

# TOWN OF DANVILLE



## PERSONNEL POLICIES AND PROCEDURES

*Amended October 16, 2007*

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**AUTHORITY**

**APPENDIX A**

**ALCOHOL & DRUG TESTING REQUIREMENTS FOR COMMERCIAL MOTOR VEHICLE DRIVERS**

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## **SECTION 1**

### **GENERAL PROVISIONS**

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#### **1.1 Purpose**

The purpose of these policies and procedures is to implement the Personnel Policy Guidelines of the Town Council adopted by Resolution 47-83, and amended by Resolution 113-2007 which are as follows:

- 1.1.1 Recruiting, selecting, and advancing employees on their relative abilities, knowledge and skills;
- 1.1.2 Providing equitable and competitive compensation;
- 1.1.3 Training employees as needed, to assure high quality performance;
- 1.1.4 Retaining employees on the basis of the adequacy of their performance and dismissing employees who demonstrate insufficient progress towards, or are unable to meet, minimum performance standards;
- 1.1.5 Assuring the impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religion, age, marital status, disability, or any other basis prohibited by statute, and with proper regard for their privacy and constitutional rights as citizens.

#### **1.2 Notice**

All employees will be provided with copies of these policies and procedures, any changes, and departmental directives or regulations related to these policies and procedures. Employees will indicate receipt of policies & procedures by signing a statement to that effect.

#### **1.3 Scope**

These policies and procedures shall apply to all offices, positions and employees of the Town of Danville, except:

- 1.3.1 Elected officers;
- 1.3.2 Members of appointed boards, commissions and committees;
- 1.3.3 Town Manager and City Attorney;
- 1.3.4 Temporary, seasonal employees
- 1.3.5 Volunteer personnel;
- 1.3.6 Consultants and others who provide services under contract, except as otherwise provided by employment agreements or contract.

#### **1.4 Town Manager**

Ordinance No. 10 and Resolution No. 47-83 of the Town of Danville designates the Town Manager as the Appointing Authority and authorizes him/her to delegate, for administrative purposes, these duties and responsibilities to other officers and employees of the Town.

**1.5 Relationship to Other Administrative Procedures**

Within each operating department and service program of the organization, operating procedures will be developed to ensure that the work of each department and/or program is carried out with "quality service to the public with operating efficiency and effectiveness" in mind.

**1.6 Severability**

If any provisions of these policies and procedures, or their application to an employee or circumstance, are held invalid, the remainder of the policies and procedures and their application shall not be affected.

**1.7 Policies**

All Town policies must be approved by the Town Council.

**1.8 Official Records**

Human Resources keeps all official personnel records including records of employment history, performance evaluation, classification, compensation, leave, training and other matters directly related to an employee's status. The Finance Department maintains all records relating to employee payroll. Payroll and personnel records shall be consistent with each other at all times.

**1.9 Change of Status Report**

Every appointment, transfer, promotion, demotion, change of salary rate and other temporary or permanent changes in status of employees must be reported to the Human Resources Manager.

**1.10 Personnel File**

1.10.1 Content of Personnel Files - The Human Resources Manager will maintain a file on each employee which will contain all records and documents pertinent to his/her employment status and history.

1.10.2 Access to Personnel Files - The confidential information in personnel files will not be revealed to outside sources except as required by law or with the consent of the employee and the Department Director. Human Resources may reveal the following information regarding an employee, or former employee, in response to public records requests consistent with state and federal law:

- a. Employee's name
- b. Classification title and department
- c. Status
- d. Salary
- e. Hire date and, if applicable, separation date

This information is a matter of public record and is available to anyone. An employee, his/her immediate supervisor and/or Department Director, or his/her representative, may inspect his/her personnel file at any time during the normal Human Resources business hours.

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Upon request, the employee may receive a copy of any materials in the personnel file. An employee shall be furnished a copy of any statement written for inclusion in the employee's personnel file concerning the employee's conduct or performance. An employee may prepare material for insertion in his/her personnel file in response or rebuttal to any material in the file.



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## **SECTION 2**

### **DEFINITION OF TERMS**

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Terms used in these policies and procedures are defined as follows:

#### **2.1 Acknowledgment of Work Period**

Each employee must acknowledge, in writing, his/her specific assigned work period if other than the standard workweek of 37.5 hours (i.e., 8:30 a.m.-5:00 p.m. with lunch from 12:00-1:00 p.m.).

#### **2.2 Allocation**

The assignment of an individual position to an appropriate classification on the basis of the type, difficulty and responsibility of the work assigned. As used in these policies and procedures, employees are appointed to positions; positions are allocated to classes.

#### **2.3 Anniversary Date**

The month and day of an employee's appointment to a benefited position.

#### **2.4 Benefits**

Pension, medical and other benefits as set by Council.

#### **2.5 Certification**

The process whereby the Human Resources Manager identifies qualified candidates who have successfully completed all qualifying requirements and may be considered for a probationary appointment.

#### **2.6 Class**

A group of positions sufficiently similar in duties, responsibilities, authority, and qualifications to permit combining them under a single title.

#### **2.7 Classification Plan**

A single document containing all class specifications applicable to all regular positions which serves as a basis for determining recruitment, selection, training, evaluation, retention, and compensation standards.

#### **2.8 Class Specification**

A written description of a class of work, including an appropriate class title, which describes the level of the work assigned, and specifies desirable knowledge, skill and ability standards for positions assigned to the class.

**2.9 Continuous Service**

The continuous employment of an employee having a probationary or regular appointment without break or interruption, except by approved leave.

**2.10 Date of Hire**

The month, day and year of an employee's appointment to a position.

**2.11 Demotion**

The voluntary or involuntary reduction of a regular employee to a position in another class having a lower maximum salary rate.

**2.12 Discharge**

The involuntary dismissal of an employee.

**2.13 Domestic Partner**

Anyone who has registered as a domestic partner under California Family Code Section 97 et seq.

**2.14 Employee**

A person paid to occupy a position with the Town.

2.14.1 At-Will Employee - Any employee who was hired to serve at the pleasure of the Town Manager and does not serve a probationary period.

2.14.2 Full-Time Employee - An employee who works the maximum hours permitted under the Town's standard work week.

2.14.3 Temporary/Seasonal Employee - A non-benefited employee who is hired to work less than 1,000 hours during a fiscal year.

2.14.4 Part-Time Employee - An employee who works less than an average of 37.5 hours per week.

2.14.5 Probationary Employee - An employee who is hired for, or promoted to, a benefited full-time or part-time position. Probationary status is for the specified initial six (6) month uninterrupted period during which job performance is evaluated as the basis for consideration for regular status.

2.14.6 Provisional Employee - An employee who has provisional status in a vacant position during which time the employee may be under consideration for a probationary or regular status. The provisional status is for no more than a six (6) month period for emergency or interim conditions. The Human Resources Manager may extend provisional status for an additional six (6) month period, if recommended by the Department Director.

2.14.7 Regular Employee - An employee who has successfully completed the probationary period in a part-time or full-time benefited position.

**2.15 Employee Assistance Program (EAP)**

This program is available to assist employees in resolving a wide range of personal problems which might otherwise adversely affect their job performance.

**2.16 Employee Examination Status**

Any device or procedure used to measure abilities and suitability for employment including, but not limited to, oral interviews, written tests, performance tests, pre-placement physicals, drug and/or alcohol testing, evaluation of education/experience and performance during probation.

**2.17 Employee Steering Committee**

The Employee Steering Committee is composed of selected employee representatives from each of the Town's defined work groups. The Human Resources Manager is an advisory member to the Committee. The purpose of the Committee is to: (1) assist the Town Manager by providing a forum for the discussion of issues that affect employees; (2) disseminate information to all organizational work groups; and (3) play a role in the grievance process, if necessary or appropriate.

**2.18 Employment List**

- 2.18.1 Regular Employment List - A list of names of persons who have qualified to be considered for regular status.
- 2.18.2 Reinstatement List - A list of names of regular employees who have been laid off or demoted in lieu of lay-off.

**2.19 Exempt /Non Exempt Employee**

- 2.19.1 Exempt Employee - An exempt employee is a professional, technical or managerial level employee who is paid a set salary to accomplish his/her job responsibilities. Exempt employees are not paid by the hour and do not qualify for compensatory time off or overtime pay. Exempt employees generally have more responsibility on a decision-making level. These positions meet specific tests established by the Fair Labor Standards Act (FLSA) and California state law.
- 2.19.2 Non-Exempt Employee - Non-exempt employees are paid by the hour to accomplish a specific job assignment. Non-exempt employees qualify for overtime pay or compensatory time off in lieu of overtime pay. These positions do not meet FLSA exemption tests.

**2.20 Good Standing**

Voluntary resignation requiring a minimum of two weeks notification. Leave is not to be taken during the last two weeks.

**2.21 Hourly/Monthly Rate**

The actual amount paid to an employee for each regular hour/month worked.

**2.22 Immediate Family**

An employee's spouse, child, parent, brother, sister, mother/father-in-law, brother/sister-in-law, grandparent or anyone who has acted in the capacity of an "immediate family" member.

**2.23 Lay-Off**

The elimination of a position(s) and dismissal or demotion of incumbents in those positions due to reorganization, reassignment, lack of work, or lack of funds.

**2.24 Leave**

Authorized absence by an employee from his/her place of work.

**2.25 Modified Work Week**

Any work period that is different from the standard workweek. Certain departments or employees may have different hours as recommended by the Department Director and approved by the Town Manager.

**2.26 Nepotism**

The employment of "close family relatives" which include current spouse, children, parents, grandparents, brothers and sisters.

**2.27 Overtime**

Time worked by regular full-time or part-time non-exempt employees in excess of the regular full-time 37.5 hour workweek is considered overtime with the exception of a pre-approved modified work schedule.

**2.28 Personnel Action**

Any action taken with reference to appointment, compensation, promotion, commendations, transfer, layoff, discipline, or discharge.

**2.29 Position**

A combination of current duties and responsibilities requiring the full time, part-time, or temporary services of an employee.

**2.30 Probationary Period**

A six-month trial period during which an employee is required to demonstrate his/her fitness to perform the actual duties required of a specific position. The probationary period is an integral part of the examination of an individual.

**2.31 Promotion**

The advancement of an employee from a position in one class to a position in another class having a higher maximum rate of pay.

**2.32 Qualified Candidate**

A person who has been certified by the Human Resources Manager for consideration for a position.

**2.33 Reassignment**

The change of an employee from one class to another class. If necessary, the reassigned employee's salary will be adjusted to fall within the range of his/her new position.

**2.34 Reclassification**

The reassignment of a position by raising it to a higher class, reducing it to a lower class or by moving it to another class at the same level as measured by a significant change in the kind, difficulty and responsibility of the work performed.

**2.35 Reduction In Pay**

An action which decreases an employee's base pay amount.

**2.36 Reinstatement**

The re-employment, without examination, of a former full-time probationary or regular employee who has previously been laid off, or demoted in lieu of being laid off, and whose name appears on a reinstatement list.

**2.37 Re-hire**

The re-employment, without examination, after voluntary separation in good standing, of a former regular or probationary employee in a position assigned to the same or a lower classification than the position from which the employee separated.

**2.38 Safety and Wellness Committee**

The Safety and Wellness Committee is composed of selected employee representatives from each of the Town's work groups. The Committee's objectives are to meet regulatory safety requirements, ensure a high standard of safety throughout the organization and promote healthy choices through preventative measures and education.

**2.39 Salary Range**

The minimum and maximum salary rates assigned to a class.

**2.40 Separation**

The separation of an employee's employment with the Town. A minimum of two week's notice prior to separation is required unless waived by Department Director.

**2.41 Standard Workweek**

The standard workweek is Monday through Friday, from 8:30 a.m. to 5:00 p.m. with one hour for lunch.

**2.42 Supervisor**

An employee with the responsibility for organizing, directing and evaluating the work of other employees.

**2.43 Suspension**

The temporary and involuntary interruption of service, for a limited period of time, of an employee for disciplinary purposes.

**2.44 Time Sheet**

The document on which an employee's time worked and leave taken is recorded.

**2.45 Training Committee**

The Training Committee is composed of selected employee representatives from each of the Town's work groups. It recommends and oversees development and implementation of the Town's training program and helps provide every employee with an opportunity for professional and personal growth while meeting the organization's needs for greater productivity and effectiveness.

**2.46 Transfer**

A change of an employee from one position to another position in the same or comparable class.

**2.47 Vacancy**

An authorized position which is not occupied.

**2.48 Y-Rate**

A salary rate above the maximum rate of the range to which a position is assigned, which is paid to an employee following reassignment, reclassification or the adjustment of the range to a lower level. The Y-rate is retained until the newly assigned range has a maximum rate equal to or higher than the Y-rate.

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## **SECTION 3**

### **CLASSIFICATION PLAN**

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#### **3.1 Purpose**

The purpose of the Classification Plan is to provide a complete and continuous inventory of all classifications, to provide accurate specifications and to ensure that each position is allocated to the appropriate classification.

#### **3.2 Classification of Positions**

All regular positions are grouped into classes. Each class includes those positions sufficiently similar in duties and responsibilities and requiring similar education, experience, knowledge, skills and abilities.

#### **3.3 Preparation and Content of Class Specifications**

The Human Resources Manager is responsible for preparing and maintaining class specifications for all positions. The specifications include, but are not limited to, a list of examples of duties and a statement of desirable qualifications required for employee status.

#### **3.4 Interpretation of Class Specifications**

All class specifications describe typical examples of duties that employees occupying positions in the class may be required to perform. Class specifications are explanatory but not restrictive. The listing of particular tasks does not preclude the assignment of other tasks of related kind or character, or requiring lesser skills. The purpose of the class specification is to describe essential duties, level and nature of the work so that qualification standards and compensation may be equitably applied; it is not expected that each individual task required be included in the specification.

#### **3.5 Notice**

Amendments or revisions to the Classification Plan will be provided to affected employees. The provisions of the Classification Plan are to be observed in the handling of all personnel actions and activities. The Classification Plan may be amended or revised as required.

#### **3.6 Allocation of Positions**

The Town Manager is responsible for approving the assignment of each position to one of the classes established by the plan.

#### **3.7 Request for Classification Review**

A regular employee may request a review of their classification assignment. The requests will be submitted in writing to the employee's immediate supervisor, and must specify the reason the employee believes the classification should be changed. A request for classification review shall be forwarded to the Department Director for recommendations and to the Town Manager for decision.

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## **SECTION 4 COMPENSATION PLAN**

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### **4.1 Purpose**

The purpose of the Compensation Plan is to provide equitable and competitive compensation for all employees in accordance with approved compensation policies.

### **4.2 Preparation of Plan**

The Human Resources Manager shall prepare a Compensation Plan, including specified rates of pay assigned to classifications and supplemental benefits. The plan and any provisions become effective upon approval of the annual operating budget by the Town Council.

### **4.3 Administration of Plan**

4.3.1 Rate of Pay - Each employee is paid a rate of pay within the salary range for the class in which he/she is employed.

4.3.2 Entrance Salary - An employee is appointed at the minimum rate for the class, except (1) when appointment at a higher rate is appropriate due to the promotion of an existing employee, or (2) when the Department Director believes it is necessary to make an appointment or reinstatement above the minimum rate. Authorization for appointment more than 10% above the entrance rate must be obtained from the Town Manager. In reviewing such requests, consideration will be given to the candidate's unusually high qualifications, previous salary history, outstanding experience, availability of other qualified candidates and the resulting salary relationships with similar positions.

4.3.3 Merit Salary Adjustments - Merit salary adjustments may be recommended by a Department Director to recognize quality of performance. Employees are not entitled, by virtue of their employment with the Town, to receive a merit adjustment at any specific time or any specific amount of adjustment. All regular and fixed term employees who have been employed by the Town for one year as of August 1 are eligible for, and will receive consideration for, merit salary adjustments subject to the provisions of this section.

4.3.4 Merit Adjustment Guidelines - The Human Resources Manager will prepare guidelines for use by all supervisors when considering an employee for a merit adjustment and will ensure that all supervisors are apprised of, and receive training in, the application of the merit adjustment guidelines. The guidelines will be based on a systematic performance appraisal process.



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- 4.3.5 Cash Bonus - A cash bonus to a maximum of 5% of present annual salary may be awarded to employees in recognition of outstanding performance beyond the normal requirements of their employment. Bonus pay requires advance approval of the Town Manager.
- 4.3.6 Annual Review - Regular employees will be considered for a merit adjustment once each year if funds are budgeted and available. If in the opinion of the Department Director a merit adjustment is not warranted at the time of the review, consideration for an adjustment may be deferred to a later date, and the employee will be notified by the Department Director.
- 4.3.7 Movement to a Higher Classification - When an employee is promoted to a class having a higher salary range, the employee will normally be paid at the entrance step of the assigned range. If the entrance step is lower than the employee's current salary, the employee's salary will be adjusted to 5% above current salary. Promotions to a higher classification will result in a minimum 5% pay raise.
- 4.3.8 Involuntary Reclassification - If an employee is reassigned to a class with a lower salary range, the employee's salary will be set as determined by the Department Director and approved by the Town Manager. If an employee is reassigned to a class with a lower salary range as a consequence of disciplinary action, the employee's salary will be set as determined by the disciplinary proceedings.
- 4.3.9 Voluntary Reclassification - If an employee voluntarily accepts reclassification to a lower class in lieu of layoff, or for other reasons, the employee is to be assigned a rate of pay within the salary range of the new classification which is nearest to the employee's current rate of pay.
- 4.3.10 Transfer - When an employee receives a lateral transfer or is transferred, from one classification to another classification having the same salary range, the employee's pay and leave will remain unchanged.
- 4.3.11 Acting Pay - When assigned to "act" in a higher level classification for an uninterrupted period of more than 20 working days, the acting employee may receive a rate of compensation which is at least 5% above the employee's current pay rate or the minimum rate for the class to which the employee is assigned on an acting basis, whichever is greater. Acting pay is recommended by Department Director and approved by the Town Manager.
- 4.3.12 Regular Full-Time Employees - Regular full-time employees shall be eligible to receive supplemental benefits as authorized by the Town Council in the compensation plan.
- 4.3.13 Regular Part-Time Employees - Regular part-time employees in designated part-time positions who work an average of 20 or more hours per week on an annual basis shall be eligible to receive prorated supplemental benefits as authorized by the Town Council in the compensation plan.

- 4.3.14 Provisional Employees - Provisional employees will be paid a salary rate within the salary range assigned to the position classification as outlined in the compensation plan and may receive supplemental benefits as determined by the Town Manager.
- 4.3.15 Temporary/Seasonal Employees - Temporary/Seasonal Employees are assigned an hourly rate of pay.
- 4.3.16 Stand-by Pay - Stand-by occurs when an employee is assigned specific hours outside their standard workweek during which the employee must remain accessible by telephone or cell phone in order to return to work if required. Stand-by duty shall not count as hours worked. Employees performing stand-by duty shall be paid at the approved hourly rate.
- 4.3.17 Call-Out Pay - Non-exempt employees are entitled to call-out pay if after completing their work day and departing their work site, they are required to return to work. Employees called back to work in these circumstances shall be entitled to a minimum of two hours of compensation at 1½ times regular pay.

#### **4.4 Salary Range Adjustments**

Salary range adjustments are effective on the date specified by the Town Council and are intended to reflect changes in the cost of living and other economic and market factors applicable to an employee's classification. Salary range adjustments are to be distinguished from merit salary adjustments which are intended to recognize quality of performance.

#### **4.5 Partial Pay-Period Pay**

Earnings for employees working less than their declared work week in a pay period will be computed by multiplying the number of hours actually worked during the pay period by the employee's rate of pay unless accrued leave or compensatory leave are applied.

#### **4.6 Overtime**

- 4.6.1 Authorization - Non-exempt employees receive overtime pay only if the use of overtime is authorized by the appropriate supervisor in advance of its occurrence, and if the time is recorded on the employee's time sheet.
- 4.6.2 Eligibility for Overtime - The Town Manager will determine which classifications are eligible for overtime and which comply with applicable state and federal laws.
- 4.6.3 Overtime Compensation - Overtime is calculated in 15 minute increments. Hours worked in excess of 37.5 hours per week by non-exempt employees shall be compensated at the rate of 1 ½ times regular pay. Compensatory Time Off (CTO) in lieu of receiving overtime pay, may be granted in accordance with the provisions of the Federal Fair Labor Standards Act, and upon approval by the employee's supervisor for each hour worked.

- 4.6.4 Holiday Overtime Compensation - Non-exempt employees who work on a paid declared holiday will receive double their regular hourly pay. Compensatory Time Off (CTO), in lieu of receiving overtime pay, may be granted in accordance with provision of the Federal Fair Labor Standards Act, and upon approval of the employee's supervisor, for each hour worked.

**4.7 Compensation Upon Separation**

All forms of compensation due upon separation, whether voluntary, or involuntary, are paid at the rate effective at the time of separation. General Leave is cashed out at 75% of value up to a maximum number of hours as defined in Section 6.3.1.

**4.8 Declaration of Work Periods**

The Town Manager will declare specific work periods for Town employees, each of which complies with the Fair Labor Standards Act.

**4.9 Declaration of Exempt Employees**

The Town Manager will declare specified employee classifications as exempt from certain provisions of the Fair Labor Standards Act.

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## **SECTION 5**

### **EMPLOYMENT/RECRUITMENT**

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#### **5.1 Purpose**

Recruitment and selection procedures are intended to ensure that all position vacancies are filled with qualified, competent persons who are well-suited to perform the position in which they are employed. It is the objective of the Town to obtain the best qualified person or persons available based on the Town's ability to attract highly qualified persons in the marketplace and conduct a fair evaluation of applicants.

#### **5.2 Procedure**

Prior to recruiting for a position, written authorization must be obtained from the Town Manager.

#### **5.3 Applications and Applicants**

- 5.3.1 Announcements - Vacancies will be publicized to attract the best qualified candidates. Announcements of vacancies are to be placed on the Town of Danville web page and in suitable publications for the position being recruited. To ensure that current employees are aware of the vacancy, announcements will be placed in prominent work places within the Town organization. In addition to describing the nature of the work, recruitment announcements will also include desirable qualification standards, the procedure for submitting an application and the application time period.
- 5.3.2 Application Forms - The Human Resources Manager will provide a standard application form which shall be completed by all applicants. The application form may require such applicant information as deemed necessary by the Human Resources Manager and consistent with applicable state and federal law.
- 5.3.3 Disqualification - Any application may be rejected if it is incomplete or if it is not submitted within the specified filing date. When an application is rejected, the applicant shall be notified by mail, email or phone, of the rejection.
- 5.3.4 Confidentiality - All forms of applicant information including, but not limited to, applications, resumes, evaluations and correspondence related thereto, is to be held by the Human Resources Manager or his/her designee(s) as confidential information. Access to such information will be authorized by the Human Resources Manager as necessary for the proper conduct of recruitment and selection activities.

#### **5.4 Applicant Evaluation**

- 5.4.1 Nature and Types of Examination - Selection techniques used in the evaluation of applicants are to be impartial and related to those subjects which fairly measure the relative capacities of applicants to execute the duties and responsibilities of the position. Examinations may consist of selection techniques such as, but not limited to,

written tests, personal interviews, performance tests, assessment centers, physical agility tests, medical examinations, or any combination of these or other tests. The probationary period, which may include the evaluation of daily work performance, work samples and the successful completion of prescribed training, is an extension of, and an integral part of, the examination process. Examinations will be designed to provide equal opportunity to all candidates and will include an analysis of essential job-related requirements and factors only.

5.4.2 Scoring of Examinations - If an applicant evaluation process involves more than one part, each part may be separately rated and scored. If the parts are separately scored, all parts of the examination will be averaged together to arrive at a final score. If parts of an examination are to be given more weight than other parts, such weighted factors are to be noted in the announcement of the vacancy. A candidate's total score in a given examination is to be used for the sole purpose of arriving at a final determination that an applicant is qualified or disqualified for further consideration.

5.4.3 Notification of Examination Results, Review of Papers, and Examination Appeal  
Each candidate in an examination will be given written notice of the examination results. Candidates have the right to inspect their own examination answer sheets within seven (7) working days after the notice of results is mailed. The rating sheets of individual oral interview evaluators are not open to applicant inspection. Any error in computation, if appealed to the Human Resources Manager within this period, will be corrected. However, such corrections will not invalidate appointments previously made. Neither originals, nor copies, of candidate examination materials may be taken from the premises of the Human Resources office without prior approval of the Human Resources Manager.

## **5.5 Medical Examination Required**

Medical examinations may be required under the following circumstances:

- 5.5.1 To be eligible for placement or re-employment in a position for which an offer of employment or re-employment has been made by the Town.
- 5.5.2 To be promoted or transferred to a job classification requiring greater physical qualifications than in employee's present job classification.
- 5.5.3 Any employee may be required to complete a medical examination at any time designated by the Human Resources Manager to demonstrate the ability to perform assigned duties.

## **5.6 Physician**

All medical examinations will be performed by a licensed physician approved by the Human Resources Manager.

## **5.7 Cost of Exam**

The Town will pay the cost of any medical examination required under this section.

## **5.8 Nepotism**

It is the policy of the Town of Danville not to discriminate in its employment and personnel actions with respect to its employees, prospective employees and applicants on the basis of marital status. No employee, prospective employee or applicant shall be improperly denied employment on the basis of his or her marital status. Marital status is defined as an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment or other marital state for the purpose of this anti-discrimination policy. Spouse is defined as "partner in a marriage" as defined by California Civil Code Section 4100.

Notwithstanding the above provisions, the Town of Danville retains the right:

- 5.8.1 To refuse to place one party of a family relationship under the direct supervision of the other party to a family relationship where such has the potential for creating adverse impact on supervision, safety, security or morale of the employees.
- 5.8.2 To refuse to place both parties of a family relationship in the same department, division or facility where such has the potential for creating adverse impact on supervision, safety, security or morale or involves potential conflicts of interest.
- 5.8.3 To refuse to place one party of a family relationship in a position to exert influence on the hiring, transfer or promotion of the other party in a relationship.

## **5.9 Employment Lists**

- 5.9.1 Preparation and Availability - As soon as possible after the completion of the applicant evaluation process, the Human Resources office will prepare and keep available an employment list consisting of the names of candidates who are eligible for consideration for appointment.
- 5.9.2 Duration of List - All employment lists expire within six (6) months from its effective date unless extended by the Human Resources Manager.
- 5.9.3 Reinstatement Lists - The names of probationary or regular employees who have been laid off or demoted in lieu of lay-off and has performed at an overall "Meets Standards" level or better, will be placed on a reinstatement list. Such names will remain on the list for a period of six months unless the former employee is reinstated sooner or refuses an offer of reinstatement. When a reinstatement list is to be used to fill vacancies, the Human Resources Manager will notify all of the people named on the list.
- 5.9.4 Removal of Names From List - The name of any person appearing on an employment or reinstatement list will be removed if the individual requests in writing that his/her name be removed, if he/she fails to respond to a notice mailed to his/her last known address, or for any of the reasons specified in 5.9.3. The names of current employees who resign will be automatically removed from all such employment lists.

## **5.10 Methods of Filling Vacancies**

- 5.10.1 Employee Status - Vacancies may be filled by transfer, promotion, demotion, re-hire, recruitment, reinstatement or from a list of qualified candidates certified by the Human Resources Manager. In the absence of qualified candidates, provisional appointments may be made. In-house recruitments are open to all current qualified employees. Outside recruitments are open to all qualified applicants.
- 5.10.2 Notice to Human Resources Manager - It is the responsibility of the Department Director to notify the Human Resources Manager whenever a vacancy is to be filled.
- 5.10.3 Reinstatement - If a reinstatement list is in effect for the classification applicable to a vacant position, the Department Director or Town Manager must first attempt to fill the position from this list. If it is not possible to appoint an individual from a reinstatement list or if no reinstatement list exists for the classification, the vacancy may be filled by other procedures specified in these guidelines.
- 5.10.4 Provisional Status - In the absence of qualified candidates willing to accept provisional status, a current employee meeting the minimum training and experience qualifications for the position may be provisionally assigned with the concurrence of the Human Resources Manager. A provisional employee may be removed from that position at any time without the right of appeal. A provisional employee may be employed up to six (6) months. A provisional status may be extended for an additional six-month period, if recommended by the Department Director and approved by the Human Resources Manager.

## **5.11 Probationary Period**

- 5.11.1 Objective of Probationary Period - The probationary period is an integral part of the examination process and is to be utilized for closely observing the employee's work and for securing the most effective adjustment of a new or promoted employee to his/her position.
- 5.11.2 Regular Status Following Probationary Period - All regular employee positions, except provisional, shall be tentative and subject to a probationary period of not less than six months of uninterrupted service. Before the end of the probationary period, the Supervisor will notify the Department Director and Human Resources Manager that regular status of the employee is desired. A Personnel Action Form will be completed stating that employee passed probation. Also, a yearly performance evaluation form will be completed.
- 5.11.3 Failure to Successfully Complete Probation - During the six-month probationary period, an employee may be terminated without cause and without the right of appeal. Notification of rejection/dismissal shall be provided by the Department Manager/Director to the probationary employee and the Human Resources Manager.

## **5.12 Disability Non-Discrimination Policy and Complaint Procedure**

In cases where discrimination on the basis of an individual's disability is/has been alleged, the policies and procedures as defined by state and federal law shall prevail over any conflicting provisions in the Town's Personnel Policies and Procedures.

### 5.12.1 Purpose

- a. Prohibit and eliminate any discrimination in employment against a qualified individual with a disability;
- b. Define what constitutes "disability;"
- c. Define who is a "qualified individual with a disability;"
- d. Define discrimination on the basis of disability; and
- e. Establish a procedure for investigating and resolving internal disability discrimination complaints.

### 5.12.2 Policy

- a. Discrimination on the basis of disability against an applicant or an employee who is a qualified individual with a disability, by a supervisor, management employee, or co-worker, is not condoned and will not be tolerated. This policy applies to the job application process and to all terms and conditions of employment including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation and training.
- b. All complaints of discrimination on the basis of disability will be promptly and objectively investigated.
- c. Disciplinary action, up to and including separation, will be instituted for behavior described in the definition of discrimination on the basis of disability set forth in this policy.
- d. Any retaliation against a person for filing a discrimination charge or making a discrimination complaint is prohibited.
- e. The person responsible for compliance with this policy is the Human Resources Manager. All complaints based on disability should be directed to the Human Resources Manager.

### 5.12.3 Definitions:

- a. Disability is:
  - 1) A physical or mental impairment that limits one or more major life activity; or
  - 2) Having a record of such an impairment; or
  - 3) Being regarded as having such impairment.
- b. Physical or Mental Impairments/Medical Conditions - Physical or mental impairments and medical conditions include, but are not limited to: vision, speech and hearing impairments; emotional disturbance and mental illness; seizure disorders; mental retardation; orthopedic and neuromotor disabilities; learning disabilities; diabetes; heart disease; nervous conditions; cancer; genetic characteristics; asthma; Hepatitis B; HIV infection; and alcoholism or drug addiction if the addict has successfully completed or is participating in a rehabilitation program and no longer abuses alcohol or uses illegal drugs.



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- c. Limitation of Major Life Activities - An individual is disabled if he/she has a physical or mental impairment that (a) renders him/her unable to perform a major life activity; or (b) limits the condition, manner or duration under which he/she can perform a particular major life activity in comparison to other people. Major life activities are functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

In determining whether physical or mental impairment limits the condition, manner or duration under which an individual can perform a particular major life activity in comparison to other people, the following factors shall be considered:

- 1) The nature and severity of the impairment;
- 2) The duration or expected duration of the impairment; and
- 3) The permanent or long-term impact (or expected impact) of, or resulting from, the impairment.

In determining whether a physical or mental impairment limits an individual with respect to the major life activity of "working," the following factors should be considered:

- 1) The geographical area to which the individual has reasonable access;
- 2) The job from which the individual has been disqualified because of an impairment and the number and types of jobs within that geographical area utilizing similar training, knowledge, skills or abilities from which the individual is also disqualified because of the impairment; and/or
- 3) The number and types of other jobs within that geographical area not utilizing similar training, knowledge, skills or abilities (to the job from which disqualified) from which the individual is also disqualified because of the impairment (broad range of jobs in various classes).

5.12.4 Having a Record of Impairment - An individual is disabled if he/she has a history of having an impairment that limits the performance of a major life activity; or has been diagnosed, correctly or incorrectly, as having such an impairment.

5.12.5 Qualified Individual With a Disability - A "qualified individual with a disability" is a person who (1) satisfies the job-related requirements for the position, and (2) can perform the essential functions of the position despite his/her disability, or who (3) with reasonable accommodation can perform the essential functions of the position.

- a. Satisfies Job-Related Requirements - The first step is to determine whether the disabled individual satisfies the job-related requirements of the position. Satisfying the job-related requirements of the position means that the disabled individual possesses the appropriate educational background, employment experience, skills, and licenses required for the position.
- b. Essential Job Functions - The second step is to determine whether the individual can perform the essential functions of the position despite the disability.

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Essential functions are the fundamental duties of a position. Marginal or peripheral functions of a position are not essential functions. A function may be essential because:

- 1) The reason the position exists is to perform that function;
- 2) There are a limited number of employees available among whom the performance of that job function can be distributed; and
- 3) It is highly specialized and requires specific expertise or skill to perform.

The following factors shall be considered in determining whether a function is essential: written job descriptions; the amount of time spent on the job performing the function; the consequences of not requiring the performance of the function; and the work experience of past and present incumbents in the position.

- c. Accommodation - If the individual cannot perform the essential functions despite his/her disability, the third step is to determine whether reasonable accommodation would enable the individual to perform the essential functions of the position.

Accommodation is any change in the work environment or in the way things are customarily done that enables a disabled individual to enjoy equal employment opportunities. Accommodation means modifications or adjustments:

- 1) To a job application process to enable an individual with a disability to be considered for the position;
- 2) To the work environment in which a position is performed so that a disabled person can perform the essential functions of the position; and
- 3) That enable disabled individuals to enjoy equal benefits and privileges of employment as other similarly situated employees without disabilities enjoy.

Accommodation includes making existing facilities and equipment used by employees accessible to, and usable by, individuals with disabilities. Accommodation applies to:

- 1) All employment decisions and to the job application process;
- 2) All services and programs provided in connection with employment;
- 3) Non-work facilities provided by the Town to all employees; and
- 4) Known disabilities only.

Accommodation is not required if:

- 1) It eliminates essential functions of a position from the disabled individual's job; or
- 2) Adjustments or modifications requested are primarily for the benefit of the disabled individual.

- 5.12.6 Undue Hardship/Harm to Health and Safety - The Town will not provide an accommodation that imposes an "undue hardship" on the operation of the Town's business, or that would harm the health or safety of any individual. Undue hardship

refers to any accommodation that would be unduly costly, extensive, substantial or disruptive, or that would fundamentally alter the nature or operations of the business.

Whether a particular accommodation will impose an undue hardship is determined on a case-by-case basis. The following factors will be considered in determining whether an accommodation would create an undue hardship: the nature and cost of the accommodation; the financial resources of the Town; the number of employees; the type of operations of the Town, including the composition and functions of its workforce.

- 5.12.7 Determining the Appropriate Accommodation - If a qualified individual with a disability requests a reasonable accommodation, the Town shall engage in an informal, interactive process with the disabled person which identifies the precise limitations resulting from the disability and the potential accommodations that could overcome those limitations.

The accommodation process shall generally involve five steps. First, the Town shall analyze the particular job at issue and determine its purpose and essential functions. Second, the Town shall consult with the disabled individual to ascertain the precise job-related limitations imposed by the individual's disability. Third, the Town shall consult with the disabled individual to identify potential accommodations. Fourth, the Town shall assess the effectiveness of each potential accommodation with regard to enabling the individual to perform the essential functions of the position. Finally, the Town shall consider the preference of the individual to be accommodated and select and implement the accommodation that is most appropriate for both the employee and the Town.

- 5.12.8 Discrimination On The Basis Of Disability - Discrimination on the basis of disability means:

- a. To limit, segregate, or classify a job applicant or employee in a way that may adversely affect opportunities or status because of the applicant's or employee's disability;
- b. To participate in a contract which could subject an applicant or employee with a disability to discrimination;
- c. To use any standards, criteria or methods of administration which could have the effect of discriminating on the basis of disability;
- d. To deny equal jobs or benefits because of a disability;
- e. To fail to make reasonable accommodations to known physical or mental limitations of an otherwise qualified individual unless it can be shown that the accommodation would impose an undue hardship pose a risk to the health or safety of the disabled individual or others;
- f. To use selection criteria which exclude disabled persons unless the criteria is job-related and consistent with business necessity; and
- g. To fail to use employment tests in a manner that ensures that the test results accurately reflect the applicant's or employee's skills or aptitude for a particular job.

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- 5.12.9 Complaint Procedure - A job applicant or employee who believes he/she has been discriminated against on the basis of disability may make a written complaint as soon as possible after the incident to: (a) complainant's immediate supervisor; (b) complainant's Department Director; or (c) the Human Resources Manager designated to coordinate the Town's efforts to comply with federal and state laws concerning employment discrimination on the basis of disability.

In order to facilitate the investigation, the complainant is encouraged to submit the complaint within 30 days of the alleged incident(s). Where reasonable circumstances prevent the filing of the complaint within this time period, complaints received after this time period may be accepted. The complaint shall include:

- a. A description of the offending behavior(s) or violations;
- b. Date(s), time(s) and location(s) of incident(s);
- c. Name(s) of alleged offender(s);
- d. Name(s) of witnesses, if any; and
- e. Remedy desires.

Complainant's immediate supervisor or Department Director shall refer all complaints received to the Human Resources Manager.

Upon receipt of a complaint, the Human Resources Manager shall investigate all charges. The investigation shall include interviews with: (a) the complainant; (b) the person(s) allegedly engaged in discrimination; and (c) any other person the Human Resources Manager believes to have relevant knowledge concerning the complaint.

Upon completion of the investigation, the Human Resources Manager shall review factual information gathered through the investigation to determine whether the alleged conduct constitutes discrimination, giving consideration to all factual information, the totality of the circumstances, including the nature of the alleged discriminatory conduct and the context in which the alleged incidents occurred.

The Human Resources Manager shall then prepare a written report setting forth the results of the investigation and the determination as to whether discrimination occurred. A summary of the results of the investigation shall be conveyed to appropriate persons including the complainant, the person(s) allegedly engaged in discrimination, the supervisor, Department Director and the Town Manager.

If it is determined that discrimination occurred, swift and appropriate disciplinary action will be commensurate with the severity and/or frequency of the offense.

Reasonable steps shall be taken to protect the victim from retaliation as a result of communicating the complaint.

Unresolved disputes by Town employees may be appealed through the grievance procedures as set forth in the Town of Danville, Personnel Policies and Procedures, Section 10 - Grievance Procedure.

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## **SECTION 6**

### **BENEFITS AND SERVICES**

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#### **6.1 Benefits**

Employees shall receive benefits as provided for by these policies and set by Council.

#### **6.2 Computation Date**

For the purpose of calculating earned leave, an employee's original date of hire will be used unless the employee has been rehired, in which case the rehire date will be used.

#### **6.3 Types of Leave**

The following types of leave are recognized:

- 6.3.1 General Leave
- 6.3.2 Administrative Leave
- 6.3.3 Holiday Leave
- 6.3.4 Compensatory Time Off (CTO)
- 6.3.5 Jury Duty
- 6.3.6 Bereavement Leave
- 6.3.7 Military Leave
- 6.3.8 Maternity Leave
- 6.3.9 Paternity Leave
- 6.3.10 Family Care Leave
- 6.3.11 Workers' Compensation Leave
- 6.3.12 Disability Leave
- 6.3.13 Leave Without Pay
- 6.3.14 Absence Without Leave
- 6.3.15 Donated Leave Hours

6.3.1 General Leave Application - General Leave is earned by a regular full-time, regular part-time, fixed term or re-classified probationary employee and may be used for vacation, illness, care of an immediate family member, medical, dental or psychological needs. Newly hired probationary employees use accrued general leave for illness only until completion of probation.

- a. Accrual - Regular Full-Time Employees - Regular full-time employees who have passed probation can take General Leave as it is earned. Regular employees accrue General Leave credit as shown on the following schedule:

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| Year of Employment   | Accrued Per Year   | Accrued Per Pay Period |
|--|--------------------|------------------------|
| First day of employment through the last day of the first year of employment     | 20 days/150 hrs.   | 5.77 hours             |
| First day of the second year through last day of fifth year of employment        | 22 days/165 hrs.   | 6.35 hours             |
| First day of the sixth year through the last day of the ninth year of employment | 27 days/202.5 hrs. | 7.79 hours             |
| First day of the tenth year through remaining years of employment                | 30 days/225 hrs.   | 8.65 hours             |

- b. Accrual - Regular Part-Time Employees - Regular part-time employees accrue leave based on a pro rata share of the leave schedule as shown above. The pro rata share of earned leave is determined as follows:

|                    |     |
|--------------------|-----|
| 20-24 hours worked | 50% |
| 25-29 hours worked | 65% |
| 30 hours worked    | 80% |

- c. Leave Cap - A two-tier policy formula computes the amount of leave time employees may cash out upon separation:

1) **Employees hired after October 15, 1991:**

0 - 5 years of service - 165 hours leave cap

6 plus years - 202.5 hours leave cap

Any accrued time up to the cap will be cashed out at 75% of value upon separation.

2) **Employees hired prior to October 15, 1991:**

0 - 5 years of service - 330 hours leave cap

6 plus years of service - 405 hours leave cap.

Any accrued time up to the cap will be cashed out at 75% of value upon separation.

As of October 15, 1991, employees over the 330 and 405 hour cap will have their current hours capped at the effective date. That personal "cap" will be reduced as the employee uses leave hours, until the employee reaches 330 or 405 hours. They will be cashed out at 75% of value upon separation. The cap is based upon the General Leave time each employee is eligible to use annually in consideration of years of service to the Town.

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All employees can use any time accrued over the cap for General Leave while employed by the Town, subject to Section 6.3.1(d) below. Hours beyond the cap have no cash out value upon separation.

Newly hired employees are not eligible to cash out any accrued leave time upon separation until they pass a six-month probation.

- d. Use of General Leave - The use of General Leave is a benefit to the general well-being of the employee, his/her family and the organization. Consequently, unless employees have the written authorization from the Department Director and the Human Resources Manager, at least 75 hours of paid leave must be taken in a calendar year annually. Employees in their first year of employment must take 37.5 hours. Employees who do not take at least two weeks off (equivalent to 75 hours; prorated for part-time employees) will be required to do so upon reasonable notice by a Department Director.

Notwithstanding the above, reasonable limitations on the use of General Leave are also necessary for the benefit of employees and the organization in general. Factors that supervisors can consider for denying a leave request include, but are not limited to, the number of work unit or Town employees already scheduled to be on leave during the period requested, the priority and/or urgency of the work assignments for that individual employee or work unit, and the employee's past use of both scheduled and unscheduled leave. All General Leave must be recorded on a Request For Leave Form and approved in advance by the employee's supervisor.

Any leave that can be reasonably forecast or anticipated, such as elective hospitalization, personal business, medical, dental or psychological care and care of children, requires the prior approval of the employee's supervisor or Department Director. An employee requiring leave for unanticipated reasons such as general illness, car trouble, care of children or other emergencies must notify his/her supervisor within one (1) hour after the time set for reporting to work. If a request to use General Leave is not approved, it may require that time off be recorded as Leave without Pay.

- e. Return to Employment After Illness or Injury - Upon return to employment after illness or injury, the Town may, at the discretion of the supervisor or Human Resources Manager, require evidence in the form of a physician's or dentist's certificate, or other evidence, to determine whether or not he/she is capable of performing the duties of his/her position.

- 6.3.2 Administrative Leave - Exempt employees are eligible for up to five (5) days (37.5 hours) of paid administrative leave in a calendar year upon completion of probationary period. Admin. Leave is pro-rated based on date of hire. Regular part-time employees are eligible for an appropriate pro-rated number of hours/days of this amount in a calendar year. Administrative Leave must be approved by the supervisor before being taken. Administrative Leave is not a vested right. It has no cash out value upon separation and may not be carried over from one calendar year to the next.

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- 6.3.3 Holiday Leave - Probationary and regular full-time employees shall be compensated at the regular rate of pay for the holiday time off.

All regular part-time employees shall receive a percentage of paid holidays, regardless of whether these holidays fall on their regular work day.

- a. Holidays observed by the Town are:

|   |                |
|---|----------------|
| New Year's Day                                    | 1 day          |
| Martin Luther King's Birthday                     | 1 day          |
| Presidents' Day                                   | 1 day          |
| Memorial Day                                      | 1 day          |
| Independence Day                                  | 1 day          |
| Labor Day   | 1 day          |
| Veterans' Day                                     | 1 day          |
| Thanksgiving Day and day after                    | 2 days         |
| Christmas Day                                     | 1 day          |
| 1 <sup>st</sup> standard work day after Christmas | 1 day          |
| 2 floating holidays                               | 2 days         |
| <b>Total Holidays</b>                             | <b>13 days</b> |

Each regular, probationary and fixed term employee shall receive two floating holidays for each calendar year. These holidays may be used by the employee with the prior approval of the supervisor. The floating holidays may be used during the probationary period. These floating holidays have no cash value and may not be carried over from one calendar year to the next.

- b. Entitlement to Holiday Pay - When a holiday occurs and an employee is on General Leave, the employee will receive holiday leave in lieu of having his/her General Leave account charged. An employee will receive holiday pay provided that the employee is on "paid status" the day prior to and the day after a holiday.

- 6.3.4 Compensatory Time Off - Non-exempt regular full-time employees may receive compensatory time off (CTO) in lieu of pay for approved overtime work. CTO shall be accrued (100 hours limit) and compensated in accordance with the provisions of the Fair Labor Standards Act. Use of CTO must be approved in advance by supervisor. Probationary employees may not receive compensatory time off.

Regular non-exempt, part-time employees shall receive straight-time pay for each hour worked up to 37.5 hours per week. Hours worked in excess of 37.5 hours per week shall be compensated at the rate of 1-1/2 times regular pay.

- 6.3.5 Jury and Subpoena Leave - Probationary, regular full-time and regular part-time employees are entitled to paid leave for jury duty subject to the following conditions:

- a. The employee has provided a copy of the jury duty notice to his/her supervisor immediately upon having received the notice.



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- b. Any payments received, except travel expenses, for serving on the jury are remitted to the Town within five (5) days of receipt by the employee.

An employee subpoenaed to appear as a witness on behalf of the Town is entitled to leave of absence with full pay upon presentation of the subpoena to his/her immediate supervisor. An employee subpoenaed to appear as a witness for other reasons may use accumulated General Leave for this purpose.

- 6.3.6 Bereavement Leave - In the event of a death in an employee's immediate family (an employee's spouse, domestic partner, child, parent, brother, sister, mother/father-in-law, brother/sister-in-law, grandparent or anyone who has acted in the capacity of an "immediate family" member), the supervisor may grant sufficient time off with pay to make funeral arrangements and/or attend the funeral. In addition to General Leave, employees may be granted up to five days (37.5 hours) paid Bereavement Leave.
- 6.3.7 Military Leave - Military leave shall be granted in accordance with the provisions of State and Federal law. An employee requesting leave for this purpose shall provide the Department Director, whenever possible, with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of such orders, the Department Director may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.
- 6.3.8 Maternity Leave - Ten days (based on a 7.5 hour work day; pro-rated for part-time employees) paid leave will be granted to the female employee for the birth or adoption of a child beyond what is provided by state and federal law.
- 6.3.9 Paternity Leave - Ten days (based on a 7.5 hour work day; pro-rated for part-time employees) paid paternity leave will be granted to the male employee on the occasion of the birth or adoption of their child beyond what is provided by state and federal law.
- 6.3.10 Family Care Leave - To the extent not already provided for under current leave policies and provisions, the Town will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA"), and the regulations of the California Family Rights Act ("CFRA"). Unless otherwise provided by this article, "Leave" under this article shall mean leave pursuant to the FMLA and CFRA.
- 6.3.10.1 Definitions:
  - a. **"12-Month Period"** means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
  - b. **"Child"** means a child under the age of 18 years of age, or 18 years of age or older who is incapable of self-care because of a mental or physical disability. An

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employee's child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster or step-child, legal ward, or a child of a person standing in loco parentis (in place of a parent).

A child is "incapable of self care" if he/she requires active assistance or supervision to provide daily self-care in three or more of the activities of daily living or instrumental activities of daily living such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

- c. **"Parent"** means the biological parent of an employee or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
- d. **"Spouse"** means a husband or wife as defined or recognized under California State law for purposes of marriage.
- e. **"Domestic Partner"** means an individual as defined in Family Code section 297 et seq.
- f. **"Serious health condition"** means an illness, injury impairment, or physical or mental condition that involves: 1) inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to he serious health condition, treatment involved, or recovery therefrom); or 2) continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
  - 1) A period of **incapacity** (i.e., inability to work, or perform other regular daily activities due to serious health condition of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves: treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider; or treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter, and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.
  - 2) Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave.)

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- 3) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which: requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; continues over an extended period of time (including recurring episodes of a single underlying condition); and may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- 4) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider.
- 5) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

g. **"Health Care Provider"** means:

- 1) Doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- 2) Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treats or supervises treatment of a serious health condition;
- 3) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- 4) Nurse practitioners and nurse-midwives and clinical social workers who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State law;
- 5) Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

6.3.10.2 Reasons for Leave - Leave is only permitted for the following reasons:

- a. The birth of a child or to care for a newborn of an employee;
- b. The placement of a child with an employee in connection with the adoption or foster care of a child;

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- c. Leave to care for a child, parent, spouse or domestic partner who has a serious health condition; or
- d. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position.

6.3.10.3 Employees Eligible for Leave - An employee is eligible for leave if the employee:

- a. Has been employed for at least 12 months; and
- b. Has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

6.3.10.4 Amount of Leave - Eligible employees are entitled to a total of 12 workweeks of leave during any 12-month period.

- a. Minimum Duration of Leave - If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks duration on any two occasions.

If leave is requested to care for a child, parent, spouse, domestic partner or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

- b. Spouses or Domestic Partners Both Employed by the Town - In any case in which both a husband and wife or domestic partners are employed by the Town are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave). This limitation does not apply to any other type of leave under this policy.

6.3.10.5 Employee Benefits While on Leave - Family Care Leave under this policy is unpaid. While on leave, employees will continue to be covered by the Town's group health insurance to the same extent that coverage is provided while the employee is on the job.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the Town shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The Town shall have the right to recover premiums through deduction from any sums due the Town (e.g., unpaid wages, General Leave, etc.).

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- 6.3.10.6 Substitution of Paid Accrued Leaves - While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the Town may require an employee to concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and may also require an employee to use Family and Medical Care Leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.
- a. Employee's Right to Use Paid Accrued Leaves Concurrently With Family Leave - When an employee has accrued General Leave, Administrative Leave or Compensatory time, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.
  - b. Town's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Leaves - If an employee takes a leave of absence for any reason that is FMLA/CFRA qualifying, the Town may designate that non-FMLA/CFRA leave as running concurrently with the employee's 12-week FMLA/CFRA leave entitlement.
  - c. Town's and Employee's Rights - If an employee requests to utilize General leave without reference to a FMLA/CFRA qualifying purpose, the Town may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if the Town denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, the Town may inquire further into the reason for the absence. If the reason is FMLA/CFRA qualifying, the Town may require the employee to exhaust General Leave as described above.
- 6.3.10.7 Medical Certification - Employees who request leave for their own serious health condition or to care for a child, parent, spouse or domestic partner who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the Town. If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.
- a. Time to Provide a Certification - When an employee's leave is foreseeable and at least 30 days notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the Town within the time frame requested by the Town (which must allow at least 15 calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.
  - b. Consequences for Failure to Provide an Adequate or Timely Certification - If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the Town may delay the taking of FMLA/CFRA leave until the required certification is provided.

- c. Recertification - If the Town has reason to doubt the validity of a certification, the Town may require a medical opinion of a second health care provider chosen and paid for by the Town. If the second opinion is different from the first, the Town may require the opinion of a third provider jointly approved by the Town and the employee, but paid for by the Town. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a recertification.
  - d. Intermittent Leave or Leave on a Reduced Leave Schedule - If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.
- 6.3.10.8 Employee Notice of Leave - Although the Town recognizes that emergencies arise that may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. If leave is foreseeable, at least 30 days notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g., for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. If the Town determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the Town may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.
- 6.3.10.9 Reinstatement upon Return from Leave
- a. Right to Reinstatement - Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period. If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and Town the employee will be reinstated within two business days, where feasible, after the employee notifies the employer of his/her readiness to return.
  - b. Employee's Obligation to Periodically Report on His/Her Condition - Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

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- c. Fitness for Duty Certification - As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition that made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.
  - d. Reinstatement of "Key Employees" - The Town may deny reinstatement to a "key" employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the Town, and the employee is notified of the Town's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.
- 6.3.10.10 Required Forms - Employees must fill out the following applicable forms in connection with leave under this policy:
- a. "Request for Family or Medical Leave Form" prepared by the Town to be eligible for leave. Employees will receive Town's response to their request that will set forth certain conditions of the leave;
  - b. Medical certification either for the employee's own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner;
  - c. Authorization for Return to Duty form.
- 6.3.11 Workers' Compensation Leave - When an employee is off work as the result of an on-the-job injury or illness sustained in the service of the Town, the employee is entitled to Workers' Compensation Leave. While the employee is on Workers' Compensation Leave, one of the two options available for method of payment is as follows:
- a. Direct payment from Workers' Compensation which only pays two-thirds of the employee's gross average weekly earnings (subject to state statutory minimum and maximum rates); or
  - b. Direct payment from the Town will be 100% in the amount equal to regular earnings of which Workers' Compensation accounts for two-thirds of the employee's gross average weekly earnings (subject to state statutory minimum and maximum rates) and the remainder will be taken from employee's General Leave.
- 6.3.12 Disability Leave - As a result of a non-job related illness or injury requiring time off beyond the unused accumulation of leave in the employee's account, a regular or probationary employee may request to be placed on Disability Leave without pay subject to the following conditions:
- a. A medical examination by a licensed physician of the Town's choice may be required to verify the nature and potential length of the disability. At a minimum, written verification of the nature and length of the disability from the employee's physician must be submitted along with the employee's initial request for Disability Leave.
  - b. The employee must submit regular (monthly) written status reports from the employee's physician describing the current status of the disability and the employee's suitability to assume partial or complete work assignments in the

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position from which the employee is on leave. Periodic medical examinations by a physician of the Town's choice may be required. Failure to submit the required physician's reports in a timely manner is cause for termination.

- c. Prior to being placed on Disability Leave, required time off will be compensated through use of the employee's General Leave account.
- d. All reinstatements because of disability must be on the certification of a physician recognized by the Town and with approval of the Town Manager.
- e. If an employee is unable to return to work (in the position from which he/she is on leave) within 120 calendar days after being placed on Disability Leave, the employee may be separated from Town employment.
- f. The provisions of 6.3.10 relating to a leave of absence without pay apply to employees on Disability Leave.
- g. Regular part-time employees are not eligible for Disability Leave except as permitted by paragraph 6.3.8. and 6.3.9.

6.3.13 Leave Without Pay - When it is in the best interest of the organization, a leave of absence without pay may be granted to an employee subject to the following:

- a. Requests for Leave Without Pay for one (1) week or less may be approved by a Department Director.
- b. Requests for Leave Without Pay for more than one (1) week require the approval of the Town Manager.
- c. Leave Without Pay may not exceed one hundred twenty (120) calendar days.
- d. The anniversary date of an employee granted Leave Without Pay for more than thirty (30) days will be adjusted.

6.3.13.1 Leave Without Pay will be considered for:

- a. Employees who are unable to work and who have used all entitled General Leave.
- b. Regular or probationary employees who request this option for maternity leave.
- c. Employees who have personal needs requiring direct attention (evaluated on the merits of each individual case).
- d. Employees engaged in elective training directly related to their position with the Town or a position to which the employee may likely be considered for promotion.
- e. Employees who require Bereavement, Medical or Family Emergency Leave and who have used all General Leave to which entitled.

6.3.13.2 When an employee is on Leave Without Pay:

- a. Beginning the first day of Leave Without Pay, retirement contributions, General Leave benefits, pension benefits and other supplemental benefits cease.
- b. Employer paid-insurance benefits cease on the next premium payment date after the date the employee is placed on leave without pay unless the employee can make provisions to personally pay premium expenses while on leave.

6.3.14 Absence Without Leave - An employee who is absent from his/her designated place of work without notifying his/her immediate supervisor for a period of three (3) consecutive work days may be terminated.



6.3.15 Donated Leave Hours

- a. The purpose of donated leave hours is to assist employees who have an approved leave but do not have sufficient leave hours.
- b. Requests for donate hours for employees must be submitted in writing to Human Resources.
- d. If the employee meets the above qualifications, the Human Resources Manager will ask for donations.

**6.4 Employee Assistance Program**

The Town of Danville has an established Employee Assistance Program (EAP). The Employee Assistance Program is a confidential, employer-paid benefit program designed to assist employees solve personal problems and manage everyday issues. The EAP includes brief counseling and referral services for employees and their families to help employees resolve a wide range of personal problems which can have a negative effect on job performance. Many problems can be dealt with individually, by employees, by families, or with assistance from supervisors. However, sometimes additional help is needed. The Town believes that it is in the best interest of the employee, his/her family and the Town to provide support services that lead the employee back to a fully productive personal and work life. The Town of Danville recognizes that:

- a. Regardless of the type of problem, financial, alcohol, drug, marital, family, etc., most problems can be successfully resolved provided that the problem is identified early and proper assistance is obtained.
- b. Employees or their family members can access the EAP directly without discussion with Town personnel.
- c. When job performance, attendance, punctuality or dependability is unsatisfactory and the employee appears to be unable to correct such behavior, either alone or with supervisory assistance, he/she may be referred to the EAP services by his/her supervisor, Department Director or Human Resources Manager.
- d. This policy applies to all employees, regardless of their job class, title or responsibilities.

6.4.1 The Town of Danville EAP provides that:

- a. Individual rights to confidentiality will be assured in the same manner as any other health records. EAP records will not be part of the employee's personnel file and will not be seen by anyone outside the EAP without written permission from the employee. No information will be released without written permission of the employee except when required by law (i.e., child abuse, danger to others).
- b. No employee will have job security or promotional opportunities jeopardized by a request for help.
- c. The decision to request help, follow through with a referral and seek treatment is voluntary and will be the personal responsibility of the employee. The Town's responsibility is to publicize the availability of assistance.
- d. Employees participating in the EAP will be required to meet existing job performance standards. This policy does not replace existing management policy, disciplinary procedure, or contractual agreements.

- e. The services to the EAP include eight (8) clinical consultations per incident, per benefit period and are free of charge to the employee. Costs not covered by the EAP contract are the responsibility of the employee.
- f. Any employee who wishes to continue with an EAP counselor upon completion of the contracted visits must do so on a self-pay or insurance-paid basis.
- g. All supervisors and management personnel are urged to suggest using the EAP, and refer employees whose job performance is being impaired by personal problems.

## **6.5 Post Retirement Medical Participation**

6.5.1 Post Retirement Medical Eligibility - The separation of a regular employee, with the following years of age and service:

- 50 years with 15 years of service
- 51 years with 14 years of service
- 52 years with 13 years of service
- 53 years with 12 years of service
- 54 years with 11 years of service
- 55+ years with 10 years of service

- a. The retiree and his/her dependents may continue to participate in the Town's Medical Plan until the retiree reaches the minimum age for Medicare eligibility (currently 65 years of age) or enrolls in a medical plan other than that offered by the Town.
- b. The retiree's spouse or surviving spouse and his/her dependents may continue to participate in the Plan until the spouse or surviving spouse reaches the minimum age for Medicare eligibility or enrolls in a medical plan other than that offered by the Town.
- c. The Town will pay \$16 per month towards the total premium or such additional amount as may be approved by the Town Council. The retiree/spouse/surviving spouse shall be responsible for the balance of any monthly premium. Failure by the retiree/spouse/surviving spouse to pay their share of the required premiums shall terminate participation in the Plan.
- d. The retiree's benefits under the Plan shall be equivalent to the coverage available to current Town employees for the year in question.
- e. The Town reserves the right to amend, suspend or terminate this medical retirement benefit at any time in the future.

## **6.6 Pension**

See the Town's 401(a) eligibility requirements for pension distribution.

## **6.7 Flexible Spending**

The Town offers Flexible Spending for medical and dental and dependent care expenses. See Human Resources for complete Flexible Spending Account Plan information.

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## **SECTION 7 TRAINING**

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### **7.1 General Policy**

It is the policy of the Town to encourage and promote training and educational opportunities for all employees to improve the skills necessary to successfully complete his/her job and to increase self-efficacy. All employee training is to be approved by an employee's supervisor prior to registration and needs to comply with the individual's annual training objectives.

### **7.2 Orientation of New Employees**

During the first month of employment, Department Directors shall familiarize a new employee with the employee's obligations and rights and also inform the employee about the functions and operations of the Department and the Town government organization. The Human Resources Manager will assist Department Directors and supervisors with the orientation of new employees.

### **7.3 Time of Training**

Training periods may be conducted either during or after normal working hours. Training sessions conducted during normal working hours are to be arranged so as to minimize interference with scheduled work.

### **7.4 Types of Training**

For the purpose of administration, the following categories of training are recognized:

- 7.4.1 Townwide and Required Training - Any required formal or informal training program or exercise designed, conducted and sponsored by the Town Training Committee to help employees improve knowledge and/or skills in order to meet job-related objectives and to comply with federal and state mandates regarding Personnel Law.
  
- 7.4.2 Employee Development Training - Any formal employee training program or exercise designed and conducted by an organization other than the Town, and directly related to improving knowledge and/or skills considered desirable by the Town for the employee's current and prospective job duties.

### **7.5 Reimbursement for Training**

Verifiable out-of-pocket expenses incurred, which meets established standards, due to required training will be paid as expenses consistent with the Town's reimbursement policy. Supervisors approve all training request forms in advance and submit them to the Human Resources Manager for approval.

### **7.6 Completion of Training**

An employee is required to demonstrate successful completion of training which is directed or paid by the Town. Failure to satisfactorily complete required training is cause for disciplinary action. Failure to satisfactorily complete elective training for which reimbursement has been

authorized may result in non-reimbursement of the expense. Failure to satisfactorily complete elective training, for which advance payments have been made by the Town, may result in disciplinary action, and the employee may be required to reimburse the Town for expenses incurred.

### **7.7 Conferences and Seminars**

Conferences and seminars required for training or any other purposes which require out-of-state transportation and/or lodging expenses must be recommended by Department Director and approved, in advance, by the Town Manager.

Department Directors or supervisors shall not authorize pre-payments or reimbursements for required travel expenses which collectively exceed expense allocations to the program budgets for which the Department Directors are responsible.

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**SECTION 8**  
**TRANSFER, PROMOTION, DEMOTION,**  
**SEPARATION AND REHIRE**

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**8.1 Transfer**

No person may be transferred to a position for which he/she does not possess the minimum qualifications. Upon notice to the Human Resources Manager, an employee may be transferred by the Department Director or Town Manager at any time from one position to another position in a comparable class. For transfer purposes, a comparable class is one with the same maximum salary and benefits, involves the performance of similar duties and requires similar qualifications. If the transfer involves a change from one Department to another, both Department Directors must consent thereto unless the Town Manager directs the transfer for purposes of economy, efficiency, improvement to morale or improved service delivery.

**8.2 Promotions**

Insofar as consistent with the best interests of the Town, as determined by the Human Resources Manager, and in consultation with the Department Director, vacancies may be filled by promotion from among employees who are qualified candidates.

**8.3 Demotion**

Employees may be involuntarily demoted for disciplinary reasons as set forth in Section 9.

**8.4 Methods of Separation**

For administrative purposes, the following types of separation from employment with the Town are recognized:

- a. Voluntary Resignation in good standing
- b. Discharge
- c. Lay Off
- d. Retirement
- e. Failure to successfully complete probation
- f. Separation of an at-will employee

**8.5 Voluntary Resignation in Good Standing**

An employee who desires to leave Town employment in good standing shall file a written notice of resignation to his/her immediate supervisor and Department Director with an effective date at least two weeks before the last day worked. The employee's supervisor shall provide the letter to Human Resources. More notice from the resigning employee is required if a longer notice period was agreed to by the employee when originally hired in the service of the Town, unless waived by the Department. The Department Director may waive time requirements for good cause. Failure to give the required notice may be cause for denying future employment with the Town. Unless specifically authorized, the employee may not use Leave after giving notice.

### **8.6 Discharge**

Employees may be discharged at any time for disciplinary reasons as set forth in Section 9 of these policies and procedures.

### **8.7 Lay-Off**

Lay-offs are at the discretion of the Town Manager. An employee may be laid off because of the abolishment of his/her position or a determination that there is a shortage of work or funds. The Town Manager, after consultation with the Department Director, will determine when and in what position classifications lay-offs are to occur. When a lay-off is to occur, the Human Resources Manager shall:

- a. Notify in writing the employee to be laid off at least ten working days in advance of the effective date of the action. The notice shall, at a minimum, include:
  - 1) reason for the lay-off
  - 2) effective date
  - 3) employee's position on any reinstatement list
- b. Make an effort to transfer an employee who is affected by a lay-off to another vacant position for which the employee possesses the requisite qualifications.
- c. Prepare a reinstatement list which lists the names of employees laid off by classification.
- d. Ensure that procedures consistent with applicable state and federal laws are utilized to effect any lay-offs.

### **8.8 Retirement**

Any employee who qualifies for retirement under the provisions of the Town's retirement system may do so.

### **8.9 Failure to Complete Probation**

A probationary employee may be terminated for failure to successfully complete the prescribed probationary period, which is equivalent to having failed to qualify for retention for the position to which he/she is assigned. An employee who fails to successfully complete probation does not have the right to appeal the action.

### **8.10 Re-Hire**

The Town Manager may re-hire a regular employee who has resigned in good standing from the service of the Town, even though the employee's name may not appear on a current list of qualified candidates, and if the former employee possesses the minimum qualifications required by the vacant position. Upon re-hire, the employee is subject to the probationary period prescribed for the class. Town Manager may grant credit for former employment in computing salary, leave or other benefits.

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## **SECTION 9**

### **STANDARDS OF CONDUCT**

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#### **9.1 Employee Conduct Generally**

It is expected that all Town employees shall render the best possible service and reflect credit on the Town, whether in the course of their duties or in general. High standards of conduct are essential for public employees.

#### **9.2 Discipline Policy**

The following constitutes the Town's policy regarding disciplinary actions:

##### 9.2.1 Policy Coverage

The following categories of persons can be terminated at-will and have no rights to any of the pre- or post-disciplinary processes or procedures in this Policy: (1) temporary employees, (2) provisional or seasonal employees, (3) probationary employees, (4) any person who serves pursuant to a contract, and (5) any person who is designated "at-will" in any Town policy, document, acknowledgement, resolution or ordinance. Notwithstanding any provision in this policy, any regular employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) is not subject to any disciplinary penalty which is inconsistent with his or her FLSA overtime-exempt status.

##### 9.2.2 Causes for Discipline

Regular employees may be counseled, admonished, reprimanded, suspended, demoted, discharged or incur a reduction in pay for, including but not limited to, each of the following causes of discipline:

- a. Violation of any Federal, State or local law.
- b. Being under the influence of intoxicating beverages, unprescribed or illegal narcotics or drugs while on duty.
- c. Failure or refusal to comply with a lawful order or to accept a reasonable and proper assignment from an authorized supervisor.
- d. Inefficiency, incompetence, carelessness or negligence in the performance of duties.
- e. Inattention to duty, tardiness, indolence, carelessness or damage to or negligence in the care and handling of Town property.
- f. Improper or unauthorized use of Town vehicles or equipment or misappropriation of supplies. Loss or misuse of Town equipment may require employee to bear cost of replacing or recovering equipment/supplies. For personal use of approved Town equipment usage and reimbursement, see Section 9.10.
- g. Claim of leave under false pretense or misuse of leave.
- h. Furnishing false information to secure appointment.
- i. To furnish false information in the course of performing one's duties.

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- j. Absence from duty without leave, failure to report after leave of absence has expired or after such leave of absence has been disapproved, revoked or canceled.
- k. Willful violation of these policies and procedures, departmental rules and policies or any written policies, which may be prescribed by the Town.
- l. Acceptance by an employee of any bribe, gratuity, kickback, favor or other items of value including meals and travel when it appears the favor or gratuity might be given in the hope or expectation of receiving preferential treatment.
- m. Harassment on the basis of race, religion, color, national origin, ancestry, disability, marital status, pregnancy, medical condition, gender or age of any employee by another employee.
- n. Any action that reflects discredit on the Town or is a direct hindrance to the effective performance of Town functions.
- o. Outside work which creates a conflict of interest with Town work, causes discredit to the Town or detracts from the efficiency of the employee in the employee's Town work.
- p. Failure to obtain or maintain any current license or certification required as an essential condition of employment.
- q. Any other conduct of equal gravity to the reasons enumerated above as determined by the Human Resources Manager.
- r. Failure to comply with accepted safety practices and training or placing oneself or others in an unsafe situation that could lead to injury.

9.2.3 Administrative Leave

A Department Director may place an employee on administrative leave with pay pending a potential disciplinary action. Administrative leave with pay is authorized when: (1) the Department Director believes that the employee's continued presence at the work site could have detrimental consequences for Town operations, or (2) pending investigation into charges of misconduct. If the charges against the employee are substantiated by the investigation, appropriate disciplinary action may be taken in accordance with these procedures.

9.2.4 Types of Discipline

The types of personnel actions and/or discipline are:

- a. Counseling Memo - A counseling memo shall be retained in the employee's personnel file, and may not be appealed under this policy.
- b. Oral Reprimand - An oral admonishment or reprimand shall be memorialized in writing, become part of the employee's personnel file, and may not be appealed under this policy.
- c. Written Reprimand - A supervisor, manager and/or Department Director may reprimand an employee by furnishing him/her with a written statement of the specific reasons for reprimand. A copy of the reprimand will be retained in the employee's personnel file, and may not be appealed. The employee has the right to have a written rebuttal attached to the reprimand in the employee's personnel file.
- d. Suspension - A Department Director may suspend an employee from his or her position for cause. Documents related to a suspension shall become part of the employee's personnel file when the discipline is final. An employee subject to



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suspension will receive prior written notice and appeal as provided herein. FLSA-exempt employees are not subject to suspension except in work day or work week increments or for violations of major safety rules.

- e. Demotion - A Department Director may demote an employee from his or her position for cause. Documents related to a demotion shall become part of the employee's personnel file when the discipline is final. An employee subject to demotion shall be entitled to the prior written notice and appeal as provided herein.
- f. Reduction in Pay - A Department Director may reduce an employee's pay for cause. A reduction in pay for disciplinary purposes may take one of two forms: (1) a decrease in salary within the salary range, or (2) a decrease in salary paid to an employee for a fixed period of time. Documents related to a reduction in pay shall become part of the employee's payroll file when the discipline becomes final. An employee subject to a reduction in pay shall be entitled to prior written notice and appeal as provided herein.
- g. Discharge - A Department Director may discharge an employee from his or her position for cause. Documents related to discharge shall become a part of an employee's personnel file when the discipline becomes final. A discharged employee is entitled to prior written notice and appeal based upon the terms described herein.

9.2.5 Skelly Process – Pre-Disciplinary Procedure for Suspension, Demotion, Reduction in Pay or Discharge

Regular employees within the scope of these policies have the right to the conference and appeal processes outlined in this Section.

- a. Notice of Intent to Discipline - The Department Director will provide the employee with a written notice of intent to discipline, copied to the Town Manager, that contains the following:
  - 1) The level of discipline intended to be imposed;
  - 2) The specific charges upon which the intended discipline is based;
  - 3) A summary of the facts upon which the charges are based;
  - 4) A copy of all written materials, reports, or documents upon which the intended discipline is based;
  - 5) Notice of the employee's right to respond to the Department Director regarding the charges within 5 calendar days from the date of the Notice, either by requesting an informal conference, or by providing a written response, or both;
  - 6) Notice of the employee's right to have a representative of his or her choice at the informal conference, should he or she choose to respond orally; and
  - 7) Notice that the failure to respond at the time specified shall constitute a waiver of the right to respond prior to the imposition of discipline.
- b. Employee's Response and the Skelly Conference
  - 1) If the employee requests an informal conference to respond orally to the charge(s), the conference must be scheduled at least 7 calendar days after the date of the Notice. The conference will be an informal meeting with the Department Director, at which the employee has an opportunity to

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rebut the charges against him or her and present any mitigating circumstances. The Department Director will consider the employee's presentation before any final disciplinary action.

- 2) The employee's failure to make an oral response at the arranged conference time, or the employee's failure to cause his or her written response to be delivered by the date and time specified in the Notice, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

c. Final Notice of Discipline

Within 5 calendar days of receipt of the employee's timely written response or within 5 calendar days of the informal conference, the Department Director will (1) dismiss the notice of intent and take no disciplinary action against the employee, (2) modify the intended disciplinary action, or (3) impose the intended disciplinary action. In any event, the Department Director shall prepare and provide the employee with a notice that contains the following:

- 1) The level of discipline, if any, to be imposed and the effective date of the discipline;
- 2) The specific charges upon which the discipline is based;
- 3) A summary of the facts upon which the charges are based;
- 4) A copy of all written materials, reports, or documents upon which the discipline is based; and
- 5) A statement of the nature of the employee's right to appeal.

9.2.6 Evidentiary Appeal to the Town Manager

a. Request for Appeal Hearing - The employee may appeal a Final Notice of Discipline in the form of suspension, demotion, reduction in pay, or termination by delivering a written answer to the charges and a request for appeal to the Human Resources Manager or designee, who shall forward the appeal to the Town Manager. The written answer and request for appeal must be received no later than 10 calendar days from the date of the Department Director's decision. The written answer shall include a statement of the issues to be raised by the employee.

b. Date and Time of the Appeal Hearing - The Town Manager will set a date for an appeal hearing within a reasonable time after receipt of a timely written answer and request for appeal. An employee who, having filed a timely written answer and request for appeal, has been notified of the time and place of the appeal hearing, and who fails to appear personally at the hearing, may be deemed to have abandoned his or her appeal. In such a case, the Town Manager may dismiss the appeal.

c. Conduct of the Appeal Hearing

- 1) Witnesses and Evidence - Prior to the appeal hearing, each party shall present the Town Manager and the other party a list of all witnesses to be called and evidence to be presented. If necessary, the Town will issue subpoenas for witnesses. Absent extenuating circumstances, no

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- witnesses or evidence will be allowed that were not listed in advance of the hearing.
- 2) Continuances - The Town Manager may continue a scheduled hearing only upon good cause shown.
  - 3) Record of the Proceedings - All disciplinary hearings may, at the discretion of the parties, be either recorded by a court reporter or tape recorded. Any party who requests a transcript of the proceedings must pay for his/ her/ its own copy of a transcript.
- d. The Town Manager's Authority During the Hearing - The Town Manager has the authority to control the conduct of the hearing and to affirm, modify, or revoke the discipline.
- e. Presentation of Evidence
- 1) The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Hearings shall be conducted in a manner the Town Manager decides is the most conducive to determining the truth. This may include hearsay evidence, so long as it is determined relevant by the Town Manager.
  - 2) The Town Manager shall determine relevancy, weight and credibility of testimony and evidence.
  - 3) During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon the request of either party.
- f. Burden of Proof at the Hearing - The Town has the burden of proof by a preponderance of the evidence.
- g. Right to Due Process - The employee shall have the following due process rights during the hearing:
- 1) The right to be represented by legal counsel or another chosen representative, at his or her own expense;
  - 2) The right to call and examine witnesses on his or her behalf;
  - 3) The right to introduce evidence;
  - 4) The right to cross-examine opposing witnesses on any matter relevant to the issues;
  - 5) The right to impeach any witness regardless of which party first called him or her to testify; and
  - 6) The right to rebut evidence against him or her.
- h. Written Briefs by the Parties - The Town Manager or the parties may request the submission of written briefs. The Town Manager will determine whether to allow written briefs, the deadline for submitting briefs, and the page limit for briefs.
- 9.2.7 Written Findings and Decision - The Town Manager shall render a statement of written findings and decision within 14 days after the hearing has been completed and the briefs, if any, have been submitted. The Town Manager's decision is final.

- 9.2.8 Proof of Service of the Written Findings and Decision - The Town Manager shall send its final statement of written findings and decision, along with a proof of service of mailing, to each of the parties and to each of the parties' representatives. Copies shall also be distributed to the Human Resources Manager and placed in employee's personnel file.
- 9.2.9 Statute of Limitations - The Town Manager's written findings and decision is final. There is no process for reconsideration. Pursuant to Code of Civil Procedure Section 1094.6, the parties have 90 days from the date of the proof of service of mailing of the written findings and decision to appeal the decision to the Superior Court in and for the County of Contra Costa.
- 9.2.10 Retribution for Appeal - No employee shall be penalized for availing himself/herself of, or participating in, the appeal process.

### **9.3 Emergency Procedures**

Residents of Danville will be depending on Town employees to respond during an earthquake or other emergency. Emergency procedures are activated when the Town Manager determines an emergency exists. In an emergency situation, every attempt will be made to maintain Town services at a normal level. All Town employees are emergency workers and when an emergency is declared, all employees should report to work at the designated Emergency Operations Center. Every Town employee receives specialized training on their roles in an emergency.

### **9.4 Harassment Policy**

- 9.4.1 Purpose - It is the Town's intent and the purpose of this Policy to provide all employees, applicants, and contractors with an environment that is free from any form of discriminatory harassment, discrimination or retaliation as defined in this Policy. This Policy prohibits harassment or discrimination on the basis of any of the following "Protected Classifications": an individual's race, color, religion, sex (pregnancy or gender), sexual orientation, marital status, national origin (including language use restrictions), ancestry, disability, mental or physical (whether perceived or actual), medical condition, age 40 or above, denial of family and medical care leave, and denial of pregnancy disability leave or reasonable accommodation, or any other classification which may be added by federal or state law. It is also the policy of the Town to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this Policy. The protection from discrimination includes the protection from retaliation on any of the above identified protected classifications against an employee for his or her having taken action either as a complainant, or for assisting a complainant in taking action, or for acting as a witness or advocate on behalf of an employee in a legal or other proceeding to obtain a remedy for a breach of this policy.
- 9.4.2 Zero Tolerance - The Town has zero tolerance for any conduct that violates this Policy. Conduct need not rise to the level of a violation of law in order to violate this Policy. Instead, a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions. If you are in doubt as to whether or not any particular conduct

may violate this Policy, do not engage in the conduct, and seek guidance from a supervisor or the Human Resources Manager.

9.4.3 Definitions

- a. Protected Classifications - This Policy prohibits harassment or discrimination because of an individual's "Protected Classifications" as stated in 9.4.1.
- b. Policy Coverage - This Policy prohibits Town officials, officers, employees, volunteers and contractors from harassing or discriminating against applicants, officials, officers, employees, volunteers and contractors because: (1) of an individual's protected classification, (2) of the perception that an individual has a protected classification, or (3) the individual associates with a person who has or is perceived to have a protected classification.
- c. Discrimination - This Policy prohibits treating individuals differently because of the individual's protected classification as defined by this Policy.
- d. Harassment - Harassment means unsolicited words or conduct which subjectively and objectively offend another person. Harassment includes, but is not limited to, the following examples of behavior undertaken because of an individual's protected classification:
  - 1) **Verbal harassment**, such as epithets (nicknames and slang terms), derogatory or suggestive comments, jokes or slurs, including graphic verbal commentaries about an individual's body, or that identify a person on the basis of his or her protected classification. Verbal harassment includes comments on appearance and stories that tend to disparage those of a protected classification.
  - 2) **Visual forms of harassment**, such as derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive objects, or e-mails on the basis of a protected classification.
  - 3) **Physical harassment**, such as assault, touching, impeding or blocking movement, grabbing, patting, propositioning, leering, making express or implied job-related threats in return for submission to physical acts, mimicking, taunting, or any physical interference with normal work or movement.
  - 4) **Sexual harassment**, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or any of the above described conduct when:
    - a) Submission to such conduct is either an expressed or implied term or condition of an individual's employment, or
    - b) Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual, or
    - c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment.
    - d) Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that

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sexual conduct that was once welcome becomes unwelcome and harassing.

- e) By definition, sexual harassment is not within the course and scope of an individual's employment with the Town.

9.4.4 Retaliation - Retaliation against a person (and his or her associates) who reports or provides information about harassment or discrimination is strictly prohibited. Any act of reprisal violates this Policy and will result in appropriate disciplinary action. Examples of actions that might be retaliation against a complainant, witness or other participant in the complaint process include: (1) singling a person out for harsher treatment; (2) lowering a performance evaluation; (3) failing to hire, failing to promote, withholding pay increases, assigning more onerous work, abolishing a position, demotion or discharge; or (4) real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination.

Well-intentioned attempts to insulate or protect a complainant by changing his or her work environment or schedule or duties or by transferring the complainant to another office may be retaliatory. Before a supervisor takes such action, the supervisor should contact the Human Resources Manager.

Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the harassment or discrimination complaint.

9.4.5 Reporting Harassment, Discrimination or Retaliation - Applicants, officials, officers, employees, volunteers and contractors who feels he/she has been harassed, discriminated against or retaliated against in violation of this Policy should report the conduct immediately as outlined below so that the complaint can be resolved quickly and fairly.

All employees involved in the complaint process may be represented by a person of their choosing and at their own expense.

- a. Object to The Conduct - Sometimes an individual is unaware that his/her conduct is offensive. In these situations the offensive behavior may be eliminated by simply informing the offender that the conduct or language in question is unwelcome and offensive and request that it be discontinued immediately.

A person who believes he/she is being harassed is encouraged to use this process. When the conduct in question continues after the offending person has been informed it is offensive, or if a person does not feel comfortable talking to the offending person directly, the employee should make a report in accordance with the Oral Report below or go directly to the Written Process.

- b. Oral Report - If a person who believes that this Policy has been violated does not want to confront the offending person, he/she should report the conduct to a supervisor, department head or any Town management employee. The individual may also seek the advice, assistance or consultation of a supervisor, department head, or any Town management employee. Any supervisory or

management employee who receives such a report must in turn direct it to the Human Resources Manager who will determine what level of investigation and response is necessary.

- c. Written Process - An individual who believes this Policy has been violated and does not feel comfortable using the process outlined above may provide a written complaint to a supervisor, department head or any Town management employee who in turn must direct the complaint to the Human Resources Department. Individuals are encouraged to use the Confidential Complaint Form for this purpose.
- d. Option to Report to Outside Sources - An individual who believes this Policy has been violated may report the alleged harassment to an outside confidential reporting number established by the Town or to any outside regulatory agency having jurisdiction over such complaints.

9.4.6 Town's Response to Complaint of Harassment, Discrimination or Retaliation

a. Investigation

Upon receipt of a complaint of alleged harassment, discrimination or retaliation, the Human Resources Manager will be responsible for coordinating a thorough investigation (unless he/she is named in the complaint). The Human Resources Manager may coordinate the investigation with the complainant's department head and may hire an outside investigator if the Town deems appropriate. The type of investigation undertaken, and the party chosen to conduct the investigation will depend on the nature of the complaint made and will be determined by the Human Resources Manager.

The Human Resources Manager, in concurrence with the Town Manager, may take interim action to diffuse volatile circumstances, such as placing the alleged perpetrator on paid administrative leave or temporarily transferring the alleged perpetrator. Generally, no interim action should be taken to change the complaining individual's working conditions unless the complaining individual voluntarily consents to the temporary change.

The investigator will review the complaint allegations in an objective manner and to the extent that the Town deems necessary. The investigation will normally include interviews with the reporting individual, the accused, and any other person who is believed to have relevant knowledge concerning the allegations. The investigator will remind all witnesses to maintain the confidentiality of the content of the interview and that retaliation against those who report alleged harassment or who participate in the investigation is prohibited.

The Town takes a proactive approach to potential Policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged action or a third party reports a potential violation.

At the conclusion of the investigation, if it is determined that the alleged conduct did not occur or that it did not violate this Policy, the Human Resources Manager will notify the complainant and the alleged perpetrator, if appropriate, of the general conclusion(s) of the investigation and whether any further action is warranted.

b. Remedial and Disciplinary Action

If the investigation determines that the alleged conduct occurred and that the conduct violated this Policy, the Town will notify the complainant and perpetrator of the general conclusion(s) of the investigation and take effective remedial action that is designed to end the violation(s). Any employee determined to have violated this Policy will be subject to disciplinary action, up to and including termination. Disciplinary action may also be taken against any official, supervisor or manager who condones or ignores potential violations of this Policy, or who otherwise fails to take appropriate action to enforce this Policy. Any official or contractor found to have violated this Policy will be subject to appropriate sanctions.

c. Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this Policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential Policy violations and take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Human Resources Manager. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The Town will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

9.4.7 Responsibilities of Employees, Management and Supervisory Employees

a. Employees - In order to establish and maintain a professional working environment, while at the same time preventing harassment, discrimination, and retaliation, employees are expected to:

- 1) Set an example of acceptable conduct by not participating in or provoking behavior that violates this Policy.
- 2) Let fellow employees know when you consider behavior offensive.
- 3) Report harassment, discrimination or retaliation as quickly as possible, whether the employee is the target of the conduct or a witness.
- 4) If an employee witnesses harassment, he or she should tell the individual being harassed that the Town has a policy prohibiting such behavior, and that he or she can demand that the harasser cease the behavior.
- 5) Maintain confidentiality as required by this Policy.
- 6) Fully cooperate with the Town's investigation of complaints made under this Policy.

b. Managers and Supervisors - In addition to the responsibilities listed above, managers and supervisors are responsible for the following:



- 1) Implementing this Policy by taking all complaints seriously and modeling behavior that is consistent with this Policy. Direct all complaints to the Human Resources Manager.
- 2) Take positive steps to eliminate any form of harassment, discrimination or retaliation observed or brought to his/her attention.
- 3) No Department Director, supervisor or other employee may retaliate through any action of intimidation, restraint, coercion or discrimination.
- 4) Monitoring the work environment and taking appropriate action to stop potential Policy violations.
- 5) Following up with those who have complained to ensure the behavior complained of has ceased.

9.4.8 Mandatory Training

As part of its commitment to ensuring a work environment free from harassment and discrimination, the Town requires that all of its employees receive training on this Policy at least once every two years. Attendance at the training will be documented.

**9.5 Outside Employment**

A Town employee shall not engage in any outside employment that is detrimental to or inconsistent with his/her duties or service with the Town. An employee must notify their supervisor in writing prior to beginning any outside employment. The employee's supervisor shall provide a copy of the letter to Human Resources Manager and Department Director.

9.5.1 Determination of Inconsistent Activities - In making a determination as to the consistency or inconsistency of outside activities, the Department Director shall consider, among other pertinent factors whether the activity:

- a. Involves the use for private gain or advantage of: Town time, facilities, equipment, and supplies, uniform, prestige, or influence of one's Town office or employment;
- b. Involves receipt or acceptance by the employee of any money or other consideration from anyone other than the Town for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course of his/her Town employment or as a part of his/her duties as a Town employee;
- c. Involves the performance of an act in other than his/her capacity as a Town employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by the employee or the department by which he/she is employed;
- d. Involves conditions or factors that would directly or indirectly lessen the efficiency of the employee in his/her regular Town employment or conditions in which there is a substantial danger of injury or illness to the employee.
- e. Involves working for a business within the Town of Danville.
- f. Involves working or interacting with consultants or contractors who have been or are employed by the Town of Danville.

## **9.6 Political Activity**

### 9.6.1 Policy

The Town prohibits:

- a. Employees and officers from engaging in political activities during work hours;
- b. Political campaigning in Town buildings or on premises adjacent to Town buildings.

### 9.6.2 Examples of Prohibited Conduct

- a. Participate in political activities of any kind while in uniform;
- b. Participate in political activities during working hours;
- c. Participate in political activities on Town worksites;
- d. Place or distribute political communications on Town property;
- e. Use Town equipment to make political communications;
- f. Solicit a political contribution from an officer or employee of the Town, or from a person on a Town employment list, with knowledge that the person from whom the contribution is solicited is a Town officer or employee;
- g. Favor or discriminate against any employee because of political opinions or affiliations;
- h. Interfere with any election; or
- i. Attempt to trade job benefits for votes

### 9.6.3 Examples of Permitted Conduct

- a. Express opinions on all political subjects or candidates;
- b. Become a candidate for any local, state, or national election;
- c. Contribute to political campaigns;
- d. Join and participate in the activities of political organizations;
- e. Request, during off-duty time, political contributions, through the mail or other means, from Town officers or employees if the solicitation is part of a solicitation made to a significant segment of the public which may include Town officers or employees;

## **9.7 Smoking Policy**

All Town-owned and maintained vehicles and facilities, including the Town Offices and all remote Town facilities, are designated as non-smoking areas. Smoking is permitted only during work breaks.

## **9.8 Drug and Alcohol-Free Workplace Environment Policy**

### 9.8.1 Policy

- a. The unlawful manufacture, distribution, dispensation, possession, or use of alcohol or any controlled substance is prohibited in both Town workplaces and wherever Town business is performed.
- b. An employee must notify his/her supervisor before beginning work when taking medications or drugs which could interfere with the safe and effective performance of duties or operation of Town equipment. If there is a question regarding an employee's ability to perform assigned duties safely and effectively while using prescribed medications, the Town may require medical clearance.

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- c. Compliance with this policy is a condition of Town employment. Disciplinary action will be taken against those who violate this policy.
- d. Employees who are required to participate in the Town's "Federally Mandated Commercial Drivers License Holders Drug/Alcohol Testing Education Program" are subject to requirements contained in the Town's Program handbook.

9.8.2 Scope of Policy

This policy applies to all Town employees when they are on Town property or when performing Town-related business elsewhere.

9.8.3 Searches

In order to promote a safe, productive and efficient workplace, the Town has the right to search and inspect all Town property, including but not limited to lockers, storage areas, furniture, Town vehicles, and other places under the common control of the Town and employees. No employee has any expectation of privacy in any Town building, property, or communications system.

9.8.4 Drug and Alcohol Testing

Except for those employees who are required to participate in the Town's "Federally Mandated Commercial Drivers License Holders Drug/Alcohol Testing Education Program," the Town has discretion to test a current employee for alcohol or drugs in the following instances:

a. Reasonable Suspicion Testing

The Town may require a blood test, urinalysis, or other drug and/or alcohol screening of those persons reasonably suspected of using or being under the influence of a drug or alcohol at work. Testing must be approved by the Human Resources Manager, the Department Director, or a designee.

"Reasonable suspicion" is based on objective factors, such as behavior, speech, body odor, appearance, or other evidence of recent drug or alcohol use which would lead a reasonable person to believe that the employee is under the influence of drugs or alcohol. In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion and discuss the matter with the Human Resources Manager or Department Director. If there is a reasonable suspicion of drug or alcohol abuse, the employee will be relieved from duty and placed on leave until the test results are received.

b. Post-Accident Testing

The Town may require alcohol or drug screening following any work-related accident or any violation of safety precautions or standards, whether or not an injury resulted from the accident or violation, provided that the "reasonable suspicion" factors described above are present.

9.8.5 Employee's Responsibilities

Town employee must:

- a. Not report to work or be on standby or on-call status while his or her ability to perform job duties is impaired due to on or off duty alcohol or drug use;
- b. Not possess or use controlled substances (illegal drugs or prescription drugs)

- without a prescription) at any time, or use alcohol at any time while on Town property or while on duty for the Town at any location;
- c. Not directly or through a third party manufacture, sell, distribute, dispense, or provide controlled substances to any person, including any employee, at any time; or manufacture, sell, distribute, dispense or provide alcohol to any employee while either or both are on duty;
  - d. Notify his or her supervisor, before beginning work, when taking any medications or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of Town equipment;
  - e. Notify the Department Director of any criminal conviction for a drug violation that occurred in the workplace within no more than five days after such conviction;
  - f. Notify the supervisor immediately of facts or reasonable suspicions when he or she observes behavior or other evidence that a fellow employee poses a risk to the health and safety of the employee or others; and
  - g. Consent to drug or alcohol testing and searches.

9.8.6 Management Employee Responsibilities

Town management employees must:

- a. Notify the state or federal granting agency which has funded the work or program, if any, of any criminal drug statute convictions for a violation that occurred at a site where work is/was being done with a specific grant or contract;
- b. Record factors supporting “reasonable suspicion” as defined above and consult with other management staff in order to determine whether there is reasonable suspicion to test an employee as described by this policy;
- c. Take appropriate disciplinary action for any criminal drug statute conviction that occurred in a Town workplace, up to and including termination, or require that the convicted employee participate satisfactorily in a drug abuse assistance or rehabilitation program as a condition for returning to duty; and
- d. Take appropriate disciplinary action for any violation of this policy.

9.8.7. Drug-Free Awareness Program

The following is the Town’s drug-free awareness program:

Notification to each Town employee and volunteer of the availability of counseling and treatment of drug-related problems through the Town’s Employee Assistance Program provider.

**9.9 Implementation of Workplace Violence Policy**

9.9.1 Policy

The Town is committed to providing a safe and secure workplace for employees and the public. The Town will not tolerate acts or threats of violence in the workplace. The workplace includes any location where Town business is conducted, including vehicles and parking lots. Any violation of this policy will lead to criminal prosecution, and/or disciplinary action, up to and including termination.

9.9.2 Prohibited Behavior

- a. Employees are prohibited from engaging in or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of Town employment. The Town has zero tolerance for any conduct that references workplace violence, even if it was intended to be harmless, humorous, a prank, blowing off steam, or venting.
- b. Employees engaged in Town business are prohibited from carrying self-defense weapons in violation of any law or this policy. Employees who have legal authority to carry a self-defense weapon shall notify the department director in writing of what type of weapon is being carried. Employees who have legal authority to carry self-defense weapons violate this policy if they: accidentally discharge or lose their weapon; use, threaten to use, or display the weapon while engaging in Town business; or violate any law related to carrying a legal self-defense weapon while engaged in Town business.

9.9.3 Definitions

“Workplace Violence” is any conduct that causes an individual to reasonably fear for his or her personal safety or the safety of his or her family, friends, and/or property. Specific examples of workplace violence include, but are not limited to, the following:

- a. Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property;
- b. The destruction of, or threat of destruction of Town property or another employee’s property;
- c. Harassing or threatening phone calls;
- d. Surveillance;
- e. Stalking;
- f. Possession of offensive or defensive weapons (firearms, illegal knives, clubs, mace, pepper spray, tear gas, etc.) unless specifically required or authorized and approved by the Director of Human Resources; or
- g. Any conduct relating to violence or threats of violence that adversely affects the Town’s legitimate business interests.
- h. Weapons are defined as firearms, chemical sprays, clubs or batons, and knives, and any other device, tool, chemical agent or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threaten a person with harm.

9.9.4 Incident Reporting Procedures

- a. Employees must immediately report workplace violence to their supervisor or Department Director. The supervisor or Department Director will report the matter to the Human Resources Manager.
- b. The Human Resources Manager will document the incident, including the employee names(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.
- c. The Human Resources Manger will take appropriate steps to provide security, such as:

- 1) Placing the employee alleged to have engaged in workplace violence on administrative leave, pending investigation;
- 2) Asking any threatening or potentially violent person to leave the site; or
- 3) Immediately contacting an appropriate law enforcement agency.

9.9.5 Investigation

The Human Resources Manager will see that reported violations of this policy are investigated as necessary.

9.9.6 Management Responsibility

Each Department Director has authority to enforce this policy by:

- a. Training supervisors and subordinates about their responsibilities under this policy;
- b. Assuring that reports of workplace violence are documented accurately and timely;
- c. Notifying the Human Resources Manager and/or law enforcement authorities of any incidents;
- d. Making all reasonable efforts to maintain a safe and secure workplace; and
- e. Maintaining records and follow up actions as to workplace violence reports

9.9.7 Follow-Up and Disciplinary Procedures

An employee found in violation of this policy will be subject to disciplinary action, up to and including termination of employment. The Town may also direct that an employee submit to a fitness for duty examination. In addition, employees found in violation of this policy may be subject to criminal prosecution

**9.10 Town Equipment Use**

9.10.1 Policy

- a. Town property is to be used only for conducting Town business unless otherwise authorized. Town property includes, but is not limited to: telephones, desks, computers (including hardware and software), file cabinets, lockers, communications stored or transmitted on Town property (such as e- and voice-mails), vehicles and any other Town property used by Town employees in their work. Employees do not have a reasonable expectation of privacy in Town property or equipment.
- b. Town property may be monitored and searched at any time and for any reason. Messages sent or received on Town equipment may be saved and reviewed by others. As a result, Town employees have no expectation of privacy in the messages sent or received on Town property or equipment.
- c. Every Town employee is required to adhere to all Town rules and policies while on Town property or using Town property or equipment.

9.10.2 Use of Communications Equipment

Minimal personal use of communications equipment is permitted. Town employees may use Town telephones and e-mail for personal use provided that the use:

- a. is kept to a minimum and limited to break times or non-work hours;
- b. does not have any impact upon other Town employees or operations;

- c. allows the employee to more efficiently perform Town work; and
- d. is not abusive, illegal, or inappropriate.

9.10.3 Inappropriate Use of Communications Equipment Prohibited

The following are examples of inappropriate and prohibited uses of the Town's communications systems:

- a. Exposing others, either intentionally or unintentionally, to material which is offensive, obscene or in poor taste;
- b. Any use that would be offensive to a reasonable person because it involves an individual's race, religion, color, sex, gender identity, sexual orientation, ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual);
- c. Communication of confidential Town information to unauthorized individuals within or outside the Town;
- d. Sending messages with content that conflicts with any Town policies, rules or other applicable laws;
- e. Unauthorized attempts to access Town data or systems;
- f. Theft or unauthorized copying of electronic files or data;
- g. Initiating or sustaining chain letters, and
- h. Intentionally misrepresenting one's identity for improper or illegal acts.

9.10.4 Use of Town Computer System

The Town recognizes the importance of computers and related technology as an important tool in conducting the Town's business. The Town also recognizes the importance of maintaining and protecting the integrity of the Town's computer system in light of the potential for loss or misuse of confidential information, the interruption of provision of critical services and the use of the computer system for unlawful purposes. Therefore, this policy is intended to establish rules for use of the Town's computer system by all Town employees. Violation of this policy may result in discipline as set forth in Section 9.2 of the Town's Personnel Policies.

9.10.5 Ownership of Computer System

The Town's computer system (including all hardware and software) are the exclusive property of the Town of Danville and is provided to employees for creating and transmitting Town business-related information and documents. All files, whether temporary or permanent, created and retained in the Town's computer system are the property of the Town. The Town has the capability and right to access, monitor, review, copy and/or delete any computer files, including e-mails sent or received, without prior notice to employees.

9.10.6 Internet Access and Prohibited Use

The Town provides employees with access to the Internet for Town business. While incidental use of the Town's computer system and Internet access is permitted, any such usage must be conducted with the highest level of professionalism and in accordance with the Town's policies prohibiting harassment, discrimination and violation of laws. Employees are specifically made aware of the fact that the Town

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monitors and filters all Internet usage and that employee access to the Internet can be tracked to individual employees and that such usage is not confidential.

9.10.7 Retention of Electronic Mail

The Town does not retain e-mail received or sent on the Town's servers in the normal course of business. Employees should be aware that e-mails retained on their individual work stations may be public records subject to public inspection under the California Public Records Act (Government Code Section 6250 et seq.).

9.10.8 Software Use and Installation

Software owned by the Town may not be copied, transferred or reproduced by employees without the prior approval of the Town's Information Systems Manager, who may grant such rights if permitted by the applicable software license. Employees may not load or install non-Town owned software on their workstation without prior approval of the Town's Information Systems Manager. Such approval is necessary to ensure the security and functionality of the Town's computer system is not compromised.

9.10.9 Use of Town Equipment Prohibited

- a. No Town-owned equipment, autos, trucks, instruments, tools, supplies, machines, or any other item which is the property of the Town shall be used by an employee while the employee is engaged in any outside employment or activity for compensation.
- b. No employee shall allow any unauthorized person to rent, borrow, or use any of the items mentioned in (a) above.

9.10.10 Use of Supplies and Equipment

Town funds belong to the public and are held in trust for them. This differentiates us from private business. There are things that employees in private businesses may do that public employees may not.

- a. Use of Cell Phones - A copy of the monthly phone bill will be distributed to individuals who need to identify personal calls and return to the Finance Department. Personal use will be reimbursed to the Town through a quarterly direct payroll deduction. An internal notification of the amount charged will be distributed quarterly to individuals.
- b. Use of Town Telephones - It is understood that the need to do some personal business using office telephones to call home, doctors, schools, etc., is necessary. Personal use of Town telephones, beyond these situations, is not allowed. Personal calls outside of the local area should be made on employees' personal calling cards or phones.
- c. Town Vehicles - These vehicles may be used for Town business only.
- d. Supplies and Other Equipment - Supplies and equipment cannot be purchased through the Town for personal use. Personal use of supplies is not allowed.
- e. Photocopier and Fax Machine - Use of the photocopier for all reproduction purposes requires reimbursement to the Town at the established rates. Use logs will be made available at each photocopy locations. The reimbursed amount will be deducted directly from employees' paychecks at the end of the quarter. Personal use of the fax machine will require the same



reimbursement procedures as for photocopiers. Use logs are located at all machines. Employees are responsible to record both incoming and outgoing personal faxes.

- f. Postage Meter Machine - The postage meter may not be used by Town employees for personal mail.
- g. Gifts - Acceptance of gifts from vendors is permitted only if the gift is edible and can be enjoyed by employees located in the office area. Alcohol and other gifts that do not meet these criteria should not be accepted and/or need to be returned to the vendor.
- h. Tickets - Acceptance of tickets from vendors or consultants to athletic events, concerts and the like is prohibited.
- i. Meals - Judgment should be used in accepting invitations from vendors for business-related meals. Discretion should be used regarding whether to accept and who pays. Employees should consider such factors as the regulatory relationship between the Town, employee and vendor, the imminence of Town contract awards that may benefit the vendor, and the convenience of doing business at meals.

## **9.11 Fraud in the Workplace**

### 9.11.1 Purpose and Scope

To establish policies and procedures for clarifying acts that are considered to be fraudulent, describing the steps to be taken when fraud or other related dishonest activities are suspected, and providing procedures to follow in accounting for missing funds, restitution and recoveries.

The Town of Danville is committed to protecting its assets against the risk of loss or misuse. Accordingly, it is the policy of the Town of Danville to identify and promptly investigate any possibility of fraudulent or related dishonest activities against the Town and, when appropriate, to pursue legal remedies available under the law.

### 9.11.2 Definitions

- a. Fraud and other similar irregularities include, but are not limited to:
  - 1) Claims for reimbursement of expenses that are not job-related or authorized by the Town's expense reimbursement policy;
  - 2) Forgery or unauthorized alteration of documents (checks, promissory notes, time sheets, independent contractor agreements, purchase orders, budgets, etc.).
  - 3) Misappropriation of Town assets (funds, securities, supplies, furniture, equipment, etc.).
  - 4) Improprieties in the handling or reporting of money transactions.
  - 5) Authorizing or receiving payment for goods not received or services not performed.
  - 6) Computer-related activity involving unauthorized alteration, destruction, forgery, or manipulation of data or misappropriation of Town-owned software.
  - 7) Misrepresentation of information on documents.

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- 8) Any apparent violation of Federal, State, or Local laws related to dishonest activities or fraud.
  - 9) Seeking or accepting anything of material value from those doing business with the Town including vendors, consultants, contractors, lessees, applicants, and grantees.
- b. Employee - In this context, employee refers to all employees of the Town, as defined in the Town's Personnel Policies and Procedures, and any volunteer who provides services to the Town through an official arrangement with the Town.

9.11.3 Procedures to Deter Fraud

- a. Each department of the Town is responsible for instituting and maintaining a system of internal controls to provide reasonable assurance for the prevention and detection of fraud, misappropriations, and other irregularities. These internal controls should be reviewed and prepared in conjunction with the Town's Finance Department.
- b. Department Directors and managers who supervise and/or have approval authority over expenditure of Town funds should be familiar with the types of improprieties that might occur within their area of responsibility and be alert for any indications of such conduct.

9.11.4 Investigation of Potential Fraud

- a. It is the Town's policy to fully investigate any suspected acts of fraud, misappropriation, or other similar irregularity. An objective and impartial investigation will be conducted regardless of the position, title, length of service or relationship with the Town of any party who might be or become involved in or becomes the subject of such investigation.
- b. Whenever any Town employee has a reasonable suspicion that fraud may be occurring, that employee shall report the activity to their immediate supervisor, or if the supervisor is the person suspected, to the next highest level within the department.
- c. When any suspected fraud is reported, whether by a Town employee or any other individual, the appropriate department manager should determine whether an error or mistake has occurred or if there may be dishonest or fraudulent activity.
- d. If the department manager believes there may be dishonest or fraudulent activity, they should immediately report it to the Town's Human Resources Manager who shall initiate an investigation in conformance with the Town's Personnel Policies and Procedures. Depending on the allegations and circumstances, the investigation may include the Town's Finance Director, City Attorney and any outside investigators or auditors as deemed appropriate. All Town employees shall fully cooperate with any such investigation.

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- e. If the results of the investigation indicate violation of this policy, discipline, up to and including termination from employment, will be initiated as provided for in the Town's Personnel Policies and Procedures. In addition, if the results of the investigation indicated potential criminal acts, the matter should be reported to the Danville Police Department.
- f. All investigations involving Town employees shall be conducted in accordance with the Town's Personnel Policies and Procedures. This means, for example, that standard procedures for protection of whistleblowers, privacy rights and due process rights shall be in effect during and after the investigation.
- g. The Town will pursue every reasonable effort, including court ordered restitution, insurance claims, etc., to obtain recovery of Town losses from the offender, or other appropriate sources.

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## **SECTION 10 GRIEVANCE PROCEDURE**

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### **10.1 Purpose**

The purpose of the Grievance Procedure is to:

- a. Afford employees a systematic means of obtaining consideration of concerns or problems.
- b. Provide for grievances to be settled as near as possible to the point of origin.
- c. Provide that concerns or problems are resolved as informally as possible.

### **10.2 Matters Subject to Grievance**

Any alleged violation of these policies and procedures, any alleged improper treatment of an employee or any decision affecting an employee's employment is considered to be a matter subject to review through the grievance procedure. Personnel actions which are subject to section 9 of these policies and procedures are not a matter subject to grievance.

### **10.3 Matters Not Subject to Grievance**

At any time during the grievance procedure, the Human Resources Manager may rule that the matter involved is not subject to grievance. A matter not subject to grievance may include hours of work, services provided, staffing levels, amount of merit increases, allocation to classifications, equipment and work methods (provided that prescribed methods of work are consistent with the skill level expected of employees assigned to the class.)

### **10.4 Grievance Procedure**

Step 1 - An attempt must be made to resolve all grievances on an informal basis. The employee should first discuss any grievance with his/her immediate supervisor. It is the responsibility of the employee to initiate this process within five (5) working days of the date when the aggrieved action or incident becomes known to the employee. A written decision by the supervisor must be received by the employee within five (5) working days.

Step 2 - If the grievance is not satisfactorily resolved informally, the employee may present a written appeal to the supervisor's immediate supervisor within five (5) working days after receipt of the written decision under Step 1. The supervisor receiving the appeal shall make a decision, in writing, and return it to the employee within ten (10) working days after receiving the appeal.

Step 3 - If the grievance is not satisfactorily resolved at Step 2, the employee may submit the grievance in writing to the Department Director within five (5) working days after the supervisor's decision is received. The Department Director must deliver an answer in writing to the employee within ten (10) working days after submission of the grievance to the Department Director.

Step 4 - If the grievance is not satisfactorily resolved at Step 3, the employee may submit the grievance in writing to the Employee Steering Committee within five (5) working days after the Department Director's decision is received. Three members of the Steering Committee will serve as a Review Board and consider the grievance. One member of the Review Board will be selected by the grievant from the Steering Committee members. One member will be selected by the Department Director. One member shall be selected by agreement of the two previously-selected members. The Steering Committee Review Board will deliver an answer to the employee in writing within ten (10) working days after submission of the grievance to the Department Director.

Step 5 - If the grievance is not satisfactorily resolved at Step 4, the employee may submit the grievance in writing to the Town Manager within five (5) working days after the Steering Committee Review Board's answer is received. The Town Manager will render a decision in writing to the employee within fifteen (15) working days after receiving the appeal. The Town Manager's decision is final.

#### **10.5 Conduct of Grievance Procedure**

- 10.5.1 Time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer.
- 10.5.2 The employee may request the assistance of another person of his/her own choosing in preparing and presenting the appeal to any level of review.
- 10.5.3 The employee and his/her representative may use a reasonable amount of work time determined by the Department Director or supervisor in conferring about and presenting the appeal.
- 10.5.4 The employee is assured freedom from reprisal for participating in the grievance process.

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***AUTHORITY***

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RESOLUTION NO. 47-83: A RESOLUTION OF THE DANVILLE  
TOWN COUNCIL ESTABLISHING PERSONNEL POLICY GUIDELINES

RESOLUTION NO. 111-89, AMENDING RESOLUTION 47-83

RESOLUTION NO. 106-91, AMENDING RESOLUTION 111-89

RESOLUTION NO. 205-91, AMENDING RESOLUTION 106-91

RESOLUTION NO. 120-92, AMENDING RESOLUTION 205-91

RESOLUTION NO. 121-92, AMENDING RESOLUTION 120-92

RESOLUTION NO. 74-94, AMENDING RESOLUTION 121-92

RESOLUTION NO. 170-96, AMENDING RESOLUTION 74-94

RESOLUTION NO. 91-98, AMENDING RESOLUTION 170-96

RESOLUTION NO. 58-01, AMENDING RESOLUTION 91-98

RESOLUTION NO. 113-07, AMENDING RESOLUTION 58-01

# TOWN OF DANVILLE



## APPENDIX A

### **Alcohol & Drug Testing Requirements For Commercial Motor Vehicle Drivers**

*Amended October 16, 2007*

**APPENDIX A  
PERSONNEL POLICIES AND PROCEDURES  
ALCOHOL & DRUG TESTING REQUIREMENTS  
FOR COMMERCIAL MOTOR VEHICLE DRIVERS**

**1. Purpose**

The purpose of this policy is to explain the alcohol and testing requirements for commercial motor vehicle drivers employed by the Town of Danville as required by Federal Government regulations part 382. In February 1994, the Department of Transportation (DOT) issued its final regulations implementing the Omnibus Transportation Employee Testing Act of 1991. These regulations require that drivers, having a commercial driver's license (CDL), who occupy safety-sensitive positions be subject to controlled substance and alcohol testing rules. The Town of Danville must comply with these rules no later than January 1, 1996.

In order to provide greater statistical reliability, the regulation provides for the formation of a consortium. The Town of Danville has joined a consortium made up of the members of Contra Costa County Municipal Risk Management Insurance Authority. The consortium has contracted with CDT, Inc., a nationally known and respected drug and alcohol testing organization, to administer this program.

**2. Definitions**

Following are the definitions of terms related to the Omnibus Transportation Employee Testing Act and referenced in this Policy:

- 2.1 Alcohol - The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- 2.2 Alcohol Use - The consumption of any beverage, mixture, or preparation, including any medication containing alcohol.
- 2.3 Breath Alcohol Technician (BAT) - An individual who instructs and assists individuals in the alcohol testing process and operates an evidential breath testing device (EBT).
- 2.4 Commercial Motor Vehicle - A motor vehicle or combination of motor vehicles which:
  - a. Has a gross combination weight of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or
  - b. Has a gross vehicle weight rating of 26,001 or more pounds; or
  - c. Is designed to transport 16 or more passengers, including the driver; or
  - d. Is of any size and is used in the transportation of hazardous materials requiring placards.
- 2.5 Confirmation Test - for alcohol testing means a second test, following a screening test with a result of 0.02 grams or greater of alcohol per 210 liters of breath, that provides quantitative data of alcohol concentration. For controlled substances testing means a second analytical procedure to identify the presence



of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

- 2.6 Driver - any person who operates a commercial motor vehicle. For the purposes of pre-employment testing, the term driver includes a person applying to drive a commercial motor vehicle and current Town employee transferring into a position which requires driving of a commercial vehicle.
- 2.7 Employee - For the purposes of this section, employee refers to any employee of the Town of Danville, holding a California commercial driver's license, and occupying or applying for transfer to a position performing safety-sensitive functions as described herein or those employee classifications which require Class A or B California Driver's Licenses and/or hazardous materials or tanker endorsements.
- 2.8 Employer - The Town of Danville.
- 2.9 Evidential Breath Testing Device (EBT) - A device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath and placed on NHTSA's Conforming Products List of Evidential Breath Measurement Devices (CPL).
- 2.10 Medical Review Officer - A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the Town's drug testing program or his/her designee who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result together with his/her medical history and any other relevant biomedical information.
- 2.11 Performing a Safety-Sensitive Function - Any period in which the driver is actually performing, ready to perform, or immediately able to perform any safety-sensitive functions.
- 2.12 Reasonable Suspicion - Belief that the driver has violated the alcohol or controlled substances prohibitions, based on objective facts and reasonable inference drawn from those facts, that an employee is under the influence of a drug and/or alcohol. Such facts may include characteristics of the employee's appearance, behavior, mannerisms, speech or body odors. Examples include but are not limited to:
- a. Inability to perform work properly.
  - b. Behavior is creating a safety hazard.
  - c. Difficulties walking or standing, problems with dexterity or other physical activity impairment.
  - d. Impaired ability to speak (slurred, thick speech).
  - e. Belligerent or violent behavior or wide mood swings.
  - f. Excessive unauthorized absenteeism.

- g. Any conduct which constitutes a significant change from the individual's usual behavior or which indicates impairment of sound judgment.
- h. Glazed/fixed stare.
- i. Abnormally dilated or constricted pupils.
- j. Glassy or bloodshot eyes.
- k. Unusual odor of breath or skin.
- l. Nose bleeds and excessive sniffing.
- m. Actual observation of the ingestion or use of alcohol or a drug by an employee.

Reasonable suspicion alcohol tests must be administered within two hours of observation. If not, supervision must document in writing why the test was not conducted promptly. No alcohol test based on reasonable suspicion may be given after eight hours from observation.

- 2.13 Refusal to Submit (to an alcohol or controlled substance test) - a driver: 1) fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement for breath testing; 2) fails to provide adequate urine for controlled substances testing without a valid medical explanation after he or she has received notice of the requirement for urine testing; or 3) engages in conduct that clearly obstructs the testing process.
- 2.14 Safety-Sensitive Function - Any of those on-duty functions as follows:
- a. All time at a terminal, facility, or other property waiting to be dispatched, unless the driver has been relieved from duty by the Town.
  - b. All time inspecting equipment as required by the Federal Motor Carrier Safety Regulations (FMCSR) or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time.
  - c. All time spent at the driving controls of a commercial motor vehicle.
  - d. All time, other than driving time, spent on or in a commercial motor vehicle.
  - e. All time loading or unloading a commercial motor vehicle, supervising or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded.
  - f. All time spent performing the driver requirements associated with an accident.
  - g. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.
- 2.15 Screening Test (initial test) - In alcohol testing this means an analytical procedure to determine whether a driver may have a prohibited concentration of alcohol in his or her system. In controlled substance testing it means an immunoassay screen to eliminate negative urine specimens from further consideration.

- 2.16 Substance Abuse Professional (SAP) - A licensed physician (medical doctor or doctor of osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.

### **3. Prohibited Activity**

The following alcohol and controlled substance-related activities are prohibited and may result in discipline up to and including termination:

- 3.1 Reporting for duty or remaining on duty to perform safety-sensitive functions while having an alcohol concentration of 0.04 or greater.
- 3.2 Performing safety-sensitive job duties within four hours of consuming alcohol.
- 3.3 Being on duty or operating a commercial motor vehicle while the driver possesses alcohol, unless the alcohol is manifested and transported as part of a shipment. This includes the possession of medicines containing alcohol, unless the packaging seal is unbroken.
- 3.4 Using alcohol while performing safety-sensitive functions.
- 3.5 When required to take a post-accident alcohol test, using alcohol within eight hours following the accident or prior to undergoing a post-accident alcohol test, whichever comes first.
- 3.6 Refusing to submit to an alcohol or controlled substance test required by pre-employment, post-accident, random, reasonable suspicion or follow-up testing requirements.
- 3.7 Reporting for duty or remaining on duty, requiring the performance of safety sensitive functions, when the driver uses any controlled substance, except when instructed by a physician who has advised the driver that the substance does not adversely affect the driver's ability to safely operate a commercial motor vehicle. Use of controlled substances as defined by law must be in accordance with a physician's authorized prescription.
- 3.8 Reporting for duty, remaining on duty, or performing a safety-sensitive function if the driver tests positive for controlled substances.

### **4. Types of Testing**

- 4.1 Pre-Employment Controlled Substance Testing - Commercial Drivers  
Prior to the employment of any individual who will occupy a classification designated to perform safety-sensitive functions (as listed in 2. Definitions), and prior to the transfer of any current Town employee into a position which performs safety-sensitive functions, that individual must submit to testing for controlled substances.

No candidate for Town employment or current Town employee involved in a transfer to a position designated to perform safety-sensitive functions as defined in Section 2 above shall be deemed qualified for appointment or

transfer unless he/she has received a controlled substance test result from the Town's testing facility with a verified negative result.

4.2 Random Testing

- a. Random alcohol testing shall be administered at a minimum annual rate of 25% of the average number of commercial driver positions.
- b. Random controlled substances testing shall be administered at a minimum annual rate of 50% of the average number of commercial driver positions.
- c. The Town shall ensure that random alcohol and/or controlled substances tests are unannounced and spread reasonably throughout the calendar year. It is possible under this random testing program that one qualified employee could be tested more than once during a calendar year, while other employees may not be tested at all during that same time.
- d. The Town shall ensure that commercial drivers selected for random alcohol and/or controlled substance tests go immediately to the designated testing facility upon notification of being selected.
- e. Under this section, the employee shall only be tested for alcohol while he/she is performing safety-sensitive functions (see 2.11).
- f. In the event the employee who is selected for a random alcohol and/or controlled substances test is on vacation or an extended medical absence, the Town may either select another employee for testing or keep the original selection confidential until the employee returns from leave.

4.3 Random Selection Process

- a. Safety sensitive employees will be entered into the eligible pool for selection upon implementation of the program. Newly hired safety-sensitive employees will be entered into the random pool the day they begin work with the Town.
- b. Drawings will be unannounced and dates for testing will be spread out during the course of the year. The drawings will be conducted in a manner that ensures confidentiality and randomness of selections.
- c. After the drawing is completed, each selectee will be notified that they have been selected for a random alcohol and/or drug test and are to be taken/go immediately to the testing facility.

4.4 Reasonable Suspicion Testing

Employee is required to submit to an alcohol or controlled substance test when there is reasonable suspicion as defined herein to believe such employee has violated the alcohol or controlled substances prohibitions.

The required observations for alcohol and/or controlled substances reasonable suspicion testing shall be made by a supervisor or manager who has been trained in accordance with this program.

4.5 Post-Accident Alcohol and Controlled Substances Testing

As soon as practicable following an accident involving a commercial motor

vehicle, the Town shall test for alcohol and controlled substances each surviving employee when:

- a. The accident involved a fatality; or
- b. The employee receives a citation under state or local law for a moving traffic violation arising from the accident.

For the purposes of this section, accident is defined as an accident involving a commercial motor vehicle in which there is either a fatality, an injury treated away from the scene, or a vehicle is required to be towed from the scene.

Controlled substances tests will be administered within the following time frame:

| <u>Time Elapsed</u> | <u>Action Required</u>  |
|---------------------|---|
| 2 hours             | If the employee has not submitted to an alcohol test at this time, the Town shall prepare and maintain on file a record stating the reason a test was not promptly administered.          |
| 8 hours             | Cease attempts to administer alcohol tests, and prepare and maintain records described above.   |
| 32 hours            | If the employee has not submitted to a controlled substance test at this time, the Town shall cease attempts to administer the test and prepare and maintain the records described above. |

Employee's Responsibility: Any employee who is subject to post-accident testing must remain available for testing, or the Town may consider the employee to have refused to submit to testing. The employee subject to post-accident testing must refrain from consuming alcohol for eight hours following the accident, or until he/she submits to an alcohol test, whichever comes first. Failure to comply with these directions constitutes insubordination which may lead to disciplinary action up to and including termination.

- 4.6 Positive Alcohol/Controlled Substance Test  
Engaging in any prohibited activity (see Section 3) will constitute a positive alcohol/controlled substance test. In the event positive test results occur, the Personnel Officer will contact the Department Director and provide assistance to the supervisor for follow-up action based on the supervisor's documentation and test results. Appropriate action will be determined by the Department Director with the assistance of the Personnel Officer. Action may include referral of the employee for participation in a mandatory Drug/Alcohol Rehabilitation Program, and may include temporary reassignment to non-safety-sensitive job functions.

4.7 Mandatory Drug/Alcohol Rehabilitation Program

Any employee enrolled in a mandatory drug/alcohol rehabilitation program is subject to the terms and conditions of that agreement, which includes in part the requirement that all counseling be completed during non-work time, at the employee's own expense, and the requirement to submit to drug and/or alcohol tests at any time after returning to work when requested by a supervisor. The schedule of follow-up testing will be determined by the SAP.

The affected employee will receive a copy of the written agreement between the employee and the SAP stating the terms and conditions of the mandatory Drug/Alcohol Rehabilitation Program. The Town will also receive a copy of the agreement. An employee refusing to participate in the mandatory Drug/Alcohol Rehabilitation Program may be subject to further disciplinary action including termination. Once enrolled in a mandatory drug/alcohol rehabilitation program, such employee can not be considered for any driving, hazardous duty, or safety-sensitive duty until a negative finding on a return-to-duty test is confirmed. Any employee participant in the mandatory Drug/Alcohol Rehabilitation Program must submit to random drug/alcohol testing.

Employees unable to work because of a positive test result will be allowed to use available General Leave or Compensatory Time Off during the rehabilitation period.

4.8 Return-to-Duty Testing

- a. Alcohol Misuse - The Town shall ensure that before an employee returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding alcohol misuse, such employee shall undergo a return-to-duty alcohol test indicating a breath alcohol concentration of less than 0.02.
- b. Controlled Substances Abuse - The Town shall also ensure that before such employee returns to duty requiring the performance of a safety-sensitive function, after engaging in prohibited conduct regarding controlled substance use, the employee shall undergo a return-to-duty controlled substances test with a result indicating a verified negative result for controlled substances use.

4.9 Follow-Up Testing

Following a determination that an employee is in need of assistance in resolving problems associated with alcohol misuse and/or use of controlled substances, the Town shall ensure that the employee is subject to unannounced follow-up alcohol and/or controlled substances testing as directed by the Substance Abuse Professional (SAP). The employee shall be subject to a minimum of six random follow-up controlled substance and/or alcohol tests in the first twelve months after testing positive under this section. The follow-up testing period can be as long as sixty months; this period is determined under the direction of the SAP.

Alcohol follow-up testing shall be performed only when the employee is performing safety-sensitive functions.

## **5. Procedure**

### 5.1 Alcohol Testing

Alcohol testing will be conducted using evidential breath testing devices (EBT) approved by the National Highway Traffic Safety Administration. A screening test must be conducted first. If the result is an alcohol concentration level of less than 0.02, the test is considered a negative test. If the alcohol concentration level is 0.02 or more, a second confirmation test must be conducted. If the level of the second confirmation test is below 0.02 then it shall be deemed a negative test. If the level is between 0.02 and 0.039, the employee shall be removed from service for 24 hours. Alcohol testing shall be accomplished by the Town's designated testing facility.

### 5.2 Controlled Substance Testing

- a. The test must be conducted by analyzing the employee's urine.
- b. The urinalysis must be done at a laboratory certified by the Department of Health and Human Services.
- c. The urine specimen must be split into two bottles labeled as primary and split specimen. Both bottles must be sent to the lab.
- d. If the urinalysis of the primary specimen tests positive for the presence of illegal, controlled substances, the employee has 72 hours to request that the split specimen be analyzed by a second certified lab to be chosen at the discretion of the MRO.
- e. The urine sample must be tested for the following: marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP).
- f. If the test is positive for one or more of the drugs listed in "5.2.5" above, a confirmation test must be performed using gas chromatography/mass spectrometry analysis.
- g. All drug test results will be reviewed and interpreted by the Medical Review Officer before they are reported to the Town's Personnel Officer.
- h. With all positive drug tests, the MRO will contact the employee to determine if there is an alternative medical explanation for the positive test result. If documentation is provided and the MRO determines that there was a legitimate medical use for the prohibited drug, the test result may be reported to the Town as negative.

## **6. Consequences To Employees Engaging In Conduct Prohibited By The Federal Highway Administration's Drug Use And Alcohol Misuse Rules**

Employees who are known to have engaged in prohibited behavior with regard to alcohol misuse or use of controlled substances are subject to disciplinary action up to and including termination:

- 6.1 The employee shall not be permitted to perform safety-sensitive functions.
- 6.2 The employee shall be advised by the Town of Danville the resources available to him/her in evaluating and resolving problems associated with the misuse of alcohol or use of controlled substances.
- 6.3 In accordance with the Town's Alcohol and Drug-Free Workplace Environment Policy, the Department shall determine appropriate disciplinary action, which must include evaluation by a substance abuse professional who shall determine what assistance if any the employee needs in resolving problems associated with alcohol misuse and controlled substance use.
- 6.4 Any employee identified as needing assistance in resolving problems associated with alcohol or controlled substances shall be evaluated by the Substance Abuse Professional to determine that the employee has followed the rehabilitation program prescribed. The cost of the evaluation and rehabilitation program shall be borne by the employee (see Section 4).
- 6.5 Before the employee returns to duty performing safety-sensitive functions, he/she shall undergo a return-to-duty drug and/or alcohol test(s) with a result indicating a breath alcohol level of less than 0.02, and/or a verified negative controlled substance test. The specific return-to-duty test(s) will be determined by the SAP.
- 6.6 The employee shall also be subject to unannounced follow-up alcohol and controlled substance testing as described in Section 4.7 above. The number and frequency of such follow-up testing shall be as directed by the Substance Abuse Professional and consist of at least six tests in the first twelve months after return-to-duty in the prescribed rehabilitation program. This return-to-duty testing may extend as long as sixty months.

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| <b>7. Training</b> |
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- 7.1 Informational Material  
As required by the Department of Transportation, the Town of Danville will provide information on drug use and treatment resources to safety-sensitive employees.
- 7.2 Mandatory Supervisory Training  
All supervisors of safety-sensitive employees shall attend at least two hours of training on the signs and symptoms of substance abuse. This training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and the use of controlled substances, and is intended to assist supervisors in making appropriate determinations for reasonable suspicion testing.