

CHAPTER 36: PERSONNEL POLICY AND PROCEDURES

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GENERAL PROVISIONS

§ 36.001 PURPOSE.

(A) The purpose of chapter is to provide a consistent, systematic, and organized approach to the establishment, implementation, and administration of the personnel policies of the town. This chapter was written, adopted, and interpreted exclusively by the Town Council and their designee, and is not subject to modification, change, or contrary interpretation by any employee or employee representative organization except as may otherwise be specifically authorized and recognized by the laws and/or Constitutions of the State of Indiana and United States.

(B) This chapter is to be used to assist and guide personnel in the day-to-day direction and performance of the general workforce, the result being that a number of important and responsible goals may be achieved:

(1) First, by implementing uniform personnel policies that are applied in as consistent and impartial a manner as is practicable, the goal is to promote the best possible working relationships and highest morale among all town employees. This chapter was created for personnel not covered by any other bargaining agreement. Furthermore, it is not the intent or purpose of this chapter to supersede or overrule any state or federal rules and regulations governing the operation of the Police Department. It is, however, the intent of this chapter to provide support, direction, and procedures that will enable the town to practice fair and consistent daily personnel administration.

(2) Second, by providing employees with fair and equal opportunities in their recruitment and advancement, by evaluating their services on the basis of merit and fitness, and by giving consideration to their needs and desires, the goal is to provide an employment atmosphere that increases the cooperation and productivity of the employees together with the prospects for career opportunities within the town and each office or department of the town government.

(3) Third, by providing dependable and courteous services to the residents of the town, the goal is to enhance the reputation and stature of the town's departments and offices within the community.

(C) This chapter is not a contract of employment and does not guarantee employment for any specified duration.

(D) Any further questions relating to the purpose, goals and/or interpretation of the policies contained in this chapter should be directed to the Town Council.

(Ord. passed 1-1-2015)

§ 36.002 ORGANIZATION AND RESPONSIBILITY.

(A) The town is governed by the Town Council. The Town Council is responsible for the general administration of town business.

(B) The town is organized into various departments, or offices, to ensure adequate expertise, specialization, and efficient functioning. These departments or offices function under the administrative guidance and control of the Town Council who is responsible for the day-to-day management and operation of the town.

(C) Each employee's particular duties, obligations, and areas of responsibility are defined in his or her position description and/or by assignment or directive of any supervisor. Employees are primarily responsible to their immediate supervisor for completion of specific work assignments and the quality, quantity, and timeliness of the work performed.

(D) The rights, authorities, powers, and responsibilities of town employees at all levels, with respect to the policies in this chapter, are more clearly delineated in the specific subject areas. However, in general, the Town Council is charged with the development, promulgation and adoption of the provisions of this chapter. The various management and supervisor personnel are charged with applying, interpreting, enforcing and generally ensuring compliance with the provisions of this chapter. It is the obligation and a requirement as a condition of employment for each individual person employed by the town to comply in every respect with the provisions of this chapter and any related procedures and work rules and to perform their assigned duties in a responsible manner creditable to the town. As such, all town employees are expected to become knowledgeable about this chapter's contents and abide by the policies set forth herein. Any questions, concerns or lack of understanding about a particular provision of this chapter should be promptly discussed with their supervisor or the Town Council.

(Ord. passed 1-1-2015)

§ 36.003 ADMINISTRATION OF CHAPTER.

To implement this chapter and to oversee its administration on a day-to-day basis, the following procedures will be taken:

(A) A copy of this chapter will be given to all current employees of the town and to all new employees, to include part-time employees subsequent to its adoption.

(B) The contents of this chapter are subject to change without notice at the sole discretion of the Town Council. Only the Town Council will have the authority to make revisions of policies contained herein.

(C) Any changes in this chapter shall in no way alter the employment-at-will policy or create a binding contract between the town and any employee.

(D) Employees are encouraged to make suggestions for improvements in personnel policies and practices. Suggestions should be directed to the Town Council in writing, together with an explanation as to how such a change could benefit the town, department, and/or the public.

(E) The town will undertake to accomplish a review of the manual at two-year intervals or as may be indicated by law or change in characteristics of the town workforce.

(F) The Town Council maintains the ultimate right to manage their employees, consistent with the policies set forth in this chapter and all applicable state and federal laws. The Council's rights include, but are not limited to, determining methods and procedures, number of employees, assignment of duties, hours of employment compensation, hiring, disciplining, discharging, promotion, and transferring employees, and laying off employees for lack of work, lack of funds, or due to job abolishment.

(G) The policies of this chapter supersede all previous policies of the town or any department jurisdiction of the town, written or unwritten, on subject matters covered or referred to herein. The Police Department procedure manual will supersede this chapter in situations where that manual is written with stricter requirements. In policy areas in which the Police Department manual is silent on a topic, this chapter will be in effect.

(H) In the event that any section of this chapter or amendment or revisions thereto is held to be unenforceable, contrary to law or otherwise restrained from its full force and effect by a court or other tribunal of competent jurisdiction, the remaining section(s) of the chapter, to the extent that they remain unaffected by such declaration or restraint, shall continue in full force and effect.

(I) Any change to this chapter will be effective only if set forth in writing, by ordinance, and approved by the Town Council.

(Ord. passed 1-1-2015)

§ 36.004 EQUAL OPPORTUNITY.

It is the policy of the town that all personnel actions such as hiring, rate of compensation, benefits, promotions, transfers, layoffs, recalls, town-supported training, and social or recreational programs shall be administered without regard to race, color, religion, national origin, sex, age, marital status, sexual orientation, or non-job related handicap. Therefore, all such personnel actions should be consistently administered for all employees without compromise and thus should be based on the results achieved on the job, as well as objective job relatedness in both job qualifications and performance standards. (Ord. passed 1-1-2015)

§ 36.005 DISCRIMINATION; SEXUAL HARASSMENT.

(A) The Town Council believes that all our employees should be able to work in an atmosphere free from all forms of employment discrimination, including sexual harassment. The town's policy is to forbid sexual harassment and any type of discrimination. This policy extends to every level of our operations. Accordingly, discrimination and sexual harassment, whether by a fellow employee, supervisor, or Council member, will not be tolerated. Activities of this nature serve no legitimate purpose; they have a disruptive effect on the employee's ability to perform, and they undermine the integrity of the employment relationship.

(B) The Town Council takes allegations of discrimination and sexual harassment very seriously. Any employee who believes that he or she is a victim of discrimination or sexual harassment should immediately bring the matter to the attention of his or her supervisor, or in the case where the supervisor is the problem, contact the Town Council President or Town Attorney. All such matters will be treated confidentially and with the utmost discretion. The town will actively investigate all discrimination and sexual harassment complaints, and if determined that discrimination or sexual harassment has occurred, the Town Council will take appropriate disciplinary action against the offending party, up to and including termination.

(C) Acts considered to constitute sexual harassment include, but are not limited to, unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature where:

(1) Submission to such conduct is either an express or implied term or condition of employment;

(2) Submissions to or rejection of such conduct is used as a basis for an employment decision affecting the harassed person; and

(3) The purpose or the effect of such conduct is to substantially interfere with the affected individual's job performance or to create an intimidating, hostile, or offensive, work environment.

(D) Acts considered to constitute discrimination include, but are not limited to:

(1) Hiring based upon race, color, religion, national origin, sex, age, marital status, sexual orientation or non-job related handicaps;

(2) Promotions based upon race, color, religion, national origin, sex, age, marital status, sexual orientation or non-job related handicaps; and

(3) Pay increases based upon race, color, religion, national origin, sex, age, marital status, sexual orientation or non-job related handicaps.

(Ord. passed 1-1-2015)

§ 36.006 HARASSMENT; BULLYING.

(A) *Definition.* The town defines **BULLYING** as repeated inappropriate behavior, either direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment. Such behavior violates the town personnel policy which clearly states that all employees will be treated with dignity and respect.

(B) *Purpose.* The purpose of this section is to communicate to all employees, including supervisors, managers and elected officials that the town will not in any instance tolerate bullying behavior. Employees found in violation of this section will be disciplined, up to and including termination.

(C) *Examples.*

(1) Bullying may be intentional or unintentional. However, it must be noted that where an allegation of bullying is made, the intention of the alleged bully is irrelevant, and will not be given consideration when meting out discipline. As in sexual harassment, it is the effect of the behavior upon the individual which is important. The Town Council considers the following types of behavior examples of bullying:

(a) Verbal bullying: slandering, ridiculing or maligning a person or his or her family; persistent name calling which is hurtful, insulting or humiliating; using a person as butt of jokes; or abusive and offensive remarks;

(b) Physical bullying: pushing; shoving; kicking; poking; tripping; assault or threat of physical assault; or damage to a person's work area or property;

(c) Gesture bullying: non-verbal threatening gestures, glances which can convey threatening messages; or

(d) Exclusion: socially or physically excluding or disregarding a person in work-related activities.

(2) In addition, the following examples may constitute or contribute to evidence of bullying in the workplace:

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- (a) Persistent singling out of one person;
- (b) Shouting, raising voice at an individual in public and/or using in private;
- (c) Not allowing the person to speak or express himself or herself (for example, ignoring or interrupting);
- (d) Personal insults and use of offensive nicknames;
- (e) Public humiliation in any form;
- (f) Constant criticism on matters unrelated or minimally related to the person's job performance or description;
- (g) Ignoring or interrupting an individual at meetings;
- (h) Public reprimands;
- (i) Repeatedly accusing someone of errors which cannot be documented;
- (j) Deliberately interfering with mail and other communications;
- (k) Spreading rumors and gossip regarding individuals;
- (l) Encouraging others to disregard a supervisor's instructions;
- (m) Manipulating the ability of someone to do their work (for example, overloading, underloading, withholding information, setting meaning tasks, setting deadlines that cannot be met or giving deliberately ambiguous instructions);
- (n) Inflicting menial tasks not in keeping with the normal responsibilities of the job;
- (o) Taking credit for another person's ideas;
- (p) Refusing reasonable requests for leave in the absence of work-related reasons not to grant leave;
- (q) Deliberately excluding an individual of isolating them from work-related activities (meetings and the like); or
- (r) Unwanted physical contact, physical abuse or threats of abuse to an individual or an individual's property (defacing or marking up property).

(D) *Procedure.* An employee who believes they have witnessed bullying behavior or been a victim of bullying behavior shall report that behavior to their supervisor, unless they believe the supervisor is

somehow participating in the bullying. Any employee or member of the public who has witnessed what they believe to be bullying or believes they have been the victim of bullying by any employee or representative of the town may also report said conduct to the Town Council President or the Town Attorney. Any complaint of bullying should be in writing and signed by the person submitting the complaint. The Town Council will appoint a person to investigate the complaint and make a recommendation with respect to the complaint and whether bullying is substantiated or not substantiated. If the investigation concludes there is reasonable grounds to believe that bullying has occurred, then the Town Council President may refer the matter to the employee's supervisor to determine the appropriate discipline or the Town Council may meet in executive session to gather information concerning the complaint. The Town Council shall then decide what discipline should be imposed as a result of finding that bullying has occurred. Discipline can range from a verbal reprimand to termination of employment depending on the facts of each case. An employee who is the subject of a complaint of bullying has a right to appear before the Town Council to explain or defend themselves.
(Ord. passed 1-1-2015)

§ 36.007 AMERICANS WITH DISABILITY ACT (ADA).

(A) It is the policy of town that qualified individuals with disabilities are not to be excluded from participation in or benefit from the services, programs or activities of the town. It is the policy of the town not to discriminate against a qualified individual with a disability in job application procedures; the hiring, advancement or discharge of employees; employee compensation, job training, and other terms, conditions and privileges of employment. It is the intent of the town to comply with all applicable requirements of the Americans with Disabilities Act (ADA).

(B) The town will reasonably accommodate persons with a disability on a case-by-case basis, which may include making facilities readily accessible to individuals with a disability, restructuring jobs, modifying work schedules and/or equipment, or similar accommodations.

(C) Employees should contact the Town Council for assistance when an accommodation is necessary. Such employees are required to provide pertinent medical information.

(D) Accommodations may not create an undue hardship for the town or other employees. An individual who cannot be reasonably accommodated for a job, without undue hardship, will not be selected for that position.

(E) All employees are required to comply with safety standards. Applicants who pose a direct threat to the health or safety of other individuals in the workplace, and where the threat cannot be eliminated by reasonable accommodation, will not be hired. Current employees who pose a direct threat to the health or safety of the other individuals in the workplace will be placed on the appropriate leave.

(F) Further, disabled individuals cannot pose a direct threat to the safety of themselves or others. Generally, a "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation. Benefits provided to disabled individuals who are qualified to perform the work must be consistent with the benefits provided to other employees. Any individual

who believes he or she has received treatment inconsistent with the policies set forth above or any other requirement of ADA, may file a complaint with Town Council.

(Ord. passed 1-1-2015)

§ 36.008 EMPLOYMENT AT WILL.

(A) Employment with the town is based on the "at-will" doctrine. At-will employment means any individual may voluntarily leave employment or may be terminated by the town at any time with or without cause.

(B) This section may not be modified by any statements contained in this chapter or any other employee materials, including applications, memoranda, or other documents provided to applicants and employees in connection with their employment. None of these documents whether single or combined create an expressed or implied contract of employment for a definite period, or an express or implied contract concerning any terms or conditions of employment.

(C) Similarly, town policies and practices with respect to any matter should not be considered as creating any contractual obligation on the town's part or as stating in any way that termination will occur only for cause. Statements of specific grounds for termination set forth in this chapter or in any other town documents are examples only, not all-inclusive lists, and are not intended to restrict the town's right to terminate at-will.

(D) Completion of a probationary period or conferral of regular status does not change an employee's status as an at-will employee or in any way restrict the town's right to terminate the employee or change the terms or conditions of employment.

(Ord. passed 1-1-2015)

§ 36.009 NEPOTISM.

(A) The town selects employees based on their job qualifications. To make sure this standard is always followed and to protect the integrity of business operations, the town has certain restrictions on when and where relatives of employees can be hired and how related employees can work together.

(1) Members of an employee's immediate family for this section include parents, siblings, children and corresponding step. Relatives also include persons related by marriage (including in-laws and common law marriages) and those related by law (including adoption, guardianship and foster parent relationships).

(2) Two employees may also be considered related if they have a personal relationship that, in the opinion of the town, may affect or give the appearance of affecting the employment decisions of the Council. This may include a dating relationship or sharing residence.

(B) Unless otherwise specified by state law, relatives will not be hired, promoted or transferred to positions that:

(1) Place them in direct or indirect supervisory or managerial capacity over a relative. The employment of relatives as co-workers in the same department may also be prohibited even when there is not a reporting relationship;

(2) Allow them to directly or indirectly influence salary adjustments, career progress or other managerial activities involving a relative; or

(3) Require them to audit or review the work of another relative.

(C) If a Council member has a relative working for the town, that Council member shall abstain from any vote affecting that employee's pay wage, benefits, promotion, demotion and the like. (Ord. passed 1-1-2015)

§ 36.010 EMPLOYER AND EMPLOYEE RELATIONS.

(A) The town is committed to a mutual rewarding and direct relationship with its employees. Thus, the town attempts to be receptive to constructive suggestions, criticisms and questions. Supervisors will conduct regularly scheduled departmental meetings to keep employees informed about items of interest and discuss issues of concern to employees. The town, as part of its commitment to delivering the highest level of services to our residents and guests, expects all employees:

(1) To treat all residents, guests and suppliers as customers of all town services;

(2) To represent the town in a positive and ethical manner;

(3) To perform assigned tasks in a safe and efficient manner;

(4) To attend work as required and to be punctual;

(5) To demonstrate a considerate, friendly, and constructive attitude toward fellow employees, supervisors, and elected officials; and

(6) To follow the town and departmental policies and practices.

(B) The Town Council retains the sole discretion to exercise all managerial functions, including the following rights:

(1) To dismiss, assign, supervise and discipline employees;

(2) To determine and change employee work schedules to meet the needs of residents and guests of the town;

- (3) To assign employees to other jobs within departments or into other departments;
 - (4) To determine and adjust the employee number and specific qualifications of the workforce;
 - (5) To assign duties to employees in accordance with the town's needs and requirements and to carry out all ordinary administrative and management functions; and
 - (6) To establish, change, and abolish policies, practices, roles, and regulations as the town works to meet the needs of its residents.
- (Ord. passed 1-1-2015)

§ 36.011 SUBSTANCE ABUSE POLICY.

The town requires all employees of the town to read and abide by the town's substance abuse policy. The town substance abuse policy can be found in §§ 36.135 through 36.151 of this chapter.

(Ord. passed 1-1-2015)

§ 36.012 COMMERCIAL DRIVER'S LICENSE.

(A) *Generally.* Any town employee, who is required to drive a town vehicle, which meets the federal regulations to be considered (heavy equipment), will be required to maintain a commercial driver's license (CDL). These employees will be required to participate in the town's alcohol and drug-testing program as mandated by the Department of Transportation.

(B) *Town to pay for physical and license renewal.* If the employee is required by the town to maintain a CDL, as a condition of employment, the town will pay for CDL physicals and CDL license renewal.

(C) *Goals.* The goals of the CDL drug and alcohol testing policy are to insure a drug and alcohol-free work environment, and to reduce and help eliminate drug and alcohol related accidents, fatalities and damage to property.

(D) *Drug and alcohol testing.* Under the town's policy, drug and alcohol testing will be conducted on any current and/or prospective driver who may be required to operate a motor vehicle having a gross vehicle weight rating in excess of 26,000 pounds in interstate or intrastate commerce, and on any driver of a motor vehicle that is used to transport hazardous materials in a quantity which requires the vehicle to be placard regardless of the vehicle's size.

(E) *Testing before employment.* All applicants for positions with the town which will include driving town equipment and which meets the above requirements will be notified of the town's drug and alcohol use and testing policy at the time they apply. They will be required to pass an alcohol and drug test before becoming employed by the town.

(F) *Maintaining CDL license status.* A CDL driver must maintain his or her CDL license status or he or she will be terminated.

(G) *Post accident testing.*

(1) Any employee carrying a CDL must submit to a post accident drug and alcohol test as soon as possible after an accident, whenever he or she receives a citation for a moving violation involving the accident; either a person is injured because of the accident and the injuries require immediate medical treatment to the person away from the accident scene; or one or more motor vehicles involved in the accident incur disabling damage and must be transported away from the accident scene by a tow truck or another vehicle. (A supervisor on the scene can ask the employee to submit to drug and or alcohol test if they believe the situation warrants one even if there is no personal injury or disabling vehicle damage.) The police can also request that a test be done following an accident.

(2) An employee who is required to take a post-accident drug and alcohol test will, at the town's discretion, either be assigned to a position, which does not require driving town vehicles, or placed on non-disciplinary suspension with pay while awaiting the post accident test results.

(3) An employee who tests positive for drugs and/alcohol, or who refuses or fails to submit to a post accident drug and alcohol test will be subject to disciplinary action, up to and including discharge.

(H) *Random drug testing.*

(1) The town is required to test CDL employees on a random basis and all such tests will be unannounced. Every employee will have an equal chance of being selected every time the selection is conducted. Appropriate safeguards are also present to ensure that the identity of the individual drivers cannot be determined before or at the time of their selection. When a driver is randomly selected to be tested, he or she will be notified and instructed to report to the collection site immediately.

(2) An employee who tests positive for drugs and/or alcohol, or who refuses or fails to submit to a random drug and/or alcohol test will be subject to disciplinary action, up to and including discharge.

(I) *Reasonable suspicion testing.*

(1) Each CDL employee is required to submit to a drug and alcohol test whenever the town has reasonable suspicion to believe that the driver has used drugs and/or alcohol in violation of DOT regulations and/or this policy.

(2) Reasonable suspicion will exist when an employee's appearance, behavior, speech, or body odors indicate drug or alcohol use, or the withdrawal effects of drugs. Such observations must be personally observed and documented by at least one town official who has received training covering the physical, behavioral, speech, and performance indicators of probable drug and alcohol use. (If the trained individual is not available, the supervisor who observes the impairment will use his or her best judgment to determine whether a test is necessary.)

(3) An employee who is required to submit to a reasonable suspicion test will be escorted by his or her supervisor to the appropriate specimen collection site for the drug and alcohol test.

(4) The supervisor will arrange the transportation of the employee home at the completion of the test.

(5) An employee who is required to take a reasonable suspicion test will be considered by the town as unqualified to work and placed on immediate suspension, without pay, pending the results of the test. An employee whose test results are positive will not be reimbursed for the time of the suspension.

(6) An employee who tests positive for drugs and/or alcohol, or who refuses or fails to submit to a reasonable cause drug and alcohol test will be subject to disciplinary action, up to and including discharge.

(Ord. passed 1-1-2015)

§ 36.013 MANAGEMENT (TOWN COUNCIL) RIGHTS.

(A) The Town Council reserves all rights which are afforded to the Council by virtue of being a town and all authority under the state statutes, together with all such other rights of management, which are inherent by custom to such positions.

(B) The Town Council is responsible for determining compensation and benefits.

(C) Specifically, management (Town Council) rights include, but are not limited to, the following:

(1) The right to manage through the implementation, enforcement, amendment, deletion, or revision of policies, procedures, rules, regulations, and directives;

(2) The right to control the efficiency of operations through organization or reorganization of work methods or procedures, layoff or recall of employees due to operational or financial needs, and improvement in work methods, equipment, machinery and facilities;

(3) The right to direct the workforce through the determination of its size and number, including the right to determine the number of shifts required, work schedules and hours of employment, including the need for overtime or compensatory time;

(4) The right to select, retain, and assign of employees based upon qualifications and duties;

(5) The right to discipline employees, including suspension, termination, or reduction in pay or position, and the right to promote and transfer employees as needed pursuant to established policy;

(6) The right to effectively, efficiently and economically manage the departments and functional areas by determining acceptable standards of conduct and performances;

(7) The right to determine the methods, means, equipment, materials and processes needed for the accomplishment of work;

(8) The right to establish the department's goals, objectives, programs, services, and work to be performed and to utilize personnel in a manner designed to meet these purposes and improve productivity;

(9) The right to determine when an emergency exists and implement actions and assignments deemed advisable and necessary to effectively respond to such emergencies; and

(10) The right and authority of each supervisor to promulgate and enforce any reasonable work rules, operational policies, and procedures necessary to carry out the mission, goals, objectives, and functions of the departments and other functional areas consistent with the town policy.

(D) The Town Council shall further have the right to promulgate and enforce any rules, regulations and procedures necessary to implement the personnel policies contained in this chapter.

(E) Such rules, regulations and procedures shall not conflict in any manner with the policies of this chapter and are only applicable to the particular department or office.

(Ord. passed 1-1-2015)

EMPLOYMENT

§ 36.030 EMPLOYMENT STATUS.

All employees of town shall be categorized as full-time, part-time and seasonal/temporary.

(A) *Full-time employee.* An employee who works 1,664 hours per year, on a regularly scheduled basis or the standard full-time workweek as designated by the Town Council. Full-time employees are eligible for benefits after their probationary period. The Town Council has the authority to waive the probationary period for benefits.

(B) *Part-time employee.* An employee who works less than full time but on a regularly scheduled basis. Part-time employees are not eligible for benefits.

(C) *Temporary/seasonal employee.* An employee hired for a specific and limited amount of time of less than ten months in any calendar year. Temporary/seasonal employees are not eligible for benefits.

(D) *Exempt employee.* An employee classified as executive, administrative or professional according to provisions of the Fair Labor Standards Act (FLSA), plus any elected official.

(E) *Non-exempt.* An employee that does not meet the Fair Labor Standards Act (PLS A) exempt provision.

(F) *Address and phone number changes.* All employees must provide the Clerk-Treasurer with their current address and phone number. Changes in this information must be reported within five days of an employee changing address or phone number. This way, the Clerk-Treasurer can inform payroll concerning insurance carriers, the IRS (for W-2 purposes) and any others when the information would be required.

(Ord. passed 1-1-2015; Ord. 2015-09, passed 8-18-2015)

§ 36.031 CLASSIFICATION PLAN.

(A) A classification plan based upon the duties and responsibilities of positions shall be maintained by the town. The plan shall include job descriptions, consisting of job titles, position summaries, job requirements and responsibilities.

(B) The supervisor or Town Council shall, as needed, review the duties and responsibilities of positions to recommend to the Town Council, adjustments or revisions to the classification plan.

(C) Any employee may request that his or her position be audited for proper classification, by requesting a review through the grievance procedure. Unless duties are substantially altered on a permanent basis, the employee may not request such a review for a year from the date of the disposition of the last review.

(Ord. passed 1-1-2015)

§ 36.032 MINIMUM JOB QUALIFICATIONS.

(A) It is the responsibility of employees to maintain the minimum qualifications of their classifications as established by the Town Council and/or mandated by state or federal law. The Town Council shall determine the qualifications and requirements for each classification in the town.

(B) Employees failing to maintain the minimum qualifications of their classification or who do not comply with state and federal requirements may be subject to either termination of employment or a reduction of position.

(C) If a vacancy exists in a classification for which the employee is qualified, the employee may be recommended for the position by the supervisor, with final approval granted by the Town Council.

(D) An employee who is terminated pursuant to this section may reapply for employment upon meeting the minimum requirements of the classification. An employee who is reduced in position shall receive the rate of pay of the new classification and may apply for his or her former position when a vacancy becomes available and the requirements of the position have been met. All employees are

expected to make reasonable and diligent efforts to maintain the qualifications of their current classification.

(Ord. passed 1-1-2015)

§ 36.033 VACANCIES AND APPOINTMENTS.

(A) In the event the Town Council determines that a vacancy exists, a notice of such position opening shall be conspicuously posted for a period of five working days on employee bulletin boards throughout the town's facilities. The notice shall include the date of posting, as well as the date the notice expires. The Clerk-Treasurer shall do the postings.

(B) All announcements will specify the job title, nature of the job, required qualifications, and essential functions of the position, compensation range, application deadline and the place to file such applications.

(C) Any employee may apply for a posted vacancy provided he or she possesses the requisite minimum qualifications and is not a probationary employee. Criteria used in evaluating an applicant's qualifications may include such considerations as evaluations, aptitude, attendance records, education, training, prior work experience history, physical and mental fitness for the position, and length of service with the town and the particular town department or office.

(D) In the event that no qualified employees apply or the Town Council determines that such positions should be filled from outside, the Town Council at their discretion, may do so.

(E) (1) An applicant for employment with the town must complete an employment application, including acknowledgment that he or she is a citizen of the United States, is a legal alien, or has filed a declaration of intent to become one and a declaration that all information provided is truthful. Falsification of any statements by the applicant shall be cause for denial of employment or termination from employment if discovered after the applicant has been hired. Evidence of a conviction of a felony which was not reported, or other conduct unbecoming a public servant of the town or posing a threat to the legitimate business concerns of the town or its various departments shall also be cause for denial or termination from employment; however, prior criminal conviction(s) shall not be an automatic bar to employment.

(2) This application must be given to the Clerk-Treasurer's office by the close of business on the last day of posting.

(F) Applicants may be subject to a background investigation.

(G) Upon determination of which applicants meet the minimum job-related qualifications, the applicant's knowledge, skill, and ability to perform the essential functions of the position may be considered. Applicants shall be required to provide any information and undergo any job-related performance tests, reference checks, background checks, or other job-related procedures necessary to demonstrate qualifications for the position sought.

(H) Applicants selected for employment will be required to submit to drug and alcohol testing to determine their ability to perform the duties of the position for which they have been selected. Such examinations shall be conducted prior to commencement of employment and shall be a condition for acceptance as an employee of the town.

(I) In the event that an applicant has a disability which affects his or her abilities to complete employment testing, a request for reasonable accommodation, made by the applicant prior to the administration of the testing, (including accessible resting sites, modified testing conditions and accessible testing formats) will be evaluated to ensure that the application process is available to all qualified applicants.

(J) Requests for reasonable accommodations will be evaluated for applicants and employees with a handicap as required by law. Health and medical conditions shall only be a bar to employment if the employee or applicant's condition is still such that after making reasonable accommodation, he or she could not perform the substantial and material aspects of the job. In addition, the Town Council, at its own expense, may require an employee at any time to take a medical examination conducted by a licensed physician to be selected by the Town Council if they have reason to believe the employee is no longer capable of performing the substantial and material portions of the duties and responsibilities of his or her position.

(K) In the event that the minimum requirements and qualifications of a classification are changed by external law or technological advancement, it shall be the sole responsibility of the employee to meet such new requirements within a reasonable period and maintain such qualifications. Employees failing to maintain the minimum requirements and qualifications of their classification in a reasonable amount of time may be subject to reduction in position and pay, provided a vacancy exists in a classification for which the employee is qualified or termination if no such vacancy exists. The town has no obligation to create a vacancy for an employee failing to maintain the qualifications of his or her job.

(L) The Town Council may eliminate a prospective employee from consideration if he or she:

(1) Does not possess the knowledge, skill and abilities necessary to effectively perform the duties of the vacant position;

(2) Has made a false statement of material fact on the application form or supplements;

(3) Has committed or attempted to commit a fraudulent act at any stage of the selection process;

or

(4) Is an illegal alien.

(M) An applicant may be eliminated from consideration upon other reasonable grounds relating to job requirements (such as, inability to perform essential functions even though reasonable accommodations have been met). If an applicant is hired and it is subsequently discovered that any of the above disqualifying criteria apply, the Town Council may terminate the employee for dishonesty, incompetence, nonfeasance, or malfeasance. The town, through the Clerk-Treasurer's office, shall

maintain a record keeping system reflecting the disposition of all job applicants and the reasons for hiring or not hiring an applicant. Such records shall be kept on file for at least two years and shall include a completed job application, medical examination data, test results, and/or any job-related information.

(N) Continued employment by the town is conditioned upon the employee maintaining the physical, mental, and emotional ability to perform the substantial and material portions of his or her duty and a satisfactory record of performance and discipline as determined solely and exclusively by the Town Council and/or designees.

(O) If an applicant is hired and it is subsequently discovered that any of the above disqualifying criteria apply, the Town Council may terminate the employee.
(Ord. passed 1-1-2015)

§ 36.034 EMPLOYMENT ORIENTATION.

(A) An orientation program will be conducted for all newly hired employees of the town. The primary purpose of the orientation program is to acquaint new employees with town policies and departmental rules and procedures, the organization's structure, their position description, and to familiarize such new employees with facilities equipment, and introduce them to department personnel and supervisors.

(B) The Clerk-Treasurer and Town Council designee are responsible for establishing an orientation program for new employees.

(C) This orientation program may include but is not limited to such areas as:

(1) *Clerk-Treasurer's responsibilities.* Details to take care of before your first day on job:

- (a) Application;
- (b) Review town benefits;
- (c) I-9 Form;
- (d) W-4 Form;
- (e) Fill out all insurance forms;
- (f) Fill out all payroll information;
- (g) Sign drug-free workplace policy;
- (h) Review town personnel policy and procedure manual;

(2) *Supervisor's responsibilities.*

- (a) Introduction to immediate supervisor;
- (b) Town philosophy;
- (c) Importance of attitude;
- (d) Employee dress code;
- (e) Reporting to work (time, place, and daily and weekly work hours);
- (f) Employee parking area;
- (g) Where to store your personal belongings while working;
- (h) Personal calls;
- (i) Where to pick up your payroll check;
- (j) Who to see if there is a question/mistake on your check;
- (k) Job description and training for your new job;
- (l) Probationary period;
- (m) Overtime/compensatory time;
- (n) Who to call if absent;
- (o) Safety in the workplace;
- (p) What you do in case of fire or other disasters;
- (q) First aid procedures in case of emergency;
- (r) Whom to contact if you have suggestions for improvements;
- (s) Use of town equipment and/or vehicles;
- (t) Town grievance procedure;
- (u) Job and employee information postings;
- (v) Introduction to employees within the department; and

(w) Others as determined by the Town Council.

(D) It is the responsibility of the Council to establish an orientation check-off list covering the above areas. The employee's supervisor will be required to check off each area after they have acquainted the new employee with this area and obtain the employee's signature and date indicating they have completed the orientation program, and understand all information provided in each of the above areas. This check-list will be completed and sent to the Clerk-Treasurer within seven days from the employee's first day of work. The signed and dated check-off list will be filed in the employee's personnel file in the Clerk-Treasurer's office.

(Ord. passed 1-1-2015)

§ 36.035 PROBATIONARY PERIOD.

(A) Newly hired employees of the town shall be required to complete 90 calendar days, probationary period. Such employees will be evaluated in writing on or about their completion of the 90-calendar day probationary period. The evaluation will be discussed with the employees who will be requested to acknowledge his or her review in writing.

(B) At the discretion of the Town Council, the probationary period may be extended.

(C) All benefits start the first day following the 90-day probationary period as allowed by law. In compliance with the Affordable Care Act (ACA), health insurance benefits start the first day following a 60- day waiting period.

(D) The probationary period allows management the opportunity to closely observe and evaluate the employee's fitness and suitability for the position to which they have been appointed.

(E) Only those employees who demonstrate an acceptable standard of conduct and performance during this period shall be retained in their positions.

(F) If the service of a newly hired probationary employee is unsatisfactory, he or she may be terminated at any time during his or her probationary period.

(G) Time spent on inactive pay status or non-paid leave of absence shall not be counted toward the completion of the probationary period.

(Ord. passed 1-1-2015; Ord. 2017-4, passed 1-17-2017)

§ 36.036 PERFORMANCE EVALUATION.

(A) During the first year of employment with the town, job performance will be reviewed before the end of probationary period and again prior to the employee's anniversary date.

(B) After the one-year review, an annual performance review for all employees will be given by their supervisor. At these reviews, the supervisor will discuss the employee's progress with the town, past accomplishments, performance shortcomings (if any), attendance, safety record, and overall performance on the job.

(C) The Town Council will evaluate supervisors annually.

(D) The Clerk-Treasurer will evaluate his or her staff.

(E) All evaluations shall be properly documented and kept in the employee's permanent personnel file in the Clerk-Treasurer's office.

(Ord. passed 1-1-2015)

§ 36.037 EMPLOYMENT FILE.

(A) The town maintains a confidential file for each employee, including (but not limited to) employment application, reference responses, attendance records, and evaluation reports. A copy of any written disciplinary action shall be given to the affected employee and shall be placed in the affected employee's personnel file.

(B) Any disciplinary action shall cease to have force and effect and will not be considered in future disciplinary action if for 12 months after its effective date the affected employee has not engaged in the same or similar conduct or offense.

(C) Upon written request, an employee may review their personnel file. This request must be signed, dated, and given to the Clerk-Treasurer.

(D) Employee medical records will be maintained in accordance with HIPPA requirement.

(Ord. passed 1-1-2015)

§ 36.038 RESIGNATION.

In the event that an employee intends to resign, he or she should notify the Town Council, in writing, at least two weeks in advance of the effective date in order to assure continuity of operations.

(Ord. passed 1-1-2015)

§ 36.039 ON THE JOB TRAINING; CONFERENCES; PROFESSIONAL DEVELOPMENT.

(A) *Generally.* It is the employee's responsibility for maintaining and upgrading job skills. Each individual administrator, supervisor, and employee bears primary responsibility for maintaining individual knowledge, skills, and abilities necessary to perform the job, and for upgrading skills

necessary to meet technological change or seek promotion. The town will facilitate those efforts and provide training from time to time.

(B) *On-the-job training (OJT)*. On-the-job training prepares an employee to perform the responsibilities required of his or her position. It allows the employee to learn his or her job duties, proper procedures and expected performance levels.

(C) *Training program evaluation*. The Town Council may periodically examine current and proposed training programs in order to insure the program's relevance to both the individual employee and organizational training needs.

(D) *Training/schooling*.

(1) The Clerk-Treasurer and town employees may obtain training/schooling leave without loss of pay for the purpose of participating in training/schooling that will increase the knowledge and efficiency in their position with the municipality. The straight eight hours per day will be paid while attending seminars, conferences or training classes.

(2) If training/schooling is for one day only with travel to and from on the same day, the hours over eight will be considered when calculating overtime.

(E) If possible, any expenses involved in attending such training shall be paid for in advance. (Ord. passed 1-1-2015)

§ 36.040 SPECIAL TRAINING/CERTIFICATION.

(A) If it is determined that a course of special training, certification, or approval which the employee wishes to pursue will be necessary or beneficial to the town, then the Council may authorize the following:

- (1) Payment of the employee for tuition and material cost of the program;
- (2) Payment of miles traveled to attend the program, or use of a municipal vehicle; and
- (3) Promotion and/or an increase in compensation after successful completion.

(B) To be eligible for payment, the training, licensing, or certification must pertain to the employee's job responsibilities with the town.

(C) In order to be eligible for payment, the employee must receive a certificate, license, proof of completion or proof of attendance. Failure to receive certification, license, proof of completion or proof of attendance may result in a requirement that the employee reimburse the town for all prepaid costs. Employee reimbursement may be made by payroll deduction at a rate agreed to by the Town Council and the employee.

(D) Continuing education required for an employee's current employment, certification and licensing for the town shall be approved by the supervisor and Town Council before attendance is authorized.

(Ord. passed 1-1-2015)

EMPLOYEE BEHAVIOR AND CONDUCT

§ 36.055 ETHICS; CONFLICT OF INTEREST.

(A) The proper operation of the town requires that all official representatives be effective, independent, objective and accountable to the people they serve. To ensure these qualities are upheld, the town has adopted this code of ethics and values to promote and maintain the highest standards of personal and professional conduct in our community. All elected and appointed officials, employees, volunteers, and others who participate in our government are required to subscribe to this code, understand how it applies to their specific responsibilities, and practice these core values in their work. Because we value the public's confidence and trust in our services and its decision-makers, our character and behaviors must meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this code.

(1) *Honest/integrity.*

(a) To act with moral courage;

(b) To make decisions for the public's best interests, even when they may not be popular;

(c) To not engage in any business that would be, directly or indirectly, inconsistent with the conscientious performance of our public duties;

(d) To make no private promises of any kind that may unduly influence our public duties;
and

(e) To accept the responsibility to expose corrupt practices and/or behaviors and where empowered to do so, protect any public employee from retaliation who has exposed corrupt practices and/or behaviors.

(2) *Respect/civility.*

(a) To treat others as you would wish to be treated;

(b) To accomplish the goals and responsibilities of our individual positions, while respecting our role as a member of a team and the community at large;

- (c) To act in a professional and responsive manner;
- (d) To work together in a spirit of tolerance and understanding;
- (e) To work to build consensus and accommodate diverse opinions; and
- (f) To communicate effectively by listening carefully, asking questions and responding in a way that adds value to conversations.

(3) *Accountability/responsibility.*

- (a) To not participate in any decision, where we have a conflict of interest or from which our family, business or professional associates may personally benefit;
- (b) To not use our positions, public property or public resources for the personal benefits of ourselves, our family or our business or professional associates;
- (c) To never solicit or accept any favor or benefit for our family, our business, professional associates or ourselves that might be construed as influencing the performance or our public duties;
- (d) To make full public disclosure of the nature of any conflict of interest prior to any action taken;
- (e) To avoid disclosing or abusing the information that we gain by virtue of our position for the personal benefit of ourselves, our family, or businesses or professional associates;
- (f) To not engage in direct competition with our respective town while we are an employee, an appointed official or an elected official; and
- (g) To support the public's right to know the truth and encourage diverse and civil public debate in the decision-making process.

(4) *Fairness/justice.*

- (a) To promote non-discrimination in our decision-making for our respective town and to make decisions based upon the merits of the issue at hand;
- (b) To recognize the function of government to serve the best interests of the citizens;
- (c) To use our authority to promote the efficient and effective delivery of public services;
- (d) To refrain from proposing services where adequate resources are not available; and

(e) To work to remedy the imbalance where inadequate resources adversely affect the best interest of the citizens.

(B) Behavior inconsistent with the values set forth in this code may be redressed by the traditional instruments of governance including state law, ordinances and work rules.

(C) No employee shall use his or her position with the town for personal gain, nor shall he or she engage in any business or transaction, which is in conflict with the proper discharge of his or her duties.

(D) No employee shall engage in, accept private employment, or render services for private interests, when such employment or service is incompatible with the proper discharge of his or her official duties, or would tend to impair his or her independent judgment or action in the performance of his or her official duties.

(Ord. passed 1-1-2015)

§ 36.056 GROOMING; USE OF UNIFORMS.

(A) When appropriate, a clean and neat appearance is required. (It is understood that some employees may become dirty during their work schedule. Every effort should be made to provide the community with a neat and clean appearance when possible.)

(B) The town is a place of business and staff should dress accordingly.

(C) (1) Some employees are provided uniforms which must be worn while on duty. If not dressed in clothing provided during a work period, the employee shall be sent home to dress in work clothes.

(2) An employee shall be off the clock and will not be paid while traveling home to change into work attire.

(D) The Police Department must refer to their department SOP's pertaining to clothing and clothing allowance.

(E) All clothing allowances will be taxed according to IRS rules and included on the employee's W-2.

(F) All employees' clothing attire must follow OSHA laws and regulations.
(Ord. passed 1-1-2015)

§ 36.057 EMPLOYEE FITNESS FOR DUTY.

The town has a strong commitment to provide a safe and healthy environment for its employees.

(A) All employees must be able to perform his or her job duties. Any employee deemed unfit to perform such duties will be subject to a written reprimand up to and including being sent home for the day. Discipline for the same infraction may be cause for disciplinary action up to and including dismissal.

(B) Fitness for duty will be determined when reasonable suspicion exists that the employee is unfit to continue working. When an employee's appearance, behavior, speech, or body odors indicates he or she may have an illness, drug or alcohol use, or other health related issues which could affect the entire staff or the employees ability to perform his or her duties, he or she will be disciplined or sent home according to this policy. Such observations must be personally observed and documented by at least one supervisor. This supervisor will use his or her best judgment to determine whether disciplinary action or merely sending the employee home is required.

(C) An employee is obligated to notify his or her immediate supervisor when reporting for duty or in the course of work, if the use of any substance, even if medically required which may adversely affect his or her ability to satisfactorily perform his or her normal job.
(Ord. passed 1-1-2015)

§ 36.058 BEHAVIOR.

(A) Always treat the public with respect. Employees are expected to adopt a friendly, courteous and service oriented attitude towards the citizens of the town.

(B) (1) The possession and/or use of a firearm, ammunition or other deadly weapons on town property or while on duty by town employees who are not police officers is strictly prohibited.

(2) When authorized, town employees may occasionally be permitted to use firearms around sewer ponds for rodent control purposes only.

(C) Profane or vulgar language is not permitted while on duty.

(D) Personal telephone calls are acceptable, but should be limited. Receiving personal telephone calls at work shall be limited as much as possible. (Please inform family/friends concerning this policy.) When telephone calls are necessary, please try to limit length of the call. No personal phone calls are allowed to be charged to the town's business numbers.

(E) Improper (such as, immoral, unethical and unprofessional) use of the town's computers and the town's e-mail system will not be tolerated.

(F) Fighting, immoral acts, threats, intimidation, or similar behavior aimed at the public or other employees will not be tolerated.

(G) Visits from family and friends while on duty should be limited.

(H) While not everything can be listed, you should remember that your behavior should reflect the fact that you work for the public and that your behavior could negatively affect the people you meet.

(I) Excessive complaints from the public against any employee will be investigated and may result in disciplinary action.

(J) Violation of federal, state or local laws and/or ordinances may result in disciplinary action up to and including termination.
(Ord. passed 1-1-2015)

§ 36.059 ATTENDANCE; LATE ARRIVAL.

(A) Each employee is expected to be available to work as scheduled, to be at work at the beginning of his or her assigned shift and to work until the end of the assigned shift unless prior approval to do otherwise has been received.

(B) If an employee is unable to report to work as scheduled, will be late, or will need to leave early, he or she must report this information to their supervisor as soon as possible.

(C) Any employee not notifying the supervisor or not reporting to work at his or her scheduled start time will be considered to be on unauthorized leave.

(D) Late arrival on a regular basis is inexcusable and will not be tolerated. Late arrival is defined as any situation where an employee reports to work after his or her scheduled starting time.

(E) In addition, if an employee is late, that employee may be subject to appropriate disciplinary action, unless he or she offers, to the supervisor, a written reason for being late which is deemed acceptable.

(F) Excessive absenteeism may result in disciplinary action.

(G) If an employee is excused, in advance, from scheduled work, such absences will not count as an absence occurrence.

(H) An employee absent for three consecutive workdays without notifying his or her supervisor will be considered voluntary termination.
(Ord. passed 1-1-2015)

§ 36.060 OUTSIDE EMPLOYMENT.

(A) Employment conflicts, as set forth in this policy, are when a second job impairs the employee's ability to perform the duties of his or her position.

(B) Full-time employment by the town shall be considered the employee's primary occupation, taking precedence over all other occupations. Outside employment, or moonlighting, shall be a concern to the Town Council only if it adversely affects the job performance of the employee's town job.

(C) Should the Town Council feel that an employee's outside employment is adversely affecting the employee's job performance, the Town Council may recommend, but may not demand, that the employee refrain from such activity. However, any conflict, policy infractions, or other specific offense which is the direct result of an employee's participation in outside employment will subject the employee to discipline or discharge, in a manner that is otherwise consistent with the policies set forth in this chapter.

(D) This division (D) addresses outside employment by all full-time officers of the Town Marshal.

(1) The term secondary or outside employment shall mean any type of employment where compensation is received for services rendered by an employer other than the Town Marshal.

(2) The intent of the Town Marshal's office is to permit secondary employment of full-time officers where such employment has no impact or liability on the operation or efficiency of the Department.

(3) Officers engaged in secondary employment shall ensure that such employment does not:

(a) Render the officer unavailable during an emergency;

(b) Mentally or physically exhaust the officer to the point that expected performance is affected;

(c) Require that any special consideration be given to the scheduling of the officer's regular duty hours or assignments; and

(d) Bring the Department or town into disrepute or place either in a position of assuming civil liability or defense costs were the officer to be involved in any litigation arising out of the outside employment.

(4) Restrictions on outside employment:

(a) Officers of the Department will not be allowed secondary or outside employment with any business or activity within the jurisdiction of the municipality that is involved in the sale of the distribution of alcoholic beverages. This applies to employment within the jurisdiction of the municipality where special liquor licenses have been issued. This is to include security work at a licensed liquor establishment.

(b) Officers, full-time, part-time, auxiliary or reserve, working as private security guards or in private investigative work which provide private police services shall comply with the laws and licensing regulations of the state pertaining to these types of businesses.

(c) Officers, full-time, part-time, auxiliary or reserve are advised that, being employed as such, they have no arrest powers other than that of private citizens. Officers shall not use any emblem, insignia or uniform which comprises any part of the Department's police uniform. Further, the officer shall not use any Department-owned equipment, weapons, vehicles, radios, the Leads & NC/C system or special training obtained through employment with the Department.

(d) Officers accepting secondary or outside employment in the nature of police training or instruction, security, protective, or investigative services shall obtain an indemnification agreement from the secondary or outside employer, wherein, the employer will agree to indemnify and hold harmless the Department and municipality from any and all civil liability and/or defense costs of any litigation arising out of and in the course of the police officer's secondary or off-duty employment.

(e) An officer choosing to engage in such secondary or off-duty employment recognizes and understands that he or she is not covered under the civil liability insurance provided by the municipality. An officer shall not commence in this type of secondary or off-duty employment until he or she delivers a copy of this indemnification agreement to the Chief of Police or designee.

(5) Procedures for secondary or outside employment:

(a) All outside employment must first be approved by the Marshal.

(b) An officer wishing to work secondary or outside employment will submit a request to the Marshal. The request should contain the following information:

1. The name, address and telephone number of the business or organization from which the officer is applying for employment;
2. A job description for which the officer is applying; and
3. The expected hours and days of employment.

(6) Because of the potential for liability involving secondary or outside employment not authorized according to the above listed terms and procedures, disciplinary action proceedings will be initiated for any violation of this chapter.

(Ord. passed 1-1-2015)

§ 36.061 PROGRESSIVE DISCIPLINE.

(A) All employees are expected to perform their duties in a competent, efficient and professional manner. Further, employees are required to act courteously and cooperatively with their fellow employees, supervisors and the public. When an employee's conduct falls below these standards, disciplinary action may be warranted.

(B) In order to promote the common good and welfare of the town and its employees, the town has established rules of conduct. The commission of any of the acts listed below will result in disciplinary action ranging from verbal or written warnings to suspension or to immediate discharge depending on the act and the circumstances. This list is not exhaustive:

(1) *Group I rules.*

(a) If a violation of a Group I rule occurs, the supervisor/assistant will use the following procedures:

1. Step 1: corrective interview, confirmed in writing;
2. Step 2: violation of any Group I rule, within the calendar year, may subject the employee to up to three days suspension without pay;
3. Step 3: violations of any Group I rule, following a disciplinary suspension, will be subject to discharge (pending review by a Town Council hearing); and
4. Step 4: the employee may request to have any written documentation removed from his or her file at the end of a year if no additional violations have occurred.

(b) The following list provides examples of disciplinary violations (this is not intended to be an exhaustive list):

1. Excessive tardiness or absence;
2. Leaving town premises during working hours without permission;
3. Failing to report absence within one-half hour of starting time;
4. Neglect of duty and/or failure to perform assigned duties;
5. Failure to follow established work procedure and policies;
6. Horseplay or use of machinery, equipment or tools in a hazardous manner;
7. Creating or contributing to any unsanitary condition;
8. Unauthorized use of bulletin boards;
9. Posting notices in unauthorized places;
10. Restricting one's own production or interfering with the production of other employees;

11. Conducting personal business on town time;
12. Violating safety regulations;
13. Failing to make an immediate report of an occupational injury;
14. Fighting or committing an assault;
15. Failure to report an accident while on town time;
16. Failure to wear provided town uniforms;
17. Violation of the smoking policy; and
18. Failure to report a traffic ticket while driving a town vehicle.

(2) *Group II rules.* Any violation of a Group II rule will result in the employee being relieved from duty with pay from three to five days and may be subject to discharge pending a Town Council hearing. Examples of Group II disciplinary actions include, but are not limited to the following:

- (a) Improper use of accident leaves or extended disability leave benefits;
- (b) Insubordination;
- (c) Possessing firearms, weapons, explosives and so forth on the premises;
- (d) Disclosure of confidential town information to outsiders without proper authorization;
- (e) Completing another employee's time record or allowing another to complete one's time record;
- (f) Loafing, loitering or sleeping on the job;
- (g) Mistreatment of members of the public, fellow employees or supervisory personnel, or blatant disrespect of fellow employees, supervisor or citizens;
- (h) Using abusive or threatening language;
- (i) Using, selling or being under the influence of illegal substance or controlled substances not prescribed by a physician;
- (j) Disorderly, offensive or illegal conduct;
- (k) Falsifying any town records or employment application;

- (l) Stealing or committing any criminal offense on town property;
 - (m) Damage to or improper use of town property either willfully or through gross negligence;
 - (n) Intentional making of scrap or waste;
 - (o) Employee testing positive for drug and/or alcohol test; and
 - (p) Unauthorized use or possession of town property.
- (Ord. passed 1-1-2015)

§ 36.062 EMPLOYEE APPEAL.

(A) In the event that disciplinary action must be taken against an employee, it will be for just cause and normally in a progressive manner in an attempt to correct an employee's behavior, except in those cases of gross or serious misconduct where an employee may be subject to suspension, reduction or removal from employment for violation of Group II rules.

(B) In cases of possible suspension without pay, reductions in pay or position, or termination, an employee shall be notified of the charges in advance and be afforded the opportunity to present evidence and witnesses on his or her behalf before disciplinary action. Said hearing will be before the Town Council. The employee may also be represented by third party if so requested.

(Ord. passed 1-1-2015)

§ 36.063 GRIEVANCE PROCEDURE.

(A) It is inevitable that misunderstandings and differences will arise when employees of the town are working together on a day-to-day basis. In order that employees have a formal process in which to have their problems and questions heard and appropriately resolved in a timely manner, the following grievance procedure is hereby established:

(1) *Step 1.*

(a) The employee will submit an oral grievance to the Council President within five working days of the action's occurrence. The Council President shall meet with the employee and make every effort to resolve the grievance within five working days of the date of the presentation of the grievance.

(b) If the grievance is against the Council President, the employee should contact the Council Vice President.

(2) *Step 2.* If the grievance has not been settled in Step 1, the written appeal, along with all pertinent correspondence to date, shall be presented to the Town Council within five working days of the receipt of the reply from Step 1.

(3) *Step 3.* After the written appeal, the Town Council shall conduct a detailed hearing and they shall issue a final decision within ten working days of the date of presentation of the written grievance.

(B) Failure of the employee to submit his or her appeal within the time limits specified will result in the town considering the matter settled and closed and shall constitute a legal defense in any legal action involving the employee.

(C) The time limits in the grievance procedure may be extended only by mutual written agreement of the parties due to extenuating circumstances.

(D) A grievance shall be considered resolved if, at any point, the grievant withdraws his or her grievance in writing or fails to process the grievance within the specified time limits.
(Ord. passed 1-1-2015)

GENERAL POLICIES

§ 36.080 TRAVEL AND EXPENSE REIMBURSEMENT.

(A) An employee may be reimbursed for mileage at the federal government mileage rate for the use of privately-owned automobiles for official business. However, such reimbursement may be made only if the employee carries motor vehicle liability insurance as required by law and demonstrates proof.

(B) An employee must file all receipts on a claim form. Employee must state origin and destination of each trip in sufficient detail to account for the mileage claimed. No reimbursements are payable for travel between home and office. Claims, with original itemized receipts, must be turned into the Clerk-Treasurer's office within seven days of the trip. Charges for parking are reimbursable on any day when an employee is entitled to claim reimbursement for mileage.

(C) Travel by commercial airlines, rail service or bus will be reimbursed for the prevailing tourist or coach rate when authorized and supported by original receipts.

(D) Meals will be reimbursed when supported by original receipts up to \$40 per day, including gratuities. Such gratuity should be reasonable and not exceed 20%.

(1) When separate checks are not available, an employee may claim reimbursement for other employees up to the maximum amount provided for in the preceding section multiplied by the number of employees, provided that each employee is identified by name and that an original receipt is provided.

(2) Payment for meals will only be made to the individual submitting the claim.

(3) No meals will be reimbursed for meals already provided for in a registration fee.

(E) Lodging shall be reimbursed when supported by original receipts in the following manner:

(1) Single occupancy will be reimbursed at actual cost, not to exceed \$120 without Town Council approval.

(2) Reimbursement for lodging costs shall include room costs, associated local taxes and necessary business-related charges.

(3) Room service will not be reimbursed.

(F) Personal expenses incurred in traveling are not reimbursable, including but not limited to, personal telephone calls, laundry, entertainment, in room movies and alcoholic beverages.

(Ord. passed 1-1-2015)

§ 36.081 HEALTH AND SAFETY.

(A) In accordance with the Occupational Safety and Health Act of 1970, the town has established that, as a matter of policy, a safe and healthful workplace shall be provided for all employees. The Town Council has the ultimate responsibility and authority for compliance with the federal and state laws pertaining to occupational safety and health.

(B) Each employee is to work in a safe manner and observe the safety procedures as instructed by his or her supervisor.

(C) Any employee who has a valid prescription for a narcotic and is required to take the medication during work hours is required to inform his or her supervisor of the prescription and provide a medical authorization of ability to return to work with or without restriction while using medication. This employee will not be allowed to operate a town-owned vehicle or heavy equipment.

(D) Any accident hazards or unsafe conditions of equipment are to be corrected or reported to the employee's department head immediately, who will then notify the designated safety officer. The designated safety officer will be the central point of contact for OSHA/IOSHA issues. Nothing in this appointment shall reduce the responsibility or authority of department heads and/or supervisors from the effective and ongoing performance of OSHA/IOSHA.

(E) If an employee has an accident involving a town vehicle that causes an injury requiring medical attention or property damage, the employee will be subject to an alcohol and drug test.

(F) Workers' compensation forms will be filed for all injuries. All department heads or their designee will file their report, on behalf of the employee, within 24 hours of the accident. The degree

of injury does not matter. If the employee has complications later, a properly completed form will allow the treatment to be covered by workers' compensation.

(G) If an employee is injured and is physically unable to complete the balance of the workday, he or she shall be paid for the remainder of that day. Further, absence may require the employee to apply for benefits pursuant to workers' compensation.

(H) The town's compliance with applicable OSHA/IOSHA laws, standards, policies, and the like shall be monitored, and documented by the Clerk-Treasurer.
(Ord. passed 1-1-2015)

§ 36.082 MATERIAL SAFETY DATA SHEET.

(A) The town will maintain and utilize appropriate material safety data sheets on any products, chemicals or substances used in the town operation that is required by federal law.

(B) In case where an employee may come in contact with said substance and medical treatment is necessary, a copy of the material safety data sheet will accompany the employee to the medical facility.
(Ord. passed 1-1-2015)

§ 36.083 BLOOD BORNE PATHOGENS.

Several departments within the town may have occupational exposure to blood or other potentially infectious material.

(A) Universal precautions will be observed at the town in order to prevent contact with blood or infectious materials. All blood and potentially infectious material will be considered infectious regardless of the perceived status of the source of the individual.

(B) Employees should not compress trash in waste cans, as it would be easy to be stuck by a needle or other sharp object. Employees should also not place their hand on the bottom of trash bags for support as they could be stuck by sharp objects in the bag. Employees should examine the bags before picking them up to be sure there are no sharp objects sticking out of the bag.

(C) Hand washing facilities are also available to employees who incur exposure to potentially infectious materials. Employees should wash as soon as possible.

(D) Protective gloves should be worn whenever possible.

(E) When performing CPR, proper face guards must be used.

(F) Do not reuse gloves, face guards or other protective equipment.

(G) All employees will be provided annual training on blood borne pathogens.
(Ord. passed 1-1-2015)

§ 36.084 HIPAA POLICY.

(A) The HIPAA privacy rule (standards for privacy of individually identifiable health information) provides national standards for protecting the privacy of health information. The privacy rule regulates how certain entities, called covered entities, use and disclose certain individually identifiable health information, called protected health information (PHI). PHI is individually identifiable health information that is transmitted or maintained in any form or medium (such as, electronic, paper or oral), but excludes certain educational records and employment records.

(B) The protected health information privacy rule protects certain information that covered entities use and disclose. This information is called protected health information (PHI), which is generally individually identifiable health information that is transmitted by, or maintained in, electronic media or any other form or medium. This information must relate to the past, present, or future physical or mental health, or condition of an individual; provision of health care to an individual; or payment for the provision of health care to an individual. If the information identifies or provides a reasonable basis to believe it can be used to identify an individual, it is considered individually identifiable health information.

(C) The town will maintain the employee's health and medical records in accordance with the requirements of HIPAA.
(Ord. passed 1-1-2015)

§ 36.085 SMOKING POLICY.

Recognizing that the use of tobacco and electronic smoking devices may cause hazards to the health of smokers and non-smokers alike, no smoking will be permitted in town-owned or occupied buildings or vehicles. An employee may not smoke within 20 feet of any door of town buildings. All employees must comply with Ordinance 2013-16 as amended by Ordinance 2014-05. Smoking is defined by Ordinance 2014-05 as the act of vaping, lighting, carrying, inhaling from, or leaving a lighted or smoldering cigar, cigarette, electronic smoking device, or pipe of any kind.
(Ord. passed 1-1-2015)

§ 36.086 USE OF TOOLS AND EQUIPMENT.

(A) Employees are prohibited from using and loaning town vehicles, materials, tools, equipment, and labor for personal or private use regardless of whether it is during work or non-work time.

(B) Employees may not expend labor during scheduled work hours for work not related to town business. This prohibits any employee from performing private work for himself or herself, another employee, or a non-employee.

(C) If an employee is injured while using town tools or equipment, he or she may be required to take a drug and/or alcohol test.

(Ord. passed 1-1-2015)

§ 36.087 USE OF TOWN VEHICLES.

(A) Any employee of the town who is required to operate a town vehicle in the course of his or her employment shall be subject to the following conditions and restrictions:

(1) Use of seat belts by driver and all passengers; and

(2) Reassignment or other appropriate personnel action in the event of license revocation, suspension or arrest for a DUI.

(B) Employees who are required to operate town vehicles during the course of their employment must immediately report any condition that adversely affects their ability to operate such vehicle(s) and/or equipment and:

(1) Must be able to meet insurability standards and requirements of the town liability insurance provider; and

(2) Maintain a valid driver's license.

(C) Employees must not permit unauthorized drivers or passengers in the town vehicles, unless on official business or approved by the Town Council.

(D) Reimbursement for necessary emergency road service and repairs, parking, and highway-related tolls require appropriate receipts for reimbursement.

(E) In the event of an accident, employees must do the following:

(1) Assist any injured party is possible and call 911;

(2) Do not move any vehicles unless instructed to do so by proper police authority;

(3) Write down all pertinent facts such as the other driver's name, address, telephone number, license plate number, driver's license number, social security number, and name of insurance, policy number, name, address, and telephone number of any injured party or witnesses;

(4) Do not admit any fault or make any oral or written statements but give your name, address, telephone number and the like; and

(5) Notify the Town Council and submit a written report as soon as possible.

(F) If an employee has an accident involving a town vehicle that causes an injury requiring medical attention or property damage, the employee will be subject to an alcohol and drug test.
(Ord. passed 1-1-2015)

§ 36.088 TAKE HOME VEHICLES.

(A) Employees may not use town vehicles for personal use. (Police officers should refer to their own SOPs on this policy).

(B) Employees of the town who are assigned a town vehicle for duty to domicile travel are subject to Internal Revenue Service rulings regarding such usage. The use of such a vehicle for commuting is considered by the IRS to be a taxable benefit, a value must be established and the total annual amount reported to the IRS on the employee's W-2 Form.
(Ord. passed 1-1-2015)

§ 36.089 SOLICITATION AND DISTRIBUTION.

The following policy on solicitation and distribution is hereby adopted by the Town Council as to all town premises including but not limited to the various administrative offices, locations and work sites:

(A) Employees of the town are not permitted to engage in solicitation of others on town premises.

(B) The Town Council may regulate any solicitation and distribution activity by any employee which disrupts or interferes with the normal work of the town on its premises or in areas under the operational control of the town.
(Ord. passed 1-1-2015)

§ 36.090 CONFIDENTIAL INFORMATION.

In the course of employment with the town, the employee may have access to information, which is confidential, including, but not limited to, information about any new town projects, accounting records, personnel records, insurance records, the community and their families. The employee shall not use, disclose or divulge the confidential information, to any third party, without prior authorization.
(Ord. passed 1-1-2015)

§ 36.091 HOURS OF WORK.

(A) The Town Council shall establish the standard workday, workweek, and starting and quitting times for each department, taking into account current and anticipated workloads, public service needs, and other factors. No established schedule shall be construed as a guarantee of work hours or as a restriction of the town's right to restructure the workday or workweek.

(B) The town is open for business Monday through Friday, 52 weeks a year unless there is a scheduled holiday. Employees should contact the Town Council for the hours of operation for their department. Employees of the Clerk-Treasurer's office shall contact that department for hours of operation.

(C) Subject to the discretion of the department head, employees may be allowed to take one 15-minute rest break during any four-hour work period. Such breaks shall not interfere with the proper performance of the employee's work responsibilities, will be set by the elected official/department head and are subject to change.

(D) Employees shall receive an unpaid lunch period.

(E) Operational needs and/or emergencies, however, may necessitate the establishment of other work hours, days, or weeks.
(Ord. passed 1-1-2015)

§ 36.092 COMPUTERS, INTERNET AND E-MAIL.

(A) All town employees have a responsibility to use the electric media provided in a manner, which both enhances the image of the town and is productive in its service and operation.

(B) This section applies to all town employees, not subject to a prior agreement or contrary to provisions of law.

(1) Contracts and licenses with software program providers define the limits of software and hardware program use. Employees are forbidden to use any software or hardware contrary to the provisions of these contracts and licenses. The town provides the software and hardware programs that are anticipated to be needed by employees in performing their job responsibilities. If any employee believes that he or she needs additional software or hardware programs, he or she should consult with his or her supervisor. Employees shall not copy or install any software program or hardware of any kind on the town's electronic media of any part thereof without the prior authorization from his or her elected official

(2) Employees may be provided access to the internet to assist them in the performance of their duties as a benefit to the employer. Employees have a responsibility to use the internet in a productive and responsible manner. It is the policy of the town that the use of internet resources will be for work related purposes, and that any personal use of the internet will be limited, never a priority over work

matters. Employees may only access the internet through methods approved by the town, and employees are responsible for the material they review and download on the internet. Users of the internet may encounter material that is not appropriate, is offensive, inaccurate, and in some instances, illegal. The town cannot always control the availability of this information.

(3) Employees should not participate in chat groups or post items to news groups. Sending, receiving, displaying, printing, or otherwise disseminating material that is fraudulent, harassing, illegal, embarrassing, sexually explicit, obscene, intimidating, or defamatory is prohibited. Employees encountering material that is disruptive should report it to their department head immediately.

(4) Employees' e-mails are subject to screening by the Town Council and/or supervisor. Employee will be required to use town issued e-mail for all work and town-related communication and business.

(Ord. passed 1-1-2015)

§ 36.093 CELL PHONES.

(A) (1) Some employees shall receive a stipend pay to purchase a cell phone and plan.

(2) Employees who receive a stipend to purchase a cell phone, with a local number, and plan must keep their phone activated and must be accessible while on duty and on call.

(B) Personal calls should be limited during working hours.

(C) Employees should not use hand held cell phones while driving, except in an emergency. Should an employee need to take or make a business call while driving, the employee should pull over and park whenever possible or use a hands-free speaking device such as a speaker phone/earpiece.

(Ord. passed 1-1-2015)

§ 36.094 HANDLING CITIZENS QUESTIONS AND COMPLAINTS.

(A) All citizens should be treated with respect and courtesy. Employees should not engage in arguments, debates, or lengthy discussions with private citizens regarding the town's policies, procedures, or services.

(B) Any employee who receives a complaint from a private citizen should refer that individual to his or her supervisor.

(Ord. passed 1-1-2015)

§ 36.095 POLITICAL ACTIVITY.

(A) Employees may not participate in any partisan or non-partisan political activity while on-duty or off-duty in a uniform required by, used by, or identified with any department of the town government.

(B) Employees may not use municipal vehicles for any political activities.

(C) Any municipal employee found violating any provisions of this policy is subject to reprimand, suspension or dismissal from town employment.

(Ord. passed 1-1-2015)

§ 36.096 DEFINITIONS.

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

AT-WILL EMPLOYEE. An employee may voluntarily leave employment or may be terminated by the town at any time with or without cause.

COMPENSATORY TIME. Time-off equal to one and one-half times hours worked in excess of 40 hours in a week.

DISTRIBUTION. As used in this chapter includes the passing out of any type of literature, advertising, handbills, circulars, forms or any other memorabilia.

EMPLOYEE. Any person in the employ of the town in any status.

EXEMPT. Employee classified as executive, administrative or professional according to provisions of the Fair Labor Standards Act (FLSA), plus any elected official.

FLEX TIME. Taking time off within a 40-hour week to prevent overtime.

HOLIDAY PAY. As used in this chapter, pay based on eight hours of straight base pay.

HOURLY. Employee paid an hourly rate bi-weekly.

NON-EXEMPT. All employees that do not meet the Fair Labor Standards Act (FLSA) exempt provision.

NON-WORK AREA. Is any area on or off the town's premises not designed as a work area.

NON-WORK TIME. As used in this chapter, includes any time during an employee's workday where the employee is completely relieved of work duties, such as break time and lunch time. Whether

an employee is in paid or unpaid status during these times is immaterial to the designation of non-work time.

SALARIED. Employee paid a predetermined amount of compensation bi-weekly.

SOLICITATION. As used in this chapter includes, but is not limited to an act which requests, urges, or seeks to induce an employee to give or obligate him or her to pay money for any cause, or for any reason or to sign any document indicating membership in any obligation, association, or group, or indicating support for or a pledge, to any such organization, association, or group.

TOWN. The town of Hanover, Indiana.

WORK AREA. As used in this chapter includes, but is not limited to, offices, work sites, locations, conference rooms, common areas, and corridors leading directly thereto, and such other areas, which are essential to the performance of an employee's duties.

WORK TIME. As used in this chapter, includes all of the time when an employee's duties require that he or she be engaged in work tasks, but does not include the employee's own time such as meal periods, scheduled breaks, and time before or after a work shift.

WORK WEEK. As used in this chapter, means the scheduled starting and quitting time each week, for each position, as determined by the Town Council. The Clerk-Treasurer shall set the starting time and quitting time each week, for each position in the Clerk-Treasurer's office.
(Ord. passed 1-1-2015; Ord. 2015-09, passed 8-18-2015)

EMPLOYEE BENEFITS

§ 36.110 PAYROLL.

(A) Payroll is paid bi-weekly and will be available by the end of business on pay day. All required deductions will be made according to the law.

(B) All non-elected personnel will be required to maintain a time record.

(C) Straight time will be paid to hourly employees working 40 hours or less per work week. Work performed by hourly employees in excess of 40 hours in a week, will be considered overtime and will be paid in the form of compensatory time at the rate of time and one-half the employee's regular rate of pay. Benefit hours (vacation, holidays, personal leave, compensatory time used and the like) are not considered time worked for computing overtime.

(D) (1) If an employee works on a holiday, he or she will receive holiday pay (eight hours of straight pay) for that day plus shall be given time off for hours worked to be used within 30 days.

(2) Example: If an employee works four hours on a holiday, he or she will receive his or her regular pay plus four hours off to be used within 30 days of that holiday.

(Ord. passed 1-1-2015)

§ 36.111 DIRECT DEPOSIT.

All employees of the town are required to have their payroll checks direct deposited.

(Ord. passed 1-1-2015)

§ 36.112 OVERTIME AND COMPENSATORY TIME.

(A) Any employee may be required to work in excess of the normal workday or workweek to meet operational demands. Overtime for non-exempt employees will be addressed under the guidelines set out by the FLSA (Fair Labor Standards Act) and treated accordingly. Eligibility for overtime shall be based upon all hours in active pay status.

(B) All overtime must be approved by the employee's supervisor in advance. Two instances of working overtime without approval is subject to disciplinary action.

(C) Whenever it is necessary to provide an employee with overtime compensation, compensatory time off in lieu of additional pay will be the method of providing such overtime compensation.

(D) Exempt employees are not subject to the overtime payment requirements of the FLSA due to the nature of their work. These employees are expected to have flexible working hours, which may exceed 40 hours in a week. These individuals do not expect to receive overtime pay.

(E) Non-exempt employees of the town shall receive compensatory time in lieu of overtime pay. Compensatory time is earned at the rate of one and one-half times the actual time worked. For example, an employee who works one hour of overtime will receive one and one-half hours of compensatory time.

(F) Non-exempt employees may take compensatory time-off after a proper request has been submitted and approved by their supervisor. An employee must be permitted to use compensatory time on the date requested unless doing so would unduly disrupt the operations of the employee's department.

(G) Compensatory time may be banked to a maximum of 30 hours. Supervisors are responsible for requiring employees to use banked time. Compensatory time may be banked beyond the maximum of 30 hours only with prior approval of the Town Council. Supervisors' failure to require employees to use banked time or to seek and obtain approval by the Town Council is subject to disciplinary action.

(H) All compensatory time must be used by August 31 of any calendar year unless approved by the Town Council to carry over to the following month. Banked compensatory time earned after August 31 may be carried over into the following year.

(I) Upon termination of employment, a non-exempt employee is entitled to receive payment for accrued and unused compensatory time at the regular hourly wage rate in effect at the date of termination.

(J) The employee's termination date shall always be the last day worked.

(K) An employee's termination date may not be extended to include accrued or unused compensatory time.

(Ord. passed 1-1-2015)

§ 36.113 FLEX TIME.

(A) The town may utilize time-off or flexible hours in order to avoid having nonexempt employees work in excess of 40 hours in a work week.

(B) The supervisor must approve flextime scheduling.

(C) The supervisor should make every effort to ensure that employees utilize flex time so as not to work overtime.

(D) Flex time must be taken within a 40-hour pay period if possible.

(E) (1) Flex time is as time for time.

(2) Example: If an employee works four hours overtime in a day, then the employee may be required to take off four hours on another day within that workweek, thus keeping his or her hours worked at 40 hours for that week.

(Ord. passed 1-1-2015)

§ 36.114 EMERGENCY CALL IN.

If a non-exempt employee is called in to work during an emergency, he or she shall be compensated for a minimum of one hour.

(Ord. passed 1-1-2015)

§ 36.115 PENSION PLAN.

All full-time employees are covered by an Indiana Public Retirement System (INPRS).

(Ord. passed 1-1-2015)

§ 36.116 GARNISHMENTS.

A court ordered garnishment shall be recognized and executed by the town. When a garnishment order is received for an employee, the Clerk-Treasurer's office shall notify the employee.
(Ord. passed 1-1-2015)

§ 36.117 HOLIDAYS.

(A) All full-time employees are entitled to the following paid holidays after the employee's 90-day probation period:

- (1) New Year's Day: January 1;
- (2) Martin Luther King Day: Third Monday in January;
- (3) Presidents Day: Third Monday in February;
- (4) Good Friday: Friday before Easter;
- (5) Primary Election Day: First Tuesday after first Monday in May;
- (6) Memorial Day: Last Monday in May ;
- (7) Independence Day: July 4;
- (8) Labor Day: First Monday in September;
- (9) Columbus Day: Second Monday in October;
- (10) General Election Day: First Tuesday after first Monday in November;
- (11) Veteran's Day: November 11;
- (12) Thanksgiving: Fourth Thursday in November;
- (13) Friday after Thanksgiving: Fourth Friday in November;
- (14) Christmas Eve: December 24; and
- (15) Christmas Day: December 25.

(B) If the holiday falls on Sunday, it will be observed on the following Monday, if it falls on Saturday, it will be observed on the preceding Friday.

(C) In the years that there is no election in the town, there will only be 13 holidays for that year.

(D) If a holiday occurs while an employee is on vacation, such vacation day will not be charged against his or her vacation leave.

(E) Due to the emergency areas covered by the town, some employees are required to work holidays. Said employees will receive holiday leave time.

(F) Holiday leave time is to be used within 30 days of the date the holiday was observed.

(G) Employees absent the last scheduled working day before a holiday or the first scheduled working day after a holiday will not be paid for that holiday unless the absence is authorized by the Town Council. The employee shall submit a written request to the Town Council and the request will be addressed at the next regularly scheduled meeting. The employee shall not be paid for the holiday until the Town Council takes action upon the written request.

(H) An employee scheduled to return from a non-paid leave on the day after a holiday will not be paid for the holiday. An employee whose leave without pay is approved through the end of the last business day preceding a holiday is also presumed to be on leave during the holiday, and will not receive compensation for the holiday.

(I) The holiday schedule may be amended by the Town Council, with written notice, and distributed to all departments within the town government.
(Ord. passed 1-1-2015)

§ 36.118 VACATION.

(A) This section applies to all full-time employees. Each employee must work for one full year before he or she is entitled to take a vacation. The first vacation period must be taken before the end of the calendar year in which the employee has completed his or her first year of service.

(B) One week of vacation is the equivalent of 40 working hours.

(C) Vacation time must be used prior to the end of the calendar year.

(D) During years of continuous full-time employment, employees shall be entitled to vacation as follows:

(1) After the first anniversary of continuous full-time employment: one week;

(2) After the second anniversary of continuous full-time employment: two weeks;

(3) After the fifth anniversary of continuous full-time employment: three weeks; and

(4) After the tenth anniversary of continuous full-time employment: four weeks.

(E) Any employee with three or more weeks of vacation shall take at least one week prior to July 1. An employee shall not take more than two weeks of vacation at one time.

(F) Temporary or part-time employees are ineligible for vacation leave with pay. However, if agreeable with the department head or Town Council, these employees may take non-paid vacation leave without loss of seniority rating.

(G) An employee's vacation time shall be considered as hours worked for the purpose of determining vacation leave eligibility.

(H) If an employee is on vacation during the time of a holiday, he or she receives an additional day of vacation for that holiday.

(I) Vacation leave is credited for all continuous service in active pay status. Vacation is not earned while an employee is in a non-paid status (such as, leave of absence without pay, disciplinary suspensions and short-term disability leave).

(J) Vacations are scheduled in accordance with workload requirements of the individual department or office. For this reason, it is mandatory that full week vacation requests be made, in writing, at least one week in advance of the proposed starting date of the vacation. The supervisor has the authority to approve or deny vacation requests.

(K) Vacation days may not be carried over to the following year without approval of the Town Council.

(L) Upon termination or resignation, a full-time employee will only be compensated for any unused vacation time they had earned as of their termination or resignation date.

(M) The employee's termination date shall always be the last day worked.

(N) An employee's termination date may not be extended to include unused vacation time.
(Ord. passed 1-1-2015; Ord. 2015-09, passed 8-18-2015)

§ 36.119 PERSONAL TIME OFF (PTO).

(A) This section applies to all full-time employees.

(B) New employees will not receive PTO days until after their probationary period (90 days). After the probationary period, new employees will begin accruing PTO at the rate of four hours a month not to exceed six days/48 hours the first year.

(C) On January 1, following the employee's probationary period, the employee will receive eight days of PTO.

(D) PTO days may be taken in one-hour increments.

(E) The supervisor may request a physician's written certification of illness when three consecutive days or more are claimed.

(F) To be eligible for PTO benefits, all employees must have reported for work or called in reporting the leave. Employees shall call his or her supervisor. In the absence of the supervisor, calls shall be directed to the employee's department's second in command.

(G) The employee or someone on his or her behalf shall notify in the above order the absence of the employee as soon as possible prior to the scheduled hours of work. It is preferred that the call be made at least one hour prior to the employees starting time.

(H) Any unused days are accumulative from year to year (not required to be used within the calendar year). However, employees may only carry over 40 hours per year and shall not exceed 240 hours of PTO at any one time.

(I) Upon termination of employment, the employee will not be paid for unused PTO days.

(J) An employee's termination date may not be extended to include unused PTO time.

(K) The Clerk-Treasurer shall keep an individual up-to-date record of all employees.
(Ord. passed 1-1-2015)

§ 36.120 FAMILY AND MEDICAL LEAVE.

(A) Effective January 16, 2009, the Family and Medical Leave Act of 1993 (FMLA) was amended. The amendments to the FMLA regulations implements new military family leave entitlements enacted under the National Defense Authorization Act for FY 2008 and update the regulations under the 15 year-old FMLA. This change shall also improve communication between employees, employers, and health care providers to make the law operate more smoothly, and provide needed clarity for both workers and employers about their responsibilities and rights under the FMLA leave.

(B) The Family and Medical Leave Act requires the town to provide eligible employees with up to 12 weeks of unpaid leave for their own serious illness, the birth or adoption of a child, or the care of a seriously ill child, spouse or parent. The two new leave entitlements are military caregiver leave (also known as covered service member leave) and the qualifying exigency leave. For an employee to be eligible for medical leave, he or she must have been employed by the town for at least one year and must have worked 1,250 hours within the previous 12-month period. Any employee who completes a period of leave must be returned either to the same position the employee was in prior to the leave, or to a position equivalent in pay, benefits, and other terms and conditions of employment.

(C) The town shall allow up to 12 weeks unpaid leave in a 12-month calendar year (January through December) for the following, except the military family leave which will be allowed up to 26 weeks of unpaid leave in a 12-month calendar year (January through December):

(1) To care for a newborn child or a child who is newly placed for adoption or foster care (the leave must be taken within 12 months from the date of birth or the date of placement);

(2) To care for a spouse, child or parent who has a serious health condition;

(3) Because the employee has a serious health condition that makes the employee unable to perform the functions of his or her job;

(4) To care for a covered service member with a serious illness or injury incurred in the line of duty on active duty; or

(5) Requesting qualifying exigency leave for families of members of the National Guard and Reserves to manage their affairs while the member is on active duty in support of a contingency operation.

(D) The provisions of the policy shall not apply to any employee of the town who has been employed for less than 12 months or who has worked less than 1,250 hours during the preceding 12-month period preceding the beginning of the requested FMLA leave.

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

ANY QUALIFYING EXIGENCY. A circumstance arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation. The department's final rule defines qualifying exigency by referring to a number of broad categories for which employees can use FMLA leave:

- (a) Short-notice deployment;
- (b) Military events and related activities;
- (c) Childcare and school activities;
- (d) Financial and legal arrangements;
- (e) Counseling;
- (f) Rest and recuperation;
- (g) Post-deployment activities; and

(h) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

CHILD. A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is under 18 years of age or who is older than 18 years of age and incapable of self-care because of a physical or mental disability.

COSMETIC TREATMENT. Voluntary cosmetic treatments are not considered serious health conditions, unless necessitated by accident or injury and inpatient care is required.

FAMILY AND MEDICAL LEAVE. Any leave taken pursuant to this section or for any of the reasons listed above, herein referred to as FMLA,

IN LOCO PARENTIS. An individual who has day-to-day responsibility to care for and financially support a child.

MILITARY CAREGIVER LEAVE (COVERED SERVICE MEMBER LEAVE). To permit a spouse, son, daughter, parent, or next of kin to take up to 26 workweeks of leave to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

PARENT. The biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

SERIOUS HEALTH CONDITION. Any illness, injury, impairment, or physical or mental condition that involves:

(1) Inpatient care; or

(2) Continuing treatment by a health care provider for a long-term condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days; or period of incapacity relating to the same condition, that also includes:

(a) Treatment two or more times by or under the supervision of a health care provider (such as, in-person visits, the first within seven days and both within 30 days of the first day of incapacity), or one treatment by a health care provider (such as, an in-person visit within seven days of the first day of incapacity) with a continuing regimen of treatment (such as, prescription medication, physical therapy);

(b) Any period of incapacity related to pregnancy or for prenatal care (a visit to the health care provider is not necessary for each absence);

(c) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care

provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence;

(d) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or

(e) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

(F) An employee who seeks to obtain leave pursuant to this policy is required to give his or her supervisor written notice at least 30 calendar days in advance of the leave, if possible, unless the need for leave cannot be anticipated, in which case notification must be given as soon as practicable.

(G) All leave taken by an employee under this policy shall be unpaid leave unless specifically provided in this section. If an employee has any accrued compensatory time, the employee may be paid for that time as a part of the employee's FMLA leave. The employee may also elect to be paid all or part of the accrued vacation time or all or part of accrued personal time as part of the employee's FMLA leave.

(H) An employee may take family and medical leave on an intermittent basis or by reducing the number of hours worked if medically necessary and if the leave is taken in order to care for a sick family member as defined above or for the employee's own serious health condition. Only upon the town's written approval may an employee take leave intermittently. Intermittent leave must be taken in increments of one hour. An employee who requests intermittent leave may be temporarily transferred to another position, which would better accommodate his or her absence, if the new position has comparable pay and benefits.

(I) The town shall have the right to request in writing a medical certification from a health care provider describing the necessity for the leave, whether it be a continuous or intermittent leave, when an employee is on family or medical leave due to his or her own serious health condition or the serious health condition of a parent, child or spouse. The medical certification shall be provided within 15 calendar days, unless it is not practicable to do so under the circumstances. The town may seek an additional medical certification to substantiate the medical certification at the town's expense. If the employee's original certification and the town's certification are in conflict, the two health care providers who made the certification shall select a third health care provider to provide a third certification at the town's expense. The opinion of the third health care provider shall be conclusive. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official but not the employee's direct supervisor to authenticate or clarify a medical certification of a serious health condition.

(J) When an employee is on leave as provided for in this policy, all insurance coverage shall be maintained as if the employee were actively employed. The employee would still be responsible for his or her portion of the health premiums. The Clerk-Treasurer will notify the employee of their premiums due in writing after they return to work. Insurance coverage provided as required herein during the

course of a leave is not to be counted as COBRA coverage. If the employee does not return to work for the town or returns for less than 30 days, all benefit premiums paid by the town are eligible to be recovered by the employee as described in and allowed by the federal act as amended from time to time.

(K) An employee granted leave pursuant to this policy, upon return, shall be restored to the job he or she held when he or she left, or an equivalent position with equivalent pay, benefits, and terms of employment. All benefits shall accrue during the leave. Upon reinstatement, an employee who has allowed his or her insurance coverage to lapse will be entitled to re-enroll. Certain key employees (as defined by the Family and Medical Leave Act) may be denied reinstatement if necessary to prevent substantial and grievous economic injury to the town. The employee must be notified of the town's election to designate an employee as a key employee at the time the leave is requested or prior to the commencement of the leave (whichever is earlier). The town shall notify the employee of their designation in writing.

(L) During a leave of absence, the employee must not secure employment elsewhere.

(M) An employee will be required to provide a fitness for duty report prior to returning to work if the leave was due to his or her own serious health condition. The town may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. In addition, where reasonable job safety concerns exist, the town may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

(N) If an employee receives and/or continues leave under the Family Leave Act through misrepresentation or false statements, his or her leave will automatically be rescinded and the appropriate discipline up to and including termination may occur.

(O) In situations where the husband and wife both work for the town and the Family Leave Act is requested and approved, their combined total leave is limited to 12 weeks.

(P) The town may require an employee to report periodically during the leave period on the employee's leave status and the employee's intention to return to work. The town will consider an employee's failure to report to work at the end of the leave period as an employee resignation.
(Ord. passed 1-1-2015)

§ 36.121 BEREAVEMENT LEAVE.

(A) All regular, full-time employees will be granted a paid leave of up to three consecutive work days in the event of the death in the employee's immediate family. **EMPLOYEE'S IMMEDIATE FAMILY** for purposes of this section, shall mean an employee's spouse, child, parent, grandparent, corresponding in-laws, grandchild, sibling, step-child, step-parent, step grandchild, half sibling, and other residents of the household of an employee.

(B) All regular, full-time employees will be granted one day of leave in the event of the death of an aunt, uncle, niece or nephew.

(C) In the event of the death of a family member not in the immediate family, an employee should use personal time.

(D) Bereavement leave must be arranged with the appropriate supervisor. As soon as practical or upon return to work, the employee shall provide a written request to his or her supervisor. The request must be executed by the employee and must state the relationship between the deceased and the employee and the length of time needed for the requested absence. Proof of funeral attendance may be required.

(E) In extenuating circumstances, the Town Council may approve extended bereavement leave. The employee shall submit a written request to the Town Council and the request will be addressed at the next regularly scheduled meeting.

(Ord. passed 1-1-2015)

§ 36.122 COURT LEAVE.

(A) If an employee is called for jury duty or subpoenaed to testify in a court of law during any portion of the employee's regular scheduled working day, that employee shall be compensated for such time, however all compensation received for such court service shall be surrendered to the employer.

(B) The employee will be expected to report for work following jury duty, if a reasonable amount of time (two hours or more) remains during his or her scheduled workday.

(C) The town will not reimburse employees when appearing in court for criminal or civil cases, when the case is being heard in connection with the employee's personal matters unless the employee utilizes unused vacation, personal, or compensatory time.

(Ord. passed 1-1-2015)

§ 36.123 MILITARY OR RESERVE SERVICE.

(A) *Reserve training.* Indiana Code requires that Indiana National Guard, Defense Corps, Naval Militia and all U.S. Armed Forces reserve component members be authorized up to 15 working days leave per calendar year for training purposes. The employee may use vacation or comp time.

(B) *Written statements.* Along with requests for such leave, employees are required to submit the published order authorizing the military duty or a written statement from the appropriate military commander authorizing such duty. Employees requesting such leave will also be required to complete any necessary leave papers required by the Clerk-Treasurer or Town Council.

(C) *Active duty.* A full-time employee who is drafted or is called for active duty in the Armed Forces of the United States, the Coast Guard, Public Health Service, Civil Defense, or is drafted in the

Merchant Marine Service, shall (in accordance with existing law) be entitled to reemployment after honorable discharge or discharge under honorable conditions from such services, provided the employee is physically and mentally able to do the work required and reports for work within 90 days of such discharge, or within 90 days after he or she is released from hospitalization continuing after discharge for a period of not more than one year. He or she shall be employed in the position or a similar position to the one held at the time of entry into the Armed Forces. All salary adjustments or position upgrades shall be granted to the employee upon reinstatement. In the event his or her former job no longer exists, he or she shall be employed in a position for which he or she is qualified at a salary comparable with the one he or she formerly received.

(Ord. passed 1-1-2015)

§ 36.124 GROUP HEALTH INSURANCE/LIFE INSURANCE.

(A) The town hereby agrees to provide and pay for health insurance and vision insurance benefits for all of its full-time eligible employees who elect to receive such coverage.

(B) The coverage shall be single coverage only. If any covered employee wishes to add family coverage and is eligible to do so, then such employee shall pay the difference in premium cost.

(C) Employees who are at least 65 years old, and not covered by the town's health insurance policy will be reimbursed for the cost of Medicare and Medicare supplements. Said reimbursement shall not exceed the cost that the town pays for coverage for employees.

(D) The amount of the deductible shall be established each year by the Town Council depending on the coverage options for the town.

(E) Full-time employees are eligible for life insurance.

(F) Please refer to individual insurance policies for coverage details.

(Ord. passed 1-1-2015; Ord. 2017-5, passed 1-17-2017; Ord. 2019-12, passed 11-19-2019)

§ 36.125 WORKERS' COMPENSATION.

(A) *Generally.* Workers' compensation insurance provides coverage for work-related injuries and illnesses as required under the workers' compensation laws of the state. Workers' compensation insurance covers all authorized expenses related to the treatment of a work-related illness or injury and provides lost time benefits when an employee must be absent from work on a workers' compensation disability leave.

(B) *Reporting a work related injury or illness.*

(1) Any illness or injury related to an employee's work assignment must be reported to the employee's supervisor so that the necessary forms can be completed and sent with the employee prior

to evaluation and treatment, if possible. The town will inform an injured employee of its approved medical facility at the time of injury.

(2) The supervisor or injured employee must notify the Clerk-Treasurer as soon as possible so that all claims and compensation can be administered properly and in a timely manner.

(C) *Compensation and benefits.* Compensation and benefits for an absence resulting from a work-related injury or illness and a workers' compensation disability leave shall be as follows:

(1) Lost time benefits due to a work-related injury or illness begin on the eighth calendar day following an employee's absence because of a work-related injury or illness. If an employee wishes to be paid for work missed during the first seven calendar days, he or she must use any accrued time.

(2) If the absence from work extends longer than 21 calendar days, the initial seven-day waiting period will be retroactively paid by the workers' compensation insurance carrier.

(D) *Insurance coverage.* Group health insurance coverage and other insurance benefits will continue on the same basis, as coverage would have been provided had the employee been continuously employed during the period of a workers' compensation disability leave as long as the employee pays his or her regular portion of the premium on a timely basis. Employees must arrange with the Clerk-Treasurer's office to pay their portion of this insurance coverage.

(Ord. passed 1-1-2015)

SUBSTANCE ABUSE POLICY FOR EMPLOYEES

§ 36.135 PURPOSE.

(A) The purpose of this subchapter is to set forth the procedures for the implementation of controlled substance and alcohol use and testing of employee applicants and current employees pursuant to the town's alcohol and drug abuse policy. These procedures are intended as a guide only, and are in no way intended to alter any existing relationship between the town and any employee.

(B) The town's DER (designated employer representative) that is designated to monitor, facilitate and answer questions pertaining to these procedures is the Clerk-Treasurer.
(Ord. passed 1-1-2015)

§ 36.136 APPLICABILITY.

This policy applies to all employees who hold full-time, voluntary or part-time positions.
(Ord. passed 1-1-2015)

§ 36.137 PROHIBITED CONDUCT.

The following shall be considered prohibited conduct for purposes of this subchapter:

(A) No employee shall report for duty or remain on duty while having an alcoholic concentration of .04 or greater.

(B) No employee shall possess or use alcohol while on duty.

(C) No employee required to take a post-accident test shall use alcohol for eight hours following the accident or until he or she undergoes a post-accident test, whichever occurs first.

(D) No employee shall refuse to submit to a post-accident, random, reasonable suspicion, return-to-duty, or follow-up alcohol or drug test.

(Ord. passed 1-1-2015)

§ 36.138 PRESCRIPTION MEDICATION AND OTHER MEDICATION USE.

(A) Employees are prohibited from reporting to work or remaining at work when the employee uses any controlled substance, except when the use is pursuant to the written instruction of a physician who has advised the employee that the substance will not adversely affect their ability to safely perform their duties. The employee must provide the town with proof of such medical advice. The town can decide if the employee can remain at work or on the town premises and what work restrictions, if any, are deemed necessary.

(B) Any employee who is using a prescribed drug or other medication, which is known or advertised as possibly affecting or impairing judgment, coordination or other senses (including dizziness or drowsiness), or which may adversely affect the employee's ability to perform work in a safe and productive manner, must notify the town prior to duty. The town may, after evaluation of the information, restrict or prohibit the employee from performing duties.

(C) Ingestion of products that contain hemp will not be an acceptable explanation for testing positive for marijuana.

(Ord. passed 1-1-2015)

§ 36.139 REFUSAL TO TEST.

(A) Refusal to submit to the types of drug and alcohol tests employed by the town will be grounds for refusal to hire applicant(s) and to discipline existing employee(s).

(B) A refusal to test would include any of the following situations:

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- (1) Failing to appear for any test within a reasonable time after being directed to do so;
- (2) Failing to remain at the testing site until the testing process is completed;
- (3) Failure to provide a breath or urine sample as directed;

(4) Failure to provide a urine, breath, or saliva specimen within required time frames may be considered a refusal. If an employee cannot provide a sufficient quantity of urine or breath, he or she will be directed to be evaluated by a physician of the employer's choice. If the physician cannot find a legitimate medical explanation for the inability to provide a specimen (either breath or urine), it will be considered a refusal to test;

(5) Failure to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of a "shy bladder" or "insufficient breath" situation;

(6) Failure to cooperate with any part of the testing process and/or conduct that would obstruct the proper administration of a test (such as, refusing to empty pockets when so directed by the collector, behaving in a confrontational way that disrupts the collection process);

(7) For an observed collection, fail to follow the observer's instruction to raise and lower clothing to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;

(8) Possess or wear a prosthetic or other device that could be used to interfere with the collection process;

(9) Admit to the collector or MRO that you adulterated or substituted the specimen; or

(10) A report from the MRO that he or she has a verified adulterated or substituted test result.
(Ord. passed 1-1-2015)

§ 36.140 TYPES OF TESTS.

(A) All employees subject to this policy will be tested for drugs and/or alcohol, if applicable, for the following reasons: pre-employment, random, post-accident, reasonable suspicion, return-to-duty and follow-up testing as follows.

(B) (1) *Pre-employment (drug test only)*. All applicants must submit to a urine drug test.

(2) *Random testing*.

(a) The town conducts random drug and alcohol testing. The town will submit all employees' names to a random selection system. The random selection system provides an equal chance

for each employee to be selected each time random selection occurs. Random selections will be reasonably spread throughout the year. Random selection by its very nature may result in an employee being selected in successive selections more than once a calendar year.

(b) If an employee is selected at random, for either drug or alcohol testing, a town official will notify the employee. Once notified, the employee must proceed to the designated collection site immediately, if the employee does not go to the collection site as soon as possible after notification, such conduct may be considered a refusal to test.

(3) *Post-accident testing.*

(a) Following any accident incident, the employee must contact the town as soon as possible. The employee may be required to submit to a drug and alcohol test any time he or she is involved in:

1. Any accident/incident involving injury or death;
2. Any accident/incident involving property damage;
3. Any accident/incident where the employee is driving a town vehicle and receives a citation under state or local law for a moving traffic violation arising from the incident;
4. Any accident/incident in which an employee's involvement or actions may have contributed or cannot be completely discounted as a contributing factor to an accident/incident which results in damage over \$1,000 or personal injury; or
5. The incident results in a lost time injury.

(b) The employee shall follow the instructions from the town or its representative to complete required testing.

(c) Any time a post-accident drug or alcohol test is required, it must be performed as soon as practical. If no alcohol test can be made within eight hours, attempts to perform an alcohol test shall cease. If no urine collection can be obtained for the purpose of post-accident drug testing within 32 hours, attempts to make such collection shall cease. An employee is prohibited from consuming alcohol between the time of the accident and the test.

(d) In the event that federal, state, or local officials conduct a breath or blood test for the use of alcohol and/or urine tests for the use of controlled substances following an accident, employee must comply with law enforcement personnel requests. The town may request testing documentation from such agencies, and may ask the employee to sign a release allowing the town to obtain such test results.

(e) In the event an employee is so seriously injured that the employee cannot provide a sample of urine or breath at the time of the accident, the employee must provide necessary authorization

for the town to obtain hospital records or other documents that would indicate the presence of controlled substances or alcohol in the employee's system at the time of the accident.

(4) *Reasonable suspicion testing.*

(a) Reasonable suspicion for requiring an employee to submit to drug and/or alcohol testing shall be deemed to exist when an employee manifests physical, behavioral, speech, or performance symptoms or reactions commonly attributed to the use of controlled substances or alcohol. Such employee conduct must be witnessed by a supervisor who has received at least two hours of training in recognizing the signs and symptoms of alcohol and drug use.

(b) A supervisor observing such conditions will take the following actions immediately:

1. Confront the employee involved and keep under direct observation until the situation is resolved;

2. Secure the DER's (designated employer representative) concurrence to observations; and

3. After discussing the circumstances with the DER, arrangements will be made to observe or talk with the employee. If he or she believes, after observing or talking to the employee, that the conduct or performance problem could be due to substance abuse, the employee will be immediately required to submit to a breath test or urinalysis. If the employee refuses to submit to testing for any reason, the employee will be informed that continued refusal would result in disqualification for remaining on duty. The DER will document in writing the particular facts related to the behavior or performance problems that led to the suspicion test or the refusal to submit to the test, and maintain this documentation in appropriate files.

(c) The DER shall remove or cause the removal of the employee from any town-owned vehicle, equipment, and the like and ensure that the employee is transported to an appropriate collection site and thereafter to the employee's residence or, where appropriate, to a place of lodging. Under no circumstances will that employee be allowed to continue to drive a town vehicle until a confirmed negative test result is received.

(5) *Return to duty testing.* A return to duty test will be required for all employees who have violated this policy (test positive, have an adulterated or substituted specimen, or refuse to test). The employee may not return to work until he or she passes (tests negative) a drug test and/or tests below a .02 for breath alcohol and the substance abuse professional (SAP) and the town have determined that the employee may return to duty.

(6) *Follow-up testing.* Any town employee who has returned to work following a violation of this subchapter will be subject to follow-up testing. At a minimum, three follow-up tests will be required within the first 12 months following the employee's return to work.

(Ord. passed 1-1-2015)

§ 36.141 CONTROLLED SUBSTANCE TESTING PROTOCOL.*(A) Urine collection procedures.*

- (1) The employee will be asked to show a photo ID to verify identity at the start of a urine collection.
- (2) Employee will be directed to empty their pockets and display the contents to the collector.
- (3) A custody and control form will be initiated.
- (4) Employee will be asked to provide a specimen in the privacy of a restroom (except as noted below).
- (5) Observed collections are required if:
 - (a) The previous specimen provided by the employee is determined to be invalid and the MRO ordered a retest;
 - (b) The previous specimen provided by the employee is determined to be negative-dilute with a creatinine value > 2 mg/dl but < 5 mg/dl;
 - (c) The collector observes evidence of an employee's attempt to tamper with the specimen or the specimen appears to have been tampered with; and/or
 - (d) The temperature of the specimen is out of range.
- (6) As part of the collection process, the specimen will be split into two bottles provided enough specimen is collected or a single bottle may be accepted.
- (7) If the employee is unable to provide an adequate specimen, the employee will have up to two hours to provide an adequate specimen, and may consume up to 40 ounces of fluids during this time period. The employee will be required to be monitored during the waiting period.
- (8) After collection, the specimen will be submitted to a SAMHSA laboratory for testing.

(B) Laboratory procedures.

- (1) All urine specimens will be tested in a SAMHSA laboratory certified by DHHS. Drug testing will be performed through urinalysis and will test, at a minimum, for the presence of drugs and/or metabolites of the following controlled substances: marijuana, cocaine, opiates, (including codeine, morphine and heroin), amphetamines (including methamphetamines, MDMA, MDEA and MDA), and phencyclidine (PCP). The town reserves the right to test covered employees for additional substances of abuse under its own authority, including, but not limited to, substances listed on Schedule

I through V of § 202 (21 U.S.C. § 812) of the Controlled Substance Act (examples include synthetic marijuana (K2/Spice) or designer stimulants (bath salts)).

(2) The laboratory will perform initial screenings on all primary specimens. In the event that the primary specimen tests positive, a confirmation test of that specimen will automatically be performed. If the confirmatory test is positive, it will be reported to the Medical Review Officer (MRO) as a positive.

(C) *Validity testing.*

(1) Validity testing will be performed on all specimens at the laboratory. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. The following will be measured: creatinine level, specific gravity and pH. In addition, all specimens will be tested for known adulterants. An initial validity test is performed first, followed by a confirmation test if required.

(2) All laboratory results will be reported by the laboratory to a MRO designated by the town or its agents.

(D) *MRO procedures.* All test results will undergo a review process by the MRO service. Negative test results will be reported directly to the town. Positive, adulterated or substituted results will be handled in the following manner by the MRO service.

(1) Before reporting a positive, adulterated or substituted test result to the town, the MRO or MRO Assistant will attempt to contact the employee to gather any pertinent medical information if needed.

(2) The employee will be allowed to explain and present medical documentation to explain any permissible use of a drug.

(3) If the MRO is unable to contact the employee directly, the MRO will contact the DER, who shall, in turn, contact the employee and direct the employee to contact the MRO. Upon being so directed, the employee is required to contact the MRO immediately if he or she desires to discuss the test result and/or provide pertinent medical information.

(4) In the MRO's sole discretion, a determination will be made as to whether a result is verified as positive, negative or considered a refusal.

(E) *Diluted specimens.* The town does not accept a diluted specimen as a valid specimen and will require another test. The DER or appropriate supervisor will explain the diluted result to the employee, instruct them on their fluid intake prior to retesting, explain the consequences if the second test is diluted again, and instruct the employee as to where and when the retest will take place.

(F) *Medical information disclosure.* Pursuant to DOT regulations, if in the MRO's opinion, any information provided may mean a medical disqualification or represent a safety hazard, such as the use

of certain prescription drugs, the MRO must disclose this to the employer. Individual test results for employee applicants and employees will be released to the town and will be kept strictly confidential unless consent for the release of the test result has been obtained. Any individual who has submitted to drug testing in compliance with this procedure is entitled to receive the results of such testing upon written request.

(G) *Safeguards for the integrity of the drug testing process.*

- (1) The collector must obtain photo identification from the employee or identification by a supervisor prior to administering the test.
- (2) The employee will be asked to wash their hands prior to providing a specimen.
- (3) The employee signs the chain of custody form signifying the correctness of data for test reporting.
- (4) Electronic communication of test results from the laboratory into the MRO reporting system with no external human intervention.
- (5) The specimen container and specimen bottles are individually wrapped and unwrapped in employee's presence.
- (6) After the specimen is provided in a reasonable time, the collector inspects it for sufficient volume, temperature and signs of tampering. If a specimen is not provided, the employee will be referred to a MRO to determine whether there is a valid medical reason. If there is, the employee must still attempt to provide a specimen each time his or her name is drawn.
- (7) After the specimen is given to the collector, the remaining collection procedures are conducted in employee's view.
- (8) The specimen bottles and shipping container are sealed with tamper evident seals.
- (9) The employee will be asked to initial the seals covering the specimen bottles which will signify to the laboratory that the employee witnessed their bottles being sealed.
- (10) The specimen number on the bottle seals match the specimen number on the chain of custody form.
- (11) The laboratory will check the specimen bottles upon receipt to ensure the seal has not been broken. If the seal has been broken the laboratory will report the test as cancelled.
- (12) Blind sample submission through the laboratory for quality control.

(13) A collector who has completed the qualification training as mandated in DOT C.F.R. Part 40 as amended will perform the collection.
(Ord. passed 1-1-2015)

§ 36.142 SPECIMEN RETEST PROTOCOL.

(A) If an employee is notified by the MRO that his or her test result was positive, adulterated, or substituted, the employee may request that a retest be done on the split sample, if available, or a portion of the original specimen that tested positive. The retest will be at a different SAMHSA laboratory. The request must be made to the MRO within 72 hours of being notified of a verified positive, adulterated or substituted result.

(B) The cost of a split specimen test will be the responsibility of the employee. The employee must follow the company procedures to arrange for payment prior to the retest being implemented.
(Ord. passed 1-1-2015)

§ 36.143 ALCOHOL TESTING PROTOCOL AND SAFEGUARDS.

(A) Alcohol tests will be conducted by a trained breath alcohol technician (BAT). An evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration will be used. An initial test will be conducted and followed by a confirmatory test if needed. The employee shall report to the alcohol testing site as notified by the town. The employee shall follow all instructions given by the alcohol technician.

(B) If the result of a screening test is a breath alcohol concentration (BAC) of less than 0.02, no further testing is authorized. If the initial test result is .02 or greater, a confirmation test will be required. The confirmation test will be performed no sooner than 15 minutes and no later than 30 minutes following the completion of the initial test. In the event the confirmation test indicates a BAC of .020 to .039, the employee shall be removed from duty for 24 hours or until his or her next scheduled on-duty time, whichever is longer. Employees with tests indicating a BAC of .04 or greater are considered to have tested positive, which may result in disciplinary action up to and including termination. All alcohol tests shall be performed while the employee is on duty.

(C) Alcohol testing safeguards for the employee's protection:

- (1) The BAT must obtain employee's photo identification prior to administering the test;
- (2) An individually wrapped mouthpiece will be opened and inserted into the EBT for the employee's test;
- (3) The National Highway Traffic Safety Administration approves the EBT that is used;
- (4) Calibration checks are frequently performed to ensure the EBT is working properly;

- (5) If the screening test indicates a 0.02 or greater, a confirmation test will be administered;
- (6) An air blank will be administered prior to the confirmation test, with a 0.000 reading;
- (7) An individually wrapped mouthpiece will be used for the confirmation test; and
- (8) The BAT has completed the required training course in the correct operation of the EBT.

(Ord. passed 1-1-2015)

§ 36.144 EDUCATIONAL MATERIALS.

(A) The town shall provide educational materials that explain the consequences of violating the town's policies and procedures and information with respect to the use or possession of alcohol or controlled substances. Materials will also be provided concerning the effects of alcohol and controlled substance use on an individual's health, work, and personal life.

(B) Employees may be required to attend an educational meeting(s) to discuss the town's policies and procedures and to review all materials covered by this subchapter. Each employee is required to sign an acknowledgment verifying that he or she has received a copy of these materials.

(Ord. passed 1-1-2015)

§ 36.145 DISCIPLINARY PROCEDURES.

Any employee with a confirmed positive test for drugs, alcohol (.04 BAC or greater), or who has refused to test is considered in violation of this subchapter and will be immediately removed from work.

(A) *First violation.* The employee will be removed from duty with pay for three to five days and may be subject to discharge pending a Town Council hearing. The employee will also be referred to a substance abuse professional. If the employee is not terminated, the employee will be on probation for six months beginning from the date of the failed test and must complete the steps outlined in § 36.146 of this subchapter.

(B) *Second violation.* The employee will be terminated.

(Ord. passed 1-1-2015)

§ 36.146 SUBSTANCE ABUSE EVALUATION, RETURN TO DUTY AND FOLLOW-UP TESTING.

(A) The following steps will be required to be completed if an employee has a violation and it has been determined he or she will be given the opportunity to return to duty:

- (1) Complete an evaluation with a substance abuse professional (SAP);

- (2) Complete any rehabilitation and/or education required by the SAP;
- (3) Be re-evaluated by the SAP and obtain written confirmation of satisfactory completion of all recommendations;
- (4) Complete a return to duty test that is issued with a negative result; and
- (5) As a condition of continued employment, the employee will be required to submit to a minimum of three unannounced follow up tests in the next 12 months after returning to work.

(B) Follow-up testing will be separate from and in addition to the town's reasonable suspicion, post-accident, and random testing procedures. The schedule for follow-up testing shall be unannounced and in accordance with the instructions of the SAP.

(C) The cost of any SAP evaluation, prescribed treatment, return-to-duty test and all follow-up testing shall be borne by the employee.
(Ord. passed 1-1-2015)

§ 36.147 VOLUNTARY DISCLOSURE.

(A) The town encourages personnel to seek help if they feel they have a problem with drug or alcohol misuse before it becomes a matter of discipline with the town. The town will assist any employee who voluntarily discloses to the town that he or she believes that he or she has a drug or alcohol problem in seeking professional help to address their problem.

(B) This voluntary step of self-identification is the responsibility of the individual, and with the exception of certain conditions, will alleviate the requirement for disciplinary action if brought to the town's attention prior to any testing conducted by the town. Upon disclosure of a problem to town personnel, the employee will be removed from all safety-sensitive duties without pay until completion of all steps outlined in § 36.146 of this subchapter. The employee will be responsible for all costs associated with this process.

(C) If the employee makes no commitment to overcoming the problem and achieving a satisfactory level of performance, attendance, or behavior, then termination of employment will result. Voluntary disclosure will be allowed one time during an employee's employment with the town.
(Ord. passed 1-1-2015)

§ 36.148 CONFIDENTIALITY AND RELEASE OF INFORMATION.

(A) Under no circumstances, unless required or authorized by law, will alcohol or drug testing information or results for any employee or applicant be released without written request from the applicable employee.

(B) The town may release information as follows:

(1) Copies of the results of alcohol or drug testing to an identified person provided the employee has provided written consent;

(2) Copies of information requested by any state or local official with regulatory control over the town or any of its employees; and

(3) Legal proceedings to include:

(a) Lawsuits (such as, wrongful discharge action);

(b) Grievances (such as, an arbitration concerning disciplinary action taken by the employer);

(c) Administrative proceedings (such as, an unemployment compensation hearing) brought on by, or on behalf of, an employee and resulting from a positive drug test or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results); and

(d) Criminal or civil actions to the decision maker in the proceeding (such as, the court in the lawsuit).

(C) Employees are entitled, upon written request, to obtain copies of any records pertaining to their use of alcohol or controlled substances, including any records pertaining to his or her alcohol or controlled substance tests.

(Ord. passed 1-1-2015)

§ 36.149 RESPONSIBILITY.

(A) *Employee.* All town employees are responsible for abiding by this procedure as a condition of their employment.

(B) *Management officials and supervisors.* All supervisors and town officials are responsible for being alert to employee conduct that raises a reasonable suspicion that an employee is using or is under the influence of alcohol or controlled substances while on duty or otherwise performing town business.

(C) *Application.* This subchapter is not intended nor should it be construed as a contract between the town and the employee. This subchapter may change at any time at the sole discretion of the town and/or to comply with changes in federal regulations.

(Ord. passed 1-1-2015)

§ 36.150 DEFINITIONS.

(A) *Abbreviations.*

BAT	Breath Alcohol Technician
DER	Designated Employer Representative
DHHS	Department of Health and Human Services
EBT	Evidential Breath Testing Device
MRO	Medical Review Officer
SAMHSA	Substance Abuse and Mental Health Services Administration

(B) *Definitions.* For the purpose of this subchapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADULTERATED SPECIMEN. A specimen that contains a substance that is not expected to be present in human urine or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

ALCOHOL. Intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

ALCOHOL CONCENTRATION (OR CONTENT). Alcohol in a volume of breath (shown as grams of alcohol/210 liters of breath) as indicated by an evidential breath test.

ALCOHOL USE. Consumption of any beverage, mixture or preparation, including medications, containing alcohol.

BREATH ALCOHOL TECHNICIAN (BAT). An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath measurement (EBT) device.

CONFIRMATION TEST. In alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration detected. In controlled substances testing, a second test to identify the presence of a specific drug or metabolite. In order to ensure reliability and accuracy, this test is separate from and uses a different technique and chemical principle from that of the screening test.

CONTROLLED SUBSTANCES. In this policy, the term **DRUGS** and **CONTROLLED SUBSTANCES** are interchangeable and have the same meaning. Unless otherwise provided, these terms refer to marijuana, cocaine, opiates (including codeine, morphine, heroin, hydrocodone, hydromorphone, oxycodone and oxymorphone), amphetamines (including methamphetamines, MDMA (ecstasy), MDA and MDEA (ecstasy metabolites)), phencyclidine (PCP), barbiturates, benzodiazepines, propoxyphene, and methadone.

DESIGNATED EMPLOYER REPRESENTATIVE (DER). An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The **DER** also receives test results and other communications for the employer.

DILUTE SPECIMEN. A specimen with creatinine and specific gravity values that are lower than expected for human urine.

EBT or EVIDENTIAL BREATH TESTING DEVICE. A device approved by the National Highway Traffic Safety Association (NHTSA) for the evidential testing of breath and placed on NHTSA's conforming products list (CPL) of evidential breath measurement devices.

EMPLOYEE. A person who holds a full-time, voluntary or part-time position.

INITIAL DRUG TEST. The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

MEDICAL REVIEW OFFICER (MRO). A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving and reviewing laboratory results generated by an employer's drug testing program. The **MRO** must have knowledge of substance abuse disorders and appropriate medical training to interpret and evaluate an individual's confirmed positive test, medical history and other relevant biomedical information.

PRIMARY SPECIMEN. The urine specimen bottle that is opened and tested first by the laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of validity testing. The **PRIMARY SPECIMEN** is distinguished from the split specimen, defined in this section.

SCREENING TEST (INITIAL TEST). In alcohol testing, a procedure to determine if an employee has a prohibited concentration of alcohol in his or her system. In controlled substance testing, a screen to eliminate negative urine specimens from further consideration.

SPLIT SPECIMEN. A part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

SUBSTANCE ABUSE PROFESSIONAL (SAP). A person who evaluates employees who have violated a company substance abuse testing policy and make recommendations concerning education, treatment, follow-up testing and aftercare. A person qualified to be a **SAP** must have one of the following credentials: a licensed physician (doctor of medicine or osteopathy); a licensed or certified social worker; a licensed or certified psychologist; a licensed or certified employee assistance professional; a state-licensed or certified marriage and family therapist; or a drug and alcohol counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC); or by the International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse (ICRC);

or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC).

SUBSTITUTED SPECIMEN. A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.
(Ord. passed 1-1-2015)

§ 36.151 DRUG TESTING PANEL DESCRIPTION.

<i>Drug Categories and Corresponding Cutoff Concentrations</i>		
<i>Drug Class</i>	<i>Initial Screening Cut-off Limit (ng/ml)</i>	<i>Confirmation Cut-off Limit (ng/ml)</i>
Amphetamines	500	
Amphetamine		250
Methamphetamine		250
Ecstasy (MDMA)		250
Cocaine metabolites	150	100
PCP-Phencyclidine	25	25
Opiate metabolites	2,000	
6-Acetylmorphine	10	10
Morphine		2,000
Codeine		2,000
Marijuana metabolites	50	15
*Cutoff concentrations are subject to change		

(Ord. passed 1-1-2015)