



# Town of Smithfield Employee Handbook 2018 - 2019

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Employee Name



Revised 7-5-18



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## Introduction Letter

Dear Employee:

The Town of Smithfield Personnel Regulations Handbook, Annual 2018-2019, includes all Personnel Regulations. This handbook does not constitute an employment contract, expressed or implied. The Town Council and Administration of the Town want to insure that each employee has in his or her possession a copy of the rules governing employment with the Town of Smithfield.

It is important that all employees understand and adhere to the regulations set forth in this handbook. For this reason, you, as an employee, will be asked to sign a departmental sheet which means that you have received the handbook and are aware that it is your responsibility to review the policies established there and if any questions arise in relation to the regulations or employment, it is your responsibility to ask your supervisor, department head or myself.

Town Manager,

A handwritten signature in blue ink, appearing to read "Mark L. Scott", with a long horizontal flourish extending to the right.

Disclaimers:

- The handbook does not create a contract, expressed or implied.
- The handbook is not all inclusive, and is only a set of guidelines.
- The handbook does not guarantee employment for any definite period of time.
- The handbook can be changed by the Town of Smithfield unilaterally, at any time.

Revisions:

1999, January 2000, January 2003, October 2004, July 2006, July 2007, July 2008, March 2010, September 2012, June 2017, December 2017, July 2018



# **ARTICLE I: General Provisions**

## **Section 1. At Will Employment**

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

## **Section 2. Purpose of the Chapter**

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

## **Section 3. Merit Principle**

All appointments and promotions shall be made solely on the basis of merit. All positions requiring the performance of the same duties and fulfillment of the same responsibilities shall be assigned to the same class and the same salary range.

- a. Applicants and employees shall be assured of fair treatment in all aspects of personnel administration, regardless of race, color, creed, religion, sex, national origin, political affiliation, handicap/non-disqualifying disability, veteran status or age.
- b. Individuals shall be treated with proper regard for their privacy and constitutional rights as citizens.
- c. Employees shall be recruited, selected, trained and advanced on the basis of their ability to perform essential functions, knowledge, skill, and performance.
- d. Employees shall be retained on the basis of adequacy of their performance. They shall be guided in ways to correct inadequate performance and separated from employment when inadequate performance cannot be corrected.
- e. Employees shall receive suitable and adequate pay and benefits and all positions requiring performance of the same duties and fulfillment of the same responsibilities shall be assigned to the same classification and the same salary range.
- f. Eligible employees shall receive merit pay increases based on the quality of their performance, subject to the availability of funds.
- g. Employees shall be protected against coercion for political purposes.
- h. Every reasonable effort to accommodate applicants and employees with disabilities will be made as long as the accommodation is not an undue financial hardship to the Town.

## **Section 4. Responsibilities of the Town Council**

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

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

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

The Town Manager shall supervise or participate in:

- a. recommending rules and revisions to the personnel system to the Town Council for consideration;
- b. making changes as necessary to maintain an up to date and accurate pay plan; preparing and

- recommending necessary revisions to the pay plan;
- c. determining which employees shall be subject to overtime provisions of FLSA with the consent of Council;
- d. establishing and maintaining a roster of all persons and authorized positions in the municipal service, setting forth each position and employee, class title of position, salary, any changes in class title and status, and such data as may be desirable or useful;
- e. developing and administering such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town;
- f. developing and coordinating training and educational programs for Town employees;
- g. investigating periodically the operation and effect of the personnel provisions of this Chapter; and
- h. performing such other duties as may be assigned by the Town Council not inconsistent with this Chapter.

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

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

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

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

## **Section 8. Definitions**

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

**Full-time employee.** An employee who is in a position for which an average work week equals at least 40 hours, and continuous employment of at least six (6) months, are required by the Town, 12 months for sworn police officers.

**Part-time employee.** An employee who is in a position for which an average work week of at least 20 hours and less than 30 hours and continuous employment of at least six (6) months are required by the Town.

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

**Temporary employee.** An employee appointed to a position for which either the average work week required by the Town over the course of a year is less than 20 hours, or continuous employment required by the Town is less than 12 months.

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

## **ARTICLE II: The Pay Plan**

### **Section 9. Purpose**

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

### **Section 10. Administration of the Pay Plan**

The Town Manager shall allocate each position covered by the pay plan to its appropriate department, and shall be responsible for the administration of the pay plan. The Town Manager shall periodically review portions of the pay plan and recommend appropriate changes to the Town Council.

### **Section 11. Adoption of the Pay Plan**

The pay plan shall be adopted by the Town Council and shall be on file with the Human Resources Department's Office. Copies will be available to all Town employees for review upon request. New positions shall be established upon recommendation of the Town Manager and approval of the Town Council after which the Town Manager shall allocate the new position into the appropriate department.

### **Section 12. Definition**

The pay plan includes the basic salary schedule adopted by the Council. The salary schedule consists of salary ranges for each position within each department and a designation of the standard hours in the work week for each position.

### **Section 13. Administration and Maintenance**

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

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

Periodically, the Town Manager shall recommend that individual salary ranges be studied and adjusted as necessary to maintain market competitiveness. Such adjustments will be made by increasing or decreasing the assigned salary grade for the class and adjusting the rate of pay for employees in the class when the action is approved by the Town Council. The suggested time for recommending such adjustments should take place during the annual budget process.

### **Section 14. Starting Salaries**

All persons employed in positions approved in the pay plan shall be employed at least at the minimum hiring salary for the classification in which they are employed; however, exceptionally well qualified

applicants may be employed above the hiring rate of the established salary range up to the mid- point of the hiring range for the position classification upon approval of the Town Council. The Town Manager may approve starting employees up to five percent (5%) above the minimum starting salary without Town Council Approval.

### **Section 15. Trainee Designation and Provisions**

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

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

### **Section 16. Merit Pay**

Merit pay, when approved by the Town Council, will be available to all Town departments. Merit pay will be provided following annual evaluations, as approved by the Town Council during the annual budget process.

### **Section 17. Bonus for Top of Salary Range Employees**

Employees who are at the maximum amount of the salary range for their position classification are eligible to be considered for a Bonus during the same time period as the other employees receive approved salary adjustments. Bonuses shall be awarded in lump sum payments and do not become part of base pay. Bonus Pay shall be based upon available funds and by approval of the Town Council.

### **Section 18. Salary Effect of Promotions, Demotions, & Transfers**

Promotions. The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility. When an employee is promoted, the employee’s salary shall normally be advanced to the minimum rate of the new position, or to a salary which provides an increase of up to 10% at Manager's discretion. Career Ladder promotions will carry a 5% increase. In the event of highly skilled and qualified employees, shortage of qualified applicants, or other reasons related to the merit principle of employment, the Town Manager, with approval of the Town Council, may set the salary at an appropriate rate in the range of the position to which the employee is promoted that best reflects the employees qualifications for the job and relative worth to the Town. In no event, however, shall the new salary exceed the maximum rate of the new salary range. In setting the promotion salary, the Town shall consider internal comparisons with other employees in the same job. Promoted employees will be required to complete a six-month probationary period. Annual evaluation date may be adjusted to coordinate with Town-wide evaluation dates.

Demotions. When an employee is demoted to a position for which qualified, the salary shall be set at the rate in the lower pay range which provides a salary commensurate with the employees’ qualifications to

perform the job and consistent with the placement of other employees within the same classification in that salary range when the demotion is not the result of discipline. If the current salary is within the new range, the employee's salary may be retained at the previous rate if appropriate. If the demotion is the result of discipline, the salary shall be decreased up to 10%, at Manager's discretion. Salaries of demoted employees may be no greater than the maximum of the new range.

Transfers. The salary of an employee who is reassigned to a position in the same class or to a position in a different class within the same salary range shall not have his/her annual salary or evaluation date changed by the reassignment but it may be adjusted to coordinate with Town-wide evaluation dates.

## **Section 19. Transition to a New Salary Plan**

The following principles shall govern the transition to a new salary plan:

- a. No employee shall receive a salary reduction as a result of the transition to a new salary plan.
- b. All employees being paid at a rate lower than the hiring rate established for their respective positions shall have their salaries raised to the new minimum for their positions.
- c. All employees being paid at a rate below the maximum rate established for their respective positions shall be paid at a rate listed in the salary schedule if a step plan is in use; all employees not at a listed rate shall have their salaries raised to a listed rate.
- d. All employees being paid at a rate above the maximum rate established for their respective positions shall be maintained at the salary level until such time as the employee's salary range is increased above the employee's current salary.

## **Section 20. Effective Date of Salary Changes**

All salary changes, excluding merit pay changes, approved by the Town Manager after the first working day of a pay period shall become effective at the beginning of the next pay period or at such specific date as maybe provided by procedures approved by the Town Manager.

## **Section 21. Overtime Pay Provisions**

Employees of the Town can be requested and may be required to work in excess of their regularly scheduled hours as necessitated by the needs of the Town and determined by the Department Head. Where possible, overtime work should be approved in advance by the Department Head or Town Manager. In the public safety and public works departments, emergency situations and end-of-shift responses may result in overtime; however, the shift supervisors should approve such overtime and make reasonable effort to avoid overtime when possible.

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

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 period; 171 hours for police and 212 hour for fire personnel in a 28 day cycle). Hours worked beyond the FLSA established limit will be compensated in either time or pay at the appropriate overtime rate. In determining eligibility for overtime in a work period, only hours actually worked shall be considered; in no event will vacation, sick leave, or holidays be included in the

computation of hours worked for FLSA purposes. Compensatory leave requires approval by the Town Manager when creating a balance that exceeds 40 hours. Department Heads will report all overtime hours to the Finance Department. The Police Chief may authorize additional overtime to be paid outside of FLSA restrictions, while remaining within budget allocations, during emergency or investigate situations, in order to secure needed staffing.

Whenever practicable, Department Heads 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 or compensatory time accrued in accordance with the FLSA.

Employees who hold a full-time position within any Town department and work part-time with another department within the Town will be compensated for any total worked hours over their normal scheduled hours in accordance with FLSA. The department where the part-time duties are performed will be responsible for compensation to the employee.

Employees receive one hour for meal periods, unless taking advantage of the flex-time policy. Any employee whose meal period is less than 30 minutes shall be compensated for the full 30 minutes, as approved by the department head.

Employees in positions determined to be "exempt" from the FLSA (as Executive, Administrative, or Professional staff) will not receive pay for hours worked in excess of their normal work periods. These employees may be granted compensatory leave by their supervisor on an hour for hour basis where the convenience of the department allows and in accordance with procedures established by the Town Manager.

Exempt positions include (but are not limited to):

Aquatics Center Supervisor  
Assistant Fire Chief/Deputy Chief  
Town Manager  
Electric Line Superintendent  
Finance Director  
Fire Chief  
Fire Marshal  
IT Analyst  
IT Analyst/Billing Supervisor  
Parks/Recreation Director  
Parks and Recreation Maintenance Supervisor  
Planning Director  
Police Captain Police Chief  
Public Works Director  
Public Works Superintendent  
Public Utilities Director  
Recreation and Aquatics Center Director  
Sr. Athletic Programs Supervisor/Asst. Parks & Rec Director

Town Clerk  
Human Resources Officer/Public Information Officer  
Water Plant Superintendent  
Water/Sewer Line Superintendent

Compensatory Time. Any compensatory time allotted to a non-exempt employee shall not exceed 40 hours of total time and such compensatory time should be taken by the employee as soon as reasonably possible with the consent of his/her supervisor or Department Head. Compensatory time earned by any employee, shall not be paid out but should be expended in time taken off and not paid as compensation, as required by FLSA.

## **Section 22. Compensation for Travel**

Travel time is compensable to all employees provided that the time occurs during the course of the regular work day. If two or more employees commute together to any Town required classes, meetings, or conferences before the beginning of the work day, travel time for both the driver and passenger(s) will be compensable. The Town shall maintain a separate written Travel Policy for determining reimbursable expenses for employees and such policy may be updated from time-to-time.

## **Section 23. Call-back and Stand-by Pay**

The Town provides a continuous twenty-four hour a day, seven day a week service to its customers. Therefore, it is necessary for certain employees to respond to any reasonable request for duty at any hour of the day or night. One of the conditions of employment with the Town is the acceptance of a share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails to respond to reasonable calls for emergency service, either special or routine, the employee shall be subject to disciplinary actions up to and including dismissal by the Town Manager. Unless specifically set forth in writing, below, the Town does not compensate for Call-back or Stand-by time.

Call-back. Non-exempt employees will be guaranteed a minimum payment of two hour's wages for being called back to work outside of normal working hours. Employees will not be paid while serving on call-back status unless actually called back and then only for the minimum two-hour period, or longer, if the time actually worked exceeds two hours. Only hours actually worked will be used when calculating overtime. "Call-back" provisions do not apply to previously scheduled overtime work. Exempt employees are not eligible for call-back and stand-by pay.

Stand-by. Non-exempt employees required to be on "stand-by" duty will be paid for eight hours of work for each week of stand-by time they serve. Stand-by compensation for less than one full week shall be determined by the ratio of .065 hours of pay per one hour of stand-by time. For police officers, one hour is compensated for every 24 hour period he or she is on stand-by. Hours actually worked while on stand-by are calculated beginning when the employee reports to the work site and are added to the regular total of hours worked for the week. Time spent during actual "stand-by" is not considered hours worked when calculating overtime. Stand-by time is defined as that time when an employee must remain near an established telephone or otherwise substantially restrict personal activities in order to be ready to respond when called. Stand-by time must receive prior approval from the department head.

## **Section 24. Payroll Deduction**

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

## **Section 25. Hourly Rate of Pay**

Employees working in a part-time or temporary capacity with the same duties as full-time employees will work at a rate in the same salary range as the full-time employees. The hourly rate for employees working other than 40 hours per week, such as police officers working an average 43 hours per week, will be determined by dividing the average number of hours worked scheduled per year into the annual salary for the position.

## **Section 26. Pay Day**

Employees are paid bi-weekly. Pay day falls on Friday for all employees. Should a regular pay day fall on a holiday, automatically deposited pay checks shall be deposited on the workday that precedes the holiday. All employees will be required to have payroll checks automatically deposited.

## **Section 27. Career Ladders**

Because of the variety of training and educational requirements for each department, the Department Head from each department may recommend to the Town Manager a specific career ladder program and/or certification increase plan for his or her department. Career Ladder programs are generally designed to provide guidance for employees within a department to fulfill the specific requirements for education, training, and advancement to the next higher rank or position. Such programs must be reduced to writing and are only effective upon the written approval of the Town Council. Such programs are subject to available funds.

## **ARTICLE III: Reserved**

## **ARTICLE IV: Recruitment and Employment**

### **Section 28. Equal Employment Opportunity Policy**

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

### **Section 29. Implementation of Equal Employment Opportunity Policy**

All personnel responsible for recruitment and employment will continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable, job-related requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color,



religion, disability, national origin, political affiliation, sexual orientation or marital status. Notices with regard to equal employment matters shall be posted in conspicuous places on Town premises in places where notices are customarily posted.

### **Section 30. Recruitment, Selection and Appointment**

**Recruitment Sources.** When position vacancies occur, the Human Resources Department shall publicize these opportunities for employment, including applicable salary information and employment qualifications. Information on job openings and hiring practices will be provided to recruitment sources, including organizations and news media available to minority applicants. In addition, notice of vacancies shall be posted at designated conspicuous sites within Town Buildings in order that qualified employees and other interested candidates may apply for vacant positions. Individuals shall be recruited from a geographic area as wide as necessary to ensure that well-qualified applicants are obtained for Town service. Equally qualified internal applicants may be given first priority for the position.

**Job Advertisements.** When a vacancy occurs and the Department Head and Human Resources Officer believe that current employees are or may be qualified for the position(s), the job(s) will be posted internally. In the event that there are no qualified employees for the position, jobs will be advertised in local newspapers, professional publications, and other relevant publications in order to establish a diverse and qualified applicant pool. Employment advertisements shall contain assurances of equal employment opportunity and shall comply with Federal and State statutes.

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

**Application Reserve File.** Applications shall be kept in an inactive reserve file for a period of two years, in accordance with Equal Employment Opportunity Commission guidelines.

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

**Post-Offer Drug Screen, Physical Exam, Driver's License Check and Criminal History Check.** All job applicants that are offered a position with the Town will be required to submit to a driver's license check, criminal history check, physical exam and drug screen, performed by a physician of the Town's choice and at the Town's expense, prior to beginning work. The Town shall rescind any offer of employment to any applicant who refuses to (1) take a drug screen or physical exam, (2) has a positive drug screen, urinalysis or blood test or breathalyzer/toxalyzer, and/or (3) if the physical exam indicates that the candidate is unable to perform the essential functions of the position, and/or (4) unacceptable driver's license check and/or criminal history check results.

**Appointment.** Before any commitment is made to an applicant either internal or external, the Department Head and Human Resources Department shall make recommendations to the Town Manager with a recommendation of the position to be filled, the salary to be paid, and the reasons for

selecting the candidate over other candidates. The Town Manager shall approve or disapprove appointments and the starting salary for all applicants.

### **Section 31. Probationary Period**

An employee appointed or promoted to a permanent position shall serve a probationary period. Employees shall serve a six (6) month probationary period, except that sworn police personnel, Water Plant Operators, and Department Heads shall serve a twelve (12) month probationary period. During the probationary period, supervisors shall monitor an employee's performance and communicate with the employee concerning performance progress. Police Officers serving twelve (12) month probation shall have a performance review as required in the Police Department field training program as well as before the end of the twelve (12) months. There are no automatic increases in salary for the employee at the end of a successfully completed probationary period.

Employees serving a probationary period are not eligible to apply for other positions within the Town until they have successfully completed the probationary period evaluation and six months as a full time employee. If it is in the best interest of the Town, this time period may be waived by approval of the Town Manager.

Before the end of the probationary period, the supervisor shall conduct a performance evaluation conference with the employee and discuss accomplishments, strengths, and needed improvements. A summary of this discussion should be documented in the employee's personnel file. The supervisor shall recommend in writing whether the probationary period should be completed, extended, or the employee transferred, demoted, or dismissed. Probationary periods may be extended for a maximum of six (6) additional months.

Disciplinary action, including demotion and dismissal, may be taken at any time during the probationary period of a new hire without following the steps outlined in this policy. A promoted employee who does not successfully complete the probationary period may be transferred or demoted to a position in which the employee shows promise of success. If no such position is available, the employee shall be dismissed. Promoted and demoted employees who are on probation retain all other rights and benefits such as the right to use of the grievance procedures.

### **Section 32. Promotion**

Promotion is the movement of an employee from one position to a vacant position in a position assigned to a higher salary range. It is the Town's policy to create career opportunities for its employees whenever possible. Therefore, when a current employee applying for a vacant position is best suited of all applicants, that applicant shall be appointed to that position. The Town will balance three goals in the employment process: 1) the benefits to employees and the organization of promotion from within; 2) providing equal employment opportunity and a diversified workforce to the community; and 3) obtaining the best possible employee who will provide the most productivity in that position. Therefore, except in rare situations where previous Town experience is essential or exceptional qualifications of an internal candidate so indicate, the Town will consider external and internal candidates for selection rather than automatically promoting from within. Candidates for promotion shall be chosen on the basis of their qualifications and their work records. Internal candidates shall apply for promotions using the same application process as external candidates and may be given priority for the position available.

### **Section 33. Demotion**

Demotion is the movement of an employee from one position to a position in a class assigned to a lower salary range. Demotion may be voluntary or involuntary. An employee whose work or conduct in the current position is unsatisfactory may be demoted provided that the employee shows promise of becoming a satisfactory employee in the lower position. Such disciplinary demotion shall follow the disciplinary procedures outlined in this chapter. An employee who wishes to accept a position with less complex duties and reduced responsibilities may request a voluntary demotion. A voluntary demotion is not a disciplinary action and is made without using the above-referenced disciplinary procedures.

### **Section 34. Transfer**

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

## **ARTICLE V: Conditions of Employment**

### **Section 35. Flexible Work Schedule**

Where possible, Department Heads shall establish flexible work schedules which meet the operational needs of the department in the most cost effective manner possible. Flexible work schedules are a variation of the normal 8:00 a.m. to 5:00 p.m. work schedule followed by most departments within the Town of Smithfield government. The purpose of permitting flexible work schedules is to recognize the increasing potential for conflicts for employees between their work lives and personal lives. These conflicts have arisen out of significant societal changes including shifts in parenting roles, the changing make-up of the traditional family, as well as the increasing prevalence of the two-income family.

- a. An employee or group of employees desiring to work a flexible schedule will submit the appropriate form to their Department Head including the hours to be worked and how the position or positions will be covered during the 8:00 to 5:00 schedule. In no case can service or business hours be diminished or reduced due to a flexible work schedule.
- b. The Department Head will approve or deny the request. If the request is approved, the Department Head is assuming responsibility that the work will be completed in a timely manner and not be delayed due to flex time schedules. If the request is denied, the Department Head will specify the reason(s) in writing to the employee.
- c. A copy of the "Request for Flex Time Schedule" must be placed in the employee's Personnel File.
- d. The Department Head will be required to note on his monthly Department Report the operational hours of his department, if there is a deviation from the normal operating hours of the department.
- e. Flex Work Schedules are normally between the hours of 7:00 a.m. and 6:00 p.m., Monday thru Friday and must account for the number of hours budgeted for the position.
- f. Suggested flex time schedules:

- 4 - ten hour days, off one day per week; or
- 4-9<sup>1/2</sup> days, 30 minute lunch hour and off at 11:00 a.m. one day per week (Example: 7-4:30 for four days and 7-11 for the fifth day or 8-5:30 for four days and 8-12 the fifth day); or
- Flex time for Summer only (May 1 - Sept 1) 8<sup>1/2</sup> hours per day, 1/2 hour for lunch; leave 4.5 hours early every other Friday or Monday.

### **Section 36. Political Activity**

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

- a. Engage in any political or partisan activity while on duty;
- b. Use official authority of influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- c. Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- d. Coerce or compel contributions from another employee of the Town for political or partisan purposes;
- e. Use any supplies or equipment of the Town for political or partisan purposes; or
- f. Be a candidate for nomination or election to office under the Town Charter;

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

### **Section 37. Outside Employment**

The Town has no intention of attempting to regulate what an employee does during his own time away from the job as long as off-duty activities do not represent a conflict of interest or reflect discredit to the Town. To avoid possible conflict of interest, the employee's outside employment shall be reported in writing to and approved by the Department Head. An employee is cautioned not to engage in outside activities that are so exhausting that one's physical or mental abilities are consistently impaired to the extent that his or her own Town service is adversely affected.

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

- a. Employment with organizations or in capacities that are regulated by the employee or employee's department; or
- b. Employment with organizations or in capacities that negatively impact the employee's perceived integrity, neutrality, or reputation related to performance of the employee's Town duties.

### **Section 38. Dual Employment**

A full or part-time employee of the Town may simultaneously hold another position with the Town if the temporary position is in a different department and clearly different program area from that of the full or part-time position. The work of the temporary position must also be performed on an occasional or sporadic basis as identified in Fair Labor Standards Act regulations. However, the work of the full or part-time position shall take precedence over the temporary position, and such temporary work will not

count toward the calculation of overtime for pay or time off.

### **Section 39. Employment of Relatives**

The Town prohibits the hiring and employment of immediate family in permanent positions within the same work unit. "Immediate Family" in this section is defined as a spouse, brother, sister, parent or child of either the employee or of the employee's spouse. The Town also prohibits the employment of any person into a permanent position who is an immediate family member of individuals holding the following positions: Mayor, Mayor Pro Tem, Town Council Member, Town Manager, Human Resources Officer, Finance Officer, or Town Attorney. Otherwise, the Town will consider employing family members or related persons in the service of the Town, provided that such employment does not:

- a. Result in a relative supervising relatives;
- b. Result in a relative auditing the work of a relative;
- c. Create a conflict of interest with either relative and the Town; or
- d. Create the potential or perception of favoritism.

This provision shall not apply retroactively to anyone employed when the provision was adopted by the Town in 2006.

### **Section 40. Sexual Harassment Prohibited**

The Town prohibits sexual harassment by supervisors and co-workers in any form. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or 3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment. Sexual harassment includes repeated offensive sexual flirtations, continual or repeated commentaries about an individual's body, offensive sexual language, and the display in the workplace of sexually suggestive pictures or objects.

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

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

### **Section 40A Whistleblower Policy:**

The Town of Smithfield is committed to high standards of openness, decency and integrity in its provision of services to its citizens. To maintain these standards, the Town is committed to establishing and maintaining a work place that will allow employees to report matters pertaining to "wrongdoing, i.e., violations of Town rules and regulations, Town Ordinances, State and Federal law, and waste and abuse in Town operations".

## 1.0 DEPARTMENTS/DIVISIONS AFFECTED

All departments and divisions of the Town

## 2.0 TOWN'S POSITION

- A. The Town of Smithfield has established a high level of standards that is the basis upon which choices are made, determining the framework for the way the Town does business. These standards are used to evaluate the manner in which the Town conducts its business operations. These standards apply to every Town employee and to the Town's elected officials. In addition, the Town complies with the relevant laws and regulations that apply to the Town and its employees. The Town is dedicated to the prevention, avoidance, detection and investigation of all forms of non-compliance, fraud, theft and corruption.
- B. The Town realizes that employees are often the first to notice that there may be something wrong. However, the employees may not express their concerns due to feelings of disloyalty to colleagues, or fear of punishment or unfair treatment.
- C. The Town acknowledges that most concerns are of relatively minor nature and can be resolved through the normal channels relatively easily. However, where the concerns are more serious, and especially where they involve serious misconduct such as criminal acts, or financial misconduct, or in situations where employees, the public, or the environment may be subject to danger, it can be difficult for the employee to know what to do and to whom to report such concerns.
- D. The Town wishes to make it clear that individuals can raise such serious concerns without fear of punishment or unfair treatment. This is to encourage individuals to report concerns so that the management can take appropriate action to prevent or stop intolerable behavior that harms employees, the public, the environment or the Town of Smithfield.
- E. This policy has been introduced and adopted to give guidance on how to raise concerns at an early stage.

## 3.0 INTENTIONS OF THE PROCEDURE

- A. Provide avenues for employees to raise concerns and define a way to handle these concerns.
- B. Enable management to be informed at an early stage about acts of misconduct.
- C. Reassure employees that they will be protected from punishment or unfair treatment for disclosing concerns in good faith in accordance with this procedure.
- D. Help develop a culture of openness, accountability and integrity.

## 4.0 OBLIGATION OF EMPLOYEES TO REPORT VIOLATIONS

- A. It is the responsibility of all employees to report any violation of policies, procedures, rules or regulations of the Town of Smithfield, or any of the Departments of the Town.
- B. Employees are obligated to cooperate in every investigation of violations, including but not necessarily limited to, coming forward with evidence, fully and truthfully making a written report or verbally answering questions when required to do so by an investigator during the course of an investigation of violations.
- C. Failure to report incidents of wrongdoing may be grounds for disciplinary action.

- D. Failure to report a violation of a written directive or order given by proper authority is a violation on its own standing.
- E. Employees are forbidden to knowingly make a false or misleading report in a malicious manner against any employee or official of the Town.
- F. Employees are encouraged to engage to engage in a discussion with colleagues who display behavior that is or could be violating any law or Town of Smithfield value or policy, if all possible. If a discussion is not a realistic option, then the employee should report the behavior in accordance with this policy.

## 5.0 EXAMPLES OF WRONGDOING

- A. Irregularities: Personal conduct or action in violation of established laws, Town regulations, ordinances, and administrative policies.
- B. Waste: To allow to be used inefficiently, to spend money or use Town property extravagantly, unwisely, and carelessly.
- C. The following are some examples that suggest irregularities and waste:
  1. Misuse or misappropriation of Town funds or property such as but not limited to travel reimbursement reports, purchase orders, disbursement vouchers, checks, bank accounts, deposits and cash.
  2. Falsification of Town records such as but not limited to time cards, payroll time sheets, petty cash receipts, contracts, and agreements.
  3. Careless, negligent or improper use of Town equipment or property such as but not limited to driving while under the influence of alcohol or narcotic drugs or controlled substances; driving Town equipment without a valid driver's license; driving or using Town equipment or property in a reckless manner or without the proper safety equipment; and using Town equipment or property for personal use.

## 6.0 SAFEGUARDS

- A. The Town of Smithfield does not tolerate punishment or unfair treatment when concerns are raised in good faith and will take action to protect staff.
- B. The Town recognizes that some individuals will wish to raise a concern in confidence under this policy. Confidentiality will be maintained to the largest extent possible. Therefore, the Town will protect the identity of an employee who discloses concerns according to this procedure.
- C. The Town does however acknowledge that in some circumstances it may be obvious who has raised the concern and filed the report, or the investigation process may lead to the point where a statement is required or the individual is called to provide evidence. In such circumstances, where finding the truth is hindered by maintaining complete confidentiality, the Town cannot guarantee complete confidentiality to the reporting employee.
- D. The Town wants to avoid anonymous reports, as it can make the investigation of the

allegations much more difficult. However, if an employee feels there is no other way than making an anonymous allegation, then that allegation will be acted upon appropriately.

- E. The Town encourages people to raise concerns in good faith. However, if upon investigation some of these concerns cannot be confirmed or may not have substance, no action will be taken against employees raising concerns in good faith.
- F. Investigations, however, are a costly, time consuming and potentially damaging process. If reported allegations are judged to be malicious and without any factual foundation, the Town may take appropriate action against employees making such malicious allegations.

## 7.0 REPORTING PROCEDURES

The purpose of this procedure is to ensure that employees will receive prompt, fair and considerate review of any reports of possible violations. Every employee shall have the right to present his/her report of violations of Town Administrative Code, and ordinances, Federal or State law and to be free from interference, coercion, restraint, discrimination or reprisal.

- A. When making the report, the employee should be prepared to provide the following information:
  - 1. Name, department of person(s) and position title (if known) involved in violation of Town Administrative Code or Ordinances;
  - 2. The date, time, location of where the alleged incident(s) took place;
  - 3. A description of the alleged incident(s) to the best of their knowledge and how long it has gone on;
  - 4. The names of any witnesses that can verify the violations;
  - 5. Whether the violations were previously reported, when and to whom.
- B. The concerns may also be voiced in a face-to face meeting. If that is not possible, they may be reported through the website, by telephone or fax, or by e-mail.
- C. Individuals will not be expected to provide truth of an allegation but they should be able to demonstrate that there are sufficient grounds to have a reasonable belief that something is wrong.
- D. Individuals are encouraged to express their concerns at the earliest possible stage so that timely action can be taken.
- E. The supervisor shall investigate the report and advise the employee regarding the matter. The Department Director will ensure that all alleged violations of this policy are investigated. The Department Director shall advise the Town Manager of all reports of wrongdoing.
  - 1. If the employee's immediate supervisor is the subject of the report, the employee shall direct the report to his/her next highest level of supervision.
  - 2. If the incident involves an employee of another department, the report shall be filed with the Town Manager.
  - 3. If the subject of the report is the Town Manager, the reports shall be filed with the Town Attorney.
  - 4. If the subject of the report is the Mayor, a Town Councilman, a member of any Town Board or Commission, or the Town Attorney, the report shall be filed with the Town Manager.



- F. If the reporting employee does not receive an answer within 30 days, he/she can make a request to the Department Director as to the status of the report. The Town recognizes that the individual raising the concern needs to be assured that the matter has been properly addressed. Thus, subject to legal constraints, individuals making a complaint will be kept informed during the investigation about the outcome of any investigation.
- G. If after not resolving the manner at the Department level, the employee reporting the matter can submit the same written report to the Town Manager.
- H. All reports of violations received by the Town Manager's office will be investigated. The Town Manager will designate an appropriate individual(s) to investigate the incident(s).
- I. The Town Manager's office will give a written reply to the employee of the findings of the allegations, including a finding that no further investigation is needed and the matter is dismissed; such report shall not disclose any confidential employment or personnel matters. The Town Manager will provide the Town Council with a copy of the final report.

## 8.0 DISCIPLINARY ACTIONS

- A. Based upon the investigation of the alleged "wrongdoing", the Town Manager shall, within a reasonable time, decide whether the conduct of the person(s) against whom the report has been made is valid.
- B. If the Town Manager finds that the report of alleged irregularities and/or waste is founded, he/she shall conduct a hearing or other measures to consider all evidence as set forth in the Employee Handbook. If after conducting a hearing with the employee(s) involved and determining that irregularities and/or waste has occurred, the Town Manager shall take appropriate disciplinary action against the employee(s) guilty of "wrongdoing" consistent with his/her authority.

The disciplinary action may include demotion, suspension, dismissal, warning or reprimand. A determination of the level of disciplinary action shall be made on a case-by-case basis.

### **Section 41. Solicitation and Acceptance of Gifts and Favors**

The conduct of an employee in Town service shall be free from influence arising from gifts, favors, or special privileges in situations where it is reasonable to believe that such may be offered so as to affect the donator's interest or otherwise exert influence on the actions of the employee. Furthermore, no employee shall seek personal or financial advantages because of his position with the Town.

### **Section 42. Use of Town supplies and equipment**

- a. Town equipment, materials, tools and supplies shall not be available for personal use or be removed from Town property except in the conduct of official Town business with the exception of rental under Town policy. Town employees are not to use Town equipment or vehicles for private purposes.
- b. Vehicles owned by the Town shall be cared for by an employee in the same responsible way that he would care for his own. Such vehicles are to be used exclusively for official Town business, except that by special approval by the Town Manager. An employee may be directed to take the vehicle home when doing so shall serve the best interest of the Town. Use of Town vehicles for commuting to and from work shall usually be limited to an employee who is subject to emergency call-back work. Town vehicles shall not be used for personal purposes including transporting family members

to and from school, work, or other errands that involve non-employees except in the regular course of Town business.

- c. Equipment, materials, tools and supplies that are used for training or educational purposes must have prior approval of the Town Manager.
- d. Employees who are issued Town of Smithfield uniforms are required to wear the uniforms each work day. Uniforms should be clean and neat at the beginning of the work day.

## **Section 43. Acceptable Use Policy:**

### **1. Overview**

This policy applies to the use of telephones, radios, voice mail systems and Internet/Intranet related systems, including but not limited to computer equipment, software, operating systems, storage media, network accounts providing electronic mail, WWW browsing, and FTP, within the Town of Smithfield ("Information Technology Systems"). These systems are to be used for business purposes in serving the interest of the Town, and of our clients and customers in the course of normal operations.

Effective security is a team effort involving the participation and support of every Town of Smithfield employee who deals with information and/or information systems. It is the responsibility of every computer user to know these guidelines, and to conduct their activities accordingly.

### **2. Purpose**

The purpose of this policy is to outline the acceptable use of the Information Technology Systems at the Town of Smithfield. These rules are in place to protect the employee and the Town. Inappropriate use exposes the Town of Smithfield to risks including virus attacks, compromise of network systems and services, and legal issues. It is the user's responsibility to read and abide by the topics set forth in this and other related documents. It is the Department Head's responsibility to ensure his/her department's users abide by the guidelines set forth in this and other related documents.

### **3. Scope**

This policy applies to employees, contractors, consultants, elected officials, temporaries, and other workers at the Town of Smithfield, including all personnel affiliated with third parties. This policy applies to all equipment that is owned or leased by Town of Smithfield.

### **4. Policy**

#### **4.1 General Use and Ownership**

- a) While the Town of Smithfield's network administration desires to provide a reasonable level of privacy, users should be aware that the data they create on the organizational systems remains the property of the Town of Smithfield. Because of the need to protect the Town's network, management cannot guarantee the confidentiality of information stored on any network device belonging to the Town of Smithfield.
- b) Employees are responsible for exercising good judgment regarding the reasonableness of personal use. Guidelines concerning personal use of Internet/Intranet systems are provided in section 4.4 of this document, and if there is any uncertainty; employees should consult their supervisor or Department Head.
- c) The Finance Department recommends that users consider password protecting sensitive documents.

- d) For security and network maintenance purposes, authorized individuals within the Town of Smithfield may monitor equipment, systems and network traffic at any time.
- e) The Town of Smithfield reserves the right to audit networks and systems on a periodic basis to ensure compliance with this policy.

#### **4.2 Security and Proprietary Information**

- a) The user interface for information contained on Internet/Intranet related systems should be classified as either confidential or not confidential, as defined by organizational confidentiality guidelines. Examples of confidential information include but are not limited to: procurement specifications, customer lists, and research data. Employees should take all necessary steps to prevent unauthorized access to this information.
- b) Keep passwords secure and do not share accounts. Authorized users are responsible for the security of their passwords and accounts.
- c) All PCs, laptops, and workstations should be logged off or locked when unattended.
- d) Because information contained on portable computers is especially vulnerable, special care should be exercised.
- e) Postings by employees from a Town of Smithfield email address to newsgroups should contain a disclaimer stating that the opinions expressed are strictly their own and not necessarily those of the Town of Smithfield, unless posting is in the course of business duties.
- f) All hosts used by the employee that are connected to the Town of Smithfield Internet/Intranet, whether owned by the employee or the Town of Smithfield, shall be continually executing approved virus-scanning software with a current virus database. Unless overridden by departmental or group policy.
- g) Employees must use extreme caution when opening e-mail attachments received from unknown senders, which may contain viruses, e-mail bombs, or Trojan horse code.

#### **4.3 Expectations of Personal Privacy**

There should be no “expectation of personal privacy” in the usage of the Town of Smithfield’s Information Technology resource. In fact, the Town of Smithfield reserves the full right to access, monitor, retrieve and disclose any digital information that has been stored or transmitted, to or from any technology resource that is owned or leased by the Town of Smithfield without advance notice. This also applies to all activities conducted with any Town paid accounts, subscriptions, or other technical services, such as Internet access, E-mail and cell phones, whether or not the activities are conducted on the Town premises. The Town of Smithfield’s Finance Director or his/her delegate may exercise his/her right to access under, but not limited to, the following: (1) impropriety, (2) violation of Town policy, (3) legal requirements, (4) suspected criminal activities, (5) breach of system security, or (6) to locate substantive information or monitor employee performance and conduct. Employees should be aware that, even when a message is erased or a visit to a website is closed; it is still possible to recreate the message or locate the web site. Furthermore, all communications including text and images may be disclosed to law enforcement or other third parties without prior consent of the sender or the receiver.

#### **4.4 Acceptable and Unacceptable Usage**

The Town of Smithfield promotes the usage of computer and other electronic systems by its employees, to perform daily tasks and encourages the development of computing skills that result in improvement of job proficiency. Users are advised that the Town of Smithfield's Information Technology Systems are business tools that shall be used in a professional manner only at all times and should not be used for any purpose that would reflect negatively on the Town or its employees.

*(a) Uses that are acceptable and encouraged:*

- 1) Access to technical and other informational topics as well as conducting communication among peers in other government agencies, academia and industry on matters which have relevance to the Town of Smithfield.
- 2) Communications and information exchanges directly relating to the mission, charter and work tasks of the Town.
- 3) Announcements of Town policies, meetings, procedures, services, or activities.
- 4) Use for advisory, standards, research, analysis, and professional society or development activities related to the user's Town job-related duties.
- 5) Use in applying for or administering grants or contract for Town research programs.
- 6) Personal use during off time (i.e. break time, lunch time) is an employee's responsibility in exercising good judgment in the reasonability of use and must be in accordance with this and other Town policies.

*(b) Uses that are unacceptable and punishable:*

- 1) It is unacceptable for a user to access, use, submit, publish, display, download, save or transmit on the network, or on any computer system, any information which:
  - i. Violates or infringes on the rights of any other person or company protected by copyright, trade secret, patent or other intellectual property, or similar laws or regulations, including, but not limited to, the installation or distribution of "pirated" or other software products that are not appropriately licensed for use by the Town of Smithfield.
  - ii. Contains illegal, defamatory, misleading, inaccurate, false, abusive, obscene, pornographic, profane, sexually oriented, threatening, racially offensive, biased, or otherwise discriminatory material.
  - iii. Restricts, derogates or disrupts any Town resource's performance adversely affecting daily operations, other users or the Internet, or misrepresent the interest of the Town.
  - iv. Encourages the use of controlled substances or uses the system for the purpose of criminal intent or any other illegal purpose.
- 2) Sending or receiving unsolicited email messages, "Junk Mail" or other advertising materials including "chain letters", inappropriate jokes or similar type emails (spam).
- 3) Data that is in violation of copy right infringement of any local, state or federal law.
- 4) Creating, installing or distributing unauthorized or malicious software.
- 5) Gaining or allowing access to others to restricted technology resources (sharing

- passwords).
- 6) Using storing or transferring Copyrighted information (The Federal Copyright Act, U.S.C. Title 17-106) including plagiarism.
  - 7) Unauthorized copying of copyrighted material including, but not limited to, digitization and distribution of photographs from magazines, books or other copyrighted sources, copyrighted music, and the installation of any copyrighted software for which the Town of Smithfield or the end user does not have an active license is strictly prohibited.
  - 8) Introduction of malicious programs into the network or server (e.g., viruses, worms, Trojan horses, e-mail bombs, etc.)
  - 9) Revealing your account passwords to others or allowing use of your account by others. This includes family and other household members when work is being done at home.
  - 10) Using a Town of Smithfield's computing asset to actively engage in procuring or transmitting material that is in violation of sexual harassment or hostile workplace laws in the user's local jurisdiction.
  - 11) Making fraudulent offers or products, items, or services originating from any Town of Smithfield's account.
  - 12) Effecting security breaches or disruptions of network communication. Security breaches include, but are not limited to, accessing data of which the employee is not an intended recipient or logging into a server or account that the employee is not expressly authorized to access, unless these duties are within the scope of regular duties. For purposes of this section, "disruption" includes, but is not limited to, network sniffing, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes.
  - 13) Port scanning or security scanning is expressly prohibited.
  - 14) Executing any form of network monitoring which will intercept data not intended for the employee's host, unless this activity is a part of the employee's normal job/duty.
  - 15) Circumventing user authentication or security of any host, network or account.
  - 16) Interfering with or denying service to any user other than the employee's host (for example, denial or service attack).
  - 17) Using any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, a user's terminal session, via any means, locally or via the Internet/Intranet.
  - 18) Providing information about or lists of Town of Smithfield employees to parties outside Town of Smithfield, unless otherwise authorized by N.C. Public Records Law.
  - 19) Text messaging, unless specifically required to perform job duties. Users may be financially responsible for unauthorized or excessive text messaging at the current rate charged by the Cell Phone Provider (see cell phone policy).
  - 20) Web based email accounts such as Yahoo!, Gmail, Hotmail, AOL etc. pose a threat by allowing an entry point for mail that circumvents current security controls that are in place to prevent the spread of malicious code, viruses, and worms. By allowing this type of access to online web based email accounts inside our network, we are providing a gaping hole for malicious software, Trojan horses, and other viruses and worms into and out of our environment without our knowledge. It is there the recommendation at this time that users do not use web-based email. It is also unacceptable for a user to use the features and capabilities of the system to:
  - 21) Knowingly open information or e-mails not directed to you (unless under direction of

the Information Owner).

- 22) Utilizing unauthorized removable storage devices such as USB thumb drives or PDAs.
- 23) Gaining or allowing access to others to restricted areas within the physical facilities.
- 24) Conducting any non-approved business such as: Any activity or unauthorized purchases that is prohibited by law; Any activity for used for personal gain or personal business including Commercial ventures, religious or political causes, outside organizations or other non-job related solicitations including non-Town- related fund raising or public relations activities.

#### **4.5 Policy Agreement**

As a condition of employment, all Town of Smithfield employees, elected officials, contractors, consultants, temporaries, and other workers including all personnel affiliated with third parties accessing the Town of Smithfield's network must sign the Acceptable Use Policy Acknowledgement Form acknowledging that they understand the terms of this policy and the proper usage of the Town of Smithfield's Information Technology systems as well as the potential punitive actions for non-compliance. Furthermore, all Town of Smithfield employees must accept and re-sign this policy at each and every yearly evaluation.

Immediately upon implementation of this policy, Department Heads will be responsible to provide a copy of this policy to, and collect signed agreement forms for all employees. Collected forms, with original signatures, will be maintained on file by the Human Resources Department.

Upon new hire, the Human Resource Director is responsible for providing a copy of this policy to the new employee and maintaining the signed agreement form in the employee's permanent file.

#### **4.6 Policy Enforcement**

This policy is intended to be illustrative of the range of acceptable and unacceptable uses of the technology resources provided by the Town of Smithfield and are not necessarily exhaustive. Questions about specific uses should be directed to the Finance Director or his designee.

It is in the responsibility of all users to exercise good judgment and maintain a professional manner while utilizing the Town of Smithfield's technology resources as well as report any violations to their Department Head, the Finance Director or his designee.

Any violation of this policy or any other applicable local, state or federal laws is subject to punishment ranging from the immediate loss or restrictions of technology privileges, up to and including termination of employment and/or criminal prosecution.

#### **4.7 Policy Contact Information**

Any questions related to the above can be directed to the Finance Director or his designee, at 919-934- 2116.

### **Section 44. Performance Evaluation**

Supervisors and/or Department Heads shall conduct Performance Evaluation conferences with each employee at least once a year. These performance evaluations shall be documented in writing and placed in the employee's personnel file. Procedures for the performance evaluation program shall be published by the Town Manager. Members of the Town Council will do an annual evaluation of the Town Manager in written form and will discuss the findings of the reports with the Town Manager in closed session at the close of a regular Council meeting. The evaluations will be done by all Council Members on a standard form and the review will be done as close to the employment anniversary date of the Town

Manager as possible. Original copies of the evaluations are to be placed in the Town Manager's personnel file following the evaluation.

## **Section 45. Safety**

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

## **Section 46. Substance Abuse Policy**

The Town may establish policies and procedures related to employee substance abuse in order to insure the safety and well-being of citizens and employees, and to comply with any state, federal, or other laws and regulations. The Town shall adopt and follow a separate Substance Abuse Policy applicable to all of its employees.

## **Section 46A. Alcohol and Controlled Substance Policy**

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

### **I. Definitions.**

- a. **Reasonable Suspicion** means an expressible belief based on specific objective facts and rational inferences drawn from those facts that an employee has consumed or is under the influence of alcohol or improper use of drugs while at work. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:
  1. Direct observation of drug use or alcohol use and/or the physical symptoms of being under the influence of a drug or alcohol;
  2. A pattern of absenteeism, tardiness, or deterioration of work performance and abnormal conduct or erratic behavior while at work;
  3. A pattern of accidents and/or information that an employee has caused or contributed to an accident at work while under the influence of drugs or alcohol;
  4. Evidence that an employee is involved in the unauthorized possession, sale, solicitation, or transfer of drugs or alcohol while working, or while on the Town's premises or while operating a Town vehicle, machinery or equipment.
- b. **Approved Laboratory** means a laboratory approved and certified to conduct employee and applicant drug testing by the North Carolina Department of Human Resources or the National institute on Drug Abuse, the College of American Pathology, the American Association for Clinical Chemistry or the equivalent.
- c. **Controlled Substance** means any substance regulated by state or federal law which has been

determined to have a potential for abuse and that may lead to physical or psychological dependence. This includes all forms of marijuana (THC metabolite), cocaine, amphetamines, opiates (including heroin), phencyclidine (PCP), barbiturates and benzodiazepine.

- d. **Positive Drug Test** means a chemical test on one's urine or blood sample performed by a certified laboratory which confirms the presence of a controlled substance. A test shall be declared positive after two tests confirm the presence of drugs in the sample.
- e. **Positive Alcohol Test** means a Breathalyzer or blood test which confirms the presence of alcohol at a level 0.02 or greater. To ensure maximum validity, the test shall be conducted under the generally accepted test procedures accepted under the Department of Transportation (Federal Highway Administration) and North Carolina General Statutes.

## **II. Workplace Use of Prescription or Ability-altering Drugs.**

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

## **III. Workplace Use of Prescription or Ability-altering Drugs.**

Employees shall be tested when there is reasonable suspicion of improper use of alcohol and/or a controlled substance, and after accidents involving a fatality, bodily injury or property damage. Employees in safety sensitive positions may also be required to submit to random drug and/or alcohol testing per guidelines established by Triangle J Council of Government.

## **IV. Retesting of Employees who have Tested Positive.**

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

## **V. Consent.**

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

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

## **VI. Refusal to Consent.**

Refusal to consent to testing will subject an employee to immediate dismissal. In addition, failing to appear for a scheduled the test will be considered to have refused to consent to the test. An employee who requests a delay of a test scheduled under the provisions of this section will be considered to have violated expected work behavior.



## VII. The Drug Test.

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

## VIII. Consequences of a Positive Drug Test.

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

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

## IX. The Alcohol Test.

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

## X. Consequences of a Positive Alcohol Test.

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

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

## **XI. Mandatory Participation in Employee Assistance Program.**

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

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

The Town will pay for the first visit of an employee to the Employee Assistance Program during the calendar year.

**The cost of all other visits, be they voluntary or mandatory, will be the responsibility of the employee.**

## **XII. Use of Results in Criminal Action.**

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

## **XIII. Notification of Charge.**

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

## **XIV. Accident Involving Town Vehicles.**

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

## **Section 47. Inclement Weather**

Town departments will remain open during periods of inclement weather unless otherwise authorized by the Town Manager or his designee for delayed opening, early closing, or other deviation. The Town Manager will implement policies and procedures for delayed opening, early closing, or other deviations from normal operations.

It shall be at the discretion of the Department Head to determine what positions within his/her department are considered essential. Essential personnel shall be defined as those employees who are required to carry on the operations of the department during a disaster or in inclement weather. Failure of an essential employee to report for duty as required during emergencies or inclement weather may result in discipline up to and including dismissal.

## **Section 48. Random Drug Screening for Full-Time Employees**

Employees who are required to hold a Commercial Driver's license for the purpose of performing their duties or as a condition of employment are subject to random drug testing.

## **Section 49. Tobacco-Free Policy In Buildings, Vehicles and Equipment**

The purpose of this policy is to establish a healthful, tobacco-free environment for all patrons, visitors, contractors, and staff members with the Town of Smithfield government entity. This applies to all tobacco products, i.e., cigarettes, cigars, snuff, chewing tobacco, pipes and e-cigarettes.

The Policy applies to all full-time and part-time staff, temporary staff, contract workers, volunteers, patrons, and anyone who enters a Town of Smithfield building, structure, vehicle or other motorized equipment.

- a. No tobacco use is allowed anywhere inside any Town of Smithfield government owned, operated and/or leased facility or motor vehicle.
- b. No tobacco use is allowed in any Town owned office, building, structure, park and related structures, or facility, and is only allowed in designated smoking areas per location (see designations below).
- c. No one in the employ of or volunteering at the Town of Smithfield, while representing the Town of Smithfield in public (i.e., wearing an identification badge or uniform), may use tobacco products.
- d. No tobacco use is allowed during a Town of Smithfield sponsored event.

**Enforcement:** Department Heads and supervisors are responsible for assuring compliance with this policy, and are expected to enforce this policy. Signs indicating that the Town of Smithfield is "Tobacco Free" are posted on all entranceway doors to buildings.

**Employees/Volunteers:** Applicants/ Employees/Volunteers are made aware of this policy at the time of their employment offer and during new employee or volunteer orientation.

**Visitors:** If visitors refuse to cooperate with this policy, the Department Head should request that the visitor use tobacco products in the designated areas only.

### **Designated Tobacco Use Areas:**

- Town Hall - Area outside council room back door (Town Hall Park area)
- Fire Department and EMS Building-Between EMS and Fire Station under breezeway
- Police Department- Rear Entrance on south end of building
- Operations Center- Employee Entrance on west side of building
- Recreation and Aquatics Center- Corner of the building near tennis courts
- Water Plant-Side Entrance near generator building Public Works- Designated garage area

Employees who knowingly violate this policy are subject to disciplinary action per the Town of Smithfield Personnel Regulations.

## **Section 50. Conflict of Interest**

It is the policy of the Town of Smithfield that no Council member, officer or employee of the Town receives any personal or private benefit resulting from the activities of the Town or from the receipt of the Town of funds, or funds from the State of North Carolina, or from any other source, apart from reasonable compensation for services rendered and reimbursement for reasonable expenses incurred in the conduct of the business of the Town. Further, no Council member, officer, or employee of the Town shall obtain any direct or indirect economic stake in any entity participating in the programs of the Town, and the Town shall not employ any individual who owns a stake in such entity.

## **ARTICLE VI: Employee Benefits**

### **Section 51. Benefits Eligibility**

All regular full-time employees of the Town are eligible for employee benefits as provided for in this Article which are subject to change at the Town's discretion. Part-time and temporary employees are eligible only for workers' compensation and FICA. Certain part-time employees working 1,000 hours or more per year are eligible for certain state retirement benefits as provided by North Carolina law.

### **Section 52. Group Health and Hospitalization Insurance**

- a. Health care insurance is provided for each full-time employee after completion of 30 days of work. Employees may elect to include coverage for his or her family members at the cost of the employee. Details of medical care coverage and benefits are outlined for each employee in a separate booklet entitled "Group Insurance Plan" that is provided by the health insurance carrier and may change from year to year.
- b. Any employee (hired before June 30, 2007) who retires from the Town with 20 years or more of service and is eligible for the Medicare supplement shall be reimbursed by the Town only for his/her Medicare supplement premium for the remainder of his/her life not to exceed the Town's medical insurance premium for an individual employee. Such employees shall produce written evidence to the Town upon demand, and at least once every 12 months, of the actual invoice for his or her health insurance premium. If dependent(s) are covered at the time of retirement, the employee may elect to continue coverage for the dependents under the Health Insurance Company's COBRA plan. The COBRA plan allows dependent(s) to be covered for a period of 18 months. The employee will be responsible for the entire health insurance premium for his/her dependents. If dependents are eligible for the Medicare supplement, the dependent is not eligible for any reimbursement.
- c. Any employee (hired before June 30, 2007) who retires from the Town with 20 years or more of service and is not eligible for the Medicare supplement shall be eligible to continue his/her health insurance coverage with the Town. The Town will pay the premium for the employee's coverage but only as paid for other full-time employees. When the employee becomes eligible, Medicare supplement (b) will apply and shall be reimbursed by the Town only for his/her Medicare supplement premium up to the Town's medical insurance premium for an individual employee. Such employees shall produce written evidence to the Town upon demand, and at least once every 12 months, of the actual invoice for his or her health insurance premium. If dependent(s) are covered at the time of retirement, the employee may elect to continue coverage for the dependents under the Health Insurance Company's COBRA plan. The COBRA plan allows dependent(s) to be covered for a period of 18 months. The employee will be responsible for the entire health insurance premium for his/her dependents.
- d. The Town of Smithfield will not continue health insurance coverage following retirement (as in "b" & "c" above) for employees hired on or after July 1, 2007. Employees hired on or after July 1, 2007 will be eligible for COBRA benefits through the health insurance carrier.
- e. An employee that receives a total disability retirement from the Local Government Employee Retirement System or Law Enforcement Retirement System is eligible to receive coverage under the Town's health insurance plan. The Town will pay the individual premium for the employee's coverage. If dependent(s) are covered at the time of retirement, the employee may elect to continue coverage for the dependents under the Health Insurance Company's COBRA plan. The COBRA plan allows dependent(s) to be covered for a period of 18 months. The employee will be responsible for the entire health insurance premium for his/her dependents. If dependents are eligible for the Medicare supplement, the dependent is not eligible for any reimbursement.

- f. If any council member or mayor has 20 years or more of service that includes both full-time employment status with the Town of Smithfield and voluntary status as a member of the Smithfield Town Council at the time he/ she resigns his/her seat at the Council table, shall be eligible to continue his/her health insurance coverage with the Town subject to section 55.g. The Town will pay the individual's premium amount until the age that the Medicare supplement is effective. When the individual becomes eligible for the Medicare supplement, the Town will reimburse the individual for his/her Medicare supplement premium for the remainder of his/her life, not to exceed the Town's medical insurance premium for an individual employee. Such participants shall produce written evidence to the Town upon demand, and at least once every 12 months, of the actual invoice for his or her health insurance premium. Any dependents covered by the Town's health insurance plan, at the time of vacancy, will not be eligible for the COBRA Plan.
- g. Any council member or Mayor elected in the year 2005 and any year thereafter is not eligible for health or dental insurance benefits thru the Town. However, the newly elected official may purchase the health or dental insurance but will be responsible for the entire premium for the remainder of his term in office. Once the elected official is no longer serving, he/she will not be eligible for any COBRA Plan coverage.
- h. An employee benefits joint committee shall be established consisting of the Mayor, two council members, the Town Manager, two department heads and three other town employees. This committee shall be an advisory committee only and make periodic recommendations to the Town Council on items relevant to employee benefits. The committee members shall be selected as follows: the Mayor shall always be a member and the presiding officer, the Town Manager shall always be a member and shall serve as the presiding officer in the absence of the Mayor, the two council members shall be appointed by the full Council for two-year terms starting in odd years on January 15th, the department heads shall be appointed by the Town Manager and serve two-year terms starting in even years on January 15th, and the three employees shall be recommended jointly by all town department heads and selected by the serving department head members and shall serve for two-year terms starting in odd years on January 15th . If a vote is necessary, a majority vote will prevail and the presiding officer shall not vote on any matters under consideration by the committee except in the case of ties. One serving member shall take minutes at each committee meeting that shall be reduced to writing and made public if all material contained in the minutes is open to the public under the North Carolina Open Records law. Although the committee shall seek to make timely recommendations to the Town Council, the Council need not receive a recommendation from this committee on all matters related to benefits before it is authorized to take action.

### **Section 53. Group Life Insurance**

The Town may make group life insurance coverage available to the employee, including accidental death and dismemberment coverage as described in same, "Group Insurance Plan" booklet, provided by the life insurance carrier. This benefit is subject to available funding and may change from year to year.

### **Section 54. Other Optional Group Insurance Plans**

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

### **Section 55. Retirement and Death Benefits**

The Town and employees contribute in the cost of the retirement plans which employees are required to join. Information about benefits and the systems are available in printed brochures circulated to employees. Under the Law Enforcement Officers' benefit and retirement system and the State's local governmental employee's retirement system, the Town provides death benefits at no cost to the

employee.

## **Section 56. Supplemental Retirement Benefits**

The Town may provide supplemental retirement benefits for its full and part-time employees. Each Law Enforcement Officer shall receive 401-K benefits as prescribed by North Carolina State Law. Each general employee may receive supplemental benefits as approved by the Town Council.

## **Section 57. Law Enforcement Special Separation Allowance**

The Town of Smithfield shall provide a special separation allowance to qualified police officers who retire early or who leave service early and who meet all of the following qualifications:

1. The officer must have completed 30 years or more of creditable service or have attained 55 years of age and completed five (5) or more years of creditable service; and
2. The officer must not yet be age 62; and
3. The officer must have completed at least 5 years of continuous service as a law enforcement officer immediately before service retirement.

Payment of the separation allowance will cease at:

1. The last day of the month in which the officer attains 62 years of age; or
2. The death of the officer; or
3. The first day of re-employment by a local government employer in any capacity.

Notwithstanding the provisions of subdivision 3. of this subsection, a local government employer may employ retired officers in a public safety position in a capacity not requiring participation in the Local Governmental Employees' Retirement System and doing so shall not cause payment to cease to those officers under the provisions of this section.

This policy shall apply to all law enforcement officers who currently receive a special separation allowance from the Town and all future law enforcement officers.

## **Section 58. Social Security**

- a. Social Security is federal government insurance to provide an employee with income in his/her senior years. Disability and death benefits are also provided by Social Security.
- b. The cost for Social Security is paid through an automatic payroll tax. The Town matches the amount that is deducted from the employee's payroll check for payment into the Social Security Trust Fund.

## **Section 59. Workers' Compensation**

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

Responsibility for claiming compensation under the Workers' Compensation Act is on the injured employee, and such claims must be filed by the employee with the North Carolina Industrial Commission within two years from date of injury. The Human Resources Department will assist the employee in filing the claim. (Also see Section 83 regarding Worker's Compensation Leave)

## **Section 60. Unemployment Compensation**

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

where a determination of eligibility will be made.

### **Section 61. Tuition Assistance Program**

Full-time employees who have completed initial probation may apply for tuition reimbursement for courses taken on their own time, which will improve their skills for their current job or prepare them for promotional opportunities within the Town service. Tuition, registration, fees, laboratory fees, and student fees are eligible expenses. Employees may be reimbursed eligible expenses up to five hundred dollars (\$500) per fiscal year subject to funding. Satisfactory completion of the courses will be required for reimbursement. Requests for tuition assistance shall be submitted to the Department Head prior to course registration and are subject to the review and approval of Town Manager, subject to availability of funds. An employee granted financial assistance through this program shall agree to remain an employee of the Town of Smithfield for up to five (5) years from the date of the last course taken under this program. If the employee leaves employment with the Town before the end of the period stated above, he/she shall reimburse the Town of Smithfield the total amount of any funds received through the tuition assistance program.

## **ARTICLE VII: Holidays and Leaves of Absence**

### **Section 62. Policy**

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

### **Section 63. Holidays**

The Town shall observe the following holidays and others as observed by the State of North Carolina, and as may be amended by the State and approved by the Town. Town staff will be notified of the holiday schedule at the beginning of each calendar year. When a holiday, other than Christmas, falls on Saturday or Sunday, the preceding Friday shall be observed for a Saturday holiday and the following Monday shall be observed for a Sunday holiday:

- New Year's Day
- Martin Luther King's Birthday
- Friday before Easter
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Friday after Thanksgiving Day
- Christmas (and the days designated by the State of North Carolina and adopted each year by the Town)

### **Section 64. Holidays: Effect on Other Types of Leave**

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

### **Section 65. Holidays: Compensations When Work is Required or Regularly Scheduled Off for Shift Personnel**

Non-exempt, full time employees required to perform work on regularly scheduled holidays may be granted compensatory time off at the one and one-half rate or be paid at their overtime rate for hours

actually worked in addition to any holiday pay to which they are entitled, provided the employee has not missed any other work hours during that week. If the employee has missed additional work hours during that week, regular FLSA requirements would apply.

If any employee is engaged in shift work and if the regular work schedule requires one to work on a holiday, the employee shall receive regular pay plus the holiday pay or a subsequent day off as compensation for the holiday worked; likewise, if a holiday falls on one's scheduled day off, the employee shall receive an additional day off.

An employee who must work on a holiday who would normally be expected to observe the day off shall receive regular holiday pay plus pay at his regular hourly rate for the hours worked on the holiday.

Departments with employees working a shift schedule may elect to compensate those employees for working on the "true" holidays rather than the Town designated holidays.

## **Section 66. Vacation Leave**

Vacation leave is intended to be used for rest and relaxation, and may be used for medical appointments. Vacation leave may also be used by employees who wish to observe religious holidays other than those granted by the Town. Employees who wish to use leave for religious observances must request leave from their respective Department Heads. The Department Head will attempt to arrange the work schedule so that an employee maybe granted vacation leave for the religious observance. Vacation leave for religious observance may be denied only when granting the leave would create an undue hardship for the Town.

## **Section 67. Vacation Leave: Use by Probationary Employees**

Employees serving a probationary period following initial employment may accumulate vacation leave but shall not be permitted to take vacation leave during the first six (6) months of employment unless approved in a pre-employment agreement. Employees shall be allowed to take accumulated vacation leave after six (6) months of service.

## **Section 68. Vacation Leave: Accrual Rate**

Each full and permanent part-time employee of the Town shall earn vacation leave at the following schedule. Vacation leave shall be computed by multiplying an employee's total annualized regular work hours (as specified by the employee's approved departmental work schedule) by the employee's corresponding leave percentage determined by the employee's years of service. The result equals annual vacation leave hours. These hours shall be accrued at a rate of 1/12 monthly. A regular full-time employee shall earn paid vacation according to his or her length of service with the Town of Smithfield as follows:

Years of Service	
0 – 3.....3.85%	15 – 19.....7.69%
4 – 9.....4.62%	20+.....9.23%
10 –14.....5.77%	

## **Section 69. Vacation Leave: Maximum Accumulation**

Vacation leave may be accumulated without any applicable maximum until December 31 of each year. Employees are not eligible to receive pay for vacation time not taken. However, if the employee departs from service, payment for accumulated vacation leave shall not exceed 240 hours. The maximum number of unused vacation hours that may be carried over from one calendar year to the next is:

Regular full-time employees.....	240	hours
Police Officers on Rotating Shifts.....	260	hours
Fire Department Personnel on 24-hour shifts.....	285	hours



On December 31 of each year, any employee with more than the hours as stated above shall have the excess accumulation converted to sick leave so that only the hours as stated above are carried forward to January 1 of the next calendar year.

Employees are cautioned not to retain excess accumulated vacation leave until late in the year. Because of the necessity to keep all functions in operation, large numbers of employees cannot be granted vacation leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having vacation leave scheduled or in receiving any exception to the maximum accumulation. This provision may be waived in case of natural disasters, upon approval of the Town Manager.

### **Section 70. Vacation Leave: Manner of Taking**

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

### **Section 71. Vacation Leave: Payment upon Separation**

An employee who has successfully completed six (6) months of the probationary period will normally be paid for accumulated vacation leave upon separation not to exceed 240 hours, provided written notice is given to the supervisor at least two weeks in advance of the effective date of resignation. Any employee failing to give the notice required by this section shall forfeit payment for accumulated leave. The notice requirement may be waived by the Town Manager when deemed to be in the best interest of the Town. Employees who are involuntarily separated shall receive payment for accumulated vacation leave subject to the 240 hour maximum. Employees dismissed for criminal conduct may be determined ineligible to receive vacation pay.

### **Section 72. Vacation Leave: Payment upon Death**

The estate of an employee who dies while employed by the Town shall be entitled to payment of all the accumulated vacation leave credited to the employee's account not to exceed the maximums established in Section 69 of this Article.

### **Section 73. Sick Leave**

Sick leave with pay is not a right that an employee may demand but a privilege granted by the Town Council for the benefit of an employee when sick. Sick leave may be granted to a probationary or regular employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease, when continuing work might jeopardize the health of others. Sick leave, up to five (5) days per calendar year, may be used when an employee must care for a member of his or her immediate family who is ill. Sick leave use in excess of five (5) days for this purpose requires prior Town Manager Approval.

Good attendance is extremely important as it allows each Town department to carry out the services and projects assigned to it and expected of it. When employees are absent, projects are delayed, service delivery suffers, and other employees must work harder to complete the same amount of work. Therefore, it is in the interest of employees, supervisors and the Town as a whole to promote good attendance.

Sick leave may also be used for death in the employee's immediate family, but may not exceed three (3) days for any single occurrence. Additional leave time required for such occurrence may be charged to

vacation or other approved leave when approved by the Department Head and/or Town Manager.

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

"Immediate family" shall be defined as spouse, child, parent, brother, sister, grandparent, grandchild, son-in-law or daughter-in-law, parent-in-law, brother or sister in law, aunt, or uncle of the employee or spouse of the employee or guardian. This also includes various combinations of "step", "half", and adopted relationships.

Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave or according to departmental procedures but (except for emergencies) no later than two hours prior to the beginning of the scheduled workday.

#### **Section 74. Sick Leave: Accrual Rate and Accumulation**

Sick leave shall accrue at a rate of one day per month of service or twelve (12) days per year. Sick leave for full- time and permanent part-time employees working other than the basic work schedule shall be pro-rated as described Section 68. Sick leave will be cumulative for an indefinite period of time and may be converted upon retirement for service credit consistent with the provisions of the North Carolina Local Government Employees' Retirement System.

For pay purposes, sick time taken will equal the amount of time that the employee is away from scheduled work. All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from the Town, except as stated for employees retiring or terminated due to reduction in force.

#### **Section 75. Transfer of Sick Leave from Previous Employer**

Upon hire, the Town will accept only the transfer of up to 350 hours of sick leave hours for employees from other employers who are participants of the Local or State Employees Retirement System. The sick leave will be treated as though it were earned with the Town of Smithfield. The sick leave amount must be certified by the previous employer. This provision shall not be retroactive to policy adoption. The transfer of more than 350 hours requires Town Manager approval and will be evaluated on a case by case basis.

#### **Section 76. Sick Leave: Donation of Time to Another Employee**

An employee experiencing extreme and extenuating situation who has expired his or her vacation and sick leave may apply in writing to the Human Resources Officer to accept donated sick leave from other Town of Smithfield employees. The written request shall include a brief description of the circumstances prompting the request.

The Human Resources Officer shall review the request and make a written recommendation to the Town Manager for presentation to the Town Council for approval or denial. Upon approval, the Human Resources Department is responsible for the accountability of the leave donations and use.

Donation Forms are date-stamped as they are received. The Human Resources Officer will advance the employee 80 hours at one period, as the hours are received. Employees will receive a copy of their donation forms if their donated hours are used.

The recipient shall continue to accrue sick and vacation leave while in the shared leave status. The minimum amount of hours that can be donated shall not be less than four (4). The maximum amount of hours that can be donated shall not exceed one-half of the donor's sick leave balance.

Per each request approved by the Town Council, the total shared sick leave hours accepted shall not exceed 480.00. Requests for additional donated sick leave must be submitted in the same manner as the original request. Donated sick leave hours not used will be returned to the employees that donated such hours.

### **Section 77. Sick Leave: Abuse and Requirement of Medical Certification**

Abuse of sick time shall not be tolerated and shall subject the employee to disciplinary action. Examples of abuse of sick leave shall include but are not be limited to: taking unapproved leave; failure to notify a supervisor in advance of the need to take a personal day; use of all sick time accrued; taking leave as soon as it is earned; or falsifying the reason for the use of sick time.

The employee's supervisor or Department Head may require a physician's certificate stating the nature of the employee's or family member's illness and the employee's capacity to resume duties, for each occasion on which an employee uses sick leave or whenever the supervisor observes a "pattern of absenteeism"; however, a physician's certificate does not excuse the abuse of leave privileges.

The employee shall be required to present a certified doctor's note of illness if the employee has been absent for more than three (3) consecutive days and also may be required to submit to such medical examination or inquiry as the Department Head deems desirable. The Department Head shall be responsible for the application of this provision to the end that:

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

Claiming sick leave under false pretense to obtain a day off with pay shall subject the employee to disciplinary action, up to and including dismissal. See Section 99 (f) for disciplinary action regarding sick leave abuse.

### **Section 78. Sick Leave Pro-rated**

Each regular full-time employee shall earn annual sick leave at a rate of 4.62 percent times the employee's total annualized regular work hours as determined by approved work schedules. The result equals annual sick leave hours. These hours shall be accrued at a rate of 1/12 monthly.

### **Section 79. Family and Medical Leave**

The Town will grant up to 12 weeks of family and medical leave per calendar year to eligible employees in accordance with the Family and Medical Leave Act of 1993 (FMLA). The leave may be paid (coordinated with the Town's Vacation and Sick Leave policies), unpaid, or a combination of paid and unpaid. Unpaid leave will be granted only when the employee has exhausted all appropriate types of paid leave. Additional time away from the job beyond the 12 week period may be approved in accordance with the Town's Leave without Pay policy.

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

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

- a. the birth of a child and in order to care for that child;
- b. the placement of a child for adoption or foster care;
- c. to care for a spouse, child, or parent with a serious health condition; or
- d. the serious health condition of the employee.

A serious health condition is defined as a condition which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care

provider. This policy covers illness of a serious and long-term nature resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which results in a period of incapacity or more than three days would be considered a serious health condition.

If a husband and wife both work for the Town and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (not parent in-law) with a serious health condition, the husband and wife together may only take a total of 12 weeks leave under FMLA.

An employee taking leave for the birth of a child may use paid sick leave for the period of actual disability, based on medical certification. The employee shall then use all paid vacation for the remainder of the 12 week period.

The request for the use of leave must be made in writing by the employee and approved by the Department Head and Town Manager.

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

Employees who are on paid leave under this policy shall not be allowed to work any outside employment during the tenure of paid leave. Employees experiencing extenuating circumstances may request a waiver of this section to the Town Manager for approval.

## **Section 80. Medical and Family Leave - Certification**

In order to qualify for leave under this law, the Town requires medical certification. This statement from the employee's or the family member's physician should include the date when the condition began, its expected duration, diagnosis, and brief statement of treatment. For the employee's own health condition, it should state that the employee is unable to perform the essential functions of his/her position. For a seriously ill family member, the certification must include a statement that the patient requires assistance and the employee's presence would be beneficial or desirable.

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

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

## **Section 81. Leave Without Pay**

A full or part-time employee may be granted a leave of absence without pay for a period of up to twelve (12) months by the Town Manager. The leave shall be used for reasons of personal disability after both sick leave and vacation have been exhausted, sickness or disability of immediate family members, continuation of education, special work that will permit the Town to benefit by the experience gained or the work performed, or for other reasons deemed justified by the Town Manager.

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

## **Section 82. Family Medical Leave and Leave Without Pay: Retention and Continuation of Benefits**

When an employee is on leave under FMLA (maximum of 12 weeks in a year), the Town will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work. If an employee chooses not to return to work for reasons other than a continued serious health condition, the Town will require the reimbursement of the amount paid for the employee's health insurance premium during the FMLA leave period.

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

An employee shall retain all unused vacation and sick leave while on Leave Without Pay. An employee ceases to earn leave credits on the date leave without pay begins. The employee may continue to be eligible for benefits under the Town's group insurance plans at his or her own expense, subject to any regulation adopted by the Council and the regulations of the insurance carrier.

## **Section 83. Workers' Compensation Leave**

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accrued sick leave, vacation, or compensatory time during the first waiting period. The employee shall supplement workers' compensation payments after they begin with sick leave, vacation, or compensatory time, provided that the combination of leave supplement and workers' compensation payments does not exceed normal compensation. An employee on workers' compensation leave may be permitted to continue to be eligible for benefits under the Town's group insurance plans. When workers' compensation leave extends long enough for the waiting period to be reimbursed, the employee shall notify the Human Resources Department immediately so that the appropriate leave time can be deducted and to prevent over-compensation and shall return the reimbursement check to the Town and have leave hours re-instated for all time covered by paid leave. In such cases, the Town will pay the employee for any unpaid time that is owed to the employee.

## **Section 84. Military Leave**

Regular employees who are members of an Armed Forces Reserve organization or National Guard shall be granted two calendar weeks per year for military leave without pay. On rare occasions due to annual training being scheduled on a federal fiscal year basis, an employee may be required to attend two periods of training in one calendar year. For this purpose only, an employee shall be granted an additional ten days of military leave during the same calendar year. If the compensation received while on military leave is less than the salary that would have been earned during this same period as a Town employee, the employee shall receive partial compensation equal to the difference. The effect will be to maintain the employee's salary at the normal level during this period. If such duty is required beyond these ten workdays, the employee shall be eligible to take accumulated vacation leave or be placed in a leave without pay status, and the provisions of that leave shall apply. Sick leave will not be used for this purpose. While taking military leave, the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the Town during this period. Employees who are eligible for military leave have all job rights specified by the Vietnam Veterans Readjustment Act.

## **Section 85. Reinstatement Following Military Service**

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

- a. Applies for reinstatement within ninety (90) days after the release from military service; and

- b. Is able to perform the duties of the former position or similar position; or
- c. Is unable to perform the duties of the former position or a similar position due to disability sustained as a result of the military service, but is able to perform the duties of another position in the service of the Town. In this case, the employee shall be employed in such other position as will provide the nearest approximation of the seniority, status, and pay which the employee otherwise would have been provided, if available.

### **Section 86. Civil Leave**

A Town employee called for jury duty or as a court witness for the federal or state governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. The employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation; except, that employees must turn over to the Town any witness fees or travel allowance awarded by that court for court appearances in connection with official duties. While on civil leave, benefits and leave shall accrue as though on regular duty.

### **Section 87. Parental School Leave**

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

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

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

## **ARTICLE VIII: Separation and Reinstatement**

### **Section 88. Types of Separations**

All separations of employees from positions in the service of the Town shall be designated as one of the following types and shall be accomplished in the manner indicated: suspension, resignation, reduction in force, disability, voluntary retirement, dismissal, or death.

### **Section 89. Suspension**

- a. Suspension is an action taken by the Town Manager or by a Department Head with the consensus of the Town Manager whereby pay is discontinued for an exempt and non-exempt employee (as defined while the employee is temporarily relieved of all duties and responsibilities).
- b. Suspension shall be used to allow time for the investigation, hearing or trial of an employee against whom an allegation of wrong doing has been made. If the allegation proves false, the employee may be reinstated without loss of compensation.
- c. Suspension shall also be used as a disciplinary action to penalize an employee for misconduct, insubordination, or to correct poor work habits. Disciplinary suspensions shall be without pay and the duration of disciplinary suspensions shall vary with the seriousness of the offense.

### **Section 90. Resignation**

An employee may resign by submitting the reasons for resignation and the effective date in writing to the immediate supervisor as far in advance as possible. In all instances, the minimum notice requirement is two weeks. Failure to provide minimum notice shall result in forfeit of payment for accumulated vacation leave unless the notice is waived upon recommendation of the Department Head and approval by the Town Manager. Three consecutive days of absence without contacting the immediate supervisor or Department Head may be considered to be a voluntary resignation. Sick leave will only be approved during the final two weeks of a notice with a physician's certification or comparable documentation.

### **Section 91. Reduction in Force**

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

### **Section 92. Disability**

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

### **Section 93. Voluntary Retirement**

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

### **Section 94. Death**

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

### **Section 95. Dismissal**

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

### **Section 96. Reinstatement**

An employee who is separated because of reduction in force may be reinstated within one year of the date of separation, upon recommendation of the Department Head, and upon approval of the Town Manager. An employee who is reinstated in this manner shall be re-credited with his or her previously accrued sick leave.

### **Section 97. Rehiring**

An employee who resigns while in good standing may be rehired with the approval of the Town Manager, and may be regarded as a new employee, subject to all of the provisions of rules and regulations of this Chapter. An employee in good standing who is separated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position. Any employee who is re-hired shall accrue vacation time at the new employee rate unless otherwise approved by the Town Manager as a condition of employment.

## **ARTICLE IX: Unsatisfactory Job Performance and Detrimental Personal Conduct**

### **Section 98. Disciplinary Action for Unsatisfactory Job Performance**

A regular employee may be placed on disciplinary suspension, demoted, or dismissed for unsatisfactory job performance, if after following the procedure outlined below, the employee's job performance is still deemed to be unsatisfactory.

All cases of disciplinary suspension, demotion, or dismissal must be approved by the Town Manager prior to giving final notice to the employee.

### **Section 99. Unsatisfactory Job Performance Defined**

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

- a. Demonstrated inefficiency, negligence, or incompetence in the performance of duties;
- b. Careless, negligent or improper use of Town property or equipment;
- c. Physical or mental incapacity to perform duties;
- d. Discourteous treatment of the public or other employees;
- e. Absence without approved leave;
- f. Improper use of leave privileges;
- g. Failure to report for duty at the assigned time and place;
- h. Failure to complete work within time frames established in work plan or work standards;
- i. Failure to meet work standards over a period of time; or
- j. Failure to follow the chain of command to address work-related issues
- k. Insubordination

### **Section 100. Communication and Warning Procedures Preceding Disciplinary Action for Unsatisfactory Job Performance**

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

An employee whose job performance is unsatisfactory over a period of time should normally receive at least two warnings from the supervisor before disciplinary action resulting in dismissal is taken by the Town Manager; however, such warnings are not required in extreme cases of misconduct or unsatisfactory job performance and immediate termination may occur. In each case, the supervisor should record the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended, and the time limits set. If the employee's performance continues to be unsatisfactory, the supervisor should use the following steps:

- a. A final written warning from the supervisor serving notice upon the employee that corrected performance must take place immediately, except in extreme cases of misconduct or unsatisfactory job performance where immediate dismissal is warranted, in order to avoid suspension, demotion, or dismissal.
- b. If performance does not improve, a written recommendation should be sent to the Town Manager for disciplinary action such as suspension, demotion, or dismissal.
- c. Disciplinary suspensions are for the purpose of communicating the seriousness of the performance deficiency, not for the purpose of punishment and should not generally exceed three days (24 hours)



for nonexempt employees. Suspensions for exempt employees shall be for one full work week in accordance with FLSA requirements to maintain exempt status.

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

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

### **Section 101. Detrimental Personal Conduct Defined**

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

- a. Fraud or theft;
- b. Conviction of a felony or the entry of a plea of nolo contendere thereto;
- c. Falsification of records for personal profit, to grant special privileges, or to obtain employment;
- d. Willful misuse or gross negligence in the handling of Town funds or for personal use of equipment or supplies;
- e. Willful or wanton damage or destruction to property;
- f. Willful or wanton acts that endanger the lives and property of others;
- g. Possession of unauthorized firearms or other lethal weapons on the job;
- h. Brutality in the performance of duties;
- i. Reporting to work under the influence of alcohol or drugs or partaking of such while on duty. Prescribed medication may be taken within the limits set by a physician as long as medically necessary;
- j. Engaging in incompatible employment or serving a conflicting interest;
- k. Request or acceptance of gifts in exchange for favors or influence;
- l. Engaging in political activity prohibited by this chapter;
- m. Harassment of an employee(s) and/or the public on the basis of sex or any other protected class status;  
or
- n. Stated refusal to perform assigned duties, flagrant violation of work rules and regulations, or serious malfeasance of work responsibilities

### **Section 102. Disciplinary Action for Detrimental Personal Conduct**

With the approval of the Town Manager, an employee may be placed on disciplinary suspension, demoted, or dismissed without prior warning for causes relating to personal conduct detrimental to Town service in order to (1) avoid undue disruption of work; (2) to protect the safety of persons or property; or (3) for other serious reasons.

### **Section 103. Pre-disciplinary Conference**

Before suspension, demotion, or dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the Department Head will consult with the Human Resources Department and conduct a pre-disciplinary conference. At this conference, the employee may present any response to the proposed disciplinary action to the Department Head. The Department Head will consider the employee's response, if any, to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, notify the employee in writing of the final decision to take disciplinary action, upon approval by the Town Manager. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal

rights.

### **Section 104. Non-Disciplinary Suspension**

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

- a. 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
- b. 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.
- c. Terminate the employee should the employee be unable or unwilling to report to work to complete the internal investigation.

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

## **ARTICLE X: Grievance Procedure**

### **Section 105. Purpose**

The grievance procedure provides an adequate and fair means for hearing matters of concern to Town employees.

### **Section 106. Coverage**

This grievance procedure applies to all departments and all employees of the Town. A grievance is defined as any matter of concern or dissatisfaction arising from the working conditions of an employee, subject to the control of the Town.

### **Section 107. Policy**

Every employee shall have the right to present a grievance in accordance with these procedures free from interference, coercion, restraint, discrimination, penalty or reprisal. Employees will be allowed such time off from their regular duties as may be necessary and reasonable as determined by the Department Head or the Town Manager to prepare and present a grievance.

### **Section 108. Procedure**

**A. Step One.** An employee must file a grievance, either orally or in writing, with the immediate supervisor within five (5) working days of the date of the incident giving rise to the grievance. If the employee alleges sexual harassment by the immediate supervisor, the employee may file the complaint with the Town Manager, as set forth in Section 40. If the grievance concerns an appeal of a dismissal, it shall be filed directly with the Town Manager at Step Three. The immediate supervisor shall meet with the employee within five (5) working days of receipt of the grievance and attempt to resolve the grievance informally. If informal resolution efforts fail, the immediate supervisor shall issue a written decision on the grievance not later than five (5) working days following the meeting.

**B. Step Two.** If the employee is dissatisfied with the response at Step One, the employee may file the grievance in writing with the Department Head within five (5) working days of receipt of the immediate supervisor's written decision. The grievance shall state concisely the basis for the complaint and, if based on alleged discrimination, indicate whether the alleged discrimination was based on race, color, religion, sex, national origin, political affiliation, non-disqualifying handicap, sexual orientation, or age. The Department Head shall meet with the employee within five (5) days of receipt of the Step Two grievance, shall review the decision at Step One, and shall make an independent determination on the merits of the grievance. Within five (5) working days of the meeting with the employee, the Department Head shall issue a written decision.

**C. Step Three.** If the employee is dissatisfied with the response at Step Two, the employee may forward the written grievance to the Town Manager within five (5) working days of receipt of the Step Two decision. The employee may request a decision, with or without representation, from the appointing official directly or may request a hearing before the Personnel Advisory Committee with a recommended decision by the committee. The personnel advisory committee may only be assembled and utilized in cases involving suspension, demotion, discharge, or when grieving a promotional process. If the employee requests a decision directly, the Town Manager will render a written decision within fifteen (15) working days of receipt of the grievance. If the employee or the appointing authority requests the services of the Personnel Advisory Committee, the procedures set forth in Section 108 of this article will apply.

### **Section 109. Personnel Advisory Committee**

The Personnel Advisory Committee may only be assembled and utilized in cases involving, suspension, demotion or discharge, or when grieving a promotional process. Personnel Advisory Committee, is composed of three persons designated by the Town Council, with authority to hear employees' grievances and recommend decisions to the Town Manager. An employee or the Town Manager may request a hearing, which shall be transcribed or recorded. The hearing shall be conducted within thirty (30) calendar days of the date on which the hearing is requested, during regular working hours of the Town. The Personnel Advisory Committee, the grievant, and any person whose alleged conduct is the cause of the complaint shall have the right to call and cross-examine witnesses and offer other evidence. The hearing shall be conducted by the chairperson of the committee. The Personnel Advisory Committee shall submit its recommended decision to the Town Manager within fifteen (15) calendar days of the hearing.

### **Section 110. Final Decision on the Grievance**

Upon receiving the recommended decision of the Personnel Advisory Committee, the Town Manager shall inform the employee and the Department Head, in writing, of the final decision. The final decision will be furnished within ten (10) working days of receipt of the recommended decision of the Personnel Advisory Committee.

### **Section 111. Maintenance of Records**

All documentation, records, and reports will be retained for a minimum of three (3) years and shall be held by the Human Resources Department. These records will be subject to review by the grievant, the employee's Department Head, the Town Manager, and the Town Council, as applicable under State Law.

## **ARTICLE XI: Records and Report**

### **Section 112. Personnel Records Maintenance and Public Information**

Such personnel records as are necessary for the proper administration of the personnel system will be maintained by the Human Resources Department. The Town shall maintain in personnel records only

information that is necessary and relevant to accomplishing legitimate personnel administration needs.

In compliance with GS 160A-168, the following information with respect to each Town employee is a matter of public record:

- a. Name;
- b. Age;
- c. Date of original employment or appointment to the service;
- d. Current position title;
- e. Current salary;
- f. Date and amount of the most recent increase or decrease in salary;
- g. Date of the most recent promotion, demotion, transfer, suspension, separation, or other change in position classification;
- h. Date and type of each dismissal, suspension, or demotion for disciplinary reasons and if the action taken was a dismissal, a copy of the written notice of the final decision of dismissal and the reasons contained on such final dismissal form supporting the dismissal as set forth in NCGS 160A-168; and,
- i. Office to which the employee is currently assigned.

Also as required by G.S. 160A-168, any person may have access to this information listed above for the purpose of inspection, examination, and copying, during regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Town Council may adopt. Any person denied access to any record shall have a right to compel compliance with these provisions by application to a court for writ of mandamus or other appropriate relief.

### **Section 113. Access to Confidential Records**

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

- a. The employee or his/her duly authorized agent may examine all portions of his/her personnel file except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.
- b. A licensed physician designated in writing by the employee may examine the employee's medical record.
- c. A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- d. By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
- e. An official of an agency of the State or Federal Government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the Town Manager to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- f. An employee may sign a written release to be placed in his/her personnel file that permits the record custodian to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- g. The Town Manager, with the concurrence of the Town Council, may inform any person of the

employment, unemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a Town employee, and the reasons for that action. Before releasing that information, the Town Manager shall determine in writing that the release is essential to maintaining the level and quality of Town services. The written determination shall be retained in the Town Manager's office, is a record for public inspection, and shall become a part of the employee's personnel file.

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

### **Section 114. Personnel Actions**

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

### **Section 115. Records of Former Employees**

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

### **Section 116. Remedies of Employees Objecting to Material in File**

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

### **Section 117. Penalties for Permitting Access to Confidential Records**

PerGeneralStatute160A-168, any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by the designated custodian, may be judged guilty of a misdemeanor and upon conviction be fined in an amount provided for in General Statutes.

### **Section 118. Examining and/or Copying Confidential Material without Authorization**

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

### **Section 119. Destruction of Records Regulated**

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with GS 121.5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or whoever, alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined in an amount provided for in the General Statutes.