



City of  
**Charleston, West Virginia**  
*The Cultural, Recreational, and Business Capital of the Appalachian Mountains*



## Personnel Rules and Administrative Policies

City of Charleston  
Non-Uniform Employees

September 19, 2016

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# 1. Introduction

## 1.1 General Information

This document contains the primary employment rules and policies that provide guidance to effectively manage human resources within the City of Charleston. While no set of written rules or policies can include every possible situation, these rules, when used as a whole, provide overall guidance for reasonable, consistent decision-making.

All non-uniformed employees of the City of Charleston, those persons who work for the City in return for financial compensation, except elected officials, certain appointed positions and independent contractors, are governed by this common set of employment rules. The City Manager may make exceptions to the rules in special or unusual situations when in his or her opinion an exception would be in the best interest of the City. Exceptions are documented and maintained in the Human Resources Department.

The rules and policies are intended to provide effective guidance and sufficient flexibility to allow independent judgment while ensuring accountability to the public and consistent, equitable decision-making. No member of the City Administration, other than the Mayor, City Manager, Director of Human Resources and/or City Attorney has the authority to modify any of the terms or provisions of these "Personnel Rules and Administrative Policies."

This manual should not be construed, implied or intended to be a promise or guarantee of continued employment. All employees are "employed at will", and can be discharged with or without cause for any lawful reason subject to applicable grievance rights of non-exempt employees. Likewise, employees may choose to end their employment relationship with the City at any time for any reason.

Should a discrepancy exist between these rules and policies and City code, federal, or state law, the applicable City code, federal, or state statute shall prevail.

**These Personnel Rules and Administrative Policies issued September 19, 2016, supersede and replace any and all previous City handbooks and/or City written or oral rules, regulations, and/or policies and procedures.**

## 1.2 Profile and Background

Charleston is the capital and largest city in the State of West Virginia. It is the county seat of Kanawha County, and is conveniently located at the intersection of Interstates 64, 77 and 79, and at the confluence of the Elk and Kanawha Rivers. It is the transportation, retail, cultural and telecommunications hub of the State and offers one-day shipping proximity to over 60% of the United States population.

The present charter of the City is a legislative charter enacted in 1929, which provides for a Mayor-council form of government. Legislative and policy making authority are vested with a governing Council consisting of a Mayor and 26 elected council members. The Mayor and six

council members are elected at large and the remaining 20 council members are elected by ward. The Mayor and council serve four year terms.

A City Manager, appointed by the Mayor and confirmed by Council, serves as the Chief Administrative Officer, and is responsible for overseeing the City's day-to-day business and administrative functions. The City Attorney, appointed by the Mayor, serves as general counsel for the City and is responsible for day-to-day legal affairs. The City provides a broad array of municipal services including, but not limited to police and fire protection; parks and recreational programming; hourly, daily and monthly parking, street, road and bridge repair and maintenance; building, construction and home improvement permits; refuse and recycling collection and disposal; business licensing; planning and zoning regulation; code enforcement; grant programs and community and economic development.

Each year, City Council is required to adopt a final budget by March 28th for the fiscal year beginning July 1. This annual budget serves as the foundation for the City's financial planning, management and control. The budget is prepared by fund, function (e.g. public safety, general government, etc.) and department (police, fire, etc.). All budget amendments require council approval; however, the legal authority of budgetary control is maintained at the departmental level and requires approval by City Council as well as the West Virginia State Auditor's Office. All appropriations, except funds that are re-appropriated, expire annually at the June 30th fiscal year end.

City Council, the Mayor and the City Administration's vision is for Charleston to be the Cultural, Recreational, and Business Capital of the Appalachian Mountains. As a local government organization, the City of Charleston strives to be efficient and effective at balancing and meeting the common needs and reasonable expectations of its core constituents. The Mayor and City Council have identified the core constituents to be residents, businesses, governmental organizations, non-governmental organizations and their employees, visitors and other departmental units, boards, commissions, and employees.

### 1.3 Organization Vision, Mission and Values

Charleston City Council's vision: "CHARLESTON – the Cultural, Recreational, and Business Capital of the Appalachian Mountains. As a local government organization, the City of Charleston strives to be efficient and effective at balancing and meeting the common needs and reasonable expectations of its core constituents."

To achieve this vision, the City requires a competent and diverse workforce that possesses certain core competencies that are aligned with the City's vision and linked to departmental strategic objectives.

The core competencies that guide the City's actions and decision making are:

1. **Accountability** – takes responsibility for own actions
2. **Adaptability** - responds positively to change

3. **Communication** - listens, speaks and/or writes in a clear, concise and respectful manner
4. **Initiative** - takes proactive action to complete work or resolve issues
5. **Judgment & Decision Making** - evaluates issues and makes sound factual decisions
6. **Customer Service** - provides courteous, accessible and quality assistance to others
7. **Professional Development** - seeks opportunities to enhance technical skills and job knowledge
8. **Teamwork & Cooperation** - collaborates with others to fulfill City's mission and achieve departmental goals and strategic objectives
9. **Leadership** (for supervisors): Develops innovative approaches to address problems and drive continuous improvement in City programs and processes.
10. **Performance Management** (for supervisors): Clearly establishes and communicates expectations and accountabilities, monitors and evaluates performance.

#### 1.4 Human Resources Department Administrative Responsibilities

- A. The Director of Human Resources will develop policy and rule recommendations and the procedures necessary for implementation of rules, and shall serve as a source of expertise on the intent and application of the City's Employment Policies.
- B. In cases where several rules apply to the same situation, or where conflicts appear to exist, the City Manager and/or Director of Human Resources in consultation with the City Attorney are authorized to make a determination as to the intent and application of rule. The City Manager has final authority for the approval and administration of employment rules and policies.
- C. The Director of Human Resources shall manage, direct and oversee all recruiting compensation, classification, performance management, employee relations, employee benefits, workforce development and other human resource plans and programs in an efficient and effective manner and in accordance with applicable, federal, state and local laws and regulations. The Director of Human Resources shall have the authority to hire other assistants and employees as necessary, subject to budgetary appropriations, in order to successfully fulfill the duties and responsibilities of the position.

#### 1.5 Department Head Responsibilities

- A. Department Heads and other designated management officials will be expected, and shall have discretion to perform the following personnel management functions:
  1. Develop organizational structures and staffing levels based on service delivery needs and resource availability;

2. Establish and communicate work expectations, develop operating procedures, manage performance and maintain an effective working environment;
3. Develop, promote, and enforce departmental rules and operating procedures necessary for the efficient and effective functioning of the department; however, such rules and operating procedures shall not conflict with City code or any portion of these Employment Policies and must be coordinated in advance with the Human Resources Department;
4. Schedule activities within their departments including hours of work, rest and lunch periods, time to prepare for work and clean-up time;
5. Recommend and select applicants for employment and assign duties and responsibilities to employees within their management area;
6. Make recommendations with respect to promotion, demotion, reassignment, discipline, termination and other personnel-related decisions for their departments;
7. Make recommendations with respect to decisions regarding employee compensation as outlined in the Employment Policies;
8. Identify training and development needs and provide for on-the-job training (OJT);
9. Ensure that financial and procurement policies are followed appropriately, including making the best use of fiscal resources, consultants, and approved contracts;
10. Department Heads may delegate one or more of the personnel management functions listed above to an assistant or other designee within the department whenever necessary, convenient, and reasonable to do so.

## 1.6 Personnel Rules and Administrative Policies Maintenance

A. Personnel Rules and Administrative Policies are maintained by the Director of Human Resources and an updated copy shall be kept in the Human Resources Department, filed with the City Clerk, and posted on the City of Charleston website. A copy of the Personnel Rules and Administrative Policies shall be available to all employees at any time upon request to the Human Resources Department.

B. The City Manager, upon consultation with the Director of Human Resources and the City Attorney, have the discretion and authority to amend the Personnel Rules and Administrative Policies, or promulgate new rules and policies as, from time to time, may be necessary or required to facilitate the efficient and effective operations of the City. Unless otherwise specified, amendments or additions to the Personnel Rules and Administrative Policies shall take effect on the date of City Manager, Director of Human Resources and/or City Attorney approval, and shall supersede all previously issued rules.



C. When changes to previous rules are approved, information regarding changes will be communicated to the workforce in a manner prescribed by the City Manager and/or Director of Human Resources. The Human Resources Department will fully implement all provisions of the rules in a timely and reasonable manner.

D. Typographical or other similar non-material errors may be corrected by the Director of Human Resources without going through this process for review and amendment.

## 2. Employment

### 2.1 Equal Opportunity Employment Policy

The City of Charleston provides equal employment opportunities (EEO) to all current employees and new applicants for employment without regard to sex, race, color, age, national origin, ancestry, religion, disability, medical condition, genetic information, marital status, sexual orientation, gender identity or expression, citizenship, pregnancy or maternity, veteran status, or any other status protected by applicable national, federal, state, or local law.

### 2.2 Diversity Plan

A. The City of Charleston's goal is to hire and retain a workforce that is representative of the community and reflective of the relevant available labor pool. To achieve this goal, the City is committed to the following actions designed to attract diverse, qualified applicants:

1. The City shall use non-discriminatory, equitable processes to fill all positions. All persons wishing to apply for a vacant position advertised to the public will have the opportunity to do so;
2. Recruitment advertising may include a variety of formats and targeted resources such as print, the Internet, other media and firms specializing in minority recruitment to attract a diverse pool of qualified applicants for all vacancies;
3. All recruiting announcements will contain the following statement: "The City of Charleston is an Equal Employment Opportunity Employer."

### 2.3 Criminal Convictions

A prior felony conviction does not necessarily exclude an applicant from employment with the City. The age and nature of the offense resulting in a past felony conviction is weighed and considered in relation to the duties and nature of the position sought.

### 2.4 Merit Principles and Selection

A. A merit system is a system by which selections, appointments and promotions are based on knowledge, skills and abilities qualifications rather than political favoritism, seniority or other

non-job related factors. The City supports the principles of a merit system for selection and performance evaluation to recognize and reward job-related factors.

B. New applicants and current employees are encouraged to apply for positions in which they are interested and for which they are qualified. New applicants and current employees will be given consideration for vacancies based upon qualifications necessary for the position sought.

C. Applicants for part-time, seasonal, or temporary positions may be selected and/or appointed without regard to the hiring provisions of this policy including the recruitment procedures.

## 2.5 Employment at Will

A. The State of West Virginia is an “employment at will” state and employees of the City of Charleston do not have a contract of employment. Neither these Personnel Rules and Administrative Policies nor other policies or documents constitute an express or implied employment contract or any right, guarantee or promise to continued employment.

B. These Personnel Rules and Administrative Policies are not intended to and do not imply or create any vested rights or contract entitling employees to any specific term of employment, compensation, or benefits from the City. The contents of these Personnel Rules and Administrative Policies and the City of Charleston’s policies are subject to change at any time, for any lawful reason, including, but not limited to annual budgetary appropriations by Charleston City Council.

## 2.6 Recruitment

A. The Human Resources Department will develop and maintain effective and efficient recruitment practices and processes designed to attract qualified candidates representative of the community who possess the knowledge, skills and abilities to meet the current and future needs of the City, and who possess core competencies that are aligned with the City’s vision.

B. Job Requisitions: Newly established vacated positions shall normally be authorized for filling through an electronic requisition process in a manner established and prescribed by the Director of Human Resources. The requisition will be initiated by the department with the vacant position, and include all information specified by the Director of Human Resources. The requisition will be forwarded to the City Manager for approval. Upon approval, the requisition will be forwarded to Human Resources to begin the recruitment process.

C. Filling of Vacancies: Vacant positions may be filled by recruitment from inside and/or outside sources as determined appropriate by the Department Head in conjunction with and approval by the Director of Human Resources. Vacancies may also be advertised with employment agencies, newspapers, electronic media, and/or other sources. The City supports promotion from within, and may reduce competition for vacant positions to members of the City’s workforce if determined to be in the best interest of the City.

D. Advertisements: Vacancy listings and/or announcements may be developed and used to attract applicants for City positions, but shall not be required. Vacancies identified for advertisement will be advertised for a period in a manner established and prescribed by the Director of Human Resources.

E. Application Process: For the convenient and efficient receipt, review, processing, and recording of City of Charleston employment applications, all persons seeking employment with the City must submit an online application. Unless reasonable accommodations are necessary and prior approval has been given from the Office of Human Resources, both existing City employees and prospective employees must apply online through the City's career site portal (<https://cityofcharleston.applicantpro.com/jobs/>) to be considered for a posted position. Any applicant that wishes to apply and requires reasonable accommodation should contact the Office of Human Resources.

F. Examinations: The application process may include examinations such as skill testing, written examinations, personal interviews, alcohol and drug testing, physical examination, and other lawful evaluations.

G. Background Checks: In the interest of public welfare and safety, some positions such as those in public safety, positions that include working with children, those responsible for handling money, and other similar positions, require that applicants successfully complete background checks including, but not limited to, personal reference and criminal history checks to ensure that the applicant's past conduct is compatible with the nature and requirements of the position under consideration. An applicant for a position that requires driving a vehicle shall authorize the City to obtain a copy of the DMV record. In all cases, appropriate state and federal laws shall be followed.

H. Qualifications: Qualifications are the education, experience, competencies, skills, abilities, knowledge and other attributes determined most likely to predict successful job performance in a position or group of positions with similar requirements and levels of responsibilities. Acceptable background information, driving record, and necessary certifications and/or certificates when required, are included in the attributes necessary to meet minimum qualifications.

I. Screening of Applicants: A screening process shall determine those candidates who meet the qualifications for the position(s) to be filled. Such screenings may include, but are not limited to, a review of submitted applications, resumes, education and experience credentials, references, preliminary interviews and other relevant information. City of Charleston employment records may be reviewed as a part of the screening process when an applicant is a current or former employee of the City. Screening may generally be completed by the Department Head supervising the vacant position, Human Resources staff, and/or outside public or private agencies, as deemed appropriate by the Office of Human Resources.

## 2.7 Offers of Employment

A. Conditional offers of employment will be made in writing to perspective employees contingent on a number of factors, including, but not limited to the results of a criminal background check, physical examination, drug testing and other pre-employment testing.

B. In most circumstances, only the Director of Human Resources, his/her designee, and/or the City Manager may extend conditional offers of employment to perspective employees.

## 2.8 New Employee Orientation

New employees will attend a new employee orientation session, which shall generally be conducted on his/her first day of employment. During the orientation session, new employees will complete various payroll and other benefit paperwork. Employees will also receive a copy of the Personnel Rules and Administrative Polices, and other applicable information with respect to general City or departmental policies and procedures.

## 2.9 Position Categories

A. City positions fall into one of the following employment categories:

1. Full-Time: Those positions approved by City Council and confirmed individually in the annual operating budget based on on-going full-time service delivery needs. Employees work a continuing schedule as it applies to their department's regular work hours, typically 2,080 hours annually. The positions are included in the City's pay plan, assigned to a pay grade and range, and are compensated with an annual salary or an hourly rate as appropriate. Employees in full-time positions are eligible to participate in all City benefits described herein.

2. Part-Time: Those positions are approved individually or based on a pool of resources for part-time services in the annual budget based on an on-going service delivery need or structure of less than 1,039 hours during the calendar year. The positions are not included in the City's pay plan and are compensated through an hourly rate as appropriate. Employees in part-time positions are not eligible to participate in any City benefits plan.

3. Temporary/Seasonal: Those positions are approved either individually or based on a pool of resources for temporary services in the annual budget based on short-term, seasonal or sporadic service delivery needs typically of six (6) calendar months or less. The positions are not included in the City's pay plan and are compensated through an hourly rate as appropriate. Employees in seasonal positions are not eligible to participate in any City benefits plan.

4. Part-Time Elected: Those part-time positions filled by election by the citizens of Charleston consisting of the City Council Representatives, City Treasurer, and Municipal Court Judge. Part-time elected positions are compensated in a manner established and prescribed in Charleston City Code. Part-time elected positions shall be eligible for City health, dental and vision coverage and other benefit plans described herein that are

available to full-time employees. However, part-time elected officials shall not be eligible for accrued vacation, sick leave or any other form of paid leave described herein.

5. Full-Time Elected: That full-time position filled by election by the citizens of Charleston consisting of the Office of the Mayor. Full-time elected positions are compensated in a manner established and prescribed in Charleston City Code. The full-time elected official shall be eligible to participate in all City benefits described herein.

6. Certain Appointed: The appointed part-time positions identified in the Municipal Budget as the City Clerk and the Municipal Court Clerk shall be eligible for City health, dental and vision coverage and other benefit plans described herein that are available to full-time employees. However, these two appointed part-time employees shall not be eligible for accrued vacation, sick leave or any other form of paid leave described herein. Other positions filled by appointment by the Mayor, with or without confirmation by City Council, such as City Manager and City Attorney, are categorized as full-time positions, eligible to participate in all City benefits described herein.

## 2.10 Employment of Relatives

A. To maintain the highest level of trust and support from the community, to avoid situations that might result in unfair or preferential treatment of employees and/or the public, and to avoid any appearance of conflict of interest, the City may limit the employment and work assignment of employees, regardless of category, that are related to each other or to a current City Official.

B. Members of the same family are eligible for employment with the City; however, such employment may not result in a City Official or an employee directly or indirectly supervising a member of his or her immediate family.

C. Definitions:

1. For purposes of this rule, immediate family shall consist of parents, children, siblings, spouse, parents-in-law, children-in-law, grandparents, grandparents-in-law, grandchildren, step-parents, step-siblings, stepchildren, foster children, individuals in a loco parentis relationship and individuals in a legal relationship.

2. City Official is any individual elected or appointed to a position.

3. Employees are individuals hired through an application processes to serve the City of Charleston.

4. Indirect supervision includes, but is not limited to, being in a position through the chain of command to influence the terms and conditions of another's employment, including making decisions about work assignments, compensation, grievances, advancement, or performance evaluation.

## 2.11 Initial Probationary Employment Period

A. The City of Charleston uses an initial probationary employment period as an integral part of the employment process for employees seeking full-time positions, in order to determine the suitability of an employee for his/her position. The initial probationary employment period shall be used to assess new employees' work performance, interpersonal behavior and conduct and to allow sufficient time for an employee to adjust to his/her position and work environment.

B. Length of Initial Probationary Employment Period: The initial probationary employment period shall be twelve (12) months from the date of hire. Employees serve only one initial probationary employment period regardless of reassignment, promotion or demotion to other positions.

C. Extension of Initial Probationary Employment Period: Twelve (12) months is normally sufficient time to evaluate the suitability of the employment relationship. However, in rare instances, an extension of the initial probationary employment period may be warranted. Department Heads may, with consultation and approval by the Director of Human Resources and with specific job-related justification, extend the initial probationary employment period for an additional period not to exceed six (6) months. Extensions of the initial probationary employment period shall be in writing and shall be included in the official personnel file located in the Human Resources Department. The extension must be discussed with the Human Resources Department and communicated to the employee prior to the end of the original initial probationary employment period. The employee shall be notified in writing of the specific reasons for such extension as well as the specific performance results necessary to ensure ongoing employment. An example of an appropriate justification for an extension of the initial probationary employment period is when a new employee has experienced an injury or illness and is unable to work for an extended period of time. In such a situation, an extension of the initial probationary employment period equal to the length of the absence from work, up to six (6) months, may be needed to adequately observe and evaluate the employee's performance.

D. Disciplinary Actions during Initial Probationary Employment Period: Employees who have not completed their initial probationary employment period may be subject to disciplinary action up to and including termination as outlined in Chapter 8, "Employee Responsibilities" as determined to be appropriate by their immediate supervisor and/or Department Head. Employees disciplined and/or separated from employment during the initial probationary employment period are not entitled to an appeal nor do they have a grievance right related to such disciplinary action(s).

## 2.12 Safety and Risk Management

A. The City is committed to providing a safe and healthy workplace for its employees and preventing injuries and illnesses is a primary objective. The Human Resources Department coordinates and communicates a Safety Program in conjunction with the City's insurance agents for all City employees beginning with New Hire Orientation and continuing throughout employment. The goal of the Safety Program is to protect the safety and health of City employees, assist in preventing accidents and injuries, increase efficiency of operations, and save money for the taxpayers of the City of Charleston.

B. "The City of Charleston Safety and Risk Management Manual," available from the Human Resources Department, includes the purpose and responsibilities of the Safety Program as well as general safety rules, loss control, accident prevention, and reporting procedures. Each employee is fully responsible for implementing the provisions of the Safety Program as it pertains to operations under his or her control. Employees are responsible for immediately reporting any on-the-job accident/injury to his/her immediate supervisor or Department Head.

## 2.13 Scheduling of Work

A. Workweek: The City observes a work week that begins at 12:01 a.m. on Sunday and ends at 12:00 midnight the following Saturday. In the event that an employee's work day extends into a new workweek, the work day will be split into the applicable workweeks.

B. Work Schedule: On a typical work day, most full-time employees may be scheduled to actually work 7 hours, with a one (1) hour paid lunch. Department Heads shall have the authority to establish, modify, alter and/or change an employee's work schedule to ensure efficient and effective operations and service.

C. Work Location/Assignment: Department Heads and/or supervisors shall have the authority and/or discretion to establish, modify, alter and/or change work locations and/or assignments on any given day to ensure efficient and effective operations and service.

D. Due to the broad array of municipal services provided to citizens, employees in any given department/division may not necessarily work the same schedule. Department Heads may change and/or modify an employee's schedule to accommodate business operations.

E. Lunch periods: Employees are provided the equivalent of one (1) hour paid lunch or meal break during the work day, during which the employee is entirely free of the duties of his or her position. Employees shall consult their Department Head and/or immediate supervisor regarding the timing and scheduling of lunch or meal breaks.

### F. Travel Time

1. Travel time from an employee's home or residence to the workplace is not considered work or paid time. However, once an employee reports to work, required travel as part of his/her duties, from one location to another during the employee's scheduled work day, is considered and counted as hours worked.

2. From time-to-time, it may be necessary and/or required for an employee to travel outside of his/her normal work location, or to and from out of town or state destinations in order to conduct official City business. Such approved travel is normally considered paid time and shall be included in hours worked for overtime purposes. Examples of City business requiring such travel include training events, conferences or meetings in other locations, or similar situations.

3. With approval from his/her Department Head, employees should adjust their work schedule in order to limit the amount of overtime that may result from traveling to and from, or attending any scheduled training, event, conference or meeting in an out-of-town or out-of-state location.

## 2.14 Transfers

- A. A vacant position may be filled by transferring an existing employee with the same or similar grade/class to the vacant position. The transfer may be involuntary. Transfers shall be approved by any Department Head(s) impacted by the transfer, and shall also require approval by the Director of Human Resources and/or City Manager.
- B. An employee may be transferred for any legitimate business purpose including, but not limited to, departmental restructuring, consolidation, reallocation of duties, simplification and/or streamlining efforts, or when the City lacks budgetary appropriations to sustain a position.
- C. A change in an employee's work schedule, shift, location and/or daily assignment shall not be construed as a transfer.

## 2.15 Reduction of Force

- A. Employees may be placed in a Reduction in Force (RIF) status when filled positions are no longer necessary or required due to departmental restructuring, consolidation, reallocation of duties, simplification and/or streamlining efforts, or when the City lacks budgetary appropriations to sustain the position.
- B. In the event of a RIF, full-time employees shall be given preference over employees still in their Initial Probationary Employment Period, and over part-time, or seasonal employees serving in the same class of positions in that department. However, the city is not prohibited from using part-time or seasonal employees during or after a reduction in force.
- C. Typically, and to the extent it is reasonably possible under the circumstances, employees identified for separation due to RIF will be provided at least 30 days advance written notice.

## 2.16 Separation from Employment

- A. Resignation is a separation initiated by an employee. Employees who leave their position due to resignation are encouraged to provide at least two weeks written notice to their Department Head. Department Heads shall document verbal resignations in writing. Resignations shall be promptly forwarded to the Director of Human Resources.
  1. Once a resignation is submitted by the employee, either verbally or in writing, it may not be withdrawn unless the Department Head, Director of Human Resources and/or City Manager consents and agrees to the withdrawal.



2. Employees who resign shall be paid for any accrued, but unused vacation, up to limits prescribed in City policy, with exception of employees who resign during the initial probationary employment period.

3. Employees who resign shall not be paid or otherwise compensated by the City for any accrued, but unused sick leave.

B. Retirement is a separation initiated by an eligible employee. Employees who leave their position due to retirement are encouraged to provide at least two weeks written notice to their Department Head. Retirement eligibility and guidelines are specified and governed by the West Virginia Consolidated Public Retirement Board (CPRB) and the Public Employee's Retirement System (PERS). Prior to retiring, employees should make an appointment with the CPRB to determine benefits eligibility and monthly annuity options, and with the City's Benefit and Compensation Manager to review and discuss health benefits and coverage options.

C. Employees who separate during the Initial Probationary Employment Period shall not be paid or otherwise compensated by the City for any accrued, but unused vacation or sick leave.

D. Regardless of the type of separation, the employee must return all City-owned materials, equipment, and other property to his/her Department Head including, but not limited to, identification badge, parking card, cell phone, keys, uniforms, electronic files, and any confidential or proprietary documents.

E. Exit Interview: An exit interview is a meeting between a separating employee and a Human Resources' staff member. The interview is encouraged in all voluntary separations including retirements and is normally held no later than two weeks after the employee's last day of service. During the exit interview, the employee may discuss his or her reason(s) for leaving and learn about the status of benefits, reinstatement privileges, and retirement, if applicable. The exit interview is not intended as a counseling or grievance session. The information gained from the employee on subjects such as pay, benefits, training, and working conditions provides important feedback that may contribute to improved job satisfaction for City personnel.

F. Change of Status: It shall be the responsibility the Human Resources Department to initiate or facilitate the initiation of, an electronic change of status for departing employees.

## 2.17 Rehires

A former employee who completed his/her Initial Probationary Employment Period, and voluntarily left City employment in good standing, may be rehired to an available position at the discretion of the City Manager and/or Director of Human Resources on a case-by-case basis . Generally, an employee who is rehired will not receive credit for previous service with respect to vacation, sick leave or other benefits. The City Manager has discretion to modify this rule in the event he/she believes it is in the best interest of the City. Rehired employees do not have to complete any additional Initial Probationary Employment Period unless otherwise determined by the City Manager.

## 2.18 Personnel Files

- A. Personnel files contain material and information about an employee's employment. Official personnel files for each City employee are maintained in the Human Resources Department.
- B. Documents that are a part of, or ancillary to, the personnel file may include, but are not limited to: job classification, grade or pay range assignment, employment application/resumes, references and background checks, employee pay and benefit information, performance evaluations, disciplinary actions, counseling documentation, supervisor's job-related notes, commendations, and education materials.
- C. All medical information such as Family Medical Leave certifications, ADA materials including requests for accommodations, or results of physicals or drug/alcohol testing, is maintained in files separate from personnel files.
- D. In accordance with the Government Data Collections and Dissemination Practices Act, every employee has the right to review his or her personnel file(s).
  - 1. Requests for review may be made to Human Resources through a variety of means such as e-mail, memo, telephone, or in person.
  - 2. The file will be made available as soon as reasonably possible, but in no case later than close of business the following workday.
  - 3. Copies of materials within the file will be provided at the employee's request.
  - 4. The file may not be removed from the Office of Human Resources.
  - 5. A staff member from Human Resources shall be present during the review.

## 2.19 Release of Information

- A. All employment verification inquiries or requests for references from current or former employees, prospective employers of current or former employees, governmental agencies, or other organizations, including, without limitation, financial institutions, shall be directed to the Office of Human Resources. Only the Office of Human Resources may respond to such inquiries or requests for references.
- B. Responses by the Office of Human Resources to employment verification inquiries shall be limited to verification of employment dates, position title(s) and salary. Additional information may be provided upon written authorization from the current or former employee consenting to the release of such information.
- C. Employees may provide a personal reference for a current or former employee, provided that the employee does not utilize City resources in providing personal references. When providing a personal reference, the City employee shall emphasize that the reference is

personal, not professional. Failure to adhere to this rule may be cause for disciplinary action up to and including termination.

## 2.20 Workweek and Pay Day

A. The City observes a work week that begins at 12:01 a.m. on Sunday and ends at 12:00 midnight the following Saturday.

B. The City compensates and pays employees either through direct deposit or by check as may be requested by each employee. Generally, the City initiates direct deposits and/or dates pay checks every other Friday.

C. There may be occasions, such as when a scheduled payday occurs during a federal, state or City observed holiday, when it may be necessary for the City to modify, alter and/or change normal payroll practices, including the day/time for initiating direct deposits and/or the issuance of pay checks. Unless extenuating circumstances exist, direct deposits and checks will be issued the day before the holiday.

## 2.21 Payroll Deductions

A. The City is required by applicable federal, state and local law to withhold and make certain deductions from employee's paychecks. Mandatory deductions, include, but are not necessarily limited to:

1. Federal Income Tax
2. State Income Tax
3. Social Security
4. State Retirement
5. City Service Fee

B. The City is also required to withhold, upon written notification, qualifying child support orders, garnishments and/or any other court ordered withholding. The City is required make withholdings in accordance with a valid court order until such time the City receives written notice of a modification or change of order from the appropriate court or other legal authority.

C. Employees may voluntary authorize the City to make optional withholdings from their bi-weekly compensation. Voluntary deductions include, but are not necessarily limited to:

1. Medical Insurance
2. Dental Insurance
3. Optical Insurance

4. Deferred Compensation
5. Voluntary Life Insurance
6. Disability Insurance
7. Flexible Spending Account.

D. Employees who believe they have been the recipient of any improper or unauthorized deduction should promptly contact the Benefits and Compensation Manager in the Office of Human Resources.

## 2.22 On-line Human Resources & Employee Self-Service

A. As a courtesy and convenience, employees are encouraged to take advantage of the online Human Resources & Employee Self-Service Application. With the Human Resources & Employee Self-Service Application, employees have the convenience and ability to view their leave balances, direct deposit information, paystubs, W-2's and other information from a cell phone, tablet, laptop or any other device with internet access. In order to view their information, employees must first register as a user. It is recommended that you do not attempt the initial registration process through a mobile device.

B. Registration Process:

1. Type <http://tylerweb.cityofcharleston.org> into your internet web browser.
2. Select Employee Service.
3. Select New User.
4. Complete the registration process by following the instructions provided.

C. After successfully registering, please allow one (1) to three (3) working days for your account to be reviewed and activated. You will receive a confirmation at the email address you provided during the registration process notifying you when your account has been activated.

D. If you have any questions, or need further assistance, please contact Human Resources.

## 3. Compensation

### 3.1 Compensation Philosophy

A. The City strives to provide a total compensation plan that enables the City to:

1. Attract and retain a high-quality and diverse workforce;

2. Reward and retain qualified employees;
3. Provide a fair and consistent framework for assigning jobs;
4. Maintain salary structures at market competitive levels;
5. Ensure fair and consistent pay practices;
6. Comply with applicable laws and regulations;
7. Operate within the constraints of fiscal resources; and
8. Be an employer that promotes and rewards performance excellence.

B. The City promotes a fair and equitable compensation plan to support achievement of the following goals:

1. To provide a total compensation program that is fiscally sound and equitable in the defined marketplace;
2. To use benchmarking of select classifications as a best practice for compensation of similar positions;
3. To establish competitive salary ranges for all positions to provide the flexibility needed to adapt to market changes, maintain internal equity, and address needs of the City that will ensure a high level of service to the residents of the City;
4. To establish starting pay for new employees based on education and work experience related to positional requirements as well as market conditions;
5. To provide pay adjustments, other than allowances and supplements, to employees when appropriate to address equity, market responsiveness, and consistency in the administration of the City's compensation program;
6. To provide for pay increases for eligible employees resulting from true promotions and reclassifications;
7. To fairly and consistently apply Fair Labor Standards requirements to applicable positions;
8. To review, assess, and adjust benefit plans and other non-cash compensation plans periodically for competitiveness, cost effectiveness, and their value to employees and the City; and
9. To review, assess, and adjust pay ranges on a periodic basis to maintain salary structure at market competitive levels.

C. It is the City's goal to develop and maintain a compensation plan that is merit based and guided by the following principles:

1. Public service is an admirable occupation and the employees who have dedicated themselves to the service of the City's residents are to be valued;
2. Employees shall be compensated in ways that reflect market competitiveness and recognize performance in alignment with the City's vision and organizational goals;
3. Each employee is a unique individual, with his or her unique and particular needs and aspirations. No compensation program can accommodate every individual circumstance. Rather, the intent is to have a program that reasonably provides choices and the flexibility to assist employees in achieving their goals, while encouraging individual responsibility and reflecting the prevailing market environment;
4. The compensation plan must be fiscally responsible and affordable and work within the constraints of resource availability;
5. No compensation plan is perfect as every variable cannot be addressed equally and to the satisfaction of all, but the compensation plan shall be rational and based on clear guidelines that can be easily understood and communicated; and
6. Differences in compensation for reasons other than job classification, performance, qualifications, longevity, or legal requirements are inappropriate. Specifically, there shall be no discrimination related to non-job related factors such as sex, race, color, age, national origin, ancestry, religion, disability, medical condition, genetic information, marital status, sexual orientation, gender identity or expression, citizenship, pregnancy or maternity, veteran status, or any other status protected by applicable national, federal, state, or local law.

D. The City's compensation plan is intended to:

1. Balance salary and non-salary benefits to achieve competitive total compensation;
2. Assure that like jobs are valued with comparable methodology and are treated similarly in terms of base pay;
3. Manage pay ranges with respect to the relevant market for comparable work;
4. Promote individual contributions and high levels of performance that advance organizational and departmental missions and outcomes;
5. Consider relevant market data, internal equity, knowledge, skills and abilities, length of service in the job, and demonstrated performance in setting individual pay;
6. Attract applicants with demonstrated core competencies needed to perform the job and the ability to quickly learn the specific requirements of the position;

7. Allow new employees with relevant experience (both quantitative and qualitative) and demonstrated competence to be hired at a pay rate above the range minimum; and
8. Encourage employees to make a performance difference, either individually or through teams, in which results are more important than other non-performance variables such as seniority, hierarchy, or the expectation of additional pay for changing responsibilities.

## 3.2 Compensation Plan

A. The City's compensation plan is an administrative structure that includes a series of market-based pay grades, ranges and broad bands. Each position in the City is assigned to the appropriate grade or band in the compensation plan that is in keeping with the nature of work, the degree of responsibility involved in the position, and the relevant labor market. Employee base pay is intended to fit within a pay range or band and at a rate no less than the minimum and no greater than the maximum. The City regularly reviews the compensation plan and makes changes to the structure, as necessary, in accordance with the Compensation Philosophy.

B. Plan Maintenance: The City compensation plan is maintained by analyzing information collected through periodic salary and benefits surveys for comparable positions in market organizations and internal information regarding recruitment and retention. On a regular basis, market information about average pay, range parameters, and benefits is collected for those positions common to most organizations (benchmark positions) and compared to City average pay, range parameters, and benefits. Each City position is linked to a benchmark position therefore, the survey results apply to all City positions. This information, along with information regarding recruitment difficulty and attrition, provides the basis for decisions regarding pay range parameters, grade placement and employee pay adjustments.

C. Communication of the Plan: The City's compensation plan and a listing of all City positions with assigned pay grades is included in the City's Annual Municipal Budget Document and is posted on the City's website.

## 3.3 Classification

A. Classification is the assignment of a position on the City's compensation plan to a pay grade based on an assessment of the duties and nature of work, the degree of responsibility, and the relevant labor market.

B. Generally, most City positions are governed by the United States Department of Labor (DOL) Fair Labor Standards Act (FLSA). Within the pay grades, City positions are placed into one of the following categories:

1. Exempt: Employees are not entitled to overtime pay for hours worked in excess of 40 hours in a given work week.

2. Nonexempt: Employees are entitled to overtime pay for actual hours worked in excess of 40 hours in a given work week. Paid time off for vacation or sick leave is not included as actual hours worked under the FLSA regulations.

C. Certain City positions are eligible for compensatory time off in lieu of overtime pay for actual hours worked in excess of 40 hours in a given week. See Section 3 - Pay Actions, section 3.5(H) for additional information.

D. The Office of Human Resources will maintain the FLSA status of all City positions. Employees should contact the Benefits & Compensation Manager with any questions with respect to their FLSA status.

### 3.4 Reclassification

A. Reclassification is the reassignment of a position from one pay grade to another resulting from a formal job review requested by a Department Head and completed by the Human Resources Department. Reclassification is normally the result of a significant change in the duties and responsibilities of a position, structural changes, a change in the needs of the organization or other similar situations as may be determined or approved by the Director of Human Resources and/or the City Manager. To maintain fair, competitive pay for all employees, the City utilizes a job review process to analyze positions to determine appropriate pay grade assignment. Changes to the pay grade of existing positions may be implemented due to changes in the relevant labor marker, duties and responsibilities, structural changes, changes in the needs of the organization, when new positions are developed, or other similar situations.

1. If the reclassification results in an upgrade of one pay grade, the initial pay raise will be moved upward no more than 5% of the new pay range. An upgrade of two or more pay grades may be eligible for an additional 2.5% increase for each additional pay grade, up to a maximum of 10% of the new pay range. Any increase of more than 10% shall require documentation of the requested variance by the Director of Human Resources and approval by the City Manager.

2. Typically, when reclassifications made as a result of a normal budget process review, the effective date of any change will be the first day of the fiscal year. Otherwise, for an approved individual reclassification made outside of the normal budget cycle, the effective date of any change in pay will typically begin with the next full pay period after formal approval of the reclassification.

3. Typically, reclassification or changes in pay grade resulting from the normal budget cycle, or an approved individual change in pay grade, shall not be retroactive.

4. Internal Equity Adjustments resulting of the implementation of a system-wide compensation or similar study shall not be subject to the same guidelines as the "Reclassification" guideline. Internal Equity Adjustments can be the result of the application of a formula, applied to all positions in the same compensation plan, and are made to insure that employees' salaries are internally equitable and are not made to reflect an individual "job audit" of a single member incumbent. Internal Equity



Adjustments are also not tied to performance measures. The City Manager may determine an Internal Equity Adjustment strategy that is separate and apart from the guidelines that cover reclassification. Internal Equity Adjustments, resulting from an internal or external comprehensive review, can be to a higher, or lower, pay grade and are not considered a reclassification, promotion, or demotion.

5. When a job has been reclassified to a lower pay grade, the affected employee shall have their pay grade adjusted to the new pay grade without any loss in pay. Unless the employee's salary prior to the reclassification exceeds the salary range of the new pay grade, the employee will be eligible for future increases within the new pay grade. If the employee's salary is greater than the maximum salary of the new pay range, the employee will continue to be paid at the higher rate of pay, but will not be eligible for future increases within the new pay grade. The effective date of any reclassification will be the day following adoption of the reclassification by City Council and the change will be reflected in the next full pay period.

### 3.5 Pay Actions

A. **New Hire Pay:** Pay for newly hired employees is determined based on a variety of factors such as the grade assignment of the position, the employee's level of knowledge, skills and abilities, and current market conditions. In no case will a new employee's pay be set below the minimum of the assigned pay grade or above the maximum of the assigned pay grade.

1. **Initial Pay Rate:** Newly hired employees will typically have their pay set at the beginning of the pay range established for the position.

2. **Pay Rates above Minimum:** There may be situations when it is necessary to set an initial pay rate above the minimum of the pay grade, based on the value of the position to the City, the knowledge skills and experience the candidate brings to the position, and market conditions for the particular position. In order to pay a new hire above the minimum, a Department Head must submit a written request to the Director of Human Resources with the specific reasons including the value of the position to the department, the knowledge skills and experience the candidate brings to the position, the impact of above minimum salary on other employees, if any, and the market conditions for the particular position. The Department Head's request will be reviewed and considered by the Director of Human Resources in consultation with the City Manager. The Department Head will be notified by the Director of Human Resources of the approval, denial, or modification of the request.

B. **Promotion:**

1. When an employee is promoted as a result of a job change or job progression to a higher pay grade, the initial pay raise will be moved upward no more than 5% of the new pay range. An upgrade of two or more pay grades may be eligible for an additional 2.5% increase for each additional pay grade, up to a maximum of 10% of the new pay range. Any increase of more than 10% shall require documentation of the requested variance by the Director of Human Resources and approval by the City Manager. If the

promotion is within the employee's current pay range, the initial pay raise will typically be moved upward no more than 5% of the current pay range, but not more than the maximum salary of the assigned pay grade. The effective date will be the day of approval and will be included in the next full pay period.

2. There may be times when the uniqueness of an individual job and level or necessary skills required by the City, and not just possessed by the employee, may require a higher salary schedule placement than stipulated in this section. Under such circumstances, the Director of Human Resources may recommend a higher salary placement within the assigned pay grade, subject to approval by the City Manager.

C. Lateral Transfer: A lateral transfer occurs when an employee is transferred from one job position to another in the same, or substantially equivalent, pay grade. When there is no change in pay grade there shall be no adjustment in base salary. A lateral transfer is not considered a reclassification or a promotion. Lateral transfers from one pay grade to another will result in the employee being placed in the new pay range.

D. Temporary Assignment(s)

1. "Acting" or temporary assignment(s) occurs when the City recognizes a critical job assignment need that must be met and cannot be met under the circumstances through the normal recruitment process. This can occur when an unexpected vacancy occurs; when a mission critical job cannot be filled in a timely fashion; or when a mission objective changes abruptly and requires an immediate action. Assuming the duties of another employee who is on approved leave such as vacation, holiday, medical, or other short term absence, is not considered an acting or temporary assignment.

2. The terms and conditions of an acting or temporary assignment, including the terms of any Acting Duty Pay, shall be documented in writing and shall be made a part of the employee's personnel file.

3. Temporary or "acting" assignment(s) would be anticipated to last more than 30 days but less than 6 months. A temporary or acting assignment may be extended beyond 6 months with written approval of the City Manager and/or the Director of Human Resources, based on justification provided by the Department Head.

4. A Temporary or "acting" assignment will not result in a lower salary for the assigned employee, even if the assigned employee's salary exceeds the maximum of the pay range for the position to which they are temporarily assigned.

5. If a temporary or acting assignment results in an employee being assigned to a position in a higher pay grade (or substantially equivalent pay range) for more than 30 days, but less than 6 months, the employee will be eligible for Acting Duty Pay consistent with paragraph K of this Section.

E. Maximum of the Range of Pay Grade: Ranges for pay grades are established to reflect the market value of a job. Once an employee reaches the maximum of his/her assigned range, the

salary is frozen and the employee is not eligible for any additional compensation unless there is an approved change to the maximum range of the employee's pay grade.

F. Overtime Compensation: Only non-exempt employees are eligible for overtime compensation. All City departments have established work schedules as required by workload, production flow, service needs, and the efficient management of resources. In addition to these established schedules, service delivery needs may require overtime work (i.e. more than 40 hours of actual work in one administrative work week) when authorized and approved by a Department Head. No overtime shall be worked without prior approval or authorization from an employee's Department Head. Under certain circumstances, employees may be required to work overtime. The following pay actions apply when overtime work is authorized.

1. Eligibility for Overtime Compensation: The Fair Labor Standards Act (FLSA) is a federal law which requires that most employees in the United States be paid at least the federal minimum wage for all hours actually worked (productive time) and overtime pay, at one and one-half times the regular rate of pay, for all hours worked over 40 hours in a workweek. The time needed to travel to destinations outside of the normal work location, beyond commuting time, to conduct required City business is usually considered productive time.

2. Overtime Compensation for Non-Exempt Employees: The FLSA requires that non-exempt employees receive overtime compensation at 1.5 times the hourly rate for hours worked in addition to specified hours threshold, normally 40 hours in one administrative work week. Paid time off for vacation or sick leave is not included as actual hours worked under the FLSA regulations. A non-exempt employee shall not work any time that is not specifically authorized by his or her supervisor. Non-exempt employees are prohibited from performing any "off-the-clock" work (i.e., work performed but not recorded on the timesheet).

3. Overtime compensation may either be in the form of compensatory time at one and one half hours of time awarded for each hour worked over the appropriate threshold or payment at one and one-half times the employee's hourly rate, at the City's discretion.

4. Exempt employees are not typically eligible to receive overtime compensation. However, they may, on occasion and with the approval of their Department Head, use discretion to adjust their regular work schedule following extended periods of work in excess of 40 hours per administrative work week.

G. Compensatory Time: The FLSA allows public entities to give compensation time off ("Comp Time") in lieu of paying overtime wages for certain non-exempt employees. Only employees who have been designated as eligible by the Office of Human Resources are subject to Comp Time pursuant to this rule. An employee's designation is subject to change. If an employee's designation is changed, the employee will be notified by Human Resources. Employees who have any questions concerning their status or the availability of Comp Time are encouraged to contact Human Resources for clarification.

1. **Rate of Comp Time:** Any employees covered by this rule will receive Comp Time in lieu of monetary overtime compensation, at a rate of one and one-half hours of Comp Time for each hour of overtime worked in a work week.
2. **Hours Actually Worked:** Comp Time will only be awarded to eligible employees after they actually work forty (40) hours in one work week. Paid time off for vacation, sick leave holidays, jury duty, commute time, meal breaks, or other leaves from work and use of Comp Time do NOT count towards the 40 hours actually worked. (See 29 C.F.R. 785 for additional regulations.)
3. **Amount of Comp Time Which May Be Accrued:** Unless modified or otherwise permitted herein, the maximum amount of Comp Time hours which may be accrued by an eligible employee is 240 hours.
4. **Payment for Unused Comp Time:** Upon separation of employment, eligible employees who have accrued Comp Time shall be paid for the unused Comp Time at a rate of the average regular rate of pay of the employee during the last 3 years of employment or the final regular rate, whichever is higher.
5. **Permission is required to Work Overtime:** An eligible employee must request and receive permission from his/her Department Head prior to working hours outside his/her regular hours of work which could result in Comp Time. Failure to do so may result in discipline to the employee. It is a violation of this rule for any employee to instruct another employee to work overtime without prior permission from his or her Department Head. Employees should report any violations of this rule to the Director of Human Resources.
6. **When a potential compensatory overtime situation is foreseeable, the Department Head shall on a case-by-case basis attempt to adjust an eligible employee's work week schedule to avoid the accrual of Comp Time.**
7. **Requests for Using Comp Time:** Requests to use Comp Time for time off must be made to and approved by the employee's Department Head. The employee will be permitted time off as requested unless the Department Head reasonably and in good faith anticipates that the employee's absence would impose an unreasonable burden on the department's ability to provide services of acceptable quality and quantity during the time requested.
8. **Timing of Use of Comp Time:** A Department Head may, with the approval of the City Manager, set a maximum number of Comp Time hours an employee within their department may accrue, after which employees must take steps to use the accumulated Comp Time. Departmental maximums may not exceed 240 hours. If the employee does not do so voluntarily, the Department Head may order the employee to use his/her Comp Time at specific times. A Department Head, with the approval of the City Manager, may also elect to "cash out" accrued Comp Time by paying the employee cash compensation at a rate of one and one-half times the employee's hourly rate for unused Comp Time.

9. Required Records: If Comp Time off is to be granted for work performed during a given pay period, each Department Head or his/her designee is required to enter and approve the following information into the timekeeping system:

- a. The number of hours of comp time earned each work week by each employee;
- b. The number of hours of such comp time used each work week by each employee; and
- c. The amount of comp time paid in cash as a "cash out" to each employee if approved by the City Manager, and the date of said payment each work week.

10. In a week when Comp Time is awarded, each Department Head shall require each eligible employee to verify the information in a. or b. below.

H. Professional Certification/License Pay: Some employees may be required, as a condition of employment, to possess, maintain, and/or obtain one or more professional certifications and/or licenses. Employees shall not receive any additional pay or compensation for such professional certification and/or license. The City may pay expenses incurred by employees for acquisition and/or maintenance of professional certifications and licenses necessary or required by the City, or determined to be advantageous by an employee's Department Head.

Department Heads may develop certain standards and/or expectations for employees in which the Department Head may recognize or reward professional certifications through the performance management process.

I. Call out Pay:

1. On occasion, it may be necessary and required that an employee be called out after hours for non-scheduled work. Department Heads shall determine the terms under which employees in their department will be compensated for call out assignments and shall issue their determination in a written policy, subject to review and approval by the Director of Human Resources and the City Manager.

2. Each Department Head will identify the position(s) in his/her department subject to call out.

J. Stand-by:

1. Stand-by is a time that a designated, non-exempt employee must remain available to report to work during off-duty and/or non-scheduled hours, in accordance with his/her department's operating policies and procedures, but is generally not unduly restricted in his/her freedom to conduct personal business during off-duty hours. An employee on stand-by is not required to remain at work or home and is free to engage in personal activities and business, with the understanding that he or she must be available by phone or pager and in reasonable proximity to respond and report to work in a reasonably timely manner based on circumstances on a case-by-case basis, if

necessary and required. A non-exempt employee assigned to stand-by shall be compensated as follows:

- a. One (1) hour regular pay for each 24-hours assigned to stand-by, Monday through Friday or regular work day of the employee's assigned regular work schedule.
  - b. One (1) hour regular pay for each eight (8) hour period assigned to stand-by on a regularly scheduled day off, including Saturday, Sunday, or an observed holiday.
  - c. At the Department Head's discretion, subject to approval by the Director of Human Resources, hours accumulated on stand-by assignment may be compensated by time off in lieu of payment.
2. An employee on stand-by who is called out shall be compensated in a manner set forth in Section I, Call Out Pay herein.
  3. An employee on stand-by who does not respond to a call out request, or who is not within reasonable proximity to report to work in a timely manner when called out will not receive stand-by pay, and may be removed from eligibility for future stand-by assignment, and/or subject to discipline, up to and including termination.
  4. Each Department Head will identify the position(s) in his/her department subject to stand-by.
  5. Stand-by hours are not "hours worked" with respect to overtime accumulation.

K. Acting Duty Pay:

1. The City may provide additional compensation for employees in acting appointments who temporarily assume additional higher level duties resulting from resignations, terminations, retirements, extended leave, or other extended absence or vacancy in the workforce, or who assume additional programs or responsibilities, based on the degree of responsibility assumed. Acting Duty Pay will be determined on a case-by-case basis at the recommendation of the Department Head, subject to approval by the Director of Human Resources and the City Manager. Additional compensation, if approved, will typically be a percentage of base pay.
  - a. The base salary of an employee who assumes most or all of the duties or responsibilities of a higher level position will typically be increased no more than 10% of the employee's current salary, or adjusted to the minimum salary of the grade of the temporary appointment, whichever is greater.
  - b. An employee who takes on all of the duties of a higher level position also is subject to the conditions of employment of the temporary position including FLSA status.

c. In exceptional situations an employee may be granted a temporary increase greater than 10% of the employee's current salary or the minimum of the range based on the recommendations of the Department Head and Director of Human Resources, and subject to the approval of the City Manager.

2. If an employee is receiving acting duty pay at the time an annual increase is awarded, calculation of the employee's increase will be based on the employee's regular pay in effect prior to receiving acting duty pay.

3. At the end of the acting status or additional duties, the employee's pay will return to the level of pay in effect prior to the temporary appointment to acting status or additional duties, plus any annual increases which the employee may have received during the temporary appointment.

4. Acting duty pay is not a part of base pay for pay adjustment purposes such as promotional, performance within grade, pay range or cost of living increases.

L. Within Grade Increases:

1. Within grade increases are pay adjustments that increase an employee's base salary for reasons other than performance or pay range adjustment. Such increases are at the recommendation of the Director of Human Resources and subject to the approval of the City Manager on a case-by-case basis. Within grade increases may be for the following circumstances:

a. To increase the pay of an employee who has demonstrated a significantly increased value by taking on additional responsibility that meets the needs of the City, but does not meet the criteria for a reclassification or acting duty/assumption of additional duties;

b. To aid in the retention of a valuable employee who has received a competing job offer; or

c. When recommended by the Director of Human Resources and in the reasonable judgment of the City Manager, a pay adjustment is in the best interest of the organization.

M. Performance Increase Eligibility: After successful completion of the Initial Probationary Employment Period, employees become eligible for consideration for an annual performance merit increase in accordance with City policy and subject to budgetary appropriations by Charleston City Council. See Chapter 6, Performance Management for additional information.

N. Transfers/Reassignments:

1. Transfer/Reassignment within the Same Pay Grade: An employee who moves from one position to another position within the same pay grade, whether voluntary or involuntary, shall retain his or her current base rate of pay.

2. Transfer/Reassignment Through No-Fault to a Lower Grade: An employee who is moved from one position to another position with a lower pay grade through no fault of his or her own (i.e. in saturations such as reorganization, reduction-in-force, reclassification of the position, reallocation of duties, streamlining, the needs of management, or in response to market factors) shall typically have his or her pay set at a rate within the lower grade range that results in the least loss of pay to the transferred/reassigned employee, but does not exceed the maximum of the lower grade range.

3. Voluntary Transfer/Reassignment to a Position in a Lower Grade: An employee who requests and is granted placement or is selected through a competitive selection process to a position in a lower grade, shall typically have his or her pay set at the minimum of the new lower grade range or have his or her pay reduced by 5%, whichever results in the least loss of pay and does not exceed the maximum pay of the new lower grade range.

O. Other Pay Actions: Other pay actions may be necessary and required from time-to-time if determined to be in the best interests of the City and with approval of the City Manager.

### 3.6 Pay Process

A. It is the City's policy and practice to accurately compensate employees and to do so in compliance with all applicable state and federal laws. To enable the City to ensure that employees are paid properly for all time worked and that no improper deductions are made, each employee must complete appropriate records regarding time worked and leave taken. Employees are paid in two week increments through direct deposit or paycheck every other Friday. The City reserves the right to modify, change and/or alter the scheduled payday to accommodate business and/or other needs such as modification to account for observed holidays.

B. Information entered into the City's timekeeping system must be recorded and approved no later than noon Tuesday in each week that checks are issued. Information recorded and approved after noon on Tuesday during a week when checks are issued will be included in the following pay period.

C. Each employee should review his or her direct deposit statement or check when received to make sure that the pay is accurate. Occasionally, inadvertent mistakes may happen. In the event that a mistake does occur, employees should notify their Department Head and/or immediate supervisor, and/or Human Resources Department. Reports of an error involving pay will be promptly investigated. If it is determined that a mistake has been made, the pay will be corrected and the correction along with any additional pay due to the employee will typically be reflected in the pay period following identification and correction of the error.

D. Direct Deposit

1. The City strongly encourages all employees to participate in the convenience of direct deposit as a method of receiving his/her pay. Employees can designate one or



more banks/financial institutions as recipients for direct deposit. By participating in direct deposit, employees do not have to make alternative arrangements to pick up or obtain their paycheck when they are on vacation or otherwise off work during a day in which paychecks are distributed.

2. While the City initiates direct deposit transactions to participating employee accounts, the availability of employee funds shall be in the discretion of, or in accordance with, the employee's banking/financial institution policy.

3. Employees who desire to participate in direct deposit shall obtain the prescribed form from the Office of Human Resources and complete and return it to the Office of Human Resources.

4. Each employee is responsible for promptly notifying the Office of Human Resources when he/she changes financial institutions, account numbers and/or makes any other changes that might affect his or her direct deposit transaction.

## 4. Benefits

### 4.1 Philosophy

The City's goal is to provide employees with a comprehensive and competitive benefit package to assist in the successful recruitment and retention of employees and to promote and encourage a healthy workforce. From time to time, conditions or circumstances may require that the City make changes, additions, or reductions in its benefits program for both active employees and retirees as the City may determine are appropriate and in the best interest of the City. The City Manager is authorized to execute any and all documents required to implement any necessary or appropriate changes, additions, or reductions. This rule does not grant employees or retirees vested benefits. Employees and retirees are not guaranteed current or future benefits, unless required by federal or state law.

### 4.2 Medical, Dental and Vision Coverage

A. Eligibility: Group medical, dental and vision coverage is currently available for elected officials, appointed officials, full time employees, and their eligible dependents. For new employees, enrollment takes place at each new hire orientation and coverage typically begins the on 1st day of the month following the date of hire. Thereafter, employees may only make changes during designated open enrollment periods, with the exception of a qualifying life event as defined by the plan.

B. Health Risk Management Program: To promote and encourage a healthy workforce, the City's medical insurance plan provides employees and covered spouses the option to voluntarily participate in a Health Risk Management ("HRM") program coordinated, managed and provided by the operator of the Employee Wellness Center. The HRM program provides employees and covered spouses with an annual Health Risk Assessment ("HRA"), personal health management and treatment plans/programs, health and wellness coaches and other related assistance.

C. Cost of Coverage: Medical premiums are based on coverage type (single, family, etc.) and annual base salary. A discounted premium is available for HRM Program participants. Employees who do not participate in the HRM Program, but do not use tobacco are eligible for a Non Tobacco Users (“NTU”) discounted premium. Medical premiums will generally be published in the City’s annual budget document and are available upon request to the Human Resources Department. Medical premiums are subject to change at the discretion of City Council based on health care costs and other factors.

D. Random Nicotine Screenings: Individuals who elect to participate in the HRM program and individuals certified as a NTU will be subject to random nicotine screenings. An HRM participant or NTU who tests positive for nicotine during a random screening will be afforded an opportunity to complete a tobacco/smoking cessation program. Failure to complete a tobacco/smoking cessation program will result in loss of the NTU discount and the individual’s premium will be changed to the standard rate.

E. Leave of Absence and Premiums: An employee on an approved leave of absence without pay is responsible for payment of his or her premiums during the leave of absence and premiums will be invoiced to the employee on a monthly basis. An employee should contact the Benefits and Compensation Manager in the Human Resources Department if he or she will be off for an extended duration without pay. An employee who fails to maintain his/her premiums during the leave of absence period may have his/her coverage suspended until such time as any outstanding premiums are remitted.

F. An employee’s eligibility and coverage typically ends on his/her date of separation. COBRA

### 4.3 Life Insurance

A. Group Term Life: The City provides full time employees with a complimentary group term life insurance policy at no cost with coverage equal to one (1) times annual base salary (up to \$50,000). For full time employees, additional coverage for spouses or dependents, and higher coverage limits may be purchased by the employee during open enrollment period. All term life insurance policies are administered by the policy provider and not the City. Eligibility and benefits are subject to the terms and conditions of the policy provider.

B. Leave of Absence and Premiums: An employee on an approved leave of absence without pay is responsible for his or her term life insurance premiums during the leave of absence and premiums will be invoiced to the employee on a monthly basis. An employee should contact the Benefits and Compensation Manager in the Human Resources Department if they will be off for an extended duration without pay.

C. An employee’s eligibility and coverage generally ends on his/her date of separation.

### 4.4 Disability Insurance

A. Full-time employees are eligible to purchase voluntary combined short-term/long-term disability coverage through a group policy administered by the policy provider. Eligibility and benefits are subject to the terms and conditions of the policy provider.

B. Leave of Absence and Premiums: An employee on an approved leave of absence without pay is responsible for his or her disability insurance premiums during the leave of absence and premiums will be invoiced to the employee on a monthly basis. Employees should contact the Benefits and Compensation Manager in the Human Resources Department if they will be off for an extended duration without pay.

## 4.5 Retirement

All full-time employees are enrolled in the West Virginia Public Employee's Retirement System ("PERS"). Elected employees may choose to enroll in PERS. Participants in PERS contribute a percentage of their gross salary through bi-weekly payroll withholdings, and the City matches the contribution at a rate determined annually by PERS. Contribution percentages may be amended and adjusted periodically as determined by the West Virginia Legislature and/or PERS. Under existing law, all employee contributions currently remitted are tax deferred. Retirement eligibility and retirement benefits are determined exclusively by PERS. The City does not determine retirement eligibility or calculate retirement benefits. Employees should contact the West Virginia Consolidated Public Retirement Board with any specific questions regarding retirement benefits and eligibility.

## 4.6 Deferred Compensation

All full-time employees and full-time elected employees are currently eligible to participate in an optional 457 Deferred Compensation Plan administered by a third-party provider. This plan, which is similar to a private sector 401(k) plan, is an optional and supplemental retirement savings program that permits an employee to make contributions through bi-weekly payroll deductions on a pre-tax basis. Eligibility and contributions are subject to the terms and conditions of the third party provider and/or Internal Revenue Service policy. Employees should contact the third party provider with any specific questions regarding the 457 Deferred Compensation Plan. The City is prohibited from providing tax or investment advice to employees.

## 4.7 Employee Health & Wellness Center

A. The City desires an active and healthy workforce, and is committed to promoting health and wellness through an integrated approach. As an added benefit at no cost to employees, the City provides all full-time and elected employees access to a wide range of quality health care services through an Employee Health & Wellness Center ("Center"). The Center is located at 601 Morris Street, Suite 203 (Appalachian Power Park).

B. The Center uses a holistic approach to health care, infusing wellness and condition management directly into primary care. It is staffed full-time by a Physician Assistant and Registered Nurse, and part-time by a Physician. All full-time employees and elected employees

have access to the center, as well as spouses and dependent children who are covered under the City's health care plan. Appointments can be made online at <https://www.myhealthguide.com/lab/reg2/utility> or by calling the appointment hotline (877) 423-1330. Patients are seen by appointment only.

C. The Center **does not** provide assessments or treatments for on-the-job incidents or injuries.

## 4.8 Employee Fitness Center

A. To promote physical fitness and to encourage a healthy lifestyle, the City provides an on-site fitness center located on the fourth floor of City Hall to all full-time and elected employees. The fitness center features free weights, nautilus machines, cardiovascular equipment and an aerobic room. The fitness center is open and available for use 24 hours a day, 7 days a week and can be accessed with an employee's identification access badge. Employees can request access to the fitness center through the Office of Human Resources.

B. Spouses and dependent children (over 16 years of age) of employees may also utilize the fitness center, provided they are accompanied by the employee and adhere to all fitness center rules and regulations.

C. The City frequently offers various complimentary fitness classes and other activities in the fitness center. In addition, the City provides separate men's and women's locker rooms with shower facilities located on the fourth floor of City Hall. Bath and hand towels are located in the fitness center.

## 4.9 Flexible Spending Account

All full-time employees, and full-time and part-time elected employees are eligible to participate in the City's optional Flexible Spending Account ("FSA"). A FSA allows an employee to set aside a portion of his or her earnings from each pay period to pay for qualified medical expenses including deductibles, co-payments and prescriptions. The money set aside into the FSA is pre-tax and the funds are available through a Visa Benny Card or through a reimbursement process. Contributions and eligible purchases are subject to Internal Revenue Service regulations.

## 4.10 Workers' Compensation

**Notwithstanding the reporting requirements contained in this section, in the event of a potentially life threatening injury, employees should call 911, request emergency services, and take any additional necessary actions to assist and protect an injured employee or other persons before following the reporting and other requirements of this section.**

A. The City provides Workers' Compensation benefits in accordance with applicable State law to all qualifying employees. The program provides compensation and medical payments in the event that an employee is unable to work due to a work-related illness or injury. The City complies with applicable provisions of West Virginia Workers' Compensation laws, rules and

regulations. Injuries timely reported and treated properly and promptly result in the continuation of good employer-employee relationships, and the timely return to work of an experienced employee.

B. An employee who sustains an illness/injury on the job shall promptly report the illness/injury to his/her immediate supervisor and/or Department Head. If the supervisor or Department Head is unavailable, employees should notify the Safety Coordinator in the Human Resources Department.

C. Work related injuries/accidents **must** be reported not later than the end of the shift in which the injury/illness occurred. This includes minor injuries that may only require first aid treatment. Failure to report all injuries or illnesses within 24 hours may result in a delay and/or forfeiture of benefits.

D. If the circumstances reasonably permit, the injured employee shall obtain and fully complete a City of Charleston Report of Incident and Injury form, and forward it to the Safety Coordinator.

E. If reasonably possible, an employee should seek medical treatment from the nearest urgent care facility or from his or her personal physician. When seeking treatment for a work related injury, an employee should take a Workers Compensation Claims Kit. The Claims Kit can be obtained from the employee's immediate supervisor, Department Head, the Safety Coordinator or on the City's intranet. **The City of Charleston Employee Wellness Center does not see or treat employees who have sustained an on-the-job injury.**

F. After seeking treatment, employees should contact the Safety Coordinator and provide an update on their illness/injury and their status to return to work. Employees should send all completed forms and paperwork to the Safety Coordinator.

G. Election of Benefits Option: If an employee will be absent from work due to a work related injury/illness, he/she must choose to receive either Temporary Total Disability Benefits ("TTD Benefits") from Workers' Compensation OR paid sick leave. Employees who elect to receive TTD Benefits may use their accumulated sick leave, if any, until they receive their initial TTD benefit check. However, this sick leave will be restored when the employee reimburses the City for the net value of the paid sick leave used. Pursuant to State law, employees are prohibited from receiving TTD Benefit and using accumulated sick leave for the same period. Employees who sustain an illness/injury on the job must choose ONE of the following options:

1. Election to Receive TTD Benefits: The injured employee may use accumulated sick leave (or vacation after sick leave is exhausted) only until he/she receives their initial TTD benefits check. While receiving TTD Benefits, the employee will be in a leave of absence without pay status. During this leave of absence without pay, the employee will not accrue vacation or sick leave, and will not be paid for holidays.

2. Election to Receive Sick Leave Benefits: The injured employee may use accumulated sick leave benefits instead of Workers' Compensation TTD Benefits for the period that he/she is absent from work due to a work related illness/injury. While receiving paid leave benefits (sick leave and vacation after sick leave exhausted if applicable), the

employee will continue to accrue vacation and sick leave, and be paid for holidays that occur during this period. After an employee exhausts his/her sick leave and vacation, if applicable, the employee will become eligible to receive TTD Benefits during any remaining period of absence from work due to a compensable injury. If the employee begins to receive TTD benefits after exhausting paid leave, he/she will be in a leave of absence without pay status. During this leave of absence without pay, he/she will not accrue vacation or sick leave, and will not be paid for holidays.

H. Should an employee's injury cause him or her to be unable to work for a period of three (3) or fewer consecutive days, the employee is not eligible to receive temporary total disability ("TTD") benefits (i.e. wage replacement). However, any medical expenses incurred or any treatment of covered conditions as a result of the injury, if any, will be paid. On the date of injury, the employee should be paid for the remainder of his or her normal shift without any deduction to his/her accumulated leave balances. Any subsequent days on which the employee is off work shall be entered into and recorded as "Workers' Comp Paid Sick". In the event the employee has no sick leave available, the timekeeper should give the employee the option to use vacation time. Should the employee choose not to use vacation time or there is no vacation leave available, the timekeeper should code and record the absence in Kronos as "Workers Comp Unpaid".

I. If a work related injury causes an employee to be unable to work for a period of four (4) or more consecutive days, he or she may be eligible for TTD (i.e. wage replacement) benefits. On the date of injury the employee should be paid for the remainder of his or her normal shift. The following three (3) days shall be entered into and recorded in Kronos as "Workers' Comp Paid Sick". In the event the employee has no sick leave available, the timekeeper should give the employee the option to use vacation time. Should the employee choose not to use vacation time or there is no vacation leave available, the timekeeper should code and record the absence in Kronos as "Workers Comp Unpaid". On the fourth (4th) day of injury and any subsequent days, if eligible as determined by the City's Workers' Compensation Third Party Administrator, the employee's time should be entered into and recorded in Kronos as "Workers' Compensation Unpaid".

J. Should an employee's injury exceed seven (7) consecutive days, he or she may be eligible for Workers Compensation beginning the date of injury, if eligible as determined by the City's Workers' Compensation Third Party Administrator. Any sick leave and/or vacation time used during the initial three (3) day period may be credited back to the employee, provided he or she reimburses the City for those days.

K. Employees who are subject to follow-up workers' compensation appointments are provided two (2) hours of paid leave on the day of said appointment without any deduction to his/her accumulated leave balances. Any additional leave beyond two (2) hours must be charged to sick leave or vacation as appropriate. If any employee does not have any accrued vacation or sick leave available, the additional leave beyond two (2) hours shall be unpaid.

L. Workers' Compensation Fraud: Workers' Compensation fraud is a felony in West Virginia. Any individual who files and/or contributes to the filing of a false Workers' Compensation claim may be committing a crime punishable by a fine and/or jail sentence.

## 4.11 Return to Work Program

A. The City of Charleston is committed to providing a safe and healthy workplace for all employees. Preventing on-the-job injuries and providing support to employees in instances when a work-related injury occurs are important objectives for the City. The City maintains a return-to-work program in order to provide employees with an opportunity to continue as a valuable contributor while recovering from an on-the-job injury. The return-to-work program is a coordinated effort among supervisors, human resources staff and workers' compensation administrators to assist City employees who have sustained a work related injury to re-enter the workforce in a timely, efficient, and productive manner.

B. If the employee's treating physician restricts the employee from regular duty, the employee must provide the Safety Coordinator in the Human Resources Department with the treating physician's Transitional Duty Evaluation Form or other approved report by the treating physician setting forth the restrictions in sufficient detail to enable the City to determine what duties the employee is capable of performing, if any.

C. The Return to Work Program is designed to return an injured employee to the workplace as soon as medically and reasonably possible. To the extent reasonable under the circumstances, and on a case-by-case basis, the City will attempt to accommodate an employee's restrictions by providing appropriate modified, light-duty or alternative work while the employee is unable to perform his/her normal duties due to an on-the-job injury. All reasonable efforts will be made to provide modified/alternative job duties unless the City is unable to accommodate an employee with a light-duty assignment due to the type of restrictions placed upon him/her by the treating physician or if no assignment is available. Notwithstanding, the City's goal to accommodate employees with work related injuries or conditions, nothing in this policy shall require the City to create or fund a new position for an injured employee or to take actions that place an unreasonable burden on the City or its funding or resources.

D. A modified, light-duty or alternative work duty assignment, if available, may not necessarily occur in an employee's department or during the employee's normal scheduled work hours or shift. Overtime hours are not available to an employee working a modified or alternate work assignment.

E. If the City can reasonably accommodate an employee's medical restrictions as set forth by his or her treating physician, but the employee chooses not to participate in the City's return-to-work program, then the employee may be required to use accrued paid leave (sick leave or vacation), or unpaid leave, subject to approval, if no sick leave or vacation time is available.

F. Employees are responsible for attending any required workers' compensation follow-up appointments and/or complying with any treatment/rehabilitation plans/programs prescribed by their treating physician.

G. Modified, light-duty or alternative work is not intended to be a permanent or long-term assignment for any employee. When available, modified, light-duty or alternative assignments are intended and designed to benefit an employee by providing an opportunity to continue as a

valuable contributor, while transitioning the employee back to his/her pre-injury assignment within a reasonable time.

H. The City's Return-to-Work Program is not intended to preclude or limit an employee's rights under the Family and Medical Leave Act (FMLA), Americans with Disabilities Act (ADA), or any other provisions of federal or state law.

## 4.12 Other Benefits

A. Credit Union: Employees are eligible to become members of the West Virginia State or Member's Choice Credit Union. Credit Unions offer employees an alternative to traditional banking institutions, and provide many of the same services such as checking and savings accounts, mortgage and automobile loans and individual retirement accounts.

B. Commercial Drivers License: Some employees are required to possess and maintain a valid Commercial Driver's ("CDL") License as a condition of employment. The City will reimburse those employees for the cost of their CDL renewal, subject to budgetary appropriations by Charleston City Council. Because the REAL ID/For Federal Use card is not a CDL requirement, employees will not receive reimbursement for this extra fee.

C. Uniform, Clothing, and Footwear Allowance

1. Some employees may be required to wear a uniform, certain articles of clothing, or special footwear as a condition of their employment. In order to obtain the necessary uniform and/or clothing articles, these designated employees may be issued an allowance subject to budgetary appropriations by Charleston City Council.

2. A uniform and clothing allowance may be considered a taxable fringe benefit to an employee, according to Internal Revenue Service ("IRS") regulations. For purposes of fairly and reasonably attributing value to the taxable portion of an employee's uniform and clothing allowance without placing an undue financial burden on the City and public associated with administration and record keeping, 50% of the amount of uniform and/or clothing allowances will be deemed to be a taxable fringe benefit, and will be included in an employee's wages and reported on the employee's W-2 tax form. This amount will also be subject to state and federal income tax withholding and Social Security and Medicare taxes.

3. Footwear allowances, unless used solely to purchase steel-toed boots, are deemed to be a 100% taxable fringe benefit according to IRS regulations, and will be included in an employee's wages. Footwear allowances will be reported on the employee's W-2 tax form, and are subject to state and federal income tax withholding and Social Security and Medicare taxes.

D. Tool Allowance

1. Mechanics and Crew Leaders in the Equipment Maintenance Division are required to provide at their cost, a set of tools prescribed by the City for use in their day-to-day



performance of their jobs. These employees may receive an annual tool allowance, less deductions for taxes and other withholdings as required by applicable law or City policy. Tool allowances are subject to budgetary appropriations by Charleston City Council.

2. Employees will be responsible for using their tool allowance to replace any tool that breaks or becomes unusable during the course of the year, or to purchase additional tools that may be required for the effective performance of their jobs. Other than an annual tool allowance, Mechanics and Crew Leaders will not receive any other allowance or reimbursement for broken and/or worn tools.

3. The tool allowance will be paid in arrears, based on the number of days the employee was employed in the prior Fiscal Year. Mechanics and Crew Leaders hired and/or separated during the prior fiscal year will receive a pro-rated amount based on the number of days employed.

## 5. Paid Time Off and Other Absences

### 5.1 General Information

A. Regular attendance at work is a critical component of providing efficient, effective and uninterrupted municipal services to the citizens of Charleston. Employees are expected to maintain regular attendance and to report to work on time expect for time off approved under the following provisions and/or in accordance with departmental policy.

B. Paid time off is an employee benefit that is an important part of the City's total compensation package that provides time away from work for rest, relaxation and personal purposes, and provides a mechanism for partial pay protection during times of illness or incapacity.

C. Paid time off may be used in ½ hour increments. Accrued paid time off is a personal benefit to an individual employee and shall not be loaned, sold or transferred to another employee.

### 5.2 Vacation Leave

A. Vacation Leave is paid time off from work for full time employees for vacation, recreation or other personal purposes.

B. Vacation Leave Accrual: Beginning on October 1, 2016, and at 12:01 a.m. on the first day of each month thereafter, full-time employees shall be credited with paid vacation leave hours which shall accrue according to the following schedule adjusted on the first day of the month following the hire date or anniversary of each employee as follows:

<u>Years of Service</u>	<u>Monthly Accrual</u>
6 months - 4 years	8 hours per month
5 - 9 years	10 hours per month
10 – 14 years	12 hours per month

15 – 19 years	14 hours per month
20 or more years	16 hours per month

C. Full time employees hired before October 1, 2016, with less than six (6) months service shall also be credited with 8 hours of paid vacation leave on October 1, 2016, and on the first day of each month thereafter until reaching six (6) months of service and qualifying for the credits provided in subsection (B) above, but shall not be permitted to take leave within six (6) months of their hire date.

D. New Hires: In addition to the 8 hours to be credited according to the schedule in subsection (B) above, employees hired on or after October 1, 2016, shall be credited with an additional 24 hours of vacation leave on the first day of the month following six (6) full months of employment after their hire date. A Department Head may request the Director of Human Resources to tender a written contingent offer of employment that provides for unpaid leave to accommodate a prospective employee’s prescheduled vacation plans and the Director of Human Resources shall have discretion to make such offer if reasonable and appropriate under the circumstances.

E. Alternative Accrual Plan: Notwithstanding the Vacation Leave set forth in subsection (B) above, full-time employees hired before October 1, 2016, may continue to receive vacation accruals on an annual basis by opting out of the monthly accrual plan outlined in subsection (B) above. To opt out, an employee must forfeit their October 1, 2016, monthly accrual, and make a one-time non-revocable election in writing on or before October 31, 2016, on a form and in a manner authorized by the Director of Human Resources. Those employees electing to opt out shall continue to receive a net credit on January 1 of each calendar year, based on the employee’s years of service as of December 31 of the prior calendar year in accordance with the following schedule:

<u>Years of Service</u>	<u>Annual Vacation</u>
Less than 12 months	4 hours per month of total service
1 year but less than 5 years	80 hours
5 years but less than 15 years	120 hours
15 years or more	160 hours

F. Maximum Accrual: No employee shall accumulate more than 240 hours at any one time. Monthly accruals shall be adjusted or forfeited accordingly based upon the leave balance at 12:01 a.m. on the first day of each calendar month. Employees who elect to opt out of the monthly accrual and continue with the Alternate Accrual Plan as set forth in (E) herein, shall not be permitted to carry forward more than 80 hours of accumulated annual vacation from one calendar year to another.

G. Scheduling: Except for exigent or unforeseen circumstances, vacation leave should be scheduled as far in advance as reasonably practicable and approved by the Department Head or his/her designee. Employees must comply with established departmental procedures for requesting and scheduling of vacation. Employees are encouraged to budget their use of vacation leave and shall not be permitted to incur negative leave balances. For the rules regarding leave without pay, please refer to Rule 5.9 Absences Without Pay.

H. Approval: Approval and granting of vacation leave shall be the discretion of the Department Head on a case-by-case basis, and may be denied in situations when necessary or required in order to maintain efficient and effective service and/or to keep a department or division adequately staffed. Employees may be called back to work from approved vacation for necessary or required service delivery reasons such as an emergency.

I. Transfer/Promotion: Promotion, transfer or reassignment of an employee does not affect an employee's accrual rate or the amount of accumulated vacation leave.

J. Separation: Upon separation of employment, employees shall be paid for any accumulated but unused vacation leave, which in no case shall exceed 240 hours.

K. Deviation: Any deviations from this rule may only be made with the approval of the City Manager.

### 5.3 Sick Leave

A. Sick leave is paid time off that is normally used to cover a full-time employee's absence from work due to: the employee's incapacity to work due to illness or injury; the employee's medical and dental appointments; or the illness or injury of an employee's dependent family member that requires the employee's presence.

B. Sick Leave Accruals: Full-time employees shall accrue sick leave with pay on the basis of eight (8) hours for each calendar month of service. Sick leave shall accrue on the last day of each month. Part-time, seasonal, part-time elected, and certain appointed positions shall not accrue sick leave.

C. Maximum Accrual: Full-time employees shall have the right to carry over from year to year an unlimited amount of any unused sick leave.

D. Transfer/Promotion: Promotion, transfer or reassignment of an employee does not affect sick leave accrual or the amount of accumulated sick leave.

E. Separation:

1. Upon separation of employment other than retirement, all sick leave accrued by an employee shall be forfeited as of his or her last working day with the City.

2. If separation is due to a reduction in force, any accumulated sick leave may be reinstated if a full-time employee is reinstated to employment with the City within a period of one year from the date of separation.

3. When an employee retires, the employee will have the privilege of converting up to 96 hours of sick leave that was accrued on or after January 1, 2015, or any remaining unused sick leave accrued prior to January 1, 2015, whichever is greater, to insurance benefits based on the formula of 16 hours for one month single coverage insurance premium or 24 hours for one month family coverage insurance premium. Any unused

sick leave accrued by an employee on or after January 1, 2015, that is not converted to insurance benefits to the extent permitted by this rule shall be forfeited effective as of the date of the employee's retirement or separation from employment.

4. Employees who retire will be eligible to convert accrued but unused sick leave accrued into credit for months of service in accordance with state law and West Virginia Public Employees Retirement System guidelines.

5. Under no circumstances shall employees be paid accrued but unused sick leave upon separation.

F. Scheduling: Sick leave may be scheduled in advance, but is typically requested by an employee on a daily basis. Employees must comply with established departmental procedures regarding requesting sick leave such as notifying a Department Head prior to the start of the employee's scheduled shift or other identified and prescribed process.

G. Approval: Department Heads have the principal responsibility for the proper and consistent application of the sick leave policy, and the approval of paid sick leave for an employee is at the discretion of the Department Head on a case-by-case basis. Sick leave may be denied in situations when the Department Head has evidence that the employee's reason for requesting sick leave is untrue/unfounded or, is otherwise inconsistent with the intent of this policy, or if absences are frequent, undocumented, and have a serious impact on the morale or effectiveness of the department and on other employees in the department.

H. Medical Certification: The City shall require medical certification for any sick leave taken for three (3) or more consecutive work days, including medical certification indicating that the employee's presence is required for the incapacity of a dependent family member. A Department Head may require additional documentation of additional medical opinions if there is a disagreement. After 48 hours of unexcused sick leave is used by an employee during the course of a calendar year, the employee shall furnish documentation from a physician or other medical provider establishing reason for relief from duty for use of additional sick leave. If additional days are taken without a physician's or other medical provider's excuse, the additional sick leave may be unpaid and may constitute an absence without leave, subject to the terms and conditions set forth in Section 5.10 of this policy.

I. Advance of Sick Leave: In cases of emergency or in unforeseen circumstances, the City Manager may, at his discretion and on a case-by-case basis, approve an advance of sick leave up to 240 hours, provided that all accrued sick leave and vacation have been exhausted. The terms and conditions of any sick leave advance shall be documented in writing and retained by the Human Resources Department, and shall include the terms under which any deficit in accrual resulting from the advance will be resolved.

## 5.4 Funeral Leave

A. Funeral leave is leave with pay granted to employees holding full-time positions upon the death of a member of an employee's family for the purpose of attending services, handling the affairs of the deceased, or similar needs.

B. An employee shall be permitted two (2) days of paid funeral leave for the death of an immediate family member. For the purposes of this section, immediate family shall consist of parents, children, siblings, spouse, parents-in-law, children-in-law, sister-in-law, brother-in-law, aunt, nephew, niece, grandparents, grandchildren, first cousin, step-parents, step-siblings, stepchildren, foster children, individuals in a loco parentis relationship, and individuals in a legal relationship.

## 5.5 Holidays

A. The City of Charleston observes the following paid holidays:

1. January 1 (New Year's Day)
2. The third Monday of January (Martin Luther King Day)
3. The third Monday of February (Presidents Day)
4. The last Monday of May (Memorial Day)
5. June 20 (West Virginia Day)
6. July 4 (Independence Day)
7. The first Monday of September (Labor Day)
8. The second Monday of October (Columbus Day)
9. November 11 (Veterans Day)
10. The fourth Thursday and Friday of November (Thanksgiving Day Holidays)
11. December 25 (Christmas Day)
12. Any day on which a national, state or other governmental election is conducted within the City of Charleston.
13. Any day proclaimed or ordered by the Mayor, the Governor, or the President of the United States as a day of special observance or Thanksgiving, or for the general cessation of business.

B. When any such days or dates identified in Section (a) above falls on Saturday, the preceding Friday shall be regarded, treated and observed as such legal holiday. When any of such days or dates identified in Section (a) above falls on Sunday, the succeeding Monday shall be regarded, treated and observed as such legal holiday; provided this Section (b) shall not apply to subsections 12 and 13 of Section (a) above.

C. An employee who requests sick leave on the last working day preceding or the first working day following a holiday shall not receive regular compensation for the holiday if it is determined that sick leave was taken for a reason not consistent with the provisions of Rule 5.3.

D. If a holiday as identified in Section (A), but excluding subsections (12) and (13) of Section (a) of this section when occurring on a Saturday or Sunday, is observed on a full-time employee's regularly scheduled day off, the employee shall be compensated by straight time pay or an additional day off in lieu thereof. The determination of whether compensation will consist of pay or an additional day off shall be at the discretion of the City Manager on a case-by-case basis. If compensated by pay, such pay shall be for a normal working day at the straight hourly equivalent rate for his position classification.

E. Upon request to his/her Department Head a full-time employee who is required to work on an election day, as identified in subsection (12) of Section (a) in this section, shall be provided with reasonable time and opportunity during his/her work day to vote, without any reduction in pay or leave, if applicable.

F. Alternate holiday leave procedures may apply, as required by business need, to personnel who are normally scheduled to work holidays as a part of their regular work shift.

## 5.6 Military Leave

A. Military Leave is an employee's approved absence from work due to the performance of military duty in a uniformed service on a commission or non-commission status, on a voluntary or involuntary basis, including active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, funeral honors duty by National Guard or reserve members, or for an examination to determine a person's fitness for any of the above forms of duty.

B. Employees shall notify their Department Head immediately when they learn of an upcoming need for military leave, and shall provide a copy of the official military orders as soon as possible. A copy of the military orders shall be forwarded to the Office of Human Resources.

C. Subpart(a) Military Leave: Employees shall be eligible for paid military leave in accordance with West Virginia Code 15-1F-1. State Code provides employees up to 240 hours per calendar year of paid leave for State National Guard active duty and Federal Reserve military service. These hours are generally referred to as Subpart (a) days, from their statutory designation (15-1F-1(a)). The qualifying employee will be credited with these days on January 1 of each calendar year, except as provided below, and any unused time expires at the end of the calendar year. These days are most often used for weekend drills, training classes and occasionally for special extended periods for, by example, flood mitigation or fighting forest fires.

D. Subpart (b) Military Leave: Employees shall also be eligible for an additional 240 hours of paid military leave for federal active duty for each single call to active duty. These are generally referred to as Subpart (b) days, from their statutory designation (15-1F-1(b)). This time may continue into the next calendar year.

E. An employee whose absence does not exceed five (5) years and who is released from service under honorable conditions is eligible for reemployment rights and employment benefits as described under the "Uniformed Services Employment and Reemployment Rights Act of 1994."

F. Effective January 1 of each calendar year, employees are credited with 30 Subpart (a) days, unless he or she is in unpaid status with the City (i.e., leave of absence without pay or suspension) or on active duty status (paid or unpaid) under Subpart (b).

G. Employees on federal military duty, Subpart (b), will accrue sick and annual leave while in paid status, are not afforded additional Subpart (a) days until they are released by the military and return to the City workforce and payroll. An employee who is called to active duty under Subpart (b) who has not used all of the 30 Subpart (a) days for the calendar year, shall be entitled to exhaust the remaining Subpart (a) days, provided that the Subpart (a) days may not be carried forward into the next calendar year.

H. Continuing orders, revised orders, extensions of the service period, and consecutive orders DO NOT constitute new orders and there is no additional Subpart (b) military leave eligibility. There must be a break (discharge) between orders and normally a return to work before additional Subpart (b) leave eligibility is credited for a subsequent call to military duty. Situations in which an employee may not return to work prior to subsequent activation but is still entitled to additional Subpart (b) military leave upon subsequent activation include paid or unpaid medical leave of absence or time off for readjustment prior to returning to work as provided in the USERRA and/or federal Family and Medical Leave Act ("FMLA"). Employees may be permitted to work while under military orders, upon request, based upon the specific needs of the department or division, and the responsibilities of the position.

I. The specific amount of leave permitted for each call to duty is dependent upon the authority under which the employee is called or ordered to duty, the timing of the call in the calendar year, the amount of military leave standing to his or her credit at the time of the call to duty, the manner in which the employee prefers to use his or her Subpart (a) and (b) military leave, and any use of accumulated annual leave, if requested. A service member cannot be required to use accumulated leave benefits against his or her will. Sick leave may not be used for absences for military duty.

J. Specific guidance for determining eligibility for Subpart (a) and/or Subpart (b) Military Leave is available in the Human Resources Department.

K. Leave Accrual: All employees on paid leave, including Subpart (a) and Subpart (b) military leave, will continue to accrue vacation and sick leave. Employees on a Military Leave of Absence without pay do not accrue vacation or sick leave during the time they are off the payroll. Leave benefits are a form of compensation and thus do not accrue when the employee is not being paid. However, the annual leave accrual rate is based on seniority. Therefore, time spent on military leave (paid and unpaid) is included in calculating service for establishing the annual leave accrual rate. For employees who choose to delay their return to work, based on the duration of the period of military service as provided for in USERRA, such time is also included as qualifying service in the annual leave accrual rate service calculations.

L. Wage maintenance – Any employee on military leave will continue to receive normal salary or compensation for the time as indicated below, regardless of whether or not the employee receives other compensation from federal sources during the same period:

1. Payment of wages for up to thirty (30) working days in any calendar year to any such employee absent from the worksite for time in which he/she is engaged in drills, parades, field service or active service to the State.
2. Payment of wages for up to thirty (30) working days per single call to active duty for any such employee away from the worksite under provisions of the Military Selective Service Act or any other time in which the President or other properly designated federal authority of the United States may order him/her to active service.
3. The number of unused days from the first 30 working days may be added to the additional 30 working days, up to a maximum of 60 working days for a single call to active duty. However, none of the unused days from the first 30 days may be carried over and used in the next calendar year.

M. In order to maintain additional salary continuation, employees are entitled, but not required, to use vacation or sick time accrued.

N. Reemployment Eligibility, Rights & Responsibilities:

1. Any employee occupying a regular position at the time military leave began, is entitled to return to the same job, or one of similar seniority, status and pay for which they are qualified. To be eligible for protection under USERRA, an employee must report back to work or apply for reemployment consistent with the following guidelines.
  - a. If the employee served fewer than 31 days, the employee must return to work the next regularly scheduled work day.
  - b. If the employee served more than 30 days but fewer than 180 days, the employee must notify their Department Head of their intention to return to work within 14 days after completion of service.
  - c. If the employee served more than 180 days, the employee must notify their Department Head of their intention to return to work within 90 days after completion of service.
2. Upon return to work, the employee must provide military discharge documentation to the Human Resources Department that establishes the timeliness of application for reemployment and the length of the employee's military service.

O. If the employee is hospitalized or convalescing from an illness or injury occurring or aggravated in service, they are expected to report for reemployment as outlined above following recovery; protection applies to a recovery period of less than two (2) years. All employees must provide proper documentation, as prescribed by the Secretary of Defense, for reemployment processing.



P. Reemployment Protection:

An employee who has been reemployed may be discharged for cause only during the 180 days after reemployment, if the military service was for 31-180 days duration or during the year following reemployment, if the military leave was more than 180 days.

## 5.7 Jury Duty

A. Any full-time employee called or summoned for jury duty shall receive special leave with pay at his or her normal rate of pay, without any deduction to his or her accumulated leave balance(s). Under normal circumstances, the City will not request or seek deferment of jury duty for any employee. However, should the release of an employee for jury duty create a hardship for a department or if an employee works an abnormal schedule (i.e. night shift), the Department Head may contact the Director of Human Resources for guidance and potential assistance in requesting or seeking deferment.

B. Any full-time employee called or summoned for jury duty may receive a per diem, mileage reimbursement or other compensation from the court for his or her jury service. An employee may retain any payment or reimbursement by the court for mileage reimbursement. However, any per diem that may be paid to the employee for jury service must be submitted or turned over to the City. The employee can either endorse the check received from the Court to the City or write a check to the City for the amount of the per diem.

## 5.8 Family and Medical Leave

The City of Charleston will provide family and medical leave to its eligible employees in compliance with the federal Family and Medical Leave Act ("FMLA"). City of Charleston posts the mandatory FMLA Notice and upon hire, provides all employees with notices required by the U.S. Department of Labor (DOL) on Employee Rights and Responsibilities under FMLA in West Virginia. This section is intended to provide employees with a general overview and description of their FMLA rights. In the event of any conflict between this policy and the applicable law, employees will be afforded all rights required by law. Employees should contact the Benefits and Compensation Manager with any questions regarding FMLA.

For the purposes of FMLA, a "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

1. any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
2. a period of incapacity requiring absence of more than **three calendar days** from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. any period of incapacity due to pregnancy, or for prenatal care; or

4. any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
5. a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
6. any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

A. General Provisions: Under this policy, the City of Charleston will grant up to 12 weeks (or up to 26 weeks of military caregiver leave to care for a covered service member with a serious injury or illness) during a 12-month period to eligible employees. The leave may be paid, unpaid or a combination of paid and unpaid leave, depending on the circumstances of the leave and as specified in this policy.

B. Eligibility: To qualify for family or medical leave under this rule, the employee must meet all of the following conditions:

1. The employee must have worked for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement stating the employer's intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee was on approved leave during the week.
2. The employee must have actually worked at least 1,250 hours during the 12-month period immediately preceding the commencement of FMLA leave. The 1,250 hours do not include time spent on paid or unpaid leave. Consequently, paid or unpaid hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

C. Type of Leave Covered: To qualify as FMLA leave under this rule, the employee must be taking leave for one of the reasons listed below:

1. The birth of a child and in order to care for that child.
2. The placement of a child for adoption or foster care and to care for the newly placed child.
3. To care for a spouse, child or parent with a serious health condition.
4. The serious health condition of the employee. An employee may take leave because of a serious health condition that causes the employee to be unable to perform

the functions of the employee's position. This policy covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year. Employees with questions about what illnesses are covered under this FMLA policy or under the sick leave policy are encouraged to consult with Human Resources. If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this policy, City of Charleston may designate all or some portion of related leave taken as leave under this policy, to the extent that the earlier leave meets the necessary qualifications.

5. Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty:

a. An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following:

- (1) Short-notice deployment;
- (2) Military events and activities;
- (3) Child care and school activities;
- (4) Financial and legal arrangements;
- (5) Counseling;
- (6) Rest and recuperation;
- (7) Post-deployment activities; or
- (8) Additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

b. "Covered active duty" means:

- (1) "Covered active duty" for members of a regular component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country.

(2) "Covered active duty" or call to covered active duty status in the case of a member of the Reserve components of the Armed Forces means duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation, in accordance with 29 CR 825.102.

c. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

d. Eligible employees are entitled to FMLA leave to care for a current member of the Armed Forces, including a member of the National Guard or Reserves, or a member of the Armed Forces, the National Guard or Reserves who is on the temporary disability retired list, who has a serious injury or illness incurred in the line of duty on active duty for which he or she is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list. Eligible employees may not take leave under this provision to care for former members of the Armed Forces, former members of the National Guard and Reserves, and members on the permanent disability retired list. In order to care for a covered service member, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered service member.

(1) A "son or daughter of a covered service member" means the covered service member's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered service member stood in loco parentis, and who is of any age.

(2) A "parent of a covered service member" means a covered service member's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered service member. This term does not include parents "in law."

(3) Under the FMLA, a "spouse" means a husband or wife, including those in same-sex marriages, which were made legal in all 50 United States as of June 26, 2015.

(4) The "next of kin of a covered service member" is the nearest blood relative, other than the covered service member's spouse, parent, son, or daughter, in the following order of priority: blood relatives who have been granted legal custody of the service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the

FMLA. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously. When such designation has been made, the designated individual shall be deemed to be the covered service member's only next of kin. For example, if a covered service member has three siblings and has not designated a blood relative to provide care, all three siblings would be considered the covered service member's next of kin. Alternatively, where a covered service member has a sibling(s) and designates a cousin as his or her next of kin for FMLA purposes, then only the designated cousin is eligible as the covered service member's next of kin. An employer is permitted to require an employee to provide confirmation of covered family relationship to the covered service member pursuant to § 825.122(k).

6. Military caregiver leave (also known as covered service member leave) to care for an injured or ill service member or veteran. An employee whose son, daughter, parent or next of kin is a covered service member may take up to 26 weeks in a single 12-month period to take care of leave to care for that service member.

a. Next of kin is defined as the closest blood relative of the injured or recovering service member.

b. The term "covered service member" means:

(1) A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or

(2) A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

c. The term "serious injury or illness means:

(1) In the case of a member of the Armed Forces (including a member of the National Guard or Reserves), an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

(2) In the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered service member, means a qualifying (as defined by the Secretary of Labor) injury or illness incurred by a covered service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

(3) Outpatient status, with respect to a covered service member, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient, or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

D. Amount of Leave:

1. An eligible employee can take up to 12 weeks for the FMLA circumstances (1) through (5) above under this policy during any 12-month period. The City will calculate the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes leave, HR will compute the amount of leave the employee has taken under this policy in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time for that 12-month period.

2. An eligible employee can take up to 26 weeks for the FMLA circumstance (6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the Human Resources Department will calculate the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

3. If spouses both work for the City and each desires to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, the spouses may only take a combined total of 12 weeks of leave. If spouses both work for the City of Charleston and each desires to take leave to care for a covered injured or ill service member, the spouses may only take a combined total of 26 weeks of leave.

E. Employee Status and Benefits during Leave:

1. While an employee is on FMLA leave, the employee's health benefits will continue during the leave period at the same level and under the same conditions as if the employee had continued to work.

2. If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the employee will be required to

reimburse the City the amount it paid for the employee's health insurance premium during the leave period.

3. Under current policy, each full time employee who elects city health insurance coverage pays a portion of the health care premium. While on paid leave, the City will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received in the Human Resource Department by the 10th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The City will provide 15 days' notification and an opportunity to cure prior to the employee's loss of coverage.

4. If the employee contributes to a life insurance or disability plan, the City will continue making payroll deductions when an employee is on paid FMLA leave. While the employee is on unpaid FMLA leave, the employee may request continuation of such benefits and pay his or her portion of the premiums, or the City may elect to maintain such benefits during the leave and pay the employee's share of the premium payments. If the employee does not continue these payments, the City may discontinue coverage during the leave. If the City maintains coverage, the City may recover the costs incurred for paying the employee's share of any premiums, whether or not the employee returns to work.

F. Employee Status after Leave: An employee who takes leave under this policy may be asked to provide a fitness for duty (FFD) clearance from a qualified, licensed health care provider in order to return to work. This requirement will be included in the City's response to the FMLA request. Generally, an employee who takes FMLA leave will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The City may choose to exempt certain employees from this requirement and not return them to the same or similar position.

G. Use of Paid and Unpaid Leave:

1. An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid vacation or sick leave prior to being eligible for unpaid leave. Sick leave may run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave policy.

2. Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. For example, if an employer provides six weeks of pregnancy leave, the six weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee may then be required to substitute accrued (or earned) paid leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An employee who is taking leave for the adoption or foster care of a child must use all paid vacation, personal or family leave prior to being eligible for unpaid leave.

3. An employee who is using military FMLA leave for a qualifying exigency must use all paid vacation and personal leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid vacation, personal leave or sick leave (as long as the reason for the absence is covered by the sick leave policy) prior to being eligible for unpaid leave.

H. Intermittent Leave or a Reduced Work Schedule:

1. An employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill service member over a 12-month period).

2. The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate a intermittent or reduced schedule in instances when leave is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

3. For the birth, adoption, or foster care of a child, the City and the employee must mutually agree to the schedule before the employee may take the leave intermittently or work a reduced hour schedule. Leave for birth, adoption, or foster care of a child must be taken within one year of the birth or placement of the child.

4. If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee and Department Head will reach a mutually satisfactory agreement before the employee takes intermittent leave or works a reduced hour schedule. If the employee and Department head are unable to reach a mutually satisfactory agreement, the employee must prove that the use of intermittent/reduced leave is medically necessary.

I. Certification for the Employee's Serious Health Condition:

1. The Human Resources Department requires certification of an employee's serious health condition for purposes of FMLA leave. An employee must respond to a request for certification within 15 days of the request or provide a reasonable explanation for the delay in response. Failure to provide certification may result in a denial of leave or of a continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition available in the Human Resources Department.

2. The Human Resources Department may directly contact the employee's health care provider for verification or clarification of information provided by an employee. Before the Human Resources Department makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the employee's



permission will be obtained prior to clarification of individually identifiable health information with an employee's health care provider.

3. The City has the right to ask for a second opinion by a licensed health care provider if it has reason to doubt the certification and will select and pay for the employee to get an evaluation for purposes of verification of a medical condition and medical certification for purposes of FMLA. FMLA leave may be denied to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the City may require the opinion of a third doctor. The City and the employee will mutually select the third doctor and will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under FMLA pending the second and/or third opinion.

J. Certification for the Family Member's Serious Health Condition:

1. The City will require certification for the family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member's Serious Health Condition.

2. City may directly contact the employee's family member's health care provider for verification or clarification of information provided by an employee. Before direct contact is made with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the City will obtain the employee's family member's permission for clarification of individually identifiable health information.

3. City has the right to ask for a second opinion if it has reason to doubt the certification and will select and pay for the employee's family member to get a certification from a second doctor. City may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the opinion of a third doctor may be required. The City and the employee will mutually select the third doctor and will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

K. Certification of Qualifying Exigency for Military Family Leave: The City will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave.

L. Certification for Serious Injury or Illness of Covered Service member for Military Family Leave: The City will require certification for the serious injury or illness of the covered service

member. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Service member.

M. Recertification: The City may request recertification for the serious health condition of the employee or the employee's family member no more frequently than every 30 days unless circumstances have changed significantly, or if the employer receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the City may request recertification for the serious health condition of the employee or the employee's family member every six months in connection with an FMLA absence. Human Resources may provide the employee's health care provider with the employee's attendance records and ask whether need for leave is consistent with the employee's serious health condition.

N. Procedure for Requesting FMLA Leave:

1. All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the Director of Human Resources. Within five (5) business days after the employee has provided this notice, the Director of Human Resources will complete and provide the employee with the DOL Notice of Eligibility and Rights and the Benefits and Compensation Manager will complete and provide the employee with a written response to the employee's request for FMLA leave using the DOL Designation Notice.

2. When the need for the leave is foreseeable, the employee must provide the employer with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

O. Intent to Return to Work from FMLA Leave: On a basis that does not discriminate against employees on FMLA leave, the company may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

## 5.9 Absences Without Pay

A. Leave of Absence without Pay: Leaves of absence without pay other than for FMLA, Workers' Compensation, or Military Leave may be granted to full-time employees. For an absence of fewer than 40 hours, approval shall be given by the employee's Department Head. For an absence greater than 40 hours but fewer than 240 hours, approval shall be given by the Department Head in conjunction with the Director of Human Resources. For extended leaves of absences beyond 240 hours, between thirty (30) calendar days and six (6) months, approval from the Department Head, the Director of Human Resources and City Manager must be obtained.

B. Leaves of absences without pay shall be granted only when it will not result in an undue burden to the City in filling the position of the absent employee with a competent replacement. Generally, all accumulated vacation must be exhausted before beginning an unpaid leave of absence. Failure on the part of an employee on leave to report promptly to his or her assigned location of work at its expiration without good cause shall be considered as a voluntary quit or resignation.

C. Leaves of absence without pay for qualifying FMLA, Workers' Compensation, or Military Leave purposes will be authorized in accordance with applicable federal and state law, and City rules and policy.

## 5.10 Absences Without Leave

Any unauthorized absence of an employee shall be deemed an absence without pay and may be grounds for disciplinary action up to and including termination by the employee's Department Head. In the absence of such disciplinary action, any employee who is absent for three or more days shall be deemed to have voluntarily quit or resigned.

## 5.11 Length of Service and Leave of Absence

A. Length of service requirements for vacation accruals and for other purposes will be determined by an employee's continuous service with the City without a break or interruption.

B. Authorized leaves of absences with or without pay for 240 hours will not impact the continuity of service.

# 6. Performance Management

## 6.1 Summary & Overview

A. Performance management is a participatory process in which employees and Department Heads and/or supervisors/managers work together to identify, communicate, monitor, and measure work expectations. Employee performance management through feedback and evaluation is a vital part of personnel management. It is a tool used to enhance performance through appraisal, discussion and coaching which may be formal or informal. Performance feedback is most effective when completed on an ongoing basis to reinforce good performance or to improve performance when needed. Formal, written performance feedback and appraisal will be completed at least annually for each employee using the tools and process established by the Human Resources Department. While performance management is a participatory process, supervisors/managers are responsible for ensuring timely completion.

B. This policy and the associated performance evaluation tools are the basis for consistent, equitable application of performance management by all departments, divisions and work units within the City. The policy provides guidance to employees and Department Heads and/or supervisors/managers about the purpose and process of performance evaluation. Implementation of the performance management policy will help employees develop and

improve their skills and value to the organization by identifying and communicating the needs and expectations of the City, by holding all employees accountable.

## 6.2 Objectives of Performance Management

A. The primary objectives of performance management are:

1. To provide the assessment and development needed to achieve service delivery objectives and to assist employees in develop and improve in their current jobs and prepare them for future advancement opportunities;
2. To provide a means of identifying what the City and the Department Head and/or supervisor/manager expect of employees, of communicating it to them, and of holding them accountable for meeting expectations;
3. To ensure that employees are aware of performance standards which apply to their job and to let employees know how they can improve their performance and increase their contribution through feedback, coaching, training, and developmental activities; and
4. To recognize and incentivize professional, effective, and efficient overall work performance by employees.

## 6.3 Assessing Performance

A. A successful performance management system relies on an effective partnership between employees and supervisors/managers as well as a clear understanding of the expectations of each job. Effective performance management will also:

1. Be job oriented, providing an evaluation of performance against specific standards, expectations, goals and objectives that are related to workplace practices;
2. Promote employees' job satisfaction and morale by letting them know that Department Heads and supervisors are interested in their progress and development as well as providing regular feedback;
3. Assist employees to better understand the areas in which they need improvement, are doing a good job, or are doing an outstanding job;
4. Provide consistency across all City departments;
5. Provide a reasonable and articulable assessment of sustained performance; and
6. Include goals that are Specific, Measurable, Achievable, Realistic and Timely ("SMART").

## 6.4 Completing the Performance Management Plan

A. The formal review of performance is based on evaluating employee behavior against the basic core competencies needed to deliver public services as well as the specific tasks and expectations of the employee's job. Performance reviews will be completed in a manner established and prescribed by the Director of Human Resources. More generally, the following procedures will be used to complete a formal, annual review of an employee's performance. See the City's Performance Management Handbook for additional information and further details.

### B. Administration of the Performance Management Plan & Review:

1. For each employee, a formal, written review, and a face-to-face performance discussion shall be completed at least annually, but periodic discussion and feedback is encouraged.
2. Each employee will be evaluated and reviewed on a number of factors including, but not necessarily limited to:
  - a. Core Competencies;
  - b. Individual Expectations/Goals; and
  - c. Essential duties and responsibilities.
3. Department Heads and/or supervisors/managers and employees must become familiar with the evaluation tool and process, including core competencies.
4. Supervisors are responsible for ensuring timely completion of performance reviews. Each Department Head is encouraged to develop a process and system in his/her department to ensure each employee is evaluated and reviewed on a periodic basis of not less than annually.
5. The performance reviews will be completed on forms and/or in a manner established and prescribed by the Director of Human Resources.
6. The completed Performance Management Plan & Review Form shall be forwarded to and retained by the Human Resources Department. Department Heads should keep a copy of each employee's review form in order to evaluate/review the expectations and goals established for the subsequent review period.

C. Actions Required When Performance Needs Improvement: When an employee's performance needs improvement, he/she will be given a reasonable opportunity to bring his/her performance to an acceptable and successful level. In these situations, the following should be clearly communicated to the employee:

1. The specific job core competency, job requirement, and/or other performance expectations the employee is failing to perform satisfactorily;
2. What the employee must do to bring the performance to an acceptable and successful level;
3. What the supervisor and/or the City can do to help the employee improve, such as providing additional training, regular feedback, or written guidance;
4. The frequency at which the employee can expect to receive interim feedback;
5. A date by which the employee must raise his/her performance to an acceptable and successful level; and
6. The consequences of failing to improve overall performance to an acceptable and successful level.

D. Performance Merit Increases

1. After successful completion of the initial probationary employment period, employees may be eligible for an annual performance merit increase in accordance with City policy, subject to budgetary appropriations by Charleston City Council. An employee is not guaranteed any performance increase during his/her tenure. Performance increases are optional, and are recommended at the reasonable discretion of the employee's Department Head or supervisor, based on the employee's performance.
2. Requests for merit increases will be made in a manner established and approved by the Director of Human Resources and the City Manager.
3. No performance pay increase shall cause an employee's base salary to exceed the maximum of his/her pay grade.

## 7. Workforce Development

### 7.1 Training & Development

A. The City supports on-going employee training and development with the goal of providing learning opportunities that enable employees to meet the organization's current and future needs and that improve employee job satisfaction. The Human Resources Department, in conjunction and cooperation with Department Heads, will identify, develop and/or present a variety of training opportunities intended to enhance employee development. The following operating principles will be used as general guidance in developing and maintaining training and workforce development programs:

1. Establish and rely on a partnership for responsible, relevant learning between the employee, his or her Department Head, and management.

2. Rely on participatory program development utilizing the skills and competencies of all employees to develop the curricula, workshops, and classes.
3. Close gaps between employee skill level and the employee's ability to effectively deliver services.
4. Support attainment of employees' individual goals.
5. Identify the return on investment for employees and the organization.
6. Integrate learning experiences with day-to-day job responsibilities.
7. Present a variety of integrated, developmental learning opportunities for all employees.

## 7.2 Employee Recognition

A. Through meaningful employee recognition programs the City acknowledges individual and team behaviors that support the organization's vision, mission and values. Formal and informal employee recognition is one of the most effective ways to reinforce the City's customer service values, support its service delivery objectives, improve job satisfaction, and retain top performers.

B. A variety of employee recognition programs such as outstanding customer service awards, awards for generating tangible cost savings, length of service awards or other similar awards programs may be developed, implemented and maintained by the Human Resources Department in cooperation with City management.

# 8. Employee Responsibilities

## 8.1 Code of Conduct

A. Efficient and effective service to the citizens of Charleston requires that employees and management work together in order to support the City's vision and to achieve departmental strategic objectives and goals. Individual responsibility is critical to maintaining an effective partnership and providing good customer service to the public. The following information outlines the guidelines for employee behavior and the procedures for addressing problems that might arise. These guidelines support the City's core competency of accountability, i.e., taking ownership and accepting the consequences of individual actions.

B. The City requires that employees follow a code of conduct reflecting the highest ethical standards and promoting public confidence in City government.

C. This Code of Conduct is established for all municipal employees. This Code of Conduct shall be operative in all instances covered by its provisions except when superseded by an applicable

statutory or charter provision and statutory or charter action is mandatory, or when the application of a statutory or charter provision is discretionary but determined to be more appropriate or desirable.

D. The efficient and effective operation of municipal government requires that public officials and employees be independent, impartial, and responsible to the people; that government decisions and policy be made through the proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government. The purpose of this Code of Conduct is to establish standards of ethical conduct for employees by setting forth those acts or actions that are expected and those that are incompatible with the best interests of the City.

E. Responsibilities of Public Office: Municipal employees are agents of the citizens and are entrusted to pursue the public good at all times. As such, they are bound to uphold the Constitution of the State of West Virginia and to carry out impartially the laws of the nation, state and municipality and foster respect for all government. They are bound to observe in their official acts the highest ethical standards and to discharge faithfully the duties of their office regardless of personal considerations, recognizing that the public interest must be their primary concern.

F. Dedicated Service: All City employees are expected to be loyal to the objectives expressed by the electorate through the Mayor and City Council. Employees shall adhere to the rules of work and performance established as the standard for their positions. Employees shall not exceed their authority, breach the law or ask others to do so, and shall work in full cooperation with other employees unless prohibited from so doing by law or by officially recognized confidentiality concerns.

G. Fair and Equal Treatment:

1. No employee shall grant any material special consideration, treatment, or advantage to any citizen beyond that which is available to every other citizen.
2. No employee shall use or permit the use of City-owned vehicles, equipment, materials, or property for personal gain or profit, except when such services are available to the public generally, or are provided by municipal policy for the use of such employee in the conduct of official business.

H. Political Activity:

1. Employees may participate in political activities while they are off duty, out of uniform, and not on the premises of their employment with the City.
2. For the purpose of this policy, the term "political activities" include, but are not limited to: soliciting votes or endorsements on behalf of a political candidate or political campaign; expressing opinions, privately or publicly, on political subjects and candidates; displaying a political picture, sign, sticker, badge or button except on personal vehicles; participating in the activities of or contributing financially to, a political party, candidate or campaign or an organization that supports a political



candidate or campaign; attending or participating in a political convention, caucus, rally or other political gathering; initiating, circulating or signing a political petition; engaging in fund-raising activities for any political party, candidate or campaign; acting as a recorder, watcher, challenger or similar officer at the polls on behalf of a political party, candidate or campaign; or becoming a political candidate.

3. The components of this section are designed to promote public trust and confidence in City government by ensuring that it is free of the actual or apparent influence of partisan politics and that employment and advancement in the City are based on meritorious performance rather than political service or affiliation. In addition, it protects every employee's right to vote and to keep this right free from interference, solicitation or dictation by any fellow employee, supervisor, or officer.

4. Every employee is encouraged to vote in every appropriate election. Moreover, except during working hours or when officially representing the City of Charleston, any municipal employee is free to express his or her opinion as to candidates or issues and to meet with candidates for office.

5. Subject to applicable state law, employees may be candidates for an elected City office but must resign, or shall be released, from employment with the City upon successful election to a City office. Subject to applicable state law, employees may be candidates in non-city elections and may be permitted to continue employment with the City; provided, however, the employee must resign, or will be released from employment if the elected office is a full term position or if the responsibilities of that office will interfere with the employee's ability to perform the duties of his/her City position.

6. Under no circumstances shall an employee engage in political activities while performing the official duties of his/her City position, or use any City property or equipment to engage in political activity, or to appear as a candidate while dressed in City uniforms or clothing that identifies the individual as a City employee. This prohibition shall not apply to an employee registering to vote or voting.

7. No employee shall use the prestige of his/her position on behalf of any political organization or party. For purposes of this Code of Conduct, a "political organization" shall be defined as "any group, formal or informal, which endorses candidates for elective office at any level of government—national, state or local."

8. No employee shall use his/her official authority to coerce or attempt to coerce a subordinate employee to pay, lend, or contribute anything of value to a political party, candidate, or campaign, or to discriminate against any employee or applicant for employment based on political affiliations or political activities.

9. City employees are prohibited from discriminating in the provision of City services or responding to requests for services, on the basis of the political affiliations or political activities of the person or organization for which such services are provided or requested.

10. Employees are prohibited from suggesting or implying that the City has officially endorsed a political party, candidate, or campaign.
11. Consequences of Violation: Violation of any section of this policy may constitute a cause for disciplinary action up to and including termination.
12. This section and the prohibitions contained herein, are not intended to restrict City elected officials from engaging in conduct lawful under state law related to the elected position or any candidacy for election or re-election.

## 8.2 Suspected Theft and Fraudulent Transactions

- A. Fraud is an act which is characterized by deceit, concealment, or violation of trust perpetrated to obtain money, property, or services, to avoid payment or loss of services, or to secure personal or business advantage or other benefit. The City investigates suspicions of significant theft and/or fraudulent transactions.
- B. An employee who has knowledge of an occurrence of work-related fraud, or has reason to suspect that a fraudulent action has occurred at work, shall notify his or her Department Head or the Office of Human Resources as soon as possible and shall not discuss the alleged fraud with others. Upon receipt of an allegation, the Office of Human Resources will notify appropriate authorities, develop an action plan and coordinate all investigative processes.
- C. Confidentiality is critically important in handling fraud allegations and all participants shall keep the details and results of the investigation as well as the identities of involved employees confidential to the extent permitted by law. Information will only be shared on a need-to-know basis. If the investigation concludes that the allegations of fraudulent activity by an employee are founded, the employee shall be subject to disciplinary action up to and including termination and/or legal action.
- D. Retaliation against individuals reporting suspected fraud or who cooperate, provide testimony, or participate in any manner in an investigation, proceeding, or hearing is unacceptable and will not be tolerated. However, such protections are not intended to shield employees who make unfounded or vindictive accusations against others.

## 8.3 Gifts

- A. No employee shall solicit a gift unless it is for a charitable purpose from which the employee and his or her immediate family members derive no direct personal benefit. Additionally, an employee may not accept gifts from "interested persons" (those who do or seek to do business with, are regulated by, or otherwise financially interested in activities of the City) unless the gift fits into one of the following exceptions:
  1. Meals and beverage with no monetary limit when the interested party is present (gift certificates for meals for in amounts greater than \$25.00 are not acceptable);

2. Unsolicited gifts of a value of \$25 or less;
3. Ceremonial gifts or awards of insignificant value;
4. Reasonable expenses incurred in appearing at a speaking engagement;
5. Reasonable honoraria, where permitted by The WV Ethics Commission's rules;
6. Free tickets to political, charitable, or cultural events customarily given as a courtesy to the office;
7. Free tickets to a sporting or other event if the ticket is less than \$25.00, unless ticket is incidental to conduct of official or ceremonial duties;
8. Purely private and personal gifts; or
9. Lawful political contribution(s).

#### 8.4 Conflict of Interest

A. It shall be unlawful for any elected or appointed officer or employee of the city to have a personal or pecuniary interest, either directly or indirectly or as a member, manager, officer, or stockholder of any partnership, business, firm or corporation, in any contract furnishing material, services or supplies to the city, or to any contractor or workers related to services performed for or materials provided to the city, or in any other manner whatsoever, whereby the taxpayers of the city shall become the paymaster, either directly or indirectly. Any violation of this subsection shall be a misdemeanor and upon conviction, such officer or employee shall be subject to discipline up to and including termination, or shall be deemed to have committed misconduct subject to removal under W. Va. Code § 6-6-7, if applicable, and may be subject to criminal penalties as provided by state law.

B. Subsection A of this section shall not be applicable to members of boards or commissions who volunteer their time and receive no compensation from the city for their services.

C. Subsection A of this section shall not be applicable to members of City Council. Provided, no member of City Council shall vote on any matter before the Council if he or she is directly and immediately, and/or financially interested in the matter, and shall be subject to applicable state laws regarding conflict of interest.

D. If there is ever any question as to the possibility of a conflict of interest, the employee shall promptly disclose the applicable facts to their supervisor, Department Head or Director of Human Resources who will notify the City Attorney so that a determination of whether a conflict exists can be made, and if so, what course of action should be taken.

#### 8.5 Working Hours, Punctuality and Attendance

A. Each Department Head shall determine the assigned shift and/or work hours for each employee within his/her department. Every employee is expected to be on the job during all hours as assigned, unless previously approved for paid leave or leave without pay as approved by his or her Department Head. Department Heads have the authority to change or modify an employee's shift and/or work hours in order to maintain staffing, continuity of operations and/or to ensure efficient and effective service. Individual departments may have specific requirements regarding advance notice of an intended absence or tardiness. Employees will communicate with their supervisor if they have any questions regarding how absence or tardiness is handled within their department. To the extent any provision in this policy would result in an employee who is exempt under the Fair Labor Standards Act to lose their exempt status, such provision shall not apply.

B. If an employee will be absent, or late, he or she must notify the Department Head or immediate supervisor in advance of the scheduled working time whenever possible in accordance with departmental policies and procedures. When requesting leave or reporting an absence, the employee must follow established and prescribed departmental policies and procedures. Failure to give proper notice may result in an unauthorized absence and/or disciplinary action.

C. Meal Breaks: The City currently permits full-time employees to take up to 1 hour (60 minutes) of paid leave for meal breaks during any shift or work day scheduled for ten (10) hours or less. Any leave occasioned less than 1 hour (60 minutes) after the beginning or before the end of an employee's shift or work day shall be charged against some other compensable leave (i.e. vacation, sick, etc.) or shall be non-compensable. The timing of such meal breaks shall be at the discretion of an employee's Department Head; in order to provide the least possible disruption to operations provided, however that meal breaks will not typically be permitted for less than 1 hour (60 minutes) after the beginning or 1 hour (60 minutes) before the end of the employee's shift or work day. At no time shall a meal break be permitted at either the beginning or end of an employee's work day in order to offset arrival and/or departure times or to cover compensatory time off for other purposes (i.e. reducing the amount of paid leave). Failure of an employee to return on time from break or meal periods may subject the employee to disciplinary action and the employee may be charged vacation or sick leave, on a case-by-case basis for the time missed.

D. It is expected that employees will report to and be prepared to work on or before the designated start time of his or her shift, unless previous arrangements have been made with and approved by the employee's immediate supervisor or Department Head. Employees who do not report to work on time disrupt operations and delay supervisors from making daily work assignments. Employees in departments/divisions that use a time clock are expected to punch in/out at their designated time clock station at the beginning/end of his or her shift unless other arrangements have been approved by the employee's immediate supervisor or Department Head. In the event an employee's punch in/out is not accepted and/or confirmed by the time clock, the employee should promptly notify his or her supervisor or follow his or her departmental procedures. Employees who miss punches or fail to punch in/out at the beginning/end of his or her shift may not receive credit for the proper amount of hours worked during their shift. Missed punches and/or not clocking in/out a violation of this policy. Employees who miss punches and/or do not punch in/out at the beginning/end of a shift may be subject to disciplinary action in accordance with his or her departmental rules and/or this policy.

## 8.6 Drug and Alcohol Testing Policy

A. Objectives, Purpose and Scope: The City has a vital interest in maintaining a safe, healthy and efficient working environment. Being under the influence of drugs or alcohol on the job poses serious safety and health risks to the user, all those who work with the user, and the general public in many instances. The purpose of this testing policy is to provide guidance to supervisors and employees concerning their responsibilities pursuant to this policy. An additional purpose of this policy is to comply with the United States Department of Transportation Regulations, including those found in Title 49 of the Code of Federal Regulations part 40 and part 382.

This policy establishes procedure for testing for the presence of drugs or alcohol in the bodies of certain prospective employees, existing employees who are Commercial motor vehicle drivers or who are in safety-sensitive positions, and current employees who are reasonably suspected of being under the influence of drugs or alcohol while on the job.

### B. Definitions:

1. *Alcohol* means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.
2. *Alcohol concentration* means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test using evidential breath testing devices.
3. *Alcohol use* means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
4. *Breath Alcohol Technician (BAT)* means an individual who instructs and assists individuals in the alcohol testing process and is certified to operate an evidential breath testing device.
5. *Chain of custody* means procedures to account for the integrity of each specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen.
6. *Collection site* means a place(s) designated by the City where individuals present themselves for the purpose of providing a sample for analysis.
7. *Collection site supervisor* means an individual designated by the City's Human Resources Department in the position of Safety Coordinator who may serve as a third party employer representative at a Collection site to ensure the City's compliance with federal regulations and this policy.
8. *Commercial motor vehicle*, as defined in 49 CFR part 382.107, means a motor vehicle or combination of motor vehicles that:

- a. Has a gross combination weight rating or gross combination weight of 26,001 or more pounds, whichever is greater, inclusive of a towed unit with a gross vehicle weight rating or gross vehicle weight of more than 10,000 pounds, whichever is greater; or
- b. Has a gross vehicle weight rating or gross vehicle weight of 26,001 or more pounds, whichever is greater; or
- c. Is designed to transport 16 or more passengers, including the driver; or
- d. Is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F).

9. *Confirmation (or Confirmatory) drug test* in drug testing means a second analytical procedure to identify the specific drugs or metabolite that is independent of the initial screening test and that uses a different technique and chemical principle from that of the initial screening test in order to ensure reliability and accuracy. In alcohol testing a Confirmation is a second test, following an initial screening test, with an alcohol concentration result of 0.02 or greater.

10. *Covered duty* means the employee is performing safety sensitive functions as part of their job duties and/or is operating a Commercial motor vehicle.

11. *Covered employee(s)* has the meaning set forth in this Section.

12. *Evidential breath testing device (EBT)* means a device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath that is placed on NHTSA's "Conforming Products List of Evidential Breath Measurement Devices" (CPL).

13. *Medical Review Officer (MRO)* means a licensed physician responsible for receiving laboratory results generated by the City's drug and alcohol testing program who has knowledge of and evaluates an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.

14. *Screening test (or initial test)* means:

- a. For purposes of a drug test, a test to eliminate negative specimens from further analysis.
- b. For purposes of an alcohol test, an analytic procedure to determine whether an employee may have prohibited concentration of alcohol in his or her system.

15. *Substance Abuse Professional (SAB)* means a licensed physician, or a licensed or certified psychologist, social worker, employee assistance profession or addiction

counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or International Certification Reciprocity Consortium/Alcohol and Other Drug Abuse) with knowledge of and clinical experience in, the diagnosis and treatment of alcohol and controlled substances-related disorders.

C. Covered Employees: *Covered employees* under this policy means employees who are "Commercial drivers" as defined in this Section and employees who are "Safety-sensitive employees" as defined in this Section.

1. *Commercial driver*: Any employee who, within the scope of his or her employment:

- a. Is required to possess a commercial driver's license in order to operate a Commercial motor vehicle; or
- b. May be dispatched to operate a Commercial motor vehicle; or
- c. Services or maintains a Commercial motor vehicle.

2. *Safety-sensitive employees*: Any employee who, within the scope of his or her employment, performs duties with increased risk of injury to themselves or others or whose job responsibilities involve public safety or the safety of others. Some safety-sensitive functions include but are not limited to:

- a. Using dangerous tools or equipment in the performance of one's job duties; or
- b. Perform job duties at heights; or
- c. Perform job duties involving the use of dangerous chemicals; or
- d. Routinely operate a vehicle in the course of job duties; or
- e. Carry a firearm in the performance of job duties; or
- f. Occupy a position designated as being safety sensitive pursuant to subsection (3) of this Section.

3. *Determination of Safety-sensitive employees*: The Director of Human Resources, upon approval from the City Manager and City Attorney, shall determine which employee positions qualify as "Safety-sensitive employees" under the definitions and mandates of the policy. A list of the designated Safety-sensitive employees shall be maintained in the Human Resources Department. In the event the Director of Human Resources, after approval from the City Manager and City Attorney, determines that a position must be added or deleted from the original Safety-sensitive employees list, he or she shall make such change, in writing, and post it in a location visible to all employees and notify the head(s) of the department(s) where said position(s) is/are located.

4. Covered employees are strictly prohibited from being impaired by drugs or alcohol while at work. This strict prohibition includes impairments caused by medications for which the employee has a valid prescription. In the event a Covered employee is prescribed a medication that may cause an impairment, it is the duty of the employee to consult with his or her physician to determine whether the employee can safely perform his or her job duties while on said medication, and obtain written documentation of the same from the physician.

D. Participation: All employees are required to participate in the applicable drug and alcohol regulations outlined in this policy as a condition of employment. Employees must be in compliance with the policy at all times while at work or performing work-related duties. No employee may report for duty, or remain on duty, under the influence of or impaired by drugs and/or alcohol, or having a breath alcohol concentration of 0.02 percent or greater. Refusal to participate in the testing program is considered as refusing to test and will result in employee termination.

E. Testing substances and categories.

1. All employee drug and/or alcohol testing will be conducted in accordance with the procedures established in 49 CFR Part 40 titled "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" unless otherwise noted in this policy.

2. In addition to the substances set forth in 49 CFR 40, the drug testing referenced in this policy shall be for the purpose of detecting the presence of one or more of the following substances:

- a. Marijuana
- b. Cocaine
- c. Amphetamine
- d. Opiate
- e. Phencyclidine (PCP)
- f. Benzodiazepine
- g. Barbiturate
- h. Methadone
- i. Methaqualone
- j. Propoxyphene
- k. Buprenorphine
- l. Oxycodone

3. A Breath Alcohol Concentration (BAC) of 0.02 or greater is prohibited in the workplace under this policy. Alcohol screening will be accomplished using an evidential breath testing device (EBT).

4. The following seven drug and alcohol testing categories are required for all Covered employees. All other employees are subject to reasonable suspicion and return to duty/follow-up testing.



a. *Pre-employment.* All applicants for Covered employment are required to produce a negative drug screen prior to employment.

(1) Once an applicant has been approved for employment, Human Resources will contact the potential employee providing details of the drug testing procedure. A conditional offer of employment will be made to the applicant. The applicant must provide a negative drug test result prior to a final offer of employment. A positive drug test will disqualify the applicant for employment.

(2) No permanent record will be kept for any applicant who decides to withdraw his or her application due to the testing requirement.

b. *Random.* Random testing provisions require Covered employees be subject to drug and/or alcohol testing at any time while at work or performing work-related duties. Notification of random testing will be given to employees immediately prior to the testing; an employee will have 30 minutes from notification to appear at the designated Collection site. If the employee fails to appear for the test, the test result will be issued as positive, refusal to test. Should an employee who operates a Commercial motor vehicle not be present at the time he or she is selected, notification will be given to the employee upon his or her return to the workplace.

(1) Every Covered employee shall be subject to unannounced random drug and alcohol testing. Two separate selection pools will be maintained. One random pool will be for Commercial drivers only and the other random pool will be for all Covered employees.

(2) Names will be selected for random testing using computer technology and methodology established by the USDOT/FHWA in 49 CFR part 40 and part 382. The method of selection requires each employee in each pool have an equal chance at being selected for any given testing period. Testing in one testing period does not preclude the employee from being selected again in another testing period. The City is required to conduct a minimum amount of drug/alcohol tests in a calendar year. The minimum rate will be determined by USDOT. Nothing in this policy precludes the City from testing Covered employees at a rate higher than the minimum rate established by the USDOT.

c. *Transferring/promoting employees to Covered duty.* Non Covered employees must meet pre-employment testing requirements before reporting for Covered duties as described in the Covered employees section of this policy.

d. *Reasonable suspicion.* Only department heads, supervisors, or their designees who have attended a training course in the signs and symptoms of alcohol misuse and drug abuse can request employees undergo reasonable suspicion testing when it can be reasonably suspected the employee has violated the alcohol or controlled substance prohibitions of this policy. Tests can

only be requested based upon specific articulable observations concerning objective factors such as appearance, behavior, speech, or body odors of an employee while at work. Supervisors shall have a confirming opinion from another trained individual that documents the employee's conduct and behavior when practicable. If a second, confirming individual is not available, one supervisor can request testing

(1) To determine "reasonable suspicion" under this policy, the following factors, while not exclusive, are reasonable indicators to consider in conjunction with other relevant information, including the employee's explanation:

(A) The direct observation of drug or alcohol use while at work or on duty; or

(B) The physical symptoms or manifestations of drugs or alcohol use such as altered or slurred speech or repeated incoherent statements, dilated or constricted pupils, flushed skin, excessive sweating, excessive drowsiness or loss of consciousness without reasonable explanation; or

(C) Unexplained, abrupt or radical changes in behavior such as violent outbursts, hyperactivity, extreme suspiciousness, frequent and/or extreme fluctuations of mood without reasonable explanation; or

(D) Inability to walk steadily or in a straight line, or perform normal manual functions essential to an employee's position without reasonable explanation; or

(E) Unexplained, prolonged or frequent disappearances from the work area; or

(F) Accidents or near-accidents on the job that appear related to unexplained sensory or motor skill malfunctions; or

(G) Smell of alcoholic beverage on the employee when the employee is expected to be performing job duties; or

(H) A report of reasonable suspicion provided by a reliable and credible source.

(2) Supervisors or designees are to contact his or her department head (or a designee) to report the employee's conduct or behavior. The department head (or designee) will make the determination to initiate testing and will inform Human Resources as soon as practical.

(3) A written record, preferably West Virginia Department of Transportation Form AH-505, is to be prepared by the department head, supervisor, or designee requesting reasonable suspicion testing and forwarded to Human Resources in all drug and/or alcohol reasonable suspicion testing situations. This written record should be prepared and submitted to human resources as soon as practicable after observing the suspicious behavior. If approval to test a particular employee is not granted, no record of the drug/alcohol reasonable suspicion indicators are to be kept for any reason. Negative drug test results require that no record of the specific incident be maintained.

(4) Reasonable suspicion drug tests require the employee be removed from all duties until drug/alcohol testing is complete and results certified. (Alcohol test results are immediately available). If an employee is informed that reasonable suspicion drug testing has been ordered, the employee must provide a urine sample as soon as possible after being informed testing has been ordered. It is the employee's responsibility to be available to provide a urine sample once he or she has been informed of the testing requirement, and failure to meet this testing requirement shall have the test result issued as positive, refusal to test.

(5) If an alcohol test is not performed within two hours following the department head's (or a designee's) determination to test, the department head, supervisor, or designee is to prepare and forward to Human Resources written documentation stating the reasons the alcohol test was not administered promptly. If an alcohol test is not administered within eight hours following the department head's (or a designee) determination to test, attempts to administer the test shall cease and the department head, supervisor, or designee shall forward to Human Resources written documentation stating the reasons the test was not administered.

e. *Post accident.*

(1) As soon as practical following an accident involving a Commercial motor vehicle or other City-owned vehicle, the City shall conduct drug and alcohol testing when the situation meets any one of the following criteria:

(A) The accident involves a fatality; or

(B) The employee receives a citation under state or local law for a moving traffic violation arising from the accident and:

i. One or more of the vehicles involved in the accident cannot be moved or has to be towed from the scene; or,

ii. Someone receives medical treatment away from the scene of the accident.

(2) Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident, or to prohibit an employee from first seeking assistance in responding to the accident, or to obtain necessary medical treatment. A Covered employee subject to post accident testing must remain available for testing or the City will consider it a refusal by the employee to participate in the testing process and the employee will be terminated. The Covered employee subject to post accident testing cannot consume alcohol for eight hours following the accident, or until he or she submits to an alcohol test, whichever comes first.

(3) When the required controlled substance and/or alcohol test has not been administered within a reasonable time following the accident, the following actions shall be taken:

(A) If the employee has not submitted to an alcohol test within two hours, the department head, supervisor, or designee shall prepare and forward to Human Resources written documentation stating the reason the test was not promptly administered.

(B) If the employee has not been tested for prohibited alcohol concentration within eight hours, attempts to administer the alcohol test shall cease, and the department head, supervisor, or designee is to prepare and forward to Human Resources written documentation stating the reasons the test was not administered.

(C) If the employee has not submitted to a controlled substance test within 32 hours, the City shall cease attempts to administer the test, and the department head, supervisor or designee is to prepare and forward to Human Resources written documentation stating the reason the test was not administered.

(4) Covered employees may be required to provide two different samples as a result of an accident. Federal regulation requires that the City drug and alcohol screen for specific accidents and a law enforcement agency may request testing under its authority. If the City cannot perform the required tests as a result of the accident, a drug/alcohol test administered by federal, state, and local authorities will meet the requirements of the federal post accident testing regulations under the following conditions:

(A) The official must have independent authority to conduct the test; and

(B) The test must conform to federal, state, and local requirements.

f. *Return to duty/follow up.* Before an employee returns to duty after testing positive for drugs and/or alcohol, the employee is to undergo a return to duty alcohol test indicating an alcohol concentration of 0.02 or less and/or a certified negative drug test result.

(1) In the event return to duty testing is required, the employee must have been evaluated by a Substance Abuse Professional and complete any recommended substance abuse assistance program. The City will advise employees of local Substance Abuse Professionals through its Human Resources Department. However, employees are free to choose their own substance abuse professional as long as the individual meets the minimum requirements for such established in 49 CFR part 382.107.

(2) Following the determination that an employee is in need of assistance in resolving problems associated with substance abuse and upon his or her return to covered duty, the employee will be subject to unannounced follow up alcohol and/or drug testing as required by the Substance Abuse Professional for up to 60 months. Federal regulations require Covered employees be subject to a minimum of six follow-up tests during the first 12 months, in addition to any random drug screens.

g. *Return to work.* Pre-employment testing requirements must be met before a Covered employee who has been in a nonworking status for 30 or more consecutive days can again perform safety-sensitive duties as described in Section of this policy. Covered employees who are off from work for 30 or more consecutive days must contact the safety coordinator at least four days in advance of his or her return to work date so that return to duty testing can be scheduled and results known before a return to duty. If an employee fails to contact the safety coordinator to schedule, he or she may be delayed in returning to work and will not receive pay for time off from work due to any delay.

F. Refusal to test.

1. All employees are required to participate in applicable testing programs as a condition of employment. Refusal to participate will result in immediate termination.
2. Certain behaviors constitute a refusal to test. These behaviors include:

- a. Failure to follow all instructions provided by the Breath Alcohol Technician/urine sample collector and/or the Collection site supervisor; or
- b. Tampering with or attempting to adulterate a specimen or collection procedure; or
- c. Not accompanying the safety coordinator or his designee to the test site; or when the City has not provided an escort, not reporting to the Collection site within thirty (30) minutes of notification of selection; or
- d. Leaving the scene of an accident without a valid reason before testing has been conducted; or
- e. Failure to provide adequate breath/urine samples without a valid medical reason; or
- f. Engaging in any conduct that clearly obstructs the testing process.

3. Employees are to provide an adequate amount of breath upon the instruction of the Breath Alcohol Technician. The Breath Alcohol Technician will ask an employee who is unable to provide a sufficient amount of breath for a further sampling in order to complete the test. If the employee is unable to provide an adequate breath sample, the Breath Alcohol Technician will notify the Collection site supervisor that a positive test result is declared as a result of the employee's inability to provide an adequate sample. After notifying Human resources, the employee's department head or supervisor shall refer the employee to a licensed physician acceptable to the City. The physician is to make a determination as to whether or not the employee has a medical condition, or could have a medical condition, that precluded him or her from providing an adequate breath sample. If the physician cannot make such a determination, the employee's test is considered a refusal to test and the employee will be terminated from employment. The physician is to provide Human Resources with his or her written conclusions.

4. Drug tests require at least 45 milliliters of urine. If the employee cannot provide this minimum amount, the Collection site supervisor will advise the employee to drink not more than 40 ounces of fluid, and, after a period not to exceed three hours, again attempt to provide an adequate amount of urine. The original sample is to be discarded. If the employee still cannot provide an adequate sample, the specimen is to be discarded and testing discontinued, and the collector will inform the Collection site supervisor who will inform Human Resources. Human Resources will then inform the drug testing program's MRO. After consultation, the employee may be referred to a licensed physician acceptable to the City to determine if there could be a medical reason for the employee's failure to provide an adequate urine sample. If the physician cannot make such a determination, the test is considered a refusal to test and the employee will be terminated from employment. The physician is to provide Human Resources with his or her written conclusions.

## 5. Dilute Urine Samples

a. Positive Dilute: In the event that the MRO informs Human Resources that an employee's positive test was dilute, the City will treat the test as a verified positive test.

b. Negative Dilute: In the event that the MRO informs Human Resources that an employee's negative test was dilute, the employee will be required to immediately provide another adequate urine sample for analysis. In the event that the second test results in a negative dilute test, the employee may be referred to a licensed physician acceptable to the City to determine if there could be a medical reason for the employee's urine sample resulting in a diluted sample. If the physician cannot make such a determination, the test will be considered a refusal to test and the employee may be terminated from employment.

Following any second diluted sample, all testing procedures and options are at the City's discretion and do not fall within the Federal DOT standards.

With regard to pre-employment or seasonal employees, in the event that the MRO informs Human Resources that a negative test was dilute, the City will treat the test as a verified positive test. The City may permit the applicant or part-time employee to submit to an additional test, or alternative form of testing, including hair or blood testing at the expense of the applicant or part-time employee. If the City allows for an additional test, and the additional test is dilute, the City will treat the test as a positive result.

6. In the event an employee cannot provide an adequate breath or urine sample, or has provided two negative dilute samples and is referred to a licensed physician acceptable to the City for medical evaluation, the employee will be advised that he or she must provide the required medical documentation within seven calendar days from the date of notification. Failure to provide the necessary documentation will result in the test being issued as positive because of refusal to test and the employee will be terminated.

7. Notwithstanding anything in this section to the contrary, in the event an employee cannot provide an adequate breath or urine sample for a legitimate reason beyond the reasonable control of the employee, and prior to referral to a licensed physician or to termination, the employee may choose to submit to an alternative form of testing including either hair or blood testing.

## G. Testing procedures, generally.

1. Employees will be verbally informed by the department head, supervisor or designee that they are to report to a specific location for drug and/or alcohol testing. The Safety Coordinator or his or her designee may provide transportation and accompany the employee to the testing facility. In the event that transportation is not

provided, the employee will report to the testing facility within thirty (30) minutes of being informed that they are to report for testing.

2. Employees are to identify themselves through picture identification. In the event no picture identification is readily available, the Collection site supervisor may verify the employee's identity, when possible.

#### H. Record retention and confidentiality.

1. The City shall maintain records of its alcohol misuse and controlled substances testing programs as required by 49 CFR Part 382.401. All records will be maintained in a secure location within Human Resources in a controlled access area. The City shall maintain documentation relating to refusals to test, breath alcohol results of 0.02 or greater and positive drug test results for a period of five years. Negative drug test results and breath alcohol test results of 0.02 or less shall be maintained for a period of one year. All other records shall be maintained as required by 4 CFR Part 382.401.

2. All drug and alcohol testing records will be maintained under the rules of confidentiality established in the federal regulations. Human Resources will provide employees with their testing records upon receipt of a written request for such records. Records will be disclosed only to those individuals authorized by the USDOT/FHWA rules or other city official authorized to receive such information. Supervisors will be informed on a need-to-know basis. The City may disclose certain information to the decision maker in a lawsuit, grievance or other proceeding initiated by or on behalf of the individual and arising from the results of an alcohol and/or drug test or from the City's determination that the employee engaged in prohibited conduct (including, but not limited to worker's compensation, unemployment compensation or other proceeding relating to a benefit sought by the employee).

#### I. Consequences of prohibited conduct.

1. The City's MRO will certify positive drug test results to human resources. Alcohol test results are available on-site and supervisors are to proceed based upon the criteria established under this policy. The employee is to be removed from duty immediately upon notification of positive drug test results and/or an alcohol concentration of 0.02 or greater.

2. If, for any reason, errors are made in reporting employee test results, which cause the employee monetary loss and/or disciplinary action, the affected employee will have his/her status restored as if the error in the test result reporting never occurred. All documentation relating to a situation such as this will be purged from the City's drug and alcohol records management system.

3. Discipline is to be administered under the City's authority to discipline employees found to be in violation of prohibited workplace activity. The following disciplinary schedule applies to all employees who violate this policy. Disciplinary action taken hereunder against members of the police department shall be subject to review in accordance with applicable provisions of W.Va. Code § 8-14-20 and § 8-14A-3.



Disciplinary action taken hereunder against members of the Fire Department shall be subject to review in accordance with the applicable provision of W. Va. Code § 8-15-25 and § 8-14A-3. Disciplinary action taken hereunder against non-uniformed employees in the city's classified service shall be subject to review in accordance with the applicable provisions of City code.

(A) *Pre-employment.* A positive drug test will cause the potential employee not to be offered employment.

(B) *Probationary employees.* A positive drug test or breath alcohol concentration of 0.02 or greater will cause the employee to be terminated from employment.

(C) *First offense. Random, reasonable suspicion or employee transfer to Covered Duty.*

(1) First Offense. A positive drug test result or a breath alcohol concentration of 0.02 or greater will cause the employee to be terminated. Provided that such termination shall be deemed a suspension without pay if within 48 hours of the notification of test results the employee executes a consent agreement whereby the employee agrees to the following conditions:

i. The employee waives any and all rights to grieve or to have a hearing on the issues before applicable hearing boards, civil service commissions, or any other administrative or judicial process, except as the same may relate to an alleged breach of the terms of this consent agreement;

ii. The employee will be evaluated by a qualified substance abuse professional as soon as reasonably practicable and in any event within seven calendar days of the notification of positive test result and shall authorize and cause a copy of the evaluation and treatment plan, and any follow-up reports, to be delivered to the Director of Human Resources;

iii. The employee agrees to abide by the treatment program established by the Substance Abuse Professional;

iv. The employee agrees to pay for such evaluation and treatment without reference to or claims for reimbursement against city healthcare benefits;

v. The employee agrees to follow-up drug and/or alcohol testing at a rate directed by the Substance Abuse Professional, to be conducted on an unannounced basis and of a frequency of not less than six during the first 12 months following the employee's return to work, with it being understood and agreed

that the Substance Abuse Professional may continue or terminate the follow-up testing requirement at any time after the first six tests, and for such reasonable period beyond 12 months as may be deemed necessary, at his/her discretion;

vii. The employee agrees to authorize and give consent to any substance abuse professional or other treatment provider to release any information the city requests regarding the employee's evaluation, treatment, or fitness for duty;

viii. Any additional terms, conditions, or stipulations that the city may deem necessary to effectuate the intent of this provision;

The suspension will be lifted and the employee will be returned to his or her regular duties, or in the city's discretion to duties in another capacity, only upon certification from a substance abuse professional that the employee is fit to return to duty, and any employee who does not follow the entire plan set forth by the substance abuse professional, or violates the terms and conditions of the consent agreement in any way, or tests positive on a follow-up drug test, or has a breath alcohol concentration of 0.02 or greater on a follow-up test shall, upon reasonable verification of the same, be immediately dismissed, regardless of whether the suspension had been previously lifted or not. Failure to complete all of the requirements within proper time frames will cause the employee to be terminated.

(2) *Second offense* A second positive drug test result or a second instance of breath alcohol concentration of 0.02 or greater will cause the employee to be terminated.

D. *Post accident.* A positive drug test result, or a breath alcohol concentration of 0.02 or greater on a post accident test will cause the employee to be terminated.

E. *Return to duty/follow up.* A positive drug test result, or a breath alcohol concentration of 0.02 or greater on a return to duty or follow up test will cause the employee to be terminated.

F. *Return to work.* A positive drug test, or a breath alcohol concentration of 0.02 or greater on a return to duty or follow up test will cause the employee to be terminated.

G. *Refusal to test.* Any refusal to test will cause the employee to be dismissed.

J. Appeals process: An employee/applicant wishing to challenge the results of any positive drug test or blood alcohol concentration test may do so by filing an Appeal in writing to Human Resources, provided:

1. Any such appeal must be made within 72 hours of notification of a positive test.
2. Employee/applicant will pay for the cost of a retest.
3. A challenge test must be performed on the same sample as the first test. However, a retest/re-analysis is not subject to cut-off levels and will be reported positive if any detectable drug metabolite is found.
4. If the result proves negative, the employer will be pay for the cost of the challenge test. The employee will be reinstated to the former position with no loss of benefits.
5. When employee testing for alcohol results in a 0.02 or greater blood alcohol concentration, an immediate confirmation test shall be performed. The BAT will instruct the employee in the steps necessary to complete the confirmation test. The confirmation test is to be performed within 20 minutes, but not less than 15 minutes of the initial test. There is no appeal of the confirmation results.

K. Changes to policy: This policy is subject to change as regulatory requirements make necessary or as determined by the City. Any changes in this policy will be posted in a location visible to all employees.

L. Voluntary referral program: Any employee covered by this policy, who, of their own accord and prior to being informed they are to submit to testing, voluntarily seeks the assistance of a Substance Abuse Professional, will be allowed a leave status consistent with the City's policies. No disciplinary action will be initiated as a result of voluntary referral. The employee will be returned to duty upon the recommendation of the Substance Abuse Professional. If returned to duty upon the recommendation of the Substance Abuse Professional, the employee will be required to present a negative return to duty drug and alcohol test result, as well as negative follow-up test results.

M. Contact person: The City of Charleston's Human Resources Department assists in administering the drug and alcohol testing program and answers questions about the policy for all employees. Human resources will maintain a hard copy of this policy to be distributed upon request. Human resources will also maintain a list of substance abuse professionals, maintain records and answer questions about the testing program;

Human Resources  
City of Charleston  
Room 303, City Hall  
301 Virginia Street  
Charleston, WV 25301  
(304) 348-8015  
(304) 348-8055 (Fax)

## 8.7 Fleet Vehicle and Driving Policy

A. To provide for safe and efficient vehicle operation, the City has established a comprehensive policy to guide employee-drivers and Department Heads in proper vehicle operation and procedures. The goals of this policy are:

1. To establish a fair and impartial fleet management standard for all City departments regarding motorized equipment and employee-drivers;
2. To establish a fair and impartial review system for all accidents involving motorized equipment and employee-drivers of the City's motorized fleet;
3. To identify problem drivers, unsafe conditions, and take remedial steps to reduce damage to City owned vehicles and prevent injury to City employees;
4. To establish the responsibilities for each vehicle's use, maintenance, and operation;
5. To establish eligibility of City drivers and operators for safe driver recognition; and
6. To establish uniformity of discipline.

Your contribution to the overall success of the City's fleet is mandatory and of major significance. A professionally managed fleet can control costs, provide valuable information to management, and minimize time-consuming problems for drivers, thus enabling them to perform their function effectively.

B. Definitions: The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

1. "Approved Business Associates" – non-employees approved by the Mayor or City Manager who have a connection with City business.
2. "Chargeable accident" – an accident involving a City vehicle in which the employee-driver failed to exercise reasonable caution to prevent in some manner that which contributed to the occurrence of the accident.
3. "City business" – business on behalf of the City.
4. "Non-chargeable accident" – an accident involving a City vehicle in which the responsibility for the accident rests with person(s) or object(s) other than the employee operating the City-owned vehicle.

C. Qualification of Employee-Driver: This section sets forth the requirements that an employee must meet to qualify for assignment to a City-owned vehicle.

1. The employee-driver must be a full-time City employee, an Approved Business Associate, or an approved part-time employee.
2. The employee-driver must possess a valid West Virginia driver's license or commercial drivers license (CDL).
3. The employee-driver must have an acceptable driving record. The employee-driver's driving record may be reviewed annually to determine if he/she continues to have an acceptable driving record. Any employee-driver who fails to maintain and/or meet the City's safe driving standards shall not be allowed to operate City vehicles or equipment. The employee-driver has duty to report any change of status to his/her driving record, including, but not limited to, reporting any accidents or other change of status to their driving privileges and/or driver's license status. Failure to report any such changes may lead to discipline, including, but not limited to, termination.
4. The employee-driver must be able to operate a motor vehicle with or without reasonable accommodation.

D. Eligibility for Assignment: The Mayor or City Manager must approve all vehicle assignments. City vehicles may be assigned to:

1. Department Heads that are required to drive or operate a City vehicle as a condition of employment or to fulfill essential duties and responsibilities;
2. Assistant Department Heads who are required to drive or operate a City vehicle as a condition of employment or to fulfill essential duties and responsibilities; or
3. Any employee of any department who needs a vehicle to fulfill his or her essential duties, and as authorized by his/her Department Head.

E. Use of City Vehicle: A City-owned vehicle may only be used purposes of conducting City business and/or minimal personal convenience (i.e. stopping for meals while traveling on City business). Any other use must be approved by the Mayor or City Manager.

F. Safe Operation Required

1. The employee-driver of a City-owned vehicle is responsible for the vehicle he/she operates. All employee-drivers of City-owned vehicles and/or non-City owned vehicles used for City business are subject to all laws, ordinances and rules governing the operation of a motor vehicle.
2. Failure to operate a City-owned vehicle in a safe and reasonable manner, or operating a City-owned vehicle in contravention to this policy or any other applicable law, ordinance, or rule may result in the suspension of use of vehicles for that employee-driver.
3. The employee-driver of a City-owned vehicle, or a non-City owned vehicle used for City business is personally responsible to respond to any warrants issued or fines levied

regarding the operation or parking of the vehicle, including towing charges, and is personally liable for any and all fines or penalties, criminal or civil.

4. Whenever a City-owned vehicle is left unattended (the employee-driver, nor any passengers are in the vehicle), the employee-driver shall turn the vehicle off, remove the keys from the vehicle, close all windows, lock all doors/hatches/trunks, and remove or conceal from outside view all items of value, including but not limited purses, wallets, and electronic devices.

5. The employee-driver and all passengers must use combination lap and shoulder safety belts.

G. The City Strictly Prohibits:

1. Transport of a hitchhiker or strangers for reasons other than City business;

2. Transport of employee-driver's family members;

3. The use of a City-owned vehicle for conducting any business ventures other than City business;

4. The personal use of City-owned vehicles without prior approval by the Mayor or City Manager;

5. Employee-driver's spouses or children who are not employed by the City, operating City-owned vehicles;

6. Eating while operating a City-owned vehicle;

7. Smoking or using tobacco products in a City-owned vehicle;

8. Leaving a City-owned vehicle running unattended unless the driver or someone overseeing the vehicle is in close proximity, or the vehicle is in a secure area, or leaving the vehicle running is made necessary by the existing circumstances;

9. Driving a City-owned vehicle while under the influence of any alcoholic beverage or narcotic drug;

10. Employee-drivers who are under a physician's care and taking prescription drugs that may impair the employee-driver's ability to control the vehicle, or cause drowsiness or dizziness.

11. Personal contact of an intimate nature in City-owned vehicles or equipment.

12. Use of cell phones while driving, including, but not limited to making or receiving calls, texting or emailing, except employee-drivers may respond to work related calls in a hands-free manner when reasonable and necessary under the circumstances.

#### H. Use of Non-City Owned Vehicle

1. Employees who only travel occasionally on City business and do not require, or are not eligible for, a City-supplied vehicle may upon approval, use a non-City owned vehicle for City business and be compensated for such use at the current federal reimbursement rate per business mile.
2. To qualify for the mileage rate, the use of a non-City owned vehicle must be specifically approved by the Mayor or City Manager for trips over 25 miles (Department Head may approve trips under 25 miles), and the driver must meet all qualifications as a City approved driver. Such approval shall be granted only upon evidence that the non-City owned vehicle driven by the employee is covered by vehicle liability insurance with at least the minimum coverage required by West Virginia State Law.

#### I. Vehicle Replacement Policy

1. The Fleet Manager shall be responsible for overseeing the vehicle replacement program and shall prepare all vehicle and equipment specifications. The Fleet Manager shall supply each Department Head with a list of vehicles that are to be replaced pursuant to the following schedule:
  - a. Ten (10) year replacement cycle: dump trucks, administrative vehicles, department and division head vehicles, pick-ups, and vans.
  - b. Seven (7) year replacement cycle: refuse packer trucks.
  - c. Six (6) year replacement cycle: police patrol vehicles.

The Department Head shall budget for vehicle replacement.

2. The Fleet Manager has the authority to change the replacement cycle and to replace vehicles not meeting established criteria for replacement in situations where a vehicle is unsafe to operate and/or has a high repair history or when there is a change in the budget or size of the fleet.

#### J. New Vehicle Delivery

1. The Equipment Maintenance Division shall order all new vehicles, inspect new vehicles, and release the vehicles to the departments. Each vehicle shall be entered into a database that the Equipment Maintenance Division shall maintain on all City vehicles.
2. The Equipment Maintenance Division shall oversee the installation of all additional equipment that is required before the vehicle is released.
3. Vehicles that need to be transferred to another department or re-numbered vehicles within the same department or division must have a City transfer form completed by the Department Head. The transferring Department Head, the receiving Department Head and City Manager must sign the transfer form. The transfer form

must be delivered to the Fleet Manager so that the information can be entered into the database.

4. Any vehicle being replaced shall be turned in to the Equipment Maintenance Division for disposal at the same time the new vehicle is picked up.

K. Vehicle Disposal: The Equipment Maintenance Division shall hold a public auction to sell surplus vehicles and equipment, except for council approved donations, and/or may sell surplus vehicles and equipment through any other legal means.

L. Personal Use of a City Vehicle: Employees are not permitted to use City vehicles for personal use unless approved by the Mayor or City Manager. Employee-drivers who are approved for personal use or to take a City vehicle home must supply the Fleet Manager with his/her home address or the location where the vehicle is being kept.

M. IRS Regulation and Personal Use Fee: the purpose of this policy is to ensure compliance with applicable fringe benefit tax laws with respect to Employer-Provided Vehicles ("EPVs").

1. Background: Under Internal Revenue Code ("IRC") Section 61, all income is taxable unless excluded by a specific section of the IRC. The IRC specifically designates some forms of additional compensation as "fringe benefits". A fringe benefit is defined as a form of remuneration (including property, services, cash, or cash equivalent), in addition to stated pay, for the performance of employee services. According to the IRC, some forms of fringe benefits include, but are not limited to EPVs.

2. Unless expressly excluded or deferred until a subsequent year under the IRC, taxable fringe benefits are to be included in the employee's gross income in the year in which the benefits are received, and generally are included in wages at their fair market value as calculated in section 8.7-m-6.

3. Tax, Withholding & Reporting Policy: Generally, according to the IRC, EPVs used exclusively for business purposes are not subject to IRS tax, withholding and reporting requirements. The use is considered and treated as a working condition fringe benefit. However, IRS rules state that business use does not include commuting between an employee's residence and his/ her workplace, unless the vehicle is a qualified non-personal use vehicle, as that term is defined herein.

4. Eligible Qualified Non-personal Use Vehicles

a. Use of a "qualified non-personal use vehicle" by an employee, including commuting, is treated as a nontaxable working condition fringe benefit if certain specifications are met. A qualified non-personal use vehicle is defined as "any vehicle that an employee is not likely to use more than minimally for personal purposes because of its design." Qualified non-personal use vehicles, as designated by the IRS generally include:

(1) Clearly marked police, fire or public safety officer vehicles;



- (2) Unmarked vehicles used by law enforcement officers if the use is officially authorized;
- (3) Qualified specialized utility repair truck;
- (4) An ambulance or hearse used for its specific purpose;
- (5) Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds;
- (6) Delivery trucks with seating for the driver only, or the driver plus a folding seat;
- (7) A passenger bus with a capacity of at least 20 passengers used for its specific purpose;
- (8) Construction or specially designed work vehicles (e.g. bucket trucks, dump trucks, cement mixers, forklifts, garbage trucks);
- (9) School buses; and
- (10) Tractors, combines and other special-purpose farm vehicles.

b. Clearly Marked Police, Fire or Public Safety Officer Vehicles: In accordance with the IRC, a clearly marked police, fire or public safety officer vehicle is a qualified non-personal use vehicle, only if the following apply:

- (1) The employee must always be on call;
- (2) The employee must be required by the employer to use the vehicle for commuting;
- (3) The employer must prohibit personal use (other than commuting) for travel outside of the officer's or firefighter's jurisdiction.; and
- (4) It must be readily apparent, by words or painted insignia, that the vehicle is a public safety vehicle. A marking on a license plate is not a clear marking for this purpose.

c. Public Safety Officer: According to the IRC, a public safety officer is an individual serving a public agency in an official capacity, with or without compensation, as a law enforcement officer, as described above, or a firefighter, chaplain or member of a rescue squad or ambulance crew.

d. Unmarked Law Enforcement Vehicles: Unmarked law enforcement vehicles are qualified non-personal use vehicles, as designated by the IRC, only if the following apply:

- (1) The employer must officially authorize personal use;
- (2) Personal use must be incident to use for law enforcement purposes (e.g. no vacation or recreational use);
- (3) The employer must be a governmental unit responsible for prevention or investigation of crime;
- (4) The vehicle must be used by a full-time law enforcement officer authorized to carry firearms, execute warrants and make arrests. The officer must regularly carry firearms, except when it is not possible to do so because of the requirements of undercover work.

5. Valuation of Personal Use of City-Owned Vehicle: The personal use (e.g. commuting) of a City-owned vehicle by an employee, other than a qualified non-personal use vehicle, will be valued using the IRC Commuting Valuation Rule. Under the Commuting Valuation Rule, personal use for commuting can be valued at \$1.50 each way or \$3.00 daily.

6. The City will use the formula below to determine the annual fair market value, as well as the basis for calculating the additional tax withholding requirements.

Annual Available Productive Days (52 weeks "times" 5 days week)	260
Less Unproductive Days:	
City Holidays	12
Annual Vacation	10
Annual Productive Day Basis	238
Commuting Value Per Productive Day (\$1.50 one-way or \$3.00 daily)	3
Annual Fringe Benefit Value Included on Form W-2	714
Bi-weekly Fringe Benefit Value	27.46
Additional Bi-weekly FICA Taxes Withheld	1.70
Additional Bi-weekly Medicare Taxes Withheld	0.40

7. In accordance with the IRC, the personal use (e.g. commuting) by an employee of a City-owned vehicle, other than a qualified non-personal use vehicle, is subject to federal income tax withholding and reporting requirements. The City will include the value of the personal use (e.g. commuting) of a City-owned vehicle as income, and report the value on Form W-2, Wage & Tax Statement in the year in which the benefit is received. Additionally, the City will withhold additional FICA and Medicare taxes on the value on a bi-weekly basis in accordance with the City's established prescribed payroll policies.

#### N. Preventive Maintenance and Repair

1. Employees who are assigned City-owned vehicles have the responsibility to properly maintain the vehicle in a safe operating condition. The Equipment Maintenance Division shall maintain and oversee the repair of all City owned vehicles and equipment.

1. Departments shall be notified of preventive maintenance and repair schedules.
3. Each department shall be required to deliver the vehicle to the maintenance shop for needed maintenance.
4. To save the City additional maintenance cost and downtime the driver shall perform the following checks:
  - a. Engine oil level
  - b. Cooling system fluid level
  - c. Power steering fluid level
  - d. Battery fluid
  - e. Tire pressure
  - f. Hose and belt wear
  - g. Automatic transmission fluid level
  - h. Tire condition
5. Drivers with City-owned vehicles that need repair shall contact the Equipment Maintenance Shop Foreman and schedule the repair. The shop will not make repairs without having a repair order. Vehicles not on the official vehicle list will not be repaired.
6. Employee-drivers who operate vehicles having a GVW of 26,001 pounds are required to perform a pre-trip inspection as per the state and federal CDL regulations.

#### O. Vehicle Fueling Program

1. The City operates two fueling stations within the City limits. The stations are located at the Public Works complex, 1100B Pennsylvania Ave, and Fire Station No. 2, 808 Washington Street West.
  - a. The stations are self-service and computer operated. To use the station the driver must have a personal fuel card and a vehicle fuel card. The personal fuel card is green in color and supplies the fueling computer with information about the driver. The vehicle card is white in color and supplies the fueling computer with information about the vehicle.
  - b. Employees are not allowed to share fuel cards. If a fuel card is not operating properly, the employee shall contact the Equipment Maintenance Division to have the card replaced. In order to prevent vehicle downtime, there are emergency cards located at the Street Department Dispatcher's office and the Equipment Maintenance Foreman's office.
  - c. Employees are not permitted to fuel personal vehicles at the City's fuel stations or use fuel from the City stations for personal use.

2. When a City-owned vehicle cannot be refueled at the City's refueling stations the driver may fuel the vehicle at a public station. The driver must have a receipt for the fuel purchase to be reimbursed for the use of personal funds. The City will NOT reimburse employees for fuel used in their personal vehicles.

3. The driver may, when traveling out of town, attain fuel credit cards from the City Manager's office. The credit cards may be used to purchase fuel, oil or fluids for City-owned vehicles only and may not be used to purchase other items.

P. Safety and Accident Reporting

1. It is the intent of the City to assure that all City-owned vehicles are operated safely. Each employee-driver shall be responsible for accident prevention, and shall obey all laws, ordinances, and rules governing the operation of a motor vehicle.

2. Incidents or accidents involving a City-owned vehicle (whether in motion, temporarily stopped, parked, or being loaded or unloaded) that result in personal injury and/or property damage shall be reported to the City's Accident and Safety Coordinator.

3. The employee-driver shall contact the Accident and Safety Coordinator and submit a City Accident Report within twenty-four (24) hours of occurrence of any accident or incident involving a City-owned vehicle. This accident report will be filed on City forms distributed by the Accident and Safety Coordinator.

4. The employee-driver shall comply with state and federal laws, and file a written report to state, county or city authorities in accordance with applicable law.

5. The employee-driver must stop and identify himself/herself to the other driver.

6. The employee-driver is not authorized to and shall not express opinion as to fault or liability, agree to any settlement on behalf of the City or sign any statement other than documents required by law enforcement authorities.

7. The City's Accident and Safety Coordinator shall complete a Vehicle Accident Summary from the information obtained from the employee-driver interview and police report. This information will be forwarded to the Accident and Safety Review Unit.

8. There is always the possibility that "third party" injuries or damages resulting from an accident in which an employee-driver is involved cannot be reasonably settled without a civil lawsuit. In such situations, the employee-driver may be named as a defendant along with the City (or sometimes without the City). The service of legal papers in such a suit may take several forms. It may be just a summons in which the employee-driver is summoned to appear at a certain court at a certain time to answer a complaint. It may be a summons and complaint in which the employee-driver is not only summoned to appear, but is also given the full particulars of the complaint against him/her. If served with a summons, the employee-driver shall immediately inform the City Attorney, the City's Accident and Safety Coordinator and his/her Department Head. Employee-drivers are required to cooperate in any suit brought by a third party whether

still a City employee or not. Failure to cooperate can and will void personal liability coverage in the event of judgment and/or constitute a basis for contribution or indemnity for any judgment paid by the City.

9. Chargeable accidents are accidents involving a City-owned vehicle in which the employee-driver failed to exercise reasonable precaution in some manner that contributed to the occurrence of the accident. The following are examples of driving errors considered chargeable:

- a. Following too closely;
- b. Driving too fast for road conditions;
- c. Driving under the influence of drugs or alcohol;
- d. Failure to obey signs and traffic lights;
- e. Turning improperly;
- f. Parking improperly;
- g. Passing improperly;
- h. Failure to yield;
- i. Careless or improper backing; and/or
- j. Speeding.

Q. Accident and Safety Review Unit

1. Whenever an employee-driver is involved in a vehicular accident while operating a City-owned vehicle, he/she may be asked to attend a meeting and/or provide information to the Accident and Safety Review Unit to clarify details concerning the accident.

2. The Accident and Safety Review Unit will also review accidents and/or traffic violations involving employee-drivers as they may effect drivers licensing, previous driving record and/or previous sentencing by a court of record for driving related violations.

3. The purpose of the Accident and Safety Review Unit is:

- a. To establish a fair and impartial review system for all accidents involving motorized equipment and employee-drivers with the primary objective being to improve the driving safety of employees operating City-owned motorized vehicles;

- b. To identify problem employee-drivers and unsafe conditions, and to pursue remedial steps to reduce damage to City-owned vehicles and prevent injury to City employees and the public;
- c. To establish responsibility for each vehicle accident;
- d. To establish eligibility of employee-drivers for safe driving recognition;
- e. To assist Department Heads in establishing uniformity of discipline; and
- f. To help lower insurance and vehicle repair costs.

4. The Accident and Safety Review Unit shall consist of the following:

- a. The Accident and Safety Coordinator;
- b. One Human Resources Representative to be appointed by the Director of Human Resources;
- c. The Fleet Manager;
- d. One City employee – to be appointed by the Director of Human Resources;
- e. One Police Department Representative to be appointed by the Chief of Police; and
- f. One Fire Department Representative to be appointed by the Fire Chief.

5. The Accident and Safety Coordinator will serve as the Chairperson and Secretary of the Accident and Safety Review Unit. The Accident and Safety Review Unit will normally meet on the first Tuesday of each month at 10:00 a.m. The meeting may be changed, altered, modified, and/or canceled at the discretion of the Accident and Safety Coordinator on a case-by-case basis.

6. The Accident and Safety Review Unit shall review all vehicle accident reports of City-owned vehicles and/or equipment where property damage, personal injury or death occurs. The employee-driver involved in such accidents shall be notified in writing by the Chairperson of the Accident and Safety Review Unit. The employee-driver may appear and give his/her information on the accident personally, and/or offer witnesses or other third parties with relevant knowledge of the incident being reviewed. The Accident and Safety Review Unit may also ask third parties to provide information.

7. Approximately five (5) working days prior to a regularly scheduled meeting, the Accident and Safety Review Unit Secretary shall notify all City personnel who are requested to attend the unit meeting via their Department Head. Considering the vast assortment of job responsibilities throughout the City, the following guidelines are suggested:

a. Personnel unable to attend an Accident and Safety Review Unit meeting at its regularly scheduled time shall notify the Secretary (Safety Director of Human Resources) twenty-four (24) hours in advance. He/She will be rescheduled to attend a meeting the following month. Unless authorized by his/her Department Head in writing, no individual will be excused from attending the Accident and Safety Review Unit meeting twice in succession.

b. All vehicle accident cases scheduled for discussion except those which have been deferred, will be reviewed whether or not the individual is present. The Department Head and the employee-driver will be notified of the review summary by the Accident and Safety Review Unit.

c. Any employee-driver whose accident is being reviewed may attend the Accident and Safety Review Unit meeting. Recommendations will be made based on the information available to the Accident and Safety Review Unit regardless of the employee-driver's attendance. It is, therefore, important that each accident report be complete and accurate.

8. In the event a member of the Accident and Safety Review Unit is involved in an accident either as a witness or as an employee-driver, they shall withdraw from participation in meetings reviewing their accident. The Chairperson of the Accident and Safety Review Unit shall appoint a substitute for that member from the ranks and non-uniformed full time City employees.

9. An accident will not be considered "non-chargeable" merely because all laws, ordinances, orders, or rules and regulations were obeyed or because the employee-driver had the right-of-way at the time the accident occurred.

#### R. Chargeable Accidents

1. Chargeable accidents are described in part, but are not limited to, the following:

a. Backing accidents. Responsibility for backing safety is entirely the employee-driver's. Backing is dangerous only if the employee-driver neglects to make sure the way is clear during the entire movement. Backing should be avoided as much as possible.

b. Intersection accidents. Stoplights, stop signs, or right-of-way are no protection against collision with traffic violators, funeral processions, fire, police, ambulance, or other emergency vehicles and accidents in intersections may be considered a chargeable accidents.

c. Pedestrian accident. Whether or not pedestrians have the right-of-way or are jaywalking is irrelevant and pedestrian accidents will be deemed avoidable. If further investigation uncovers extraordinary circumstances indicating that there was nothing the driver could have done to prevent the accident, then the accident might be deemed unavoidable.

d. Rear-End Collisions. Collisions with the rear of the vehicle ahead or when the vehicle to the rear strikes your vehicle as in cases of sudden stops at intersections, grade crossings, vehicular stoppage, and vehicles preparing to turn or park, or vehicles improperly parked or allowed to roll back are seldom non-chargeable. Most rear-end collisions can be avoided by foresight in controlling speed and allowing sufficient following distance.

e. Traffic lane encroachment accident. These accidents result from passing, weaving, squeeze plays, shutouts, or improperly merging into a line of moving traffic.

f. Accidents resulting from mechanical condition. These include accidents blamed on mechanical failure that reasonable and prudent attention could have foreseen but was not reported for repair. This also includes any accident blamed on mechanical failure as the result of an employee-driver operating a city-owned vehicle in excess of its mechanical limits or from mechanical failure that resulted from an employee-driver's rough or abusive handling.

g. Accidents with fixed rail vehicles. Trains always have the right-of-way because they run on fixed tracks. Fixed rail vehicles cannot dodge or maneuver and need greater braking distance than rubber tire vehicles. Any accident involving a fixed rail vehicle will be deemed a chargeable accident.

h. Collisions with stationary objects, non-collision accidents, unattended vehicles accidents and miscellaneous accidents. Accidents involving scraping or striking curbs, buildings, signs, trees, posts, bridges, parked vehicles, or overhead obstructions and accidents resulting from overturning, running off the roadway, or colliding with stationary objects sometimes are caused by taking emergency action to avoid another accident. However, most accidents of this type of accident will be considered chargeable.

i. Accidents Blamed on Adverse Weather Conditions. Rain, fog, snow, sleet, or icy pavement add more hazards to driving and make normal hazards worse. Accidents blamed on skidding or bad weather conditions are classified as chargeable if it is determined the employee-driver: was operating at a speed unsuitable for the conditions; failed to use available traction enhancing equipment; or was driving in severe conditions when it was not necessary to do so.

j. Parking Accidents. Unconventional parking location, including double-parking and/or failure to put out warning devices, generally constitute evidence for judging an accident chargeable. Rollaway accidents from a parking position normally will be classified as chargeable. This includes unauthorized entry into an unlocked and unattended vehicle, failure to properly block wheels or to turn wheels toward the curb to prevent vehicle movement.

2. The following shall constitute prima facie evidence that the accident in question was of a chargeable nature:



- a. Violation of federal or state law or City ordinance by employee-driver;
- b. City-owned vehicle striking another vehicle in rear end;
- c. City-owned vehicle striking a fixed object;
- d. Backing City-owned vehicle strikes another vehicle or object;
- e. Operation of City-owned vehicle at high speeds resulting in loss of vehicle control regardless of weather conditions; or
- f. Emergency vehicle operation where the driver failed to utilize due care and caution.

#### S. Other Employee-Driver Violations

1. The following violations may also be reviewed by the Accident and Safety Review Unit:

- a. An offense for which mandatory revocation of a West Virginia license is required upon conviction;
- b. Habitual reckless or negligent operation of a City-owned vehicle;
- c. Determination by another entity that an employee-driver is incompetent to drive a vehicle.
- d. Accumulation of points under the West Virginia DMV point system that may result in suspension or revocation of a driver's license;
- e. Any unlawful or fraudulent use of a driver's license.

2. In the event an employee-driver has been found responsible for two (2) or more accidents within a period of eighteen (18) months, his/her Department Head will be required to advise the board as to what actions are being taken to eliminate future accidents caused by the employee-driver.

#### T. Determining Chargeability

1. Following the presentation and discussion of the facts and circumstances surrounding matter before the Accident and Safety Review Unit, the Chairperson shall call for a vote of the Accident and Safety Review Unit to determine whether the accident was chargeable to the employee-driver.

2. If the majority of the Accident and Safety Review Unit votes that the accident was chargeable to the employee-driver, the Accident and Safety Review Unit shall recommend disciplinary action to the Department Head and provide a copy of their

recommendations to the City Manager. Based on the severity of the incident or accident, disciplinary action may include:

- a. Oral reprimand;
- b. Written reprimand;
- c. Suspension of driving privileges of City vehicles; and/or
- d. Termination of employment.

The Accident and Safety Review Unit may recommend the disciplinary action it deems fits the severity offense and is not bound by any progressive discipline policy or practice.

3. In addition to disciplinary recommendations, a summary of the proceedings of the Accident and Safety Review Unit shall be completed for each case and submitted to the applicable Department Head and City Manager. A copy of the accident report and the Accident and Safety Review Unit summary form shall be placed in the employee-driver's personnel folder.

4. The Department Head may reject or accept the recommendations of the Accident and Safety Review Unit and implement disciplinary action up to and including termination. If the Department Head rejects the Accident and Safety Review Unit's recommendations, he/she must meet with the City Manager who will make a final determination as to the disciplinary action to be taken.

5. Where applicable, rules and regulations governing non-uniform personnel rights of appeal shall apply. Any additional codified procedures and/or hearings shall be scheduled as deemed necessary.

U. Driving and Traffic Citations: The cost of traffic citations or any other resulting fines are the employee-driver's responsibility, and shall be paid immediately by the employee-driver. Any costs incurred by the City due to citations issued to an employee-driver shall be reimbursed by the employee-driver.

V. Insurance: All City-owned vehicles are automatically insured upon delivery under a blanket fleet policy. City-owned vehicles will carry a current proof of insurance card advising drivers of the name of the City's insurance carrier, the policy number, and related procedures. Proof of insurance cards shall be distributed annually by the Equipment Maintenance Department. The proof of insurance card shall be kept in the vehicle's glove compartment. The City is self-insured for collision, fire, theft and vandalism. Employee personal property is not insured. The City will not reimburse employees for loss of or damage to personal property, loss of or damage to personal vehicles, parking citations, traffic citations, or the cost of operating the vehicle other than the mileage reimbursement.

## 8.8 Email

A. The City of Charleston maintains an electronic mail system. This system is provided to assist in the conduct of business. The City of Charleston has established policies with regard to use, access, and disclosure of electronic mail messages created, sent or received by City employees, or employees of its affiliates, using the City's electronic mail system.

1. The E-mail system software and hardware is the City's property. Additionally, all messages composed, sent, or received on the electronic mail system are, and remain the property of the City.
2. The E-mail system is intended for the conduct of business at the City. Personal emails should be kept to a minimum.
3. The electronic mail system may not be used to solicit on behalf of commercial ventures, religious or political causes, outside organizations, or other non-job-related solicitations.
4. The E-mail system is not to be used to create any offensive or disruptive messages. Among those which are considered offensive or disruptive under this policy, are any messages which contain sexual inferences, racial slurs, hate speech, or any other comment that offensively addresses an employee's or other person's age, race, gender, sexual orientation, religious beliefs, political beliefs, national origin, or disability.
5. The E-mail system shall not be used to knowingly send (upload) or receive (download) copyrighted materials, trade secrets, proprietary financial information, or similar materials without prior authorization.
6. The City reserves and may to exercise at any time the right to review, audit, intercept, and access all messages created, received, or sent over the E-mail system. The contents of electronic mail properly obtained for legitimate business purposes may be disclosed within the City without the permission of the employee.
7. Notwithstanding the City's right to retrieve and read any electronic mail messages, such messages should be treated as confidential by other employees and accessed only by the intended recipient. Employees are not authorized to retrieve or read any E-Mail messages that are not sent to them. Any exception to this policy must receive prior approval from the Director of Human Resources or the City Attorney.
8. Employees may not gain, or attempt to gain, access to another employee's email messages without the latter's permission, unless authorized by the employee's Department Head for a legitimate City business purpose.
9. Security of messages can only be guaranteed within the City's Intranet. Confidential or sensitive business related e-Mail should not be sent to users outside of the City without being encrypted.

10. Any employee who discovers a violation of this policy shall notify the IS Department or their supervisor or Department Head.

11. Any employee who violates this policy or uses the E-Mail system for an improper or unlawful purpose may be subject to discipline, up to and including termination.

12. The City will determine the amount of message storage available to employees. When an employee reaches their individual maximum limit of storage, they may not be able to receive any new messages until the employee deletes unnecessary data attributable to their email account. Employees are encouraged to keep their Inbox, Deleted Items, and Sent Items cleaned-up in order to maximize available storage.

## 8.9 Internet

A. The City of Charleston has established this policy with regard to the access and use of the internet by its employees or employees of its affiliates, and vendors using the City's network system.

1. Use of the Internet by employees and duly authorized representatives is permitted and encouraged in cases where such use is both suitable for business purposes and supports the goals and objectives of the city and its departments. In such cases, the Internet is to be used in a manner that is consistent with the City's standards of business conduct and as a part of the normal execution of an employee's job responsibilities.

2. Consultants/Contractors may, with the approval of the City Manager, use the City's Internet for business purposes to the extent needed to complete a stated assignment.

3. Employees may make appropriate personal use of the Internet from the City facilities before and after business hours, during meal breaks, or during weekends or holidays. Some examples of appropriate personal use include:

- a. Performing nonprofit or community service;
- b. Participating in personal or civic associations;
- c. Conducting educational or research projects;
- d. Retrieving news stories and other information of general interest; and
- e. Pursuing reasonable hobby or recreational interests .

4. Using the City of Charleston facilities or equipment to make abusive, unethical or inappropriate use of the internet will not be tolerated and shall be considered cause for discipline, up to and including termination. Examples of abusive, unethical, or inappropriate employee internet use include, but are not limited to, the following:

- a. Conducting illegal activities;

- b. Accessing or downloading pornographic material;
- c. Gambling;
- d. Soliciting for personal gain or profit;
- e. Revealing or publicizing proprietary or confidential information;
- f. Representing personal opinions as those of the city;
- g. Making or posting indecent remarks or proposals;
- h. Uploading or downloading commercial software in violation of its copyright;
- i. Downloading any software or electronic files without reasonable virus protection measures in place; and/or
- j. Intentionally interfering with the normal operation of any City internet gateway

5. Use of the City's computer networks is subject to audit, inspection, and monitoring as deemed appropriate by the City. The City may maintain an audit log of every internet access transaction as deemed necessary or appropriate.

6. No export-controlled information or technical data that is not in the public domain shall be posted to public groups on the internet. In addition, City confidential, classified, or proprietary information shall not be transmitted over the internet without prior management approval and reasonable security measures in place.

## 8.10 Workplace Attire

A. The City of Charleston is a public service delivery organization and requires all employees to dress appropriately for a customer service environment and in a manner consistent with his or her work assignment. To maintain the confidence and respect of the citizens of Charleston and our core constituents, each employee must exercise good judgment and professional decision-making as they choose workplace attire. This policy establishes a set of guidelines generally applicable to all departments, but employees should direct any specific questions regarding appropriate attire to their Department Head. Department Heads shall have discretion to determine appropriate attire for employees in their department.

B. The following guidelines establish general expectations regarding employee attire. The list is not intended to include every possible scenario and employees are encouraged to communicate with their supervisor or Department Head regarding employee attire in each department:

1. Clothing, jewelry and accessories must not create a safety hazard for the employee or others.
2. All clothing must be in good condition without holes, excessive wear, or staining from use or design.
3. Clothing may not display implied or stated profanity.
4. Clothing may not display advertisements or logos for alcohol, tobacco products, and/or illegal, racial or sexual connotations.
5. Employees shall be clean, well-groomed, and demonstrate acceptable personal hygiene.
6. Appropriate footwear must be worn.
7. Appropriate safety and/or personal protective equipment must be worn, if applicable.

C. Direct Service Delivery Assignments/City Uniforms

1. Employees working in direct service delivery assignments such as public works, parks & recreation, construction, building maintenance, parking system and civic center or other operational/field capacities may be required to wear uniforms or other specific attire while performing official duties.
2. Employees are expected to maintain city uniforms in good condition, ordinary wear and tear excepted, and to comply with his/her department and/or work unit uniform policy and/or other clothing guidelines.

D. Administrative Assignments

1. The City supports "business casual" attire for those employees working generally in an office/administrative environment. Business casual is a form of attire that is more traditional and typically includes slacks, khaki pants, polo or colored shirts, skirts, and blouses as the case may be. Department Heads retain the right to require more or less formal attire based on the particular operating needs of the department or division.
2. The City also supports "casual" dress on Fridays or the last workday of a shortened workweek. Casual dress is a form of attire that is more relaxed such as jeans (good condition with no rips or tears) and polo or golf shirts. Department Heads retain the right to require more or less formal/casual attire based on the particular operating needs of the department or division.
3. Department Heads shall retain the right to consider unique situations and may approve alternate employee attire based on business/operational needs or other personal accommodations.

## E. Consequences

1. Employees are expected to abide by the guidelines of the workplace attire policy and his/her department regulations, and shall be held accountable for decisions that do not meet the guidelines as may be determined by his or her Department Head. When an employee's attire does not meet reasonable expectations, and in most circumstances prior to any discipline, the Department Head or immediate supervisor shall discuss the matter with the employee to ensure that the employee understands the policy and its application.
2. If the employee refuses to modify attire in violation of this policy, and/or otherwise knowingly or repeatedly fails to comply with the workplace attire policy, the Department Head or supervisor may initiate disciplinary action up to and including termination.

## 8.11 Social Media & Public Speech

A. The City respects and honors the First Amendment rights of its employees to express themselves as citizens on matters of public concern and to post personal comments on public Internet and other sites (e.g., an employee's personal website, blog, Facebook, Twitter or similar social networking site).

B. Employees shall not make statements or postings to City owned or operated websites, blogs, facebook, twitter, or other City owned/maintained social networking media site that disrupts or interferes with the City's ability to provide effective and efficient services to the public. Similarly, employees shall not use other City owned resources (e.g. telephone, cell phone, computer, fax machine, email or Internet) to make such posts. Employees are subject to discipline up to and including termination for such comments or postings made in violation of this policy.

C. Examples of communications or online statements or postings for which an employee may be disciplined include, but are not limited to statements or postings that:

1. Diminish/discourage morale or harmony among co-workers;
2. Interfere with any employee's job performance;
3. Interfere with the operation of the City's business;
4. Disclose confidential or sensitive information;
5. Have a detrimental impact on working relationships; or
6. Depict the City or any employee in

## 8.12 Secret Recordings of Employees

A. It shall be a violation of this policy for any City employee to record conversations, whether in person, by telephone, or by any similar communication device, through the use of any audio, video, or other type of recording device (including a cell phone, computer, or any similar electronic device) without notifying and receiving prior approval from all parties to the conversation, or unless prior approval is received from the City Manager, the Human Resources Director, and/or the City Attorney for a lawful and legitimate purpose. The purpose of this policy is to:

1. Foster open dialogue and communication between employees at work;
2. Facilitate spontaneous and honest discourse, especially when sensitive or confidential matters are being discussed;
3. Eliminate the chilling effect to expressing views that may occur when one person is concerned that his or her conversation with another is being secretly recorded.

B. Notwithstanding, employees may use various ways to memorialize interactions with others, including but not limited to, taking notes during conversations, memorializing the conversation afterwards, having another employee or a representative present during interactions if and when appropriate. This policy is not intended, nor shall it be interpreted to conflict with any superseding federal or state laws. This policy shall not apply to Charleston Police Department personnel during the performance of law enforcement related duties.

C. Violation of this policy may result in discipline up to and including termination.

### 8.13 Smoking

The City of Charleston supports and promotes a smoke-free environment. On-duty employees are prohibited from smoking in any City owned and/or operated building, vehicle or equipment. Employees who choose to smoke must abide by restrictions established by his or her Department Head and the Human Resources Department regarding the conditions of outdoor smoking including location(s) and timing.

### 8.14 Inclement Weather

A. The City strives to provide continued and uninterrupted service to the citizens and visitors of Charleston. The City generally maintains normal office hours during inclement weather and employees are expected to report to work as normal to the extent they are able to do so without posing a safety risk to themselves or others.

B. Employees who are concerned about travel and safety due to inclement weather may take appropriate accrued leave with the approval of their Department Head.

C. Essential personnel are expected to report to work unless previously approved for authorized leave by his/her Department Head. Failure of an employee to report to work or otherwise notify his/her Department Head may result in disciplinary action up.



## 8.15 Employee Identification, Access & Time Clock Badge

A. Full-time City employees are issued an identification/access/time clock badge depicting his/her name, picture, and assigned department. It is the responsibility of employees to maintain possession of their id badge. If equipped and applicable, the identification badge is also an employee's means of accessing their assigned City parking garage, fitness center, locker room, time-clock, and potentially afterhours access to his/her work location, building, or office.

B. Employees required to use an identification badge for clocking/punching in and out to work and for reporting hours worked may be subject to disciplinary action if they forget or are not in possession of their id badge. Id badges used for clocking/punching are specifically assigned to an employee and are to be used exclusively by that employee. Any form of "buddy punching" or clocking in or out for a coworker is not permitted and may result in disciplinary action.

C. All employee identification, access and/or time clock badges are issued through the Office of Human Resources. A broken or inoperable badge should be promptly returned to Human Resources for replacement. Employees will not be financially responsible for the replacement cost of worn out, broken, or inoperable badges. If an employee loses their badge, they may be responsible for the replacement badge cost. Upon separation, an employee will immediately return their id badge to his or her Department Head or to the Human Resources Department.

## 8.16 Secondary Employment

A. Employees may choose to obtain secondary employment in addition to their employment with the City, provided:

1. The secondary employment does not involve a conflict of interest or otherwise conflict with the state law, City Code, or the City's Personnel Rules and Administrative Policies;
2. The secondary employment does not interfere or conflict with the employee's performance, attendance, timeliness, ability to work overtime or emergency hours; and/or
3. City resources (telephone, email, internet, computer, copy machine, fax machine, cell phone, vehicle or other City equipment, materials or supplies) may not be used to benefit secondary employment.

B. If the City determines that an employee's secondary employment interferes or conflicts with his/her City employment, or that the employee has used City resources for the purpose of secondary employment, the City may reduce the employee's duties or hours with the City, or separate the employee from City employment.

## 8.17 Updating Personal Information

- A. It is the responsibility of each employee to promptly notify the Office of Human Resources of any changes in personal information such as mailing address, phone number, marital status, dependents, or emergency contact. Updates can be emailed to [contactinfoupdate@cityofcharleston.org](mailto:contactinfoupdate@cityofcharleston.org)
- B. Certain changes in circumstances may require the completion of new beneficiary and/or benefit enrollment forms.
- C. The City shall not responsible for omissions or errors, or any consequences resulting therefrom, due to the failure of an employee to update his/her personal information.

## 8.18 Personal Telephone Use

- A. City telephones, including city provided cellular phones, are intended for conducting official City business. Employees should keep personal use of city phones to a minimum.
- B. In order to provide efficient and effective service, and to accommodate and serve our core constituents, employees should keep personal cell phone use, including text messaging, to a minimum during working hours. Excessive use of personal cell phones during an employee's work hours can create a distraction, cause a disruption in operations and/or impact the City's ability to serve the public. Personal cell phone use in violation of this policy may result in disciplinary.
- C. This policy is not intended to restrict personal cell phone use during an employee's lunch hour, break-time or after work hours.

## 8.19 Sexual Harassment, Workplace Violence and Discrimination

- A. Statement of policy: The City expects and promotes a work environment that is free from fear, violence, intimidation, hostility, harassment or other unwelcomed/unlawful offenses which interfere with employees and work performance. Sexual harassment and discrimination violate state and federal law, in addition to the city's laws and policies. The City has a zero tolerance policy for sexual harassment or unlawful discrimination. Violence, harassment, and discrimination of any manner (e.g., verbal, physical, visual) or of any type (e.g., sexual, sexual orientation, gender, racial, ethnic, religion, national origin, age, and disabilities) is not tolerated, and any employee violating this policy shall be are subject to severe disciplinary action up to and including termination. Violence is self-explanatory. Discrimination and harassment can take many forms. While it is not possible to list all behaviors that may constitute harassment and/or discrimination, the following are examples of behavior, which may constitute harassment and/or discrimination depending upon the totality of the circumstances, the severity of the conduct and its pervasiveness.
- B. Examples of prohibited conduct:
  - 1. Unwelcome sexual advances whether they involve physical touching or not.

2. Requiring or suggesting that submission to unwelcome sexual advances by a supervisor or other employee is either explicitly or implicitly a term or condition of an individual's employment.
3. Using submission or rejection of unwelcome sexual advances by an individual as the basis for employment decisions.
4. Conduct that has the purpose or effect of substantially interfering with an individual's work performance by creating an intimidating, hostile or offensive working environment.
5. Displaying sexually suggestive or offensive objects, pictures, computer graphics or cartoons.
6. Unwelcomed leering, whistling, brushing against the body, sexual gestures, suggestive or insulting comments.
7. Inquiring into one's sexual experiences, or discussion of one's sexual activities.
8. Asking an employee for a date once that person has expressed no interest in starting or continuing a personal relationship.
9. Making slurs or jokes based on sex, race, religion, sexual orientation, national origin, age, disabilities, or ethnic background to or about employees.
10. Failing, or an unwillingness or inability to demonstrate good faith efforts to get along with employees of the opposite sex, or of another race, religion, sexual orientation, national origin, or disability, or refusing to work with such persons because of these reasons.
11. Posting derogatory graffiti, cartoons, or script on City/workplace bulletin boards, computer screens, chalkboards, walls, locker rooms, or in City vehicles or failing to remove or arrange for the removal of such prohibited graffiti, cartoons, script or illustrations.
12. Threatening or intimidating a subordinate employee at any time, on or off duty.
13. A supervisor or employee observing or condoning, through actions or inactions, prohibited harassment or discrimination by failing to properly report it to the designated management authorities. A supervisor found to be in violation of this policy may be subject to more severe discipline.
14. A supervisor denying or granting an employee with whom he or she currently has or has had a personal relationship an atypical amount of preferential job assignments or of work related benefits.

C. Discrimination in the performance of duties: Employees shall not unlawfully discriminate in words, deeds, gestures, performance of jobs, duties, tasks and delivery of services to the public.

D. Reporting requirements: All employees, and particularly supervisors and managers, have a responsibility for keeping the work environment free of harassment and discrimination. If any employee believes that he or she has been subjected to harassment or discrimination, the employee should:

1. Immediately make it clear to the other individual that such behavior is offensive to them and request that the individual immediately cease and desist such conduct. If the individual's behavior continues or if the conduct reoccurs, the employee shall file a written complaint, with his or her Department Head, the Director of Human Resources, or the City Manager. This does not preclude the employee from contacting the city or state human rights commission, the EEOC, or from filing a complaint.

2. Any supervisor, Department Head, or other employee who receives a complaint of sexual harassment or unlawful discrimination shall report the same directly to the Director of Human Resources; provided that, if the alleged violator/harasser/aggressor is a sworn police officer, the Director of Human Resources shall forward the complaint to the professional standards division of the police department. If the employee's supervisor is the harassing/discriminating party, the employee may report misconduct directly to their Department Head or to the Director of Human Resources. If the Director of Human Resources is the harassing/discriminating party, the employee may report misconduct directly to the City Manager.

3. The Director of Human Resources shall have the duty to 1) advise the complainant of the meaning and importance of the policy and the city's commitment to prevent retaliation; 2) make written notes of the allegation; 3) explain the procedure for handling the complaint; 4) advise the complainant that the complaint will remain confidential to the extent practicable to meet the goals of this policy and permitted by law. If the accused is a sworn police officer, the Director of Human Resources will coordinate with the Chief of Police or his or her designee to achieve these duties.

4. Employees who become aware of sexual harassment or unlawful discrimination, whether by witnessing the incident or being told of it, have an affirmative responsibility to report it immediately. The Director of Human Resources, or where the accused is a sworn police officer, the Director of Human Resources in cooperation with the Chief of Police or his or her designee, will determine in each instance if immediate action is necessary to defuse any situation and will direct what, if any, immediate steps are to be taken.

E. Confidentiality policy: Information generated during the course of informal reviews and formal investigations necessary for enforcing this policy will be given the full extent of confidentiality to the extent practicable to meet the goals of this policy and permitted by law. The city will strive to maintain such confidentiality. Any person who, without authorization from the Director of Human Resources or the Director of Human Resources and the Chief of Police or his or her designee if the accused is a sworn police officer, knowingly discloses such information, will be subject to discipline up to and including termination.

F. Retaliation prohibited: Retaliation by a supervisor or fellow employee against an employee who has reported, or has made an effort to report harassment or unlawful discrimination and/or who is cooperating with an authorized investigation thereof will not be tolerated. While it is not possible to list all behaviors that may constitute retaliation, the following are examples of conduct which may constitute retaliation: any act of reprisal including internal interference, coercion and restraint by a city employee, including any supervisory employee, or by one acting on behalf of the city. The recommended discipline for retaliation will be severe and may include termination from employment.

G. Investigation of harassment/unlawful discrimination complaint: All reported allegations will be promptly investigated in a fair and expeditious manner by the Director of Human Resources and/or his/her designee or by the professional standards division where the accused violator/harasser/aggressor is a sworn police officer. The investigation will include a private interview with the complainant and with witnesses, if any. The accused will be interviewed. The complainant will be given advance notice of the date when the accused will be informed about the complainant's accusations. The investigator will determine whether there have been other complaints of sexual harassment or discrimination made to the city by the complainant or about the accused. A written report for each investigation which contains the identification of the complainant and the accused, complainant's written statement of the complaint, if any, the accused response to the complaint, the findings and a summary of facts that constitute a basis for those findings, and the recommendation for resolution will be prepared and kept by the City. Absent extenuating circumstances, the city will complete the investigation within 60 days. If the investigation cannot be completed within 60 days, the Director of Human Resources will advise the accused violator/harasser/aggressor and the complainant. When the investigation is completed the complainant and accused will be notified of the results of the investigation.

H. Corrective and/or disciplinary action: If it is determined that inappropriate conduct has been committed by an employee, the degree and extent of action taken will be commensurate with the seriousness of the offense, the circumstances giving rise to the conduct, the deterrent effect on other employees, and the employee's complete work history and performance. Corrective action can take a variety of forms, including remedial training, counseling, and job reassignment in addition to disciplinary action up to termination.

I. Policy not intended to limit rights of city: While this policy sets forth the goal of promoting a workplace that is free of harassment and unlawful discrimination, in any form, this policy is not designed nor intended to limit the city authority to discipline or take remedial action for workplace conduct which it deems unacceptable, regardless of whether that conduct satisfies the legal definition of sexual harassment, unlawful discrimination or workplace violence. Furthermore, by establishing this policy, the city does not agree to assume any liability for individuals who commit acts of sexual harassment against another employee or any other person. Individuals who engage in harassment, unlawful discrimination, and/or violence may be personally liable for such actions.

## 8.20 Confidentiality

### A. Confidential Information

1. During performance of their authorized, assigned and lawful duties for which hired, employees may have access to confidential, sensitive and/or private information (hereafter "confidential information"). For purposes of this Policy, "confidential information" means any fact, matter, document, or file in any form (whether delivered verbally, in a writing, by electronic delivery or otherwise), disclosed or known as a consequence of employment and not generally known or available to the general public. Confidential information may also include, but is not limited to, personnel matters, financial records, tax records, legal matters, and/or any other matter involving the business of the City that is not generally known and does not constitute public information. Employees are required to understand that they may hear conversations, see written documents, or observe things that are not intended for public dissemination. This Policy shall not be construed to prevent employees from discussing any public matter or the general nature of his/her authorized, assigned and lawful work as an employee of the City. However, employees will not disclose or otherwise reveal any confidential information without authorization.

2. Employees shall not use any confidential information, or any information derived from confidential information, for personal purposes or gain, or otherwise use such information outside of the course of employment with the City.

3. During their employment with the City and after separating employment for any reason, employees will not disclose to, discuss or share with any unauthorized person, group or department, inside or outside of the City, any confidential information, in any form, except to the extent such disclosure, discussion or sharing is authorized by law or by an immediate supervisor or Department Head. The obligations of confidentiality set forth herein shall survive separation from employment with the City for an indefinite period.

4. Employees will not copy or remove from the City any materials containing confidential information, except to the extent that he/she is given direction to do so by his/her immediate supervisor or Department Head.

5. Employees will not look at, examine, or retrieve any document, file, or database developed or maintained by the City, except those to which he/she is authorized to access and which are necessary for him/her to access in order to perform authorized and assigned job duties.

6. Employees will not discuss or share with any unauthorized person, group or department, inside or outside of the City, any conclusions that are drawn from confidential information if discussing or sharing those conclusions would reveal any confidential information.

7. If an employee is ever uncertain whether a particular fact, matter, document, or file constitutes confidential information or is subject to this Policy, he/she will resolve all uncertainties in favor of preserving the confidentiality of that information, and will seek clarification from his/her immediate supervisor or Department Head before engaging in any conduct that could jeopardize the confidentiality of the information. If the

Department Head or supervisor have questions regarding confidential information, he or she should contact the Director of Human Resources or the City Attorney.

8. Employees will immediately notify their immediate supervisor or Department Head if they become aware of any breach of confidentiality, either intentional or accidental, regardless of whether they are personally involved.

9. Upon an employee's separation from employment with the City or as may be requested by their immediate supervisor or Department Head, an employee will promptly return all material containing confidential information to his/her immediate supervisor or Department Head and will not retain any copies thereof.

10. Any violation of the terms or conditions of this Policy may subject an employee to disciplinary action, up to and including termination.

## 9. Discipline and Grievance

### 9.1 Conflict Resolution

A. The City promotes an inclusive, professional, friendly, and diverse working environment. However, the City recognizes that differences of opinions and interests may arise in the workplace from time-to-time. It is the responsibility of every employee to make every effort to communicate effectively, exercise good judgement, and attempt in good faith to resolve conflicts or disputes with reason, professionalism, and compassion. The City promotes and encourages the resolution of conflicts in a fair, professional, peaceful, and efficient manner.

B. Department Heads and immediate supervisors will exercise all reasonable efforts to facilitate fair and timely resolution of work-related conflicts. In order to provide employees an effective and acceptable means of bringing conflicts to management's attention, there is an established problem resolution procedure that is to be used by all employees:

1. Employees are encouraged to speak with the individual with whom they are having the conflict in an open, candid and courteous manner. Many times conflicts arise due to simple misunderstandings and/or miscommunications.

2. Employees should speak with their Department Head and/or immediate supervisor if speaking with the individual with whom they are having the conflict does not work or is unlikely to resolve the conflict under the circumstances, or would potentially place an employee in an unsafe situation. If a work-place conflict is with the employee's Department Head, the employee should contact the Director of Human Resources.

### 9.2 Discipline

A. In most circumstances, employees perform as expected and demonstrate conduct that reflects credit upon themselves, their co-workers and the City of Charleston. When employees fail to conduct themselves in such a manner, it may become necessary to formally intervene to

correct the behavior. This policy provides guidance for effective problem resolution and may be applied to all employees at the reasonable discretion of each Department Head on a case-by-case basis. The overall objective of this policy is to develop and implement solutions to problems as quickly and effectively as possible so that attention is primarily focused on providing quality service to the citizens and maintaining a positive work environment for all.

B. Expectations: The City expects and anticipates that employees will behave responsibly and consistent with work-place expectations, but recognizes that, on occasion, it may be necessary to take action to correct or prevent inappropriate or unacceptable behavior. Maintaining effective working relationships requires all employees to be aware of and abide by City rules and policies and departmental rules and regulations. To the extent possible, the City will resolve underlying causes of problems through communication, training, and counseling.

C. The City distinguishes between misconduct and unsatisfactory performance (with the exception of acts of gross negligence) by defining unsatisfactory performance as the inability to meet performance expectations due to lack of skills, training, education, non-work related difficulties, or other similar circumstances. Unsatisfactory performance will typically be addressed through the City's performance management program which identifies the specific actions required when an employee demonstrates overall unsatisfactory performance. Misconduct is generally defined as intentional and/or willful disregard for the City's standards of conduct or City Code and policy and/or departmental rules. Employee misconduct will typically be addressed through a progressive discipline system.

D. Progressive Discipline: Generally and when applicable under the circumstances, the City follows a progressive discipline approach, establishing a set of guidelines rather than fixed disciplinary actions or requirements. Progressive discipline encourages and provides an opportunity to employees to become more productive and to conform their behavior to City expectations and standards. In most cases, an employee will have the opportunity to correct problems before more serious disciplinary actions are necessary. The level of disciplinary action is dependent upon the type and extent of the misconduct and the circumstances surrounding the misconduct. Accordingly, it is not required that a progression of disciplinary actions, from less stringent to more stringent, always be followed. The City reserves the right and discretion, by and through its Department Heads, Director of Human Resources and City Manager, to administer disciplinary action up to and including termination appropriate to the misconduct and will take into account the overall situation before a final decision is made.

E. Disciplinary Actions: The Office of Human Resources will provide support and assistance to Department Heads and supervisors/managers in developing approaches to disciplinary problems which first and foremost serve the City's interests and policy objectives, but also take into account the value and personal considerations of each employee. The following actions describe the disciplinary system established as a means to address employee misconduct or unacceptable behavior/performance:

1. Verbal Warning: A discussion between an employee and Department Head and/or immediate supervisor to talk about an incident of misconduct or unacceptable behavior/performance and the corrective action expected.



2. **Written Performance Correction Notice:** A Department Head or supervisor may issue a Performance Correction Notice to an employee in a manner and method established and prescribed by the Director of Human Resources. A copy of the notice should be promptly forwarded to the Office of Human Resources. The notice should include, but is not necessarily limited to:

a. A detailed and specific description of the incident of misconduct or unacceptable behavior/performance.

b. A behavior/performance improvement plan (PIP) with SMART (Specific, Measurable, Achievable, Realistic and Timely) goals describing what the employee must do to bring behavior/performance to an acceptable and successful level.

c. The potential or likely consequences of failing to improve behavior/performance to an acceptable level.

3. **Suspension:** A Department Head may suspend an employee in his/her department for a period up to 15 days (120 hours) without pay after consultation with the Director of Human Resources. A copy of the suspension notice should be promptly forwarded to the Office of Human Resources.

4. **Termination:** A Department Head may terminate an employee for good cause and for any lawful reason after consultation with the Director of Human Resources and/or City Manager.

F. **Misconduct:** Examples of misconduct and/or inappropriate behavior/performance are listed below. The examples are not intended, nor should they be construed, as an all-inclusive list, but are rather intended as general guidelines to assist Department Heads and supervisors in identifying misconduct and administering discipline in a fair and consistent manner. The specific circumstances of each case shall be considered prior to a determination of discipline. Examples of misconduct or inappropriate behavior/performance shall include, but are not limited to:

1. Rudeness, in person or on the telephone, to the public or to city officials or employees;

2. Careless workmanship or careless provision of services;

3. Careless use of City owned property resulting in possible or actual damage;

4. Tardiness or absenteeism;

5. Absence from work station, work unit, department, or other assigned location without permission;

6. Horseplay, pranks or non-work related activities during working hours;

7. Inappropriate, obscene, abusive or offense language;

8. Inappropriate use of a City owned or leased vehicle or equipment, including conviction of a minor moving violation;
9. Conduct having an adverse effect on the City's interest or on the confidence of the public in City government, with or without serious consequences;
10. Inappropriate use of City electronic equipment or systems including, but not limited to, the Intranet, Internet, e-mail systems, or cell phones;
11. Refusal to follow instructions of a Department Head or supervisor or other forms of insubordination;
12. Conduct constituting gross negligence or reckless behavior;
13. Unauthorized use of City documents, records or confidential information;
14. Secretive or surreptitious audio or video recording of any other City employee, supervisor or Department Head without proper authorization from the City Manager, Director of Human Resources and/or City Attorney;
15. Willful failure of an employee to fulfill job duties or responsibilities to an extent that the failure likely could or actually does cause harm to any person or substantial damage to loss of City property;
16. Violation or disregard of established safety rules, including failure to wear personal protective equipment and/or other required safety gear;
17. Dishonesty, deliberate misrepresentation, or falsification or concealment of a material fact in connection with any official act or document;
18. Theft, actual or attempted;
19. Threatened or actual physical violence or verbal abuse;
20. Use, possession, or being under the influence of alcohol or drugs during work time; except medication prescribed by a doctor, taken in accordance with the doctor's instructions and not in a manner that jeopardizes the safety of the employee, other employees or the public;
21. Disorderly conduct while on City premises or on City business;
22. Sleeping in the workplace (except with permission e.g., as may be the case from time to time for employees assigned to 24-hour shifts);
23. Off-duty misconduct that if convicted would constitute a felony, or other behavior of such severity that the employee is unable to fulfill job responsibilities, and/or there is an adverse effect on City operations or the workplace environment; and/or that reflects

negatively on the city and/or interferes with the City's ability to maintain the trust and confidence of the public;

24. Violation of the Code of Conduct;

25. Sexual, racial, or any other form of harassment or discrimination;

26. Criminal or illegal activity that adversely affects the safe and effective operation of City business;

27. Unauthorized use of City property for personal benefit;

28. Violation of state law, City Code or policy, or departmental rules or regulations;

29. Improper or unlawful political activity;

30. Failure to report accidents/injuries in accordance with City policy.

### 9.3 Grievance Process

#### A. General Information; establishment of process; Administrative Law Judge:

1. The City supports prompt and fair methods for resolving grievances of its employees. Employees whose grievances, as defined herein, result from work situations deserve and have the right to submit such grievances for orderly resolution with freedom from discrimination, coercion, recrimination, restraint, retaliation, or reprisal. In addition, resolving grievances quickly and equitably promotes effective employer-employee relationships and is in the mutual interests of all affected parties.

2. This policy sets forth the general procedures for the administration and resolution of all grievable employment disputes, as defined herein. Reasonable efforts will be made to resolve employee grievances on an informal basis at the Department Head level if possible.

3. All steps of the grievance procedure shall be in writing on forms established and prescribed by the Human Resources Department and available in on the City's website, in the Department of Human Resources, and the City Clerk's Office. Personal face-to-face meetings are encouraged and recommended at all steps of the process. At each step in the process, the grievant should be prepared to present his or her view of the events which gave rise to the grievance.

4. For the purpose of hearing and issuing decisions on Step 3 grievances, the Director of Human Resources, in consultation with the City Attorney, will retain and compensate for work performed reviewing, hearing, and issuing decisions on grievances, subject to budgetary appropriation, one or more administrative law judge(s). Administrative law judge(s) shall be licensed to practice law in the State of West Virginia for at least seven (7) years, and shall have substantial legal experience with employment law. In order to

provide City employees with notice, convenience, and consistency, the Director of Human Resources in consultation with the City Manager and City Attorney, will develop and coordinate regular times and the place for hearings of grievances by administrative law judge(s) (e.g., the third week of each month in the A.V. room). Administrative law judge(s) may be retained as needed, on a case-by-case basis.

5. Persons who may normally be present in grievance meetings are the grievant, the Department Head, the Director of Human Resources, and any witnesses to the extent reasonable under the circumstances. At a hearing before an administrative law judge, the City Attorney or his or her designee and witnesses, if any, will also be present. At a hearing, witnesses shall usually be present only while actually providing testimony. When witnesses are permitted to remain in the hearing for one side, witnesses for the other side shall also be permitted to remain.

6. At the third step of the procedure, the grievant may choose to have an attorney or other legal representative of his or her choice present to provide assistance. If legal counsel represents the grievant, all costs for employee representation shall be borne by the employee. The grievant's representative or attorney should be identified by the employee in writing at the time he or she presents the grievance in writing at the third step.

7. As a grievance moves through the steps of appeal, an employee may not materially change the basic nature or content of his or her grievance after it is reduced to writing, nor may he or she change the relief sought. Further, an employee may not knowingly withhold available evidence from the early steps of the grievance procedure and then seek to introduce such evidence for the first time during the final steps of the grievance procedure. When processing any grievance to a higher step in the procedure, the grievant should recognize that each step will be handled as a hearing de novo in which the original dispute is considered anew. The Director of Human Resources (Step 2) and the administrative law judge (Step 3) will decide among three courses of action:

- a. To affirm the Department Head's original decision;
- b. To reverse the Department's Head's original decision; or
- c. To modify the Department Head's original decision.

8. Except in instances where grievances might arise within the Human Resources Department, the Director of Human Resources or his or her designee will act in an unbiased manner and in the best interest of the City and the public throughout the grievance process. The Director of Human Resources will be responsible for designing all necessary forms, making City policy interpretations which might become necessary, and issuing additional guidelines for the orderly administration of employee grievances in accordance with this Grievance Policy. As provided within this Policy, time limitations are designed to be fair and reasonable to both the grievant as well as to those individuals who will be involved in the grievance process.

9. The grievance process shall not preclude or limit an employee's ability at any point in time to pursue legal or similar action before any applicable administrative agency or court of law.

B. Employees who may file grievances: Only non-exempt employees holding full-time City positions, who have completed their initial probationary employment period, are eligible to file a grievance.

C. Disciplinary actions subject to grievance proceedings: The City retains exclusive and sole responsibility to manage the affairs and operations of government to ensure efficient, effective and continued municipal services. Department Heads shall have the authority and the reasonable discretion to manage the affairs and operations of his/her department. Accordingly, only the following actions shall be subject to the grievance process.

1. Disciplinary actions resulting in a suspension without pay.
2. Disciplinary actions resulting in the termination of employment.
3. Involuntary transfer to a lower pay grade that results in an immediate loss of pay.

D. Time Periods:

1. All grievances must be processed through the steps of successive appeal and within the specified time limits, except as noted within this policy. For purposes of this Policy, all time limits are stated in terms of "calendar days." If the last day of any time limit falls on a Saturday, Sunday, or observed City holiday, the following regular weekday shall be considered the last day. Time frames may be extended by mutual agreement of the Director of Human Resources and the grievant, or with the permission of the administrative law judge when applicable.

E. Relief Sought:

1. Once an employee reduces his or her grievance to writing, he or she must include on the appropriate form the specific relief he or she is requesting through the use of the grievance process. The relief sought shall be personal to the grievant (e.g., the relief sought may not be the dismissal or discipline of another employee). The relief sought must be consistent with the matters to be heard under this procedure and may not be in conflict with the management rights section of this policy.

2. The grievant may accept the requested relief or any other satisfactory resolution of the grievance at any step of the process and his or her grievance will be considered resolved. However, prior to a hearing before an administrative law judge, if the employee finds any part of the relief or proposed resolution unacceptable, he or she must advance the entire grievance and relief sought to the hearing. The decision of the Administrative Law Judge shall be final and binding. Appeals of an administrative law judge's decision shall be made in the Circuit Clerk of Kanawha County and may be made by the grievant or the City.

F. Steps of the Grievance Process:

1. Step 1 – Department Head Level:

a. An employee who has a grievance shall reduce the grievance to writing on the designated and prescribed form(s) and file a Step 1 Grievance with the Director of Human Resources or his/her designee within five (5) calendar days of the event giving rise to the grievance. The Director of Human Resources shall forward a copy of the grievance to the Department Head.

b. The Department Head will discuss the grievance with the Director of Human Resources and will then hold a meeting with the employee within ten (10) calendar days from the date of the grievance filing. The time to meet may be extended by mutual consent of both parties.

c. Within ten (10) days after meeting with the grievant, the Department Head will issue, by hand-delivery when reasonably possible, his/her decision to the employee in writing. The Department Head will also send a copy of his/her decision to the Director of Human Resources. The time to respond may be extended by mutual consent of both parties.

2. Step 2 – Human Resources Level:

a. If the employee does not agree with the Department Head's Step 1 decision, he/she may appeal the Department Head's decision to the Director of Human Resources by filing a Step 2 Grievance with the Director of Human Resources on the designated and prescribed form within five (5) calendar days from the date of receipt of the Department Head's written decision. Unless facts demonstrate otherwise, the date of receipt will be presumed to be the date identified on the Department Head's written decision.

b. The Director of Human Resources or his/her designee will hold a meeting with the employee to hear the facts of the grievance within ten (10) calendar days of the date on which the Step 2 grievance is filed. The time to meet may be extended by mutual consent. The Director of Human Resources may include the Department Head in the meeting if deemed reasonable or necessary by the Director of Human Resources, unless objected to by the grievant. The Director of Human Resources will also discuss the grievance with the Department Head and may consult the City Attorney prior to the issuance of a decision.

c. Within ten (10) days after meeting with the employee, the Director of Human Resources or his/her designee will issue a decision in writing. The time to issue a decision may be extended by mutual consent. As part of his/her authority, the Director of Human Resources may:

(1) Affirm the Department Head's Step 1 decision;

(2) Reverse the Department Head's Step 1 decision; or

(3) Modify or change the Department's Head's Step 1 decision.

If (1) or (2) is the decision of the Director of Human Resources, the Director of Human Resources will consult with the City Manager prior to issuing a decision.

3. Step 3 – Administrative Law Judge Level:

a. If the Director of Human Resources' Step 2 decision is not acceptable to the grievant, he or she may appeal the decision to an Administrative Law Judge by filing a Step 3 Grievance with the Director of Human Resources on the designated and prescribed form within five (5) calendar days from the date of the filing of the Director of Human Resources' decision. Unless facts demonstrate otherwise, the date of filing will be presumed to be the date identified on the Department Head's written decision. The administrative law judge will conduct a hearing within thirty (30) days of receipt of the Step 3 grievance and shall decide among three courses of action:

(1) Affirm the Department Head's original decision;

(2) Reverse the Department's Head's original decision; or

(3) Modify the Department Head's original decision.

b. At the hearing, the burden will be on the City to show just cause for the discipline. A recording of the hearing will be made and maintained by the Human Resources Department along with copies of any exhibits introduced at the hearing. The hearing will be confidential unless otherwise requested by the grievant in writing at least five (5) days prior to the hearing. The administrative law judge will conduct the hearing in a fair and equitable manner and shall have reasonable discretion to deviate from the West Virginia Rules of Evidence, the West Virginia Rules of Civil Procedure, and the West Virginia Trial Court Rules.

c. The Administrative Law Judge shall issue a written decision on the grievance within thirty (30) days of the hearing, unless such time is extended upon written mutual consent by both parties.

d. The grievant or City may appeal the decision of an administrative law judge to the Circuit Court of Kanawha county within thirty (30) days of issuance of a decision by an administrative law judge.

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# Appendix A: Annotated History

Adopted September 19, 2016.

## Appendix B: Department Specific Rules or Policies

(To be provided by Department Heads subject to approval by the Department of Human Resources)

**ACKNOWLEDGMENT AND RECEIPT**  
**CITY OF CHARLESTON PERSONNEL RULES AND ADMINISTRATIVE POLICIES**

The City of Charleston Personnel Rules and Administrative Policies contains important information about the City, and I understand that I should consult my Department Head and/or the Department of Human Resources regarding any questions I may have. I have entered into my employment relationship with the City of Charleston voluntarily and on my own accord.

I understand this manual should not be construed, implied or intended to be a promise or guarantee of continued employment. I am “employed at will”, and can be terminated with or without cause for any lawful reason. Likewise, I may choose to end my employment relationship with the City at any time for any reason.

Since the information, policies, and benefits described herein are subject to change at any time, for any lawful reason, I acknowledge that revisions to the Personnel Rules and Administrative Policies may occur. All such changes will generally be communicated through official notices, and I understand that revised information may supersede, modify, change, alter or eliminate existing rules or policies. Only the City Manager, Director of Human Resources, and City Attorney have the ability to adopt any revisions to the Personnel Rules and Administrative Policies.

Furthermore, I understand that the Personnel Rules and Administrative Policies are neither a contract of employment nor a legally-binding agreement. I have had an opportunity to read the Personnel Rules and Administrative Policies, and I understand that I may ask my Department Head or any employee in the Department of Human Resources any questions I might have concerning the rules. I accept the terms of the Personnel Rules and Administrative Policies, and understand that it is my responsibility to comply with the rules and policies contained in this manual, and any revisions made to it. I further agree that if I remain with the City of Charleston following any modifications to the Personnel Rules and Administrative Policies, I thereby accept and agree to such changes.

I have received a copy of the Personnel Rules and Administrative Policies on the date listed below. I understand that I am expected to read the entire manual. I also understand that compliance with City of Charleston Personnel Rules and Administrative Policies and departmental rules is a condition of my employment. I further understand that any violation of City or departmental rules or policy may result in disciplinary action, up to and including termination.

\_\_\_\_\_  
Employee's Name - Printed

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Human Resources Representative

\_\_\_\_\_  
Date