



# **City of New Smyrna Beach**

## **Personnel Policies And Procedures**

**PERSONNEL POLICIES AND PROCEDURES**  
**APPENDIX A**  
**CITY OF NEW SMYRNA BEACH**  
**CODE OF ORDINANCES**

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**\*Editor's note:** Printed herein are the city personnel policies and procedures manual, as adopted by Ordinance Number 42-97 on September 23, 1997, as revised in 1998, as updated in 2006, revised in March 2010 and revised in March 2014 Ordinance #16-14. Amendments to the ordinance are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catch lines, capitalization, citation to state statutes, and expression of numbers in text as appears in the Code of Ordinances has been used. Additions made for clarity are indicated by brackets.

*Preservation of contract rights.* City employees working under collective-bargaining agreements approved before September 23, 1997, and the city manager, the assistance [assistant] city manager, the city attorney and any other person working under negotiated contracts of employment of for services with the City of New Smyrna Beach approved before September 23, 1997, or Ordinance Number 73-91 who acquired rights to pay, compensation, vacation, sick leave or benefits, in any form whatsoever, by reference in the aforesaid collective-bargaining agreements or contracts to the then-existing merit personnel codes or other personnel policies shall in no way be affected by the adopted of this manual, and said previously-acquired rights are hereby specifically preserved for the aforementioned groups and persons and shall remain fully enforceable against the city as if the Merit System established by Ordinance Number 73-91 and the prior merit systems had never been repealed.

**Cross references:** Any ordinance providing for the compensation of officers and employees or personnel policies saved from repeal, § 1-8(15); administration, ch. 2.

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# **SECTION I**

# **MERIT SYSTEM**

**A. General provisions.**

The purpose of these personnel policies and procedures is to establish a guide to administrative actions concerning the various personnel activities and transactions of the city. They are intended to indicate the customary and the most reasonable methods to carry out the aims of the city's policies. Department policies and procedures are considered supplemental to the City's policies. In the event of a conflict, the City's personnel policies govern. These policies shall not be construed as a contract between the City and any employee but rather the policies by which employment shall be governed.

**B. Positions covered.**

These rules and regulations apply to regular status employees in the municipal government as defined herein. The policies do not apply to part-time, regular part-time or temporary employees unless otherwise noted. These policies also do not apply to certain confidential, key policy-making, and/or administrative positions. These positions are:

1. The Mayor and City Commissioners;
2. The City Manager;
3. The City Attorney;
4. The City Clerk;
5. The Assistant City Manager;
6. The members of City Boards and Commissions; and
7. Personnel employed by contract or as consultants under provisions of government programs or grants.

**C. Organization for personnel administration.**

The following officers and bodies will participate in the administration of the personnel policies and procedures as follows.

**D. The City Commission.**

The City Commission will be responsible for approving the personnel ordinance and amendments thereto, approving the classification and pay plan, and for making and confirming appointments to positions specified by law.

**E. City Manager.**

The City Manager will be responsible for:

1. The administration of the personnel program according to these rules.
2. Making all appointments to positions under his/her jurisdiction, in accordance with these rules.
3. Preparation and presentation to the City Commission for their approval, rules and regulations governing the general administration of the personnel program.

4. Appointment of a Director of Human Resources.
5. Full appointing, promotion, demotion, transfer and terminating authority, except that no such authority shall exist with reference to elected officials, attorneys, the city clerk and the members of boards and commissions.

**F. Personnel Board.**

The Personnel Board is hereinafter created as authorized in chapter 59-1612, personnel policy, of the 1959 Related Acts of the City of New Smyrna Beach.

1. *Duties.*

- a. To advise the City Manager and City Commission on matters of personnel policy;
- b. To represent the public interest in the improvement of personnel administration; and
- c. To hold and conduct hearings involving appeals of disciplinary action against employees.

2. *Composition of the personnel board.*

The five members of the personnel board shall be selected from the electorate of the city. Each member shall serve for a period of three years. Members shall serve no more than two consecutive terms and the City Commission may waive by the affirmative vote of three commissioners the limitation that no member shall serve more than two consecutive terms when the City Commission feels that it is in the best interest of the citizens of the City of New Smyrna Beach. Members of the board shall select yearly from their own membership a chairman to serve at the pleasure of the board; the Director of Human Resources shall serve as executive secretary to the board; the assistant to the Director of Human Resources shall serve as clerk to the board or as otherwise designated by the City Manager.

3. *Qualification.*

Any qualified voter residing in the city is eligible for membership on the personnel board; provided, however, that no person who has been convicted of a crime involving moral turpitude shall be eligible to hold such office.

4. *Removal.*

Members of the personnel board shall serve at the pleasure of the City Commission. In the event of resignation or death of a board member or his or her removal from office, the City Commission shall appoint a member to fill the unexpired term of office. A member of the board may be removed from office with respect to any appeal proceeding if sufficient facts are found which would impair the member's impartiality and fairness in an appeal proceeding. Such removal may be limited to the proceeding in which the conflict arises.

5. *Meeting.*

The personnel board shall hold meetings at the call of the chairman, Director of Human Resources, and/or City Manager as may be required for the transaction of the business of the board or when deemed necessary and ordered by a majority vote of

the City Commission. The Director of Human Resources shall be responsible for scheduling the meeting.

**G. Director of Human Resources.**

The City Manager shall be the responsible human resources official, but may delegate operating detail to a Director of Human Resources who will be responsible to him/her for the administration and technical direction of the human resources program. Duties will include:

1. Preparing and recommending such forms and procedures as are necessary for carrying out the personnel program.
2. The maintenance of the classification plan.
3. The maintenance of a roster of city employees and other necessary personnel records and files.
4. The monitoring of the system of payroll checking so as to determine that all persons employed by the city have been appointed in conformance with these rules.
5. The collection and development of material relating to employee training and other personnel matters, and for assisting department heads in conducting training programs for employees under their jurisdiction.
6. Acting as executive secretary to the personnel board and as such will perform such duties as the board may delegate and shall conduct/hold quarterly board meetings.
7. The performance of such other activities with reference to human resources administration which are not inconsistent with state law or with these rules, as may appear necessary or desirable, as the City Manager may direct, or the City Commission may require by ordinance or resolution.
8. The Director of Human Resources shall present to the City Manager such rules, regulations and policies, and changes thereto, as are necessary for the effective administration of the human resources system.

**H. Department heads.**

1. Department heads will be responsible for the proper and effective administration of these rules and regulations within their respective departments or divisions. Routine matters pertaining to enforcement may be delegated.
2. Department heads are authorized to take corrective action concerning employees within their departments up to and including suspensions. All corrective action involving demotion, transfer or termination shall be authorized by the City Manager.
3. Department or division policies and procedures shall serve as supplements to these rules and regulations. In the event of conflict in any section, the city rules and regulations shall prevail.
4. Departmental or divisional policies and procedures, general orders, operating procedures, and training manuals will be reduced to writing and approved by the City Manager for conformance to these rules.

**I. Organizational structure; chain of command.**

The City of New Smyrna Beach is chartered as a commissioner-manager plan of government ([see Charter] chapter 2, section 8). In accordance with the form of government and the Charter, the City Commission is empowered to adopt laws, establish policy, and adopt a budget and such other powers and responsibilities as provided in chapter 2 of the Charter for the public health, welfare and safety of the residents of the city.

As such, the City Commission appoints a City Manager ([see Charter] chapter 4, section 28). In accordance with the Charter, the City Manager is responsible to the City Commission for the proper administration of all affairs of the city.

To this end, the City Manager is to see that the laws and ordinances are enforced; appoint and remove all subordinate officers in accordance with the Charter; exercise control of all divisions of the municipal government in accordance with the Charter; to formulate recommendations to the City Commission; to participate in all discussions of the City Commission; to advise them concerning financial matters and such other powers and responsibilities as provided in chapter 4 of the Charter.

Department/division heads are appointed by the city to ensure that the laws, ordinances, policies and/or directives are enforced and to direct supervision of their departmental operation, as established by the Municipal Code, City Commission and/or City Manager.

In order to ensure that the operations are administered properly, that supervision is provided in a manner which affords continuity of direction and enforcement and to minimize confusion regarding the day to day operations of the city, the following organizational structure and chain of command has been established.

City Commission

City Manager

Department/division head

Midlevel supervisor (if applicable)

First level supervisor (if applicable)

Employee (non-supervisory)

Except as authorized otherwise, or in an emergency situation, the organizational chain of command should be followed in all matters regarding the operations of the city.

Appointed board members, except as otherwise provided by this code or law, do not have supervisory/directive authority over any municipal employees. Difficulties encountered by board members from employees of the city should be reported to the department head for proper corrective action; or in the case of a department head, to the City Manager.

As detailed in the Charter, the public policy legislative decisions of the city will be made by the City Commission, with the advice and recommendations of the City Manager. Under no circumstances are staff members, including department/division heads, to make policy recommendations to the City Commission without prior review by the City Manager.

Staff members are not to initiate communications regarding policy and/or procedures with the City Manager without advance approval of the department head, and city staff

are not to initiate communications with the City Commission regarding policy and/or operations without advance approval by the City Manager.

Each employee has the right to appear before the City Commission; however, each employee must utilize the organizational chain-of-command prior to contacting the City Commission. This procedure is established to ensure that:

1. A resolution of the matter/concern can be secured at the administrative level, if possible.
2. The commission is provided a comprehensive and complete description and/or briefing.
3. The city and/or City Commission are not placed in a legally compromising situation.
4. The information provided does not impact existing litigation adversely.
5. The commission and its members are not placed in a situation that would violate law or ethical standards.

Municipal staff members who are appointed by the City Manager to serve on boards/committees on behalf of the city are free to express opinions and provide comments to the board/committee as long as the following is observed:

1. The staff member representing the city is to stay abreast and up-to-date of the policy direction of the city. This is to be accomplished through department head meetings and briefings with the City Manager.
2. When requested to provide the "city's position," the position provided by the staff representative should be clarified that the position is not official until the City Manager (operational/administrative issues) and/or the City Commission (policy/legislative issues) have taken an action to confirm. If either the manager/commission has already affirmed a position, the representative may so indicate.
3. When a staff representative is requested to vote on an issue, indicating a nonbinding position of the city, the representative should request direction from the City Manager prior to such vote, if possible. If such direction may not be obtained, the staff representative should utilize his/her professional judgment.
4. When a staff representative is requested to take an action that will bind the city, such actions should only be taken after the city has indicated a formal position. The City Manager's office should be routinely briefed on any and all committee/board matters in order to ensure consistent policy interpretation, to keep the City Commission briefed, to secure legal advice when necessary and to insure a uniform administrative process.

# **SECTION II**

## **DEFINITION OF TERMS**

## A. **Terms defined.**

As used in these policies and procedures, the following words and phrases shall have the meanings ascribed to them:

- *Allocation:* The assignment of a position to its appropriate class in relation to duties performed.
- *Anniversary/seniority date:* The date an employee begins employment and the same date in following years. This also is the date from which vacations and sick leave are computed. This date changes only if an employee is in a leave status for a period of 30 days or more, and then the anniversary date is deferred by an equivalent amount.
- *Appointment:* The final offer and acceptance by a person of a position either on a regular or temporary basis.
- *Class:* A group of positions those are sufficiently alike in general duties and responsibilities to warrant the use of the same title, class specifications and pay range.
- *Class specification:* A written description of a class consisting of a class title, general statement of the level of work and of the distinguishing features of work, examples of duties, and the qualifications for the class. (Also referred to as a "class description")
- *Classification date:* The date an employee entered, transferred, or was promoted to the current position class. This is the date from which length of service in the class is computed for determination of probationary periods, order of layoff. . (This date will be adjusted an equivalent amount for an absence from employment without pay for a period of 30 days or more.)
- *Classification plan:* The official or approved system of grouping positions into appropriate classes.
- *Compensatory leave:* Time off from work in lieu of monetary payment for having worked in excess of scheduled workweek in accordance with city policy.
- *Demotion:* Assignment of an employee from one class to another that has a lower rate of pay, whether voluntary or involuntary.
- *Department head:* An administrative employee who manages and supervises employees performing the duties of a department or division, and who administers and formulates the policies for the department or division, and reports directly to the City Manager.
- *Employee:* An individual who is appointed to a position with the city and performs such functions as prescribed and reports directly to his/her immediate supervisor as detailed in the organizational structure.
- *Exempt service:* Those employees and positions that are exempt from regular status employment provisions of the personnel rules and regulations as provided herein.
- *Full-time schedule:* Work of 40 hours or more per week or as established by the City Commission.

- *Immediate family:* Includes employee's spouse, child, parents, grandparents, grandchildren, father-in-law, mother-in-law, brother, sister, stepparents, stepsiblings, or stepchild legal guardian, or any relative living in the same household.
- *Layoff:* A reduction of the number of employees due to lack of work, funds, or other causes.
- *Managerial positions:* Key employees who are responsible to and report directly to the City Manager or City Commission and who exercise independent decision-making judgment. This includes but is not limited to:
  1. All department directors;
  2. The building official and city engineer;
  3. The city attorney;
  4. The assistant city attorney;
  5. The city clerk;
  6. The assistant city manager; and
  7. The city manager.
- *Part-time:* Appointments to a position that requires the employee to work less than 30 hours per week. Part-time employees are not subject to or entitled to the provisions of this code and serve at the pleasure of the City Manager.
- *Pay range:* The salary range that is assigned to a particular position title sometimes expressed as a pay range number.
- *Position description:* A written description of class specifications and its characteristics.
- *Position title:* The title in the classification plan that describes the nature of work performed by an employee.
- *Probationary employee:* A regular status employee serving a probationary period prior to final appointment in that position. An employee serving a probationary period as a new or rehire employee of the city is subject to and receives such benefits and rights as provided by the rules and regulations, except for the right to file a grievance. An employee serving a probationary period as a result of a promotion from one regular position to another is subject to and receives all benefits and rights in the rules and regulations provided the employee attained classified status in the prior class title.
- *Reclassification:* An action that results from a review of duties performed by any employee's position. In this type of action, the class title of the position is changed and the pay range of such new title is then used.
- *Regular part-time:* Appointments to a position that requires the employee to work 30 hours or more, but less than 40 hours per week. Unless specifically included, regular part-time employees are otherwise not subject or entitled to the provisions of this Code, and serve at the pleasure of the City Manager.

- *Regular status:* An employee who works a full-time schedule and who has successfully completed an initial probationary period; has attained an initial classified status; and is subject to and receives all benefits and rights as provided by the rules and regulations under these personnel policies and procedures.
- *Resignation:* Act of voluntarily leaving city employment.
- *Retirement:* Whenever an employee meets the conditions set forth in the retirement plan regulations; makes application for and receives all benefits earned under the plan; and thereby voluntarily withdraws from city employment.
- *Standby assignment:* An assignment made by a department head which requires an employee to be available for emergency work during off-duty time which may include nights, weekends, or holidays.
- *Supervisory employee:* An employee who exercises supervisory, professional and/or administrative functions as designated by the city and who reports to a higher-level supervisor or the department head as detailed in the organizational structure. Some supervisory employees, particularly professional supervisors, are exempt from overtime.
- *Temporary employee:* An employee appointed for a special project, grants, programs, or other work of a temporary or transitory nature. A temporary appointment will not exceed a six-month period unless specified by the project, program or grant. Temporary employees are not subject or entitled to the provisions of this code, except as may be provided in a temporary employee agreement and serve at the pleasure of the City Manager.
- *Temporary promotion:* A temporary appointment by the City Manager of a regular status employee to act in the capacity of the individual vacating the position. Such appointments are limited to 180 calendar days' duration absent unusual circumstances as approved by the City Manager. Employees receiving a temporary promotion will receive the pay rate appropriate to their new position after a minimum of two weeks of uninterrupted service in the new position.
- *Termination:* Act of involuntarily leaving city employment.
- *Transfer:* That action in which the employee moves or is moved from one position to another.

# **SECTION III**

## **GENERAL POLICIES**

**A. Objectives.**

One of the primary objectives of the city is to establish and administer a system of personnel management consistent with the goal of providing superior service to the community by employing and retaining individuals of the highest caliber who display pride and dignity in the performance of their duties.

The city administration advocates acceptance of the concept that with quality public service at all levels of government, the city can attain maximum efficiency and effectiveness.

All city employees are encouraged to develop skills and seek formal training that will enhance their personal development and add to the overall expertise of the organization.

It is the policy of the city to expect from its employees compliance with all personnel rules and regulations, local ordinances, state statutes, and federal regulations in the performance of duties, as well as compliance with all safety rules and standards and departmental rules and regulations. An employee who violates any of the standards of conduct or rules and regulations may be subject to corrective action as set forth herein.

**B. Equal opportunity and nondiscrimination.**

**1. Anti-harassment Policy and Complaint Procedure**

The City of New Smyrna Beach provides equal employment opportunities (EEO) to all employees and applicants for employment without regard to race, color, religion, gender, national origin, age, disability, genetic information, marital status, or status as a covered veteran in accordance with applicable federal, state and local laws. The City of New Smyrna Beach complies with applicable state and local laws governing nondiscrimination in employment in every location in which the company has facilities. This policy applies to all terms and conditions of employment, including hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training. The City of New Smyrna Beach expressly prohibits any form of unlawful employee harassment based on race, color, religion, gender, sexual orientation, national origin, age, genetic information, disability or veteran status. Improper interference with the ability of The City of New Smyrna Beach employees to perform their expected job duties is absolutely not tolerated.

The City of New Smyrna Beach is committed to a work environment in which all individuals are treated with respect and dignity. Each individual has the right to work in a professional atmosphere that promotes equal employment opportunities and prohibits unlawful discriminatory practices, including harassment. Therefore, The City of New Smyrna Beach expects that all relationships among persons in the office will be business-like and free of bias, prejudice and harassment.

It is the policy of The City of New Smyrna Beach to ensure equal employment opportunity without discrimination or harassment on the basis of race, color, religion, gender, national origin, age, disability, genetic information, marital status, or status as a covered veteran. The City of New Smyrna Beach prohibits any such discrimination or harassment.

The City of New Smyrna Beach encourages reporting of all perceived incidents of discrimination or harassment. It is the policy of The City of New Smyrna Beach to promptly and thoroughly investigate such reports. The City of New Smyrna Beach prohibits retaliation against any individual who reports discrimination or harassment or who participates in an investigation of such reports.

## **2. Definitions of Harassment and Statement of Prohibited Conduct**

Sexual harassment constitutes discrimination and is illegal under federal, state and local laws. For the purposes of this policy, sexual harassment is defined, as in the Equal Employment Opportunity Commission Guidelines, as unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature when, for example a) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; b) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or c) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Sexual harassment may include a range of subtle and not-so-subtle behaviors and may involve individuals of the same or different gender. Depending on the circumstances, these behaviors may include unwanted sexual advances or requests for sexual favors; sexual jokes and innuendo; verbal abuse of a sexual nature; commentary about an individual's body, sexual prowess or sexual deficiencies; leering, whistling or touching; insulting or obscene comments or gestures; display in the workplace of sexually suggestive objects or pictures; and other physical, verbal or visual conduct of a sexual nature.

Also prohibited is preferential treatment or promise of preferential treatment to an employee for submitting to sexual conduct, including soliciting or attempting to solicit any employee to engage in sexual activity for compensation or reward; and

Subjecting, or threats of subjecting, an employee to unwelcome sexual attention or conduct or intentionally making performance of the employee's job more difficult because of that employee's sex.

Sexual or discriminatory displays or publications anywhere in the City of New Smyrna Beach workplace by employees such as; displaying pictures, posters, calendars, graffiti, objects, promotional materials, reading materials, or other materials that are sexually suggestive, sexually demeaning, or pornographic, or bringing into the City of New Smyrna Beach work environment or possessing any such material to read, display or view at work.

A picture will be presumed to be sexually suggestive if it depicts a person of either sex who is not fully clothed or in clothes that are not suited to or ordinarily accepted for the routing work in and around the City of New Smyrna Beach and who is posed for the obvious purpose of displaying or drawing attention to private portions of his or her body. Reading or otherwise publicizing in the work place materials that are in any way sexually revealing, sexually suggestive, sexually demeaning or pornographic is prohibited.

Harassment on the basis of any other protected characteristic is also strictly prohibited. Under this policy, harassment is verbal, written or physical conduct that denigrates or shows hostility or aversion toward an individual because of his/her race, color, religion, gender, sexual orientation, national origin, age, disability, marital status, citizenship, genetic information or any other characteristic protected by law or that of his/her relatives, friends or associates, and that a) has the purpose or effect of creating an intimidating, hostile or offensive work environment; b) has the purpose or effect of unreasonably interfering with an individual's work performance; or c) otherwise adversely affects an individual's employment opportunities.

Harassing conduct includes epithets, slurs or negative stereotyping; threatening, intimidating or hostile acts; denigrating jokes; and written or graphic material that denigrates or shows hostility or aversion toward an individual or group and that is placed on walls or elsewhere on the employer's premises or circulated in the workplace, on company time or using company equipment via e-mail, phone (including voice messages), text messages, tweets, blogs, social networking sites or other means.

### **3. Individuals and Conduct Covered**

These policies apply to all applicants and employees, whether related to conduct engaged in by fellow employees or someone not directly connected to The City of New Smyrna Beach (e.g., an outside vendor, consultant).

Conduct prohibited by these policies is unacceptable in the workplace and in any work-related setting outside the workplace, such as during business trips, business meetings and business-related social events.

### **4. Complaint Process**

Individuals who believe they have been the victims of conduct prohibited by this policy statement or who believe they have witnessed such conduct should discuss their concerns with their immediate supervisor, Human Resources or any member of management.

When possible, The City of New Smyrna Beach encourages individuals who believe they are being subjected to such conduct to promptly advise the offender that his or her behavior is unwelcome and request that it be discontinued. Often this action alone will resolve the problem. The City of New Smyrna Beach recognizes, however, that an individual may prefer to pursue the matter through complaint procedures.

The City of New Smyrna Beach encourages the prompt reporting of complaints or concerns so that rapid and constructive action can be taken before relationships become irreparably strained. Therefore, although no fixed reporting period has been established, early reporting and intervention have proven to be the most effective method of resolving actual or perceived incidents of harassment.

Any reported allegations of harassment, discrimination or retaliation will be investigated promptly. The investigation may include individual interviews with the parties involved and, where necessary, with individuals who may have observed the alleged conduct or may have other relevant knowledge.

Confidentiality will be maintained throughout the investigatory process to the extent consistent with adequate investigation and appropriate corrective action.

Retaliation against an individual for reporting harassment or discrimination or for participating in an investigation of a claim of harassment or discrimination is a serious violation of this policy and, like harassment or discrimination itself, will be subject to disciplinary action up to and including discharge. Acts of retaliation should be reported immediately and will be promptly investigated and addressed. Misconduct constituting harassment, discrimination or retaliation will be dealt with appropriately.

False and malicious complaints of harassment, discrimination or retaliation may be the subject of appropriate disciplinary action up to and including discharge.

**C. Americans with Disabilities Act (ADA) and the ADA Amendments Act (ADAAA)**

The Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act, known as the ADAAA, are federal laws that prohibit employers with 15 or more employees from discriminating against applicants and individuals with disabilities and that when needed provide reasonable accommodations to applicants and employees who are qualified for a job, with or without reasonable accommodations, so that they may perform the essential job duties of the position.

It is the policy of The City of New Smyrna Beach to comply with all federal and state laws concerning the employment of persons with disabilities and to act in accordance with regulations and guidance issued by the Equal Employment Opportunity Commission (EEOC). Furthermore, it is the City's policy to not discriminate against qualified individuals with disabilities in regard to application procedures, hiring, advancement, discharge, compensation, training or other terms, conditions and privileges of employment.

The City of New Smyrna Beach will reasonably accommodate qualified individuals with a disability so that they can perform the essential functions of a job unless doing so causes a direct threat to these individuals or others in the workplace and the threat cannot be eliminated by reasonable accommodation and/or if the accommodation creates an undue hardship to The City of New Smyrna Beach. Contact the Human Resources department with any questions or requests for accommodation.

**D. Code of ethics. (Conflict of Interest)**

To avoid misunderstandings and conflicts of interest that could arise, employees of the city will adhere to the following policy. This policy is in accordance with F.S. Chap.112, entitled "Code of Ethics For Public Officers and Employees."

1. No city employee shall solicit or accept any gifts, including Christmas gifts, favors or services that might reasonably tend improperly to influence them in the discharge of their official duties.
2. No city employee shall use or attempt to use, their position to secure special privileges or exemptions for themselves or others, except as may be provided by policy and/or law.

3. No city employee shall disclose confidential information gained by reason of their official position, nor shall they otherwise use such information for their personal gain or benefit. This is subject to the requirements of F.S. Chap.119.07.
4. No officer or employee of the city shall have or hold any employment or contractual relationship with any business entity or any agency which is subject to the regulation of, or is doing business with, an agency of which he/she is an officer or employee; nor shall an officer or employee of an agency have or hold any employment or contractual relationship that will create a continuing or frequently recurring conflict between his/her private interests and the performance of his/her public duties or that would impede the full and faithful discharge of his/her public duties.
5. If an employee of the city is an officer, director, agent, or member of, or owns material interest in any corporation, firm partnership, or other business entity which is subject to the regulations of or which has substantial business commitments with the city, they shall file a sworn statement to this effect, with the circuit court of the county in which the employee is principally employed.
6. No city employee shall transact any business in their official capacity with any business entity of which he or she is an officer, director, agent or member, or in which he or she or their spouse or child owns a material interest.
7. No city employee shall have personal investments in any enterprise that will create a substantial conflict between their [city employee's] private interests and the public interest.
8. No city employee shall violate any provision of F.S. Chap. 112, as amended from time to time, and as more particularly set forth therein.

Any violation of the provisions of this policy shall be subject to review and appropriate corrective action.

When an employee of the city has any doubt as to the application of this policy, they [the employee] should discuss the possible violation with the department head or, where a department head is concerned, they should discuss the possible violation with the Director of Human Resources.

#### **E. Political activity.**

1. No employee, official, or other person shall solicit, orally or by letter, contributions or services for any political party or candidate from any employee during his/her hours of duty, service, or work with the city.
2. Nothing herein contained shall be construed to restrict the right of the employee to hold membership in and support a political party, to vote as he/she chooses, to express opinions on all political subjects and candidates, to maintain political neutrality, to attend political meetings after working hours, or to campaign actively during off-duty hours in all areas of political activity.
3. Any employee who is elected or appointed to any political office shall immediately notify the city. Any employee so elected or appointed may be required to resign his/her employment with the city, depending upon the position he/she is elected or appointed to as adopted by the City Commission.

**F. Public relations, release of information.**

1. The employee shall, at all times, be courteous and friendly to those members of the public who seek information.
2. Employees are cautioned that information concerning subjects under discussion or consideration often change in content and meaning before becoming an accomplished fact. Any release of such information before final decisions or disposition of the matter often causes misunderstanding and confusion resulting in a waste of time and money.
3. An employee will decline courteously to reveal information and shall direct such inquiry to the department head or City Manager, keeping in mind that it is not the intent of the city to be secretive; or to withhold valid information, but to assure that all information released is true and accurate.
4. From time to time, any city employee, especially those in supervisory and managerial positions, may be requested or subpoenaed to make a statement to an attorney or law firm regarding city business. These statements are generally concerned with an employee who may have suffered an accident and generally has contemplated action against the city. Should an employee receive either a request or subpoena, the matter will be discussed first with the department head, who in turn, will notify the City Manager.

**G. Solicitation and distribution.**

1. City employees are prohibited from soliciting any other employees of the city, engaging in discussion or advocating a position on behalf of any organization, including any labor union, labor organization, or employee organization, during their working hours or the working hours of the employee sought to be solicited. The term working hours as used in this section shall not include lunch breaks or other recognized break time.
2. City employees are prohibited from distributing literature that tends to promote any organization including any labor union, labor organization, or employee organization, during working hours in any area where city work is performed. The distribution of literature shall not be prohibited during an employee's lunch hour, recognized breaks, or in such areas not specifically devoted to the performance of the employee's official duties.
3. Distribution of literature for city-sanctioned programs such as recreational activities, are not restricted by this rule.
4. Employee contributions to recognized charitable organizations are purely voluntary. No coercion of an employee to make contributions shall be permitted.

**H. Employee debts.**

An employee's financial transactions are the employee's personal affair. This city will not act as a collection agent for an employee, or for collection agencies. However, should complaints concerning an employee's failure to meet financial obligations result in interference with the employee's job performance or loss of time and effort on the part of the human resources office or other city employees, the employee concerned shall be so

informed. Should the condition continue, the employee may be subject to appropriate corrective action.

## **I. Use of city property/vehicles and Seatbelt Policy.**

An employee shall not use city property, equipment, or vehicles except in the performance of official duty, nor permit its use by an unauthorized person, either on-duty or off-duty except as otherwise approved by the City Commission and/or the City Manager. Any violation of the foregoing may result in disciplinary action, up to and including termination of employment.

An employee driving a City vehicle must have on their person a valid driver's license issued by the State of Florida (Commercial Drivers License as mandated by law). Additionally, employees are required to notify the Human Resource Department, through their supervisor, of any change of status in their license. Suspension or revocation of licenses may affect the person's status of employment, depending on any job requirement for the employee to operate a City vehicle in the course of their job duties.

The cleanliness of the interior of the vehicle is the responsibility of the person to whom the vehicle is assigned. Each person who uses a vehicle is responsible for keeping it orderly and litter free. Smoking is not permitted in any City vehicles. This also includes products such as cigarettes, e-cigarettes, cigars, snuff and chewing tobacco.

The safety and well being of our employees is of critical importance. We therefore each have a responsibility to not only protect ourselves when on the road but also should do our part to protect those around us. Employees that are required to drive on company business at any time will be expected to follow all the procedures below.

1. All employees are required to wear seat belts at all time while in a moving vehicle being used for company business, whether they are the driver or a passenger.
2. Use of handheld cell phones (either talking or texting), whether personal or business-owned, while behind the wheel of a moving vehicle being used on company business is strictly prohibited.
3. Although use of cell phones under any circumstances is strongly discouraged while driving, the use of hands-free technology may be warranted in unusual or emergency circumstances.
4. Engaging in other distracting activities including, but not limited to, eating, reading, wearing of ear buds, etc. or is also strongly discouraged while driving, even when in slow-moving traffic.
5. Use of drugs and/or alcohol or other substances, including certain over-the-counter cold or allergy medications that in any way impair driving ability, is prohibited.
6. All employees are expected to follow all driving laws and safety rules such as adherence to posted speed limits and directional signs, use of turn signals and avoidance of confrontational or offensive behavior while driving. Drivers must turn off and secure vehicles prior to exiting.(except: police and fire units)

7. Employees should never allow anyone to ride in any part of the vehicle not specifically intended for passenger use and/or any seat that does not include a working seat belt.
8. Employees who drive commercial vehicles or who are otherwise subject to separate rules and regulations such as those dictated by state or federal law are also expected to adhere to all policies and regulations associated with the appropriate law or regulation that applies.
9. Employees must promptly report any accidents to Supervisors in accordance with established procedures.
10. Employees are also expected to report any moving or parking violations received while driving on city business and/or in city vehicles.
11. Failure to adhere to these procedures may result in disciplinary action per company policy.

**J. Personal appearance/dress code.**

As a representative of the City of New Smyrna Beach, you must present a neat and well groomed appearance in accordance with the highest standards intended to insure that we continue our excellent reputation for serving members of our city.

Therefore, the following guidelines for personal appearance and grooming are established and apply to all employees:

1. Each employee shall present an overall appearance of being neat and well groomed at all times while at work. The uniform (when applicable) or dress code of each particular job or department must be followed. An employee whose work or professional status requires wearing a uniform should do so with pride.
2. Personal hygiene measures shall be taken at all times.
3. A minimum amount of jewelry of a conservative nature may be worn, and then only by employees whose work permits.
4. Makeup and perfume or cologne may be worn in good taste. Excessive use shall be avoided if perfume or cologne causes allergic reactions.
5. Employees are encouraged to wear hair in a neat and stylish manner. Hair shall be worn clean and well groomed. Extreme styles are unacceptable. Wigs are permitted provided the wig is natural in appearance and does not present a safety hazard.
6. Clothing of non-uniformed employees shall be conservative in color, cut, and fabric. Jeans of any type, t-shirts, flip-flops, clogs, or tank tops are examples of inappropriate styles except in unusual circumstances with prior approval of the City Manager.

**K. Drug and alcohol policy.**

1. *Purpose.*

As a part of its commitment to safeguard the health of its employees, to provide a safe and productive work environment, and to promote a drug-free community, the City of

New Smyrna Beach has established this policy on the use of drugs and/or alcohol and abuse in the workplace. This policy is established pursuant to the drug-free workplace program under Florida's Workers' Compensation Law, F.S. § 440.101-102, F.A.C. chap. 38F-9; the Florida Uniform Traffic Control Law, F.S. § 316.302, the U.S. Department of Transportation Administration Controlled Substance Testing, 49 CFR part 382, U.S. Department of Transportation Drug Testing Procedures, 49 CFR part 40.

The use of illegal drugs and/or alcohol abuse, while at work or otherwise, seriously endangers the safety of employees, as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity and a decline in the quality of products and services provided. The City of New Smyrna Beach has established this policy to prevent the possession or use of illegal drugs and/or alcohol at any time and to further prohibit the possession or use of drugs and/or alcohol during working time, on city property and in city vehicles. "Illegal drug" means any narcotic, barbiturate, marijuana, central nervous system stimulant, hallucinogen, cocaine or any controlled substance as defined by Section 893.03, Florida Statutes, as amended from time to time, not possessed or used in accordance with a lawful prescription.

The City of New Smyrna Beach implemented this policy pursuant to the drug-free workplace program under the Florida Workers' Compensation Act, F.S. § 440.101-102 and FAC 38F-9. This provides that an employee, who is injured in the course and scope of his employment and tests positive on a confirmed drug test, may forfeit his eligibility for medical and indemnity benefits under Florida's Workers' Compensation in addition to disciplinary action. Refusal to take a drug test will result in the employee forfeiting his eligibility for medical and indemnity benefits under Florida's Workers' Compensation and will be cause for termination of employment.

This policy as it relates to applicants or employees who are required to have a commercial drivers' license, is implemented pursuant to the U.S. Department of Transportation (D.O.T.) Regulations, 49 CFR Part 40 and 49 CFR Part 352, et seq. and the Florida Uniform Traffic Control Law, F.S. § 316.302. Parts of this policy may only apply to employees covered by the D.O.T. regulations, or additional requirements may be applied in accordance with D.O.T. regulations.

The purpose of this policy is to communicate the city's position on the use and/or possession of illegal drugs and/or alcohol, both in the workplace and in the community, and provide guidance for the implementation of related programs.

2. *Scope.*

All employees are covered by this policy as more fully described in the policy and are required to abide by the terms of this policy as a condition of employment.

3. *Drug-free workplace policy dissemination.*

- a. The employer will give a general one-time notice to all employees that it is a condition of employment to refrain from using, possessing or otherwise dealing in drugs and/or alcohol on or off the job and that a drug testing program is being implemented.

- b. Sixty-days may elapse between the notice and the actual drug and/or alcohol testing. This 60-day notice of testing provision does not apply to employees who are, as of January 1, 1996, required to be tested pursuant to D.O.T. Drug and/or Alcohol Testing Rules or employees previously noticed and [who have] received any required training.
- c. A notice of drug and/or alcohol testing will be included with all vacancy announcements for those positions where drug and/or alcohol testing is required as part of the employment process. A notice of the city's drug and/or alcohol testing policy will also be posted in an appropriate and conspicuous location on the city's premises and copies of the policies will be made available for inspection during regular business hours by the general public in the city's human resources office.

4. *Definitions.*

The definitions of words and terms as set forth in the Florida Workers' Compensation Drug and/or Alcohol Testing Rules shall apply to the terms used in this policy.

5. *Alcohol use prohibitions.*

- a. The consumption of alcohol on city premises, in a city vehicle, or while on duty is prohibited and will result in disciplinary action, up to and including discharge. There may be occasions, removed from the usual work setting, at which it is permissible to consume alcohol in moderation on city premises
- b. Off-duty abuse of alcohol that adversely affects an employee's job performance or adversely affects or threatens to adversely affect other interests of the city is prohibited and may result in disciplinary action up to and including discharge.
- c. The personal possession (whether on the person, or in a desk, locker or city vehicle) of alcohol on city premises or on duty will result in disciplinary action up to and including discharge.
- d. The possession of alcohol on city property in a personal vehicle in a closed container (i.e., the manufacturer's seal on the container has not been opened or broken) is not prohibited, provided such possession is in compliance with this policy as well as federal, state and local laws.
- e. It is against city policy to report to work or to work under the influence of alcohol.
- f. For the purpose of this policy, an employee is presumed to be under the influence of alcohol if a blood test or other scientifically acceptable testing procedure shows a forensically acceptable positive quantum of proof of alcohol usage.
- g. Consistent with this policy, an employee who is perceived to be under the influence of alcohol will be removed immediately from the workplace and may be evaluated by medical personnel, if reasonably available. The city will take further action (i.e., removal from service, referral to counseling and/or disciplinary action) based on medical information, position held, work history, job conduct, and other relevant factors. The determination of what action is appropriate in each case rests solely with the city.
- h. Refusal to submit to, efforts to tamper with, confirmed, positive results of an alcohol test will result in disciplinary action, up to and including discharge.

Employees arrested for an alcohol-related incident shall immediately notify their division supervisor, the Director of Human Resources or their department head of the arrest. Failure to notify an appropriate city official may result in disciplinary action, up to and including discharge.

6. *Drug use prohibitions.*

- a. The use, sale, purchase, possession, manufacture, distribution or dispensation of illegal drugs (to include possession of drug paraphernalia) at any time, whether on or off duty and whether on or off city property, is cause for immediate discharge. Any illegal drugs or drug paraphernalia will be turned over to an appropriate law enforcement agency and may result in criminal prosecution.
- b. It is against city policy to report to work or work under the influence of drugs. This includes prescription drugs that induce an unsafe mental or physical state. Employees who violate this policy are subject to disciplinary action up to and including discharge.
- c. For the purpose of this policy, an employee is presumed to be under the influence of drugs if a urine test or other accepted testing procedure shows a forensically acceptable confirmed positive quantum of proof of drug usage. Test results will be confirmed by a second test different in scientific principle from the initial test. A confirmed positive drug test will result in disciplinary action up to and including discharge.
- d. Prescription drugs may also affect the safety of the employee or fellow employees or members of the public. Therefore, any employee who is taking any prescription drug that might impair safety, performance, or any motor functions must advise his supervisor before reporting to work under such medication. A failure to do so may result in disciplinary action, up to and including discharge. If the city determines that such use does not pose a safety risk, the employee will be permitted to work. The city reserves the right to require that the employee have his/her physician confirm that the substance does not adversely affect the employee's ability to perform work in a safe manner. If such use impairs the employee's ability to safely and effectively perform work, the city may temporarily reassign the employee or grant a leave of absence during the period of treatment. Improper use of "prescription drugs" is prohibited and may result in disciplinary action, up to and including discharge. Prescription medication must be kept in its original container if such medication is taken during working hours or on city premises.
- e. Employees arrested for a drug related incident shall immediately notify their division supervisor, the Director of Human Resources or their department head of the arrest. Failure to notify an appropriate city official may result in disciplinary action, up to and including discharge.
- f. Refusal to submit to or efforts to tamper with a drug test will result in discharge.

7. *Testing.*

- a. *Testing of applicants (illegal drugs only).*
  1. All applicants considered final candidates for a position, to the extent permitted by Florida law, will be tested for the presence of illegal drugs as a part of the application process. All applicants for positions requiring a

commercial drivers' license will be tested for illegal drugs pursuant to federal law.

2. Any job applicant who refuses to submit to drug testing, refuses to sign the consent form, fails to appear for testing, tampers with the test, or fails to pass the pre-employment drug test shall be ineligible for hire.

b. *Reasonable suspicion testing (alcohol and illegal drugs).*

1. Employees must submit to a drug and/or alcohol test if reasonable suspicion exists to indicate that their ability to perform work safely or effectively may be impaired.

"Reasonable suspicion testing" means drug and/or alcohol testing based on a belief that an employee is using or has used drugs and/or alcohol in violation of the city's policy, on the basis of specific, contemporaneous, particularly observations concerning physical behavior or performance indicators of probable drug use, drawn from those facts in light of experience. Human Resources must be consulted before sending an employee for reasonable suspicion testing. Among other things, such facts and inferences may be based upon:

- a. Observable phenomena while at work, such as direct observation of drug and or alcohol use or of the physical symptoms or manifestations of being under the influence of a drug and/or alcohol.
- b. Abnormal conduct or erratic behavior while at work or a significant deterioration in work performance.
- c. A report of drug and/or alcohol use, provided by a reliable and credible source.
- d. Gross negligence or carelessness.
- e. Disregard for safety, life, or well being of any city employee, customer or the general public.
- f. Reporting to or remaining at work in an apparently unfit condition.
- g. Excessive tardiness or absenteeism.
- h. Evidence that an individual has tampered with a drug and/or alcohol test during his employment with the city.
- i. Any employee involved in an accident that results in loss of life or serious injury or the employee receiving a citation for a moving traffic violation arising from the accident will be tested.

If the employee, another employee or a member of the public is injured to the extent that medical attention is required; or if there is significant property damage, the employee shall be tested if there is information that the employee caused or contributed to the accident while at work or while operating a city vehicle. In any of these instances, the investigation and subsequent testing shall take place within two (2) hours following the accident.

- j. Evidence that an employee has used, possessed, sold, solicited, or transferred drugs.
  - k. Any other conduct indicative of the abuse of alcohol or the use of illegal drugs.
2. The reasonable suspicion conduct should be witnessed by a supervisor or city official, if feasible. The supervisor or city official making the observation must have received training in the identification of actions, appearance, or conduct that are indicative of the use of drugs and/or alcohol. If a supervisor believes a reasonable suspicion exists, the supervisor should report his or her findings and observations to the Director of Human Resources, department head, or the City Manager. Upon approval by the City Manager, Director of Human Resources or other designated officer of the city, the employee will be asked to submit to a drug and/or alcohol test and sign a form acknowledging his or her consent. Factors that substantiate cause to test should be documented by the supervisor on the Substance Abuse Investigation Report Form that must be done as soon as possible, but no later than 24 hours after the employee has been tested. A copy of this report shall be given to the employee upon request and the original documentation shall be kept by the employer.
- c. *Random testing (CDL holders).*
1. Employees in "safety sensitive" or "special risk" positions shall be required to submit to drug and/or alcohol testing on a random basis to the extent permitted by law. Currently, employees required to hold a commercial driver's license as required by their job description will be required to submit to drug and/or alcohol testing on a random basis.  
  
In addition, those required to hold a commercial driver's license will also be subject to random drug and/or alcohol testing as required by federal law. The list of those job classifications to be "safety sensitive" or "special risk" will be periodically updated as needed.
  2. Selection of employees for random testing shall be conducted through the use of a random number generator or other neutral, scientifically valid selection process in each grouping of employees.
  3. Employees selected for random testing will be contacted on the day the test is scheduled to occur and notified of the time and place of the test.
  4. Testing may be postponed only when an employee's supervisor and the City Manager agree that there is a compelling need for deferral (i.e., the employee is out on leave or is on travel).
  5. An employee whose random drug and/or alcohol test is deferred will be subject to an unannounced test within 60 days.
- d. *Post-accident testing.*
- All post-accident testing required by the department of transportation is covered by reasonable suspicion testing under [sub] section b above.

e. *Follow-up testing.*

- Employees who have tested positive, or otherwise violated this policy, are subject to discipline up to and including discharge. If the employee, in the course of employment, enters an employee assistance program for drug and/or alcohol related problems or a drug and/or alcohol rehabilitation program, the employee will be required to submit to random drug and alcohol testing for two years after completion of the program, or for such additional period of time in excess of two years recommended by the program.

f. *Return to duty testing.*

An employee who does not pass a drug and/or alcohol test cannot return to work unless:

1. The city, at its sole discretion, permits the employee to return to work.
2. The employee passes a drug and/or alcohol test administered under this rule.
3. The employee agrees to participate in and successfully complete any drug and/or alcohol evaluation, counseling or rehabilitation program required by the city.
4. The employee agrees to submit to periodic, unannounced drug and/or alcohol tests for a period of two years following completion of the required drug and/or alcohol evaluation, counseling or rehabilitation program, or for such additional period of time in excess of two years recommended by the program.

Participation in a treatment program, be it either voluntary or pursuant to this section, will not excuse work rule violations or poor performance; and an employee may be disciplined or discharged for such offenses or failure to perform. If the employee either does not complete his/her rehabilitation program or tests positive after completing the rehabilitation program, he/she will be subject to immediate discharge from employment.

g. *Additional testing.*

Additional testing may also be conducted as required by applicable state or federal laws, rules, or regulations or as deemed necessary by the city (e.g., D.O.T. Alcohol and Drug Test Rules).

h. *Refusal to test.*

1. Employees who refuse to submit to a drug and/or alcohol test may forfeit their eligibility for all workers' compensation medical and indemnity benefits.
2. Any employee required to be tested under this policy who refuses to be tested; who refuses to sign required forms; who refuses to provide the necessary urine specimen or breath alcohol sample; who consumes alcoholic beverages within eight hours of any vehicle or work-related accident as described in [sub] section VII (B) (1) (i); or who engages in conduct that clearly obstructs the testing process will be subject to disciplinary action up to and including discharge.

8. *Testing procedure.*

- a. *Test.* Consistent with the testing provisions of [sub] section VII, the city may test for any or all of the following drugs and/or alcohol which is included but not limited to:
- \*Alcohol (booze, drink, distilled spirit, wine, malt beverage, beer, intoxicating liquor, alcoholic beverage, etc.)
  - \*Amphétamines (Binhetamine, Desoxyn, Dexedrine)
  - Barbiturates (Phenobarbital, Tuinal, Amytal)
  - Benzodiazophines (Ativan, Azene, Klonopin, Dalmane, Diaozepam, Halcion, Librium, Poxipam, Restoril, Serax, Tranxene, Valium, Vertron, Xanax)
  - \*Cannabinoids (marijuana, hashish, hash, hash oil, pot, joint, roach, spleaf, grass, weed, reefer)
  - \*Cocaine (coke, blow, nose candy, snow, flake, crack)
  - Methaqualone
  - Methodone (Dolophine, Methadose)
  - \*Phencyclidine (PCP, angel dust, hog)
  - Propoxyphene (Darvocet, Darvon N. Dolene)
  - \*Opiates (opium, dover's powder, paregoric, parepectolin)
  - \*Drugs tested for under U.S. Department of Transportation, Drug and Alcohol Testing Procedure, 49 CFR Parts 40 and 382.
- b. *Signing of form required.* Job applicants and employees required to submit to drug testing will be required to sign an Applicant Drug Testing Consent Form or a Consent To Employee Testing Form.
- c. *Accurate testing program.* Because of the potential adverse consequences of positive test results on employees, the city will employ a very accurate testing program. Urine, breath and, where used, blood samples will be analyzed by a qualified independent laboratory which has been selected by the city and approved by the Florida Agency for Health Care Administration or the U.S. Department of Health and Human Services (NIDA) and the Substance Abuse and Mental Health Service Administration (SAMHSA).
- d. *Information relevant to test.* At the sample collection site, applicants and, to the extent conditions permit, employees will be given an opportunity prior to testing to provide any information they consider relevant to the test, including listing all drugs they have taken recently, specifically listing prescribed drugs and explaining the circumstances of the use of those drugs in writing or providing other relevant medical information on a Drug Testing/Chain of Custody Form. The only time conditions which may require that the testing proceed without the opportunity described above is when the physical or mental condition of the employee would not allow the employee to provide meaningful information. In such circumstances, the employee will be given the opportunity to provide relevant information when practical, but prior to the test results being discussed

with the city or the employee. This medical information is confidential and should be given only to the MRO [medical review officer]. The job applicants or employees will also be provided with a notice of the most common medications by brand name or common name, as well as the chemical name which may alter or affect a drug test. A list of common medications which may affect drug and/or alcohol test is as follows:

The following list contains the most common drugs/medications by brand name, common name, or chemical name which may alter or affect the outcome of a drug test. All or some of these drugs may be tested for under the employer's drug testing policy. The Agency for Health Care Administration list of common drugs/medications are:

Alcohol:

All liquid medications containing ethyl alcohol (ethanol). Please read the label for alcohol content. As an example Vick's Nyquil is 25% (50 proof) ethyl alcohol, Comtrex is 20% (40 proof), Contac Severe Cold Formula Night Strength is 25% (50 proof) and Listerine is 26.9% (54 proof).

Amphétamines:

Obetrol, Biphetamine, Desoxyn, Dexedrine, Didrex, Ionamine, Fastine

Cannabinoids:

Marinol (Dronabinol, THC)

Cocaine:

Cocaine HCl topical solution (Roxanne)

Phencyclidine:

Not legal by prescription

Methaqualone:

Not legal by prescription

Opiates:

Paregoric, Parepectolin, Donnagel PG, Morphine, Tylenol with Codeine, Emprin with Codeine, APAP with Codeine, Aspirin with Codeine, Robitussin AC, Guiatuss AC, Novahistine DH, Novahistine Expectorant, Dilaudid (Hydromorphone), M-S Contin and Roxanol (morphine sulfate), Percodan, Vicodin, Tussi-organidin, etc.

Barbituates:

Phenobarbital, Tuinal, Amytal, Nembutal, Seconal, Lotusate, Fiorinal, Fioricet, Esgic, Butisol, Mebaral, Butalbital, Butabarbital, Phenrinin, Triad, etc.

Benzodiazepines:

Ativan, Azene, Clonopin, Dalmine, Diazepam, Librium, Serax, Tranxene, Valium, Verstran, Halcion, Paxipam, Restoril, Centrax, etc.

Methadone:  
Dolphine, Metadose

Propoxyphene:  
Darvocet, Darvon N, Dolene, etc.

\*Due to the large number of obscure brand names and constant marketing of new products, this list is not intended to be all-inclusive.

A list of Drug and/or Alcohol Treatment Centers in or near the New Smyrna Beach area are available from Human Resources.

The job applicant or employee may receive a summary of this policy and a list of employee assistance programs, local drug/alcohol rehabilitation programs.

- e. *Injured employee.* An employee injured at the workplace and required to be tested shall be taken to a medical facility for immediate treatment of injury. If the injured employee is not at a designated collection site, the employee shall be transported to one as soon as it is medically feasible and specimens shall be obtained. If, as a result of medical treatment, blood is drawn, CDL holders who would normally be tested by breath may, at the option of the treating facility or the MRO, have their blood tested for drugs and/or alcohol. If it is not medically feasible to move the injured employee, specimens will be obtained at the treating facility under the procedures set forth in this policy and transported to an approved testing laboratory.
- f. *Emergency medical care.* No specimens will be taken prior to the administration of emergency medical care. Once this condition has been satisfied, an injured employee must release to the employer the result of any tests conducted for the purpose of showing the presence of drugs and/ or alcohol.
- g. *Body specimens.* Urine will be used for the initial test for all drugs and/or alcohol and for the confirmation of all drugs and/or alcohol. The physician shall have the discretion to determine whether drawing a blood sample will threaten the health of an injured employee or if the employee has a medical condition unrelated to the accident which may preclude the drawing of the necessary quantity of blood for a testing specimen. Under these circumstances, no inference or presumption of intoxication or impairment will be made. Alcohol tests for those holding a commercial driver's license will be tested by breath analysis, except as provided in [sub] section VIII e) above.
- h. *Cost of testing.* The city shall pay the cost of initial and confirmation drug and/or alcohol tests, which it requires of employees and job applicants. An employee or job applicant shall pay the cost of any additional drug and/or alcohol tests not required by the city.
- i. *Collection site.* The city will utilize a collection site designated by an approved laboratory which has all necessary personnel, materials, equipment, facilities, and supervision to provide for the collections, security, chain of custody procedures, temporary storage and shipping or transportation of urine and blood specimens to an approved drug and/or alcohol testing laboratory. The city may also utilize a medical facility as a collection site that meets the applicable requirements.

Security of the collection site, chain of custody procedures, privacy of the individual, collection control, integrity and identity of the specimen and transportation of the specimen to the laboratory will meet state rules and guidelines. If the laboratory is certified by Florida Agency for Health Care Administration, Drug Testing/Chain-of-Custody/HRS Form 1806, or the currently applicable form, if any, will be used for each employee or job applicant tested. If the laboratory is certified by the United States Department of Health and Human Services, it will use the chain-of-custody form designated by the department of Health and Human Services; or the U.S. Department of Transportation Drug Testing Custody and Control form will be used for each employee or applicant tested.

- j. *Collection site personnel.* A specimen in an amount sufficient for two drug and/or alcohol tests will be taken or collected by:
    - 1. A physician, a physician's assistant, a registered professional nurse, a licensed practical nurse, a nurse practitioner, or a certified paramedic who is present at the scene of the accident for the purpose of rendering emergency service or treatment; or
    - 2. A qualified person employed by a licensed laboratory who has the necessary training and skills for the assigned tasks.
  - k. *Testing laboratory.* The laboratory used to analyze initial or confirmation drug and/or alcohol specimens will be either licensed and approved by the Agency for Health Care Administration using criteria established by the Agency in its Drug-Free Workplace Standards (F.A.C. chap. 10E-18), or the laboratory will be certified by the United States Department of Health and Human Services using criteria established by the Department of Health and Human Services.
 

When testing under the U.S. Department of Transportation regulations, the laboratory will follow the requirements and D.O.T. Procedures for Transportation Workplace Drug Testing programs (49 CFR, Part 40).

    - 1. All laboratory security, chain of custody, transporting and receiving of specimens, specimen processing, retesting, storage of specimens, instrument calibration and reporting of results shall be in accordance with state laws and rules established by the Florida Agency for Health Care Administration, the U.S. Department of Health and Human Services or the U.S. Department of Transportation.
    - 2. The laboratory will provide assistance to the MRO, employee or job applicant for the purpose of interpreting any positive confirmed test results.
9. *Initial tests.* Initial drug tests shall use an immunoassay. Initial alcohol tests will be by breath analysis for D.O.T. purposes and by blood under the Florida Drug-Free Workplace Law. The following cutoff levels shall be used when screening specimens to determine whether they are positive or negative for these drugs or metabolites.

All levels equal to or exceeding the following shall be reported as positive:

*	Alcohol	0.05 g/dl
**	Amphetamines	1,000 ng/ml
	Barbiturates	300 ng/ml

	Benzodiazepines	300 ng/ml
**	Cannabinoids	100 ng/ml
**	Cocaine	300 ng/ml
	Methaqualone	300 ng/ml
**	Opiates	300 ng/ml
**	Phencyclidine	25 ng/ml
	Synthetic Narcotics:	
	Methodone	300 ng/ml
	Propoxyphene	300 ng/ml

\* Alcohol: When the breath/alcohol test is used under the D.O.T. regulations, the initial test level is 0.04 gram of alcohol per 210 liters of breath.

\*\* Drugs tested under U.S. Department of Transportation Drug and Alcohol Testing Procedures, 49 CFR Part 40.

1. *Confirmation tests.* All urine specimens identified as positive on the initial test shall be confirmed using Gas Chromatography/MASS Spectrometry (GC/MS). Initial positive blood alcohol tests will be confirmed by gas chromatography. Confirmation of breath alcohol analysis for commercial drivers' license holders under D.O.T. regulations will be by the same method as the initial test. All confirmation shall be done by quantitative analysis. Concentrations that exceed the linear region of the standard curve shall be documented in the laboratory and recorded as "greater than highest standard curve value." The following confirmation cutoff levels shall be used when analyzing specimens to determine whether they are positive or negative for these drug metabolites.

10. *Test results.*

a. *Reporting results.*

1. The laboratory will report test results (both positive and negative) to the medical review officer (MRO) within seven working days after receipt of the specimen by the laboratory. The name and address of the current medical review officer is on file with the collection site. The medical review officer (MRO) is contracted/employed by a third party vendor and not the drug-testing laboratory.
2. The laboratory will report as negative all specimens that are negative on the initial test or negative on the confirmation test. Only specimens confirmed positive on the confirmation test will be reported positive for a specific drug. A report will not disclose the presence or absence of any drug other than a specified drug and its metabolites listed in this policy.
3. The laboratory will transmit results in a manner designed to ensure confidentiality of the information. The laboratory and MRO will ensure

the security of the data transmission and restrict access to any data transmission, storage and retrieval system.

4. The MRO will verify that positive and negative test results were properly analyzed and handled according to Agency for Health Care Administration, U.S. Department of Transportation or U.S. Department of Health and Human Services rules. The MRO will have knowledge of substance abuse disorders and shall also be knowledgeable in the medical use of prescription drugs and in the pharmacology and toxicology of illicit drugs. The MRO shall evaluate the drug test result(s), which is reported to by the lab, verify by checking the chain-of-custody form that the specimen was collected, transported and analyzed under proper procedures, and determine if any alternative medical explanations caused a positive test result.

This determination by the MRO can include conducting a medical interview with the individual, review of the individual's medical history or the review of any other relevant biomedical factors. The MRO shall also review all medical records made available by the tested individual. The MRO may request the laboratory to provide quantization of test results.

5. The MRO will contact the employee or job applicant of a confirmed positive test result and inquire as to whether prescriptive or over-the-counter medications could have caused the positive test result. The MRO will follow the procedures set forth in the Florida Workers' Compensation Drug Testing Rules and the Agency for Health Care Administration, Drug-Free Workplace Standards or the rules established by the U.S. Department of Health and Human Services or the U.S. Department of Transportation for providing the applicant or employee the opportunity to present relevant information regarding the test results. After following the appropriate procedures, the MRO will notify the city of any verified, confirmed positive test results.
6. Within five working days after receipt of a positive confirmed test result, the city will inform the employee or job applicant in writing of such positive test results, the consequences of such results, and the options available to the employee or job applicant, including the opportunity to contact the MRO and the right to file an administrative or legal challenge.
7. The city shall provide to the employee or job applicant, upon request, a copy of the test results.
8. Unless otherwise instructed by the city in writing, all records pertaining to a given specimen shall be retained by the drug-testing laboratory for a minimum of five years. The drug testing laboratory shall retain (in properly secured refrigerated or frozen storage) for a minimum period of one year, all confirmed positive specimens. Within this one-year period the city, employee, job applicant, MRO or the department of Health and Human Services may request in writing that the laboratory retain the specimen for an additional period of time. If no such request is received, the laboratory may discard the specimen after one year of storage.

9. Within 24 hours for all tests based on reasonable suspicion, the city will detail in writing the circumstances that formed the basis of the determination that a reasonable suspicion existed to warrant the testing. A copy of the report will be given to the employee upon request. The original report will be kept confidential and retained by the city for at least one year.

b. *Challenges to test results.*

1. Within five working days after receiving notice of a positive confirmed test result, the employee or job applicant may submit information to the MRO explaining or contesting the test results, or to the city explaining why the result does not constitute a violation of this policy.

The employee or job applicant will be notified in writing if the explanation or challenge is unsatisfactory to the city. The written notice will be given to the employee or job applicant within 15 days of receipt of the explanation or challenge, and will include why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive results. All such documentation will be kept confidential and will be retained for at least one year.

2. If the employee or job applicant does not submit to the city or MRO information explaining or contesting the test results within five days after receipt of notice of a positive test result, then the positive test result will become final for purposes of any employment or disciplinary action.

c. *Employee protection.*

1. During the 180-day period after written notification of a positive test result, the employee will be permitted by the employer to have a portion of the specimen retested, at the employee's expense. Any additional tests, however, must be conducted on the same specimen as the original test. The retesting must be done at a Florida Agency for Health Care Administration (HCA) or U.S. Department of Health and Human Services licensed and approved laboratory. The second laboratory must test at equal or greater sensitivity for the drug and/or alcohol in question as did the first laboratory. The first laboratory that performed the test for the employer shall be responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the custody for such transfer.
2. The drug and/or alcohol testing laboratory will not disclose any information concerning the health or mental condition of the tested employee.
3. The city will not request or receive, from the testing facility, any information concerning the personal health, habit or condition of the tested employee including, but not limited to, the presence or absence of HIV antibodies in the tested worker's body fluids.
4. The city will not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the

sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer (MRO).

5. The city will not discharge, discipline or discriminate against an employee, solely upon the employee's voluntarily seeking treatment, while under the employ of the city, for a drug and/or alcohol related problem, if the employee has not previously tested positive for drug and/or alcohol use, entered an employee assistance program (EAP) for drug and/or alcohol related problems, is not currently under investigation of an alleged violation of this policy, or entered an alcohol and drug rehabilitation program. The city retains the right to select an EAP or drug and/or alcohol rehabilitation program when the city pays the cost of the employee's participation in the program.
6. The carrier or self-insurer will pay all authorized treatment of an injured employee prior to reasonable notice of denial of benefits to the health care provider. Prior to denying medical and indemnity benefits based upon a confirmed positive test result, the employer's workers' compensation carrier or self-insurer will give reasonable notice to all affected health care providers that payment for treatment, care and attendance provided to the employee after a future date certain will be denied.

11. *Disciplinary action.*

- a. In the case of a first-time violation of the city's policy, including a positive drug and/or alcohol test result (without evidence of use, sale, possession, distribution, dispensation, or purchase of drugs and/or alcohol on city premises or while on duty), the employee will be subject to discipline up to and including discharge.
- b. The city may suspend employees with or without pay under this policy pending the results of a drug and/or alcohol test or investigation.
- c. Any employee using, selling, purchasing, possessing, distributing or dispensing drugs and/or alcohol on duty or on city premises will be discharged.
- d. The city reserves the right to discipline, up to and including termination, any employee who uses, possesses, sells, distributes, dispenses or purchases illegal drugs and/or alcohol, whether on or off duty or on or off city premises.

12. *Investigation.*

- a. To ensure that illegal drugs and/or alcohol do not enter or affect the workplace, the city reserves the right, upon reasonable suspicion, to search all vehicles, containers, lockers or other items on city premises or in city vehicles in furtherance of this policy. Individuals may be requested to display personal property for visual inspection upon the city's request.
- b. Searches will be conducted only where the city has reason to believe that the employee has violated the city's substance abuse policy.
- c. Failure to consent to a search or display personal property for visual inspection will be grounds for discharge or denial of access to city premises.
- d. Searches of an employee's personal property will take place only in the employee's presence. All searches under this policy will occur with the utmost discretion and consideration for the employee involved.

- e. As part of the search policy referenced in [sub] section 10(a) above, individuals may be required to empty their pockets, and the city may use law enforcement personnel to conduct additional searches based upon reasonable suspicion.
- f. Because the primary concern is the safety of its employees and their working environment, the city will not normally prosecute in matters involving illegal substances. However, the city will turn over all confiscated drugs and/or alcohol to the proper law enforcement authorities. Further, the city reserves the right to cooperate with or enlist the services of proper law enforcement authorities in the course of any investigation.

13. *Arrest or conviction for drug-related crime.*

- a. If an employee is arrested for or convicted of a drug-related crime, the city will investigate all of the circumstances, and city officials may utilize the drug testing procedure if cause is established by the investigation. In most cases, an arrest for a drug-related crime constitutes reasonable suspicion of drug use under this policy. The following procedures will apply:
  - 1. During investigation, an employee may be placed on leave without pay where the presence of the Employee at work constitutes a hazard or creates potential liability, either to the City, to other Employees, or to the Employee. After the investigation is completed, the leave may be converted to a suspension or the employee may be reinstated, depending upon the facts and circumstances.
  - 2. If convicted of a drug-related crime, enters a plea of "nolo contendere" or enters into a "pretrial intervention agreement," or pleads guilty with adjudication withheld, the employee will be terminated.
  - 3. If an employee has been suspended and the case has been dismissed or otherwise disposed of, the city will make a determination as to whether to authorize the employee's return to work based on its investigation. If the employee is authorized to return to work, the employee must agree in writing to unannounced, periodic testing for a period of up to two years.
  - 4. Because of the seriousness of such situations, the city reserves the right to alter or change its policy or decisions on a given situation depending upon its investigation and the totality of the circumstances.
- b. It is a condition of employment with the City of New Smyrna Beach that any employee who pleads guilty of or is convicted of any criminal drug violation occurring in the workplace or off the job must report such conviction to his supervisor within five calendar days of such conviction. A "nolo contendere" plea or enters a "pretrial intervention agreement" for drug activity is also to be reported in the same manner. Employees who are convicted of any criminal drug violation, who plead guilty with adjudication withheld, or who enter a "nolo contendere" plea may be disciplined or terminated.

14. *Confidentiality*

- . All information, interviews, reports, statement memoranda and drug and/or alcohol test results, written or otherwise, received by the city as a part of this drug and/or alcohol testing program are confidential communications. Unless authorized by state laws, rules or regulations, the city will not release such information without a written consent form signed voluntarily by the person tested. The right to confidentiality does

not apply when the information is used by the city as a defense in a civil or administrative matter.

15. *Records and training.*

- a. *Resource file.* The city will maintain a current resource file of providers of employee assistance including alcohol and drug abuse programs, mental health providers, and various other persons, entities or organizations designed to assist employees with personal or behavioral problems. The city will inform employees and new hires about various employee assistance programs that may be available. The information shall be made available at a reasonable time convenient to the city and shall be discretely reviewed by the employee.
- b. *Education course.* The city will provide an annual education course to assist the employees in identifying personal and emotional problems that may result in the misuse of drugs and/or alcohol. This course will also include a presentation on the legal, social, physical and emotional consequences of the misuse of drugs and/or alcohol.
- c. *Individual test results.*
  1. The MRO shall be the sole custodian of individual test results.
  2. The MRO shall retain the reports of individual test results for a period of at least five years.
  3. Only the following information will be maintained by the city in an employee's confidential medical file:
    - a. The types of controlled substances testing for which the employee submitted a urine or blood specimen;
    - b. The date of such collection;
    - c. The location of such collection;
    - d. The identification of the person or entity (1) performing the collection, (2) analyzing the specimens, and (3) serving as the MRO; and
    - e. Whether the test finding was positive or negative and, if positive, the controlled substances identified in any positive test.
  4. The city shall ensure that all records related to the administration and results of the drug-testing program are maintained for a period of five years.
- d. *Annual statistics for employees with commercial driver's licenses.* The city will maintain an annual (calendar year) summary of the following records related to the administration and results of the controlled substance testing program for employees with commercial drivers' licenses:
  1. The total number of controlled substance tests administered.
  2. The number of controlled substance tests administered in each category (i.e., pre-employment, periodic, reasonable cause, and random).
  3. The total number of individuals who did not pass a controlled substance test.

4. The total number of individuals who did not pass a controlled substance test by testing category.
  5. The disposition of each individual who did not pass a controlled substance test.
  6. The number of controlled substance tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the screening test in a sufficient quantity to warrant a confirmatory test.
  7. The number of controlled substance tests performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding to the MRO.
  8. The number of controlled substance tests that were performed by a laboratory that indicated evidence of a prohibited controlled substance or metabolite in the confirmatory test in a sufficient quantity to be reported as a "positive" finding by substance category.
- e. *Commercial driver's license drug training program.*
1. The city shall establish and maintain a drug and/or alcohol training program. The program shall, at a minimum, include the following:
    - a. An educational and training component for employees which addresses controlled substances;
    - b. An educational and training component for supervisory personnel and city officials which addresses controlled substances; and
    - c. A written statement on file and available for inspection at the city's principal place of business outlining the program.
  2. The drug and/or alcohol training program will include at least the following elements:
    - a. The effects and consequences of controlled substance abuse on personal health, safety and work environment;
    - b. The manifestations and behavioral changes that may indicate controlled substance use or abuse;
    - c. Documentation of training given to employees and supervisory personnel.
  3. The drug and/or alcohol training program for all covered employees and supervisory personnel will consist of at least 60 minutes of training each year. Additionally, supervisors and managers over commercial drivers' license holders will receive an additional 60 minutes of alcohol and drug training each year.

16. *Conclusion.*

The city's drug-free workplace policy has been prepared so as not to conflict with the public policy and, further, not to be discriminatory or abusive. A drug-free workplace should be the goal of every employer in America.

Drug testing is only one of the several steps that must be taken to achieve this objective. When incorporated into a comprehensive anti-drug effort, testing can go a long way in combating drug abuse in the workplace.

This policy supersedes any information provided to applicants and/or employees, either written or oral. The city reserves the right to change the provisions of this policy and testing program at any time in the future to remain in compliance with any state or federal law.

**CONSENT TO EMPLOYEE TESTING**

I understand that submission to testing for the presence of drugs and/or alcohol is a condition of employment with the City of New Smyrna Beach. I further understand that (1) if I refuse to take the drug and/or alcohol test(s), (2) if I refuse to authorize release of the drug and/or alcohol test results to the City of New Smyrna Beach or (3) if the drug and/or alcohol test(s) establish a violation of the city's policies concerning drug and alcohol use, disciplinary action up to and including discharge may result. In addition, if I was injured on the job and test positive, I may forfeit my medical and indemnity benefits under Florida's Workers' Compensation Act upon exhaustion of the procedures in F.S. § 440.102.

By placing my initials in the blanks below, and by signing and dating this form, I consent to take the drug and/or alcohol test(s) and authorize release of any drug and/or alcohol test(s) results to the City of New Smyrna Beach. I understand that I may be placed on temporary leave of absence pending results of said drug and/or alcohol test(s). I understand that should my drug and/or alcohol test(s) results be confirmed positive, I will be subject to disciplinary action up to and including discharge.

By signing this form, I hereby release to the City of New Smyrna Beach the results of the drug and/or alcohol test(s) to which I have consented. I further authorize the City of New Smyrna Beach to discuss the results with medical personnel/ physician collecting the specimen, the testing facility, its directors, officers, agents, and employees responsible for administering the aforementioned drug and/or alcohol test(s) or evaluating the results thereof and any of them herein and to use the drug and/or alcohol test results as a defense to any legal action to which I am a party.

I further release any drug and/or alcohol testing facility or any physicians who have tested me from any liability arising from a release of any and all results, written reports, medical records and data concerning my drug and/or alcohol test(s) to the appropriate city officials and representatives. I agree to take the following drug and/or alcohol test(s) and have the results released to the City of New Smyrna Beach:

1.	Urinalysis Test	_____ (initials)
2.	Blood Test	_____ (initials)
3.	Breath Alcohol Test	_____ (initials)

_____	_____
Employee's Signature	Date
_____	
Social Security Number	
_____	_____
Witness Signature	Date

I hereby refuse to consent to testing for the presence of drugs and/or alcohol.

_____	_____
Employee's Signature	Date
_____	
Social Security Number	
_____	_____
Witness Signature	Date

## **L. Smoke-Free Workplace.**

The City of New Smyrna Beach is continually striving to improve the working conditions and protect the health of its employees and the general public. In accordance with the “Florida Clean Indoor Act”, F.S. 386, the City will provide a healthy, comfortable and safe environment in all respects by prohibiting smoking and the use of all smoking and tobacco products (including e-cigarettes) in all City owned buildings, all city owned vehicles/equipment and while performing the functions of your job description.

The smoke-free workplace policy applies to:

- All areas of city buildings.
- All vehicles/equipment owned or leased by the City
- All visitors to city buildings
- All employees, temporary employees, interns and volunteers.

Any supervisor who observes an employee in violation of this rule will remind the employee of the rule and its intent. Violations will subject the employee to disciplinary action up to an including discharge.

## **M. Employee organizations.**

The city's policy is an open door policy under which all employees have the right to deal directly with their supervisor or manager with reference to all working conditions. The city recognizes and accepts its obligation to provide the city employees with good working conditions, good wages and benefits, fair treatment, and personal respect which each employee deserves.

The city does not and will not discriminate against any employee because of his/her membership or non-membership in any organization. However, it is not necessary for city employees to belong to a union or any other organization in order to hold a job with the city.

It is our belief that a union would not benefit employees, the city, nor the public we serve. It is therefore the city's intention, as permitted by state law, to oppose by lawful means any union which may seek to organize those city employees who are not already represented by a union.

## **N. Records and reports.**

### *1. Responsibility.*

The Director of Human Resources is responsible for establishing and maintaining comprehensive central personnel records of all city employees.

### *2. Annual report.*

The Director of Human Resources shall submit information to be included in the City Manager’s Annual Report.

3. *Records.*

- a. All personnel records of employees of the city and all other records and material relating to the administration of the city's personnel system shall be considered confidential and the property of the city to the extent permitted by law. The decision of the City Manager relating to the use, maintenance, and disposition of such records and material, and as to whether or not any information contained therein may be disclosed in accordance with applicable law shall be final.
- b. Employees should be aware of the importance of keeping their personnel records current. This means immediately notifying the human resources office of any changes; such as, change of address (even if temporary), change of telephone number, change of beneficiary, number of dependents, divorce, marriage, or any change not previously reported, of status that was originally given at time of employment. This is the responsibility of the employee and failure to comply may result in loss of employee benefits or other corrective action.
- c. The human resources office should be informed of any special training courses completed by an employee. Copies of diplomas or certificates will be forwarded to become a permanent addition to the employee's personnel file.

4. *Records retention and disposition.*

The Director of Human Resources shall determine the time limit that any personnel records shall be kept on file and the final disposition of such records, in accordance with applicable laws.

**O. Criminal history record checks for certain employees and appointees.**

That pursuant to F.S. § 166.0442, a criminal history record check shall be required for any position of municipal employment or appointment which is critical to security or public safety, or for any private contractor, employee of a private contractor, vendor, repair person, or delivery person who has access to any public facility or publicly operated facility which is critical to security or public safety. The city shall require that each person applying for, or continuing employment in, any such position or having access to any such facility to be fingerprinted. The fingerprints shall be submitted to the department of law enforcement for a state criminal history record check and to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from the criminal history record checks conducted pursuant to this section may be used by the city to determine an applicant's eligibility for employment or appointment and to determine an employee's eligibility for continued employment. This section is not intended to preempt or prevent any other background screening, including, but not limited to, criminal history background checks, which the city may lawfully undertake. To the extent that the provisions of this section are inconsistent with any labor, or employment, or any other contract in existence at the adoption date of this section, the provisions of the contract shall control over the provisions of this section. All contracts adopted after the effective date of this section shall be consistent with the provisions of this section.

An employee is responsible for immediately notifying his/her Department Head when information or other charging documents has been filed by a prosecuting official against him/her for an offense or violation of law, or when indicted by a Grand Jury. Failure to do so shall result in disciplinary action.

**P. Workplace Bullying.**

The City of New Smyrna Beach defines bullying as “repeated inappropriate behavior, either direct or indirect, whether verbal, physical or otherwise, conducted by one or more persons against another or others, at the place of work and/or in the course of employment.” Such behavior violates the company Code of Ethics, which clearly states that all employees will be treated with dignity and respect.

The purpose of this policy is to communicate to all employees, including supervisors, managers and executives, that the company will not tolerate bullying behavior. Employees found in violation of this policy will be disciplined up to and including termination.

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

**Verbal bullying:** Slandering, ridiculing or maligning a person or his/her family; persistent name calling that is hurtful, insulting or humiliating; using a person as the butt of jokes; abusive and offensive remarks.

**Physical bullying:** Pushing, shoving, kicking, poking, tripping, assault or threat of physical assault; damage to a person’s work area or property.

**Gesture bullying:** Nonverbal threatening gestures or glances that convey threatening messages.

**Exclusion:** Socially or physically excluding or disregarding a person in work-related activities.

**Q. Workplace Violence Policy**

The purpose of this policy is preventive, not punitive. It is the responsibility of each employee to contribute to a safe working environment. The City of New Smyrna Beach will do its part to prevent violence in the workplace and expects each employee’s full cooperation.

It is the City of New Smyrna Beach’s policy to provide a safe workplace for its employees. Due to the increased incidence of violent activities in workplaces, the City of New Smyrna Beach has adopted a zero-tolerance policy with respect to threats of violence or violent acts in the workplace. To further augment this policy, the following policy statement shall be adhered to by all City employees and contractors:

With the exception of weapons issued to public safety personnel or as otherwise permitted by Florida Statutes, including but not limited to 790.251, Florida Statute, the carrying or possession of firearms or other weapons by employees is prohibited at all times in City buildings or on City property, including City parking lots and in City vehicles. The carrying or possession of firearms or other weapons is prohibited in any other City location while on or off duty.

1. *Zero Tolerance.*

Threats, threatening language, or any other acts of aggression or violence made toward or by a City employee WILL NOT BE TOLERATED! For purposes of this policy, *threat* includes any verbal or physical harassment, an attempt at intimidation or to instill fear in others, menacing gestures, flashing of concealed weapons, stalking, verbal or physical abuse, or other hostile, aggressive, injurious, and destructive actions undertaken for the purpose of domination or intimidation.

In addition, failure to comply with this policy will result in disciplinary action up to and including termination of employment.

2. *Responsibilities.*

All potentially dangerous situations, including threats, should be reported immediately to one's supervisor or Director of Human Resources. The key to preventing violence is to report the threat. All threats will be promptly investigated. Reports of threats may be made anonymously. No employee will be subject to retaliation, intimidation, or discipline as a result of reporting a threat under this policy, unless the report of the threat is found to be deliberately false. If an investigation confirms that an employee commits the violence or threat, the City will take appropriate corrective action that may, at the discretion of the City Manager, include discharge of the offender. Disciplinary action up to and including discharge may also be taken against anyone who knowingly makes a false, meritless or malicious claim under this policy. The Human Resources Department will appoint employees to the Threat Assessment Team.

It is also important to report the following:

- Suspicious acts inside the building.
- A suspicious vehicle outside the building.
- Threats made by irate customers.
- Threats made by spouses and/or ex-spouses.
- Acts of stalking.
- Unusual packages or letters.

3. *Inspections.*

If there is reasonable suspicion to believe that personal property may contain weapons not authorized, the City has the right to inspect personal property of employees on City property.

An employee who refuses, when a reasonable suspicion exists, to submit immediately to such an inspection of his or her person, vehicle or other property shall be

considered insubordinate and subject to disciplinary action, up to and including discharge.

Any weapon discovered to be in violation of the City's policy may be seized by the City and may be turned over to law-enforcement authorities. Weapons are defined as:

- a. Any firearm.
- b. Any item that is specifically designed or used to intentionally inflict bodily harm.
- c. Any item which is inappropriate in the employee's workplace and which may be used to cause fear of violence or may be used in connection with threats.

4. *Procedures For Handling Violent Situations.*

a. Pre-Crisis Situations:

When an employee identifies a potentially violent situation:

1. The employee reports the situation to his or her supervisor or the Director of Human Resources.
2. Management investigates the situation.
3. Based on the results of the investigation, management either:
  - a. Resolves the situation utilizing existing procedures (e.g., counseling, discipline, EAP, or other resource).
  - b. Activates a Threat Assessment Team comprised of the Safety Officer and supervisory personnel.
  - c. Informs the City Manager of the potential crisis.
4. Management will follow up with the complainant.

b. Crisis Situations.

1. Personal safety must be the utmost priority.
2. Management contacts local law-enforcement and/or medical-emergency personnel.
3. All employees are empowered to contact local law enforcement in an emergency situation.
4. Refer all media inquiries to the City Manager's Office.

c. Post-Crisis Situations.

1. The Threat Assessment Team will coordinate an incident debriefing.
2. Management will give assessment to Director.
3. Refer all media inquiries to the Public Information Officer.

**R. Conclusion**

The City's objective is to maintain the safety of all of its employees. Therefore, no employee shall engage in any conduct that would serve to escalate a hostile or threatening situation.

Nothing in the Violence in the Workplace Policy or guidelines is intended or shall be used to violate any legal requirement or safety standard. If applicable laws or safety standards become effective which are in conflict with any provisions of the Policy or Guidelines, the Policy and /or Guidelines shall be deemed amended to conform to such conflicting provisions and all other provisions shall remain in effect.

**SECTION IV**

**EMPLOYMENT**

**WITH THE CITY**

**A. Vacancies.**

1. *Request for personnel.*

- . Department heads shall submit completed position authorization requests (PAR) to the Director of Human Resources for persons to fill vacancies. Requests shall include the title of the position to be filled and other pertinent information as may be needed to enable the Director of Human Resources to satisfactorily recruit the personnel being sought by the department. Requests for personnel should be made reasonably far in advance of actual need when circumstances permit. All such requests for vacancies to be filled shall be authorized by the City Manager. Vacancies that are filled by Management decisions such as; demotions, transfer or by certification from layoff eligibility lists will not require execution of notification and recruitment procedures.

2. *Notification; recruitment.*

The Director of Human Resources or designee will be responsible for preparing recruiting notices to publicize vacancies. Notification, examination, and review of internal applicants may be, but [are] not required to be, conducted prior to external notification and recruitment. The city will endeavor to fill all vacancies through promotion; however, the city will fill all vacancies by the most qualified applicant.

3. *Acceptance of applications.*

All applications must be made on a standard form designated and prepared by the human resources office. The applicant must complete this form personally. Incomplete applications may be revised by applying in person to the human resources office or authorized origination intake agency, provided said change is corrected through revision before the final date for receiving applications for the position or examination applied for by the applicant.

Applications shall be active and considered by the human resources office for the term of the vacancy, which is from the date the application is filed, unless the application becomes void by virtue of some other rule, until the vacancy is filled. All applications for a vacancy shall be maintained by the human resource office or with the authorized origination intake agency in accordance with state law.

4. *Basis for employment.*

Employment with the city shall be based on merit, ability, and fitness as evidenced by:

- a. Training, experience and other attributes of the applicants as reflected by the application form, interview and other documentation of certifications, registration, etc., as requested;
- b. Written examinations or performance tests when in the best interest of the city;
- c. A physical examination that may be required for all applicants accepting employment with the city. Additional examinations will be required for certain positions at the discretion of the Director of Human Resources or by request of the department head or City Manager.

5. *Application references.*

The Hiring Department and/or Human Resources Department or designee may check with former supervisors, employers, or fellow workers regarding an applicant's

qualifications. The Director of Human Resources may also check criminal and driving records, credit records or educational credentials as provided by candidates or obtained by the human resources office as part of the pre-employment procedure. Background checks may include verification of any information on the applicant's resume or application form. Reference checks made by personal or telephone contact will be documented and made part of the applicant's file.

The City also reserves the right to conduct a background check for current employees to determine eligibility for promotion or reassignment in the same manner as described above.

6. *Rejection of applications.*

- a. The City Manager, Director of Human Resources, or department head may, within applicable legal requirements, reject any application which indicates that the applicant does not possess one or more of the requirements as specified in the position description, or as a result of information obtained through the verification and testing stages.
- b. Applicants may also be rejected if:
  1. The applicant has a prior conviction for a crime, if the crime was a felony or first-degree misdemeanor or a crime which directly relates to the position of employment sought;
  2. The applicant has submitted an incomplete, false, or misleading application;
  3. The applicant has ever been a member of any organization which advocates the overthrow of the government of the United States of America by force or violence; or
  4. The applicant's past employment record is "unsatisfactory" as determined by the department head, Director of Human Resources, or City Manager. If the applicant did not give proper notice of termination, they would be ineligible for re-hire.

**B. Examinations and eligibility lists.**

1. *Examinations.*

- a. All appointments to regular status positions, either at the entrance or promotional level, shall be made on the basis of merit and fitness to be determined as far as practical and possible by competitive examination and may only be made by the City Manager.
- b. Whenever vacancies exist or are contemplated in the regular status category, the Director of Human Resources or designee, in conjunction with the department head, shall prepare and administer examinations. The examinations will be designed to fairly and impartially test the merit, fitness, aptitude, experience, and other relative qualifications of an applicant to discharge the duties of the classification in which he/she seeks appointment. These may consist of any, all or a combination of the following:
  1. Written examination;
  2. Performance examination;

3. Evaluation of training and experience;
4. Length of time in present classification;
5. Attendance record;
6. Management rating;
7. Oral board examinations;
8. Psychological examinations;
9. Substance abuse testing; and
10. Any other applicable criteria that will fairly measure the relative abilities of individuals competing in examinations.

2. *Applicant appeals.*

Should any new job applicant feel adversely affected or discriminated against in his/her opportunity for employment or if, in his/her opinion, an injustice has been done in the grading of the examination papers, the applicant may appeal to the Director of Human Resources, and then to the City Manager should the matter not be resolved by the Director of Human Resources to the applicant's satisfaction. Any such appeal to the City Manager must be in writing and shall specify the nature and cause of complaint.

3. *Examination confidential.*

Examination papers may be made available only to the employee, department head, Director of Human Resources, City Manager, or authorized designee of each and as required by state law.

4. *Rating examinations.*

Sound measurement techniques and procedures will be used in rating the results of tests and determining the relative ranking of the candidates, and all such tests utilized shall be administered in a manner to minimize/eliminate discriminatory factors.

5. *Position Authorization Request (PAR).*

The human resources office must have an approved position authorization request for a vacancy prior to certification of names of applicants to requesting departments. If the human resources office is unable to fill the requisitions or the department fails to select certified candidates within six months, the request will be canceled and returned to the department for reconsideration. The requesting department may resubmit the Position Authorization Request form if the position is deemed necessary and is approved by the City Manager to be filled.

6. *Filling positions.*

The city follows the procedure commonly known as "rule of three" in processing applicants to fill vacant positions. Each department head shall have a minimum of three applicants to review for each position, including internal promotions. This provision may be waived by the department head and Director of Human Resources, when factors exist which would delay the timely filling of a vacancy or warrant an expedited placement procedure.

In those instances where eligibility/promotional lists exist, which have established a hierarchy of eligible applicants, department heads shall review the top three applicants on the list for a vacancy and provide a recommendation from one of those three to the City Manager. The department head shall not be limited to the individual identified first on the list. In situations where more than one vacancy exists and there is a promotional list, the department head shall review the top three on the list and provide a recommendation to the City Manager of one of the three. Once this vacancy is filled, then the department head shall review the remaining top three on the list and provide a recommendation to the City Manager of one of the three.

This shall continue until all vacancies are filled or less than three individuals remain on the eligibility/promotional list. If less than three individuals appear and/or remain on the list and a vacancy or vacancies occur/remain, then a new eligibility/promotional list shall be developed.

In situations where more than one vacancy exists and promotional/eligibility lists are not utilized by the department, the department head shall review the top three applicants and provide to the City Manager the top three applicants and a recommendation for each vacancy.

If the department head concludes that none of the applicants or none of the remaining applicants for a position are qualified, the department head shall notify the Director of Human Resources. If the Director of Human Resources concurs, the position(s) shall be re-noticed. If the Director of Human Resources does not agree with the department head, then both shall present their information/opinions to the City Manager for determination.

Each department head, after completing a thorough background/employment/educational/reference check; testing; and interview process, shall forward to the Director of Human Resources the top three applicants, one of which shall be the department head's recommendation selection. The Director of Human Resources shall review the department head's recommendation and shall provide recommendation to the City Manager. The City Manager in accordance with the Charter, shall review the recommendation and either authorize the hiring, select an alternate candidate from the list of three, or defer a determination when in his/her opinion such an action would not be legal, professional and/or in the best interest of the city.

#### *7. Processing applicants.*

After approval to hire from the City Manager, the Human Resources Department will prepare an offer of employment to selected applicants with the exception of Police and Fire Departments. All offers of employment are conditioned on receipt of a background check report that is acceptable to the City.

- a. Before employment of the successful applicant, the applicant must:
  1. Pass a physical examination (subsequent to an offer of employment);
  2. Present a social security card;
  3. Complete employment eligibility verification (Form I-9)
  4. Present proof of education, if applicable;

5. When appropriate, present certificate of separation from armed forces (military DD-214 form);
  6. Present certification of date of birth;
  7. Be subject to a background investigation;
  8. Present other records as may be required by the Director of Human Resources;
  9. Drug screen.
- b. Reimbursement for relocation and/or travel costs incident to interview requirements may be allowed by the City Manager. If the new employee resigns or is dismissed within one year, these costs will be returned to the city. There will be a signed statement from the employee prior to authorization.
  - c. Any exception to this procedure must be approved by the City Manager.

**C. Use of Social Security Number.**

The Florida Legislature adopted requirements relating to the collection and dissemination of social security numbers by all “agencies” in Florida. The City of New Smyrna Beach is defined as an “agency” under Section 119.071, Florida Statutes.

1. *Applicability.*

The provisions of this policy apply to all City employees, officers, departments, divisions, boards, commissions or other separate units of government created or established by law and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of the City.

2. *In General.*

In Section 119.071(5), Florida Statutes, the Legislature acknowledges that the Social Security number was never intended to be used for business purposes but was intended to be used solely for the administration of the federal Social Security System. They further acknowledge that social security numbers are now used for identity verification and other legitimate purposes.

Recognizing that the social security number can be used as a tool to perpetuate fraud, the City of New Smyrna Beach will comply with the State’s requirements that:

- a. An agency may not collect an individual’s social security number unless the agency has stated in writing the purpose for its collection;
- b. Social security numbers collected by an agency may not be used by the agency for any purpose other than the purpose provided in the written statement;
- c. An agency collecting an individual’s social security number must provide that individual with a copy of the written statement;
- d. Each agency shall review whether its collection of social security numbers is in compliance with Section 119.071(5), Florida Statutes; and

- e. Each agency shall certify to the President of the Senate and the Speaker of the House of Representatives its compliance with these requirements no later than January 31, 2008.

The City of New Smyrna Beach adopts the following written statement for the collection of social security numbers and will provide such statement to individuals when their social security number is obtained:

**“The City of New Smyrna Beach adopts the written statement attached hereto for the collection of social security numbers and such statement to individuals when their social security number is obtained. The City hereby determines that obtaining an individual’s social security number for the reasons identified in said statement is either specifically provided by law or is imperative for the City to fulfill its lawful duties and responsibilities.”**

The City acknowledges that social security numbers held by an agency, including those held before, on or after the effective date of this exemption, are confidential and exempt from s. 119.07(1) and s.24(a), Art. I of the State Constitution.

Social security numbers may be disclosed to another agency or governmental entity if disclosure is necessary for the receiving agency or entity to perform its duties and responsibilities. Commercial entities engaged in commercial activity may access social security numbers through a public records request under the following conditions as provided for in Section 119.071(5), Florida Statutes:

1. The “commercial entity” must be a corporation, partnership, limited partnership, proprietorship, sole proprietorship, firm, enterprise, franchise or association that performs a commercial activity in the State of Florida.
2. A “commercial activity” means the provision of a lawful product or service by a commercial entity. Commercial activity includes verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use for insurance purposes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities. It does not include the display or bulk sale of social security numbers to the public or distribution of such numbers to any customer that is not identifiable by the commercial entity.
3. The social security numbers will be used only in the performance of a commercial activity and the commercial entity makes a written request for the social security numbers, which must:
  - Verify the written request under penalties of perjury as provided in Section 92.525, Florida Statutes;
  - Be legibly signed by an authorized officer, employee, or agent of the commercial entity;
  - Contain the commercial entity’s name, business mailing and location addresses,

and business telephone number; and

- Must request the specific purpose for which the commercial entity needs the social security numbers and how the social security numbers will be used in the performance of a commercial activity.

The City may request any other information reasonably necessary to verify the identity of a commercial entity requesting the social security numbers and the specific purposes for which the numbers will be used. Any person who makes a false representation in order to obtain a social security number commits a third degree felony. Any public officer who violates these provisions on providing social security numbers to commercial entities commits a non-criminal infraction, punishable by a fine not exceeding \$500 per violation.

The City Clerk's Office shall be responsible for filing a report with the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 31 of each year. This report must identify all commercial entities that have requested social security numbers during the preceding calendar year, and the specific purpose or purposes stated by each commercial entity regarding its need for social security numbers. If no disclosures were made, the City shall so indicate on the report.

**THE CITY OF NEW SMYRNA BEACH COLLECTS YOUR SOCIAL SECURITY NUMBER FOR THE FOLLOWING PURPOSES:**

- CLASSIFICATION OF ACCOUNTS;
- IDENTIFICATION AND VERIFICATION;
- CREDIT WORTHINESS;
- BILLING AND PAYMENTS;
- DATA COLLECTION, RECONCILIATION, AND TRACKING;
- BENEFIT PROCESSING;
- TAX REPORTING;
- NEW UTILITY ACCOUNT APPLICATIONS;
- BANK DRAFT AUTHORIZATIONS;
- VENDOR REGISTRATION APPLICATIONS;
- VOLUNTEER CONTRACTS FOR BACKGROUND CHECKS;
- EMERGENCY TRANSPORT FOR BILLING AND INSURANCE; AND
- POLICE STATEMENTS AND ARRESTS FOR VERIFICATION OF IDENTITY

**D. Pre-employment physical examinations.**

All applicants, including those being reemployed, will be required to undergo a physical examination/drug screen after an offer of employment is made but before the applicant begins his/her employment duties. The city reserves the right to withdraw any offer of employment based on the results of the physical examination/drug screen, provided that such a withdrawal is consistent with the requirements of law. The physical examination shall be performed and evaluated by the city's designated physician under standards established by the city.

The City of New Smyrna Beach's decisions involving persons who have communicable diseases shall be based on current and well-informed medical judgments concerning the disease, the risks of transmitting the illness to others, the symptoms and special circumstances of each individual who has a communicable disease, and a careful weighing of the identified risks and the available alternative for responding to an employee with a communicable disease.

Communicable diseases include, but are not limited to, measles, influenza, viral hepatitis-A (infectious hepatitis), viral hepatitis-B (serum hepatitis), human immunodeficiency virus (HIV infection), AIDS, AIDS-Related Complex (ARC), leprosy, Severe Acute Respiratory Syndrome (SARS) and tuberculosis. The City of New Smyrna may choose to broaden this definition within its best interest and in accordance with information received through the Centers for Disease Control and Prevention (CDC).

The City of New Smyrna Beach will not discriminate against any job applicant or employee based on the individual having a communicable disease. Applicants and employees shall not be denied access to the workplace solely on the grounds that they have a communicable disease. The City reserves the right to exclude a person with a communicable disease from the workplace facilities, programs and functions if the organization finds that, based on a medical determination, such restriction is necessary for the welfare of the person who has the communicable disease and/or the welfare of others within the workplace.

The City of New Smyrna Beach will comply with all applicable statutes and regulations that protect the privacy of persons who have a communicable disease. Every effort will be made to ensure procedurally sufficient safeguards to maintain the personal confidence about persons who have communicable diseases.

**E. Veterans preference.**

Preference on entrance examinations or a promotional examination shall be granted to qualified persons who have been members of the Armed Forces of the United States in time of war as required by state and/or federal law.

**F. Employment Eligibility Verification (Form I-9).**

Before starting work, the new employee will complete the Employee Information and Verification Section of U.S. Immigration and Naturalization Service Form I-9, Employment Eligibility Verification, and present identity and employment eligibility documents as specified on that form. The Human Resources Office will examine the

documents presented and complete the Employer Review and Verification section. Copies of the documents presents and the completed Form I-9 will be filed separately from the personnel file as required by law. The City of New Smyrna Beach participates with E-Verify a program for employment verification under the department of Homeland Security.

**G. Types of appointments.**

1. *Original appointment.*

Any individual employed by the city for the first time in a regular status, temporary, part-time, or regular part-time position.

2. *At-will Policy.*

Department Heads hired after March 1, 2010 by the City are hired “at will” unless otherwise stipulated by provisions of a formal contract. “At will” employment means that either the department head or the City can end the employment relationship at any time, for any reason. Nothing in this Personnel Code will alter or limit the City’s right to maintain employment “at will”. This Personnel Code is not a contract for employment.

3. *Employment contracts.*

All employees filling temporary positions must sign an employment contract prior to being hired.

4. *Transfers.*

a. *Department transfer; same classification or pay grade.* An employee on regular status or probationary status may, with the approval of the department heads concerned and the City Manager, be transferred, such transfer will not change the employee's pay grade and anniversary date or classification date;

Employees will serve a minimum of three months probationary period in the new department; however, this probationary period will not reduce a probationary period incurred as a result of said transfer.

b. *Department transfer; different classification or pay grade.* An employee may be transferred to another department with a different job classification pay grade if he/she meets the minimum qualifications.

c. *Department transfer; city initiated.* The City Manager, after a review and recommendation from the human resources office, may transfer any employee from one department/operation to another within the city and within the same or a different pay grade when, such transfer is deemed to be in the best interest of the city. A transfer without a change in the employee's pay rate shall not be considered corrective action and is not grievable. If such transfer is to a lower pay grade and the employees pay rate is reduced, then such action would be considered to be a corrective action and grievable by the employee.

5. *Promotions.*

a. Vacancies in positions above the lowest rank in any category in the classified service shall be filled as far as practical by the promotion of employees in the city service.

- b. Promotional examinations may be held for specific classes or occupations when it is in the best interests of the city. The term promotional examinations signifies a fitness test to determine the relative standing of applicants for positions in the specified class.
- c. Promotional examinations would be open only to employees in the city service who are serving in specified classes for such a period as may be prescribed. A promotional examination may include employees in specific class in all departments or only in the department in which the vacancy occurs, as determined by the department head and the Director of Human Resources.
- d. No employee shall be deemed eligible for a promotional examination whose last performance rating was less than "meets expectations."

6. *Reemployment.*

Reemployment will be contingent, among other things, upon satisfactory references from previous employment with the city. Applicants who are reemployed shall be considered as new hires. They shall be given a new hire date as of the date of return to the active payroll, and they shall be required to meet all qualifying conditions prior to participation in the benefits program.

7. *Demotion.*

An employee on regular status may be reduced in pay grade, rank and/or position as a result of corrective action initiated by the department head and authorized by the City Manager.

**H. Probationary period.**

Newly hired employees shall serve a probationary period of six (6) months which may be extended by the employer for an additional six (6) months. This period of time is established for the purpose of evaluating the employee's work quality, attendance, and other performance factors, and to determine how well he/she fits into the city's organization. It also gives the employee the opportunity to look at the city and decide whether he/she likes the new job or position and surroundings. During such probationary period, a probationary or new hire employee may be disciplined, laid off, suspended, or otherwise terminated by the city and such action shall not be subject to the grievance procedure set forth in these policies and procedures. A newly hired probationary employee shall only be entitled to use his/her accrued personal leave upon approval of the City Manager. A promotional employee, as provided in the code, shall be subject to the grievance procedure set forth in these policies and procedures. A promotional probationary employee shall be entitled to use his/her accrued personal leave.

Following the successful completion of the probationary period, a new hire employee shall be placed on regular status and entitled to the full benefits afforded to regular status employees. However, the successful completion of this probationary period is contingent upon the completion and submission of a performance evaluation by the employee's supervisor which specifically recommends that the probationary employee should be extended regular status, and approved by the department head and City Manager. All probationary new hire employees who have their probationary periods extended cannot use Personal Leave accruals until after they have satisfactorily completed the extended

period and the above referenced performance evaluation is completed and submitted by the employee's supervisor and approved by the department head and City Manager. Any new hire employee terminated during his/her probationary period will not be entitled to receive unemployment compensation benefits, in accordance with Florida law.

## **I. Employee performance assessment system.**

### *1. Scope and purpose.*

- a. An employee performance rating is a tool management must use to evaluate each employee's performance. The rating process is a means of comparing performance with established standards;
- b. It is the supervisor's responsibility to be continuously aware of his/her subordinate's performance, and to continually evaluate in order to provide constructive criticism and guidance/mentoring on a current basis. Such a procedure will produce more meaningful service ratings and improve employee development.

### *2. Uses of performance ratings.*

- a. The performance evaluation is intended to improve employee performance and aid management in the decision making process. Used properly, the evaluation will:
  1. Indicate to the employee how his/her performance has been evaluated by their immediate supervisor, bring out his/her strong and weak points, serve as the basis for discussion of how he/she can improve his/her performance, and provide for counseling of the individual employee;
  2. Call attention to the need for employee training;
  3. Provide the basis for granting salary adjustment;
  4. Determine an employee's potential for promotion;
  5. Provide documentation that may be required for transfers or corrective actions.

### *3. Required procedures.*

- a. The Human Resources Department shall maintain a list of all employees and their evaluation schedule. Such list is to be reviewed monthly by each department for correctness. Each department head is to secure the proper evaluation form and ensure that all evaluations are performed in a timely and professional manner.
- b. All performance evaluations shall be made by the employee's immediate supervisor and reviewed by a higher-level supervisor and/or department head. The immediate supervisor's evaluation shall not be changed by higher-level supervisors and/or department head; however, the reviewing supervisor and/or department head should attach any written comments deemed appropriate.
- c. Each employee who has been given an original appointment, reinstatement, transfer, promotion, demotion, or reassignment shall have his/her performance evaluated two to four weeks prior to completion of six months of service in the class. An employee who has completed six months of service in a class shall have

his/her performance evaluated again two to four weeks prior to completion of 12 months of service in the class. Employees who satisfy the probationary status and become regular status shall have annual performance evaluations thereafter. There is a required meeting midyear in order to address any changes in annual goals or to address the status of established goals.

Special ratings for the purpose of recognizing performance that is other than satisfactory may be made at any time.

- d. All performance ratings must be explained in detail, either on the rating form or in an attached statement, to specifically indicate strengths and weaknesses. The performance improvement plan must also be completed in detail.
- e. In all cases where an employee receives a "below expectations" rating, the immediate supervisor shall discuss the rating with the employee and work with him/her in an attempt to assist in improving his/her performance. Such employee must be reevaluated each 90 days thereafter until:
  1. His/her performance has improved and is evaluated at least "meets expectations"; or
  2. Six months have elapsed without the employee receiving a rating of at least "meets expectations."

In such cases, action shall be taken to remove the employee either through demotion or termination.

- f. The results of the performance assessment rating shall be discussed with, and furnished to the employee after the rating has been finalized, and the employee will have an opportunity to reply.
- g. The employee will be required to sign the rating certifying that he/she has been informed of the results. Employees refusing to sign the rating shall have such noted on the rating form and the given notation shall be witnessed.
- h. The employee performance assessment evaluation or the results contained therein will not be subject to the grievance procedure set forth in these policies and procedures.

#### 4. *Employee performance assessment rating schedule.*

*Substantially exceeds expectations.* Any employee who receives an evaluation of "Substantially Exceeds Expectations" has demonstrated consistent, outstanding performance. This individual is one of a very few employees citywide who has distinguished oneself during the evaluation period. The employee has received no discipline of any nature; the employee's attitude to fellow city employees and the public is of the highest standard. The employee has exceeded many or most of the requirements of the job, department rules and regulations and standard operating procedures (when and where such regulations and procedures exist).

This individual has exceeded most, if not all of the expectations detailed by the department head, assistant and/or supervisor(s) in the employee's previous annual evaluation and job assignments.

An individual who "substantially exceeds expectations" demonstrated their leadership capability in all facets of employment with the city. The employee is able to

anticipate needs and situations and respond in a professional manner that characterizes the highest standard of service to the public on a routine and consistent basis. Performance at this level is typically not achieved from evaluation to evaluation but reflects a combination of opportunities and performance which are consistently of the highest level.

*Meets expectations.* An employee that receives an evaluation of "Meets Expectations" must have performed the elements of the job description, the department rules and regulations and the standard operating procedures (where such regulations and procedures exist) in a dependable, timely, quality manner. The individual must have met the expectations established by the department head, assistant and/or supervisor(s) in the previous evaluation or job assignment.

The employee must respond to the public and fellow municipal employees in a positive and hospitable manner. The individual must have performed work in such a manner as characterizing the need for little or no supervision and exercise appropriate independent decision-making capability. Any individual achieving this level of evaluation should have had no disciplinary infractions of a group II or group III level and should not have any multiple group I infractions.

An evaluation of this level signifies that the employee is dependable, conscientious, hospitable, reliable, and performs responsibilities in a quality professional manner. She/he has performed all the functions of the position and service to the city and the residents. All employees should strive for this consistent level of attainment. It means the employee has performed well.

*Does not meet expectations.* This category is indicative of an employee who during the last evaluation year failed to meet expectations. Expectations are defined as the elements of the job description which pertain to functions on behalf of the city; departmental rules and regulations, standard operating procedures (where such regulations and procedures exist) and those criteria established by the department head, assistant and/or supervisor(s) during the course of the annual evaluation, job assignment or any intermediate evaluation.

Employees who receive an annual evaluation of "does not meet expectations" will receive an intermediate evaluation 90 days from their anniversary date to determine if improvement in performance has occurred. If an employee is rated as "meets or substantially exceeds expectations," no additional evaluation will be required until their next regularly scheduled annual evaluation. If an employee is still considered "does not meet expectations" after the first intermediate evaluation, a second and final intermediate evaluation will be completed within 60 days.

Any employee who is still considered "does not meet expectations" as a result of the second intermediate evaluation will be released from employment. An employee who receives either "meets or substantially exceeds expectations" on this the final evaluation will not receive another evaluation until the next annual evaluation. Any employee who receives a "does not meet expectations" on the initial annual evaluation will not be eligible for a salary adjustment regardless of the results of the first intermediate or final intermediate evaluation.

**J. Personnel reduction.**

In the case of reduction (layoff), the city may consider such factors as an employee's skill, ability, efficiency, performance, and education. Where such factors as skill, ability, efficiency, performance, and education are otherwise equal, seniority shall be the determining factor.

No new employee shall be hired to fill the position vacated until the laid off employee has been given an opportunity to return to work for a period of up to 12 months from date of layoff. The last employee laid off shall be the first recalled. To be eligible for recall, the employee may be required to pass a physical examination/drug screen. The employee will be notified by certified or registered mail of his/her recall and must return to work within 14 calendar days. Failure to respond to the recall notice within seven calendar days from the date of receipt (excluding holidays), or failure to pass applicable physical examinations/drug screen may result in forfeiture of recall rights.

Notification of recall will be made to the employee's last known address as shown on city personnel records. The employee must notify the city of any change of address in order to maintain recall rights. Employees who are laid off will receive accrued annual leave payment at the time of layoff.

**K. Employment of relatives.**

In accordance with F.S. § 112.3135, a public official of the city will not appoint, employ, promote, advance, or advocate for appointment, employment, promotion or advancement in or to a position in the city in which he/she is serving or over which he/she exercises jurisdiction or control, any individual who is a relative of the public official.

An individual may not be appointed, employed, promoted, or advanced in or to a position in the city if such appointment, employment, promotion or advancement has been advocated by a City official serving in or exercising jurisdiction or control over the city, who is a relative of the individual.

For purposes of this section, the term "public official" means an officer, manager, department head, or supervisor in whom is vested the authority by law, rule, or regulation, or to whom the authority has been delegated, to recommend individuals for appointment, employment, promotion, or advancement in connection with the employment in an agency.

The City wants to ensure that practices do not create situations such as conflict of interest or favoritism. This extends to practices that involve employee hiring, promotion and transfer. Close relatives, partners, those in a dating relationship or members of the same household are not permitted to be in positions that have a reporting responsibility to each other.

Close relative means an individual who is related to the public official as parent, son, daughter, brother, sister, uncle, aunt, , spouse, nephew, niece, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step relatives half brother, or half sister and domestic partners.

The City reserves the right to apply this policy to situations where there is a conflict or the potential for conflict because of the relationship between employees, even if there is no direct-reporting relationship or authority involved.

**L. Outside employment.**

1. City employment shall be considered the primary employment and no employee may engage in outside employment which would interfere with the interest of city service. Any outside employment must occur outside of the normal working hours for City employment in a position.
2. Any employee desiring to pursue outside employment shall notify the department head of the intent to engage in outside employment by completing an Outside Employment or Business Activity Form. The department head shall notify the City Manager of the intent to engage in outside employment. The completed form shall state the type of employment and the hours of work, the name of the prospective employer and the place of employment. No employee shall retain outside employment until a request has been submitted to and approved by the City Manager. This form must be completed on an annual basis.
3. The City Manager may reject the request if it is deemed to adversely affect city employment. Any notice to engage in outside employment granted as herein before provided may be canceled or terminated at any time by the City Manager upon giving sufficient written notice to the employee to whom said permission was granted.
4. No employee granted permission to engage in outside employment shall work at said outside employment for a longer period of time or a different place of employment than stated in said request.
5. Any employee accepting outside employment under the terms of this rule shall make arrangements with the outside employer to be relieved from his/her outside duties if and when called for emergency service by the city. Every employee granted permission to engage in outside employment under this rule shall agree to and respond immediately to any emergency call to duty by the city whenever the department head or the City Manager shall determine his/her services to be necessary.
6. Under no circumstances will employees use City time, material, facilities, vehicles, equipment, telephone, personnel, or other services in connection with outside employment.
7. Activities and conduct away from the job must not compete with, conflict with or compromise the City interest or adversely affect job performance and the ability to fulfill all job responsibilities. Employees are prohibited from performing any services that are normally performed by the City. This prohibition also extends to the unauthorized use of any city tools or equipment. In addition, employees are not to solicit or conduct any outside business during paid working time.

8. Employees sustaining injuries while engaged in outside employment are ineligible to receive benefits under the city's worker's compensation plan on account of injury resulting from the outside employment.

**M. Rest periods.**

Rest breaks will be arranged so as not to interfere with city business. Misuse of the rest break may subject the employee to appropriate corrective action. It shall be the responsibility of the supervisors to enforce this provision. Rest breaks are usually scheduled for 15 minutes in the first half of the shift and 15 minutes in the second half of the shift, according to the needs of the department.

**N. Termination of employment.**

Employees are required to give proper notice, preferably in writing, of voluntary termination or retirement to their department head. Proper notice is considered four weeks for Department Heads, three weeks for exempt/salaried position and two weeks for all others. The use of personal leave time shall not be counted toward this notice period. If an employee provides less notice than requested, the City may deem the individual to be ineligible for rehire depending on the circumstances regarding the notice given. Job abandonment: Employees who fail to report to work or contact their supervisor for three (3) consecutive workdays shall be considered to have abandoned the job without notice, effective at the end of their normal shift on the third day. The supervisor shall notify the Human Resources department at the expiration of the third workday and initiate the paperwork to terminate the employee. Employees who are separated due to job abandonment are ineligible to receive accrued benefits and are ineligible for rehire.

Employees who are employed on an at-will basis, the city retains the right to terminate at any time.

The terminating employee must return all city property at the time of separation, including uniforms, cell phones, computer devices, keys, credit cards and identification cards. Failure to return items may result in deductions from the final paychecks. Terminating employee will be provided an exit interview appointment with Human Resources Department to discuss and process all retirement/benefit changes.

**O. Volunteer/Internship Policy**

*Purpose.*

To inform Department Heads about the City's policy regarding the procedures for recruiting and utilizing volunteers in city departments.

- A The City greatly benefits from the services provided by skilled and motivated volunteers and encourages involvement by New Smyrna Beach citizens. The procedures for recruitment, selection and placement assist the City and the volunteer to establish and maintain a beneficial relationship. Volunteers are individuals who are non-paid, including interns and work study program students.

B The Human Resources Department will continually and successfully recruit volunteers for various functions and events, both long-term and short term commitments and maintain a roster of interested individuals. Departments may contact Human Resources Department directly concerning volunteer needs and the recruitment, selection placement process will begin. Other times, the department may be directly contacted by the interested volunteer. Either way, a written description of duties is required for a successful experience and the Human Resources Department can work with departments to create the description prior to recruitment efforts.

The Parks and Recreation Department independently recruits, screens, selects and places volunteers for their youth athletic programs. The Human Resources Department will assist with recruiting and screening as needed.

C 1. If the volunteer applicant contacts Human Resources Department directly concerning opportunities, the applicant will complete a volunteer application form and will be interviewed by Human Resources Department. A candidate package comprised of the Volunteer Application and a Volunteer Placement Status Form will be forwarded to the appropriate staff member in areas that the volunteer is seeking to be placed. The appropriate staff member contacts the potential volunteer, within three (3) business days, to discuss volunteer opportunities and conduct an interview. If the applicant is selected, notify Human Resources Department of selection and complete the appropriate screenings.

2. The appropriate staff member may conduct an interview prior to the potential volunteer contacting Human Resources Department. Should the department wish to utilize the volunteer, he/she must be directed to Human Resources Department for mandatory screening. The appropriate staff member should notify Human Resources Department. The individual will then complete the application.

*Non-Selected Applicants.*

If the department chooses not to select the volunteer, it is courteous and professional to call the applicant and share the reason for non-selection in a positive manner.

*Screenings.*

All City volunteers must be registered with Human Resources Department and successfully complete a background screening prior to placement. This requirement also applies to youth participating in community service hour programs. There is a cost associated with the background screening for volunteers. This cost would need to be approved and paid for by the department in which the volunteer will be placed. Drug testing is required for volunteers. Managers must ensure that volunteers have been drug screened.

Some volunteer positions may require additional screening applicable to duties to be performed. Volunteers who are inactive for two (2) years or more will be required to undergo re-screening.

The only exemption is for volunteers that register to assist with a certain special event such a festival, holiday celebration and similar special group

projects etc. Appropriate supervisory controls shall be utilized in managing volunteers at special events.

The Human Resources Department conducts a mandatory orientation session. The volunteer will be informed of all applicable volunteer policies, procedures and benefits.

City badges are not issued to volunteers except in very limited circumstances.

*Placement.*

Once a volunteer has attended orientation and has been cleared by Human Resources Department, the department will be notified. The department is responsible to contact the volunteer to set up the report to duty. Please note that often small details and considerations become routine to “regular employees” and the volunteer may feel out of place. Departments are encouraged to orient the volunteer to the specific work environment and to find ways to show the City’s appreciation.

*Monitoring and Recordkeeping.*

The appropriate staff member is asked to complete an Orientation checklist within two weeks of engaging the volunteer. The form should be returned to Human Resources.

*Special Event Volunteers.*

Special event volunteers are only to be used to support a specific event which may last a day or up to a week. These volunteers are not ongoing and can be recruited from a number of sources such as high schools, colleges, churches, military, and/or local businesses.

# **SECTION V**

# **POSITION CLASSIFICATION PLAN**

**A. Purpose.**

The position classification plan provides a systematic arrangement and inventory of all positions. The plan groups the various positions into classes indicative of the range of duties, responsibilities, and the level of work performed. The class titles standardize the meaning, allocation, and usage of the plan based upon the similarity of work and duties performed.

**B. Use.**

1. Determine qualifications; prepare examination announcements, and examination content.
2. Standardize salaries to be paid for the various classes of work.
3. Establish lines of promotion.
4. Assist in developing an employee-training program.
5. Provide an understandable and uniform terminology of jobs.

**C. Content.**

1. A grouping of positions into classes on the basis of approximately equal difficulty and responsibility that requires the same general qualifications and which can be equitably compensated with the same pay grades.
2. A position title, indicative of the work of the class, which shall be used on all personnel, accounting, budget, and related official records. No person shall be appointed to a position in the city personnel structure under a title not contained in the classification plan without the approval of the City Manager.
3. Written position descriptions for each job classification containing the nature of work and relative responsibilities of the class, illustrative duties found in the class, requirements of the class setting forth the necessary knowledge, abilities and skills required for adequate performance of the work, and the desirable training and experience needed for recruiting to the class.

**D. Administration and maintenance.**

The Director of Human Resources is charged with maintenance of the classification plan so that it will reflect the duties performed by each employee in the city and the class to which each position is allocated. It is the duty of the Director of Human Resources to have the nature of the position examined as they are created and to have them allocated to the classification plan as are made necessary by changes in the duties and responsibilities of existing positions; and review the entire classification plan and recommend appropriate changes in allocations or in the classification plan as needed.

**E. Position audit.**

1. The Director of Human Resources is charged with the responsibility of having position audits made of positions. Other position audits may be initiated by written request to the human resources office from:
  - a. The City Manager;

- b. The department head in the department where the position is located.
2. Position information will be gained through completion of a position classification questionnaire by the incumbent or by the supervisor of the position (if the position is vacant) and through study of the position by the staff of the human resource department.
3. The department head or comparable level supervisor should review and make recommendations to the Director of Human Resources on all proposed new positions, changes and position descriptions.
4. Position audits must be presented to the City Manager for review and approval.

**F. Reclassification.**

1. When the incumbent of a position, through diligent application of the work, is officially assigned, as a result of action by the City Commission or City Manager, more difficult and significant additional responsibilities and duties so that it appears that the position warrants reallocation to a higher pay grade, the Director of Human Resources shall perform a study of the present duties and responsibilities of the position.
2. If it is determined by the City Manager that the position should be reallocated to such higher-level class, the Director of Human Resources may require that the incumbent undergo a prescribed test of fitness, depending on the conditions of the reclassification and the nature of the position to be reclassified. Tests may include written or oral examinations, interviews or performance tests depending on the position involved.
3. Should the employee fail the examination, or for some other valid reasons is not promoted to fill the vacancy, the Director of Human Resources may allow the employee to remain in the original position until he/she can be changed to the same or another class of employment.
4. Should the position be reclassified to a job classification with the same pay grade as that of the original classification, the incumbent employee shall receive a corresponding change in title without the benefit of examination, provided the reclassified position is in the same line and character of work and involves the same basic duties, responsibilities and skills.
5. Should the position be reclassified to a class with a lower pay grade than that of the original classification, the incumbent employee shall be offered transfer to a vacancy, if one exists, in the original classification in the same or other department.
6. Should the position be reclassified to a class with a higher pay grade than that of the original classification, the employee shall receive a pay rate adjustment equal to the higher of (1) entry level rate of the new pay grade; or (2) five percent above the current rate of pay; but in no case may such increase exceed the maximum of the new pay range.
7. Reclassification shall not change an employee's classification date or affect the then status of the employee's performance salary adjustment.

**G. Position control.**

All positions in the city are established and maintained through a personnel budget each fiscal year in accordance with established budget and accounting procedures. The establishment of new or additional positions will be accomplished at the direction of the City Manager upon approval of the City Commission.

**H. Classification plan.**

The City Commission shall approve the classification plan for all employees of the city. The City Commission shall thereafter annually review and establish the classification plan as a part of the city's budget ordinance as duly adopted and amended.

**SECTION VI**

**SALARY**

**COMPENSATION PLAN**

**A. Purpose.**

The salary/compensation plan shall be directly related to the classification plan and provides the basis of compensation for employees in the classified service. The salary/compensation plan is constructed with regard to the following:

1. Relative difficulty and responsibility existing between the various classes of work within city employment.
2. Prevailing rates of pay for similar types of work in private and public employment in the labor market where the city recruits for employees.
3. Availability of candidates to fill positions.
4. Economic conditions of the area.
5. Financial policies of the city.

**B. Use.**

The salary/compensation plan is to reward employees for satisfactory performance, develop incentives among employees to improve their quality and performance of work. The proper utilization of the salary/compensation plan provides the department head or comparable level supervisor with a vehicle for rewarding performance and affords the employee the opportunity to develop and achieve personal objectives.

**C. Content.**

1. The salary/compensation plan includes the basic compensation schedule as adopted by the City Commission and subsequent amendments, and the schedule of salary ranges for all classes of positions included in the classification plan as adopted by the City Commission and subsequent amendments.
2. The salary schedule indicates salary ranges and the compensation attached to the ranges. Each position title in the classification plan is assigned a specific salary range.

**D. Adoption of the plan.**

After study, inquiry and consultation, the Director of Human Resources, with such assistance as required, shall prepare the salary/compensation plan for various classes of work in the classified service and present the salary/compensation plan to the City Manager for review prior to the new fiscal year. The City Manager shall submit his/her recommendations to the City Commission for approval. The salary/compensation plan shall be established in accordance with the adopted New Smyrna Beach Budget Ordinance.

**E. Amendments.**

Amendments to the salary/compensation plan shall be considered by the Director of Human Resources when changes of responsibilities of work or classes, availability of labor supply, prevailing rates of pay, the city's financial condition and policies or other pertinent economic consideration warrant such action. Such amendments shall be submitted to the City Manager for review and appropriate action.

In addition, in an effort to maintain the utmost integrity in the city's salary/compensation plan, every three years, the city shall engage the services of an independent professional to review and recommend any changes to the plan.

**F. Appointment and starting rates.**

1. A new hire employee's initial entry rate shall be the minimum salary established for a position as provided for in the classification and pay allocation plan. (Ord. 55-98)
2. Appointments that are above the minimum salary may only be approved with the authorization of the City Manager if the applicant's training, experience or qualifications are substantially above those required for the position, or when the city has been unable to recruit qualified applications or when it is determined to be in the best interest of the city.
3. The minimum and maximum of the pay rates will increase 50% of the approved budgeted increase percentage for the fiscal year, if any.

**G. Salary increases.**

1. The employee's adjustment is to be determined by the City Commission in accordance with the adoption of the city's annual budget; such increase, if any, shall include the rate, effective date(s) and positions applicable thereto.
2. No employee may have the base rate of pay increased above the maximum of the adopted salary scale. Any adjustment described herein which will increase the base rate of pay above the maximum of the salary scale will be provided in the form of cash consideration.

**H. Promotion.**

An employee may be promoted to a job classification with a higher maximum rate of pay after successfully meeting the requirements for that position. Upon promotion, the employee shall have his/her pay grade, pay and classification date and probationary period adjusted as follows:

1. The minimum salary established for a position is considered the normal appointment rate for promotional employees. The employee, as a minimum, shall receive the greater of the entry rate or a five percent increase in his/her base pay; but in no case may such increase exceed the maximum of the new pay range.
2. Appointments that are above the minimum salary must be authorized by the City Manager if the promotional employee's training, experience, or qualifications are substantially above those required for the position.
3. Promotions shall establish a new classification date. Employees shall be eligible for consideration for an employee performance adjustment 12 months following the effective date of the promotion unless otherwise stated herein.

The effective date of promotion or current job date will coincide with the employee's departmental payroll period beginning date unless otherwise approved by the City Manager.

## **I. Demotion.**

1. The pay of an employee demoted to a classification having a lower pay grade than his/her present classification shall be based upon the following guides:
  - a. Demotion will not result in a pay increase;
  - b. Pay will not exceed the maximum rate of pay grade designated for the lower position;
  - c. Employees demoted to a lower classification, which was held immediately prior to being promoted, shall be placed in the grade or relative position within the pay range that they would have attained by remaining in the lower classification;
  - d. Employees demoted to a lower classification which was not held previously or was not held immediately prior to being promoted, may be placed in the same relative grade or relative position in the lower pay class as they held in their previous position;
  - e. An employee who voluntarily or involuntarily demotes to a classification he/she held immediately prior to being promoted will have the date in classification adjusted to reflect the time served in that classification. All other demotions will establish a new classification date.

## **J. Transfers.**

### *1. Department transfer, same classification or pay grade.*

- a. An employee may be transferred to another department with the same job classification. Such transfer will not change the employee's pay rate, pay grade, anniversary date or classification date.
- b. Employees will serve a minimum of three months' probationary period in the new department. This probationary period will not reduce a probationary period incurred as a result of employment, promotion or reclassification.

### *2. Department transfer; different classification or pay grade.*

An employee may be transferred to another department with a different job classification or pay grade if he/she meets the minimum qualifications. The City Manager may reduce the pay rate of an employee transferred, to a lower pay grade, and the new pay rate shall not exceed the pay range of the lower pay grade. Transfers to a position with a higher pay grade shall be considered under the same rules as a promotion.

### *3. Change in classification, same pay grade.*

When an employee requests and is granted a transfer to a different classification, if qualified and on the appropriate eligibility list, having the same pay grade as his/her present classification, the employee's salary will remain the same.

### *4. Transfer of physically incapacitated.*

When an employee becomes unable to perform the essential requirements of his/her job by virtue of a physical or mental disability, the Director of Human Resources may

recommend to the City Manager, with the consent of the employee and the department head or comparable level supervisor, a transfer to a position in the same or a lower class which the employee has the ability to fill.

**SECTION VII**

**HOURS OF WORK**

**AND**

**OVERTIME**

**A. Hours of work.**

The hours of work shall be determined for each class of work and each department by the department head, subject to the approval of the City Manager.. The normal hours of operation for administrative personnel is 8 a.m. to 5 p.m.

The City of New Smyrna Beach recognizes a payroll cycle of 26 pay periods in a standard fiscal year. Paydays are on the Friday following the end of a payroll cycle. Direct deposit of paychecks is required.

If authorized, employees may take one or more brief breaks or rest periods each work day. Rest periods shall be considered a privilege and not a right and shall never interfere with proper performance of the work responsibilities of each department. Rest periods, when not used by the employee, will not be cumulative.

**B. Overtime.**

The requirement of frequent and considerable overtime services in a department shall be subject to investigation by the City Manager. When regular status employees are directed by supervisors to work extra time in addition to their regular working hours during emergencies, certified as such by the department head, they will be compensated for such overtime. In emergencies, employees may anticipate approval of overtime work, subject to later approval by their supervisors. A record of all overtime shall be kept by the appropriate department head and subject to review and approval by the City Manager. All overtime must be verified by official departmental records kept in such manner as the City Manager may prescribe.

1. Overtime hours worked shall be certified in writing by the department head prior to payment.
2. No overtime payments shall be made to any employee whose position is designated by the City Manager as executive, administrative, or professional as defined in the Fair Labor Standards Act and designated on the city's position classification schedule.
3. Regular employees, except fire and police personnel, will receive time and one-half for all work in excess of 40 hours worked per week.

**C. Compensatory time policy.**

Compensatory time is defined as time off from work in lieu of monetary payment for having worked in excess of the scheduled work period. Compensatory time, or "comp time" shall be administered under the following provisions:

1. An employee will qualify for comp time under the same provisions required for receiving overtime payment.
2. Comp time will be earned at the rate of 1 1/2 times the hours worked in excess of the scheduled work period.
3. The decision to offer comp time shall be at the discretion of the employee's supervisor with the approval of the department head. The city has the exclusive right to refuse the earning of comp time in lieu of monetary payment.

4. The decision to accept comp time in lieu of monetary payment shall be at the sole discretion of the employee.
5. An employee shall accrue no more than 40 hours of unused comp time. Overtime hours worked thereafter shall be paid at time and one half the employee's regular rate of pay.
6. Once comp time has been earned, it may not be "cashed-in" for monetary payment at a later date. However, in the event that the employee is terminated he/she shall be paid any accrued comp time in accordance with the Fair Labor Standards Act.
7. The use of comp time shall not be authorized in lieu of accrued sick leave.
8. No employee shall be authorized to use accrued comp time if the use of the comp time would unduly disrupt the operations of the department or the city.
9. Use of accrued comp time shall be at the discretion of the department head.
10. Any employee filling an exempt position which requires working on an unlimited basis without the payment of overtime shall not be eligible for comp time.
11. All earned and used comp time shall be documented with the finance department at the end of every pay period.
12. The earning and use of comp time must be in compliance with the provisions set forth in this policy in order to be considered authorized and valid, except where otherwise provided by law.

**D. Call back pay.**

1. An employee called back to work on off-duty hours due to an emergency or other urgent situation will be paid for the actual time worked but not less than two hours in accordance with the overtime provisions.
2. If an emergency requires that an employee be called in to work during his/her personal leave or on a holiday, the employee will be paid at the regular straight-time or appropriate overtime rates. The employee may receive compensatory time to be taken at a later date at the discretion of the department head or comparable level supervisor as provided in [sub] section VII C (3).

**E. Standby time.**

1. In order to provide coverage for services during off-duty hours, it may be necessary to assign and schedule certain employees to standby duty. A standby duty assignment is made by a department head or comparable level supervisor who requires an employee to be available for work due to an urgent situation during on-duty time which may include nights, weekends, or holidays.
2. The department or office of the comparable level supervisor will seek volunteers whenever possible consistent with equitable distribution of standby time within a work area, classification shift, and consistent with skill and ability. In the event volunteers are not available, qualified employees will be required to take the assignment in order to maintain effective, proper, and superior service to the community.

3. In the event any employee who is officially on standby duty fails to respond to a call to work, he/she will be subject to corrective action.
4. Employees on standby who are not restricted to their home or work location will not be paid for the time spent on standby; however, employees on standby who are called to work will be compensated at their regular rate of pay or overtime rate where applicable.

# **SECTION VIII**

## **BENEFITS**

**A. General provisions.**

Only regular status (30 hours or more) employees are entitled to the benefits set forth below, unless otherwise indicated. Probationary, part-time, or temporary employees shall not be entitled to these benefits unless specifically noted. Regular part-time employees shall not receive these benefits except that they shall receive (1) an hourly adjusted pro rata accrual of personal leave, and holidays; and (2) medical coverage for the employee only (the employee may elect to secure dependent coverage at his/her cost).

Upon resignation and/or termination of employment with the city, employees may or may not be entitled to payment for certain benefits as set forth herein. In all cases, the City Manager reserves the right to deviate from these policies as part of an agreed upon separation agreement with the employee.

**B. Holidays.**

The following are declared to be legal holidays for city employees:

- |                     |   |
|---------------------|---|
| 1. New Year's Day   | 5. Thanksgiving Day                       |
| 2. Independence Day | 6. Day after Thanksgiving Day;            |
| 3. Memorial Day     | 7. Day before Christmas Day (December 24) |
| 4. Labor Day        | 8. Christmas Day;                         |
|                     | 9. Martin Luther King's birthday.         |

1. When a holiday falls on a Sunday, the following day shall be observed as the holiday.
2. When a holiday falls on a Saturday, the holiday shall be observed on the preceding Friday.
3. Each department head may determine, subject to approval of the City Manager, if the holiday to be recognized is the specified holiday or another designated day. If not the specific holiday, [subsections] (1) and (2) above prevail.
4. Employees required to work a holiday will be given an alternate day off with pay or be paid at the rate of 1 1/2 hours at the regular rate for each hour actually worked, plus the regular straight time pay for the holiday.
5. In order to be eligible for holiday pay, the employee must be on active pay status or must work his/her last regularly scheduled full day before the holiday and his/her first regularly scheduled full day after the holiday, or be absent on authorized compensated leave (to include personal or compensatory leave) approved by the City Manager. If personal leave is used for illness, a doctor's certificate may be required.
6. The City Commission may designate additional days as paid holidays.
7. Effective the first pay period in October of each year, employees will be credited with four (4) floating holidays. Employees hired after the first pay period in October will receive a pro-rated amount of hours for each full pay period remaining in the fiscal year. The floating holidays must be used before the last pay period of the fiscal year with no exceptions and will not be counted to satisfy the minimum personal leave

usage requirements. Floating holidays must be approved by the Department Head prior to scheduling following the same requirements for personal leave use.

**C. Personal leave.**

*1. General provisions.*

- a. Personal leave hours are accrued bi-weekly based on the schedule below.
- b. Regular part-time employees shall earn a pro rata portion of personal leave, except as provided for by law or formal agreement;
- c. Any employee with previously accrued sick or vacation leave shall maintain that earned leave (as long as it does not exceed the caps adopted by the city) and utilize such leave pursuant to the applicable provisions of this agreement only after all personal leave earned during the anniversary year has been expended.

Employees shall accrue personal leave based on their anniversary date in accordance with the following schedule:

*Accrual Schedule*

<b>Years of Service</b>	<b>Accrual</b>
1--5	144
6--13	192
14--20+	240

Employees hired after March 1, 2010, the maximum hours to be banked will be limited to two years of accruals. No additional hours will be banked once employee reaches the maximum accrual allowance.

*2. Charging personal leave.*

- a. Personal leave, other than for emergencies, illness, etc., shall be requested as provided for in this section and as far in advance as possible; provided, however, that a request made less than 30 days before the scheduled leave may be disapproved by the department head due to workload consideration. The department head must approve all personal leave.
- b. Advanced, scheduled leave must be taken in hourly minimum increments.
- c. Unscheduled use of personal leave (emergencies, illness, etc.) will be charged according to the actual hours/days away from work in half-hour increments. Leave taken under this provision must, upon request from the department head, be supported by a written statement that may be included on the personal leave request form. If unscheduled absence of 3 days or more is due to illness a doctor's note may be required.

In the event of an emergency, illness, etc., where leave cannot be scheduled at least 24 hours in advance, notification of leave must be provided prior to scheduled shift time.

3. *Payment for personal leave.*

- a. The employee must take at least 40 hours of his/her annual accrual of personal leave. The unused portion may be banked up to a total of 720 hours (or two years accrual if hired after March 1, 2010) which may be used in later years once the current year's earnings have been depleted. The unused portion (up to 40 hours) may be cashed in at the end of the fiscal year at the employee's applicable base pay rate.
- b. For employees hired prior to March 1, 2010, upon retirement or death, a maximum of 520 hours of unused credited personal leave will be paid to the employee, spouse, or estate of the employee. Employees hired after March 1, 2010 will be limited up to the maximum of two years accrual.
- c. Employees resigning voluntarily and who declare their intention to resign with the required advance notice, will receive payment of their personal leave, not to exceed 520 hours. Employees hired after March 1, 2010 will be limited up to one year accrual maximum payment. Personal leave may not be used to satisfy the advance notice requirement. A lump sum payment shall be subject to the approval of the City Manager.
- d. Payment of credited personal leave for employees involuntarily terminated shall be paid only upon the City Manager's approval. If approved, the amount shall not be greater than the amount provided in the following schedule, but may be less.

*Payment of Personal Leave Hours  
for Terminated Employees*

<b>Years of Service</b>	<b>Maximum Personal Leave Payment</b>
1—5	60
6—13	84
14-20	120
21 and over	144

- e. An employee entering the Florida Retirement System Deferred Retirement Option program (DROP) may be paid up to 500 hours of banked personal leave or vacation leave. The hours paid shall be counted toward the maximum hours which may be banked, or paid at actual retirement, death, voluntary resignation or termination.

All personal leave, whether approved or requested during the calendar year, is subject to modification and/or cancellation by the department head in emergency circumstances.

**D. Personal leave/managerial positions.**

1. *Eligibility.*

- a. The City Manager, Assistant City Manager, City Attorney, Assistant City Attorney, City Clerk, Department Directors and regular status managerial employees covered by this code and are eligible for personal leave.
- b. Any employee receiving personal leave shall not be eligible to earn leave incentive, overtime, and/or compensatory time.
- c. Any employee with previously accrued sick leave and/or annual leave shall maintain that earned leave and utilize it pursuant to the applicable provisions of these policies and procedures only after all personal leave earned for the year has been expended.
- d. Employees promoted from regular or supervisory positions to Department Head status shall earn personal leave at the rate received prior to promotion if that rate exceeds the Rate of Earning for newly hired Department Heads noted below.

2. *Rate of earning.*

- a. Personal leave shall be calculated based upon the date of hire or promotion to the covered position.
- b. Regular part-time employees shall earn a pro rata portion of personal leave, except as provided for by law or formal agreement;

<b>Month</b>	<b>Hours</b>
October	192
November	176
December	160
January	144
February	128
March	112
April	96
May	80
June	64
July	48
August	32
September	16

- c. Three-quarter additional day per each year of service, in a covered position, to a maximum of 40 days per year, [is] to be awarded October 1, of each year. Employees hired after March 1, 2010, the maximum hours to be banked will be limited to two years of accruals. No additional hours will be banked once employee reaches the maximum accrual allowance.
3. *Charging personal leave.*
- a. Personal leave shall be scheduled in advance, whenever possible and must be approved by the City Manager.
  - b. Advanced, scheduled leave must be taken in one-day minimum increments.
  - c. Unscheduled use of personal leave (emergencies, illness, etc.) will be charged according to the actual days away from work in day increments. Leave taken under this provision must, upon request from the City Manager, be supported by a written statement. The employee shall be advised, prior to returning to work, if a written excuse is required.
  - d. Personal leave may be used for "family and medical leave" as provided in these personnel policies and procedures.
4. *Payment for personal leave.*
- a. The employee must take at least 40 hours of his or her annual accrual of personal leave. The unused portion may be banked which may be used in later years once the current year's earnings have been depleted. The unused portion (up to 40 hours) may be cashed in at the end of the fiscal year at the employee's applicable base pay rate.
  - b. Employees hired prior to March 1, 2010, upon retirement or death, a maximum of 880 hours of unused credited personal leave will be paid to the employee, spouse, or estate of the employee. Employee hires after March 1, 2010 will be limited up to the maximum of two years accrual.
  - c. Employees resigning voluntarily and who declare their intention to resign with four weeks advance notice, will receive payment of their personal leave, not to exceed 880 hours. Employees hired after March 1, 2010 will be limited up to one year accrual maximum. Personal leave may not be used to satisfy the advance notice requirement. A lump sum payment shall be subject to the approval of the City Manager.
  - d. Payment of credited personal leave for employees terminated shall be paid only upon the City Manager's approval. If approved, the amount may not be greater than the amount received if the employee had left under good standing, but may be less.
  - e. An employee entering the Florida Retirement System Deferred Retirement Option program (DROP) may be paid up to 500 hours of banked personal leave or vacation leave. The hours paid shall be counted toward the maximum hours which may be banked, or paid at actual retirement, death, voluntary resignation or termination.

**E. Banked sick and vacation leave.**

Any employee who has accrued banked sick or vacation leave as of September 30, 1997, will be eligible to receive payment for any retained banked leave upon resignation with proper notice, termination, death or retirement at the following level:

*Banked vacation.*

1. Employees resigning and/or retiring/(DROP) voluntarily and who give proper notice of their intention to resign/retire will receive any annual leave credit banked as of the date of resignation/retirement. Involuntarily terminated employees will not receive banked annual leave unless authorized by the City Manager;
2. Payment of all banked annual leave of employees who die while in the service of the city shall be paid in cash to the spouse or estate of the employee.

*Banked sick.*

Upon retirement or death, the employee or his/her heirs will be paid for 50 percent of their accrued unused/banked sick leave at the employee's straight time rate not to exceed 360 hours pay.

Employees resigning voluntarily and who give required proper notice of their intention to resign will be paid for unused banked sick leave in an amount equal to 20 percent of their accrued unused/banked sick leave, up to 144 hours.

**F. Bereavement Leave**

The bereavement leave policy establishes uniform guidelines for providing paid time off to full time employees or part time employees scheduled to work in excess of 30 hours weekly.

An employee who wishes to take time off due to the death of an immediate family member should notify his or her supervisor immediately. Bereavement pay is calculated based on the base pay rate at the time of absence and will not include any special forms of compensation, such as incentives, overtime or shift differentials.

An employee may, with his or her supervisor's approval, use any available personal leave time for additional time off if necessary. Paid bereavement leave is granted according to the following schedule:

Employees are allowed up to three consecutive days off from regularly scheduled duty with regular pay in the event of death of the employee's spouse, child, parents, grandparents, grandchildren, father-in-law, mother-in-law, brother, sister, stepparents, stepsiblings, or stepchild. To be eligible for paid bereavement leave, the employee generally must attend the funeral service of the deceased relative. Employee must submit a request for time off notice for supervisor approval.

The employee will be required to submit a copy of the obituary notice, death certificate, etc. within 30 calendar days. Failure to produce document will result in the employee reimbursing the City for any paid leave taken under this section. Any employee found to

have falsified his/her use of requested bereavement leave will be disciplined up to and including termination.

**G. Court leave.**

1. *City related.*

- a. Regular status and regular part-time employees attending court on behalf of the city during their normal working hours shall receive full pay equal to their normal work schedule for the hours they attend court, and shall be eligible for reimbursement of expenses. This time shall be charged as leave with pay.
- b. Payments received by the employee for witness fees and mileage, meals, travel and lodging expenses, shall be endorsed to the city if leave with pay and reimbursement for expenses are granted.
- c. An employee working other than the normal working day who is requested to appear in court may receive time served in court at the recommendation of the department head or comparable level supervisor.

2. *Non-city related.*

Employees attending court for personal reasons, to engage in actions against the city, or to testify as a witness against the city will not be eligible for leave with pay, but are eligible for use of annual personal leave.

3. *Jury duty.*

- a. Employees called for jury duty during their normal working hours will receive full pay equal to their normal work schedule for the hours they attend court. Upon notification of jury duty, the employee shall promptly notify his/her immediate supervisor so that arrangements can be made for their absence from work;
- b. The employee shall provide the department head or comparable level supervisor with proof of jury duty service before compensation is approved;
- c. Payment received by the employee to act as a juror, except for meals, travel and lodging expenses, shall be endorsed to the city.

4. *General provisions.*

- a. Employees who attend jury duty or attend court on behalf of the city on their day off will receive an extra day off. Employees who attend jury duty or attend court on behalf of the city for only a portion of the day are expected to report to their supervisor when excused or released from the court;
- b. Employees required to attend court on behalf of the city or act as a juror while on scheduled annual leave, may be allowed to take additional leave with pay for that court time, or request an adjustment in the unused accrual for such time actually devoted to court attendance. Documentation will be required;
- c. In the event a holiday occurs during the period of the employee's jury duty or attendance at court on behalf of the city, he/she shall receive pay for the holiday.

## **H. Training and education.**

### *1. Training.*

It is the responsibility of the City Manager in conjunction with department heads and the Director of Human Resources to foster and promote in-service training of employees. The purpose of this training is to improve the level of service rendered to the public, the quality of personnel and to assist employees in preparing themselves for advancement in the city service.

Department heads, in cooperation with the human resources office, will establish standards for training programs, assure that training is carried out as approved by the City Manager and prepare certificates or other forms of recognition to persons who satisfactorily complete approved courses and programs. The human resources office will provide assistance to department heads in developing and conducting training to meet specific needs of their departments and to assure that supervisory and management training are available to all departments.

### *2. Education.*

In order to increase the efficiency and productivity of city staff, it may become necessary to enroll in a formal program or course provided by an accredited educational institution. These courses shall be categorized as required, enrichment, or conference and governed accordingly:

### *3. Required.*

This is defined as taking and satisfactorily completing the course as a condition of continuing employment with the city. The city shall assume financial responsibility for tuition, books and transportation. If the employee does not satisfactorily complete the course he/she shall be terminated.

### *4. Enrichment.*

These are courses not considered a condition of employment but those that may contribute to improved efficiency and/or work quality. If an employee requests or is requested to take an enrichment course, subject to approval by the City Manager, the employee will receive reimbursement for tuition and books under the following conditions:

1. Upon satisfactorily completing the course; and
2. If the employee remains in the city's employment for one year beyond the completion of the course. If the one-year requirement is not met, the reimbursement may be deducted from the employee's last paycheck received.
3. Reimbursement for books, tuition and fees shall be the actual cost not to exceed the fees currently charged by the University of Central Florida. The City Manager, at his discretion, may approve reimbursement of higher costs.

5. *Conference.*

These are programs/courses not considered a condition of employment but as a contribution to improved efficiency, work quality, and/or job knowledge. If an employee requests or is requested to attend, the city may, subject to approval of the City Manager, pay directly or reimburse the employee for travel, lodging, meals, registration, books, materials, tolls, parking and other such expenses as are reasonable and justifiable. These reimbursements shall be subject to the following:

1. The employee must be a member of a professional organization which fosters improved job knowledge and performance relating to municipal service delivery systems and programs and the city finances the membership; and/or
2. The employee's position and/or function would be enhanced and thereby directly benefit the city.

NOTE: This benefit is subject to budgetary approval received by the City Commission.

**I. Military leave.**

1. Employees who are members of an armed-services unit will be granted paid leaves of absence for the part-time performance of military training when said training is ordered under the provisions of the U.S. military or naval training regulations for a period not to exceed 17 working days in one calendar year.
2. Employees will be granted leaves of absence to perform active military duty, the first 30 days of any leave of absence to be with full pay and the remainder without pay.
3. The employee shall be required to submit an order or statement from the appropriate military commander as evidence of any such duty. The order or statement must accompany the formal request for military service [leave].
4. All monies due the employee shall be paid at the time of his/her leaving the city employment to enter active military service.
5. Upon termination of the military service an employee who wishes to return to work shall report for duty to the city within 90 days from the date of discharge, unless otherwise approved by the City Manager. In the event of temporary or partial disability related to military service, the city will provide an appropriate extension of time.
6. An employee must provide proof of satisfactory performance while on active duty to be eligible for reinstatement.
7. Before the employee is allowed to return to duty in a regular status position, the employee will be required to submit to a physical examination.
8. An employee returning to duty in a classified position shall start at the salary he/she would have received, including all adjustments, had the employee remained continuously in the service of the city instead of entering the armed forces.

9. Reemployment rights apply only to regular status employees unless otherwise approved by the City Manager.
10. In addition to the above rights, employees will receive any applicable rights due them pursuant to Florida's Veterans Preference Statute.

**J. Leave of absence.**

1. The decision to grant a leave of absence is a matter of administrative discretion. It shall be incumbent upon the department head to weigh and determine each case on its own merits. For any leave of absence for a period in excess of five working days an employee must have the approval of the City Manager. In each case, the city shall make a reasonable effort to return the employee to his/her former position or a similar position of the same classification in another department. If no opening exists, the employee shall be placed on an eligibility list for a period of six months. All departments are required to adhere to the following practices:
  - a. Department heads must submit a payroll change notice placing employees on a leave of absence for any period of leave of absence which extends 30 consecutive days or longer;
  - b. Leave of absence for 30 days or longer will result in a corresponding adjustment of anniversary and classification dates;
  - c. An employee granted a leave of absence must keep the department head informed of his/her current activity (school, medical, military, etc.). In addition, the employee must keep the department head advised of his/her current address at all times. The check-in schedule shall be established prior to commencement of such leave for any leave in excess of five working days;
  - d. An employee who attains either part-time or full-time employment elsewhere while on an authorized leave of absence is required to notify his/her department head in writing, within three days of accepting such employment and will be considered as having resigned his/her position with the city;
  - e. Failure to comply with items [subsections] (c) and (d) above, will result in the employee being dropped from leave of absence status, and will be considered as having resigned his/her position with the city;
  - f. Any employee granted a leave of absence shall contact his/her department head or comparable level supervisor at least two weeks prior to the expiration of the approved leave in order to facilitate the reinstatement process;
  - g. Failure to return to work at the expiration of the approved leave shall be considered as a voluntary resignation;
  - h. No personal leave will be earned by an employee for the time that the employee is on leave of absence for leave of more than a five-day period;
  - i. Retirement credit may be maintained only if allowed in the pension plan in operation, provided the employee pays the full share of the premiums;

- j. Group life and hospitalization insurance coverage may be continued for a maximum period of six months while on authorized leave of absence, provided premium payments are kept current by the employee. In case of leave of absence for illness, the maximum period shall be 12 months during which period the employee, at his/her expense, may continue both group life and hospitalization. A maximum delinquency period of one pay period will be enforced for payment of premiums. If a monthly premium is delinquent and payment is not made by cash or payroll deduction on/or before the next applicable pay period, coverage will be canceled as of the beginning of the delinquent period. Where the employee will be out of town during an approved leave exceeding 30 days, payment arrangements must be made in advance so that premiums are kept current. If any coverage is canceled during an approved leave of absence, it will be reinstated as required for new employees.

## **K. Family and medical leave.**

### *1. General Provisions.*

It is the policy of the City to grant up to 12 weeks of family and medical leave during any 12-month period to eligible employees, in accordance with the Family and Medical Leave Act of 1993 (FMLA) and up to 26 weeks of leave in any 12-month period in compliance with the expansion of FMLA under The Support for Injured Service members Act of 2007. 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. An application for leave of absence must be completed.

### *2. Eligibility.*

To qualify to take family or medical leave under this policy, the employee must meet all of the following conditions:

- a. The employee must have worked for the City for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. 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 the week or if the employee is on leave during the week.
- b. The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

3. *Type of Leave Covered.*

To qualify as FMLA leave under this policy, the employee must be taking leave for one of the reasons listed below:

- a. The birth of a child and in order to care for that child.
- b. The placement of a child for adoption or foster care and to care for the newly placed child.
- c. To care for a spouse, child or parent with a serious health condition.
- d. The serious health condition (described below) of the employee.

An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.

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, which, if left untreated, would result in a period of incapacity of more than three days, would be considered a serious health condition.

Employees with questions about what illnesses are covered under this FMLA policy or under the City's leave policy are encouraged to consult with the Human Resource department.

The City may require an employee to provide a doctor's certification of the serious health condition. The certification process is outlined in section J of this policy.

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, the City 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.

4. *A covered family member's active duty or call to active duty in the Armed Forces.*

An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to active military duty or who is already on 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. Reasons related to the call-up or service includes helping the

family member prepare for the departure or caring for children of the service member. 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.

Employees requesting this type of FMLA leave must provide proof of the qualifying family member's call-up or active military service before leave is granted.

5. *To care for an injured or ill service member.*

This leave may extend to up to 26 weeks in a 12-month period for an employee whose spouse, son, daughter, parent or next-of-kin is injured or recovering from an injury suffered while on active military duty and who is unable to perform the duties of the service member's office, grade, rank or rating. Next-of-kin is defined as the closest blood relative of the injured or recovering service member. An employee is also eligible for this type of leave when the family service member is receiving medical treatment, recuperation or therapy, even if the service member is on temporary disability retired list.

Employees requesting this type of FMLA leave must provide certification of the family member or next-of-kin's injury, recovery or need for care. This certification is not tied to a serious health condition as for other types of FMLA leave. This is the only type of FMLA leave that may extend an employee's leave entitlement beyond 12 weeks to 26 weeks. Other types of FMLA leave are included with this type of leave totaling the 26 weeks.

An eligible employee can take up to 12 weeks (or up to 26 weeks of leave to care for an injured or ill service member) under this policy during any 12-month period. The City will measure 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, the city 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 (or 26 weeks for the care of an injured or ill service member) of available leave, with the balance remaining being the amount the employee is entitled to take at that time.

If a husband and wife both work for the City and each wishes 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 husband and wife may only take a combined total of 12 weeks of leave. If a husband and wife both work for the City and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

6. *Employee Status and Benefits during Leave.*

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

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

Under current City policy, the employee pays a portion of the health care premium. While on paid leave, the employer 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 Finance department by the due date 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 prior to the employee's loss of coverage.

If the employee contributes to a life insurance or disability plan, the City will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his/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 employer may recover the costs incurred for paying the employee's share of any premiums whether or not the employee returns to work.

The employee shall not be entitled to the accrual of seniority or other benefits during the term of the leave, unless required by law.

7. *Employee Status after Leave.*

An employee who takes leave under this policy will be able to return to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or virtually identical in terms of pay, benefits and working conditions. The City may choose to exempt certain key employees from this requirement and not return them to the same or similar position.

If the employee is unable to return to work upon the conclusion of the family medical leave, a review committee consisting of the department head and Director of Human Resources will review the case and determine whether or not family and medical leave should be extended and for how long. The review committee shall consider the employee's progress toward recovery, operational needs of the employee's

department, reasonable accommodations which may be made in the employee's job duties, the employee's prior performance, evaluations and disciplinary actions and any other information that would contribute to an informed decision. The review committee's decision shall be subject to the final approval of the City Manager. If family and medical leave is not extended, employment may be terminated in accordance with applicable state law, or the employee may be placed on a leave of absence in accordance with section VIII N of these personnel policies and procedures.

8. *Use of Paid and Unpaid Leave.*

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, personal or sick leave prior to being eligible for unpaid leave. Leave may be run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established leave policy.

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 disability 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 and personal leave prior to being eligible for unpaid leave.

9. *Intermittent Leave or a Reduced Work Schedule.*

The 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 work week or work day, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 work weeks (or 26 work weeks to care for an injured or ill service member over a 12-month period).

The City may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee's family member 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.

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.

If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should try to reach agreement with the City before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary. The City may require certification of the medical necessity as discussed in Sections J and K.

*10. Certification of the Serious Health Condition of the Employee or the Spouse, Child or Parent of the Employee.*

The City may ask for certification of the 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 may be provided by using the Medical Certification Form. Request for a medical certificate must be made in writing as part of the City response to employee request for leave.

Certification of the serious health condition shall include the date when the condition began, its expected duration and a brief statement of treatment. For medical leave for the employee's own medical condition, the certification must also include a statement that the employee is unable to perform work of any kind or a statement that the employee is unable to perform the essential functions of the employee's position. For a family member who is seriously ill, the certification must include a statement that the patient, the family member, requires assistance and that the employee's presence would be beneficial or desirable.

If the employee plans to take intermittent leave or work a reduced schedule, the certification must also include dates and the duration of treatment as well as a statement of medical necessity for taking intermittent leave or working a reduced schedule.

The City has the right to ask for a second opinion if it has reason to doubt the certification. The City will pay for the employee to get a certification from a second doctor, which the City will select. If necessary to resolve a conflict between the original certification and the second opinion, the City will require the opinion of a third doctor. The City and the employee will mutually select the third doctor, and the City 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.

11. *Documentation of the Covered Family Member's Active Duty or Call to Active Duty in the Armed Forces.*

Employees requesting this type of service member FMLA leave must provide proof of the qualifying family member's call-up or active military service. This documentation may be a copy of the military orders or other official Armed Forces communication.

12. *Documentation of the Need for Service member FMLA Leave to Care for an Injured or Ill Service member.*

Employees requesting this type of Service member FMLA leave must provide documentation of the family member's or next-of-kin's injury, recovery or need for care. This documentation may be a copy of the military medical information, orders for treatment, or other official Armed Forces communication pertaining to the service member's injury or illness incurred on active military duty that renders the member medically unfit to perform his or her military duties.

13. *Procedure for Requesting Leave for:*

- a. The birth of a child or in order to care for that child;
- b. The placement of a child for adoption or foster care and to care for the newly placed child;
- c. To care for a spouse, child or parent with a serious health condition; or
- d. The serious health condition of the employee.

All employees requesting this type of FMLA leave must provide verbal notice with an explanation of the reason(s) for the needed leave to their immediate supervisor, who will advise the Human Resource department. If the leave is foreseeable, the immediate supervisor may require the employee to provide a written request for leave and reasons(s) with a copy to the Human Resource department. Failure of the employee to provide a written request for leave cannot be grounds to deny or delay the taking of FMLA leave.

The City will provide individual notice of rights and obligations to each employee requesting leave within two business days or as soon as practicable. For employees on intermittent or recurring leave for the same incident, this notice will be provided every six months.

When an employee plans to take leave under this policy, the employee must give the City 30 days' notice. If it is not possible to give 30 days' notice, the employee must give as much notice as is practicable. An employee who is to undergo planned

medical treatment is required to make a reasonable effort to schedule the treatment in order to minimize disruptions to the City's operations.

If an employee fails to provide 30 days' notice for foreseeable leave with no reasonable excuse for the delay, the leave request may be denied until at least 30 days from the date the employer receives notice. While on leave, employees are requested to report periodically to the City regarding the status of the medical condition and their intent to return to work.

14. *Procedure for Requesting Leave for 1) a covered family member's active duty or call to active duty in the Armed Forces or 2) to care for an injured or ill service member.*

All employees requesting this type of FMLA leave must provide verbal notice with an explanation of the reason(s) for the needed leave to their immediate supervisor, who will advise the Human Resource department. Leave may commence as soon as the individual receives the call-up notice. If the leave is foreseeable, the immediate supervisor may require the employee to provide a written request for leave and reasons(s) with a copy to the Human Resource department.

The City will provide individual notice of rights and obligations to each employee requesting leave within two business days or as soon as practicable.

## **L. Personal Leave Donation Program**

New Smyrna Beach employees may donate accumulated leave to employees who are eligible for coverage under Family Medical Leave Act and have a serious medical condition.

Employees with serious medical conditions may seek limited financial relief through the donation of leave from fellow employees. This will enable employees to compensation after all accrued leave has been exhausted. Such a policy is based on compassion and generosity and may promote a spirit of cohesiveness and mutual support among employees.

### *Scope:*

Donation of leave time may be made among City employment and is based on the dollar value of the leave donated.

An employee is eligible to receive donated leave under the following circumstances:

1. The employee is a regular status employee who is eligible for coverage under the City's FMLA policy, requiring 12 months of service and
2. The employee has exhausted all personal leave, sick leave, vacation leave, and compensatory time, and

3. The employee must have a serious health condition as defined under the FMLA, and
4. The employee is not eligible to receive payments from the retirement system of which they are a member, and
5. The employee is not eligible to receive social security disability benefits, and
6. The employee is not eligible for any publicly funded financial assistance program for disability.
7. Employees on pregnancy leave may accept donations for time off the job through the 6<sup>th</sup> week post-partum or longer if certified by a physician as having a serious health condition.

The dollar ratio of donated leave will be adjusted proportionately to the salaries of the donor and recipient. The City Human Resources Department is responsible for making such determination. The recipient and the City are under no obligation to repay the donated hours of monies.

No one employee may reduce his or her leave balance through donation to less than 80 hours of leave. There is no limit to the amount of compensatory time that may be donated. The recipient may receive donations from any number of donor employees. Donations are transferred to the recipients personal leave balance.

The recipient of the donated (transferred) hours has a serious health condition he/she must currently be on an approved medical leave of absence without pay and possess a doctor's certification specifying that the recipient is not yet able to return to work.

Exceptions to this policy require written approval from the City Manager.

- a.** To initiate the transfer of leave, the donor must voluntarily request the "Donation of Leave" form from the Human Resources Department. He/She must indicate the recipient and then complete the "Donor" portion of the form and sign the form before a Notary Public. After completion of the donor information, the form is forwarded to the recipient's department.
- b.** The recipient's department then completes the recipient's section of the form, and attaches the doctor's certificate of unavailability to perform their current duties, as outlined. The completed form is then sent to the Human Resources Department for approval.
- c.** The Human Resources Department will then verify doctor's certification (additional information may be requested as necessary). After approval, the original copy of the form is then kept by the Human Resources Department. Copies will then be forwarded to the Finance Department, the recipient, recipient's department, and the donor.

d. If not approved, the Human Resources Department will so indicate reason for disallowance on the form and copies will be sent to all the appropriate parties.

#### **M. Domestic Violence Leave.**

In accordance with Florida Statutes, Section 741.313, any employee who has been employed with the City for three or more months may request to take up to three working days of leave from work in any 12-month period, if the employee or a family or household member of an employee is the victim of domestic violence. For the purposes of this leave, the following definitions shall apply.

- Domestic violence - any assault; aggravated assault; battery; aggravated battery; sexual assault; sexual battery; stalking; aggravated stalking; kidnapping; false imprisonment or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.
- Family or household member - spouses; former spouses; persons related by blood or marriage; persons who are presently residing together as if a family or who have resided together in the past as if a family; and persons who are parents of a child in common regardless of whether they have been married. With the exception of persons who have a child in common, the family or household members must be currently residing or have in the past resided together in the same single dwelling unit.
- Victim – an individual who has been subjected to domestic violence.  
Domestic violence leave will be granted to enable an employee to:
  1. Seek an injunction for protection against domestic violence or an injunction for protection in cases of repeat violence, dating violence, or sexual violence;
  2. Obtain medical care or mental health counseling, or both, for the employee or a family or household member, to address physical or psychological injuries resulting from the act of domestic violence;
  3. Obtain services from a victim-services organization, including, but not limited to, a domestic violence shelter or program or a rape crisis center as a result of the act of domestic violence;
  4. Make the employee's home secure from the perpetrator of the domestic violence or to seek new housing to escape the perpetrator; or
  5. Seek legal assistance in addressing issues arising from the act of domestic violence or to attend and prepare for court-related proceedings arising from the act of domestic violence.

Except in cases of imminent danger to the health or safety of the employee, family or household member, an employee seeking domestic violence leave must provide the City advance notice of the leave by completing and submitting an established Request for

Leave of Absence form with accompanying documentation to substantiate the act of violence.

Information and documents relating to the need or request for domestic violence leave are exempt from Florida Statutes Chapter 119 public records requirements, so leave requests and supporting documents will be maintained confidentially by the Human Resources Department.

Employee completed Leave of Absence request forms are to be submitted to the immediate supervisor and then forwarded to the Department Director, Human Resources and the City Manager for consideration. Human Resources will notify the employee of the leave request determination and will provide a description of rights and obligations with regard to the leave.

At the City's discretion and depending upon the availability of accrued leave benefits, domestic violence leave may be paid, unpaid or a combination of paid and unpaid. Additionally, terms and conditions of such leave shall be in accordance with Section VIII, J, Leaves of Absence; employees authorized to take domestic violence leave will be subject to adhering to these same terms and conditions.

The City will not condone retaliation, discrimination or adverse employment action being taken against any employee who exercises his right to request and receive the benefit of domestic violence leave.

**SECTION IX**

**SAFETY**

**AND WORKER'S**

**COMPENSATION**

**A. Safety policy.**

It is the policy of the city that every employee is entitled to work under the safest possible conditions in the many occupations the city represents. To this end, every reasonable effort will be made to provide and maintain a safe and healthy work place, safe equipment, proper materials, and to establish and insist upon safe methods and practices at all times.

Accidents that injure people, damage machinery, or equipment and destroy materials or property cause needless suffering, inconvenience, and expense.

Safety rules and regulations are developed for protection. These rules and regulations are to be considered directive in nature and applicable to all employees.

It is a basic responsibility of all employees to make safety realization a part of their daily, hourly concern. Employees are obligated to observe the rules of conduct and safety, and to properly use the safety equipment provided.

People are our most important asset; their safety our greatest responsibility.

**B. Work spaces.**

Workspaces of New Smyrna Beach employees are considered an integral part of City property. Work areas including, but not limited to, offices, desks, lockers and files are not to be considered private areas of individual employees with an expectation of privacy. Material produced by City employees and produced on or stored on computer medial with City facilities are not be considered personal property of individual employees with the expectation of privacy.

Searches of work areas including, but not limited to, offices desks, lockers and files may be conducted without notice only upon the specific authorization either written or verbal, of the City Manager, or their designee, and only for reasonable cause. Any such search must be conducted by at least two persons, one of whom must be at the level of Department Director or above.

Access to any material produced by City employees and produced on or stored on computer medial with City facilities is strictly controlled by security protocols established and promulgated by the Information Technology Department.

Employee's assigned specific workspaces within City facilities are personally responsible for maintaining such areas in a manner that will not produce safety hazards to the employee or others and which produce an image of neatness, orderliness, and efficiency when viewed by other.

Elected Officials, City Manager, Assistant City Manager, and Department Directors establish Workspace safety and appearance standards within their areas of responsibility. Within such established standards, employees may personalize their individual workspaces to include photographs, wall hangings, plants, and small item of a personal nature if in keeping with good taste and professionalism expected of City employees by the public. While an employee may bring personal items into their workspaces, they remain solely responsible for their security. City of New Smyrna Beach will not be

responsible for the loss of any personal items. Employees are particularly discouraged from eating in public view at their workstations and in proximity of computer equipment.

**C. Accident prevention.**

All department heads and supervisors must recognize their responsibilities for a successful safety program, and will participate in the development, implementation and improvement of a citywide safety program designed to eliminate unnecessary accidents and needless expense. Supervisors must have a continuing concern with all possible operational economies.

The comprehensive citywide programs will be under the direction of the Director of Human Resources, who will:

1. Develop an appropriate education and training program; and
2. Establish and enforce rules and regulations that will ensure reaching all of the objectives of this program.

Violations observed by the Director of Human Resources shall be reported to the appropriate department head in writing, for corrective action.

**D. Safety equipment and devices.**

The city will provide proper and necessary safety equipment and devices for employees engaged in work where such special equipment and devices are necessary. Such equipment and devices, where provided, must be used. Failure by employees to utilize provided equipment or devices will be subject to corrective action.

**E. Safety committee.**

In order to develop a safety program, a committee shall be established consisting of no less than six and no more than ten city employees. The City Manager shall designate an individual as chairperson of the committee whose duties shall be to preside over all meetings and coordinate with the Director of Human Resources on all matters. These individuals may be volunteers or may be designated by the department head. Their responsibilities shall be [to]:

1. Establish a regular meeting time and publish an agenda.
2. Review accident reports and help verify causes.
3. Recommend corrective action.
4. Review employee safety suggestions.
5. Hear and investigate employee complaints on hazardous conditions, material or equipment.
6. Publish minutes of meetings, to include committee recommendations, and direct these to management.

The city recognizes the substantial benefits that can arise from a healthier workforce. These benefits include reduced insurance claims, increased productivity, a reduction in employees lost time, and increased employee morale and well being.

Therefore, the City Manager is authorized to implement an employee fitness program. This program may allow employees to participate in the various recreational activities and programs offered by the city. The participation by employees in such programs is not to result in any direct costs to the city.

Also, such participation is strictly based on excess space, availability and capacity. In no event shall an employee preempt the participation by any member of the community.

Participation shall be during an employee's non-duty time and subject to all rules, regulations and policies as established by the City Manager and/or program.

**F. On-the-job injuries.**

All employees shall be advised of their responsibility to immediately report to their supervisor all injuries that occur on the job. Delay in reporting an injury can cause complications of the injury and delay recovery.

Employees injured on the job must contact their immediate supervisor who will call 911 if in a medical emergency. The first responders will administer emergency treatment at the scene and provide for the appropriate care. The supervisor will provide an authorization if medical care or time-off for medical care is required. The supervisor will also perform the accident investigation and injury report.

Injury reports will be submitted to the Director of Human Resources within 48 hours after the occurrence of the injury or the report of the injury. If the injury occurs over a holiday or weekend, the injury report should then be submitted within 48 hours from the time the work period starts after the weekend or holiday. This applies to all on-the-job injuries, as well as any one injured in a vehicular accident involving city equipment.

**G. Vehicle accident reporting procedures.**

1. In the case of any city-owned vehicle that is involved in a motor vehicle accident, the employee will immediately notify the police department and his/her supervisor. The police department will, in turn, notify the Director of Human Resources of the accident. In the event the employee's supervisor is not available, another supervisor from within that department will be dispatched to the accident scene.
2. The department of the employee involved in the motor vehicle accident will ensure that an accident report is completed and copies of this report will be forwarded to the Director of Human Resources within three working days of the time the accident occurred.
3. In case of serious injury or fatality, the police department and the Director of Human Resources shall be notified immediately.

## **H. Workers' compensation for injured employees.**

Payment of worker's compensation to all employees who are disabled because of an injury arising out of and in the course of performing their duties with the city will be governed by the Florida State Worker's Compensation Law.

### *1. Notification.*

Notification of all job-related injuries and accidents shall be in accordance with [sub] section[s] F and G above.

### *2. Medical treatment.*

Employees sustaining job-related injuries or illnesses will be referred to a physician selected by the city. If the employee is not satisfied by the treatment received from that physician, the city will select another physician. The treating physician (health care provider) shall not refer the employee to another health care provider, diagnostic facility, pain program, work hardening program, therapy center, or other facility without the authorization of the city/city's worker's compensation carrier except in cases where emergency care is required. If chiropractic treatment is recommended by the physician or preferred by the employee, the chiropractor will be selected by the city. Employees will not be permitted to select their own physicians.

Expenses incurred in such examinations or treatment will be borne by the city/city's worker's compensation carrier in accordance with the Florida State Worker's Compensation Law. Reports of such examinations and treatment received by the city shall become a part of the employee's medical file.

### *3. Worker's compensation; differential payments.*

Full wages will be paid for the day of the job-related injury or illness, or for that part of the day spent receiving medical care.

An employee sustaining a lost-time injury with personal leave, sick and/or annual leave credited to his/her account, may request the department head or comparable level supervisor to apply any accrued personal leave then sick and/or annual leave to obtain full base pay while absent from duty. In no case shall the amount of worker's compensation, personal leave, sick leave, annual leave, or any other payments received by the employee exceed the employee's base pay for that period.

### *4. Benefits accruals and insurance.*

Personal leave will continue to accrue for 12 weeks following the week in which the job-related injury occurred. After such time, personal leave accruals shall cease.

The city shall continue to provide and pay the employee medical insurance in the same manner and to the same extent that such insurance existed prior to the accident while employee is on worker's compensation leave of absence. If the employee is not receiving additional payments of personal, sick, then the city shall pay employee's portion of dependent insurance coverage, if any not to exceed a total period of leave of absence of 12 months.

5. *Case review and notice.*

The employee shall be instructed to keep the department head and Director of Human Resources informed of employee's status, progress to recovery and anticipated date to return to work and will cooperate with city on the review of employee's case. During the worker's compensation leave of absence, the Director of Human Resources shall consult regularly with the employee's treating physician and worker's compensation carrier to determine employee's progress toward recovery and date of maximum medical improvement.

In no event shall an employee on a job-related disability return to work without certification of the employee's attending physician and approval of the Director of Human Resources or designee.

However, upon approval of the employee's attending physician, the City Manager may transfer the employee to another position within the city which the employee is capable of performing, and/or the City Manager may modify the duties of the employee within the limitations prescribed by the employee's physician.

If employee has not returned to his/her regular duty work assignment without restriction after 12 weeks of the date of injury, a review committee consisting of the department head and Director of Human Resources will review the case and determine whether or not worker's compensation leave of absence should be extended and for how long. The review committee shall consider the employee's progress toward recovery, operational needs of the employee's department, reasonable accommodations which may be made in the employee's job duties, the employee's prior performance, evaluations and disciplinary actions and any other information that would contribute to an informed decision. The review committee's decision shall be subject to the final approval of the City Manager.

If worker's compensation leave of absence is not extended, employment may be terminated in accordance with applicable state law or the employee may be placed on a leave of absence in accordance with subsection VIII, J. of these personnel policies and procedures. In no event shall the employee's worker's compensation leave of absence exceed 12 months total time for any single injury, or multiple lost time injuries during a four-year period. Whether an injury is a single injury or a separate injury shall be determined by the city's worker's compensation carrier. The time incurred by an employee on worker's compensation leave of absence shall be counted as time incurred for family and medical leave purposes.

# **SECTION X**

# **CORRECTIVE ACTIONS**

**A. Non-supervisory employees.**

1. *Introduction.*

The following corrective actions apply only to those non-supervisory employees who do not serve at the pleasure of the city. The corrective actions are established in three divisions. These are:

- a. Non-supervisory;
- b. Supervisory; and
- c. Managerial.

Each division is cumulative with regard to behavior, work, role, and procedural or policy violation. (I.e. those specified in non-supervisory also apply to supervisory and managerial; those specified in supervisory also apply to managerial) except where a conflict occurs. In such cases where a conflict should occur, the appropriate division applied shall be determined by the position classification.

2. *General.*

It is the policy of the City of New Smyrna Beach to emphasize an individual's responsibility for managing their performance and behavior. The city's system of corrective actions focuses on communicating an expectation of change and improvement in a personal, adult, non-threatening way while at the same time maintaining concern for the seriousness of the situation. Key aspects of this system include recognizing and encouraging good performance, correcting performance problems through counseling, and building commitment to effective work standards and safe work practices.

If an employee has a conduct, attendance or work performance problem, corrective action may be necessary to address the situation.

The city's approach is designed to provide the opportunity to correct deficient performance and build commitment (not merely compliance) to expected performance in a manner that is fair and equitable to all employees. Each step is a reminder of expected performance, stressing decision-making and individual responsibility, not punishment.

Corrective actions are normally progressive in nature, except where the seriousness of the offense warrants deviation from the normal progressive disciplinary system. All documentation should be forwarded to Human Resources for filing in Personnel file.

Progressive discipline ordinarily involves any or all of the following steps: [set forth in subsection (3) of this section.] When possible, a witness for the City will be in attendance.

3. *Steps.*

- a. *Oral counseling.* The purpose of oral counseling is to allow the supervisor to bring to the employee's attention the need to improve his/her performance, work

habits, behavior or attitude and to serve as a warning against further repetition of the unsatisfactory conduct. The supervisor should utilize the occasion to identify and define the area needing improvement and inform the employee as to how such improvement can be achieved. Documentation of the oral counseling will be made a part of the employee's personnel file.

- b. *Written reprimand.* In situations where an oral counseling has not resulted in the expected improvement, or when an employee commits a more serious offense (group II offense), a written reprimand will be issued to the employee. Documentation should be reviewed by Human Resources prior to issuance.

This shall include a complete description of the incident(s) or problem, and refer to specific times, dates, locations, personnel involved and rules violated. The employee will be notified that further problems may result in more severe corrective action up to and including discharge.

- c. *Suspension (disciplinary).* In the event problems or offenses continue and the employee has already received oral or written reprimands, or if the nature of the problem is more serious in nature, an employee may be suspended for a specific period of time.

Such suspension shall be without pay and, if for more than one day, shall be issued on a consecutive working day basis unless otherwise designated by the City Manager. A suspended employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension.

- d. *Demotion/termination.* In those situations where the progressive disciplinary steps have not resulted in modification of the identified behavior, or where the employee commits a serious infraction (group III offense), the employee may be demoted or terminated from employment with the city.

4. *Suspension pending investigation of misconduct.*

- a. *Conduct on duty.* An employee may be suspended when his/her inappropriate behavior is so serious that immediate removal from the work place is necessary. The employee shall be required to leave city property pending investigation and the period of suspension shall be without pay. A suspended employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension. Some examples would be theft, insubordination, and threat of violent action, destruction of city property, reporting to work under the influence of drugs and/or alcohol, or violations of the chain of command. When an investigation has been completed, the appropriate disciplinary step, if any, will be applied. If charges are not sustained, then employee shall be made whole.
- b. *Illegal conduct on or off-duty.* Employees who are arrested and/or charged with serious criminal offenses (first-degree misdemeanor or felony) may be placed on suspension without pay where the presence of the Employee at work constitutes a

hazard or creates potential liability, either to the City, to other Employees, or the Employee. A suspended employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension.

Depending upon the results of the city's investigation, agreements through the state attorney's office such as pretrial intervention, or any adjudication by the court, the employee may then be disciplined up to and including discharge or the department head in consultation with the Director of Human Resources may take other appropriate disciplinary steps as he/she deems necessary.

5. *Positive discipline/decision making.*

Any discipline/corrective action (other than oral counseling and termination) shall also include a decision-making review/commitment. The department head, or appropriate supervisory official designated by the department head, shall discuss the conduct, attendance, or work performance problem in a private meeting with the employee. An attempt should be made to reach an agreement regarding the nature of the problem, as well as a course of action to correct the situation. The department head, or designee, shall remind the employee of the commitment to follow work rules and city standards. The department head, or designee, shall discuss with the employee the implications of his/her action to him/herself, fellow workers, the department, the city and its residents. In this problem-solving discussion, the department head, or designee, is to help the employee recognize that a problem exists and to develop effective solutions. A commitment should be secured indicating the employee's understanding and willingness to adhere to the rules and city standards and that the conduct, attendance, or work performance problem that occurred will not be repeated the commitment should also reflect that the employee understands the concerns expressed. The commitment shall be reduced to writing, signed by both parties and placed in the employee's personnel file. Failure to secure a commitment should also be noted in the employee's personnel file.

6. *Levels of offenses.*

The types of offenses requiring corrective action are divided into three groups to reflect degrees of severity. In each group and for each offense, such factors as the cost involved, the time interval between violations, the length and quality of service records and ability of the employee concerned will be considered. In each case where the penalty is modified from the recommended standard penalties, the reasons for such modifications will be noted in writing.

The offenses listed under each of the three categories are examples only and are not intended to be all-inclusive. The city retains the right to treat each violation on an individual basis without setting a binding precedent for future cases.

Failure of a supervisor to take an authorized corrective action does not bar or waive any authorized action for subsequent offenses.

Any offense not specifically enumerated in the three groups shall be considered an offense most closely resembling the group listed and appropriate recommended guidelines will apply.

As used in this section, the terms second or third offense do not necessarily mean a repeat of a previous offense in a particular group, but include any and all offenses listed in any and all groups of offenses.

<b>Group I Offenses</b>	<b>Recommended Action</b>
First Offense	Oral Counseling
Second Offense	Written Warning
Third Offense	Suspension--up to 10 days
Fourth Offense	Demotion/Termination

- a. Operating, using or possessing tools, equipment or machines to which the employee has not been assigned, or performing other than assigned work;
- b. Taking more than specified time for meals or rest periods;
- c. Productivity or workmanship not up to required standards of performance;
- d. Inattention to job duties by loafing, wasting time loitering, leaving assigned work areas or neglect of work during working hours, which does not threaten the safety of others;
- e. Failure to maintain the proper professional attitude, friendly demeanor and/or courtesy as it relates to co-workers, supervisors, management staff, appointed/elected officials and/or the public;
- f. Tardiness;
- g. Absenteeism;
- h. Violating a safety rule or safety practice, which does not threaten the safety of others;
- i. Failure to report an accident or personal injury in which an employee was involved while on the job;
- j. Engaging in horseplay, scuffling, wrestling, throwing things, malicious mischief, distracting the attention of others, catcalls, demonstrations on the job or similar types of disorderly conduct;
- k. Creating or contributing to unsafe and unsanitary conditions or poor housekeeping, which does not threaten the safety of others;
- l. Posting or removal of any material on city bulletin boards unless authorized.

<b>Group II Offenses</b>	<b>Recommended Action</b>
First Offense	Written Warning
Second Offense	Up to a Ten-Day Suspension
Third Offense	Demotion/Termination

- a. Failure to work overtime, special hours or special shifts of a non-emergency nature after being scheduled according to overtime and standby duty policies and/or as directed by the supervisor, department head or City Manager;
- b. Absence without permission; failure to report absence prior to or no later than 15 minutes after scheduled starting time absent extraordinary circumstances;
- c. Sleeping during working hours unless otherwise permitted;
- d. Negligence or omission in complying with the requirements as set forth in the Code of Ethics of these personnel policies and procedures and of the State of Florida;
- e. Gambling, lottery, or engaging in any other game of chance at city work stations at any time;
- f. Reporting for work or working while unfit for duty;
- g. Leaving the job during regular working hours without permission;
- h. Violation of the city's no solicitation and distribution rule;
- i. Failure to report a request for information or receipt of a subpoena from a law firm or an attorney, that relates to city business;
- j. Use or possession of another employee's tools or equipment without the employee's consent;
- k. Causing material, parts, or equipment to be damaged;
- l. Disregard of safety methods, rules and/or procedures which threatens the safety of others or results in minor injury to the employee or others;
- m. Violating the rules, orders, and policies issued and adopted by the City Commission;
- n. Failure to comply with the provisions of the policies and procedures governing outside employment;
- o. Failure to comply with any polices set forth in section III of these personnel policies and procedures, except as otherwise provided herein;
- p. Violations of the chain of command as provided in these personnel policies and procedures;
- q. Lying or misrepresenting information to an official of the city;

- r. Providing information obtained by the employee as a function of their official position with the city to other employees or persons except as required as a function of your position, without obtaining permission from the department head or City Manager (as appropriate) or securing a public records request through the city clerk; except as provided by law.

<b>Group III Offenses</b>	<b>Recommended Action</b>
First offense	Up to a 10 day suspension, Demotion or immediate termination Based on prior discipline record

- a. Willful neglect in the performance of duties;
- b. Misusing, destroying, or damaging any city property or property of any employee of a significant dollar value;
- c. Falsification, destruction of, or misrepresentations made on personnel or city records, including employment applications, accident records, work records, purchase orders, time sheets, or any other report, record, application, or city record;
- d. Making false claims or misrepresentations in an attempt to obtain any benefit from the city, including sickness or accident benefits, workmen's compensation, or unemployment compensation payments;
- e. Insubordination;
- f. Refusal to perform work assigned, work overtime of an emergency nature, or to comply with written or verbal instructions of the supervisory force, other than directions regarding overtime of a non-emergency nature;
- g. Unauthorized possession of firearms, explosives, or weapons on city property;
- h. Theft or removal from city locations, without proper authorization, of any city property or property of an employee;
- i. Immoral, unlawful, or improper conduct or indecency either on or off the job which would tend to affect the employee's relationship to this job, his fellow workers, and his reputation or goodwill in the community;
- j. Any violation of the city's drug or alcohol abuse policies;
- k. Use or attempted use of political influence, position or bribery to secure an advantage in any manner;
- l. Striking an individual, provoking or instigating a fight, or fighting at any time on city property;
- m. Threatening, intimidating, coercing, or interfering with fellow employees or supervision at any time, including abusive language;

- n. Conviction, guilt, or sentencing involving a felony of first, second or third degree or of a misdemeanor of the first, second or third degree as defined by Florida Statutes;
- o. Instigating, leading, or participating in any strike in violation of F.S. § 447.505;
- p. Violation of the city's sexual harassment policy;
- q. Loss of necessary prerequisites or abilities to perform the work, except as restricted by state and/or federal law;
- r. Repeated abuse of the city's personnel policies and procedures, safety rules and regulations, departmental policies and procedures or other city policies and procedures, or any combination thereof and/or violation of a safety rule that results in a major injury to the employee or others.
- s. Any conduct which in the city's judgment is adverse or prejudicial to the best interests of the city;
- t. Having an interest in a business or having outside employment at a business where there exists a conflict of interest or where employment would have an effect on the full and faithful discharge of duties as a city employee;
- u. Making or publishing of false, vicious, malicious, or unprofessional statements concerning any employee, department/division head, appointed official, board member, or the City Commissioners;
- v. Failure to achieve the objectives/goals established in the employees' performance evaluation.
- w. Conviction, guilt or sentencing involving any crime of moral turpitude;
- x. Conviction, guilt or sentencing regarding perjury, or providing false information or testimony during any official inquiry or investigation.
- y. Use of any government computer for any reason other than official business or as approved by the City Manager, department head, city attorney for employees of the city attorney's office, or the information technology department. If such improper use results in downtime or damage to the system, the employee shall be immediately terminated.

The above reasons for discharge are examples only and the city retains the right to discharge any employee for reasons other than [those] listed above.

## **B. Supervisory employees.**

### *1. Introduction.*

The following corrective actions apply only to those supervisory employees who do not serve at the pleasure of the city. The corrective actions are established in three divisions. These are:

- a. Non-supervisory;

- b. Supervisory; and
- c. Managerial.

Each division is cumulative with regard to behavior, work, role, procedural, or policy violation. (I.e. those specified in non-supervisory also apply to supervisory and managerial; those specified in supervisory also apply to managerial) except where a conflict occurs. In such cases where a conflict should occur, the employees appropriate division applied shall be determined by the position classification.

2. *General.*

It is the policy of the City of New Smyrna Beach to emphasize an individual's responsibility for managing their performance, behavior, and the proper supervision of subordinate employees. The city's system of corrective actions focuses on communicating an expectation of change and improvement in a personal, adult, and non-threatening way while at the same time maintaining concern for the seriousness of the situation. Key aspects of this system include recognizing and encouraging good performance, correcting performance problems through counseling, and building commitment to effective work standards and safe work practices.

If a supervisory employee has a conduct, attendance, or work performance problem, corrective action may be necessary to address the situation. The city's approach is designed to provide the opportunity to correct deficient performance and build commitment (not merely compliance) to expected performance in a manner that is fair and equitable to all employees. Each step is a reminder of expected performance, stressing decision-making and individual responsibility, not punishment.

Corrective actions are normally progressive in nature, except where the seriousness of the offense warrants deviation from the normal progressive disciplinary system.

Progressive discipline ordinarily involves any or all of the following steps: [set forth in subsection (3) of this section.]

3. *Steps.*

- a. *Oral counseling.* The purpose of oral counseling is to allow the supervisor and/or department head to bring to the supervisory employee's attention the need to improve his/her performance, work habits, behavior, or attitude and to serve as a warning against further repetition of the unsatisfactory conduct. The supervisor and/or department head should utilize the occasion to identify and define the area needing improvement and inform the supervisory employee as to how such improvement can be achieved.

Documentation of the oral counseling will be made a part of the supervisory employee's personnel file and utilized for supervisory employees on matters of concern and of an incidental nature at the supervisor's and/or department head's discretion.

- b. *Written reprimand.* In situations where a supervisory employee commits an offense (group I offense), a written reprimand will be issued to the supervisory employee. This shall include a complete description of the incident(s) or problem,

and refer to specific times, dates, locations, personnel involved, and rules violated. The supervisory employee will be notified that further problems may result in more severe corrective action up to and including discharge.

- c. *Suspension (disciplinary)*. In the event problems or offenses continue and the supervisory employee has already received a written reprimand, or if the nature of the problem is more serious in nature, a supervisory employee may be suspended for a specific period of time.

Such suspension shall be without pay and, if for more than one day, shall be issued on a consecutive working day basis unless otherwise designated by the City Manager. A suspended supervisory employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension;

- d. *Demotion/termination*. In those situations where the progressive disciplinary steps have not resulted in modification of the identified behavior or where the supervisory employee commits a serious infraction (group III offense), the supervisory employee may be demoted or terminated from employment with the city.

#### 4. *Suspension pending investigation of misconduct.*

- a. *Conduct on duty*. A supervisory employee may be suspended when his/her inappropriate behavior is so serious that immediate removal from the work place is necessary. The supervisory employee shall be required to leave city property pending investigation and the period of suspension shall be without pay. A suspended supervisory employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension. Some examples would be theft, insubordination, violation of the chain of command, threat of violent action, destruction of city property, or reporting to work under the influence of drugs and/or alcohol. When an investigation has been completed, the appropriate disciplinary step, if any, will be applied. If not sustained, then the employee will be made whole.
- b. *Illegal conduct on- or off-duty*. Supervisory employees who are arrested and/or charged with serious criminal offenses (any misdemeanor or felony as defined by Florida Statutes) may be placed on suspension without pay where the presence of the Employee at work constitutes a hazard or creates potential liability, either to the City, to other Employees, or the Employee. Until the court determines final resolution of their case or until the city completes its internal investigation of the matter. A suspended supervisory employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension. Depending upon the results of the city's investigation, agreements through the state attorney's office such as pretrial intervention, or any adjudication by the court, the supervisory employee may then be disciplined up to and including discharge or the department head in consultation with the Director of Human

Resources may take other appropriate disciplinary steps, as he/she deems necessary.

5. *Positive discipline/decision-making.*

Any discipline/corrective action (other than oral counseling and termination) shall also include a decision-making review/commitment. The department head or appropriate supervisory official designated by the department head, shall discuss the conduct, attendance, or work performance problem in a private meeting with the supervisory employee. An attempt should be made to reach an agreement regarding the nature of the problem, as well as a course of action to correct the situation. The department head or designee shall remind the supervisory employee of the commitment to follow work rules and city standards and exercise prudent/professional supervisory practices and procedures. The department head, or designee, shall discuss with the supervisory employee the implications of his/her action to him/herself, subordinate employees, fellow workers, the department, the city, and its residents. In this problem-solving discussion, the department head or designee, is to help the supervisory employee recognize that a problem exists and to develop effective solutions. A commitment should be secured indicating the supervisory employee's understanding and willingness to adhere to the rules and city standards and that the conduct, attendance, work performance, or supervisory problem that occurred will not be repeated. The commitment should also reflect that the supervisory employee understands the concerns expressed. The commitment shall be reduced to writing, signed by both parties and placed in the supervisory employee's personnel file. Failure to secure a commitment should also be noted in the supervisory employee's personnel file.

6. *Levels of offenses.*

The types of offenses requiring corrective action are divided into three groups to reflect degrees of severity. In each group and for each offense, such factors as the cost involved, the time interval between violations, the length and quality of service records, and ability of the employee concerned will be considered. In each case where the penalty is modified from the recommended standard penalties, the reasons for such modifications will be noted in writing.

The offenses listed under each of the three categories are examples only and are not intended to be all-inclusive. The city retains the right to treat each violation on an individual basis without setting a binding precedent for future cases. Failure of a supervisor to take an authorized corrective action does not bar or waive any authorized action for subsequent offenses.

Any offense not specifically enumerated in the three groups shall be considered an offense most closely resembling the group listed and appropriate recommended guidelines will apply.

As used in this section, the terms second or third offense do not necessarily mean a repeat of a previous offense in a particular group, but include any and all offenses listed in any and all groups of offenses.

<b>Group I Offenses</b>	<b>Recommended Action</b>
First Offense	Written Warning
Second Offense	Suspension--1 day
Third Offense	Suspension--2 to 10 days
Fourth Offense	Demotion/Termination

- a. Exercising improper and/or deficient supervisory decision-making authority regarding operations using or possessing tools, equipment, or machines; personal rest breaks/lunch periods; reporting for an attendance at work or engaging in inappropriate/disorderly conduct on the job;
- b. Inattention to job duties and responsibilities by loafing, wasting time, loitering, or neglect of work, which does not threaten the safety of others;
- c. Failure to maintain the correct professional attitude, friendly demeanor, and/or courtesy as it relates to subordinate employees, co-workers, management staff, appointed/elected officials, or the public;
- d. Violating a safety rule or safety practice, which does not threaten the safety of others;
- e. Failure to report an accident or personal injury in which an employee was involved while on the job;
- f. Creating or contributing to unsafe and unsanitary conditions or poor housekeeping, which does not threaten the safety of others.

<b>Group II Offenses</b>	<b>Recommended Action</b>
First Offense	Suspension--1 day
Second Offense	Suspension--2 to 10 days
Third Offense	Demotion/Termination

- a. Failure to work overtime, special hours, or special shifts of a non-emergency nature after being scheduled according to overtime and standby duty policies and/or as directed by the supervisor, department head, or City Manager;
- b. Absence without permission; failure to report absence prior to or no later than 15 minutes after scheduled starting time absent extraordinary circumstances;
- c. Sleeping during working hours unless otherwise permitted;
- d. Negligence or omission in complying with the requirements as set forth in the Code of Ethics of these personnel policies and procedures and of the State of Florida;

- e. Gambling, lottery, or engaging in any other game of chance at city work stations at any time;
- f. Reporting for work or working while unfit for duty;
- g. Failure to perform supervisory functions, such as leaving the job without permission which results in an absence of proper supervision to employees; causing municipal materials and/or equipment to be damaged; participating in or allowing a violation of this code by a subordinate employee for offenses contained in group I or group II for non-supervisory and/or supervisory employee;
- h. Violation of the city's no solicitation and distribution rule;
- i. Failure to report a request for information or receipt of a subpoena from a law firm or an attorney, that relates to city business;
- j. Use or possession of another employee's tools or equipment without the employee's consent;
- k. Violation or failure to enforce the provisions of the departmental rules and procedures;
- l. Disregard of safety methods, rules and/or procedures which threatens the safety of others or results in minor injury to the employee or others;
- m. Violating the rules, orders, and policies issued and/or adopted by the City Commission, City Manager, and/or department head;
- n. Failure to comply with the provisions of the policies and procedures governing outside employment;
- o. Failure to comply with any and/or all provisions of the general polices concerning standards of conduct of this Code, except as otherwise provided herein;
- p. Violations of the chain of command as provided in these personnel policies and procedures;
- q. Lying or misrepresenting information to an official of the city;
- r. Failure to promote, conduct, and sustain a positive/conducive attitude toward employees, supervisors, department heads, and officials of the city and positively participate in the supervisory, management, operational, and decision making process;
- s. Productivity or workmanship of the supervisor or the supervisor's division not up to required standards of performance;
- t. Providing information obtained by the employee as a function of their official position with the city to other employees or persons except as required as a function of your position, without obtaining permission from the department head or City Manager (as appropriate) or securing a public records request through the city clerk; except as provided by law.

Group III Offenses	Recommended Action
First Offense	Up to a 10 Day Suspension, Demotion or Immediate Termination Based on prior discipline record.

- a. Willful neglect in the performance of duties;
- b. Misusing, destroying, or damaging any city property or property of any employee of a significant dollar value;
- c. Falsification, destruction of, or misrepresentations made on personnel or city records, including employment applications, accident records, work records, purchase orders, time sheets, or any other report, record, application, or city record;
- d. Making or authorizing false claims or misrepresentations in an attempt to obtain any benefit from the city, including sickness or accident benefits, workmen's compensation, or unemployment compensation payments;
- e. Insubordination;
- f. Refusal to perform work assigned, overtime work of an emergency nature, or to comply with written or verbal instructions of the supervisor, department head, and/or City Manager, other than directions regarding overtime of a non-emergency nature;
- g. Unauthorized possession of firearms, explosives, or weapons on city property;
- h. Theft or removal from city locations, without proper authorization, of any city property or property of an employee;
- i. Immoral, unlawful, or improper conduct or indecency either on or off the job which would tend to affect the employee's relationship to his/her job, his fellow workers, and his/her reputation or goodwill in the community;
- j. Any violation of the city's drug or alcohol abuse policies;
- k. Use or attempted use of political influence, position or bribery to secure an advantage in any manner;
- l. Striking an individual, provoking or instigating a fight, or fighting at any time on city property;
- m. Threatening, intimidating, coercing, or interfering with fellow employees or supervision at any time, including abusive language;
- n. Conviction, guilt, or sentencing involving a felony of the first, second or third degree or of a misdemeanor of the first, second or third degree as defined by Florida Statutes;
- o. Instigating, leading or participating in any strike in violation of F.S. § 447.505;
- p. Violation of or knowledge of a subordinate employee's violation of the city's sexual harassment policy;

- q. Loss of necessary prerequisites or abilities to perform the work, except as restricted by state and/or federal law;
- r. Repeated group I abuse of the city's personnel policies and procedures, safety rules and regulations, departmental policies and procedures or other city policies and procedures, or any combination thereof and/or violation of a safety rule which results in an injury to the employee or others;
- s. Any conduct which in the city's judgment is adverse or prejudicial to the best interests of the city;
- t. Having an interest in a business or having outside employment at a business where there exists a conflict of interest or where employment would have an effect on the full and faithful discharge of duties as a city supervisory employee;
- u. Making or publishing of false, vicious, malicious, or unprofessional statements concerning any employee, department/division head, appointed official, board member, or the City Commissioners;
- v. Failure to properly evaluate performance of a subordinate employee;
- w. Failure to administer the laws/policies of the city and/or administer the appropriate corrective action to a subordinate employee where a group III violation occurs and/or participating in or encouraging a group III violation by a subordinate employee, fellow worker, and/or supervisor;
- x. Failure to achieve the objectives/goals established in the employees' performance evaluation.

The above reasons for discharge are examples only and the city retains the right to discharge any employee for reasons other than listed above.

**C. Managerial employees.**

1. *Introduction.*

The following corrective actions apply only to those management employees who serve at the pleasure of the city. The corrective actions are established in three divisions. These are:

- a. Non-supervisory;
- b. Supervisory; and
- c. Managerial.

Each division is cumulative with regard to behavior, work, role, procedural, or policy violation. (I.e. those specified in non-supervisory also apply to supervisory and managerial; those specified in supervisory also apply to managerial) except where a conflict occurs. Where a conflict occurs, the employees appropriate division applied shall be determined by the position classification.

## 2. *General.*

It is the policy of the City of New Smyrna Beach to emphasize an individual's responsibility for managing their performance, behavior, and promoting the proper management of the operations and employees.

The city's system of corrective actions focuses on communicating an expectation of change and improvement in a personal, adult, and non-threatening way while at the same time maintaining concern for the seriousness of the situation. Key aspects of this system include recognizing and encouraging good performance, correcting performance problems through counseling, and building commitment to effective work standards and safe work practices.

If a management level employee has a conduct, attendance, or work performance problem, corrective action may be necessary to address the situation. The city's approach is designed to provide the opportunity to correct deficient performance and build commitment (not merely compliance) to expected performance in a manner that is fair and equitable to all employees. Each step is a reminder of expected performance, stressing decision making, and individual responsibility, not punishment.

Corrective actions are normally progressive in nature, except where the seriousness of the offense warrants deviation from the normal progressive disciplinary system. Progressive discipline ordinarily involves any or all of the following steps: [set forth in subsection (3) of this section.]

## 3. *Steps.*

- a. *Oral counseling.* The purpose of oral counseling is to allow the City Manager to bring to the management employee's attention the need to improve his/her performance, work habits, behavior, or attitude and to serve as a warning against further repetition of the unsatisfactory conduct. The City Manager should utilize the occasion to identify and define the area needing improvement and inform the management employee as to how such improvement can be achieved. Documentation of the oral counseling will be made a part of the management employee's personnel file and utilized for management employees on matters of minor operational concern representing a potential violation of the code should the action or behavior continue;
- b. *Written reprimand.* In situations where a management employee commits an offense (group I offense), a written reprimand will be issued to the employee. This shall include a complete description of the incident(s) or problem, and refer to specific times, dates, locations, personnel involved, and rules violated. The management employee will be notified that further problems may result in more severe corrective action up to and including discharge;
- c. *Suspension (disciplinary).* In the event problems or offenses continue and the management employee has already received a written reprimand, or if the nature of the problem is more serious in nature, a management employee may be suspended for a specific period of time.

Such suspension shall be without pay and, if for more than one day, shall be issued on a consecutive working day basis unless otherwise designated by the City Manager. A suspended management employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension;

- d. *Demotion/termination.* In those situations where the progressive disciplinary steps have not resulted in modification of the identified behavior, or where the management employee commits a serious infraction (group III offense), the management employee may be demoted or terminated from employment with the city.
4. *Suspension pending investigation of misconduct.*
- a. *Conduct on duty.* A management employee may be suspended when his/her inappropriate behavior is so serious that immediate removal from the work place is necessary. The management employee shall be required to leave city property pending investigation and the period of suspension shall be without pay. A suspended management employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension. Some examples would be theft, insubordination, violation of the chain of command, threat of violent action, destruction of city property, or reporting to work under the influence of drugs and/or alcohol. When an investigation has been completed, the appropriate disciplinary step, if any, will be applied. If not sustained, then the employee will be made whole.
  - b. *Illegal conduct on [-duty] or off-duty.* Management employees who are arrested and charged with serious criminal offenses (first-degree misdemeanor or felony) may be placed on suspension without pay where the presence of the Employee at work constitutes a hazard or creates potential liability, either to the City, to other Employees, or the Employee or until the court determines final resolution of their case. A suspended employee may not be permitted to work on his/her normal day(s) off, nor take paid leave time, nor make up the time by working overtime in lieu of a payroll deduction for the period of suspension. Depending upon the results of the city's investigation, agreements through the state attorney's office such as pretrial intervention, or any adjudication by the court, the management employee may then be disciplined up to and including discharge or the City Manager may take other appropriate disciplinary steps, as he/she deems necessary.
5. *Positive discipline/decision making.*

Any discipline/corrective action (other than oral counseling and termination) shall also include a decision-making review/commitment. The City Manager shall discuss the conduct, attendance, or work performance problem in a private meeting with the management level employee.

An attempt should be made to reach an agreement regarding the nature of the problem, as well as a course of action to correct the situation. The City Manager shall

remind the management employee of the commitment to follow work rules and city standards and exercise prudent/professional administrative practices and procedures. The City Manager shall discuss with the management employee the implications of his/her action to him/herself, fellow workers, the department, the city, and its residents.

In this problem-solving discussion, the City Manager is to help the management employee recognize that a problem exists and to develop effective solutions. A commitment should be secured indicating the management employee's understanding and willingness to adhere to the rules and city standards and that the conduct, attendance, works performance, or administrative problem that occurred will not be repeated. The commitment should also reflect that the management employee understands the concerns expressed. The commitment shall be reduced to writing, signed by both parties and placed in the management employee's personnel file. Failure to secure a commitment should also be noted in the management employee's personnel file.

6. *Levels of offenses.*

The types of offenses requiring corrective action are divided into three groups to reflect degrees of severity. In each group and for each offense, such factors as the cost involved, the time interval between violations, the length and quality of service records, and ability of the employee concerned will be considered. In each case where the penalty is modified from the recommended standard penalties, the reasons for such modifications will be noted in writing.

The offenses listed under each of the three categories are examples only and are not intended to be all-inclusive. The city retains the right to treat each violation on an individual basis without setting a binding precedent for future cases. Failure of a supervisor to take an authorized corrective action does not bar or waive any authorized action for subsequent offenses.

Any offense not specifically enumerated in the three groups shall be considered an offense most closely resembling the group listed and appropriate recommended guidelines will apply.

As used in this section, the terms second or third offense do not necessarily mean a repeat of a previous offense in a particular group, but include any and all offenses listed in any and all groups of offenses.

<b>Group I Offenses</b>	<b>Recommended Action</b>
First Offense	Written Warning
Second Offense	Suspension--1 day
Third Offense	Suspension--2 to 10 days
Fourth Offense	Demotion/Termination

- a. Exercising improper and/or deficient administrative decision making/oversight authority regarding the operations, equipment, conduct, and/or reporting/attendance provisions of this Code;
- b. Inattention to job duties and responsibilities or those of his/her department, which does not threaten the safety of others;
- c. Failure to maintain the correct professional attitude, friendly demeanor, and/or courtesy as it relates to the department, co-workers, appointed/elected officials, or the public.

<b>Group II Offenses</b>	<b>Recommended Action</b>
First Offense	Suspension--1 day
Second Offense	Suspension--2 to 10 days
Third Offense	Demotion/Termination

- a. Failure to respond to a request to work after hours of a non-emergency nature by the City Manager;
- b. Absence without permission; or failure to report absence within 30 minutes after scheduled starting time;
- c. Negligence or omission in complying with the requirements as set forth in the Code of Ethics of these personnel policies and procedures and of the State of Florida;
- d. Reporting for work or working while unfit for duty;
- e. Any conduct or violation of safety methods, rules and/or procedures which threatens the safety of the public or city personnel, equipment, tools, or property, or results in minor injury to others;
- f. Failure to ensure for the proper coverage and/or administrative oversight for the department;
- g. Participating in or allowing a violation of this Code by a subordinate employee for offenses contained in group I or group II for management, supervisory, and non-supervisory corrective action sections of this Code;
- h. Failure to report a request for information or receipt of a subpoena from a law firm or an attorney, that relates to city business;
- i. Violating the rules, orders, and policies issued and/or adopted by the City Commission and/or City Manager;
- j. Failure to comply with provisions of this Code governing outside employment;
- k. Failure to comply with any and/or all provisions of the general polices concerning standards of conduct of this Code, except as otherwise provided herein;

- l. Violations of the chain of command as provided in these personnel policies and procedures;
- m. Productivity or workmanship of the management employee or department not up to required standards of performance;
- n. Lying or misrepresenting information to an official of the city;
- o. Failure to promote, conduct, and sustain a positive/conducive attitude toward employees, supervisors, department heads, and officials of the city and positively participate in the supervisory, management, operational, and decision making process;
- p. Providing information obtained by the employee as a function of their official position with the city to other employees or persons except as required as a function of your position, without obtaining permission from the department head or City Manager (as appropriate) or securing a public records request through the city clerk; except as provided by law.

<b>Group III Offenses</b>	<b>Recommended Action</b>
First Offense	Up to 10 Day Suspension, Demotion or Immediate Termination Based on Prior Discipline record

- a. Willful neglect in the performance of duties;
- b. Falsification, destruction of, or misrepresentations made on personnel or city records, including employment applications, accident records, work records, purchase orders, time sheets, or any other report, record, application, or city record;
- c. Making or authorizing false claims or misrepresentations in an attempt to obtain any benefit from the city, including sickness or accident benefits, workmen's compensation, or unemployment compensation payments;
- d. Insubordination;
- e. Refusal to perform work assigned, work overtime of an emergency nature, or to comply with written or verbal instructions of the City Manager, other than directions regarding overtime of a non-emergency nature;
- f. Theft or removal from city locations, without proper authorization, and/or misuse or damage of any city property, equipment, or tools or property, equipment, or tools of an employee;
- g. Immoral, unlawful, or improper conduct or indecency either on or off the job which would tend to affect the employee's relationship to his/her job, his fellow workers, and his/her reputation or goodwill in the community;
- h. Any violation of the city's drug or alcohol abuse policies;
- i. Use or attempted use of political influence position or bribery to secure an advantage in any manner;

- j. Threatening, intimidating, coercing, or interfering with fellow employees or supervision at any time, including abusive language;
- k. Conviction, guilt, or sentencing involving a felony of first, second or third degree or of a misdemeanor of the first, second or third degree as defined by Florida Statutes;
- l. Violation of or knowledge of a subordinate employee's violation of the city's sexual harassment policy or failure to act based on the knowledge of a subordinate employees violations of the city's sexual harassment policy;
- m. Loss of necessary prerequisites or abilities to perform the work, except as restricted by state and/or federal law;
- n. Repeated group I abuse of the city's personnel policies and procedures, safety rules and regulations, departmental policies and procedures or other city policies and procedures, or any combination thereof and/or violation of a safety rule which results in a major injury to the employee or others;
- o. Any conduct which in the city's judgment is adverse or prejudicial to the best interests of the city;
- p. Having an interest in a business or having outside employment at a business where there exists a conflict of interest or where employment would have an effect on the full and faithful discharge of duties as a city management employee;
- q. Making or publishing of false, vicious, malicious, or unprofessional statements concerning any employee, department/division head, appointed official, board member, or the City Commissioners;
- r. Failure to properly evaluate a subordinate employee;
- s. Failure to administer the laws/policies of the city and/or administer the appropriate corrective action where a group III violation occurs and/or participating in or encouraging a group III violation by an employee of the department;
- t. Knowledge of and failure to notify the City Manager or Director of Human Resources of a violation of the municipal code by a management, supervisory, or non-supervisory employee;
- u. Failure to achieve the objectives/goals established in the employees performance evaluation.

The above reasons for discharge are examples only and the city retains the right to discharge any employee for reasons other than [those] listed above.

**SECTION XI**

**GRIEVANCE  
PROCEDURE**

**A. Non-supervisory employees.**

1. *Scope.*

A regular status non-supervisory employee may file a grievance in response to any corrective action other than an oral counseling. Employees with complaints other than those involving corrective actions are encouraged to speak with their supervisor or department head on an informal basis to address the problem. For purposes of this section, a substandard, unsatisfactory, or standard evaluation is not to be considered a corrective action.

2. *Procedure.*

*Step 1:* The aggrieved employee shall, within five calendar days of the corrective action, discuss his/her grievance orally with his/her immediate supervisor who may call higher-level supervision into the discussion in an effort to achieve a prompt satisfactory adjustment.

The immediate supervisor will make a decision and notify the employee within five calendar days after discussion with the employee.

*Step 2:* If the matter is not resolved by the decision of the immediate supervisor, the employee may appeal to the department head or the comparable level supervisor, as applicable, within five working days from receipt of the answer in *Step 3*: The department head will schedule a meeting with the employee within five working days after receipt of the grievance or as soon thereafter as is reasonably practicable. If the matter is not settled at this meeting, the department head shall give a written answer within five working days after the scheduled meeting.

*Step 3:* If the grievance is not resolved by the decision of the department head, the employee may file an appeal to the City Manager within five working days of receipt of the answer in *Step 2*. The City Manager shall upon request meet with the employee within a reasonable time after receipt of the appeal.

*Step 4:* The City Manager shall reply within a reasonable period of time not to exceed 30 days, after the meeting held in *Step 3* indicating the course of action he/she intends to follow and shall send one copy of the reply to the department head, one copy to the employee and one copy to the employee's personnel file.

*Step 5:* If a grievance has not been satisfactorily resolved within the grievance procedure, the supervisory employee may request a hearing before the personnel board. Such request must be in writing and be submitted through the Director of Human Resources to the personnel board no later than five working days after the City Manager's response in *Step 4* of the grievance procedure.

Upon receipt of a written request for a hearing, the personnel board shall meet within 15 working days to set a hearing date. The hearing procedures shall be as set forth in this section.

*Step 6:* Upon receipt of the personnel board's decision, the City Manager may consider the personnel board's recommendation; however the decision of the City Manager shall be final. 3 *General provisions.*

- a. The time limits of this grievance procedure may be extended by management due to illness, vacations, business trips, or other emergency. If an extension is required, the employee will be notified;
  - b. If the response time limit falls on an employee's day off, the reply by management shall be given to the employee on the scheduled workday immediately following;
  - c. Any grievance shall be considered settled at the completion of any step, unless it is appealed within the time limits set forth. This restriction shall be strictly construed;
  - d. In all steps the information filed in all grievances shall be copied to the Director of Human Resources on the day of receipt;
  - e. All grievances at their conclusion shall be forwarded to the Director of Human Resources for coordination, analysis and filing;
  - f. In some cases, upon notice to the employee, steps in the grievance procedure may be waived at the discretion of the department head or City Manager to allow matters to progress rapidly;
  - g. The Director of Human Resources will be available at any step in the procedure for advice, rule interpretation, or to assist in any way in resolving the grievance;
  - h. Should the corrective action involve demotion, transfer or termination as approved, or by action taken by the City Manager, may decline to rehear the appeal and forward the grievance to the personnel board for consideration.
4. *Appeal to the personnel board.*
- a. The chairman of the personnel board shall, upon instruction from the board, give at least 15 days' written notice of the hearing. The notice may be served by certified mail, by a member of the police department or by the person being served acknowledging that he/she has received the notice;
  - b. Both parties must present a list of witnesses to be called, to the chairman of the personnel board within five working days following receipt of the notice of hearing. Thereupon the chairman of the personnel board shall issue a written request to each witness requesting the witness to be present at the hearing to testify;
  - c. At least five days prior to the date of the hearing, the chairman of the personnel board shall cause to be assembled a file of information and documents relative to the appeal and shall furnish pertinent copies of the file to the members of the personnel board and in addition thereto, shall upon request, furnish copies of the file to either party involved in the appeal;

- d. The chairman of the personnel board shall open the hearing upon determining the presence of a quorum of the board and the parties to the appeal. The chairman shall note for the record, or by roll call, the names of the board members present;
- e. In his/her opening statement, the chairman shall first indicate the name and title of the appellant, the names of representatives of the respective parties and shall indicate the nature of the appeal;
- f. The chairman shall then state the general rules of procedures to be followed in the conduct of the hearing. As presiding officer, the chairman of the board shall have control of the proceedings. He/she shall take whatever action is necessary to insure an equitable orderly and expeditious hearing. The parties shall abide by his/her decision. In the event a member of the board objects to said decisions, a majority vote of the board shall govern. The chairman or any member of the board may direct questions to either party or the representatives at any time during the proceedings;
- g. Order of proceedings:
  - 1. Opening statement by employee or representatives;
  - 2. Opening statement by city or representatives;
  - 3. Presentation of employee's case with direct and cross examination of the witnesses by the respective parties;
  - 4. Presentation of city's case with direct and cross examination of the witnesses by the respective parties;
  - 5. Closing statement by employee;
  - 6. Closing statement by city.
- h. Testimony of witnesses shall be under oath or affirmation. Either party may object to clearly irrelevant material, but no technical objections will be allowed, except as provided in [subsection] (k) below. Strict courtroom procedures will not be followed and the Rules of Evidence shall be liberally construed;
- i. A record of the proceedings shall be maintained by the city. The employee may secure a transcript. If a transcript is requested by the employee, he/she shall bear the cost of preparation;
- j. In a grievance regarding corrective action for performance matters, the competency of the employee's supervisor to evaluate the employee shall not be an issue. The employee's burden in this instance shall be to prove by clear and convincing evidence that his/her performance was not unsatisfactory.

If the city uses employee performance evaluations as a part of its case, said evaluations shall be presumed accurate in the absence of clear and convincing evidence to the contrary;
- k. Irrelevant issues and/or testimony shall not be permitted, including but not limited to, recriminatory statements and the employee's opinion(s) of the supervisor's,

department head's, appointed official's, or elected official's operational or administrative policies.

5. *Post-hearing procedure.*

- a. At the conclusion of the taking of the evidence and the arguments of the parties, the chairman shall close the hearings. The board shall thereupon conduct its deliberations in open meeting and upon completion of said deliberations shall vote for or against the appeal;
- b. With respect to all appeals, a majority vote shall be required in order to reverse or modify the action taken by the city. An employee's appeal may request a reversal and in the alternative request modification.

The board may propose, upon a motion of a member, a vote for or against reversal or a modification of the action taken by the city. A motion carried for modification shall be deemed to have denied the reversal.

When a motion for modification is not carried, the board shall then be required to vote for or against the reversal. Failure of the employee to obtain a majority vote from the board to reverse or modify, shall constitute an affirmation of the city's action. For purpose of all appeals, a simple majority of the board members present (assuming a quorum exists) shall be considered the decision of the board.

**B. Supervisory employees.**

1. *Scope.*

A supervisory employee may file a grievance in response to any corrective action other than an oral counseling. Supervisory employees with complaints other than those involving corrective actions are encouraged to speak with their superior or department head on an informal basis to address the problem. For purposes of this section, a substandard, unsatisfactory, or standard evaluation is not to be considered a corrective action.

2. *Procedure.*

*Step 1:* Where an aggrieved supervisory employee's immediate supervisor is someone other than the department head, the aggrieved employee shall, within five calendar days of the corrective action, discuss his/her grievance orally with his/her immediate supervisor who may call higher level supervision into the discussion in an effort to achieve a prompt satisfactory adjustment.

The immediate supervisor in this instance will make a decision and notify the employee within five calendar days after discussion with the supervisory employee.

*Step 2:* If the aggrieved supervisory employee's immediate supervisor is the department head, or if the matter is not resolved by the decision of the immediate supervisor, the supervisory employee may take the grievance to the department head within five working days from receipt of the answer in *Step 1* or the effective date of the corrective action, whichever is applicable.

The department head will schedule a meeting with the supervisory employee within five working days after receipt of the grievance or as soon thereafter as is reasonably practicable.

If the matter is not settled at this meeting, the department head shall give a written answer within five working days after the scheduled meeting.

*Step 3:* If the grievance is not resolved by the decision of the department head, the supervisory employee may file an appeal to the City Manager within five working days of receipt of the answer in *Step 2*. The City Manager shall upon request meet with the supervisory employee within a reasonable time after receipt of the appeal.

*Step 4:* The City Manager shall reply within a reasonable period of time not to exceed 30 days, after the meeting held in *Step 3* indicating the course of action he/she intends to follow and shall send one copy of the reply to the department head, one copy to the supervisory employee and one copy to the supervisory employee's personnel file.

*Step 5:* If a grievance has not been satisfactorily resolved within the grievance procedure, the supervisory employee may request a hearing before the personnel board. Such request must be in writing and be submitted through the Director of Human Resources to the personnel board no later than five working days after the City Manager's response in *Step 4* of the grievance procedure.

Upon receipt of a written request for a hearing, the personnel board shall meet within 15 working days to set a hearing date. The hearing procedures shall be as set forth in this section.

3. *Step 6:* Upon receipt of the personnel board's decision, the City Manager may consider the personnel board's recommendation; however the decision of the City Manager shall be final. *General provisions.*
  - a. The time limits of this grievance procedure may be extended by management due to illness, vacations, business trips, or other emergency. If an extension is required, the supervisory employee will be notified;
  - b. If the response time limit falls on a supervisory employee's day off, the reply by management shall be given to the supervisory employee on the scheduled workday immediately following;
  - c. Any grievance shall be considered settled at the completion of any step, unless it is appealed within the time limits set forth. This restriction shall be strictly construed;
  - d. In all steps the information filed in all grievances shall be copied to the Director of Human Resources on the day of receipt;
  - e. All grievances at their conclusion shall be forwarded to the Director of Human Resources for coordination, analysis and filing;

- f. In some cases, upon notice to the supervisory employee, steps in the grievance procedure may be waived at the discretion of the department head or City Manager to allow matters to progress rapidly;
  - g. The Director of Human Resources will be available at any step in the procedure for advice, rule interpretation, or to assist in any way in resolving the grievance.
4. *Appeal to the personnel board.*
- a. The chairman of the personnel board shall, upon instruction from the board, give at least 15 days' written notice of the hearing. The notice may be served by certified mail, by a member of the police department or by the person being served acknowledging that he/she has received the notice;
  - b. Both parties must present a list of witnesses to be called, to the chairman of the personnel board within five working days following receipt of the notice of hearing. Thereupon the chairman of the personnel board shall issue a written request to each witness requesting the witness to be present at the hearing to testify;
  - c. At least five days prior to the date of the hearing, the chairman of the personnel board shall cause to be assembled a file of information and documents relative to the appeal and shall furnish pertinent copies of the file to the members of the personnel board and in addition thereto, shall upon request, furnish copies of the file to either party involved in the appeal;
  - d. The chairman of the personnel board shall open the hearing upon determining the presence of a quorum of the board and the parties to the appeal. The chairman shall note for the record, or by roll call, the names of the board members present;
  - e. In his/her opening statement, the chairman shall first indicate the name and title of the appellant, the names of representatives of the respective parties and shall indicate the nature of the appeal;
  - f. The chairman shall then state the general rules of procedures to be followed in the conduct of the hearing. As presiding officer, the chairman of the board shall have control of the proceedings. He/she shall take whatever action is necessary to insure an equitable orderly and expeditious hearing. The parties shall abide by his/her decision. In the event a member of the board objects to said decisions, a majority vote of the board shall govern. The chairman or any member of the board may direct questions to either party or the representatives at any time during the proceedings;
  - g. Order of proceedings:
    - 1. Opening statement by supervisory employee or representatives;
    - 2. Opening statement by city or representatives;
    - 3. Presentation of supervisory employee's case with direct and cross examination of the witnesses by the respective parties;

4. Presentation of city's case with direct and cross examination of the witnesses by the respective parties;
  5. Closing statement by supervisory employee;
  6. Closing statement by city.
- h. Testimony of witnesses shall be under oath or affirmation. Either party may object to clearly irrelevant material, but no technical objections will be allowed, except as provided in [subsection] (k) below. Strict courtroom procedures will not be followed and the rules of evidence shall be liberally construed;
  - i. A record of the proceedings shall be maintained by the city. The supervisory employee may secure a transcript. If a transcript is requested by the supervisory employee, he/she shall bear the cost of preparation;
  - j. In a grievance regarding corrective action for performance matters, the competency of the supervisory employee's supervisor to evaluate the supervisory employee shall not be an issue. The supervisory employee's burden in this instance shall be to prove by clear and convincing evidence that his/her performance was not unsatisfactory;
  - k. If the city uses supervisory employee performance evaluations as a part of its case, said evaluations shall be presumed accurate in the absence of clear and convincing evidence to the contrary;
  - l. Irrelevant issues and/or testimony shall not be permitted, including but not limited to, recriminatory statements and the supervisory employee's opinion(s) of the supervisor's, department head's, appointed officials, or elected official's operational or administrative policies.
5. *Post-hearing procedure.*
- a. At the conclusion of the taking of the evidence and the arguments of the parties, the chairman shall close the hearings. The board shall thereupon conduct its deliberations in open meeting and upon completion of said deliberations shall vote for or against the appeal;
  - b. With respect to all appeals, a majority vote shall be required in order to reverse or modify the action taken by the city. A supervisory employee's appeal may request a reversal and in the alternative request modification. The board may propose, upon a motion of a member, a vote for or against reversal or a modification of the action taken by the city. A motion carried for modification shall be deemed to have denied the reversal. When a motion for modification is not carried, the board shall then be required to vote for or against the reversal. Failure of the supervisory employee to obtain a majority vote from the board to reverse or modify, shall constitute an affirmation of the city's action. For purpose of all appeals, a simple majority of the board members present (assuming a quorum exists) shall be considered the decision of the board.

**C. Managerial employees.**

1. Managerial positions are employed “at will” and not subject to any grievance procedure.