

**RESOLUTION AMENDING ARTICLE I OF THE PERSONNEL RESOLUTION OF
THE CITY OF WINSTON-SALEM REGARDING CERTAIN EMPLOYMENT
MATTERS**

WHEREAS, the City of Winston-Salem Personnel Resolution (“Personnel Resolution”) contains certain policies employment related policies; and

WHEREAS, city staff wish to streamline the provisions in the Personnel Resolution regarding conditions of employment and the grievance process.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Winston-Salem City Council that the Personnel Resolution is amended as follows:

Section 1: Section 1. Equal Employment Opportunity. of Article I. Conditions of Employment. is hereby amended to read as follows:

“Sec. 1. Equal Employment Opportunity

- (a) Employment practices in city government shall at all times adhere to the spirit and letter of federal, state and local laws, rules and regulations promulgated thereunder guaranteeing equal employment opportunities and promoting fairness in compensation to all persons without regard to and prohibiting discrimination, bullying or harassment on the basis of race, ethnicity, color, creed, religion, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability unless a bona fide occupational qualification exists, age, veteran or military status, marital status, familial status, genetic information, political affiliation, or national origin.

For purposes of this article, the terms used herein shall mean the following: (i) Familial status means one (1) or more individuals (who has not attained the age of eighteen (18) years) being domiciled with: (1) A parent or another person having legal custody of such individual; or (2) the designee of such parent or other person having such custody, with the written permission of such parent or other person. The protections afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of eighteen (18) years; (ii) Protected hairstyle means any hairstyle, hair type, or hair texture historically associated with race such as, but not limited to, braids, locks, twists, tight coils or curls, cornrows, Bantu knots, and afros; and (iii) Consistent with the decision of United States Supreme Court in *Bostock v. Clayton County*, 140 S. Ct. 1731 (2020), the term "sex" or the phrase on the "basis of sex" or "because of sex" shall expressly include sexual

orientation, gender identity, gender expression and any other protected category held to be covered by said term and phrases in the aforementioned case.

- (b) Persons noted above will receive impartial consideration for initial employment and promotion; will possess equal standing and security as city employees; and will have equal opportunity to receive training, develop skills and opportunities to advance. Such opportunities shall be limited only by the individual's abilities and the requirements of the work force.
- (c) All activities, facilities, services and training operated, sponsored or participated in by the city shall be available to employees without any segregation or discrimination based on race, ethnicity, color, creed, religion, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability unless a bona fide occupational qualification exists, age, veteran or military status, marital status, familial status, genetic information, political affiliation, or national origin.
- (d) It is illegal and against the policies of the City of Winston-Salem for any employee, regardless of gender or gender identification, to sexually harass another employee. Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
- (e) ~~Individuals~~Employees who may believe they have been subject to discrimination, harassment, bullying, or sexual harassment shall be entitled as a matter of right to use ~~any and all existing grievance procedures~~ the process outlined below in section 1 (f) without fear of coercion or reprisal. An employee who has been found to have discriminated against, harassed, bullied or sexually harassed another employee will be subject to appropriate sanctions depending on the circumstances, from a warning in ~~his or her~~ their the employee's personnel file up to and including termination.

(f) Complaints of Harassment, Discrimination, or Bullying

- (1) Employment practices in City government shall at all times adhere to the spirit and letter of federal, state and local laws, rules and regulations promulgated; thereunder, guaranteeing equal employment opportunities and promoting fairness in compensation to all persons without regard to and prohibiting discrimination or harassment on the basis of race, ethnicity, color, creed, religion, sex, sexual orientation, gender identity or gender expression, protected hairstyles, pregnancy, disability unless a bona fide occupational qualification exists, age, veteran status, marital status, familial status, political affiliation, or national origin.
- (2) If harassment, discrimination, or bullying is suspected, witnessed, or encountered, the human resources director, or their designee shall be contacted immediately. The human resources department will conduct an internal investigation with the support of the city attorney's office to ascertain facts related to the allegations and establish whether a violation has occurred.

- (3) If, during the course of the investigation, investigators substantiate code of conduct violations pursuant to Article I. Section 16 of this Resolution, or confirm that harassment, discrimination, or bullying has occurred, the employee(s) involved shall be subject to appropriate disciplinary action, up to and including termination.
- (4) All complaints of discrimination, harassment, or bullying will be investigated promptly in accordance with the complaint procedures and kept confidential to the extent possible in accordance with all applicable laws. Depending upon the circumstances, an employee(s) may be placed on administrative leave with pay while the investigation is pending.
- (5) Employees who receive disciplinary action resulting from an administrative investigation pursuant to these provisions shall be entitled to utilize the grievance provisions found in Article I, Section 17 of this Resolution, provided the disciplinary action is one of the actions listed in said section. All grievances filed will be heard by the City Manager or their designee within fifteen (15) working days unless there are extenuating circumstances in which case the employee will be advised of the same.
- (6) When a complaint of discrimination, harassment, or bullying is made from a member of the general public regarding a City of Winston-Salem employee, the allegations shall be investigated to determine if said allegations are truthful and if any disciplinary action will be warranted.”

Section 2. Sec. Compliance with all applicable federal and state laws of Article I. Conditions of Employment. is hereby amended to read as follows:

“Sec. 2. Compliance with all applicable federal and state laws.

Notwithstanding any ordinance or resolution provision to the contrary, the City of Winston-Salem shall comply with all requirements of federal and state laws which apply to persons employed by the City of Winston-Salem. The City of Winston-Salem prohibits improper pay deductions. To the extent an employee believes that he has been the subject of an improper pay deduction(s), the employee may bring said matter to the attention of the human resources department for redress, if possible. ~~file a grievance under the city's grievance process to address such concern.~~ The employee also has the option of contacting the wage and hour division of the department of labor. To the extent the employee has been the subject of an improper pay deduction(s), the city will reimburse said employee in accordance with the Fair Labor Standards Act. The city will continue to make a good faith effort to comply with the Fair Labor Standards Act.”

Section 3. Sec. 7. Probationary period. of Article I. Conditions of Employment. is hereby amended to read as follows:

“Sec. 7. Probationary period.

Regular full-time employees who are newly appointed, transferred, or promoted shall serve the first ~~six (6)~~ twelve (12) months of employment, transfer, or promotion as a probationary

period. Sworn police and certified fire employees who are newly appointed, transferred or promoted shall serve the first twelve (12) months of employment and the first six (6) months of transfer or promotion as a probationary period. The probationary period is a continuation of the hiring, transfer, or promotion process. Employees must demonstrate satisfactory job performance during this period, as is documented by an end of probationary period performance evaluation. Should the common annual evaluation fall within the probationary period, the employee shall receive both the common annual evaluation and any associated pay increase, as well as the end of the probationary period performance evaluation. Employees whose performance is rated as unsatisfactory at the end of the probationary period may be terminated. During the probationary period, an employee that has been suspended, demoted, or suspended pending termination may access the grievance process under Article 1, Section 17. During the probationary period, employees may access the grievance and complaint processes and employees terminated at the end of the probationary period may access the grievance and complaint process."

Section 4, Sec. 11. Reclassification. of Article I. Conditions of Employment. is hereby amended to read as follows:

"Sec. 11. Reclassification.

- (a) Reclassification of positions in city government is necessary when significant changes in job content occur. Reclassification requests must be submitted by the department head, along with a completed reclassification study form, to the ~~office of personnel~~ human resources department for study. Recommendations from such study will determine the need and justification for reclassification.
- (b) *Reserved.*
- (c) ~~The creation of a new classification must be recommended by the city manager to the city council for approval.~~ Classification adjustments must be approved by the city manager consistent with the authority provided by the city council to the city manager."

Section 5, Sec. 12. Retirement Incentive Program of Article I. Conditions of Employment. is hereby amended by revising the introductory paragraph and the definition of eligible employees to read as follows with no changes to the remaining provisions:

"Sec. 12. Retirement incentive program.

Due to economic conditions, the city may from time to time offer eligible employees the option to participate in a retirement incentive program ("program"). The program will allow eligible employees to execute an election and release form ("release") and retire under the terms of such release. Participation in the program is voluntary and no eligible employee shall be required or coerced in any manner to retire. An employee who believes that he or she is being coerced to retire or that the program is not being applied in substantial compliance herewith may bring said matter to the attention of the human resources department for redress, if possible. file a grievance in accordance with section 17 of this article.

- (1) Definitions.

Creditable service. That period of active employment and credit for active employment coming from leave balances or from purchased retirement credits based on eligible service within other organizations.

Designation date. The date by which an employee eligible to participate in the program must submit written notification to the human resources department of his or her intention to participate. This date will be included in the official notice of the program provided to employees.

Election period. The period of time starting when all eligible employees are officially notified of the program and lasting until the date when those eligible employees who elect to participate in the program must execute and return their release of claims.

Eligible employees. Those ~~full-time~~ full-time employees ~~and~~ and part time with benefits employees who by the retirement-effective date are both (i) eligible for unreduced retirement benefits under the North Carolina Local Governmental Employees' Retirement System and (ii) meet the minimum age requirement(s) established by the city manager and provided by notice to all eligible employees. Employees who opted out of the North Carolina Local Governmental Employees Retirement System in 1977 and who meet service and age requirements are eligible for the program. Notice of eligibility will be provided to said employees. In no event will the criteria for eligibility to participate in the program be based on any status protected by federal or state law.”

Section 6. Sec. 13. Resignation. of Article I. Conditions of Employment. is hereby amended to read as follows:

“Sec. 13. Resignation.

To resign in good standing, a city employee ~~should~~ shall provide at least ten (10) workdays' advance notice, preferably in writing. Employees who do not resign in good standing, as determined by the city, shall become eligible for reemployment following one (1) year of separation unless otherwise indicated in a separate section of this resolution.

An employee may voluntarily resign their employment at any point unless and until the conclusion of the hearing at the last stage of the grievance process utilized by the employee. Once the hearing, at the last stage of the grievance process utilized by the employee, has concluded, the employee will be precluded from resigning.”

Section 7. Sec. 14. Reduction in force. of Article I. Conditions of Employment., in particular subsections (e) and (f) are hereby amended to read as follows:

“Sec. 14. Reduction in force.

Reductions in force result from changes in programs, cutbacks in funding, outsourcing of services, or decreased workload. Affected employees will be evaluated for continued employment on the basis of the needs of the organization, past performance, skills and education levels and seniority.

- (e) *Issuing notice to employees affected by the layoff.* Each employee identified for RIF shall be given a written notice of the date of the RIF, the reason(s) for the layoff, and ~~appeal rights~~ right of redress, if possible, before the human resources department, at least sixty (60) days prior to the effective date of the action. ~~All appeals must be filed in writing with the city manager within five (5) working days of the receipt of the RIF notice.~~ The city will also follow all requirements of the Workers Adjustment Retraining Act, if applicable.
- (f) *Reduction-in-force appeal.* When an employee believes that reduction-in-force procedures have not been correctly applied to him, he may bring said matter to the attention of the human resources department for redress, if possible. ~~file a grievance in accordance with Section 17 of this Article. However, the employee must file the grievance within five (5) working days of receiving a RIF notice. All such grievances, however, will proceed directly to the city manager who will either personally hear each case or designate a representative on his behalf.~~ The city manager shall make the final decision with respect to each case.”

Section 8, Sec. 16. Conduct. of Article I. Conditions of Employment., in particular subsection (b)(32), (38), (39), (40) and (41) are hereby amended to read as follows:

“Sec. 16. Conduct.

- (a) Appropriate conduct of city employees, who are employees at will, while on the job ensures ~~insures~~ that work with the city is safe, productive and pleasant. The city will not permit conduct which is improper and will attempt to provide uniform discipline in cases of improper conduct. Improper conduct may result in immediate discharge, suspension without pay, discharge upon happening of subsequent acts, reprimands, or such other sanctions as the supervisor or city manager deem appropriate.
- (b) Examples of the types of job misconduct which could result in the imposition of appropriate sanctions include, but are not limited to:
 - (32) Violation of the city's policy concerning information technology and computing, including, but not limited to viewing pornography on any device owned, leased, maintained or otherwise controlled by the city unless the employee is engaged in activity exempted by G.S. 143-805;
 - (38) Willfully providing false, incomplete or inaccurate information during an internal administrative proceeding, investigation, inquiry or grievance hearing;
 - (39) Refusal to participate in an internal administrative proceeding, investigation, inquiry or grievance hearing;
 - (40) Knowingly making false claims and/or statements about other city employees or third parties in the performance of official city responsibilities; and
 - (3841) Any conduct, including conduct off the job, that might interfere with the

successful completion of an employee's job duties. Under these circumstances, the city will determine if there is a link, or connection, between the employee's activity and their employment with the city. Determining factors may include, but are not limited to: whether the employee used their status as a city employee to perpetrate or further these inappropriate activities; or whether they connected their city status to their behavior or took efforts to make that connection publicly known. The issuance of any disciplinary action is not dependent upon the disposition of any case in court.”

Section 9. Sec. 16b. Unauthorized work interruptions. of Article I. Conditions of Employment. is hereby amended to read as follows:

“Sec. 16b. Unauthorized work interruptions.

In an effort to ensure the general public's health, safety and welfare, the city manager may, during unauthorized work stoppages, work slowdowns, strikes, sick-outs, or other deliberate work interruptions as determined by the city manager, declare this section of the city personnel resolution to be in effect. Such special provisions shall be applicable to the entire city, or only to certain designated departments or divisions, as determined by the city manager. The city manager or his designee will notify department heads, supervisory personnel and employees by telephone, memoranda, and/or bulletin board posters when he deems a declaration necessary. The same method(s) of notification will be used to declare when the declaration has ended. The following personnel policies shall apply during such periods of time as shall have been declared by the city manager as a result of a work stoppage, work slowdown, strike, sick-out, or other deliberate work interruptions:

- (1) *Failure to report for duty:* Any municipal employee who deliberately fails to report for duty, without an excuse approved by the employee's department head, or who fails to fully and faithfully perform the duties of his or her employment, shall be automatically suspended without pay and subject to disciplinary action, including dismissal.
- (2) *Unauthorized leave:* All unauthorized leave by an employee shall be without pay. In the event of a declaration as provided herein, all previously approved leave requests will become null and void for leave not already begun, and employees will be required to resubmit leave requests for approval only by department heads. The city manager has the authority to recall all employees on authorized leave status. After proper notification, failure to report will constitute an unauthorized leave and subject the employee to appropriate disciplinary action.
- (3) *Sick leave:* An employee claiming sick leave shall be deemed to be on unauthorized leave unless he or she presents a written statement from a qualified physician indicating:
 - (i) That the physician performed a personal examination of the patient (the employee or member of immediate family) during the period of claimed sick leave;
 - (ii) Found objectively observable or measurable symptoms (i.e., not patient history); and
 - (iii) Made a diagnosis (which must be stated) that the patient is suffering from an illness making it essential to the patient's health to refrain from working, and specifying the dates on which the patient should not work.

- (4) *Suspension and dismissal:* An employee who is determined to be engaged in any unauthorized work stoppage, strike, sick-out, or other deliberate work interruption will be immediately suspended without pay. If, after being notified by the city manager or his designee to return to work, the employee fails to report and faithfully perform his duties, the employee will be officially dismissed. A dismissed employee will lose all seniority and benefits and will be separated from the city's payroll. Any former employee requesting reemployment will be considered on an individual basis and will have to adhere to the city's employment procedure. If rehired, an individual will be reemployed as a new employee.

Any ~~suspended~~ employee suspended under this provision who returns to work as ordered by the city manager may be considered for reinstatement by the city manager to the same status as existed at the time of suspension, but with loss to the employee of pay for regular hours not worked and the accrual of employee benefits.

During the time an employee is suspended without pay, the accrual of employee benefits will be discontinued. Sick leave, vacation, holidays, longevity, pension, health insurance, and any other benefits to which the city contributes, will be stopped. Such benefits will be continued only if an employee returns to work and is reinstated following a suspension. Said employee may be eligible for continuation of health insurance and other benefits in accordance with the Public Health Services Act. In addition, merit increases, promotions, transfers, reclassifications, and other work status considerations will be withheld and lost during the period of suspension.

- (5) *Grievance procedure:* During the time of a declaration as stated above, normal grievance procedures of successive hearings at the various levels of supervision and management will be suspended. All grievances will proceed directly to the city manager who will either personally hear each case or designate a representative to act in his stead. The representative acting in this capacity will recommend appropriate action in each case to the city manager, and the city manager shall make the final decision.”

Section 10. Sec. 17. Grievances. of Article I. Conditions of Employment. is hereby deleted in its entirety and replaced with the following:

“Sec. 17. Grievances.

- (a) City of Winston-Salem employees who have been suspended without pay, demoted, suspended pending termination may file a grievance. Additionally, fire and police department employees covered by the civil service board may also file a grievance regarding those matters that are appealable to the civil service board pursuant to the ordinance that created said board and the rules and regulations approved by city council subsequent thereto. It is the city's policy is to address such employee grievances promptly and fairly. Other matters, including but not limited to a mere disagreement or difference of opinion with a supervisor or another employee, a disagreement with a performance appraisal, a written warning, documented counseling, a recommendation for counseling, or a position classification decision, are not matters that may be grieved under the city's grievance procedure.

Additionally, work policies and procedures, even if the subject of a suspension, demotion, or suspension pending termination, are not in and of themselves grievable. Such work policies and procedures include but are not limited to the city's drug and alcohol testing policy. If a work policy or procedure that has been violated requires a particular type of disciplinary action, then the employee may not grieve the actual work policy or procedure. For example, a mere expression of dislike or disagreement with the city's drug and alcohol testing policy or the discipline mandated by said policy is not grievable.

(b) Unless otherwise provided, any complaint or grievance which is covered under another set of rules is excluded from this procedure. City employees are encouraged to present grievances covered by the city's grievance procedure to their immediate supervisors and higher levels of supervision and in doing this shall have freedom from discrimination, coercion, restraint, or retaliation.

(c) An employee who wishes to file a grievance must:

(1) File the grievance within five (5) days of the action that is the subject of the grievance with the human resources department. The human resources department must notify the affected department of the grievance within two (2) working days of the grievance being filed.

(2) The employee's grievance must adhere to the following structure:

First Step: The employee may request that the immediate supervisor arrange a meeting with the second level supervisor so that the problem can be discussed further, or the problem may be presented in writing to the second level supervisor with a copy to the human resources director. The "report/grievance discussion" form shall be used for this purpose.

Subsequent Step: If the employee is not satisfied with the decision of the second level supervisor, the employee may appeal it to successively higher levels of supervision, following the same general procedure described in the "first step." Each supervisor to whom a complaint or grievance is referred is responsible for recording it and his answer on a jointly signed "report/grievance discussion" form. If the employee refuses, such refusal should be noted on the form. When a satisfactory solution to an employee's grievance is reached, it is the responsibility of the supervisor making the decision to follow through with whatever action is necessary to put the solution into effect. The final level of grievance jurisdiction is the city manager whose decision is final.

(3) The supervisor (or successively higher levels of supervision to which an appeal may be made) shall be allowed up to three (3) working days in which to meet with an employee regarding their grievance unless there are extenuating circumstances of which the employee has been advised. The supervisor (or successively higher levels of supervision to which an appeal may be made) shall be allowed up to two (2) working

days following the discussion to complete and deliver to the employee written documentation of the outcome of the grievance discussion for the employee's signature and decision on the next step. This written documentation must be signed by the supervisor and employee and submitted to the human resources department. Unless the hearing is before the city manager or the city manager's designee, an employee may elect to have any level of supervision skipped in the grievance process if, and only if, the supervisor at that level was involved in the original action(s) being addressed in the grievance.

- (4) If the situation is adjusted to the satisfaction of both employee and supervisor, the matter may be considered closed. The supervisor will then complete the "report/grievance discussion" form containing the employee's and supervisor's signature with a copy to be sent to the human resources department. If the employee refuses, such refusal should be noted on the form.
- (5) The employee has the right to appeal the supervisor's decision to the next higher level (or the decision of higher levels of supervision) up to five (5) days after the decision was made. A copy of all written documentation, discussion report forms, etc., generated at all levels of consideration of a grievance must be sent immediately to the human resources department.
- (6) The employee shall be entitled, if the employee so desires, to a formal or informal hearing before the city manager. The city manager, in cases involving suspension, demotion and dismissal, if requested by the employee, shall give the employee an opportunity to appear before him at a mutually convenient time, but in no event later than thirty (30) days after the employee's request, for the purpose of a final grievance hearing. The employee shall be advised in writing of the charges against him. The employee may present evidence and witnesses and may cross-examine any adverse witnesses. If it is the desire of the employee, the employee may have a court reporter present to record the hearing at the employee's expense. Within ten (10) working days following the hearing, the city manager shall make final disposition of the grievance by notifying the employee in writing of the action taken and the reasons therefor. The human resources department is familiar with this grievance procedure and is available to advise and provide guidance at any level of this procedure. The final disposition by the city manager shall be made within ten (10) working days following the hearing, unless unusual circumstances make compliance impracticable, in which case the city manager may within twenty (20) working days following the hearing unless it is impracticable to do so. Any willful and/or unreasonable delay in this process shall be grounds for disciplinary action pursuant to Article I. Section 16 of this resolution as failure to carry out instructions or insubordination.

For purposes of this section, the term "city manager" shall mean either the city manager, an assistant city manager, or department director duly authorized by the city manager to act in their stead. For purposes of this section, the term "assistant city manager" includes the deputy city manager. The city manager may, in extenuating circumstances, seek the assistance of an independent third party to assist in the resolution of employee grievances. If a hearing is held by an assistant city manager, department director, or independent third party pursuant to the immediately preceding paragraph of this section, a report containing findings of fact and a recommendation is

to be prepared for review by the city manager. The city manager shall study the report and consider recommendations of the hearing officer and shall then make the final disposition of the matter.

(7) For purposes of this section, "supervisor," in the case of disciplinary action, shall mean the supervisor of the person taking the disciplinary action. The intent hereof is that appeals of disciplinary action taken by a supervisor shall go to the next higher supervisor rather than the immediate supervisor of the affected employee."

Section 11. Sec. 19. Outside employment. of Article I. Conditions of Employment, is hereby amended to read as follows:

“Sec. 19. Outside employment.

- (a) The work of the city shall have precedence over all outside employment by city employees.
- (b) No employee shall engage in outside employment which impairs the efficiency of city services or results in any conflict of interest.
- (c) Any hours accumulated by a city employee through outside employment shall be excluded by the city in the calculations of the hours for which the employee is entitled to overtime compensation in accordance with the Fair Labor Standards Act.
- (d) No time during city working hours shall be used to promote or carry out outside employment.
- (e) No employee shall use any equipment, supplies or office space owned by the city for outside employment, except public safety uniforms and weapons when used for security activities.
- (f) No employee shall engage in the preparation of any work for any outside employer, as a professional, contractor or subcontractor, which will be submitted to any city or city-county agency for review, approval or inspection.
- (g) An employee must, prior to assuming new outside employment, and otherwise annually, submit information regarding outside employment for approval by the employee's department head who must determine if the requested employment violates any of the terms of this policy. This approval or disapproval shall be placed in the employee's departmental personnel file. ~~Employees may appeal the department head's decision to the city manager or his representative~~ The department head's decision is final.
- (h) Any violation of this policy on outside employment shall be grounds for disciplinary action or dismissal.”

Section 12. Sec. 24. Secondary employment. of Article I. Conditions of Employment, is hereby amended to read as follows:

“Sec. 24. Secondary employment.

- (a) Employees of the City of Winston-Salem working in one (1) department may be employed in another department on an occasional and sporadic basis; providing it is in a different capacity from which the employee is regularly employed and that it is at the employee's option. The hours such employee accrues in performing the different employment shall be excluded by the city in the calculation of the hours for which the employee is entitled to overtime compensation.
- (b) The work of the employee in his full-time position with the city shall have precedence over all secondary employment with the city.
- (c) No employee shall engage in secondary employment which impairs the efficiency of city services or results in any conflict of interest.
- (d) An employee must, prior to assuming secondary employment, and otherwise annually, submit information regarding said secondary employment for approval by the employee's department head who must determine if the requested employment violates any of the terms of this policy. This approval or disapproval shall be placed in the employee's departmental personnel file. ~~Employees may appeal the department head's decision to the city manager or his representative.~~ The department head's decision is final.”

Section 13. Sec. 26. Drug and alcohol testing policy for applicants and employees. of Article I. Conditions of Employment, in particular subsections (f) through (m) are hereby amended to read as follows:

“Sec. 26. Drug and alcohol testing policy for applicants and employees.

- (f) *Prior notice of testing policy.* The city shall provide written notice of its drug testing policy to all applicants and its drug and alcohol testing policy to all affected employees. The notice shall contain the following information:
 - (1) *Employee.*
 - a. The reason for drug and alcohol testing;
 - b. The circumstances under which testing may be required;
 - c. The procedure for confirming an initial positive drug and alcohol test result;
 - d. The consequences of a positive drug and alcohol test result;
 - e. Consequences of refusing to undergo a drug and alcohol test;
 - f. ~~The right to explain a positive test result and~~ extent to which appeal procedures are available; and
 - g. The availability of drug and alcohol abuse counseling and referral services.
 - (2) *Applicant.*
 - a. The reason for drug testing;

- b. The circumstances under which testing may be required;
 - c. The procedure for confirming an initial positive drug test result;
 - d. The consequences of a positive drug test result;
 - e. The consequences of refusing to undergo a drug test.
- (g) *Consent.* Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those city officials with a need to know. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the city's drug and alcohol testing policy. The consent form shall also set forth the following information:
- (1) The procedure for confirming an initial positive test result.
 - (2) The consequences of a positive drug or alcohol test result.
 - (3) ~~The right of an employee to explain a positive drug or alcohol test result and the extent to which appeal procedures are available to employees;~~ and
 - (4) The consequences of refusing to undergo a drug or alcohol test.
- (h) *Refusal to consent: applicant.* A job applicant who refuses to consent to a drug test will be denied employment with the city.
- (i) *Refusal to consent; employee.* An employee who refuses to consent to a drug or alcohol test when required by this policy and the procedures established by the city manager or his designee, shall be subject to termination.
- (j) *Confidentiality; general standard.* The city, or approved laboratory with access to drug reports and other information acquired in the testing process, shall keep this information confidential. The city-approved laboratory shall not release to any person other than the employee or job applicant, human resources director, or other personnel as designated by the employer on a need-to-know basis, information related to drug test results unless the employee or job applicant has expressly, in writing, granted permission for the release of such information. The results of a positive drug test shall not be released until the tests are confirmed. The records of unconfirmed positive drug test results and negative test results shall be destroyed by the testing laboratory. Any city employee found to have violated the city's policy on confidentiality will be subject to disciplinary action.
- (k) *Test: procedures.*
- (1) *Drugs.* A urine test will be used to determine the use of drugs. Guidance and instructions in administering the drug tests will be provided by an approved laboratory to ensure that proper steps are followed in collecting and evaluating samples. A strict chain of custody will be maintained by the approved testing laboratory. If a test result is positive, the employee or applicant shall be notified in writing by the human resources director of the test result. The letter of notification shall identify the particular substance found.

Within ninety (90) days of notification of a positive drug test result, an employee or applicant may request that the original sample be sent to an approved laboratory for another test at his or her own expense. The results of this test will be taken into

consideration for future employment of a job applicant. To the extent an appeal is allowed under the city's grievance procedures, the ~~The~~ results of this test will be taken into consideration on appeal of any disciplinary action if the test is requested within five (5) days of notification.

- (2) *Alcohol.* Alcohol testing will be done by using evidential breath testing devices (EBT) approved by the National Traffic Safety Administration. The breath tests shall be administered by a breath alcohol technician (BAT). Two (2) breath tests are required to determine if an employee has a prohibited alcohol concentration. A screening test will be conducted first. If the alcohol concentration level is less than 0.02, the test is considered "negative." If the alcohol concentration level is 0.02 or greater, a second, confirmation test will be conducted with the results verified, in writing, by the BAT and the employee tested. Except for sworn police personnel, an employee with an alcohol concentration level of 0.02 or greater will be referred to the employee assistance program, which does not automatically suspend disciplinary action. In the case of sworn police personnel, an alcohol concentration level of 0.01 or greater shall result in disciplinary action up to and including termination. Additionally, sworn police personnel may be required to submit to a blood test to determine the employee's alcohol concentration level when an injury to the employee prevents or impairs the administration of a breath test. This action will only be taken in connection with an administrative investigation. The blood test must be performed in accordance with methods approved by the Commission for Health Services and must be performed by an individual possessing a permit issued by the Department of Environment Health and Natural Resources or comparable state agency.

All alcohol test results will be forwarded by the lab directly to the medical review officer (MRO). In all cases, the employee will have an opportunity to discuss a positive test result with the MRO, if desired. After review by the MRO, positive confirmations will be communicated, in writing, to the appropriate department head by the human resources department. The confirmation or second test, along with any applicable federal or state law, will be used by the city to determine what action to take in this matter.

- (1) *Consequences of a positive drug or alcohol test.*
 - (1) *Applicants:* A job applicant shall be denied employment with the city if his drug test is positive. Applicants for sworn positions are also subject to subsection (r) of this policy.
 - (2) *Employees:* An employee who has a positive drug test will be terminated. Except as otherwise provided in subsections (1)(3) or (r) of this policy, an employee who has a positive alcohol test will be subject to disciplinary action up to and including termination. To the extent an appeal is allowed under the city's grievance procedure, the appeal ~~Appeal~~ of the disciplinary action shall be in accordance with subsection (m) of this policy. Factors to be considered in determining the appropriate disciplinary response for a positive alcohol test include the employee's work history, job assignment, length of employment, current job performance, and existence of past disciplinary actions.

Additionally, unless the employee has been terminated, the employee will be required to participate in the employee assistance program outlined in subsection (n) of this policy. Employees who voluntarily, without reasonable suspicion of a supervisor, identify themselves as drug and/or alcohol users, may petition the city manager or his designee for assistance under the EAP and for continued employment. Such petitions will be considered using factors described above. Sworn police personnel who voluntarily admit illegal drug use will not be permitted to continue employment in positions requiring sworn status.

- (3) *Semi-synthetic opioids.* If an employee performing in a safety-sensitive job position tests positive for any semi-synthetic opioid drug, the medical review officer (MRO) will conduct an interview with that employee to determine if there is a legitimate medical explanation for the result. If the employee has a valid prescription, he/she should provide it to the MRO, who will determine if the prescription is valid and if the employee has consumed the drug in accordance with said prescription. If the prescription is valid, the MRO will also determine whether or not the employee can perform their safety-sensitive job position while on their current medication(s). If a legitimate medical explanation is established, and the MRO determines that the employee can perform his/her safety-sensitive job duties while on their current medication regimen, the MRO will report the result as "negative." If the employee does not have a valid prescription, the MRO will report the result as "positive."

If the employee has a valid prescription, but the MRO does not believe that he or she can safely perform his/her safety-sensitive job duties, the MRO will notify the employee who will then have five (5) days to have their prescribing physician contact the MRO.

The prescribing physician should be prepared to discuss whether the employee can safely perform his or her safety-sensitive job position in a safe manner while taking the medication(s), or the prescribing physician may consider changing the medication regimen to one that does not make the employee medically unqualified or does not pose a significant safety risk.

After this discussion, if the MRO is satisfied that the employee will be able to safely perform his/her safety-sensitive job position, the test result will be reported to the city as "negative." However, if the MRO is not satisfied that the employee will be able to safely perform his/her safety-sensitive job position, the MRO will report the result to the city as "negative with safety-sensitive concerns," which will result in that employee being immediately removed from all safety-sensitive job duties.

- (m) *Right to hearing.* To the extent an appeal is allowed under the city's grievance procedure for the disciplinary action rendered, an ~~An~~ employee may appeal any disciplinary action rendered in accordance with the city's grievance process as outlined in section 17 of the city's personnel resolution, subsections (l) or (r) of this policy. The employee must make a written request for a hearing to the city manager within five (5) days of receipt by the employee of the positive drug or alcohol test result or upon notification of any disciplinary action, whichever occurs last. To the extent an appeal is allowed under the city's grievance procedures, the ~~The~~ conduct of the hearing shall be in accordance with section 17 of the city's personnel resolution."

Section 14. This resolution shall become effective upon adoption, however, any grievance filed before the effective date of this resolution shall proceed in accordance with the grievance procedure in existence before the adoption of the changes set forth herein.