

# **TOWN OF MIDDLEBURG EMPLOYEE HANDBOOK**

*(effective September 10, 2021)*

## **INTRODUCTION & PURPOSE OF EMPLOYMENT POLICIES**

The Town of Middleburg has established employment policies to provide equitable conditions of employment for Town employees, to establish and maintain uniform standards of employment and compensation; and to provide assistance to department heads and supervisors in their administration of personnel matters. They are contained in this handbook, which is intended to serve as a source of information about employment with the Town of Middleburg.

This handbook sets guidelines only. Conditions may require the Town to supplement, modify or eliminate one or more benefits, work rules and guidelines described in this handbook. The Town of Middleburg reserves the right in its sole discretion to unilaterally make changes and deletions from, or additions to this handbook. The employee's continued employment constitutes acceptance of such changes.

Employees of the Town of Middleburg are employed "at-will" except as otherwise provided by law. Neither this handbook nor any other policy or procedure of the Town of Middleburg should be considered a contract of employment.

Unless their employment contract provides otherwise, the policies and procedures in this handbook shall apply to all departments, positions, and employees of the Town, including Charter Officials. In addition to the Employee Handbook regulations, the Chief of Police shall establish and update as needed, Policies and Procedures pertaining to the operation of the Police Department, hereinafter referred to as "General Orders". The Chief of Police shall brief the Town Council on any major additions or changes to said General Orders within thirty days of their development.

Much of the information contained in this handbook is drawn from relevant laws, regulations and official directives. This handbook is prepared solely for informational purposes. Should there be a conflict between any statement, fact or figure presented here, and the current regulations or policies, the latter takes precedent. The Town Manager shall be responsible for maintaining a complete and current set of employment policies and for bringing these policies to the attention of all employees. In addition, a copy shall be maintained in the office of each department head.

Employees have a responsibility to keep themselves informed of updates and revisions to Town policies as a violation of any Town policy, even ones not stated in this handbook, may lead to discipline. The Town shall provide copies of any updates to each Town employee upon their approval.

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# Chapter I

## Employment Practices

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### A. Definitions

The following definitions are intended for use throughout the Employee Handbook. However, not all terms used in the Employee Handbook are defined. In the event of a conflict, the Town Manager, in his/her sole discretion, may determine the meaning of a term.

**Administrative Leave:** The status of paid or unpaid leave authorized by the Town Manager that may be voluntary or involuntary and may be the result of personnel action, investigations, unforeseen circumstances, or other purposes by which the Town Manager determines it necessary for an employee to be absent from work.

**Anniversary Date:** The anniversary date of the initial employment, promotion or demotion date.

**Break In Service:** Any separation from service with the Town, whether by resignation, lay-off, disability or retirement, when an employee is subsequently re-employed. An authorized leave without pay shall not be considered as constituting a break in service.

**Charter Official (Charter Employee):** Appointed officers of the Town of Middleburg who serve in positions of extraordinary trust and confidence. These positions are identified in the Middleburg Town Charter and include the Town Manager and Town Attorney.

**Chief of Police:** The individual hired by the Town of Middleburg to be the top official in the chain of command of the Middleburg Police Department.

**COIA:** The Conflicts of Interest Act as identified in the Code of Virginia.

**Continuous Service:** Employment without interruption, except for approved absences.

**Demotion:** Assignment of an employee from one position to one with a lower maximum rate of pay.

**Disability:** A physical or mental impairment which prevents, hinders or adversely affects an individual's ability to perform the essential functions of his/her job with or without reasonable accommodation.

**Emergency Leave:** Paid leave granted to all employees and Charter Officials of the Town of Middleburg in an emergency situation, such as inclement weather.

**Exempt Employees:** Employees of the Town of Middleburg who are exempt from overtime pay provisions based upon the tests regarding their job duties and salary as identified by the Fair Labor Standards Act. Job titles do not determine exempt status. While Charter Officials are generally exempt employees, refer to Chapter III for specific identifications.

**FLSA:** The Fair Labor Standards Act as administered by the United States Department of Labor.

**FMLA:** The Family & Medical Leave Act as administered by the United States Department of Labor.

**Full-Time Employee:** An individual who is hired to work a minimum of forty (40) hours per week.

**Grievance:** A complaint or dispute by an employee related to his/her employment as set forth in Section X of this handbook, including but not necessarily limited to: disciplinary actions, including terminations, disciplinary demotions and suspensions, provided that terminations shall be grievable whenever resulting from formal discipline or unsatisfactory job performance; the application of personnel policies, procedures, rules and regulations; complaints of discrimination on the basis of veteran status, uniformed service member status, race, color, religion, sex, age (40 and over), pregnancy (including childbirth, lactation and related medical conditions), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics) or any other consideration protected by federal, state or local law; acts of retaliation as the result of the utilization of the grievance procedures or the participation in the grievance of another Town employee or because the employee has complied with any law of the United States, the Commonwealth of Virginia or the Town of Middleburg, has reported any violations of such law to a governmental authority or sought any change in law before the Congress of the United States, Virginia General Assembly or Town Council, or has reported any incidence of fraud, abuse or gross mismanagement.

**Immediate Family:** The employee's spouse; the employee's biological, step, or adopted son, daughter, parent, sibling, grandparent, or grandchild, or any of these relations as an "in-law;" an individual to whom the employee serves as the legal guardian or foster parent.

**Job Description:** A written narrative detailing the essential functions, responsibilities and minimum or desirable qualifications for a position.

**Liberal Leave:** Any unscheduled leave taken in the event that extreme weather, or a similar emergency, prevents the employee from coming into work as usual. Liberal leave may also be known as unscheduled leave.

**Non-Charter Employee:** Employees of the Town of Middleburg who do not serve in a position of a Charter Official.

**Non-Exempt Employee:** Employees of the Town of Middleburg who are not exempt from overtime pay provisions based upon the tests regarding their job duties and salary as identified under the Fair Labor Standards Act. While Non-Charter Employees are generally non-exempt employees, refer to Chapter III for specific identifications.

**Part-Time Employee:** An individual who is hired to regularly work less than forty (40) hours per week.

**Performance Evaluation:** A formal evaluation system, using printed forms completed by the evaluator (normally one's immediate supervisor), which are rendered at least annually for each employee to document job performance and are made a part of the employee's personnel records. Satisfactory performance, however, is a condition of employment throughout the year and an employee's performance is monitored throughout the year.

**Personal Leave:** Days off granted to FLSA-exempt employees in recognition of hours worked for which they are not directly compensated. Personal leave days may be used for any purpose, such as vacation, sick leave, or otherwise, with approval of the employee's supervisor.

**Position:** Any office or employment, whether occupied or vacant; full-time or part-time, temporary or contractual, consisting of duties and responsibilities assigned to the individual by the Town Manager or his/her designee.

**Promotion:** The assignment of an employee to a position which has a higher maximum rate of pay.

**Regular Employee:** An employee who has completed the initial review period set out in Section H, of Chapter 1 of this Employee Handbook.

**Retirement:** A voluntary departure from active service where the employee qualifies for the payment of benefits from the Virginia Retirement System or may qualify to remain eligible for other Town benefits at the employee's expense.

**Sensitive Personal Information:** Information that identifies a specific individual or business which could cause material economic damage or compromise their identity and for which an exemption from disclosure exists under the Virginia Freedom of Information Act as amended.

**Separation:** Vacating a position, either through resignation, termination, disability or death.

**Suspension:** A period of involuntary leave, for disciplinary purposes or pending investigation of, among other things, charges made against an employee.

**Telecommuting:** A voluntary work arrangement in which an eligible employee, with the advance approval of the Town Manager, works from home instead of commuting to their work.

**Termination:** The involuntary separation from Town employment.

**Town Manager:** The official appointed by the Town Council of Middleburg to serve as the chief administrative officer of the Town of Middleburg.

**Unsatisfactory Service:** The performance of assigned duties and responsibilities that fall below the accepted standards including work habits, attitudes and personal conduct, among other things.

**Workplace:** Any site for the performance of work by a Town employee, including but not limited to any Town building or premise; any Town-owned vehicle or equipment; any building or premises used by the Town for Town business; and any non-Town property during any Town-sponsored or Town-approved public activity, event or function. It shall also include all Town-owned property such as, but not limited to, offices, desks, safes, file cabinets, tool boxes, etc.

## **B. Employment At-Will**

Except as otherwise provided by law, all employees are employed “at-will” and no employee has any vested, contractual or property rights to continued employment for any specific duration. “At will” means that regardless of any provision in this handbook, either the employee or the Town may terminate the employment relationship at any time, for any reason, with or without cause. Neither this handbook nor any other policy or procedure of the Town of Middleburg is intended to create a contract of employment, either express or implied, and the Town of Middleburg disavows any representations, oral or written, contrary to the foregoing at-will employment relationship.

## **C. Recruitment**

The Town of Middleburg will accept applications for any available positions. Unsolicited applications may be considered for a period of one year after the date of their receipt, at which time they should be destroyed. Applications solicited for positions from persons not ultimately employed by the Town shall be destroyed after three years in accordance with the Virginia Public Records Act, except as otherwise required by law.

The Town of Middleburg shall advertise job openings for all full and part-time vacant positions for a period of at least two weeks. Such advertisement shall be through (1) paid advertising in a newspaper of general circulation, (2) the posting of an announcement on a bulletin board at the Town Office, and/or (3) such other means as may be appropriate at the time, including Town newsletters, listing on the Town website, with the Virginia Municipal League or other appropriate professional sites. The Town Manager may waive these requirements upon determination that a more expedited recruitment is warranted.

Job descriptions shall be provided to all applicants, clearly stating the duties of the position, the hours of work, required and/or preferred qualifications, and salary range.

## **D. Selection of Candidates/Hiring**

### Candidates for Non-Charter Positions

With the exception of police personnel, the Town Manager shall select, interview, negotiate with and hire the candidate who best meets the qualifications for the position. The Town Manager may authorize the head of a town office, department, or board to appoint subordinates in such office, department, or board. The Chief of Police shall select, interview and recommend a candidate for police personnel positions, with the Town Manager having the final hiring authority. The Town Manager shall then notify the Town Council of the successful candidate, for information purposes only.

### Candidates for Charter Officials

The Town Council, with the assistance of the Town Manager, shall select, interview, negotiate with and hire the candidate who best meets the qualifications for the position.



The Town Council has final authority over the hiring and the conditions of employment of Charter Officials. Charter Officials serve at the pleasure of the Town Council and are subject to dismissal at any time.

#### Employee Eligibility and Work Authorization

The Town is committed to employing only individuals who are authorized to work in the United States and who comply with applicable immigration and employment law. As a condition of employment, every individual must provide satisfactory evidence of his or her identity and legal authority to work in the United States within seventy-two hours of commencing employment. If the employee cannot verify his or her right to work in the United States within seventy-two hours of employment, the Town will be required to terminate his or her employment immediately.

#### **E. Background Checks**

The Town recognizes the importance of maintaining a safe, secure workplace with employees who are qualified, reliable, and nonviolent, and who do not present a risk of serious harm to their coworkers or others. To promote these concerns and interests, the Town reserves the right to conduct background checks. All background checks will be conducted in strict conformity with the federal Fair Credit Reporting Acts (FCRA), applicable state fair credit reporting laws, and state and federal antidiscrimination and privacy laws. The Town is an equal opportunity employer and will comply with applicable federal, state and local laws relating to the use of background checks for employment purposes.

#### Reference Checks

As part of the selection procedures, former supervisors, employers (for a reasonable past period as determined by the Town) and references provided by the candidate will be contacted for information related to a candidate's past job performance and work habits. References and other contacts shall be documented and made part of the applicant's file. The checks shall be completed prior to an offer of employment. The information secured during a reference check shall be handled as privileged information.

#### Driving Record Checks

Applicants for positions which require operation of Town vehicles or who reasonably may be expected to operate a vehicle on Town business, as identified in the job description, will be required to sign a release for the Town Manager to obtain their driving records. No applicant shall be offered employment with the Town if he/she has a driving record determined to be "probationary" or "poor" as determined under the Town's Employee Driving Policy as identified in Section VII(C) of this Handbook.

#### Comprehensive Background Investigation

A criminal background check shall be required for all Town positions, but only to the extent permissible under applicable law. A pending criminal matter may be considered in appropriate circumstances for business-related reasons, consistent with applicable law. The Town Manager shall obtain authorization from the applicant. The results of that investigation are deemed confidential. If any reference check or background investigation discloses any material

misrepresentation on the application, or any other information indicating that the individual is not suited for employment with the Town, the applicant shall not be offered employment.

The Town retains the discretion to select the applicant deemed best suited to its needs or to refuse all applicants for any position. Additional vetting may be required for police officers.

#### Disqualification

The Town may remove from further consideration, the application of any applicant who:

1. Does not possess the minimum qualifications as required for the position;
2. Has established an unsatisfactory employment, driving, or personal record as evidenced by reference or other checks of such a nature that demonstrates unsuitability for employment;
3. Has made a false statement of material fact or practiced deception in his/her application;
4. Has a conflict of interest under the Virginia Conflict of Interests Act which cannot be resolved;
5. Failed to provide a release for the Town to obtain background information.

#### Offer of Employment

A letter of appointment, approved by the Town Attorney, shall be provided for every hired employee or officer. A copy of this letter will be placed in his/her personnel file. This letter will clearly state the starting salary (either in hourly wage or annual salary), hours of work, initial review period (if any), and termination provisions. Any special conditions of employment (e.g., a take-home vehicle) shall be set out in the text of the appointment letter. The appointment letter shall also specify that the terms of employment include required adherence to all policies and procedures in the Employee Handbook, including future Council amendments. The failure of the appointment letter to address any matter stated above shall not operate to revoke or limit the authority of the Town with regard to the terms and conditions of employment. The employee or officer shall sign a statement (as drafted in Section XII) acknowledging his/her receipt of the Employee Handbook, a clear understanding of the policies contained therein; and, that the employee or officer agrees to comply with the policies.

#### **F. Equal Opportunity Employment Policy**

As an equal opportunity employer, the Town of Middleburg, in accordance with applicable law, prohibits unlawful discrimination against any applicant or employee based on any legally protected status, including, but not limited to: veteran status, uniformed service member status, race, color, religion, sex, age (40 and over), pregnancy (including childbirth, lactation and related medical conditions), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics) or any other consideration protected by federal, state or local law. Our commitment to equal opportunity employment applies to all persons involved in our operation and prohibits unlawful discrimination by any employee, including supervisors and co-

workers. Any applicant or employee who believes he/she has been unlawfully discriminated against may file a complaint as identified in Section J, Chapter VII of this Employee Handbook.

### **G. Physical Examinations and Drug Screenings**

Physical examinations may be required to assure that the physical standards prescribed for the specific job descriptions are met. Drug screenings are required for all Town positions, with the Town paying the cost of the screening. Physicians designated and paid by the Town shall perform all required physicals.

Examinations shall be passed after the Town has made a conditional offer of employment, but prior to the date the employee or officer reports for duty. However, the examinations can be delayed until after the appointment, provided that the employment offer and appointment is made subject to satisfactorily passing the prescribed physical examination.

Any employee or officer may be required to pass a physical examination and/or drug screening if the Town Manager has reasonable concern about his or her continued fitness for duty.

### **H. Initial Review Period for Non-Charter Employees**

All new, full-time or part-time employees, who are not Charter Officials, are hired for an initial review period of six (6) months, with the exception of police officers who are sent to the Police Academy. Officers who are sent to the Police Academy shall be hired for an initial review period of one (1) year, during which time their qualifications for becoming a regular employee are evaluated on the basis of effective adjustment to the new position.

Upon satisfactory completion of the initial review period and performance appraisal, regular status shall be granted. If, however, in the judgment of the supervisor, initial review employees do not meet the required performance standards, and subject to the provisions regarding removal, they may be (1) considered for transfer to a more suitable position, (2) given more time to prove to the supervisor that he/she is capable of meeting the required performance standards for the position through an extension of the initial review period (not to exceed an additional six months), or (3) separated from the Town's employment.

Any initial review employee shall not be eligible for any salary increases except when cost of living increases are issued during the employee's initial review period or the employee's position is reclassified.

#### Removal or Dismissal during Initial Review Period

An employee is subject to removal at any time during the initial review period, with or without cause. During the initial review period, the employee's supervisor may recommend dismissal; however, no employee shall be removed from a position during his/her initial review period without the approval of the Town Manager. All recommendations from the supervisor to the Town Manager shall be in writing.

## **I. Garnishments**

Employee's wages are subject to court-ordered garnishments and tax levies issued in the State of Virginia. When the Town Treasurer receives a garnishment summons or tax levy, the Town Treasurer shall notify the employee of the amount owed. The Town Treasurer is legally required to make payroll deductions from an employee's paycheck to satisfy the employee's financial obligation.

## **J. Outside Employment**

Upon receipt of the written permission of the Town Manager, an employee (including Charter Officials) may engage in outside employment, including self-employment, subject to the conditions below.

Employees who wish to engage in outside employment shall submit a written request to the Town Manager prior to accepting such employment. No employee may engage in outside employment on medical or sick leave, on temporary disability or on light-duty assignment due to injury. No employee may engage in additional employment (including self-employment) which in any manner interferes with the proper and effective performance of the duties of his/her position with the Town, results in a conflict of interest in violation of COIA, or if it is reasonable to anticipate that such employment may subject the Town to public criticism or embarrassment as determined by the Town Manager. If at any time such outside employment is determined by the Town Manager to be disadvantageous to the Town, said employee shall be notified of this in writing by the Town Manager. The employee must then notify the Town Manager within ten (10) working days whether he/she will resign his/her Town position to continue the outside employment or continue employment with the Town.

New hires already engaged in outside employment at the time of their hire with the Town must disclose said employment at the time of hire and receive the approval of the Town Manager to continue such outside employment.

In addition to the requirements identified above, law enforcement personnel shall comply with any restrictions imposed in the Police Department's General Orders, as they may be amended from time to time.

## **K. Standards of General Conduct**

All employees of the Town are expected to conduct themselves properly, with decorum, treating each member of the public with courtesy and respect, and not partake in any conduct which harms or has the potential to harm (i.e. hurt, injure or damage) the Town, its employees or the public. Any action by an employee which harms or has the potential to harm the Town, its employees, or the general public will subject the employee to appropriate discipline, including possible termination.

## **L. Termination of Employment by Employee**

### Resignation and Retirement

It is the responsibility of the employee or officer who intends to leave the Town's employment to notify his/her supervisor in writing at least ten working days prior to the last day of work.

Employees or officers who wish to retire must apply for retirement benefits through the Virginia Retirement System at least three months prior to the anticipated retirement date.

Employees or officers who separate from the Town's employment after giving the Town Manager required notice are eligible for compensation for unused leave as described in Chapter IV of this Handbook.

## **M. Termination of Employment by Town**

### Dismissal

Non-Charter Employees: Regular employees may be dismissed for violation of established policies, procedures, rules or accepted standards of personal conduct. Specific reasons for dismissal must be provided to the employee in writing. Initial review employees may be removed or dismissed as deemed appropriate, as set forth in Section H above. No employee shall be dismissed without the approval of the Town Manager. The Town Manager must immediately report the dismissal to the Mayor and Town Council.

Employees or officers who are dismissed from the Town's employment, unless dismissed for misconduct, are eligible for compensation for unused leave as described in Chapter IV(B) of this Handbook.

Disciplinary dismissals may be appealed prior to termination as allowed under the provisions of the Grievance Procedure & Police Officers' Procedural Guarantees Policy detailed in Section X of this Handbook.

Charter Officials: Charter Officials serve at the will of the Town Council and may be dismissed at its discretion.

### Other Separation from Employment

Any employee or officer may be separated from Town employment at any time due to lay-off or job abolition, as deemed appropriate by the Town Council.

## **N. Return of Town Property**

Employees are required to return all Town property that is in their possession or control in the event of termination of employment, resignation, retirement or layoff or immediately upon request. No confidential information belonging to the Town can be copied for the employee's use. The Town may also take all action deemed appropriate to recover or protect Town property and information.

## **O. Requests for References**

All requests for references must be directed to the Town Manager. No other person or department is authorized to release references for current or former employees. Town policy concerning references for former employees is to disclose only the dates of employment, title of the last position held and the amount of the last salary or wage last earned. In the event a former employee has signed a release for all personnel records, the Town shall release all records, including those held pursuant to Virginia Code Section 15.2-1722, absent a compelling reason to withhold some or all of them as determined by the Town Manager.

## **P. Disability Accommodation**

To comply with applicable laws ensuring equal employment opportunities for individuals with disabilities, the Town will make reasonable accommodations for the known physical or mental impairments of an otherwise qualified individual with a disability who is an employee or applicant for employment unless undue hardship and/or a direct threat to the health and/or safety of the individual or others would result.

Any employee who requires an accommodation in order to perform the essential functions of his or her job, enjoy an equal employment opportunity and/or obtain equal job benefits should contact the Town Manager to request such an accommodation. The Town will communicate with the employee and engage in an interactive process to determine the nature of the issue and what, if any, reasonable accommodation may be appropriate. In some cases, this interactive process may be triggered without a request from the employee, such as when the Town receives notice from its own observation or another source that a medical impairment may be impacting the employee's ability to perform his or her essential job functions.

Employees who believe they need an accommodation must specify, preferably in writing, what barriers or limitations prompted the request. The Town will evaluate information obtained from the employee, and possibly his or her health care provider or another appropriate health care provider, regarding any reported or apparent barriers or limitations and will then work with the employee to identify possible accommodations, if any, that will help to eliminate or otherwise address the barrier(s) or limitation(s). If an identified accommodation is reasonable and will not impose an undue hardship on the Town and/or a direct threat to the health and/or safety of the individual or others, the Town will generally make the accommodation or it may propose another reasonable accommodation that may also be effective. Employees are required to cooperate with this process by providing all necessary supporting documentation of the need for accommodation, and be willing to consider alternative accommodations when applicable.

The Town will also consider requests for reasonable accommodations for medical conditions related to pregnancy, childbirth and lactation where supported by medical documentation and/or as required by applicable federal, state or local laws.

Employees who wish to request unpaid time away from work because of a qualifying disability should speak to their supervisor regarding the proposed accommodation.

## **Q. Religious Accommodation**

The Town will provide reasonable accommodation for employees' religious beliefs, observances and practices when a need for such accommodation is identified and reasonable accommodation is possible. A reasonable accommodation is one that eliminates the conflict between an employee's religious beliefs, observances or practices and the employee's job requirements, without causing an undue hardship to the Town. The Town has developed an accommodation process to assist employees and management. Through this process, the Town establishes a system of open communication between employees and the Town to discuss conflicts between religion and work and to take action to provide reasonable accommodation for employees' needs. The intent of this process is to ensure a consistent approach when addressing religious accommodation requests.

Any employee who perceives a conflict between job requirements and religious beliefs, observance or practice should bring the conflict and his or her request for accommodation to the attention of their supervisor to initiate the accommodation process. The Town requests that accommodation requests be made in writing, and in the case of schedule adjustments, as far in advance as possible.

## **R. Confidentiality of Personnel Records**

Unless otherwise required by applicable law, all official personnel files are maintained in the Town Office. These files include application, payroll and benefit information, inquiries and responses, evaluations, results of physical examinations, reference checks, disciplinary actions and commendations. All such employee records shall remain confidential and shall be secured in such a way as to prevent unauthorized access. Requests for access to personnel records shall be governed by the provisions of the Government Data Collection and Dissemination Practices Act, Va. Code § 2.2-3800 et seq. Routine access to employee personnel files is limited to the Town Manager, the Town Clerk (for records management purposes), Town Treasurer, supervisors or elected officials who are legitimately involved in personnel decisions, and persons to whom the employee has given written permission. Information in personnel records is also subject to dissemination in response to judicial or administrative subpoena or prospective employer inquiry. Each employee has a right to review his or her personnel file. An employee may request the addition of a written document(s) to his or her personnel file. Such additions shall be at the sole discretion of the Town Manager.

Any employee or official of the Town of Middleburg who is authorized to review or process information in personnel records is bound by this policy of confidentiality, and shall not divulge or discuss such information with any unauthorized persons. Those violating this policy will be subject to discipline, up to and including termination.

## **S. Personal Data Changes**

Maintaining accurate information in our files is important for recordkeeping, payroll and benefits purposes, as well as to maintain up to date contacts in the event of a personal emergency. Changes in name, address, telephone number, marital status, number of dependents, next of kin and/or beneficiaries should be given to the Town Treasurer promptly.

## **T. Voluntary Open Door Policy**

The Town recognizes that employees may have suggestions for improving our workplace, as well as complaints about the workplace. We feel that the most satisfactory solution to a job-related problem or concern is usually reached through a prompt discussion with an employee's supervisor. Employees should feel free to contact their supervisor with any suggestions and/or complaints. If an employee has raised the suggestion or complaint with the supervisor and is not satisfied with the supervisor's response, the employee should contact the Town Manager. In the event the Town Manager is the employee's supervisor, they should contact the Town Council's Personnel Committee Liaison.

While the Town provides employees with this opportunity to communicate their views, not every complaint can be resolved to the employee's satisfaction. Even so, the Town believes that open communication is essential to a successful work environment and all employees should feel free to raise issues of concern without fear of reprisal.

## **U. Reporting and Anti-Retaliation Policy**

The Town encourages a "Speak-Up" culture. Choosing to speak up about workplace concerns helps build a healthy, ethical, and law-abiding Town and is part of our culture. To promote that culture, the Town encourages employees to speak up and raise good-faith questions and concerns promptly about any situation that may violate our values or our policies, especially conduct that may be illegal, fraudulent, unethical or retaliatory.

The Town is deeply committed to promoting a culture of ethical conduct and compliance with our values, policies, and the laws, rules and regulations that govern the Town. The Town expects all of our employees and officers to follow this commitment in all aspects of their work.

The Town promotes an environment that fosters honesty, good faith communication about matters of conduct related to our activities, whether that conduct occurs within the Town, involves the Town citizens, contractors, suppliers, consultants or another party with a relationship with the Town.

While the Town recognizes that coming forward with questions or concerns may sometimes feel like a difficult decision, it is committed to fostering an environment that does not deter individuals from speaking up when they observe conduct that is improper or illegal. For that reason, the Town will not tolerate retaliation of any kind because an employee in good faith raises a question or concern about a violation or suspected violation of our policies, or the laws and regulations under which the Town operates or because the employee participates in or cooperates with an investigation of such concerns.

Retaliation is any conduct that would reasonably dissuade an employee from raising, reporting or communicating about good-faith concerns through our internal reporting channels or with any governmental authority or from participating in or cooperating with an investigation or legal proceeding raising such concerns. If an employee becomes aware of an instance or threat of retaliation, he or she is encouraged to immediately report it. When an employee files such a report, the Town shall investigate it in accordance with Chapter VII, Section J of this Handbook.



The Town also complies with Virginia's Fraud and Abuse Whistle Blower Protection Act. Employees are free to report good-faith reports of wrongdoing or abuse committed by governmental agencies or independent contractors of governmental agencies as stated under the Act.

All good faith concerns and reports raised under this policy will be taken seriously. This policy does not, however, protect employees who knowingly or recklessly raise a false concern or report and employees are prohibited from knowingly or recklessly making false concerns or reports.

#### **V. No Solicitations**

Employees are restricted from engaging in solicitation activities in Town work areas, during worktime, which may disrupt Town business.

#### **W. Non-Disclosure of Confidential Information**

Certain information concerning the Town and its citizens is confidential. Any such confidential information which an employee obtains as a result of his/her employment with the Town is not to be used for personal gain or to the Town's detriment either during employment or after the termination of employment.

Employees should note that in raising any questions or concerns they may have about potentially illegal conduct, pursuant to the 2016 Defend Trade Secrets Act (DTSA):

- No individual will be held criminally or civilly liable under federal or state trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act) that is:
  - Made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or,
  - Made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public; and
- An individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of the law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret, except as permitted by court order.

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# CLASSIFICATION OF EMPLOYMENT AND STATUS CHANGES

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## A. Position Classifications

All positions and classifications are approved by the Town Council as a part of the budgetary process. The Town Manager is responsible for the maintenance of the official organizational chart, which lists, by department, all positions, by grade, as authorized by the Town Council.

Current classifications are identified as exempt or non-exempt from the Federal Fair Labor Standards Act as outlined in Chapter III (Salary and Compensation).

### CHARTER (APPOINTED) OFFICIALS

Charter (appointed) Officials serve in positions of extraordinary trust and confidence. They serve at the pleasure of the Town Council and report to the Mayor for daily activities. They are identified in the Middleburg Town Charter as the following:

Town Manager  
Town Attorney

The Town Council reserves the right to designate other employees as Charter Officials by amendment to the Town Code.

### NON-CHARTER POSITIONS

Non-charter positions are as follows:

Deputy Town Manager/Town Planner/Zoning Administrator  
Chief of Police  
Town Clerk  
Finance Director / Town Treasurer  
Director of Business Development and Community Partnerships  
Facilities & Maintenance Supervisor  
Accounting & Administrative Assistant  
Planning Project Associate  
Police Lieutenant (Reports to the Chief of Police)  
Police Corporal (Reports to the Chief of Police)  
Senior Police Officer (Reports to the Chief of Police)  
Police Officers (Reports to the Chief of Police)  
Police Administrative Assistant (Reports to the Chief of Police)

Unless otherwise noted, non-charter employees report to the Town Manager.

## FULL- AND PART-TIME CLASSIFICATIONS

Positions may be classified as full time or part time, and may be reclassified as deemed appropriate by the Town Manager. Non-charter employees shall serve an initial review period as provided in Chapter I, Section H before achieving non-initial review or ongoing employment status.

Full-time employees or officers work forty (40) hours or more per week, on average. Full-time employees are generally eligible for the employee benefits described in this Handbook and are provided with benefits required by applicable law. Part-time employees or officers regularly work less than 40 hours per week. Part-time employees are eligible for some, but not all employee benefits described in this Handbook and are provided with benefits required by applicable law.

Seasonal or temporary employees are hired for a prescribed length of time, or until the occurrence of some event (e.g., the return of an employee from sick or maternity leave) or to perform an identified task or tasks. A seasonal or temporary employee shall be limited to working no more than forty (40) hours per week and is not eligible to receive benefits. A seasonal or temporary employee is employed at-will during the period of the project or the time specified.

### **B. Promotions**

When an employee is transferred from one position to another position that has a higher salary range, they are generally considered promoted. All promoted non-exempt employees must serve an additional six-month initial review period in accordance with Chapter I, Section H.

### **C. Demotions**

When an employee is transferred from one position to another position which has a lower salary range, they are generally considered demoted. A non-charter employee may be demoted at the sole discretion of the Town Manager or a charter employee may be demoted at the discretion of the Town Council when it deems necessary, including but not limited to:

1. When an employee would have otherwise been laid off because the position is being abolished;
2. When an employee has not rendered satisfactory service in the current position;
3. When an employee voluntarily requests such demotion;
4. As discipline; or
5. When an employee's position is re-classified under a pay plan.

All demoted employees must serve a six-month review period in accordance with the provisions of Chapter I, Section H. Disciplinary demotions (only) may be grieved under the Grievance Procedure, Chapter X of this Handbook.

## CHAPTER III

### SALARY AND COMPENSATION

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#### A. Definition of Hours Worked

The regular hours of operation for the Town Office are from 8:30 a.m. to 4:30 p.m., Monday through Friday, holidays excepted as provided in Chapter IV. In addition, some extended evening hours of operation may be offered at the discretion of the Town Manager utilizing a reduced coverage that shall be based upon the regular evening hours meeting schedule(s) of Town Office personnel. Except for law enforcement personnel, the workweek is defined, for payroll purposes, as starting at 12:01 AM Thursday and ending the following Wednesday at midnight and consist of forty (40) hours.

Flexibility may be permitted for employees in the Town Office by the Town Manager as long as a minimum of eight hours are worked each work day. If authorized by the Town Manager, employees in the Maintenance Department may work on alternative schedules, but such schedules shall not exceed forty (40) hours per week unless authorized by the Town Manager. The Chief of Police assigns law enforcement personnel to variable shifts. Such shifts shall not exceed eighty (80) hours over two weeks (14 days) unless authorized by the Chief.

Hours worked include all time during which an employee has worked or is permitted to work for the Town's benefit. Hours worked also include:

1. Emergency stand-by time. Emergency stand-by time occurs when an employee is required by the supervisor to be available for specific periods of time and are restricted from effectively using the time for his/her own purposes. (Employees who are designated on "stand by" but who are not restricted in the use of personal time and who may use a cellular telephone, leave a forwarding telephone number or other method of contacting them are not considered to be accumulating hours worked.)
2. Preparatory activities which are an integral part of the principal activity. (Changing clothes before or after a shift is not considered preparatory activity. Setting up a meeting room for a meeting is considered preparatory activity.)
3. Travel time to and from a conference or training course or school mandated or authorized by the Town to maintain the job as well as the time spent attending the actual training.
4. Time on authorized leave, including annual leave, sick leave, personal leave, administrative leave with pay, military leave, bereavement leave or jury duty or court appearance leave.

Breaks or short rest periods of ten (10) minutes or less are counted as hours worked. Employees shall be limited to two (2) break periods per eight hour work day. The granting of additional breaks is at the discretion of the Town Manager. Unauthorized extensions of an authorized work break or an unauthorized break(s) above the two permitted breaks shall not be counted as hours worked and may result in disciplinary action taken against the employee.

## **B. Overtime Policies and Procedures**

### 1. Purpose

The purpose of these policies and procedures is to establish policies and guidelines for the administration of overtime pay with regard to eligibility, rates of pay, hours to be paid, and record keeping. It is the policy of the Town to adopt and implement the provisions of the Federal Fair Labor Standards Act (FLSA), as amended, as the fundamental wage and hour policy of the Town. The FLSA applies to all employees and cannot be waived. The Town also complies with the Virginia Overtime Wage Act (VOWA), effective July 1, 2021. Further, it is the policy of the Town that any overtime work necessary to the continued effectiveness of the Town shall be managed in the most efficient and economic manner possible.

### 2. Categories of Jobs

- A. Under the FLSA, there are two (2) basic categories of jobs.
  - 1. Exempt – those employees not covered by the overtime provisions of the FLSA
  - 2. Non-Exempt – those employees covered by the overtime provisions of the FLSA.

#### Exempt Employees

Exempt employees are employees whose job assignments meet specific tests established by the federal Fair Labor Standards Act (FSLA) and state law and who are exempt from minimum wage and overtime pay requirements. Exempt employees are compensated on a salary basis. Employees will be informed whether their status is exempt or nonexempt.

#### Nonexempt Employees

Nonexempt employees are employees whose job positions do not meet FLSA or applicable state exemption tests, and who are not exempt from minimum wage and overtime pay requirements. Nonexempt employees are eligible to receive overtime pay for hours worked in excess of forty (40) hours in a given week, or as otherwise required by applicable state law. Employees will be informed whether their status is exempt or nonexempt and should consult their supervisor with any questions or concerns regarding this status.

- B. FLSA requirements apply to positions and employees, not to classes. The Town's class descriptions serve as a general guide in determining whether individual positions are exempt or non-exempt. All Town classes will be identified as exempt or non-exempt.

- C. The following positions are exempt (executive/professional) from the overtime provisions of the FLSA and thus are not eligible for the payment of overtime:
- Town Manager
  - Deputy Town Manager/Town Planner/Zoning Administrator
  - Chief of Police
  - Finance Director/Town Treasurer
  - Director of Business Development and Community Partnerships
  - Town Clerk
  - Planning Project Associate
- D. The following payroll positions are considered to be non-exempt from the overtime provisions of the FLSA and thus are eligible for the payment of overtime:
- Police Lieutenant
  - Police Corporal
  - Senior Police Officer
  - Police Officer
  - Police Administrative Assistant
  - Facilities & Maintenance Supervisor
  - Accounting & Administrative Assistant
- E. Exception: When an employee who is classified as exempt is authorized by the Town Manager or immediate supervisor to perform non-exempt work that results in a work week of greater than forty hours (eighty hours in the case of a law enforcement employee), the employee shall be entitled to overtime pay for those hours worked in excess of forty (eighty for a law enforcement employee) in the performance of non-exempt work.

### 3. Overtime

OVERTIME is any time, authorized by the employee's supervisor, worked by eligible employees in excess of the maximum hours allowed in a standard work week as defined in Employee Handbook Section III(A). The employee's immediate supervisor may adjust leave requests to manage the Town's overtime liability.

As a condition of employment, an employee is expected to work overtime and on any shift when assigned by his/her immediate supervisor. In the event an employee has a justifiable excuse and is unable to work overtime, he/she shall immediately notify his/her immediate supervisor so an alternate may be selected.

### 4. Authorization for Overtime

Overtime work may be authorized to cover emergencies, necessary seasonal activity, weather conditions, and unusual working requirements by the Town Manager or the employee's supervisor. It is the responsibility of the Town Manager or the employee's supervisor to determine that overtime pay is administered in the best interest of the Town. In addition, it is equally important for the supervisor to control unauthorized overtime. It is the responsibility of the supervisor to arrange normal working schedules so as to minimize the need for overtime work by given employees and the consequential overtime pay. Supervisors are expected to be aware of the

number of hours being accumulated by each employee during a given pay period. Where workload allows such action, the supervisor shall require a subordinate to take time off so that no more than the appropriate numbers of hours are worked.

5. Eligibility for Overtime Pay

- A. Non-exempt employees, other than law enforcement personnel, who are required to work more than 40 hours per week shall be entitled to compensation at 1.5 times the employee's regular rate<sup>1</sup> for working hours over 40 hours per week, but not in increments of less than one half hour.
- B. Non-exempt law enforcement personnel shall be entitled to overtime pay at 1.5 times the employee's regular rate for hours worked beyond 80 hours in two weeks (14 days).
- C. Exempt employees who are authorized by the Town Manager or an employee's supervisor to perform work classified as non-exempt that results in their working more than forty hours per week shall be paid overtime for the hours spent performing said non-exempt work over forty hours per week.

**C. Meal and Rest Breaks**

It is the Town's policy to comply with all laws regarding meal and rest breaks.

Rest breaks of short duration (up to 10 minutes) will be counted as "hours worked" and paid accordingly. Meal breaks lasting 30 minutes or more are not considered "hours worked" for purpose of federal law and will not be paid for nonexempt employees.

Employees must be completely relieved from work duties during any unpaid meal breaks. Nonexempt employees must record the beginning and ending time of their meal breaks each day on their time records.

**D. Lactation Accommodation**

The Town will provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child. Employees needing breaks for lactation purposes may use ordinary paid rest breaks or may take other reasonable break time when needed. If possible, the lactation break time should run concurrently with scheduled meal and rest breaks already provided to the employee. If the lactation break time cannot run concurrently with meal and rest breaks already provided or additional time is needed for the employee, the lactation break time will be unpaid for nonexempt employees.

Employees will be relieved of all work-related duties during any unpaid break. Where unpaid breaks or additional time are required, employees should work with their supervisor regarding scheduling and reporting the extra break time.

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<sup>1</sup> The regular rate is the hourly rate of pay plus any other non-overtime wages paid or allocated for that workweek, excluding any amounts that are excluded from the regular rate by the FLSA, divided by the total number of hours worked in that workweek.



Exempt employees who need lactation accommodation breaks do not need to report any extra break time as “unpaid”.

The Town will provide employees with the use of a room or a private area, other than a bathroom or toilet stall, that is shielded from view and free from intrusion from co-workers and the public. The Town will make a reasonable effort to identify a location within close proximity to the work area for the employees to express milk. This location may be the employee’s private office, if possible.

The Town will otherwise treat lactation as a pregnancy-related medical condition and address lactation-related needs in the same manner that it addresses other non-incapacitating medical conditions, including requested time off for medical appointments, requested changes in schedules and other requested accommodations.

Employee should discuss with the Town Manager the location of storage of expressed milk. In addition, employees should contact the Town Manager during their pregnancy or before their return to work to identify the need for a lactation area.

## **E. Telecommuting**

### Purpose

Telecommuting is a transitional work program available for temporary weather-related conditions and other unusual circumstances, as approved in advance by the Town Manager, in order to decrease absenteeism and improve productivity for the benefit of the Town organization. It is not intended to occur on a consistent basis nor shall it be used as a substitute for dependent care or other personal reasons. Telecommuting is not appropriate for all Town employees nor are employees entitled to or guaranteed the opportunity to telecommute.

### Authorization to Telecommute

The ability to telecommute to work shall be authorized by the Town Manager, at his/her discretion, for those employees who are eligible for the program. Authorization must be approved in advance for each day the employee requests the ability to telecommute.

### Eligibility

In order to be eligible to telecommute, an employee’s work must be of a nature that his/her tasks can be successfully performed away from the office. In general, the positions which may be allowed to telecommute should have the following characteristics: (1) require independent work; (2) require infrequent face-to-face interaction with the public and/or co-workers; (3) require concentration; (4) result in specific, quantifiable work products and (5) can be monitored via output rather than time spent on the job.

Employees who telecommute must have a safe home office environment and the equipment needed at their home in order to telecommute. Other than remote computer network access, the need for specialized materials or equipment in order to telecommute must be minimal.

In determining whether an employee is suited to telecommute, the Town Manager shall consider whether the employee has consistently demonstrated that he/she is dependable; is conscientiousness about his/her work time and productivity; is self-motivated; displays the ability to work well alone; communicates effectively with supervisors and co-workers; and, performs at an overall satisfactory level or above in their position. The Town Manager shall also consider whether the office needs are met and may disapprove telecommuting at his/her discretion.

#### Duties and Responsibilities of a Telecommuting Employee

The duties, obligations and responsibilities of an employee who telecommutes shall be the same as when the employee works at his/her regular office. Employees who telecommute shall ensure that a high level of public service is maintained and that abuses of this program do not occur. Employees who telecommute are expected to (1) be able to be reached by phone, (2) work on Town business at their homes and (3) shall not conduct non-Town work during their telecommute work hours. Employees who telecommute are subject to the Town's policies regarding the use of Town equipment and shall not allow anyone else to use Town provided equipment (including hardware and software) and services. Employees who telecommute must maintain the confidentiality of Town information, prevent unauthorized access to any Town system or information and dispose of work related documents in a manner that will not jeopardize the interests of the Town.

#### **F. Payroll and Time Sheets**

The Town Treasurer shall prepare the payroll based on time sheets submitted by employees and verified by the employee's supervisor and the Town Manager. The payroll period is defined as a two-week period beginning at 12:01 AM on a Thursday and ending at midnight on the second following Wednesday. Time sheets shall be submitted to the Town Treasurer by the close of business on the Tuesday of each payroll week period. Paychecks are issued on Friday, every two weeks.

In order to calculate employee pay and benefits, employees are required to accurately record the time they start and end their shifts, including meal periods if taken, on their time sheets. Nonexempt employees are not to work any time that is not authorized by the Town.

Non-supervisory employees are forbidden to alter, enter information on or tamper with another employee's time sheet. All employees are forbidden to falsify information on any time sheet. Employees must sign their time sheets to certify their accuracy. Any errors discovered in an employee's time sheet by the Town Treasurer or Town Manager are to be reported immediately to the supervisor, who will determine the manner and method of correcting legitimate errors and shall direct the Town Treasurer to make the appropriate changes. Attempts to falsify time sheets may result in disciplinary action against the employee, up to and including termination.

#### **G. Salary Program**

The Town salary program is intended to establish pay practices to comply with federal and Commonwealth of Virginia laws, to support the Town's commitment to the Equal Employment Opportunity Law and to ensure competitive salaries within the labor market.

The Town Manager shall be responsible for developing a pay plan, which may include a pay scale, and for assigning all positions to the pay grade, based upon a careful analysis of the requirements of the positions. Such analysis will include but not be limited to: skills, responsibilities, effort required, work conditions and education/experience. The pay plan shall become effective upon approval by the Town Council, and may be amended by Council action.

Nothing in the pay plan shall limit the Town Manager from day-to-day personnel management. The Town Manager may periodically review salary scales and adjust salaries, as deemed appropriate, within available funds, to reflect prevailing rates of pay in order to attract and retain employees in the Town service. The Town Manager may also adjust salaries as appropriate, or provide for bonuses within available funds to award exceptional service. When this occurs, the Town Manager shall notify the Town Council of the salary adjustments and/or bonuses within two weeks of approving them.

In assigning salary ranges, consideration shall be given to prevailing rates of pay for comparable work in other similar public sector and private sector positions, the current cost of living and the duties and responsibilities of the position. In addition, when assigning salary ranges, consideration shall be given to the funds that are available.

Supervisors are responsible for immediately informing the Town Manager of any significant change in duties, responsibilities, working conditions or other factors which might affect the pay grade of a position.

In the event an employee is temporarily assigned the duties of another position (i.e. acting status) that carries a higher pay classification, he/she shall be paid in accordance with the salary range for that position for the length of time he/she serves in such an acting capacity. This higher pay status shall not apply to instances in which an employee is filling in for an employee who is on annual leave. In the event an employee is temporarily assigned the partial duties of another position that carries a higher pay classification, he/she shall be paid commensurate with the duties assigned.

A general review of the entire plan by the Town Manager is required each year prior to the submission of that year's budget request to the Council. A more comprehensive review of the plan may be conducted by the Town Manager as determined appropriate.

## **H. Bonus Programs**

It is the policy of the Town to encourage its employees to fully participate in providing the best service to our citizens. Providing recognition to employees for their loyal and dedicated service to the Town has a positive impact on morale and productivity. Employees who feel appreciated for their work have greater incentive to remain employed by the Town and to demonstrate excellence in public service. To achieve this, the Town will recognize individuals and teams who demonstrate exceptional customer service, continuous improvement and/or teamwork.

The Town encourages its supervisors to recognize deserving employees throughout the year with a verbal and/or written thank you, including recognition during a Town Council meeting. In addition, other forms of recognition, as identified below, may be offered subject to the availability of funds and the adoption by Town Council of an ordinance authorizing such payments. The following guiding principles should be taken into consideration related to the granting of any performance bonus:

1. Recognition should never become an entitlement or expected compensation;
2. Both team and individual recognition are important;
3. Recognition of any type must be fairly and equitably considered throughout the organization.

### **Performance Bonus**

Performance goals are developed to encourage employees in aligning their individual job duties with the goals and objectives of the Town. Individual performance accomplishments provide the opportunity to evaluate the success of the individual and Town in providing services to the citizenry. Performance evaluations, as discussed in Chapter VI of this handbook, are designed to determine how well employees achieve established goals, perform job duties and interact with customers and coworkers. An employee who attains a 4.0 or higher on his or her annual performance evaluation is eligible to receive a base pay performance increase as determined by the Town Manager. The amount of the base pay performance increase shall be dependent upon the availability and amount of funding as approved by the Town Council.

### **Project Bonus**

In addition to performance bonuses, a project bonus may be provided to an employee(s) for the successful completion of an extraordinary project and/or team effort. There is no limit to the number of project and/or team bonuses for which an employee(s) may be nominated for or receive. Employees must have passed their initial review in order to be eligible to receive a project bonus.

The Town Manager shall make recommendations to the Town Council regarding the award of a project bonus. All project bonuses (including the number and type of award) shall be at the discretion of the Council. The type and level of award may include, but is not limited to, cash awards and/or days off with pay.

### **Spot Bonus**

Spot awards are small awards that can be given by the Town Manager to an employee(s) who perform an outstanding act or service for the Town. The amount of the award shall be limited to \$25-\$250. An employee may receive no more than two spot awards in a given fiscal year.

### **Longevity Bonus**

The Town recognizes the value of the institutional knowledge created through long-term employees. As such, it desires to recognize and reward employees who have achieved significant anniversary milestones. On an employee's significant anniversary dates, as identified below, the Town Treasurer shall include a bonus in the amounts as identified below in the employee's payroll check for the date that coincides with said anniversary:

10 Year Anniversary Date: Five Hundred Dollars (\$500)  
15 Year Anniversary Date: Seven Hundred Fifty Dollars (\$750)  
20 Year Anniversary Date: One Thousand Dollars (\$1,000)  
25 Year Anniversary Date: One Thousand Five Hundred Dollars (\$1,500)  
30 Year Anniversary Date: Two Thousand Dollars (\$2,000)

### **Suggestion Award Program Bonus**

A suggestion award bonus may be awarded to an employee on a one-time basis in recognition of their contribution of a practical idea that results in monetary savings, increased effectiveness of public relations or service to the public and/or safer working conditions. All awards shall be recommended by the Town Manager and approved at the discretion of the Town Council. The type and level of award may include, but is not limited to, days off with pay and/or cash awards.

Acceptance of an award constitutes a waiver of the employee's or the employee's heirs claim of rights against the Town for the Town's use of the suggestion. The employee will retain all rights and interests for the use of the suggestion in non-Town business to include pursuit of patents or royalties.

### **Certification/License Increase**

The Town encourages employees to pursue education and professional development opportunities that maintain or improve skills related to the performance of their jobs. In recognition of attaining a Town-approved certification or license that is beyond that already required for the position, all full-time employees are eligible to receive up to a five percent (5%) pay increase upon receipt of said certification or license. It is the responsibility of the employee to notify the Town Manager in advance of seeking the certification/license, to confirm it is eligible for a certification/license increase and to request the increase after the certification/license has been attained.

To be eligible for an increase, the certification/license must: (1) be directly related to the employee's current job; (2) add value to the employee's job and/or performance; (3) be recognized by an accepted state or national association or organization; (4) require extensive (generally defined as one year or longer) classroom instruction or equivalent on-the-job training; and (5) be on a list of certifications/licenses approved by the Town Manager.

Certificates attained for attending short-term training shall not be eligible for a certification/license increase. Should the certification/license lapse or be lost, the employee shall immediately notify the Town Manager and the amount of the increase shall be reduced effective with the date of expiration/loss.

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## **CHAPTER IV LEAVE**

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### **A. Attendance**

Employment with the Town carries with it the responsibility to be at work on time every day, as attendance is an essential function of every job. The Town realizes, however, that some absences are inevitable. The following section describes what absences are excused.

Unexcused employee absenteeism, repetitive absenteeism, and/or unexcused tardiness may result in disciplinary action up to and including termination of employment. Unexcused absences or tardiness may also be a factor considered by the Town in determining other terms and conditions of employment such as pay increases.

In accordance with the Unauthorized Leave Without Pay Policy below, absent extraordinary circumstances or a legally protected reason, if an employee fails to report for work without any notification to their supervisor and their absence continues for a period of five (5) consecutive work days, the Town will consider that the employee has abandoned and voluntarily terminated his or her employment.

### **B. Paid Vacation**

Full-time employees and Charter Officials shall accrue paid vacation at the following rates:

First through third year: 10 days per year, to be earned at a rate of .84 days per month.

Fourth through ninth year: 15 days per year, to be earned at a rate of 1.25 days per month

Ten years and above: 20 days per year, to be earned at a rate of 1.67 days per month

Part-time charter (appointive) officers and employees are not eligible to earn paid vacation.

Temporary or seasonal employees are not eligible to earn vacation time.

Eligible new employees and officers shall accrue paid vacation from the initial date of employment, but are not eligible to take paid vacation until they successfully complete their initial review period. However, at the supervisor's discretion, the employee may be allowed to take paid vacation under special circumstances.

All requests for paid vacation leave must be approved in advance by the employee's immediate supervisor. Employees may not be able to take annual leave at the time requested depending on the needs of the Town and the efficient delivery of services to the citizens.

Employees and officers who have been employed by the Town for four (4) or more years are encouraged to take a minimum of two weeks' vacation annually. Unless otherwise specified in an employee's agreement, an employee's vacation time balance may not exceed 300 hours at the end

of the fiscal year. In the event an employee's vacation time exceeds 300 hours at the end of the fiscal year, the Town Treasurer shall convert the amount exceeding the 300 hours over to sick leave. Upon request to the Town Manager, and based on unusual or exigent circumstances, an employee may be permitted to carry a balance of more than 300 hours at the end of a fiscal year.

In times of personal or financial need, or in cases of emergency, or in such operational circumstances that an employee has been limited in their ability to use annual leave, an employee may request that he/she be allowed to cash in up to forty (40) hours of accrued annual leave, which shall be paid out in the next payroll cycle. This request may be granted at the discretion of the Town Manager; however, no more than one (1) such request per employee shall be granted per fiscal year. The employee must have a remaining annual leave balance of at least 120 hours to be approved. Within one week of the approval of such a request, the Town Manager shall report the details of this transfer-of-leave-for-cash request to the Town Council's Personnel Committee Liaison.

Use of annual leave by exempt, executive employees must be taken in increments of half- or full-days (4 or 8 hours, respectively).

Upon retirement, resignation or termination, unless the termination is involuntary, an employee or officer is entitled to compensation of all unused vacation time, up to 300 hours, as allowed under Chapter I of the Employee Handbook. Employees who are terminated involuntarily shall not be entitled to compensation of unused vacation time.

### **C. Sick Leave**

Sick leave shall not be considered a right which may be used at the employee's discretion, but is a privilege. Sick leave shall be provided to aid employees in time of need and shall only be used when necessary and as outlined in this policy.

Full-time Charter Officials and employees shall accrue sick leave at a rate of one (1) day per month. Part-time charter (appointive) officers or employees are not eligible to earn sick leave.

Employees and Charter Officials eligible to earn sick leave may accrue unlimited sick leave. Employees are eligible, upon separation from the Town, for compensation from the Town of Middleburg of 25% of their accumulated sick leave, at their current rate of pay, in accordance with the following table:

- 5-14 years of service: 25% of sick leave balance, up to \$10,000
- 15-19 years of service: 25% of sick leave balance, up to \$15,000
- 20+ years of service: 25% of sick leave balance, up to \$20,000

Sick leave may not be taken in increments of less than thirty minutes. Use of sick leave by exempt employees must be taken in increments of half- or full-days (4 or 8 hours, respectively).

#### Use of Sick Leave

Eligible employees may take sick leave for the following purposes:

- a. Personal sickness or physical incapacity of the employee or a member of the employee's immediate family;



- b. Medical, dental, or optical appointments for the employee or a member of the employee's immediate family;
- c. Exposure to a contagious disease when the employee's presence at work jeopardizes the health of others; and
- d. Conditions as dictated under the provisions of the Family and Medical Leave Act where the employee's attendance is required as dictated in Section E below.

Employees are required to notify their immediate supervisor of illness as early as possible or as otherwise required by the department head but no later than the beginning of their normally scheduled workday. The Town Manager and/or department head will determine in his/her sole discretion if reasonable notice is provided.

#### Approval of Sick Leave/Written Certificate of Sickness or Physical Incapacity

- a. The employee's immediate supervisor has the authority to grant sick leave. An employee may be required by the supervisor to submit a certificate by a licensed physician confirming the employee's incapacity and his/her inability to report for work if the supervisor has reasonable suspicion that the employee is not sick or otherwise incapacitated.
- b. An employee who is away from work for medical conditions which require absence in excess of three consecutive work days may be required to submit to the supervisor a certificate from a licensed physician outlining the general nature of the medical condition, stating the earliest approximate date of return to duty, and advising on the ability of the employee to perform his/her regular duties.
- c. Sick leave shall not be approved if the employee does not present the necessary physician's certificate(s) when required by his/her supervisor. This will result in loss of pay for the days taken as well as possible disciplinary action.
- d. In the event an employee begins a pattern of repetitively using his/her sick leave as determined by the Town Manager, the employee shall be required to submit a certificate by a licensed physician confirming the employee's incapacity and his/her inability to report for work each time he/she is absent from work.

#### Medical Examination

The Town Manager may require an employee to undergo a medical examination to be performed by a Town-authorized, licensed physician and at Town expense under any of the following conditions:

- a. When there is evidence to support that an employee is having problems related to job performance or safety;
- b. To verify fitness for duty of employees assigned to physically demanding jobs;

- c. When in the judgment of the Town Manager, an employee absent on sick leave is falsely or fraudulently using sick leave;
- d. Upon an employee's return to work after an absence due to sickness or physical incapacity;  
or
- e. When an employee has been exposed to a contagious disease or hazardous substance. If the employee is confirmed to have a contagious disease or illness, he/she may not return to work without the written approval of said Town-authorized, licensed physician.

An employee or Charter Official away from work for medical conditions which require absence from work in excess of thirty (30) days is required to submit to the Town Manager a written statement from the attending physician or health care provider stating the earliest approximate date of return to duty and advising on the ability of the employee to perform the essential functions of his/her job with or without reasonable accommodations. All medical information will be kept confidential and will be made a part of a file separate from the employee's personnel file.

#### Transfer of Sick Leave

When an employee or officer has exhausted his/her available balances of sick leave and is required to be away from work for personal sick leave or any condition that qualifies the employee for FMLA, he/she may request the transfer of sick leave from other Town employees. To initiate such a transfer, the employee shall submit a written request to the Town Manager, who in his/her discretion, may require the employee to provide written proof of the need for such sick leave. Upon the Town Manager's finding that the transfer of sick leave is appropriate, he/she shall notify the Town's employees of the request to determine if any would like to voluntarily transfer a portion of their leave to the requesting employee. The employee requesting the sick leave shall not contact or in any manner solicit other employees for a transfer – this may only be done by the Town Manager. Upon receipt of written confirmation that an employee(s) wishes to transfer a portion of their sick leave to the requesting employee and upon the written approval of the Town Manager, an employee or Charter Official may transfer in writing a specific portion of their sick leave balance to the requesting employee or officer.

#### Exceptions

Exceptions to this policy may be considered on a case-by-case basis and approved in writing by the Town Manager.

In cases of prevalent disease; local, state, or national emergency due to a pandemic; or other such situation that may jeopardize the health of one or more employees, the Town Manager is authorized to grant additional hours of sick leave to one or more employees for use in accordance with the policies above in order to protect the interests of the Town.

#### **D. Personal Leave**

Exempt employees, as specified in Chapter III.B., will be granted five (5) personal leave days at the beginning of each fiscal year. Personal leave days may be rolled-over at the end of each fiscal year without a cap on the days in balance; however, there is no payout of any personal leave days

at the time of termination, separation, or retirement, and there is no cash value to the personal leave days an employee may accrue.

Exempt employees hired throughout a fiscal year will be granted one (1) personal leave day for every three months (or portion thereof) remaining in the fiscal year. For instance, an employee hired on January 15<sup>th</sup> will receive two (2) personal leave days upon hire (as there are six months remaining in the fiscal year).

Personal leave days must be taken in full-day (8 hour) increments. Use of personal leave days must be approved by the employee's supervisor and requested days off may be denied based on the operational needs of the organization.

This policy will take effective immediately upon adoption and five (5) days of personal leave will be granted to each exempt employee as of the date of adoption.

## **E. Family and Medical Leave**

In accordance with the Family and Medical Leave Act, as may be amended from time to time, eligible employees of the Town may take up to twelve (12) weeks of leave (an "FMLA" leave) in a 12-month period. As of the date of the adoption of this policy, the provisions as set forth below shall apply.

Eligibility: An eligible employee is an employee who has been employed for at least 12 months; and has worked at least 1,250 hours during the 12-month period preceding the need for leave.

Availability: FMLA leave is available for:

- (1) The birth of a son or daughter of the employee and in order to bond with and/or care for that son or daughter;
- (2) The placement of a son or daughter with the employee for adoption or foster child;
- (3) The employee has a serious health condition that makes the employee unable to perform the essential functions of his/her position;
- (4) The employee's spouse, son, daughter or parent has a serious health condition;
- (5) The employee is needed to care for the spouse, son, daughter or parent;
- (6) For qualifying exigencies arising out of the fact that an employee's son, daughter or parent is on covered active duty status as a member of the National Guard, Reserves or Regular Armed Forces; or
- (7) To care for a covered service member with a serious health condition<sup>2</sup>.

Definition of Serious Health Condition: A serious health condition is defined as generally any illness, injury, impairment or physical or mental condition that involves:

- (1) In-patient care in a hospital, hospice or residential medical care facility or any subsequent treatment in connection with such in-patient care;

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<sup>2</sup> Eligible employees are allowed up to twenty-six (26) weeks of leave during a single twelve (12) month period in order to care for a covered service member with a serious health condition

- (2) A period of incapacity of more than three (3) consecutive calendar days requiring continuing treatment by a health care provider;
- (3) Any period of incapacity due to pregnancy or for prenatal care;
- (4) Any period of incapacity or treatment due to a chronic serious health condition which requires periodic visits for treatment, continues over an extended period of time and may cause episodic incapacity; or
- (5) Any condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment.

Period of Leave: Eligible employees are allowed up to twelve (12) weeks of leave during any twelve (12) month period. Worker's Compensation injuries or any other illness or injury, including disability, will be counted as FMLA leave if the injury or illness qualifies as a serious health condition.

Use of Other Available Leaves: An employee must first use Paid Family Leave (as described in Section E below) and all unused annual leave, sick leave, and personal leave (if applicable) as part of the FMLA leave. Requests for Transfer of Sick Leave, as authorized under Section C above, may not occur until Paid Family Leave is exhausted. The remainder of the FMLA leave period will be unpaid.

Notice: In order to prevent disruption of Town operations, the employee should provide advance notice of at least thirty (30) days for the need to take leave where the need for leave is foreseeable, such as the birth of a child. Where the need for leave is not foreseeable, the employee should provide notice as soon as possible. Failure to provide notice may lead to delay of leave being granted and may result in discipline, including termination, as provided by law.

Intermittent Leave: Employees have a duty to attempt to schedule leave, as soon as practicable, so as not to disrupt Town operations. Thus, leave may be taken on a reduced or intermittent leave schedule only when medically necessary. The Town may allow, in its discretion, an employee to take intermittent leave for an employee to take care of a newborn child.

The Town reserves the right to assign an employee to an alternative position or placement with equivalent pay and benefits to better accommodate the reduced leave schedule.

Medical Certification and Re-certification: Employees may be required to provide medical certification for leave to care for the employee's seriously ill spouse, child or parent as well as the employee's own serious health condition. Re-certification may also be required during the period of leave. If the Town questions the certification or re-certification, it reserves the right to seek a second opinion at the Town's expense.

The Town may require, in its sole discretion, that an employee who has taken leave because of his/her own serious health condition to get medical certification that he/she can return to work and perform the essential functions of his/her job without risk of injury to the employee or co-workers prior to allowing the employee the opportunity to return to work. Where it questions the return-to-work certificate, the Town reserves the right to seek a second opinion at the Town's expense. Failure to provide the necessary return-to-work certificate or failure to cooperate with the second opinion may prohibit reinstatement and may result in termination as provided by law.

Reinstatement after FMLA Leave: An employee taking FMLA leave will be returned to the same position or to an equivalent position with equivalent pay and benefits unless:

- (1) The employee is not medically released to perform the essential functions of his/her job without risk of injury to the employee or co-workers;
- (2) The employee is determined to be a “key” employee and the return would cause substantial and grievous economic injury to the Town (A “key” employee is defined as being a salaried, FMLA-eligible employee who is among the highest paid ten percent of all the employees employed by the Town within seventy-five miles of the employee’s worksite.);
- (3) Business circumstances have changed in that irrespective of the leave, the employee would not have been employed at the time of reinstatement, i.e. layoff; or
- (4) As provided by law, the employee fails to return to work after the FMLA leave or the employee tells the Town that he/she will not return to work.

For scheduling reasons, employees should try to provide the Town with at least two (2) weeks’ notice of the day they intend to return to work or if two weeks’ notice is not practicable, as soon as circumstances allow.

Insurance: The Town will continue the employee’s group health insurance coverage during the leave period under the same terms and conditions as prior to leave. Thus, employees will be required to only pay those premium payments for health insurance they were making prior to the leave during the leave. Employees, however, will be required to make premium payments for all other optional insurance coverages, such as life, short and long term disability, etc. Failure to make premium payments within the applicable grace periods could lead to termination of those benefits. The Town may seek to recoup insurance premium payments as allowed by law, including where the employee does not return from FMLA leave and the failure to return is not due to the employee’s inability to return because of a serious health condition.

Miscellaneous: An employee will not accrue additional benefits such as annual leave during FMLA leave.

An employee’s entitlement to leave for the birth of a child, to take care of a newborn child or for the placement of the child for adoption or foster care expires one year after the birth of the child or the placement with the employee in the case of a child for adoption or foster care.

## **F. Paid Family Leave**

Paid Family Leave is paid leave that enables the employee to take leave from work for any qualifying reason that would be covered under FMLA and as set forth in Section E above. This leave shall run concurrently with any applicable FMLA. Paid Family Leave is available to eligible employees for qualifying absences occurring on or after April 1, 2021, to include any eligible employee approved for FMLA as of April 1, 2021.

Eligibility: In order to qualify to take Paid Family Leave under this policy, the employee must meet all of the following conditions:

- (1) The employee has completed their initial review period, to include any extensions.

- (2) The employee must be approved for FMLA.
- (3) The employee must be eligible for leave benefits (i.e., full-time employee).
- (4) All other requirements of FMLA remain in effect, regardless of the use of Paid Family Leave.

The Town Manager is authorized to implement administrative policies and procedures governing the eligibility for and use of Paid Family Leave.

Benefit Amount: Eligible employees will receive a maximum of 6 work weeks of Paid Family Leave for a qualifying absence.

Limitations: In no event will an employee receive more than 6 weeks of Paid Family Leave in a period, regardless of whether there is more than one qualifying absence, or more than one birth, adoption or foster care placement event occurs within that 12-month time period. Approved Paid Family Leave for parental bonding may be taken at any time during the 12-month period immediately following the birth, adoption or placement of a child with the employee, and may not be used or extended beyond this 12-month time period. Unused Paid Family Leave will not carryover to another 12-month period and will not be paid to an employee upon separation of employment.

Concurrence with FMLA Leave: Paid Family Leave taken under this section shall run concurrently with FMLA; thus, any leave taken under this section that falls under the definition of circumstances qualifying for a leave of absence due to the employee's serious health condition, the serious health condition of a covered family member, or the birth or placement of a child due to adoption or foster care and will be counted toward the 12 weeks of available FMLA leave within a 12-month period. All other requirements and provisions under the FMLA will apply in accordance with Section E above. Paid Family Leave may be taken intermittently only when intermittent FMLA leave is approved. In no case will the total amount of leave— whether paid or unpaid—granted to the employee under the FMLA exceed 12 weeks during the 12-month FMLA period.

Notice: Employees must inform the Town of intent to use Paid Family Leave in the same manner as notice is required under FMLA.

## **G. Administrative Leave**

Administrative leave at full pay may be authorized for the purpose of investigating or resolving work related complaints, allegations, offenses, charges or disciplinary action, or for providing paid leave prior to a dismissal from employment, or for testifying at work related judicial proceedings. The employee must be informed in writing of the administrative leave period and the general reason why he/she is being placed on administrative leave. While on administrative leave, the employee may be required to make himself/herself available during working hours. Administrative leave may be authorized for an initial period of up to ten (10) working days. The Town Administrator may extend this timeframe with appropriate notice to the employee and as required for the purposes stated above.

The Town Manager may also authorize up to one day of administrative leave for emergency, work-related reasons and shall document the number of and reasons for days authorized. Emergency is defined as a work-related incident that results in a short-term need to remove the employee(s) from the worksite for the benefit of the organization in that their continued presence could be detrimental to the employee(s), services or facility.

Administrative Leave does not affect other accrued leave balances and employees continue to accumulate annual and sick leave while on administrative leave.

## **H. Leave without Pay**

Leave without pay may be granted to a full-time employee or Charter Official by the Town Manager, in his/her discretion, for a period not to exceed six (6) months. To be eligible to take leave without pay, an employee or officer must have worked for the Town for twelve (12) months and must have worked at least 1,250 hours within the twelve (12) months preceding the start of the leave.

Leave without pay may be taken:

- a. To cover FMLA Leave.
- b. Other circumstances in the employee or Charter Official's personal life, such as but not limited to an educational opportunity, which upon the consideration of the Town Council and/or Town Manager would merit the necessity for leave without pay.

The employer's cost of health insurance in effect during leave without pay will continue to be paid by the Town for a period not to exceed two (2) months except as provided by law. The employee on leave without pay will be liable for his/her cost of the health plan in effect during leave without pay by payment of the amount due to the Town Treasurer. Such payment(s) shall be made once per month. Employees on leave without pay will continue participation in the-Virginia Retirement System (VRS) and the group life and accident insurance provided through VRS in accordance with the rules and regulations established by VRS and in effect at the time of the leave without pay. Leave without pay does not constitute a break in service, but changes the anniversary date if the employee is absent for more than thirty (30) days, except in cases covered under Worker's Compensation.

Failure on the part of the employee to report to work at the expiration of approved leave without pay may be cause for disciplinary action, up to and including dismissal.

## **I. Unauthorized Leave Without Pay**

An employee who has not had prior authorization to use leave, including leave without pay, may be placed on unauthorized leave without pay status for five (5) consecutive work days. As soon as placed in this status, the Town Manager shall immediately send the employee a letter, either hand delivered or return-receipt requested, at his/her last known address, notifying him/her of his/her placement on unauthorized leave status. At the conclusion of the five work days, if said employee has not contacted the Town Manager and received approval for some form of leave, he/she shall be automatically terminated, as permitted by law.

## **J. Bereavement Leave**

Any full-time Charter Official or employee may use up to five (5) days bereavement leave in the event of death of an immediate family member. If authorized by the Town Manager, additional leave may be taken and charged to vacation leave, personal leave, or leave without pay. In the

event of death of a non-immediate family member, an employee may request time off using vacation leave, personal leave, or leave without pay.

## **K. Military Leave**

Both state and federal law provide employees with the right to take leave in order to serve in the military. At the federal level, military leave rights are governed by the Uniformed Services Employment and Re-employment Rights Act, commonly referred to as USERRA. This policy discusses military leave under USERRA.

Eligibility for Leave: The Town provides unpaid military leave of absence to employees who serve in the uniformed services as required by USERRA and applicable state laws. The uniformed services are defined as the Army, Navy, Marine Corps, Air Force, Coast Guard, Army National Guard, Air National Guard, Commissioned Corps of the Public Health Service and any other category of persons designated by the President of the United States in time of war or national emergency. The uniformed services also include participants in the National Disaster Medical System when activated to provide assistance in response to a public health emergency, to be present for a short period of time when there is a risk of a public health emergency, or when they are participants in authorized training.

Service consists of performing any of the following on a voluntary or involuntary basis: active duty, active duty for training, initial active duty, inactive duty training, full time National Guard duty, absence from work for an examination to determine fitness for such duty, and absence for performing funeral honors duty. Total military leave time may not exceed five years during employment, except in certain, defined circumstances.

In addition, members of the state military forces, including the Virginia National Guard, the Virginia State Defense Force and Virginia residents who are members of the National Guards of another state, who are called to state active duty or military duty for weekend drills and two-week training duty are entitled to an unpaid leave of absence for the length of the period of active service.

Notice of Leave: Advance notice of leave is required, preferably in writing, unless giving such notice is impossible or unreasonable or notice is prohibited by military necessity (which is defined by the United States Department of Defense). When notice is required, employees must provide their supervisor with as much advance notice as possible of any anticipated leave of absence for military service.

Compensation and Benefits: Accrued, unused vacation will be paid during military leave at the employee's request. After thirty (30) days of continuous military leave, employees may elect to continue their health plan coverage at their own expense, for up to twenty-four (24) months or during the remaining period of service, whichever is shorter.

The leave will be unpaid except that employees may elect to use any accrued annual leave.

Reinstatement: In order to be eligible for reinstatement, an employee must have provided advanced notice of the need for military leave (where required) and have completed his or her service on a basis that is not dishonorable or otherwise prohibited under USERRA.



Employees whose military service will be for fewer than thirty-one (31) calendar days must report back to work at the beginning of the first full, regularly scheduled work day following completion of service, after allowing for a period of safe travel home and eight hours of rest.

Employees whose military service will be for more than thirty (30) calendar days, but fewer than one hundred eighty-one (181) days must apply for re-employment within fourteen calendar (14) days after completing service.

Employees whose service is greater than one hundred eight (180) calendar days must apply for re-employment within ninety (90) calendar days after completing service.

As with other leaves of absence, failure to return to work or to reapply within the applicable time limits may result in the loss of re-employment rights.

Employees must notify the Town in writing of their intent to return to employment following military service in accordance with the following timing requirements:

- Within fourteen (14) calendar days of release from duty or from hospitalization following release for individuals whose period of service was one hundred eighty (180) calendar days or less; or
- Within ninety (90) calendar days of release from duty or from hospitalization following release for individuals whose period of service was more than one hundred eighty (180) calendar days.

The Town will re-employ employees returning from military leave so long as the employee received an honorable discharge and the combined length of the absence from service and of all previous military leaves of absence from employment with the Town does not exceed five (5) years.

In general, an employee returning from military leave will be re-employed in the position and seniority level that the employee would have attained had there been no military leave of absence. If necessary, the Town will provide training to assist the employee in the transition back to the workforce.

Upon return, employees will be restored to the position they held when ordered to duty. If that position has been abolished or otherwise ceased to exist during the employee's leave of absence, the employee will be reinstated in a position of like seniority, status and pay if the position exists, or to a comparable vacant position for which they are qualified, unless to do so would be unreasonable.

Vacation benefits do not continue to accrue during a military leave of absence. An employee returning from military leave is entitled to any unused, accrued vacation benefits the employee had at the time the military leave began minus any vacation benefits the employee chose to use during the leave. Upon reinstatement, the employee will begin to accrue vacation benefits at the rate he or she would have attained if no military leave had been taken.

Additional Rights for Virginia National Guard Members: Members of the Virginia National Guard who are called to state active duty service for thirty (30) consecutive days or more are also entitled to the rights, benefits and protections provided under the federal Service members Civil Relief Act for a call to federal active duty.

In addition, when a member of the Virginia National Guard is called to active duty by the Governor, he or she will have the option of continuing life or health insurance at his or her own expense.

#### **L. Jury Duty and Court Appearance Leave**

The Town encourages all employees to fulfill their civic responsibilities and to respond to jury service summons or subpoenas, attend court for prospective jury service or serve as a juror, or to take time off from work needed to respond to a summons or subpoena to appear in court, except as a criminal defendant. Under no circumstances will employees be terminated, threatened, coerced or penalized because they take or request leave in accordance with this policy. Employees are to notify their immediate supervisor upon receipt of a jury summons or subpoena. Verification from the court clerk of having served may be required.

Employees will be expected to report or return to work for the remainder of the work schedule on any day they are dismissed from jury duty. However, employees who serve as jurors for four or more hours, including travel time, on the day of the appearance are not required to return to work to start any shift that begins on or after 5:00 p.m. on the day of service or begins before 3:00 a.m. on the day following the day of service.

Absences related to jury duty, when subpoenaed to appear before a civil or criminal court, except for criminal defendants, or when performing emergency civilian duties in connection with national defense are excused for all absences. Employees are to notify their immediate supervisor immediately upon receipt of a jury summons or subpoena.

An employee will be given time off without charge to annual leave or loss of pay for a maximum of five (5) work days per year unless circumstances necessitate a waiver of this provision by the Town Manager. In order to receive pay, an employee must submit evidence to their supervisor of the summons or subpoena, selection notice and voucher of payment by the court.

Employees will not be required to use sick leave or vacation for time spent responding to a summons and/or subpoena, for participating in the jury selection process or for serving on a jury.

#### **M. Crime Victim Leave**

Eligible employees who are victims of a crime may take time off from work to attend any criminal proceedings relating to the crime, provided the employee has the right to appear. Employees are eligible for leave under this policy if:

- The employee has suffered physical, psychological or economic harm as a direct result of the commission of a felony, assault and battery, maiming or driving while intoxicated;
- The employee is the spouse or child of the victim;
- The victim is a minor and the employee is the victim's parent or legal guardian; or
- The victim is physically or mentally incapacitated or was a homicide victim and the employee is the victim's spouse, parent, sibling or legal guardian.

Employees who are accountable for the crime or who are the relative or guardian of an individual

who committed the crime are not eligible for leave under this policy. The Town may limit leave provided under this policy if the leave creates an undue hardship for the Town.

An employee will be given time off without charge to annual leave or loss of pay for a maximum of five (5) work days per year unless circumstances necessitate a waiver of this provision by the Town Manager.

In order to receive pay, an employee must submit evidence to their supervisor of the summons or subpoena, selection notice and voucher payment by the court. The period of such leave shall be only as necessary for the performance of the activity, plus any necessary travel time.

Before employees may take time off from work for this purpose, they must provide their supervisor with a copy of the form provided to the employee by the applicable law enforcement agency and, if applicable, a copy of the notice of each scheduled criminal proceeding that is provided to the employee as a victim.

The Town will not retaliate or tolerate retaliation against any employee who seeks or obtains leave under this policy.

#### **N. Voting**

The Town encourages all employees to fulfill their civic responsibilities and to vote in official public elections. Generally, working hours are such that an employee will have ample time to cast a vote before or after the work shift. If employees do not have sufficient time to vote, however, that employee should discuss the matter with a supervisor. The Town will comply with all applicable state and municipal voting laws.

#### **O. Election Officer Leave**

Employees will be allowed time off from work to serve as an election officer, meaning a person appointed by an electoral board to serve at a polling place for any election. Employees must provide their supervisor with reasonable notice of the need for leave. Verification from a representative of the electoral board of having served may be required.

Employees who serve as election officers for four or more hours, including travel time, on the day of election service are not required to return to work to start any shift that begins on or after 5:00 p.m. on the day of service or begins before 3:00 a.m. the following day.

Time off for election leave will be unpaid except that exempt employees may receive pay, as required by applicable law. Employees will not be required to use sick leave or vacation time for their leave.

The Town will not terminate or take any adverse employment action against an employee as a result of requesting or taking leave under this policy.

**P. Volunteer Leave**

The Town Manager is authorized to develop a program to encourage volunteerism in the community, with up to two (2) days (more specifically, 16 hours) per fiscal year granted to each employee for volunteering. Employees are encouraged to volunteer together, if possible, and in the Middleburg community.

**Q. Paid Holidays**

The following holidays are paid by the Town of Middleburg:

New Year's Day	Columbus Day
Martin L. King, Jr. Day	Election Day (November only)
Washington's Birthday (President's Day)	Veterans' Day
Memorial Day	Thanksgiving Day
Juneteenth	(and Friday after)
Independence Day	Christmas Eve (1/2 Day)
Labor Day	Christmas Day

(Floating Holiday – 1)

In addition, Town Employees will receive any holidays, including regular or floating, designated by the County of Loudoun. The Town Council may authorize additional holidays at its discretion.

For purposes of compensation, each holiday is considered to be the 8-hour period when the Town Office is closed. If a holiday occurs on a Saturday, the preceding Friday will be observed. If a holiday occurs on a Sunday, the holiday will be observed on Monday.

Employees and officers required to work on a holiday will be entitled to eight (8) hours of regular base pay in addition to their normal compensation for the hours worked. Work hours on a holiday is paid at straight time; holiday hours are paid at straight time and do not count as “hours worked” for overtime calculation purposes.

Part-time employees are not entitled to paid holidays.

Temporary or seasonal employees are not entitled to paid holidays.

## **R. Severe Weather Policy/Emergency Leave/Liberal Leave**

In the event of weather conditions that necessitate closing the Town Office, emergency leave shall be granted by the Town Manager. “Emergency leave” is paid leave granted to all full-time employees and Charter Officials. This time is not charged to an employee or Charter Officer’s annual leave balances. During emergency leave, non-essential personnel are released from duty. Essential personnel are expected to report for duty. During severe weather conditions, the Town of Middleburg shall follow the closing policy as established by the County of Loudoun; however, the Town Manager, in consultation with the Mayor, may override the County and close the office or delay its opening as weather conditions necessitate for the safety of traveling employees.

Essential employees include police officers and maintenance employees. Employees who are required to work during a period for which emergency leave has been declared will be paid emergency leave plus compensation in accordance with Chapter III of this Handbook for all hours worked while the Town Office is closed.

Non-essential employees will be paid straight time, commensurate with their normal working hours, on days that the Town Office is closed during emergency leave.

The Town's policy of requiring advance approval of time off (leave) will not be enforced when adverse weather conditions may make it unsafe for an employee to travel to and from work. Under these circumstances, non-essential employees will be granted liberal leave by the Town Manager and may use vacation leave, personal leave, or leave without pay for an absence while the Town Office is open. Sick leave may never be used during a period of liberal leave unless the employee meets the requirements of Section C above. Employees already on scheduled leave with pay who do not report to work are eligible for emergency leave if declared during the period of scheduled leave. Employees must contact their supervisor as soon as possible if they cannot report for or remain at work because of severe weather.

An employee who is absent from duty without approval shall receive no pay for the duration of the absence; and may be subject to disciplinary action up to and including dismissal.

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## **CHAPTER V**

### **EMPLOYEE BENEFITS**

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#### **General Policy**

The following is a list of benefits offered by the Town. The Town reserves the right to alter benefits as business conditions necessitate and as allowed or required by law. Copies of all plan documents are available for review in the Town Treasurer's office.

#### **A. Workers' Compensation**

In accordance with the Virginia Workers' Compensation Act, the Town provides insurance for all employees covered by the Act to pay for medical and lost wages expense which result from an on-the-job injury, disability, or death. Any Town employee who is injured while performing the duties of his/her assigned position generally is eligible to receive Workers' Compensation Benefits.

An Employer's First Report of Accident form must be filed with the Town Office within 24 hours of the injury or illness. Employees should report all injuries received while on duty, no matter how minor they may seem. If no medical attention (other than first aid) is provided, no additional reporting is required.

Employees seeking medical attention for work related injuries or illness must consult with a physician approved by the Town for review of Workers' Compensation cases, except in the case of emergency treatment.

Employees who need to take time off from work due to a worker's compensation illness or injury may also be eligible for a leave of absence under the Town's leaves of absence or reasonable accommodation policies.

During the time when an employee is receiving Workers' Compensation Wage Benefits, he/she will not receive his/her regular pay from the Town. If, however, there is a delay in getting wage benefits, the Town at its discretion may advance the employee in question an amount equal to the benefit which Workers' Compensation will pay.

During the time any Town employee is receiving Workers' Compensation benefits for lost wages, the employee will continue to participate in the health plan in effect at the time of injury. The Town will continue to pay the employer's cost for the health benefit premium as long as the employee is unable to work as determined by the employee's physician or until Workers' Compensation benefits have been exhausted or until the employee is separated from Town service, whichever comes first. For on-the-job injuries which also qualify for Family and Medical Leave, the Town will continue to pay the Town's portion of such insurance for the period of FMLA leave.

The employee will be liable for his/her portion of the health insurance premiums in effect while unable to work as the result of a job-related injury by payment of the amount due to the Town Treasurer. Such payment(s) shall be made to the Town Treasurer once per month as set forth by the Town.

During the time any Town employee is receiving Workers' Compensation benefits for lost wages, the employee will continue to participate in the Virginia Retirement System (VRS) and group life insurance program provided through VRS in accordance with the rules and regulations established by VRS and in effect at the time of the injury.

The employee will be liable for the employee's cost of the "Optional Life Insurance" program provided through VRS while unable to work as the result of a job-related injury by payment of the amount due to the Town Treasurer. Such payment(s) shall be made to the Town Treasurer once per month as set forth by the Town.

The Town actively supports a selective return-to-work program. Employees who are ready to return to work following a worker's compensation-related leave of absence must supply a certification from a health care provider confirming the employee's ability to return to work.

For claims deemed compensable under the Town's worker's compensation plan, every effort shall be made within the employee's department or if necessary within another department, to find a suitable modified work assignment for an employee unable to perform his/her regular duties. Any return to work action taken by the Town shall be in accordance with Virginia compensation laws.

The modified work assignment shall be based upon the treating physician's medical evaluation (including information on required medical treatments, recovery prognosis, work restrictions, and time frames.) The Town Manager shall carefully consider the medical report(s) and the availability of suitable modified duty prior to initiating a modified work assignment.

Any injured employee who refuses any suitable employment shall not be entitled to any compensation at any time during the continuance of such refusal, unless in the opinion of the Virginia Worker's Compensation Commission the refusal was justified.

During the time any Town employee is receiving Workers' Compensation benefits for lost wages, the employee will not accrue vacation or sick leave, nor shall the employee receive credit toward completing his/her initial review period if applicable.

The Town will notify the worker's compensation insurance company if it has reason to believe an employee has supplied false or misleading information in connection with a claim and/or has filed a fraudulent claim. Worker's compensation fraud is a crime and may also be grounds for disciplinary action, up to and including termination of employment.

## **B. Health Insurance**

Eligible employees as required by law and Charter Officials may participate in the health insurance plan, or plans, made available to them by the Town. Elected officials may also participate in the health insurance plan for single self-coverage only; and, shall be deemed to be a special class of part-time employees for the purpose of health insurance coverage.



The Town of Middleburg shall pay the cost of health care insurance for its eligible employees according to the following schedule:

Full time employee only	100% of the health care premium
Full time employee and spouse or one dependent	85% of the health care premium
Full time employee and family	80% of the health care premium
Part time employee only, including elected officials	50% of the health care premium
Part time employee and spouse or one dependent	50% of the health care premium
Part time employee and family	50% of the health care premium

Retirees who retired from the Town prior to July 1, 2017 and who participate in the Town's health insurance program shall receive a \$100 per month benefit paid by the Town toward the cost of their health insurance premium. All remaining costs are paid by the retiree.

Retirees who retired from the Town under VRS on or after July 1, 2017, with a minimum of five (5) years of Town service, shall receive a \$200 monthly benefit paid by the Town toward the cost of their health insurance premium. This benefit shall be paid regardless of whether the retiree participates in the Town's health insurance program or utilizes an outside insurer. Employees hired before March 8, 2018 may, at their option, remain on the Town's health insurance plan until the retiree obtains supplemental Medicare insurance, at which time, he/she may participate in the supplemental plan offered through the Town's group health insurance program. Employees hired after March 8, 2018 may remain on the Town's health insurance plan upon retirement from the Town only until such time as the retiree is eligible for Medicare insurance.

A retiree's spouse may also continue to participate in the Town's group health insurance program until he/she obtains supplemental Medicare insurance provided he/she was included on the employee's coverage for the five (5) years preceding the employee's retirement and remains married to the employee. The spouse shall be responsible for the entire amount of the premium contributions.

A retiree's dependent children may also continue to participate in the Town's group health insurance program until they attain age twenty-six (26) provided the dependents were on the employee's coverage for the five (5) years preceding the employee's retirement. The retiree and/or said dependents shall be responsible for the entire amount of the premium contributions.

The retiree has a one-time only option to continue participation in the Town's health insurance plan and such option shall be exercised upon date of retirement from the Town.

When the retiree meets the eligibility requirements for enrollment in Medicare, he/she is required to immediately notify the Town and to enroll in the Medicare program. Retirees who fail to enroll in Medicare upon eligibility risks cancellation from the Town's group health insurance plan.

An employee who qualifies for disability retirement under VRS may continue to participate in the Town's group health insurance program as identified in the paragraphs above.

## **C. Retirement Benefits**

The Town is a member of the Virginia Retirement System (VRS). All full-time officers or employees of the Town are required to enroll in the system and, thus, are entitled to all benefits offered by the Plan in accordance with the date of their employment with the Town. Any officer or employee who is over 65 years of age when first employed may elect not to participate in the retirement plan. If he/she is already covered by VRS, he/she may elect to cease making contributions at age 65.

Retirement benefits are not automatically paid. The employee must file the appropriate forms requesting benefits with VRS at least ninety (90) days in advance of the effective date of retirement. Part-time, temporary and seasonal employees are not eligible for retirement benefits.

VRS offers several alternative methods of receiving retirement benefit payments based upon when the retiree entered VRS. These options are outlined in the Handbook for Members which is provided by VRS directly to members. The amount of the retirement benefit is based on three factors: the employee's average final compensation, years of service credit, and age.

### Plan 1 & Plan 2 Members:

VRS Plans 1 & 2 are defined benefit plans. Individual members contribute 5% of their annual base salary to VRS. This contribution is paid by the member. The Town, as the employer, makes additional annual payments to VRS to assist in funding the Plan. This payment by the Town is determined actuarially by VRS.

### Hybrid Retirement Plan Members:

The Hybrid Retirement Plan is a combination of two types of plans – a defined benefit plan and a defined contribution plan. Under the defined benefit plan, individual members contribute 4% of their creditable compensation each month to their defined benefit member contribution account and the Town, as the employer, makes a separate contribution directly to VRS on behalf of the covered employee. The defined contribution plan consists of two plans – a Hybrid 401(a) Cash Match Plan and a Hybrid 457 Deferred Compensation Plan. Participants in the Hybrid 401(a) Cash Match Plan also contribute 1% of creditable compensation each month into their 401(a) plan, with the Town providing a 1% match. The Town shall also match any voluntary contributions made by the employee as required by VRS. Participants in the Hybrid 457 Deferred Compensation Plan may make voluntary contributions up to a maximum of 4% of creditable compensation.

### Enhanced Coverage for Hazardous Duty Service (also known as LEOS)

The Town participates in Law Enforcement Officers Supplemental (LEOS), also known as enhanced coverage for hazardous duty service, through the Virginia Retirement System. This supplement is available for sworn law enforcement personnel who retire with at least twenty (20) years of eligible hazardous duty creditable service. The supplement is a dollar amount added to an eligible employee's monthly retirement payment and begins when an employee retires. It ends when the individual reaches normal retirement age under Social Security. For more information on eligibility and benefits, contact the Virginia Retirement System.

#### **D. Life Insurance**

The Town of Middleburg provides group life insurance through VRS for all eligible full-time Charter Officers and employees. This coverage, which includes coverage for accidental death, natural death, and dismemberment, is available to VRS-enrolled personnel only. Information on the amount of each benefit may be obtained at the Town Office.

Life insurance coverage ceases at the end of the month after termination of employment before eligibility for retirement through VRS. Upon retirement from VRS, basic life insurance coverage continues at no cost to the retiree; however, the amount of the life insurance reduces by 25% annually starting January 1<sup>st</sup> of the retirees first full year following retirement, until the coverage reaches 25% of the value at retirement. In no event will the amount of life insurance decrease to less than ¼ of the amount to which the reduction was applied.

VRS makes available “Optional Life Insurance” to employees electing to purchase the coverage. The employee is responsible for the full cost of the “Optional Life Insurance”. Detailed and specific information on the “Optional Life Insurance” Program may be obtained at the Town Office.

#### **E. Direct Deposit and Automatic Payroll Deduction**

All employees of the Town are eligible to participate in direct deposit of all of their compensation to any financial institution or automatic payroll deduction of a portion of their compensation to a financial institution(s).

Direct deposit and payroll deduction shall be limited to two financial institutions and is subject to the terms and conditions of the financial institution(s). Payroll deduction may be for any specific dollar amount, not percentage. The employee must file the appropriate paperwork with the Town and be responsible for any and all updates or changes. An individual employee shall be limited to no more than two (2) changes in their direct deposit/payroll deductions per calendar year, unless authorized by the Town Manager in the case of an extraordinary circumstance.

#### **F. Tax Deferred Compensation**

The Town of Middleburg has adopted and implemented an optional tax deferred compensation plan for all employees. The purpose of this plan is to allow employees to postpone receipt of a portion of their salary and receive its value when they retire. The amount of deferred earnings is not subject to income tax until it is paid out.

Upon election to participate in the tax deferred compensation plan, payment into the plan by the Town is automatically processed by the Town Treasurer. The Town will match full-time employee’s contributions to the deferred comp plan up to a set dollar amount per month, said amount to be determined annually by the Town Council as a part of the budget process.

Tax deferred compensation plan(s) offered by the Town to its employees may be changed from time to time as Council may approve.

## **F. Fitness Benefit**

The Town of Middleburg recognizes that unhealthy lifestyles can be costly to the Town as they may result in chronic illness that leads to the loss of productivity due to absence from work and/or reduced performance while at work, as well as increased insurance costs. In an effort to promote the health and well-being of its employees, the Town offers a fitness benefit to all full-time employees. Under this program, eligible employees shall receive reimbursement, in an amount as determined by the Town Council, for membership in a gym or other fitness program as evidenced by the production of a signed membership contract or other proof of participation to the Town Manager. Reimbursement shall be subject to applicable taxes.

Employees who receive this benefit are responsible for immediately notifying the Town Manager should they allow their fitness membership contract to lapse.

Nothing in this section shall be construed to mean that the employee's use of the gym or participation in a fitness program is intended to occur during normal work hours or are to be counted as paid working hours. All such use/participation is intended to occur during an employee's off-duty hours.

## **G. Tuition Assistance**

The Town believes that employees should have the opportunity to expand their knowledge and further their job-related education. The purpose of the Tuition Assistance Program is to provide financial assistance for an employee in order to achieve this goal.

Tuition assistance benefits shall be available to all full-time employees who have completed their initial review. Courses must be taken at an accredited college or university and must be job-related, or be required courses to complete a job-related degree. The employee must successfully complete the course in the expected timeframe by receiving a grade of "C" or better.

The amount of tuition assistance benefits shall be determined annually by the Town Council and will be based upon the availability of funds. Employees who wish to pursue tuition assistance benefits should contact the Town Manager. The Town Manager will establish program criteria, to include the requirement of a certain tenure of service following tuition assistance payments to an employee, in a separate policy.

## **I. Long-term Care Insurance**

VRS makes available "long-term care insurance" to employees electing to purchase the coverage. This coverage applies to eligible employees and family members. Benefits received are not taxable and premiums paid may be tax deductible under certain conditions. Details and specific information on "long-term care insurance" may be obtained at the Town Office.

## **CHAPTER VI**

### **EMPLOYMENT EVALUATIONS**

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#### **A. POLICY**

The Town works to create an environment in which our employees can learn, develop and contribute in a meaningful way to the success of the Town. To this end, the Town has created a performance evaluation system that supports these goals.

Effective performance management is one of the Town's key strategic planning goals and a core responsibility of all supervisors and employees. To achieve this goal, it is the policy of the Town for supervisors and employees to participate in an annual performance evaluation process. This process includes both employee self-evaluation and supervisor evaluation. The process will apply to all employees, including Charter Officers, except for the Town Manager, who shall be evaluated on an annual basis as determined by the Town Council.

In an effective governmental setting, assignments and projects are monitored continually. To that end, supervisors will measure employee performance consistently, provide ongoing feedback to employees, and ensure that their progress toward professional goals are addressed, supported and coached where necessary.

The Town Manager or Department Head will introduce the performance evaluation process to new employees as part of their orientation.

The content of performance evaluations are not subject to the Town of Middleburg Grievance Procedure.

#### **B. PURPOSE**

The Town has established a performance management system to: 1) provide a method by which employees can be objectively assessed regarding their job performance; 2) assist employees in aligning individual job duties with the goals and objectives of their department; and 3) encourage and support employees' individual career development. To that end, employees' performance evaluations include goal-setting and reviewing performance against standards which shall be measurable, understandable, verifiable, equitable, and achievable.

Performance evaluations are designed to determine how well employees achieve established goals, perform job duties, and interact with customers, coworkers, and team members. Department supervisors are responsible for establishing departmental goals and working with their employees to establish individual employee goals and/or duties that contribute to the Town's mission. Employee performance evaluations help employees focus work activities so that employee, department, and Town goals are achieved.

The performance evaluation may be used as the basis for personnel decisions, including career development, salary increases, and disciplinary action, as appropriate. The Performance Evaluation is designed so that employees:

1. Know what is expected of them;

2. Are given the opportunity to contribute to developing individual performance goals;
3. Receive timely feedback about performance;
4. Receive coaching and constructive criticism when appropriate;
5. Receive opportunities for education, training, career development, and promotion; and
6. Receive recognition in a fair and equitable manner.

## **C. PROCESS**

The Town believes in a process of continuous, two-way performance evaluation and feedback by both supervisors and employees. This evaluation process must be grounded in a shared understanding of employee and supervisor roles and responsibilities, as well as in organizational and employee goals. Town goals flow down to supervisors and employees from the Town Council's goals for Town government. All Town staff are responsible for helping to achieve the Council's goals.

### **1. Annual Evaluation Cycle.**

The annual evaluation cycle will begin June 1 of each year, with completed annual evaluation forms being submitted to the Town Manager on or before July 15, annually. A mid-year check-in between each employee and his/her supervisor will also occur, as noted below, to be completed during the month of January each fiscal year.

### **2. Key Annual Evaluation Process Elements**

The annual performance evaluation process includes:

- a. Initial review period for all new employees, as specified in Chapter 1, Section H;
- b. Assignment of Town employee roles and responsibilities for annual Town Council goals by Town Manager, department heads and supervisors;
- c. Establishment of individual employee goals related to organizational goals, as well as individual career development goals and training needs;
- d. Goal progress check-ins with employees by supervisors, with frequency related to employee development level and needs for each goal;
- e. A formal mid-year check-in by supervisors with employees to address progress on goals midway through the annual evaluation period. The premise is to coach where necessary and receive feedback from the employee. Progress toward employee goals will be discussed, as well as any delays or obstacles experienced. The need for employee support and/or training will also be discussed; and
- f. An annual evaluation, to include an employee self-evaluation, supervisor's evaluation, employee review of supervisor's evaluation, and a face-to-face discussion between the employee and supervisor. In the case of Charter Officials (excluding the Town Manager and Town Attorney), the Town Manager shall draft the Official's evaluation, which shall then be shared with the Mayor and Town Council in closed session for their input prior to providing the evaluation to the Official.

### **3. Continuous Feedback and Documentation**

Beyond this formal evaluation process, supervisors are responsible for providing continuous feedback to their employees throughout the year. This feedback is best communicated in the course of normal daily interactions and discussions with employees or in periodic meetings set up for that purpose. Employees are also responsible for informing their supervisors if they feel they are not receiving adequate feedback. With regular communication, there should be no unexpected outcomes when the annual performance evaluation is completed.

While it is part of each supervisor's responsibility to document performance, employees are also strongly encouraged to document their own performance. Documentation of performance is critical to support and justify performance evaluation scores. Accurate record-keeping and documentation are key to a successful and effective performance evaluation.

### **4. Elements of the Evaluation**

A major goal of the evaluation process is to provide employees with a method by which they can be objectively assessed regarding their job performance. To that end, employees' performance evaluations will be based on performance elements and standards which are measurable, understandable, verifiable, equitable, and achievable.

#### **a. Town-wide Values and Goals Elements:**

- i. Core Town government values and critical elements of performance expectations are evaluated for all Town employees through the annual evaluation process and included on the annual performance evaluation form.
- ii. Town and departmental goals will be discussed with employees by their supervisor at the beginning of each fiscal year and after the Town Council establishes its goals for the year. This will alert employees to general expectations and requirements for each discipline or specialty within the Town government.

- b. **Departmental or Discipline-Specific Elements:** Departments or specialties within Town government, such as law enforcement, may have additional evaluation elements that will be included as an addendum to the annual performance evaluation form.

## **D. PERFORMANCE EVALUATION PERIODS**

### **1. Initial Review Period for Non-Charter Employees**

All new employees, excluding Charter Officials, are hired for an initial review period in order to demonstrate that he/she can perform the duties of the position in a satisfactory manner. This initial review period shall be for six (6) months, with the exception of police officers who are sent to the Police Academy for basic law enforcement certification. Officers who are sent to the Police Academy shall be hired for an initial review period of one (1) year, during which time their qualifications for becoming a regular employee are evaluated on the basis of effective adjustment to the new position. (See also Police Department Policies for standards applicable to their probationary employees).

Upon satisfactory completion of the initial review period and evaluation, regular status shall be granted. If, however, in the judgment of the supervisor, initial review employees do not meet the required performance standards, and subject to the provisions regarding removal below, they may be (1) considered for transfer to a more suitable position, (2) given more time to prove to the supervisor that they are capable of meeting the required performance standards for the position through an extension of the initial review period (not to exceed an additional six months), or (3) separated from the Town's employment.

Employees in their initial review period shall not be eligible for any salary increases except when cost of living increases are issued during the employee's initial review period or the employee's position is reclassified.

#### Removal or Dismissal during Initial Review Period

An employee is subject to removal at any time during the initial review period, with or without cause. During the initial review period, the employee's supervisor may recommend dismissal; however, no employee shall be removed from a position during his/her initial review period without the approval of the Town Manager. All recommendations from the supervisor to the Town Manager shall be in writing. Charter Officials may not be removed without consultation with and approval of the Town Council.

## **2. Non-Probationary Employees; Evaluation Cycle**

Employees who continue in the Town's employment beyond the initial review period will participate in the annual performance evaluation process. Upon release from the initial probationary status the employee shall complete the self-evaluation tool.

### **E. EVALUATION PROCEDURES & INSTRUCTIONS**

Evaluation procedures and instructions are included with the evaluation forms in the Appendix.

### **F. RETENTION OF PERFORMANCE EVALUATION FORMS.**

- 1. Completed Evaluation Forms.** Completed performance evaluation forms are official personnel documents and must be retained in the employee's personnel file. Completed forms may be used by the Town Manager to make informed personnel decisions.
- 2. Confidentiality.** Performance evaluations and all related forms are to be held in strict confidence. Only the following individuals may obtain access to an employee's performance evaluation: employee, supervisor, Department head or Town Manager, or those specifically authorized by the Town Manager acting on official Town business, or, in the case of Charter Officials, the Mayor and Town Council.

### **G. TOWN COUNCIL'S GENERAL OVERSIGHT OF TOWN EMPLOYEES**

If any member of the Town Council wishes to comment on a particular employee's performance outside of the formal evaluation process, he/she should speak to the Town Manager.

The Town's evaluation forms are included in an Appendix to this handbook.



## **CHAPTER VII**

### **STANDARDS OF CONDUCT**

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#### **A. General Standards of Conduct**

Employees of the Town of Middleburg shall abide by the standards of conduct listed below. Employees who fail to abide by these standards shall be subject to disciplinary action up to and including dismissal.

1. Employees shall report for work at the time designated in their job descriptions and letters of appointment, and shall remain on duty throughout their assigned work hours. Any deviation from the designated work hours must be authorized in advance by the employee's supervisor.
2. Employees shall report for work dressed appropriately for their duties, including when representing the Town during functions outside of normal working hours.
3. Employees shall perform their duties in compliance with safety standards required by the Occupational Safety and Health Administration (OSHA).
4. Employees shall not use any equipment or facilities owned by the Town of Middleburg except while performing assigned duties for the Town, unless specifically authorized by their respective employment agreements and in compliance with the terms of the Employee Handbook and the Code of Virginia, as amended.
5. Employees shall conduct themselves in a courteous, professional and respectful manner at all times. Employees shall not use language or gestures, which would reasonably be deemed offensive by the general public.
6. Employees shall not dispense special favors or privileges to anyone or accept favors which might be construed by reasonable persons as having the potential to influence the performance of Town duties.
7. Employees shall not solicit or accept anything of value in return for performing or refraining from performing an official act.
8. Employees shall not use, possess, or be under the influence of any intoxicant (alcohol, drugs, or any other substance which could impair performance) while performing Town duties or on Town property or in Town vehicles.
9. Employees shall abide by the personnel policies set forth by the Town, and by all Federal, State, and Town codes, laws and ordinances in the performance of their duties.
10. Employees shall not conduct themselves in such a way, whether during work hours or not, that brings disrepute to the Town. Doing so may subject the employee to disciplinary action, up to and including immediate termination.

11. Any employee who witnesses a violation of the Standards of Conduct shall inform his/her immediate supervisor. The immediate supervisor shall then be responsible for informing the Town Manager immediately, who shall then inform the Town Council of the report during a closed session meeting of the Council. In the event the immediate supervisor fails to inform the Town Manager of said violation within thirty (30) days of receiving the first report, the witnessing employee shall report the violation to the Town Manager and/or the Town Council.

## **B. Vehicle Use Policy**

It is the policy of the Town of Middleburg that Town-owned vehicles will only be used for official Town business and purposes that can reasonably and directly be related to an employee's assigned duties and responsibilities.

### **1. Requirements**

- a. Whenever feasible, employees will use a Town vehicle in the performance of their official duties. If a Town vehicle is not available, the employee may receive reimbursement for using his/her private vehicle at the current mileage reimbursement rate authorized by the United States Internal Revenue Service. The Town does not insure employee's personal vehicles for damages sustained while utilized for Town business. In the event of an accident, an employee should contact his/her own insurance company.
- b. Unless otherwise specified within this policy or with the express permission of the Town Manager, all Town owned vehicles must remain on Town premises when not in use for official duties.
- c. Except for public safety vehicles, Town vehicles should not be left running or unlocked when someone is not physically in the vehicle. When parking, employees should turn off the vehicle, remove the keys and lock the vehicle. Employees must keep the keys on their person at all times.
- d. Employees operating a Town vehicle must report any accident or damage to that vehicle immediately to the Town Manager. The Town Manager shall then be responsible for completing a review of the incident within twenty-four hours of the incident.

### **2. Take Home Vehicles – Regular Basis**

Certain Town employees may be authorized by the Town Manager to take home a Town vehicle on a regular basis. The criteria used to determine the eligibility will be:

- a. Potential for emergency call back.
- b. Potential for use outside the normal workday.

No take-home vehicle may be utilized without prior approval of the Town Manager.

Assignment of a take-home vehicle shall be limited to those individuals living within a 25-mile radius of the Town Office.

Employees assigned take-home vehicles are subject to the appropriate tax liability in accordance with IRS regulations.

3. Take-Home Vehicles – Occasional Basis

Employees not assigned take-home vehicles may take a vehicle home under the following situations if approved by the Town Manager (or by the Police Chief for Police officers) and if a vehicle is available:

- a. When it is logical for the employee to travel directly from home to a meeting or conference the next day.
- b. In circumstances where it is in the best interest of the Town that an employee have the use of a vehicle.

**C. Employee Driving Policy**

It is the policy of the Town of Middleburg to promote employee and public safety and to reduce the Town's exposure to financial loss involving the use of motor vehicles. To this end, the Town shall annually review and evaluate the driving records for all Town employees who regularly operate a motor vehicle on Town business.

1. Requirements

- a. All employees operating a motor vehicle on Town business must maintain a valid state driver's license at all times. Any suspension, change to limited driving restriction or revocation of an employee's driver's license or the accrual of six or more demerit points on his/her driving record must be reported to the Town Manager at once. In addition, if an employee is charged with DUI/DWI, he/she must report it immediately to the Town Manager. An employee without a valid driver's license shall not operate any motor vehicle on Town business until their license is restored. Any employee who knowingly operates a motor vehicle on Town business without a valid license or an acceptable driving record, as determined by the Town Manager, shall be terminated.
- b. Employees who drive Town vehicles must grant to the Town Manager the authority to inspect their personal driving records at any time by signing an "Employee Driving Record Acknowledgement/Release Form". Employees who fail to return a signed form within one week of being requested to do so shall immediately have their driving privileges with the Town suspended and may be subject to disciplinary action up to and including termination.
- c. Upon receipt of an employee's signed Employee Driving Record Acknowledgement/Release Form and annually thereafter, the Town Manager shall obtain and review the employee's driving record. The Town Manager shall assess the employee's driver's license status and examine the employee's driving record for patterns of unsafe driving to include but not be limited to DWIs, reckless driving, speeding, vehicle accidents and other violations that may affect the employee's ability to operate a motor vehicle while on Town business. In assessing an employee's pattern

of unsafe driving, the Town Manager shall consider the following Driving Record Grading Criteria:

**Driving Record Grading Criteria (last 3 years):**

Number of Demerit Points assessed by DMV after successful completion of a driver improvement class	Number of At-Fault Accidents* (last 3 years)			
	0	1	2	3
0	Acceptable	Acceptable	Probationary	Poor
1	Acceptable	Acceptable	Probationary	Poor
2-3	Acceptable	Probationary	Probationary	Poor
4-5	Probationary	Probationary	Poor	Poor
6	Probationary	Poor	Poor	Poor
>7	Poor	Poor	Poor	Poor

\*At fault as determined by the investigating police officer

- d. If the Town Manager determines an employee’s driving record to be “probationary” by the above standards, the employee shall be placed in a probationary review period until his/her driving record improves to “acceptable”. If said employee receives any additional infractions while in a probationary review period, the employee shall immediately have their driving privileges with the Town suspended and may be subject to disciplinary action up to and including termination.
- e. If the Town Manager determines an employee’s driving record to be “poor” as determined by the above standards, the employee shall be immediately terminated.
- f. An employee who is disciplined as a result of this policy may file a grievance if otherwise eligible to do so under Chapter X.
- g. Following the completion of an employee’s driving record review, the Town Manager shall cause the written print-out to be placed in the employee’s personnel file. Upon request of the employee, a copy of the record will be sent directly to him/her.

**D. Electronic Communications & Telecommunications Policy**

1. Consent to Monitoring

As a requirement for employment by the Town, employees will be required to consent to the monitoring of communications sent, received and stored on equipment provided by the Town or on electronic, wire, or digital services provided by the Town, including but not limited to phones and computers.

## 2. Internet

### a. Provision of Internet

The Town may provide electronic wired and wireless communications equipment for business purposes. The use of this equipment should not be for personal use or political activities as defined in Section 15.2-1512.2 of the Code of Virginia of 1950, as amended. Messages received, sent, and stored on this equipment will be subject to monitoring at any time and in the course of this monitoring may be read for content. Employees should be aware that there are stored records of all communications. There should be no expectation of privacy in any communications received, sent, or stored on equipment or service provided by the Town.

### b. Employees Access

The Town has established an internet account that provides unlimited access to the Internet and the World Wide Web to its employees as one of the many resources available to assist them in doing their jobs better and more efficiently. This access is provided exclusively for Town business and any personal communications, political activities or transfers will be considered property of the Town and therefore subject to seizure and review at any time. In addition, any illegal or inappropriate usage, including but not limited to pornography, personal or criminal activities, will be grounds for immediate termination. In addition, in the event that an employee illegally or inappropriately uses the Town's internet account and this illegal/inappropriate usage results in an expense to the Town, said employee will be responsible for reimbursing the Town in the amount of said expense.

### c. Passwords and Email Addresses

Employees may be provided with user accounts, passwords and e-mail addresses to enable them to use the account. These accounts and passwords belong to the Town and are not provided to make employees' usage confidential or private. E-mail records are business records of the Town of Middleburg. As such, they are subject to the retention regulations contained in the Virginia Public Records Act of the Code of Virginia. The usage of the Internet is subject to the same code of conduct which applies to all other actions in the workplace, and using the Town's Internet account in a manner that violates any rules or regulations constitutes grounds for disciplinary action, up to and including termination. The electronic use, transmission, and storage of messages, files, images, and sounds are subject to monitoring by the Town.

Passwords shall be developed in a format consistent with the current recommendations of the Town's technology services provider and the Town Manager. Employees shall reset their passwords when required.

Employees must not share their Town user accounts or passwords with any other individuals, including other employees or outsiders, unless authorized by the Town Manager. Nor is it appropriate to attempt to subvert network security either by accessing the Internet without using your user account and password or by seeking to

discover other user accounts and/or passwords to gain access. Employees are representatives of the Town of Middleburg when using the Town's internet account. Accordingly, they are expected to act and to communicate professionally on the Internet, not to engage in any commercial or illegal activities, or to use the account for personal business or political activities.

Any employee who is terminated by the Town must immediately cease use of their passwords and Town e-mail account. Any attempts to continue their use may result in criminal prosecution by the Town.

d. Employer Access

The Town has access to a log of all usage, including a list of employees who have used the Internet and the sites they visited. The Town will monitor internet usage from time to time, and employees found to be abusing usage or using the Internet inappropriately will be subject to disciplinary action.

3. Town Phones (land lines)

The Town provides telecommunications equipment (landlines) for business purposes. Excessive personal calls during the work day are discouraged as they can interfere with employee productivity and be distracting to others. The use of Town phones should be avoided for personal use and political activities. In no event shall Town phones be used to make long distance calls for personal reasons or for political activities, 900 number calls or any other type of personal or political call that results in a charge to the Town's telecommunications account. Messages received, sent, and stored on this equipment will be subject to monitoring from time to time. There should be no expectation of privacy in any communications received, sent, or stored on equipment provided by the Town.

**E. Social Media Policy**

To address the fast-changing landscape of the Internet and the way residents communicate and obtain information online, Town staff may participate in social media formats to reach a broader audience. The Town encourages the use of social media to further the goals of the Town, where appropriate and with the proper computer security safeguards. The Town Council and the Town Manager have an overriding interest and expectation in deciding who may "speak" and what is "spoken" on behalf of the Town of Middleburg on social media sites. This policy establishes guidelines for the use of social media. For purposes of this policy, social media activity includes all types of postings on the Internet, including, but not limited to, postings on social networking sites, such as Facebook, LinkedIn and Tumbler; blogs and other on-line journals and diaries; bulletin boards and chat rooms; microblogging, such as Twitter; and postings of video or audio on media-sharing sites, such as YouTube or Flickr. Social media activity also includes permitting, or failing to remove, posts by others whenever the employee can control the content of posts, such as on personal page or blog.

1. All official Town presences on social media sites or services are considered an extension of the Town's information networks and are governed by the Electronic Communications Policy contained in the Town Employee Handbook. The Town Manager will review staff requests to use social media sites; and, shall maintain a list of all approved sites.

2. Staff that use social media are responsible for complying with applicable federal, state, and local laws, regulations, and policies. This includes adherence to established laws and policies regarding copyright, records retention, Freedom of Information Act (FOIA), First Amendment, privacy laws and information security policies established by the Town. The Town's Social Media outlets shall not be used for political activities.
3. Wherever possible, links to more information should direct users back to the Town's official website for more information, forms, documents or online services necessary to conduct business with the Town.
4. Employees representing the Town government via Social Media outlets must conduct themselves at all times as representatives of the Town of Middleburg. Employees that fail to conduct themselves in an appropriate manner shall be subject to the Disciplinary Procedures outlined in the Town Employee Handbook.
5. The Town Manager or designee will monitor content on any Town social media sites to ensure adherence to the Social Media Policy for appropriate use, message and branding consistent with the goals of the Town.
6. Town employees shall not disclose personal information regarding an employee gained as a result of their interaction with that employee either on the Town's social media or their personal social media, including an employee's medical condition. Town employees may, however, share information already posted on social media by the employee or his/her authorized representative when deemed appropriate by the Town Manager.
7. Violation of these standards may result in the removal of pages from social media outlets, as well as disciplinary action against the employee responsible for the violations. The Town Manager retains the authority to remove information.
8. Only authorized employees may speak on behalf of the Town on social media sites.
9. The Town's policies with respect to non-discrimination, anti-harassment, sexual harassment and retaliation apply to social media usage.

## **F. Cellular Phone Use Policy**

This policy outlines the use of personal cell phones and Mobile Internet Devices at work and the use of Town of Middleburg cell phones or Mobile Internet Devices by employees.

### **1. Personal Cellular Phones/Mobile Internet Devices**

While at work, employees are expected to exercise the same discretion in using personal cellular phones and mobile Internet devices as is expected for the use of Town phones. Excessive personal calls during the work day, regardless of the phone used, can interfere with employee productivity and be distracting to others. Employees are encouraged to make any personal calls on non-work time where possible and to ensure that friends and family members are aware of Town phone use policy. The Town will not be liable for the loss of personal cellular phones or mobile Internet devices brought into the workplace.

### **2. Personal Use of Town-Provided Cellular Phones/Mobile Internet Devices**

Where job or business needs demand immediate access to an employee, the Town may issue a business cell phone or mobile Internet device to an employee for work-related communications. Employees in possession of Town equipment such as cellular phones or mobile Internet devices are expected to protect these devices from loss, damage or theft. At any time upon request by the Town Manager, an employee may be asked to produce these devices for inspection. Upon resignation or termination of employment, the employee will be asked to return these devices to the Town. Failure to do so will result in criminal prosecution.

#### **2.1 Use of Town-Provided Cellular Phones/Mobile Internet Devices for Political Activities**

At no time ever, shall Town cellular phones or mobile Internet Devices be used for political activities as defined in the Employee Handbook.

### **3. Safety Issues for Cellular Phone and Mobile Internet Device Use**

All employees are expected to follow applicable state or federal laws or regulations regarding the use of cell phones or mobile Internet devices at all times whether hand-held or not. Employees whose job responsibilities include regular or occasional driving and who are issued a cell phone or mobile Internet device for business use are expected to refrain from using their phone while driving. Use of a cell phone or mobile Internet device while driving is not required by the Town. Safety must come before all other concerns.

Employees who are charged with traffic violations resulting from the use of their phone or mobile Internet device while driving will be solely responsible for all liabilities that result from such actions and could result in loss of their cell phone privileges by the Town.



#### 4. Video or Audio Recording Devices

An employee's use of camera phones, mobile Internet devices or other audio or video recording capable devices on Town properties may constitute not only an invasion of employees' personal privacy, but may breach confidentiality of Town of Middleburg protected information. With the exception of police issued video recorders or body worn cameras in the performance of official duties and recordings made in accordance with the Virginia Freedom of Information Act, any method of recording is prohibited by an employee without the knowledge and consent of the person or persons being recorded. Any recordings taken are considered property of the Town and subject to any usage deemed appropriate within legal boundaries.

#### 5. Special Responsibilities for Managerial Staff

As with any policy, management staff is expected to serve as role models for proper compliance with the provisions above and are encouraged to regularly remind employees of their responsibilities in complying with this policy.

### **G. Travel and Training Policy**

The Town of Middleburg is committed to providing its employees and citizens serving in an appointed/elected capacity with the opportunity to seek further training which is beneficial to the Town. It is the intention of the Town to adequately compensate and reimburse those individuals during travel periods based on the following policy.

#### 1. Approval Process

- a. All seminars, courses, meetings, etc. must be related to the performance of the traveler's assigned duties or employee professional development goals, as approved by the Town Manager or department head. The monies requested must be approved by the Town Manager or department head prior to attending the program. Failure to obtain approval when traveling could result in the individual not being reimbursed for travel expenses.
- b. All hotel reservations, conference registrations and other items should be paid in advance by the Town whenever possible. This payment will be made by check or credit card and will be completed prior to the traveler's arrival.

#### 2. Expenses

- a. The individual shall be reimbursed for the cost of his/her meals and incidental expenses by the Town, upon the presentation of receipts, except for alcoholic beverages.
- b. The individual shall be reimbursed for round trip mileage when he/she uses his/her personal vehicle to attend approved travel and training. Reimbursement shall be calculated from the Town Office at the gas allowance rate established by the IRS for that period. Road tolls and parking fees are also included as a reimbursable item.

- c. Unless otherwise authorized by the Town Manager, the Town will only pay for a single room rate for hotel rooms for travel and training exceeding one day and/or at a location that exceeds 125 miles one way from Middleburg. If a double room is desired, the individual will pay the difference between the single and double room rate. If two employees and/or officials share a double room, the double room rate is allowable.
- d. No expenses of any kind incurred by a traveling spouse, family or guest shall be covered by the Town.
- e. No business meals or related expenses shall be considered to be a travel/training expense unless approved in advance by the Town Manager or department head in accordance with Section H(5) of this Chapter.

## **H. Credit Card Use Policy**

The credit card program is intended as an alternative method for procuring goods and services and for eliminating the need for advanced payment for travel/training. The purpose of this policy is to provide a procedure for the use of credit cards for small dollar purchases in accordance with the Town's Purchasing Ordinance (Town Code Chapter 20).

### **1. Card Issuance, Cancellation and Changes**

Credit cards shall be issued to individuals who have been delegated appropriate purchasing authority by the Town Manager. The cards will be issued in the name of the designated individual, with the Town of Middleburg's name and account number embossed on the front. The cards will be kept with the individual who has been issued the card or in the Town's safe at all times.

### **2. Spending Limits**

The Town Manager will establish spending limits, including (1) spending limits per transaction and (2) spending limits per card for the Town's credit cards. Payments for purchases may not be split in order to stay within the same transaction limit.

### **3. General Requirements Associated With Credit Card Use**

In order for spending limits to be monitored and purchasing activity reconciled to the monthly credit card statements, cardholders must maintain a log of purchases made with each credit card. The purchasing log shall include the date of the purchase, the vendor's name, the amount of the purchase, the budget code and the individual details of the purchase. A new purchasing log must be established at the beginning of each new billing cycle. To use the card, the cardholder must:

- A. Inform the vendor that the Town is tax exempt.
- B. Be sure there is no sales tax applied to any purchase. The Town of Middleburg is exempt from sales tax, but must pay meals and lodging taxes.
- C. Retain all documents pertaining to the purchase. When the vendor delivers the order, documentation of the purchase, such as sales receipt or packing slip should accompany the order. Detailed receipts must be retained for all purchases made on the credit card and must list the individual items purchased. This documentation must be kept on file for

reconciliation with the monthly credit card statement and purchasing log. If the employee does not have documentation of the transaction, he/she MUST contact the vendor to get a duplicate receipt.

D. Enter the purchase information in the cardholder's purchasing log sheet.

The Town Treasurer will forward the monthly credit card statement to the card holder(s). The cardholder will verify the accuracy of the statement and return the statement, purchasing log sheet and credit card receipts to the Town Treasurer within three (3) working days. Any discrepancies in the monthly statement and the purchasing log should be noted in the purchasing log and reported to the Town Treasurer immediately.

#### 4. Returns, Purchases & Disputed Items

In most cases, disputes should be resolved directly between the cardholder and the vendor who supplied the goods and services.

The following guidelines must be used when returning an item:

- A. If an item needs to be returned for any reason, the cardholder must send the item back to the vendor in the agreed upon manner as soon as possible.
- B. The vendor should issue a credit for items that are returned. CASH REFUNDS ARE NEVER PERMITTED.
- C. The vendor should issue documentation of the return, such as a credit receipt. All documentation pertaining to returns must be kept on file for reconciliation with the monthly credit card statement.
- D. If an issue with the vendor cannot be resolved, the cardholder will notify the Town Treasurer who will contact the card vendor and ask for an investigation of the dispute on the Town's behalf.

#### 5. Business Meals

Business meals purchased with the Town credit card must be for a particular public purpose and only include attendees necessary to the business at hand. Travel arrangement approval shall include meals costs. The purchases must be documented with the original receipt showing the following:

1. Itemized cost, including tax and tip (tip not to exceed 20%)
2. Name and location of restaurant
3. Names of persons included in the meal purchase
4. Reason for meal expense

6. Travel Expenses

Credit cards may be used for travel related expenses, in accordance with Section G of this Chapter. When outside of the Town limits, credit cards may be used for fuel for pre-approved vehicular trips, with amounts charged being deducted from the amount owed to the employee upon completion of the trip. Original receipts for all travel-related purchases must be attached to the purchasing log.

7. Lost or Stolen Credit Cards

The cardholder is responsible for the safety and security of the credit card. The cardholder shall notify the bank who issued the card, as well as the Town Manager and the Town Treasurer immediately if a credit card is lost or stolen.

8. Items Not Approved for Purchase Using a Credit Card

Town credit cards may not be used for the following purchases under any circumstance:

1. Personal Purchases
2. Cash Advances
3. Personal Services
4. Self-entertaining activities, including but not limited to movies, sporting events, etc.
5. Alcoholic beverages
6. Tips in excess of 20% on meal purchases
7. Meals for spouses, family members or partners
8. Purchases made by anyone other than the authorized cardholder

9. Cardholders Responsible for Credit Card Charges

Cardholders are personally responsible for any credit card charges which violate this policy and for any expenses that are not supported by a receipt for the purchase.

10. Improper Use of Credit Card

The Town Manager will investigate all reports of employee misuse or personal use of the Town credit card. Failure to comply with applicable procedures shall result in the card being immediately and permanently canceled. Improper use of the credit card may result in immediate disciplinary action, up to and including termination and may include criminal prosecution by the Town.

## **J. Harassment-Free Workplace Policy**

The Town of Middleburg is dedicated to a work environment that is free of harassment and discrimination. The Town does not and will not tolerate actions, words, jokes, pictures, gestures or comments to any applicant, employee, vendor or customer related to an individual's veteran status, uniformed service member status, race, color, religion, sex, age (40 and over), pregnancy (including childbirth, lactation and related medical conditions), national origin or ancestry, physical or mental disability, genetic information (including testing and characteristics) or any other consideration protected by federal, state or local law. All such harassment is prohibited.

A. The following conduct, as outlined in the Equal Opportunity Commission Sexual Discrimination Guidelines and state law, is illegal:

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

1. Submission to such conduct is made either explicitly or implicitly a term or condition of the individual's employment;
2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive environment."

Sexual harassment may include, but not be limited to:

- Vulgar language and/or jokes;
- Offering employment benefits in exchange for sexual favors;
- Making or threatening reprisals after a negative response to sexual advances;
- Visual conduct: leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons, posters, websites, emails or text messages;
- Verbal conduct: making or using derogatory comments, epithets, slurs, sexually explicit jokes or comments about an employee's body or dress;
- Verbal sexual advances or propositions;
- Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes or invitations;
- Physical conduct: touching, assault, impeding or blocking movements;
- Teasing;
- Flirtation;
- Graphic or degrading comments;
- Inappropriate physical conduct;
- Retaliation for making reports or threatening to report sexual harassment.

B. Other Types of Harassment

Harassment on the basis of any legally protected classification is prohibited, including harassment based on veteran status, uniformed service member status, race, color, religion, sex, age (40 and over), pregnancy (including childbirth, lactation and related medical conditions), national origin

or ancestry, physical or mental disability, genetic information (including testing and characteristics) or any other consideration protected by federal, state or local law. Prohibited harassment may include behavior similar to the illustrations above pertaining to sexual harassment. They include conduct such as:

- Verbal conduct including threats, epithets, derogatory comments or slurs based on an individual's protected classification;
- Visual conduct including derogatory posters, photography, cartoons, drawings or gestures based on protected classification; and
- Physical conduct including assault, unwarranted touching or blocking normal movement because of an individual's protected status.

Everyone must be sensitive to his/her own behavior toward others. Keep in mind what one considers to be appropriate behavior may be offensive to others. Any inappropriate conduct, as determined by the Town Manager, whether it rises to the level of harassment or discrimination under applicable law, will not be tolerated by the Town.

### C. Complaint Procedure

The Town can only address workplace misconduct if the Town is aware of its existence. An employee who observes or who believes that he or she has been subjected to prohibited harassment, discrimination or retaliation by a co-worker, supervisor, agent, client, vendor or citizen, or who is aware of such harassment, discrimination or retaliation of others, should immediately provide a written or verbal report to his or her supervisor. If this is not appropriate, assistance should be sought from the Town Manager or the Personnel Committee Liaison of the Town Council.

The complaint will be investigated as follows:

1. The complainant shall be asked to submit the complaint in writing, detailing the exact charges.
2. Taped interviews will be conducted with the complainant, the victim (if not the complainant), the accused, witnesses named by the victim and others who may have relevant information.
3. The accused shall be informed of the allegations and provided an opportunity to respond in the interview process.
4. If there is no foundation for the allegations, the investigating authority will notify the complainant and the accused. In this event, the complaint will not be made a part of the personnel record of the accused.
5. If there is a foundation for the allegations, appropriate disciplinary action will be taken, up to and including dismissal.

To the extent possible, complaints and information related thereto will be handled discreetly. When an employee raises a concern, the Town will maintain confidentiality to the fullest extent possible, consistent with applicable legal requirements and the need to conduct an adequate investigation or review.

**D. Protection Against Retaliation**

Retaliation is prohibited against any person by another employee or by the Town for using this complaint procedure, reporting proscribed harassment or discrimination, objecting to such conduct or filing, testifying, assisting or participating in any manner in any investigation, proceeding or hearing conducted by a governmental enforcement agency. Prohibited retaliation includes, but is not limited to, termination, demotion, suspension, failure to hire or consider for hire, failure to give equal consideration in making employment decisions, failure to make employment recommendations impartially, adversely affecting working conditions or otherwise denying any employment benefit.

Employees should report any retaliation to their supervisor. If this is not appropriate, assistance should be sought from the Town Manager or Personnel Committee Liaison of the Town Council. Any report of retaliatory conduct will be investigated in a thorough and objective manner. If a report of retaliation prohibited under this policy is substantiated, appropriate disciplinary action, up to and including termination of employment, will be taken.

**K. Romantic and Family Relationships at Work**

The Town will not take any adverse employment action against any employee for engaging in romantic relationships during nonworking hours away from the Town's premises. However, the Town will consider such action when relationships affect an employee's job performance, take up unreasonable amounts of working time, or create a conflict of interest that cannot be resolved under COIA.

A familial or intimate relationship among employees can create an actual or at least potential or perceived conflict of interest in the employment setting, especially if one relative, spouse, partner or member of a relationship, supervises another relative, spouse, partner or member. To avoid this problem, the Town may transfer a relative or other intimately associated individual to a position where the potential for favoritism or conflict is less.

If two employees marry, become related or enter into an intimate relationship, they may not remain in a reporting relationship or in positions where one individual may affect the compensation or other terms or conditions of employment of the other individual. In other cases where a conflict or the potential for a conflict arises, even if there is no supervisory relationship involved, the parties may be separated by reassignment or terminated from employment, at the discretion of the Town.

For the purposes of this policy, a "relative" is any person who is related by blood or marriage or whose relationship with the employee is similar to that of persons who are related by blood or marriage (e.g. domestic partnership or civil union status).

## **L. Political Activities**

1. Town employees shall not be coerced to support a political activity or candidate, whether funds or time are involved.
2. For the purposes of this policy, the term “political activities” includes, but is not limited to: registering to vote; soliciting votes or endorsements on behalf of a political candidate or political campaign; expressing opinions, privately or publicly, on political subjects and candidates; displaying a political picture, sign, sticker, badge or button; participating in the activities of, or contributing financially to, a political party, candidate or campaign or an organization that supports a political candidate or campaign; attending or participating in a political convention, caucus, rally or other political gathering; initiating, circulating or signing a political petition; engaging in fundraising activities for any political party, candidate or campaign; acting as a recorder, watcher, challenger or similar officer at the polls on behalf of a political party, candidate or campaign; or becoming a political candidate. Employees shall not use their Town user account or wired or wireless communication equipment for political activities.
3. Town employees may participate in political activities while they are off duty, out of uniform and not on the premises of their employment with the Town. An employee may register to vote and may vote while dressed in Town uniforms or clothing. Town employees shall not engage in other political activities while in Town uniforms or clothing. Employees shall not engage in political activities while performing official duties for the Town or use any Town property or equipment to engage in political activities.
4. The components of this section are designed to promote public trust and confidence in Town government by ensuring that it is free of the actual or apparent influence of partisan politics and that employment and advancement in the Town are based on meritorious performance rather than political service or affiliation. In addition, it protects every employee’s right to vote and to keep this right free from interference, solicitation or dictation by any fellow employee, supervisor or officer.
5. Employees may be candidates for political office but, in order to protect the efficiency, integrity, discipline and morale of officers and employees, an employee elected to the Town Council must resign, or shall be released, from employment with the Town prior to taking office. However, any employee whose total salary, other compensation, and benefits (not including reimbursement for permitted expenses) does not exceed \$10,000 annually may retain such employment after his/her election.
6. No employee shall use the prestige of his/her position on behalf of any political organization or party. For purposes of this Handbook, a “political organization” shall be defined as “any group, formal or informal, which endorses candidates for elective office at any level of government – national, state or local.” This provision does not prohibit the endorsement of candidates for office by organizations that include Town employees, but such an endorsement is a “political activity” to which this policy applies.



7. No employee shall use his/her official authority to coerce or attempt to coerce a subordinate employee to pay, lend or contribute anything of value to a political party, candidate or campaign, or to discriminate against any employee or applicant for employment based on political affiliations or political activities.
8. Town employees are prohibited from discriminating in the provision of Town services or responding to requests for services on the basis of political affiliations or political activities of the person or organization for which such services are provided or requested.
9. Town employees are prohibited from suggesting or implying that the Town has officially endorsed a political party, candidate or campaign.

**M. Sensitive Personal Information**

Sensitive personal information shall not be stored on any device except a Town server specified and designated for the encrypting, storing and processing of this information in a protected and confidential manner. If contracting with other government or private entities, this data may only be transmitted in encrypted form and stored as encrypted data on contractually identified devices. Sensitive personal information shall not be stored on any device not specifically designated for this data, including other Town-owned computers or non-Town provided equipment.

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## **CHAPTER VIII**

### **EMPLOYMENT HEALTH AND SAFETY POLICIES**

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The health and safety of the Town's employees and the public is of the highest concern to the Town. It is, therefore, the policy of the Town to strive constantly for the highest possible level of safety in all activities and operations, and to carry out the Town's commitment to compliance with all applicable health and safety laws by requiring all employees to ensure that the public and work areas are free from hazardous conditions.

#### **A. Work-Related Injuries or Illnesses**

The Town will make every effort to provide working conditions that are healthy and safe, and employees are expected to be equally conscientious about workplace safety, including proper work methods, reporting potential hazards and mitigating known hazards. Unsafe work conditions in any work area that might result in an accident should be reported immediately to a supervisor. Any employee found to be violating a safety rule, including failing to report an unsafe work condition, or any employee acting in a manner clearly inconsistent with this policy will be subject to discipline, up to and including termination.

Employees of the Town are required to report on-the-job injuries, as well as injuries to other persons or Town-owned property, no matter how slight, as soon as possible. Failure to do so is in violation of the Town policies and may, in the case of an employee's injury, affect the employee's ability to collect workers' compensation as provided by the workers' compensation statute. It may also subject the employee to disciplinary action.

#### **B. Uniforms**

It is the policy of the Town to provide suitable clothing and other personal protective equipment to certain employee classifications to promote a standard appearance, to offer protection against weather elements and other hazards that may be present in the workplace and to identify the employee as a Town employee. Employees are required not only to maintain clean and efficient work areas, but also to present a proper personal appearance. Employees at all levels and job positions are representatives of the organization and therefore their dress, grooming and personal hygiene affect both the public's impression of the Town and internal morale. This policy expresses both the Town's standards and provides guidance to employees on appropriate grooming standards.

#### **Policy**

All sworn police officers shall be provided uniforms by the Town. The Facilities & Maintenance Supervisor shall be provided with a uniform and/or other clothing with a Town logo.

If uniforms are provided to an employee, the employee must wear the proper uniform while at work. An employee who reports for work and is not wearing the proper uniform will be placed on Unauthorized Leave Without Pay for that day. All uniforms must be kept in clean condition and be without tears. Multiple violations of this policy could result in disciplinary action, up to and including termination. Members of the Police Department shall also comply with the Police General Orders with regard to the wearing of uniforms.

Under federal employment tax regulations as identified by the Internal Revenue Service (IRS), the value of uniforms (work clothing) provided by the Town is not taxable to the employee if the employee must wear the clothing as a condition of employment and the clothes are not suitable for everyday wear. Under these regulations, it is not enough that the employee wear distinctive clothing. In order to be non-taxable, the clothing must not be suitable for taking the place of regular clothing. In the event that clothing is provided that does not qualify under the IRS definition for being non-taxable as interpreted by the IRS, the Town Treasurer shall identify said clothing as a taxable fringe benefit subject to withholding. The value of said clothing shall be added to the employee's wages at the time it is made available to the employee and taxes shall be withheld on the total in accordance with applicable tax laws.

The Town will reasonably accommodate an employee's religious beliefs, medical condition or disability by making exceptions to this policy.

### **C. Drugs, Narcotics and Alcohol (Drug and Alcohol Free Workplace)**

The Town's goal is to provide and maintain a safe and healthy workplace for its employees, free from drug and alcohol abuse, and to protect the safety of its citizens by providing the highest quality of service.

The Town will attempt to assist employees who may be experiencing problems with drugs and/or alcohol if the employee requests assistance prior to or immediately upon detection. Employees who voluntarily seek help for substance abuse (self-referral) by contacting the Town will be provided an opportunity to pursue counseling and rehabilitation. An employee who is receiving counseling and/or treatment for substance abuse may use available vacation, sick leave or, if eligible, family and medical leave. The employee cannot return to work until released by a treatment provider to do so, and when he or she receives a negative result on a return-to-work drug and/or alcohol test (as appropriate for that individual). An employee's decision to seek help voluntarily will not be used as a basis for disciplinary action, although the individual may be transferred, given work restrictions or placed on leave, as appropriate. A request for help is considered voluntary only if it is made before the employee is asked to submit to any drug or alcohol testing or is discovered to have otherwise violated this policy.

The Town's desire to assist employees does not relieve the Town of its responsibility to maintain a drug and alcohol free workplace. The use, possession, distribution, solicitation or sale of alcohol, illegal drugs or misuse of prescription drugs is not acceptable in the Town workplace or while performing work for the Town or representing the Town. Such behavior seriously affects job performance and can create a danger to citizens and co-workers. The policy and regulations pertaining to a drug and alcohol free workplace must be followed by all employees of the Town.

Notwithstanding the Town's Drugs, Narcotic and Alcohol Policy, police officers shall also be subject to any policy as outlined in the Police Department's Policy Manual.

## **Policy**

It is the policy of the Town of Middleburg that all Town work sites shall be maintained as a drug and alcohol free workplace.

No employee shall unlawfully manufacture, distribute, dispense, possess, use, solicit or sell on or in the workplace, or while performing work for the Town or representing the Town, any narcotic drug, hallucinogenic drug, amphetamine, barbiturate, marijuana, any synthetic drug or any other controlled substance as defined in Schedules I through V of Section 202 of the Controlled Substances Act and as further defined in Federal Regulation 21 CFR 1300.11 through 1300.15.

As a condition of employment, each employee shall notify his/her supervisor of his/her conviction of any criminal drug statute no later than five (5) days after such conviction. Conviction of any criminal drug statute is grounds for disciplinary action up to and including termination. Failure to report a conviction will result in immediate termination.

In the event an employee is issued a valid prescription that prohibits the employee from operating heavy machinery, the employee will not be allowed to work during the period he/she is taking the prescription drug unless he/she does not operate heavy machinery on behalf of the Town, including a Town-owned vehicle. In addition, no employee will be allowed to work during the period he/she is taking said prescription drug unless he/she has arranged for transportation to/from the workplace which does not require the employee to operate heavy machinery, including a motor vehicle.

As a condition of employment, each employee shall abide by the terms of this Town policy and regulations respecting a drug and alcohol free workplace.

All Town work sites and all Town-owned property are subject to drug detection inspection at the discretion of the Town.

Being under the influence of illegal drugs or alcoholic beverages in the workplace is also prohibited. "Being under the influence" is not meant in the restrictive legal sense but refers to any influence which impairs the employee's ability to perform his/her duties satisfactorily, may endanger the employee, his/her co-workers or the public or is so obvious as to concern others. Violation of this policy and regulations will result in termination.

All drug and alcohol testing information specifically related to employees and applicants is confidential and shall be treated as such. All records and information of any personnel actions taken on employees with verified positive test results shall be maintained in confidential and secure files and disseminated only to authorized individuals on a confirmed "Need to Know" basis.

## **1. Drug and Alcohol Testing**

Drug and/or alcohol testing shall be required in the following cases:

- a. When an applicant for any Town position has been given a conditional offer of employment subject to passage of a drug screening;
- b. On-the-job post-accident investigation;
- c. Where there is reasonable suspicion that any Town employee, regardless of position or employment status, is under the influence of illegal drugs or alcohol or is abusing prescription drugs; or
- d. Where a Town employee, regardless of position or employment status, has been authorized to return to work with the approval of the Town Manager after testing positive for drug or alcohol use and referral to an employee assistance program, testing may occur on an unannounced basis after the employee returns to work for an indefinite period of time.

## **2. Test Procedures in General**

The administration of the Drug and Alcohol Testing Program will be in accordance with the Drug Free Workplace Act of 1986 as amended. Detailed provisions are listed in the regulations regarding collecting, labeling and transporting the sample. Specific requirements regarding confidentiality are also included. A Preliminary Breath Testing device operated by a trained Town police officer will be used to test for the presence of alcohol; if the screening reveals detectable alcohol (above 0.02%), then the officer will proceed to transport the employee for breath or blood testing at the employee's option. A blood test or urinalysis will be used for the detection of controlled substances. All employees tested will be required to sign an authorization and consent form releasing the information to the Town. The testing of the sample will be performed by a laboratory approved by the National Institute on Drug Abuse (NIDA), including a NIDA panel screening with gas chromatography/mass spectrometry (GC/MS) confirmation on all positive tests. The panels include screening for amphetamines, barbiturates, benzodiazepines, marijuana metabolite, cocaine metabolite, opiates, any synthetic drug and phencyclidine (PCP). The cutoff level for each substance tested for, both drugs and alcohol, will be consistent with those currently recommended by the Federal Department of Transportation guidelines. The cost for all drug/alcohol tests will be borne by the Town.

Any employee subject to testing under this plan will be permitted to provide urine specimens in a manner such that the employee is not observed while actually providing the specimen, unless there is reason to believe that the employee has altered or substituted the urine specimen provided. If it is determined that the employee has altered or substituted the urine specimen, the employee will be immediately terminated.

Failure to appear for testing without prior notice acceptable to the Town will be considered refusal to participate in the testing and the employee will be immediately terminated; or in the case of an applicant, the rescinding of the conditional offer of employment.

When a confirmed positive test result for the drugs has been returned by the laboratory, the tested employee will be given an opportunity to provide to the Town Manager appropriate and corroborated information to demonstrate the confirmed positive test result is from a legally prescribed medication or other ingestant. Evidence to justify a positive test result may include, but not be limited to a valid prescription or verification from the individual's physician verifying a valid prescription.

If the Town Manager determines there is a lack of legitimate reason for the positive result, the result will then be considered a verified positive test result. If the test results are positive, the employee must be evaluated by a Substance Abuse Professional (SAP). A return-to-duty test must be conducted prior to returning to the job. The employee will be subject to a minimum of six (6) unannounced follow-up drug tests in the first twelve (12) months following the positive result. The employee may submit a written request for a retest of the original specimen within 72 hours of being notified by the Town Manager. The retest will be at the employee's expense at a facility approved by the Town as identified in Section C(2) – Test Procedures in General – under this Chapter.

The laboratory may disclose laboratory test results only to the Town Manager. Any positive result which the Town Manager justifies by acceptable and appropriate medical or scientific documentation to account for the result as other than the intentional ingestion of drugs will be treated as a negative test result and may not be released for purposes of identifying drug use/misuse.

All positive tests will be confirmed by a second test. The results of these tests will be reported immediately to the Town Manager. A positive test result on any return-to-duty or follow-up test will result in immediate termination. The Town Manager shall notify the Mayor and Town Council of said termination immediately.

### **3. Alcohol Test Results**

If the results of an employee's breath or blood test for alcohol indicates a blood alcohol concentration of .02% or greater, but less than .04%, the employee will be suspended without pay and shall not be permitted to perform the duties of a position that requires a driver's license for at least twenty-four (24) hours and a return-to-duty test that indicates a blood alcohol level (BAL) of less than .02%. If the blood alcohol concentration is greater than .04%, the test is considered a positive result and the employee must be evaluated by a SAP at the employee's expense. Return-to-duty tests must be conducted prior to returning to the job. The employee will be subject to a minimum of six (6) unannounced follow-up alcohol tests in the first twelve (12) months. All positive tests will be confirmed by a second test. The results of these tests will be reported immediately to the Town Manager. A positive test result on any return-to-duty or follow-up test will result in immediate termination.

#### **4. Guidelines for Reasonable Suspicion Testing**

The following guidelines are provided as an aid in administering and enforcing the Town's Drug and Alcohol Free Workplace Policy. They are not meant to cover every situation; however, they are designed to help avoid allegations of unlawful treatment. These guidelines cannot be used as a substitute for good judgment; each situation must be reviewed on a case-by-case basis. When a supervisor, in his/her judgment, has reason to believe that an employee has used or is under the influence of drugs or alcohol, the supervisor should ask his/her supervisor to corroborate the observations when practical. The following examples, alone or in combination, may comprise reasonable suspicion. The list is not all inclusive.

- a. Unexplained inability to perform normal job functions;
- b. Slurred speech;
- c. Smell of alcohol or drugs on breath;
- d. Any unusual lack of physical coordination or loss of equilibrium;
- e. Unexplained hyperactivity or depression and withdrawal;
- f. Unexplained inability to think or reason at the employee's normal level;
- g. Bizarre behavior;
- h. Possession of alcohol or illegal drugs; or the presence of alcohol containers, illegal drugs or drug paraphernalia in an area subject to the employee's control; or
- i. Information provided by a reliable and credible person.

If during normal working hours, reasonable suspicion is confirmed, the supervisor shall contact the Town Manager to discuss the observations and to determine the appropriate course of action. If the employee is to be tested, the Town Manager will make the arrangements with the Town's designated collection center for the necessary drug and/or alcohol tests. The employee will be transported to the testing site. If the reasonable suspicion is confirmed outside of normal working hours, then the supervisor shall arrange to have the employee transported to the approved collection center.

If the employee refuses to be tested, the employee shall be immediately suspended from duty without pay and benefits and transported home. The refusal of an employee to submit to a reasonable suspicion test shall comprise insubordination and may be the basis for disciplinary action, up to and including termination.

The Town Manager or the employee's supervisor shall document, in writing, within twenty-four (24) hours of the observed behavior, the conduct giving rise to the reasonable belief of drug and/or alcohol use. The documentation should include any statements made and any actions taken by any persons involved in the incident. All records should be immediately forwarded to the Town Manager.

#### **D. No Smoking Policy**

The Town of Middleburg promotes a productive and cooperative working environment. To that end, no special rights are granted to smokers or nonsmokers. Employees must strive to assure that any personal habits do not interfere with the effective production of work and must adhere to the Town's break policy.



Employees are not permitted to smoke in any Town-owned building or vehicle or on any Town job-site. In addition, employees are not permitted to smoke or spit tobacco products on or in any Town-owned property.

#### **E. Violence and Weapons in the Workplace**

The Town has a policy of zero tolerance for violence in the workplace. Threats or acts of violence – including intimidation, bullying, physical or mental abuse and/or coercion – that involve or affect Town employees or that occur on the Town’s premises will not be tolerated. No talk of violence or joking about violence shall be tolerated either.

The prohibition against threats or acts of violence applies to all persons involved in the operation of the Town, including, but not limited to, Town employees and other personnel, seasonal and temporary employees, consultants, contractors, citizens, vendors, visitors and anyone else on the Town’s premises.

Violations of this policy by an employee will result in disciplinary action, up to and including termination from employment.

It is our goal to have a workplace free from acts or threats of violence and to respond effectively in the event that such acts or threats of violence do occur.

Workplace violence is any intentional conduct that is sufficiently severe, abusive or intimidating enough to cause an individual to reasonably fear for his or her personal safety or the safety of his or her family, friends and/or property such that employment conditions are altered or a hostile, abusive or intimidating work environment is created for one or several employees.

Examples of workplace violence include, but are not limited to:

- Threats or acts of violence occurring on Town premises, regardless of the relationship between the parties involved in the incident;
- Threats or acts of violence occurring off Town premises involving someone who is acting in the capacity of a representative of the Town;
- Threats or acts of violence occurring off Town premises involving an employee if the threats or acts affect the interests of the Town;
- All threats or acts of violence occurring off Town premises, of which an employee is a victim, if the Town determines that the incident may lead to an incident of violence on Town premises;
- Threats or acts of violence resulting in the conviction of an employee or agent of the Town, or an individual performing services for the Town on a seasonal or temporary basis, under any criminal code provision relating to violence or threats of violence when that act or the conviction adversely affect the legitimate interests of the Town.

Examples of conduct that may be considered threats or acts of violence under this policy include, but are not limited to:

- Threatening physical contact directed toward another individual;
- Threatening an individual or his or her family, friends, associates or property with harm;
- The intentional destruction or threat of destruction of Town property or another individual's property;
- Menacing or threatening phone calls;
- Stalking;
- Veiled threats of physical harm or similar intimidation; and/or
- Communicating an endorsement of the inappropriate use of firearms or weapons.

The Town prohibits the possession of weapons by an employee, except appropriate law enforcement personnel, during work time, on Town property or premises, or while conducting Town business. Weapons include real and "look alike" guns, straight or sheath knives, batons, explosives and other items with the potential to inflict harm on another. Possession of weapons will be subject to discipline, including immediate termination.

It is the responsibility of everyone to do their part to prevent violence in the workplace. Employees are encouraged to immediately report any incident that may violate this policy to their supervisor or the Town Manager.

No provision of this policy statement or any other provision in this policy alters the at-will nature of employment with the Town. The Town will make the sole determination of whether or to what extent, threats or acts of violence will be acted upon by the Town. In making this determination, the Town may undertake a case-by-case analysis in order to ascertain whether there is a reasonable basis to believe that workplace violence has occurred.

## **F. Emergency Evacuations**

In an emergency, reporting is the first essential step to protecting oneself and others. In the event of a fire or hazardous materials emergency, any employee who suspects an emergency shall report it immediately. The source of the potential fire or hazardous material should not be investigated by the employee.

When an emergency has been signaled, all employees and visitors are expected to evacuate the building by exiting in an orderly manner through the nearest exit.

After exiting, the employees should report to an area away from the building exits designated as the meeting location. Once employees arrive at the designated area, they should immediately report to the Town Manager and/or Police Chief and remain at that location until accounted for and authorized to leave.

No reentry to the building will be permitted until an official all-clear notification is given.

In the event employees are advised to evacuate not only the building but the premises, employees shall assemble at the Police Department offices. In the event employees in the Police Department offices are ordered to evacuate their premises, they shall assemble at the Town Hall.

Employees should review this policy and the evacuation procedures and notify the Town if they believe they might require an accommodation or assistance in order to comply with these procedures in the event of an emergency.

#### **G. Town Property/Searches**

The security of Town property is of vital importance to the Town, its employees and the public. To promote safety, all property belonging to the Town, such as desks, cabinets, lockers and computers are subject to search by the Town Manager, without prior notice or consent where there is a reasonable cause for such search. Consequently, there should be no expectation of privacy in Town property and, as such, employees should not put anything in these areas which is personal to them and which they would not want the Town to see upon inspection.

Where there is a reasonable cause to believe there may be a violation of policy, including but not limited to theft and drugs/alcohol, the Town Manager may ask the employee's consent to search personal property such as pocketbooks, etc. While an employee has the right to refuse consent, such refusal may, as circumstances warrant and consistent with the law, be viewed as a violation of policy which can lead to discipline, up to and including termination.

#### **H. Incident Investigation Policy**

This policy is to be followed for all accidents/incidents resulting in employee injury, injuries to outside persons on Town-owned or property damage. The depth of an accident/incident investigation may vary depending on the accident/incident and the potential for future occurrences.

#### **Responsibilities**

- a. Employees must report all accidents/incidents to their immediate supervisor at the earliest opportunity and must assist in the investigation process. Providing first-aid and other medical treatment for injured persons shall take precedence over initiating an incident investigation.
- b. Immediately or as soon as practical upon the receipt of the report of an accident/incident, the supervisor shall notify the Town Manager who shall (1) notify the Town's insurance carrier of the accident/incident if appropriate; and (2) identify, depending on the nature of the accident/incident, who should conduct the investigation. The investigation may be conducted using in-house personnel or outside expertise, depending on the nature of the accident/incident. If necessary, the lead investigator may elicit the assistance of others in investigating the accident. The investigation shall be conducted immediately, but no later than twenty-four hours after the receipt of the first accident/incident report. Upon the completion of the investigation, the investigator shall report the findings to the Town Manager who shall then ensure that both immediate and long-term corrective actions are taken to avoid a re-occurrence. The Town Manager shall also notify the Mayor and Town Council of the accident/incident and any corrective actions as needed.

## **Investigation/Procedures**

The actual procedures used in an investigation will vary depending on the nature and results of the accident/incident. The investigation shall be a fact-finding procedure with the focus of the investigation being to prevent future accidents/incidents and injuries. The site of an accident/incident shall be secured whenever possible to preserve any evidence.

- a. The investigator will be responsible for gathering the following, including but not necessarily limited to:
  1. Description of the accident/incident, with damage and injury estimates;
  2. Location of the accident/incident site;
  3. List of witnesses, including names and contact information;
  4. Normal operating procedures for the activity being undertaken at the time of the accident/incident;
  5. Events that preceded the accident/incident;
  6. Collecting data through photographs, sketches and/or observation;
  7. Preservation of any physical evidence that might be protected in some way.
  
- b. The investigator shall also attempt, if possible, to determine:
  1. Whether anything occurred that was not normal/typical before the accident/incident;
  2. If there was an abnormality, where and how it occurred and when it was first noted;
  3. Why the accident/incident occurred (i.e. unsafe acts, conditions or procedures);
  4. The likely cause scenario.
  
- c. The investigator shall interview each witness to the accident/incident, as well as those individuals in the area just prior to or immediately after the accident/incident, within twenty-four hours of the event. The interview shall take place in the privacy of an office. When asking the witnesses about their knowledge of the accident/incident, care shall be taken to avoid leading questions or those with a “yes” and “no” response. The interview may be recorded with the permission of the witness and a written witness statement produced and signed by both the witness and investigator.

## **Identification of Cause Scenario/Analysis of Causes**

The identification of the likely cause scenario is the early goal of the investigation. The investigator shall take care not to exclude any cause scenarios early in the investigative process.

In addition to interviewing the witnesses, the investigator may wish to gather information from persons with knowledge of the operations being undertaken at the time of the accident/incident.

Following the gathering of information and the interviewing of witnesses, the investigator shall consider all data in determining the likely cause scenario. Care shall be taken to determine root causes, not just symptoms of root causes.

Causes may fall in two areas – Unsafe Acts and Supervision – as identified below:

Unsafe Acts

1. Horseplay
2. Interfering with or disabling safety devices
3. Failure to secure or warn
4. Operating without authority
5. Working on moving equipment
6. Taking an unsafe position or posture
7. Operating or working at an unsafe speed
8. Unsafe loading, placing, mixing, combining
9. Failure to use personal protective equipment
10. Undertaking a task when not properly trained for the job
11. Other, as identified by the investigation:

Supervision

1. Failed to provide guidance, oversight or training
2. Failed to track qualifications or performance
3. Failed to provide correct information
4. Failed to provide adequate instructional time
5. Improper staffing
6. Task not in accordance with rules/regulations
7. Failed to correct known problems
8. Failed to enforce rules and regulations
9. Other, as identified by the investigation:

**Investigation Report**

Upon the completion of the investigation, the investigator shall complete an Incident Investigation Report Form. This form shall contain the following information:

1. Employee Information: Name, Job Title and Department
2. Date & Time of Accident/Incident, including when reported
3. Nature/Extent of Injury, including property damage if applicable
4. Location of Accident/ Incident
5. Names of Witnesses
6. Description of Accident/Incident
7. Causes of Accident/Incident (direct, indirect and root)
8. Any recommended corrective actions
9. Signature of Investigator

Upon the completion of the Report Form, the investigator shall submit it to the Town Manager, along with any accompanying notes the investigator deems necessary.

### **Corrective Action**

Following the receipt of the investigation report, the Town Manager shall identify the corrective action(s) necessary to address each cause identified in the investigation report and shall ensure the implementation of these actions. The minimum corrective action shall be a brief training session for all employees who conduct the same task as was involved in the accident/incident.

Six months following the implementation of the corrective action, the Town Manager shall review how effective the corrective action has been, including whether it has resulted in the creation of new hazards. If necessary, the Town Manager shall identify and implement new corrective actions to address any issues that may remain.

### **Disciplinary Action**

An Accident/Incident Investigation is not intended as an investigation of the employee(s) involved in the accident/incident but rather is intended to investigate the details of the event in order to determine whether the Town's procedures and policies need to be amended to ensure the safety of the Town's employees and the public. As such, any Accident/Incident Investigation Report shall not be made a part of an employee's personnel file. Following the review of the Accident/Incident Investigation Report, should the Town Manager believe that disciplinary action may be required against an individual(s) involved in the accident/incident, the Town Manager shall refer this matter to the employee's immediate supervisor for a separate investigation of whether the employee violated any rules and/or regulations and whether disciplinary action may be warranted.

## CHAPTER IX DISCIPLINE

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### A. Disciplinary Actions

An obligation rests with every employee of the Town of Middleburg to render honest, courteous and efficient performance of his/her duties. Employees, therefore, will be responsible and held accountable for adhering to all Town policies, rules, directives or procedures prescribed by the Town in this handbook as may be amended, or as directed by supervisory or management personnel. In addition, law enforcement personnel are subject to the discipline policies included in the Police Policy Manual. Failure to heed Town policies, or any action or inaction which in the sole discretion of the Town is harmful to the Town, its employees or the public, as well as the Town's reputation, may result in discipline, including immediate dismissal. Disciplinary action may take any of the following forms as appropriate: verbal counseling; written warning or reprimand; withholding of annual pay increases; demotion; pay reduction; suspension; dismissal; or, any other form which the Town, in its sole discretion, believes is appropriate under the circumstances.

The responsible supervisor will provide notice to the employee of the grounds for disciplinary action. In addition, supervisors are expected to document any significant discussions and verbal counseling with an employee as part of the performance evaluation process. The presence of records of commendations and violations can and should be part of the basis of the employee's performance evaluation.

Unless otherwise directed, charges of unacceptable conduct or performance shall be investigated by the Town Manager, except in the event of criminal behavior, which shall be investigated by the Chief of Police or the Virginia State Police, as deemed appropriate by the Town Manager. If the Town Manager is the subject of investigation, the Mayor shall determine the appropriate person or entity to conduct such investigation.

The following are examples of grounds for disciplinary action but are in no way exclusive causes:

- Insubordination: Refusal to comply with the proper order of an authorized supervisor.
- Theft or Destruction: Stealing; misappropriation of Town funds; or carelessly or willfully causing the destruction of Town property.
- Unlawful Conduct: Violation of or refusal to comply with pertinent laws and regulations when such conduct impairs the efficiency of the Town service or brings it into public disrepute; i.e., activities prohibited by federal or state laws or by Town Ordinances.
- Intoxication or Disgraceful Conduct: Intoxication or other conduct, while on or off duty, whenever such behavior threatens order, safety, health or public respect for the Town service and when such conduct is solely the fault of the employee.
- Substance Abuse: Abuse of prescription medicine or other drugs, legal or not, such that it affects the employee's ability to do his/her job, threatens public safety or the safety of other employees and/or visitors or becomes so obvious as to concern others.

- Unprofessional Interaction with the Public: Discourtesy to the public while on the job.
- Poor Attendance: Repeated tardiness, unauthorized or unexcused absence, or abuse of sick leave
- Soliciting or Accepting Gifts: Acceptance of a gift or fee, including any violation of the Conflict of Interests Act (Va. Code §§ 2.2-3100 et seq.), the Ethics in Public Contracting provisions of the Virginia Public Procurement Act (Va. Code §§ 2.2-4367-4377), or other state laws regarding unethical behavior. This prohibition extends to bribes and kickbacks of any kind, if there is an express or implied agreement for the officer or employee to exercise or withhold the exercise of official power. Pursuant to Virginia Code § 2.2-3104.2, the Town Council may adopt an ordinance setting a monetary limit on the acceptance of any gift by the officers and employees of the Town and requiring disclosure by such officers or employees of the receipt of any gift. If the Town Council does so, then acceptance of any prohibited gift or failure to disclose any prohibited gift is a violation of this provision.
- Improper Use of Authority: Use of official position or authority for personal profit or advantage, or to oppress or intimidate any person.
- Use of Influence: Use for his/her own economic benefit or that of another party confidential information that was acquired by reason of his/her public position and which is not available to the public.
- Falsification of Communication: Falsification, by false statement or omission of information needed to make the communication not misleading of application papers, time sheets, or of any written or oral report required under any circumstances.
- Unsound Judgment: Evidence of continued unsound judgment in performance of official duties.
- Poor Performance: Failure to meet the prescribed standards of work. Any employee who receives two consecutive unsatisfactory performance appraisals or who fails to satisfactorily comply with a performance improvement plan may be dismissed from Town service at the sole discretion of the Town.
- Sale of Any Good or Service of the Town or to the Town: Any attempt to sell materials, goods, services, etc. of the Town or to the Town in which the employee may receive financial gain or remuneration or which is detrimental to the Town, if in violation of applicable state law.
- Discrimination and Harassment: Failure to comply with the Town's Equal Employment Opportunity and Harassment-Free Workplace Policy.



- Non-Compliance with Town Policies: Violation of any policy or procedure as outlined in the Town's personnel policies or any other rule or directive of the Town, including but not limited to:
  1. Failure to comply with the Town's Drug, Narcotics and Alcohol Policy.
  2. Failure to comply with the Town's Violence and Weapons in the Workplace Policy.
- Injury to Town's Reputation: Any action or violation which is harmful to the Town, its employees or its citizens or any action or inaction which harms the Town's reputation or has the potential to harm the Town's reputation to the public.
- Job Abandonment: When an employee fails to report to work for three (3) full consecutive days, or when an employee is unable to report to work due to reasons unacceptable to the Town, including but not limited to incarceration.
- Safety Violations: Safety violations as prescribed by the employee's supervisor or through written Town policy or directive.
- Misuse of Electronic Resources: Using the Town's electronic resources in an improper manner, including but not limited to:
  1. Personal use of Town electronic resources to an extent that interferes with work duties.
  2. Sending, saving, accessing or viewing obscene or similarly offensive material on the Town's electronic resources, except for law-enforcement purposes after receiving written approval from the Chief of Police.
  3. Downloading software and/or modifying files without permission from the copyright holder.
  4. Failure to abide by document retention, storage and disposition requirements of state law or Town policy.
- Indifference Toward Work: Including but not limited to inattention, failure to do the job, inefficiency, loafing, sleeping, wasting time, carelessness or negligence; failure to remain at one's work station or on the job site, leaving work without permission, taking excessive time or more time than allowed on breaks; performance of work for someone other than the Town during work hours; and/or indifference toward the work of others.
- Failure to Update Personal Information: Failure to inform the immediate supervisor of any change in the employee's telephone number and/or address within ten (10) days of that change.

## **B. Levels of Discipline**

The purposes of discipline are (1) to correct employee behavior where possible, (2) to ensure proper service to the public, and (3) to prevent employee negligence, lack of competence or misconduct from harming the Town in terms of liability, loss of public trust, or damage to the Town's reputation. The level of discipline imposed should be in each instance tailored to the circumstances, being progressive, proportional, and palatable. "Progressive" means that prior instances of the same or similar offense will lead to more serious discipline for a recurrence. "Proportional" means that the level of discipline matches the seriousness of the offense, in terms of the harm or potential harm of the employee negligence or misconduct. "Palatable" means that the Town should take into consideration the overall circumstances of the matter, including the employee's years of service and past contributions.

### **1. Verbal Counseling**

Verbal counseling should occur in private and allow for the employee to explain the circumstance of the apparent offense and develop a plan to avoid recurrence. The occurrence of verbal counseling may be recorded in an employee's file as part of the employee's record.

### **2. Written Reprimand**

In situations where verbal counseling has not resulted in expected improvements, or where more severe action is warranted, a written reprimand shall be presented to the employee and a copy shall be placed in the employee's personnel file. A written reprimand may be accompanied by required training, a performance improvement plan, or similar corrective action.

### **3. Suspension**

Suspensions are periods when an employee is not working for the Town for disciplinary reasons when there is insufficient cause for dismissal or pending an investigation or disciplinary hearing. At the sole discretion of the Town Manager and depending on the circumstances, an employee may be suspended with or without full pay for a period not to exceed thirty (30) days within any one (1) calendar year. The Town Manager must approve all suspensions in writing. The Town Manager may also authorize Administrative Leave for the purpose of investigating disciplinary actions related to the performance or behavior of an employee.

### **4. Dismissal**

Dismissal or involuntary termination of employee is appropriate when the actual, potential, or anticipated negative effects of serious misconduct or continued poor performance justify such action.

# CHAPTER X

## GRIEVANCE

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### X-1 Grievance Procedure

#### A. Policy

The Town of Middleburg is committed to resolving employee complaints and grievances in a just and equitable manner. Employees of the Town who have the right to submit grievances for resolution may do so without threat of retaliation. The timely resolution of grievances enhances employer/employee relations and serves the mutual interests of all concerned parties. The establishment and revision from time to time of this grievance procedure does not change the “at will” status of employees nor does it confer a property interest in employment.

#### B. Definition of Grievance

A grievance shall be a complaint or dispute by an employee relating to his/her employment, including but not necessarily limited to:

1. Disciplinary actions, including termination, disciplinary demotion, and suspensions provided; however, that suspension or termination shall be grievable only when resulting from formal discipline and/or unsatisfactory job performance;
2. The application of personnel policies, procedures, rules and regulations, including the application of policies involving matters referred to in Section D(3) below;
3. Complaints of discrimination on the basis of race, color, religion, marital status, creed, political affiliation, age (over 40), disability, national origin, sex, pregnancy, childbirth or related medical conditions, genetic information, or military status (including membership in the National Guard or Virginia Defense Fund); or any other status protected by State or Federal law;
4. Acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States, the Commonwealth of Virginia, or the Town of Middleburg; or has reported any violation of such law to a governmental authority; or has sought any changes in law before the Congress of the United States, Virginia General Assembly or the Council in Middleburg; or has reported an incidence of fraud, abuse or gross mismanagement.

A grievance shall not include, however, those matters listed in subsection D, of this policy.

### **C. Eligibility for Grievance/Coverage of Personnel**

Unless otherwise provided by law, all full-time and part-time employees of the Town who have successfully completed the initial or transitional period of employment are eligible to file grievances with the following exceptions:

1. Officials and employees who are by charter or other law serve at the will or pleasure of the Town Council, including the Town Manager, Town Attorney, Town Clerk, Town Treasurer and Chief of Police;
2. Appointees of elected groups or individuals;
3. Deputies and executive assistants to the Town Manager;
4. Department heads of governmental operations;
5. Employees whose terms of employment are limited by law;
6. Temporary, limited term and seasonal employees;
7. Law enforcement officers as defined in the Law Enforcement Officers' Procedural Guarantee Act, Chapter 5 of Title 9.1 of the Code of Virginia, 1950, as amended (the "Act"), whose grievance is subject to the provisions of the Act and who have elected to proceed pursuant to those provisions in the resolution of their grievance, or any other employee electing to proceed pursuant to any other existing procedures in the resolution of his/her grievance.

### **D. Town of Middleburg Responsibilities**

The Town of Middleburg shall retain the exclusive right to manage the affairs and operations of the government in a safe and secure manner. Accordingly, the following complaints are non-grievable:

1. Establishment and revision of wages or salaries, position classification or general benefits;
2. Work activity accepted by the employee as a condition of employment or work activity which may reasonably be expected to be a part of the job content;
3. The contents of ordinances, statutes or established personnel policies, procedures, rules and regulations;
4. Failure to promote except where the employee can show that established promotional policies or procedures were not followed or applied fairly;
5. The methods, means and personnel by which work activities are to be carried on;

6. Termination, layoff, demotion or suspension from duties because of reduction of work duties, reduction in work force or job abolition except where such action affects an employee who has been reinstated within the previous six months as the result of the final determination of a grievance;
7. The hiring, promotion, transfer and assignment and retention of employees within the Town;
8. The relief of employees from duties of the Town in emergencies; and
9. The suspension of employees pending an investigation or hearing.

In any grievance brought under the exception to provision 6 above, the action shall be upheld upon a showing by the Town that:

- a. There was a valid business reason for the action, and
- b. The employee was notified of the reason in writing prior to the effective date of the action.

#### **E. Decisions Regarding Grievability**

Decisions regarding grievability and access to the procedure shall be made by the Town Manager at any time prior to the final hearing, at the request of the Town or grievant, within ten (10) calendar days of the request. No city, town or county attorney, or attorney for the Commonwealth, shall be authorized to decide the question of grievability.

1. Whenever the Town Manager decides a question of grievability, a copy of the ruling shall be sent to the grievant. If the Town has more than 15 employees, the decisions of the Town Manager may be appealed to the Loudoun County Circuit Court for a hearing on the issue of whether the grievance qualifies for a final hearing. Proceedings for review of the decision of the Town Manager shall be instituted by the grievant by filing a notice of appeal with the Town Manager within ten (10) calendar days from the date of receipt of the decision of non-grievability and giving a copy thereof to all other parties. Within ten (10) calendar days thereafter, the Town Manager shall transmit to the Clerk of the Circuit Court for Loudoun County: a copy of the decision of the Town Manager, a copy of the notice of appeal and the exhibits. A list of the evidence furnished to the Court shall also be furnished to the grievant. Failure by the Town Manager to transmit the record shall not prejudice the rights of the grievant. The Court, on motion of the grievant, may issue a writ of certiorari requiring the Town Manager to transmit the record on or before a certain date.
2. If the Town has more than 15 employees, then within thirty (30) calendar days of receipt of such records by the Clerk, the Court, sitting without a jury, shall hear the appeal on the record transmitted by the Town Manager and such additional evidence as may be necessary to resolve any controversy as to the correctness of the record. The Court, in its discretion, may receive such other evidence as the ends of justice require. The Court may affirm the decision of the Town Manager or may reverse or modify the decision. The decision of the Court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The decision of the Court is final and is not appealable.

## **F. Grievance Procedure Principles**

- 1. Face to face meetings are required between the employee and the supervisor in each of the steps specified in the procedure.**
2. It is the policy of the Town to resolve grievances at the lowest possible level that has the authority to adjust the grievance.
3. It is intended that attention to employee grievances be timely, consistent with the ability of the parties to prepare for a fair consideration of the issues of concern.
4. Time frames in the grievance procedures may be extended by mutual agreement of the Town and the grievant.
5. The Town will make reasonable accommodations upon request of the grievant to permit meaningful participation in the grievance procedure. However, delays of greater than five business days shall not be deemed reasonable accommodations.
6. "Town Manager" means the incumbent, interim, or acting Town Manager or that person's designee.
7. "Work days" refer to days that the Town Office is open for normal business.

## **G. Compliance**

1. After the initial filing of a written grievance, failure of either party to comply with all substantial procedural requirements of the grievance procedure, including the final hearing, without just cause shall result in a decision in favor of the other party on any grievable issue, provided the party not in compliance fails to correct the noncompliance within five (5) work days of receipt of written notification by the other party of the compliance violation. Such written notification by the grievant shall be made to the Town Manager.
2. The Town Manager, at his/her option, may require a clear written explanation of the basis for just cause extensions or exceptions. The Town Manager shall determine compliance issues. If the Town has more than fifteen employees, compliance determinations made by the Town Manager shall be subject to judicial review by filing a petition with the Loudoun County Circuit Court within thirty (30) days of the compliance determination.
3. Following receipt of a petition for judicial review of the compliance determination, if the Town has more than fifteen employees, the Court shall review the record transmitted by the Town Manager and shall hear such additional evidence as may be necessary to resolve any controversy that may exist as to the compliance determination. The Court, in its discretion, may receive such other evidence as justice requires. The Court may affirm the decision of the Town Manager or may reverse or modify the decision. The decision of the Court is final and is not appealable.

## **H. Grievance Procedure Steps**

All grievable employment disputes will be administered in the following specified manner and within the specified time limits. With the exception of the final grievance step, the only persons who may be present in the grievance meetings are the grievant, the appropriate level government official at the level at which the grievance is being heard and (when permitted) the appropriate witnesses for each side. Witnesses shall be present only while actually providing testimony. At the Final Step, the grievant at his/her option, may have present a representative of his/her choice. If the grievant is represented by legal counsel, the Town likewise has the option of being represented by counsel.

### **1. First Step**

- a. A non-police employee shall identify the grievance verbally to the immediate supervisor in an informal discussion within thirty (30) calendar days after the event or action which is the basis for the grievance. Police Department personnel shall follow the Police Department's grievance policy and procedures in lieu of this step.
- b. The immediate supervisor shall give a verbal response to the employee within ten (10) work days following the discussion, and shall make a written record of the date of his/her response.

### **2. Second Step**

- a. If a resolution is not reached at the First Step (or at the Chief of Police level for Police Department personnel), the employee shall submit to the Town Manager within ten (10) work days following the date of receipt of the immediate supervisor's verbal response, a written statement on Form A, as provided by the Town, describing the nature of the grievance and the specific relief requested.
- b. Upon receipt of this written statement, the Town Manager shall meet with the employee within five (5) work days.
- c. The Town Manager shall give the employee a Second Step response in writing on Form A within five (5) work days of the meeting.
- d. If the Town has 15 or fewer employees, decisions of the Town Manager shall be final. If the Town has more than 15 employees, decisions of the Town Manager are final unless the grievant within ten (10) work days from the Town Manager's written response indicates and submits to the Town Manager a written request to initiate the Final Step on Form B.

### 3. Special Procedures

- a. In addition to the foregoing procedures, any employee may take the following grievances directly to the Town Manager:
  - (1) Any demonstrated personal prejudice or bias as it relates to race, gender, color, religion, national origin, age, disability or any other status protected by State or Federal law.
  - (2) Any demonstrated personal prejudice or bias that affects the terms and conditions of employment (hostile workplace) as it relates to race, gender, color, religion, national origin, age, disability or any other status protected by State or Federal law.
  - (3) Violation of the Town's Violence and Weapons in the Workplace Policy.
- b. In any of the foregoing instances, the Town Manager shall undertake a prompt and thorough investigation of the grievance and, if necessary, ensure that proper remedial and/or disciplinary actions are taken.

#### **I. Final Hearing**

If the Town has more than 15 employees, qualifying grievances shall advance to a hearing before an administrative hearing officer, as set forth below:

1. Administrative Hearing Officer. The administrative hearing officer shall be appointed by the Executive Secretary of the Supreme Court of Virginia. The appointment shall be made from a list of administrative hearing officers maintained by the Executive Secretary pursuant to Virginia Code Section 2.2-4024 and shall be made from the appropriate geographical region on a rotating basis. In the alternative, the Town Manager, in his/her discretion, may request the appointment of an administrative hearing officer from the Virginia Department of Human Resource Management. If the Town elects to use an administrative hearing officer, it shall bear the expense of such officer's services.
2. Both the Town and the grievant may call upon appropriate witnesses and be represented by legal counsel or other representatives at the final hearing. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or the respondent before the hearing officer without being in violation of the provisions of Virginia Code Section 54.1-3904 (practicing law without a license).
3. The decision of the hearing officer shall be final and binding and shall be consistent with the provisions of law and written policy. The hearing officer shall render a decision in writing and distribute copies to the employee and Town Manager within ten (10) work days of the conclusion of the hearing. The basis for the hearing officer's decision shall be specifically set forth in writing.
4. Either party may submit in writing within ten (10) work days to the Town Manager, with a copy to the opposing party, a protest that the hearing officer's decision was not consistent with law and written policy.



5. The question of whether the relief granted by a hearing officer is consistent with law and written policy shall be determined by the Town Manager unless such person has a direct personal involvement with the event or events giving rise to the grievance, in which case the decision shall be made by the Loudoun County Commonwealth Attorney. The decision shall be issued within ten (10) work days of receipt and shall be final. In the event that the ruling is that the decision is not consistent with written policy and law then the decision shall be vacated and a new hearing officer shall be selected for hearing in accordance with the provisions of Subsection I.
6. If necessary, either party may petition the Circuit Court of Loudoun County for an order requiring implementation of the hearing officer's decision. The Town Manager is responsible for assuring that the hearing officer's decision(s) are implemented.

**J. Rules of Final Hearing**

1. Parties

- a. There is no subpoena power to compel the attendance of witnesses in any step of the grievance procedure prior to the final hearing. The hearing officer may, however, on the request of either party, or in its own discretion, request the voluntary appearance of witnesses. Town employees are expected to appear as witnesses if requested.
- b. The hearing officer does not have the authority to formulate policies or procedures or to alter existing policies or procedures.
- c. The hearing officer has the discretion to determine the propriety of attendance at the hearing of persons not having a direct interest in the hearing, and, at the request of either party, the hearing shall be private.
- d. The Town of Middleburg shall provide the hearing officer with copies of the grievance record prior to the hearing, and provide the grievant with a list of the documents furnished to the hearing officer and the grievant and his/her attorney, at least ten (10) work days prior to the scheduled final hearing, shall be allowed access to and copies of all relevant files intended to be used in the grievance proceeding.
- e. The hearing officer has the authority to determine the admissibility of evidence without regard to the burden of proof, or the order of presentation of evidence, so long as a full and equal opportunity is afforded to all parties for the presentation of their evidence.
- f. All evidence is to be presented in the presence of the hearing officer and the parties, except by mutual consent of the parties.
- g. Documents, exhibits and lists of witnesses are to be exchanged between the parties at least ten (10) work days in advance of the hearing.

- h. The hearing officer may institute such other provisions as may facilitate a fair and expeditious hearing, with the understanding that the hearing is not intended to be conducted like proceedings in a court, that rules of evidence do not necessarily apply and that the hearing officer does not have the authority to change policies or procedures.

2. Hearing Officer Procedures

- a. These procedures are to assist the hearing officer in preparing for and conducting a final hearing.

Prior to the convening of a final hearing, the hearing officer should carefully review the grievance and become acquainted with the issues to be addressed. Final hearings are not meant to be conducted as full court proceedings and the hearing officer shall not be bound by the technical rules of evidence.

A hearing officer's responsibility is to insure the proper application of the Town's policies and procedures. Hearing officers do not have the authority to formulate or to change policies or procedures. Nor do they have the authority to consider matters which the grievance procedures makes non-grievable.

The hearing officer may uphold or reverse the action of the Town or, in appropriate circumstances, may choose a modified remedy. The hearing officer's decisions, however, must be consistent with provisions of law and written policies. While in appropriate cases, the hearing officer might determine that a grievant is entitled to reinstatement, in no case does a hearing officer have the authority to award back pay, costs, damages or attorney fees. The hearing officer may not order promotion or transfer of the grievant or any other person.

- b. The conduct of final hearings shall be as follows:

- (1) The hearing officer shall determine the propriety of attendance at the hearing of persons not having direct interest in the hearing, and at the request of either party, the hearing shall be private.

- (2) At the option of each party, opening statements may be made at the beginning of the hearing and the hearing officer may ask for such statements in order to clarify the issues involved in the grievance.

- (3) The grievant and thereafter the Town, or their representatives, shall then present their claims, evidence and witnesses who shall submit to questions or other examination. The hearing officer may, at its discretion, vary this procedure but shall afford full and equal opportunity to all parties for presentation of any material or relevant evidence and shall afford the parties the right of cross-examination.

- (4) The hearing officer may decide procedural questions and rule upon objections raised during the course of the hearing.

- (5) Witnesses other than the parties should not be allowed in the hearing room except while giving their testimony.
- (6) The hearing officer may question anyone giving testimony in order to clarify points being made.
- (7) Exhibits offered by the grievant or the Town may be received in evidence by the hearing officer and, when so received, shall be marked and made a part of the record.
- (8) The parties shall produce such additional evidence as the hearing officer may deem necessary to have an understanding of and make a determination of the dispute. The hearing officer shall judge the relevancy and materiality of the evidence offered.
- (9) After each side has had the opportunity to present its evidence, the hearing officer shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, both parties shall be given the opportunity to make closing statements summarizing their positions, following which the hearing should be declared closed.
- (10) The hearing officer shall render its decision within ten (10) work days of the conclusion of the hearing. The facts found and the reasons for the hearing officer's decision must be set forth in writing on Form C. The hearing officer is to decide cases on the merits, not on compliance matters occurring prior to or during the final hearing.
- (11) The hearing may be reopened at any time before the actual implementation of the hearing officer's decision:
  - Upon the hearing officer's own motion.
  - By the hearing officer on the application of a party for good cause shown.

The hearing officer shall render its decision within fifteen (15) work days of the conclusion of any reopened hearing. The facts found and the reasons for the hearing officer's decision must be set forth in writing on Form C.

#### **K. Costs**

The grievant is responsible for the cost of legal counsel or other representation in the preparation of the employee's case in all and any part of the proceedings.

#### **L. Recorders**

The use of court reporters, as well as mechanical recorders, shall not be permitted in the Management Steps. They may be used at the Final Hearing, however, at the request of either party, and at the cost of the requesting party.

## **M. Implementation of Final Hearing Decisions**

Either party may petition the Loudoun County Circuit Court for an order requiring the implementation of the final hearing decision.

### **X-2 Police Officers' Procedural Guarantees**

Non-probationary sworn police officers, except the Chief of Police, have procedural guarantees under the Law Enforcement Officer's Procedural Guarantees Act, Code of Virginia, as amended, Chapter 10.1 of Title 9.1, Section 9.1-500 through Section 9.1-507 ("the Act"). A law enforcement officer may proceed under either the Town's grievance procedure or the law enforcement officer's procedural guarantees, but not both. For purposes of these Police Officers' Procedural Guarantees, the term "Officers" means any non-probationary sworn police officer except the Chief of Police.

The rights guaranteed to Officers under the Police Officers' Procedural Guarantees are as follows:

#### **A. Conduct of Investigation**

1. Any questioning of the Officer shall take place at a reasonable time and place as designated by the investigating officer, preferably when the Officer under investigation is on duty and at the office of the Middleburg Police Department, unless matters being investigated are of such a nature that immediate action is required.
2. Prior to the Officer being questioned, he/she shall be informed of (i) the name and rank of the investigating officer and of any individual to be present during the questioning, and (ii) the nature of the investigation.
3. When a blood or urine specimen is taken from an Officer for the purpose of determining whether the Officer has used drugs or alcohol, the specimen shall be divided and placed into two separate containers. One specimen shall be tested while the other is held in a proper manner to preserve the specimen by the facility collecting or testing the specimen. Should the first specimen test positive, the Officer shall have the right to require the second specimen to be sent to a laboratory of his/her choice for independent testing in accordance generally with the procedures set forth in the Code of Virginia. The Officer shall notify the Chief of Police in writing of his/her request within ten (10) days of being notified of positive specimen results. The laboratory chosen by the Officer shall be accredited or certified as provided by the Act.

#### **B. Personal Assets of Officers**

No Officer shall be required or requested to disclose any item of his/her property, income, assets, source of income, debts, or personal or domestic expenditures, including those of any member of his/her family or household, unless such information is necessary in investigating a possible conflict of interest with respect to the performance of his/her official duties, such disclosure is required by law, or such information is related to an investigation.

Nothing in this section shall preclude the Town of Middleburg from requiring an Officer to disclose any place of off-duty employment and where he/she may be contacted.

### **C. Notice of Charges**

Before any termination, demotion, suspension without pay or transfer for punitive reasons may be imposed, the following rights shall be afforded:

1. The Officer shall be notified in writing of all charges, the basis therefore, and the action which may be taken.
2. The Officer shall be given five (5) work days (or a lesser period if agreed by the Officer) to respond orally and in writing to the charges.
3. In making his/her response, the Officer may be assisted by counsel at his/her own expense.
4. The Officer shall be given written notification of his/her rights to initiate a grievance under this Chapter X of the Employee Handbook. A copy of this Chapter X shall be provided to the Officer upon his/her request. An Officer may proceed under either the Town's general grievance procedure or the Police Officer's Procedural Guarantees, but not both.

### **D. Hearing**

1. Whenever an Officer is terminated, demoted, suspended without pay or transferred for punitive reasons, he/she may, within five (5) work days following such action, file a grievance requesting a hearing. If such request is timely made, a hearing shall be held within fourteen (14) calendar days from receipt of the request, unless a later date is agreed to by the Officer.
2. The hearing shall be conducted by a panel, such panel to consist of one member from within the Town government selected by the grievant, one member within the Town government selected by the Chief of Police who is at least the same rank as the grievant but not more than two ranks above the grievant, and a third member from within the Town government to be selected by the other two members. In the event that such two members cannot agree upon their selection, the Chief Judge of the Loudoun County Circuit Court shall choose a third member.

At the hearing, the Officer and the Town shall be afforded the opportunity to present evidence, examine and cross-examine witnesses. The panel shall have the power to issue subpoenas requiring witnesses to testify on the request of either the Officer or the Town. The Officer and the Town shall also be given the opportunity to be represented by counsel at the hearing. The panel conducting the hearing shall rule on the admissibility of the evidence. A written record shall be made of the hearing.

3. At the option of the Town, it may, in lieu of complying with the provisions of paragraph C, give the law enforcement officer a statement, in writing, of the charges, the basis therefore, the action which may be taken, and provide a hearing as provided for in paragraph D prior to dismissing, demoting, or suspending or transferring for punitive reasons the law enforcement officer.
4. The recommendations of the panel, and the reasons therefore, shall be in writing, and shall be transmitted promptly to the Officer, or his/her attorney, and the Chief of Police. Such recommendation shall be advisory only, but shall be accorded significant weight by the Chief of Police in making his/her final recommendation to the Town Manager.

**E. Immediate Suspension**

Nothing in this section shall prevent the immediate suspension without pay of any Officer whose continued presence on the job is deemed to be a substantial and immediate threat to the welfare of the Town or the public, nor shall anything in this section prevent the suspension of a law enforcement officer for refusing to obey a direct order issued in conformance with the Town's written and disseminated rules and regulations. In such a case, the Officer shall, upon request, be afforded the rights provided for under this section within five (5) work days from the date of the suspension.

**F. Informal Counseling Not Prohibited**

Nothing in this section shall be construed to prohibit the informal counseling of a law enforcement officer by a supervisor in reference to a minor infraction of policy or procedure which does not result in a disciplinary action being taken against the law enforcement officer.

**G. Additional Rights Not Provided**

It is not the intent of the Town to grant additional rights beyond those expressly required by the Act, or shall the rights guaranteed in the Police Officer Procedural Guarantees be constructed as implying any additional rights not expressly provided in the Act.

**CHAPTER XI  
IMPLEMENTATION OF POLICIES**

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**A. CONFLICTING POLICIES REPEALED**

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

**B. SEPARABILITY**

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

**C. VIOLATIONS OF POLICY PROVISIONS**

An employee violating any of the provisions of this policy shall be subject to suspension and/or dismissal, in addition to any civil or criminal penalty.

**D. EFFECTIVE DATE**

This policy shall become effective upon adoption by the Middleburg Town Council.

Last revision date: July 1, 2020

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**CHAPTER XII**  
**EMPLOYEE STATEMENT OF ACKNOWLEDGEMENT**

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I acknowledge receipt of a copy of the employee handbook. I understand all matters set forth in the employee handbook and agree to abide by and adhere to the policies as set forth therein during my employment with the Town of Middleburg.

I further understand and agree that any provision of the employee handbook may be amended, revised, or eliminated at any time.

I understand that it is my responsibility to maintain and keep my handbook updated as new policies are created and distributed and/or policies are deleted or changed.

I hereby acknowledge receipt of the Employee Handbook dated \_\_\_\_\_.

Employee's Name (Please Print) \_\_\_\_\_

Employee's Signature \_\_\_\_\_

Date \_\_\_\_\_

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# APPENDIX

- Background Investigation Release Form**
- Driving Record Release Form**
- Employee Evaluation Forms**
- Grievance Forms**
- Incident Investigation Forms**

