

# CITY OF MOUNT AIRY

## PERSONNEL POLICY



As Amended By the Board of Commissioners  
July 17, 2003



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Personnel Policy  
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**City of Mount Airy  
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**INTRODUCTION**

The purpose of this policy is to provide officials and employees of the City of Mount Airy (hereinafter referred to as the City) with a concise document, which contains all of the policies governing City personnel administration. This policy replaces and supersedes all previously issued ordinances and policies.

The personnel policy represents the "official" personnel manual of the City and should be used to conduct employee orientation and resolve disputed matters.

The approval and issuance of this policy does not constitute a contractual relationship with employees. The City has the right to change or suspend any provision of this policy.

The policy will be maintained by the Personnel Department with a copy being provided to each department of the City.

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**ARTICLE I. ORGANIZATION OF PERSONNEL SYSTEM**

**Section 1. Purpose**

It is the purpose of this policy to establish a personnel system, which will facilitate recruitment, selection, development and maintenance of an effective and responsible work force for the City of Mount Airy. It is the intent of the Board of Commissioners to establish an equitable and uniform system of personnel administration, to place municipal employment on a merit basis to the end that the best-qualified persons available shall constitute the City employment. This Article shall serve to govern administrative action concerning all personnel activities and transactions with the following general standards:

- (a) Employment shall be based on merit without regard to race, sex, color, national origin, religion, age, political affiliation, or physical or mental disability.
- (b) Qualified persons with a disability, persons who have a known association with a disabled person, or persons who aid or encourage others to exercise any right granted or protected under the Americans with Disabilities Act may not be discriminated against in regard to employment terms, conditions, or privileges.
- (c) Conditions of employment shall be maintained to promote efficiency and economy in the operation of the City government.
- (d) Position classification and compensation plans shall be established and revised from time to time to meet changing conditions.
- (e) Appointments and promotions shall be made solely on the basis of fitness, demonstrated by examination and/or other evidence of competence.
- (f) Tenure of employment shall be subject to satisfactory performance of work, personal conduct compatible with the trust inherent in public service, necessity for the performance of work, and availability of funds.

**Section 2. Responsibilities of the Board of Commissioners**

The City Board of Commissioners shall establish and amend the personnel policy and shall establish, by policy, a personnel pay plan. They shall also make and confirm appointments when so specified by the general statutes.

**Section 3. Responsibility of the City Manager**

The City Manager shall be responsible to the City Board of Commissioners for the administration and direction of the personnel program. The City Manager shall make appointments, dismissals and suspensions in accordance with the policies and procedures spelled out in this policy manual. Appointment, dismissal, and suspension policies shall apply to all employees, including department heads, except where specified by law. The City Manager shall

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be responsible for interpreting policies when necessary, and may issue administrative policies to interpret the intent of these policies and/or recommend to the City Board policy changes. The City Manager shall also be responsible for determining conditions of employment.

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

This policy shall apply to all regular, temporary, part-time and probationary employees except as specifically exempted. The City Manager, City Attorney, members of the City 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 5. Departmental Rules and Regulations**

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

**Section 6. Policy Statement**

The Personnel Policy of the City outline the general policies of personnel administration, and are not intended to constitute an expressed or implied contract between the City and the employee.

***Section 7. "At-Will Employment***

The City of Mount Airy is an "at-will" employer. Nothing in this Policy creates an employment contract or a term of employment between the City and its employees. No person has the authority to grant an employee any contractual rights of employment

**Section 8. Definitions**

**Designee** - An employee who has been designated to make decisions or conduct business on behalf of a supervisor.

**Full-time employee** - An employee who is in a position for which an average workweek equals at least the number of hours designated by the City Board as full-time.

**Immediate family** - This shall include the employee's spouse, children, mother, father, sister, brother, grandparent, grandchildren, plus the various combinations of half, step, in-law, and adopted relationships that can be derived from those named.

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**Part-time employee** - An employee, either regular or temporary, who is regularly scheduled to work less than the number of hours normally worked by full-time employees. Such employee shall receive no benefits unless specifically stated.

**Probationary period** - A working test period of six months (one year for sworn law enforcement officers) for all new employees and promotions. During this time, the employee is required to demonstrate by actual performance, the ability to perform the work required and general fitness and suitability as an employee of the City.

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

**Temporary employee** - An employee regularly scheduled to work a standard number of hours per week but for a definite period. Generally temporary employees are not entitled to benefits or any type of leave, unless specifically indicated.

**Section 8. Merit Principle**

All appointments, promotions, and other personnel transactions shall be made solely on the basis of merit and fitness.

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**ARTICLE II. POSITION CLASSIFICATION PLAN**

**Section 1. Purpose**

The position classification plan provides a complete inventory of all authorized and permanent positions in City 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. 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 services items in departmental budgets; and
- (e) In providing uniform job terminology.

**Section 3. Administration of the Position Classification Plan**

The City Manager, assisted by the Finance Director, 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 City Manager shall periodically review portions of the classification plan and make minor revisions to insure that classifications accurately reflect current job duties and responsibilities. The City Manager shall also periodically review the entire classification plan and, when needed, recommend major changes to the City Board of Commissioners.

**Section 4. Adoption of the Position Classification Plan**

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

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**Section 5. Request for Reclassification**

An 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 City Manager. Upon receipt of such request, the City Manager shall study the request, determine the merit of the reclassification, and take final action on the reclassification request.

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**ARTICLE III. THE PAY PLAN**

**Section 1. Policy**

Pay of city employees shall be administered in a fair and systematic manner in accordance with work performed. The city shall have a pay structure that is externally competitive, that maintains proper internal relationships among all positions based on the relative level of duties and responsibility, and that recognizes performance levels as the basis for pay increases within the established pay ranges. The program shall provide for effective control of pay on a uniform basis, shall permit decentralization of pay decisions while maintaining appropriate control and shall assure each employee periodic performance appraisals and pay reviews.

The pay plan shall be approved by the City Board.

**Section 2. Administration and Maintenance**

The City Manager shall be responsible for the administration and maintenance of the pay plan. The pay plan is intended to provide equitable compensation for all positions, reflecting differences in 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 City, and other factors. To this end, from time to time, the City Manager will make comparative studies of all factors affecting the level of salary ranges and may make minor adjustments in the allocations of positions to salary grades. When major adjustments encompassing numerous positions are needed, or when a general adjustment is needed to the pay plan, the City Manager shall recommend such changes in salary ranges as appear to be warranted to the City Board. This salary schedule shall be adjusted periodically depending upon availability of funds.

**Section 3. Use of Salary Range**

Salary ranges are intended to permit the recognition of individual performance. The following general provisions shall govern the granting of performance pay increases:

- (a) A hiring rate is established for each position in the classification plan. Appointment above the hiring rate may be made on the recommendation of the Department Head with the approval of the City Manager. Appointments above the hiring rate will be based on such factors as the qualifications of the applicant being higher than the minimum education and training for the class. Except in cases of employees in trainee status, no employee shall be hired at a rate below the assigned grade for the position.
  
- (b) Pay above the midpoint rate is reserved to reward employees for meritorious service. Annually, at the end of the quarter in which the employee's evaluation date falls, each employee shall be given a performance evaluation, a portion of which is oriented toward determining if the employee's performance is worthy of a performance pay increase. Department Heads shall consider all factors affecting employee performance and shall submit their recommendations in writing on the performance evaluation form. Their

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recommendations should include whether to award a performance increase or retain the existing rate. All performance evaluations and pay recommendations must be reviewed and approved by the City Manager.

Performance pay increases shall not be awarded automatically. All marginal ratings will be re-evaluated three months following the initial evaluation. If the employee has not shown an improvement in performance, the employee will not be eligible to receive a performance pay increase until the next annual evaluation period, and is subject to termination.

When an employee reaches the maximum salary in their pay grade, the employee will no longer be eligible for performance pay increases. Any pay ranges adjustments subsequently approved will give the employee eligibility for performance pay increases provided they are performing at a proficient level.

**Section 4. The Pay Scale**

The pay scale shall be an integrated scale with sufficient pay grades to adequately compensate the employees covered by the position classification plan. Each grade shall consist of a hiring, minimum, midpoint and maximum rate.

**Section 5. Salary Upon Completion of Probationary Period**

Employees hired or promoted into the hiring rate of the pay range shall have the opportunity to receive a salary increase upon successful completion of the probationary period. Employees hired or promoted into a rate of pay above the hiring rate of the pay range may be considered for a probationary pay increase upon successful completion of the probationary period.

**Section 6. Budget Funds for Performance Pay Increases**

The City Manager shall each year include funds in the budget proposal to the City Board of Commissioners for providing performance pay increases.

**Section 7. Performance Pay Increases**

All regular employees who are below the maximum rate in the pay grade shall be eligible for a performance pay increase based on their performance evaluation. The performance pay increase shall be granted at the beginning of the quarter following the quarter in which the employee's evaluation falls. The evaluation may recommend a performance pay increase based on the employee rating and position on the comp-ratio scale.

**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 hiring 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

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to recognize and compensate the employee for taking on increased responsibility. At the end of a six-month probationary period in the new position, the employee's performance shall be evaluated and any recommendation for salary adjustment forwarded to the City Manager. The next review date will be one year from any salary adjustment effective date at the end of the probationary period.

**Demotions:** When the demotion of an employee is not for cause, the employee shall receive their present salary. If the demotion is for cause, the salary may be adjusted to a lower salary or left the same.

**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. Whenever an employee requests a permanent transfer to another position not previously held and the change is not a promotion or demotion, the employee normally shall receive the hiring pay in the pay range unless previous experience warrants a higher starting rate. Whenever an employee requests a permanent transfer to a position in a lower class not previously held, and the change is not a promotion or demotion, the employee normally shall receive a salary no higher than the midpoint on the salary grade.

**Reclassifications:** An employee whose position is reclassified to a class having a higher salary range shall receive a pay increase of approximately 5% or an increase to the minimum of the new pay range, whichever is higher. 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 the employee shall be maintained at the current level until the range is increased above the employee's salary.

**Reinstatement:** When an employee is reinstated in a position of the same class after separation from the City of not more than one year, and when the separation was not due to discreditable circumstance, the employee may receive the same rate of pay as at the time of separation.

### **Section 9. Payment for Temporary Assignment**

When the necessity arises for an employee to temporarily assume the responsibility of another position in a class which is at a higher grade or temporarily perform duties recognized a higher level for a period of more than 30 calendar days, the employee shall be compensated for the entire period of the temporary assignment at the minimum rate assigned the higher class or five percent of current salary whichever is greater. In all such cases, increased payment shall be reviewed by and approved by the City Manager.

### **Section 10. Trainee Status**

Subject to review and approval of the City Manager, persons may be employed as trainees in positions for which the City prefers to train employees or is unable to recruit experienced and qualified applicants. An employee in trainee status shall be paid at not more than ten percent below the hiring salary for the position. The employee shall continue in the trainee status until the appointing Department Head, with approval of the City Manager, determines if the trainee is

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qualified to assume the full responsibilities of the position. If qualified, the employee's pay shall be increased to the hiring rate of the salary range. If not qualified, the trainee may be dismissed subject to approval of the City Manager.

**Section 11. Pay for Part-time Work**

An employee appointed for less than full-time service shall be paid at a rate to be approved by the City Manager. Students approved for City internships will be paid at a rate approved by the City Manager.

**Section 12. Effective Date of Salary Adjustments**

Salary adjustments shall become effective as determined by the personnel action.

**Section 13. Preparation of Payroll**

All payrolls shall be prepared in the Finance department from timesheets approved by the appropriate supervisors. Payroll shall be prepared on a bi-weekly basis. The City, as an employer, has chosen direct deposit as its only method of pay. Accordingly, all employees must provide the City with written authorization, including depository account information, in order for the City to process an employee's pay.

**Section 14. Payroll Deductions**

Federal and state income taxes, Social Security tax, Medicare tax and retirement contributions shall be deducted as authorized by law. Additional deductions may be allowed at the option of the employee. Authority to allow any other payroll deductions is vested in the Board of Commissioners.

**Section 15. Overtime Pay Provisions**

- (a) The City abides by all applicable sections of the Fair Labor Standards Act (FLSA). The City will properly record all applicable overtime accrued for each covered employee. This overtime policy is applicable only to employees of the City of Mount Airy who are non-exempt under the Fair Labor Standards Act.
- (b) 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. An emergency exists if a condition arises that could reasonably result in damage to property or persons or which requires immediate attention of the employee. Employees who work excess hours due to an emergency shall advise their immediate supervisor of the overtime worked as soon as practical following completion of the work.

Employees of the City can be requested and may be required to work overtime hours as necessitated by the needs of the City and determined by the Department Head.

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

Non-exempt employees will be paid at a straight time rate for hours up to the FLSA established limit for their position (usually 40 hours in a 7 day work period); hours for public safety personnel may be different. Hours worked beyond the FLSA established limit will be compensated in either 1) pay at the appropriate overtime rate or 2) compensatory time off if the city and the employee have entered into a memorandum of understanding regarding compensatory time in accordance with Section 207 (o) (2) (A) (ii) of the FLSA. In determining eligibility for overtime in a work period, only hours actually worked shall be considered.

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 paid in accordance with the FLSA.

### **Section 16. Call-back Pay**

The City of Mount Airy 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 service at any hour of the day or night. One of the conditions of employment with the City 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 action up to and including dismissal by the Department Head.

**Call-back:** Non-exempt employees will be guaranteed a premium rate of pay above the standard hourly rate for being called back to work outside of normal working hours due to unplanned events such as snow, ice, severe storms which are beyond the City's control regardless of the total hours worked in their scheduled work period. This premium rate will be equivalent to 1 ½ times the employee's normal rate. "Call-back" provisions do not apply to previously scheduled overtime work or employees who are called to work while serving in a "standby" capacity.

### **Section 17. Termination Pay**

Upon termination of employment, an employee is entitled to a lump sum payment for unused vacation leave up to 240 hours for regular employees, 252 hours for police shift personnel, and 318 hours for fire shift personnel, less any deductions for debts owed to the City. No sick leave shall be paid upon termination of employment. Termination pay will normally be paid with the payroll subsequent to the final pay for worked hours.

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**ARTICLE IV. EMPLOYEE PERFORMANCE APPRAISAL POLICY**

**Section 1. Purpose**

The purpose of this section is to establish a system by which the job performance of all City employees can be accurately evaluated in order to administer a performance based pay system.

**Section 2. Objectives**

- (a) To formally evaluate the job performance of all City employees on a regular basis.
- (b) To determine at what level each employee is performing.
- (c) To identify employees to be awarded pay increases based on a performance based pay system.
- (d) To encourage communication between employees and supervisors on what is expected performance; provide feedback to the employee on needed improvements or developmental activities that will help the employee grow and develop in the position.
- (e) To distribute available salary dollars to reward hard work with a pay system which is flexible and which recognizes varying levels of performance.

**Section 3. Procedures**

Each regular City employee shall be evaluated annually during the quarter in which his/her evaluation date falls. New employees shall be evaluated at the end of their probationary period and again twelve (12) months after their first evaluation unless a different arrangement was approved by the City Manager at the time of hire. It shall be the responsibility of the Department Head to assign a supervisor to evaluate the employee's performance. The supervisor will monitor performance requirements and compare the employee's actual performance with the performance requirements of the job. The immediate supervisor will discuss the evaluation with the employee. Once the evaluation process is complete, a personnel action form signed by the Department Head is to be sent to the City Manager along with the appraisal form.

A specific performance appraisal form is available for each job classification in the City. These job-related forms developed by job classification are to be used to evaluate each employee's job performance.

All City performance forms will use the following standard rating system:

**MARGINAL:** Performance is close to acceptable but falls short on one or more major responsibilities of the position. There is still a clear need for improvement. The City expects improvement in performance as a condition of continued employment. Continued rating at this level may lead to performance probation or dismissal.

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**PROFICIENT:** Performance is fully acceptable. Each of the major responsibilities of the position is met in a satisfactory manner. This rating recognizes accomplishment and achievement, and represents the performance that the City expects.

**COMMENDABLE:** Performance exceeds all the requirements of the position. This level of work is clearly and consistently above the proficient level.

**PAY ADJUSTMENTS:** Employees are considered for pay adjustments based upon their overall performance evaluation rating and their position on the comp-ratio scale. Each salary grade has a hiring, minimum, midpoint and maximum salary for that grade. An employee's comp-ratio is the relationship between the employee's actual salary and the midpoint of the grade in he/she falls.

**ALLOCATION OF PAY FOR PERFORMANCE FUNDS:** Each department will be allocated an amount of pay for performance funds based on the comp-ratio relationship of current salaries of employees in the department and the funds budgeted by the Board of Commissioners. It is the responsibility of the Department Head to monitor the funds throughout the fiscal year.

**Section 4. Responsibility**

**CITY MANAGER:** The City Manager shall review all functions of the performance appraisal system. All personnel action forms shall be signed by the City Manager before they become effective.

**DEPARTMENT HEADS:** Department Heads shall assign evaluation duties and review all performance appraisals and personnel action forms prepared by supervisors in their departments. It is also the duty of the Department Head to monitor allocated funds to ensure that all employees receive deserved pay increases.

**SUPERVISORS:** Supervisors shall communicate to all supervised employees the expectations of performance in specific job classes. The supervisor is responsible for monitoring employee performance and giving feedback on performance. Informal reviews are to be performed quarterly and performance progress notes kept as needed.

**EMPLOYEES:** It is the responsibility of each employee to participate in the performance appraisal process and to inform the supervisor of any areas in which the employees wishes to receive training.

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**ARTICLE V. RECRUITMENT AND SELECTION**

**Section 1. Equal Employment Opportunity Policy**

It is the policy of the City to foster, maintain, and promote equal employment opportunity. The City shall select employees on the basis of applicant's qualifications without regard to age, sex, race, color, religion, national origin, non-job related handicap, political affiliation, or marital status. Applicants with physical handicaps shall be given equal consideration with other applicants for positions in which their physical handicaps do not represent an unreasonable barrier to satisfactory performance of duties.

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

All personnel responsible for recruitment and employment shall continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable, job-related job 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, non-job related handicap, national origin, political affiliation, or marital status. Notices with regard to equal employment matters shall be posted in conspicuous places on City premises in places where notices are customarily posted.

**Section 3. Recruitment**

- (a) Recruitment sources: When position vacancies occur, Department Heads shall notify the City Manager concerning the number and classification of positions which are to be filled. The Personnel Administrator shall publicize these opportunities for employment, including applicable salary information and employment qualifications. Information on job openings and hiring practices shall be provided to recruitment sources, including organizations 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 City service.
- (b) Job advertisements: Employment advertisements shall contain assurances of equal employment opportunity and shall comply with Federal and State statutes
- (c) Application for employment: An official City application shall be made available to all applicants for all advertised positions. All applications shall be accepted by departments.
- (d) Applicant interest card: Persons interested in employment with the City 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.

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- (e) Application reserve file: Applications shall be kept in an inactive file for a period of two years.

**Section 4. Qualification Standards**

All applicants considered for employment or promotion shall meet the essential qualification standards established by the class specifications for the position to which the appointment is being made. Applicants who knowingly make any material false statement concerning their application for appointment or promotion to a position in City employment shall forfeit their right to be considered for or occupy the position.

**Section 5. Selection**

Department Heads shall develop, use and document, on a consistent, routine basis, a selection process that best suits the City's needs in filling positions within each individual department. All selection methods and procedures utilized by the Department Head shall be valid measures of job performance.

**Section 6. Appointment**

- (a) Appointments to City employment shall be made on the basis of merit and fitness demonstrated by examination and/or other evidence of competence without regard to race, sex, color, national origin, religion, age, political affiliation, or physical or mental disability. Qualified persons with a disability or persons who have a known association with a disabled person shall be given equal consideration with other applicants for positions in which their known physical and mental limitations may be reasonably accommodated and would not impose an undue hardship on City operations. The Personnel Administrator shall be responsible for assisting the departments in recruiting and selecting such employees as are authorized by the classification plan and by the budget. The Personnel Administrator shall conduct preliminary screening processes and shall refer those applicants most qualified for the position to the appointing department. No commitment shall be made by the Personnel Administrator or appointing department to an applicant or employee until such time all available interested individuals have had a reasonable opportunity to be considered for the position. The Personnel Administrator shall keep eligible lists of applicants for one year. The City screening process shall include but not necessarily be limited to testing, qualifications analysis, oral interviews, previous employment history, character references, motor vehicle traffic records and criminal history and/or non-conviction data where applicable.
- (b) After a conditional job offer is made, all applicants are subject to a medical exam, drug screen and psychological examination. The City *will not* refuse to hire disabled individuals based on the results of a medical exam, unless the reason for rejection is job related and their known physical and/or mental limitations cannot be reasonably accommodated and would impose an undue hardship on City operations.

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- (c) Department Heads shall be appointed by the City Manager. The City Manager shall be appointed by the Board of Commissioners. The Department Head shall appoint departmental positions with the approval of the City Manager.

**Section 7. Priority to Current Employees**

It is the City's policy to provide career opportunities for its employees whenever possible and when it is in the best interest of the City. Therefore, present City employees will be given priority consideration in filling the vacancy, provided they would appear to be the best qualified for the position if it were advertised to the general public.

Appointment of a current City employee to a vacant position may be done without officially advertising the vacancy other than internally. However, if the automatic promotion or transfer of a current employee would continue any historical discriminatory employment practices, the City must follow normal recruitment procedures.

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**ARTICLE VI. EMPLOYMENT STANDARDS**

**Section 1. Probationary Period**

- (a) Original probationary period: Any employee appointed to a regular position in City employment shall serve a probationary period of six months (one year for sworn law enforcement officers). A probationary employee may be dismissed at any time during the probationary period if the appointing Department Head, with the approval of the City Manager, determines that the employee is incapable of doing assigned duties in a satisfactory manner. Job performance appraisals shall be completed on all probationary employees at the end of the probationary period. The appointing Department Head shall indicate to the Personnel Administrator, in writing, on the job performance appraisal:
  - (1) That the employee's accomplishments, failures, strengths and weaknesses have been discussed with the employee;
  - (2) Whether or not the employee is performing satisfactory work; and
  - (3) Whether or not the employee should be retained in the position.
- (b) Promotional probationary period: Any employee appointed to a promotional position shall serve a probationary period of six months. At the end of the probationary period, the Department Head shall determine:
  - (1) Whether or not the employee is performing satisfactory work;
  - (2) Whether or not the employee should be retained in the position or be reinstated in a former class. Reinstatement to a former class during a promotional probationary period shall not be considered a demotion, unless the reinstatement is done for a disciplinary reason.
- (c) Extension of probationary period: The appointing Department Head may, with the approval of the City Manager, extend an employee's original probationary period or promotional probationary period for a period of time not to exceed 90 days.
- (d) The warnings and hearing procedures of Article XIII, Separation, Disciplinary Action and Reinstatement, shall not apply during a probationary or promotional probationary period except for reinstatement to a former class for disciplinary reasons during a promotional probationary period.

An employee serving a probationary period following initial or promotional employment in a regular position shall receive all benefits provided in accordance with this policy.

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### **Section 2. 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 City's policy to create career opportunities and encourage qualified City employees to apply for positions, which would be promotions. Candidates for promotion shall be chosen on the basis of their qualifications and work records. Candidates shall apply for promotions using the same application process as external candidates.

At the time of promotion, the employee's salary shall be adjusted to the hiring salary of the new salary grade or 5% whichever is greater. At the end of the six-month probationary period in the new position, the employee's performance shall be evaluated and any recommendation for salary adjustment forwarded to the City Manager. The employee's evaluation date is re-established as one year from date of probationary review.

### **Section 3. Demotion**

Demotion is the movement of an employee from one position to a position in a class assigned to a lower salary range. An employee whose work or conduct in the current position is unsatisfactory may be demoted by the City Manager at the request of the Department Head, provided that the employee show promise of becoming a satisfactory employee in the lower position. Such demotion shall follow the disciplinary procedures outlined in Article XIII, Separation, Disciplinary Action and Reinstatement. An employee who wishes to voluntarily accept a position with less responsibility may be demoted by the City Manager at the request of the Department Head, for reasons other than unsatisfactory performance of duties or failure of personal conduct.

### **Section 4. Transfer**

Transfer is the movement of an employee from one position to another 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.

Administrative transfers: Movement from one position to another may be initiated in three ways: (1) by the Department Head, who shall make a recommendation to the City Manager; (2) as a result of a classification study by the Personnel Department, or (3) when such action will promote morale, or serve budgetary, manpower or general organizational needs. Such administrative transfers do not represent disciplinary action. Employees transferred as described in this Section will not have their pay rate or anniversary date changed. An employee who has successfully completed a probationary period may be transferred into the same classification without serving another probationary period. Employees transferred administratively will be notified by the Department Head in writing with a copy to the Personnel Department and the office of the City Manager. When special circumstances warrant and with approval of the city manager, an employee may be considered for a monetary increase if the new assignment will result in placing the employee in a training and development stage for more than ninety (90) days to learn the methodology, procedures, policies and/or technology of the new assignment.

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**ARTICLE VII. CONDITIONS OF EMPLOYMENT**

**Section 1. Work Schedule**

Department Heads shall establish work schedules, with the approval of the City Manager, which meet the operational needs of the department in the most cost effective manner possible. The standard workweek is 40 hours per week. The normal daily work schedule is between 8:00 a.m. and 5:00 p.m., which includes one hour for lunch. Because of the nature of the various city activities, some departments do not operate on the normal work schedule.

**Section 2. Use of City Property**

Use of city-owned property is intended for official City business only. City-owned property including supplies, tools, materials, equipment and vehicles are not for personal use and should not be removed from City property except in the conduct of official City business. Vehicles owned by the City shall be cared for in a responsible way. Such vehicles are to be used exclusively for City business. Use of City vehicles for commuting to and from work usually will be limited to an employee who is subject to emergency callback work. Employees who drive city-owned vehicles back and forth to work will be subject to all requirements of the Internal Revenue Service regarding private use of City vehicles.

**Section 3. Use of Pool Car and Personal Car for Business**

Employees should make every effort to obtain a city-owned vehicle for conducting City business. City cars are available through the use of the car pool for travel to schools, seminars, meetings and other official City business. Scheduling for the car pool is done through the City Garage. When it is necessary to use a personal car for City business, with prior approval of the Department Head and the City Manager, the City will pay the current business rate allowed by the Internal Revenue Service, for use of the private vehicle. A travel claim shall be completed by the individual and submitted for approval to the authorizing party as defined in the City's Travel Policy. Relatives of city employees are not allowed to ride in city vehicles.

**Section 4. Employment of Relatives**

Employment of an immediate family member of any member of the Governing Board, City Manager or Department Head shall not be permitted. No person shall be hired or assigned to work under the administrative influence or supervision of an immediate family member. Members of an immediate family shall not be employed at the same time if such employment would result in:

- (a) Operational conflict within the division or department; or
- (b) Any adverse management or personnel considerations.

Immediate family is defined for the purpose of this section as spouse, mother, father, guardian, children, sister, brother, grandparents, grandchildren, aunt, uncle, - plus various combinations of half, step, in-law, and adopted relationships that can be derived from these named.

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**Section 5. 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, an employee shall not while on duty or in the workplace:

- (a) Engage in political activity except where such political activities are otherwise permitted by law.
- (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, promotion or tenure of office to contribute funds for political or partisan purposes;
- (d) Coerce or compel contributions from another employee of the City for political or partisan purposes;
- (e) Use any supplies or equipment of the City for political or partisan purposes;
- (f) Be a candidate for nomination or election to office under the City Charter while in a pay status;
- (g) Publicly endorse candidates for nomination, election or appointment to an office under the City Charter, individually or in concert with other employees on City time or property;
- (h) Solicit, or act as custodian of, funds for political or partisan purposes on City time or property.

Any violation of this Section shall subject the employee to disciplinary action up to and including termination.

**Section 6. Secondary/Dual Employment**

- (a) The work of the City shall have precedence over all other occupational interests of employees.
- (b) Dual Employment: A full or part time employee of the City may simultaneously hold another position with the City provided that the temporary position is in a different department and/or clearly different program area from that of the full or part time

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position and that it is at the employee's option to assume such dual employment. 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.

Secondary Employment: Prior to assuming employment with an employer other than the City, an employee shall submit information regarding such secondary employment for approval by the employee's Department Head who must determine if the secondary employment violates any term of this Personnel Policy. This approval or disapproval shall be in writing and placed in the employee's personnel file. An employee may appeal the Department Head's decision to the City Manager or his designee. No employee shall engage in secondary employment which impairs the efficiency of city services or results in any conflict of interest.

**Section 7. Direct Deposit of Payroll Check**

All employees are required to provide the City with written authorization for direct deposit as a condition of employment.

**Section 8. Gifts and Favors**

No official or employee of the City shall accept any gift, favor or thing of value that may tend to influence such employee in the discharge of the employee's duties, or grant in the discharge of duty an improper favor, service, or thing of value. These limitations are not intended to prohibit the acceptance of articles of nominal value, which are distributed generally, or to prohibit employees from obtaining personal loans from regular lending institutions.

**Section 9. Code of Ethics**

- (a) It is the obligation of every public official and employee to support the Constitution of the United States and the Constitution of the State of North Carolina.
- (b) The laws of the Nation, State and Municipality shall be impartially administered. No public official or employee shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen except by due process of law.
- (c) Every citizen shall receive a fair and impartial hearing on any matter coming before the City Council, its appointed agencies or any employee of the City. No public official or employee shall make any promise or pledge to any person concerning any matter to be heard before a public official or employee except upon fair, impartial and final hearing thereof.

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- (d) The conduct of public business shall be free of any hidden personal or financial interest of any public official or employee. No public officials or employees shall advocate in any public meeting or private discussion any matter in which they have a personal or financial interest except upon full and timely disclosure of the interest.
- (e) It is the obligation of every public official to faithfully discharge the duties of office. In the conduct of public business, no public officials shall be excused from voting except on matters involving consideration of their own official conduct, or where their financial interests are involved. Public officials shall make full and timely disclosure of any personal or financial interest, which they have in any matter of public business to be transacted before them.
- (f) The conduct of public business shall be free of any influence arising from gifts, favors or special privileges. It is the obligation of every public official and employee to refuse personal gifts, favors or special privileges in every instance where such public official or employee reasonably believes such gift, favor or special privilege would not have been extended but for the position of such public official or employee, or where there exists a reasonable belief that the giver's interests are likely to be affected by the actions of the public official or employee, or where the gift is or may reasonably be considered to be designed to influence the actions of the public official or employee. No public officials or employees shall seek personal or financial advantage by means of their public office, appointment or employment.
- (g) The use of public trust for private gain is inimical to good government. No public official or employee shall violate the provisions of North Carolina General Statutes 14-234. No public official or employee shall use confidential or advance information obtained by virtue of public office, appointment or employment for personal or financial gain.
- (h) It is the obligation of every public official and employee to carry out the lawful orders and policies of the Board of Commissioners. No public official or employee shall knowingly take any action inconsistent with the lawful orders or policies established by the Board of Commissioners. No public official or employee shall knowingly take any action, which would be detrimental to the best interests of the City.

**Section 10. Zero Tolerance for Unlawful Harassment, Including Sexual Harassment**

- (A) Policy. The City of Mount Airy has a policy of “zero tolerance” with respect to unlawful employee harassment by supervisors and co-workers in any form and subscribes to the principle that persons should not be subject to such harassment. The City expressly prohibits any form of unlawful employee harassment based on race, color, gender, national origin, age, disability status as a Vietnam-era or special disabled veteran, religion, political affiliation or status in any group protected by federal, state, or local law. City employees and supervisors will make every effort to prevent and avoid harassment in the workplace. The City believes that such efforts are necessary for productive working relationships within the City. The City will comply with Title VII of

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the Civil Rights Act of 1964 (as amended), the Age Discrimination in Employment Act and the Americans with Disabilities Act.

If you feel that you have been unlawfully discriminated against or harassed at work, or if you feel that a fellow employee is being unlawfully discriminated against or harassed, the City encourages you to immediately notify your supervisor. If possible, such notice should be in writing (signed and dated), stating the date, place, time, nature of the harassment or discrimination, and the name(s) and position(s) of the offending party and any witnesses to the alleged harassment or discrimination. If you feel that your supervisor is involved in the discrimination or harassment in any way, or believe that for some other reason your supervisor cannot be approached, then the following people, in this order, should be notified: \_Personnel Administrator; Assistant City Manager; City Manager.

This policy also applies to any person with whom an employee comes into contact performing his or her duties, such as contractors, vendors, and/or suppliers. The City's employees should immediately inform their supervisors or the Personnel Administrator, if they believe that they have been unlawfully discriminated against or unlawfully harassed while on duty by a customer, contractor, vendor, supplier, or the like.

- (B) Equal Employment Opportunities Guidelines. The Equal Employment Opportunity Commission has issued guidelines regarding employment practices that the City hereby adopts to the extent set out below:
  - (1) Title VII of the Rights Act of 1964 (as amended) states that it is an unlawful employment practice:
    - (a) To fail or refuse to hire or to discharge any individual or otherwise to discriminate against an individual with respect to his/her compensation, terms, conditions, or privileges of employment because of such individual's race, sex, national origin, religion, or color, or;
    - (b) To limit, segregate or classify employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his/her status as an employee because of such individual's race, sex, national origin, color or religion.
  - (2) The Age Discrimination in Employment Act establishes essentially the same prohibitions as mentioned under Title VII, but for individual's age 40 years and above.
  - (3) The Americans With Disabilities Act also requires non-discrimination and includes prohibitions as outlined in Title VII, but for qualified individuals with disabilities.
- (C) (1) Harassment is verbal or non-verbal conduct or physical acts which are unwelcome or offensive to or retaliatory against an employee or group of employees based on their race, sex, national origin, color, religion, age or disability and which:

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- (a) Explicitly or implicitly, affects an employee's terms or conditions of employment, including employment, evaluations, wages, advancement, assigned duties, shifts, or any other condition of employment or career development; or;
- (b) Interferes with an employee's ability to perform his or her job, or;
- (c) Creates an intimidating, hostile or offensive work environment.

Examples of acts which may constitute harassment include but are not limited to the following:

Slurs and epithets; offensive jokes or statements; threats; derogatory pictures/materials/articles displayed on bulletin boards or in work areas; derogatory graffiti; segregating facilities (such as break rooms, eating areas, work stations) based on race, sex, national origin, color, religion, age, or disability; physical violence intended to harass, intimidate or discourage employees from pursuing complaints, retaliatory acts based on an employee having filed a charge of discrimination.

- (2) Sexual Harassment is unwelcome verbal, non-verbal or physical advances of a sexual nature or non-sexual hostile or physically aggressive behavior directed to an employee because of such employee's sex, which:

- (a) Explicitly or implicitly, affects an employee's terms or conditions of employment, including employment, evaluations, wages, advancement, assigned duties, shifts, or any other condition of employment or career development; or;
- (b) Interferes with an employee's ability to perform his or her job, or;
- (c) Creates an intimidating, hostile or offensive work environment.

Examples of acts which may constitute sexual harassment include but are not limited to the following:

- (1) Verbal. Referring to an adult as "hunk," "doll," "babe," "honey," or "sweetie;" whistling or catcalling; sexual comments or innuendoes; sexual jokes or stories; making sexual comments about a person's clothing, body; recounting one's sexual exploits or asking about sexual fantasies, preferences or history; repeatedly asking a person for a date after being turned down; starting or spreading rumors about the sex life of a person; making kissing sounds, howling or smacking lips; threats.
- (2) Nonverbal. Blocking a person's path; following the person; making sexual gestures; making facial expressions; the display in the workplace of sexually suggestive objects or pictures.
- (3) Physical. Hugging, kissing, patting, stroking, pinching or grabbing; rubbing oneself sexually around another person;

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touching the person's clothing, hair or body; giving a massage around the neck or shoulders; revealing parts of the body in violation of common decency; physically forcing sexual activity on someone ranging from assault to rape.

- (4) All of the conduct listed in Example 1, 2, and 3 which are directed to an employee by a non-employee in the workplace, i.e., contractors or vendors who may do business with or for the City.
- (5) Employment opportunities or benefits granted by a supervisor or his/her employee because such employee submits to the supervisor's advance.

HOSTILE ENVIRONMENT means a workplace that has become intimidating or offensive due to the conduct of an employee, when such conduct has a purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

(D) Procedure.

- (1) It is the policy of the City of Mount Airy to treat all complaints or allegations of harassment with respect and confidentiality. An employee who believes he or she has been the subject of harassment or witnessed unlawful harassment should immediately address his or her concerns to someone in management or ~~Human Resources~~ *Personnel* with whom they feel comfortable. Whenever possible, concerns should be presented in writing, stating the facts.
- (2) The employee should be prepared to provide the following information:
  - (d) His or her name, department and position title.
  - (e) The name of the person(s) committing the harassment, including his or her title(s) if known.
  - (f) The specific nature of the harassment, how long it has gone on, any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken as a result of the harassment, or any other threats made as a result of the harassment.
  - (g) Witnesses to the harassment, if any.
  - (h) Whether the employee has previously reported such harassment and, if so, when and to whom.
- (3) Complaints will be handled in a timely and confidential manner. Information concerning a complaint will not be released to anyone who is not involved with the investigation unless there is a compelling legal reason for the release. The purpose of this provision is to protect the confidentiality of the employee, who files a complaint, to encourage the

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reporting of any incidents of harassment, and to protect the reputation of any employee wrongfully charged with harassment.

- (4) Investigation of a complaint will normally include conferring with the parties involved and any named or apparent witnesses. A review of the written documentation will be made. Employees are guaranteed an impartial and fair hearing. All employees will be protected from coercion, intimidation, retaliation, interference or discrimination for filing a complaint or assisting in an investigation.
  - (5) City Manager is available to assist in the investigation of harassment complaints.
  - (6) If the investigation reveals that the complaint is valid, prompt attention and disciplinary action up to and including termination, designed to stop the harassment immediately and to prevent its recurrence will be taken. Violators of this policy will be subject to appropriate disciplinary action up to and including termination.
  - (7) We encourage reports of any such acts when they happen. All reports of unlawful discrimination or harassment will be investigated promptly. Supervisors who fail to effectuate this policy or who fail to investigate and report conduct of allegations of the type which are prohibited by this policy will be subject to discipline up to and including discharge.
  - (8) Complaints of harassment which are found to be malicious, willful attempts to misrepresent or tarnish the reputation of individuals will be dealt with through appropriate discipline, up to and including termination.
- (E) Appeal. Should either the complainant or the alleged offender be dissatisfied with the findings or actions resulting from an allegation of harassment, that individual may appeal the results to the City Manager, provided written notice to the City Manager is given within ten (10) days from the date the resolution is given to the employee.

**Section 11. Age Limitations**

The minimum age for employee with the City is 18 for all positions except law enforcement officers, who must be 20. Exceptions to the minimum age are provided for under the law if the applicant procures an employment certificate or work permit from the County Department of Social Services where he/she resides.

The City will not require an employee to separate from City service because of age subject to the provisions of Article XVIII. However, the City does recognize that it is a disadvantage to the employee and to the City if employees are allowed to continue work who are not physically able to do so. Therefore, early retirement or dismissal from employment may be necessary if an

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employee is found physically or mentally unfit for the performance of his/her duties. The following procedure will apply in such cases:

- (a) Upon request by a Department Head, the City will designate a physician to perform a physical evaluation, at the expense of the City. The City shall make all necessary arrangements for the examination and inform the employee.
- (b) The Department Head shall prepare a detailed statement of the duties and responsibilities required of the employee and forward it to the physician.
- (c) Based upon medical evaluations, medical opinions, and duties of the position, the Department Head shall make a recommendation to the City Manager regarding continued employment. The City Manager shall have final authority in determining if the employee should be dismissed or retained.

**Section 12. Conformance to Immigration Law Requirement**

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

**Section 13. Safety**

The City of Mount Airy has a legitimate interest in the welfare and safety of its employees and the public it serves. Safety is the responsibility of both the City and employees. It is the policy of the City to establish a safe work environment for employees. The City 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 14. Controlled Substances**

No employee shall use intoxicating beverages or non-prescribed drugs of any kind while on duty. Nor shall an employee report for duty while under the influence of an intoxicant or non-prescribed controlled drug. Any employee using medication or a controlled drug by prescription which may affect job performance or safety, shall notify their supervisor.

**Section 15. Communicable Disease**

The City of Mount Airy has a legitimate interest in maintaining a safe and healthy work environment for employees. The City of Mount Airy's communicable disease policy shall be administered in accordance with the North Carolina Communicable Disease Law (G.S. 130A-

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143 through 148), and the Americans with Disabilities Act, and all other applicable federal, state, and local rules, regulations and ordinances.

It is the policy of the City to attempt to provide a safe and secure environment for all employees. In an effort to maintain a balance between the need to protect the rights of employees and to control the spread of serious communicable diseases and conditions, decisions regarding the employment status of employees with communicable diseases or conditions shall be made on a case-by-case basis, in accordance with this policy.

A “communicable disease” means an illness due to an infectious agent or its toxic products which is transmitted directly or indirectly to a person from an infected person or animal through the agency of an intermediate animal, host or vector, or through an inanimate environment.

Any employee suffering from a communicable disease or condition shall follow all control measures given to him/her by his/her physician and shall take all necessary precautions to prevent the transmission of the disease or condition. Any City employee who has reason to believe that a fellow employee is suffering from a reportable communicable disease and that the fellow employee is failing to follow safe practices shall report this to his/her supervisor. Failure to follow control measures may result in severe sanctions against the offending employee. An employee suffering from a communicable disease or condition is encouraged to inform his/her supervisor so that appropriate accommodations may be made and appropriate precautions may be taken.

The City will follow all applicable state and federal laws and regulations and this policy in determining when an employee with a communicable disease or condition shall be required to take leave from his/her position or otherwise be restricted from continuing his/her employment.

Any employee who feels he/she is unable to continue to perform his/her regular duties due to a communicable disease or condition or who feels he/she may risk transmitting his/her disease to others if he/she continues to perform his/her assigned duties may request the City Manager or his/her designee to consider altering his/her duties or other conditions of his/her employment. The employee seeking alteration in the conditions of employment must apprise the City Manager or his/her designee of his/her condition, submitting medical documentation regarding such condition, suggest possible accommodations known to him/her, and cooperate in any ensuing discussing and evaluation regarding whether there are possible reasonable accommodations. If the City Manager so requests, the employee also must furnish written permission either to consult with appropriate medical personnel to receive medical information regarding the employee in order to assist the City Manager in determining whether alternative employment opportunities reasonably can be provided to the affected employee.

When addressing the issue of whether reasonable accommodation is possible, the City Manager shall determine to what degree the employee’s continued presence in his/her current job exposes other staff or members of the public to possible transmission of the disease and/or whether the

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employee is able to continue in his/her current position with reasonable modifications. If the City Manager determines that a significant risk of transmission exists in the employee's current position or that the employee is no longer able to continue in his/her current position for health reasons, the City Manager shall determine whether alternative employment opportunities are reasonably available within the City.

If the employee requesting accommodation refuses to consent to the release of information to the City Manager and/or appropriate medical personnel designated by the City Manager, his/her request for an accommodation may be denied until the employee agrees to allow the City Manager access to all relevant information.

Any employee who has been absent for more than 10 successive work days because of a communicable disease must, before returning to work, provide a physician's certificate certifying that the employee is free of any communicable disease.

**Confidentiality:** Because of the sensitive nature of medical information, extreme caution shall be exercised to maintain the confidentiality of such information. No statement or any other information concerning the employee's medical condition shall be made available except those having a need to know. No other person shall be notified nor given information concerning the employee's medical condition. Any City employee found to have violated this policy regarding confidentiality will be subject to disciplinary action up to and including termination

Nothing in this policy is intended to grant or confer any employment rights beyond those existing by law or contract.

### **Section 16. Weapons Policy**

It is the policy of the City of Mount Airy that no person employed by the City, either paid or volunteer, is permitted to possess any firearm or other dangerous weapon while performing his/her duties. This includes possession of any firearm or other dangerous weapon by employees/volunteers while on any City property, in any City-owned vehicle, or in any personal vehicle while the employee/volunteer is performing his/her duties. It is also prohibited for any employee/volunteer to have a firearm or other dangerous weapon in any personal vehicle parked on City property while the employee/volunteer is performing his/her duty.

The only employees exempt from this policy are law enforcement personnel. These employees must follow the guidelines established by the Chief of Police.

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

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**Section 17. Workplace Violence**

The City of Mount Airy is committed to doing what it can to prevent violence in the workplace. Acts of violence is directed toward another employee will result in immediate dismissal. The City will also discharge an employee who takes action, which indicates that violence may follow, such as threats of bodily harm or property damage. Every employee shall report possible workplace violence problems to the department head or the Personnel Administrator.

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**ARTICLE VIII. EMPLOYEE BENEFITS**

**Section 1. Insurance Benefits**

The City will provide individual medical, dental and life insurance to all full-time employees in accordance with the provisions of the group plan. Employees shall be enrolled in the programs in accordance with the provisions of the group plan. Deductions shall be allowable, at the option of the employee, to provide medical, dental and life coverage for dependents with the provisions of the group plan.

**Section 2. Retirement Benefits**

Each employee who is expected to work for the City more than 1000 hours annually shall join the North Carolina Local Governmental Employees' Retirement System as a condition of employment. Membership shall be effective on the employee's date of hire. Employees contribute, through payroll deduction, six percent (6%) of their gross salary each pay period to the system. The City contributes an actuarially determined percentage of the gross payroll each pay period to the system. Retirement system benefits and active duty service requirements are established by the Retirement System and subject to change.

The City provides 401(k) supplemental retirement benefits for its full-time employees who are eligible for enrollment into the North Carolina Local Governmental Employees' Retirement System.

In accordance with North Carolina General Statutes, the City shall provide a special separation allowance to qualified law enforcement officers who retire early or who leave service early and who meet all the following qualifications:

The officer must have completed thirty (30) years or more of creditable service or have attained fifty-five (55) years of age and completed five (5) or more years of creditable service.

The officer must not yet be age sixty-two (62).

The officer must have completed at least five (5) years of continuous service as a law enforcement officer immediately before service retirement.

**Section 3. Unemployment Compensation**

Employees who are laid off or dismissed from the City service may apply for unemployment compensation through the local office of the Employment Security Commission. Eligibility for unemployment compensation will be determined by the Employment Security Commission.

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**Section 4. Old Age and Survivors Benefits**

The City, 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 5. Workers' Compensation**

All employees of the City (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 supervisor 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 the date of injury. The employee's immediate supervisor or the Personnel Division will assist the employee in filing the claim.

**Section 6. Employee Assistance Program**

The City has an employee assistance program designed to offer help to employees, or members of their families, who have personal problems, which result in absenteeism and/or deteriorating job performance. The City will assist these employees by paying for mental health services for the first three visits after insurance has paid its portion.

**Section 7. Uniforms**

The City provides uniforms for certain personnel in public works, public utilities and public safety services. Employees are required to wear uniforms so they will be easily identified as City employees while working on or near private property.

Employees are responsible for the uniforms; therefore, the costs of avoidable damage or loss of uniforms will be paid by the employee. An employee will wear the uniform properly, will not wear the uniform while working for an employer other than the City, and will not allow other individuals to wear the uniform. Upon separation from City employment, the employee shall return all uniforms and issued equipment and accessories to the City in a reasonably good condition.

**Section 8. Optional Benefits**

Employees have the option for the following:

- a) Purchase of miscellaneous insurance through payroll deduction.
- b) Membership in Local Government Employees Credit Union
- c) Voluntary, employee contributions to a supplemental retirement income plan under Section 401(k) of the Internal Revenue Code.

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- d) Voluntary, employee contributions to a deferred compensation plan under Section 457 of the Internal Revenue Code.
- e) Election to spend pretax dollars on insurance premiums and deductibles, uncovered medical expenses and dependent child-care expenses under Section 125 of the Internal Revenue Code.

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**ARTICLE IX. EMPLOYEE DEVELOPMENT/EDUCATION ASSISTANCE PROGRAM**

**Section 1. Policy**

The City of Mount Airy shall encourage the improvement of service by providing employees with opportunities to improve skills and job performance or to prepare them for promotional opportunities within the City service by means of an employee development/education assistance program. The City will reimburse up to \$1,000.00 during a calendar year in approved educational expenses as defined below.

**Section 2. Organizations/Personnel Affected**

All departments; all regular, full-time personnel.

**Section 3. Definitions**

- (a) Approved course: An approved course is one which will either improve the employee's ability to perform his/her present job or will help prepare the employee for a job with the City which will require a higher level of knowledge, responsibility and/or skill.
- (b) Approved institution: Any accredited college, university, technical institute, or correspondence school, or any other institution approved by the City.
- (c) Eligible expense: Tuition, registration fees, books, laboratory fees and student fees, when charged, are the eligible reimbursement items. Special equipment, tools, and miscellaneous supplies such as pencils and paper are not reimbursable expenditures.
- (d) Successful course completion: Successful completion will normally be construed to be a grade of "C" or better when grade letters are given. Otherwise, as in the case of Pass/Fail courses, or in course when no grade is given, a written statement of successful completion from the instructor will be acceptable to demonstrate successful completion of a course.

**Section 4. Eligibility**

All full-time regular employees who are not receiving educational financial assistance from another governmental source, e.g., Veteran Administration benefits or the Law Enforcement Educational Program (LEEP), will be eligible to apply for financial assistance under this program. In such cases where an employee is receiving funds from another source, which do not cover all the expenses, the City Employee Development/Education Assistance Program will help defray the eligible costs over the amount of the funds received for approved courses.

**Section 5. Application Process**

To apply for the Employee Development/Education Assistance Program, the following steps are to be taken:

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- (a) Employees should discuss and plan their educational or training needs with their Department Head in advance. The employee should obtain and complete an Employee Development/Education Assistance Program Application prior to the beginning of the course.
- (b) The completed application should be submitted to the Department Head for approval, and then submitted to the Personnel Administrator for approval.
- (c) If the application is approved, the employee may proceed with the course. If not approved, the Department Head will discuss with the employee the reason for disapproval.

**Section 6. Reimbursement Process**

After satisfactory completion of the course, the employee may apply for reimbursement of eligible expenses using the following steps:

- (a) The employee shall complete an Employee Development/Education Assistance Program refund form, listing all eligible expenditures. Receipts for all expenditures must be attached.
- (b) The employee shall attach to the refund form an official record of the course grade or have an official of the institution verify, in writing, the course grade or successful completion of the course in which no letter grade is given.
- (c) The completed refund form shall be forwarded to the Department Head for approval, then to the Personnel Administrator for approval and authorization for payment. The Personnel Administrator shall verify all expenditures and grade, obtain all necessary signatures, then forward to the Finance Department for payment.

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**ARTICLE X. SAFETY PROGRAM**

**Section 1. Safety Policy**

The City has established a safety program with the goal of preventing and reducing on-the-job accidents and injuries. A safety coordinator has been designated and assigned the responsibility of organizing the overall safety and loss control efforts. A safety committee is in place to establish loss control policy, investigate major losses and loss trends and assign other safety responsibilities as needed. This committee will be chaired by the safety coordinator and its members will include each Department Head and the City Manager.

Each Department Head will be responsible for the safety and well being of the workers in his/her department as well as the required maintenance of facilities and equipment in his/her area of responsibility. Each employee will be responsible for his/her own personal safety and for the safe completion of assigned tasks. The City requires its employees to attend all planned safety meetings and training and to perform their assigned job in the safest manner possible.

The City of Mount Airy is committed to doing all in its power to make its safety and loss control program a success and expects all employees to assist in this effort by contributing expertise and by following all established safety rules and procedures.

**Section 2. Safety Orientation**

At the time of new employee orientation, all new employees will be presented with a copy of the City's Safety and Loss Control Policy and must sign that they have received a copy and understand it. Employees must also certify that they understand accident-reporting procedures and will abide by same at all times. New employees must be trained in safety policies and standards, which apply to them before being allowed to perform their job duties. Specific departmental safety rules will be reviewed by their supervisor.

**Section 3. Safety Committee Structure**

Each department and division will hold regular periodic safety meetings through the safety committee structure. Employees are required to attend and participate in these meetings. An executive safety committee consisting of the City Manager and Department Heads will meet quarterly to review the overall safety program of the City.

**Section 4. Working Conditions**

Department Heads, supervisors and safety representatives shall be held responsible for providing safe and suitable working conditions within their departments and for making recommendations to the executive safety committee for the alleviation of unsafe or unsuitable working conditions. Employees have the responsibility to safely perform their duties, to practice safe working habits, and to bring to the attention of the supervisor any unsafe working conditions.

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**Section 5. Safety Equipment**

The City shall supply whatever safety equipment or clothing deemed necessary to safely perform the duties and responsibilities of each position in the City.

The employee's supervisor shall be responsible for seeing that safety apparel and equipment is used properly. Employees will not be permitted to remain on the job unless properly protected based on the hazards present in the job.

Employees riding in any City vehicle or vehicle being used for City business are required to wear seat belts in accordance with North Carolina State law. Employees are not allowed to ride in truck beds under any circumstances.

**Section 6. Evaluation of Employee Safety**

As part of the annual performance evaluation, employees will be reviewed on their safety performance. The refusal of an employee to abide by safety rules and procedures may result in disciplinary action leading up to and including dismissal.

**Section 7. Accident Review Procedure**

A city employee involved in an accident must notify their immediate supervisor immediately. If the accident involves City vehicles, the employee must notify the Police Department, then, contact their immediate supervisor. The supervisor will contact the Safety Coordinator and the Personnel Division that an accident has occurred.

Accident investigation will be performed by the immediate supervisor of the employee involved along with the Department Head and Safety Coordinator. If two or more employees were separately involved in the accident, the supervisor of each will perform independent investigations. All accidents, incidents, and near misses will be thoroughly investigated.

The immediate supervisor and employee will complete the proper accident investigation forms. The supervisor will forward a copy of the accident investigation forms to the Safety Coordinator and will send the original to the Personnel Division.

The Personnel Division will inform the City Manager and Assistant City Manager that an accident has occurred involving a City employee and give background information involving the accident. The Personnel Division will handle all correspondence between the City, employee, physicians and insurance companies. The Personnel Division will inform the City Manager, Assistant City Manager, Department Head and Safety Coordinator of any further actions that may need to be made.

Employees injured on the job must report the incident to their immediate supervisor as soon as possible and complete an employee statement form. The immediate supervisor will get all statements and signatures from the employee and any witnesses, complete a supervisor's incident

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report and a preventable/non-preventable form and forward to the Personnel Division as soon as possible.

The Executive Safety Committee, made up of all Department Heads, will review any and all safety concerns on a quarterly basis and more often, if needed.

**Section 8. Accident Review**

It is the purpose of the executive safety committee when reviewing accidents to identify causes so as to prevent accidents in the future and to assure each employee of fair and uniform treatment. The Department Head will provide the committee with background information. The committee will review the facts, interview the employee involved, and make a recommendation.

**Section 9. Specific OSHA Regulations**

Each job will be analyzed to determine to which OSHA standards it is subject. This information will become part of the job classification file. Proper training and personal protective equipment will be provided to employees subject to these regulations and standards.

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**ARTICLE XI. LEAVES OF ABSENCE**

**Section 1. Holidays Observed**

The following days and such other days as the City Board may designate are holidays with pay for full-time City employees:

|                             |          |  |
|-----------------------------|----------|--|
| New Years Day               | 8 hours  |  |
| Martin Luther King, Jr. Day | 8 hours  |  |
| Good Friday                 | 8 hours  |  |
| Memorial Day                | 8 hours  |  |
| Independence Day            | 8 hours  |  |
| Labor Day                   | 8 hours  |  |
| Veterans Day                | 8 hours  |  |
| Thanksgiving                | 8 hours  | <i>(Friday following Thanksgiving holiday is a mandatory vacation day or leave without pay).</i> |
| Christmas                   | 16 hours |  |

Any holiday that falls on Saturday or Sunday shall be observed in accordance with the corresponding federal or state holiday, if applicable, or if there is no corresponding federal or state holiday on the preceding Friday or on the following Monday, as determined by the City Manager. Employees required to work on an observed holiday shall receive compensation for all hours worked on the holiday plus either (1) holiday pay equal to their regular daily rate; or (2) compensatory time off on an hour-for-hour basis at a time which will least obstruct the normal operations of the department.

**Section 2. Holiday Pay**

- (a) Any full-time employee who takes approved vacation or sick leave on the day before and/or the day after a paid holiday shall receive pay for the holiday.
- (b) A full-time employee granted approved leave without pay for less than two (2) weeks for any reason and who are on approved leave the day before and/or the day after a paid holiday shall receive pay for the holiday.
- (c) An employee on approved leave without pay, other than military and maternity leave, in excess of two (2) workweeks shall not be eligible for holiday pay.

**Section 3. Adverse Weather Conditions**

Employees are expected to report to work in the event of adverse weather conditions. City offices and departments shall remain open for the full scheduled workday unless authorization for early closing or other deviation is received from the City Manager's Office. All departments and offices will be given sufficient advance notice of any authorized early closings. Employees who do not report to work due to inclement weather, shall be required to use *vacation* leave or leave without pay. Employees must contact their supervisor of their intended absence from work

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within one hour after the scheduled start of the workday. It is the responsibility of the Department Head to make sure that his/her department is adequately staffed given the weather conditions and workload of the department.

**Section 4. Vacation Leave - Accumulation**

The vacation policy of the City provides for the accumulation of up to 318 hours, 252 hours, and 240 hours of earned vacation leave for fire shift employees, police shift employees, and regular employees, respectively, with such leave being fully vested when earned. Vacation leave earned and accumulated in excess of these limits as calculated on January 1 of each year will be converted to sick leave.

All full-time employees shall earn vacation leave at the following rates:

| Length of Service | Hours Accrued Per Month |            |              |
|-------------------|-------------------------|------------|--------------|
|                   | Regular                 | Fire Shift | Police Shift |
| 0 - 5 years       | 8                       | 10.60      | 8.40         |
| 6 - 10 years      | 10                      | 13.25      | 10.50        |
| 11 - 15 years     | 12                      | 15.90      | 12.60        |
| 15+ years         | 14                      | 18.55      | 14.70        |

**Section 5. Vacation Leave - Use and Reporting**

Vacation leave may be taken as earned by the employee, subject to the approval of the employee's supervisor. All requests for vacation leave must be completed prior to the time of leave. The Department Head must approve such request.

**Section 6. Vacation Leave - Terminal Pay**

Upon termination of employment, an employee is entitled to a lump sum payment for unused vacation leave, not to exceed the carryover limits described in Section 5 of this Article.

**Section 7. Vacation Leave - Payment Upon Death**

The estate of an employee who dies while employed by the City shall be entitled to payment for accumulated vacation leave credited to an employee's account, not to exceed the carryover limits described in Section 5 of this Article.

**Section 8. Sick Leave - Policy**

Sick leave with pay is a privilege granted by the City Board for the benefit of an employee when they or a member of the immediate family is sick. In this case, the definition of immediate

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family shall be expanded to include a member of the employee's household. Sick leave may be granted for absence due to the following:

- (a) Sickness or bodily injury that prevents the employee from performing regular duties.
- (b) Medical or dental appointments.
- (c) The actual period of temporary disability caused by or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom. A physician's certificate is required to verify the employee's period of temporary disability for these reasons.
- (d) Exposure to a contagious disease when continuing to work might jeopardize the health of others.
- (e) Death in the employee's immediate family
- (f) Care of spouse, dependent child, or parent.

To facilitate recruitment of qualified persons with appropriate governmental experience, the City Management may approve the transfer of all or part of unused sick leave that is certified as accumulated during employment with the State of North Carolina or local government employer within the State of North Carolina.

**Section 9. Sick Leave - Accumulation**

The sick leave policy of the City provides for an unlimited accumulation of earned sick leave. Sick leave does not vest, but any unused sick leave accumulated at the time of retirement may be used in the determination of length of service for retirement benefit purposes under the provisions of the North Carolina Local Governmental Employee's Retirement System.

All full time employees shall earn sick leave at the following rates: (1) Regular - 8 hours per month; (2) Fire shift - 10.60 hours per month; (3) Police shift - 8.40 hours per month. An employee will not work at the same time that they are on paid leave, nor will one employee give any of their accrued sick leave to another.

**Section 10. Sick Leave - Reporting**

Employees are required to notify their supervisor as soon as practical but no later than one (1) hour after the beginning of their regular workday if they are unable to work because of illness. Departments with shift personnel will require up to one-hour notification prior to the start of employee's scheduled shift.

Sick leave is not to be abused and will be granted with pay only when the employee:

- (a) Calls their supervisor to give the proper amount of advance notice.

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- (b) Tells their supervisor the nature and expected duration of the illness.
- (c) Keeps their supervisor informed daily, if necessary, of the status of the illness.

If the employee fails to notify their supervisor of the illness and fails to tell their supervisor when a return to work might be expected, the employee will be placed on leave without pay until the absence is explained. The supervisor has the authority to require proof of illness in whatever form that will meet their approval.

**Section 11. Sick Leave - Medical Certification**

The City may require a physician's certification concerning the nature of illness and the employee's physical capacity to resume duties for each occasion on which an employee uses sick leave. The employee's Department Head will be responsible for the application of this provision so that there will be no abuse of sick leave privileges. For all absences extending beyond three days, a physician's certification concerning the nature of the illness and the employee's physical capacity to resume duties shall be obtained at the discretion of the Department Head.

The City may also require a physician's certification from an employee who has been absent from work to care for a spouse, dependent child, or parent. The certificate shall verify the actual period that the spouse, dependent child, or parent was under a physician's care.

The City may require an employee to undergo an examination by a physician of the City's choice to ensure that an employee is physically fit to resume duties after an extended absence due to illness or accident.

Failure of an employee to provide requested proof of illness shall constitute a reason for non-payment of the days taken. Such action shall also be construed as grounds for further disciplinary action.

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

**Section 12. Sick Leave - Payment Upon Separation**

Employees will not be paid for any portion of unused sick leave when they leave the employment of the City. Unused sick leave accumulated at the time of retirement may be used in the determination of length of service for retirement benefit purposed under the provision of the North Carolina Local Governmental Employees Retirement System.

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**Section 13. Leave Without Pay - Policy**

A regular or probationary employee may be granted a leave of absence without pay for a period of up to one year by the City Manager, upon recommendation of the Department Head. The employee shall apply in writing for leave, stating the reason and the length of time for the leave of absence request.

The employee is obligated to return to duty within, or at the end of, the time determined appropriate by the City 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 should 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 14. Leave Without Pay - Retention and Continuation of Benefits**

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. The employee may continue to be eligible for benefits under the City's group insurance plans at his or her expense subject to any regulations adopted by the City Board and the regulations of the insurance carrier.

**Section 15. Workers' Compensation Leave**

An employee absent from duty due to injury or illness by accident arising out of and in the scope of employment with the City shall receive the benefits as follows:

- (a) All rights, benefits and remedies prescribed by the North Carolina Workers' Compensation Act.
- (b) For any employee out of work less than twenty-one (21) days, the first seven (7) days after the date of the injury/illness will be paid at the rate equivalent to that payable if the employee was present at work.
- (c) If injury or illness shall continue beyond seven (7) days, the disabled employee may choose to supplement North Carolina Workers' Compensation benefits by charging one-third (1/3) day of sick leave, per day, resulting in a rate equivalent to that payable if the employee was present at work until sick leave is exhausted. Sick leave credited to a disabled employee must be approved by the department head.
- (d) An employee receiving Workers' Compensation benefits shall continue to accrue vacation and sick leave.
- (e) Employees receiving Workers' Compensation benefits shall cease contributions to the North Carolina Local Governmental Employees' Retirement System. Upon returning to work, employees may purchase credit for the period of time they received Workers' Compensation benefits.
- (f) Workers' Compensation benefits paid during a period of time that includes a holiday(s) observed by the City shall be considered full pay for the holiday.

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**Section 16. Military Leave**

An employee who is a member of the National Guard or Armed Forces Reserve will be allowed up to 80 hours per fiscal year military training leave without pay for all employees except Fire, who shall be allowed up to five 24-hour shifts. An employee wishing to take military leave shall indicate in writing to their supervisor at least two weeks in advance that such leave needs to be taken. If such military duty is required beyond this period, employees shall be eligible to take accumulated vacation leave, compensatory leave, or be placed in a leave without pay status.

In rare cases where two annual training sessions may be required in one fiscal year, the employee may be allowed to take additional military time without pay, and when such leave does not interfere with departmental regulations.

While taking military leave, the employee's leave credits and benefits shall continue to accrue as if the employee physically remained with the City during this period.

Employees who are eligible for military leave shall have all job rights specified by the Uniform Services Employment and Reemployment Rights Act of 1994.

**Section 17. Civil Leave**

A City 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. While on civil leave, benefits and leave shall accrue as though on regular duty.

An employee who is a principal in private litigation shall not be entitled to civil leave, but may take vacation leave or leave without pay for necessary court appearances with the approval of the Department Head.

**Section 18. Funeral Leave**

Up to three consecutive days per occurrence may be taken for death in the immediate family which includes spouse, the employee's and spouse's mother, father, child, sister, brother or grandchild, step child or adopted child. One day per occurrence may be taken for death of guardian, grandparent, aunt and uncle, plus the combinations of half, step and adopted relationships that can be derived from all those named. Two additional days may be available if extensive travel is required. Additional days required may be taken as sick leave, with the approval of the Department Head.

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**Section 19. Family and Medical Leave**

Under the provisions of the Family and Medical Leave Act of 1993, eligible employees may take up to 12 weeks of unpaid leave in a 12-month period for the birth or placement of a child, or a serious health condition. This policy sets forth employee eligibility and obligations associated with taking a qualifying FMLA leave.

For purposes of FMLA leave, an eligible employee is one who has worked for the City at least twelve (12) months and has rendered at least 1,250 hours of service.

FMLA protected leave may be taken for any one of the following reasons:

- (a) The birth of a son or daughter of the employee and in order to care for such son or daughter.
- (b) The placement of a son or daughter with the employee for adoption or foster care.
- (c) In order to care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.
- (d) The serious health condition that makes the employee unable to perform the functions of the position of such employee.

For purposes of determining the amount of leave available to an eligible employee under this Section, the City shall use the "roll back" method by reviewing the employee's attendance record for the prior twelve (12) months. For purposes of this policy, the "roll back" method is illustrated by the following example: The 12-month period on which eligibility for leave shall be based is a period measured backward from the date an employee last used FMLA leave. Therefore, if an employee takes 4 weeks of FMLA leave on February 1; 4 weeks of FMLA leave on April 1; and 4 weeks of FMLA leave on August 1, such employee will not be entitled to any additional FMLA leave until the following February 1, at which time she will be entitled to 4 weeks of leave; on April 1 she will be entitled to another 4 weeks of FMLA leave, and so forth.

**Limitations:**

A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves hospitalization or continuing treatment by a medical doctor. Leave by an employee for a serious health condition may be taken intermittently or on a reduced-time schedule, if medically necessary. The City Manager may place the employee in an alternate job that would better accommodate the recurring periods of leave than would the employee's regular job without reduction in pay and benefits of the employee in the alternate job.

The entitlement to leave for a birth or child placement expires one year after the date of childbirth or placement. Childbirth or placement leave is to be taken in one block of time up to twelve weeks, unless the employee and the City Manager agree otherwise.

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A husband and wife who are both employed by the City, and are otherwise eligible for FMLA leave, are limited to a combined total of 12 weeks of FMLA leave in a 12-month period if the leave is taken for: 1) the birth of a child or to care for the child after birth; 2) the placement of a child with the employee for adoption or foster care, or to care for the child after placement; or 3) to care for the employee's parent with a serious health condition.

**Advance Notification of Leave, Medical Certification and Certification to Return to Work:**

- (a) Notification by Employee: Thirty (30) days notice should be given to the immediate supervisor and forwarded to the City Manager as, the birth or adoption of a child, or the planned medical treatment of the employee or immediate family member. The employee is required to make a reasonable effort to schedule the foreseeable or planned event so as not to unduly disrupt the City's operations. If the employee fails to give thirty (30) days notice for a foreseeable or planned leave event with no reasonable excuse for the delay, the City may deny the leave for at least thirty (30) days after the date the employee provides notice to the City of the need for the leave. In cases where the need for leave is unforeseeable or it is not possible to give 30 days notice, employees must give as much notice as possible under the circumstances.
- (b) Notification by the City: Upon absences from work for more than three (3) consecutive calendar days for an illness or injury, the employee's immediate supervisor shall contact the employee to determine if the employee is receiving inpatient care, continuing treatment by a health care provider, or is under the supervision of a health care provider. The supervisor shall then notify the City Manager of the employee's condition whereby the City Manager will make the determination as to whether such leave qualifies under this Section.
- (c) The employee or a designee must notify the Department Head every 30 days of his/her status and intent to return to work. Employees on leave longer than 30 days may be required to recertify their serious health condition or the serious health condition of a family member by submitting another completed medical certification form. In such circumstances, failure to recertify a serious health condition by submitting a completed medical certification form within 15 calendar days after each 30-day anniversary date will result in the leave losing its FMLA protection.
- (d) The employee must provide a medical certification (fitness for duty report) to resume work before returning from leave due to the employee's own serious health condition. Otherwise, the employee may not be permitted to return to work until he or she submits the required certification. Failure to provide a fitness for duty report after the end of the FMLA leave may result in the employee being terminated from employment. The fitness for duty report must list any limitations upon the employee's ability to return to work, as well as the anticipated duration of such limitations.

**Verification of Leave Requests:**

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The City Manager may require an employee requesting benefits under the Family and Medical Leave Act to provide a copy of certification from a medical doctor as to the seriousness of the health condition of the employee or the employee's spouse, child or parent.

The medical certification must contain the following elements:

- (a) The date when the serious health condition began;
- (b) The probable duration of the condition;
- (c) The appropriate medical facts known by the health-care provider regarding the condition;
- (d) The need of the employee to provide care to the family member (if leave is for the care of a family member);
- (e) The schedule of treatments (if leave is for the intermittent leave or leave on a reduced-time schedule).

The City Manager may require the employee to obtain a second opinion from a second health-care provider of the City's choice. If the City Manager requires a second opinion, the City will bear the cost of obtaining the second opinion. If the second opinion conflicts with the original opinion, then the employer may require a third opinion, which shall be final and binding on the employer and employee.

### **Employment and Benefits Protection:**

An employee who is granted family and medical leave is guaranteed the right to return to either the position he/she left when the leave began, or to an equivalent position with the same benefits, pay, and other terms and conditions of employment.

### **Medical Insurance Coverage**

- If the employee is covered under the employer's group health insurance plan during unpaid leave, the employer will continue to pay its portion of the health insurance premium, and the employee must continue to pay his/her share of the premium to the employer. Failure of the employee to pay his/her share of the premium will result in loss of coverage if the premium is more than 30 days late.
- If the employee does not return to work after the expiration of the leave, the employee may be required to reimburse the employer for payment of health insurance premiums paid during the period of unpaid leave, unless the employee does not return to work due to:

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- (A) the continuation, recurrence, or onset of a serious health condition either affecting the employee or the employee's family member which would otherwise entitle the employee to leave under the FMLA.
- (B) certain circumstances beyond the employee's control.

**Applicability of Sick and Vacation Leave:**

An employee who is granted leave under this Section shall first use any accrued sick and vacation leave while on FMLA leave. Any use of sick and vacation leave shall be used concurrently with leave granted under this Section. Once accrued sick leave and vacation are exhausted, the remainder of the FMLA leave will be without pay.

**Accrual of Leave and Holiday Pay**

During unpaid leave, the employee will not accrue vacation or sick leave benefits, and will not receive holiday pay.

**Workers' Compensation and Disability Leave**

Any employee who takes FMLA leave for a condition which also qualifies for workers' compensation or disability leave will not be entitled to substitute accrued paid leave for the period covered by workers' compensation or disability benefits, but such time will be counted against the employee's 12-week FMLA entitlement. If an employee is certified to return to a light duty position, but chooses not to do so, and instead chooses to remain on FMLA leave, or if such employee's workers' compensation or disability benefits cease for any reason, such employee will then be required to substitute accrued paid leave for the duration of the FMLA leave. If the employee exhausts his accrued paid leave, the remainder of the leave will be unpaid.

**Designating the Leave**

An employee will normally be advised whether his or her leave will be counted as FMLA within two business days after making a request for leave. If the employer does not designate the leave as FMLA leave, and the employee wants the leave to be counted as FMLA leave because the leave was due to an FMLA qualifying reason, the employee must, within two days after returning to work, notify the employer of its desire to have the leave counted as FMLA leave. Failure to notify the employer within two business days after returning to work that leave was taken for an FMLA qualifying reason will result in such leave losing its FMLA protection. Any such request must be in writing, and submitted to the head of the Personnel Division.

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**Section 20. Parental School Leave**

City employees may take up to four (4) hours of leave per year to attend or otherwise be involved in his or her child's school without adverse employment action. The leave is to be mutually agreed upon time between the employee and the Department Head. The Department Head may require a written request at least forty-eight (48) hours before the leave time sought is taken. The supervisor or Department Head may also require verification of the leave from the child's teacher or principal. Leave may be charged against the employee's accrued vacation leave or taken without pay.

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**ARTICLE XII. SUBSTANCE USE/ABUSE**

**Section 1. Purpose**

The City of Mount Airy has a strong commitment to the public and its employees to provide public safety and a safe secure workplace. The City is concerned about the detrimental effects which illegal drugs and alcohol abuse have upon the health and safety of its employees. The City recognizes that alcoholism and the illegal use of drugs leads to increased accidents and medical claims, and often destroys an employee's health and family life. Simply stated, employees who abuse illegal drugs and alcohol are a danger to themselves, their fellow employees and their families. In addition, employees with drug or alcohol have much higher medical costs than other employees, and their decreased productivity because of absenteeism and turnover adversely affect their ability to serve the citizens of the City.

In light of these concerns, and in compliance with applicable state and federal laws and regulations, the City of Mount Airy intends to maintain a workplace free of the problems associated with the illegal use of drugs and the abuse of alcohol. The City of Mount Airy Substance Abuse Policy is designed to help employees with problems associated with the abuse of drugs and alcohol and to encourage their rehabilitation. No part of this policy, or any of its procedures is intended to affect the City's right to manage its workplace or to discipline its employees. This policy is not a guarantee of employment, continued employment or, except as specifically provided in the policy, a guarantee of terms or conditions of employment. The policy is intended to help provide a better and safer work environment for all employees.

**Section 2. Scope and Application**

With the exception of all sworn law enforcement personnel and applicants for sworn law enforcement positions, who are tested for substance abuse in accordance with State law and Police Department policy, this policy covers all employees of the City and applies to all City property which, for purposes of this policy, includes all public and City owned grounds and parking lots, public streets, leased space, City vehicles and equipment, and personal vehicles used for City purposes. The policy applies to any employee on City time at any location. The policy supersedes all previous policies with respect to substance abuse to the extent they may be inconsistent.

For purposes of this policy and until further notice, the designated City official is the City Manager.

**Section 3. Definition of Substance Abuse**

Substance abuse is defined as:

- (a) Reporting to work or working with illegal drugs present in the body or while affected by alcohol.

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- (b) Chemical dependency on alcohol or other drugs where job performance or employee safety is adversely affected, or
- (c) The use of illegal drugs.

The term "illegal drugs" as used in this policy includes, but is not limited to: marijuana, cocaine, heroin, opiates, amphetamines and similar drugs whose possession and use are prohibited under state or federal law in this country, as well as prescription drugs unless validly prescribed by the employee's physician and used in the prescribed manner. So-called "designer drugs", "look alike", synthetic drugs and similar substances are also considered illegal drugs for the purposes of this policy, even if they are not specifically prohibited by state or federal law. This policy is also designed to cover other substances which may be abused, whether available legally over-the-counter (such as cough syrup or drugs obtained with a valid prescription), or substances which are not intended for human consumption (such as glue).

**Section 4. Applicants**

- (a) Scope and Application of Section 4: This Section of the policy applies only to all applicants for employment with the City, unless otherwise stated. For purposes of this policy, an "applicant" is defined as any person seeking employment with the City to whom an offer of employment has been made. Any current employee of the City who may seek employment by the City in another position (which shall not include transfers, demotions, promotions made by the City) shall be considered an applicant within the meaning of this policy.
- (b) Applicant Drug Testing: All applicants must undergo a pre-employment drug-screening test as part of their routine pre-employment physical examination. Failure to cooperate in such a test or examination will be considered a withdrawal of the City's offer of employment.
- (c) Contingent Employment: Any offer or acceptance of employment is contingent upon the applicant successfully completing a drug-screening test. No applicant shall be required to submit to a drug test until after the applicant has been offered a job. Employment will be denied when the test results are positive for illegal drugs or for the presence of prescription drugs (such as barbiturates, amphetamines, opiates, etc.) unless the applicant has a current prescription, a valid medical reason for using such drugs, and is using such drugs in the prescribed manner. No one shall be permitted to begin work until the results of the test have been obtained.
- (d) Release: Before taking the drug-screening test, applicants must sign a consent form. Failure to sign the form or cooperate in the test procedure as requested shall be deemed a withdrawal of the individual's application for employment.
- (g) Method of Drug Screening Test: Urine Sample Collection Procedure: The drug screening test shall consist of laboratory analysis of an applicant's urine. Procedures established by the City's designated testing laboratory, the City Manager, and those

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procedures set forth in Section 5(f) below (as applicable) shall be followed for collecting the urine sample.

- (h) Communication of Test Results by the Medical Review Officer:
- (1) Negative Test Results: If the drug screening test result is negative, the laboratory will so advise the City Manager. The applicant is then permitted to begin work.
  - (2) Adulterated or Unreadable Samples: If a drug screening test cannot be accurately performed because a urine sample is not authentic, or has been adulterated, contaminated or otherwise made impossible to analyze properly, the following procedures shall be used, unless otherwise dictated by applicable law:
    - a. If a urine sample is obviously not authentic (as example - when an applicant substitutes cold tap water for urine), the laboratory will so inform the City. The City then shall inform the applicant that the sample is not acceptable and the offer of employment will be withdrawn.
    - b. If the urine sample cannot be properly analyzed because of contamination or adulteration, the laboratory will so inform the City. The City shall then inform the applicant that he or she cannot be determined to be qualified for work and is requested to discuss the test with the Medical Review Officer (MRO). The MRO will ask the applicant to provide an explanation for the contaminated or adulterated sample.
      - i. If the MRO advises the City that the applicant failed to provide a satisfactory explanation, the City shall advise the applicant that the offer of employment has been withdrawn.
      - ii. If the MRO advises the City that the applicant provided a satisfactory explanation, the applicant will be permitted to repeat the drug-screening test, in which a new urine sample will be collected and analyzed.
  - (3) Positive Test Results: In the event a drug screening test is positive (positive test results must be confirmed by the laboratory using Gas Chromatography/Mass Spectrometry hereinafter referred to as "GCMS"), the following procedures should be followed:
    - (a) The laboratory will inform the City's MRO that the drug screening test is positive, and will convey such details of the test as the MRO deems necessary. The MRO will consult with the applicant to determine whether or not there is a satisfactory explanation for the positive test result.
    - (b) If a satisfactory explanation is provided, the MRO will advise the City that the applicant's test was negative, and the applicant will be permitted to begin employment.

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- (c) If a satisfactory explanation is not provided, the MRO will so advise the City. The City will advise the applicant that the offer of employment has been withdrawn.
- (4) Confidentiality: Because of the sensitive nature of drug screening test, extreme caution shall be exercised to maintain the confidentiality of the results. No statement or any other information concerning the applicant's drug screening results shall be made available to other members of management except those having a need to know. No other person, including friends and/or members of the applicant's family, shall be notified nor given information concerning the applicant's drug screening results. Any City employee found to have violated this policy regarding confidentiality will be subject to disciplinary action up to and including termination.

**Section 5. Employees**

- (a) Scope and Application of Section 5: This section of this policy applies only to current employees of the City. Its policies and procedures are effective immediately for all current employees, and for all former applicants once they have successfully completed the drug-screening test and started employment with the City.
- (b) Voluntary Referral for Counseling and/or Rehabilitation:
  - (1) Policy: The City recognizes and accepts that early treatment is the key to rehabilitation for substance abusers. Therefore, employees are encouraged to voluntarily request help. All reasonable attempts will be made by management to protect an employee's job security when such a good-faith effort is made. Management may take into account, among other matters, the prevailing risks involved to the employee, fellow employees, citizens, and property. Possibilities of temporary job assignments and other personnel actions may also be taken into consideration by management.
  - (2) Procedure for Volunteering for Assistance: An employee may volunteer for assistance either by requesting help from the Department Head, or a supervisor, or by contacting the City's EAP. If an employee contacts a Department Head or supervisor concerning a substance abuse problem, the Department Head or supervisor shall assist the employee in setting up an appointment with the of City Manager or the EAP, but shall not attempt to diagnose the problem nor counsel the employee.
- (c) Prohibitions for All Employees:
  - (1) Except as provided in paragraph 3 2 below, the possession, use, distribution, transfer, manufacture or sale of alcohol, illegal drugs, or legal drugs without a valid prescription on City property, in a City vehicle, or on City time, is

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specifically prohibited. An employee who violates this prohibition is subject to disciplinary action up to and including termination of employment. Any circumstances that indicate the violation of state, federal or local laws may be reported to appropriate law enforcement officials, and the City will cooperate in any criminal prosecution.

- (2) Reporting for duty or working with drugs present in the body or while affected by drugs or alcohol is prohibited and will be administered under disciplinary procedures or referral for counseling and/or rehabilitation, as management determines. This prohibition includes prescription drugs, unless the employee has a current legal prescription and a valid medical reason for using such prescription drug and is using such drug in the prescribed manner.
  - (3) Employees shall not consume alcohol during normal business hours. Employees shall not operate motor vehicles after consuming even a moderate amount of alcohol. Employees who violate the provisions of this paragraph are subject to disciplinary action.
  - (4) In order to ensure that employees can safely perform their jobs, the City is also concerned with prescription or over-the-counter drugs which might have an impact on job performance. Employees using such drugs should notify their supervisors or Department Heads immediately upon reporting to work. Such supervisor and/or Department Head shall then notify the City Manager of the same. Failure to do so may be considered a violation of this policy and is cause for disciplinary action. The City will not use this information in a manner that would violate the federal Americans with Disabilities Act.
- (d) **Searches: Drug Searches:** Where there is reasonable suspicion (as defined in paragraph (e)(2) below) that an employee or group of employees may (i) possess (ii) have consumed or (iii) be under the influence of substances which are prohibited by this policy, the employee or employees may be required, as a condition of continued employment, to submit to a reasonable search of their clothing, personal lockers, purses, lunch boxes or other containers, desks or personal vehicles while on City property. If there is reason for such a search, the matter will be turned over to law enforcement authorities.
- (e) **Drug and/or Alcohol Screening Criteria:** The City will consider an employee for a drug-screening test under the following circumstances:
- (1) **Accident or Incident:** An employee who is involved in an accident or incident, in which there is, or reasonably could have been personal injury or property damage, will be considered for testing. Not every incident or injury may result in a test. Reasonable determination that action or inaction of the employee contributed to the incident or accident shall be made prior to a request for testing. In making such reasonable determination, the facts listed and applicable under Paragraph E.2 below may be considered.

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- (2) Evidence of Substance Abuse: The City may also test employees on the basis of reasonable suspicion of substance abuse or violation of this policy.

The term “reasonable suspicion” as used in this Section means an expressible belief based on specific objective facts and rational inferences drawn from those facts. While it is impossible to list every factor, which might lead to a decision to search and/or test an employee, circumstances which constitute a basis for determining "reasonable suspicion" may include, but are not limited to:

- a. Observable occurrences, such as direct observation of drug use and/or the physical symptoms of being under the influence of a drug or alcohol.
  - b. A pattern of excessive absenteeism, tardiness or deterioration in work performance and abnormal conduct or erratic behavior while at work.
  - c. A report of drug or alcohol use, by an employee while at work, provided by a reliable and credible source.
  - d. Evidence that an employee is involved in the unauthorized use, possession, sale, solicitation or transfer of drugs or alcohol while working or while on the city's premises or operating a city vehicle, machinery or equipment.
  - e. Significant change in personality (repeated abusive behavior, insolence, insubordination, etc.)
  - f. Unexplained absences from normal worksites
  - g. Unusual behavior, which cannot be readily explained
  - h. Odor of alcohol or drugs.
- (3) Testing After Referral for Assistance: An employee with a positive drug and/or alcohol screening test, who has been referred by the City for counseling and/or rehabilitation under this policy, may be tested without cause and at any time for a period of two years after referral.
- (4) Employee Requests: The City may test an employee who specifically requests to take a test; however the City shall consider the employee's motivation for requesting a test, as well as the test's potential impact on other employees when making a determination of whether or not to test.
- (5) **Random Testing:** At such times as the City may decide, the City may conduct a drug and/or alcohol screening test of employees selected at random from among those employees involved in safety sensitive positions and/or positions involved

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in drug interdiction as determined by the City Manager. The City may or may not give advance notice of the date of any such test.

In selecting employees for random testing, the City will first determine the number of employees to be tested. The City or its designee will then draw names of employees to be tested from a pool consisting of all employees involved in safety sensitive positions and/or positions involved in drug interdiction. The drawing of names shall be in a manner such that the identity of any employee selected for testing is not known until the full number of employees to be tested has been drawn.

Any employee who refuses to participate in a test, or who fails to participate in a test without an explanation satisfactory to management, is subject to disciplinary action including but not limited to termination of employment. Any employee who fails to participate in a test due to illness, vacation, excused absence, or some other reason satisfactory to management, shall be tested as soon thereafter as reasonably possible, and shall be subject to such further testing as the City may decide, in the City's sole discretion.

**(f) Testing Procedure**

- (1) Before an employee is requested by a supervisor or Department Head to submit to a drug and/or alcohol-screening test for post-accident or reasonable cause testing, the concurrence of the City Manager shall be obtained. The employee shall be confronted in private with at least two members of management present. The employee shall be told that, in accordance with the City's Substance Abuse Policy, he or she is being requested to submit to an alcohol or drug-screening test. Care shall be taken to ensure that management states no conclusions as to whether the employee is a substance abuser.
- (2) A consent for drug and/or alcohol screening shall be completed by each employee to be tested pursuant to any provision of this policy. Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those city officials with a need to know. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the city's drug and alcohol testing policy. Applicants and employees will be asked to sign a voluntary medication form to indicate current or recent use of prescription or over-the-counter medication. The consent form shall also set forth the following information:
  - A. The procedure for confirming an initial positive test result;
  - B. The consequences of a positive drug or alcohol test result;
  - C. The right of an employee to explain a positive drug or alcohol test result and the appeal procedures available to employees; and

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- D. The consequences of refusing to undergo a drug or alcohol *test*.
- (3) The employee shall then be referred to the City Manager, who will ensure that the appropriate examination or test is conducted.
  - (4) Procedures established by the City's designated testing laboratory and the City Manager shall be followed for collection. Where tests are governed by federal or state law, procedures specified therein shall be followed.
  - (5) The employee may be permitted to continue to work pending the results of the drug and/or alcohol screening test if, in the City's sole discretion, the employee's returning to work will not endanger the employee, fellow employees, or member of the public, nor cause any other problems relating to the City's ability to manage its workplace.
  - (6) If management determines that it is in the City's best interest that an employee not be permitted to return to work pending the results of the examination or test, the City Manager shall make the determination as to whether he/she shall be suspended with or without pay pending the results of such testing.
  - (7) If the employee refuses to cooperate or-refuses to agree to the examination and/or drug and/or alcohol-screening test, he/she shall be suspended with or without pay pending the results of such testing.
- (g) If the City believes that an employee may be impaired by drugs or alcohol and appears to be unable to drive safely, the City shall provide or arrange for transportation. If the employee refuses to accept such transportation, and insists upon driving, he or she should be strongly discouraged from doing so, but not forcibly restrained. If appropriate, the City may take disciplinary action, up to and including termination of employment, against an employee who insists upon operating a motor vehicle under such circumstances. Finally the employee should be advised that the City will notify local law enforcement authorities if he or she attempts to drive. If the employee does attempt to drive, the proper law enforcement agencies shall be notified immediately. All actions taken to persuade the employee not to drive shall be documented.
- (h) Communication of Test Results by the Medical Review Officer:
- (1) Negative Test Results: If the drug screening test result is negative, the laboratory will so advise the City Manager who will notify the employee of-the test result. If the employee has been suspended pending the results of the screening test, the employee may, in the City's sole discretion, be reinstated with back pay and benefits.
  - (2) Adulterated or Unreadable Samples: A drug screening test which cannot be accurately performed because a urine sample is not authentic, or has been

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adulterated, contaminated or otherwise made impossible to analyze properly, shall be considered reasonable evidence of an employee's failure to cooperate with the City in administering this policy. The Medical Review Officer will discuss the test with the employee and request an explanation. If the employee provides a satisfactory explanation, a new drug and/or alcohol-screening test may be performed in the City's sole discretion. If the employee does not provide a satisfactory explanation, he or she is subject to disciplinary action up to and including termination of employment.

- (3) Positive Test Results: In the event a drug and/or alcohol-screening test is positive, the following procedures shall be followed:
- (a) The laboratory will inform the City's MRO that the test is positive and the MRO will consult with the employee to determine whether or not there is a satisfactory explanation for the positive test result.
  - (b) If a satisfactory explanation is provided, the MRO will advise the City that the employee's test was negative.
  - (c) If a satisfactory explanation is not provided, the MRO will so advise the Personnel Administrator who shall meet with the employee with another member of management to advise the employee of the test results. The employee shall be requested to meet with the City's EAP and attend an assessment session at a counseling and rehabilitation center if the EAP and employee sign a form to that effect.

(i) Failure of an Employee to Cooperate

Employee compliance with the City's Substance Abuse Policy is a condition of employment. Failure or refusal of any employee to fully cooperate and participate in the program, sign any required document or submit to a drug and/or alcohol-screening test will be grounds for termination of employment, unless a compelling, satisfactory reason is provided.

- (j) Employees who continue employment while undergoing counseling or rehabilitation will be required to meet all established standards of conduct and job performance. Employees who have been referred for counseling or rehabilitation under this policy shall be required to fully cooperate and participate in their rehabilitation and the recommendations of the program administrators. This may include the requirement for regular attendance at therapy sessions. Employees who have been referred to counseling or rehabilitation may be required to undergo drug and/or alcohol screening tests at any time for a period of up to two years. If the City determines that an employee has failed to cooperate under the terms of this Substance Abuse Policy, the employee shall be suspended without pay, pending further investigation and final decision regarding disciplinary action.

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- (k) Time Off for Counseling/Rehabilitation and Return to Work: Work time lost for counseling and/or rehabilitation will be paid according to applicable sick and vacation leave policies of the City to the extent available to the employee. Beyond such benefits, work time lost for counseling and rehabilitation will be without pay. An employee may return to work only after:
  - (a) He/she has been certified by the treatment facility as being drug-free and fit for return to duty: and
  - (b) He/she has produced a clean urine sample, which generates a negative test result.
- (l) Medical Benefits for Counseling and/or Rehabilitation: Medical benefits for counseling and/or rehabilitation shall be available as provided in the City's medical insurance plan provided for full time employees. Such benefits available will depend upon the medical diagnosis by the employee's physician in conjunction with the City's benefit plan.
- (m) Effects of a Positive Test After Referral: After an employee has been referred for counseling or rehabilitation under this Substance Abuse Policy, a condition of continued employment is that the employee promise to remain drug free. A subsequent positive drug test may result in termination of employment.

**Section 6. Confidentiality**

Because of the sensitive nature of drug screening test, extreme caution shall be exercised to maintain the confidentiality of the results. No statement or any other information concerning the applicant's drug screening results shall be made available to other members of management except those having a need to know. No other person, including friends and/or members of the applicant's family, shall be notified nor given information concerning the applicant's drug screening results. Any City employee found to have violated this policy regarding confidentiality will be subject to disciplinary action up to and including termination.

**Section 7. Use of Results in Criminal Action**

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

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**Section 8. Notification of Charge**

Any employee charged with driving under the influence or while impaired or charged with a drug related offense shall notify his/her Department Head no later than five (5) days after such charge. Failure to notify one's Department Head of such charge shall be grounds for dismissal.

**Section 9. Outside Charges**

Any employee officially charged with a drug related offense off the job may be suspended and/or dismissed according to the existing policies and procedures for employee facing civil or criminal charges.

**Section 10. Additional Standards: Police Department**

- (a) Testing: All applicants for employment as sworn law enforcement officers will be subject to the additional drug testing policies and procedures of the North Carolina Department of Justice, Criminal Justice Standards Division.
- (b) Reporting Requirements: The Personnel Administrator will report or cause to be reported all positive drug test results of applicants for sworn positions and current officers to the North Carolina Department of Justice, Criminal Justice Standards Division.
- (c) Consequences of a Positive Test Result: All sworn police personnel who test positive will be denied continued employment in a position requiring sworn status.

**Section 11. Safety Sensitive Positions**

- (a) Safety sensitive positions are those positions in which employees are entrusted with preserving the public health and safety or the safety of other employees. These employees have a special responsibility to maintain physical and mental fitness for duty at all times while on the job. These positions include, but are not limited to the following:
  - 1. Those positions requiring the use or potential use of weapons, fire suppression or the operating of heavy equipment or the handling of hazardous materials, the mishandling of which may place the employee, fellow employees and the general public at risk.
  - 2. Positions requiring the operation of vehicles, machinery, or equipment as a primary job task.
  - 3. Positions requiring the handling of materials and/or chemicals, the mishandling of which may place the employee, fellow employee, or the general public at risk of serious injury, or the nature of which would create a security risk in the workplace.
  - 4. Those positions requiring or potentially requiring the employee to render medical care.

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- (b) Positions determined to be “safety sensitive” and thus subject to random drug and alcohol testing following employment will include the following classification criteria:
- (1) All public safety personnel
  - (2) Automobile technicians or similar positions in the repair of vehicles used in the transportation of employees or the public
  - (3) Other positions required by law, or as so designated by the City Manager, due to the “safety sensitivity” of the individual jobs.

**Section 12. Positions involved in drug interdiction**

Positions involved in drug interdiction include those positions within the police department which have some responsibility for storing, maintaining or disposing of drugs or drug paraphernalia. This includes employees who are transferred or promoted to a position involved in drug interdiction.

**Section 13. Consequences of positive drug or alcohol test**

Applicants: A job applicant shall be denied employment with the city if his drug test is positive.

Employees: Except as otherwise provided in this policy, an employee who has a positive drug or alcohol test result will be subject to disciplinary action up to and including termination by his or her department, division or office head for performance issues or conduct violations.

The employee may appeal any disciplinary action using the appeal process as outlined in this policy.

**Section 14. Employee Responsibility for Off-duty Offenses**

Any employee charged with driving under the influence or while impaired or charged with a drug-related offense shall notify his or her department head immediately after such charge. Failure to notify one’s department head in a timely manner (within five days) of such charge shall be grounds for immediate dismissal.

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**ARTICLE XIII. SEPARATION, DISCIPLINARY ACTION AND REINSTATEMENT**

**Section 1. Types of Separation**

All separations of employees from positions in the service of the City shall be designated as one of the following types and shall be accomplished in the manner indicated. In no instance will an employee be separated from employment on the basis of age, sex, race, disability, religion, national origin, or other status protected by applicable federal or state law.

- (a) **Resignation:** A minimum of two (2) weeks notice is expected of all resigning personnel. Resigning Department Heads are encouraged to give one month's notice. Such notice should be given to the Department Head (or in the case of Department Heads, to the City Manager).

Employees who do not report to work or contact the appropriate official for two working shifts shall be considered to have voluntarily resigned.

- (b) **Reduction in Force :** A Reduction in Force (“RIF”) results from changes in programs, cutbacks in funding, outsourcing of services, or decreased workload. Such administrative decisions do not represent disciplinary action. The area of a RIF may include all or any part of government; a department, a division, any organizational or program sub-unit of a department or division, or position(s) within a department or division.

Retention Factors: To provide an equitable basis for determining the order of retention, all affected employees in the area(s) of RIF are to be evaluated against one another to determine their retention standing. In evaluating employees against one another for purposes of a RIF, consideration shall be given to organizational needs, the quality of each employee's past performance, and seniority, in that order, in determining those employees to be retained.

Employees who are laid off because of reduction in force shall be given at least two weeks notice of anticipated layoff. No regular employee shall be separated while there are temporary employees serving in the same class in the department, unless the regular employee is not willing to transfer to the position held by the temporary employee.

Reduction-in-force appeal: When an employee believes that the retention factors have been incorrectly applied to him, or if he believes that there are temporary employees serving in the same class in the department, the employee may file a grievance in accordance with Section XV of this Policy. However, the employee must file the grievance within five (5) working days of receiving a RIF notice. All such grievances, however, will proceed directly to the City Manager who will either personally hear each case or designate a representative on his behalf. The city manager shall make the final decision with respect to each case.

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Continuation of medical benefits. Employees laid off under this RIF policy shall be eligible for continuation of medical and dental benefits under COBRA at their own expense.

- (c) Disability: An employee may be separated for disability when the employee cannot perform the essential functions of a position because of a physical or mental impairment and reasonable accommodations, as required by the Americans with Disabilities Act (ADA) cannot be made. Action may be initiated by the employee or the City, but in all cases it shall be supported by medical evidence as certified by a competent physician. The City may require an examination at its expense and performed by a physician of its choice. Before an employee is separated for disability, a reasonable effort shall be made to locate alternate positions within the City service for which the employee may be suited.

An employee who is eligible for retirement and who remains absent from work for more than sixty (60) consecutive workdays because of sickness or injury other workers' compensation cases, shall file application for disability, early or service retirement, or show satisfactory evidence that the disability is not permanent.

- (d) Retirement: All employees are required to participate in the North Carolina Local Governmental Employees Retirement System. Sworn law enforcement personnel may also be eligible to receive retirement income from the Required Employer Contribution 401(k) Retirement Income Plan and the Law Enforcement Officer's Separation Allowance at the time of retirement as mandated by the North Carolina General Assembly. Any employee who is planning to retire must submit a written request to the City Manager up to three months prior to the planned effective date. Accumulated sick leave may be used toward early retirement in accordance with the North Carolina Local Governmental Employees Retirement System.
- (e) Death: All compensation due an employee who dies while employed by the City will be paid to the estate of the deceased employee. The date of death shall be recorded as the separation date for computing compensation due.
- (f) Dismissal: If the appointing authority determines that a dismissal action is appropriate, such dismissal shall be effective at the end of the calendar day. A written summary giving the circumstances and facts leading to the dismissal shall be prepared. A copy of the summary shall be mailed to the employee by certified mail and one copy shall be filed in the employee's personnel file. The employee shall be entitled to appeal the dismissal action in accordance with Article XV of this Policy .

**Section 2. 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 City Manager. An employee who is re-instated in this manner shall be re-credited with his or her previously accrued sick leave. They will not be eligible for reinstatement of any longevity pay

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eligibility. Reinstatement into the retirement system shall be governed by the rules of the North Carolina Local Governmental Employees Retirement System.

**Section 3. Rehiring**

An employee who resigns while in good standing may be rehired and shall be regarded as a new employee, subject to all of the provisions of this Ordinance. The employee shall be credited with his or her previously accrued sick leave and shall accrue benefits based on total length of service with the City. An employee in good standing who is separated due to reduction in force shall be given the first opportunity to be rehired in the same or a similar position.

**Section 4. Exit Interview**

When any employee, for whatever reason, leaves the employment of the City, the Personnel Administrator shall conduct an exit interview. The purpose of the exit interview is to determine the employee's reason for leaving and to document such reason. Also the employee will be advised of his/her rights of continued group insurance coverage under COBRA.

**Section 5. Termination Report**

Whenever an employee leaves the employment of the City, a termination report and personnel action form must be completed by the Department Head and placed in the employee's permanent records.

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**ARTICLE XIV. DISCIPLINARY ACTION**

An employee may be suspended, demoted, or dismissed by the Department Head because of failure in performance of duties or failure in personal conduct. The Department Head shall provide the employee with a written notice including the recommended effective date, reasons for the action, and appeal rights available to the employee.

**Section 1. Unsatisfactory Job Performance**

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 the City 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 City property or equipment
3. Physical or mental incapacity to perform duties
4. Discourteous treatment of public or other employees
5. Absence without approved leave
6. Repeated improper use of leave privileges
7. Habitual pattern of 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 time
10. Sleeping on the job.
11. Violation of established safety rules.
12. "Horseplay"
13. Disorderly conduct.
14. Willful refusal or failure to carry out instructions or assignments.
15. Violation of the City's policy concerning outside secondary/dual employment.
16. Unreported absences for more than (1) workday.
17. Repeated absence from work area without permission or an excused reason.
18. Absence without justifiable cause
19. Poor attendance.
20. Leaving the job or work area without permission before the end of the work period.
21. Failure to report workplace injury

**Section 2. Communication and Warning Procedure Preceding Disciplinary Action for Unsatisfactory Job Performance**

The progressive steps of discipline outlined below should normally be taken with an employee whose performance is unsatisfactory:

- A. Oral warning(s): The supervisor or Department Head shall talk privately with the employee and discuss the following:
  1. Inform the employee that the discussion is a warning and not some other non-disciplinary process such as counseling.

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2. Inform the employee how he/she has not met the performance requirements of the job and why the performance has been unsatisfactory.
3. Tell the employee specific actions the employee needs to take, and the time frame for taking such actions to improve performance to a satisfactory level.
4. Tell the employee the consequences of failing to make the required improvements.
5. The persons conducting the meeting should record the date of the meeting and other necessary information for any future use. The Personnel Division should be provided with a copy of the supervisor's or Department Head's notes for inclusion in the employee's official personnel file.

It is recommended that the supervisor allow the employee to respond to the specific reasons why performance has been unsatisfactory. In some cases, this may affect the supervisor's decision on whether to discipline an employee.

B. Written warning(s): If the oral warning(s) have not caused an improvement in the employee's performance, the supervisor or Department Head shall present the written warning to the employee and discuss its contents which should include the following:

1. Date(s) and points covered in previous warning(s)
2. A description of specific performance problems
3. Specific actions the employee needs to take to improve performance to a satisfactory level
4. A general time frame allowed for improvement
5. A strong notice that continuation of the performance problem(s) will result in more severe disciplinary action up to and including dismissal.

The written warning should be signed by the employee with a copy being forwarded to the Personnel Division for filing in the employee's official file. The employee's failure to sign the written warning does not affect the validity of the warning. The supervisor or Department Head should indicate on the warning that the employee refused to sign it. The employee has the right to attach a written summary of events leading to and including disciplinary action.

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- C. Following the written warning given to the employee, or in conjunction therewith, the Department Head may cause the employee to be placed on Disciplinary Probation as set forth below in Section 7 hereof.
- D. If the oral warning(s) and written warning(s) have not caused an improvement in the employee's performance, the supervisor or Department Head may take further Disciplinary Action up to and including dismissal.
- E. Provided, however, it should be understood that the steps outlined above are simply **recommendations** to be followed if an employee's performance is unsatisfactory. These steps are intended as simply guides. A Department Head should formulate the disciplinary measures that are appropriate in each case.

**Section 3. Disciplinary Action for Failure in Personal Conduct**

An employee may be subject *to* Disciplinary Action up to and including dismissal without warning for causes relating to personal conduct detrimental to City service in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons.

**Section 4. Detrimental Personal Conduct Defined**

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

- 1. Fraud
- 2. Conviction of a felony or any crime involving moral turpitude 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 City 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 or on City Property. Prescribed medication may be taken within the limits set by a physician as long as medically necessary
- 10. Engaging in incompatible employment or servicing a conflicting interest
- 11. Request of acceptance of gifts in exchange for favors or influence
- 12. Engaging in political activity prohibited by this Policy
- 13. Engaging in malicious gossip that is detrimental to the operations of the City
- 14. Sexual Harassment
- 15. Fighting

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16. Insubordination
17. Stealing.
18. Misrepresentation and/or falsification of records, time sheets or attendance reports.
19. Misappropriation of City property or funds.
20. Willful violation of any City Personnel Policy.
21. Willful violation of any of the City's Departmental Rules and Regulations
21. Any conduct, including conduct off the job, unbecoming of a City employee which might reasonably interfere with the successful completion of employee's duties or bring the City of Mount Airy or its Board of Commissioners into substantial disrepute.

**Section 5. Disciplinary Suspension**

In order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons, an employee may be suspended either with or without pay in accordance with this Section.

Suspensions With Pay: If a Department Head believes that cause exists for Disciplinary Action under this Policy, then the Department Head may suspend an employee with pay for a period not to exceed ten (10) work days. Any suspension exceeding ten (10) workdays shall be made by the City Manager based upon the recommendation of the Department Head.

Suspensions Without Pay: If a Department Head believes that cause exists for Disciplinary Action under this Policy, then the Department Head may suspend an employee without pay for a period not to exceed five (5) work days. Any suspension exceeding five (5) work days shall be made by the City Manager based upon the recommendation of the Department Head.

Suspensions as herein provided shall become effective upon imposition or approval by the Department Head or the City Manager, as applicable, and will not be delayed by the employee filing an appeal. If the employee is successful in an appeal, then all references to the suspension will be removed from the personnel file and all benefits restored as if the period of suspension had not occurred.

**Section 6. Non-Disciplinary Suspension**

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

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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 employee would have been entitled had the suspension not occurred. If the decision is made to terminate an employee following suspension without pay, 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.

**Section 7. Disciplinary Probation**

The disciplinary probation status shall serve as a period of formal notice to an employee that a problem exists which may jeopardize continued employment with the City. Such status, which may be for a period not to exceed one year, shall set forth the following:

1. A clear and concise statement of the problems or deficiencies in the employee's performance
2. The corrective action(s) to be taken immediately
3. A schedule for periodic evaluations of progress
4. That failure by the employee to follow through with prompt corrective action(s) shall be cause for further disciplinary action, up to and including dismissal.

An employee who is placed on Disciplinary Probation shall retain all rights and benefits of a regular employee in accordance with the Personnel Policy.

**Section 7. Notice of Disciplinary Action**

As soon as practicable, and in any event not later than one (1) work day following any Disciplinary Action, whether a dismissal or whether a suspension or period of Disciplinary Probation under Sections 5, 6 or 7 of this Article, the Department Head shall provide the employee with a written notice as set forth in this Section. This Notice shall be hand delivered or mailed by certified mail to the employee's home address and shall include (i) the nature of the disciplinary action, (ii) its effective date, (iii) the reasons for the action, (iv) a statement of the reasons for the action, and (v) the employee's rights of appeal. The City Manager will be provided with a written notice of action taken.

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**Section 8. Failure to Meet or Maintain Required Conditions of Employment**

An employee may be suspended, demoted, transferred, placed on disciplinary probation or dismissed for cause relating to employment qualifications and standards that are not met or maintained. Representative of such conditions of employment are requirements concerning certifications or licenses, education and training levels, physical condition or any other condition stipulated in an employment or subsequent agreement. An employee in violation of this section may be disciplined in accordance with the steps listed in this Article.

**Section 9. Right of Appeal**

A non-probationary employee wishing to appeal a disciplinary action taken against him/her may do so through the grievance procedure prescribed in Article XV within fifteen (15) days from written notice of the disciplinary action.

**Section 10. Discipline of Department Heads**

**A. Preamble.**

Employees who shall have earned confidence and become Department Head occupy a special status which requires leadership, trust, judgment and the highest order of responsibility. Department Heads are expected to lead by example, to command respect, to be eminently fair in their dealings with their subordinates and to exercise abundant discretion as administrators. Department Heads are expected to work cooperatively with the City Manager, to demonstrate candor and honesty with their dealings with the City Manager who of necessity makes recommendations to the Board of Commissioners based upon the reports and information supplied to him by Department Heads.

**B. Conduct Justifying Suspension or Dismissal**

Department Heads may be disciplined by the City Manager, suspended or dismissed for the following conduct:

1. Willful or deliberate misrepresentation of facts to the City Manager and/or the Board of Commissioners; or
2. Culpably negligent failure to meet legitimate job description; or
3. Failure to meet a minimum level of competency expected and required of a Department Head; or
4. Conduct which is deemed destructive of that level of confidence deemed essential to the exercise of the duties assigned to the position of the Department Head.

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**C. Procedure**

The City Manager shall have the authority to suspend, with or without pay, or dismiss a Department Head immediately for any of the causes set forth in Section 10 B(1)(2)(3) or (4). The discipline exacted or the dismissal with the ground therefore shall be stated in writing, delivered to the Department Head and placed in his personnel file.

**D. Appeal**

Any Department Head shall have the right to appeal to the Personnel Committee of the Board of Commissioners within five (5) days next following dismissal. The decision of the Personnel Committee shall be final.

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**ARTICLE XV. GRIEVANCE PROCEDURE**

**Section 1. Policy Statement**

It is the policy of the City to provide a means whereby employees may freely discuss problems with supervisors and to provide a procedure for the presentation and mutual adjustment of points of disagreement that arise between employees and their supervisors. Employees whose grievances arise from work situations have the right to submit grievances for orderly resolution with complete freedom from discrimination, coercion, recrimination, restraint or reprisal. The resolution of grievances promotes more effective employee-employer relationships and is in the best mutual interest of all affected parties.

The purposes of this policy are:

- (a) to provide employees a procedure by which their complaints can be considered rapidly, fairly, and without reprisal;
- (b) to encourage employees to express themselves about the conditions of employment which affect them as employees;
- (c) to promote better understanding of policies, practices and procedures that affect employees;
- (d) to develop in supervisors a greater sense of responsibility in their dealings with employees.

**Section 2. Grievance - Definition**

A grievance shall be defined as any dispute concerning the interpretation or application of this personnel policy, or any other policy, practice or procedure affecting working conditions of the City. A grievance might involve alleged safety or health hazards, unfair or discriminatory supervisory practices, misapplication of department work rules, unsatisfactory physical facilities or equipment or any other complaints related to conditions of work or disciplinary action.

Non-grievable subjects include:

- (a) The negotiation of wages, salaries, or fringe benefits;
- (b) any work activity accepted by the employee as a condition of employment;
- (c) operating and/or organizational changes adopted by the City for the efficient and economical operation of City services, including but not limited to, hours of work, licenses and certifications, residency requirements, and other specified conditions of employment; and

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- (d) subjects covered by existing ordinances or established personnel policies and procedures. Non-grievable complaints may, however, be provided customary administrative review outside the scope of the grievance procedure.

**Section 3. Procedure**

All grievable disputes as defined in the preceding sections will be administered in the specified manner and processed within the stated time limits unless a time extension is mutually agreed upon. Failure by the employee to process complaint within the stated time limits, or agreed upon extension, shall constitute termination of the complaint. At each step of the grievance process where written documentation is required, the Personnel Administrator shall receive a copy to put in the employee's permanent file. The number of days indicated at each step of the grievance procedure should be considered as the maximum number of working days allowed for presentation of and response to the grievance at that level.

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 and/or City Manager as a resource to help resolve the grievance.

- A. Step 1: The employee shall present the grievance to their immediate supervisor in writing within fifteen (15) calendar days of its occurrence or within fifteen (15) calendar days of learning of the event or condition. The grievance shall specify the relief that he/she expects to gain through the use of this procedure. The supervisor shall respond to the grievance within three (3) working days in writing. The supervisor should and is encouraged to consult with any employee of the City 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 Personnel Administrator.

- B. 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 (10) days after receipt of the response from Step 1. The Department Head shall hear the grievance and render a decision in writing within ten (10) days after receipt of the appeal.
- C. 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 City Manager within five (5) days of the receipt of the response in Step 2. The employee shall be entitled, if he so desires, to a formal or informal hearing before the City Manager. The City Manager, in cases involving suspension, demotion and dismissal, if requested by the employee, shall give the employee an opportunity to

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appear before him no later than thirty (30) days after the employee's request, for the purpose of a final grievance hearing. The employee shall be advised in writing of the charges against him, the date and time of the hearing, and of his rights under this Step 3: An employee may be represented by legal counsel or any other person of his choice; may present evidence and witnesses; and may examine the evidence against him and cross-examine any adverse witnesses. If it is his desire, he may have a court reporter present to record the hearing at his expense. Within ten (10) days of the hearing the City Manager shall notify the employee in writing of the action taken and the reasons therefor. The decision shall include detailed findings of fact and conclusions of law drawn from the findings of fact.

For purposes of this section, the term "City Manager" shall mean either the city manager or an assistant city manager duly authorized by the city manager to act in his stead. If a hearing is held by an assistant city manager pursuant to the immediately preceding paragraph of this section, a report containing findings of fact and a recommendation is to be prepared for review by the city manager. The city manager shall study the report and consider the recommendations of the assistant city manager holding the hearing, and shall then make the final disposition of the matter.

Step Four: If the grievance is not resolved to the satisfaction of the employee at this point, the employee may appeal the decision of the City Manager to the personnel committee of the Board of Commissioners for their review and final decision. The employee may appeal, in writing, to the Personnel Committee within five (5) days of the receipt of the response in Step 3. The employee shall not be permitted to rely upon any grounds for relief on appeal that were not set forth specifically in his notice of appeal filed with the Personnel Committee.

Scope of Appeal to Personnel Committee: On appeal the Personnel Committee shall review the record and any alleged irregularities in the process of Steps One-Three, above, not shown in the record. So far as necessary to the decision and where presented, the Personnel Committee shall decide all questions of law and determine the meaning and applicability of the terms of any action of the City Manager. The Personnel Committee may remand the case for action back to the City Manager with a recommendation either affirming or reversing his decision, or remand the case to the City Manager for further proceedings; or for good cause shown, it may reverse or modify the decision if the substantial rights of the employee have been prejudiced because the City Manager's findings, inferences, conclusions or decisions are:

1. In violation of law or made upon unlawful proceedings; or
2. Unsupported by material and substantial evidence in view of the entire record as submitted; or
3. Arbitrary or capricious.

Within ten (10) days of the hearing the City Manager shall notify the employee in writing of the final disposition and the reasons therefor.

### **Section 4. Grievance Appeal Procedure for Discrimination**

Any applicant for City employment, City employee, or former City employee, who has reason to believe that any employment action, including promotion, training, classification, pay,

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disciplinary action, transfer, layoff, failure to hire, or termination of employment was based on age, sex, race, color, national origin, religion, creed, political affiliation, or disability, except where specific requirements constitute a bona fide occupational qualification necessary to proper and efficient administration shall have the right to appeal directly to the City Manger using the grievance procedure if so desired. An employee or applicant must appeal an alleged act of discrimination in writing within thirty (30) days of the alleged discriminatory action.

**ARTICLE XVI. PERSONNEL RECORDS AND REPORTS**

**Section 1. Personnel Records Maintained**

Such personnel records as are necessary for the proper administration of the personnel system will be maintained by the Personnel Department. The City shall maintain, in personnel records, only information that is relevant to accomplishing personnel administration purposes. All medical information shall be kept confidential and separate from the personnel files.

**Section 2. Public Personnel Records Defined**

The following information on each City employee is part of an employee's public personnel record:

- (a) Name;
- (b) Age;
- (c) Date of original employment or appointment to City service;
- (d) Current position title;
- (e) Current salary;
- (f) Date and amount of most recent change in salary;
- (g) Date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification;
- (h) Office to which the employee is currently assigned.

**Section 3. Access to Personnel Records**

As required by G.S. 160A-168, any person may have access to the information listed in Section 2 of this Article for the purpose of inspection, examination, and copying during the regular business hours, subject only to such rules and regulations for the safekeeping of public records as the City Board may adopt. Access to such information shall be governed by the following provisions:

- (a) All disclosures of records shall be accounted for by keeping a written record (except for authorized personnel action) of the following: name of employee; information disclosed; date information was requested; name and address of the person to whom the disclosure is made; and purpose for which information is requested. This information must be retained for a period of two years.

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- (b) Upon request, the record of disclosure shall be made available to the employee to whom it pertains.
- (c) Any individual examining a personnel record may copy the information. Any available photocopying facility may be provided and the cost may be assessed to the individual.
- (d) Any person denied access to any record shall have a right to compel compliance with these provisions by application to a court for a writ of mandamus or other appropriate relief.

**Section 4. Confidential Information**

All information contained in the City employee's personnel file, other than the information listed in Section 2 of this Article will be maintained as confidential in accordance with the requirements of G.S. 160A-168 and shall be open to inspection only in the following circumstances:

- (a) The employee or duly authorized agent may examine all portions of the personnel file, except (1) letters of reference solicited prior to employment, and (2) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.
- (b) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (c) A City employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (d) By order of a court of competent jurisdiction, any person may examine such portion of the employee's personnel file as may be ordered by the court.
- (e) An official of an agency of the State or Federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of the personnel records to be necessary and essential to the pursuance 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, such official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (f) An employee may sign a written release, to be placed with his/her personnel file, that permits the person with custody of the file 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.

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- (g) The City Manager, with concurrence of the City Board, may inform any person of the employment or non-employment, promotion, demotion, suspension, or other disciplinary reasons for that personnel action. Before releasing the information, the City Manager shall determine in writing that the release is essential to maintaining the public trust and confidence in the administration of services or to maintain the level and quality of City services. This written determination shall be retained in the office of the City Clerk, and is a record available for public inspection and shall become part of the employee's personnel file.
- (h) Each individual requesting access to confidential information will be required to submit satisfactory proof of identity.
- (i) A record shall be made of each disclosure and placed in the employee's file (except disclosures to the employee and the supervisor)

**Section 5. Records of Former Employees**

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

**Section 6. Records of Applicants**

Applicants and other information gathered with respect to an applicant will be kept confidential in accordance with G.S. 160A-168. The City will not release this information without written permission from the applicant.

**Section 7. Remedies of Employees Objecting to Material in File**

An employee who objects to material in his/her file may place in the file a statement relating to the material considered to be inaccurate or misleading. The employee may seek the removal of such material in accordance with established grievance procedures.

**Section 8. Penalties for Permitting Access to Confidential File by Unauthorized Person**

G.S. 160A-168 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's personnel file, except as permitted by the statute, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars.

**Section 9. Penalty for Examining and/or Copying Confidential Material Without Authorization**

G.S. 160A-168 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

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a misdemeanor and upon conviction shall be fined in the discretion of the court but not in excess of five hundred dollars.

**Section 10. Destruction of Records Regulated**

No person may destroy, sell, loan or otherwise dispose of any public record except in accordance with G.S. 121-5. Whoever unlawfully removes a public record from the offices 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 no less than ten dollars, not more than five hundred dollars as provided in G.S. 132-3.

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**ARTICLE XVII. IMPLEMENTATION OF POLICY**

**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 thereunder or the application of such provision to any person or circumstance is held invalid, the remainder of these policies and the application of remaining provisions of these policies or such rules, regulations or orders to persons or circumstances other than those held invalid will not be affected thereby.

**Section 3. Violation of Policy Provisions**

An employee violating any of the provisions of these policies shall be subject to suspension and/or dismissal, in addition to any civil or criminal penalty which may be imposed for the violation of the same.

**Section 4. Supplemental Procedures**

Subject to review and approval by the City Manager, departments may develop supplemental rules, regulations, practices, and procedures as they deem necessary. Such supplemental requirements must be consistent with the policies contained in this manual and shall be in written form and distributed to all departmental employees. Any supplemental requirements which have been reviewed by the City Manager, take on the same validity as these personnel policies and may be enforced as though they are part of these policies.

**Section 5. Effective Date**

These policies shall become effective upon adoption.

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**ARTICLE XVIII. MANDATORY RETIREMENT**

**Section 1. Employees of City of Mount Airy**

Employees employed by the City of Mount Airy, where public safety is their primary responsibility shall plan to retire on the eligibility date for full social security benefits.

**Section 2. Continued Employment**

Continued employment could be allocated for one additional year provided that he/she would be recommended by their supervisor and approved by the City Manager.