

# **Article I. Preface**

## **Section 1.**

The employees of the Town of Nags Head are its most valuable resource. It is the goal of the Board of Commissioners to treat our employees fairly and with respect. This includes compensating them fairly, encouraging their professional development and providing a safe and supportive workplace that enhances their productivity.

The Town's Mission and Vision statement speak of 'treating all with respect'. This is particularly important when it comes to our employees. We believe these policies reflect that respect.

The policies laid out in the manual describe the relationship between the Town and the employee. Both parties must accept responsibility for fulfilling this relationship. It is the intention of the Town to follow the adopted policies in this manual. Exceptional circumstances may require decisions outside the framework of these policies. In order to maintain flexibility the Town retains the right to make personnel decisions that may not be covered under these policies or that may not be consistent with the letter of the policy. When such decisions are required, the employee will be given the benefit of the doubt. Since these policies can be varied, the constant that underlies them is state employment law. State employment law establishes the relationship between the employee and the town as an at will relationship. Nothing within these policies changes that law.

## **Article II. General Provisions**

### **Section 1. Guiding Principle/Purpose**

The purpose of this policy is to establish a personnel system which will recruit, select, develop and maintain an effective and responsible work force. All appointments and promotions of Town employees exercised by the town manager shall be made on the basis of ability, knowledge, skill, and performance. This policy is established under the authority of Chapter 160A-164 of the General Statutes of North Carolina.

### **Section 2. Coverage**

The provisions of this policy shall be applicable to all regular and probationary employees except as provided below:

- A. The town manager, town attorney, and elected officials shall be exempt from the provisions of this policy except for Article V, section 1; Article VI, section 4, 7, 10, 11, 12, 14-16, Articles VII, X and XI.
- B. Temporary employees will be included only in the following articles and sections of this policy: Article I; Article II, Sections 1-3, 6-7, Article III; Article IV, Sections 1-9, 13, 14, and 17; Article V, Section 1-9, Article VI, Section 1,3-4, 5-14, 16, Article VII, Section 10-12, Article X, Section 9 - 10, Article XI; and Article XII.
- C. Part-time officials appointed by the Board of Commissioners, and employees of advisory or special boards and commissions who work an irregular schedule, shall be exempt from all provisions of this policy except where specifically included.

### **Section 3. Definitions**

- A. Adverse Action – A reprimand, demotion, dismissal, reduction in pay, layoff, suspension, or an undesirable transfer.
- B. Building – As used in this policy, any building owned and occupied by the Town of Nags Head.
- C. Called Back – When an employee is called out after his normal work day has ended and physically responds to the call.
- D. Class of Positions – A position or group of positions which have the same generic title and class specification (e.g., Firefighter).
- E. Class Specification – A statement of general duties, responsibilities, distinguishing features, illustrative examples of work, required knowledge, skills and abilities and training for a class of positions.
- F. Completed Month – Any month in which an employee works at least half the workdays.
- G. Completed Year – A period of twelve (12) months in which the employee is in active pay status or is receiving Workers' Compensation payments while on leave without pay.
- H. Demotion – The reassignment of an employee to a position or classification having a lower salary range than the position or the classification from which the reassignment is made.
- I. Disciplinary probation – A component of progressive discipline that results from a disciplinary action for failure in performance of duties or personal conduct. This is a period of specific duration whereby the employee's work performance and personal conduct is subject to periodic review. The Employee has access to the appeal/grievance procedure with respect to the conduct or performance that

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resulted in the disciplinary probation. During this period of probation, this employee is not subject to the rights of grievance/appeal for any subsequent disciplinary action except for a termination for an offense unrelated to the action that resulted in the disciplinary probation. Merit review during disciplinary probation will be considered on a case by case basis.

- J. Full-time Employee – An employee, either regular or temporary, who is regularly scheduled to work the number of hours per workweek designated by the Board of Commissioners as full-time.
- K. Grounds – As used in this policy, any non-built upon area of Town owned property.
- L. Immediate Family – Immediate family is defined for the purpose of this section as spouse, mother, father, guardian/ward, children, sister, brother, grandparents, grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those named, or a significant other living as a part of the same household. Immediate family for sick leave purposes is defined under the Family and Medical Leave Act.
- M. Mediation – The attempt to bring about a settlement or compromise.
- N. On-Call Status – When an employee is required to be available for emergencies which may arise in his or her area of employment or to tend to the needs of the Town. Normally he or she will be required to be contacted by telephone and respond within a designated period of time.
- O. Part-time Employee – An employee, either regular or temporary, who is regularly scheduled to work less than 30 hours per workweek.
- P. Pay Plan – A schedule of pay ranges arranged by sequential rates for each class assigned to a salary range.
- Q. Probation – A trial period of specific duration, due to initial employment, whereby the employee's work performance and personal conduct is subject to regular review. During this period of probation, the employee is not subject to rights of appeal/grievance or merit review.
- R. Probationary Employee – A person appointed to a budgeted position who has not satisfactorily completed the probationary period.
- S. Promotion – The reassignment of an employee to a position in classification having a higher salary range than the position or the classification from which the reassignment is made.
- T. Promotional/transfer period – Is a period of specific duration whereby the employee's work performance and personal conduct is subject to periodic review. The employee does not have access to the appeal/grievance procedure with respect to demotion to previously held position (or substantially similar position if original position is unavailable) nor is the employee eligible for merit.
- U. Public Safety Employees Police personnel with power of arrest and all fire/rescue personnel except administrative support.
- V. Reclassification. The reassignment of an existing position from one class to another based on changes in job content.
- W. Regular Employee. An employee who has successfully completed the prescribed probationary period(s) shall be considered regular. However, all Town positions are subject to budget review and approval each year by the Board of Commissioners, and all employees' work and conduct should not be construed as a contract or right to perpetual funding or employment.

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- X. Salary Range. The minimum and maximum salary levels for a given classification for hiring purposes.
- Y. Significant Other. Any person with whom the employee cohabits and shares an intimate relationship regardless of marital status.
- Z. Smoking – Shall mean any use of an e-cigarette, lighted cigarette, lighted cigar, lighted pipe, or any other lighted tobacco product.
- AA. Stand-by. When conditions are placed on the activities of non-exempt employees that are so restrictive that they cannot use the time effectively for personal pursuits. Normally the employee is required to remain on the employer's premises or so close to the employer's premises that the employee cannot use the time effectively for his or her own purposes.
- BB. Temporary Employee. A person appointed to serve in a position for a defined time period, usually less than one year.
- CC. Tobacco Product – Any product containing, derived, or made from tobacco that is intended for human consumption, whether chewed, smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component part or accessory of a tobacco product, including but not limited to cigarettes; cigars; electronic cigarettes; electronic hookahs; electronic pipes; vaping products; little cigars; cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rub and other smoking tobacco; snuff; snuff flour; Cavendish; plug and twist tobacco; and other kinds and forms of tobacco. A tobacco product excludes any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product, as a tobacco dependence product, or for other medical purposes, and is being marketed and sold solely for such an approved purpose.
- DD. Transfer – The reassignment of an employee from one position or department to another.
- EE. Vehicle – As used in this policy, any vehicle owned and operated by the Town of Nags Head.

### **Section 4. Merit Principle**

The purpose of this resolution and the rules and regulations set forth is to establish a fair and effective system of modern personnel administration for all employees of the Town.

The Town shall embrace the following merit system principles in administering its personnel program:

- A. Applicants and employees shall be assured of fair treatment in all aspects of personnel administration without regard for political affiliation, religious creed, sex, national origin, color, race, age, or disabilities. Individuals shall likewise be treated with proper regard for their privacy and constitutional rights as citizens.
- B. Employees shall be recruited, selected, trained, and advanced on the basis of their ability, knowledge, skill, and performance.
- C. Employees shall be retained on the basis of the adequacy of their performance. They shall be guided in ways to correct inadequate performance and separated when inadequate performance cannot be corrected.
- D. Employees shall be protected against coercion for partisan political purposes.

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- E. Employees shall receive equitable and adequate pay and benefits and eligible employees shall receive merit pay increases based upon their performance subject to the availability of funds.

### **Section 5. Responsibility of Board of Commissioners**

The Board of Commissioners shall establish personnel policies and benefit plans, including the classification and pay plan, and shall make and confirm appointments when required by law.

The Board of Commissioners shall adopt rules and regulations by, resolutions concerning personnel policies and other measures that promote the hiring and retention of capable, diligent, and honest employees under the authority of Chapter 160A-164 of the North Carolina General Statutes, to be administered by the town manager. The Board of Commissioners shall prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the Town.

### **Section 6. Responsibility of the Town Manager**

The town manager shall be responsible to the Board of Commissioners for administration and technical direction of the personnel program; maintenance of the classification and pay plan; appoint, discipline, dismiss and suspend in accordance with the Town charter and perform such other duties in connection with a modern personnel program as is required by this policy. All matters dealing with personnel shall be routed through the town manager, who shall maintain a complete system of personnel files and records. (The town manager may perform any or all of these duties and responsibilities or assign them to a staff employee). The town manager shall:

- A. Recommend revisions of personnel policies and the personnel system to the Board of Commissioners for consideration.
- B. Recommend revisions of the position classification plan to the Board of Commissioners.
- C. Prepare and recommend revisions of the pay plan to the Board of Commissioners for approval.
- D. Determine administrative, professional, and managerial positions to be excluded from overtime compensation as provided for in Article IV Section 9.
- E. Establish and maintain a roster of all persons in municipal service, setting forth each officer and employee, class title of position, salary, any changes in class title and status, and such data as may be deemed desirable or useful.
- F. Develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the Town.
- G. Develop and coordinate training and educational programs for Town employees.
- H. Investigate periodically the operation and effect of the provisions of this policy and report findings and recommendations to the Board of Commissioners, as necessary.
- I. Perform such other duties as may be assigned by the Board of Commissioners not inconsistent with this policy.

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### **Section 7. Responsibility of Department Heads**

The head of each Town department shall supervise the staff in their department and shall recommend to the town manager, the appointment, suspension and removal of Town employees assigned to the department or prescribed in Chapter 160A-155 of the North Carolina General Statutes.

## **Article III. The Position Classification Plan**

### **Section 1. Adoption**

The position classification plan, as from time to time approved by the Board of Commissioners, is hereby adopted as the position classification plan for the Town.

### **Section 2. Allocation of Positions to Salary Grade**

The Board of Commissioners shall assign each position covered by the classification plan to its appropriate grade in the Position Classification Plan.

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

It is the policy of the Town of Nags Head to compensate its employees at a level sufficient to encourage excellence of performance and to maintain the labor market competitiveness necessary to recruit, retain, and develop a competent and diverse workforce. In order to meet this expectation the human resources director will review the pay plan every 2-3 years and present recommendations to the town manager. All final recommendations will be presented to the Board of Commissions.

Department heads shall be responsible for bringing to the attention of the town manager and human resources director (1) the need for new positions, and (2) material changes in the nature of duties, responsibilities, working conditions or other factors which may affect the classification of any existing positions.

When the town manager finds that a substantial change has occurred in the nature or level of duties and responsibilities of an existing position, the town manager shall recommend to the Board of Commissioners that the existing class specification be revised, reallocated to the appropriate class within the existing classification plan, or that the position classification plan be amended to establish a new class to which the position may be allocated. New positions shall be established only with the approval of the Board of Commissioners.

### **Section 4. Amendment of Position Classification Plan**

Classes of positions shall be added and deleted from the position classification plan, upon the recommendation of the town manager, by the Board of Commissioners.

## **Article IV. The Pay Plan**

### **Section 1. Adoption**

The schedule of salary ranges and class titles, as periodically adjusted by the Board of Commissioners is hereby adopted as the pay plan for the Town. The Pay Plan shall include all regular classes of positions included in the Classification Plan.

### **Section 2. Maintenance of the Pay Plan**

The town manager shall be responsible for the administration and maintenance of the pay plan. The pay plan is intended to provide equitable compensation for all positions, reflecting differences in duties and responsibilities, the comparable rates of pay for positions in private and public employment in the area, changes in the cost of living, the financial conditions of the Town, and other factors. To this end, the human resources director shall, from time to time, make comparative studies of all factors affecting the levels of salary ranges, including internal relationships between classes to reduce or eliminate any inequities, and shall recommend to the town manager such changes in salary ranges as appear to be warranted.

### **Section 3. Transition to Pay Plan**

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

- A. No employee shall receive a salary reduction as a result of the transition to a new pay plan.
- B. All employees being paid at a rate lower than the minimum rate established for their respective classes shall have their salaries raised to the new minimum for their classes.
- C. All employees being paid at a rate below the maximum rate established for their respective classes shall be paid at a rate listed in the salary schedule. All employees not at a listed rate in the salary schedule shall have their salaries raised to a listed rate within the grade for their class of position closest to their current rate.
- D. All employees being paid at a rate above the maximum rate established for their respective classes shall remain at their present salaries as long as the maximum rate is below the employees' present salaries (see also Section 7B of this Article).

### **Section 4. Use of Salary Ranges**

Salary ranges are intended to furnish administrative flexibility in recognizing individual performance among employees holding positions in the same class by rewarding employees for meritorious service. The following general provisions will govern the granting of increases within the pay range:

- A. The minimum rate established for the class is the normal hiring rate, except in those cases where unusual circumstances appear to warrant appointment at a higher rate. Appointment above the minimum ~~step~~ salary range may be made with the approval of the town manager when deemed necessary and in the best interest of the Town. Above-the-minimum appointments will be based on such factors as the qualifications of the applicant being higher than the desirable education and experience for the class, a shortage of qualified applicants



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available at the minimum range, the refusal of qualified applicants to accept employment at the minimum range, or other similar factors.

- B. All increases to the salary range above the minimum are reserved to reward employees for meritorious service. Each year, the town manager may require department heads to consider the eligibility of employees to receive salary increases based on merit and to recommend such advancement or retention at the same rate. Department heads shall consider all factors affecting employee performance and shall submit their recommendations in writing, giving the reasons whether to advance or retain the employee at the same rate. All such advancements and retentions must be approved by the town manager.

### **Section 5. Payment at a Listed Rate**

All employees covered by the salary plan shall be paid at a listed rate within the salary range established for their respective job classes except for employees whose present salaries are above the established maximum rate following transition to a new pay plan (see also Section 3 of this Article).

### **Section 6. Pay Rates in Promotion, Demotions, Transfer, and Reclassification**

When an employee is promoted, demoted, transferred, or reclassified, the rate of pay for the new position will be established in accordance with the following rules:

- A. Promotion: See Article V Section 11.
- B. Demotion: An employee who is demoted voluntarily will be offered a salary that is associated with the salary grade of the position and that the town manager finds to be internally equitable for the department. If the demotion is for cause, the employee's salary will be reduced to the salary grade that the town manager finds to correspond with the position and the employee's experience in the position, if any, as long as the reduced salary does not fall below the minimum salary rate of that range.
- C. Transfer: An employee transferring from a position in one class to a position in another class assigned the same pay range shall continue to receive the same salary.
- D. Reclassification: An employee whose position is reclassified to a class having a higher salary grade shall be assigned to the minimum salary in the new grade or maintain the same salary, whichever is higher. If the position is reclassified to a lower pay range, the affected employee will maintain the same salary until such time as the new classification's pay grade is increased above the employee's current salary.

### **Section 7 Pay Rates in Salary Range Revisions**

When the Board of Commissioners approves a change in salary range for a class of positions, the salaries of employees whose positions are allocated to that class shall be affected as follows:

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- A. When a class of positions is assigned to a higher pay range, employees in that class shall receive the same salary or be assigned to the minimum of that range, whichever is higher.
- B. When a class of positions is assigned to a lower pay range, the salaries of employees in that class will remain unchanged. If this assignment to a lower pay range results in an employee being paid at a rate above the maximum salary range established for the new class, the salary of the employee shall be maintained at that level until such time as the classification's pay grade is increased above the employee's current salary or the employee is promoted into a classification with a pay range above their salary rate.

### **Section 8. Pay for Temporary and Part-Time Work**

The pay plan established by this policy is for full-time employees. An employee appointed on a temporary basis will be paid a pro-rated amount determined by converting the established salary to an hourly rate.

Employees working in a part-time or Limited-Service capacity with the same duties as full-time employees will normally work at a rate in the same salary range as the full-time employees.

### **Section 9. Overtime**

To the extent that local government jurisdictions are so required, the Town will comply with the Fair Labor Standards Act (FLSA).

The town manager shall determine which jobs are nonexempt, as specified in the Position Classification Plan, and are therefore subject to the FLSA in areas including hours of work and work periods, rates of overtime compensation, and other provisions. Hours worked beyond the FLSA statutory minimum will be compensated in the appropriate manner outlined below. In determining eligibility for overtime in a work period, only hours actually worked shall be considered.

Overtime work must be of an unusual, unscheduled, or emergency nature and be directed or authorized by the department head or authorized representative of the department head, in writing, in advance.

Whenever practicable, departments will schedule time off on an hour-by-hour basis within the applicable work week/period for nonexempt employees instead of paying overtime. When time off within the work week/period cannot be granted, overtime worked will either be paid at a rate of one and one-half times the employee's regular rate or as compensatory time at a rate of one and one-half hours for each hour of employment for which overtime compensation is required, in accordance with FLSA regulations.

#### **Overtime Pay:**

Unless otherwise agreed upon by the Town and the individual employee to receive compensatory time, the employee will be paid overtime at the rate of one and one-half times the employee's regular rate.

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### Compensatory Time:

The Town may provide compensatory time for overtime work at a rate of one and one-half hours for each hour of employment for which overtime compensation is required.

The Town may only provide compensatory time in lieu of overtime pay if there is an agreement between the Town and the employee that receives compensatory time for their overtime work. The agreement must occur prior to the performance of work. The Supervisor authorizing the overtime work is responsible for documenting the agreement substituting compensatory time.

The Town has a right to restrict compensatory time to certain hours of work only and the agreement may include provisions allowing the Town to pay overtime in cash instead of compensatory time, consistent with the FLSA. The Town is not required to adopt the same agreement with different employees or provide compensatory time to all employees.

The FLSA permits the Town to reduce accrued compensatory time hours by paying an employee cash compensation for unused compensatory time or the Town may halt the accrual of compensatory time by paying cash compensation for overtime work. Overtime payment in cash will not affect any future compensatory time off.

Nonexempt employees who work in public safety activities, emergency response activities, or seasonal activities must not accrue more than 480 hours of compensatory time for overtime hours. All other nonexempt employees must not accrue more than 240 hours of compensatory time for overtime hours. Upon exceeding the maximum hours allowed as stated above, any approved overtime earned must be paid in cash.

### Use of Accrued Time:

Employees will be required to use accrued leave (i.e. "on call" time, compensatory time and administrative leave) in lieu of vacation if the employee has accrued more than the number of hours listed below. The accrued hours must be taken in lieu of sick leave until the hours are below the listed threshold. Once the total accrued hours are below the threshold, the employee will have the option to use sick time in lieu of accrued time.

### Maximum Threshold of Accrued Hours:

Regular Employee – 75 hours

Police Officer – 85.5 hours

Fire Fighter – 106 hours

The maximum threshold applies regardless of whether the employee: (1) takes leave with advance approval; or (2) is involuntarily placed on leave by the Town for any reason. The Town may also designate leave taken under FMLA as leave consistent with this policy. The order for designation of leave may not be varied without written approval from the town manager.

This policy is established in an effort to ensure that employees are able to use the paid leave available to them and to reduce the excessive accrued leave that is a financial liability to the Town.

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Employees wishing to use accrued compensatory time must make a written request to their immediate supervisor. Use of such time will be allowed within a reasonable period following the request as long as the use does not unduly disrupt the operations of the Town. The Town reserves the right to schedule use of compensatory time.

Employees in positions determined to be exempt from FLSA—such as Executive, Administrative, or Professional staff—will not receive pay for hours worked in excess of their normal work periods. These employees may be granted occasional administrative leave by their department head or the town manager where the convenience of the department allows.

### **Section 10. Call-Back Pay**

Any non-exempt employee will be provided at least two (2) hours work credit for being called back to work outside of normal working hours or the actual hours worked whichever is greater.

### **Section 11. Recognition of Employees**

The recognition of service awards for employees has six (6) separate categories of service time. Recognition of service awards shall be made on the employee's anniversary date in accordance with the following schedule:

<u>5 Years of Service</u>	Cross ink pen with the Town Seal
<u>10 Years of Service</u>	\$40 Gift Card + one (1) day off with Pay
<u>15 Years of Service</u>	\$50 Gift Card + one (1) day off with Pay
<u>20 Years of Service</u>	\$100 Gift Card + one (1) day off with Pay
<u>25 Years of Service</u>	Tie tack or pendant with the Town Seal + one (1) day off with Pay
<u>30+ Years of Service</u>	\$250 Gift Card + one (1) day off with Pay

The employee would be required to take the one (1) day off with pay during their anniversary year. The years of service shall be based on the number of full years of regular full-time service completed during the twelve (12) month period prior to the employee's anniversary date of that year. Awards will only be made to those employees in regular employment on their anniversary date. Years of service must be continuous, except for extended leave approved by the Town.

### **Section 12. Longevity Pay**

Longevity checks will be paid in a lump sum and are subject to all regular deductions and withholdings, including retirement.

Base salary does not include any overtime, bonus payments, expense reimbursements or anything beyond the amount stipulated in the pay schedule to the employee at the time of award.

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The years of service shall be based on the number of full years of regular full-time service completed during the twelve (12) month period prior to the employee's anniversary date of that year. Payment will only be made to those employees in regular employment on their anniversary date. Longevity pay in proportion to the full months of service rendered prior to retirement or on approved extended leave shall be made to those retired or on leave during the twelve (12) months prior to the anniversary date.

Years of service must be continuous, except for leaves of absence approved by the Town. All longevity pay is made in one lump sum and is taxable and subject to all deductions including retirement.

***Employees hired on or prior to June 30, 2008 shall be covered under the following longevity pay plan:***

The longevity plan has four (4) separate categories of service time. Longevity will compensate employees for continuous service.

Less than five (5) full years of service	No Payment
Five (5) full years of service but less than ten (10) full years	2%
Ten (10) full years of service but less than fifteen (15) full years	4%
Fifteen (15) full years of service but less than twenty (20) full years	6%
Twenty (20) full years of service and over	7%

***Employees hired on or after July 1, 2008 shall be covered under the following longevity pay plan:***

The longevity plan has five (5) separate categories of service time. Longevity will compensate employees for continuous service.

Less than five (5) full years of service	No Payment
Five (5) full years of service but less than ten (10) full years	\$500.00
Ten (10) full years of service but less than fifteen (15) full years	\$1,000.00
Fifteen (15) full years of service but less than twenty (20) full years	\$1,500.00
Twenty (20) full years of service and over	\$2,000.00
Twenty-Five (25) plus years of service	\$2,500.00

### **Section 13. Payroll Deductions**

Only payroll deductions specifically mandated or authorized by federal, state, or Town act may be deducted at each period from each employee's pay.

### **Section 14. Pay Periods**

All employees shall be paid on a bi-weekly basis with the pay day being every other Friday. The pay received on Friday will pay the employee for work performed from the Monday proceeding the last pay day through the Sunday proceeding the current pay day. Effective July 1, 2011, all employees will be required to use direct deposit as the sole method for receiving pay. The town's banking institution offers free limited checking accounts for employees that wish to open an account for direct deposit.

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### **Section 15. Effective Dates of Salary Adjustments**

Approved salary adjustments shall become effective at the beginning of the next pay period or at such a later date as may be provided.

### **Section 16. Merit Award Policy**

Merit increases, defined as advancements in the salary range, are not automatic but may be awarded for the following reasons: (1) exceptional work achievements, (2) excellence in work performance, or (3) special contribution to productivity. Each employee may be considered annually for a merit increase after they have successfully completed one full year of service with the town or at the discretion of the town manager. Performance evaluations are to be completed and forwarded to the human resources director prior to the end of the fiscal year. Increases must be recommended by the department head and approved by the human resources director and town manager. Even though all eligible employees will be considered for merit increases, only those employees who exceed the standard and/or expected performance will receive a merit increase.

### **Section 17. Employee Incentive Program**

The Employee Incentive Program was designed by the Nags Head Board of Commissioners to reward Town employees who develop ways of increasing productivity and cutting costs for the Town without sacrificing existing service levels. The program provides two types of awards which can be given to eligible employees in Town Government. First, a \$25.00 gift certificate given to the employee who submits the best cost-savings suggestion each month. Second, a "cash-back" award of 10% of net savings during the first year of adoption provided the Town's savings exceed \$1,000.00 per year.

A Reward Committee, consisting of the town manager, deputy manager/finance officer and Deputy Finance Officer will review all suggestions submitted to the Suggestion Box each month. Once a suggestion is submitted, it is eligible for one year. A \$25.00 gift certificate will be given by the Board of Commissioners each month to the employee who submits the best cost savings suggestion (as determined by the Rewards Committee). If the Committee feels that no suggestion was submitted which warranted a gift certificate award, the \$25.00 certificate will not be given that particular month.

Any suggestion implemented by the Town of Nags Head which results in a net savings of over \$1,000.00 will be eligible for an additional award. An eligible employee, who submits a significant (over \$1,000.00) savings suggestion which is implemented by the Town, will receive a "cash-back" award of 10% of the net savings during the first year of adoption. The "cash-back" award is a one-time reward covering the first year savings only.

#### **Eligibility Requirements:**

- A. All full-time, temporary or part-time employees of the Town of Nags Head may submit suggestions.
- B. Employees who have the authority or responsibility to implement the suggested change are not eligible for any award.

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- C. Suggestions already under consideration by the Board of Commissioners are not eligible for an award.
- D. If the same suggestion is submitted by two or more persons separately, the first one received is eligible. Others are considered duplicates and are not eligible.

### **Reward Rules:**

- A. Suggestions must propose improvements in a specific way to Town government operations. It must be timely and practical and state how the improvement can be made and should be submitted on the Town's "Cost Savings Suggestion Form".
- B. Suggestions remain valid for one year only. Suggestions not implemented may be resubmitted by employees for consideration by the Reward Committee
- C. Decisions of the Reward Committee are final.
- D. The Board of Commissioners has the exclusive right to set award policy and structure and may change the program at any time.
- E. The use of any suggestions by the Town shall not be the basis of further claims of any kind by the suggester, suggester's heirs or assigns.
- F. "Cash-back" awards are paid after one year.
- G. All awards are subject to federal, state, local taxes and retirement deductions which will be withheld according to government regulations.
- H. The Town retains the right to terminate the Employee Incentive Program at any time.
- I. The maximum award under this program is \$1,000.00.

### **Section 18. Investigation Salary Differential**

Whenever a police officer is assigned to the investigative section for periods of one month or longer, such police officer's salary will be increased \$50 each bi-weekly pay period. The investigative salary differential will continue until such time as the officer is re-assigned from the investigative section. The effective rate for pay purposes, to start or stop the differential, will be the beginning of the next pay period following the date of re-assignment.

### **Section 19. Clothing Allowance**

Police Officers assigned to the Criminal Investigation Unit shall receive a clothing allowance in the amount of \$600.00 annually, or at a prorated amount based upon the months served in the Criminal Investigation Unit. Should the officer be reassigned from the unit or terminate employment, the officer shall reimburse the town at a rate of \$50.00 for each month remaining in the current Fiscal Year.

### **Section 20. Handler Compensation**

Police Officers assigned as canine handlers shall receive additional compensation of \$200.00 per pay period for a total of \$5,200.00 annually. This supplemental pay is to compensate a canine officer for his or her off duty time caring for their assigned partner. Care is defined as, but not limited to, bathing, brushing, exercising, the act of feeding, grooming, administering medication, training the dog at home, cleaning of the dog's kennel and vehicle. The handler compensation will continue until the officer is reassigned from the K-9 unit.

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## **Article V. Recruitment and Employment**

### **Section 1. Statement of Equal Employment Opportunity Policy**

It is the policy of the Town to foster, maintain, and promote equal employment opportunity. The Town shall select employees on the basis of the applicant's qualifications and without regard to age, sex, race, color, creed, religion, national origin, disability or genetic information. In addition, the Town will grant preference in employment for all veteran applicants that meet the minimum requirements of the job for which they have applied. The Town of Nags Head will make reasonable accommodations to the known physical or mental impairments of otherwise qualified individuals, unless the result would create an undue hardship on the Town.

As used in this policy, 'veteran' shall mean any person who qualifies as a 'veteran' as defined in 5 U.S.C. Section 2108 (1).

### **Section 2. Implementation of EEO Policy**

All personnel responsible for recruitment and employment shall continue to review regularly the implementation of this personnel policy and relevant practices to assure that equal employment opportunity based on reasonable performance-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, creed, religion, national origin, disability or genetic information. Notices with regard to equal employment matters shall be posted in conspicuous places on Town premises in places where notices are customarily posted.

### **Section 3. Recruitment**

Each department head shall be responsible for assisting the human resources director in recruiting employees for vacancies in their respective departments. All opportunities for employment shall be posted, including applicable salary ranges and employment qualifications. Notice of vacancies shall be communicated via email and posted at designated conspicuous sites within Town buildings. Individuals shall be recruited from a geographic area as wide as is necessary to insure that well qualified applicants are obtained for Town service. The Town shall make every effort to ensure that communications with applicants with disabilities are as effective as communications with other applicants.

It is the policy of the Town to employ according to merit and fitness. To that end, the Town shall use all available means to attract qualified candidates for employment and make such investigations and have conducted such examinations as deemed appropriate to assess fairly the aptitude, education and experience, knowledge and skills, character, physical fitness, and other qualifications required for positions in the service of the Town. These examinations may consist of medical, skills based, job knowledge and/or physical strength and agility tests. All selection criteria/devices administered by the Town or by persons or agencies for the Town shall be valid measures of bona fide occupational qualifications.

It is the Town's policy to create career opportunities for its employees when possible. Therefore, when a current employee applying for a vacant position possesses the best qualifications of all applicants, that applicant shall be considered for that position. However, if other applicants possess comparable qualifications the Town must carefully consider the qualifications of other applicants in filling this position.

## **Article V. Recruitment and Employment**

When positions are to be filled, department heads shall notify the town manager concerning the number and classifications of positions which are to be filled. The Town shall publicize opportunities as outlined in this policy. If selections cannot be made from current employees wishing to be considered for the vacant position(s), or available lists of qualified applicants and/or applicants responding to media advertisements, the human resources director shall assist department heads with recruitment of qualified applicants.

Each department head shall be responsible for recommending for hire such employees as are authorized by the budget for their department. Before any commitment is made to an applicant or employee, the department head shall submit a completed application form to the town manager with a written recommendation as to the position to be filled, the salary to be paid, a description of the selection process, and the reasons for selecting the particular applicant over others. After a thorough review, the town manager shall act on the recommendation of the department head.

### **Section 4. Job Announcements**

Employment announcements shall contain assurances of equal employment opportunity and shall comply with federal and state statutes regarding discrimination in employment matters.

### **Section 5. Applications for Employment**

All persons expressing interest in employment with the Town shall be given the opportunity to file an application for employment when a position is vacant or when the Town is attempting to fill such positions.

### **Section 6. Applicant Tracking**

The Human Resources Department shall be responsible for maintenance of permanent records of all position vacancy announcements, including posting and closing dates, all optional referral sources used in the recruitment process, and the pool of applicants considered for each vacancy.

The applicant pool data for each position shall include an alphabetized listing of all applications, and test scores, when applicable, for each position vacancy announcement. In addition, EEO-4 forms, providing data on race and sex of applicants, shall be maintained by the Human Resources Department.

### **Section 7. Qualification Standards**

- A. Applicants shall meet the employment standards established by the position classification plan and such other reasonable, job-related minimum standards of character, aptitude, knowledge, skills, abilities, and physical condition as may be established by the town manager with the advice and recommendation(s) of department heads.

The Town may condition an offer of employment on the result of a medical examination required post-offer and before the applicant begins employment

## **Article V. Recruitment and Employment**

duties if all entering employees in the same job category are subjected to the same such examination. However, if the applicant's medical examination reveals a disability, the Town may not refuse to hire the applicant if the disability can be reasonably accommodated.

- B. The Town's policy includes the provision for insuring that qualifications for both entry level and promotional level jobs shall be reviewed periodically to assure that requirements are fair, will be fairly administered and conforms to the actual job performance requirements.

### **Section 8. Testing**

- A. Tests administered by the Town or by the North Carolina Employment Security Commission for the Town will conform to applicable legal requirements.
- B. All tests given to applicants shall be administered and evaluated by qualified employees, or by Employment Security Commission personnel who are fully acquainted with the Town's policy on equal employment opportunity.
- C. Upon becoming aware of the need of accommodation, disabled applicant(s) shall inform the Town's ADA coordinator (Deputy Manager) before testing begins. The Town shall ensure that the testing site is accessible to and reasonably accommodates those disabled applicants who notify the ADA coordinator.

### **Section 9. Limitation of Employment of Relatives**

- A. The members of an immediate family shall not be employed in the same department at the same time. Neither shall two (2) members of an immediate family be employed at the same time if such employment would result in an employee directly or indirectly supervising a member of the immediate family.
- B. Immediate family is defined for the purpose of this section as spouse, mother, father, guardian/ward, children, sister, brother, grandparents, grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those named, or a significant other living as a part of the same household.

### **Section 10. Probationary Period of Employment**

An employee hired into a regular position shall serve a probationary period of not less than twelve (12) months. This time period is to be considered a continuation of the selection process. It is a time when the employee determines if this is the career that they want and the employer determines if the employee is right for the position.

An employee serving a probationary period may be dismissed at any time during the probationary period.

Probationary employee(s) will have no vested rights to any benefits except the group hospitalization health plans which shall be subject to the terms of the policy. All probationary employees may accumulate vacation and sick leave but shall not be permitted to take vacation or sick leave during the first six (6) months of the probationary period unless the denial of such leave will create an unusual hardship. Vacation leave or sick leave may be taken during this period only with prior approval of the town manager.

## **Article V. Recruitment and Employment**

In unusual cases, for specific reasons approved by the town manager, the probationary period may be extended for a maximum of an additional six (6) months. In such cases, the employee must be notified of the purpose of the extension, the conditions and performance expectations, and the length of time of the extension.

Before the completion of the probationary period, the department head shall indicate in writing to the town manager:

- A. That he has discussed the new employee's progress, accomplishments, strengths, failures, and weaknesses with the new employee, and
- B. whether the new employee is performing satisfactory work,
- C. whether the employee should have the probation extended,
- D. whether the employee should be retained in the present position, transferred, demoted or discharged.

The town manager shall be bound by these same requirements in evaluating department heads.

Probationary employees will receive a 5% salary increase, not to exceed the mid-point of their pay range, upon six months of satisfactory service.

### **Section 11. Promotion**

- A. Candidates for promotion shall be chosen on the basis of existing or anticipated job openings, on their qualifications and on their work records. Performance appraisals and work records of all personnel shall be carefully examined when openings for positions in higher classifications occur.
- B. Vacancies in positions shall be filled as far as practicable by the promotion of employees in the service of the Town, subject to the limitations of Article V, Section 3.
- C. When a vacancy occurs, the supervisor in whose department the vacancy occurs shall review all applications referred by the human resources director, including those from current Town employees wishing to be promoted into the position. If a current Town employee is chosen for promotion, the supervisor shall forward the employee's name to the town manager with recommendations for classification and salary and the reasons for selecting the employee over other applicants. After receiving the supervisor's comments, the town manager shall make an appointment if appropriate and determine the starting salary.
- D. An employee that is promoted will fall under the promotional period as described in Article II, Section 3S.
- E. The purpose of the promotion pay increase is to recognize and compensate the employee for taking on increased responsibility. When an employee is promoted, the employee's salary shall normally be advanced to the hiring rate of the new position, or to a salary which provides an increase of at least 5% over the employee's salary before the promotion, whichever is greater. In the event of highly skilled and qualified employees, shortage of qualified applicants, or other reasons related to the merit principle of employment, the Town Manager may set the salary at an appropriate rate in the range of the position to which

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the employee is promoted that best reflects the employee's qualifications for the job and relative worth to the Town, taking into account the range of the position and relative qualifications of other employees in the same classification. In no event, however, shall the new salary exceed the maximum rate of the new salary range. In setting the promotion salary, the Town shall consider internal comparisons with other employees in the same or similar jobs.

### **Section 12. Demotion**

Any employee whose work in his or her present position is unsatisfactory or whose personal conduct is unsatisfactory may be demoted provided the employee shows promise of becoming a satisfactory employee in another position. Such a demotion shall be preceded by the warning procedures outlined in Article VIII, Section 2A or 2B of this policy, whichever is applicable.

Representative causes for demotion because of failure in performance of duties and failure in personal conduct are listed in Article VIII, Sections 2A and 2B of this policy. If the demotion is for failure in performance of duties or failure in personal conduct, the employee shall be provided with written notice citing the recommended effective date and reasons for demotion and appeal rights available to the employee.

An employee who wishes to accept a position with less complex duties and responsibility may be demoted for reasons other than failure in performance of duties or failure in personal conduct. Employees voluntarily demoted will be paid as outlined in Article IV, Section 6B.

### **Section 13. Transfer**

If a vacancy occurs and an employee in another department is eligible for a transfer, the employee should make the request in writing to the receiving department head (or in the case of department heads, to the Manager). If selected, the department head wishing to hire the employee shall request the transfer, subject to the approval of the town manager.

An employee who has successfully completed a probationary period may be transferred to the same or similar class in a different department without serving another probationary period.

### **Section 14. Reinstatement**

An employee who resigns while in good standing or who is dismissed because of a reduction in force may be reinstated within one calendar year of the date of separation, with the approval of the town manager. This employee will be credited with all previously accrued benefits, excluding longevity, and any additional benefits that have not been paid to them. The longevity benefit will remain in regards to years of service but upon the employees return will be prorated for the months the employee was absent. The salary offered to a reinstated employee shall be as close as reasonably possible to their previous salary, within their previous salary range for the class of work, plus any across the board pay increases.

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An employee who has been suspended for cause may be reinstated at the end of the suspension period at the same or lower pay grade at the time of the suspension.

An employee who enters extended active duty with the Armed Forces of the United States, the Public Health Service or with a Reserve component of the Armed Forces will be granted reinstatement rights commensurate with Chapter 43 of Public Law 93-508.

Employees who return to employment with the Town more than one calendar year from the end of a prior period of employment will be considered as new hires.

## **Article VI. Work Conditions and Expectations**

### **Section 1. Work Period and Schedule**

The work period and schedule for all divisions will be determined by the town manager after considering the activities required to meet work needs of particular departments. The work week is defined as seven consecutive days.

Full-time, non-exempt, employees are subject to the overtime provisions set forth in Article IV, Section 9 of this policy. Public safety employee's work schedule(s) will be established and maintained in accordance with Title 29 Code of Federal Regulations, Part 500 through 899.

Exempt employees in administrative, professional or managerial positions shall work schedules and the number of hours necessary to assure the satisfactory performance of their duties.

When the activities of a particular department require some other schedule to meet work needs, the town manager or department head may authorize a deviation from the normal schedule.

### **Section 2. On Call Duty Policy**

The following applies to employees who serve "on call".

- A. All Water, Public Works Fleet Maintenance, Facilities Maintenance, Building Inspectors and Police Officers (while assigned to CID duties) will serve "on call" duty on a rotating basis as required.
- B. Employees should respond within a maximum of 30 minutes of receiving a call. Response time is measured as the time between when a call is received by phone to when the employee begins to travel to the site of the call. Employees should make their best efforts to report to the call scene as promptly as possible after responding.
- C. If, for any reason, the "on call" employee is unable to meet the requirements of No. 2 above, or the callout is of an immediate emergency nature, the "on call" employee will call other members of the department, division or unit as applicable. Calling should start with the immediate Supervisor and follow the chain of command up to the department head until someone is reached.
- D. Employees must carry either/or a town provided wireless telephone or a personal phone at all times when "on call". The employee is responsible for any such equipment until it is transferred to the next "on call" employee.
- E. The employee who is "on call" will respond to all emergencies with no regard to date, time or extent of emergency.
- F. To be considered a legitimate "call out" for purposes of the compensation called for under this policy, an employee must be called out after his normal workday has ended. A minimum of two "hours worked" will be credited for each call out. To be considered a "call out", the employee must physically report to the scene of the call.
- G. Changes in the "on call" schedule are subject to prior approval by the appropriate supervisor.
- H. Employees who use their personal vehicle to respond while on call will be reimbursed at the current IRS mileage rate from point of residence to their Duty

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Station. "Duty Station" is defined as the job location at which the employee spends the majority of his or her working hours.

- I. An employee who is "on call" must remain in a physical, mental and emotional condition that allows him to respond to a call within the time frames required by this policy. For example, the use of impairing substances is prohibited while an employee is "on call". Otherwise, the employee's activities are not restricted (29 CFR 785.17).
- J. An employee who is "on call" will receive 4 hours of compensatory time for each week served "on call". All maximum compensatory time guidelines and use of compensatory time are outlined in Article IV, Section 9. Employees are required to use their compensatory time before using any other form of paid time off.
- K. Where an employee has worked less than 40 hours in the workweek before being on call, any time actually spent responding to a call will be considered as working hours until the employee has met the 40 hour mark for the week. The time spent in responding to the call for hours over 40 will be subject to FLSA overtime guidelines.
- L. Only hours actually worked are counted in determining whether the employee has worked 40 or more hours. As such, hours not worked due to vacation leave, sick leave, holidays or otherwise during the week are not counted as "hours worked".
- M. The employee may elect whether to receive overtime pay or to accrue compensatory time off subject to the approval of the appropriate supervisor.

### **Section 3. Gifts and Favors**

- A. No official or employee of the Town shall accept any gift, whether in the form of service, loan, thing of value or promise from any person who to the employee's knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the Town.
- B. No official or employee shall accept any gift, favor or thing of value that may tend to influence that employee in the discharge of duties.
- C. No official or employee shall grant in the discharge of duties any improper favor, service, or thing of value. Any violation of this section shall subject such employee to disciplinary action up to and including dismissal.

### **Section 4. Political Activity Restricted**

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, may advocate and support the principles or policies of civic, social, fraternal, or political organizations in accordance with the Constitution and laws of the State of North Carolina and in accordance with the Constitution and laws of the United States of America.

However, no employee shall:

- A. Engage in any political or partisan activity while on duty;
- B. Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;



## **Article VI. Work Conditions and Expectations**

- C. Be required as a duty of employment or as a condition for employment, promotion, or tenure of office to contribute to, solicit for, or act as custodian of funds for political or partisan purposes;
- D. Coerce, solicit or compel contributions, while on duty, for political or partisan purposes by another employee of the Town;
- E. Use funds, supplies or equipment of the Town for political or partisan purposes;  
or
- F. Display any political advertisement in or on Town property.

Town employees in certain federally aided programs may be subject to the Hatch Act as amended. This federal act may prescribe further limits on political action.

Any Town of Nags Head employee who takes an oath of office for an elected position in the Town of Nags Head shall be deemed to have resigned from the Town's employ.

Any violation of this section shall subject such employee to disciplinary action up to and including dismissal.

### **Section 5. Outside Employment**

The work of the Town will take precedence over other occupational interests of employees. All outside employment for salaries, wages, or commission and all self-employment must be approved by the department head and recommended to the town manager for his final approval. Conflicting outside employment will be grounds for disciplinary action up to and including dismissal.

### **Section 6. Conformance to Immigration Law & Selective Service Requirement**

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

All male employees and applicants for employment over the age of 18 must furnish proof that they are registered for selective service and a copy of such proof shall be a permanent part of their personnel file. In the event there is a finding of ineligibility for employment, the employee or applicant should be given not more than 30 days to provide the issuing official with information that he is in compliance with the registration requirements of this statute.

### **Section 7. Substance Abuse and Controlled Substances**

#### **Purpose**

It is the policy of the Town to provide a safe work environment for the Town employees and to protect the public by establishing and maintaining an alcohol and drug-free workplace. Drug and alcohol abuse is a problem of serious concern and one which affects all segments of the community, including the workplace.

Through its Substance Abuse Policy, the Town hopes to identify and help current employees and prospective employees with substance abuse problems and to encourage them to seek help on their own.

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### Applicability

All employees are covered under the Substance and Abuse Policy. All applicants who have been offered employment must undergo a drug screen test as part of the hiring process. All employees are subject to post-accident or post-incident testing. In addition, all employees who must hold a Commercial Driver's License are subject to random and "follow-up" testing as required by the United States Department of Transportation.

### Prohibited Conduct for All Town Applicants and Employees

The following conduct is expressly prohibited and violations will result in disciplinary action up to and including termination:

- A. Possession, consumption, manufacturing, distribution, dispensation or being under the influence of an unauthorized controlled substance, an illegal drug, drug paraphernalia or alcohol while on duty, on Town premises, in Town supplied vehicles, or in any Town work area. Law enforcement officials shall be notified, as appropriate, where criminal activity is suspected.
- B. Sale, use or possession of illegal drugs; or possession with intent to sell illegal drugs.
- C. Off-premises or off duty abuse of alcohol or controlled substances when these activities adversely affect job performance, job safety or the public's confidence in an employee's ability to perform their duties in an adequate and effective manner.

### Drug Screening Criteria

The Town of Nags Head will consider an employee for a drug screening test under the following circumstances:

- A. Pre-employment - All applicants who have been offered employment with the Town of Nags Head will be required to undergo a drug screening test as part of the hiring process. The Town will withdraw an offer of employment made to any applicant whose drug screen test reveals the presence of illegal drugs or prescription drugs without a valid prescription.
- B. Post-Accident/Incident – All full time and part time employees will be tested for the presence of both controlled substances AND alcohol following an on-the-job accident/incident that involves any of the following:
  1. A fatality;
  2. Bodily injury requiring immediate medical attention or professional medical treatment away from the scene of the accident/incident. The employee is tested only if circumstances indicate that such bodily injury (whether to an employee or citizen or both) may have been caused, at least in part, by the employee; or
  3. Property damage and/or disabling damage to any motor vehicle requiring tow away.
  4. Where there is reasonable suspicion that the accident/incident was caused by impairment from alcohol or drug use as defined in Article VI, Section 7, Drug Screening Criteria, C. Reasonable Suspicion Testing.

Post-accident/incident drug AND alcohol test, both will be administered as soon as possible, but not more than eight hours following the time of the

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accident/incident. Refusal to testing could result in disciplinary action including termination unless the employee is seriously injured.

- C. Reasonable Suspicion Testing – When there is reasonable suspicion that any employee on duty has alcohol or drugs in his or her system, the employee will be tested. Reasonable suspicion must be based on specific, objective facts or reasonable inferences drawn from facts that would cause a reasonable person to suspect that the employee is or has been using drugs or alcohol. Facts supporting a reasonable suspicion determination include, but are not limited to, any one or more of the following:
1. direct observation of prohibited drug or alcohol use
  2. slurred speech
  3. odor or visible signs of a controlled substance or alcohol about the person
  4. inability to walk a straight line
  5. physical altercation
  6. verbal altercation
  7. behavior that is so unusual that it warrants summoning a supervisor or anyone else in authority (i.e. confusion, disorientation, lack of coordination, marked personality changes irrational behavior)
  8. possession of drugs or alcohol
  9. a report of prohibited drug or alcohol use provided by a reliable and credible source
  10. arrests, citations, and deferred prosecutions associated with drugs or alcohol.
- D. Federal or State Mandated Substance Abuse Testing - Town employees who are subject to federal or state mandated substance abuse testing, including but not limited to Department of Transportation regulations, will be tested pursuant to such testing requirements notwithstanding this Substance Abuse Policy.
- E. Relief from Duty – An Employee may be placed on administrative leave for the balance of the work shift when tested under Section B, Post-Accident or Incident. When tested under Section C, Reasonable Suspicion, an employee may be placed on administrative leave pending the outcome of the test results.

### Testing Procedures

- A. Consent – Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those town officials with a need to know. Employees will sign an acknowledgment complying with this policy when hired and understand the process.
- The consent form shall also set forth the following information:
1. the procedure for confirming an initial positive test result
  2. the consequences of a confirmed positive test result;
  3. the right to explain a confirmed positive test result and the appeal procedures available; and
  4. the consequences of refusing to undergo a drug and/or alcohol test.
- B. Refusal to Consent – Any employee who refuses to consent to a drug and/or alcohol test is subject to disciplinary action up to and including termination. Any

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- final applicant who refuses to consent to a drug and/or alcohol test will have the offer of employment withdrawn.
- C. Confidentiality – All information from an employee's or applicant's drug and/or alcohol test is confidential and only those with a need to know are informed of the test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. The results of a positive drug test shall not be released until the results are confirmed.
- D. Testing Requirements – All drug and/or alcohol testing of employees and applicants shall be conducted in compliance with the Controlled Substance Examination Act, Article 20 of Chapter 95 of the North Carolina General Statutes. Such testing shall be conducted at medical facilities or laboratories selected by the Town. To be considered a testing site, a medical facility or lab should have the following factors:
1. testing procedures which ensure privacy to employees and applicants consistent with the prevention of tampering;
  2. methods of analysis which ensure reliable test results, including the use of gas chromatography/mass spectrometry to confirm positive test results;
  3. chain of custody procedures which ensure proper identification, labeling, and handling of test samples;
  4. retention and storage procedures which ensure reliable results on confirmatory test of original samples; and
  5. alcohol testing of employees shall be conducted by law enforcement with appropriate jurisdiction, or Nags Head Law enforcement. If test conducted by Nags Head Law enforcement it is to be performed at an appropriate private setting with a department head or supervisor as a witness and administered by duly certified Law Enforcement with results reported in verbal format to the employee and the witnessing department head/supervisor.
- E. Positive Test Results – An employee whose drug test yields a positive result shall be given a second or "confirmation" test using a gas chromatography/mass spectrometry test. The second test shall use a portion of the same test sample withdrawn from the employee or applicant for use in the first test. If the confirmation test results are positive, then the employee will be notified of the positive test results and will have an opportunity to rebut verbally or explain in writing the test results. The Town may, in its discretion, take this explanation into account in making any employment decision.

An employee may request a retest of the original urine sample at his or her expense after notice of a confirmed positive test. Within five working days after the receipt of the confirmed positive test results, the employee shall notify the Town in writing of his or her intention to obtain such a retest. The retest shall be conducted of the original sample and the same criteria as used in the original test shall be used in this retest. If the retest does not confirm the original positive test result, then no adverse personnel action based upon the original test will be taken.

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### Communication of Test Results:

Negative Test Results – If the drug screening test result is negative, the laboratory will so advise the designated town official who will inform the employee or job applicant.

Positive Test Results - In the event of a positive test result the following action shall be taken:

- A. The employee shall be informed of the positive test results verbally by the human resources director or town manager followed by a written notice of the test results.
- B. The town manager will schedule and attend a meeting between the employee, the department head and human resources director. At this meeting, the positive test result will be discussed and a decision will be rendered as to whether the employee could benefit from the Employee Assistance Program, or whether suspension from work and/or termination from employment would be appropriate. The Town encourages the use of the Employee Assistance Program whenever possible. The Employee Assistance Program may be found in the Personnel Policy under Article VI, Section 15. Employees who hold a CDL will be subject to the Department of Transportation regulations for positive test results.
- C. If suspension and/or termination from employment is recommended by the town manager, the employee shall be notified in writing. The employee has a right to appeal the decision per the Personnel Policy, Article IX, Section 2, Grievance Procedure.

### Exemptions:

The town manager or his designee, may exempt certain classes of employees from all or part of the testing requirements of the policy.

### Failure of an Employee to Cooperate

Employee compliance with the Town of Nags Head's Substance Abuse Policy is mandatory. Failure or refusal of any employee to fully cooperate and participate in the program, sign any required document or submit to a drug and/or alcohol screening test will be grounds for termination of employment, unless a compelling, satisfactory reason is provided. Employees who continue employment while undergoing counseling or rehabilitation will be required to meet all established standards of conduct and job performance. Employees who have been referred for counseling or rehabilitation under this policy shall be required to fully cooperate and participate in their rehabilitation program and adhere the recommendations of the town manager. Employees who have been referred to counseling or rehabilitation as a result of a positive drug or alcohol test may be required to undergo drug screening tests at any time for a period of up to two years. If an employee receives a subsequent positive drug test after counseling and/or rehabilitation they are subject to immediate termination.

### Summary

Employees are encouraged to voluntarily request counseling or rehabilitation before their Substance Abuse leads to disciplinary or other work-related problems. No employee will have their job security jeopardized by such a good faith request.

## Article VI. Work Conditions and Expectations

No part of this policy, nor any of its procedures, is intended nor shall be construed to affect the Town of Nags Head's right to manage its workplace, to discipline its employees or to change the "at will" nature of employment with the Town. Since it is impossible to anticipate every situation which may arise under this policy, the town manager should be contacted to resolve any situation not addressed herein. This contact should be made before action is initiated, if at all practicable.

### **Section 8. MVR Checks**

#### Introduction

Operation of a Town vehicle is both a privilege and a responsibility. The purpose of this policy is to identify and monitor drivers who because of their driving practices, attitude, and/or driving history pose a risk to the Town, themselves and the general public. This policy applies to all Town employee whose duties require them to possess a valid North Carolina Driver's License, including employees who receive authorization from their department head to operate a vehicle (personal and/or Town issued) on Town business.

#### A. New Employee Qualifications

Motor Vehicle Records (MVR's) will be examined prior to the start of employment. Any conditional employment offer made for a position with driving duties shall be contingent upon an MVR meeting the required minimum standards set forth in this policy.

#### B. Motor Vehicle Record Grading Criteria

The standards for MVRs are as follows:

- All operators must have a valid driver's license.
- New drivers will *not* be hired with a "borderline" or "poor" MVR rating. MVRs will be graded based on the table below, as minimum requirements.

Any exceptions to these guidelines must be referred to the town manager for written approval.

#### Motor Vehicle Record Grading Criteria (last three years)

Number of Minor Violations	Number of at-fault accidents			
	0	1	2	3
0	Clear	Acceptable	Borderline	Poor
1	Acceptable	Acceptable	Borderline	Poor
2	Acceptable	Acceptable	Poor	Poor
3	Borderline	Poor	Poor	Poor
4	Poor	Poor	Poor	Poor
5	Poor	Poor	Poor	Poor
Any major Violation	Poor	Poor	Poor	Poor

Minor Violations:	Major Violations
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<p>Any minor violation other than a major except:</p> <ul style="list-style-type: none"> <li>• Motor vehicle equipment, load or size requirement</li> <li>• Improper/failure to display license plates</li> <li>• Failure to sign or display registration</li> <li>• Failure to have driver's license in possession (if valid license exists)</li> </ul>	<ul style="list-style-type: none"> <li>• DWI within the last 3 years</li> <li>• Failure to stop/report an accident</li> <li>• Reckless driving/speeding contest</li> <li>• Making a false accident report</li> <li>• Homicide, manslaughter or assault arising out of the use of a vehicle</li> <li>• Driving while license is suspended/revoked</li> <li>• Attempting to elude a police officer</li> <li>• Passing a stopped school bus</li> </ul>
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### C. Continuing Driver Qualifications

It is the employee's responsibility to inform his/her supervisor of any incidents that could potentially change his/her status as an employee who is authorized to operate a vehicle on Town business. Any employee who fails to report incidents that affect driving status will be removed from a driving position and will be subject to disciplinary actions up to and including termination. The following items must be reported as soon as possible after an incident and BEFORE operating a vehicle on Town business:

- Failing a breath test, blood test, urine test or any other objective measure of intoxication/impairment conducted by a law enforcement official.
- Refusing to submit to any test of intoxication/impairment conducted by law enforcement officials.
- Suspension of a driver's license as a result of a moving violation or operation of a motor vehicle without a valid driver's license.
- Charge or conviction of driving while intoxicated (DWI) or under the influence (DUI) involving any drug or alcohol use.
- Charge or conviction of failing to stop and report when involved in an accident.
- Charge or conviction of homicide or assault from the operation of a motor vehicle.
- Charge or conviction of reckless or dangerous driving.
- Attempting to elude a law enforcement official
- Any moving offense committed while operating a town vehicle
- Passing a stopped school bus
- Any other Major Violation

### D. Motor Vehicle Records

All Town Employees who are authorized to operate a vehicle on Town business will be subject to random driving record checks, conducted by the Nags Head Police Department, to ensure the safety of employees and the community.

## **Article VI. Work Conditions and Expectations**

### **Section 9. Use of Town Owned Equipment**

The Board of Commissioners specifically forbids the personal use of any Town owned equipment or supplies by any employee, official or individual unless authorized by the town manager. Should authorization be granted, use will be limited to the use specified in the authorization.

Use of Town owned vehicles are governed by the Town Policy and summarized in paragraphs (a) and (b) below. Further clarifications are covered in paragraphs (c) through (f).

- A. Vehicles Owned by the Town may be provided to one or more employees in connection with Town business and shall be used only on Town business. Town vehicles are not to be used to transport personal property such as an employee's dog, weekly groceries and other similar items or use. When the vehicle is not used in the Town's business, it is kept on the Town's business premises unless approved otherwise by the town manager. Individuals required to drive Town vehicles home who are on vacation or other extended leaves shall see that the vehicle is available for Town use during that leave. The Board of Commissioners reasonably believes, based on Town policy and state law, that no employee or any individual use these vehicles for personal use.
- B. For bona fide non-compensatory business reasons, the Town may require certain employees to commute to and from work in Town vehicles that are not exempted by IRS regulations. In accord with federal and state law, an employee may not use the Town owned vehicle for personal use other than commuting. The Town has a written policy forbidding personal use of any Town vehicle and the employee using the vehicle is not an elected or appointed official. Under these conditions the Town will account for commuting use by including an appropriate amount in the employee's gross income, as specified in IRS regulations.
- C. Certain vehicles may be used to commute without any income being added to the employee's gross income. For example a qualified specialized utility repair truck used to commute to enable the employee to respond in emergency situations to restore or maintain water or sewer services and not used for personal reasons is exempt from having an adjustment made to the employee's gross income.
- D. Use of clearly marked police vehicles to commute, and not used for personal use, are also exempt from the requirement to adjust the employee's gross income. Under certain conditions an unmarked police vehicle used to commute and not for personal use may also qualify for this exemption.
- E. Only Town employees are authorized to operate Town vehicles. The only exception is that members of the Nags Head Volunteer Fire Department may do so in training and emergency situations only.
- F. Only authorized persons are to be transported in Town vehicles. The only exceptions are emergency situations.
- G. No one under the age of eighteen may operate a town vehicle.
- H. During times of Town authorized special activities such as parades, when vehicles would not be responding in an emergency situation, non-Town employees may be a passenger.



## **Article VI. Work Conditions and Expectations**

### **Section 10. Reimbursement for use of Personal Vehicle**

The Town will reimburse an employee for use of his personal vehicle for Town business when authorized by the town manager. The rate of reimbursement will be equal to the amount allowed for tax deduction purposes by the IRS at the time of use.

### **Section 11. Employee Travel Policy**

#### Purpose

It is the intent of this policy to provide Town departments and agencies a comprehensive reference for uniform interpretation of payment or reimbursement for travel expenses pertaining to official travel and subsistence. All employees of the Town are subject to this policy.

#### Employee Responsibility

An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business and expending personal funds. Excess costs, circuitous routes, luxury accommodations, extravagant meals and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Employees will be responsible for unauthorized costs and any additional expenses incurred for personal preference and/or convenience. Good judgment should be used when incurring expenses. Willful violations of this policy may result in disciplinary action up to and including dismissal.

#### Definitions and General Guidelines

##### A. Authorizing Party

An individual authorized by this policy to approve or disapprove requests for travel, cash advances, travel reimbursements, etc.

##### B. Distant Travel

When travel requires any employee or official to travel, the traveler should consider whether to travel by air from Norfolk or Newport News. In the event of air travel, reimbursement will also be given for the mileage to and from the airport. Reimbursement will be provided based on the more economical method of travel regardless of whether travel is actually by air or automobile.

##### C. Employee's Duty Station

"Duty Station" is defined as the job location at which the employee spends the majority of his or her working hours. For an employee in travel status, the duty station should be the point where traveling begins the majority of the time (home or office). The designation of an employee's home as the duty station by a department head requires prior approval from the town manager or his designee.

##### D. Non-Town Employees

Non-Town employees traveling on official business whose expenses are paid by the Town are subject to these regulations, including subsistence allowances, to the same extent as Town employees. Travel expenses for members of a non-Town employee's family are not eligible to be paid by the Town. No travel advances will be made to non-Town employees.

##### E. Preauthorization

## Article VI. Work Conditions and Expectations

- Travel plans and estimated costs should be included on the travel preauthorization so the individual(s) authorized to approve the request can weigh the estimated costs of the travel against the benefits of the travel. Any significant change (greater than 10%) in the estimated costs should be communicated to the individual(s) approving the travel request.
- F. Registration Fees  
The Town allows for registration fees to be reimbursed at the actual amount as shown by a valid receipt or invoice. They may be paid by the employee and then reimbursed or prepaid by the department. These fees are charged to "travel and training expense". The department must require itemization and documentation of expenses.
- G. Reimbursements  
All expense reports, reimbursement requests shall be filed for approval and payment within 10 working days after the travel period ends for which the reimbursement is being requested.
- H. Requesting Party  
The person who will be reimbursed for travel costs incurred while conducting Town business.
- I. Subsistence (Meals & Lodging)  
Subsistence is an allowance related to lodging, meal costs, and gratuities thereon.
- J. Town Credit Card  
Where practical, Town credit cards will be issued to a responsible Town employee as a tool to help minimize the personal financial impact of conducting Town business. Detailed documentation, including line item purchases and sales tax is required of all Town credit card use. Inappropriate, unauthorized or unreported use of Town credit cards will be grounds for disciplinary action up to and including dismissal.
- K. Transportation  
Transportation expenses include personal automobile, taxi, bus, train, airplane, motor pool charges, auto rentals, tolls and parking fees. All travel expenses must be incurred by and for employees or other eligible travelers while conducting official Town business or visiting for employee interviews in order to be eligible for reimbursement.
- L. Travel  
Travel is defined as going to and from the normal job location to a site located more than 35 miles from the normal job location to conduct Town business for more than twelve (12) hours. Authorization of travel requests will be based upon need and cost/benefit of travel as determined by the authorizing party. The requesting party is also encouraged to share transportation with other employees of the Town and representatives of other government units when possible. The requesting party will be reimbursed for actual costs incurred only, subject to the limitations established in this policy.
- M. Out-of-Town Travel & Travel Advances  
For all out of town travel, other than travel by the town manager, the department head is responsible for determining that a sufficient unexpended appropriation remains in the department travel budget to reimburse all expected costs of travel. A travel preauthorization form will be submitted by the

## Article VI. Work Conditions and Expectations

requesting party to the department head for authorization of travel at least two weeks prior to the date upon which travel will commence, unless there are extenuating circumstances. The amount of travel advance may not exceed the estimated travel cost. The finance director will not issue a travel advance unless it has been approved by the department head. If the department head is the requesting party, the preauthorization form should be submitted to the town manager or deputy town manager. Excess travel advances will be repaid no later than five working days after the completion of the approved travel.

### Specific Guidelines Relating to Transportation, Subsistence, and Other Costs

#### A. Transportation

##### 1. Town Vehicles

Town vehicles may be provided for any authorized travel. The use of Town vehicles is restricted to the specific Requesting Party given permission for such use. The Requesting Party must obey all laws of the jurisdiction in which the vehicle is being operated and attend the town defensive driving class. The vehicle will be used in conducting Town business only. A de minimis amount of personal use incidental to or reasonably associated with the travel, such as driving the vehicle to and from dinner, may be allowed. Non-town employees may accompany Town employees in Town vehicles only if they have a business interest in the travel.

##### 2. Personal Vehicles

Town vehicles are made available for out of town travel and personal vehicle use is discouraged. However, a department head may authorize the use of a personal vehicle. In such a case, the following will apply:

- a. The use of personal vehicle must be approved in advance.
- b. The Requesting Party waives any and all claims for any property damage against the Town, and releases the Town for any claims for reimbursement other than as specifically authorized by this policy.
- c. Parking fees, tolls, and storage fees are reimbursable. Receipts are required for fees in excess of \$3.00 per day. Reimbursement of expense for airport parking is limited to ninety-six hours, with a receipt required.
- d. If a Town vehicle is available, however the employee chooses and is authorized to use their personal vehicle, reimbursement will be calculated for the actual round trip mileage, as determined by MapQuest.com, at the privately owned vehicle (POV) IRS rate per mile. Reimbursement will be either based on actual mileage or available airfare, whichever is less. Mileage is measured from the closer of the duty station or the point of departure to the destination (and return). No other costs associated with vehicle use or maintenance (e.g. fuel, oil, repairs or supplies) will be reimbursed.

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- e. If a Town vehicle is not available and a personal vehicle must be used, the employee will be reimbursed for the actual round trip mileage at the standard IRS rate per mile.
3. Rental Vehicles  
Rental vehicles are to be used as a last resort. Use of a rental vehicle must be approved in advance by the town manager or his designee. A receipt is necessary for reimbursement.
4. Common Carrier  
Actual coach fare (substantiated by receipt) will be reimbursed. First Class travel should be used only in extraordinary circumstances. Penalties and charges resulting from the cancellation of airline reservations (or other travel reservations) shall be the Town's obligation if the employee's travel has been approved in advance and the cancellation or change is made at the direction of and for the convenience of the Town. If the cancellation or change is made for the personal benefit of the employee, it shall be the employee's obligation to pay the penalties and charges. However, in the event of accidents, serious illness or death within the employee's immediate family, or other critical circumstances beyond the control of the employee, the Town will be obligated to pay the penalties and charges.
  - a. Super Saver Rates  
When traveling by common carrier to conduct official Town business, employees traveling to their destination earlier than necessary and/or delaying their return in order to avail the Town of reduced transportation rates may be reimbursed subsistence for additional travel days if, in the opinion of the department head, the amount saved in transportation costs due to the early and/or delayed travel is greater than the amount expended in salary and additional subsistence. Prior written approval of the department head is required.
5. Commuting
  - a. No reimbursement shall be made for the use of a personal vehicle in commuting from an employee's home to his/her duty station.
  - b. Travel to/from airport (at employee's duty station):  
Reimbursement for travel between the employee's duty station and the nearest airline terminal and for appropriate parking may be made under the following circumstances. For travel by:
    - Airport limousine - One round-trip limousine fare;
    - Taxi - Limited to reimbursement for actual costs (receipt required);
    - Private vehicle - The IRS rate per mile for a maximum of two round trips with parking charges for a maximum of 96 hours. Receipts are required for airport parking claims.
  - c. Travel to/from airport (at employee's destination) -  
Reimbursement for travel to and from the airline terminal at the employee's destination may be made where available as listed below (receipts are required):
    - Airport limousine - One round-trip limousine fare;

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- Bus - One round-trip bus fare;
- Taxi - When limousine service is not available, actual fare to and from airline terminal;
- Rental vehicles - May be used as a last resort.
- Taxis and limousines other than trips to and from the airport - The actual cost of taxi and limousine fares is reimbursable when required for travel on official Town business.

### 6. Subsistence

#### a. Travel Advance Schedule

Travel advances may be issued for traveling on official Town business based on the subsistence schedule set forth by the U.S. General Services Administration.

#### b. Lodging

##### (1) Authorization

Written approval by a department official designated by the department head must be obtained in order to qualify for reimbursement for overnight stays. Supervisory personnel certifying the reimbursement request as necessary and proper must require documentation from the traveler to substantiate that the overnight lodging was necessary.

##### (2) Reimbursement

Each employee is responsible for his or her own request for reimbursement. Requests for reimbursement must be filed within 10 working days after the travel period ends for which the reimbursement is being requested. Specific dates of lodging must be listed on the reimbursement request, and substantiated by a receipt from a commercial lodging establishment. Other entertainment expenses, such as the cost of movies, that are included with the bill for lodging will not be reimbursed. A reimbursement request submitted more than 10 working days after the travel period may be denied.

### B. Meals and Other Expenses

#### 1. Meals

##### a. Reimbursement

Travel meal reimbursements are only available for travel to a destination located at least 35 miles from the employee's regularly assigned duty station when more than twelve (12) hours of travel have been incurred. Each employee is responsible for preparing and submitting his or her own request for reimbursement. All requests for meals reimbursement must be reasonable and may be disallowed if determined to be otherwise. The amount of reimbursement will be based on the schedule published by the

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U.S. General Services Administration at [www.GSA.gov](http://www.GSA.gov). Filing procedures are the same as for lodging (see: VI, A, 6b(2) above). Each meal reimbursement must be listed on the reimbursement request. Time of departure and arrival must be listed on the reimbursement request. Use of the travel advance *per diem* rate shall be used for meal reimbursements. The travel advance *per diem* rate includes gratuities.

### 2. Daily Travel (Overnight)

Employees may receive allowances for meals for partial days of travel when the partial day is the day of departure or the day of return. For partial days, to be eligible for a meal allowance, travel must equal or exceed twelve (12) hours;

Breakfast- Depart duty station prior to 6:00 a.m.

Lunch- Depart duty station prior to 10:00 a.m. (day of departure).  
Return to duty station after 2:00 p.m. (day of return).

Dinner- Depart duty station after 2:00 p.m. (day of departure).  
Return to duty station after 8:00 p.m. (day of return). If stopping for dinner would cause the employee to return after 8:00 p.m., when he/she would otherwise have returned before 8:00 p.m., dinner will not be reimbursed.

### 3. Daily Travel (not overnight)

Except as listed in "4" below, allowances shall not be paid to employees for any meal if travel does not occur for more than twelve (12) hours or involve an overnight stay.

### 4. Reimbursement for Meals – required employee attendance

IRS guidelines do not allow a non-taxable lunch allowance when travel is not overnight. However, an employee may elect to receive a taxable allowance for lunch as based on the schedule published by the U.S. General Services Administration at [www.GSA.gov](http://www.GSA.gov) for the location of the training. Such allowance will be processed through the employee's pay check and subject to Federal and State Tax withholdings.

A Town employee may be reimbursed for their out of pocket meal cost when the job requires his/her attendance at the meeting of a Board, Commission, Committee, or Council in his/her official capacity and the meal is preplanned as part of the meeting for the entire Board, Commission, Committee or Council.

A Town employee may be reimbursed for their out of pocket meal costs when the meal is included as an integral part of a congress, conference, assembly, convocation, etc. Such congress must involve the active participation of persons other than the employees of the Town; the employee's attendance is required for the performance of

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his/her duties, but must not be part of the employee's normal day-to-day business activities; the congress must be planned in advance with a formal agenda; and the congress must provide written notice or an invitation to participants.

In no case will any employee be reimbursed for any alcohol purchased or consumed, whether as part of a meal or any other activity.

### C. Other Costs

#### 1. Conventions and Conferences

##### a. Limitations

Attendance at conventions and conferences will be normally limited to two requesting parties, in addition to any requesting parties involved in the convention or conference program. Management may waive this limit as appropriate.

#### 2. Telephone Calls

##### a. Long Distance

One reasonable personal long distance phone call (not to exceed \$5.00) is allowed for every three nights away on business.

##### b. Reimbursement

Official phone calls are reimbursable under "other expenses". Individual calls over \$5.00 must be identified as to point of origin and destination.

### D. Authorization for Reimbursement Procedures

#### 1. Submitting expense reports

A requesting party will complete a reimbursement form, attach receipts for expenses requiring them, and submit it to the authorizing party no later than ten working days after returning from travel. Advances will be deducted from reimbursable costs. A requesting party submitting a falsified reimbursement form will be subject to disciplinary action and/or criminal prosecution. An authorizing party or Finance Officer who knowingly approves a falsified reimbursement form will be subject to disciplinary action and/or criminal prosecution. Violations of the Town's travel policy may result in dismissal from Town employment.

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### **E. Approval and Processing of Reimbursement Requests**

1. Reimbursement requests will be submitted to the authorizing party for approval. After approval by the authorizing party, the form should be forwarded to the Finance Officer. The Finance Officer will determine that the reimbursement form has been properly approved, that it is mathematically correct, and that requested reimbursements agree to submitted receipts and are within the limits set by this policy. If an error in the reimbursement request is found, the requesting party will be informed and the error will be corrected before payment is made. Before the reimbursement is made, the Finance Officer will determine that an amount sufficient to pay the request has been encumbered for payment, or that there is a sufficient unexpended appropriation in the expenditure item. The Finance Officer will immediately inform the authorizing party and requesting party if payment cannot be made. Reimbursement will not be made from petty cash.

### **Section 12. Harassment Policy**

#### Purpose:

- A. To affirm the Town's commitment to providing a work environment free of sexual and other unlawful harassment.
- B. To state the Town's commitment to providing a work environment that shows respect for the individual.
- C. To inform all employees of their right to be free of unlawful harassment in the work place.

#### Policy Statement:

- A. The Town will not tolerate or condone acts of sexual or other unlawful harassment.
- B. It shall be against the Town's policy for any worker, employee, volunteer, board member or other person, to unlawfully harass a Town employee.
- C. All employees, no matter what their position, must not engage in offensive and inappropriate behavior at work and are responsible for ensuring that the workplace is free from such harassment.
- D. Town employees and supervisors will make every effort to prevent and avoid unlawful harassment in the work place. The Town believes that such efforts are necessary for productive working relationships within the organization.
- E. Retaliation against any person who, in good faith, complains of unlawful harassment as prohibited by this policy or who is called upon to participate in any grievance hearing concerning or investigation of such complaint, is prohibited.

#### Scope:

This policy covers all employees of the Town of Nags Head.

#### "Unlawful Harassment" - Definition:

"Unlawful harassment" refers to conduct which is considered unlawful harassment or discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended. It



## Article VI. Work Conditions and Expectations

includes but is not limited to sexual harassment, which is defined by 29 C.F.R. Part 1604.11 per the Equal Employment Opportunity Commission (EEOC) Guidelines on discrimination because of Sex, as follows:

"Unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.
- B. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting such individuals, or
- C. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

Examples of sexual harassment include, but are not limited to deliberate, unwelcome touching; suggestions or demands for sexual involvement accompanied by implied or overt promises of preferential treatment or threats; pressure of sexual activity; continued or repeated offensive sexual flirtations, advances or propositions; continued or repeated verbal remarks about an individual's body or physical characteristics; sexually degrading words used towards an individual or to describe an individual; or the display in the workplace of sexually suggestive objects or pictures. Sexual harassment does not include personal compliments welcomed by the recipient or social interactions or relations freely entered into by employees or prospective employees.

"Unlawful harassment" also includes any other act that is demeaning to another person or group of persons relating to their race, color, ethnicity, national origin, religion, gender, disabling physical or mental condition or age. Such conduct may undermine the integrity of the employment relationship, or create a hostile or offensive working environment. Therefore, such conduct is strictly prohibited.

### How Complaints are Handled:

- A. All complaints of unlawful harassment will be treated seriously and with respect. Employees who feel victimized by unlawful harassment should report the harassment immediately.
- B. All complaints of unlawful harassment shall be investigated promptly and thoroughly to determine whether there is evidence substantiating the complaint. Each situation will be evaluated individually.

### Where to Lodge a Complaint:

All complaints of unlawful harassment shall be filed with either:

The town manager, human resources director or assistant town manager.

### How to Lodge a Complaint:

Complainants are not required to provide a written statement in order to file a complaint, but may do so if they wish. Complainants may convey their complaint orally to the appropriate contact person. The contact person will then document the complaint and have the complainant review the document. The complainant should sign the documentation when it reasonably represents the situation.

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### Investigation of a Complaint:

All complaints will be investigated to include, but are not limited to, interviews with the complainant, the accused, and the supervisor of the accused. A written report of the investigation will be generated.

### Disciplinary Action:

- A. If the investigation reveals that the complaint is valid, prompt attention and disciplinary action designed to stop the harassment immediately and to prevent its recurrence *shall* be taken. All disciplinary action is subject to Article VIII – Separation and Disciplinary Actions of the Town of Nags Head Personnel Policy.
- B. Complaints of unlawful harassment which are found to be malicious, willful attempts to misrepresent or tarnish the reputation of any individual will be dealt with through appropriate disciplinary action. All disciplinary action is subject to Article VIII – Separation and Disciplinary Actions of the Town of Nags Head Personnel Policy.
- C. Any person who retaliates against a person making a valid or good faith complaint or participating in an investigation or grievance hearing as provided for in this policy will be subject to disciplinary action subject to Article VIII – Separation and Disciplinary Actions of the Town of Nags Head Personnel Policy.

In addition to disciplinary action against the harasser, action will be taken to correct or remedy any tangible effects of the harassment. Such may include reinstatement without loss of pay, benefits, seniority, etc. Other action necessary to correct any intangible effects of the harassment will also be considered and, if appropriate, taken.

If either the complainant or the accused is not satisfied by the investigation held internally, either party may initiate a Formal Grievance Procedure in accordance with Article IX. Mediation Policy and Grievance Procedure of the Town of Nags Head Personnel Policy.

### **Section 13. Personal Indebtedness**

It is expected that each employee of the Town will keep his/her financial affairs arranged in such a way that the Town will not be embarrassed by excessive personal indebtedness.

### **Section 14. Surrender of Property**

Records will be kept of all issued equipment, supplies and uniforms. An employee who is suspended, discharged, retires, or resigns will be required to return all town owned equipment, supplies and uniforms. Final pay will be held and or docked for failing to return all issued equipment, supplies and uniforms in appropriate condition.

### **Section 15. Employee Assistance Program (EAP)**

#### Purpose

Most employees at one time or another will face personal problems and in some cases the personal problems will affect the employee's job performance as well as his or her personal well-being. Marriage problems, legal problems, emotional disturbances, financial problems, substance abuse or other stress related disorders may contribute to the personal problems that an employee may be experiencing.

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Implementation of the Employee Assistance Program reflects the concern at the Town of Nags Head for employees who may be facing personal problems. We believe our employees are our greatest asset and represent our greatest investment. The Town of Nags Head is not interested in intruding into any employee's personal life. We are interested in offering a program that will assist the employee in overcoming their problem and restoring the employee's well-being and overall job performance. Early intervention may help alleviate the problems and cause the employee to be a better worker and in many cases actually prevent the loss of a good employee.

### Eligibility

All regular full time employees as well as their immediate family members (spouse and dependents) are eligible to participate in the program.

### Referral Procedures

Employees may access the program by contacting the Human Resources Department, or a supervisor may refer the employee to the Human Resources Department for assistance if the problems appear to be the cause of unsatisfactory job performance. Once contact has been made, the Human Resources Department will provide the employee with a list of service providers from specific agencies, groups and organizations, approved and recognized as being competent in providing assistance to employee needs. If requested by the employee, the Human Resources Department will contact the employee's choice of service provider and set up the first visit, or the employee may make direct contact with a service provider to set up a visit.

### Confidentiality

Use of this program is confidential and the service provider does not report to anyone at the Town except with the employee's knowledge or under circumstances where the safety of the employee, coworkers or the public may be at direct risk. If a referral is made by a supervisor, no documentation thereof is placed in the personnel file of the employee unless the referral is the result of disciplinary action or is otherwise relevant to a job-related objective or requirement. Even then, the referral is confidential between the employee, the supervisor and the Human Resources Department. No summary of findings prepared by the EAP provider is forwarded to the Town unless it is the result of a disciplinary action. No employee will have his or her job security or promotional opportunities jeopardized by participating in the program.

### Implementation

Implementation of this policy will not detract from the normal supervisory function of monitoring attendance and performance, and taking corrective action when job performance or behavior begins to deteriorate or become unacceptable. EAP procedures do not differ from the standard procedures required of supervision whenever performance declines or substandard performance is observed, whatever the presumed cause may be.

Supervisory personnel should avoid attempts to identify and/or label employees as having marriage problems, legal problems, emotional disturbances, financial problems, drug or alcohol dependence or stress related disorders. This is a case-finding and

## **Article VI. Work Conditions and Expectations**

diagnostic function which is not proper to the role of supervisor. That is the function and responsibility of the EAP provider.

### Funding

The participating employee is responsible for the cost of the services rendered by the EAP referral. The Town's health insurance may pay some or all of the cost for a covered employee (or a covered dependent) if the services are rendered by a licensed doctor, psychiatrist or PHD. The first visit to the appropriate provider will not be charged to the leave account of the employee.

In circumstances where the referral is mandatory or as part of a disciplinary action, the Town bears the cost of the service as well as providing the leave time to attend. After satisfaction of the mandatory or disciplinary referral, any fees for subsequent visits are the obligation of the employee and any leave time will be charged to the employees leave account.

### Summary

The Town of Nags Head offers the above EAP as a means to communicate concern and offer assistance for its employees. Through the use of the EAP it is our hope to enhance the health, happiness and stability of employee. The Town believes that early intervention may help alleviate the problem(s) and cause the employee to be a better worker.

### **Section 16. Tobacco Free Campus**

It is the policy of the Town of Nags Head to maintain a smoke and tobacco free campus. No smoking or other use of tobacco products is permitted at any time in any part of the building, property or vehicles owned, leased, or rented or by any employee while performing work duties.

#### A. Prohibited Conduct for all town employees

Smoking and the use of tobacco products are prohibited as follows:

1. Smoking or using tobacco products in any Town of Nags Head Building.
2. Smoking or using tobacco products in any Vehicle owned, leased, or operated by the Town of Nags head.
3. Smoking or using tobacco products while on any grounds that are owned, leased, occupied, or operated by the Town of Nags Head.
4. Smoking or using tobacco products while performing work duties.

Violations of any of these prohibitions will result in disciplinary action up to and including termination consistent with Article VIII, Section 2 of the Town's personnel policy.

#### B. Implementation

1. The person in charge of a Building, Vehicle and grounds or his or her designee shall post signs that meet all the requirements in Section 16, C of this policy.
2. The person in charge of a Building and grounds or his or her designee shall remove all ashtrays and other smoking receptacles.

#### C. Signage

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1. Signs will include an express reference to, "smoke free" or "tobacco free" and may include the international "No Smoking and Smokeless Tobacco" symbol (which consists of a pictorial representation of a burning cigarette and smokeless tobacco product enclosed in a red circle with a red bar across it),
2. Signs will be posted at each Building entrance and on the grounds at a height and location easily seen,
3. Signs will be in legible font type.
4. Persons in charge of Vehicles identified in Section 16, A or his or her designee shall post signs in the Vehicles explaining the prohibition. The signs must be displayed in areas where passengers will be able to see the signs but the placement of the signs must not interfere with the safe operations of the Vehicle.
5. Nothing in this policy prohibits a person in charge of Buildings, grounds and Vehicles from posting additional signs in areas where smoking is prohibited. For example, signs may be posted in other areas where people are likely to want to use tobacco products, such as in bathrooms or in dining areas.

## Article VII. Leave Benefits

### **Section 1. Holidays**

The following days are Town observed holidays.

<b>Holiday*</b>
New Year's Day**
Martin Luther King Jr. Day
Good Friday
Memorial Day
Independence Day**
Labor Day
Veterans Day**
Thanksgiving (2 days)
Christmas (3 days)**

\*The Town of Nags Head will follow the NC State holiday calendar.

\*\*Employees that work in the Fire and Police Departments will observe the following Holidays: New Year's Day on January 1<sup>st</sup>, Independence Day on July 4<sup>th</sup>, Veterans Day on November 11<sup>th</sup> and Christmas on December 24<sup>th</sup>, 25<sup>th</sup> and 26<sup>th</sup>.

For regular full time employees required to work a minimum base with greater or fewer hours than 2080, holiday leave shall be granted as described in Section 3 of this Article.

### **Section 2. Effect of Holidays on Other Types of Leave**

Regular holidays which occur during a vacation, sick or other authorized paid leave period of any officer or employee of the Town shall not be charged as vacation, sick or other paid leave. An employee being compensated by the Town's Workers' Compensation is deemed to be fully compensated for the holidays that fall during such period of inability to perform duties due to injury.

### **Section 3. Holiday Pay**

Calculating holiday pay when work is not required is described below;

<u>Category of Employee</u>	<u>Maximum Holiday Hours</u>
Non-Exempt Employee	7.5 hours
Exempt Employee	8 hours
Police (except Support Staff)	8.56 hours
Fire (except Support Staff)	10 hours

Employees required to perform work on regularly scheduled holidays will be granted a bonus for each hour worked equal to their overtime rate of pay.

### **Section 4. Vacation Leave**

Vacation leave shall be used for rest and relaxation and may be used for medical appointments and absences due to adverse weather conditions. It shall be used at the discretion of the employee and at the convenience of the appropriate supervisor. Such leave is subject to the restrictions in paragraph (d) of this section.

## Article VII. Leave Benefits

A. New Hires

Probationary Employees may accumulate vacation leave but shall not be permitted to take vacation leave during the first six months of the probationary period unless the denial of such leave will create an unusual hardship as provided in Article V., Section 10.

B. Vacation Leave - Accrual

For the purpose of this calculation please reference the chart below.

<u>Total Years of Service</u>	<u>Accrued Vacation Days</u>	<u>Non-Exempt 7.5 hrs.</u>	<u>Exempt 8 hrs.</u>	<u>Police 8.56 hrs.</u>	<u>Fire 10 hrs.</u>
Hours Earned Per Pay Period					
0 to 4 yrs.	12	3.46	3.69	3.95	4.62
5 to 9 yrs	15	4.33	4.62	4.94	5.77
10 to 14 yrs	18	5.19	5.54	5.93	6.92
15 to 19 yrs	21	6.06	6.46	6.91	8.08
20 to 24 yrs	24	6.92	7.38	7.90	9.23
25 to 29 yrs	27	7.79	8.31	8.89	10.38
30 plus	30	8.65	9.23	9.88	11.54

Example: A non-exempt employee, who is required to work a minimum of 1950 hours annually and has 5 years of service with the town, will accrue vacation at the rate of 4.33 hrs per pay period. This employee would accrue 15 days per year using the following formula:

$$4.33 \times 26 \text{ pay periods} = 112.58 \text{ hrs divided by } 7.5 \text{ hrs} = 15 \text{ days}$$

C. Vacation Leave - Maximum Accumulation

Employees will not exceed a maximum accrual of 36 earned days. The chart below illustrates the maximum accumulation of vacation leave.

<u>Category of Employee</u>	<u>Minimum Annual Hrs.</u>	<u>Maximum Accumulation</u>
Non-Exempt Employee	1950 hrs.	270 hrs.
Exempt Employees	2080 hrs.	288 hrs.
Police (except Support Staff)	2223 hrs.	308.16 hrs.
Fire (except Support Staff)	2756 hrs.	360 hrs.

D. Vacation Leave - Manner of Taking Leave

Vacation leave may be taken as earned by a regular employee subject to the approval of the supervisor, who may not grant leave if it is in the Town's best interest not to grant the leave. One week notice may be required by the supervisor in granting vacation leave. All department heads and other employees so designated by the town manager must take at least five (5) consecutive work days of accrued vacation per calendar year.

Employees who exceed the maximum accumulation of vacation hours per calendar year will have all excess hours rolled into sick time.

E. Vacation Leave - Terminal Pay of Vacation Leave

## Article VII. Leave Benefits

An employee who is separated without failure in performance of duties or personal conduct, shall be paid for vacation leave accumulated to the date of separation not to exceed a maximum of 36 days, (or as described in Section 4C of this Article) provided completion of six months or more of continuous service has occurred and provided that written notice has been submitted to their immediate supervisor at least two weeks in advance of the effective date of separation. For involuntary separation due to failure in personal conduct as outlined in Article VIII, Section 2B of this policy, accumulated vacation leave may be withheld at the discretion of the town manager at the time of an employee's separation. In exercising this discretion, the manager shall consider the nature of the employee's misconduct, their years of service, the decision made in prior situations, and other legitimate and non-discriminatory criteria. Employees who do not give proper notice (2 weeks for most employees, 30 days for department heads) will not be paid for their accumulated vacation upon termination.

F. Vacation Leave - Payment for Accumulated Vacation Upon Death

The designated beneficiary of an employee who dies while employed by the Town shall be entitled to payment for all of the accumulated vacation leave credited to the employee's account not to exceed a maximum of 36 days (or as described in Section 4C of this Article).

### **Section 5. Sick Leave**

Sick leave with pay is not a right which an employee may demand but is a privilege granted by the Board of Commissioners for the benefit of an employee when unable to work because of illness. Sick leave shall be granted to an employee absent from work for any of the following reasons: sickness, sickness in the immediate family, as defined by the Family and Medical Leave Act, bodily injury, quarantine, medical or dental examinations or treatment, or exposure to a contagious disease, when continuing work might jeopardize the health of others.

Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave, when possible, or not later than two (2) hours after the beginning of a scheduled work day or as otherwise required by the department head. Un-excused absences constitute failure in personal conduct and must be avoided and are subject to disciplinary action up to and including dismissal.

A. Sick Leave –Accrual

The manner in which employees accrue sick leave is illustrated in the chart below.

<u>Accrued Sick Days</u>	<u>Non-Exempt 7.5 hrs.</u>	<u>Exempt 8 hrs.</u>	<u>Police 8.56 hrs.</u>	<u>Fire 10 hrs.</u>
	<u>Hours Earned Per Payroll</u>			
12	3.46	3.69	3.95	4.62



## Article VII. Leave Benefits

Example: A non-exempt employee who is required to work a minimum of 1950 hours annually will accrue sick leave at the rate of 3.46 hrs per pay period. This employee would accrue 12 days per year using the following formula:  
 $3.46 \text{ hrs} \times 26 \text{ pay periods} = 89.96 \text{ hrs}$  divided by  $7.5 \text{ hrs} = 12 \text{ days}$ .

The town manager may advance sick leave to an employee who has exhausted sick leave because of a major operation or illness. Vacation leave need not be exhausted. This advanced sick leave may not exceed the amount an employee may earn during a twelve (12) month period.

B. Sick Leave - Maximum Accrual

Sick leave shall accumulate without limit.

C. Sick Leave - Physician's Certificate

The employee's supervisor or department head may require a physician's certificate concerning the nature of the illness and the employee's physical capacity to resume duties for each occasion on which an employee uses sick leave of two (2) or more consecutive work days, for the third absence of any length in any calendar month or whenever the employee's outstanding sick leave balance is below 45 hours. The department head shall be responsible for the enforcement of this provision to the end that (1) employees shall not be on duty when their presence may endanger their health or the health of other employees, and (2) there will be no abuse of sick leave privileges.

Under Family and Medical Leave Act guidelines, the Town may require that a request for leave because of a serious illness of the employee or the employee's child, spouse or parent, be supported by a doctor's certification, which shall include the following:

1. The date on which the serious health condition began;
2. The probable duration of the condition;
3. Appropriate medical facts regarding the condition;
4. A statement that the leave is needed to care for a child, spouse or parent and an estimate of the amount of time that is needed; or,
5. That the employee is unable to perform the functions of the position, whichever applies.

Where certification is necessary for intermittent leave for planned medical treatment, the dates on which the treatment is expected to be given and the duration of the treatment, shall be provided.

If the Town has reason to doubt the validity of medical certification, the Town may require the employee to get a second opinion from a doctor designated by and paid for by the Town. If the second opinion differs from the original medical opinion, the Town may require the employee to get a third opinion from a doctor jointly approved by the Town and the employee, but paid for by the Town. The Third opinion is final and binding on both the Town and the employee. The Town may require and pay for the employee to obtain periodic re-certification on a reasonable basis, usually no more frequently than every thirty (30) days.

## **Article VII. Leave Benefits**

D. Sick Leave - Separation

Sick leave shall be reinstated when an employee returns from authorized leave without pay or when reinstated within five (5) years from any type of separation. No employee shall be paid for any accrued sick leave.

E. Sick Leave - Retirement Credit

The North Carolina Local Government Employee's Retirement System may allow credit for days accrued in a member employee's sick leave account at time of retirement.

F. Sick Leave – Roll over

Employees who successfully complete their probationary period may be credited sick leave balance from a state agency or other municipalities or counties that participates in the State of North Carolina Retirement System or Local government Employee's Retirement System. Such balance to be transferred must be submitted in writing from the transferring agency.

### **Section 6. Extended Leave Policy**

Upon the recommendation of the department head and with the approval of the town manager, an employee may be granted a leave of absence without pay for a period not to exceed one (1) year for reasons of personal disability, personal or family illness. Accumulated leave may be used/exhausted during the leave. Leave without pay may also be granted for completion of education, or special work which will permit the Town to profit by the experience gained or the work performed, or for other reasons deemed justified by the town manager. The use of accumulated sick leave or vacation leave is not a condition of such uses of leave without pay (education, special work, etc.).

For personal disability or personal or family illness, the employee shall apply in writing to the department head for leave and will provide a statement from the attending physician indicating the approximate period which the employee will be physically or otherwise unable to work. If the purpose of the leave is for other reasons, appropriate documentation shall be provided by the employee making the request.

An employee shall retain all available unused accumulated vacation and sick leave while on leave without pay. An employee ceases to earn vacation and sick leave on the date leave without pay begins.

The employee is obligated to return to duty within or at the end of the extended leave. Upon returning to duty after being on extended leave, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification, seniority and pay. If the employee decides not to return to work, the department head shall be notified immediately. Failure to report at the expiration of a leave shall be considered a resignation.

If the leave is covered by the Family Medical Leave Act, the Town will continue to pay its portion of medical and life insurance premiums for up to twelve weeks; if leave without pay is granted for a longer period, the employee is responsible for the full cost of

## **Article VII. Leave Benefits**

insurance. If leave is granted for other reasons, such as education, the employee shall be responsible for paying all of the costs for medical and life insurance beginning with the thirty-first (31<sup>st</sup>) day of approved leave.

Payment of the health insurance premiums will be auto drafted each month. That is, payments for July coverage will be drafted in the month of July. Failure to pay the required premium within 30 days will result in loss of coverage; once coverage has been discontinued, it cannot be reinstated.

### **Section 7. Family and Medical Leave**

The Town will comply with all applicable requirements of the Family and Medical Leave Act of 1993 (FMLA). The Town will allow eligible employees to take leave for up to a total of 12 weeks in any 12 months for family or medical leave in accordance with the FMLA. The Town may require an employee to substitute accrued paid leave for unpaid FMLA leave. This pay will run concurrently with the unpaid leave. Paid leave shall be applied in the following order: accrued sick leave, compensatory leave, vacation leave, and any other accrued paid leave. Job protected, unpaid leave in compliance with the FMLA will be granted only when the employee has exhausted all appropriate types of paid leave. Additional time away from the job beyond the 12-week period may be approved in accordance with the Town's Leave without Pay policy.

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

- A. The birth of a child and to care for the newborn child; within one year.
- B. The placement of a child with the employee for adoption or foster care; within one year.
- C. To care for a spouse, child, or parent with a serious health condition;
- D. The employee suffers a serious health condition that makes the employee unable to perform the functions of his or her job; or
- E. A qualifying military exigency for an employee's spouse, child, or parent.

To qualify for FMLA coverage, the employee must have worked for the Town at least 12 months or 52 weeks by the date on which any FMLA leave is to begin. These do not have to be consecutive months, provided any break in service is not more than seven years. However, the employee must have worked 1,250 hours of work during the twelve-month period immediately before the date when the FMLA time begins.

An employee who takes leave under this policy generally has the right to return to the same position or a position with equivalent pay, benefits, and working conditions. Taking FMLA leave cannot result in the loss of any benefit that accrued prior to the start of the leave, unless the employee is unable to return to work at the end of the 12 week period of leave.

An employee should provide the Town at least thirty (30) days advance written notice before FMLA leave is to begin. The written notification must include the nature of the condition, the anticipated dates and duration of the requested leave, and the types of leave requested. The supervisor shall forward the request to the town manager or the human resources director for approval. If leave is not foreseeable, notice is required as

## Article VII. Leave Benefits

soon as practicable under the circumstances. The employee is obligated to return to duty by the end of the time specified. After the period of leave, pursuant to this policy, if the employee does not intend to return to work, the Town should be notified immediately. Failure to Report at the expiration of the leave, unless an extension has been requested and approved, shall be considered a resignation.

For family or medical leave pursuant to this policy, the Town may require certification or proof of leave for employee's serious health condition or serious health condition of a family member, qualifying exigency, or to care for a covered service member. The Town must give an employee notice of a requirement for certification each time a certification is required. The employee must provide the requested certification to the Town within 15 calendar days after the request, unless it not practicable under the circumstances, despite the employee's diligent and good faith effort to provide the certification.

The Town reserves the right to require a second opinion for a medical certification involving an employee's serious health condition by the Town's designated health care provider at the Town's expense. If the opinions of the employee and the Town's designated health care providers differ, the Town may require the employee to obtain certification from a third health care provider, pursuant to the FMLA.

The Town requires a fitness-for-duty certification to return to work following leave due to the employee's particular health condition that caused the need for FMLA leave. The certification from the employee's health care provider must certify that the employee is able to resume work and must specifically address the employee's ability to perform the essential functions of their job. The Town will provide the employee a list of the essential functions of their job in compliance with the FMLA and provide in the designation notice that the certification must include their ability to perform those essential functions. Second or third opinions are not required on a fitness-for-duty certification.

Serious Health Condition: A serious health condition is defined as an illness, injury, impairment or physical or mental condition that requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. This policy covers illness of a serious and long-term nature resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which results in a period of incapacity or more than three days would be considered a serious health condition.

Military Exigency: Qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military service member under a call or order to federal active duty in support of a contingency operation. Qualifying events are:

- A. Deployment of service member with seven or fewer days' notice;
- B. Military ceremonies and events such as family-assistance or informational programs related to the family member's active duty or call to active duty;
- C. Urgent, immediate childcare or arranging for alternative childcare for the children of service members;
- D. Attending school or daycare meetings relating to the child of service member;

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- E. Making financial or legal arrangements related to a family member's active duty status or call to active duty; or
- F. Post-deployment activities for a period of ninety days after the termination of the service member's active duty status.

Military Caregiver Leave: An employee whose spouse, son, daughter, parent or next of kin is a current service member who is undergoing treatment, therapy, recuperation or outpatient treatment or has temporary disability retirement for injury or illness sustained in the line of duty, is eligible for 26 weeks of leave in a single 12 month period. During a single 12 month period, the employee is eligible for a total of 26 weeks of all types of FMLA leave to care for a covered service member with a serious injury or illness.

Providing False Information: Any employee that knowingly provides false information for the purpose of obtaining such leave or uses FMLA leave for purposes other than listed in this policy may be subject to having said leave withdrawn, losing all benefits accrued during said leave period and disciplinary action.

### **Section 8. Family and Medical - Use of Leave**

- A. An employee is prohibited from working in any outside employment while on FMLA leave from the Town. Any outside employment while on FMLA leave will result in the loss of leave benefits.
- B. Circumstances may require that FMLA leave begin before the actual date of birth of a child. An expectant mother may use FMLA leave before the actual date of birth of a child for prenatal care or if her condition makes her unable to work.
- C. If an employee requests leave on an intermittent or reduced schedule basis for pregnancy, which may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for intermittent or reduced scheduled leave and an estimate of the frequency and duration of episodes of incapacity are required.
- D. Intermittent leave or leave on a reduced leave schedule may be taken because of the employee's serious health condition, to care for a spouse, parent, or child with a serious health condition, or to care for a covered service member with a serious injury. The Town will only permit intermittent leave or leave on a reduced schedule if there is a medical certification providing the need for leave and such medical leave can be best accommodated through an intermittent or reduced leave schedule, and an estimate of the dates and duration of such leave.
- E. If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, the employee must make a reasonable effort to schedule treatment as not to unduly disrupt the Town's operations.
- F. An employee taking leave for the birth of a child may use paid sick leave for the period of actual disability, based on medical certification. The employee shall

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then use all paid vacation and accrued compensatory time for the remainder of the 12-week period.

- G. If a husband and wife both work for the Town and each wishes to take leave for the birth of a child, for placement for adoption or foster care of a child, or to care for a parent (not parent in-law) with a serious health condition, the husband and wife together may only take a combined total of 12 weeks leave under FMLA. However, each employee is entitled to up to 12 total weeks of FMLA leave if needed because of the employee's own serious health condition, to care for their own spouse or to care for a child who has a serious health condition. All such leave remains subject to the applicable limit for each employee during the applicable 12 month FMLA leave period.
- H. If the Town does not designate leave in a timely manner, in accordance with the FMLA, the Town may retroactively designate leave as FMLA leave with appropriate notice to the employee. The employee and the Town can mutually agree that the leave be retroactively designated as FMLA leave.
- I. If an employee does not give the Town proper notice, an employee's FMLA leave may be delayed due to lack of required notice. If certification is required, certification must be provided within 15 calendar days after the request. If an employee fails to provide the Town with a complete and sufficient certification, the Town may deny FMLA coverage until the required certification is provided or treat the leave as not qualifying and unauthorized. For example, if an employee has 15 days to provide certification and does not provide it for 45 days without sufficient reason for delay, the Town can treat leave as beyond the protections of the FMLA.

### **Section 9. Leave for Parent Involvement in Schools**

Employees will be allowed up to four (4) hours per calendar year to attend or otherwise be involved at their child's school subject to the following conditions:

- A. The leave shall be at a mutually agreed upon time between the employer and the employee.
- B. The employee must provide the employer with a request for the leave at least 48 hours before the time desired for the leave.
- C. The employer may require that the employee furnish written verification from the child's school that the employee attended or was otherwise involved at the school during the time of the leave.
- D. The employee may take the leave without pay or use accumulated vacation or comp.

### **Section 10. Workers' Compensation Leave**

An employee absent from duty because of sickness or disability covered by the North Carolina Workers' Compensation Act may receive benefits and elect to use accumulated vacation and sick leave as a supplemental payment for the difference between his regular net salary and the net payments received under the Workers' Compensation Act. Upon reinstatement, an employee's salary will be computed on the basis of the last

## Article VII. Leave Benefits

salary earned plus any increment or other salary increase to which the employee would have been entitled during the disability covered by Workers' Compensation.

Temporary employees will be placed in a leave without pay status and will receive all benefits for which they may be adjudged eligible under the Workers' Compensation Act.

### **Section 11. Light Duty**

#### Purpose

Ordinarily, the Town will not provide temporary job modifications to allow an employee to perform less than the usual or essential functions of their job. However, in order to serve as a cost-saving measure, to facilitate an employee's continued employment following a job related accident or occupational disease, and to minimize an employee's lost income during a temporary disability resulting from Town service, the Town may provide light duty in accordance with this policy.

#### A. Light Duty Defined

"Light duty" is non-strenuous work or work which requires minimal physical activity. Such duties will only be provided if approved by the employee's physician and of benefit to the Town.

#### B. Eligibility for Light-Duty Status

An employee is eligible for light-duty status when the following conditions are met:

1. The employee suffers from a job-related injury or illness and their claim is accepted by the worker's compensation administrator for the Town.
2. The injury or disease temporarily restricts the employee's ability to perform the essential functions of his or her job. The employee must provide the Town with the certification of a licensed physician knowledgeable about the employee's condition(s) and the requirements of the job, which sets out a definite time after which the employee should be able to return to full duty. The physician must also certify that in the interim the employee can safely perform light duty as described.
3. Work beneficial to the Town must exist with duties which can safely be performed by a person with in the restrictions indicated by the physician.

If all of these conditions are met, the Town may request and require the employee to return to light duty work. An employee eligible for FMLA under the Town's FMLA policy may accept, but may not be compelled to accept, a light duty position during their FMLA leave. An employee who elects not to accept a light duty assignment while on FMLA leave will not be terminated for such election during their FMLA leave, but could be subject to a suspension or decrease in their worker's compensation benefits as determined by the worker's compensation administration.

The Town is under no obligation to create a position in order to offer any employee light duty.

#### C. Approval Process for Light Duty Status

1. Light duty status will only be approved if the proposed duties are needed by the Town.

## Article VII. Leave Benefits

2. Light duty status must be approved by the town manager following consideration of recommendations by the department head, safety/risk management officer and the director of human resources.
  3. Light duty status should not extend for more than thirty days without review, an updated medical certification and approval by the town manager, following consideration of recommendations by the department head, safety/risk management officer and the director of human resources. If extended, similar reviews must occur every thirty days.
  4. Current employees in existing positions may not be replaced solely for purposes of making a light duty position available.
- D. Options Available for Light-Duty Status  
Light duty status may deviate from an employee's normal position, including, but not limited to as follows:
1. The employee's schedule may provide for fewer working hours and/or different working hours.
  2. Duties may be different and/or the same as required in the employee's normal position.
  3. Light duty may be performed in a different department or under different supervision than the employee's normal position.
  4. Light-duty responsibilities may be adjusted as the employee's recovery progresses.
- E. Return from Light Duty Status to Regular Duty

An employee will be returned to regular duty as soon as the employee's conditions permit. However, before an employee placed on light duty status may be transferred back to regular duty, the employee must provide a physician's certification that he or she can return to work without restrictions. Return to regular duty must be approved by the town manager, following consideration of recommendations by the department head, safety/risk management officer and the director of human resources. Once approved, the employee must immediately return to regular duty. Failure to comply with any requirements during a light duty assignment or to perform adequately while on light duty is grounds for discipline, including dismissal.

In no event will an employee be allowed to remain on light duty for longer than 12 months. Employees who are unable to return to duty on their usual schedule and perform the essential functions of their usual position with or without a reasonable accommodation for a period of 12 consecutive months will be terminated except in those situations where additional leave is required by the ADA.

### **Section 12. Outside Employment during Sick, Disability or Workers' Compensation Leave**

Outside employment while on any type of personal sick leave within a 24 hour period of the start of the work shift, or without written release from a physician is prohibited. Outside employment while on leave due to disability (including but not limited to Workers' Compensation leave) is prohibited except to the extent of the physician's release for limited duty and with the town manager's approval. This prohibition applies regardless of whether the employee's leave is subject to the Town's FMLA policy.



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Employees found to be in violation of this policy may be subject to disciplinary action up to and including suspension, demotion or dismissal.

### **Section 13. Smallpox Vaccination Policy**

Sick leave and salary continuation is available to first responders that experience an adverse medical reaction to smallpox vaccinations administered in accordance with the Homeland Security Act. Sick leave and salary continuation for a reaction to a smallpox vaccination will follow the same procedures and will carry the same such benefits that apply for any other incident subject to workers' compensation.

NC General Assembly, Session Law 2003-169, House Bill 273: Sections 2 and 5.

### **Section 14. Bereavement Leave**

An employee may have up to three days leave per occurrence at full pay when dealing with the death of an immediate family member as defined in Article V., Section 9B of this policy. See chart below for additional information.

<u>Category of Employee</u>	<u>A "day" defined in hours</u>
Administrative and Support Staff	7.5 hours
Public Works and Water Operations	7.5 hours
Department Heads	8 hours
Police (except Support Staff)	8.56 hours
Fire (except Support Staff)	10 hours

Additional time to settle affairs of the family may be taken with the approval of the department head and should be charged to vacation leave. Leave to attend funerals of other than the immediate family member may be granted by the department head and charged to vacation leave.

### **Section 15. Sick Leave Bank**

Establish a voluntary Sick Leave Bank which will provide disability income for an employee who experiences a "medical emergency", is caring for a spouse or child in the event of a medical emergency, or needs extended time off following the death of a parent, spouse or child. Medical emergency is defined as a major illness or other medical condition (i.e. heart attack, cancer etc.) that requires a prolonged absence from work, including intermittent absences that are related to the same illness or condition.

#### **A. Eligibility for Participation**

1. All regular full-time employees, who meet the FMLA requirements as described in Article VII, Section 7 in the personnel policy, and who have a sick leave balance of at least one day will be eligible to participate in the Sick Leave Bank. Employees who do not elect to participate in the Sick Leave Bank must wait until the next open enrollment date to join and will then be required to have accumulated a minimum of ten leave days before joining. The open enrollment period will be annually on July 1<sup>st</sup>.
2. Any employee who is terminating employment with the Town may elect to donate accrued sick leave to the bank.

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### B. Requirements for Participation

1. Participation in the Sick Leave Bank is voluntary. Participation does not guarantee an employee's approval of requests to withdraw leave from the Bank.
2. Each employee will be required to contribute one day of accumulated sick leave to the Bank. Participation will begin as of the date of contribution. Sick leave contributions to the Bank are irrevocable and cannot be returned if the employee cancels their participation in the Bank.
3. Each open enrollment, participating employees will be required to contribute one additional day of sick leave to the bank. The human resources director will determine the need and extent of additional contributions.  
If the bank has a minimum of 2,000 hours, current participants will not be required to donate one additional day of sick leave at open enrollment.
4. The human resources director reserves the right to hold an additional open enrollment when all available Sick Leave Bank hours are exhausted. At that time the current participants will be required to donate one sick day to the Sick Leave Bank, or opt out of the sick leave bank.

### C. Eligibility for Benefits

1. Provided the employee is an active participant in the Sick Leave Bank and has been employed for at least 90 days, they, or someone on their behalf, must submit the appropriate request in writing, for a Sick Leave Bank withdrawal to the human resources director. Included with the request will be a physician's certification of disability as described in Section F, 4, below.
2. Eligibility for approved Sick Leave Bank benefits is contingent upon the exhaustion of all individually accrued vacation and sick leave days, and all compensatory leave days (i.e. vacation, comp time and admin leave).
3. Employees currently eligible for, or currently receiving worker's compensation, or have applied for retirement benefits through the NC Local Government Employee's Retirement System, are not eligible for the Sick Leave Bank.
4. The human resources director and town manager may request a certification from a second physician of his/her choice at any time and at the employee's expense. Certification from a physician, chosen by the human resources director may be required after 15 Sick Leave Bank days are used in any one continuous period of disability. This physician would make their report directly to the human resources director. The report is to include the nature, extent, and anticipated duration of the disability. Additional physician certification may be required by the human resources director, as necessary.
5. Failure to submit any requested physician's certification of disability may result in denial of Sick Leave Bank benefits.

## Article VII. Leave Benefits

### D. Use of Benefits

1. A participating employee will be allowed to withdraw up to 90 days per 12 months from the commencing of receiving the Sick Leave Bank benefit.

### E. Exclusions, Limitations, and Termination of Benefits

1. Disabilities resulting from the following will be excluded from eligibility for Sick Leave Bank benefits:
  - a. Any occupationally related accident or illness for which Workers' Compensation benefits are payable.
  - b. Horseplay or intoxication by alcohol or drugs while at work, or a failure to obey instructions or use a safety device while at work.
  - c. Intentionally self-inflicted injuries.
  - d. Injury occurring in the course of committing a felony or assault.
  - e. Service in the Armed Forces Reserve or National Guard.
  - f. War, insurrection, rebellion, or active and illegal participation in a riot.
  - g. Cosmetic surgery or treatment, or surgery or treatment deemed medically unnecessary by a physician.

Employees currently eligible for, or currently receiving worker's compensation, or have applied for retirement benefits through the NC Local Government Employee's Retirement System, are not eligible for the Sick Leave Bank.

2. No Sick Leave Bank benefits will be payable for that portion of any period of disability when the disabled employee is confined in a penal or correctional institution as a result of conviction for a criminal or other public offense.
3. A participating employee will immediately lose the right to use Sick Leave Bank benefits because of the following:
  - a. Termination of employment with the Town.
  - b. During a suspension without pay.
  - c. Voluntary cancellation of participation in the Bank.
  - d. Failure to make required contribution (except for a person receiving Sick Leave Bank benefits at which time employees are required to contribute during open enrollment).
  - e. Failure to provide required physician certification.
  - f. Any abuse or misuse of the Sick Leave Bank
  - g. Exhaustion of maximum Sick Leave Bank days as described in Article VII, Section 15, D, 1.
  - h. Fraud or misrepresentation in requesting or use of Sick Leave Bank benefits.

### F. Administration

1. The Sick Leave Bank will be administered by the human resources director. The human resources director will recommend such rules and policies, notwithstanding those provided herein, considered appropriate for the operation of the Sick Leave Bank.
2. The human resources director and town manager shall have the responsibility of reviewing all requests from eligible participants verifying

## **Article VII. Leave Benefits**

the validity of the requests, and approving or denying the requests. The decision from the human resources director and town manager is final, subject to the provisions of subsection D, below. The human resources director will notify the employee of the final decision.

3. Sick Leave Bank benefits are payable commencing on the first pay period once eligibility requirements have been met (Section 4(B)).
4. Each request for Sick Leave Bank benefits shall include a signed physician certification confirming the cause of the illness or injury, certifying the existence of a disability which prevents the participating employee from performing assigned duties, and stating the anticipated duration of the disability.
5. All participation forms and cancellation of participation in the Sick Leave Bank will be available from the human resources director.
6. The human resources director shall maintain records of all participating employee contributions, withdrawals, and the status of the Sick Leave Bank.
7. The human resources director shall report the status of the Sick Leave Bank at any time, upon the request of the town manager, and shall provide information to the town manager with respect to any participating employee's contribution status or prior use of Sick Leave Bank benefits.

### **G. Termination or Modification of the Sick Leave Bank**

The Town has every intent to continue the Sick Leave Bank but it reserves the right to institute a termination or modification thereof unilaterally and without prior notice. However, all existing and pending disability withdrawals will be honored by the Sick Leave Bank to the extent Sick Leave Bank days remain available. Should the Sick Leave Bank be terminated, all unused sick leave days will be distributed to the then current participating employees based on the number of years each has participated in the Bank.

### **H. Financing**

The participating employees will bear the entire benefit cost of the Sick Leave Bank through their annual contribution of sick leave days provided to them at no cost by the Town under the current sick leave accrual plan. The Town will bear only the necessary administrative cost of the Sick Leave Bank.

## **Section 16. Military Leave**

The Town shall comply with all leave and reinstatement requirements for members of the Armed Forces Reserve or National Guard. Regular employees who are members of the National Guard or Armed Forces Reserve will be allowed two (2) calendar weeks military training leave annually with pay. If such military duty is required beyond this two (2) calendar weeks period, the employee shall be eligible to take accumulated vacation leave or be placed in a leave without pay status. While taking military leave with pay or without pay, the employee's leave credits and other benefits shall continue to accrue as if the employee was physically working for the Town during this period. Regular employees who are guardspersons and reservists have all job rights specified in the Veterans Readjustment Assistance Act and the Uniformed Services Employment and

## **Article VII. Leave Benefits**

Re-Employment Rights Act.

### **Section 17. Civil Leave**

A Town employee called for jury duty or as a court witness for the federal or state governments or a subdivision thereof, on regularly scheduled work days receive leave with pay for such duty during the required absence without charge to accumulated vacation or sick leave. Law enforcement officers may not receive any witness fees for appearing in court in connection with their official duties. While on civil leave, benefits and leave shall accrue as though on regular duty. Employees are not required to submit to the Town any jury fees paid by the court.

### **Section 18. Administrative Leave**

Administrative Leave is leave granted to an employee by the town for any reason when a determination has been made that it is in the town's best interest to not have the employee report to work. Leave may be granted with or without pay as determined by the town manager.

### **Section 19. Evacuations**

#### **A. Mandatory Evacuation**

If a mandatory evacuation is declared by the Mayor of the Town of Nags Head, the town manager may grant non-essential personnel administrative leave within the time frames of the State of Emergency proclamation. All non-essential personnel would be expected to start back to work at the conclusion/rescission of the State of Emergency with liberal leave policy in effect. Essential personnel may be required to stay as part of their job responsibilities.

#### **B. Essential Personnel**

Refer to the Emergency Operations Plan (EOP) for a list of positions classified as essential personnel.

Announcements concerning mandatory evacuations by the Town of Nags Head will be issued to all local and area media.

#### **C. Cancellation of Previously Planned Activities**

The town manager will review on a case by case basis, situations where an employee classified as Essential Personnel, or personnel requested in writing by their department head, is required to remain available to the Town during a State of Emergency, and said employee must cancel previously planned activities that may result in the forfeiture of refunds, deposits, or cancellation fees. The employee must demonstrate that every possible avenue has been exhausted to seek reimbursement, receive a credit, or reschedule the activity. If necessary the Town will assist the employee in their endeavors. After all avenues have been exhausted, the employee may apply in writing to the town manager for a reimbursement of forfeited funds.

### **Section 20. Storm Related Compensation Leave**

The Board of Commissioners or town manager may, at their discretion, award straight time to employees that work during storm related events granted by the town manager or mandatory evacuations declared by the Mayor of the Town of Nags Head.

Such leave must be used in accordance with Article IV, Section 10, Use of Accrued Time.

## **Article VII. Leave Benefits**

## **Article VIII. Separation and Disciplinary Actions**

### **Section 1. Types of Separation**

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

- A. Resignation: A minimum of two weeks' notice for employees, and 30 days for department heads, is expected of all resigning personnel. Such notice should be given to the department head (or in the case of department heads, to the town manager) and must be in writing.  
Employees who do not give proper notice (two weeks for employees, 30 days for department heads) shall be deemed a resignation without notice and will not be paid for their accumulated vacation leave balance upon termination.  
Three consecutive days or shifts without reporting to work or contacting the immediate supervisor or their designee, shall be considered a resignation.
- B. Reduction in Force: In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's past performance, organizational needs, relative employee qualifications, and seniority, in that order, in determining those employees to be retained. Employees who are laid off because of reduction in force shall be given at least two weeks' notice of anticipated layoff. No regular employee shall be separated while there are temporary employees serving in the same class in the department, unless the regular employee is not willing to transfer to the position held by the temporary employee.
- C. Disability: An employee who is injured on or off the job, who becomes ill, or suffers any other condition that meets the American With Disabilities Act ("ADA") definition of disability, is protected by the ADA, if they can perform the essential functions of their job, or any other vacant position for which they qualify with or without reasonable accommodations.  
The Town shall make a reasonable accommodation to the known physical or mental impairment of an otherwise qualified employee with a disability, unless the Town can demonstrate that the accommodation would impose an undue hardship on its operations.  
An employee may be separated for disability when the employee cannot perform the required duties of their position or any other vacant position for which they qualify because of a physical or mental impairment and reasonable accommodations, as required by the American with Disabilities Act (ADA), cannot be made. Action may be initiated by the employee or the Town, but in all cases it shall be supported by medical evidence as certified by a competent physician. The Town may require an examination at its expense and performed by a physician of its choice. Before an employee is separated for disability, a reasonable effort shall be made to locate alternative positions within the Town's service for which the employee may be suited.
- D. Death: All compensation due in accordance with Article VII, Section 4F of this policy will be paid to the designated beneficiary of a deceased employee. The date of death shall be recorded as the separation date for computing compensation due.

## **Article VIII. Separation and Disciplinary Actions**

- E. Demotion: Any regular employee whose performance of duties is unsatisfactory over a period of time shall be notified in writing by the supervisor or department head how their performance is deficient and what must be done for their performance to be satisfactory. The employee will be given up to three months to improve their performance to a satisfactory level. If at the end of the three months the appraising official determines that the performance is still unsatisfactory, a recommendation to demote to a position for which the employee is more suited or to dismiss shall be made to the town manager by the appraising official.
- F. Dismissal: All employment with the Town is terminable at will; as such, the town manager may dismiss an employee at any time and with or without notice or cause. Before dismissing an employee, the town manager may conduct any review or investigation he considers reasonable and appropriate under the circumstances, and may decide whether to provide an opportunity to explain their side of the situation.
- G. Retirement: Retirement benefits for employees retiring from Town employment shall be determined and administered by the appropriate agency as noted in Article X., Section 5.

### **Section 2. Disciplinary Actions**

The Town generally employs the theory and practice of progressive discipline. Progressive discipline includes but is not limited to the following components: documented oral warning, written warning, suspension, dismissal. Additional components may include disciplinary probation, remedial training and final written warning where and when appropriate. Depending on the severity of an offense, one or more of the components can be omitted with pertinent documented explanation or as provided elsewhere within this personnel policy.

An employee may be warned, suspended, demoted, placed on disciplinary probation or dismissed in the discretion of the town manager because of failure in performance of duties or failure in personal conduct. The supervisor shall initiate the disciplinary action form to include all prior discipline related to the present situation, a situational summary and a current recommended disciplinary action. The disciplinary action form is reviewed by the department head and finalized by the town manager. The department head shall provide the employee with a written notice from the town manager including the recommended effective date, reasons for the action, and appeal rights available to the employee.

#### **A. Failure in Performance of Duties**

Failure in the performance of duties includes any aspects of the employee's job which are not performed as required to meet the standards set by the town manager.

The following causes relating to failure in the performance of duties are representative, but not all inclusive, of those considered to be adequate grounds for suspension, demotion or dismissal:

1. Inefficiency, negligence or incompetence in the performance of duties;
2. Careless, negligent or improper use of Town property or equipment;
3. Incapacity or inability to perform duties; or



## Article VIII. Separation and Disciplinary Actions

4. Unwarranted refusal or failure to perform duties as assigned or as required by the employee's job description.

Prior to making a decision to terminate employment, the employee will have the opportunity to discuss the dismissal and the reasons for the dismissal recommendation with the supervisor, department head, and town manager.

### B. Failure in Personal Conduct

An employee may be suspended, demoted or dismissed for causes relating to personal conduct detrimental to Town service without warning in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons.

The following causes relating to failure in personal conduct are representative, but not all inclusive, of those considered to be adequate grounds for suspension, demotion, or dismissal:

1. Fraud in securing appointment;
2. Conduct unbecoming a public officer or employee;
3. Conviction of a felony or of a misdemeanor which would adversely affect performance of duties, or the entry of a plea of no contest to either;
4. Misappropriation of Town funds or property;
5. Falsification of Town records for personal profit or to grant special privileges;
6. Reporting to work under the influence of alcohol or controlled substances or partaking of such while on duty or while on public property, except that prescribed medication may be taken within the limits set by a physician so long as medically necessary with notice given to the appropriate supervisor;
7. Willful damage or destruction of property;
8. Willful acts that would endanger the lives and property of others;
9. Acceptance of gifts in exchange for "favors or influences";
10. Incompatible outside employment or conflict of interest;
11. Violation of political activity restrictions;
12. Insubordination;
13. Discourteous treatment of the public or other employees;
14. Absence without approved leave;
15. Habitual improper use of leave privileges; or
16. Habitual pattern of failure to report for duty at the assigned time and place.

C. Disciplinary Suspension: An employee who is suspended for disciplinary reasons shall be relieved temporarily of all duties and responsibilities and shall receive no compensation for the period of suspension.

D. Immediate Disciplinary Suspension: An employee may be suspended, without pay and without notice by the town manager for causes related to personal conduct in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. Upon suspension of an employee, the town manager may require the employee to relinquish assigned

## **Article VIII. Separation and Disciplinary Actions**

Town equipment or stay off of designated Town property. A written summary giving the circumstances and facts leading to the suspension shall be prepared with one copy being sent to the employee by certified mail and a copy shall be filed in the employee's personnel folder.

- E. Non-Disciplinary Suspension: During a personnel investigation, or a hearing or trial of an employee on any criminal charge or during the course of any civil action involving an employee, the town manager may suspend the employee without pay for the duration of the proceedings as a non-disciplinary action. However, the investigation, hearing, trial, or civil action must involve matters that could lead to a disciplinary suspension, demotion or dismissal in order for the non-disciplinary suspension to be allowed.

Full recovery of pay and benefits for the period of non-disciplinary suspension may be authorized by the town manager, if the suspension is terminated with full reinstatement of the employee.

Whenever the town manager decides to dismiss an employee for disciplinary reasons, the town manager shall ensure that a written summary is prepared giving the circumstances and facts leading to the dismissal. Before an employee is demoted or dismissed for causes relating to personal conduct they should be informed of the charges of improper personal conduct, be allowed to respond in writing or in a conference with the town manager, and be given a prompt decision from the town manager. A copy of the statement shall be delivered to the employee by regular or certified mail or by personal delivery and one (1) copy shall be filed in the employee's personnel file.

### **Section 3. Employee Appeal**

A regular employee wishing to appeal a demotion, suspension or dismissal may present the matter in accordance with the provisions of the grievance procedure prescribed in Article IX of this policy.

### **Section 4. Notice to Board of Commissioners**

The town manager shall provide oral or written notice of every suspension, demotion, dismissal or disciplinary probation, to the Board of Commissioners in a timely manner.

# Article IX. Mediation Policy and Grievance Procedure

## **Section 1. Mediation Policy**

### A. Policy Background

Mediation is a dispute resolution process that is a separate alternative to Town of Nags Head's standard employee grievance procedure. Mediation is a voluntary, neutral process whereby a chosen, trained mediator(s) will assist in the employee(s) dispute resolution process. Mediation is designed to resolve work-related conflicts between two or more employees and is conducted in an open, honest and confidential meeting. Participation in mediation is voluntary and may be stopped at any point within the process. Mediation does not preclude an employee's choice for the grievance process.

The benefit to mediation is that certain work-related issues may be resolved more effectively and efficiently because they are not appropriate for an established grievance process. Mediation allows employees another avenue to solve defined informal work-related problems between staff that are not really grievance issues. Examples of issues that are not appropriate for mediation are, but are not limited to, promotion, termination of employment, or payroll.

### B. The Mediation Process

To begin the mediation process an employee will submit a request via email or letter to the immediate supervisor who will forward it to the Human Resources Department. The document will outline the parties involved and a short summary of the work-related issue(s). The Human Resources Department will contact the other party(s) named by the employee who has initiated the request for mediation. The Human Resources Department will review the document to determine if the dispute is suitable for mediation or if a grievance process is required.

### C. The Mediators

The Town will use the human resources director or some other independently operated facility, to provide the mediation service. The assigned mediator will guide the parties through a process that will allow each employee to tell his/her side of the story. The mediator will help the parties to explore alternatives, to reach a mutually agreed upon resolution of the conflict, and to draft a written agreement in their own words.

### D. Mediation or Grievance

An employee may request mediation at any time. Certain issues are defined as more appropriate under the grievance process, but this does not prevent an employee from requesting mediation. The employee, at any time, may end the mediation, and initiate the grievance process in accordance with Town policy.

If the mediation process is selected, the employee may agree that the written grievance will not be initiated or will be concluded based on the satisfactory conclusion of the mediation.

### E. Mediation Schedule

After the document is submitted, the issue is determined appropriate for mediation, and the parties have all agreed, the human resources director will schedule the mediation or call upon an independent facility. For mediation to go forward, all parties must be acting in good faith.

### F. The Mediation Agreement

## **Article IX. Mediation Policy and Grievance Procedure**

Once the parties have reached mediation, a Mediation Agreement is drawn up accurately summarizing the decisions reached by all involved. All participants will sign the Agreement. The signed Agreement is given to the human resources director to ensure that no provision in it is contrary to Town policy or federal or state law. After the review by the Human Resources Department, each participant will receive a signed copy.

G. Breach of Mediation Agreement

If any of the participants feel the Mediation Agreement has been violated, a meeting between the participants must be conducted to try and resolve the differences. If this meeting is not successful, the participants may request the mediator(s) to assist in the resolution of the issue which may have contributed to the violation. If not resolved, a part of or the entire Agreement could be voided, in which case the participants would be able to exercise any rights or prerogatives available.

H. Mediation is Confidential

All information that is shared in the mediation process is to remain confidential. At the beginning of the meeting, the mediator will explain the scope of the confidentiality.

Sharing information that took place within the mediation may be considered a breach of the Mediation Agreement. However, simply sharing that one took part in a mediation process is not considered a breach of the Agreement.

### **Section 2: Grievance Procedure**

In an effort to establish and maintain a high degree of morale, effective communications, and efficient working relations among employees of the Town, a continuing system for settling employee grievances, complaints, and problems is hereby established. When an employee feels conditions affecting his/her employment are unjust, inequitable, discriminatory, or creates a problem, the employee will use the following procedures for resolution of such condition(s) or problem(s) without fear of recrimination. This procedure is administrative in nature and not a judicial proceeding.

Any employee filing a grievance will have the right to follow all the steps of the Grievance Procedure with complete freedom from reprisal.

A. Objective

It is the objective of this Grievance Procedure to obtain a complete understanding of employee problems and to have them settled as soon as possible at the lowest supervisory level commensurate with an equitable settlement. However, there should be no hesitancy in carrying the problem to the highest level of management should there be no resolution at a lower step.

B. Definition of Grievance

A grievance is any dispute concerning the interpretation or application of this personnel policy, or any other action, policy, practice or procedure affecting working conditions for the Town that are not considered matters of management discretion. Many subjects or actions are non-grievable including but not limited to the following: Any condition of employment accepted at the time of employment and/or subsequent changes(s) thereto; determining the employee

## **Article IX. Mediation Policy and Grievance Procedure**

benefit package; determining the proper classification and pay; determining types of training; scheduling and distribution of personnel; determining methods, means, and personnel to carry out operations; relieving employees from work because of lack of work, funds or other valid reasons; hiring, promotion, transfer, non-disciplinary demotion and assignment decisions; performance evaluations and maintaining the efficiency of governmental operations. A grievance might involve alleged safety or health hazards, unfair or discriminatory supervisory practices, misapplication of department work rules, unsatisfactory physical facilities or equipment or other complaints related to conditions of work or disciplinary action. Complaint processes involving issues covered by other parts of this policy are excluded from this procedure.

Nothing in this procedure shall change the status of any employee from that of an employee at will.

### **C. Eligibility**

Unless otherwise provided by law, or Town policy, all non-probationary full-time Town employees are eligible to initiate a grievance under this policy. An employee or person who falls within one or more of the following groups is not eligible to initiate a grievance under this procedure:

1. Probationary employees – all newly hired employees will be considered probationary for the first 12 months of employment, and during any period of extended initial probation.
2. Employees under disciplinary probation are not eligible to grieve actions taken against them with the exception of a termination action for an offense other than that which resulted in the disciplinary probation.
3. Promotional/transfer period - Employee does not have access to the appeal/grievance procedure with respect to demotion to previously held position (or substantially similar position if original position is unavailable).
4. Officials appointed by the Board of Commissioners of the Town of Nags Head.
5. Department heads, and the equivalent, and deputy town manager.
6. Temporary, limited terms, and seasonal employees.

The human resources director shall determine the officers and employees excluded from the grievance procedure, and shall be responsible for maintaining an up-to-date list of the affected positions.

### **D. Procedure**

At each step, the appropriate manager will meet face-to-face with the employee and render a decision and comments, in writing, on the form provided by the Town, with copies to the department head and the town manager and human resources director, within fifteen (15) calendar days after receiving the written grievance. The only persons who may be present at these meetings are the employee, the supervisor, and the appropriate witnesses for each side. The grievant has the right to call any witnesses they desire. Witnesses shall be prepared to testify and shall be present only while actually providing testimony.

## **Article IX. Mediation Policy and Grievance Procedure**

If during the course of the hearing there is a request for supplementary testimony, additional witnesses may be called. The hearing may be adjourned and reconvened when the witnesses become available. A list of witnesses to be called to testify at the hearing shall be given to each party seven (7) days prior to the hearing.

First Step- Supervisory Level

### PART A. Verbal

The grievant must present the grievance verbally to the immediate supervisor within ten (10) calendar days of the date of its occurrence or knowledge of its occurrence. The supervisor will meet with the employee face-to-face and will give an answer, verbally in a discussion format, within seven (7) calendar days of the date of the oral presentation of the grievance. In the event that no settlement or verbal response is made by the supervisor within seven (7) calendar days of the oral presentation, the grievant may proceed to Part B immediately. Failure on the part of the employee to initiate the action required within the time stated herein shall terminate the employee's right to initiate a grievance on that issue.

### PART B. Written

If there is no resolution or verbal response within the time limit provided in Part A, the grievant may file a written grievance on the appropriate form provided by the Town to the immediate supervisor, with copies to the department head and the human resources director, within seven (7) calendar days of the immediate supervisor's verbal response or within fourteen (14) days from when the grievance was submitted if the supervisor failed to respond.

This statement will be the employee's explanation of what occurred, and must state specifically what relief is requested as a remedy. Such relief must be tangible, rational, and within the power of the Town to grant.

The employee's supervisor must meet face-to-face with the employee and render a decision and comments, in writing, on the form provided by the Town, with copies to the department head and the human resources director, within seven (7) calendar days after receiving the written grievance. The only persons who may be present at this meeting are the employee, the immediate supervisor, and the appropriate witnesses for each side.

The human resources director will review the grievance for compliance with the procedure and grievability. He/she will advise all interested and proper parties in a timely manner of any administrative, grievability, other actions or rulings affecting the grievance.

Second Step – Middle Management (when applicable)

If the grievance is not settled at the First Step, the employee may appeal the immediate supervisor's decision in writing on the grievance form, provided by the Town, to the next level of management, with a copy to the department head and the human resources director, within seven (7) calendar days of the immediate

## **Article IX. Mediation Policy and Grievance Procedure**

supervisor's response.

The intermediate manager receiving the grievance will meet with the employee face-to-face. The only persons who may be present are the grievant, the intermediate manager, and the appropriate witnesses for each side. The intermediate manager will render a written decision and comments on the form provided by the Town and return it to the employee, with a copy to the department head and the human resources director, within ten (10) calendar days after receiving the appeal. If this level of management is the department head, Steps Two and Three are consolidated into a single step.

If the employee does not agree with the decision reached, or if the intermediate manager fails to provide resolution on the grievance as outlined above, the employee may present an appeal, in writing, on the form provided by the Town, to the department head, with a copy to the human resources director, within ten (10) calendar days of the intermediate manager's response; if there was no response, within 20 calendar days from when the grievance was submitted to this level of management.

### **Third Step – Department Head Level**

The department head, upon receiving the grievance, will meet face-to-face with the employee and discuss the grievance. The department head will render a written decision and comments on the form provided by the Town and return it to the employee, with a copy to the human resources director, within ten (10) calendar days after receiving the appeal. If the department head is the immediate supervisor, Step One Part B, Step Two, and Step Three are consolidated into a single step.

If the grievance is not settled, the employee may present their grievance in writing on the appropriate form provided by the Town to the human resources director. This written request must state whether the employee requests their grievance be heard by the Grievance Panel or by the town manager. The notice by the employee of grievance to the town manager or the Grievance Panel must be received by the human resources director within ten (10) calendar days after receipt of the written decision of the department head.

### **Fourth Step – Town Manager Hearing Alternative**

If the grievance is referred to the town manager, he/she shall arrange a time to hear the employee and their representative (if any) within 20 calendar days. At this meeting the employee is allowed to present their case, including any evidence, and to review the evidence in the Town's possession. Within 15 calendar days, the town manager shall provide his response in writing which shall be final. Once the grievance has been heard by the town manager, the grievance cannot be referred to the Panel.

The grievant and the department head or Town representative may be represented by legal counsel at this hearing. The grievant must notify the human resources director of the name of their attorney, if applicable, within five (5) calendar days of filing Step 4 of the grievance.

## Article IX. Mediation Policy and Grievance Procedure

### Fourth Step – Panel Hearing Alternative

After receiving notification of the employee's intent to grieve to the Grievance Panel, the human resources director shall begin processing the grievance hearing.

The Grievance Panel provides an additional venue for the fair hearing and resolution of employee grievances and appeals in a procedure free of recrimination. The Grievance Panel reviews the record of the appeal or grievance and hears testimony from all parties involved in the grievance or appeal. The Grievance Panel then recommends a course of action to the town manager. By state statute, the authority over all Town employees is vested in the town manager, and the town manager determines the final action. The Grievance Panel may also suggest improvements in procedure or policy to the town manager.

The grievant must notify the human resources director of the name of their attorney, if applicable, within five (5) calendar days of filing Step 4 of the grievance.

#### 1. Panel Rules

All Town employees, as a condition of Town employment, shall serve on the Grievance Panel when appointed. Members of the Town Manager's office and the human resources director are excluded from serving.

Registered voters of the Town shall be appointed to the Panel by the Board of Commissioners to three (3) year staggered terms.

The Panel shall not be composed of any Town employee having direct involvement with the grievance being heard by the Panel, or with the complaint or dispute giving rise to the grievance. The human resources director will determine whether a Town employee has a direct involvement with a grievance. Managers who are in a direct line of supervision of a grievant, persons residing in the same household as the grievant, and the following relatives of a participant in the grievance process, or a participant's spouse are prohibited from serving as panel members: spouse, parent, child, descendants of a child, sibling, niece, nephew, and first cousin.

#### 2. Selection of Panel

The Panel shall be chosen for each grievance and shall consist of two (2) Town employees and three (3) registered voters of Nags Head.

Members of the Panel will be chosen for each grievance from a pool of six (6) registered voters. Two (2) Town employees and two (2) alternates will be selected for each grievance. The Chair of the Panel for each grievance hearing shall be chosen from the pool of registered voters.



## **Article IX. Mediation Policy and Grievance Procedure**

The two (2) Town employees and two (2) alternates for each grievance shall be selected by Town division. There shall be no more than one (1) panel member or alternate from the same division and no more than one (1) member from the same department chosen for each panel.

Each division will nominate a representative for a Panel lottery. Divisions with two (2) or fewer employees will be grouped with their parent division. Divisions with three (3) to ten (10) employees shall nominate one (1) representative and divisions with ten (10) or more employees shall nominate two representatives to be eligible for the Panel lottery. If there is no nomination in the division by the employees, the department head will choose a representative for that division.

Each nomination will be entered into a lottery from which they can be chosen to sit or act as an alternate on the panel.

The two (2) Town employees and two (2) alternates shall be regular non-probationary employees, except for those on promotional probation.

The Panel will set the date, time, and place for the hearing, which shall be held within twenty (20) calendar days following receipt of the intent to grieve by the human resources director. Each member of the Panel shall review and sign a Confidentiality Agreement prior to each hearing.

### **3. Case Presentation**

The grievant and the department head or Town representative shall be present at all panel hearings and may be represented by legal counsel. Should the Panel hear a grievance as a result of a termination, the Panel will have legal representation, at Town expense, to assist the Panel in legal matters concerning the grievance.

### **4. Panel Decision**

The Panel shall render its decision on the appropriate Town form and distribute copies to the grievant, town manager, department head, and the human resources director within fifteen (15) calendar days of the conclusion of the hearing. The reason for the Panel decision will be noted on the form. The majority decision of the Panel, acting within the scope of its authority, shall be the final recommendation to the town manager and shall be consistent with the provisions of existing written policies, standard practices, procedures, and laws. The question of whether the relief recommended by the Panel is consistent with existing written policies, standard practices, procedures, and laws shall be determined by the town manager.

### **5. Rules**

- a. The Grievance Panel does not have the authority to formulate policies or procedures or to alter existing policies and procedures.
- b. The Panel shall determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing and the hearing shall be closed to the public.

## Article IX. Mediation Policy and Grievance Procedure

- c. The town manager or designee shall provide the Panel with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the Panel, and the grievant and his attorney, at least five (5) calendar days prior to the scheduled panel hearing. All parties shall have access to and copies of all relevant files intended to be used in the grievance proceeding.
- d. The Panel has the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.
- e. All evidence shall be presented in the presence of the Panel and the parties, except by mutual consent of the parties.
- f. Documents, exhibits, and lists of witnesses shall be exchanged between the parties seven (7) calendar days in advance of the hearing. The exchange will be made by 2:00 P.M. of the seventh day.
- g. At the option of each party, opening statements may be made at the beginning of the hearing, and the Panel may ask for such statements in order to clarify the issues involved in the grievance.
- h. The Town and thereafter the grievant, or their representatives, shall then present their claims, proofs, and witnesses who shall submit to questions or other examination. The Panel may, at its discretion, vary this procedure, but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination. It is recommended that in cases of alleged discrimination and sexual harassment, the grievant present the case first.
- i. The Panel by majority vote may decide procedural questions and rule upon objections raised during the course of the hearing. Witnesses other than the parties should remain in the hearing room only while giving their testimony.
- j. The Panel, by a majority vote, may recommend upholding or reversing the action of the Town, or in appropriate circumstances may recommend a modified remedy. Panel decision, however, must be consistent with the provisions of law and existing written policies and standard practices. In appropriate cases, a panel might determine that a grievant is entitled to reinstatement, from which full, partial or no back pay and/or full, partial, or no benefits might be awarded. In no case does the Panel have the authority to award damages or attorney's fees. No claims, including claims for back wages by the employee, shall be valid for a period of more than fifteen (15) calendar days prior to the date the grievance was filed. An exception to that time period shall be where the circumstances of the case were unknown to the grievant and they had grounds for such a claim. In such a case, the claim shall be limited retroactively to a period not to exceed thirty (30) calendar days prior to the date the employee first filed the grievance.
- k. After each side has had the opportunity to present its evidence, the Panel Chair shall specifically inquire of all parties whether they have

## Article IX. Mediation Policy and Grievance Procedure

any further proofs to offer or witnesses to be heard. Upon receiving negative replies, both parties shall be given the opportunity to make closing statements summarizing their positions, following which the hearing should be declared closed.

- I. The majority decision of the Panel, acting within the scope of its authority, shall be the final recommendation to the town manager, subject to existing written policies, standard practices, procedures, and laws.
6. The Town shall have the authority to adopt such other provisions as may facilitate fair and expeditious, informal hearings. Technical rules of evidence will not apply.
  7. Conduct and Responsibilities

The decision and recommendations of the Panel may not expand the issue or the relief requested in the original grievance. The Panel has the authority to recommend to uphold the action taken, or to reverse, reduce, or otherwise modify the actions of the Town. The Panel does not have the authority to exonerate an employee from all discipline when the guilt of the employee is admitted or guilt is determined by the Panel based on the evidence presented.

In discharging this responsibility, the following should be adhered to by the Panel during its deliberations:

    - a. Accept the responsibility of being selected as a panel member. Take the job that you have been selected to do very seriously, and try to accomplish the goal by resolving the grievance to the best of your ability.
    - b. Analyze the decision. The Panel members must ask themselves if it is fair; will it settle the underlying issue; does it conform to Town policies, rules, and regulations, local, state, and federal laws; is it consistent with past actions taken; what precedent does it establish, if any?
    - c. Explain your decision. Write the decision so it is clear and straightforward. If an action is to be taken by the Town, explain what will be done and by what date.
    - d. Prior to the convening of a panel hearing, carefully review the grievance and become acquainted with the issues to be heard. Panel hearings are not meant to be conducted as full court proceedings and are not bound to the technical rules of evidence. Panels, however, should take into account all reliable, relevant, and material evidence produced at the hearing.
    - e. Maintain the confidentiality of all information received at the hearing and all proceedings associated with the grievance. Failure to observe and maintain this confidentiality may lead to disciplinary action.

### E. Time Periods

The human resources director, with the mutual agreement of the town manager and the grievant, may extend the time limits within the four steps. No

## **Article IX. Mediation Policy and Grievance Procedure**

permanent changes shall be made in this procedure without the approval of the Board of Commissioners.

### **F. Compliance**

1. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the Panel hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within three (3) work days of the receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the human resources director.
2. Compliance and/or exception determinations shall be made by the town manager.

### **G. Standards of Conduct Policy**

The Town has a Board Policy concerning Disciplinary Actions which constitutes a written policy governing all matters of discipline, and same shall be the basis on which all employees are disciplined.

### **H. Confidentiality**

All participants of the grievance procedure, including members of the Personnel Grievance Panel, are subject to North Carolina General Statutes dictating confidentiality and non-release of certain personnel-related information. All participants must sign a Confidentiality Agreement prior to participating in a grievance hearing.

# Article X. Insurance and Retirement Benefits

## **Section 1. Insurance Benefits**

The Board of Commissioners may change or offer insurance plans at will. Currently the Town offers group hospitalization, dental insurance, vision and life insurance. The Town may make other group insurance plans available for its employees upon authorization of the Board of Commissioners. Supplemental Insurance Benefits may be offered at the discretion of the Board of Commissioners.

There is a waiting period before coverage can become effective. Under the Health Insurance Portability and Accountability Act of 1996 (HIPPA) the length of the plans preexisting conditions limitation may be reduced or eliminated if a covered person has creditable coverage from another health plan.

## **Section 2. Health Insurance for Retirees**

Employees who retire with the Town under the Local Government Employees' Retirement System on or after July 1, 2001 may continue health insurance for themselves under the Town's group policy. The Town's policy and the type of coverage or the level of benefits offered may change from time to time. There is no guarantee that the type or level of coverage will remain constant or the same throughout the retiree coverage period.

The Town will pay the retiree premium for the coverage up to the retired employee's Medicare eligibility date based on the years of Town service of the retired employee:

Retiree with Town Service:		Retiree Health Insurance Premium:	
<u>At Least</u>	<u>Not More than:</u>	<u>Town Pays:</u>	<u>Employee Pays:</u>
10 years	15 years	25%	75%
15 years	20 years	50%	50%
20 years	25 years	75%	25%
25 years		100%	0%

Such employees may elect to purchase health insurance coverage for their families, and will pay the full cost of this dependent coverage based on the current retiree rate. In the event of the death of a retired employee, covered dependents may continue coverage for 36 months as provided by COBRA.

### **Eligibility**

- A. Employees must retire under the Local Governmental Employees' Retirement System, and draw benefits from the System in order to qualify for payment of all or part of the health insurance premium. Retirement System regulations on eligibility for retirement govern eligibility for the Town program. (Current regulations set age 50 with 20 years of service as the lower limit for retirement, unless employees are either 60 years of age with at least 5 years of service, or are a law enforcement officer at age 50 with 15 years of service, or 55 with at least 5 years of service, or meet Retirement System regulations covering disability retirement.)
- B. Once the employee meets the criteria for retirement described above, service with the Town, not total creditable service with the Retirement System will govern which level of payment the retired employee will be eligible for. For example, a full time employee retiring with 25 years of creditable service in the

## **Article X. Insurance and Retirement Benefits**

Retirement System but only 11 years of Town service would have 25% of the individual health insurance premium paid based on 10-plus years of Town service. For the purpose of sick leave converted to creditable service by the Retirement System only the sick leave accrued while employed with the Town of Nags Head may be used to increase creditable Town service in the same manner used by the N.C. Retirement System.

- C. Early Retirement – should an employee elect an early retirement or reduced benefit under the Local Government Employee’s Retirement System, then the same reduction will apply to the retired employee’s health insurance. For example: An employee is 58 years old with 24 years of service with the LGERS and the Town. The employee retires and receives retirement benefits at his credited service times 75% (or a reduction of 25%). This retired employee would then receive 56.25% of his/her health insurance premium paid by the Town (75% retirement payment times 75% health insurance coverage).
- D. Disability Retirements - Should an employee retire under disability, they will receive unreduced credit for their actual years of service with the Town towards health insurance. If the disability retirement is the result of a work related condition occurring while employed with the Town of Nags Head, then the years of service credit will be doubled for purposes of the determination of their health insurance benefit.

### **Election of Coverage**

- A. Retiring employees must decide within 30 days after their retirement if they wish to continue Town health insurance coverage. Before insurance can be reinstated the employee must complete the auto draft document electing benefits and confirming cost during the 30 day election period.
- B. After a decision has been made not to continue coverage, coverage will not be reinstated at any future date.

### **Payment of Premium**

- A. Payment of the retiree premium for coverage on dependents and for the portion of the retired employee’s coverage not paid by the Town will be auto drafted each month. That is, payments for July coverage will be drafted in the month of July.
- B. Failure to pay the required premium within 30 days will result in loss of coverage; once coverage has been discontinued, it cannot be reinstated.

### **Section 3. Unemployment Insurance**

In accordance with Public Law 94-566 and Chapter 1124 of the Session Laws of 1977 of the North Carolina General Assembly, local governments are covered by unemployment insurance effective January 1, 1978. Town employees who are laid off or released from the Town service may apply for unemployment compensation through the local office of the Employment Security Commission who will determine the employee's eligibility for this benefit.

### **Section 4. Old Age and Survivor's Insurance**

The Town, to the extent of its lawful authority and power, has extended social security benefits for its eligible employees and eligible groups and classes of such employees.

## **Article X. Insurance and Retirement Benefits**

Each Town employee shall be included in the Social Security program as a condition of employment.

### **Section 5. Retirement Benefits**

The Town provides retirement benefits for its employees. Such benefits are provided through any one of the following:

- A. The North Carolina Local Governmental Employees' Retirement System;
- B. A plan contracted with a private insurance company;
- C. A local retirement system.

All regular employees shall be required to participate in the Town's retirement plan should they not be otherwise disqualified from participation.

The Town also contributes to the retirement pool on an actuarial basis as defined by the NC Retirement System each fiscal year.

### **Section 6. Law Enforcement Deferred Income & Separation Allowance**

The Town provides contributions to a deferred income plan for active law enforcement personnel and provides a monthly separation allowance to retired law enforcement officers as required in Chapter 143 Article 12D and Article 12E of the General Statutes of North Carolina.

### **Section 7. 457 Deferred Compensation**

Each regular employee shall have the opportunity to enroll in a 457 Deferred Compensation Plan. Participation is voluntary and is handled through payroll deduction. Employees are vested according to the rules and regulations of the plan.

### **Section 8. State 401k Deferred Compensation Plan**

401K Contribution for General Employees: All full-time employees may make voluntary contributions to the 401(k) Plan up to the limits established by law and the 401(k) provider. The Town may contribute a percentage of salary to the State 401 (k) Plan for each employee who is not a sworn law enforcement officer, subject to availability of funds and approval by the Town Board.

401k Contribution for Sworn Law Enforcement Officers: The Town contributes 5% for law enforcement officers as mandated by the General Assembly.

Such contribution is vested to the employee according to the rules and regulations of the plan document.

### **Section 9. Worker's Compensation**

All employees are covered with worker's compensation insurance as required by the General Statutes of North Carolina. Information regarding worker's compensation is posted through-out town facilities and may be also obtained from the Human Resource Department.

## **Article X. Insurance and Retirement Benefits**

### **Section 10. Credit Union Membership**

Employees of the Town of Nags Head are eligible for membership in the N. C. Local Government Employees' Federal Credit Union. Administration of this credit union is being provided under contract with the N. C. State Employees' Credit Union

### **Section 11. Legal defense of Employees**

N.C. General Statute 160A-167 provides that a municipality may provide for the defense of any civil action or proceeding brought against a municipal officer or employee either in the official or individual capacity, or both, of the municipal officer or employee on account of any act allegedly done or omission allegedly made in the scope and course of the employment or duty of the municipal officer or employee.

The defense may be provided by the Town through its own counsel, or by employing other counsel, or by purchasing insurance that requires that the insurer provide the counsel. Limits on the amount of defense expenditures may be set by the Board of Commissioners, in relation to prevailing local rates and in consideration of available budget funding.

Nothing, however, in this section shall be deemed to require the Town to provide for the defense of any action or proceeding of any nature when the Town is directly or indirectly an adverse party or where the Town's interest is adverse to that of such employee so as to create a conflict of interest between the Town and such employee.



## **Article XI. Personnel Records and Reports**

### **Section 1. Personnel Records Maintenance**

Such personnel records as are necessary for the proper administration of the personnel system will be maintained by the human resource director in compliance with G.S. 160A-168A. The Town shall maintain, in personnel records, only information that is relevant to accomplishing personnel administration purposes.

### **Section 2. Access to Personnel Records**

As required by G. S. 160A-168, any person may have access to the information listed in G.S. 160A-168(b) (except for the files of law enforcement employees) for the purpose of inspection, examination, and copying, during the regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Board of Commissioners may adopt. Access to such information shall be governed by the following provisions:

- A. All disclosures of records shall be accounted for by keeping a written record (except for authorized persons processing personnel actions) of the following information: name of employee; information disclosed; date information was requested; name and address of the person to whom the disclosure is made; and purpose for which information is requested. This information must be retained for a period of two years.
- B. Upon request, records of disclosure shall be made available to the employee to whom it pertains.
- C. An individual examining a personnel record may copy the information. Any available photocopying facilities may be provided and the cost may be assessed to the individual.
- D. Any person denied access to any record shall have a right to compel compliance with these provisions by application to a court for a writ of mandamus or other appropriate relief.

### **Section 3. Confidential Information**

All information contained in a Town employee's personnel file, other than the information listed in G.S. 160A-168(b) for employees other than law enforcement will be maintained as confidential in accordance with the requirements of G. S. 160A-168(c) and shall be open to public inspection only in the following instances:

- A. The employee or his duly authorized agent may examine all portions of their personnel file, except, (1) letters of reference solicited prior to employment, and (2) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- B. A licensed physician designated in writing by the employee may examine the employee's medical record.
- C. A Town employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- D. By order of a court of competent jurisdiction, any person may examine all material in the employee's personnel file.
- E. An official of an agency of the State or Federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such information is deemed by the department head to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information

## **Article XI. Personnel Records and Reports**

shall be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.

- F. An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- G. Each individual requesting access to confidential information will be required to submit satisfactory proof of identity.
- H. A record shall be made of each disclosure and placed in the employee's file (except of disclosures to the employee and the supervisor).

### **Section 4. Records of Law Enforcement Employees**

The Town shall not disclose the following information with respect to a law enforcement officer: any information that might identify the residence of the officer; the officer's emergency contact information; and/or other identifying information as defined in G.S. 14-113.20, which prohibits disclosure of social security numbers, checking account numbers, drivers license's numbers and similar types of sensitive commercial and identifying information. The Town will also not provide to members of the public or others rosters, lists or other documents that are not part of an employee's personnel file but that may disclose the confidential information of a law enforcement officer.

### **Section 5. Records of Former Employees**

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

### **Section 6 Remedies of Employees Objecting to Material in File**

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

### **Section 7. Penalty for Permitting Access To Confidential File By Unauthorized Person**

G. S. 160A-168 provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee's personnel file, except as expressly authorized by the designated custodian, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars.

### **Section 8. Penalty for Examining and/or Copying Confidential Material Without Authorization**

G. S. 160A-168 provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be

## **Article XI. Personnel Records and Reports**

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

### **Section 9. Destruction of Records Regulated**

No public official may destroy, sell, loan, or otherwise dispose of any public record except in accordance with G. S. 121-5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the offices where it is usually kept, or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined not less than ten dollars, not more than five hundred dollars as provided in G. S. 132-3.

## **Article XII. Implementation of Policies**

### **Section 1. Conflicting Policies Repealed**

All policies or resolutions that conflict with the provisions of this policy are hereby repealed.

### **Section 2. Separability**

If any provision of this policy or any rule, regulation or order thereunder of the application of such provision to any person or circumstances is held invalid, the remainder of this policy and the application of such remaining provisions of this policy of such rules, regulations or orders to persons or circumstances other than those held invalid will not be affected thereby.

### **Section 3. Violations of Policy Provisions**

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

### **Section 4. General Policy Updates**

The Board of Commissioners has authorized the human resources director to maintain and update the personnel policy in regards to general maintenance. If a policy needs to be updated, outside of general housekeeping, then the human resources director will request approval from the Board of Commissioners before implementation.