

CHAPTER 35: PERSONNEL

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GENERAL PROVISIONS

§ 35.001 PURPOSE OF THE CHAPTER.

It is the purpose of this chapter and the rules and regulations set forth to establish a fair and uniform system of personnel administration for all employees of the city under the supervision of the City Manager. (Nothing in this policy creates an employment contract or term between the city and its employees.) This chapter is established under authority of G.S. Ch. 160A, Art. 7.

§ 35.002 RESPONSIBILITIES OF CITY COUNCIL.

The City 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.

§ 35.003 RESPONSIBILITIES OF CITY MANAGER.

(A) The City Manager shall be responsible to the City Council for the administration and technical direction of the personnel program. The City Manager shall appoint, suspend and remove city officers and employees, except those elected by the people or whose appointment is otherwise provided for by law. The City Manager shall make appointments, dismissals and suspensions in accordance with the City Charter and other policies and procedures spelled out in other sections in this chapter.

(B) The City Manager shall maintain the position classification plan and the pay plan, and perform such other duties in connection with a modern personnel program as the City Council requires. All matters dealing with personnel shall be routed through the office of the City Manager, who shall maintain a complete system of personnel files and records. The City Manager shall:

- (1) Recommend rules and revisions to the personnel system to the City Council for consideration;
- (2) Make minor revisions and recommend major revisions to the position classification plan to the City Council for approval;
- (3) Prepare and recommend revisions to the pay plan to the City Council for approval;
- (4) Determine which employees shall be subject to the overtime provisions of FLSA;
- (5) Establish and maintain 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;
- (6) Develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the city;
- (7) Develop and coordinate training and educational programs for city employees;
- (8) Investigate periodically the operation and effect of the personnel provisions of this chapter; and
- (9) Perform such other duties as may be assigned by the City Council not inconsistent with this chapter.

§ 35.004 APPLICATION OF POLICIES, PLANS, RULES AND REGULATIONS.

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

§ 35.005 DEPARTMENTAL RULES AND REGULATIONS.

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

§ 35.006 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

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 12 months is required by the city.

PART-TIME EMPLOYEE. An employee who is in a position for which an average work week of at least 20 hours and less than 40 hours and continuous employment of at least 12 months is required by the city.

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

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

TEMPORARY EMPLOYEE. An employee appointed to a position for which either the average work week required by the city over the course of a year is less than 20 hours or continuous employment required by the city 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.

POSITION CLASSIFICATION PLAN

§ 35.020 PURPOSE.

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

§ 35.021 COMPOSITION OF THE POSITION CLASSIFICATION PLAN.

The classification plan shall consist of:

(A) A grouping of positions in classes which are approximately equal in difficulty and responsibility, which call for the same general qualifications and which can be equitably compensated within the same range of pay under similar working conditions;

(B) Class titles descriptive of the work of the class;

(C) Written specifications for each class of positions; and

(D) An allocation list showing the class title of each position in the classified service.

§ 35.022 USE OF THE POSITION CLASSIFICATION PLAN.

The classification plan is to be used:

- (A) As a guide in recruiting and examining applicants for employment;
- (B) In determining lines of promotion and in developing employee training programs;
- (C) In determining salary to be paid for various types of work;
- (D) In determining personnel service items in departmental budgets; and
- (E) In providing uniform job terminology.

§ 35.023 ADMINISTRATION OF THE POSITION CLASSIFICATION PLAN.

The City Manager shall allocate each position covered by the classification plan to its appropriate class and shall be responsible for the administration of the position classification plan. The City Manager shall periodically review portions of the classification plan and make minor revisions to ensure that classifications accurately reflect current job duties and responsibilities. The City Manager shall also periodically review the entire classification plan and, when needed, recommend major changes to the City Council.

§ 35.024 ADOPTION OF THE POSITION CLASSIFICATION PLAN.

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

§ 35.025 REQUEST FOR RECLASSIFICATION.

Any employee who considers the position in which he/she is classified to be improper shall submit a request in writing for reclassification to the employee's immediate supervisor, who shall immediately transmit the request to the City Manager. Upon receipt of the request, the City Manager shall study the request, determine the merit of the reclassification and forward the recommendation to the City Council for consideration.

PAY

§ 35.035 DEFINITION.

The PAY PLAN includes the basic salary schedule and the "Assignment of Classes to Grades and Ranges" adopted by the City Council. The salary schedule consists of steps for minimum or beginning, maximum and intervening rates of pay for all classes of positions, and a designation of the standard hours in the work week for each position. Salary increases within the pay range shall be based on criteria established by the City Manager and approved by the City Council.

§ 35.036 ADMINISTRATION AND MAINTENANCE.

(A) The City 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.

(B) 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 public employment in the area, changes in the cost of living, the financial conditions of the city, and other factors. To this end, from time to time the City Manager shall make comparative

studies of all factors affecting the level of salary ranges, and may make minor adjustments in the allocation of positions to salary grades.

(C) When major adjustments encompassing numerous positions are needed, or when a general adjustment is needed to the pay plan, the City Manager shall recommend such changes in salary ranges as appear to be warranted to the City Council. The City Council shall adopt the "Assignment of Classes to Grades and Ranges," including any minor adjustments made by the City Manager during the previous budget year, annually as part of the budget process.

§ 35.037 STARTING SALARIES.

All persons employed in positions approved in the position classification plan shall be employed at the minimum salary for the classification in which they are employed; however, on the recommendation of the department head, with the approval of the City Manager, exceptionally well qualified applicants may be employed above the minimum of the established salary range.

§ 35.038 TRAINEE DESIGNATION AND PROVISIONS.

(A) Applicants being considered for employment or city 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 City Manager to a "trainee" status. In such cases, a plan for training, including a time schedule, must be prepared by the supervisor. "Trainee" salaries may be no more than two grades below the minimum salary established for the position for which the person is being trained. A new employee designated as "trainee" shall be regarded as a probationary employee.

(B) If the training is not successfully completed as planned, the trainee shall be transferred, demoted or dismissed. If the training is successfully completed, the employee shall be paid at least at the minimum rate established for the position for which the employee was trained.

§ 35.039 PROBATIONARY PAY INCREASES.

Employees hired or promoted into the hiring rate of the pay range shall receive a salary increase to Step 1 upon successful completion of the probationary period. Employees hired or promoted above the hiring rate shall not receive increases when removed from probationary status.

§ 35.040 PERFORMANCE EVALUATION AND MERIT PAY INCREASES.

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. Employees may be considered for advancement within the established salary range based on the quality of their overall work performance or other factors recommended by the City Manager and approved by the City Council. Procedures for determining performance levels and performance pay increases shall be determined by the City Manager and approved by the City Council.

§ 35.041 PERFORMANCE PAY BONUS.

Employees who are at the top step of the salary range for their position classification are eligible to be considered for a performance bonus, as established by City Council and approved in annual budget. Performance bonuses shall be awarded based upon the performance of the employee as described in the performance evaluation. Performance bonuses shall be awarded in lump sum payments and do not become part of base pay.

§ 35.042 SALARY EFFECT OF PROMOTIONS, DEMOTIONS, TRANSFERS AND RECLASSIFICATIONS.

(A) Promotions. When an employee is promoted, the employee's salary shall normally be advanced to the minimum level of the new position, or to a salary which provides an increase of at least approximately 5% over the employee's salary before the promotion; provided, however, that the new salary may not exceed the maximum rate of the new salary range. The

purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility.

(B) Demotions. When an employee is demoted to a position for which qualified, the salary shall be set no higher than Step 4 of the lower pay range if action is not for cause. If the demotion is for cause, the salary shall be decreased at least approximately 5%, or to the maximum of the new range.

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

(D) Reclassifications. An employee whose position is reclassified to a class having a higher salary range shall receive a pay increase of approximately 5%, or an increase to the minimum of the new pay range, whichever is higher. If the position is reclassified to a lower pay range, the employee's salary shall remain the same. If the employee's salary is above the maximum established for the new range, the salary of that employee shall be maintained at the current level until the range is increased above the employee's salary.

§ 35.043 SALARY EFFECT OF SALARY RANGE REVISIONS.

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

§ 35.044 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 minimum rate established for their respective classes shall have their salaries raised to the new minimum for their classes.

(C) All employees being paid at a rate below the maximum rate established for their respective classes shall be paid at a rate listed in the salary schedule; 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 classes shall be maintained at that salary level until such time as the employees' salary range is increased above the employees' current salary.

§ 35.045 EFFECTIVE DATE OF SALARY CHANGES.

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

§ 35.046 OVERTIME PAY PROVISIONS.

(A) Employees of the city can be requested and may be required to work overtime hours, as necessitated by the needs of the city and determined by the supervisor.

(B) To the extent that local government jurisdictions are so required, the city will comply with the Fair Labor Standards Act (FLSA), being 29 USC 201 et seq. The City Manager shall determine which jobs are "non-exempt" and are therefore subject to the Act in areas such as hours of work and work periods, rates of overtime compensation, and other provisions.

(C) 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 seven-day period). Hours for public safety personnel shall be based on a 28-day cycle, with compensation at overtime rates beginning after 171 hours are worked in the cycle for police staff, and 27-day cycle with compensation at overtime rates beginning after 204 hours are worked in the cycle for fire personnel. 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 City Manager when creating a balance that exceeds 100 hours.

(D) Whenever practicable, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of paying overtime. When time off within the work period cannot be granted, overtime worked will be paid in accordance with the FLSA.

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

(F) 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 where the convenience of the department allows, and in accordance with procedures established by the City Manager. The compensatory time is not guaranteed to be taken and ends without compensation upon separation from the organization.

§ 35.047 CALL-BACK PAY.

(A) The city provides continuous 24-hours-a-day, seven-days-a-week services 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 city is the acceptance of a share of the responsibility for continuous service, in accordance with the nature of each job position. If an employee fails to respond to reasonable calls for emergency service, either special or routine, the employee shall be subject to disciplinary actions up to and including dismissal by the City Manager.

(B) Non-exempt employees will be guaranteed a minimum payment of two hours wages for being called back to work outside of normal working hours. Exception: Off-duty fire personnel will be guaranteed a minimum of one hour in wages for being called back. "Call-back" provisions do not apply to previously scheduled overtime work.

§ 35.048 PAYROLL DEDUCTIONS.

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 City Manager as to capability of payroll equipment and appropriateness of the deduction.

§ 35.049 EXTRA DUTY OR CERTIFICATION PAY.

When employees assume additional duties as a result of additional training and/or certification, and it does not substantially change the duties and responsibilities of the position enough to merit a new job classification, then the City Manager may authorize additional flat rate amounts of dollars for each pay period, as long as these additional duties are being performed and the certification is retained and current.

RECRUITMENT AND EMPLOYMENT

§ 35.060 EQUAL EMPLOYMENT AND OPPORTUNITY POLICY.

It is the policy of the city to foster, maintain and promote equal employment opportunity. The city shall select employees on the basis of the applicant's qualifications for the job, and shall award jobs and make decisions with respect to compensation, opportunity for training and advancement, including upgrading and promotion, without regard to age, sex, race, color, religion, national origin, disability, political affiliation or marital status. An applicant with a disability shall be given equal consideration with other applicants if such applicant can, with or without reasonable accommodation, perform the essential requirements of the position.

§ 35.061 IMPLEMENTATION OF EQUAL EMPLOYMENT AND 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 job requirements is being actively observed, to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, nonjob-related handicap, national origin, political affiliation or marital status. Notices with regard to equal employment matters shall be posted in conspicuous places on city premises in places where notices are customarily posted.

§ 35.062 RECRUITMENT, SELECTION AND APPOINTMENT.

(A) Recruitment sources. When position vacancies occur, supervisors shall notify the City Manager concerning the number and classification of positions which are to be filled. The City Manager shall publicize these opportunities for employment, including applicable salary information and employment qualifications. The decision of whether to advertise internally or externally at the same time will be made by the City Manager, depending on the type and kind of vacant position. Information on job openings and hiring practices shall be provided to recruitment sources, including organizations and news media available to minority applicants. In addition, notice of vacancies shall be posted at designated conspicuous sites within departments. Individuals shall be recruited from a geographic area as wide as necessary to ensure that well qualified applicants are obtained for city service. The North Carolina Employment Security Commission shall normally be used as a recruitment source.

(B) Job advertisements. Employment advertisements shall contain assurances of equal employment opportunity, and shall comply with federal and state statutes.

(C) Application for employment. All persons expressing interest in employment with the city shall be given the opportunity to file an application for employment for positions which are vacant.

(D) 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.

(E) Selection. Department heads shall make such investigations and conduct such examinations as necessary to assess accurately the knowledge, skills and experience qualifications required for the position.

(F) Appointment. Before any commitment is made to an applicant either internal or external, the department head shall make recommendations to the City Manager, who shall review and approve the position to be filled, the salary to be paid, and the reasons for selecting the candidate over other candidates. The City Manager shall approve appointments and the starting salary for all applicants.

§ 35.063 PROBATIONARY PERIOD.

(A) An employee appointed or promoted to a permanent position shall serve a probationary period. Employees shall serve a six-month probationary period, except that sworn law enforcement personnel, fire shift personnel and department heads shall serve a 12-month probationary period.

(B) During the probationary period, supervisors shall monitor an employee's performance and communicate with the employee concerning performance progress. Before the end of the probationary period, the supervisor shall conduct a performance evaluation conference with the employee and discuss accomplishments, strengths and needed improvements. A summary of this discussion 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 three additional months.

(C) 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 chapter. 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.

§ 35.064 PROMOTION.

(A) Promotion is the movement of an employee from one position to a vacant position in a class assigned to a higher salary range. It is the city's policy to create career opportunities 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 promoted to that position. The city 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 work force to the community; and

(3) Obtaining the best possible employee who will provide the most productivity in that position.

(B) Candidates for promotion shall be chosen on the basis of their qualifications and their work records. Candidates shall apply for promotions using the same application process as external candidates.

§ 35.065 DEMOTION.

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

§ 35.066 TRANSFER.

Transfer is the movement of an employee from one position to a position in a class in the same salary range. If a vacancy occurs and an employee in another department is eligible for a transfer, the employee shall apply for the transfer using the usual application process. The department head wishing to transfer an employee to a different department or classification shall make a recommendation to the City Manager. 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.

CONDITIONS OF EMPLOYMENT

§ 35.080 WORK SCHEDULE.

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

§ 35.081 POLITICAL ACTIVITY.

(A) 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:

- (1) Engage in any political or partisan activity while on duty;
- (2) Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- (3) 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;
- (4) Coerce or compel contributions from another employee of the city for political or partisan purposes;
- (5) Use any supplies or equipment of the city for political or partisan purposes;
- (6) Be a candidate for nomination or election to office under the City Charter.

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

§ 35.082 OUTSIDE EMPLOYMENT.

The work of the city shall have precedence over other occupational interests of employees. All outside employment for salaries, wages or commission, and all self-employment must be reported in writing in advance to the employee's supervisor, who in turn will report it to the City Manager. The City Manager will review such employment for possible conflict of interest and then approve or disapprove the secondary employment. Conflicting or unreported outside employment is grounds for disciplinary action, up to and including dismissal.

§ 35.083 DUAL EMPLOYMENT.

A full- or part-time employee of the city may simultaneously hold another position with the city if the temporary position is in a different department and/or clearly different program area from that of the full- or part-time position. However, the work of the full- or part-time position

shall take precedence over the temporary position, and the work will not count toward the calculation of overtime for pay or time off.

§ 35.084 EMPLOYMENT OF RELATIVES.

The city prohibits the hiring and employment of immediate family in permanent positions within the same work unit. The term "immediate family" is defined in § 35.131. The city also prohibits the employment of any person into a permanent position who is an immediate family member of individuals holding the following positions: Mayor, City Council, City Manager, City Clerk or City Attorney. Otherwise, the city will consider employing family members or relocated persons in the service of the city, provided that the employment does not result in a relative supervising relatives.

§ 35.085 SEXUAL HARASSMENT.

(A) The city opposes 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.

(B) Any employee who believes that he or she may have a complaint of sexual harassment may file the complaint directly with the City Manager. The City Manager will conduct an investigation into any allegation of sexual harassment, and advise the employee and appropriate management officials of the outcome of the investigation.

§ 35.086 ACCEPTANCE OF GIFTS AND FAVORS.

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

§ 35.087 SAFETY.

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

§ 35.088 IMMIGRATION LAW REQUIREMENTS.

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

§ 35.089 USE OF CITY-OWNED VEHICLES.

The City Council specifically forbids the personal use of any city-owned vehicles, equipment or supplies by any employee.

EMPLOYEE BENEFITS

§ 35.100 ELIGIBILITY.

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

§ 35.101 GROUP HEALTH AND HOSPITALIZATION INSURANCE.

(A) The city provides group health and hospitalization insurance programs for full-time employees and their families. The city also provides paid dental insurance for its employees.

(B) Information concerning cost and benefits shall be available to all employees through the city payroll office.

(C) Retirees shall be able to continue health and hospitalization coverage on the city's plan for a maximum of three years prior to eligibility for Medicare, as long as they have at least ten years of service with the city.

§ 35.102 OTHER OPTIONAL GROUP INSURANCE PLANS.

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

§ 35.103 RETIREMENT.

Each employee who is expected to work for the city more than 1,000 hours annually shall join the North Carolina Local Governmental Employees' Retirement System when eligible as a condition of employment.

§ 35.104 SUPPLEMENTAL RETIREMENT BENEFITS.

(A) The city allows employees to defer a portion of their income before taxes into a 401(k) tax deferral plan.

(B) The city provides contributions to a 401(k) plan for active law enforcement personnel and a monthly separation allowance to retired law enforcement officers as required in G.S. Ch. 143, Art. 12E and Art. 12D.

§ 35.105 SOCIAL SECURITY.

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

§ 35.106 WORKERS' COMPENSATION.

(A) All employees of the city (full-time, part-time and temporary) are covered by the North Carolina Workers' Compensation Act, being G.S. §§ 97-1 et seq., 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.

(B) Responsibility for claiming compensation under the Workers' Compensation Act, being G.S. §§ 97-1 et seq., is on the injured employee and the supervisor, and such claims must be filed by the employee with the North Carolina Industrial Commission within two years from date of injury.

§ 35.107 UNEMPLOYMENT COMPENSATION.

City employees who are terminated due to a reduction in force or released from city service may apply for benefits through the local office of the Employment Security Commission, as provided in G.S. §§ 96-3 et seq., where a determination of eligibility will be made.

§ 35.108 TUITION ASSISTANCE PROGRAM.

The city shall continue to improve the level of service offered to its citizens by providing employees with training opportunities. The encouragement of education and training to improve

job performance, as well as increase the employee's knowledge, skills and abilities for promotions within the city, shall be accomplished by means of a tuition assistance program, and should be considered each year when funding is established for the upcoming budget. This benefit will be provided as funding is made available. The maximum amount per fiscal year or semester shall be established in procedures distributed by the City Manager. All requests for tuition assistance shall be approved prior to the employee beginning the course, and the reimbursement shall occur only after the completion of the course and the submission of the required forms certifying a successful completion of the course with a grade of "C" or better.

HOLIDAYS AND LEAVES OF ABSENCE

§ 35.120 POLICY.

The policy of the city 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.

§ 35.121 HOLIDAYS.

(A) The policy of the city is to follow the holiday schedule listed below. Each holiday is an eight-hour period.

- (1) New Year's Day.
- (2) Martin Luther King's Birthday.
- (3) Good Friday.
- (4) Memorial Day.
- (5) Independence Day.
- (6) Labor Day.
- (7) Thanksgiving Day.
- (8) Day after Thanksgiving.
- (9) Christmas -- three days.

(B) In order to be eligible for holiday pay, an employee must be in pay status for a full regularly scheduled workday before and after the holiday, unless excused by the City Manager.

§ 35.122 EFFECT OF HOLIDAYS 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.

§ 35.123 COMPENSATION WHEN WORK IS REQUIRED ON HOLIDAYS.

Employees required to perform work on regularly scheduled holidays may be granted compensatory time off or paid at their hourly rate for hours actually worked, in addition to any holiday pay to which they are entitled. Compensatory time shall be granted whenever feasible and taken within three months from the time it is earned. If a holiday falls on a regularly scheduled off-duty day for shift personnel, the employee shall receive the hours for paid holiday leave at another time.

§ 35.124 VACATION LEAVE.

Vacation leave shall be used for rest and relaxation, and may be used for medical appointments.

§ 35.125 VACATION LEAVE USED BY PROBATIONARY EMPLOYEES.

Employees serving a probationary period following initial employment may accumulate vacation leave, but shall not be permitted to take vacation leave during the probationary period. Employees shall be allowed to take accumulated vacation leave after six months of service.

§ 35.126 ACCRUAL RATE OF VACATION LEAVE.

Each full- and part-time employee of the city shall accrue vacation leave at the following schedule, pro-rated by the average hours in the workweek:

Years of Service	Hours Per Month	Hours Per Year	Days Earned in One Year
Less than 5	6 hours, 40 minutes	80	10
5 years to 10 years	8 hours 96	12	
10 years or more	10 hours	120	15
56-Hour Employees			
Less than 5	9.333 hours	112	5
5 years to 10 years	11.25 hours	135	6
10 years or more	14 hours	168	7

§ 35.127 MAXIMUM ACCUMULATION OF VACATION LEAVE.

(A) The maximum vacation leave that may accrue to an employee's credit is limited to 240 hours for regular employees and 336 hours for 56-hour employees. Vacation leave may be accumulated without any applicable maximum until June 30 of each year. Effective the last payroll in the fiscal year, any employee with more than 30 days (240 hours or 336 hours) of accumulated leave shall have the excess accumulation removed so that only 30 days are carried forward to the new payroll period. The excess amount will be converted to sick leave, up to a maximum of one-half of the employee's current annual accrual rate.

(B) Employees are cautioned not to retain excess accumulated vacation leave until late in the fiscal year; due to the necessity to keep all city 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.

§ 35.128 MANNER OF TAKING VACATION LEAVE.

Employees shall be granted the use of earned vacation leave in days of five or more upon request, in writing, at those times designated by the supervisor which will least obstruct normal operations of the city. Smaller amounts of vacation leave will be granted as approved by the supervisor. Supervisors are responsible for insuring that approved vacation leave does not hinder the effectiveness of service delivery.

§ 35.129 PAYMENT UPON SEPARATION OF VACATION LEAVE.

An employee who has successfully completed six months of the probationary period will normally be paid for accumulated vacation leave upon separation.

§ 35.130 PAYMENT UPON DEATH OF VACATION LEAVE.

The estate of an employee who dies while employed by the city shall be entitled to payment of all the accumulated vacation leave credited to the employee's leave account.

§ 35.131 SICK LEAVE.

(A) Sick leave with pay is not a right which an employee may demand, but a privilege granted for the benefit of an employee when sick. Sick leave may be granted to an 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.

(B) Sick leave may be used when an employee must care for a member of his or her immediate family who is ill, but may not be used to care for healthy children when the regular care giver is sick. Sick leave may also be used for death in the employee's immediate family, but may not exceed three days for any one occurrence. Additional leave time required for such occurrence may be charged to vacation.

(C) 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 employees may not exceed their regular salary amount using this provision.

(D) IMMEDIATE FAMILY shall be defined as spouse, parent, guardian, children, sister, brother, grandparents and grandchildren, plus the various combinations of half, step, in-law and adopted relationships that can be derived from those named.

(E) Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave or not later than two hours after the beginning of the scheduled workday.

§ 35.132 ACCRUAL RATE AND ACCUMULATION OF SICK LEAVE.

Sick leave shall accrue at a rate of one day per month of service or 12 days per year. Sick leave for full-time and part-time employees working other than the basic work schedule shall be pro-rated. 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, being G.S. §§ 160A-163 et seq. All sick leave accumulated by an employee shall end and terminate without compensation when the employee resigns or is separated from the city, except as stated for employees retiring or terminated due to reduction in force.

§ 35.133 MEDICAL CERTIFICATION FOR SICK LEAVE.

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

(1) Employees shall not be on duty when they might endanger their health or the health of other employees; and

(2) There will be no abuse of leave privileges.

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

§ 35.134 LEAVE PRO-RATED.

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

(A) The number of hours worked by such employees shall be divided by the number of hours in the basic work week (usually 40 hours).

(B) The proportion obtained in Step 1 shall be multiplied by the number of hours of leave earned annually by employees working the basic work week.

(C) The number of hours in Step 2 divided by 12 shall be the number of hours of leave earned monthly by the employees concerned.

§ 35.135 LEAVE WITHOUT PAY.

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

(B) 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 City Manager. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time leave was granted, or to one of like classification, seniority and pay. If the employee decides not to return to work, the supervisor 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.

§ 35.136 FAMILY AND MEDICAL LEAVE AND LEAVE WITHOUT PAY AND RETENTION AND CONTINUATION OF BENEFITS.

(A) The city will grant up to 12 weeks of family and medical leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA), being 29 USC 2601 et seq. The leave may be paid (coordinated with the city's vacation and sick leave policies), unpaid, or a combination of paid and unpaid. Additional time away from the job beyond the 12-week period may be approved in accordance with the city's leave-without-pay policy. Employees may be required to exhaust eligible paid leave before going on a leave-without-pay status.

(B) When an employee is on leave under FMLA, the city 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 city will require the reimbursement of the amount paid for the employee's health insurance premiums during the FMLA leave period.

(C) 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 may retain all unused vacation and sick leave while on FMLA leave and leave without pay with the approval of the City Manager. An employee ceases to earn leave credits on the date leave without pay begins.

§ 35.137 WORKERS' COMPENSATION LEAVE.

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may elect to use accrued sick leave or vacation during the first waiting period. The employee may also elect to supplement workers' compensation payments after they begin, 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 city's group insurance plans.

§ 35.138 MILITARY LEAVE.

Regular employees who are members of an Armed Forces Reserve organization or National Guard shall be granted ten workdays per year for military leave without pay. On rare occasions, due to annual training being scheduled on a federal fiscal year basis, an employee may be required to attend two periods of training in one calendar year. For this purpose only, an

employee shall be granted an additional ten days of military leave during the same calendar year. If the compensation received while on military leave is less than the salary that would have been earned during this same period as a city employee, the employee shall receive partial compensation equal to the difference in the base salary earned during this same period as a city employee. The effect will be to maintain the employee's salary at the normal level during this period. If such duty is required beyond ten workdays, the employee shall be eligible to take accumulated vacation leave or be placed in a leave-without-pay status, and the provisions of that leave shall apply. While taking military leave without pay or with partial pay, the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the city during this period. Employees who are eligible for military leave have all job rights specified by the Vietnam Era Veterans' Readjustment Assistance Act, being 38 USC 4316 et seq.

§ 35.139 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 90 days after the release from military service; and
- (B)
 - (1) Is able to perform the duties of the former position or similar position; or
 - (2) Is unable to perform the duties of the former position or a similar position due to disability sustained as a result of military service, but is able to perform the duties of another position in the service of the city. 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.

§ 35.140 CIVIL LEAVE.

A city employee called for jury duty or as a court witness for the federal or state governments, or a subdivision thereof, shall receive leave with pay for such duty during the required absence without charge to accumulated leave. The employee may keep fees and travel allowances received for jury or witness duty in addition to regular compensation, except that employees must turn over to the city 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.

§ 35.141 EDUCATIONAL LEAVE WITH PAY.

(A) A leave of absence at full or partial pay during regular working hours may be granted to an employee to take one course which is only offered during working hours, and will better equip the employee to perform assigned duties upon the recommendation of the department head and with the approval of the City Manager.

(B) An employee on educational leave with full pay shall continue to earn leave credits and other benefits to which city employees are entitled. An employee on educational leave with partial pay shall earn proportional leave credits.

SEPARATION AND REINSTATEMENT

§ 35.155 TYPES OF SEPARATIONS.

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

§ 35.156 RESIGNATION.

(A) 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 supervisor and approval by the City Manager.

(B) Three consecutive days of absence without contacting the immediate supervisor or department head is 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.

§ 35.157 REDUCTION IN FORCE.

(A) 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.

(B) No regular employee shall be separated while there are temporary or probationary employees serving in the same class in the department, unless the regular employee is not willing to transfer to the position held by the temporary or probationary employee.

§ 35.158 DISABILITY.

An employee who cannot perform the essential functions of his or her position, even though provided a reasonable accommodation, because of a physical or mental impairment that substantially limits one or more of the employee's major life functions, may be separated. An employee who is physically or mentally unable to perform the required duties of his or her position for any other reason may also be separated. In either case, action may be initiated by the employee to qualify for disability benefits. In all cases, the action must be accompanied by medical evidence acceptable to the City Manager. The city may require an examination, at the city's expense, performed by a physician of the city's choice.

§ 35.159 VOLUNTARY RETIREMENT.

An employee who meets the conditions set forth under the provisions of the North Carolina Local Government Employees' Retirement System, being G.S. §§ 160A-163 et seq., may elect to retire and receive all benefits earned under the retirement plan.

§ 35.160 DEATH.

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

§ 35.161 DISMISSAL.

An employee may be dismissed in accordance with the provisions and procedures of §§ 35.175 et seq.

§ 35.162 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 supervisor and approval of the City Manager. An employee who is reinstated in this manner shall be re-credited with his or her previously accrued sick leave.

§ 35.163 REHIRING.

An employee who resigns while in good standing may be rehired after one year with the approval of the City Manager, and shall be regarded as a new employee, subject to all of the provisions of rules and regulations of this chapter. However, the employee shall be credited with his or her previously accrued sick leave if he or she is rehired within five years. 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.

UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT
§ 35.175 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 in this subchapter, the

employee's job performance is still deemed to be unsatisfactory. All cases of disciplinary suspension, demotion or dismissal must be approved by the City Manager prior to giving final notice to the employee.

§ 35.176 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 supervisor.

§ 35.177 COMMUNICATION AND WARNING PROCEDURES PRECEDING DISCIPLINARY ACTION FOR UNSATISFACTORY JOB PERFORMANCE.

(A) When an employee's job performance is unsatisfactory, or when incidents or inappropriate actions warrant, the supervisor should 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 should be noted in the employee's file by the supervisor.

(B) 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 City Manager. In each case, the supervisor should record the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended and the time limits set.

(C) If the employee's performance continues to be unsatisfactory, then the supervisor should use the following disciplinary steps:

(1) A final written warning from the supervisor serving notice upon the employee that corrected performance must take place immediately in order to avoid suspension, demotion or dismissal.

(2) If performance does not improve, a written recommendation should be sent to the City Manager for disciplinary action, such as suspension, demotion or dismissal.

§ 35.178 DISCIPLINARY ACTION FOR DETRIMENTAL PERSONAL CONDUCT.

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

(A) Avoid undue disruption of work;

(B) Protect the safety of persons or property; or

(C) For other serious reasons.

§ 35.179 DETRIMENTAL PERSONAL CONDUCT DEFINED.

Detrimental personal conduct includes behavior of such a serious detrimental nature that the functioning of the city may be or has been impaired; the safety of persons or property may be or have been threatened; or the laws of the government may be or have been violated.

§ 35.180 PRE-DISCIPLINARY CONFERENCE.

Before any disciplinary action is taken, whether for failure in personal conduct or failure in performance of duties, the supervisor shall provide the employee with a written notice of proposed disciplinary action, which will include the nature of the proposed action, its recommended effective date, the reasons for the action, and a date and time for a pre-disciplinary conference. At this conference, the employee may present any response to the proposed disciplinary action to the supervisor. The supervisor will consider the employee's response, if any, to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, notify the employee in writing of the final decision to take disciplinary

action. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal rights. The City Manager will be provided with a written notice of action taken.

§ 35.181 NON-DISCIPLINARY SUSPENSION.

(A) During the investigation, hearing or trial of an employee on any criminal charge, 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 supervisor, be in the best interest of the city, the supervisor, with the approval of the City Manager, may suspend the employee for the duration of the proceedings as a non-disciplinary action. In such cases, the City Manager may:

(1) Temporarily relieve the employee of all duties and responsibilities and place the employee on paid or unpaid leave for the duration of the suspension; or

(2) Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities.

(B) If the employee is reinstated following the suspension, the 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.

§ 35.182 APPEALS.

An employee wishing to appeal a reprimand, a demotion, a suspension or a dismissal may present the matter using the grievance procedures prescribed in §§ 35.195 et seq.

§ 35.183 SUBSTANCE ABUSE POLICY.

The city has established policies and procedures related to employee substance abuse in order to ensure the safety and well-being of citizens and employees, and to comply with any state, federal or other laws and regulations. The policies and procedures apply to all city employees, as set forth therein.

GRIEVANCE PROCEDURES AND ADVERSE ACTION APPEAL

§ 35.195 POLICY.

(A) The grievance procedure is designed to ensure an employee or group of employees a fair, impartial and prompt consideration of a problem or dissatisfaction without fear of reprisal. The procedure also encourages employees at all levels to express themselves regarding conditions of work.

(B) The grievance procedure is intended to promote better understanding of policies, practices and procedures; to instill confidence in employees that fair and impartial treatment will be received; and to develop in supervisors a continuing sense of responsibility for maintaining effective working relationships with employees. All employees, including supervisors and department heads, are expected to discuss their problems and concerns with higher management levels. Open two-way communications is a proven factor in reducing and resolving grievances.

§ 35.196 GRIEVANCE DEFINED.

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

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

§ 35.197 PROCEDURE.

When an employee or group of employees feels the need to resolve a work-related problem, dissatisfaction or complaint, the following procedure is available.

(A) Informal discussion. Before filing a formal grievance, the employee or group of employees and supervisor shall discuss the problem up through the chain of command and seek to resolve it informally. This action assures that the supervisory staff knows about and has had the opportunity to consider and investigate the problem, and to resolve it informally. The employee must request this meeting within five calendar days of the event or working condition occurring. Ongoing conditions are not subject to this deadline. If the employee is grieving a disciplinary action already discussed with the supervisor, the meeting is encouraged, but not mandatory. Exception: if an employee alleges sexual harassment by the immediate supervisor, an informal discussion will not be required, and the employee may file the report with the Personnel Office, who will initiate a grievance on behalf of the employee.

(B) Formal grievance.

(1) Step 1: Immediate Supervisor.

(a) The first step of the formal grievance procedure is for the employee to file a written notice with the supervisor. This notice must be filed within five calendar days of the employee's meeting with the supervisor to discuss the issue or, in a discipline case where no further meeting was held, five calendar days from receipt of the notice of discipline. An employee shall file a written notice with the supervisor within 15 calendar days from receipt of a disciplinary notice, or from a related meeting with the supervisor in cases of demotion, suspension or termination.

(b) Grievances must be filed in writing, stating the problem or complaint and what solution or remedy the employee desires.

(c) The supervisor shall investigate the matter and respond in writing to the employee within five calendar days of receipt of the formal grievance. The grievance and the supervisor's response should be forwarded to the Personnel Office by the supervisor. Time limits for either party may be waived by mutual consent.

(2) Step 2: Department Head.

(a) If the grievance is not settled at Step 1, the employee may proceed to Step 2. The employee must file in writing a request to proceed to this level with the department head. The grievance must be filed within five calendar days of receiving the supervisor's written response. This written request must state the area of disagreement with the supervisor's response at Step 1, and must state the requested remedy or solution desired by the employee.

(b) The department head shall review the issues in the grievance, meet with the employee, and respond in writing to the employee within five calendar days of the

meeting. The grievance and the department head's response shall be forwarded to the Personnel Office by the department head.

(3) Step 3: City Manager.

(a) If the grievance is not settled at Step 2, the employee may proceed to Step 3, the City Manager. The employee shall file the grievance in writing with the City Manager within five calendar days of receipt of the department head's written response. As in previous steps, the employee shall be specific as to the solution or further remedy desired and any concerns about the particular points of disagreement with the supervisor's and the department head's responses.

(b) The City Manager shall either forward the employee's grievance directly to a Personnel Appeals Committee, which passes the grievance automatically to Step 4, or schedule a hearing with the employee and a representative from the department. If a hearing is scheduled, the City Manager shall respond in writing to the employee within ten calendar days of the hearing date. As in previous steps, the time limits for either party to the grievance may be waived by mutual consent.

(c) As part of the City Manager's response, the employee shall receive a determination as to whether the grievance is appealable to Step 4. If determined to be not appealable, the City Manager's response is final. Non-appealable grievances include:

1. Appeals of adopted city or departmental policies themselves (inconsistent or unfair application of policies is appealable); and
2. Grievances alleging improper position classification and salary grades.

(4) Step 4: Personnel Appeals Committee.

(a) If the grievance has been determined to be appealable, the employee may appeal to the Personnel Appeals Committee within five calendar days of receipt of the City Manager's response. The appeal shall be filed with the City Clerk's office, and the employee shall request in writing a hearing before the Committee.

(b) The Personnel Appeals Committee is composed of six citizens appointed to three-year terms by the City Council. The Committee has a standing meeting to hear grievances, and the City Clerk shall inform the committee and the employee of the next hearing date. Five members of the Committee shall constitute a quorum.

(c) The employee may request either an open or closed hearing; the City Manager also may close all or part of the hearing to protect the privacy rights of other employees. A closed hearing shall exclude the media and members of the public, but may include the employee, his or her representative, the Committee, management representatives, the City Clerk, the City Attorney and witnesses for either side or called by the Committee. Witnesses may be asked to leave after their testimony.

(d) The employee presents information first, except in disciplinary action cases. In those cases, the city presents information first. Each side may call witnesses and the Committee may call witnesses; each witness may be questioned by the employee,

management and the Committee. After the hearing, the Committee shall meet to consider the information, and shall issue their report and recommendations to the City Manager as soon after the hearing as possible, but no more than ten calendar days.

(e) The City Manager shall review the report of the Personnel Appeals Committee and make a final decision on the grievance. A copy of the report of the Committee and the response to the employee shall be sent to the employee and the City Council. If the City Manager's decision is different from the Committee's recommendation, he or she shall explain the reasons for the decision to the City Council. The decision of the City Manager is final. The decision of the Personnel Appeals Committee and the City Manager will not be made public by the city, unless the City Council deems it to be in the best interest of the city.

§ 35.198 GRIEVANCE AND ADVERSE ACTION APPEAL PROCEDURE FOR DISCRIMINATION.

When an employee, former employee or applicant believes that any employment action discriminates illegally (for example, based on age, sex, race, color, national origin, religion, creed, political affiliation or disability) he or she has the right to appeal such action using the grievance procedure outlined in this policy. While such persons are encouraged to use the grievance procedure, they shall have the right to appeal directly to the City Manager. An employee or applicant should appeal an alleged act of discrimination within 30 calendar days of the alleged discriminatory action, but may appeal for up to six months following the action.

§ 35.199 BACK PAY AWARDS.

Back pay and benefits may be awarded to reinstated employees in suspension, demotion, dismissal and discrimination cases.

PERSONAL RECORDS AND REPORTS

§ 35.210 PUBLIC INFORMATION.

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

§ 35.211 ACCESS TO CONFIDENTIAL RECORDS.

(A) All information contained in a city employee's personnel file, other than the information mentioned in § 35.210, is confidential and shall be open to inspection only in the following instances:

(1) The employee or his or her duly authorized agent may examine all portions of his or her personnel file, except letters of reference solicited prior to employment, and information concerning a medical disability, mental or physical, that a prudent physician would not divulge to the patient.

(2) A licensed physician designated in writing by the employee may examine the employee's medical record.

(3) A city employee having supervisory authority over the employee may examine all material in the employee's personnel file.

(4) By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.

(5) An official of an agency of the state or federal government, or any political subdivision of the state, may inspect any portion of a personnel file when the inspection is deemed by the City Manager to be necessary and essential to the pursuit of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee, or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the personnel records may release the name, address and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

(6) An employee may sign a written release to be placed in his or 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.

(B) The City Manager, with the concurrence of the City Council, may inform any person of the employment, nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer or termination of a city employee and the reasons for that action. Before releasing that information, the City Manager shall determine in writing that the release is essential to maintaining the level and quality of city services. The written determination shall be retained in the City Manager's office, is a record for public inspection, and shall become a part of the employee's personnel file.

(C) The City 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.

§ 35.212 PERSONNEL ACTIONS.

The City Manager will prescribe necessary forms and reports for all personnel actions. The City Manager will retain records necessary for the proper administration of the personnel system.

§ 35.213 RECORDS OF FORMER EMPLOYEES.

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

§ 35.214 REMEDIES OF EMPLOYEES OBJECTING TO MATERIAL IN FILE.

An employee who objects to material in his or 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.

§ 35.215 PENALTIES FOR PERMITTING ACCESS TO CONFIDENTIAL RECORDS.

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

§ 35.216 EXAMINING AND/OR COPYING CONFIDENTIAL MATERIAL IN FILE WITHOUT AUTHORIZATION.

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

§ 35.217 DESTRUCTION OF RECORDS REGULATED.

No public official may destroy, sell, loan or otherwise dispose of any public record, except in accordance with G.S. § 121-5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor, and upon conviction will be fined in an amount provided in G.S. § 132-3.