

**TOWN OF WILMINGTON VERMONT PERSONNEL RULES**  
**Effective February 3, 2026**

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#### **Section I NAME OF ADMINISTRATIVE RULES AND AUTHORITY**

These rules shall be known and cited as "Personnel Rules and Regulations" and are hereby adopted pursuant to the provisions of relevant Vermont and Federal Statutes.

The Town of Wilmington (hereafter Town) considers its employees its most important asset. The Town, in extending service to its residents, recognizes that the well-being of its employees is essential to the maintenance of a high standard of operation. We want to create an atmosphere where employees can provide excellent customer satisfaction and work collaboratively to improve the work environment and product.

The Town seeks to meet the needs of town residents as expressed and determined through the annual Town Meeting and the actions of the Selectboard throughout the year. Town employees are part of the team which works to meet these public needs.

The purpose of these Personnel Rules is to clearly communicate information that is relevant and important to employees and helps achieve these goals.

These rules and regulations shall be applicable to all persons employed by the Town except for non-employees who are elected officers, members of boards and commissions, employees of the school district, employees of Pettee Memorial Library, ~~and the town nurse~~. These rules shall not apply to the town clerk and their staff ~~of the town clerk~~, who shall be covered in a separate Memorandum of Agreement<sup>1</sup>. The provisions of these regulations shall prevail except in cases where contrary contractual agreement exists between the employee and the Town.

The term "appointment," used in these rules, refers to employee hiring as set forth in Section IV below.

These rules and regulations shall be administered by the town manager. Amendments to these personnel rules shall be by resolution of the Selectboard.

#### **NOT A CONTRACT OF EMPLOYMENT**

This manual sets forth expectations and procedures that will be utilized in conjunction with the applicable Vermont and Federal Law. Wages or salary and any accrued and unused vacation and compensatory time allowable under these rules and regulations shall be due to the employee only to the day and hour of termination.

This manual and the provisions continued herein do not constitute a contract of employment in whole or in part. The Town reserves the right to change any section stated herein except as otherwise committed to by formal contract agreements. Whenever possible town employees will be given notice of proposed changes to these rules.

#### **TOWN EQUAL EMPLOYMENT OPPORTUNITY POLICY**

It is the policy and intent of the Town to provide equal opportunity in employment to all persons. This policy prohibits discrimination because of race, color, religious affiliation, ancestry, place of birth, national origin, political affiliation, disability, marital status, sex, age, sexual orientation, gender identity, HIV status, pregnancy, genetic information, veteran status or any other category protected

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<sup>1</sup> As of 2/1/2017 there is no Memorandum of Agreement in place, but one may be completed in the future.

by state or federal law in all aspects of its personnel policies, all aspects of full-time, part-time, temporary or seasonal employment including but not limited to: recruitment, hiring, placement, promotion, evaluation, work assignment or transfer, reduction in force, recall or termination, rates of pay or other forms of compensation, and selection for training.

It is the responsibility of the town manager and each department head and supervisor to implement this policy. Failure of any employee to perform in a manner consistent with this policy may constitute grounds for reprimand, suspension, demotion, or dismissal from the Town's employ.

## **Section II     RECRUITMENT**

### **VACANCY**

Whenever a vacancy occurs in a position in any department, the department head (in these rules department head also means "designee") shall notify the town manager of the vacancy in writing stating the date of vacancy, the position title, and all other pertinent facts. Whenever a department head wishes to establish a new position, they shall notify the town manager, furnishing the job title if such job currently exists, or job description when no such position is classified, and the reason for the request. No new position will be established without the approval of the town manager and the Selectboard. Upon approval of the position and the decision to fill the position, full-time positions shall be posted internally for five (5) days and may be advertised for at least one week in a local newspaper or other appropriate online or print media to attract qualified candidates.

### **APPLICATION**

Application for employment in a position with the Town must be filed on the forms prescribed by the town manager. Such forms may require whatever information is deemed necessary, and all applications must be signed and the truth of all statements therein certified by such signature.

## **Section III     EXAMINATIONS: WRITTEN, ORAL, PHYSICAL, AND MEDICAL**

All hirings and promotions for town employment may be made according to merit and fitness to be determined by examining such things as; experience, education, possession of required licenses/certifications, knowledge, skills, abilities, reference checks, job-specific qualifications, and behaviors of the applicants with weights assigned to each factor as may be deemed proper by the town manager. The Town Manager shall be the appointing authority, in consultation with the appropriate department head, for all positions except the position of town manager. Whether an examination will be given, and its type and format, shall be determined by the manager and shall be designed to examine job relevant criteria. The selection procedure may include written, oral, physical and medical, psychological, and drug testing as may be required for the position being filled. Verification of driving record and license may be required. Upon recommendation from the chief of police a polygraph test may be administered for a position with the police department.

All new employees who are hired for positions in which health and physical abilities are important for the performance of the essential functions of the job may be required to have a physical examination at the expense of the Town after an offer of employment has been made. Hiring to a position may be conditioned on positive results of the examination. The specific criteria will be determined by the

manager but will be based on the specific requirements of the essential functions of the job. All information obtained as part of the medical exam shall remain confidential and shall not be placed in the employee's personnel file, but in a separate medical file.

#### **REFERENCE CHECKS**

As part of the pre-employment procedure, with permission from the applicant, former supervisors, employers, and references shall be checked as a precaution against obtaining undesirable employees. Reference checks made by personal or telephone contact shall be documented. These reference checks shall be completed prior to an offer of employment, and the information shall be made part of the application file. All such information is to be handled as privileged and confidential information. The Town reserves the right to consider post-hire late-arriving responses to requests for references and/or background checks and to terminate the employment in appropriate circumstances.

Employees offered a position working with a vulnerable population of people (as defined by state law) and/or as Vermont law allows those employees working in a confidential, executive and/or financially responsible level shall, as a condition of probationary hiring, submit to a complete background check. This background check, to be performed by the Town, will include complete disclosure of any criminal history. The Town reserves the right to consider post-hire late-arriving responses to requests for references and/or background checks and to terminate the employment in appropriate circumstances.

All new town employees must provide the town manager or their authorized representative with proof of employment eligibility in conformance with federal law. Failure to provide such proof shall result in non-hiring or immediate dismissal.

### **Section IV APPOINTMENT**

#### **TYPES OF APPOINTMENTS**

The following types of appointments may be made to the town service in conformance with the rules established. All employees are expected to follow all town rules, regulations, and policies.

**Employee – Indefinite Term – hired with no defined length of employment:**

A person hired for an indefinite period. Types of positions may include:

**Employee - Full Time Equivalent (For Leave Benefit Purposes):**

An employee who is working on a full-time continuing basis, on an hourly or salaried basis, for an average of no less than thirty (30) hours or more per week. For overtime purposes, any hours worked over 40 hours in a work week shall be considered overtime.

**Employee – Hourly/Salaried non-exempt:**

An employee who receives compensation on the basis of hours worked or salary that due to the nature and function of the position is eligible under the Fair Labor Standards Act for overtime.

**Employee - Part-time (regular schedule) and On-call (no regular schedule):**

An employee who is working on a continuing basis (indefinite term), and who is expected regularly to work less than thirty- (30) hours per week.

**Employee - Probationary:**

An employee, either full- or part-time with the expectation they will become a continuing employee, yet has not completed the probationary period.

**Employee - Salaried (Exempt/Non-Exempt):**

An employee shall be deemed to be salaried if under an employment agreement or as a matter of policy or practice they regularly receive each work period a predetermined or fixed amount of money constituting their compensation. Under the Fair Labor Standards Act exempt employees are not required to be eligible for overtime compensation.

**Employee – Temporary - definite period of time:**

A person hired for a definite period of time (thereby ineligible for any benefits). Types of positions may include:

**Student Appointments** - Student appointments have the purpose of affording students of public administration, or other professional areas, an opportunity to gain actual work experience. Such appointments are for a definite period of time, not to exceed twelve (12) months, and require the approval of the town manager.

**Emergency Appointments** - In order to prevent stoppage of public business or loss or serious inconvenience to the public, appointment of employees on a temporary basis may be authorized by the town manager in accordance with this rule for a period not to exceed sixty- (60) days.

**Limited-term Appointments**- Limited-term appointments are made when a special project requires the addition of employees for a specific time, or to fill a position of an employee on a leave of absence.

**PROBATIONARY PERIOD**

Probation is a working test period during which a probationary employee is required to demonstrate their abilities and fitness for the duties to which they are appointed by actual performance of the duties of the position. An employee may be either restored to their former position, in the case of a promotion, or terminated, in the case of a new appointee, without cause at any time during the probationary period. The typical probationary period is six (6) months for all non-law enforcement employees and twelve (12) months for law enforcement personnel. A probationary period may be extended, on a case-by-case basis as circumstances warrant. The department head, with the approval of the town manager, may extend the initial probationary period once for an additional term not to exceed six (6) months.

One month prior to the end of the probationary period, the department head shall submit a report to the town manager, carefully reviewing the work of the new employee. Unless otherwise approved by the town manager, new employees shall be paid at a probationary rate during this period. The Town has the right to terminate someone during the probationary period for any reason, and they are not afforded any rights related to termination that are outlined elsewhere in this policy.

**Section V COMPENSATORY TIME OFF/OVERTIME PAY POLICY**

### **Non-Exempt Employees**

- A. All full-time employees shall have the option of earning compensatory time in lieu of overtime pay. Overtime is defined as any combination of hours worked over 40-hours in a workweek.
- B. A maximum of one hundred-twenty (120) hours of compensatory time may be accumulated.
- C. Non-exempt employees accrue compensatory time at a rate of time and a half for all hours that exceed 40 in a workweek.
- D. Compensatory time must be used within twelve (12) months of the date earned. Unused compensatory time, which has not been used within 12 months, shall be paid off in cash at the base hourly rate of pay then prevailing.
- E. Compensatory time usage must be approved by the employee's supervisor. Compensatory time off may not be deducted in increments of less than one (1) hour.

On any separation from service, unused compensatory time off will be paid off in cash, in a lump sum with the final paycheck, at the employee's then base rate.

### **Salaried (exempt) Employees:**

There are some individuals working for the Town who are "exempt" under the Fair Labor Standards Act. Compensatory time for all "exempt" salaried employees begins only after the employee has worked more than forty-five (45) hours in a regular workweek. The time will be earned and used on an hour-for-hour basis. Compensatory time usage must be approved by the employee's supervisor. Compensatory time not used within one year may not be carried forward nor paid as a lump sum. On any separation from service, unused compensatory time will be paid. No more than one hundred-twenty (120) hours of compensatory time may be accumulated.

### **Overtime Hours to Compensatory Time Bank**

#### **A. Employee:**

All overtime hours must be approved in advance by the employee's supervisor, except in the case of an emergency, when not working without approval could cause harm to the Town. Each employee shall complete a time sheet on a form provided by. (Sample attached). The time sheet shall designate the number of regular hours worked, overtime hours worked and overtime hours, if any, to be accrued as compensatory time. Salaried non-exempt employees must fill out the time sheet when the number of hours worked in any week exceeds the range listed on their job description and/or contract.

#### **B. Supervisor:**

All time sheets shall be reviewed and approved by the department head. Department Heads' time sheet shall be reviewed and approved by the Town Manager.

#### **C. Finance Officer:**

The finance officer shall pay the employee for total straight and overtime hours worked minus hours designated to be accrued for compensatory time off. The finance officer shall maintain a compensatory time off log for each employee. For non-exempt employees each overtime hour accrued as compensatory time shall be converted to one and a half (1 and 1/2 hours) compensatory time.

## **USING COMPENSATORY TIME:**

### **Employee:**

Employees may request compensatory time off from the department head. The department head may grant or deny such request based upon whether taking such time off would unduly disrupt operations of the department. Employees using compensatory time off must complete a time sheet indicating the hours of compensatory time off taken.

### **A. Supervisor:**

The supervisor shall review and approve the time sheet.

### **B. Finance Officer:**

The finance officer shall deduct used compensatory time from the employee's accrued compensatory time log.

## **Section VI    RETAINING YEARS OF SERVICE IF REHIRED**

Any employee who had resigned in good standing their position with the Town and who, within one (1) year from that resignation, applies for an open position and is rehired through the normal hiring process will retain the years of service used to determine leave benefits at the same level as when they resigned their position.

## **Resignation**

An employee who resigns their employment with the Town shall be deemed to be terminated in good standing, for reference purposes, if they give reasonable written notice to the town manager or their authorized representative of the employee's intention to resign and if other circumstances of the termination are such as to justify good standing. Typically, "reasonable notice" is defined as thirty (30) days for management position and two (2) weeks for a non-management position.

## **Section VII    DISCIPLINARY ACTION**

### **CONDUCT AND WORK HABITS**

It shall be the duty of each employee, in the service of the Town, to maintain a high standard of conduct, cooperation, efficiency, and economy in their work for the Town. Whenever work habits, production, or the personal conduct of an employee falls below a desirable standard, as determined by the supervisor, the supervisor may point out the issues near the time they are observed.

It shall be the duty of all town employees to comply with, and assist in carrying into effect, the provisions of the town's personnel rules. Any disciplinary action shall be in accordance with procedures established by the personnel rules and regulations.

Corrections and suggestions should be presented in a constructive and helpful manner in an effort to encourage the full cooperation of and positive performance from the employee.

## **POLICY**

The Town provides a system of progressive discipline, which will be followed for failure of employees to follow workplace policies, guidelines, and practices or for failure to perform the duties of their position in an acceptable manner. All employees will be fairly and consistently subject to the disciplinary and discharge procedures, given the facts of the individual case. Appropriate confidentiality will be followed by management in cases of progressive discipline.

Nothing in this section shall prohibit the Town from bypassing the above-mentioned corrective discipline, or from applying disciplinary action of differing degrees or progressivity for different kinds of offenses. The seriousness or frequency of violation, as well as poor job performance history will be among the factors in determining the level of discipline. The town manager will, within this disciplinary system, make a good faith effort to consult with, and hear the opinions of, the employee's immediate supervisor before the town manager determines, in their exclusive discretion, what if any appropriate disciplinary action, except for an oral caution, is warranted.

The Town may place an employee on paid administrative leave, within its discretion, to investigate complaints or allegations against an employee. During such leave the employee is to strictly abide by any instructions given as to their behavior related to their job with the town. After completion of its investigation the Town will either dismiss the complaints/allegations or take one or more of the following actions:

#### **EMPLOYEE ACTIONS OR INACTIONS RESULTING IN DISCIPLINE AND/OR DISCHARGE**

The town manager may immediately dismiss an employee whenever, in their opinion, the employee's work or conduct so warrants. In the case of the Town Clerk's Assistant, the Town Clerk shall replace the Town Manager in respect to all disciplinary decisions. On- the- job reasons for dismissal may include, but are not limited to: insubordination, use or being under the influence of drugs or alcohol while on duty, dishonesty, recklessness on the job, attitude which constitutes an unwholesome influence on other employees, failure to obey a reasonable order either verbal or written, falsification of application forms, fighting on duty, convictions for offenses against the law which would affect the employee's performance, violation of any town rules which result in serious personal or property damage, or use of abusive language toward a superior or the general public.

Other violations of town work rules or these personnel rules, or employee actions or inactions including those listed as follows, shall result in an oral or written reprimand, suspension without pay or dismissal: abuse of sick leave, failure to request leave in advance, leaving without permission, unexcused absences, chronic absenteeism, unexcused and/or excessive lateness; carelessness, negligence, short cuts, horseplay, gambling, sleeping on duty, theft, disregard for safety rules, possession of firearms or dangerous weapons on duty without supervisor's permission, willful damage to company property, and falsifying work records. This list is not inclusive and is exemplary only.

Before initiating dismissal proceedings, the Town may consult with an attorney regarding appropriate steps to afford due process to the employee being considered for dismissal and protect the best interest of the Town.

#### **Oral Caution**

Issued by the immediate supervisor for initial, minor misconduct. An oral caution shall be discussed with the employee and a written record of such caution will be given to the employee and included in their evaluation. The record of an oral caution will be placed in the employee's personnel file for one-year. The employee may request its removal after one-year. Its removal is dependent upon employee improvement, supervisor's recommendation, and town manager's approval.

### **Written Reprimand**

The supervisor or department head, with Town Manager approval, may issue a written reprimand to an employee when:

- An oral caution has not resulted in the expected improvement; or,
- A further similar incident has occurred within a six (6) month period of time; or,
- A more severe initial action is warranted due to the seriousness of the action

A written reprimand shall be discussed with, and a copy given to, the employee and a copy placed in the employee's personnel file. The written reprimand shall remain in the employee's personnel file.

### **Suspension Without Pay**

A violation of any rule, inaction or prohibited action, or any other behavior warranting disciplinary action within one (1) year of a written reprimand or where more severe initial action is warranted, can result in the town manager suspending an employee without pay. Such suspended employee shall be notified of such action in writing during a conference with the town manager and witness. The written notification will include a description of the incident necessitating the action and/or the rule or rules violated. A copy of the written notification signed by the town manager and a conference witness may be entered in the employee's personnel folder. The suspension without pay shall remain in the employee's personnel file. Employees suspended shall also be informed in writing of the appeal procedure provided under these personnel rules.

### **Dismissal**

The Town Manager may immediately start the dismissal process for: (1) any employee whose actions or inactions violate Town rules and regulations as set forth in the paragraphs above; or (2) any employee whose action or inaction violates any Town rules or regulations within a one (1) year period following a disciplinary suspension as prescribed in paragraph above; or (3) any employee whose job performance remains unsatisfactory after the Town has attempted to correct the performance through progressive discipline. Such employee will be notified of such intent to dismiss the employee during a conference with the Town Manager with a witness present and will include the incident necessitating the action and/or the rule or rules violated. Within three (3) days of the conference, a final written decision shall be made on the issue of dismissal and provided to the employee, by the town manager. An employee so dismissed shall also be informed in writing of the appeal procedure provided under these personnel rules. Any employee who is given notice of a disciplinary investigation interview by the town manager or Selectboard shall have the right to bring a representative of choice to that investigation meeting/hearing.

### **Appeal**

If the employee is dissatisfied with the decision of the Town Manager a final appeal may be made to the Selectboard within ten (10) working days of the written decision of the town manager. This appeal must be in writing to the Chair of the Selectboard and must state the basis for the appeal. The board shall hold an informational hearing in executive session within ten (10) working days of the date of

receipt of such appeal; hear evidence and receive exhibits if relevant or material; review in open or executive session as appropriate with town manager the Board's views and recommendations within ten (10) working days of the final date of such hearings. Within ten (10) working days of the date of receipt of the recommendations from the Selectboard, the Selectboard shall render a decision, which shall be binding on all parties; shall be in writing and forwarded to the grievant and the Selectboard. In addition to the aforementioned appeal procedure, sworn police personnel are entitled to all rights and procedures as provided and outlined in Title 24, V.S.A., Chapter 55, Sections 1931-1936.

## **Section VIII GRIEVANCES**

### **POLICY**

The most effective accomplishment of the work of the Town requires prompt consideration and appropriate equitable adjustment of employee grievances. It is the intent of the Town to adjust grievances informally, and both supervisors and employees are expected to make every effort to resolve problems as they arise. However, it is recognized that there may be grievances, which will be resolved only after a formal appeal and review. A grievance is a difference in interpretation of these rules considered by the employee as grounds for complaint. Accordingly, the following procedure is established:

### **PROCEDURES**

An employee shall follow the following steps in the case of a grievance: the employee shall discuss the grievance with their supervisor. This discussion is to occur within seven (7) working days of the date of the incident in question. If the employee should be on excused absence during any of these seven (7) days, an additional three (3) days shall be allowed for the conference. The supervisor and employee shall attempt to come to a mutually agreeable solution or understanding of the incident in question.

If the employee is not satisfied with the discussion outcome, a written grievance may be submitted to the department head (unless the department head was the supervisor in which case the grievance follows the next step to the town manager) within seven (7) working days of the supervisor's response or within seven (7) working days of the discussion. The department head shall obtain any additional information deemed necessary and will respond in writing to the employee within seven (7) working days. Copies of the initial grievance and response shall be given to the Town Manager.

### **SECOND APPEAL**

If the employee is dissatisfied with the decision of the department head, an appeal may be made to the town manager. If the town manager is out on leave, the appeal will not be considered to be made until they return from leave. The Town Manager shall, within ten (10) working days, review the appeal, obtain any additional information needed, meet with the parties involved if necessary, and submit a written decision to the employee and to the department head. Resolutions to grievances that will result in a financial cost to the Town must be approved by the Town Manager.

### **FINAL APPEAL**

If the employee is dissatisfied with the decision of the Town Manager, a final written appeal may be made to the Selectboard within ten (10) working days of the written decision of the Town Manager. This appeal must be in writing to the Chair of the Selectboard and must state the basis for the appeal.

The Board shall hold an informational hearing within fifteen (15) working days of the date of receipt of such appeal; hear evidence and receive exhibits if relevant or material; review in open or executive session as appropriate with town manager the board's views and recommendations within ten (10) working days of the final date of such hearings. Within ten (10) working days of the date of receipt of the recommendations from the Selectboard, the Selectboard shall render a decision, which shall be binding on all parties; shall be in writing and forwarded to the grievant and the department head.

## **Section IX CONDUCT OF EMPLOYEES**

The Town believes that every employee should be aware of their visibility as a town employee and should conduct themselves in such a manner as to bring credit both upon the Town and the town employee in general.

Conduct-off-the-job may constitute conduct unbecoming a town employee and be grounds for termination if it unreasonably affects the ability of the employee or their department to provide satisfactory service to the Town. Conduct-off-the-job that is evidence of a character problem of serious proportions (e.g., public drunkenness in uniform, homicide, drug offenses, etc.) may also be cause for termination of employment, taking into consideration the duties and responsibilities of the employee.

### **HOURS OF SERVICE**

With the approval of the Selectboard, the Town Manager shall prescribe the number of hours per day and per week of actual attendance on duty for employment. The hours so established shall be construed as the normal work week.

### **Authorized Absence**

An absence is only considered authorized if the department head and/or town manager grant prior approval to the employee, or the employee subsequently demonstrates to the satisfaction of the Town that the absence was excusable.

### **Unauthorized Absence**

Unauthorized absences, including the absence for a single day or part of a day, shall be investigated by the appropriate supervisor and shall be reported to the town manager for action. An unauthorized absence may result in a forfeiture of all compensation for the period of such absence. Instances of unauthorized absences shall result in disciplinary action, up to and including dismissal.

### **ATTENDANCE**

Unless physically unable to do so, employees shall notify their department head of their inability to report to work and the nature of the illness, as soon as possible, but no later than one (1) hour prior to the beginning of the scheduled workday. The one-hour minimum can be waived by the department head based on specific circumstances. An employee not contacting their supervisor within one hour of the start of the shift may be subject to discipline starting at the first step of our progressive discipline process for an initial offense.

Not contacting an employee's department head or designee within one hour after an employee's scheduled start of shift will result, in the first instance, with an oral caution. Further instances will

result in progressive discipline. The one-hour minimum can be waived by the department head based on specific circumstances.

An employee not reporting for work for three (3) days with no call to the department head shall be considered as having vacated their position unless later investigation reveals extenuating circumstances that satisfactorily explains the absence.

#### **LATENESS**

At the first instance of being late for work the employee's immediate supervisor may discuss the situation. The second instance of coming into work past the scheduled start time within three (3) months may result in an oral caution. Any continued lateness may result in further discipline following our progressive discipline policy guidelines.

#### **EXCESSIVE ABSENTEEISM**

Within a period of six (6) months, five (5) sick leave events of a single day or consecutive days may be a matter for administrative concern. Unless resulting from a qualifying disability, employees who consistently require more sick leave than five (5) days in a six-month period, may constitute a problem for the other employees and the need of the Town to consistently maintain adequate staffing. Such employees may be counseled by meeting with the department head or department head and town manager, and if necessary, a town-approved health care provider or by confirming the employee's fitness to work with an independent physician. Unjustified absenteeism may result in progressive discipline.

If an employee is a qualified individual with a disability as defined by State and Federal law, and the employee requests a reasonable accommodation, the Town shall provide the reasonable accommodation unless it results in an undue hardship on the operations of the Town.

Employees on medical leaves of absence are expected by the Town to follow medical advice. Failure to do so may result in loss of leave benefits or termination of employment. An employee on medical leave is expected to report to their department head as directed.

#### **RECEIPT OF GIFTS**

The Selectboard adopted the Vermont State Ethics Gift Chart located at the end of the policy.

#### **EMPLOYEE AVAILABILITY**

Due to the nature of service with the Town, it is sometimes necessary to contact employees on short notice. Therefore, all employees shall be required to provide the best direct contact information to their supervisor and to the Town Manager. Some employees may also be required to provide a telephone number at which they can be reached in the event of an emergency. All employees given town pagers are expected to have them readily available in order to be contacted when needed. An inability to abide by these requirements should be discussed with the employee's supervisor so that the supervisor may determine whether an accommodation can be made in the particular circumstances.

Failure to satisfy these requirements, or to inform the supervisor of any change in telephone numbers, may be grounds for disciplinary action up to and including termination.

## **DRIVER'S LICENSE**

Anyone driving a town vehicle, or using their personal vehicle while conducting town business, shall immediately inform their supervisor upon learning that their driver's license will be suspended or revoked. Once a year, Town Administration will run a driver's license query through Department of Motor Vehicles for anyone who drives a town vehicle in the preceding year. If the check shows that someone had a driver's license suspended or revoked and they did not immediately inform their supervisor, that person shall be subject to discipline up to and including immediate termination. Anyone who drove a town vehicle in the preceding year and does not sign the waiver authorizing administration to run the driver's license query, will not be allowed to drive a town vehicle in the upcoming year.

## **DRUG & ALCOHOL POLICY FOR CMV OPERATORS**

In the event of any conflict between the Drug and Alcohol policy and any other provision of the Town's personnel policies, the Drug and Alcohol policy shall take precedence.

### **Introduction**

This policy applies to employees and prospective employees of the Town of Wilmington who operate commercial motor vehicles (CMVs) or who will operate CMVs if they are hired, transferred or promoted. Employees and prospective employees are not subject to this policy by virtue of holding a CDL unless their job duties may require them to operate a CMV.

All other municipal employees are subject to the provisions of the Town of Wilmington's personnel policy regarding alcohol and drug use and testing, if applicable.

The policy was developed based on the requirements articulated by the U.S. Department of Transportation (DOT) in Title 49, of the Code of Federal Regulations (CFR).

This personnel policy does not constitute a contract of employment. Employment with the Town of Wilmington is ***at will*** and not for any definite period or succession of periods of time. The Town or the employee may terminate employment at any time, with or without notice. The Selectboard reserves the right to amend any of the provisions of this personnel policy for any reason and at any time, with or without notice.

### **Section 1: Applicability**

This policy applies to all Town of Wilmington employees and prospective employees who operate commercial motor vehicles (CMVs) while engaged in any municipal business. This policy supersedes any provisions in the town's personnel policy regarding the consequences of the possession or use of drugs and alcohol as they pertain to CMV operators.

For purposes of this policy,

*Commercial motor vehicle or CMV* means a motor vehicle or combination of motor vehicles as follows:

- Any single vehicle with a gross vehicle weight rating (GVWR) of 26,001 pounds or more.

- A combination vehicle with a gross combination weight rating (GCWR) of 26,001 or more pounds, provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.
- A vehicle designed to transport 16 or more passengers (including the driver) for compensation; or more than 15 passengers if not receiving compensation for the transportation..
- Any size vehicle that transports hazardous material that requires federal placarding

Individuals operating the above vehicles must have a valid commercial driver's license (CDL). Note that emergency vehicles (e.g. fire apparatus are not CMVs).

Each employee who is subject to this policy is required to sign an acknowledgement that they have been provided a copy of this policy. This acknowledgement will be maintained in the town's personnel files as part of the driver qualification file. An acknowledgement form is included as Appendix C.

Given the varied nature of municipal needs, employees who are employed to operate CMVs have the potential to serve in safety-sensitive functions during any part of their job. Therefore, employees are subject to this policy at all times while they are actively working and-during periods when they may be called into work (e.g. to respond to weather-related incidents, respond to emergency situations, etc.). Safety-sensitive functions and other terms are defined in Appendix A: Definitions.

**CMV operators will need to remain substance-free during expected winter events and other anticipated emergency incidents, given the likelihood that they will be called in to work and thus must be in compliance with elements of this Drug & Alcohol Policy.**

## **Section 2: Responsibility for Employee Information**

The Town of Wilmington has assigned the Highway Superintendent as the individual who can provide employees with information regarding this Drug & Alcohol Policy and answer related questions on the pertinent issues. Employees may also obtain information about applicable Federal regulations from 49 CFR. Sources of information are provided in Appendix B of this policy.

## **Section 3: Prohibited Conduct**

Conduct listed in this section is prohibited.

- Using alcohol, being under the influence of alcohol, or impaired by alcohol as shown by the behavioral, speech, and performance indicators of alcohol misuse, or having any measured alcohol concentration or detected presence of alcohol, while on duty, or operating, or in physical control of a commercial motor vehicle.
- Using alcohol while performing safety-sensitive functions.
- Having a verified positive, adulterated or substituted drug test result.
- Reporting for duty, remaining on duty, or performing safety-sensitive functions after notification of a verified positive, substituted or adulterated drug test result or an EBT alcohol test result indicating a measured alcohol concentration of 0.02% or greater,

regardless of when the drug or alcohol was ingested and regardless of whether or not the driver is under the influence of alcohol or using drugs, as defined in federal, state or local law.

- Reporting for duty or remaining on duty requiring the performance of safety-sensitive functions while the employee is under the influence of or impaired by alcohol.
- Reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.
- Consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. An on-call employee who has consumed alcohol must acknowledge the use of alcohol at the time that they are called to report for duty.
- Consuming alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- Misusing or being impaired by authorized or prescribed use of drugs or over-the counter medications which may affect work performance or pose a danger to the safety of the driver or to others. Drivers are required to inform the employer's designated representative of any therapeutic drug use that has the potential to impact the safe operation of equipment or motor vehicles.
- In cases where prescribed medication labeling suggests that machinery operation or driving may be compromised in any way, the driver shall obtain written authorization from the prescribing physician indicating that the employee is able to safely operate a CMV while using the substance. This must be provided to the Town of Wilmington prior to operation of said CMV while using the prescribed substance(s).
- Reporting to work or remaining on duty requiring the performance of safety sensitive duties while having an alcohol concentration of 0.04% or greater regardless of when the alcohol was consumed.
- Consuming alcohol for eight (8) hours following involvement in an accident or before submitting-to any required post-accident drug/alcohol testing, whichever occurs first.
- Manufacturing, distributing, transferring, displaying, transporting, selling, dispensing, possessing, consuming, using, or being under the influence of illegal drugs, controlled substances, and/or alcohol during work hours, on work premises, while engaged in work activities away from work premises, and/or during work-related events.
- Refusing to submit to a pre-employment drug test required under § 382.301, a post-accident alcohol or drug test required under § 382.303, a random alcohol or drug test required under § 382.305, a reasonable suspicion alcohol or drug test required under § 382.307, a return-to-duty alcohol or drug test required under § 382.309, or a follow-up alcohol or drug test required under § 382.311.
- Refusal to submit to alcohol or drug testing, as defined in Section 4, below.

#### **Section 4: "Testing Refusal" Defined**

Under federal law, a test refusal is considered as a positive test and has the same consequences. An employee or prospective employee is considered to have refused a test when s/he does any of the following:

- Fails to appear for any test within a reasonable time, as determined by the employer or

testing pool administrator, after being directed to do so by the employer;

- Fails to remain at the testing site until the testing process is complete;
- Fails to provide a urine specimen for any drug test required by **Part 40** or DOT agency regulations;
- In the case of an observed collection in a drug test, fails to permit the observation or monitoring of the collection of a specimen;
- Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails to provide an adequate amount of saliva or breath for any alcohol test required, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;
- Fails or declines to take a second test that the employer or collector has directed the employee to take;
- Fails to undergo a medical examination or evaluation, as directed by the medical review officer (MRO) as **part** of the verification process, or as directed by the DER as **part** of the "shy bladder" procedures;
- Fails to cooperate with any **part** of the testing process (e.g., refuses to empty pockets when so directed by the collector, behaves in a confrontational way that disrupts the collection process);
- If the MRO reports that there is verified adulterated or substituted test result.

## **Section 5: Testing**

All testing and specimen collection prescribed under this policy will be done in accordance with federal requirements. Prescribed testing includes: pre-employment, random, reasonable suspicion, post-accident, return to duty, and follow-up, if applicable.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (DHHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner, and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.

### **Section 5a: The Drug Testing Process**

The drug testing process will screen for drugs including marijuana, cocaine, opioids, amphetamines, and phencyclidine. The use of certain over-the-counter medications and other substances may result in a positive test.

After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection procedure. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a DHHS certified laboratory.

An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

If a drug test produces a result of negative-dilute the employee is required to submit to another specimen collection. The re-collection cannot be done under direct observation. If a second test is performed and is also negative-dilute, the employer will accept that result and cannot continue re-collections. The second test is the test of record. Under federal law, an applicant/employee's refusal to submit to a re-collection for a negative-dilute result is a refusal to test.

The test results from the DHHS certified laboratory will be reported to a Medical Review Officer (MRO). The MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a verified positive, substituted, or adulterated test result. The MRO will:

- Attempt to contact the employee to notify the employee of the non-negative laboratory result and provide the employee with an opportunity to explain the confirmed laboratory test result.
- Review any medical history and/or medical records that have been offered by the employee to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be confirmed as a verified positive or a refusal to test and reported to the Town of Wilmington Designated Employer Representative (DER). If a legitimate explanation is found, the MRO will report the test result as negative to the DER and no further action will be taken. If the test is invalid without a medical explanation, a retest will be conducted under direct observation.

Any covered employee who questions the results of a required drug test performed under this policy may request that the split specimen be tested. The employee's request for a split specimen test must be made to the MRO within 72 hours of notice of the original specimen verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts beyond the control of the employee.

The original collected urine specimen is split into 2 specimens (primary specimen and split specimen) prior to testing, expressly for this purpose. The split specimen test must be conducted at a second DHHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split specimen that was provided by the employee at the same time as the primary specimen. The method of collecting, storing, and testing the split specimen will be consistent with the procedures set forth in 49 CFR Part 40, as amended.

Any covered employee, who elects to have a split specimen tested, agrees to fully reimburse the municipality for all costs associated with the testing. Reimbursement may be recouped via payroll deduction, or any other mutually agreeable method(s).

- If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct a retest of the employee under direct observation. The retest must occur as quickly after notification as possible.
- The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen tests negative, the split specimen will be discarded. If the primary specimen tests positive, the split specimen will be retained for testing if so requested by the employee through the MRO. If the primary specimen is positive, both the primary and split specimens will be retained in frozen storage for one year.

### **Section 5b: Observed Collections**

Consistent with 49 CFR Part 40, collection under direct observation by a person of the same gender with no advance notice will occur in any of the following circumstances:

- The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to the Town of Wilmington that there was not an adequate medical explanation for the result;
- The MRO reports to the Town of Wilmington that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
- The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to the Town as negative-dilute and that a second collection must take place under direct observation;
- The Town realizes a collection under direct observation was required but was not conducted or the service agent informs the Town that a direct observation should have been collected but was not;
- The test is a return-to-duty test or a follow-up test;
- The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- The temperature of the original specimen was out of range; or
- The original specimen appeared to have been tampered with.

### **Section 5c: The Alcohol Testing Process**

Tests for breath alcohol concentration will be conducted by a trained Breath Alcohol Technician (BAT) using a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT).

If the initial test results indicate that alcohol is present, a confirmatory test will be conducted at least fifteen minutes after the completion of the initial test and will be performed by a trained BAT using a NHTSA-approved EBT. The EBT will identify each test with a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the testing, all results, and to attribute the test to the correct employee.

The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee, to maintain the integrity of the alcohol testing procedures and ensure the validity of the test result. An employee who has a confirmed alcohol concentration of 0.04% or higher will be considered to have a positive alcohol test and will be in violation of this policy. The consequences of a positive alcohol test are described in Section 6: Consequences of a Positive Test.

An employee undergoing alcohol testing who does not ~~to~~ provide a sufficient amount of breath to permit a valid breath test will be directed to obtain an evaluation within 5 days, from a licensed physician who has expertise in the medical condition raised by the employee's failure to provide a sufficient specimen. The results of this evaluation will be reviewed by the MRO to determine the result of the test.

Even though an employee who has a confirmed alcohol concentration of 0.02% to 0.039% is not considered to have had a positive test, the employee shall still be removed from safety-sensitive duties for twenty-four hours.

Subsequent to the required 24-hour removal, the employee will:

- Meet with the Highway Superintendent to review the need to avoid alcohol use from any source during or proceeding work hours.
- If the employee has an alcohol test result of 0.02% to 0.039% two or more times within a six month period, the employee will again meet with Highway Superintendent and the Town Manager to review the need to avoid alcohol use. The employee will be provided with contact and related information for the EAP program (currently Invest EAP). There is no requirement that the employee access those services.

An alcohol concentration of less than 0.02% will be considered a negative test.

The Town of Wilmington affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not affect the test result will not result in a cancelled test.

#### **Section 5d: Pre-employment Testing**

When an individual applies to work for the town in a position that involves the operation of a CMV, or when a municipal employee is under consideration for a position that involves the operation of a CMV, that person will be required to undergo pre-employment urine **drug** testing. All offers of employment and offers for transfer for covered positions shall be conditional upon the applicant passing the drug test. Pre-employment testing must be completed **prior** to the individual working in the new position.

Pre-employment drug testing will be accomplished by providing advance notice of the test schedule and location to the position applicant. The length of the advance notice period will be kept as short as is reasonably feasible to coordinate and complete the test.

If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Prior to future consideration for employment performing safety sensitive duties, the Town of Wilmington must receive evidence from a substance abuse professional that meets with the requirements 49 CFR part 40 as amended, regarding the absence of drug dependency. A negative pre-employment drug test will also be required.

Any applicant who fails a pre-employment drug test will be provided the results of the test along with the current Invest EAP brochure. This serves to provide the individual with information about substance abuse treatment opportunities.

If a drug test produces a result of negative dilute the employee is required to submit to another specimen collection. The re-collection cannot be done under direct observation. If a second test is performed and is also negative-dilute, the employer will accept that result and cannot continue re-collections. The second test is the test of record. Under federal law, an applicant/employee's refusal to submit to a recollection for a negative-dilute result is a refusal to test.

When an existing employee is being placed, transferred, or promoted into a position that is covered by this policy and that person submits a drug test with a verified positive result, the employee may be subject to disciplinary action as outlined in the municipal personnel policies. That employee will also be eliminated from consideration for the position which triggered the need for the pre-employment test.

If a pre-employment/pre-transfer test is canceled for any reason, the applicant will be required to take and pass a pre-employment drug test before the individual is placed into a covered CDL position or performs safety sensitive duties.

### **FMCSA Clearinghouse**

All drivers will be subjected to a query of the FMCSA Clearinghouse prior to employment as well as yearly throughout their employment with the Town. This is an employer responsibility.

Drivers should also note that the following information will be reported to the Clearinghouse by both the Medical Review Officer, the Consortium/TPA and/or the employer. Drivers who fail to

provide the necessary authorization to complete the initial or annual query will be subject to termination.

- A verified positive, adulterated, or substituted drug test result;
- An alcohol confirmation test with a concentration of 0.04 or higher;
- A refusal to submit to a drug or alcohol test;
- An employer's report of actual knowledge, as defined at 49 CFR § 382.107;
- On-duty alcohol use pursuant to 49 CFR § 382.205;
- Pre-duty alcohol use pursuant to 49 CFR § 382.207;
- Alcohol use following an accident pursuant to 49 CFR § 382.209;
- Drug use pursuant to 49 CFR § 382.213;
- SAP's report of the successful completion of the return-to-duty process;
- A negative return-to-duty test; and,
- An employer's report of completion of follow-up testing.

### **Section 5e: Random Testing**

All municipal CDL drivers are placed in the VLCT PACIF-sponsored Drug & Alcohol Testing Consortium that is operated by PACIF's TPA for drug and alcohol testing. These employees are subject to random, unannounced alcohol and drug testing. There is no discretion on the part of the employer or supervisor in the selection and notification of the employees who are to be tested. The selection of employees is made by a scientifically valid method of randomly generating an employee identifier from the pool of covered employees.

The dates for administering unannounced testing are randomly selected each quarter, with a minimum percentage of the pool's drivers selected for drug testing, alcohol testing, or both as required by federal regulations and updated each calendar year.

Random drug tests can be conducted at any time during an employee's shift. Random alcohol tests can be performed just before, during, or just after the performance of a safety-sensitive duty. Employees are required to proceed immediately to the collection site or make themselves immediately available to collectors when they are notified that they have been selected for testing.

### **Section 5f: Reasonable Suspicion Testing**

All covered employees will be subject to a reasonable suspicion drug and/or alcohol test when there is a reasonable suspicion to believe that drug or alcohol use is occurring, has recently occurred, or that the person is under the influence of drugs or alcohol. "Reasonable suspicion" shall mean that there is objective evidence, based upon specific, contemporaneous, describable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse.

Reasonable suspicion drug test referrals will only be made by a supervisor or other designated individual with employee monitoring and assignment responsibilities who has received "reasonable suspicion training" in accordance with FMCSA regulations. The training ensures that supervisors or other designated employees with similar responsibilities have the skills and

knowledge to objectively detect the signs and symptoms of drug and alcohol use in employees covered by this policy.

A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. A reasonable suspicion drug test can be performed any time the covered employee is on duty.

The Town of Wilmington shall be responsible for transporting the employee who will be tested to a suitable testing site identified by the TPA for drug and alcohol testing. Transport shall include travel to and from the location and to the individual's residence, as they should not be permitted to work when they may be under the influence of a drug or alcohol.

Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. An employee who refuses an instruction to submit to a reasonable suspicion drug/alcohol test shall not be permitted to finish their shift and will be subject to other employment consequences. Failure to submit to a reasonable suspicion test is prohibited conduct (test refusal), the consequences of which are outlined in Section 6: Consequences of a Positive Test.

A written record of the observations that led to a reasonable suspicion drug/alcohol test shall be prepared and signed by the supervisory individual making the observation. This record shall be prepared prior to the release of the test results. This written record (a Reasonable Suspicion Testing Checklist) shall be submitted to the Town Manager (personnel file), with a copy to the Finance Officer (driver qualification file).

### **Section 5g: Post Accident Testing**

As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the Town will test for alcohol and drugs for each of its surviving drivers.

The following table notes when a post-accident test is required to be conducted:

If the accident involved any of the following:	Qualifying event: Was a citation issued to the CMV driver?	Must test be performed by employer?
Human fatality	YES	YES
Human fatality	NO	YES
Bodily injury with immediate medical treatment away from the scene.	YES	YES
Bodily injury with immediate medical treatment away from the scene.	NO	NO

Disabling damage to any motor vehicle requiring tow away.	YES	YES
Disabling damage to any motor vehicle requiring tow away.	NO	NO

All post-accident drug and alcohol testing should be completed within 2 hours of the accident.

If an alcohol test required by this section is not administered within two hours following the accident, the Highway Superintendent or Highway Supervisor will document and maintain a record stating the reason(s) why the test was not promptly administered. If an alcohol test required by this section is not administered within eight hours following the accident, the Town of Wilmington will cease attempts to administer an alcohol test and will prepare and maintain the same record. Records will be submitted to the FMCSA upon request.

If a drug test required by this section is not administered within 32 hours following the accident, the Town of Wilmington will cease attempts to administer a drug test and a supervisor will document and maintain a record stating the reasons the test was not promptly administered. Records will be submitted to the FMCSA upon request.

#### **Section 6: Consequences of a Positive Test**

The medical review officer will report positive test results to the DER only after verifying the test results as outlined in 49 CFR, Part 40 as amended. When the DER is notified of this positive test result, the employee will be immediately suspended from operating CMVs and other safety-sensitive duties for the Town of Wilmington and will be referred to a Substance Abuse Professional (SAP) for substance abuse assessment and/or treatment.

On the day that the positive test results are received, the employee will be suspended from all duties with pay. Subsequent to that, the employee may be suspended without pay. The employee's length of suspension will run the period of time in which it takes the individual to satisfactorily complete the treatment (as confirmed by the treating SAP), and last for up to 3 months from the date the positive test result was received. After that period, if the employee has not successfully completed treatment, the employee may be terminated.

Any employee who has an initial positive test and has the split sample tested and obtains a negative result will immediately be permitted to return to their normal job duties.

An employee who provides written documentation from an SAP that substance abuse treatment has been satisfactorily completed within the 3-month suspension period must fulfill all return to duty testing requirements in Section 7: Return to Duty Testing prior to performing any safety-sensitive duties. Follow-up testing will also be required as directed by the SAP.

An employee who has a second positive test after completing return to duty testing may be terminated.

Any covered employee, who elects to have substance abuse and services, agrees to fully reimburse the municipality for all costs associated with this. Reimbursement may be recouped via payroll deduction, or any other mutually agreeable method(s).

### **Section 7: Return to Duty Testing**

Covered employees having a positive test will not be permitted to return to duty (to safety sensitive functions) until after a substance abuse professional has determined that the employee has successfully complied with prescribed education and/or treatment. The SAP will authorize the return to duty testing only when the employee is known to be drug and alcohol-free and there is no risk to public safety. The SAP will provide written documentation that the treatment has been completed and that the employee may undergo return to duty testing. The employee will then be allowed to take a return-to-duty test, as directed by the treating SAP.

The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming safety-sensitive duties. For an initial positive drug test, a return to duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test, a return to duty alcohol test is required and a drug test is allowed. Return to duty testing MUST be performed under direct observation.

### **Section 8: Follow-Up Testing**

After satisfactory completion of return to duty testing, the driver is required to submit to at least 6 follow up tests during the first 12 months after resuming safety sensitive duties. Follow-up testing may be required for up to 60 months unless the substance abuse professional determines that testing is no longer warranted. The number and frequency of follow-up tests will follow the written guidance provided by the treating SAP. All follow-up tests are unannounced and may include testing for drugs and/or alcohol.

Follow-up alcohol testing will be conducted only when the driver is performing or just before performing safety sensitive functions, or just after the driver has ceased performing safety-sensitive functions. Follow-up testing MUST be performed under direct observation.

Employees may not continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.

Follow-up testing is separate from and in addition to random, post-accident, reasonable suspicion, and return to duty testing.

### **Section 9: Employee Information**

Employees are encouraged to seek information regarding the effects of alcohol and controlled substances and their health, employment, and personal life. Such information is available at:

<http://www.samhsa.gov/>

<http://www.fmcsa.dot.gov/rules-regulations/topics/drug/drug.htm>

<http://www.investeap.org/>

Supervisors will visit these websites and pre-print some information so that it is readily available to provide to an employee in the event of a request for information. While providing the links to data sources will benefit most individuals, some may not have access to the internet, the ability to print, or skills to obtain the information. Thus, having some printed materials available for these individuals is desirable.

**APPENDIX A: Definitions**

**Accident** means an occurrence associated with the operation of a CMV, if as a result:

- An individual dies, or
- An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident, or,
- One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle. For purposes of this definition, **disabling damage** means damage that precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include:
  - damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, or
  - tire disablement without other damage even if no spare tire is available, or
  - damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

**Actual knowledge** means actual knowledge by an employer that a driver has used alcohol or drugs based on the employer's direct observation of the employee, information provided by the driver's previous employer(s), a traffic citation for driving a CMV while under the influence of alcohol or drugs, or an employee's admission of alcohol or drug use, except as provided in 49 CFR § 382.121. Direct observation as used in this definition means observation of alcohol or drug use and does not include observation of employee behavior or physical characteristics sufficient to warrant reasonable suspicion testing under 49 CFR § 382.307. As used in this section, "traffic citation" means a ticket, complaint, or other document charging driving a CMV while under the influence of alcohol or drugs.

**Adulterated specimen** is a specimen that has been altered, as evidenced by test results showing either a substance that is not normally found in that type of specimen or showing an abnormal concentration of a substance that is normally found in that specimen.

**Alcohol** means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, preparation or medication.

**Alcohol Concentration** is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device (EBT).

**Commercial Driver's License (CDL)** means a type of driver's license required to operate large or heavy vehicles. Obtaining a CDL requires a higher level of knowledge, experience, skills, and physical abilities than are required to drive a non-commercial vehicle. CDL holders are held to a higher standard when operating any type of vehicle on public roads.

*Commercial motor vehicle* means a motor vehicle or combination of motor vehicles used in commerce, to transport passengers, or property if the motor vehicle:

- Has a gross vehicle weight rating (GVWR) of 10,001 pounds or more
- Is single or combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more
- • Is designed or used to transport more than 8 passengers (including the driver) for compensation; or more than 15 passengers if not receiving compensation for the transportation.
- • Any size vehicle that transports hazardous materials that require federal placarding

On the other hand, a non-Commercial Motor Vehicle would not meet the above criteria. For example, consider a vehicle where either the power unit alone or when combined with a trailer does not meet the minimum weight threshold of 10,001 pounds. For instance, a pickup truck with a GVWR of 7,000 pounds and a trailer with a GVWR of 2,000 pounds would not qualify as a CMV.

Visit the FMCSA's vehicle configuration page to learn more about the different types of CMVs

**Consortium/Third-Party Administrator (C/TPA)** means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not "employers" for purposes of this part, except as provided in 49 CFR § 382.705(c).

**Covered Employee** means an employee who performs a safety-sensitive function including an applicant or transferee who will be hired to perform a safety-sensitive function. Employees who operate CMVs are considered to be performing safety-sensitive functions.

**Designated employer representative (DER)** means an employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

**Driver** means any person who operates a commercial motor vehicle. This includes, but is not limited to: Full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers; and independent owner-operator contractors.

**Drugs** means the drugs for which tests are required under this part and DOT agency regulations: marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids.

**Federal Motor Carrier Safety Administration (FMCSA)** is a division of the U.S. Department of Transportation which regulates trucking in the United States pursuant to Title 49 of the Code of Federal Regulations (49 CFR).

**Incident** means an undesired event that did or could have resulted in personal harm or property damage, or in any undesirable loss of resources.

**Injury** means physical harm or damage to a person resulting in the marring of appearance, personal discomfort and/or bodily harm, impairment, or death (ANSI, 2012).

**Medical Review Officer (MRO)** means a licensed physician (medical doctor or doctor of osteopathy) who is responsible for receiving laboratory results generated by the drug testing program 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 they/them medical history and any other relevant bio-medical information.

**Negative Dilute** is a drug test specimen showing a creatinine level of greater than 5mg/dl and less than 20 mg/dl.

**Negative return-to-duty test result** means a return-to-duty test with a negative drug result and/or an alcohol test with an alcohol concentration of less than 0.02%, as described in 49 CFR § 40.305.

**Observed Collection** means the donor will provide their sample under the direct observation of either a collector or another individual of the same gender. The donor must raise their shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the observer, by turning around, that they do not have a prosthetic device. After the observer has determined that the donor does not have a prosthetic device, the donor may return they/them clothing to its proper position for observed urination.

**Performing (a safety-sensitive function)** means a driver is considered to be performing a safety-sensitive function during any period in which they are actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

**Positive test result** for a drug test means a verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, Section 40.87 as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04% BAC or greater. Any positive test result reported to the DER by the medical review officer is verified by the MRO prior to reporting.

**Primary specimen.** In drug testing, the primary specimen is the urine specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in their system; and for the purpose of validity testing. The primary specimen is distinguished from the split specimen, defined in this section.

**Prohibited drug** means marijuana, cocaine, opiates, amphetamines, phencyclidine, or MDMA (ecstasy) at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

*Safety-sensitive function includes the timeframe that begins when a driver starts work or is required to be in readiness to work until the time they are relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:*

- All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- All time spent at the driving controls of a commercial motor vehicle in operation;
- All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth;
- All time loading or unloading a 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; and
- All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**Split specimen.** In drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

**Substance Abuse Professional (SAP)** means a licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

**Validity testing** is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

#### **APPENDIX B: Contacts & Information**

**DISA (formerly OCCUPATIONAL DRUG TESTING, LLC)**  
340 Harvey Rd

Manchester, NH  
800-211-4469  
Drug & Alcohol: 800-967-3135

**VLCT/PACIF**  
Loss Control  
89 Main St., Suite #4  
Montpelier, Vermont 05602  
802-229-9111  
losscontrol@vlct.org

**INVEST EAP (SAP services)**  
110 Cherry Street, Suite 2-1  
Burlington, Vermont 05401  
MAIN OFFICE: 866-660-9533  
FAX: 802.863-7515  
[staff@investeap.org](mailto:staff@investeap.org)

#### Employee Access to Information

49 CFR Part 40 and 49 CFR Part 382 must be available upon request to covered employees and representatives of employee organizations. 49 CFR part 40 is accessible online at <https://www.ecfr.gov/current/title-49 subtitle-A/part-40>; by fax on demand at 1-202-366-3897 requesting document 151; by phone at 1-800-225-3784; by e-mail at [ODAPCWebMail@dot.gov](mailto:ODAPCWebMail@dot.gov); or by writing to U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

#### APPENDIX C: CMV Drug & Alcohol Testing Policy-Acknowledgement Form

##### **Town of Wilmington**

I HEREBY ACKNOWLEDGE that I have received a copy of and read and understand my employer's **CMV Drug & Alcohol Testing Policy**. I understand that I must abide by its terms as a condition of employment. I understand that during my employment I may be required to submit to a controlled substances and/or alcohol test based on U.S. Department of Transportation (DOT) and Federal Motor Carrier Safety Administration (FMCSA) regulations.

I also understand that refusal to submit to a controlled substances or alcohol test is a violation of DOT regulations and the above referenced policy and may result in disciplinary action, including suspension (with or without pay) or termination of employment for gross and willful misconduct. I further understand the consequences of controlled substances and/or alcohol use as outlined in this policy.

I acknowledge that the provisions of my employer's CDL Drug and Alcohol Policy are part of the terms and conditions of my employment, and that I agree to abide by them.

By signing below, I also acknowledge that I understand the meaning of this form and agree that it will be used to document my understanding of the CDL Drug & Alcohol Testing Policy.

Printed Name of Employee/Applicant: \_\_\_\_\_

Signature of Employee/Applicant: \_\_\_\_\_

Employee/Applicant CDL ID #: \_\_\_\_\_

Date: \_\_\_\_\_

Witness Signature: \_\_\_\_\_

Date: \_\_\_\_\_

***Original Acknowledgment of Receipt and Understanding will be kept in the Driver's Qualification File. Check here  to confirm copy given to employee/applicant.***

#### **APPENDIX D: Drug Cutoff & Testing Limits as per DOT Rule 49 CFR Part 40 Section 40.85**

Initial test analyte	Initial test cutoff <sup>1</sup>	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) <sup>2</sup>	50 ng/mL <sup>3</sup>	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecggonine)	150 ng/mL <sup>3</sup>	Benzoylecggonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.

Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.
MDMA <sup>4</sup> /MDA <sup>5</sup>	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

<sup>1</sup>For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

*Immunoassay:* The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

*Alternate technology:* Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

<sup>2</sup>An immunoassay must be calibrated with the target analyte, Δ-9-tetrahydrocannabinol-9-carboxylic acid (THCA).

<sup>3</sup>*Alternate technology (THCA and Benzoylecgonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoylecgonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylecgonine).

<sup>4</sup>Methylenedioxymethamphetamine (MDMA).

<sup>5</sup>Methylenedioxymethamphetamine (MDA).

**NOTE: These cutoff limits may be subject to periodic revision by DOT.**

<https://www.transportation.gov/odapc/part40/40-85>

## Section X RETIREMENT

The Town of Wilmington participates in the Medicare and Social Security programs and in the Vermont Municipal Employee Retirement System (VMERS). All employees must participate in the

Medicare and Social Security program, but participation in the state program shall be in accordance with the rules of the VMERS retirement program.

## **Section XI     LEAVE SCHEDULING SYSTEM**

It is important we have a uniform system by which employees can make use of our various leaves of absence and where management can track such leaves to avoid any instances of employees receiving fewer or more days than authorized under our personnel rules. Such a uniform system will protect both the Town and the employees and be most efficient for those who have to track leaves. This system is not intended to make it more difficult for employees to use their appropriate leave benefits described under our personnel rules.

### **Leave Request Form:**

Leave Request Form will identify the:

- \* Type of leave being requested
- \* Day(s) requested
- \* Employee's name, signature, and date
- \* Immediate supervisor signature signaling approval
- \* Payroll confirmation of leave day(s) availability

### **Process for all staff except administrative, department heads, and town manager**

Standardized Leave Request Form completed one (1) week in advance of requested day(s) off (discretion of supervisor for more/less than one week).

If leave request is acceptable based on department needs and after supervisor compares days requested vs. days available using own leave tracking system, form is signed "approved" by immediate supervisor

Supervisor deducts new time off against available leave days

Time availability is confirmed with payroll (can be done via phone) in advance of leave day, if possible, form is delivered to payroll in advance of leave day, signed by payroll, and stored in central file

### **Process for department heads, administration staff, and town manager**

Standardized Leave Request Form completed one (1) week in advance of requested day(s) off (discretion of town manager for more/less than one (1) week)

If leave request is acceptable based on town needs and after town manager compares days requested vs. days available using payroll leave-tracking system, form is signed "approved" by town manager.

Payroll deducts new time off against available leave days. Form is stored in central file. Town manager's leave requests shall be approved by the Select board and monitored by fiscal officer

## **Section XII     ILLNESS AND INJURY**

### **EMPLOYEES**

All full-time regular employees hired for an indefinite period, including police officers, are eligible from the date of their employment to accumulate one (1) day of sick leave per month.

All part-time and seasonal employees who work at least 18 hours per week for more than 20 weeks per year who are 18+ years old will accrue 1 hour of paid leave for every 52 hours worked.

Sick leave can be accumulated indefinitely, with a maximum accrual of 150 days. However, upon termination of employment, whether voluntary, involuntary, or upon retirement, no compensation shall be granted for any unused portion thereof remaining.

### **Usage**

Accrued leave may be used when the employee:

- A. Is ill or injured;
- B. Obtains professional diagnostic, preventative, routine, or therapeutic health care;
- C. Cares for a sick or injured family member, including helping that individual obtain diagnostic, preventative, routine, or therapeutic health treatment, or accompanying the employee's parent, grandparent, spouse, or parent-in-law to an appointment related to their long-term care;
- D. Is arranging for social or legal services or obtaining medical care or counseling for the employee or a family member who is a victim of domestic violence, sexual assault, or stalking or is relocating because of any of these; or
- E. Cares for a family member because the school or business where that individual is normally located is closed for public health or safety reasons.

\*For purposes of this policy, family member includes spouse, civil union partner, child, step-child, grandchild, foster child, parent, parent-in-law, sibling, or ward of the employee.

In addition to sick leave authorized under this section and the Family and Medical Leave Act, sick leave may also be authorized for the serious illness of the employee's child, stepchild, parent, or parent-in-law regardless of whether that person lives with the employee. Serious illness means an accident, disease or physical or mental condition that either poses imminent danger of death, requires inpatient care in a hospital, visits to a physician's office, or requires continuing in-home care under the direction of a physician.

In extremely unusual circumstances, the town manager may authorize additional use of sick leave.

The Town Manager may, in their sole and absolute discretion, require a doctor's certificate verifying the necessity for absence(s) for three (3) or more days and the specific illness, injury, or other disability to which the absence is attributed.

In the event of an illness or injury that is covered by workers' compensation insurance, this Sick Leave Policy will not apply. If sick leave is for a reason that qualifies for leave under the Family Medical Leave policy (see description in the "Unpaid Leave" section), your family medical leave will run concurrently with sick leave.

Sick leave is not intended to supplement days off from work and any violation of this shall initiate disciplinary action which may result in discipline up to and including dismissal.

If sick leave is compensated by disability income insurance, in no event shall the employee be compensated in excess of regular weekly earnings.

In order to assure continuous income to the employee, the employee may remain on the town payroll until sick leave is used provided that the employee endorses disability insurance benefits over to the Town or otherwise reimburses the Town.

Each day of sick leave taken shall be counted as one (1) day of sick leave whether covered by insurance or not.

### **SALARIED DEPARTMENT HEADS**

Salaried department heads are the Town Manager, Police Chief, Highway Superintendent, Town Clerk, Wastewater Treatment Plant Chief Operator, Fire Chief, Finance Officer and Zoning Administrator.

## **Section XIII LEAVES OF ABSENCE**

**General Policy** - The following types of leaves are officially established; holiday, vacation, sick leave, injury leave, bereavement leave, leave without pay, and compensatory leave. All leaves may be granted by the department head in conformance with rules established for each type of leave. All department heads and payroll shall maintain records of any absence from duty of their employees.

### **HOLIDAYS**

#### **Holiday Pay**

Holiday pay is not earned or accrued time, but is instead a paid time off benefit to be used as holiday time. Employees will not be legally entitled to any unused holiday benefits at the time of their job termination.

An exempt employee who is required to work on any of the specified town holidays shall receive no additional compensation for such work but shall be eligible for time off equal to the time worked that holiday.

Any part-time or full-time non-exempt employee, employed on a continuing basis, required to work on a holiday will be compensated either by pay or compensatory time at one and one-half ( $\frac{1}{2}$ ) times for the holiday hours worked.

The following holidays shall be official holidays together with any other day so proclaimed by the Selectboard:

New Year's Day	January 1
MLK Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Bennington Battle Day	August 16

Labor Day	First Monday in September
Indigenous People's Day	second Monday in October
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day After Thanksgiving	
Christmas Day	December 25
***Employee's birthday	

\*\*\* An employee can choose to take their birthday off as a paid holiday (personal day) or with advance approval from their department head a different day off. This day must be used before your anniversary each year. It cannot carry over to the next year.

All municipal departments and offices, except for the police department, shall observe any legal holiday which falls on a Saturday on the preceding Friday and any legal holiday which falls on a Sunday on the following Monday. The police department shall observe any legal holiday on the calendar day on which it falls. The wastewater treatment plant operators will observe any legal holiday that falls on a Friday or Saturday on the preceding Thursday and any legal holiday that falls on a Sunday on the following Monday.

Full-time employees wishing to observe religious holidays not listed by the Selectboard, shall, with their option, be given time off without pay or have the time charged to their vacation.

#### **APPROVED TIME OFF-Christmas Eve Day & New Year's Eve Day**

Christmas Eve Day and New Year's Eve Day are not holidays as defined in the Town of Wilmington's Personnel Rules. Therefore, all the conditions and benefits concerning town holidays do not apply.

Department Heads are encouraged to allow staff to leave work half-way through their regularly scheduled shift, with pay, on Christmas Eve Day and New Year's Eve Day when the workload and conditions support employees being able to leave at that time.

Employees who must work the full shift will receive comp-time at one/half times the hours they work beyond the half-shift. (Example: 8-hour shift - 8 divided by 2 = 4 then divided by 2 = 2 hours of comp time) Since these two days are not holidays, employees not working these days will receive no additional compensation, time off, nor have these days included in the calculation for weekly overtime.

If an employee is called into work on a scheduled day off, and if the hours worked during that unscheduled day are at overtime rate, then no additional comp time will be paid, as identified above, for working on Christmas Eve or New Year's Eve Day(s). Any employee working their regularly scheduled shift on Christmas Eve and/or New Year's Eve Day who works their full shift and then has that shift extended will receive no additional comp time for the hours worked past their scheduled shift end if those hours are paid at the overtime rate.

It will be left up to the Department Head's discretion as to whether the department can be closed at the end of the half-shift or whether the Department Head, or one staff member, should remain to keep their area open for the public.

## **VACATION**

Annual vacation leave, based on continuous “Full-Time Equivalent (FTE)” service, shall accrue monthly on the following basis for all eligible employees; accruals begin monthly upon FTE employment:

<u>Years of FTE Completed Service</u>	<u>Vacation Credits</u>
One year	2-weeks
Three years	3-weeks
Five years	4-weeks
Fifteen years	5-weeks

A week consists of the number of hours and days the employee normally works each week.

Full-time police officers shall accrue monthly vacation as follows:

- 1-2 years of FTE completed service, 2-weeks
- 3-4 years of FTE completed service, 3-weeks
- 5-14 years of FTE completed service, 4-weeks
- 15 or more years of FTE completed service, 5-weeks.

Full-time, non-exempt sworn Police Department officers who have accrued vacation leave in excess of the maximum accrual permitted may request payment for such excess leave, subject to the conditions below. Requests may be made upon the employee’s anniversary date, provided the officer has used a minimum of eighty (80) hours (two weeks) of vacation leave during the applicable year.

Eligibility for vacation leave cash-out applies only when the Police Department has one or more sworn officer vacancies that have remained unfilled for six (6) consecutive months or longer. Officers requesting payment for excess leave they are unable to take must meet the minimum vacation usage requirement unless waived by the Town Manager due to extraordinary operational necessity. This provision recognizes the continuous emergency services commitment of sworn police officers and the operational constraints associated with maintaining adequate staffing coverage on a 24-hour-per-day, seven-day-per-week, year-round basis.

All vacation leave cash-out requests are subject to review and approval by the Police Chief and Town Manager and are discretionary based on operational and fiscal considerations. This policy constitutes a limited and conditional exception to the Town’s general vacation accrual limits and does not alter or supersede Town policies governing compensatory time or other authorized leave payouts.

All employees are encouraged to take their vacation leave annually. One week accrued vacation time may be carried over to the following vacation year, in addition to vacation schedule above. Upon five years of completed service, two weeks accrued vacation time may be carried over to the following year. Upon termination or death, the accrued earned vacation will be paid to the employee or estate.

## **POLICE ON-CALL**

A police officer who is specifically required as a condition of employment by the Department to be immediately available to respond to emergency calls in the hours immediately before or after their regular shift shall be paid one-tenth (1/10) of their regular straight time hourly rate of pay during the

hours during which they are in such a status, excluding any hours actually worked or for which call-in pay is paid. An officer scheduled for duty under this section is required to immediately respond and is therefore subject to restriction by the Department in their geographic location and shall be required to provide the Department with a telephone or pager number where they can be reached at all times during the scheduled period.

Restricted On-Call Status shall be defined as "When an employee is required to be in a specific location waiting for an assignment, or is so regulated by the administration during this period that they may not spend personal time effectively for their own purposes."

#### **CIVIL DUTY AND JURY LEAVE**

All full-time regular employees entitled to vote in national, state and municipal elections shall, when necessary, be allowed sufficient time off with pay to exercise this right. Approval of such leaves shall be given by the department head.

Should any full-time employee be called for jury duty within any state or federal judicial court, the Town shall pay to the employee the difference between the employee's actual salary and that received from the court.

#### **LEAVE OF ABSENCE FOR TOWN MEETING**

In order to encourage employees to attend either their or the Town's Annual Town Meeting, employees not required to work on Annual Town Meeting Day and who show to their department head proof of attendance at their or town's annual meeting will be paid their regular hours for that day. Annual Town Meeting Day is not a regularly scheduled holiday and will be treated as a regular workday for those employees required to work that day. Employees are required to ask for Town Meeting Day off at least seven (7) days in advance.

#### **Bereavement Leave**

Purpose- The purpose of bereavement leave is to enable a full-time employee to take care of personal arrangements and problems caused by death of an immediate family member of their family and to relieve themselves of concern over the loss of earning on the regularly scheduled work days immediately following the death.

**Bereavement Leave Immediate Family**- Upon the death of an employee's spouse or child, parent, grandparent, stepparent, sister, brother, stepsister, stepbrother or spouse's parents, the employee may request up to five (5) working days immediately following such death without loss of pay. If the burial of the immediate family member falls on a regular work day and the burial is not immediately following the death, upon recommendation of department head and approval of town manager, one (1) day of the Bereavement Leave identified in this section may be applied to attend the actual burial of the immediate family member.

**Bereavement Leave General**- An employee may request and the town manager, upon recommendation of the department head or supervisor, based on the purpose identified above, may grant bereavement leave not to exceed three (3) days for family members other than those listed.

#### **LEAVE OF ABSENCE WITHOUT PAY**

All requests for leaves of absence without pay shall be submitted in writing to the appropriate department head and shall set forth the purpose for which the leave is requested. It is the discretion of the department head and town manager whether or not to grant unpaid leaves of absence.

## **Section XIV PAY PLAN**

### **Call-Out**

If an hourly employee is called into work within three (3) hours of their scheduled start of shift, that employee will be paid for the hours from the time they arrived on the job until their scheduled work shift start time.

If an hourly employee is called into work: arrives more than three (3) hours before the start of their scheduled start of shift; after they have left work at the end of their scheduled shift; or on their day off then that employee will be paid a minimum of three (3) hours. In these circumstances if the employee works more than three (3) hours the employee will be paid based on actual hours worked.

Each employee shall fill out their weekly time sheet and submit to their department head for approval.

An hourly employee shall be paid for the actual number of hours worked during each pay period. Salaried employees shall be paid an annual rate divided by the number of pay periods per year. When absent on authorized sick or vacation leave, each employee shall be paid at the regular rate.

**Paid for Training** - All Town Employees, or Elected Town Officials paid on an hourly basis, will be paid their hourly rate for each hour they attend town, state, or federally required training, including travel time to and from the town.

All Town Employees, or Elected Town Officials paid on an hourly basis, will be paid their hourly rate for each hour they attend training specifically approved by their Department Head or Chair.

All Town Employees, or Elected Town Officials paid on an hourly basis, will be paid their hourly rate for a designated amount of time, as determined by the appropriate Department Head or Chair, to travel to and from Wilmington and their training site. Paid travel time, lodging and food reimbursements for multi-day training sessions is to be determined by the appropriate Department Head or Chair taking into consideration the legitimate needs of the attendee vs. cost efficiency for the town.

**Mileage Reimbursement**- All eligible people as identified in this policy shall make every effort to carpool when more than one person is attending a required or approved responsibility so as to avoid the Town paying for more than one mileage reimbursement.

All town employees, including Town Clerk and Asst. Town Clerk, shall be reimbursed for requested mileage at the Internal Revenue Mileage Reimbursement Standard Rate for any miles driven using their own vehicle, when the miles were accumulated due to meeting a required responsibility of their job. Mileage reimbursement to attend a function that is not a required responsibility for a position

must have prior written approval by the appropriate Chair or Department Head of the aforementioned positions.

All other elected town officials or Selectboard-appointed members to boards, commissions and committees shall be reimbursed for requested mileage at the Internal Revenue Mileage Reimbursement Standard Rate for any miles driven using their own vehicle, when the miles were accumulated due to meeting a required responsibility of their position. Requests for reimbursement for the previous month must be submitted by the appropriate Chair to the Finance Officer no later than the first Monday of the next month or the reimbursement will not occur.

Mileage reimbursement to attend a function that is not a required responsibility for a position must have prior written approval by the appropriate Chair or Department Head of the aforementioned non-employees.

**Paid Benefits:**

All full-time regular employees are eligible for either coverage under our health insurance plan(s) or to receive a monthly stipend if they provide proof of coverage under another health insurance plan.

All full-time regular employees are eligible for our life insurance plan and cafeteria plan.

All regular employees who regularly work more than twenty-four (24) hours per week are required to be covered under Municipal Retirement System.

Details about employee benefits are available through the Finance Office.

## **Section XV    HEALTH AND SAFETY**

The Town of Wilmington believes its employees are its most important assets. As such, management takes seriously its responsibility of providing a safe and healthful workplace for all employees. The town's safety and health program recognize that the safe work behavior of each employee is also a key to our ultimate goal of a safe and accident-free work environment for our employees, townspeople, and visitors.

To help meet these goals, the Town will provide safety training to all employees based on the particular hazards of their job duties. We will also provide the necessary personal protective equipment to help reduce exposure to job-specific hazards and will take the appropriate steps as needed to correct hazardous conditions that are brought to our attention. Staff are required to use personal protective equipment provided to them, and it is the responsibility of department heads to monitor and enforce such usage. Decisions as to what personal protective equipment and what training will be made by the town manager in consultation with the safety committee and department heads.

It is the responsibility of each employee to follow all safe work rules and procedures. If an employee is ever in doubt about how to safely perform a job, it is that employee's responsibility to ask their supervisor for assistance. Any suspected unsafe conditions and all injuries that occur on the job must be reported

immediately to the employee's immediate supervisor. Safe work behaviors and attitudes are an expected part of each employee's job performance. Compliance with these safety rules is considered a condition of employment. Noncompliance, including loss or non-usage of personal protective equipment, will be treated like any other violation of established town personnel rules and will result in disciplinary action up to and including termination. Therefore, it is a requirement that each supervisor make the safety of employees an integral part of their regular management functions. It is the responsibility of each supervisor to monitor and assist employees in the safe performance of their duties.

This mission statement will be reviewed and revised on an annual basis to allow the Town to meet the mutually beneficial goal of zero workplace injuries and illnesses.

## **Section XVI NEPOTISM**

Applicants for employment in the Town of Wilmington shall be selected without regard to a spousal relationship or by blood relationship, which they may have with a current employee of the Town. However, to avoid possible conflicts of interest, which may result from employment procedures, an employee who is related by spouse or blood to another employee or applicant shall not participate in any decision to hire, retain, promote, evaluate, or determine the salary of that person.

### **Definition**

For the purposes of this policy, a "relationship by spouse" is defined as one that includes, but is not limited to, a relationship which an individual has with their spouse, party to a civil union (Vermont and Connecticut employers) father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law. A "relationship by blood" is defined as a relationship, which an individual has with a blood relative that extends to first cousin. The phrase "decision to hire" includes every aspect of the hiring process.

### **Procedure**

Should a town employee be called upon to participate in a decision to hire, retain, promote, evaluate, or determine the salary of a person related to them by spouse or blood as defined above, the employee shall refrain from participating in such decision and shall instead delegate their decision-making authority regarding that person to the department head or their designee. Should the department head be called upon to participate in a decision to hire, retain, promote, evaluate, or determine the salary of a person related to them by spouse or blood as defined above, they shall refrain from participating in such decision and shall instead delegate their decision-making authority in regard to the employment status of that person (i.e., decision to hire, retain, promote, evaluate, etc.) to the town manager.

## **Section XVII SEXUAL HARASSMENT POLICY**

It is against the policies of the Town of Wilmington, and illegal under state and federal law, for any employee, male or female, to sexually harass another employee. The Town of Wilmington is committed to providing a workplace free from this unlawful conduct. It is a violation of this policy for an employee to engage in sexual harassment.

### **What is "sexual harassment?"**

Sexual harassment is a form of sex discrimination and means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- (1) submission to that conduct is made, either explicitly or implicitly a term or condition of employment;
- (2) submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting that individual; or
- (3) the conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Examples of sexual harassment include, but are not limited to the following, when such acts or behavior come within one of the above definitions:

- \* Either explicitly or implicitly conditioning any term of employment (e.g. continued employment, wages, evaluation, advancement, assigned duties or shifts) on the provision of sexual favors;
- \* Touching or grabbing a sexual part of an employee's body;
- \* Touching or grabbing any part of an employee's body after that person has indicated, or it is known, that such physical contact was unwelcome;
- \* Continuing to ask an employee to socialize on or off-duty when that person has indicated they are not interested;
- \* Displaying or transmitting sexually suggestive pictures, objects, cartoons, or posters if it is known or should be known that the behavior is unwelcome;
- \* Continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
- \* Referring to or calling a person a sexualized name if it is known or should be known that the person does not welcome such behavior;
- \* Regularly telling sexual jokes or using sexually vulgar or explicit language in the presence of a person if it is known or should be known that the person does not welcome such behavior;
- \* Retaliation of any kind for having filed or supported a complaint of sexual harassment (e.g. ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering that person's duties or work environment, etc.);
- \* Derogatory or provoking remarks about or relating to an employee's sex or sexual orientation;
- \* Harassing acts or behavior directed against a person on the basis of their sex or sexual orientation;
- \* Off-duty conduct which falls within the above definition and affects the work environment.

### **What the Town of Wilmington will do if it learns of possible sexual harassment**

In the event the Town of Wilmington receives a complaint of sexual harassment, or otherwise has reason to believe that sexual harassment is occurring, it will take all necessary steps to ensure that the matter is promptly investigated and addressed. The Town of Wilmington is committed, and required by law, to take action if it learns of potential sexual harassment, even if the aggrieved employee does not wish to formally file a complaint. Every supervisor is responsible for promptly responding to, or reporting, any complaint or suspected acts of sexual harassment. Supervisors should report to the town manager (who has been designated to receive such complaints or reports). Failure by a supervisor to appropriately report or address such sexual harassment complaints or suspected acts shall be considered to be in violation of this policy.

Care will be taken to protect the identity of the person with the complaint and of the accused party or parties, except as may be reasonably necessary to successfully complete the investigation. It shall be a violation of this policy for any employee who learns of the investigation or complaint to take any retaliatory action which affects the working environment of any person involved in this investigation.

If the allegation of sexual harassment is found to be credible, the Town of Wilmington will take appropriate corrective action. The Town of Wilmington will inform the complaining person and the accused person of the results of the investigation and what actions will be taken to ensure that the harassment will cease and that no retaliation will occur. Any employee, supervisor, or agent who has been found by the Town of Wilmington to have harassed another employee will be subject to sanctions appropriate to the circumstances, ranging from a verbal warning up to and including dismissal.

If the allegation is not found to be credible, the person with the complaint and the accused person shall be so informed, with appropriate instruction provided to each, including the right of the complainant to contact any of the state or federal agencies identified in this policy notice.

### **What you should do if you believe you have been harassed**

Any employee who believes that they have been the target of sexual harassment, or who believes they have been subjected to retaliation for having brought or supported a complaint of harassment, is encouraged to directly inform the offending person or persons that such conduct is offensive and must stop. If the employee does not wish to communicate directly with the alleged harasser or harassers, or if direct communication has been ineffective, then the person with the complaint is encouraged to report the situation as soon as possible to the town manager (who has been designated to receive such complaints or reports). It is helpful to an investigation if the employee keeps a diary of events and the names of people who witnessed or were told of the harassment, if possible.

If the complainant is dissatisfied with the Town of Wilmington's action, or is otherwise interested in doing so, they may file a complaint by writing or calling any of the following state or federal agencies:

- 1. Vermont Attorney General's office, Civil Rights Unit, 109 State Street, Montpelier, VT 05602, tel: (802) 828-3171 (voice/TDD).** Complaints should be filed within 300 days of the adverse action.
- 2. Equal Employment Opportunity Commission, 1 Congress Street, Boston, MA 02114, tel: (617) 565-3200 (voice), (617) 565-3204 (TDD).** Complaints must be filed within 300 days of the adverse action.

3. **Vermont Human Rights Commission**, 133 State Street, Montpelier, VT 05633-6301, tel: (802) 828-2480 (voice/TDD). (Only if you are employed by a Vermont state agency.) Complaints must be filed within 360 days of the adverse action.

Each of these agencies can conduct impartial investigations, facilitate conciliation, and if it finds that there is probable cause or reasonable grounds to believe sexual harassment occurred, it may take the case to court. Although employees are encouraged to file their complaint of sexual harassment through the Town of Wilmington's complaint procedure, an employee is not required to do so before filing a charge with these agencies.

In addition, a complainant also has the right to hire a private attorney, and to pursue a private legal action in state court within three (3) or six (6) years, depending on the type of claims raised.

## **Section XVIII     PARENTAL, FAMILY, AND MEDICAL LEAVE POLICIES**

### **Parental, Family and Medical Leave Policies**

The Town of Wilmington provides eligible employees unpaid leave time to take care of family and medical issues consistent with the federal Family and Medical Leave Act (FMLA), 29 U.S.C. §§ 2601 et seq., and the Vermont Parental and Family Leave Act (PFLA), 21 VSA. §§ 471 et seq. The intent of this policy is to explain the benefits and requirements of these laws. Federal law requires that when a state law exists, the employee must be given whichever benefits are greater from the state and federal policies.

### **UNPAID LEAVE BENEFIT**

Subject to the definitions and conditions set forth in the FMLA and the PFLA, eligible employees may request up to twelve (12) weeks of unpaid leave for an employee's pregnancy and following the birth or adoption of their child, to care for a seriously ill spouse, child, step-child, ward, foster child, parent or parent of the employee's spouse during a twelve (12) month period. This is defined by the Town to be a "rolling year" - a rolling twelve (12-month period measured by looking back at the twelve (12) months prior to the start date of the employee's requested FMLA/PFLA leave.

### **EMPLOYEE ELIGIBILITY**

To be eligible for FMLA leave, an employee must have worked for the Town for at least twelve (12) months and at least 1,250 hours during the twelve (12) month period immediately preceding the beginning of the leave. To be eligible for PFLA leave, an employee must have worked for the Town for at least twelve (12) months and worked an average of thirty (30) hours a week (1,560 hours) during the twelve (12) month period immediately preceding the beginning of the leave. Eligibility for both FMLA leave and PFLA leave does not extend the overall unpaid leave time to which the employee is entitled. Where an employee is eligible for both FMLA and PFLA leave, such leave will be used concurrently.

### **NOTICE TO THE TOWN**

Both the FMLA and the PFLA require an employee to give notice to the Town of the employee's intent to take leave. Under the FMLA, notice must be given at least thirty (30) days prior to date leave is to begin when the need for leave is known in advance. When the need for leave is not foreseeable,

notice must be given as soon as practicable. If leave is required for planned medical treatment, an employee, subject to a health care provider's approval, must make a reasonable effort to schedule leave in a way that does not unduly disrupt the Town's operations. Under the PFLA, the employee must give reasonable notice if the intent to take leave. When leave is taken for adoption placement or birth, notice need not be given more than six (6) weeks in advance.

#### **USE OF PAID LEAVE**

Both the FMLA and the PFLA provide unpaid leave. However, an employee may be eligible to utilize accrued paid leave time as determined by the FMLA or PFLA. Use of paid leave does not extend the overall unpaid leave time to which the employee is entitled. Such paid leave will be used concurrently with unpaid FMLA/PFLA leave.

#### **CONTINUATION OF OTHER BENEFITS**

During an approved leave, employment benefits are continued in accordance with the requirements of the FMLA and the PFLA. Employees must make arrangements to continue to pay their share of insurance premiums while on leave. Failure to make such premium payments may result in cancellation of coverage.

#### **REINSTATEMENT**

With some limited exceptions, upon return from leave, the FMLA and the PFLA require reinstatement of employees to the same or comparable position at the same level of compensation, benefits, and other terms and conditions of employment.

#### **SHORT TERM FAMILY LEAVE**

Pursuant to the PFLA, an employee who has been employed by the Town of Wilmington for the past one (1) year for an average of at least thirty (30) hours per week is entitled to take unpaid leave not to exceed four (4) hours in any thirty (30) day period and not to exceed twenty (24) hours in any twelve (12) month period. At the employee's discretion, the employee may use accrued paid leave, including vacation and sick leave. Leave must be taken in a minimum of two (2) hour segments and may be taken for any of the following purposes:

To participate in preschool or school activities directly related to the academic educational advancement of the employee's child, stepchild, foster child, or ward who lives with the employee, such as a parent-teacher conference.

To attend or to accompany the employee's child, stepchild, foster child, or ward who lives with the employee or the employee's parent, spouse, or parent-in-law to routine medical or dental appointments.

To accompany the employee's parent, spouse, or parent-in-law to other appointments for professional services related to their care and well-being.

To respond to a medical emergency involving the employee's child, stepchild, foster child, or ward who lives with the employee or the employee's parent, spouse, or parent-in-law.

Employees must make a reasonable attempt to schedule appointments for which leave may be taken under this section outside of regular work hours. In order to take leave under this section, an employee shall provide their department head with the earliest possible notice, but in no case less than seven (7) days before leave is to be taken except in the case of an emergency, which is defined under statute as "circumstances where the required seven (7) day notice could have a significant adverse impact on the family member of the employee".

## **Section XIX OTHER POLICIES**

### **Tobacco Use**

The Town of Wilmington recognizes that the use of tobacco products may be hazardous to the health of the employee and the public. Therefore, it is the policy of the Town of Wilmington to prohibit an employee when they are working to use any form of tobacco including electronic cigarettes and chewing tobacco, in all publicly-owned buildings, offices and enclosed areas, and in all Town vehicles. Violation of this policy will result in discipline utilizing our disciplinary procedure.

### **Alcohol & Drug Use**

The following conduct is prohibited during working hours, while using municipal equipment, and/or while on municipal property:

- The use of alcohol;
- The use of drugs except in the manner prescribed by a duly-licensed physician or dentist;
- Being under the influence of drugs or alcohol;
- The possession, sale, transfer, or purchase of illegal drugs.

An employee who engages in any of the above behaviors will be subject to disciplinary action up to and including termination.

In addition to this policy, employees who operate commercial motor vehicles (CMVs) for the Town are also subject to the provisions of the Town's CMV Drug and Alcohol Policy. (See specific policy beginning on page 14).

### **Firearms**

It is the policy of the Town of Wilmington that no employee shall enter a municipal building or vehicle while carrying a firearm, except for law enforcement. If an employee keeps a firearm in their personal vehicle, the firearm must be free of ammunition and the vehicle locked at all times.

### **Fraud Prevention Policy**

**PURPOSE.** The purpose of this policy is to provide a mechanism for employees and officers to bring to the attention of the Town any complaints regarding the integrity of the Town's internal financial controls or the accuracy or completeness of financial or other information used in or related to the Town's financial statements and reports. Town employees and officers shall not be discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner for raising reasonable questions concerning the fair presentation of town financial statements in accordance with this policy.

**REPORTS OF IRREGULARITY.** Any employee who has a complaint regarding the integrity of the Town's internal financial controls or the accuracy or completeness of financial or other information used in or

related to the Town's financial statements and reports, or who observes any questionable accounting practices, should report such complaint to the Wilmington Town Finance Officer and Town Manager. If the complaint concerns the Town Finance Officer, then the employee shall report just to the Town Manager. If the complaint concerns the Town Manager, then the employee shall report just to the Chair of the Selectboard.

The report should include a description of the matter or irregularity, the period of time during which the employee observed the matter or irregularity, and any steps that the employee has taken to investigate the matter or irregularity, including reporting it to a supervisor and the supervisor's reaction. The report may include, at the employee's option, the employee's contact information if additional information is needed. However, a report shall not be deemed deficient because the employee did not include contact information.

Examples of reportable actions include any indication of fraud, misappropriation of Town resources, substantial variation in the Town's financial reporting methodology from prior practice or from generally accepted accounting principles, and the falsification, concealment, or inappropriate destruction of Town financial records.

**INVESTIGATION.** Upon receiving such a report, the Wilmington Town Treasurer and Town Manager shall investigate the issues identified in the report. The Wilmington Town Treasurer and Town Manager may consult with the Selectboard, any other Town employee and legal counsel as a part of their investigation. In addition, the person who has received the report shall, within no more than three business days, also inform the public accountant employed by the Selectboard who may wish to conduct their own investigation in conjunction with or separate from the town investigation. At the conclusion of the investigation, the Wilmington Town Treasurer and Town Manager shall prepare a written response to the report, which shall be a public document.

In accordance with 24 V.S.A. § 1686(c), any town officer who willfully refuses or neglects to submit their books, accounts, vouchers, or tax bills to the auditors upon request, or to furnish all necessary information in relation thereto, shall be ineligible for reelection for the year ensuing and be subject to the penalties otherwise prescribed by law.

The foregoing Policy is hereby adopted by the Selectboard and the treasurer of the Town of Wilmington, Vermont, this 21<sup>st</sup> day of April, 2010 and is effective as of this date until amended or repealed.

#### **Employee use of Mobile Communication Hand Held Devices Policy**

The Town of Wilmington recognizes that the use of Mobile Communication Hand Held Devices (MCD's), such as, but not limited to, hand-held cellular phones, personal digital assistants, hand-held computers, etc. while driving may present a hazard to the driver, other employees and the general public.

Therefore, it is the policy of the Town of Wilmington to prohibit employee's or volunteer's use of all forms of MCD's (except two-way radio microphones), while driving or operating Town-owned vehicles and equipment. Employees also shall not use MCD's while driving their personal vehicles for Town business. Should an employee need to make or receive a call or message while driving any

vehicle for work-related reasons, the employee should locate a safe, lawfully designated area to stop, park the vehicle and make or receive the call or message. Violation of this policy will result in discipline utilizing our disciplinary procedure.

The prohibition of MCD's as set forth above shall not apply to hands-free use; activation or deactivation of hands-free use of a securely mounted MCD; when use of the MCD is necessary to communicate with law enforcement or emergency personnel under emergency circumstances; or the use of a global positioning or navigation system if installed by the manufacturer or securely mounted in the vehicle. The Town may rely on the definitions of these terms as set forth pursuant to 23 V.S.A. § 1095b.

## **HEALTH INSURANCE**

### **Group Medical Benefit**

#### **PURPOSE**

The purpose of this policy is to describe procedures for the administration of the Town employee medical benefits program.

#### **POLICY**

The Town offers group medical coverage to its full-time employees and all eligible dependents.

#### **ELIGIBILITY**

Newly hired Town employees who are expected to work full-time are eligible to enroll themselves and their eligible dependents in the medical plan during the first sixty (60) calendar days of employment. Enrolled employees can enroll new dependents within sixty (60) days of the event making the new dependent eligible. Bona fide domestic partners and their eligible dependents are considered to be eligible dependents of Town employees.

To enroll, an employee must obtain an appropriate enrollment form, and to Add, Remove, or Cancel Insurance Coverage, from the Finance Office; complete the form and return it to the Finance Office within the time frames provided. Employees may enroll in the medical insurance program only during the first sixty (60) days of employment. If an employee fails to enroll within that period, (s)he must wait for the annual open enrollment period. Once enrolled, coverage will begin on the first day of the month following sign up.

Coverage for eligible dependents begins when the employee's coverage begins. If the employee does not enroll within sixty (60) days of employment, (s)he must wait until the next annual open enrollment period to enroll. An open enrollment period is held each year, usually during the month of November, to allow employees to add eligible dependents. Enrollment is not allowed outside the open enrollment period, except in the case of marriage, commencement of a qualified domestic partnership, childbirth or adoption, divorce, death of a spouse, or a spouse's job termination.

#### **Domestic Partners**

##### **Purpose**

The Domestic Partner Policy is designed to develop the definition of a domestic partner and identify applicable internal benefits.

## Policy

The Town acknowledges the needs of a diverse workforce and fairness in providing benefits to our employees, their dependents, their spouses and domestic partners. Therefore, domestic partners will receive the same medical benefits that are available to spouses of company employees.

### Domestic Partner Defined

Domestic partners are those individuals who meet the following criteria and affirm:

- We are each other's sole domestic partner and have been in an exclusive domestic relationship, while sharing a residence, for not less than six consecutive months prior to the submission of "Declaration of Domestic Partnership."
- We are both 18 years of age or older.
- We are both mentally competent to consent to a contract.
- Neither one of us is legally married to anyone.
- We are not related by blood closer than would bar marriage under Vermont state law.
- We have agreed between ourselves to be responsible for each other's welfare.
- We are jointly responsible for each other's common welfare and shared financial obligations.
- We intend to continue the domestic partner relationship indefinitely, with the understanding that the relationship can be terminated at any time by either partner.

### Procedure

Employees who wish to apply for domestic partner benefits must complete a Declaration of Domestic Partnership form. A copy of the form is kept by the Finance Office, as a medical record; the original Declaration is forwarded and attached to an appropriate medical Group Application and Change Form. The employee and the domestic partner will both be furnished a copy of the Declaration of Domestic Partnership for their records.

In general, the employee and domestic partner understand they might be required to produce documentary evidence to support this application and any information required for medical coverage. The employee understands that the required declaration and information contained in it will be maintained by the Town as a confidential personnel document, and shall not be disclosed in the absence of the employee's written consent except as necessary to provide and administer benefits coverage or otherwise as required by law. The employee agrees to notify the Finance Office, within 30 calendar days after termination of this domestic partnership.

A copy of the Domestic Partnership will be kept on file indefinitely with the Finance Office and will be deemed effective until one of the following occurs:

- The employee changes the partner designation by completing a new Declaration of Domestic Partnership and returns the new form to the Finance Office

The employee requests removal of the document and will notify the Finance Office in writing (email is acceptable) regarding the termination of domestic partnership. Benefits coverage for the domestic partner and his or her dependents will terminate at the end of the month in which the relationship ended.

#### Children of a Domestic Partner

An employee may obtain medical benefits coverage for the child of his or her domestic partner provided all of the following criteria are met:

- The child otherwise meets the eligibility criteria for dependent children under the provisions of the medical benefits plan; and
- The child can be, and is, claimed as a dependent by the employee and/or domestic partner for Federal income tax deduction purposes; and
- The child resides with the employee and their domestic partner; and
- The employee and their domestic partner have agreed between themselves to be jointly responsible for the child's welfare.

**Any misrepresentations or falsification of information on an application, form or affidavit for medical benefit coverage under this policy shall result in loss of medical insurance coverage, shall be considered gross misconduct, and may result in disciplinary action up to and including dismissal.**

#### Taxation of Benefits – Extremely Important Information

*The application for benefits under this policy shall contain a statement to the effect that the Town's portion of the cost of the medical benefits for a domestic partner or domestic partner's child(ren), when the partner or child is not an "IRS qualified" dependent of such employee, will be considered as taxable income to the employee and subject to withholding tax.*

*Section 152 of the Internal Revenue Code defines a dependent as an individual who received over half of their support from the taxpayer. Generally, a dependent can be claimed on the taxpayer's Federal Income Tax return. **On the domestic partner form, if you certify that a domestic partner or domestic partner's child(ren) do not qualify as dependents under Section 152 of the IRS Code, the Town's share of the cost of providing medical coverage to them is considered by the IRS as a taxable benefit to you.** If you enroll a domestic partner on your medical insurance, your taxable wages for Federal Income Tax, Social Security, Medicare Wages and State Wages will include the Town's share of the cost of the medical coverage provided to your domestic partner.*

*The amount of taxable income added to your wages on a weekly basis for domestic partner coverage is based on the fair market value of the Town's contributions toward this coverage. This applies to both medical and dental coverage (the Town does not currently offer dental coverage). Also included would be any portion of the premium that you pay for this additional coverage that is deducted each pay period on a pre-tax basis. **Any questions about tax liability should be addressed to the employee's tax preparer or CPA.***

#### Enrollment

An employee may obtain coverage under this policy for a domestic partner and/or the child of a domestic partner during the annual Open Enrollment period as provided for by the medical plan.

## Confidentiality

The application for benefits under this Policy shall be submitted to the Town's Finance Officer and the employee understands that this application and the information in it will be maintained by the Town as a confidential personnel document and shall not be disclosed in the absence of the employee's written consent except as necessary to provide and administer benefits coverage or otherwise as required by law.

## Termination of Domestic Partnership

The employee must notify the Finance Office within 30-days after termination of a domestic partnership.

## Cobra Coverage

Domestic partners and their dependents who are not considered as "qualifying beneficiaries" under federal COBRA provisions will not be eligible to continue their coverage under COBRA after any event that would otherwise give rise to COBRA rights, such as termination of employment or the relationship. Dependents who are not COBRA qualified may be eligible for continuation coverage under the State of Vermont law. Please contact the Finance Office for more information.

## **CODE OF ETHICS**

### **Town of Wilmington CODE OF ETHICS INVESTIGATION AND ENFORCEMENT ORDINANCE**

#### **SECTION 1. AUTHORITY.**

This ordinance is adopted by the Selectboard ("Legislative Body") of Wilmington ("Municipality") under authority of 24 V.S.A. § 1997.

#### **SECTION 2. PURPOSE.**

The purpose of this ordinance is to enact procedures for the investigation of complaints that allege a municipal officer has violated Vermont's Municipal Code of Ethics and the enforcement in instances of substantiated complaints, including methods of enforcement and available remedies.

#### **SECTION 3. DEFINITIONS.**

"Designated Complaint Recipient" means the municipal officer or body designated to receive complaints alleging violations of the Municipal Code of Ethics.

"Municipal Code of Ethics" means the municipal ethics framework in Vermont established by Act 171 (H.875) of 2024.

"Municipal Ethics Complaint" means a complaint against a "Municipal Officer" or "Officer" alleging a violation of the Municipal Code of Ethics.

“Municipal Officer” or “Officer” means:

any member of a legislative body of a municipality;

any member of a quasi-judicial body of a municipality; or

any individual who holds the position of, or exercises the function of, any of the following positions in or on behalf of any municipality: advisory budget committee member; auditor;

building inspector;

cemetery commissioner;

chief administrative officer;

clerk;

collector of delinquent taxes;

department heads;

first constable;

lister or assessor;

mayor;

moderator;

planning commission member;

road commissioner;

town or city manager;

treasurer;

village or town trustee;

trustee of public funds; or

water commissioner.

“Public body” means any board, council, or commission of the Municipality, any board, council, or commission of any agency, authority, or instrumentality of the Municipality, or any committee or subcommittee of any of the foregoing boards, councils, or commissions.

#### **SECTION 4. COMPLAINTS.**

- A. Any member of the general public may make a Municipal Ethics Complaint including any person elected, appointed, or employed by the Municipality.
- B. All Municipal Ethics Complaints must be directed to the Designated Complaint Recipient.
- C. The Designated Complaint Recipient will conduct a prompt, thorough, and impartial investigation of all Municipal Ethics Complaint, and confidentiality will be protected to the extent possible.
- D. Municipal Ethics Complaints against the Designated Complaint Recipient must be directed to the Municipal Manager.
- E. No person will be adversely affected in either their volunteer or employment status with the Municipality as a result of bringing a Municipal Ethics Complaint.

#### **SECTION 5. ENFORCEMENT.**

If the Designated Complaint Recipient, or the Municipal Manager in the case of a Municipal Complaint brought against the Designated Complaint Recipient, determines that a violation of the Municipal Code of Ethics has occurred, the Municipal Manager will take immediate and appropriate

corrective action. Municipal Officers who are found to have violated the Municipal Code of Ethics may face the following disciplinary action:

**A. Enforcement Against Elected Officers.** In cases in which the Municipal Officer holds elected office, the Legislative Body may, in its discretion, take any of the following disciplinary actions against such an elected officer as it deems appropriate:

1. The Chair of the Legislative Body may meet informally with the Municipal Officer to discuss the Municipal Code of Ethics violation. This will not take place in situations where the Chair of the Legislative Body and the Municipal Officer together constitute a quorum of a public body.
2. The Legislative Body may meet to discuss the conduct of the Municipal Officer. Executive session may be used for such discussion in accordance with 1 V.S.A. § 313(a)(4). The Municipal Officer may request that this meeting occur in public. If appropriate, the Legislative Body may admonish the offending Municipal Officer in private.
3. The Legislative Body may admonish the offending Municipal Officer at an open meeting and reflect this action in the minutes of the meeting. The Municipal Officer will be given the opportunity to respond to the admonishment.
4. Upon majority vote in an open meeting, the Legislative Body may request (but not order) that the offending Municipal Officer resign from their office.

**B. Enforcement Against Appointed Officers.** In cases in which the Municipal Officer holds appointed office, the Legislative Body may choose to follow any of the steps articulated in Section 5A. In addition to, or in lieu of any of those steps, the Legislative Body may choose to, after affording the Appointed Officer adequate due process, remove an appointed Municipal Officer from office, subject to state law.

**C. Enforcement Against Employees.** In cases in which the Municipal Officer is also an employee of the Municipality, the Municipal Manager may take any disciplinary action, up to and including termination, in accordance with the Municipality's personnel policy.

## **SECTION 6. APPEALS.**

A decision of the Legislative Body may be reviewable by the Vermont Superior Court pursuant to Rule 75 of the VT Rules of Civil Procedure. An enforcement action taken against an employee may be appealed in accordance with the Municipality's personnel policy.

## **SECTION 7. OTHER LAWS.**

This ordinance is in addition to all other ordinances of the Municipality and all applicable laws of the State of Vermont. All ordinances or parts of ordinances, resolutions, regulations, policies, or other documents inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 8. SEVERABILITY.** If any section of this ordinance is held by a court of competent jurisdiction to be invalid, such finding will not invalidate any other part of this ordinance. If any statute referred to in this ordinance is amended, this ordinance will be deemed to refer to such amended statute.

**SECTION 9. EFFECTIVE DATE.** This ordinance will become effective sixty (60) days after its adoption by the Legislative Body. If a petition is filed under 24 V.S.A. § 1973, that statute will govern the taking effect of this ordinance.

**Where can I get copies of this policy?**

A copy of this policy will be provided to every employee, and extra copies will be available in the town manager's office. This policy will also be posted on the official website of the town.

Reasonable accommodations will be provided for persons with disabilities needing assistance in filing or pursuing a complaint of harassment, upon advance request.

# VT Code of Ethics: Gifts



The Code of Ethics prohibits State of Vermont public servants from soliciting or accepting gifts.

**What is a gift? A gift is anything you didn't pay full value for.**

## Can I ever accept a gift?

Yes, you can accept a gift if it meets one of the below [3 V.S.A. § 1203g](#) gift exceptions.

### **The gift is of “de minimis” value.**

- If a gift is valued at less than \$50 per occasion, and less than \$150 per year per source, you can most likely accept it.

### **Gifts related to your official duties.**

- Admission fees/tickets to an event where you are participating in your official capacity;
- A gift to the State, for official, not personal, use;
- Printed or recorded material for use in your State duties;
- Free or reduced cost training or education that is in the best interest of your agency.

### **Gifts of food or beverage, if:**

- The food/beverage is **incidental to a legitimate state function**, or;
- The food/beverage is **served at a charitable, civic, political, or cultural event** you attend in your official capacity, or;
- The food/beverage is valued at **\$100 or less per year, per source** and the person paying for the food/beverage is there with you.

### **Gifts based on a personal or employment relationship.**

- An inheritance;
- Personal gifts from family or bona fide friends;
- Gifts between public servants, if normal and customary (such as holiday gifts);
- Gifts from a supervisor to a supervisee must be valued at less than \$100 per occasion, and less than \$200 per year.
- Gifts from an outside employer (if typically given to other employees).

### **Gifts available to the general public or a defined subset of the population.**

- Rebates, discounts, and promotions that are offered to everyone;
- Loans made at a commercially reasonable rate, made on terms not more favorable than loans made in the ordinary course of business;
- Ceremonial Awards, such as a plaque, valued at less than \$100.

**\* If a gift does not meet one of the above exceptions, it is likely not a legally permissible gift \***

*Not sure what to do?  
CONTACT THE ETHICS  
COMMISSION FOR ADVICE*

#### **Vermont State Ethics Commission**

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Approved by the Wilmington Selectboard on February 3, 2026



Thomas Fitzgerald



Vince Rice



Tony Tribuno



Charlie Foster



John Lebron