

Chapter 2

**ADMINISTRATION**

**Article I. In General**

- Sec. 2-1. Notices; service and proof.
- Secs. 2-2—2-28. Reserved.

**Article II. Mayor and Town Council**

Division 1. Generally

- Sec. 2-29. Regular, adjourned and recessed meetings.
- Sec. 2-30. Adjournment for lack of quorum.
- Sec. 2-31. Mayor—Duties generally.
- Sec. 2-32. Same—General duties at meetings.
- Sec. 2-33. Same—Appointing of special committees; vacating the chair.
- Sec. 2-34. Mayor pro tempore.
- Sec. 2-35. Motions; prerequisites to consideration.
- Sec. 2-36. Election by ballot.
- Sec. 2-37. Effective date of ordinances.
- Sec. 2-38. Resignation of member.
- Sec. 2-39. Agenda.
- Secs. 2-40—2-49. Reserved.

Division 2. Code of Ethics

- Sec. 2-50. Purpose and intent.
- Sec. 2-51. Definitions.
- Sec. 2-52. Conflicts of interest.
- Sec. 2-53. Investigations of a written complaint by a town official.
- Sec. 2-54. Enforcement and penalties.
- Sec. 2-55. Ethics awareness program.
- Sec. 2-56. Financial disclosure statement.
- Sec. 2-57. Annual ethics audit.
- Sec. 2-58. Request for advisory guidance.
- Sec. 2-59. Financial disclosure statement form.
- Sec. 2-60. Annual ethics audit form.
- Secs. 2-61—2-70. Reserved.

**Article III. Officers and Employees**

Division 1. Generally

- Sec. 2-71. Contracts; conflict of interest.
- Secs. 2-72—2-86. Reserved.

## CARY CODE OF ORDINANCES

### Division 2. Personnel

- Sec. 2-87. General provisions.
- Sec. 2-88. Position classification plan.
- Sec. 2-89. Salary plan.
- Sec. 2-90. Recruitment, selection and appointment.
- Sec. 2-91. Conditions of employment.
- Sec. 2-92. Employee benefits, holidays and leaves of absence.
- Sec. 2-93. Travel.
- Sec. 2-94. Separation.
- Sec. 2-95. Disciplinary action.
- Sec. 2-96. Grievance procedure.
- Secs. 2-97—2-107. Reserved.

## Article IV. Departments

### Division 1. Generally

- Secs. 2-108—2-128. Reserved.

### Division 2. Department of Inspections and Permits

- Sec. 2-129. Created.
- Sec. 2-130. Right of entry.
- Sec. 2-131. Stop orders.
- Sec. 2-132. Records.
- Secs. 2-133—2-143. Reserved.

### Division 3. Police Department

- Sec. 2-144. Established.
- Sec. 2-145. Duties.
- Sec. 2-146. Chain of command.
- Sec. 2-147. Uniforms and equipment.
- Sec. 2-148. Duties of chief of police.
- Sec. 2-149. Police reserves.
- Secs. 2-150—2-160. Reserved.

## Article V. Boards, Commissions and Authorities

- Sec. 2-161. Appointment generally; terms.
- Sec. 2-162. Appointment procedure.
- Sec. 2-163. Attendance at board meetings.
- Sec. 2-164. Planning and zoning board.
- Sec. 2-165. Zoning board of adjustment.
- Sec. 2-166. Parks, recreation and cultural resources advisory board.
- Sec. 2-167. Town center review commission.
- Sec. 2-168. Public arts advisory board.

## ADMINISTRATION

- Sec. 2-169. Economic development commission.
- Sec. 2-170. Information services advisory board.
- Sec. 2-171. Sister cities commission.
- Sec. 2-172. Utility board of adjustment.
- Sec. 2-173. Environmental advisory board.
- Sec. 2-174. Citizen issue review commission.



**ARTICLE I. IN GENERAL****Sec. 2-1. Notices; service and proof.**

(a) Unless otherwise specifically provided, whenever a notice is required to be given pursuant to any section of this Code such notice shall be given either by personal delivery to the person to be notified or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his last known business or residence address as the same appears in the public records or other records pertaining to the matter for which such notice is served or by any other method of delivery approved by law. Service by mail shall be deemed to have been completed at the time of deposit in the post office or any United States mailbox.

(b) Proof of giving any notice may be made by the certificate of any officer or employee of this town or by affidavit of any person over the age of 18 years who actually accomplished personal service in conformity with this Code or other provisions of law applicable to the subject matter concerned, or by a return receipt signed by the recipient notified by United States mail.

(Code 1976, § 1-13; Code 1982, § 2-2)

**Secs. 2-2—2-28. Reserved.****ARTICLE II. MAYOR AND TOWN COUNCIL\***

## DIVISION 1. GENERALLY

**Sec. 2-29. Regular, adjourned and recessed meetings.**

(a) *Regular meeting.* The town council shall adopt a regular meeting schedule at its December meeting. This schedule shall outline the dates, times and locations of all regular town council meetings for the following year.

(b) *Adjourned and recessed meeting.* Any regular or duly called special meeting may be recessed to reconvene at a time and place certain, or may be adjourned to reconvene at a time and place certain, by the town council.

(Code 1976, § 2-1; Code 1982, § 2-17; Ord. No. 86-7, § 1, 3-13-1986; Ord. No. 86-21, § 1, 6-12-1986)

**State law reference**—Notice of public meetings, G.S. 143-318.12.

**Sec. 2-30. Adjournment for lack of quorum.**

If a quorum is not present, a meeting of the town council shall stand adjourned to the next regularly scheduled town council meeting.

(Code 1976, § 2-5; Code 1982, § 2-18)

**State law reference**—Quorum, G.S. 160A-74.

**\*Charter reference**—Mayor and town council, art. III.

**State law references**—Mayor and town council, G.S. 160A-59—160A-82; meetings of public bodies, G.S. 143-318.9 et seq.

**Sec. 2-31. Mayor—Duties generally.**

The mayor shall:

- (1) Keep himself informed as to the town's business.
- (2) Execute official documents for the town.

(Code 1976, § 2-22; Code 1982, § 2-19; Ord. No. 77-37, 10-13-1977)

**Charter references**—Election of mayor, § 3.2; mayor's authority to vote § 3.3.

**Sec. 2-32. Same—General duties at meetings.**

At the hour appointed for the meeting of the town council, the mayor shall take the chair and direct the clerk to note the absentees. The mayor shall preserve order and decorum. He shall decide all questions of order.

(Code 1976, § 2-6; Code 1982, § 2-20)

**Sec. 2-33. Same—Appointing of special committees; vacating the chair.**

The mayor shall appoint all special committees, including those comprised of elected officials, except where the council shall otherwise order. He may, when present, appoint any member of the council to perform the duties of the chair, but such substitution shall not extend beyond adjournment, except by special consent of the town council, nor shall it affect his right to vote.

(Code 1976, § 2-15; Code 1982, § 2-21)

**Sec. 2-34. Mayor pro tempore.**

The mayor pro tempore shall perform the duties of the mayor in the event of the absence of the mayor, or in case of sickness of the mayor or other causes which would prevent the mayor from attending to the duties of the office.

(Code 1976, § 2-7; Code 1982, § 2-22)

**Sec. 2-35. Motions; prerequisites to consideration.**

No motion shall be considered or put at a council meeting until seconded and shall be reduced to writing by the member making it upon the request of the presiding officer or any other member. It may be withdrawn at any time before decision, commitment or amendment.

(Code 1976, § 2-14; Code 1982, § 2-24)

**Sec. 2-36. Election by ballot.**

All elections by the council shall be made by ballot if required by any two members present, and all votes shall be by yeas and nays and shall be entered upon the records on request of one member. Provided, that no election, appointment or motion shall be valid or adopted unless a quorum is present and voting.

(Code 1976, § 2-16; Code 1982, § 2-25)

**Sec. 2-37. Effective date of ordinances.**

Every ordinance enacted by the town council and filed in accordance with state law shall be in force from its passage, unless otherwise ordered or otherwise provided by state law.

(Code 1976, § 2-21; Code 1982, § 2-26; Ord. No. 77-37, 10-13-1977)

**State law reference**—Ordinances, G.S. 160A-75 et seq.

**Sec. 2-38. Resignation of member.**

No member of the town council shall be allowed to tender a resignation of his office except in writing.

(Code 1976, § 2-17; Code 1982, § 2-27)

**Sec. 2-39. Agenda.**

The business to be transacted before the town council shall be governed and regulated by an agenda prepared by the town clerk.

(Code 1976, § 2-9; Code 1982, § 2-41; Ord. No. 89-25, § 1, 2-23-1989)

**Secs. 2-40—2-49. Reserved.**

## DIVISION 2. CODE OF ETHICS

**Sec. 2-50. Purpose and intent.**

(a) The proper operation of democratic government requires that public officials and employees be independent, impartial and responsible to the people; that governmental decisions and policy be made in proper channels of the governmental structure; that public office not be used for personal gain; and that the public have confidence in the integrity of its government.

(b) In recognition of these goals, the Town of Cary code of ethics for town officials is hereby adopted. The purpose of sections 2-50—2-54 of the code of ethics is to establish rules of conduct and procedures to govern town council behavior. The purpose of sections 2-55—2-57 is to assure that the town council receives appropriate information about the code of ethics and that periodic disclosure of information is made by town officials. The purpose of section 2-58 is to provide a procedure for a town official to seek nonbinding advisory guidance prior to or during a continuation of a potential infraction of the code of ethics regarding his or her conduct or the conduct of any other town official. The code of ethics is not intended to be exhaustive or to replace a town official's personal conscience. Town officials should strive to exceed the standards of the code of ethics and, thereby, preserve and promote the public's faith in the integrity of town government.

(c) With regard to decisions involving the town's land use regulations, all applicable state statutes, case law, and regulations shall control over the code of ethics.

(d) The code of ethics is not intended to replace, conflict with or modify applicable criminal or civil statutes of North Carolina. In the event of a conflict, however, state law shall control over the code of ethics. Furthermore, any criminal violations identified during consideration of an ethical violation under the code of ethics shall be referred to the appropriate law enforcement agency. (Ord. No. 03-011, § 2-55.15, 10-23-2003)

### **Sec. 2-51. Definitions.**

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Advisory guidance* means ethics advisory guidance given pursuant to section 2-58 of the code of ethics.

*Business entity* means any business, proprietorship, firm, company, partnership, association, joint venture, trust or corporation which is organized for financial gain or profit.

*Close relative* means mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandmother, grandfather, grandson, and granddaughter, and various combinations of "step," "half" and adopted relationships.

*Code of ethics* means the code of ethics adopted by the town council.

*Confidential information* means information which has been obtained in the course of performing a town official's duties, and which information has not been disclosed to members of the public or is not available to members of the public under chapter 132 of the North Carolina General Statutes or other law or regulation and which the town official is not authorized to disclose, including:

- (1) Any written information that could lawfully be excepted from disclosure pursuant to state law, unless the town official disclosing it is authorized to do so by state law, or pursuant to some other pertinent law, policy or procedure; and
- (2) Any nonwritten information; and
- (3) Information which was obtained in the course of or by means of a record or oral report of a lawful closed session, whether or not the disclosure of the information would violate state law, unless the town official disclosing it is authorized by state law to do so, or unless the town official disclosing it has been properly authorized to disclose it pursuant to an applicable law, policy or procedure; however, when such information is also available through channels which are open to the public, this provision does not prohibit public servants from disclosing the availability of those channels.

*Ethics audit statement* means the certification required by section 2-57 herein.

*Ethics complaint* means a written statement submitted to the town attorney, pursuant to section 2-53 herein, detailing facts and allegations of a possible violation of the code of ethics based upon actual knowledge or information and a reasonable belief.

*Financial Disclosure Statement* means that statement required pursuant to section 2-56 herein.

*Gift* means a voluntary transfer of property or anything of economic value to another made gratuitously and without consideration which has a value in excess of \$100.00. Town officials may accept gratuities having a value of less than \$100.00, so long as such gratuity is not intended and does not, in fact, influence any official act of any town official, and is not prohibited by state law. A gift includes, but is not limited to, a rebate or discount in the price of anything of economic value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

*Immediate family* means wife, husband, mother, father, guardian, brother, sister, daughter and son.

*Interest* means a direct or indirect pecuniary or material benefit accruing to a town official as a result of a contract or transaction which is or may be the subject of an official act or action by or with the town. For the purpose of this article, a town official shall be deemed to have an interest in any official act or action affecting:

- (1) A town official's immediate family or close relative.
- (2) Any business entity in which the town official is an employee, officer or director.
- (3) Any business entity in which an excess of five percent of the stock, or legal or beneficial ownership of such business entity, is controlled or owned directly or indirectly by the town official.
- (4) Any nonprofit organization for which a town official currently is an employee, officer, director, or board member.
- (5) Any interest in real property owned individually by the town official or any entity described in subsections (2) or (3) above.

*Official act or action* means any legislative, quasi-judicial, administrative, appointive or discretionary act of any town official or the town council.

*Town* means the town of Cary, North Carolina.

*Town official* means the mayor or any member of the town council.  
(Ord. No. 03-011, § 2-55.16, 10-23-2003)

### **Sec. 2-52. Conflicts of interest.**

(a) *Use of official position.* No town official shall use his or her official position or the town's facilities for his or her private gain, nor shall he or she appear before or represent any private person, group or interest before any department, agency, commission or board of the town, except in matters of purely civic or public concern. The provisions of this paragraph are not intended to prohibit appropriate roles and activities by a town official at town events or events attended by the town, such as acting as a host, an ambassador or representative of the town, and are not intended to prohibit his or her speaking before neighborhood groups and other nonprofit organizations.

(b) *Disclosure of confidential information.* No town official shall use or disclose confidential information for purposes of advancing any matter in which he or she has an interest nor shall a town official disclose for any purpose information gained at a closed session until such disclosure is authorized by law.

(c) *Special treatment.* No town official shall grant any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.

(d) *Incompatible employment.* No town official shall engage in or accept employment with, or render services for, any person, business entity or nonprofit organization, when such employment or service is incompatible with the proper discharge of his or her official duties, or would tend to impair his or her independence, judgment, or action in the performance of his or her official duties, unless otherwise permitted by law and unless full disclosure is made, pursuant to the code of ethics.

(e) *Gifts and favors.* No town official shall knowingly accept gifts from any person, business entity or nonprofit organization. This provision is intended to supplement rather than replace or modify the restrictions applicable to town officials provided in G.S. 14-234 and 133-32.

(f) *Nepotism.* Section 2-91(a) hereby incorporated by reference into the code of ethics.

(g) *Interest in official act.* Any town official who has an interest in any official town act or action shall not participate at any time or in any manner in the discussion or consideration of such matter. The town official shall also publicly disclose on the record, in open session, the nature and extent of such interest and shall withdraw from any voting on the matter, if excused by a majority vote of the town council and if permitted by G.S. 160A-75.

(h) *Lobbying.* For one year after leaving office, a town official shall not, for compensation, represent or lobby on behalf of any person or business entity, before the town, including town staff and consultants.

(Ord. No. 03-011, § 2-55.17, 10-23-2003)

**Sec. 2-53. Investigations of a written complaint by a town official.**

(a) A town official may file a written ethics complaint prepared by such town official for an alleged violation of the code of ethics. Upon receipt of an ethics complaint, the town attorney shall provide a copy of the ethics complaint to the town official subject to such ethics complaint. Thereafter, the town attorney shall hold an informal meeting with the complainant to discuss the ethics complaint. The town official subject to the ethics complaint may attend the informal meeting. Should the complainant decide to pursue the ethics complaint at the conclusion of this informal meeting, the town attorney shall immediately transmit copies of the ethics complaint to each town official. Should the complainant decide not to pursue the ethics complaint, the complainant shall withdraw the ethics complaint in writing.

(b) The town attorney shall, at the direction of the complainant, hire an outside attorney licensed in the state of North Carolina ("independent investigator") to conduct an independent investigation into the complaint.

(c) Upon referral of an ethics complaint to an independent investigator, the town attorney shall provide copies of the ethics complaint to all members of the town council. The independent investigator shall be responsible for all aspects of the investigation and shall submit a thoroughly investigated and researched written legal opinion, including findings of fact and conclusions of law, to the town council.

(Ord. No. 03-011, § 2-55.18, 10-23-2003)

**Sec. 2-54. Enforcement and penalties.**

With the assistance of the independent investigator, the town council, after receipt of the independent investigator's written legal opinion pursuant to section 2-53, shall, at a minimum, take such actions as are required by law. The council, in its discretion, may take such additional actions as may be recommended or advised by the independent investigator and as necessary to protect the town and the town council. As an additional measure, the town council may, in its discretion, and by a majority vote, adopt in open session a resolution censuring a town official.

(Ord. No. 03-011, § 2-55.19, 10-23-2003)

**Sec. 2-55. Ethics awareness program.**

An ethics awareness program shall be included in the orientation for each new town official by the town manager or his designee.

(Ord. No. 03-011, § 2-55.20, 10-23-2003)

**Sec. 2-56. Financial disclosure statement.**

Within 30 days of taking office and on or before the last day of December of each year thereafter, each town official shall file a written financial disclosure statement with the town clerk. Each town official shall update the financial disclosure statement on or before the last day of June of each year by filing a statement certifying that there is "no change" or by filing an updated financial disclosure statement reflecting changes in the information disclosed. The financial disclosure statement shall be on a form developed by the town manager and approved by the town council. At a minimum, the following information shall be disclosed by each town official:

- (1) The address or location of all real property within the town's zoning jurisdiction in which the town official owns any direct or indirect interest, including leasehold interests and options to purchase. The value of any property listed need not be disclosed.
- (2) The principal sources (but not the amounts) of income received during the six months immediately preceding the deadline for filing the Financial Disclosure Statement by (i) the town official and (ii) any immediate family or close relative receiving substantial financial support from such town official during the preceding six months or who has lived in the town official's home for a total of 90 days during the preceding six months. For income received from business activities, the name, address and principal business activity of each source of income must be shown. The following need not be listed or disclosed:
  - a. The amount of income received from any source.
  - b. Compensation received from the town.

- c. Social security payments and other similar income received, pursuant to any state or federal entitlement program.
  - d. Any source of income which amounted to less than ten percent of the gross income received by the town official during the preceding calendar year.
- (3) The name and address of any business entity or nonprofit organization for which the town official is an employee, owner, officer or director. With respect to ownership, the name and address of a business entity in which the town official owns an interest of five percent or less need not be listed. For each business entity or nonprofit organization listed pursuant to this section, the town official shall include a listing of each officer, partner, member and/or shareholder of such business entity or nonprofit organization.
- (4) All loans received by the town official or any business entity or nonprofit organization disclosed pursuant to subsection (a)(3) above made by any person or made by a business entity not regularly engaged in commercial lending. For each loan listed pursuant to this section, the name and address of the lender.
- (Ord. No. 03-011, § 2-55.21, 10-23-2003)

**Sec. 2-57. Annual ethics audit.**

Each town official shall submit an annual ethics audit statement, of which the form and substance is developed by the town manager and approved by the town council. The ethics audit statement shall be executed by each council member and submitted to the town clerk on or before the last day of December of each year.

(Ord. No. 03-011, § 2-55.22, 10-23-2003)

**Sec. 2-58. Request for advisory guidance.**

(a) When a town official has a question as to the application of the code of ethics to a future particular situation, he or she may apply, orally or in writing, to the town attorney for advisory guidance. Upon receipt of a request for advisory guidance and based only upon the information given to the town attorney, the town attorney will provide advisory guidance to the town official. In the town attorney's discretion, he may retain outside legal counsel to advise the town attorney in connection with any request for advisory guidance.

(b) In no event will the town attorney's advisory guidance excuse a town official from complying with the code of ethics or other applicable law.

(Ord. No. 03-011, § 2-55.23, 10-23-2003)

**Sec. 2-59. Financial disclosure statement form.**

Pursuant to section 2.55.24 of the Town of Cary code of ethics (ethics code), within 30 days of taking office and on or before the last day of December of each year thereafter, each town official shall file a written financial disclosure statement with the town clerk. Each town official shall update the financial disclosure statement on or before the last day of June of each year by filing a statement certifying that there is "no change" or by filing an updated financial disclosure statement reflecting changes in the information disclosed.

FINANCIAL DISCLOSURE STATEMENT

Your Name \_\_\_\_\_

Please fully and completely disclose the following:

- (1) The address or location of all real property within the Town's zoning jurisdiction in which you own any direct or indirect interest, including leasehold interests and options to purchase. The value of any property listed need not be disclosed.

Property address or location:

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_
- d. \_\_\_\_\_

Continuation sheet used \_\_\_\_\_ yes \_\_\_\_\_ no.

- (2) List the principal sources (but not the amounts) of income received during the six months immediately preceding the deadline for filing this financial disclosure statement by (a) you and by (b) any immediate family or close relative receiving substantial support from you, or who lived in your home for a total of 90 days during the preceding six months. For income received from business activities, the name, address and principal business activity of each source of income must be shown:

a. Principal sources of income received by you:

<i>Source of Income by Name</i>	<i>Address of the Income Source</i>	<i>Principal Business Activity of the Income Source</i>

Continuation sheet used \_\_\_\_\_ yes, \_\_\_\_\_ no.

b. Principal sources of income received by immediate family or close relative:

<i>Name of Family or Relative</i>	<i>Relationship to You</i>	<i>Source of Income by Name</i>	<i>Address of Source of Income</i>	<i>Principal Business Activity of the Income Source</i>

Continuation sheet used \_\_\_\_\_ yes \_\_\_\_\_ no.

(3) List the name and address of any business entity or nonprofit organization of which or for which you are an employee, owner, officer or director. With respect to ownership, the name and address of a business entity in which you own an interest of five percent or less need not be listed. For each business entity or nonprofit organization listed pursuant to this section, include a listing of each officer, partner, member and/or shareholder of such business entity or nonprofit organization.

<i>Business Entity or Nonprofit Organization</i>	<i>Address</i>	<i>Nature of Interest: Employee, Owner, Officer or Director</i>	<i>% Interest Ownership, if applicable</i>	<i>Officers, Partners, Members, Shareholders</i>

Continuation sheet used \_\_\_\_\_ yes \_\_\_\_\_ no.

- (4) List all loans you or any business entity or nonprofit organization that you disclosed in number (3) above, received from any person or from any business entity that is not regularly engaged in commercial lending. For each loan, list the name and address of the lender.

<i>Person or Business Entity or Nonprofit Receiving Loan</i>	<i>Name of Lender</i>	<i>Address of Lender</i>

Continuation sheet used \_\_\_\_\_ yes \_\_\_\_\_ no.

CERTIFICATION

I do hereby certify that this is a full and accurate disclosure of the information required under the Town of Cary Ethics Code. I further acknowledge that I understand that this is a public document and, as such, is available for public inspection.

\_\_\_\_\_  
Signature Date

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

I, \_\_\_\_\_ notary public for County of Wake and State of North Carolina, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

SEAL

My commission expires:

MID-YEAR CERTIFICATION

NO CHANGES

I do hereby certify that there have been no changes in information required to be reported under the town of Cary ethics code since December \_\_\_\_\_, 2\_\_\_\_. I further acknowledge that I understand that this is a public document and, as such, is available for public inspection.

\_\_\_\_\_  
Signature Date

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_ notary public for county of Wake and State of North Carolina, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
Notary Public

SEAL

My commission expires:

FINANCIAL DISCLOSURE STATEMENT  
CONTINUATION SHEETS

Number \_\_\_\_\_ for \_\_\_\_\_ (official)

Section

Number


Use as many continuation sheets as necessary.

(Ord. No. 03-011, § 2-55.24, 10-23-2003)

**Sec. 2-60. Annual ethics audit form.**

ANNUAL ETHICS AUDIT

Each town official shall submit an annual ethics audit statement, the form and substance of which is developed by the town manager and approved by the town council. The ethics audit statement shall be executed by each council member and submitted to the town clerk on or before the last day of December of each year.

CERTIFICATION

I, \_\_\_\_\_, do hereby certify that I have read and familiarized myself with the town of Cary code of ethics, and have fulfilled all requirements thereof. I further acknowledge that I understand that this is a public document and, as such, is available for public inspection.

\_\_\_\_\_  
Signature Date

STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, \_\_\_\_\_, notary public for county of Wake and State of North Carolina, do hereby certify that \_\_\_\_\_ personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_.

\_\_\_\_\_  
Notary Public

SEAL

My commission expires:  
(Ord. No. 03-011, § 2-55.25, 10-23-2003)

**Secs. 2-61—2-70. Reserved.**

**ARTICLE III. OFFICERS AND EMPLOYEES\***

DIVISION 1. GENERALLY

**Sec. 2-71. Contracts; conflict of interest.**

No officer or employee of the town, appointed or elected, shall undertake any venture, or make any contract, for his own benefit, under his official authority, or be in any manner concerned or interested in making such contracts, or in the profits thereof, either privately or openly, singly or jointly with another unless authorized by the town council and not in conflict with G.S. 14-234. (Code 1976, § 2-31; Code 1982, § 2-58)

**Secs. 2-72—2-75. Reserved.**

**Editor’s note**—Ord. No. 06-008, adopted April 27, 2006, repealed §§ 2-72—2-75 in their entirety. Formerly, said sections pertained to the duties of the town manager, town attorney, town clerk and town treasurer, respectively, as enacted by Code 1976, §§ 2-23—2-25; as subsequently amended. The users attention is directed to the Town Charter for similar provisions.

\***Charter reference**—Officers and employees, art. IV.

**Secs. 2-76—2-86. Reserved.**

DIVISION 2. PERSONNEL

**Sec. 2-87. General provisions.**

(a) *Purpose.* The purpose of this article is to establish a fair and uniform system of personnel administration for all employees of the town under the supervision of the town manager. Nothing contained in this article should be construed as creating any type of employment contract between or among the town and any of its employees, either express or implied. Additionally, nothing contained in this article shall restrict the town's right to unilaterally change the policies, practices and procedures described herein. While, in the normal course of events, the town intends to follow the provisions set forth in this article, in whole or in part, and other policies, practices and procedures affecting personnel, certain situations may occur in which the town, at its sole discretion, will not follow this division unless otherwise required by law.

(b) *Personnel ordinance and plans.* The town council is responsible for approving this division, the position classification plan and the salary plan.

(c) *Administration.* The town manager is the head of the administrative branch of town government and is directly responsible to the town council for the administration of town affairs. The town manager is the final authority for directing the activities of all classified employees; therefore, the town manager shall establish personnel policies, practices and procedures as necessary, provided these are not in conflict with the town charter, town code, federal or state laws.

(d) *Human resources department.* There shall be a human resources department, under the supervision of the town manager, which has continuing responsibility and authority with respect to personnel matters. The town manager may delegate to the human resources department the responsibility for various functions as he/she sees fit. It has primary responsibility for advising the town manager and employees on policies, rules, regulations, benefits and procedures, and maintaining all employee records. All employees shall have full access to the human resources department for the purposes described herein.

(e) *Employee organizations.* The town recognizes the right of its employees to belong or not to belong freely and without discrimination to any organization whose purpose, existence or activities are not in conflict with a local, state or federal law.

(f) *Application.* The personnel ordinances and plans and all policies, practices and procedures adopted pursuant to them shall be binding on all town employees who are under the direction of the town manager. Any employee failing to carry out the full implementation of these policies may be subject to disciplinary action.

(g) *Departmental policies, practices and procedures.* Due to operational requirements of the various town departments, each department is authorized to establish supplemental policies, practices and procedures applicable only to the personnel of that department. All such policies, practices and procedures shall be subject to the approval of the town manager, and shall not conflict with the provisions of this division, but rather supplement it.

(h) *Statement of affirmative action and equal employment opportunity policy.* The policy of the town is to foster, maintain and promote equal employment opportunity. Recruitment of applicants for town employment will actively provide for measures to improve the diversity of the applicant pool. The town shall select employees on the basis of the applicant's qualifications for the job and award them, with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, sex, race, color, religion, national origin, nondisqualifying disability or political affiliation. Applicants with disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of essential job functions.

(i) *Implementation of affirmative action and equal employment opportunity policy.* All personnel responsible for recruitment and employment will continue to review regularly the implementation of this personnel policy and relevant practices and procedures to assure that equal employment

opportunity based on reasonable, job-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, nondisqualifying disability, national origin or political affiliation.

(j) *Merit principle.* Appointments, promotions, and other human resource transactions shall be made solely on the basis of merit, except where organizational needs warrant other considerations. (Code 1982, § 2-63; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

### **Sec. 2-88. Position classification plan.**

(a) *Purpose.* The position classification plan provides a complete and accurate description and specification for each class of employment within the town service. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities.

(b) *Full-time employees.* Full-time employees are those who are in positions for which an average work week over a one-month period of at least 37½ hours per week is required by the town.

(c) *Part-time employees.* Part-time employees are those who are in positions for which an average work week over a one-month period is less than 37½ hours per week.

(d) *Temporary employees.* Temporary employees are those who are in positions which are expected to last less than 24 consecutive months. Unless specifically included, the provisions of this division do not apply to temporary employees; however, the phrase "any employee" shall be deemed to include temporary employees.

(e) *Probationary employees and trainees.* All full-time and part-time employees hired into an authorized position and given a probationary appointment shall be considered probationary employees. A trainee is an employee not fully qualified to meet the requirements of a position, but who is expected to do so within a reasonable period of time.

(f) *Regular employees.* All full-time and part-time employees who have completed initial probation, as defined by section 2-91, shall be considered regular employees. The term "regular," as used in this division, specifically sections 2-87 through 2-96, shall not be construed to guarantee any employee continued employment.

(g) *Use.* The position classification plan is to be used:

- (1) As a guide in recruiting and examining applicants for employment;
- (2) In determining lines of progression and in developing employee training programs;
- (3) In determining salary to be paid for various types of work;
- (4) In determining human resource service items in departmental budgets; and
- (5) In providing uniform job terminology.

(h) *Administration.* The town manager shall be responsible for the administration of the position classification plan, and shall periodically review the entire position classification plan. The human resources department, under the direction of the town manager, shall have continuing responsibility to assure that this plan is implemented.

(i) *Adoption.* The position classification plan shall be adopted by the town council.

(j) *Amendment.* Classes of positions shall be added to and deleted from the position classification plan upon approval of the town council, or the town manager, based on criteria established by the town council.

(Code 1982, § 2-64; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

### **Sec. 2-89. Salary plan.**

(a) *Definition.* The salary plan includes the basic salary schedule and position authorization plan. The salary schedule consists of minimum and maximum rates of base salary for all classes of positions included in the position classification plan. The position authorization plan includes a complete inventory of authorized positions and a designation of the hours in the work week for each position. The salary schedule shall be adopted by the town council. A position authorization plan shall be adopted by the town council each fiscal year and may be amended during the fiscal year by the town council or by the town manager based on criteria established by the town council.

(b) *Pay rates in promotion, demotion, and transfer.* When an employee is promoted, demoted or transferred, the rate of salary for the new position will be established in accordance with the following rules:

- (1) An employee who is promoted will receive a salary consistent with the provisions of subsection 2-91(g);
- (2) An employee who is demoted will receive a salary consistent with the provisions of subsection 2-91(j);
- (3) An employee who is transferred from a position in one class to a position in another class where the new position is assigned to the same salary grade as the old position will continue to receive the same salary.

(c) *Pay rates in salary range revisions and reclassifications.* When the town council approves a change in salary grade for a position or class of positions, the salaries of employees whose positions are reallocated are affected as follows:

- (1) When a position or a class of positions is assigned to a higher salary grade, eligible employees in that class will normally receive a salary increase based on the pay for performance policy;
- (2) When a position or a class of positions is assigned to a lower salary grade, the salary of any employee in that position or class will remain unchanged. If this assignment to a lower salary range results in an employee being paid at a rate above the maximum established

for the new class, the base salary of that employee shall be maintained at that level at least until such time as the employee's salary grade is increased above the employee's current salary and the employee is eligible for an increase.

(d) *Starting salaries.* All persons employed in positions contained in the position authorization plan shall be employed at the minimum salary for the classification in which they are employed, provided they possess the minimum qualifications required; however, on the recommendation of the department director and with the approval of the town manager, well-qualified applicants may be employed above the minimum rate.

(e) *Trainee salaries.* An applicant who is hired as a trainee, or an employee who is promoted to a trainee, may be appointed at a trainee rate. A trainee rate is normally at least five percent below the minimum rate of the assigned salary grade.

(f) *Performance appraisal.* Each employee will receive a performance review at times established by the town manager, but at least once a year. During this review, the employee and his/her supervisor shall discuss the employee's tasks and responsibilities and identify areas of good performance and areas for additional improvement. The supervisor shall document such review to the employee's human resource file, in a form approved by the town manager.

(g) *Anniversary dates for merit performance reviews.* Anniversary dates for performance reviews shall be established by the town manager for all employees. The anniversary date will remain unchanged by promotions and reclassifications, unless either action results in a salary increase of more than 15 percent. Interim appointments will not affect anniversary dates.

(h) *Performance awards.* When an employee becomes eligible for a performance award, such increase shall be the decision of the department director, based on the quality of the employee's performance and conduct and approved by the human resource director as to the sufficiency of documentation, adherence to policies, and other technical and legal matters. The town manager will grant performance awards to department directors, upon eligibility and based upon their performance and personal conduct.

(i) *Reserved.*

(j) *Overtime.*

- (1) Any employee of the town may be required to work the hours necessary to fulfill the needs of the town as determined by the town manager or department director. Any overtime hours must be approved, normally in advance, by the employee's supervisor.
- (2) The town shall comply with minimum wage, overtime salary, recordkeeping and other applicable provisions, if any, of the Fair Labor Standards Act (FLSA). The town manager shall determine which positions are covered by the FLSA ("nonexempt") and which positions are not covered ("exempt") by the FLSA provisions concerning overtime.

- (3) Any employees in nonexempt positions will be paid the regular rate of salary for hours worked up to the limit established by the FLSA for their positions (usually 40 hours in a seven-day period). Hours worked above the FLSA-established limit will be compensated at the appropriate overtime rate or through compensatory time.

(Code 1982, § 2-65; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-029, 6-26-1997; Ord. No. 98-003, 5-28-1998)

### **Sec. 2-90. Recruitment, selection and appointment.**

(a) *Recruitment sources.* When position vacancies occur, department directors shall notify the human resources department concerning the number and classification of positions which are to be filled. Certain vacancies may be made available only to current employees. The human resources department will publicize all other opportunities for employment, including applicable salary information and employment qualifications. Information on job openings and hiring practices shall be provided to recruitment sources, including organizations and news media available to minority applicants. In addition, notice of vacancies shall be posted at designated conspicuous sites within departments. Individuals shall be recruited from a geographic area as wide as is necessary to ensure that well-qualified applicants are obtained for town service.

(b) *Job advertisements.* Employment advertisements shall contain assurances of equal employment opportunity and affirmative action, and shall comply with federal and state statutes.

(c) *Applications for employment.* All persons expressing interest in positions for which the town is recruiting externally will be given the opportunity to file an application for employment.

(d) *Selection.* Department directors shall make such investigations and conduct such examinations as deemed appropriate to assess fairly the aptitude, education, and experience; knowledge, skill, and ability; and other qualifications required to perform the essential function of a job with or without reasonable accommodation. All selection devices administered by the town, or by persons or agencies for the town, shall be valid measures of job performance.

Pre-employment background checks may include criminal conviction record checks for all positions and additional verifications depending upon the position.

(e) *Employment procedure.* When a job opening occurs and the procedures set forth in this division have been completed, the human resources department shall then screen all applications for the position and identify the best qualified applicants for the department director or other designated supervisory personnel. The department director or supervisor, following standard procedures, shall interview the appropriate applicants.

(Code 1982, § 2-66; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998; Ord. No. 2007-11, 9-11-2007)

### **Sec. 2-91. Conditions of employment.**

(a) *Employment of immediate family and close relatives.* "Immediate family" and "close relatives" are defined in subsection 2-92(q). The town prohibits the hiring and employment of immediate family and close relatives in authorized positions within the same work unit. The town

also prohibits the hiring of any person into a temporary or authorized position who is an immediate family member or close relative of individuals holding the following positions: Mayor, mayor pro tem, town councilmember, town manager, assistant town manager, town clerk, town attorney, finance director or human resources director. Otherwise, the town will consider employing families or related persons in the service of the town, provided that such employment does not result in immediate family or close relatives supervising relatives or having any responsibility for the payroll, hours of work, or human resource records of relatives, or for making any decision affecting the employment of a relative. Employment of individuals who are cohabiting or were formerly related, as defined by subsection 2-92(q), shall be subject to the same conditions as immediate family or close relatives. For the purpose of this division, "cohabiting" shall mean to live together in a sexual relationship when not legally married.

(b) *Probationary and trainee periods defined.*

- (1) An employee who is newly appointed shall serve an initial probationary period of at least six months, except firefighters and law enforcement officers, who shall serve at least a 12-month initial probationary period. "Initial probation" or "initial probationary period," where used in this division, shall mean within the current term of employment.
- (2) An employee who is transferred, as provided in subsection (k), or promoted to an authorized position, as provided in subsection (g), shall also serve a probationary period of at least six months, except that new firefighters and law enforcement officers shall serve at least a 12-month probationary period.
- (3) An applicant who is hired, or an employee who is promoted and who is not fully qualified to meet the established requirements of the position, may be appointed as a trainee. Probationary and trainee periods shall normally not exceed 12 months, except for new firefighters and police officers, where the probationary period will normally not exceed 18 months.

(c) *Probationary and training periods: evaluations and recommendations.* The supervisor of a probationary employee or trainee shall accomplish and document the following at least every three months of employment:

- (1) That there has been discussed with the employee the employee's accomplishments, failures, strengths and weaknesses;
- (2) Whether the employee is performing satisfactory work;
- (3) Whether the employee's conduct is satisfactory;
- (4) Whether the employee should be retained in the position or whether the employee should be terminated or, if applicable, reinstated to his/her former position or one of comparable seniority, status and pay, if available and appropriate. Before the end of the probationary or training period, the supervisor shall make final evaluations and recommendations. Upon successful completion of the training period, trainees shall become probationary employees.

(d) *Probationary and training periods: discipline and appeal.*

- (1) A probationary employee or a trainee who has not previously completed initial probation is not subject to the same disciplinary procedures as a regular employee. A probationary employee or a trainee who has not completed initial probation may be terminated without resorting to any of the steps outlined in section 2-95.



- (2) Termination relating to job performance should normally be preceded by one or more counseling sessions to assist the employee in fulfilling the responsibilities of the position. Such counseling sessions are not a prerequisite to termination. Particularly, termination relating to personal conduct may occur without prior counseling or warning.
- (3) A probationary employee or a trainee who has not previously completed initial probation and who is dismissed shall have the right to appeal through the grievance procedure only if alleging unlawful employment discrimination based on age, sex, race, color, religion, national origin, political affiliation or disability.
- (4) A probationary employee or a trainee who had previously successfully completed initial probation during this term of employment is subject to disciplinary action up to and including dismissal in accordance with the provisions for a regular employee (section 2-95) and is entitled to the same process as a regular employee under the grievance procedure (section 2-96).

(e) *Promotions, interim appointments and special assignments of employees.*

- (1) It is the policy of the town to encourage promotions from within the town work force whenever possible. Employees will be considered based on merit, job performance and personal conduct in current and previous town positions, and relevant experience and training. Interim appointments may be made by the town manager or department director if a vacancy or leave is reasonably anticipated to exceed 30 calendar days. Interim appointments will only be made if the employee will spend a significant portion of time performing higher level duties. Interim appointments may be terminated by the town at any time.
- (2) Special assignments are long-term temporary assignments where the duties differ significantly from those duties typical in the employee's normal job classification. Special assignments may be terminated by the town at any time for any reason. Special assignments are authorized by the town council.

(f) *Promotion, interim appointments and special assignments; salary.* When an employee who meets all established requirements is promoted to a position in a higher salary grade, the employee's salary will normally be increased to the minimum level for the new pay range, or at least the equivalent of a five-percent increase. Employees receiving interim appointments to positions in a higher salary grade, or special assignments at a higher level, may be granted a salary increase which will not affect anniversary dates and will be rescinded upon the expiration of the interim appointment or special assignment.

(g) *Promotion; probationary conditions.* An employee who is promoted shall be considered on probation for the purposes of evaluation, but shall not be denied any of the employee benefits that would be provided if the promotion had not occurred. The probationary period shall last at least six months, except for newly appointed firefighters and police officers, who shall be on probation at least 12 months. If, at any time during the probationary period, the promoted employee's work performance is found to be unsatisfactory, the disciplinary procedure for evaluation as set forth in subsections 2-95(a), (b), (c), and (d) will be followed. To avoid termination, the employee may be

reinstated in the employee's former position or one of comparable seniority, status and salary, if available. If no such position is available, the employee may be terminated. Before the end of the probationary period, the supervisor shall make the evaluations and recommendation as required by the provisions of subsections (c) and (d).

(h) *Outside employment.* An employee's work and interests of the town will take precedence over all other occupational interests of employees. All outside employment for salaries, wages or commission and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the department director. The department director will review such employment for possible conflict of interest then submit a record of the employment and review to personnel. Conflicting or unreported outside employment is grounds for disciplinary action up to and including dismissal.

(i) *Demotion: disciplinary, voluntary, administrative.* Any employee whose work performance is unsatisfactory or personal conduct is detrimental may be transferred to a position in a lower salary grade if the employee possesses the qualifications necessary for performance in the new position. Such a disciplinary demotion should normally be preceded by the warning procedures outlined in section 2-95. When a transfer to a lower level position is not acceptable to the prospective department director, an employee may instead be given a within-grade salary reduction. A voluntary demotion may be requested by an employee at any time but must be approved by the town. An administrative demotion may be imposed by the town when the safety or health of the employee, public, or co-workers is at serious risk.

(j) *Pay rate for demotional transfer.* When an employee is transferred to a position in a lower salary grade for which the employee is qualified, the salary shall be set at the rate in the new pay range which provides the smallest or no decrease in salary, provided the action is taken for reasons other than discipline. If the action is for disciplinary purposes, the salary shall be set at an appropriate point in the lower range that is less than the existing salary.

(k) *Transfer.* Any employee of the town may be transferred to another position in the same department, or in another department of the town, if approved by the town manager. The employee shall not be denied any of the employee benefits that would be provided if the transfer had not occurred; however, if the transfer results in a change in department or classification, or is for disciplinary purposes, then the employee shall serve a probationary period as provided for by the provisions of subsection (h).

(l) *Rehiring.*

- (1) An employee who resigns while in good standing may be rehired with the approval of the town manager, and will be regarded as a new employee subject to all the provisions of this division.
- (2) An employee in good standing who is terminated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position. An employee who is terminated due to a reduction in force and is then rehired within two years shall have his/her sick leave balance and vacation accrual rate reinstated.

(m) *Acceptance of gifts and favors.* No official or employee of the town shall:

- (1) Accept any gift, favor or thing of value that may tend to improperly influence or be perceived to improperly influence such employee in the discharge of the employee's duties; or
- (2) Grant in the discharge of duty an improper favor, service, or thing of value.

(n) *Political activity restricted.* Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, and may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and America; however, no employee shall:

- (1) Engage in any political or partisan activity while on duty;
- (2) Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- (3) Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- (4) Coerce or compel contributions from another employee of the town for political or partisan purposes;
- (5) Use any supplies or equipment of the town for political or partisan purposes;
- (6) Be a candidate for nomination or election to office under the town charter.

Any violation of this section shall subject such employee to dismissal or other disciplinary action.

**State law reference(s)**—Other restrictions on political activity, G.S. 160A-169.

(o) *Additional conditions of employment for the assistant town manager and department directors.* The assistant town manager and department directors may be terminated without following the process outlined in section 2-95 of this article. The town manager shall advise the town council of his intentions prior to terminating a covered employee under this provision. Such a termination may be recorded as a resignation and will entitle a covered employee who has completed initial probation to severance pay based on the following:

<i>Continuous years of town service</i>	<i>Weeks of severance pay</i>
Less than 2	4
2 or more, but less than 5	8
5 or more	12

Employees age 40 or older on the effective date of severance will receive an additional four weeks of severance pay. All such severance pay is in addition to any other benefits to which the employee

is otherwise entitled and is contingent upon the employee agreeing to such terms and conditions of severance as the town may deem appropriate. Severance pay does not include any type of pay other than base pay.

(Code 1982, § 2-67; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 93-34, § 1, 9-23-1993; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-029, 6-26-1997; Ord. No. 98-003, 5-28-1998)

**Sec. 2-92. Employee benefits, holidays and leaves of absence.**

(a) *Eligibility.* All regular and probationary employees, as well as trainees employed by the town and other employees, as specifically provided herein, are eligible for employee benefits provided for in this section which are subject to change at the town's discretion (see also subsection 2-63(a)). Temporary employees, whether full-time or part-time, are only eligible for workers compensation, family and medical leave subject to the provisions of the family and medical leave policy, and participation in the Local Government Credit Union subject to credit union rules and regulations.

(b) *Group health plans.*

- (1) The town will make reasonable effort to provide full-time employees with at least one group health plan, including family coverage, and to pay the total individual cost for the individual employees enrolling in that plan. Employees will pay all or a portion, as determined by the town council, of the cost of coverage for qualified dependents if the individual employee desires such coverage.
- (2) Part-time employees may, if they so desire, purchase available group health through the town, either for themselves or for themselves and their qualified dependents. A pro rata amount of the cost of coverage paid for a full-time employee shall be paid for by the town, with the remainder of the cost being paid by the employee. This pro rata amount shall be based on regularly scheduled hours.
- (3) Employees who retire may remain on a town group health plan to age 65. Retirees are eligible for premium supplements based on criteria established by the town council.
- (4) Information concerning cost and benefits shall be available to all employees through the human resources department.

(c) *State local governmental retirement system.* Each employee who is expected to work for the town more than 1,000 hours annually shall, as a condition of employment, join the state local governmental employees retirement system. Employees who are already members of the state local governmental employees retirement system or state teachers and state employees retirement system or other systems at the time they are hired continue participation in the state local governmental employees retirement system.

(d) *Compensation for off-duty employees on standby status.* The town must provide certain critical services 24 hours a day, seven days a week. To ensure that employees with necessary skills are readily available, the town places some off-duty employees on standby status and provides town council-approved compensation for the inconvenience created.

(e) *Tuition reimbursement.* Full-time employees who have completed initial probation may apply for tuition reimbursement for courses taken on their own time, whenever possible, which will improve their skills for their current job or prepare them for promotional opportunities within the town service. Tuition, registration fees, laboratory fees and student fees are eligible expenses. Employees may be reimbursed all of the first \$175.00 of eligible expenses and one-half of additional eligible expenses up to a total reimbursement of \$350.00 in any fiscal year. Satisfactory completion of the course will be required for reimbursement. (Also see subsection (dd), education leave, of this section.)

(f) *Paid leave policy.* The policy of the town is to provide vacation, sick leave, holiday leave, and certain other paid leaves to all full-time and part-time employees. Paid leave does not include leave while receiving short-term disability insurance or while receiving benefits under worker's compensation. An employee must work or be on paid leave for more than half the regularly scheduled hours in a biweekly pay period to accrue leave for that period.

(g) *Holidays.* The town designates the same paid holidays observed by the state and as may be amended by the state. Town staff will be notified of the schedule each calendar year. Holiday leave earned by employees having a work week with fewer hours than the basic workweek shall be determined in accordance with the formula set forth in subsection (v) of this section.

(h) *Effect of holidays on other types of leave.* Regular holidays which occur during a vacation, sick leave, or other paid leave period of any officer or employee of the town shall not be considered as vacation, sick leave, or other leave.

(i) *Holiday compensation.* An employee who works or is on paid leave the entire workday prior to and following a designated holiday will receive paid holiday leave. An employee of the town who is required to work on any designated holiday due to work schedule or at the direction of a supervisor is entitled to additional holiday compensation. The employee shall receive compensation at the regular rate for hours worked. In addition, such employee is also entitled to a choice of either compensation in the form of time off or pay, selected with the approval of the supervisor. Such compensation, whether in compensatory time or pay, shall be computed at a rate of time-and-one-half for the actual hours worked. Temporary employees, the assistant town manager, and all department and division directors shall be exempt from this provision. Departments with employees working 24 hours a day may elect to compensate those employees for working on the "true" holiday rather than the designated holiday.

(j) *Religious holidays.* Any employee of the town desiring to observe a religious holiday other than those designated shall be permitted to do so as determined by federal regulations. Such absences are accounted for through use of vacation or compensatory time, if available. Any such

employee shall advise his or her immediate supervisor of the proposed leave at least one week in advance of that date, and the employee's work schedule should be adjusted accordingly to permit such observance.

(k) *Schedule for taking vacation.* Employees shall be granted use of earned vacation upon request, in advance in writing, at those times designated by the town manager or department director, which will least inconvenience normal operations of the town.

(l) *Unscheduled vacation.* Unscheduled vacation is vacation which is taken, but has not been approved in advance by the appropriate town official. Unscheduled vacation will be considered as an improper use of leave privileges and may subject an employee to disciplinary action as outlined in section 2-95.

(m) *Vacation leave: initial appointment, probationary employees and trainees.* Employees who have not completed initial probation may accumulate vacation leave; however, the employee shall not be permitted to take vacation leave unless the denial of such leave would create an unusual hardship or unless it is to be used as supplemental pay while on workers compensation. Vacation leave, except as a supplement to workers compensation, may be taken during this period only with the prior approval of the town manager. Firefighters and law enforcement officers shall be allowed to take accumulated vacation leave after six months' satisfactory service.

(n) *Vacation leave: rate.*

(1) Full-time employees working the basic workweek shall earn vacation leave at the following rates:

<i>Years of aggregate service in an authorized position</i>	<i>Hours earned in one year</i>	<i>Days earned in one year</i>
Less than 2	80	10
2 but less than 5	96	12
5 but less than 10	120	15
10 but less than 15	144	18
15 but less than 20	168	21
20 or more	192	24

(2) Vacation earned by employees having a workweek with greater or fewer hours than the basic workweek shall be determined in accordance with the formula set forth in subsection (v) of this section.

(3) With approval of the town council, the town manager can authorize a higher-than-vacation accrual when necessary to attract an applicant to a critical position during a tight labor market. Such accrual shall not exceed 24 days per year.

(o) *Vacation; maximum accumulation.*

(1) Vacation may be accumulated without any applicable maximum until the last day of the first full payroll period in a new calendar year; however, if the employee separates from service, payment for accumulated vacation shall not exceed 240 hours. On the last day of the first

full payroll period in a new calendar year, any employee with more than 240 hours of accumulated vacation leave will have the excess amount converted to sick leave, so that 240 hours are carried forward to the second payroll period of the new calendar year.

- (2) Employees are cautioned not to retain excess accumulation of vacation until late in the calendar year; due to the necessity of keeping all town functions in operation, large numbers of employees cannot be granted vacation at any one time. If any employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee will not receive special consideration, either in having vacation scheduled or in receiving any exception to the maximum accumulation.

(p) *Payment for accumulated vacation upon death.* The estate of an employee who dies while employed by the town will normally be entitled to payment for all the accumulated vacation credit to the employee's account, not to exceed a maximum of 240 hours; however, an employee may stipulate in writing to the human resources department to whom payment should be made in the event of death.

(q) *Sick leave.*

- (1) Sick leave with salary is not a right that an employee may demand, but a privilege granted for the benefit of an employee when sick.
- (2) Sick leave may be granted to an employee temporarily absent from work for any of the following reasons: Sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease when continuing work might jeopardize the health of others.
- (3) Sick leave may be used when an employee must temporarily care for a member of his or her immediate family who is ill. Such leave is normally limited to 12 weeks total in any 12-month period. Sick leave may also be used for death in the employee's immediate family or the death of a close relative. For the death of an immediate family member, an employee may take up to five days of sick leave for any one occurrence. For a close relative, sick leave may not exceed three days for any one occurrence. Additional leave time required for any such occurrence may be charged to vacation. For the purpose of this section, "immediate family" is defined as wife, husband, mother, father, guardian, brother, sister, daughter and son. For the purpose of this section, "close relative" is defined as mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandmother, grandfather, grandson, and granddaughter. Also included in both definitions are the various combinations of "step," "half" and adopted relationships.
- (4) Sick leave may also be used to supplement pay received under worker's compensation.
- (5) Up to 80 hours of sick leave may be used singly or jointly by parents adopting a child.
- (6) An employee on sick leave who, upon advice of a competent physician, is determined by the town to be unable to return to work and who is vested in the retirement system may

continue to use accrued sick leave, provided that he/she is actively applying for service or disability retirement. Where the employee is not vested, the employee may exhaust sick leave accrued while employed with the town.

(r) *Sick leave rate and accumulation.* Sick leave shall accrue at a rate of one day per month of service or 12 days per each calendar year of service. Sick leave for employees whose workweek is less than full-time shall be calculated proportionately, as described in subsection (v) of this section. Sick leave shall accumulate without remittal for as long as that person remains an employee of the town.

(s) *Policy for taking sick leave.* Notification of the desire to take leave should be submitted to the employee's supervisor prior to the leave, but, in any event, not later than one hour after the beginning of the scheduled workday.

(t) *Physician's certificate.*

(1) The department director may require a physician's certificate stating the nature of the employee's or immediate family member's illness and the employee's capacity to resume duties for each occasion on which an employee uses sick leave. The employee may be required to submit to such medical examination or inquiry as the department director deems desirable. The department director shall be responsible for the application of this provision to the end that:

- a. Employees shall not be on duty when they might endanger their health or the health of other employees; and
- b. There will be no abuse of leave privileges.

(2) Claiming sick leave under false pretense to obtain a day off with salary shall subject the employee to disciplinary action.

(u) *Sick leave; retirement credit for accumulated sick leave.* Sick leave may be granted as retirement credit consistent with the provisions of the state local governmental employees retirement system.

(v) *Calculation of holiday leave, vacation and sick leave.* Holiday leave, vacation and sick leave earned by employees having a regularly scheduled workweek with fewer hours than the basic workweek shall be determined in accordance with the following formula. Vacation leave for employees having a regularly scheduled workweek with greater hours than the basic workweek shall also be determined by the following formula:

- (1) The number of hours worked by such employees shall be divided by the number of hours in the basic workweek;
- (2) The proportion obtained in step (1) shall be multiplied by the number of hours of leave earned annually by employees working the basic workweek;
- (3) The number of hours in step (2) divided by 26 shall be the number of hours of leave earned biweekly by the employees concerned.

(w) *Workers compensation.*

- (1) All employees of the town, whether full-time, part-time, regular, probationary or temporary, are covered by state workers compensation and are required to report all injuries arising out of and in the course of employment to their immediate supervisor, at the time of the injury, in order that appropriate action may be taken at once.
- (2) Responsibility for claiming compensation under the workers compensation act is on the injured employee. The human resources department will assist the employee in filing the claim. An employee absent from duty because of sickness or disability due to an on-the-job injury and covered by the North Carolina workers compensation act (G.S. ch. 97) may receive workers compensation benefits. Regular employees, probationary employees and trainees may elect to use accumulated vacation and sick leave as a supplemental payment for the difference between regular salary and the payments received under the workers compensation act. The combination of workers compensation payments and pay from any supplemental leave shall not exceed the employee's normal base salary. Computation of salary rate for any leave taken shall be based on the employee's base salary rate.
- (3) The town directs all medical treatment through its third party administrator. Unauthorized medical treatment is not covered.

(x) *Family, parental, maternity and medical leaves.* All employees who have met certain criteria are eligible for family and medical leave as prescribed by the family and medical leave act of 1993. Specific guidelines and employee notification requirements are outlined in separate town policies and procedures.

(y) *Leave without salary generally.*

- (1) To ensure public accountability, the town normally does not pay employees for scheduled hours not worked when there is no leave time accrued or available which is appropriate to cover the absence. Leave without pay for employees who are exempt from the overtime provisions of the fair labor standards act will only be used in a manner which preserves the employee's exempt status. A regular employee may be granted a leave of absence without salary for up to one year by the town manager. The leave may be used for reasons of:
  - a. Personal disability after both sick leave and the desired amount of vacation has been exhausted;
  - b. Continuation of education or special work that will permit the town to benefit by the experience gained or the work performed; or
  - c. For other reasons deemed justified by the town manager.
- (2) The employee shall apply in writing to the town manager for leave. The employee is obligated to return to duty with the town at the end of the time determined appropriate by the town manager. Upon returning to duty after being on leave without salary, the employee will normally return to the same position held at the time leave was granted or to one of like classification, seniority and salary. If the employee decides not to return to work, the

employee should notify the supervisor immediately. Failure to report at the expiration of a leave of absence, unless an extension has been approved, shall be considered a resignation.

(z) *Leave without salary: retention and continuation of benefits.* An employee shall retain all unused vacation and sick leave while on leave without salary. An employee ceases to earn leave when he/she works or is on paid leave one-half or less of the regularly scheduled hours in a pay period. The employee may continue to be eligible for benefits under the town's group health plans, subject to any regulations established by the respective insurance carriers and the provisions of the town's family and medical leave policy.

(aa) *Effect of absences on performance review dates.* An employee's merit review eligibility may be delayed one month for each calendar month the employee is on leave without salary, sick leave, workers compensation, absent while receiving short-term disability insurance, or any other combination of such absences more than one-half the scheduled hours in that month.

(bb) *Military leave.* An employee who is a member of an armed forces reserve organization or the national guard shall be granted two calendar weeks per year of leave with pay for military training. While on military leave, benefits will accrue as though present for duty. This leave is not charged as vacation; however, any salary payment which the employee receives from the military shall be deducted from the amount paid by the town.

(cc) *Civil leave.* An employee called for jury duty or as a subpoenaed court witness for the federal or state government, or a subdivision thereof, shall be entitled to leave with pay for such duty in addition to keeping fees received for such duty if the town is provided documentation for each day. An employee called as a witness in a private court case must take leave without pay, vacation, or compensatory leave.

(dd) *Education leave.* Education leave at full or part pay for a period not to exceed nine months may be granted to an employee with the approval of the town manager. If the educational leave exceeds 15 days or any equivalent in a period of one year, it shall also be approved by the town council. An employee granted educational leave with pay for a period of 15 or more days shall enter into a formal contract with the town, in which the employee agrees to return to the service of the town upon completion of the training and remain an employee of the town for a period equal to twice the educational leave which the employee received, or reimburse the town for all compensation received while on educational leave.

(ee) *Reinstatement generally.* An employee of the town who is on education, parental, sick or other authorized leave will normally be reinstated to the former position, or one comparable in seniority, status and salary, if such employee returns to town service at the expiration of such leave or authorized extension thereof. An employee who fails to return within the required time shall be considered as having voluntarily resigned.

(ff) *Reinstatement following military service.* An employee called to extended active duty with the United States military forces who does not volunteer for service beyond the period for which called shall be reinstated to the position he/she would have attained but for military service, provided the employee:

- (1) Applies for reinstatement as provided for by law; and

- (2) Is able to perform the essential functions of the former position with or without reasonable accommodation; or
- (3) If unable to perform the essential functions of the former position with or without reasonable accommodation, due to disability sustained as a result of military service, but is able to perform the duties of another position in the service of the town, he/she shall be employed in such other position as will provide the nearest approximation of the seniority, status and pay which he/she otherwise would have been provided. Upon re-employment, an employee is entitled to benefits the individual would have attained, with reasonable certainty, had he or she remained continuously employed.

(gg) *Payment of leave upon separation.* Regular employees and probationary employees who have completed six months' satisfactory service and given a minimum required notice shall be paid for accumulated vacation not to exceed 240 hours. Employees who are dismissed, all in full or in part, for detrimental personal conduct or grossly inefficient job performance shall not receive pay for accumulated vacation. All employees, except department directors and the assistant town manager, are paid for any accumulated holiday leave upon separation. Any employees also shall be paid for accumulated compensatory time earned while nonexempt from the overtime provisions of the fair labor standards act. All remaining sick leave shall end and terminate without compensation when an employee separates from town employment.

(Code 1982, § 2-68; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-013, 4-24-1997; Ord. No. 98-003, 5-28-1998; Ord. No. 2008-04, 3-13-2008)

#### **Sec. 2-93. Travel.**

The town manager shall be responsible for establishing, administering, revising and maintaining a travel policy applicable to all town employees. Vehicles owned by the town will be provided to certain personnel for town business only and shall not be used for personal purposes. If a town vehicle is involved in an accident, either on public or private property, the police department, the appropriate supervisor, and the risk management specialist shall be notified immediately.

(Code 1982, § 2-69; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

#### **Sec. 2-94. Separation.**

(a) *Types.* All separations of employees from positions in the service of the town will normally be designated as one of the following types and will normally be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, unavailability, dismissal or death.

(b) *Resignation and notice.* An employee may resign by submitting in writing to his/her immediate supervisor the reasons for resignation and the effective date as far in advance as possible. The minimum notice requirement is two weeks, unless, by agreement prior to employment or promotion, a longer period has been specified. Failure to provide minimum notice shall result in payment for accumulated vacation leave being forfeited, unless the notice is waived upon recommendation of the department director and approval of the town manager. Employees may not

use leave in lieu of a notice. Three consecutive days of absence without reporting in the manner required by the department director may be considered to be a voluntary resignation without minimum notice.

(c) *Reduction in force.* Reduction in force may include deletion of a specific position or positions or overall reduction of town staffing. Where specific positions are no longer needed by the town, the incumbents, if any, shall be subject to the reduction in force. In the event that an overall reduction in force becomes necessary, primary consideration shall be given to organizational needs, as well as the quality of each employee's past performance, conduct, and seniority, in determining those employees to be retained. The town will determine how to weigh these factors in order to best serve the needs of the town. Employees who are laid off because of a reduction in force shall be given at least 30 days' notice of anticipated layoff. No employee shall be separated while there are temporary employees serving in the same class in the department, unless the employee is not willing to transfer to the position held by the temporary employee. An employee who has been reduced in force may be considered for internal job listings for a period of two years.

(d) *Disability.* An employee who cannot satisfactorily perform the essential functions of a job because of a physical or mental disability may be separated. If requested by the employee, the town and employee must first fully explore reasonable accommodation(s) which might permit the employee to resume satisfactory performance. Reasonable accommodation may include transfer to a different position. Action may be initiated by the employee or the town, but, in all cases, it must be accompanied by medical evidence acceptable to the town manager. The town may require an examination, at the town's expense, performed by a physician of the town's choice.

(e) *Voluntary retirement.* An employee who meets the conditions set forth under the provisions of the state local government employees retirement system may elect to retire and receive all benefits earned under the retirement plan.

(f) *Unavailability when leave is exhausted.* An employee may be separated if he/she becomes or remains unavailable for work after all applicable leave and benefits (not including COBRA) have been exhausted and management, for sufficient reasons, does not grant leave without pay.

(g) *Dismissal.* An employee may be dismissed in accordance with the provisions and procedures of this article.

(h) *Effective dates.* Resignations and dismissals shall normally be effective the last day actually worked. The effective date of these separations may not be a holiday, a vacation day, or a compensatory leave day; however, the effective date of separation for employees who are not returning from short-term disability, sick leave, or leave without pay or similar status will be determined individually. The effective date for an employee who dies shall be the date of death.

(Code 1982, § 2-70; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

#### **Sec. 2-95. Disciplinary action.**

(a) *Progressive discipline.* Progressive discipline is intended to encourage employees to make permanent corrections to performance deficiencies and minor problems relating to personal conduct. Progressive discipline may be based on repeated performance deficiencies or detrimental

personal conduct of the same or of a different nature. Progressive discipline shall involve consideration of all previous disciplinary actions, if any, whether for unsatisfactory job performance or for detrimental personal conduct. In determining the appropriate level of discipline for unsatisfactory job performance, consideration shall also be given to the time lapsed since the last warning for unsatisfactory performance or detrimental personal conduct, if any.

(b) *Disciplinary action for unsatisfactory or grossly inefficient job performance.* A regular employee may be placed on disciplinary suspension, demoted, or terminated for unsatisfactory job performance if, after following the procedure outlined in subsection 2-95(c), the employee's job performance is still deemed to be unsatisfactory. Employees may also be warned, suspended, demoted or terminated for grossly inefficient job performance, as outlined in 2-95(c). All cases of disciplinary suspension, demotion or termination must be approved by the town manager or his designee prior to giving final notice to the employee.

- (1) Unsatisfactory and grossly inefficient job performance defined.
  - (2) Unsatisfactory job performance includes any aspects of the employee's job which are not performed as required to meet the standards set by the department director or the town manager. Examples of unsatisfactory job performance include, but are not limited to, the following:
    - a. Demonstrated inefficiency, negligence, or incompetence in the performance of duties;
    - b. Careless or negligent use of town property or equipment;
    - c. Discourteous treatment of the public or other employees;
    - d. Absence without approved leave;
    - e. Repeated improper use of leave privileges;
    - f. Repeated failure to report for duty at the assigned time and place; or
    - g. Failure to carry out supervisory responsibilities.
  - (3) Grossly inefficient job performance is a disregard for any aspect of an employee's job which results or could result in severe damage to town property, serious injury to or death of an employee or citizen, significant impact on town finances, or a loss of public confidence in town government. Examples of grossly inefficient job performance include, but are not limited to, the following:
    - a. Failure to wear required personal protective equipment or to observe other safety work rules.
    - b. Failure to follow standard procedures or practices which result in a significant loss of revenue to the town.
    - c. Failure to properly secure or protect town equipment or property which results in damage to that property or other property, or injury to an individual.
- (c) *Procedure for disciplinary action for unsatisfactory or grossly inefficient job performance.*
- (1) An employee's supervisor shall notify the employee of any deficiency in job performance and what is required for satisfactory job performance.

- (2) An employee whose job performance is unsatisfactory should normally receive progressive warnings before disciplinary action resulting in dismissal is taken by the department director or the town manager; however, in cases of grossly inefficient job performance, an employee may receive a step 2 warning, a step 3 warning or may be dismissed without any prior disciplinary action. When appropriate, progressive warnings should include the following steps:
  - a. Step 1: one or more documented oral warnings from the employee's supervisor;
  - b. Step 2: A written warning to the employee from a supervisor, outlines the performance deficiencies and serves as notice that corrected performance must take place immediately in order to avoid a further disciplinary action, including demotion;
  - c. Step 3: A final written warning from a supervisor serving notice upon the employee that corrected performance must take place immediately in order to avoid further disciplinary action, including dismissal.
- (3) A demotion to a lower salary grade or within grade may be imposed no earlier than step 3. A disciplinary suspension without pay may be imposed at step 2 or step 3 or in conjunction with a later warning.
- (4) The supervisor shall record the dates of any discussions with the employee, the performance deficiencies discussed, the corrective actions recommended and any time limits set, and submit such information to the employee's permanent human resource file.

(d) *Disciplinary action for detrimental personal conduct.* With the approval of the town manager, an employee may be placed on disciplinary suspension, demoted or dismissed without prior warning due to personal conduct detrimental to town service in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. In less serious or less disruptive situations, steps similar to those listed under subsection 2-95(d) above may be in order. When an employee is suspended or dismissed immediately, the employee may be told to leave town property at once and either to report to a supervisor at a specific time or to remain away until further notice.

(e) *Detrimental personal conduct defined.* Detrimental personal conduct includes behavior, whether on-duty or off-duty, intentional or unintentional, of such a serious detrimental nature that the functioning of the town may be or has been impaired; the safety of persons or property may be or has been threatened; the laws of the government may be or have been violated; or public confidence in government is likely to be undermined. Examples of detrimental personal conduct include, but are not limited to, the following:

- (1) Fraud;
- (2) Conviction of a felony or the entry of a plea of nolo contendere thereto;
- (3) Falsification of records for personal profit, to grant special privileges, or to obtain employment;
- (4) Willful misuse or gross negligence in the handling of town funds;
- (5) Willful or wanton damage or destruction to property;

- (6) Willful or wanton acts that endanger life or property;
- (7) Possession of unauthorized firearms or other lethal weapons on the job or bringing such onto town property;
- (8) Communication of a threat or engaging in threatening behavior;
- (9) Gross misuse or repeated personal use of town vehicles or equipment;
- (10) Request for or acceptance of a gift or gifts in exchange for "favors" or influence;
- (11) Engaging in or condoning sexual harassment or other prohibited harassment;
- (12) Reporting to work, or working, under the influence of alcoholic beverages, narcotic drugs, or any other unlawful drug, or partaking or possessing of such while on duty;
- (13) Withholding, misrepresentation or falsification of information necessary for the investigation of alleged violations of this Code when such information is requested by a supervisor, the town manager, or designee;
- (14) Failure to comply with a reasonable order from an appropriate supervisor (insubordination);
- (15) Flagrant behavior or repeated rude or uncivil behavior directed toward citizens or co-workers.

(f) *Disciplinary actions relating to special job requirements.* An employee may be placed on disciplinary suspension, demoted or dismissed without prior warning for failing to obtain or maintain a required license, certificate, registration or similar document, or for failing to maintain a satisfactory driving record when driving town equipment or vehicles is a job requirement.

(g) *Nondisciplinary suspension.* During the investigation, hearing, or trial of an employee on any criminal charge, or during an investigation related to alleged detrimental personal conduct, or during the course of civil action involving an employee, when suspension would, in the opinion of the town manager, be in the best interest of the town, the town manager may suspend the employee for the duration of the proceedings as a nondisciplinary action. Department directors may place an employee on nondisciplinary suspension in the absence of the town manager, when such employee's alleged actions constitute detrimental personal conduct. In such cases, the town manager or department director may:

- (1) Relieve the employee temporarily of all duties and responsibilities and allow the employee no compensation for the period of the suspension; or
- (2) Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities. If the employee is reinstated following the suspension, such employee may be restored any benefits to which the employee would otherwise have been entitled had the suspension not occurred; however, a written warning and a disciplinary suspension of 80 hours or less without pay may be imposed based on the extent to which the employee's behavior may have constituted detrimental personal conduct. If the employee is dismissed following the

suspension, the employee shall not be eligible for any pay from the date of suspension; provided, however, all other benefits, with the exception of the accrual of vacation and sick leave, shall be maintained during the period of suspension.

(h) *Disciplinary suspension and deductions.*

- (1) Any employee who is nonexempt from the overtime provisions of the FLSA may be suspended without pay, normally for one day, in conjunction with a step 2, step 3, or subsequent warning relating to performance of duties.
- (2) Any employee who is exempt from the overtime provisions of the FLSA may be suspended without pay, normally for one day, in conjunction with a step 2, step 3 or subsequent warning on job performance involving any serious violation of safety rules relating to the prevention of serious danger to the town's property or to other employees. For performance problems not relating to safety, accrued vacation or holiday leave may be reduced, normally by one day.
- (3) For nonexempt employees, suspension of 80 hours or less may be imposed, along with a written warning relating to detrimental personal conduct. For exempt employees to be suspended, the detrimental personal conduct must involve serious safety violations, or must be in one-week increments. In other cases of detrimental personal conduct, deductions of 80 hours or less may be made from accrued vacation or holiday leave of an exempt employee.
- (4) All disciplinary deductions from accrued leave shall be considered the equivalent of a disciplinary suspension.

(i) *Predisciplinary conference and notification of disciplinary action.*

- (1) When an employee is proposed to be placed on disciplinary suspension, demoted or dismissed, the town manager shall insure that the employee is given written notice of the proposed disciplinary action, advised of the evidence supporting the proposed action, and is provided with an opportunity to respond to the proposed disciplinary action. The employee's response shall be given due deliberation prior to making a final determination. Mechanical recording of all or any part of a conference or other meeting pertaining to the disciplinary action is prohibited without prior agreement of all parties subject to being recorded.
- (2) At the time an employee is notified of any final disciplinary decision involving disciplinary suspension, involuntary demotion, or dismissal, or as soon as possible thereafter, the town manager shall insure that the employee is provided with written notice of the action taken, the effective date, the reason or reasons for the action, and the recourse, if any, available to the employee under the provisions of this article.

(j) *Employee appeal.* An employee who has completed initial probation or a probationary employee who alleges unlawful employment discrimination and who is disciplined may appeal the disciplinary action in accordance with the grievance procedure.

(Code 1982, § 2-71; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

**Sec. 2-96. Grievance procedure.**

(a) *Policy.* It is the policy of the town to provide a just procedure for the presentation, consideration and disposition of employee grievances. The purpose of this section is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

(b) *Definition and limitations.* A grievance is a claim or complaint by an employee based upon an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.

- (1) Appeals involving a disciplinary suspension, involuntary demotion, dismissal or suspension of driving privileges by the town are initiated at step 3 of the grievance procedure. All appeals must be filed within 20 calendar days of the date the final disciplinary decision is communicated to the employee.
- (2) Grievances concerning performance evaluations or performance awards may only be appealed up to step 2 of the grievance procedure; however, department directors may appeal to the town manager.

(c) *Purposes.* The purposes of the grievance procedure include, but are not limited to, the following:

- (1) Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;
- (2) Encouraging employees to express themselves about the conditions of work which affect them as employees;
- (3) Promoting better understanding of policies, practices, and procedures which affect employees;
- (4) Increasing employees' confidence that human resource actions taken are in accordance with established, fair and uniform policies and procedures; and
- (5) Increasing the sense of responsibility exercised by supervisors in dealing with their employees.

(d) *Procedure.* When an employee or a group of employees has a grievance, the following successive steps are to be taken unless otherwise provided. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. The time limits at any step, however, may be extended by mutual consent or due to unusual circumstances beyond the reasonable control of either party. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. Mechanical recording of all or part of any meeting is prohibited without prior agreement of all parties subject to being recorded. While all parties are entitled to seek legal advice, attorneys may not be present at administrative or investigative meetings related to the grievance without the consent of all parties. At each step, the individual responding to the grievance is encouraged to consult with any employee of the town, or others as appropriate, in order to reach

a fair, impartial, and equitable resolution. All employees consulted during a grievance are required to cooperate to the fullest extent possible. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved in advance by the town manager.

- (1) *Informal grievance.* The employee with a grievance is encouraged to resolve the grievance with the appropriate supervisor in an informal face-to-face meeting, before going on to the formality required in the following steps. Either the employee or the supervisor may involve the respective department director and/or human resource director as a resource to help resolve the grievance. Using the informal grievance does not change the grievance deadline unless both parties mutually agree to an extension.
- (2) *Formal grievance.* To be considered, a grievance must be filed within the time limit described in this section and must include the full basis for the employee's complaints, all information which supports the employee's position, and a statement outlining what the employee wishes to have happen as a result of the grievance.
  - a. Step 1: If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor in writing. The grievance must be presented within 20 calendar days of the event or within 20 calendar days of learning of the event or condition. The supervisor shall have a response to the grievance delivered to the employee within 20 calendar days after receipt of the grievance. The response shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The supervisor shall send copies of the grievance and answer to the human resources department.
  - b. Step 2: If the grievance is not resolved to the satisfaction of the employee by the supervisor, the employee may appeal, in writing, to the appropriate department director, within 20 calendar days after receipt of the response received in step 1. The department director shall respond to the appeal, stating his or her decision within 20 calendar days after receipt of the appeal. Such response shall be in writing and shall be signed by the employee to acknowledge receipt. The department director shall send copies of the grievance and the response to the human resources department.
  - c. Step 3: If the grievance is not resolved to the satisfaction of the employee at the end of step 2, the employee may appeal, in writing, to the town manager within 20 calendar days after receipt of the response received in step 2. The town manager shall respond to the appeal in writing. The response shall be signed by the town manager and hand-delivered or mailed to the employee within 20 calendar days of completing the review. A mailed response shall be sent by certified or registered mail with return receipt requested. The town manager's decision shall be the final decision.

(e) *Grievance and adverse action appeal procedure; unlawful employment discrimination.* Any applicant for town employment, town employee, or former town employee who has reason to believe that any employment action, including promotion, training, classification, pay, disciplinary warning, disciplinary suspension, transfer, demotion, layoff, or termination of employment was based on age, sex, race, color, national origin, religion, or disability has the right to appeal such

action using the grievance procedure outlined in subsection (d) of this article, if he or she so desires. While employees are encouraged to use the progressive steps outlined in the grievance procedure, employees claiming discrimination shall have the right to appeal directly to the town manager (refer to step 3 above). A failure to demonstrate that unlawful discrimination was the basis for the act shall render the balance of the appeal moot.

(f) *Back pay awards.* Back pay and benefits may be awarded to reinstated employees in disciplinary suspension, demotion, dismissal and discrimination cases.

(g) *Conflict with policies and regulations.* No decision or determination of any grievance shall in any way conflict with the town policies, resolutions, ordinances or statutes applicable thereto. (Code 1982, § 2-72; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

**Secs. 2-97—2-107. Reserved.**

## ARTICLE IV. DEPARTMENTS

### DIVISION 1. GENERALLY

**Secs. 2-108—2-128. Reserved.**

### DIVISION 2. DEPARTMENT OF INSPECTIONS AND PERMITS

**Sec. 2-129. Created.**

The department of inspections and permits is hereby created, and the executive official in charge thereof shall be known, and referred to in this article, as the "director."  
(Code 1976, § 15-5; Code 1982, § 2-74)

**Sec. 2-130. Right of entry.**

The director or his agent shall make the inspections and tests necessary to obtain compliance with the Code. In cases of new construction, alterations or repairs, the right of entry upon any premises for inspections and tests is absolute between the hours of 9:00 a.m. and 5:00 p.m. on any working day.  
(Code 1976, § 15-6; Code 1982, § 2-75)

**Sec. 2-131. Stop orders.**

Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered or repaired in a hazardous manner or in substantial violation of any building law of the state or town, or in such manner as to endanger life or property, the appropriate inspector may order the specific part of such work which is in violation or presents such a hazard to be

immediately stopped. Such order shall be in writing to the person doing the work, and shall state the specific work to be stopped, the specific reasons therefor and the conditions under which the work may be resumed. Violation of a stop order shall constitute a misdemeanor.

(Code 1976, § 15-7; Code 1982, § 2-76)

**Sec. 2-132. Records.**

The department of inspections and permits shall keep official records of applications received, permits and certificates issued and fees collected. File copies of all papers in connection with building operations shall be retained in the official records as required by the municipal records retention and disposition schedule. Blueprints and plans of one- and two-family residences and miscellaneous work may be approved, stamped by the inspections and permits department and returned to the contractor at the time of issuance of the building permit. These approved plans must be kept on the job site at all times until the issuance of a certificate of compliance.

(Code 1976, § 15-8; ; Code 1982, § 2-77; Ord. No. 81-13, § 1, 9-24-1981)

**Secs. 2-133—2-143. Reserved.**

DIVISION 3. POLICE DEPARTMENT\*

**Sec. 2-144. Established.**

The police department of the town is hereby established. It shall consist of a chief and as many police officers and other staff as the town council shall from time to time determine based on recommendation of the town manager.

(Code 1976, § 12-1; Code 1982, § 15-1; Ord. No. 03-002, 1-9-2003)

**Sec. 2-145. Duties.**

The police department shall carry out all orders of the town council, enforce all laws and ordinances of the town and the state and shall at all times preserve the peace, protect the property and the safety of the citizens of Cary.

(Code 1976, § 12-4; Code 1982, § 15-2; Ord. No. 03-002, 1-9-2003)

**Sec. 2-146. Chain of command.**

All officers and members of the police department shall be accountable to the chief.

(Code 1976, § 12-2; Code 1982, § 15-3; Ord. No. 03-002, 1-9-2003)

**Sec. 2-147. Uniforms and equipment.**

The chief of police and other police officers and members shall wear such uniforms and equipment as shall be issued or approved by the town and shall keep the same in a neat condition, and upon discharge, resignation or dismissal, surrender such uniform and equipment when the

\***State law reference**—Law enforcement, G.S. 160A-281 et seq.









(b) *Officers.* The town council shall appoint one member to serve as chairperson of the zoning board of adjustment. The zoning board of adjustment shall appoint such other officers as it may deem necessary and appropriate.

(c) *Compensation.* The chairperson and members of the zoning board of adjustment may be compensated for their services as members of said board, in such amounts as the town council may determine.

(d) *Alternate members.* The town council may, in its discretion, appoint and provide compensation for alternate members to serve on the board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. There shall be one alternate member appointed from within the corporate boundaries of the town or from the area outside of the town's boundaries but within the extraterritorial planning jurisdiction. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(e) *Meetings.* Meetings and hearings of the zoning board of adjustment shall be held at such times as the board deems necessary to conduct the business before it. All meetings and hearings of the board shall be open to the public.

(f) *Oaths and witnesses.* The chairperson, or any member temporarily acting as chairperson, may administer oaths and compel the attendance of witnesses at hearings conducted by the zoning board of adjustment.

(g) *Rules and records.* The zoning board of adjustment shall formulate and adopt the rules of procedure under which it will operate. The board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or his or her absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions. Decisions on variances and appeals of administrative actions rendered by the board shall be recorded with the register of deeds in the county where the property subject to the decision is located.

(h) *Cooperation with other agencies.* The zoning board of adjustment shall cooperate in all respects with the appropriate town boards, commissions, offices and employees, including, but not limited to, the town council, the planning and zoning board, the parks, recreation and cultural resources advisory board, the town center review commission, the public arts advisory board, the town manager, staff departments, and other agencies of the town.

(i) *Conflicts of interest.* A member of the zoning board of adjustment shall not participate in or vote on any quasijudicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship

with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(j) *Amending section.* Amendments to this Section 2-165 shall be in accordance with the procedures set forth in N.C.G.S. § 160A-364.

(Code 1982, § 2-7; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006)

**State law reference**—Zoning board of adjustment, G.S. 160A-388.

**Sec. 2-166. Parks, recreation and cultural resources advisory board.**

(a) *Membership and chairs.* The board shall consist of ten members appointed by the town council, one of whom the town council shall designate as chairperson; one of whom the town council shall designate to serve as chairperson of the greenways committee; one of whom the town council shall designate to serve as chairperson of the cultural arts committee; one of whom the town council shall designate to serve as chairperson of the athletics committee; and one of whom the town council shall designate to serve as chairperson of the teen advisory committee. All members shall reside within the town.

(b) *Other officers.* The committee chairpersons may designate an alternate member from his/her committee to represent the committee on the board in his/her absence as necessary.

(c) *Reimbursement for expenses.* All members of the board shall serve without compensation, but may be reimbursed for expenses from funds allocated by the town council.

(d) *Meetings.* The board shall hold at least one meeting per month, unless there is no business to come before the board in a given month, and such other regular or special meetings or hearings as the board deems necessary to conduct the business before it. All meetings and hearings of the board shall be open to the public.

(e) *Rules and records.* The board shall formulate and adopt the rules of procedure under which it will operate. The board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or his or her absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.

(f) *Cooperation with other agencies.* The board shall cooperate in all respects with the appropriate town boards, commissions, offices and employees, including, but not limited to, the town council, the planning and zoning board, the zoning board of adjustment, the town center review commission, the public art advisory board, the town manager, staff departments, and other agencies of the town.

(g) *Membership on parks, recreation and cultural resources department staff committees.* The greenways committee, cultural arts committee, athletics committee, and teen advisory committee are staff advisory committees. The chairperson of each of these committees shall be a member of the parks, recreation and cultural resources advisory board and shall be appointed in this capacity

by the town council as outlined in this chapter. All other staff advisory committee members shall be appointed by parks, recreation and cultural resources staff or the staff may delegate this responsibility to the parks, recreation and cultural resources advisory board.

(Code 1982, § 2-8; Ord. No. 03-006, 5-22-2003)

**Sec. 2-167. Town center review commission.**

(a) *Membership.* The town center review commission shall consist of seven members appointed by the town council and shall reside within the corporate boundaries of the town. The membership of this commission shall be composed of at least two members with expertise in the areas of architecture, urban design, landscape architecture, engineering, planning, art, or other similar fields; at least one member who is a downtown business owner; at least one member who is a resident of the town center plan area; and at least one member who is a member of the planning and zoning board. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this review commission.

(b) *Officers.* The planning and zoning board representative shall serve as the chairperson of the town center review commission. The town center review commission shall appoint such other officers as it may deem necessary and appropriate.

(c) *Compensation.* The chairperson and members of the town center review commission may be compensated for their services as members of said committee, in such amounts as the town council may determine.

(d) *Meetings.* The town center review commission shall hold at least one meeting per month, unless there is no business to come before the commission in a given month, and such other regular or special meetings or hearings as the commission deems necessary to conduct the business before it. All meetings and hearings of the commission shall be open to the public.

(e) *Rules and records.* The town center review commission shall formulate and adopt the rules of procedure under which it will operate. The commission shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or his or her absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.

(f) *Cooperation with other agencies.* The town center review commission shall cooperate in all respects with the appropriate town boards, commissions, offices, and employees, including, but not limited to, the town council, the planning and zoning board, the parks, recreation and cultural resources advisory board, the zoning board of adjustment, the public art advisory board, the town manager, staff departments, and other agencies of the town.

(g) *Conflicts of interest.* Town center review commission members shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

(h) *Amending section.* Amendments to this Section 2-167 shall be in accordance with the procedures set forth in N.C.G.S. § 160A-364.

(Code 1982, § 2-9; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006)

**Sec. 2-168. Public arts advisory board.**

(a) *Membership.* The public art advisory board shall consist of nine members appointed by the town council and shall reside within the corporate boundaries of the town. The board shall be composed of representatives from local visual arts organizations, working artists, architects, private development interests, and the general public.

(b) *Officers.* The town council shall appoint one of the members to serve as the chairperson of the public art advisory board. The public art advisory board shall appoint such other officers as it may deem necessary and appropriate.

(c) *Compensation.* The chairperson and members of the public art advisory board may be compensated for their services as members of said board, in such amounts as the town council may determine.

(d) *Meetings.* The public art advisory board shall hold at least one meeting per month, unless there is no business to come before the board in a given month, and such other regular or special meetings or hearings as the board deems necessary to conduct the business before it. All meetings and hearing of the board shall be open to the public.

(e) *Rules and records.* The public art advisory board shall formulate and adopt the rules of procedure under which it will operate. The board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or his or her absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.

(f) *Cooperation with other agencies.* The public art advisory board shall cooperate in all respects with the appropriate town boards, commissions, offices, and employees, including, but not limited to, the town council, the planning and zoning board, the parks, recreation, and cultural resources advisory board, zoning board of adjustment, the town center review commission, the town manager, staff departments, and other agencies of the town.

(Code 1982, § 2-10; Ord. No. 03-006, 5-22-2003)

**Sec. 2-169. Economic development commission.**

(a) *Membership.* The economic development commission shall consist of 12 members appointed by the town council. The board shall be composed of three members representing computer technology or biotechnology related companies, three members representing commercial building and development businesses, one member representing the Cary chamber of commerce, one member who is the Cary designate for the Wake County economic development commission, and four other members from the private sector or general public. All members must reside within the corporate boundaries of the town.

(b) *Officers.* The town council shall appoint one of the members to serve as the chairperson of the economic development commission. The economic development commission shall appoint such other officers as it may deem necessary and appropriate.

(c) *Reimbursement for expenses.* All members of the board shall serve without compensation, but may be reimbursed for expenses from funds allocated by the town council.

(d) *Meetings.* The economic development commission shall hold at least one meeting per month, unless there is no business to come before the board in a given month, and such other regular or special meetings as the board deems necessary to conduct the business before it. All meetings of the board shall be open to the public.

(e) *Rules and records.* The economic development commission shall formulate and adopt the rules of procedure under which it will operate. The board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or his or her absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.

(f) *Cooperation with other agencies.* The economic development commission shall cooperate in all respects with the appropriate town boards, commissions, offices, and employees, including, but not limited to, the town council, the town manager, staff departments, and other agencies of the town.

**Sec. 2-170. Information services advisory board.**

(a) *Membership.* The information services advisory board shall consist of ten members appointed by the town council. The board shall be composed of two members with special training or expertise in internet applications, development or design; two members with special training or expertise in marketing, advertising or public relations; and two members with special training or expertise in mass media such as radio, television, cable or newspaper and four other members from the private sector or general public. Members are appointed from within Cary's corporate limits or its extraterritorial jurisdiction.

(b) *Officers.* The town council shall appoint one of the members to serve as the chairperson of the information services advisory board. The information services advisory board shall appoint such other officers as it may deem necessary and appropriate.

(c) *Reimbursement for expenses.* All members of the board shall serve without compensation, but may be reimbursed for expenses from funds allocated by the town council.

(d) *Meetings.* The information services advisory board shall hold at least one meeting per month, unless there is no business to come before the board in a given month, and such other regular or special meetings as the board deems necessary to conduct the business before it. All meetings of the board shall be open to the public.

(e) *Rules and records.* The information services advisory board shall formulate and adopt the rules of procedure under which it will operate. The board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or his or her absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.

(f) *Cooperation with other agencies.* The information services advisory board shall cooperate in all respects with the appropriate town boards, commissions, offices, and employees, including, but not limited to, the town council, the town manager, staff departments, and other agencies of the town.

**Sec. 2-171. Sister cities commission.**

(a) *Membership.* The sister cities commission shall consist of 11 members appointed by the town council. All members must reside within the corporate boundaries of the town.

(b) *Officers.* The town council shall appoint one of the members to serve as the chairperson of the sister cities commission. The sister cities commission shall appoint such other officers as it may deem necessary and appropriate.

(c) *Reimbursement for expenses.* All members of the board shall serve without compensation, but may be reimbursed for expenses from funds allocated by the town council.

(d) *Meetings.* The sister cities commission shall hold at least one meeting per month, unless there is no business to come before the board in a given month, and such other regular or special meetings as the board deems necessary to conduct the business before it. All meetings of the board shall be open to the public.

(e) *Rules and records.* The sister cities commission shall formulate and adopt the rules of procedure under which it will operate. The board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or his or her absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.

(f) *Cooperation with other agencies.* The sister cities commission shall cooperate in all respects with the appropriate town boards, commissions, offices, and employees, including, but not limited to, the town council, the town manager, staff departments, and other agencies of the town.

**Sec. 2-172. Utility board of adjustment.**

(a) *Membership.* The utility board of adjustment shall consist of five members, including alternates, appointed by the town council. All members must reside within the corporate boundaries of the town of Cary or Morrisville.

(b) *Powers and duties.* The utility board of adjustment shall have the following powers and duties, to be carried out in accordance with the terms of this section: To approve or deny requests for adjustment to billed water, sewer, reconnection, late payment penalty and/or meter testing fee based upon a determination that town policies were correctly or incorrectly applied.



