

**PERSONNEL RULES & REGULATIONS  
TOWN OF ESSEX**

**EFFECTIVE MAY 8, 2001**

(Enabling By-law Ratified at 2001 Annual Town Meeting)

*Revised March 18, 2002 – Terms of Holiday Compensation*

*Revised June 16, 2003 – Addition of MIA Recommended Policies  
and revision of Sunday Pay Policy*

*Revised June 20, 2005 – Military Leave Discrimination and Accrual of Vacation Time*

*Revised June 5, 2006 – Allotment of Vacation Time, Emergency Worker Holiday Pay, and  
Emergency Worker Observance of Holidays*

Essex Personnel Board  
Essex Board of Selectmen  
Essex Personnel Officer

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## SECTION ONE: ADMINISTRATION

### 1.1 General Provisions

#### 1.1.1 *Purpose and Authorization*

The purpose of these personnel rules and regulations is to establish a system of administration governing employment within the Town of Essex. This system shall be based on sound principles of personnel management which ensure that the recruitment, selection, retention, and advancement of personnel are based on ability, knowledge, education, and skill under fair and open competition. The personnel system shall be administered without regard to age, color, disability, gender, genetics, military service, national origin, ancestry, race, religion, past participation in discrimination complaints, or sexual orientation.

The Town of Essex Personnel By-law and these rules and regulations are adopted pursuant to the authority granted by M.G.L. Ch. 40 §§ 21A and 104C and M.G.L. Ch. 41 §§ 108A and 108C.

#### 1.1.2 *Application*

All Town departments and positions shall be subject to the provisions of these regulations excluding a) those employees under contract who are legally exempt from personnel by-laws, rules, and regulations (i.e. the Town Administrator, the Chief of Police, and the Town Accountant), b) all elected officials except the Town Clerk, c) employees of the Manchester-Essex Regional School District, and d) employees who are members of collective bargaining units. No vendor, independent contractor, or consultant employed from time to time to provide services shall be entitled to any rights or benefits provided under these personnel rules and regulations.

#### 1.1.3 *Rules of Interpretation*

- a. These rules and regulations are intended to be in accordance with all applicable state and federal laws. In the event of inconsistencies, the applicable state or federal law shall apply.
- b. Words using the singular number may extend and be applied to several persons.

#### 1.1.4 *Definitions*

The following words as used in these rules and regulations shall, unless a different meaning is plainly required by the context or specifically prescribed, have the following meanings:

- a. “appointing authority” shall mean any board or official authorized by General Law or otherwise to appoint employees.
- b. “department head” shall mean the individual in charge of a department’s operations and activities. A department head may be an appointing authority.
- c. “employee” shall mean any person in the service of the Town under any contract of hire, express or implied, oral or written, for salary or wages excluding vendors, independent contractors, or consultants employed from time to time to provide services. All employees covered by these rules and regulations, except those appointed to serve a term of office, shall be considered “at will” employees.
- d. “grievance” shall mean a dispute between an employee and his supervisors arising out of an exercise of administrative discretion by such supervisor or supervisors.
- e. “permanent employee” shall mean any employee whose position or employment requires his or her services in at least 40 weeks of every year.

- f. “permanent employee, full-time” shall mean any permanent employee whose position of employment requires his or her services at least 30 hours per week. All permanent, full-time employees are eligible for fringe benefits from the Town.
- g. “permanent employee, part-time” shall mean any permanent employee whose position of employment requires his or her services during regularly scheduled hours but less than 30 hours per week. Only those permanent, part-time employees working at least 20 hours per week are eligible for fringe benefits from the Town.
- h. “temporary employee” shall mean an employee in the Town’s service holding a non-permanent appointment of a transitory nature.
- i. “Town” shall mean the Town of Essex, Massachusetts.
- j. “work week” shall mean the amount of time in hours ordinarily required by the position of employment in question during a period of seven consecutive days.

## 1.2 Administration of These Rules and Regulations

### *1.2.1 Responsibilities of the Personnel Board*

The Personnel Board shall be responsible for the adoption of rules and regulations in accordance with the Town’s Personnel By-law. With the assistance of the Town’s Personnel Officer, the Personnel Board shall be responsible for the following:

- a. administration and necessary revision of these rules and regulations;
- b. enforcement of these rules and regulations;
- c. establishment and maintenance of a personnel system;
- d. development of a classification and compensation plan;
- e. making all necessary administrative procedures to implement the provisions of these rules and regulations;
- f. other responsibilities set forth in these rules and regulations;
- g. To review and investigate, from time to time of its own motion, the work content and standard rates of compensation of all positions in the town service and to make such other investigation of the conditions of employment of town employees as it deems necessary and proper, and to investigate any complaint relative to such conditions as may be filed with the board by any department head, town employee or other person or organization.
- h. where necessary, and with the support of the appointing authority, determining where exceptions to these Rules & Regulations should be made on a case by case basis.

### *1.2.2 Responsibilities of the Personnel Officer*

The Personnel Officer shall provide administrative and technical support to the Personnel Board. The Personnel Officer Shall:

- a. advise the Personnel Board regarding personnel matters;
- b. maintain a centralized personnel system pursuant to these rules and regulations;
- c. make recommendations to the Personnel Board concerning personnel rules and regulations and administrative procedures;
- d. advise department heads, appointing authorities, and employees regarding personnel policies, decisions, or disciplinary matters as appropriate;
- e. administer these rules and regulations and monitor compliance.

### 1.3 Personnel Records

#### 1.3.1 *Record Keeping Policy*

The Personnel Board shall be responsible for establishing and maintaining a centralized personnel record keeping system in conjunction with the Personnel Officer. The personnel record keeping system shall contain such records as may be required by law and as necessary for effective personnel management. Except as otherwise provided by law, the Personnel Board shall have access to all facts, figures, records and other information relating to the personnel of the Town departments and this information shall be furnished forthwith by any such department or employee whenever so requested by the board.

#### 1.3.2 *Contents of Records*

The Personnel Officer shall maintain an individual personnel file for each employee which may include, but not be limited to, the following: the employment application or resume; a report of all personnel actions reflecting the original appointment; promotion, demotion, reassignment, transfer, separation, or layoff; history of employment and correspondence directly related to the employee's past employment record; reclassification or change in the employee's rate of pay or position title; commendations; records of disciplinary action; training records; performance evaluations; and other records that may be pertinent to the employee's employment record. Records of authorized leaves earned and used shall also be maintained in such files.

All other records required to be maintained separately by law shall be maintained in accordance with such laws.

#### 1.3.3 *Confidentiality and Access to Records*

Personnel records shall be considered confidential and access to records shall, unless circumstances dictate otherwise, be limited to the Board of Selectmen or its agents, the Personnel Board, the Personnel Officer, persons authorized by the Personnel Board to administer the personnel system, and appointing authorities and department heads. Any employee may have access to review his or her personnel file. The employee's review of his or her employment record shall be in the presence of persons authorized by the Personnel Board to administer the personnel system.

#### 1.3.4 *Centralization of Personnel Records*

Records required to be maintained under these rules and regulations shall be centralized under the charge of the Personnel Officer within one year of the enactment of these rules and regulations. The centralized records shall be maintained in a secure location. This location shall be deemed to be the official depository of personnel records. Nothing in these rules and regulations shall prohibit individual departments or employees from maintaining their own records but the centralized depository shall take precedence over other records when completed.

#### 1.3.5 *Records Required Under the Fair Labor Standards Act (FLSA)*

In accordance with the FLSA, all departments shall submit payroll records, records of hours worked, overtime, and any other information requested. Such records shall be submitted to the Town Accountant or the Personnel Officer as necessary in the form prescribed.

*1.3.6 Development of Forms*

The Personnel Officer shall, in consultation with the Personnel Board, develop or revise necessary forms in support of the personnel record keeping system.

*1.3.7 Audit*

The Personnel Board may conduct an audit of the personnel record keeping system at any time.

**1.4 Compliance with Personnel Regulations**

Failure of any appointing authority or department head to comply with the regulations set forth in this document may invalidate any personnel action.

## SECTION TWO: PRE-EMPLOYMENT AND EMPLOYMENT

### 2.1 Recruitment and Appointment

#### 2.1.1 *Recruitment Policy*

The town shall be aggressive in the recruitment of candidates for town positions. Individuals responsible for recruitment and selection will actively seek the most qualified candidate while taking positive steps to ensure compliance with national, state, and local affirmative action and equal employment opportunity policies and guidelines. Such policies and guidelines shall be assembled in a central binder to be made available by the Personnel Officer upon request.

#### 2.1.2 *Eligibility*

Any applicant who meets the criteria as established in the job description shall be eligible for employment with the town.

#### 2.1.3 *Recruitment*

The appointing authorities or the department heads shall be responsible for the recruitment and selection of personnel. The qualifications, classification and salary range for positions shall be established in accordance with the classification and compensation plans.

##### a. Notice of Vacancies

Department heads or appointing authorities shall, upon the identification of a vacancy or on the authorization of a new position, prepare a job vacancy notice, subject to the availability of funds. Department heads shall, within three (3) business days of any resignation, notify the appointing authority of any such resignation. The job vacancy notice shall be based upon the job description and include: the job title, major duties of the position, qualifications, salary, hours of work, a proposed closing date for applications, and application instructions.

The Personnel Officer shall review and approve all job vacancy notices, as to form, prior to commencement of recruitment activities to ensure that the advertised salary conforms with the existing town policies.

##### b. Posting and Advertisement of Job Vacancy Notices

Department heads and the appointing authorities shall ensure that notices of vacant positions be posted for ten (10) working days on bulletin boards in all locations where employees assemble for work. Department heads and appointing authorities are also encouraged to post vacancies on the Town's web site and on the web sites of State and municipal organizations and agencies. Said advertisements and postings shall identify the position and duties and all advertisements and postings shall be kept on

file within the department and be forwarded to the Personnel Officer prior to any appointment.

c. Applications

All candidates applying for employment in the Town shall complete an official employment application form approved by the Personnel Board and return the form to the office of the appointing authority prior to the end of the working day of the closing date specified for the position announcement. Each applicant shall sign the form, and the truth of all statements shall be certified by the applicant's signature. Resumes and cover letters may also be required as necessary. Applications received from former employees shall be subject to the same standards as set forth in this section.

d. Examinations

The appointing authority may require an examination as one part of the selection process. Examinations may be written, oral, practical, physical or any combination thereof and shall be relevant to the requirements of the position.

e. References

A candidate's former employers, supervisors, and other references shall be contacted as part of the selection process. References and other background investigations shall be documented and made part of the applicant's file. All reference checks and investigations shall be completed prior to the offer of employment, in accordance with law.

f. Application Records

The employment application, documentation of reference checks, and related documents submitted by the applicant shall be maintained in the employee's personnel file. Upon appointment of an employee, the appointing authority shall turn over to the Personnel Officer applications of those applicants not selected for employment. Such applications shall be maintained for the period required by law. The appointing authority and the department heads, to the extent possible, shall maintain the confidentiality of all applications.

*2.1.4 Appointments*

Appointments shall be made from the three most qualified candidates, or from the candidate(s) applying if less than three apply, as determined by the appointing authority or the department head if such duty has been delegated to the department head. Any appointment action which is not in compliance with the advertising procedures described may be invalid. All appointments shall be made in writing by the appointing authority. Further, no appointment may be made if copies of all postings and advertisements have not been forwarded to the Personnel Officer. All appointments shall be contingent on the

provisions of section 2.1.5. The written notice of appointment shall include the salary, the starting date, any unique or unusual conditions of employment and appropriate additional information. Copies of the letter of appointment shall be provided to the Personnel Officer and the Personnel Board.

No employment in or transfer to a paid appointed position in the Town's service not subject to the civil service law shall take effect until the same has been approved by the Personnel Officer as being in compliance with the requirements of this plan. If such employment or transfer is in compliance with this plan, the Personnel Officer shall approve the employment.

In the case of an emergency declared by the elected officer or board having supervision of a department, such department may, subject to the limitation of its appropriation and to such reasonable requirements as the board may determine, appoint emergency employees without requirement of prior approval by the Personnel Officer, but shall promptly submit such appointments to the Personnel Officer for review. In the event the Personnel Officer shall not approve the emergency appointment, such employment shall cease as of the date of disapproval.

*2.1.5 Pre-Placement Medical Examination and Drug Testing*

An appointing authority shall make any appointment contingent on an applicant passing a pre-placement medical examination and a drug test prior to finalizing the appointment.

*2.1.6 Failure to Report*

An applicant who accepts an appointment and fails to report to work on the date set by the appointing authority, shall, unless excused by the appointing authority, be deemed to have declined the appointment and the offer of employment shall be withdrawn.

*2.1.7 Equal Employment Opportunity/Affirmative Action*

The Town recognizes the right of individuals to work and advance on the basis of merit, ability, and potential without regard to age, color, disability, gender, genetics, military service, national origin, ancestry, race, religion, past participation in discrimination complaints, or sexual orientation. Non-discrimination and equal opportunity are the policy of the Town in all of its hiring programs and activities.

Toward this end, the Town commits itself to take affirmative measures to ensure equal opportunity in the recruitment and hiring, rate of compensation, and all terms and conditions of employment. The Town is committed to fostering and encouraging a workplace comprised of individuals of diverse ages, colors, abilities, genders, genetics, military service, national origins, ancestries, races, religions, and sexual orientations.

All Town employees are encouraged to take diligent, affirmative steps to ensure equal opportunity and respect for diversity. The policy of the Town is to recruit and hire without regard to age, color, disability, gender, genetics, military service, national origin, ancestry, race, religion, past participation in discrimination complaints, or sexual orientation. Decisions about employment will be made so as to encourage the development of a diverse workforce.

## 2.2 Orientation Period

### 2.2.1 *Orientation Policy*

Performance of all employees must meet acceptable work standards. The orientation period shall be utilized to help new and promoted employees achieve effective performance level. To ensure that new employees are aware of their duties and responsibilities, department heads shall inform new employees of their rights, responsibilities, duties, and obligations. The department head shall provide the employee with a copy of these personnel rules and regulations. Also, the Town shall supply the new employee with a comprehensive employment package containing information on all benefits and all payroll deductions required or possible by these Rules & Regulations or any other sources.

### 2.2.2 *Orientation*

The appropriate department head shall conduct periodic orientation sessions for the purpose of providing new employees with information on benefits, rights and obligations as an employee of the town. Department heads shall provide on-site training and orientation regarding specific rules, regulations, policies and procedures of the employee's assigned department including the safety policies and procedures.

### 2.2.3 *Probation Period*

All newly appointed and promoted employees shall be required to successfully complete a probation period to begin immediately upon the employee's starting date or promotion date and to continue for a ninety (90) calendar day period which may be extended by the number of scheduled work days the employee may be absent from work. The probation period shall be utilized to help new and promoted employees achieve effective performance standards. The probation period shall be used by the appointing authority to observe and evaluate the employee's attitude, conduct and work habits. Upon expiration of the probation period, the appointing authority shall notify the Personnel Officer and Personnel Board in writing that:

- a. the employee's performance meets satisfactory standards and the individual will be retained in the position; or
- b. the employee's performance, due to extenuating circumstances, requires additional observation and that the probation period will be extended an additional ninety (90) calendar days; or
- c. the employee will be discharged – in which case the employee may not appeal the removal.

#### 2.2.4 *Department Head Responsibilities*

During the probation period of any employee, department heads shall at reasonable intervals discuss work performance with the probationary employee. The department head shall be responsible for documenting these discussions and copies of such documentation shall be submitted to the Personnel Officer to be filed in the employee's personnel file.

### 2.3 Transfer, Promotion, Demotion, Reinstatement and Resignation

#### 2.3.1 *Transfer*

Transfer of an employee from one position to another without significant change in level may be affected if the employee has been in the original position for one year and meets the qualifications for the particular position.

#### 2.3.2 *Promotion*

Vacancies in positions above the lowest rank in any department in the Town's service may be filled by the promotion of employees in the Town's service. Promotions must involve a definite increase in duties and responsibilities and shall not be made merely for the purpose of affecting an increase in compensation. Any promotions are subject to the availability of funds.

#### 2.3.3 *Demotion*

An employee may be demoted to a position of lower grade for which he or she is qualified for any of the following reasons:

- a. When an employee would otherwise be laid off resulting from the abolition of a position; the employee's position is reclassified to a higher grade for which the employee is not qualified; lack of work; disciplinary action; lack of funds; or because of the return to work from authorized leave of another employee to such a position in accordance with the rules of leave.
- b. When an employee does not possess the necessary qualifications to render satisfactory service in the position.
- c. When an employee voluntarily requests such demotion.

All demotions must receive the approval of the appointing authority and all department heads concerned. The employee must be notified in writing of his or her demotion and of the reason for such action. Within ten (10) working days of such notice he or she may request a public hearing or executive session before the Personnel Board who must hold such hearing not less than ten (10) working days or more than twenty (20) working days after such a request. The Personnel Board may support the action or may modify it.

*2.3.4 Working at a Higher Rated Position*

An employee who is required by the appointing authority to substitute for a higher classification for more than five (5) consecutive working days (except days filling in for another employee on vacation) shall be compensated for same at the rate set forth for the higher classification beginning with the sixth (6th) working day, and ending at the conclusion of the period of substitution. For the purposes of this provision, a day shall be the hours normally worked at the higher rated position each day.

*2.3.5 Resignation*

Any employee who resigns from town employment should provide notice of at least ten (10) working days to the department head. Department heads shall within three (3) business days of any resignation notify the appointing authority of any such resignation, who shall in turn notify the Personnel Officer and Personnel Board.

## SECTION THREE: COMPENSATION AND CLASSIFICATION

### 3.1 Classification and Compensation Plan

#### 3.1.1 *Policy*

The Town may establish and provide a uniform system for classifying all positions and to establish proper relationships between positions based on the level of responsibilities assumed and the minimum qualifications required to perform the job so that the same schedule of compensation may be applied to each class ensuring equitable pay. The compensation of elected officers of the town shall be established annually by vote of the town meeting.

#### 3.1.2 *Classification Plan Administration*

The Personnel Board shall have responsibility for the administration of the classification plan and shall be authorized to:

- a. complete studies of new positions and make allocations to existing classes, establish a new class of positions, or delete a class of positions;
- b. provide for studies of existing positions when there has been a substantial change in the duties and responsibilities which justify consideration of possible reclassification;
- c. conduct periodic studies to insure the classification plan remains uniform and current; and
- d. develop procedures to determine the proper classification of each position and classify positions.

#### 3.1.3 *Classification of New Positions*

Appointing authorities proposing the creation of new positions shall provide the Personnel Board with a description of the duties, skills, knowledge, abilities, and other work performance requirements of a proposed position in sufficient detail to enable the Personnel Board to appropriately classify the position.

#### 3.1.4 *Reclassification of Positions and Periodic Reviews*

Positions may not be reclassified without a review and approval of the Personnel Board. The board shall review all positions subject to the classification plan in accordance with proper personnel practices.

#### 3.1.5 *Starting Rates for New Appointments*

Persons newly appointed to positions shall normally be paid at the minimum rate of any salary range for a position. An appointing authority may compensate a new employee at a greater rate than the minimum rate if the employee's experience and market conditions warrant.

### *3.1.6 Step Rate Increases*

Every employee in a position for which step rates are provided shall be automatically granted an increase in compensation to the next higher step rate within the compensation grade but no step rate increases shall be granted before one year of service has been completed in that step.

### *3.1.7 Promotion*

An employee who receives a promotion shall be compensated at the rate of pay or step rate that is closest to but greater than the employee's current rate of pay or at a rate of pay or step rate that the appointing authority, subject to approval of the Personnel Board, believes the employee's qualifications and performance warrants.

### *3.1.8 Classification and Compensation Plans*

A classification and compensation plan may be developed by the Personnel Board. At a minimum, the Personnel Board shall develop and update a Wage & Salary Scale on an annual basis. The Wage & Salary Scale is attached to and made a part of this section without inclusion herein and is subject to approval by Annual Town Meeting pursuant to the Personnel By-law.

### *3.1.9 Implementation of Compensation Plan*

The compensation of Town employees shall be voted by the Town Meeting annually on the recommendation of the Personnel Board via the Board's updated Wage & Salary Scale pursuant to the Personnel By-law.

### *3.1.10 Non-Union Employees and Retroactive Pay*

Non-Union Employees shall be eligible to receive retroactive compensation.

### *3.1.11 Work Week*

Minimum work weeks vary depending on the needs of each department or appointing authority. Department heads and appointing authorities are encouraged to standardize weekly working hours regardless of the total hours in an employee's work week.

## 3.2 Overtime

### *3.2.1 Policy*

The Town shall pay overtime in conformance with the Fair Labor Standards Act (FLSA). Department heads shall be responsible for the control and authorization of overtime. Overtime shall be authorized at the discretion of a department head or appointing authority in accordance with any appropriations. Compensatory time for employees not exempt from FLSA (non-exempt employees) will not be allowed. Employees exempt from FLSA shall be entitled to flex-time in accordance with Section 3.2.3 below.

### 3.2.2 *Overtime Payment*

All non-exempt, full-time employees required to work in excess of forty (40) hours per week shall be paid overtime at the rate of one and one-half times the employee's hourly rate of pay.

All paid hours within a work week (i.e. paid holidays, paid vacation, emergency hours and work hours) shall be counted towards the accumulation of 40 hours for purposes of overtime.

### 3.2.3 *Flex-Time for Exempt Employees Under FLSA*

Flex-time, defined as time spent working in excess of the normal working day used later to reduce the time spent working on a subsequent working day, may be used no later than five working days from the day accrued. Flex-time accrual shall be tracked by the applicable employee and shall only be allowed with the consent of the employee's department head or appointing authority.

### 3.3 Department Budgets

Each department head shall make provisions in the annual budget for pay adjustments anticipated during the ensuing year. No adjustments shall be effective or paid unless, or until, sufficient funds are available.

### 3.4 Performance Review

Each employee may be subject to an annual performance review based on criteria as established in the job description. This review (if any) will be carried out by the department head or the appointing authority.

## SECTION FOUR: STANDARDS OF CONDUCT

### 4.1 Standards of Conduct

#### 4.1.1 *Policy*

All persons employed by the Town hold a position of public trust and as a result, Town employees must present themselves in a professional and appropriate manner. Employees shall avoid any action which might create the impression of using public office for private gain, giving preferential treatment to any person, or losing impartiality in conducting town business. Employees are expected to adhere to conduct established by state law. All employees may be subject to disciplinary action for acting in a manner that is not consistent with the standards of conduct.

### 4.2 Smoking Policy

No smoking is allowed in municipal buildings.

### 4.3 Political Activity Policy

Participation in political activities is to be carried on outside of the normal working hours. No political activities or solicitations will be conducted on Town-owned property by an employee, during work hours or in work areas. Use of Town-owned assets in support of political activities or solicitations is prohibited.

### 4.4 Conflict of Interest

#### 4.4.1 *Outside Business and Financial Interests*

In so far as this section is consistent with provisions of General Law, chapter 268A, no employee shall maintain an outside business or financial interest, or engage in any outside business or financial activity which interferes with their ability to fully perform job responsibilities. Conduct of an employee shall be in accordance with the laws of the Commonwealth.

#### 4.4.2 *Concurrent Service*

No person employed by a department/office of the Town shall, at the same time, serve as a member, paid or unpaid, of the board governing said department/office.

### 4.5 Gratuities

In so far as this section is consistent with the provisions of General Law, chapter 268A, no individual employee of the Town may accept any form of gifts, gratuities, special favors or preferential treatment.

4.6 Telephone Policy

Personal out-going or in-coming personal telephone calls shall be limited to an absolute minimum.

4.7 Attendance/Office Closure

Any employee whose illness or disability would result in the temporary closure of a Town office shall immediately report such illness or disability to the Office of the Board of Selectmen.

4.8 Safety Policy

Employees shall be required to wear and use safety equipment at all times while undertaking the work for which the equipment is furnished. In the case of Town-owned motor vehicle operation or employee motor vehicle operation for work purposes, seat belts shall be worn by all vehicle occupants at all times. There shall be no exceptions.

Department heads and supervisors shall: assume full responsibility for the safety of working areas; recommend correction of deficiencies noted in work procedures, facilities, safety clothing or equipment or attitudes of employees; insure the availability and utilization of appropriate protective clothing and equipment; observe working conditions and field procedures to prevent possible safety hazards; and investigate and report all accidents promptly.

Each employee shall: observe all safety rules, operating procedures and safety practices; use personal protective equipment; report unsafe areas, conditions, or other safety problems; *and* report all accidents promptly to the appropriate supervisor.

Employees, including supervisors, violating safety rules, practices and policies may be subject to disciplinary action.

4.9 Examples of Prohibited Activities

Disciplinary action may be initiated for failure of an employee to fulfill responsibilities as an employee including the standards set forth above and outlined below. The protocol for handling disciplinary action may be prescribed in existing or future collective bargaining agreements but circumstances warranting disciplinary action are not protected by such agreements.

Some examples of circumstances which are to be considered sufficient cause for disciplinary action shall include, but are not limited to the following:

- a. Incompetence or inefficiency in performing assigned duties;

- b. Refusal to perform a reasonable amount of work, violation of any reasonable official order, or failure to carry out any lawful and reasonable directions made by a proper supervisor;
- c. Habitual tardiness or absence from duty;
- d. Falsification of time sheets;
- e. Use or possession of illegal substances or alcohol while on duty;
- f. Misuse or unauthorized use of town property;
- g. Fraud in securing appointment;
- h. Disclosure of confidential information;
- i. Abuse of sick leave or absence without leave as specified by these Rules & Regulations;
- j. Violation of safety rules, practices and policies;
- k. Engaging in sexual or other harassment;
- l. Violation of these personnel rules and regulations;
- m. Any situation or instance of such seriousness that disciplinary action is warranted;
- n. Carrying an unauthorized weapon;
- o. Fighting or other physical abuse;
- p. Flagrantly discourteous service;
- q. Stealing and other criminal and civil violations of the law.

#### 4.10 Americans with Disabilities Act

It is the policy of the Town to comply with requirements of the regulations contained in the U.S. Americans with Disabilities Act of 1990. This policy applies to all employees of the Town.

The Town will not discriminate against people with disabilities in any employment practices or in terms, conditions or privileges of employment, including, but not limited to: application, testing, hiring, assignment, evaluation, disciplinary action, training, promotion, medical examination, layoff/recall, termination, compensation, leaves or benefits.

The Town has and will continue to establish occupational qualifications for each position, including the education, skills, and work experience required, and the physical, mental and environmental standards necessary for job performance, health, and safety. Such standards are job-related and consistent with business necessity.

The Town will provide reasonable accommodation to the known physical or mental limitations of a qualified applicant or employee unless such

accommodation will impose undue hardship on the Town. The Town will provide reasonable accommodation:

- To ensure equal employment opportunity in the application process
- To enable a qualified individual with a disability to perform the essential functions of the job
- To enable an employee with a disability to enjoy equal benefits and privileges of employment.
- The Town need not provide reasonable accommodation for an individual who is otherwise not qualified for a position.
- The duty to provide reasonable accommodation is on-going, and may arise any time an employee's job changes.
- It is the obligation of the individual with the disability to request the accommodation.
- If the cost of providing the accommodation is determined to meet the criteria of undue hardship on the Town, the affected individual will be offered the opportunity to provide the accommodation or partial accommodation him or herself.

Some examples of reasonable accommodation include, but are not limited to, the following:

- Making facilities readily accessible and usable;
- Restructuring a job by reallocating or distributing marginal job functions;
- Altering when or how an essential job function is performed;
- Creating part-time or flexible schedules;
- Obtaining or modifying equipment or devices;
- Providing qualified readers or interpreters;
- Permitting the use of accrued or unpaid leave for treatment; and,
- Providing reserved parking.

When attempting to identify what is a reasonable accommodation, appointing authorities and department managers should do the following:

- a. Examine the particular job involved, determining its purpose and its essential functions.

- b. Consult with the individual with the disability to find out is or her specific physical or mental abilities and limitations.
- c. In consultation with the individual, identify potential accommodations and assess how effective each would be.
- d. If an individual requests an accommodation which the appointing authority or department head considers to be unnecessary, the department head may ask for written documentation from a physician or other professional with knowledge of the individual's functional limitations.
- e. The determination that any reasonable accommodation represents an undue hardship will be made by the Personnel Board or its designee.

No pre-employment inquiries may be made about an applicant's disability. This prohibition does not prevent an employer from obtaining necessary information regarding an applicant's qualifications, including medical information necessary to assess such qualifications and to ensure health and safety on the job. Before making a job offer, the Town may ask questions about an applicant's ability to perform specific job functions and may make a job offer that is conditioned on satisfactory results of a post-offer medical examination or inquiry. The Town may not make inquiries about specific disabilities. Questions which may not be asked during a pre-employment interview include (but are not limited to):

- Have you ever had, or been treated for any of the following conditions?
- Please list any conditions or diseases for which you have been treated in the past three years.
- Have you ever been hospitalized? If so, for what conditions?
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Have you ever been treated for any mental condition?
- How many days were you absent from work because of illness last year?
- Do you have any disabilities or impairments which may affect your performance in the position?
- Are you taking any prescription drugs?
- Have you ever been treated for drug addiction or alcoholism?
- Have you ever filed a workers' compensation claim?

In addition, these questions may not be asked of a previous employer or other reference provider for an applicant during reference checks. In addition, the hiring manager may not ask the reference provider about the applicant's:

- Disability;
- Illness; or,
- Workers' compensation history.

Even if the applicant is qualified to perform the job, the Town may deny employment if such employment would pose a direct threat to the health and safety of the individual or others, if such threat cannot be eliminated through reasonable accommodation. Such determination must be made by the Personnel Board or its designee after careful review of the circumstances.

An employee who is an alcoholic is considered to be a person with a disability under the terms of the ADA. However, the Town may discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that he or she is "not qualified" for the position.

Persons addicted to drugs, but who are no longer using drugs illegally and who are receiving treatment for drug addiction, or who have been rehabilitated successfully, are protected from discrimination by the ADA. However, the Town will discharge or deny employment to current illegal users of drugs, in accordance with policies established herein. The Town may ask questions regarding the use of alcohol or illegal use of drugs. However, the employer may not ask whether the applicant is a drug addict or alcoholic, or whether he/she has ever been in a drug or alcohol rehabilitation program.

Violation of this policy will lead to appropriate disciplinary action up to and including termination from Town Service.

#### 4.11 Commercial Driver's License (CDL) Alcohol and Drug Testing Policy

The following is the policy of the Town regarding testing associated with alcohol misuse and drug use by those employees operating motor vehicles which require a Commercial Drivers' License. The terms alcohol misuse, drug use, and substance

abuse are used interchangeably herein. Definitions for specific terms used within this policy can be found in the definitions section under General Provisions.

This policy applies to all employees subject to the regulations of the Federal Highway Administration, Department of Transportation Alcohol and Drug ruling that includes every person who operates a commercial motor vehicle in interstate or intrastate commerce, and is subject to the commercial driver's license requirements of Part 383.

#### 4.11.1 *Safety-Sensitive Functions*

Regulations are based on the delineation of safety-sensitive functions that are defined as including any of the following circumstances and or activities:

- a. At a carrier or shipper plant, terminal or facility, or other property, or on any public property, waiting to be dispatched, unless the driver is relieved from duty by the employer;
- b. Inspecting service brakes, including trailer brake connections, parking (hand) brakes, steering mechanism, lighting devices and reflectors, tires, horn, windshield wipers, rear vision mirrors, coupling devices, fire extinguishers, spare fuses, or warning devices for stooped vehicles;
- c. Inspecting, servicing, or conditioning any CMV in operation;
- d. At the driving controls of a CMV in operation;
- e. While in or upon an CMV, except when resting in a sleeper berth;
- f. Supervising or assisting in loading or unloading a vehicle;
- g. Attending a vehicle being loaded or unloaded;
- h. While in readiness to operate the vehicle;
- i. When giving or receiving receipts for shipments loaded or unloaded;
- j. Performing the driver requirements of sections 392.40 and 392.41 of Part 392, Driving Motor Vehicles, relating to accidents;
- k. Repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

#### 4.11.2 *Alcohol Prohibitions*

The following prohibitions are established by the DOT relative to alcohol use for performance of safety-sensitive functions:

1. A driver may not report for duty or stay on duty:
  - a. With a blood alcohol concentration of 0.02 or greater
  - b. If in possession of alcohol, unless it is being transported as cargo (this includes any product, medication, or food containing alcohol regardless of the alcohol content)
  - c. If using alcohol
  - d. Within four hours of using alcohol
2. A driver who has an accident may not use alcohol until post-accident testing is done or for a period of eight hours, whichever comes first
3. Drivers cannot refuse to submit to alcohol testing
4. Employers who know about any of the above acts cannot permit the driver to perform a safety-sensitive function.

#### 4.11.3 *Drug Prohibitions*

The following prohibitions are established by the DOT relative to drug use for performance of safety-sensitive functions:

1. The Federal Highway Administration bans the use of controlled substances by drivers.
2. Drivers may not report for duty or stay on safety-sensitive duty while using any controlled substance. There may be an exception to this ruling if a physician has prescribed a substance and has advised you that it does not interfere with your ability to operate a vehicle in a safe manner.
3. Drivers may not report for duty or stay on duty if they have tested positive for a controlled substance.
4. Employers who know about either of the above acts cannot permit the driver to perform a safety-sensitive function.
5. Employers may require drivers to report the use of any therapeutic drugs.

#### 4.11.4 *Alcohol and Drug Testing*

Testing to determine the presence of alcohol and/or drugs can and may be performed in any of the following situations:

1. Pre-Employment: Before a new hire can perform any safety-sensitive duties or when a person transfers into a safety-sensitive function from elsewhere in the municipality (on a case-by-case basis, an applicant may be denied being hired

for a Driver's position who has had a positive drug and/or alcohol test within two years of his or her application).

2. Post-Accident: Following an accident where a life was lost or the driver was cited for a moving traffic violation. Post-accident alcohol testing shall be done within two hours of the accident, or not at all. Post-accident drug testing shall be done within 32 hours, or not at all.
3. Random: Unannounced random testing is required on a certain percentage of drivers each year. The random selection process used shall ensure that each driver has an equal chance of being tested each time selections are made. Drivers are randomly selected from the pool. Random testing for alcohol shall be completed just before, during or immediately after performing safety-sensitive work. Random testing for drugs may be done at any time you are at work. Once notified that you have been selected for random testing, you must proceed immediately to the test site. Random testing is done as follows:
  - a. 25% of all drivers shall be randomly tested for alcohol during the first year of the testing program. The number to be randomly tested in following years depend on the percentage of positive tests for the entire industry.
  - b. 50% of drivers shall be randomly tested for controlled substances during each year of the testing program.
4. Reasonable suspicion: If your supervisor has reason to believe that your behavior or appearance may indicate alcohol or drug abuse, he or she may require you to be tested. Testing for reasonable suspicion is based on:
  - a. The observances of a trained supervisor
  - b. Specific, clearly stated observations concerning the driver's appearance, behavior, speech or body odor.

Observations made for alcohol testing shall be made just before, during or just after the performance of safety-sensitive function. The supervisor who makes the observation and determines that reasonable suspicion testing should be done may not conduct the alcohol test on the driver. Alcohol testing for reasonable suspicion must be done within two hours of the observation. Tests that cannot be done within eight hours of the observation shall not be done.

You cannot report for duty or stay on the job while under the influence of alcohol or while impaired by alcohol as shown by behavior, speech or performance that indicates alcohol misuse. You will not be allowed to continue to perform safety-sensitive duties until your alcohol concentration is less than 0.02 or 24 hours have passed from the time of initial observation. Action regarding alcohol misuse cannot be taken against a driver unless an alcohol test was administered or was refused by the driver.

5. Return to duty and follow-up: Return to duty testing is required for drivers who violate prohibitions and are returning to work. In order to return to work, an alcohol concentration of less than 0.02 or a negative drug test is required. Follow-up testing is required when a driver returns to a safety-sensitive function. A minimum of six tests shall be performed during the first year back in a safety-sensitive position. However, follow-up testing may continue for up to five years.

As part of the alcohol and drug rule and this policy, you must submit to alcohol and drug testing as required. If you refuse to be tested, you cannot continue on the job. Refusal to be tested is considered to be any time you either fail to provide enough breath for alcohol testing or enough urine for controlled substance testing without a valid medical reason after being notified of the testing requirements, or if you clearly obstruct the testing process.

All alcohol testing is done by a certified Breath Alcohol Technician (BAT) in a private setting where no one but you and the BAT can see or hear the test results. An evidential breath testing (EBT) device approved by the NHSA must be used. The BAT will ask for identification. You may ask the BAT for identification as well.

To complete the test you must blow forcefully into the mouthpiece of the testing device. The BAT must show you the test result on the testing device. A screening test is done first. If the reading is less than 0.02, you will sign the certificate and fill in the date on the form. The test will be reported as negative to the employer.

If the reading is 0.02 or greater, a confirmation test must be done (after 15 minutes but within 20 minutes of the first test). You will be asked not to eat,

drink, belch or put anything in your mouth. These steps prevent the buildup of mouth alcohol which could lead to an artificially high result. If the screening and confirmation test results are not the same, the confirmation test result is used.

Drug testing is done by analyzing a urine sample, which is collected in a private location. Urine specimens are divided into two containers by the collection site person in your presence. These two samples, called 'primary' and 'split,' are sent to a testing laboratory certified by the Department of Health and Human Services (DHHS).

At the laboratory, a screening test is performed on the primary sample. If this test is positive for drugs, a confirmation test is required. The confirmation test must use a specialized procedure called gas chromatography/mass spectrometry, to ensure that over-the-counter drugs are not reported as positive. If the first test is positive, the Medical Review Officer (MRO) will notify you to find out if there is a medical reason for the drug use. If you can document why the substance is being taken and the MRO finds it is a legitimate medical use, the test may be reported as negative to the employer.

After being notified that the first test was positive, you have 72 hours to request a test of the split specimen. If you make this request, the split specimen is sent to another DHHS-certified lab for the test. If you do not contact the MRO within 72 hours, but can prove to the MRO that you had a legitimate reason for not doing so, the MRO can order the split specimen tested. Removal from safety-sensitive duty as required by the DOT following a positive drug test is not delayed to await the result of the split specimen test.

If the analysis of the split sample does not confirm the presence of a drug, the MRO cancels the test and reports this to the DOT, to the employer, and to you.

#### 4.11.5 *Violation of Policy*

Consequences for violating the alcohol or drug prohibitions are as follows:

1. Alcohol violations
  - a. Removal from safety-sensitive functions
  - b. Prohibition from return to safety-sensitive duties until an evaluation has been done and any recommended treatment is completed

- c. Employees with an alcohol concentration of 0.02 or greater but less than 0.04 are prohibited from returning to safety-sensitive duties for at least 24 hours.
  - d. Other appropriate discipline up to and including termination
2. Drug violations
- a. Removal from safety-sensitive functions
  - b. Prohibition from return to safety-sensitive duties until an evaluation had been done, recommended therapy is completed, and a verified negative drug test is produced.
  - c. Other appropriate discipline up to and including termination

The alcohol and drug rule requires that the Town, as the employer, provide you with an opportunity for treatment. The ruling does not, however, require the Town to hold a job open for you or to pay for rehabilitation. If you violate an alcohol or drug prohibition you must be evaluated by a substance abuse professional to determine what help is needed. If you would like further information on alcohol or drug issues, you may do so on a confidential basis through our Employee Assistance Program. The following person should be contacted for assistance with drug and/or alcohol problems:

The Personnel Officer, Town Hall, (978) 768-6531

#### 4.12 Drug Free Workplace

It is the policy of the Town to provide employees with a working environment that is free of the problems associated with the use and abuse of controlled substances. The use of controlled substances is inconsistent with the behavior expected of employees and subjects the Town to unacceptable risk of workplace accidents or other failures that would undermine the Town's ability to operate effectively and efficiently

The non-prescriptive use, sale, possession, distribution, dispensation, manufacture, or transfer of controlled substances on Town property, or at any other worksite where employees may be assigned, or elsewhere during work hours, is strictly prohibited.

Further prohibited is the use, sale, possession, distribution, dispensation, manufacture, or transfer of controlled substances on non-working time to the

extent that such use impairs an employee's ability to perform his/her job or where such use, sale, possession, distribution, manufacture or transfer affects the reputation of the Town to the general public or otherwise threatens its integrity.

Employees who are convicted of controlled substance-related violations in the workplace under state or federal law, or who plead guilty or nolo contendere to such charges, must inform their department head or appointing authority within 5 days of such conviction or plea. Department heads or appointing authorities shall notify the Personnel Director immediately.

Employees who are convicted, or who plead guilty or nolo contendere to such drug-related violations may be required to successfully complete a drug abuse or similar program as a condition of continued employment or re-employment.

All employees must sign a statement indicating that they have been informed of the rules and requirements of the Drug Free Workplace Act.

The Town recognizes that drug dependency is an illness and a major health problem. The Town's objective is to prevent conviction for drug related offenses prior to their occurrence. Employees who wish to obtain help in dealing with such problems are encouraged to contact the Personnel Director, Public Health Nurse, or their health insurance provider for assistance. Conscientious efforts to seek such help will not jeopardize an employee's job, and will not be noted in any personnel record.

Violations of any and all provisions of this policy may result in disciplinary action.

#### 4.13 'Whistleblower' Policy

This policy is adopted pursuant to and in accordance with the Massachusetts Whistleblower Protection Act, 1992, Massachusetts General Laws, Chapter 149 (the "Act") and is designed specifically to protect such conduct and provide such remedies as are set forth in the Act.

It is the policy of the Town:

- a. To encourage the reporting by its employees of improper governmental action taken by Town officers or employees; and

- b. To protect Town employees who have reported improper government actions in accordance with this policy.

The Town encourages the reporting of improper governmental action taken by any Town officers or employees, and the reporting of retaliatory actions for such reporting. The Town encourages initial reporting to the Town to allow for expeditious resolution of all such matters and to minimize any adverse impacts of the improper action. This policy states the city's/town's procedures for reporting improper governmental action and for protecting employees against retaliatory actions.

Town employees who obtain knowledge of facts demonstrating improper governmental actions should raise the issue first with their supervisor, the Town Administrator/designee, or the appropriate governmental agency responsible for investigating such improper action. If requested by the supervisor, the Town Administrator/designee, the employee shall submit a written report to the town stating in detail the basis for the employee's belief that an improper governmental action has occurred.

In the case of an emergency, the employee may report the improper governmental action directly to a person or entity who is not the person's supervisor, the Town Administrator/designee, or other government agency. In all other cases, the employee must first follow the reporting procedure outlined above.

An employee is not required to comply with the above procedure if he/she:

- a. is reasonably certain that the activity, policy or practice is known to one or more supervisors of the employer and the situation is emergency in nature;
- b. reasonably fears physical harm as a result of the disclosure provided; or
- e. makes the disclosure to a public body for the purpose of providing evidence of what the employee reasonably believes to be a crime.

Town employees who fail to make a good-faith attempt to follow this policy in reporting improper governmental action shall not receive the protections provided under this policy or the Act. Employees who make false reports may be subject to the disciplinary procedures in the town personnel code.

The supervisor or the Town Administrator/designee, as the case may be, shall take prompt action to assist the town in properly investigating the report of improper governmental action. Town officers, administrators, supervisors, and employees involved in the investigation shall keep the identity of reporting employees confidential to the extent possible under the law, unless the employee authorizes the disclosure of his or her identity in writing. After an investigation has been completed, the employee reporting the improper governmental action shall be advised of the summary of the results of the investigation, except personnel actions taken as a result of the investigation may be kept confidential.

Town officials, administrators, supervisors and employees are prohibited from taking retaliatory action against the town employee because he or she has in good faith reported an improper governmental action in accordance with this policy.

*Employees who believe that they have been retaliated against for reporting an improper governmental action should advise their supervisor or the Town Administrator/designee. Town officials, administrators and supervisors shall take appropriate action to investigate and address complaints of retaliation. If the supervisor or the Town Administrator/designee, as the case may be, does not satisfactorily resolve an employee's complaint that he or she has been retaliated against in violation of this policy, the employee, in accordance with the Act, may, within two years, institute a civil action in the superior court. Any party to said action shall be entitled to claim a jury trial. All remedies available in common law tort actions shall be made available to prevailing plaintiffs. These remedies are in addition to any legal or equitable relief provided herein.*

The Town Administrator/designee is responsible for implementing the town's policies and procedures: (1) for reporting improper governmental actions, and (2) for protecting employees against retaliatory actions. This includes insuring that this policy is permanently posted where all employees will have reasonable access to it and that this policy is made available to any employee upon request. The town will, to the extent it considers practical, provide training and education on the whistleblower policy. Town Administrators and supervisors are responsible for insuring that this policy is fully implemented within their areas of responsibility. Violations of this policy may result in appropriate disciplinary action, up to and including dismissal.

## **SECTION FIVE: DISCIPLINARY AND GRIEVANCE PROCEDURES**

### **5.1 Grievance Procedure**

#### **5.1.1 *Policy***

The appointing authority, department heads and supervisors shall be responsible for enforcing standards of conduct, rules and regulations, and performance standards. Failure to comply with any of the above may result in disciplinary action. The type of disciplinary action imposed is at the discretion of the appointing authority and department heads and is dependent upon the nature of disciplinary violation. Disciplinary action shall include only the following: oral warning, oral reprimand, written reprimand, suspension, and discharge. Department heads shall be responsible for preparing written documentation of disciplinary action. All written documentation shall be provided to the appointing authority, the Personnel Officer, the Personnel Board and the employee and shall be filed in the employee's personnel file in the centralized personnel record keeping system.

#### **5.1.2 *Coverage***

All employees that have successfully completed the probationary period as required by these regulations.

#### **5.1.3 *Disciplinary Action***

Department heads and appointing authorities are encouraged to discuss serious disciplinary problems and proposed disciplinary actions with the Personnel Officer to insure that procedures are followed and that contemplated actions are warranted and consistent with practices in the town.

#### **5.1.4 *Disciplinary Action Procedure***

##### **a. Oral Warning**

A department head or supervisor may issue an oral warning to the employee. The oral warning shall be presented in a manner minimizing embarrassment to the employee. The department head or supervisor shall orally communicate to the employee the nature of the deficiency and offer assistance in correcting the deficiency.

##### **b. Oral Reprimand**

Any oral warning which does not correct the deficiency may result in an oral reprimand which shall be noted in the employee's personnel file. The oral reprimand shall include: the charge; the specific behavior and dates of the behavior, as appropriate; the warning that continuance of the behavior will result in additional disciplinary action; an offer of assistance in correcting the behavior; circumstances affecting the severity of the disciplinary action and any right of appeal.

c. Written Reprimand

Any oral reprimand which does not correct the deficiency may result in a written reprimand which may be issued by either a department head or an appointing authority. The written reprimand shall include: the charge; the specific behavior and dates of the behavior, as appropriate; the warning that continuance of the behavior will result in severe disciplinary action; an offer of assistance in correcting the behavior; circumstances affecting the severity of the disciplinary action and any right of appeal. A copy of the written reprimand shall be placed in the employee's personnel file.

d. Suspension

A department head or an appointing authority may suspend an employee without pay for a period not to exceed ten (10) consecutive working days per incident. Suspension may be in lieu of oral reprimand or written reprimand, and may be effective immediately. On or before the date of suspension a department head or appointing authority shall furnish the employee with a written statement setting forth the reasons for the suspension, the effective date of the suspension and the date the employee shall return to work. The notice of suspension shall include: the charge, the specific behavior and dates of the behavior, as appropriate; the warning that continuance of the behavior will result in severe disciplinary action, including discharge; an offer of assistance in correcting the behavior; circumstances affecting the severity of the disciplinary action; and any right of appeal. A copy of the written reprimand shall be placed in the employee's personnel file.

e. Termination

5.1.5 *Grievance Procedure*

Grievances shall relate to improper application of the Town of Essex's Personnel Rules and Regulations and shall be resolved in the following manner:

a. First Step

An aggrieved employee shall discuss any matter of dispute with an immediate supervisor in a mutual effort to resolve any problem or misunderstanding. Upon failing to resolve any grievance in an informal manner an aggrieved employee may present a grievance in writing to the department head within ten (10) days from the time the employee has knowledge or reasonably should have had knowledge of the occurrence which gave rise to the grievance. The written grievance shall contain the following information: the section of the regulation upon which the grievance is based; the occurrence(s) being grieved; applicable dates and time; any pertinent information relative to the grievance; and an indication of the relief that is desired. The department head within five (5) working days of receipt of the grievance shall provide an answer in writing

to the aggrieved employee. If the immediate supervisor and the department head are the same, the employee may follow procedures set forth in subsection (b) below.

b. Second Step

If the grievance has not been resolved as provided in (a) above, the aggrieved employee may within five (5) working days after receipt of the written answer from the department head or within ten (10) working days after presentation of the grievance to the department head, present the grievance in writing to the appointing authority. If the appointing authority and the department head are the same, then the employee shall immediately follow procedures set forth in sub section (c) below. The appointing authority shall answer the grievance in writing within ten (10) days after its receipt.

c. Third Step

If the grievance has not been resolved as provided in (b) above, the aggrieved employee may, within ten (10) working days after receipt of the written answer from the appointing authority, present the grievance and a request for a hearing to the Personnel Board in writing. The Personnel Board shall hold a hearing on the grievance and shall respond to the grievance within thirty (30) days after its receipt. The Personnel Board may support, modify, or reverse the action of the appointing authority, provided, however, such action to modify or reverse a decision shall be by roll call vote of the Personnel Board and the appointing authority seating in joint session. Any such decision shall be final.

*5.1.6 Procedural Protection*

Employees may be represented by counsel or other representative during the grievance process. Any expenses incurred by an employee during the course of the grievance process shall be borne by the employee. If an employee is required or requested to be present at hearings on a grievance, the employee shall not lose pay for work time lost. Department heads or supervisors shall not retaliate or take any disciplinary action against an employee based on the filing of any grievance.

*5.1.7 Failure to Act*

Grievances are expected to be filed in a timely manner and all time limits specified in the grievance process shall be met by the employee filing a grievance and the Town. Any time limit may be extended by written agreement of the Personnel Board and the employee filing a grievance. Failure of the employee to meet the time limits specified in this section shall result in a grievance being declared null and void. Failure by the town to act in accordance with the time limits set forth in this section shall be an automatic denial of the grievance and shall move the grievance to the next step.

## SECTION SIX: BENEFITS

### 6.1 Holidays and Sundays

#### 6.1.1 *Coverage*

No Loss of Pay: All salaried, permanent, full-time employees and all salaried, permanent, part-time employees working at least 20 hours per week (referred to hereunder as “excused employees”). See Section 6.1.2.

Holiday Pay: All permanent, full-time, hourly employees and all permanent, part-time, hourly employees working at least 20 hours per week (referred to hereunder as “holiday pay-eligible employees”). See Section 6.1.3.

Sundays: See Section 6.1.4.

#### 6.1.2 *Recognized Holidays*

The following holidays shall be recognized by the Town on the day on which they are legally observed by the Commonwealth of Massachusetts except for part-time patrolmen and emergency dispatchers (who, as of July 1, 2006, will observe the following holidays on the actual, calendar dates on which they fall), and on these days, excused employees, without loss of pay, shall be excused from all duty except in cases where the appointing authority determines that the employee is required to maintain essential Town services:

New Year's Day

Martin Luther King, Jr. Day

President's Day

Patriot's Day

Memorial Day

Independence Day

Labor Day

Columbus Day

Veteran's Day

Thanksgiving Day

The Day After Thanksgiving Day

Christmas Day

Days Adjacent to the Above at the Discretion of the Board of Selectmen

#### 6.1.3 *Terms of Holiday Pay*

Holiday pay (i.e. pay for a scheduled work shift not worked due to a holiday) shall be granted as follows in accordance with the list of holidays appearing in Section 6.1.2, above:

All holiday pay-eligible employees will be paid the hours that they would have normally worked on a given holiday should they take a given holiday off (via arrangement with an employee's supervisor). “Normally worked” shall mean that an employee's past work history clearly demonstrates to his or her supervisor that

the employee regularly works on the day of the week on which a given holiday falls. All hourly employees except part-time patrolmen and emergency dispatchers specifically meeting all criteria in the following sentence shall receive one and one-half (1-1/2) time for hours worked on a holiday. As of July 1, 2006, part-time patrolmen and emergency dispatchers working at least 20 hours per week shall receive two and one-half (2-1/2) time for regularly-scheduled shift hours worked on a holiday (hours worked on a holiday that are not part of a regularly-scheduled shift shall be paid at one and one-half time as noted in the preceding sentence).

*6.1.4 Sunday Pay*

All hourly employees except public safety employees (part-time police officers, emergency dispatchers, and call firefighters) not regularly scheduled on Sunday shall receive one and one-half time for the hours worked on Sunday.

*6.2 Vacation Leave*

*6.2.1 Coverage*

All permanent full-time and permanent part-time employees working at least 20 hours per week.

*6.2.2 Allotment of Vacation*

Effective July 1, 2006, vacation leave for each new fiscal year shall be granted in a lump sum to each existing, eligible employee on July 1 (the first day of the fiscal year). Vacation shall be granted in accordance with the following schedule:

a. Every employee occupying a full-time position, or a part-time position in which he or she customarily works at least twenty (20) hours per week, shall be entitled to vacation with pay during each twelve months of employment. Such vacation shall be prorated for portions of the fiscal year for new employees during said employees' first fractional fiscal year based upon regularly scheduled work hours. Vacations shall be calculated as follows: First, determine the employee's regularly scheduled work hour category (i.e. Category I – 20-24 hours per week, Category II – 25-29 hours per week, Category III – 30-35 hours per week, Category IV – 36-40 hours per week). Second, review the Vacation Allotment Table below to find the number of allowable vacation hours for the fiscal year. The table is based on work hour categories and the amount of total employee service time accrued.

Vacation Allotment Table (hours per fiscal year)

Service Time	Category I	Category II	Category III	Category IV
< 1 year	20	25	35	40
1 year to < 5 years	40	50	70	80
5 years to < 10 years	60	75	105	120
10 years to < 25 years*	80	100	140	160
25 years plus	100	125	175	200

\* Employees with at least 20 but less than 25 years of service are entitled to the following number of additional vacation hours for each fiscal year of service above 20 years: Category I – 4 hrs., Category II – 5 hrs., Category III – 7 hrs., Category IV – 8 hrs.

b. Employees switching from one work hours category to another on a permanent basis are entitled to all allotted vacation time at the time of the switch plus future allotment based on the new work hours category and total service time (regardless of whether the service time was allotted by serving in a part-time or a full-time capacity). Temporary changes in work hours categories (i.e. changes lasting less than three months) shall not constitute grounds for vacation allotment to change provided that the employee returns to the previous arrangement within that timeframe.

c. New employees shall wait twelve months from the date of hire before advancing to the “1 year to < 5 years” row of the vacation allotment table above but the second year of employment shall begin at the start of the fiscal year (July 1) that follows the date of hire. This process will normalize the employee’s compensated leave program to the fiscal year.

*6.2.3 Scheduling and Documentation*

Vacation leave shall be authorized by department heads at such times, in the opinion of the department heads, as to cause the least interference with the performance of regular work of the town. Vacation leave shall not be unreasonably denied. Vacation leave, once used or approved, shall be documented on a form approved by the Personnel Board and said form shall be forwarded directly to the Personnel Officer or the Officer’s designee after signature by both the employee and his or her supervisor. Supervisors of departments heads are the appointing authorities or the Town Administrator, where applicable. The supervisor of the Town Administrator is the Board of Selectmen.

6.2.4 *Termination*

Whenever employment is terminated, the employee shall be paid for any currently allotted vacation time up to the time of the employee's separation from the payroll.

6.2.5 *Carry-over of Vacation Time*

- a. Employees are encouraged to take vacation within the year it is allotted. An employee may carry over up to the amount of time defined by the figures in the first row of the vacation allotment table above to the following fiscal year. Further, upon receipt of a written request made by an employee at least 30 calendar days prior to the end of the fiscal year, the Personnel Board may grant up to the amount of time defined by the figures in the second row of the vacation allotment table above for carry-over. Said written request must demonstrate why extenuating circumstances exist and the Personnel Board may approve or deny any such request on its merits as a final decision. If additional carry-over is denied by the Personnel Board the employee shall lose any time over the normally allowed carry-over threshold described above.
- b. All allotted vacation time for a new employee may be carried over in their own switch from the first twelve months of employment to the fiscal year system but the rules described in item (a) above shall fully apply as of the end of the employee's first full fiscal year on the fiscal year system.

6.2.6 *Death*

Whenever employment is terminated by death, the estate of the deceased shall be paid an amount for that portion of the vacation allowance earned in any vacation year during which the employee died up to the time of his separation from the payroll, and any unused vacation carried forward.

6.2.7 *Holiday While on Vacation*

Employees shall not use or be required to use vacation time on an official holiday.

6.2.8 *New Employees*

New employees shall earn vacation in accordance with the schedule set forth in this section, provided however, any vacation earned during the new employee's three month orientation period may not be taken until an employee has successfully completed the orientation period. An employee terminated during or at the conclusion of the orientation period shall not be entitled to any vacation benefits.

6.3 Sick Leave

6.3.1 *Coverage*

All permanent full-time and permanent part-time employees working at least 20 hours per week shall be entitled to receive sick leave each fiscal year for non-service connected sickness or injury.

6.3.2 *Accumulation*

Sick leave shall be accrued monthly and calculated as follows: First, determine the employee's regularly scheduled work hour category (i.e. Category I – 20-24 hours per week, Category II – 25-29 hours per week, Category III – 30-35 hours per week, Category IV – 36-40 hours per week). Second, review the Sick Leave Accrual Table below to find the number of allowable sick leave hours per month. The table is based solely on work hour categories.

Sick Leave Accrual Table (hours accrued per month)

Category I	Category II	Category III	Category IV
4	5	7	8

All sick time accrued to July 1, 2001 shall remain valid and future accrual as of July 1, 2001 shall be as defined above.

6.3.3 *Use of Sick Leave*

Sick leave may accrue up to a maximum of 1200 hours and is always carried over into the next accrual year. For each 12 hours (for Category I employees), 15 hours (for Category II employees), 21 hours (for Category III employees), or 24 hours (for Category IV employees) of sick leave not used from the current accrual year's allotment, 20 hours (for Category I employees), 25 hours (for Category II employees), 35 hours (for Category III employees), and 40 hours (for Category IV employees) shall be added.

6.3.4 *Sick Leave BuyBack*

Effective July 1, 2001, each employee shall be paid, on his/her retirement, twenty (20) percent of his/her accumulated sick leave, at his/her then hourly/daily rate of pay.

6.3.5 *Annual Sick Leave Sell Back*

After an employee has accumulated 1200 hours of sick leave as provided in section 6.6.3, at the end of each accrual year, each employee may sell back fifty (50) percent of his/her unused annual sick leave (up to a maximum of 24 hours for Category I employees, 30 hours for Category II employees, 42 hours for Category

III employees, and 48 hours for Category IV employees) at his/her then hourly/daily rate of pay.

*6.3.6 Authorization and Documentation of Sick Leave*

Sick leave shall be authorized by a department head. Notification of illness shall be made to the employee's supervisor, if possible, prior to starting time or as soon as practical thereafter. The department head may require a physician's certificate of illness if an absence lasts longer than three days. Sick leave, once used or approved, shall be documented on a form approved by the Personnel Board and said form shall be forwarded directly to the Personnel Officer or the Officer's designee after signature by both the employee and his or her supervisor. Supervisors of departments heads are the appointing authorities or the Town Administrator, where applicable. The supervisor of the Town Administrator is the Board of Selectmen.

*6.3.7 Worker's Compensation and Sick Leave Supplemental Payments*

The town shall supplement worker's compensation payments in the amount which is the difference between the amount paid in Worker's Compensation payments and the employee's regular compensation to the extent the employee has accumulated sick leave. Such supplemental payments shall be charged against accrued sick leave and/or vacation until such leave has been exhausted at which time such supplemental payments shall cease.

*6.3.8 Termination*

Employees whose services are terminated shall not be entitled to compensation in lieu of sick leave not taken.

*6.3.9 Special Consideration*

A department head may grant an employee leave with pay in the event of serious illness of a member of the employee's immediate family (see Section 6.4.2), which leave shall be considered to be sick leave of such employee.

6.4 Leaves

*6.4.1 Coverage*

All permanent full-time and permanent part-time employees working at least 20 hours per week who are not members of collective bargaining units or otherwise exempt from these rules and regulations. However, all employees are subject to the personal leave documentation provisions of Section 6.4.6.

*6.4.2 Bereavement Leave Policy*

Every permanent full-time employee or permanent part-time employee shall be entitled to three working days absence with pay in case of a death of a member of his or her immediate family. A "Member of the immediate family" shall be defined as follows: husband, wife, child, parent, parent or grandparent of either

spouse, brother or sister of either spouse, or a person living in the immediate household of a person subject to these rules. Such leave shall be non-cumulative.

#### 6.4.3 *Jury Leave Policy*

A leave of absence shall be granted with pay to any town officer or employee who is called upon to serve upon a jury or is summoned to appear as a witness, and with out pay to any officer or employee who shall request court leave for the purpose of appearing in court as a defendant or litigant. Such leave shall be granted only for the period during which the employee is required to be in court and it shall in no way affect the employment rights of such employee. However any amount received by such employee on account of jury duty or by way of witness fees, exclusive of travel expenses, shall be subtracted from any amounts actually paid to the employee on account of court leave. Jury leave shall be granted in accordance with state law.

#### 6.4.4 *Military Leave Policy*

The effect of military service on salary or vacation allowance of public employees is governed by the provisions of Chapter 33, Section 59, Massachusetts General Laws as follows: Any person in the service of the commonwealth, or of a county, city or town which, by vote of its county commissioners or city council or of its inhabitants at a town meeting, accepts this section, or has accepted similar provisions by earlier laws, shall be entitled, during the time of service in the armed forces of the Commonwealth, under Section 38, 40, 41, 42, or 60 or during the annual tour of duty of not exceeding seventeen days as a member of a reserve component of the armed forces of the United States, to receive pay therefore, without loss of the ordinary remuneration as an employee or official of the Commonwealth, or of such county, city or town, and shall also be entitled to the same leaves of absences or vacations with pay given to other like employees or officials.

#### 6.4.5 *Leaves of Absence Policy*

The appointing authority may, at their discretion, grant leaves of absence without compensation for periods not exceeding three month duration without loss of seniority. Only those employees completing at least one year of continuous service shall be eligible for leaves of absence under this section.

Employees granted a leave of absence shall be classified as out of service of the Town and shall not be entitled to other benefits as may be provided by the town, including, but not limited to seniority, sick leave, vacation leave and compensation during the periods of the leave. An employee granted a leave of absence for a period of thirty (30) days or less shall be entitled to coverage under applicable group health and life insurance plans. An employee granted a leave of absence for a period of greater than thirty (30) days may be provided coverage under applicable group health, dental and life insurance plans, provided that the employee pays the total premium cost, in accordance with applicable statutes.

Leaves of absence shall not be granted to enable an employee to accept other employment or for self employment. Any request for leave of absence or reinstatement after such leave without pay shall be made in writing.

#### 6.4.6 *Personal Leave*

An employee may be granted personal leave, subject to the approval of a department head or appointing authority, for up to two days per year (renewable on the first day of each fiscal year). Personal leave, once used or approved, shall be documented on a form approved by the Personnel Board and said form shall be forwarded directly to the Personnel Officer or the Officer's designee after signature by both the employee and his or her supervisor. Supervisors of departments heads are the appointing authorities or the Town Administrator, where applicable. The supervisor of the Town Administrator is the Board of Selectmen.

All personal time accrued to July 1, 2001 shall remain valid and future accrual as of July 1, 2001 shall be as defined above.

#### 6.4.7 *Small Necessities Leave*

In accordance with General Laws c. 149, §52D, an eligible employee is entitled to a total of 24 hours of leave during a twelve (12)-month period, in addition to other leave under this section, to participate in school activities directly related to the educational advancement of the employee's child; to accompany the employee's child to routine medical or dental appointments, and to accompany an elderly relative as defined in section 52D to routine medical or dental appointments or other professional services related to the elder's care. Leave under this provision is in addition to the twelve (12)-week leave provision and may be taken on an intermittent or reduced leave schedule. Family business leave shall be unpaid, unless the employee applies any paid leave that he or she has available.

### 6.5 Family Leave

#### 6.5.1 *Family Medical Leave Act*

The Town shall abide by the provisions of the federal Family Medical Leave Act and shall not take actions contrary to said provisions.

#### 6.5.2 *Maternity Leave Coverage*

Permanent full-time and part-time employees who have successfully completed the required orientation period in accordance with section 2.2 of these regulations.

#### 6.5.3 *Maternity Leave Policy*

Maternity leaves shall be granted in accordance with applicable General Law, Chapter 149, section 105D, as amended. An employee occupying a full-time position or a part-time position in which the employee customarily works a total of at least 1,600 hours in a calendar year, after six months of continuous service,

is entitled to no more than eight weeks of Maternity Leave under the following terms:

- a. The employee must provide her department head with a written notice within two weeks prior to her expected departure date. Such notice must include her intended date of return. A copy of such notice is to be sent to the Personnel Officer by the department head.
- b. Accrued sick leave benefits shall be provided for maternity leave under the same conditions and terms which apply to other temporary medical disabilities. The employee has the option of using vacation days to supplement sick leave days. Days not covered by accrued sick/vacation days will not be paid.
- c. All benefits applicable will be continued during Maternity Leave.

## 6.6 Workers Compensation

### 6.6.1 *Coverage*

All employees.

### 6.6.2 *Coordination of Sick Leave with Worker's Compensation*

An employee receiving sick leave with pay and simultaneously receiving compensation under worker's compensation laws shall receive only that portion of his regular salary which will, together with said compensation, equal his regular salary. Sick leave shall be charged accordingly.

## 6.7 Employee Incurred Expenses and Reimbursements

### 6.7.1 *Policy*

Town officers and employees shall be reimbursed for direct expenses incurred by them in the performance of their duties, subject to such policies governing such expenses as may be prescribed by the Personnel Board in consultation with the Board of Selectmen and the Finance Committee. Such policies shall be of uniform application. In the absence of such policies, reimbursement shall occur at the discretion of the department head or appointing authority.

### 6.7.2 *Coverage*

All employees.

### 6.7.3 *Mileage*

Town officers and employees who use their own automobiles for travel in the performance of official Town duties shall be reimbursed for such use at a rate to be set by the Personnel Board.

6.7.4 *Police Uniform Allowance*

Each part-time police officer shall be allowed a uniform allowance per year to be determined by the Personnel Board with the recommendation of the Chief of Police.

6.7.5 *EMT Qualification and Requalification*

Pay for each EMT attending class for qualification or requalification shall be made at the same rate of pay as firefighters.