only upon documented disability of an employee or when an employee must care for a covered family member who is disabled. Sick leave may not be used to care for a healthy new born or healthy children.

Unpaid leave will be granted only when the employee has exhausted all appropriate types of paid leave including compensatory time. Additional time away from the job beyond the 12 week period may be approved in accordance with the Town's Leave without Pay policy.

Eligibility: To qualify for FMLA coverage, the employee must have worked for the employer 12 months or 52 weeks; these do not have to be consecutive. However, the employee must have worked 1,250 hours during the twelve month period immediately before the date when the FMLA time begins.

An employee who takes leave under this policy will return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority.

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

- a) The birth of a child and in order to care for that child;
- b) The placement of a child for adoption or foster care;
- c) To care for a spouse, child, or parent with a serious health condition; or

- d) The serious health condition of the employee.
- e) A military exigency

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 only take a total of 12 weeks leave under FMLA.

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. The employee shall then use all paid vacation or leave without pay for the remainder of the 12 week FMLA period.

The request for the use of leave must be made in writing by the employee and approved by the department head or Town Manager.

During a single 12 month period, the employee is entitled to a combined total of 26 weeks of all types of FMLA.

Military Caregiver Leave: An employee whose spouse, son, daughter, parent or next of kin is a current service member who is undergoing treatment, therapy, recuperation or outpatient treatment or has temporary disability retirement for injury or illness sustained in the line of duty, is eligible for 26 weeks of leave in a single 12 month period. During a single 12 month period, the employee is eligible for a total of 26 weeks of all types of FMLA leave. The request for the use of leave must be made in writing by the employee and approved by the Town Manager.

Some definitions:

A “serious health condition” is defined as a condition which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. This policy covers illness 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 or more than three days would be considered a serious health condition.

“Military Exigency” is a specific qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a military service member (reserve or National Guard) under a call or order to federal active duty in support of a contingency operation. Qualifying events are:

1. Deployment of service member with seven or fewer days notice;
2. Military ceremonies and events such as family-assistance or informational programs related to the family member’s active duty or call to active duty;
3. Urgent, immediate childcare or arranging for alternative childcare for the children of service members;
4. Attending school or daycare meetings relating to the child of service member;
5. Making financial or legal arrangements related to a family member’s active duty status or call to active duty; or
6. Post-deployment activities for a period of ninety days after the termination of the service member’s active duty status.

Medical and Family Leave Certification

In order to qualify for leave under this law, the Town requires medical certification. This statement from the employee's or the family member's physician should include the date when the condition began, its expected duration, prognosis, and brief statement of treatment. For the employee's own health condition, it should

state that 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 would be beneficial or desirable.

This certification should be furnished at least 30 days prior to the needed leave unless the employee's or family member's condition is a sudden one. The certification should be furnished as soon as possible (no longer than 15 days from the date of the employee's request). The certification and request must be made to the department head and filed with the Town Manger.

The employee is expected to return to work at the end of the time frame stated in the medical certification, unless he/she has requested additional time in writing under the Town's Leave without Pay policy.

## **Section 20. Leave without Pay and Retention and Continuation of Benefits**

When an employee is on leave without pay under family leave as described above (maximum of 12 weeks in a year/ 26 if military caregiver leave ), the Town will continue the employee's health benefits during the 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 Town will require the reimbursement of the amount paid for the employee's health insurance premium during the FMLA leave period.

Employees on leave without pay for non-family leave qualifying reasons will be required to pay for their health premiums beginning with the first full month of absence, subject to any regulation adopted by the Town Board and the regulations of the insurance carrier.

Other insurance and payroll deductions are the responsibility of the employee and the employee must make those payments for continued coverage of that benefit.

An employee shall retain all unused vacation and sick leave while on Leave without Pay. An employee ceases to earn leave credits on the date leave without pay begins.

## **Section 21. Military Leave**

Regular employees who are members of an Armed Forces Reserve organization or National Guard shall be granted ten workdays per year for military leave without pay. On rare occasions due to annual training being scheduled on a federal fiscal year basis, an employee may be required to attend two periods of training in one calendar year. For this purpose only, an employee shall be granted an additional ten days of military leave during the same calendar year. If such duty is required beyond this ten workdays, the employee shall be eligible to take accumulated vacation leave or be placed in a leave without pay status, and the provisions of that leave shall apply. While taking military leave, the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the Town during this period. Employees who are eligible for military leave have all job rights specified by the Vietnam Veterans Readjustment Act.

## **Section 22. Reinstatement Following Military Service**

An employee called to extended active duty with the United States military forces, who does not volunteer for service beyond the period for which called, shall be reinstated with full benefits provided the employee:

- 1) Applies for reinstatement within ninety days after the release from military service; and
- 2) Is able to perform the duties of the former position or similar position; or
- 3) Is unable to perform the duties of the former position or a similar position due to disability sustained as a result of the military service, but is able to perform the duties of another position in the service of the

Town. In this case the employee shall be employed in such other position as will provide the nearest approximation of the seniority, status, and pay which the employee otherwise would have been provided, if available.

### **Section 23. Civil Leave**

A Town employee called for jury duty or as a court witness for the federal or state governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. 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 official duties. While on civil leave, benefits and leave shall accrue as though on regular duty.

Employees in court for their own case or appearing voluntarily as a witness in another person's case must use annual leave or leave without pay for their time in court.

### **Section 24. Parental School Leave**

A Town employee who is a parent, guardian, or person standing in loco parentis (in place of the parent) may take up to four hours of unpaid leave annually to involve him or herself in school activities of his or her child(ren). This leave is subject to the three following conditions:

- 1) The leave must be taken at a time mutually agreed upon by the employee and the Town;
- 2) The Town may require the employee to request the leave in writing at least 48 hours prior to the time of the desired leave; and
- 3) The Town may require written verification from the child's school that the employee was involved at the school during the leave time.

Paid leave (vacation time) taken by an employee to attend to school activities of his or her child shall count toward the fulfillment of this provision by the Town.

### **Section 25: Shared Leave Policy**

Town employees may donate accumulated vacation leave to the sick leave account of an eligible employee who has exhausted all paid leave due to an extended medical leave. Guidelines for the program are available in procedures developed by the Manager.

### **Section 26: Inclement Weather Policy**

The Town has responsibility for emergency services including law enforcement. Adequate staff are required to operate these critical services seven days per week and 24 hours per day in all weather. Department heads should designate which staff are in critical positions required to report to work regardless of weather or other hazardous conditions.

In the event it becomes necessary to open Town offices late or to close early due to severe inclement weather, it is the Town's intent that employees receive their regular pay for the day.

Specific policies concerning inclement weather notification and leave are available from the Manager

## **ARTICLE VIII. 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 types and shall be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, dismissal, or death.

### **Section 2. 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. In all instances, the minimum notice requirement is two weeks. Failure to provide minimum notice shall result in forfeit of payment for accumulated annual leave unless the notice is waived upon recommendation of the Department Head and approval by the Town Manager.

Three consecutive days of absence without contacting the immediate supervisor or Department Head may be considered to be a voluntary resignation. Sick leave will only be approved during the final two weeks of a notice with a physician's certification or comparable documentation.

### **Section 3. Reduction in Force**

In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's performance, organizational needs, and seniority in determining those employees to be retained. Employees who are separated because of a reduction in force shall be given at least two weeks notice of the anticipated action. No permanent employee shall be separated because of a reduction in force while there are temporary or probationary employees serving in the same class in the department, unless the permanent employee is not willing to transfer to the position held by the temporary or probationary employee.

### **Section 4. Disability**

An employee who cannot perform the essential duties of a position because of a physical or mental impairment may be separated for disability. Action may be initiated by the employee or the Town. In cases initiated by the employee, such action must be accompanied by medical evidence acceptable to the Town Manager. The Town may require an examination, at the Town's expense, performed by a physician of the Town's choice.

### **Section 5. Voluntary Retirement**

An employee who meets the conditions set forth under the provision of the North Carolina Local Government Employee's Retirement System may elect to retire and receive all benefits earned under the retirement plan.

### **Section 6. Death**

Separation shall be effective as of the date of death. All compensation due shall be paid to the estate of the employee.

### **Section 7. Dismissal**

An employee may be dismissed in accordance with the provisions and procedures of Article IX.

### **Section 8. Reinstatement**

An employee who is separated because of reduction in force may be reinstated within one year of the date of separation, upon recommendation of the Department Head, and upon approval of the Town Manager. An



employee who is reinstated in this manner shall be re-credited with his or her previously accrued sick leave.

### **Section 9. Rehiring**

An employee who resigns while in good standing may be rehired with the approval of the Town Manager, and may be regarded as a new employee, subject to all of the provisions of rules and regulations of this Chapter. An employee in good standing who is separated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position.

## **ARTICLE IX. UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT**

### **Section 1. Disciplinary Action for Unsatisfactory Job Performance**

A regular employee may be placed on disciplinary suspension, demoted, or dismissed for unsatisfactory job performance, if after following the procedure outlined below, the employee's job performance is still deemed to be unsatisfactory. All cases of disciplinary suspension, demotion, or dismissal must be approved by the Town Manager prior to giving final notice to the employee.

### **Section 2. Unsatisfactory Job Performance Defined**

Unsatisfactory job performance includes any aspects of the employee's job which are not performed as required to meet the standards set by the Department Head or Town Manager. *Examples of unsatisfactory job performance include, but are not limited to, the following:*

- 1) Demonstrated inefficiency, negligence, or incompetence in the performance of duties;
- 2) Careless, negligent or improper use of Town property or equipment;
- 3) Physical or mental incapacity to perform duties;
- 4) Discourteous treatment of the public or other employees;
- 5) Absence without approved leave;
- 6) Improper use of leave privileges;
- 7) Failure to report for duty at the assigned time and place;
- 8) Failure to complete work within time frames established in work plan or work standards;
- 9) Failure to meet work standards over a period of time; or
- 10) Failure to follow the chain of command to address work-related issues.
- 11) Failure to maintain certifications required by the job.

### **Section 3. Communication and Warning Procedures Preceding Disciplinary Action for Unsatisfactory Job Performance**

When an employee's job performance is unsatisfactory, or when incidents or inappropriate actions warrant, the supervisor shall meet with the employee as soon as possible in one or more counseling sessions to discuss specific performance problems. A brief summary of these counseling sessions shall be noted in the employee's

file by the supervisor.

An employee whose job performance is unsatisfactory over a period of time should normally receive at least two warnings from the supervisor before disciplinary action resulting in dismissal is taken by the Town Manager.

In each case, the supervisor should record the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended, and the time limits set. If the employee's performance continues to be unsatisfactory, then the supervisor should use the following steps:

- 1) A final written warning from the supervisor serving notice upon the employee that corrected performance must take place immediately in order to avoid suspension, demotion, or dismissal.
- 2) If performance does not improve, a written recommendation should be sent to the Town Manager for disciplinary action such as suspension, demotion, or dismissal. Disciplinary suspensions are for the purpose of communicating the seriousness of the performance deficiency, not for the purpose of punishment and should not generally exceed three days (24 hours) for nonexempt employees. Suspensions for exempt employees shall generally not exceed one full work week (in accordance with FLSA requirements to retain exempt status.) However, a suspension of up to one month without pay may be implemented by the Town Manager in the case of employees with previous good work records who have an instance of significant unsatisfactory job performance or failure in conduct.

Demotions are appropriate when an employee has demonstrated inability to perform successfully in the current job, but shows promise and commitment to performing successfully in a lower level job. If no other options are available, dismissal is appropriate.

If after suspension or demotion, the employee's performance does not reach an acceptable level, the employee may be dismissed.

#### **Section 4. Disciplinary Action for Detrimental Personal Conduct**

With the approval of the Town Manager, an employee may be placed on disciplinary suspension, demoted, or dismissed without prior warning for causes relating to personal conduct detrimental to Town service in order to

- 1) Avoid undue disruption of work;
- 2) To protect the safety of persons or property; or
- 3) For other serious reasons.

#### **Section 5. Detrimental Personal Conduct Defined**

Detrimental personal conduct includes behavior of such a serious detrimental nature that the functioning of the Town may be or has been impaired; the safety of persons or property may be or have been threatened; or the laws of any government may be or have been violated. *Examples of detrimental personal conduct include, but are not limited to, the following:*

- 1) Fraud or theft;
- 2) Conviction of a felony or the entry of a plea of nolo contendere thereto;
- 3) Falsification of records for personal profit, to grant special privileges, or to obtain employment;
- 4) Willful misuse or gross negligence in the handling of Town funds;
- 5) Willful or wanton damage or destruction to property;

- 6) Willful or wanton acts that endanger the lives and property of others;
- 7) Possession of unauthorized firearms or other lethal weapons on the job;
- 8) Brutality in the performance of duties;
- 9) Reporting to work under the influence of alcohol or drugs or partaking of such while on duty. Prescribed medication may be taken within the limits set by a physician as long as medically necessary;
- 10) Engaging in incompatible employment or serving a conflicting interest;
- 11) Request or acceptance of gifts in exchange for favors or influence;
- 12) Engaging in political activity prohibited by this chapter;
- 13) Harassment of an employee(s) and/or the public on the basis of sex or any other protected class status; or
- 14) Stated refusal to perform assigned duties or flagrant violation of work rules and regulations.

#### **Section 6. Types of Disciplinary Actions and Pre-disciplinary Conference.**

Employees may be disciplined for unsatisfactory job performance or detrimental personal conduct at the recommendation of the department head or designee. The decision on the recommended appropriate discipline is made by the Manager.

**Suspension:** Disciplinary suspensions are for the purpose of communicating the seriousness of the performance deficiency, not for the purpose of punishment, and shall be without pay.

Non-exempt employees: May be for short periods and should not generally exceed three days (24 hours) for nonexempt employees.

Exempt employees: In accordance with FLSA requirements to maintain exempt status, suspensions for exempt employees shall normally be for one full work week, especially if the suspension is for unsatisfactory job performance issues. Under FLSA suspensions of less than a week are authorized for major safety violations or infractions of workplace conduct rules (detrimental personal conduct).

**Demotions:** Demotions are appropriate when an employee has demonstrated inability to perform successfully in the current job, but shows promise and commitment to performing successfully in a lower level job.

**Dismissal:** Terminations are appropriate when the employee has shown he/she is unwilling or unable to perform work in a manner that meets the work and conduct standards of the Town.

**Pre-disciplinary Conference:** Before suspensions, demotion, or dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the supervisor may conduct a pre-disciplinary conference. At this conference, the employee may present any response to the proposed disciplinary action.

The supervisor will consider the employee's response, if any, to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, discuss proposed disciplinary action

with the Manager. If the Manager approves, the supervisor will notify the employee in writing of the final decision to take disciplinary action. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal rights.

If the employee was suspended without pay and the suspension is not upheld in the appeal process, the Town Manager may authorize back pay for the time of suspension.

### **Section 7. Non-Disciplinary Suspension**

During the investigation, hearing, or trial of an employee on any criminal charge, or during an investigation related to alleged detrimental personal conduct, or during the course of any civil action involving an employee, when suspension would, in the opinion of the Department Head or Town Manager, be in the best interest of the Town, the Department Head or Town Manager may suspend the employee for part or all of the proceedings as a non-disciplinary action. In such cases, the Town Manager may:

- 1) Temporarily relieve the employee of all duties and responsibilities and place the employee on paid or unpaid leave for the duration of the suspension, or
- 2) 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.

If the employee is reinstated following the suspension such employee shall not lose any benefits to which otherwise the employee would have been entitled had the suspension not occurred. If the employee is terminated following suspension, the employee shall not be eligible for any pay from the date of suspension; provided, however, all other benefits with the exception of accrued annual leave and sick leave shall be maintained during the period of suspension.

## **ARTICLE X. GRIEVANCE PROCEDURE AND ADVERSE ACTION APPEAL**

### **Section 1. Policy**

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.

Employees utilizing the grievance procedures shall not be subjected to retaliation or any form of harassment from supervisors or employees for exercising their rights under this policy. Supervisors or other employees who violate this policy shall be subject to disciplinary action up to and including dismissal from Town service.

### **Section 2. Grievance Defined**

A grievance is a claim or complaint by a current or a former employee based upon an event or condition, which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.

### **Section 3. Purposes of the Grievance Procedure**

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

- 1) Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;

- 2) Encouraging employees to express themselves about the conditions of work which affect them as employees;
- 3) Promoting better understanding of policies, practices, and procedures which affect employees;
- 4) Increasing employees' confidence that personnel actions taken are in accordance with established, fair, and uniform policies and procedures; and
- 5) Increasing the sense of responsibility exercised by supervisors in dealing with their employees.
- 6) Encouraging conflicts to be resolved between employees and supervisors who must maintain an effective future working relationship, and therefore, encouraging conflicts to be resolved at the lowest level possible in the chain of command; and
- 7) Creating a work environment free of continuing conflicts, disagreements, and negative feelings about the Town or its leaders, thus freeing up employee motivation, productivity, and creativity.

#### **Section 4. Procedure**

When an employee has a grievance, the following successive steps are to be taken unless otherwise provided. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved by the Town Manager before the decision becomes effective.

**Representation:** An employee may be accompanied and assisted by a representative of his or her choosing in attempting to resolve the grievance.

**Informal Resolution.** Prior to the submission of a formal grievance, the employee and supervisor should meet to discuss the problem and seek to resolve it informally. Either the employee or the supervisor may involve the respective Department Head as a resource to help resolve the grievance. In addition, the employee or supervisor may request mediation from local mediation services or other qualified parties to resolve the conflict. Mediation may be used at any step in the process when mutually agreed upon by the employee and relevant Town supervisor or Manager. Mediation is the process where a neutral party assists the parties in conflict with identifying mutually agreeable solutions or understandings.

**Step 1.** If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor in writing. The grievance must be presented within fifteen calendar days of the event or within fifteen calendar days of learning of the event or condition. The supervisor shall respond to the grievance within ten calendar days after receipt of the grievance. The supervisor should, and is encouraged to, consult with any employee of the Town in order to reach a correct, impartial, fair and equitable determination or decision concerning the grievance. Any employee consulted by the supervisor is required to cooperate to the fullest extent possible.

The response from the supervisor for each step in the formal grievance process shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The responder at each step shall send copies of the grievance and response to the Town Manager.

**Step 2.** If the grievance is not resolved to the satisfaction of the employee by the supervisor, the employee may appeal, in writing, to the appropriate Department Head within ten calendar days after receipt of the response from Step 1. The Department Head shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal.

**Step 3.** If the grievance is not resolved to the satisfaction of the employee at the end of Step 2, the employee may appeal, in writing, to the Town Manager within ten calendar days after receipt of the response from Step 2. The Town Manager shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal. The Town Manager's decision shall be the final decision. The Town Manager would notify the Town Board of Commissioners of any impending legal action.

**Department Heads.** In the case of department heads or other employees where the Town Manager has been significantly involved in determining disciplinary action, including dismissal, the Town may wish to obtain a neutral outside party to either:

- 1) Provide mediation between the grieving department head and the Town Manager (see definition of mediation in [informal resolution](#) above); or
- 2) Consider an appeal and make recommendations back to the Town Manager concerning the appeal. Such parties might consist of human resource professionals, attorneys, mediators, or other parties appropriate to the situation.

The Town Manager's decision shall be the final decision. The Town Manager would notify the Town Board of Commissioners of any impending legal action.

### **Section 5. Grievance and Adverse Action Appeal Procedure for Discrimination**

When an employee, former employee, or applicant, believes that any employment action discriminates illegally (i.e. is based on age, sex, race, color, national origin, religion, creed, political affiliation, or non-job related handicap), he or she has the right to appeal such action using the grievance procedure outlined in this Article (Section 4 above). While such persons are encouraged to use the grievance procedure, they shall also have the right to appeal directly to the Town Manager. Employment actions subject to appeal because of discrimination include promotion, training, classification, pay, disciplinary action, transfer, layoff, failure to hire, or termination of employment. An employee or applicant should appeal an alleged act of discrimination within thirty calendar days of the alleged discriminatory action, but may appeal for up to six months following the action.

## ARTICLE XI. RECORDS AND REPORTS

### Section 1. Public Information

In compliance with GS 160A-168, personnel records are protected from release except for the following, which is public record:

- Name of the employee
- Age of employee
- Date of original employment
- Terms of any contract
- Current position and title
- Current salary
- The office to which the employee is currently assigned
- Date and amount of each increase or decrease in salary with the Town
- Date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification with the Town
- The date and general description of the reasons for each promotion with the Town
- The date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the Town
- for dismissals due to disciplinary reasons, a copy of the written notice of the final decision of the Town setting forth the specific acts or omissions that are the basis of the dismissal

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.

For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the Town.

### Section 2. Access to Confidential Records

All information contained in a Town employee's personnel file, other than the information mentioned above is confidential and shall be open to inspection only in the following instances:

- 1) The employee or his/her duly authorized agent may examine all portions of his/her personnel file except 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.
- 2) A licensed physician designated in writing by the employee may examine the employee's medical record.
- 3) A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- 4) By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
- 5) 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. 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.

- 6) An employee may sign a written release to be placed in 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.
- 7) The Town Manager, with the concurrence of the Town Board of Commissioners, may inform any person of the employment, non-employment, 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 the level and quality of Town services. The written determination shall be retained in the Town Manager's office, is a record for public inspection, and shall become a part of the employee's personnel file.

The Town Board of Commissioners shall establish procedures for all personnel files containing information other than the public information mentioned above whereby an employee who objects to material may seek to have the material removed from the file or may place in the file a statement relating to the material.

### **Section 3. Personnel Actions**

The Town Manager, will prescribe necessary forms and reports for all personnel actions and will retain records necessary for the proper administration of the personnel system. There shall be one set of official personnel files, centrally located as designated by the Town Manager. Any document not located there is not an official part of that employee's personnel record.

### **Section 4. Records of Former Employees**

The provisions for access to records apply to former employees as they apply to present employees.

### **Section 5. Remedies of Employees Objecting to Material in File**

An employee 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. The employee may seek removal of such material in accordance with established grievance procedures.

### **Section 6. Penalties for Permitting Access to Confidential Records**

Section 160A-168 of the General Statutes provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by the designated custodian, is guilty of a misdemeanor and upon conviction shall be fined in an amount consistent with the General Statutes.

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

Section 160A-168 of the General Statutes of North Carolina provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined consistent with the General Statutes.

### **Section 8. Destruction of Records Regulated**

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with GS 121.5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a



public record from the office where it is usually kept, or whoever, alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined in an amount provided in Chapter 132.3 of the General Statutes.

## **ARTICLE XII. IMPLEMENTATION OF POLICIES**

### **Section 1. Conflicting Policies Repealed**

All policies, ordinances, or resolutions that conflict with the provisions of these policies are hereby repealed.

### **Section 2. Separability**

If any provision of these policies or any rule, regulation, or order there under of the application of such provision to any person or circumstances is held invalid, the remainder of these policies and the application of such remaining provisions of these policies of such rules, regulations, or orders to persons or circumstances other than those held invalid will not be affected thereby.

### **Section 3. Amendments**

This policy may be amended by action of the Board of Commissioners and by resolution appropriately approved. Notice of any suggested amendment to the policy, or any portion thereof, shall be provided to employees and opportunities for employee comment and reaction shall be made available prior to the amendments going to the Board for action. Proposed amendments should be posted on bulletin boards in all employee work locations and/or in employee newsletters. Any revisions or amendments adopted in conformance with this procedure shall become effective as of the date of such adoption.

Adopted this day \_\_\_\_\_, 2013