

Town of Windham

PERSONNEL POLICY HANDBOOK

(with changes through January 12, 2021)

DATE ISSUED :

JOB TITLE :

DEPARTMENT :

SUPERVISOR :

DEPARTMENT HEAD :

This handbook is **not** an employment contract. Employees retain the right to voluntarily leave employment at any time, and the Town retains the right to repeal, modify or amend these policies at any time, with or without notice. None of these provisions shall be deemed to create a vested contractual right in any employee nor to limit the power of the Town Manager or Town Council to repeal or modify these rules. The policies are not to be interpreted as promises of specific treatment.

These personnel policies shall apply to all Town employees not covered by a collective bargaining agreement unless specifically provided otherwise. The personnel policies set forth here do not apply to Town Council appointments or elected Town officials, unless so specified and affirmed by the Town Council.

RECEIVED BY :

Employee Signature

DISTRIBUTION : **Employee**
Employee Personnel File

**ARTICLE I
PREAMBLE**

**Section 1
PURPOSE.**

The general purpose of this policy is to provide a system of personnel administration that meets the social, economic and program needs of the Town of Windham. This policy provides means to recruit, select, develop and maintain an effective and responsive work force and includes policies and procedures for employee hiring and advancement, training and career development, job classification, salary administration, retirement, fringe benefits, discipline and other related activities.

**Section 2
CONSTRUCTION.**

The provisions set forth in these policies shall not be deemed to create a vested contractual right in any employee nor to limit the power of the Town Manager or Town Council to amend, modify, repeal, or administer these rules. The policies are not to be interpreted as promises of specific treatment.

**Section 3
ORGANIZATION, AUTHORITY, AND ADMINISTRATION.**

A. The Town Council may, under Article III of the Charter, adopt, modify, amend or repeal these policies at any time with or without notice.

B. In accordance with Article III of the Charter the Town Manager, or designee, shall have the responsibility for administering the personnel system set forth by these rules and regulations.

C. The Town Manager may receive suggestions from individual Town employees, groups of employees or representatives of Town employees concerning matters of personnel policy, and give due consideration to the views of employees on matters within the Town Manager's discretion.

**Section 4
EFFECTIVE DATE.**

These policies shall take effect immediately upon their adoption by the Town Council and shall supersede any and all previous personnel policies. [*Policies administered effective December 1, 1997 in order to provide for distribution and discussion with employees.*]

ARTICLE II EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the Town of Windham;

A. to comply with all aspects of the Americans with Disabilities Act (ADA) of 1990, as well as applicable Maine laws with regard to employment and accessibility of services, facilities, programs and accommodations; accordingly, the Town does not discriminate against an individual with disabilities with respect to all aspects of the application process and employment, nor to the admission, access, or treatment of the public in its programs or activities.

B. to employ those applicants who possess the necessary skills, education, and experience and will promote, upgrade, transfer or demote without regard to race, color, religion, creed, age, sex, national origin or ancestry, marital status or physical/mental handicap.

C. to recruit, advertise, solicit for employment or select for training without regard to race, color, religion, creed, age, sex, national origin or ancestry, marital or military status or physical/mental handicap.

D. to establish rates of pay, terms and conditions of employment and privileges of employment without regard to race, color, religion, creed, age, sex, national origin or ancestry, marital or military status or physical/mental handicap.

E. to maintain a working environment free from all forms of sexual harassment or intimidation. Sexual harassment is a serious violation of these policies and is also a violation of Title VII of the Civil Rights Act which will result in disciplinary action, and may result in legal action.

1. Sexual harassment is defined by the Equal Employment Opportunity Commission (EEOC) as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when such conduct affects the employment process, interferes with an individual's performance, or creates an intimidating, hostile or offensive working environment.

2. Employee conduct, whether intentional or unintentional, which results in sexual harassment is viewed as illegal discrimination by the EEOC and will result in prompt disciplinary action up to and including termination of employment.

3. Employees are responsible for reporting immediately any instance of sexual harassment to their supervisor or, if their supervisor is involved in the alleged harassment, to any supervisor.

ARTICLE III DEFINITIONS

Administrative leave: Involuntary temporary removal, with pay, from the performance of any and all duties and functions associated with an employee's position, as well as any other position for which the employee is qualified, due to accusations of a crime or other offense which would materially and negatively affect the employee's ability to perform the duties of his/her position

Appeal: A request to a higher authority for review of and relief from disciplinary action imposed by a lower authority.

Base Pay: An employee's stated hourly rate, weekly, bi-weekly, or annual salary exclusive of any and all additional stipends, shift differentials, bonuses, or incentive pay (such as for longevity or educational achievement), except those required by the Fair Labor Standards Act (FLSA).

Call employees: Employees who work primarily on an as-needed call-for-service basis, without benefit of any regularly defined schedule, such as call fire or rescue personnel.

Demotion: Involuntary reduction of grade, position, and pay under the town's classification and compensation plan.

Exempt: Employee positions that are executive, administrative or professional as defined in the Fair Labor Standards Act (see FLSA).

FLSA: the federal Fair Labor Standards Act, as amended.

Grievance: Any complaint or dispute brought forward by an employee which arises from the application of these policies, other than a disciplinary action (see appeal).

Non-exempt: Employees who are in positions which do not qualify for the executive, administrative, or professional exemptions under FLSA.

Occasional part time: Employee who works less than 30 hours/week, on average during any consecutive twelve (12) calendar months, and does not work according to a regularly recurring, defined schedule, and who has completed the six (6) month probation period.

Regular full time: Employee who works 30 hours or more per week on a year-round basis according to a regularly recurring, defined schedule, and who has completed the six (6) month probation period.

Regular part time: Employee who works less than 30 hours/week on a year-round basis according to a regularly recurring, defined schedule, and who has completed the six (6) month probation period.

Seasonal: Employee who may or may not work a specified number of hours per week but who is employed as part of seasonal operations, and whose employment will normally end at the conclusion of those seasonal operations during any given year.

Suspension: Involuntary temporary removal, without pay, due to a violation of these policies by the employee, from the performance of any and all duties and functions associated with an employee's position, as well as any other position for which the employee may be qualified.

Temporary: Employee who may or may not work a specified number of hours per week but who is employed on a short term basis at the discretion of the Town, usually for a specified term or project not associated with seasonal operations.

Work Day: The period of twenty-four (24) consecutive hours beginning at midnight during which an employee is scheduled, or would ordinarily be scheduled, to work.

Work Week: The regular, recurring period of days over which the employee's work hours are scheduled.

ARTICLE IV EMPLOYMENT

Section 1 AUTHORITY.

The Town Manager, or designee, in accordance with Article III, Section 2(A)(1) of the Charter shall be responsible for the employment of all personnel, except as otherwise provided by statute or the Charter.

Section 2 RECRUITMENT.

The recruitment process for the Town of Windham will vary with the position. Recruitment may include local, regional and national advertising, job postings, open examinations, employment agencies, interviews, background and reference checks. The policy of the Town will be to carry out as extensive a search as time permits and as the qualifications for the position may make necessary.

Applicants may be required to submit to various employment tests before employment. Other than for positions governed by law or regulations, there is no arbitrary age limit below or beyond which applicants will be employed, providing they are qualified to perform the work required.

Section 3 JOB POSTINGS.

Job openings will be posted in each department or building concurrent with advertising for outside candidates. The application period from the date the advertisement first appears and the deadline for receipt of applications should be not less than seven (7) calendar days. Selections will be made based on skill, ability, and merit. Employees who wish to apply for an open position should watch for posted openings and notify the department hiring for the position of their interest.

Section 4 PROBATION PERIOD.

Employment with the Town is probationary for the first six (6) months, and may be terminated at any time during this period without cause. During this time employees will receive full pay for hours worked. After thirty (30) days probationary employees will be eligible for paid holidays. Probationary employees will be evaluated by supervisors before the end of the first six (6) months of employment.

At least ten (10) days prior to completion of the six (6) month probation period, the Department Head shall notify the Town Manager whether continued employment is

recommended. Following completion of the probation period, employees shall be granted regular status under the meaning of these policies.

Section 5 PROMOTIONS.

A. Wage/salary increases may be awarded when an employee progresses from a lower graded position to a higher graded position.

B. Employees promoted into the minimum wage of a pay grade will be eligible for performance-based wage increases on the same schedule outlined in the Performance Review section.

C. Promotions will be provisional for the first six (6) months. During this time, the employee may be returned to the position and rate held immediately prior to promotion without cause, to the extent that such an opening exists. Nothing in this policy shall be construed as a guarantee of return to a former position upon the unsuccessful conclusion of a provisional promotion. Employees with provisional promotions will be evaluated by supervisors before the end of the first six (6) months in the new position.

D. In all cases of promotions, the employee's review cycle will change to the start date in the new position. For purposes of calculating seniority and benefits, the employee's actual hire date is used.

E. Recommended promotions will be reviewed by the Town Manager to ensure the employee is placed in the appropriate pay range for the new position based on prior service, and expertise from previous work experience.

Section 6 DEMOTION.

When an employee is demoted, not for cause (such as a reduction in force), to a position for which they are qualified, they shall receive the rate in the lower pay range which provides the smallest possible decrease in pay. If the demotion is for cause, the Department Head may recommend that the Town Manager approve a lower step in the pay range.

Section 7 ANTI -NEPOTISM.

Unless the Town Manager shall, following the recommendations of the Department Head, determine that the best interests of the Town would be served, the following relatives of any elected or appointed officers or other Town employee in the competitive service are disqualified from employment within the same department: son, daughter, spouse, parent, grandchild, grandparent, brother, sister, half brother, half sister, or the spouses of any of them. All relationships shall include those arising from adoption.

ARTICLE V COMPENSATION

Section 1 PAY PLAN.

The Town Manager shall propose annually a Pay Plan which shall be presented for approval and adoption by the Town Council. A copy of the pay scales and position classification schedule is attached as an illustration.

Section 2 INITIAL STARTING RATE.

The initial starting rate for all new employees will be at the minimum rate of the position grade. The Department Head and the Town Manager may use their discretion to hire at a rate higher than the minimum rate for the position grade. Employees currently in the same position grade receiving a lower rate of pay may receive an adjustment in pay to the rate established for the new employee.

Section 3 REHIRE COMPENSATION.

Any former employee of the Town who is subsequently rehired within one (1) year from the original date of separation shall start at the rate of pay at the time of the original separation date. Advancement in position grade shall follow the normal policy for advancement/performance reviews. The rehire date shall be the date used for performance review cycle.

Section 4 MILITARY DUTY COMPENSATION.

Any employee who is required to serve in the Armed Forces of the United States and is subsequently reinstated in the position previously held, will be entitled to the rate of compensation at the level in the position grade had service with the Town not been interrupted.

Section 5 OVERTIME.

All hours worked by non-exempt employees, in excess of forty (40) hours per week shall be paid at the rate of one and one-half times regular base pay for each hour of overtime worked. Time worked on Thanksgiving Day and Christmas Day shall be paid at the rate of twice regular base pay in addition to holiday pay. Vacation and holiday hours shall be included as hours worked for the purpose of calculating overtime. No other forms of paid leave shall be counted as hours worked.

During the period November 1 to the following March 31, all hours worked by hourly employees of the Public Works Department outside the regular work schedule, or other schedule as established by the department head and/or Town Manager pursuant to Article VII, Section 5 of these policies, or when called in to work, shall be paid at the rate of one and one-half times regular base pay for each hour worked.

Section 6
PERFORMANCE-BASED PAY SYSTEM.

Paragraph A., as follows, shall be in effect until June 30, 2000.

A. Wage Adjustment Eligibility. Wage adjustments within the compensation plan established under Article V, Section 1 shall be based upon the results of a performance evaluation as outlined under the provisions of the following sections.

Paragraph A., as follows, shall take effect on July 1, 2000.

A. Wage Adjustment Eligibility. Wage adjustments within the compensation plan established under Article V, Section 1 shall be based upon the results of a performance evaluation as outlined under the provisions of the following sections.

1. Base Wage Adjustment. The base wage adjustment, or amount by which the pay plan is indexed, or adjusted, as a whole, as established by the Town Manager or Town Council before July 1 of each fiscal year, shall be granted to employees receiving base evaluation scores of eight (8) or higher on the evaluation form, an example of which is attached at Appendix C.

2. Merit Wage Adjustment. For each evaluation point under Part I of the evaluation for which the employee receives a mark in the "Exceeds Requirements" column, and the evaluator provides comments or other explanation for each such mark, the employee shall be awarded a merit wage adjustment, as established by the Town Manager or Town Council before July 1 of each fiscal year.

For each evaluation point under Part I of the evaluation for which the employee receives a mark in the "Does Not Meet Requirements" column, that point shall be subtracted from the "Exceeds Requirements" marks to arrive at the final merit wage adjustment.

The merit wage adjustment shall be added to the base wage adjustment to arrive at the total wage adjustment awarded as a result of the annual evaluation.

B. Effective Date of Wage Adjustment. The effective date of any wage adjustment under this part shall be the beginning of the first pay period of the month in which the employee was hired or promoted to the position currently held.

C. Evaluation. Annual evaluations of each employee's performance will be done by the employee's supervisor(s) on the appropriate form. Forms are attached to this policy as illustrations.

1. Objectives. Each employee shall participate in a review of individual job performance not more than thirty (30) days before the month and day in which the employee was hired or promoted to the position currently held. The performance evaluation shall be performed for the following purposes:

a. to provide employees with knowledge of job performance, and the opportunity and means to improve job performance.

b. to provide management with the means of recognizing superior employee job performance and providing guidance for improvement in job performance.

c. to provide an equitable basis for determining compensation rates within the salary scale(s).

2. Procedure.

a. Evaluation Session. At the evaluation session, the employee and the supervisor shall discuss the employee's performance as evaluated by the supervisor. The ratings provided by the supervisor for each of the criteria will become part of the completed evaluation form.

b. Confirmation. At the conclusion of the evaluation session, the supervisor and the employee shall sign the completed evaluation form, confirming that discussion of the evaluation has taken place.

c. Appeal of Evaluation. If the employee feels that the completed evaluation amounts to an unfair or inaccurate appraisal of job performance, the employee may appeal the content of the performance evaluation to the Department Head in accordance with the Grievance Procedure under Article XI.

Section 7
SPECIAL MERIT/SALARY ADVANCEMENT.

At the recommendation of the Department Head to the Town Manager, an out of sequence merit increase may be granted, and may be awarded as a one-time lump-sum payment or as an addition to the employee's base pay. Out of sequence merit increases shall be based on exceptional performance of duties over and above the normal expected performance. Recommendations for an out of sequence merit increase must be submitted to the Town Manager with the appropriate justification for the Town Manager's approval. An out of sequence merit increase does not change the employee's normal performance review dates.

ARTICLE VI BENEFITS

Section 1 ELIGIBILITY .

Employees shall be eligible, according to the type of their appointment as defined under Article III, to receive the benefits established in these policies according to the following summary schedule:

Benefit	Reg Full Time	Reg Part Time	Temp	Seas	See Policy Article-Section
Bereavement Leave	Y	Y	N	N	VI-7
Medical/Dental Insurance ²	Y	N	N	N	VI-14(A)
Medical Waiver Reimbursement	Y	N	N	N	VI-14(B)
Educational Assistance	Y	N	N	N	VI-11
Holiday Pay ¹	Y	Y	N	N	VI-2
Jury Duty ¹	Y	Y	N	N	VI-9
Leave of Absence	Y	Y	N	N	VI-10
Life Insurance ²	Y	N	N	N	VI-16
Overtime ³	Y	Y	Y	Y	V-5
Retirement (ICMA 457)	Y	Y	N	N	VI-18
Short Term Disability ²	Y	N	N	N	VI-13
Long Term Disability ²	Y	N	N	N	VI-13
Sick Pay ¹	Y	Y	N	N	VI-3
Vacation Pay ¹	Y	Y	N	N	VI-4

¹These benefits will be paid to regular part-time employees according to the number of hours they are or would be regularly scheduled to work.

²These benefits will be prorated for regular part-time employees according to the number of hours regularly scheduled to be worked per week from thirty (30) up to but not including forty (40) hours per week, in addition to those marked (¹). [*effective July 1, 1998*]

Regular Hours	Formula for Proration
0-30	not applicable
>30-40	(# of hours/40) x accrual or contribution rate

³Exempt employees are not eligible to be paid overtime.

Note: Occasional and per diem employees shall have the same benefit eligibility status as temporary and seasonal employees.

Section 2 HOLIDAYS.

Paid holidays shall be as follows:

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Veteran's Day
President's Day	Columbus Day
Patriots' Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Fourth of July	Christmas Day

When a holiday falls on a Sunday, the following Monday shall be observed. When the holiday falls on a Saturday, the preceding Friday shall be observed.

Probationary employees who have been employed for at least thirty (30) days shall receive their regular base pay for an official holiday.

Holidays shall be observed on the same day as observed by the State of Maine.

Regular part-time employees scheduled to work on a day observed as a holiday, will be paid for the number of hours normally worked, or scheduled to be worked, on that particular day of the week.

Regular full-time or part-time employees required to work on holidays will receive holiday pay in addition to regular wages at time and one-half for time worked, except for Christmas and Thanksgiving when they will receive holiday pay in addition to double their regular wages. For purposes of this section, the day paid will be the day observed by the State of Maine rather than the actual holiday.

Section 3 SICK LEAVE.

Purpose of sick leave.

Paid sick leave is available to Regular Full-time and Regular Part-time employees. It is designed to provide an employee with income protection in the event of a major medical problem. Sick leave is available to be used only for the purposes specified and abuse of sick leave is grounds for disciplinary action.

Accrual of sick leave.

Regular full-time employees are granted 3.6923 hours of paid sick leave per bi-weekly pay period. This amount is pro-rated for employees who work 30 but less than 40 hours per week. As of September 10, 2019 no employee may accumulate more than seven

hundred and twenty (720) hours. Those employees who currently have sick leave in excess of the maximum accrual will be paid for 50% of those hours that exceed 720 hours at their current rate of pay.¹

Use of sick leave.

Sick leave will be counted as Family Medical Leave, if and to the extent the circumstances qualify it as such under Maine state law² or Federal law³.

Sick leave may be used only in the following instances:

- Personal illness or physical incapacity of such a degree as to render the employee unable to perform the work of the assigned position or other work in the department, or for the employee's medical or dental appointments.
- Providing necessary care to a member of the employee's "immediate family" who are living in the employee's household who is seriously ill.

For purposes of this subparagraph, "immediate family" shall mean parent, mother-in-law, father-in-law, spouse, domestic partner, child, stepparent, or stepchild.

Employees may use accrued sick leave when taking Family Medical Leave because of their own serious illness, or the serious illness of a parent, spouse, child or family member engaged in active military service, in accordance with provisions of the Family Medical Leave Act. See Section 7 of the Policy Manual ("Family Medical Leave Act Policy").

An employee who is unable to work because of the reasons stated above shall notify his or her Department Head, or designee, as promptly as possible of the employee's intent to utilize sick leave.

Absence for a fraction of a day that is chargeable to sick leave is charged proportionately in the amount of time taken.

The Town has the right to request written certification from an employee's attending physician that the employee's absence was necessary due to illness or injury, and/or that the employee may return to work without jeopardizing his own or others' health and safety.

Misuse or abuse of sick leave may be grounds for disciplinary action. Payment for unused sick leave.

Payment for unused sick leave.

Employees leaving Town service shall be paid for accumulated sick leave in accordance with this section.

¹ The only exception would be for those exempt employees who are eligible for, and who commit to, contributing to the Retirement Health Savings (RHS) Account upon separation from service.

² 26 MRSA §§843-849

³ 29 CFR §825

An employee with at least five year's continuous employment with the Town who resigns or retires from Town service and who provides at least two (2) weeks' notice to the Department Head and the Human Resources Director, shall receive payment for one-half of accrued sick leave, up to a maximum of 360 hours.

If an employee passes while in Town service, including while being on authorized leave, the Town shall make payment to the employee's estate of one-half of accrued sick leave, up to a maximum of 360 hours.

An employee who is laid off will receive pay for accrued but unused sick leave in accordance with the above of one-half of accrued sick leave, up to a maximum of 360 hours.

No payments will be made under this provision to any employee who is discharged for misconduct.

Section 4 **Earned Paid Leave⁴**

Accrual

Earned Paid Leave (EPL) privileges are available as they are earned to all non-union regular full-time and regular part-time employees working thirty hours or more per week. Each employee shall earn EPL with pay on the following basis:

- (a) **3.0769** EPL hours shall be earned per pay period from the regular date of hire until the sixth (6) anniversary is reached.
- (b) **4.6154** EPL hours shall be earned per pay period from the sixth (6) anniversary of their regular date of hire until they reach their eleventh (11) anniversary.
- (c) **6.1538** EPL hours shall be earned per pay period from the eleventh (11) anniversary of their regular date of hire going forward.

All non-union regular full-time and regular part-time employees working thirty hours or more per week may accrue up to twice the applicable annual accrual rate.

Per-diem employees and employees working less than thirty (30) hours per week shall earn EPL pay on the following basis:

- a) One (1.0) hour shall be accrued per every forty (40) hours worked up to a maximum of forty (40) hours.
- b) Any unused EPL may carryover into the next year, but the maximum benefit remains at forty (40) hours and in no event may an employee have more than forty (40) hours available in a one year period.

Exceptions

⁴ Formerly known as "vacation time"

The following are not entitled to EPL:

- (a) Seasonal summer staff (June 15 to September 15); and
- (b) Election workers earning less than \$1,000 in a calendar year.

Scheduling of Earned Paid Leave

- (a) Absent an emergency, illness, or sudden necessity, employees must give reasonable notice (at least four (4) weeks) to the employee's supervisor of the intent to use paid leave. Employees must schedule leave to prevent undue hardship on the Town.⁵
- (b) Holidays which fall within a full-time employee's scheduled EPL shall be paid as holiday hours and shall not be charged against the employee's accrued EPL.
- (c) Per-diem employees taking EPL are not eligible for other hours worked – e.g. training sessions, responding to calls, and/or putting in for an open shift.

Use of EPL Leave

Accumulated EPL may be utilized for any reason.

Termination

- (a) Accrued, unused, and unpaid EPL shall be paid as part of final pay upon termination of employment, subject to final withholding by the Town.
- (b) Accrued EPL leave shall be paid to an employee's estate upon the death of the employee.

Section 5 MILEAGE AND EXPENSES.

Employees required to drive personal vehicles for approved, legitimate municipal purposes shall be reimbursed by the Town at a mileage rate set by Council Order (22¢ per mile for all mileage until June 30, 2006; 37.5¢ per mile for all mileage on or after July 1, 2006 per Council order 06-65 on May 23, 2006, at the prevailing IRS rate effective July 1, 2012 per Council order 12-087 on June 25, 2012). Other reasonable expenses will also be reimbursed; however, requests for reimbursement must be approved by the employee's Department Head or the Town Manager, and must be accompanied by receipts. Expenses for travel and lodging must be approved in advance.

Section 6 FAMILY MEDICAL LEAVE.

⁵ Undue hardship is defined as an unreasonable or disproportionate burden on other employees.

Please refer to the Family and Medical Leave Act Policy approved by Council order 16-106 on June 28, 2016.

**Section 7
BEREAVEMENT LEAVE .**

The purpose of bereavement leave is to attend funerals or memorial services, making arrangements for such services, attending burials, or attending to family as a result of a death. Leave with pay shall be granted to regular full and part-time employees for up to three (3) days, not necessarily consecutively but reasonably proximate to the death, funeral, memorial service, burial, or other similar event, upon the death of a parent, spouse, brother, sister, child, grandparent, mother-in-law, father-in-law, brother-in-law, sister-in-law or any other person who has lived in the employee's household. Special consideration may be made by the Town Manager when exceptional or unusual circumstances are a factor. Leave may be granted at the discretion of the Town Manager to attend the funeral of a distant relative or friend.

**Section 8
RESERVE SERVICE LEAVE.**

Regular full and part-time employees who are members of the organized military reserves and who are required to perform field duty will be granted reserve service leave in addition to vacation leave, but not to exceed ten (10) working days in any calendar year. For any such period of reserve service leave, excluding weekend duty, the Town will pay the employee the balance between service pay and allowances and the employee's regular daily compensation, the total equaling the regular pay of the employee had they been in the service of the Town during the period of leave, provided that the employee on reserve service leave furnishes their Department Head an official statement by military authorities giving their rank, pay and allowances.

**Section 9
JURY AND WITNESS DUTY.**

The Town recognizes that everyone has a civic responsibility to perform when called for jury duty, or to serve as a witness as a result of their employment. The Town will pay the regular rate of pay to an employee while on jury or witness duty. The employee shall reimburse the Town by surrendering all jury pay to the Town immediately upon its receipt. It is expected that employees will report to work each day and perform their regular duties during established working hours, except for the time actually engaged in jury service or in transportation to or from the place of jury service.

Any Town designated Holiday falling during the employee's absence due to jury or witness duty shall be paid.

**Section 10
LEAVE OF ABSENCE.**

A. Regular full time and part-time employees may be granted a leave of absence without pay by the Town Manager upon written recommendation of the Department Head concerned. Such leave of absence without pay shall not exceed one (1) year in length and shall only be granted when it appears because of the past record of the employee or because of the purpose for which the leave is requested that it is in the best interest of the Town to grant the leave.

B. All benefits and seniority for the purpose of figuring performance reviews and benefit allowances shall cease during a leave of absence. However, insurance benefits may be continued at the employee's expense. Time spent on leave of absence will not be included when computing length of service. Failure on the part of the employee to return to work upon expiration of granted leave without having arranged for an extension of the leave may be deemed a resignation.

**Section 11
EDUCATIONAL ASSISTANCE.**

A. The Town may reimburse regular full and part-time employees, who have been employed by the Town for at least six (6) months, for up to two (2) job related college or technical school courses per year, to the extent funding has been requested and made available in any fiscal year.

B. Reimbursement is based on a final grade of 'B-,' 'passed,' or better.

C. Reimbursements are for registration and course costs only. The cost of time, travel, books and other materials is not included.

D. Requests for educational assistance must be approved and signed by the Department Head and Town Manager. ALL APPROVALS MUST BE RECEIVED PRIOR TO ENROLLMENT.

E. Probationary employees are not eligible to receive educational assistance.

F. If an employee leaves employment of the Town of Windham prior to completion of a course, any outstanding agreements are not binding upon the Town, and any educational assistance reimbursements made within the past twelve (12) months are to be reimbursed to the Town through a deduction of net pay from an employee's final pay check.

G. Employees will be reimbursed for courses upon submission of the following to the Town Manager:

1. copy of invoice, canceled check or proof of payment,
2. grade transcript.

H. Reimbursement will not be paid unless all information is received within three (3) months from completion of the course. The Town will not prepay for any courses.

J. This program covers only costs not recoverable against the "GI Bill Benefits". The Town will not provide "double coverage" if you are receiving assistance under the GI Bill or from any other source.

Section 12 PROFESSIONAL AND EMPLOYEE DEVELOPMENT.

At a Department Head's request, employees may be encouraged to attend a seminar, workshop, professional meeting, or formal course to assist them in their job. The Town will bear the cost of registration, travel, meals, and lodging for any such requested education.

Section 13 DISABILITY INSURANCE.

The Town makes available short term disability income protection and long term disability insurance after a one (1) month waiting period from the employee's date of hire or effective date of full-time status. Employees pay the full cost of this benefit. For more information regarding short term disability, contact the Finance Director.

Section 14 HEALTH INSURANCE.

A. All regular full-time employees are eligible for health insurance after completion of thirty (30) days of employment, which takes effect on the first day of the second month following the date of employment. Health insurance is paid by the Town and subject to a cap set annually by the Town Council. Monthly premiums not covered by the Town will be deducted bi-weekly from the employee's paycheck.

B. Employees who elect not to enroll in the health insurance plan are eligible for a forty percent (40%) reimbursement of the premium eligibility. Employees who do not choose to enroll in the health insurance plan must show proof that they are covered by another health insurance policy. Payment of the forty percent (40%) premium reimbursement will be done on a biweekly basis and included in the employee's regular pay check. In the event an employee wishes to enroll in the Town insurance plan at a later date, they are required to show proof of insurability/good health.

**Section 15
DENTAL INSURANCE.**

All regular full-time employees are eligible for dental insurance after completion of thirty (30) days of employment, which takes effect on the first day of the second month following the date of employment. Dental insurance premiums for employees are paid by the Town. Employees may purchase family dental coverage and pay for it through payroll deduction.

**Section 16
LIFE INSURANCE.**

Regular full-time employees who enroll in the health insurance program are provided life insurance in the amount of one times (1x) their annual salary, which takes effect on the first day of the second month following the date of employment. This insurance is provided at no additional cost to the employee. Employees who do not elect to enroll in the health insurance program are not eligible for paid life insurance, however, they may choose to purchase life insurance benefits through payroll deduction.

**Section 17
LONGEVITY BONUS.**

On the date of the first payroll following November 1st of each year, employees who work over thirty (30) hours per week and have completed twelve (12) years or more of service on or before November 1st shall receive a longevity bonus. For purposes of this section, time served shall be calculated beginning with the employee's original date of hire. This bonus will be paid following a satisfactory evaluation and the recommendation of the appropriate Department Head and Town Manager. The total amount of the bonus will be paid in accordance with the following schedule:

<u>YEARS OF SERVICE</u>	<u>AMOUNT OF ANNUAL BONUS</u>
12 Years to and including 14 years	\$500
15 Years to and including 19 years	\$750
20 or More Years	\$1,000 plus \$100 per year for Each year completed over twenty

**Section 18
RETIREMENT PLAN.**

A. The Town of Windham provides for an optional deferred compensation retirement programs for all full and some part-time employees as defined below.

1. Regular employees working at least twenty (20) hours per week are eligible to participate in the Towns' deferred compensation plan, which is a defined contribution plan under Section 457 of the Internal Revenue Code.

2. The plan allows qualified employees to authorize the Town to withhold portions of their wages on a pre-tax and/or post-tax basis and to forward such funds to the appropriate plan administrators for investment. The earnings on these investments are not subject to current state or federal taxes. However, any pre-tax investments and all earnings are subject to state and federal taxes upon withdrawal⁶.
3. The Town's Deferred Compensation Plans are governed by the Deferred Compensation Plan documents, Personnel Policies and administrative practices, all or any of which may be amended from time to time by the Town Council, and by Federal law. Copies of Plan Documents are available from the Human Resources Department.
4. Upon hire, the Town will match, up to 6%, employee contributions to the deferred compensation plans, as allowable under those plans.
5. Each employee participating in a deferred compensation plan decides how much to contribute each year, providing that the contributions of the employee do not exceed the maximum dollar limit as allowed by IRS code and adjusted periodically by the Secretary of the Treasury.
6. Employees working less than twenty (20) hours per week may contribute to the 457 deferred compensation plan but will receive no employer match.
7. Call fire or rescue personnel may participate in the plan, but shall not be eligible for any matching contributions by the Town.

**Section 19
COMPENSATORY TIME FOR NON-EXEMPT EMPLOYEES.**

Effective January 1, 1998 non-exempt employees shall not be eligible to accumulate compensatory time in lieu of overtime pay. Compensatory time accumulated by non-exempt employees under predecessor policies must be used before April 1, 1998.

**Section 20
DISCRETIONARY TIME FOR EXEMPT EMPLOYEES.**

A. Effective January 1, 1998 exempt employees shall not be eligible to accumulate compensatory time. Compensatory time accumulated by exempt employees under predecessor policies must be used before April 1, 1998.

B. Department heads and other FLSA-exempt employees occupy positions of responsibility, accountability, and discretion. They may be required to work outside the normal schedule of working or office hours and are compensated, in part, on the basis of accomplishing the tasks demanded of the position without regard for the specific number of hours worked. They are also expected to be accountable for their time, be available to the public and other staff, and generally to conform with normal operating hours. Exempt employees may take discretionary time off without charging such time off to sick or vacation leave:

⁶ The Roth Retirement Account requires contributions after tax and therefore is not subject to taxes upon withdrawal.

1. when it does not interfere with the operations of their department or office,
2. when there are no other priorities which should be completed which, if not completed, might interfere with the operations of another department, and
3. for absences of more than one-half a work day, when the employee receives the permission of his/her department head; or, in the case of department heads, the Town Manager.

C. Absences of less than one-half day may be taken at the discretion of the employee, subject to the review of the department head; or, in the case of department heads, the Town Manager.

**Section 21
WORKER'S COMPENSATION.**

Please refer to the Work Related Injury Policy approved by Council order 16-107 on June 28, 2016.

ARTICLE VII - GENERAL POLICIES

Section 1 TRAINING.

Both the Town and its employees profit from the provisions of educational training opportunities reasonably related to employee positions for which provision has been made in the budget. It shall be the responsibility of the Department Heads and Town Manager to provide to Town employees reasonable opportunities for such in-service training and attendance at schools or conferences as will improve quality of performance and bring about more efficient and more effective operation.

Section 2 PRE-EMPLOYMENT PHYSICAL/DRUG SCREENING.

As a condition of employment, the Town may require a physical examination including a drug screening by a physician of the Town's choice and at the expense of the Town.

Section 3 SMOKING.

It is the policy of the Town of Windham to provide a safe and healthful place of business for Town employees and citizens. In accordance with Maine's "Workplace Smoking Act of 1995", smoking is prohibited within Town-owned buildings including offices, hallways, waiting rooms, rest rooms, lunchrooms, meeting rooms and all community areas. Smoking is prohibited in municipal vehicles. This policy applies to all employees and visitors. Smoking is allowed only in designated areas outside buildings.

Section 4 SEATBELT USE.

In order to ensure the safety of employees and passengers traveling in municipal vehicles, occupants are to wear seat belts whenever vehicles are in operation unless a) Emergency Medical Service personnel are providing medical care during a transport or b) the vehicle is not equipped with seat belts.

Section 5 WORK SCHEDULES.

Due to the different services provided by the Town, it may be necessary to vary the hours of work per week in positions of the same class in different departments. The work hours for any department shall be established by the Town Manager on the recommendations of the department head; however, department heads shall have the authority to vary schedules as needed from time to time in the interests of safety, service, or economy.

Section 6

REST PERIODS.

A. Employees shall receive an unpaid rest or meal period of not less than thirty (30) minutes which shall be taken for each work period of six (6) hours or more. Rest or meal periods shall not be counted as time worked. Rest or meal periods shall be scheduled by the department head, with the approval of the Town Manager, in such a way as to ensure appropriate coverage and consistent treatment in each department, office or building, and generally in such a manner that the normal delivery of services will not be interrupted.

B. Rest or meal periods are not to be taken as part of working time and shall not be credited toward any leave time nor used to reduce the length of the employee's work day or shift.

C. Department heads and supervisors shall allow employees such other time during the work period as is reasonable and necessary, and without interfering with the operations of the office or department.

Section 7 PAY DAY.

A. All employees are paid on a bi-weekly basis. Pay checks will normally be available at 8:00 a.m. on Wednesdays for the pay period just completed.

B. In the event pay day falls on a holiday observed by the Town of Windham, checks will be available at 8:00 a.m. the day before the observed holiday.

Section 8 POWER FAILURE/INCLEMENT WEATHER.

Town offices and departments may occasionally need to be closed during the work day due to weather, public safety, or other reasons. If the Town elects to close early, open late or not open at all, and an employee is available to work, he/she will be paid for those hours.

Section 9 PERSONNEL FILES.

Employees may receive a copy of their personnel file upon written request to the Town Manager or designee. Employees have the right to contest anything in their file which they believe to be incorrect or untrue. At the discretion of the Town Manager, the contested information can be removed from the file or an explanation from the employee can be inserted. Personnel files shall not be removed from the Town Manager's office.

No information is to be inserted into or removed from an employee file without permission from the Town Manager or the Town Manager's designee.

**Section 10
UPDATING EMPLOYEE RECORDS.**

In order to comply with federal and state regulations as well as for insurance and payroll purposes, employees must notify the Finance Director, in writing, of any of the following changes:

1. Address and/or telephone number
2. Change in marital status
3. Change in dependent status
4. Legal change in name or citizenship status
5. Additional or relevant education or skills acquired since date of employment
6. Person to be notified in case of emergency
7. Change in military status or reserve requirements

**Section 11
POLITICAL ACTIVITIES.**

Except as otherwise provided by law, no person who is an employee of the Town shall be eligible to hold any elective office in the Town government. No Town employee shall orally, by letter, or in any other manner, solicit or assist in soliciting any assessment, subscriptions or contributions for candidate for elective office in the Town government. This shall not prevent Town employees from becoming, or continuing to be, members of any political organization, from attending political functions, running for any Town, State or Federal elected position, or from voting with complete freedom in any election.

**Section 12
SEPARATION.**

Employees who voluntarily terminate their employment with the Town are required to provide at least fourteen (14) calendar days notice in writing. Failure to provide fourteen (14) days notice will result in the loss of accrued sick and vacation time.

Section 13
LAYOFF AND REINSTATEMENT.

The Town Manager, subject to approval by the Council, may reduce the work force whenever it becomes essential due to lack of funds or work, or due to other reasonable or justifiable causes.

The order of layoffs in the same job classification shall be:

1. Temporary Employees
2. Seasonal Employees
3. Probationary Employees
4. Part-time Employees
5. Full-time Employees

Full-time employees shall be laid off in accordance with their seniority of employment. Employees normally will be reinstated in reverse order of layoff. The Town Manager, however, shall have the right to retain or reinstate key employees out of the normal order of layoff or reinstatement.

Section 14.
POSITION DESCRIPTIONS.

A position description outlines the duties, responsibilities and minimum qualifications for a specific group of similar jobs. Minimum qualifications shall include the education, experience, knowledge, skills and abilities required to successfully perform the work as well as a statement concerning the types of selective devices to be used in the recruitment process. A job specification describes the specific function of a position within a department.

Position descriptions shall be maintained for each class of positions within the Town in the Town Manager's Office, and shall be considered part of these policies. More detailed and specific job specifications, which shall be considered supplemental to the position description, may be maintained by Department Heads for appropriate positions with copies in the Town Manager's Office.

ARTICLE VIII CODE OF CONDUCT

Section 1 STATEMENT OF INTENT

The Town of Windham is concerned for the safety, well being, and professionalism of its employees. Every employee has the responsibility to behave in a courteous and professional manner, and to conduct their public and private affairs in a manner that will reflect positively on the Town and its people. The Town recognizes that each situation is unique; therefore, it would be impossible to establish a list of all rules and acceptable behaviors, and suitable sanctions or penalties. However, the following policies reflect principles that are intended to guide the conduct of employees. Violation of these principles may result in disciplinary action, up to and including termination of employment.

Section 2 ETHICS.

The Town's employees shall not under any circumstances seek, solicit or accept any gift, gratuity, loan, reward or fee where there is any direct or indirect connection between the solicitation or acceptance and their employment except as may be specifically authorized by the Town Manager.

Actual conflicts of interest, as well as incidents or situations which create the appearance of a conflict, must be avoided. Situations or conduct which would reflect negatively or bring discredit upon the Town of Windham are also unacceptable.

Section 3 CONFLICTS OF INTEREST.

Compensation paid to the employee in accordance with the Pay Plan, and reasonable expenses as approved by the Town Manager, shall constitute the sole remuneration for services rendered by an employee in the discharge of Town duties. No additional reward, gift or other form of remuneration shall be accepted by any employee for the discharge of their Town duties. No employee of the Town shall have any financial interest in or profit from any contract, purchase, sale or work performed by the Town unless otherwise provided for by the Town Council.

Section 4 ATTENDANCE AT WORK.

A. It is the responsibility of each employee to get to work on time and be present every day. Dependability is an important factor in determining job performance. Employees who will be absent or late for work are responsible for informing their supervisor as soon as possible, but not later than thirty (30) minutes after their scheduled starting time.

B. Three (3) consecutive days of absence without notification will be interpreted by the Town as an employee's voluntary resignation without notice. Employment will cease and the employee will be automatically dropped from the payroll.

C. Department Heads shall inform all employees of the department's regular work hours and any schedule changes and shall furnish periodic department attendance reports to the Town Manager or designee as requested.

D. Employees arriving before the designated hour for work to begin shall be allowed on premises, but shall not be authorized to begin work unless previously and specifically authorized by their supervisor.

Section 5 INTOXICATING LIQUORS.

The Town prohibits drinking or being under the influence of intoxicating liquors on the job or during work hours, and the possession of liquor or other intoxicants on Town premises (including buildings, vehicles, equipment and/or any other property owned by or in the care, custody or control of the Town).

Section 6 DRUGS.

A. It is the policy of the Town to provide a drug free work place. Therefore, the Town prohibits possession, use, and distribution of illegal drugs on Town premises (including buildings, vehicles, equipment and/or any other property owned by or in the care, custody or control of the Town.) Any violation of this rule subjects the employee to immediate disciplinary action and/or dismissal. Employees must notify the Town Manager, within five (5) days, if they are convicted of a criminal drug statute violation occurring in the workplace.

Section 7. ALCOHOL AND DRUG POLICY AND TESTING PROCEDURES FOR CDL EMPLOYEES.

A. PURPOSE. The Town of Windham is committed to a drug and alcohol free workplace. In order to ensure the safety of its employees and the general public, as well as to comply with 49 CFR Part 382 and other pertinent federal laws, the municipal officers have adopted this employment policy.

The Town takes pride in its employees who perform critical duties in a truly effective manner with safety foremost in their minds. This policy strengthens our commitment to a safe workplace.

B. PROGRAM ADMINISTRATOR. The Assistant to the Town Manager is designated by the Town as the Alcohol/Drug Testing Program Administrator. The Program Administrator is responsible for answering questions from drivers, employees or the public in general. The Program Administrator will maintain the confidentiality of all information relating to drug and alcohol testing. The Program Administrator may provide such information as necessary to enable the appropriate supervisor to take the appropriate action to ensure compliance with this policy. In addition to his/her duties under this policy, the Program Administrator is also responsible for compliance with the Program Administrator Guidelines.

C. SCOPE OF POLICY. This policy applies to all regular full-time, part-time, seasonal, on-call and temporary employees who are required to hold a Commercial Driver's License (CDL) for their position. All applicants for employment positions requiring a CDL are required to pass a drug test as a prerequisite of employment, prior to final hiring. Any applicant who fails a drug test shall not be hired, although may reapply for employment in the future.

All covered employees shall receive a copy of this policy, as well as educational materials on alcohol and substance abuse.

D. COMPLIANCE WITH REGULATIONS. All CDL employees subject to alcohol and drug testing must be in compliance with this policy at all times while working for the Town. This includes all time spent operating commercial vehicles, as well as time spent maintaining or repairing those vehicles.

NOTE REGARDING INDEPENDENT CONTRACTORS: Independent contractors and their employees who must hold a CDL for the contracted activity are subject to the requirements of 49 CFR Part 382 and are responsible for compliance. The Town will not provide or pay for tests or rehabilitation for independent contractors or their employees. The Town shall make compliance with the law a condition of any contract which requires a CDL driver.

E. SUBSTANCES TESTED. When drug and alcohol screening is required by this policy, a breath test and/or urine test will be given to detect the following:

1. Alcohol
2. Marijuana
3. Cocaine
4. Amphetamines
5. Phencyclidine (PCP)
6. Opiates

F. PRESCRIPTION DRUG USE. Employees covered by this policy may use prescription drugs and "over the counter" medications provided that:

1. The prescription drugs or their generic equivalent have been prescribed to the employee within the past 12 months by an authorized medical practitioner.
2. The employee does not consume prescribed drugs more often than as prescribed by the employee's physician.
3. Any employee who has been informed that the medication could cause adverse side effects while working shall inform his/her supervisor prior to using these substances. The Town at all times reserves the right to have a licensed physician determine if use of a prescription drug or medication by an employee produces an adverse effect. If such a finding is made, the Town may notify the employee's doctor (with employee's permission) to determine if other medications are available which would not seriously affect the employee's ability to work safely. If an appropriate substitute medicine is not available, the Town may limit or suspend the employee's work activities to non-safety sensitive duties.

G. TESTS REQUIRED. All employees subject to this policy shall be tested for alcohol and/or controlled substances in the following circumstances:

1. **Pre-employment.** Drug tests will be conducted when an offer is made to hire an employee for a CDL position. The offer for employment is contingent on the applicant passing these tests. This includes existing employees who are applying for CDL positions.
2. **Random.** Drug and alcohol tests will be conducted on a random, unannounced basis. The number of annual drug tests shall equal 50% of the number of CDL required positions while the number of annual alcohol tests shall equal 25% of the CDL required positions. The Town has entered into an agreement with a third party administrator (TPA) to randomly select the CDL employees for testing and then notify the Program Administrator of the person or persons chosen.

Note: Random alcohol testing **must be** conducted just before, during or just after a driver's performance of a safety-sensitive duties. Random drug testing **does not** have to be conducted in immediate time proximity to performing safety-sensitive functions.

3. **Post-accident.** As soon as is practicable after an accident, the employee shall be tested for alcohol and drugs if: (a) the accident involved the loss of human life; (b) the employee must receive medical treatment away from the accident scene, or (c) the employee received a citation for a moving traffic violation arising from the accident.
4. **Reasonable suspicion.** All employees who exhibit to a trained supervisor signs and symptoms of alcohol and/or drug abuse while on the job, prior to reporting to work, or just after work will be required to submit to an alcohol

and/or drug test. The supervisor shall document the specific facts, symptoms or observations by completing a "Reasonable Suspicion Record" form.

Note: Employees shall not be allowed to drive themselves to the testing facility for a reasonable suspicion test. The supervisor or another employee shall provide transportation to the testing facility.

5. **Return-to-duty.** An employee who engaged in conduct prohibited by Paragraph I must submit to an alcohol test and drug test to return to duty. The results of a drug test must be negative to return to duty, and the results of an alcohol test must be less than 0.02 to return to duty.
6. **Follow-up.** An employee who previously tested positive and has returned to duty must submit to a combination of at least six (6) alcohol and drug tests during the first year after returning to work. Follow-up tests will be unannounced and may continue for up to sixty (60) months after returning to work, not to exceed twelve (12) a year.

H. TESTING PROCEDURES.

1. **Drug Testing:** Drug testing is accomplished by analyzing the employee's urine specimen (urinalysis). Specimens will be collected at an off-site facility selected by the Town. Once the employee provides a urine specimen, it is sealed and labeled by a certified/authorized agent of the testing facility. A chain of custody document is completed in the presence of the employee, and the specimen is shipped to a SEMSA certified laboratory.

All urinalysis procedures are required to include split-specimen techniques. Each urine sample is sub-divided into two containers and labeled as primary and split specimens. Both specimens are forwarded to the laboratory. Only the primary specimen is used in the urinalysis. In the event of a confirmed positive test result, the split specimen may be used for a second confirmation test if requested by the employee.

During testing, an initial screening test is performed. If the test is positive for one or more drugs, a confirmation test will be performed for each individual drug using gas chromatography/mass spectrometry (GC/MS) analysis. This test ensures that over the counter medications are not reported as positive results.

If the analysis of the primary specimen results in a confirmed positive test, the employee may, within 72 hours, request that the split specimen also be tested at the SEMSA laboratory of his choice. The second test is at the employee's expense unless the test result is negative, in which case the Town would reimburse the employee.

All test results are reviewed by a Medical Review Officer (MRO) prior to results being reported to the Town. In the event of a positive test result, the MRO will first attempt to contact the employee and conduct an interview to determine if there are any alternative legitimate reasons for the positive results (such as over-the-counter or prescription medications). If the MRO determines there is a legitimate medical explanation for the presence of drugs, the result will be reported as negative. If the MRO is unable to contact the employee, then the employer will be contacted and requested to advise the employee to contact the MRO. Urine samples shall be provided in a private test room, stall or similar enclosure so that employees and applicants may not be viewed while providing the sample. Employees and applicants may be required to disrobe and will be given hospital gowns to wear while they are providing test samples in order to ensure there is no tampering. Street clothes, bags, briefcases, purses, and other containers may not be carried into the test area. The water in the commode, if any, shall be colored with dye to protect against dilution of test samples.

An applicant or employee may waive the right to privacy and provide the urine sample in the presence of a witness (of the same gender) and not be required to disrobe and wear a hospital gown.

2. **Alcohol Testing:** Alcohol testing will be conducted using an evidential breath testing (EBT) device. The breath test must be performed by a certified Breath Alcohol Technician (BAT) trained in the use of EBT and alcohol testing procedures. Under certain circumstances, post-accident tests conducted by law enforcement personnel or medical personnel will be acceptable.

Two (2) breath tests are required to determine if an individual is over the alcohol concentration limit permitted. Any result of less than 0.02 concentration is considered a negative result. Any result of 0.02 or greater requires a confirmation test. A confirmed test of 0.02 or greater is considered a positive result.

J. PROHIBITED CONDUCT. CDL employees shall not:

1. Report to work and/or remain on duty with an alcohol concentration of 0.04 or greater;
2. Possess any alcohol while on duty;
3. Use any alcohol while on duty;
4. Use any alcohol within four (4) hours before going on duty;
5. Use any alcohol within eight (8) hours after an accident for which the CDL employee must be tested for alcohol concentration;
6. Refuse to submit to the following alcohol and/or controlled substance tests: random test, reasonable suspicion test, post-accident test, or follow-up test;

7. Report to or remain on duty when using any controlled substance, except when used under a physician's orders and when the physician has informed the CDL employee in writing that the use will not affect the safe operations of a commercial vehicle. In the case of a written warning by the physician, the employee shall report this to his/her supervisor immediately;
8. Report to or remain on duty if the employee tests positive for controlled substances.

Failure to comply with these rules is a violation of this policy and may result in disciplinary action and shall result in referral to a substance abuse professional.

K. REFUSAL TO TEST. An employee's failure to submit to testing may result in disciplinary action up to and including dismissal, and is also grounds for referral to a substance abuse professional. Failure to submit to a test by an applicant will result in denial of employment. Specifically, the following circumstances will be considered a refusal to test:

1. Failure to report to the designated testing area within two (2) hours of being notified to submit to an alcohol test, or failure to report to the testing area within 24 hours of notification of a drug test.
2. Failure to accurately provide a sufficient sample to be tested, either breath or urine as the case may be, unless medically determined impossible to do so.

L. ALCOHOL CONCENTRATION OF 0.02 OR GREATER BUT LESS THAN 0.04.

Provided that the employee has not violated Paragraph J, any employee whose alcohol test results in a concentration of 0.02 or greater but less than 0.04 will be placed on unpaid leave for a minimum of 24 hours. The employee will not be required to undergo evaluation by a substance abuse professional if the test result is 0.02 or greater but less than 0.04, nor will a return-to-duty test be required unless there is reasonable suspicion that the employee is still under the influence of alcohol or drugs.

NOTE: This Paragraph applies only in limited situations. For example, if an employee last consumed alcohol more than 4 hours before work, but still has a blood/alcohol level of .03 when he shows up for work, he is not in violation of Paragraph J, but is subject to this Paragraph.

M. NOTICE AND CONSENT. Before a drug or alcohol test is administered, employees and job applicants will be asked to sign a consent form authorizing the test and permitting the release of test results to those officials with a need to know. The chemical screen consent form shall provide space to indicate current or recent use of prescription and over-the-counter medication.

All recruitment announcements for any position, including in-house recruitment and promotion, will disclose that a drug screening test will be required of the applicant.

N. CONSEQUENCES OF VIOLATION OF THIS POLICY.

1. Any employee who violates Paragraphs J or K of this policy shall be immediately removed from the safety-sensitive function and will be advised by the Town of the resources available for evaluating and resolving drug and alcohol abuse problems. The employee is required to be evaluated by a substance abuse professional. All evaluation and rehabilitation shall be at the employee's cost unless otherwise agreed by the Town. An employee shall not be allowed to return to the safety-sensitive function until he/she has a return-to-duty alcohol test result of less than 0.02 or a return-to-duty drug test with a verified negative result.
2. In addition, any employee who violates Paragraphs J or K of this policy may be subject to disciplinary action up to and including dismissal. Before discipline, reassignment or dismissal is imposed, the employee shall have the opportunity to participate for up to six (6) months in a rehabilitation program. The employee is responsible for all costs associated with the rehabilitation program unless otherwise agreed by the Town. Factors to be considered in determining the appropriate disciplinary response include, but are not limited to the following: employee's work history, length of employment, current job performance and existence of past disciplinary actions. Disciplinary action is imposed by Town policy; it is not required by federal law.
3. Further grounds for discipline or dismissal under Town policy include, but are not limited to:
 - a. Refusal to submit to a rehabilitation program after testing positive.
 - b. Failure within six (6) months to successfully participate in a rehabilitation program after receiving a positive test, or failure to pass a return-to-duty drug or alcohol test.
 - c. Evidence that the employee has substituted, adulterated, diluted or otherwise tampered with his/her urine sample.
 - d. Failure to contact a substance abuse professional within five (5) regular working days after being notified of a confirmed (MRO certified) positive test for the improper use of alcohol or unauthorized substances.
 - e. Employees who test positive a second time will be suspended immediately without pay and terminated after being notified of the second confirmed (MRO Certified) positive test for the use of an unauthorized substance.
4. During the period the Town is awaiting an employee's test result for a post-accident test, reasonable suspicion test, or return-to-duty test, the Town may transfer the employee to another position with or without a reduction in pay or benefits. The Town also reserves the right to place an employee on paid or unpaid suspension. A determination as to whether an employee is

placed in another position or placed on paid or unpaid suspension may be based on, but is not limited to: who is responsible for and/or the severity of the accident, if applicable; the observed condition of the employee, if applicable; the employee's work history; length of employment; current job performance and the existence of past disciplinary actions. Action taken by the Town under this subsection is a matter of Town policy, and is not imposed by federal law.

O. EMPLOYEE/APPLICANT RIGHTS AND RESPONSIBILITIES.

1. In the event of a confirmed positive test result, employees and job applicants shall have the opportunity to present an alternative explanation for the test result by contacting the Medical Review Officer (MRO). This shall be done within seventy-two (72) hours after notification of the confirmed result. No further action will be taken if there is a justified explanation, or there is a reasonable doubt as to the accuracy of the result or chain of custody of the sample.
2. Any employee with a positive test result may, upon written request to the Program Administrator, have the right to any information relating to the test result and procedures. A job applicant may request information concerning the test result within sixty (60) days after the decision on his/her employment application.
3. Upon successfully participating in a rehabilitation program (within 6 months after it commences) and upon passing a return-to-duty drug and/or alcohol test, the employee is entitled to return to his/her previous job with full pay (but not back pay) and benefits, unless conditions unrelated to the employee's previous test make the employee's return impossible. The rehabilitation or treatment provider in consultation with the Town shall determine whether the employee has successfully participated in the rehabilitation program. The Town is not required to hold the employee's job open for more than six (6) months after the employee commences a rehabilitation program.

Any subsequent second offense positive test will result in immediate suspension without pay and termination after being notified of a second confirmed (MRO certified) positive test for the use of an unauthorized substance.

P. CONFIDENTIALITY OF INFORMATION. Unless the employee or applicant consents, all information acquired by the Town in connection with the testing processes is confidential and may not be released to any person other than to the employee or applicant who is tested, the Program Administrator, officials with a need to know, and the rehabilitation provider. The foregoing shall not prevent the release of information that is required or permitted by state or federal law, or the use of information in any grievance procedure,

administrative hearing or lawsuit relating to the imposition of the test or the use of the test results.

Q. DOCUMENTS PROVIDED. The Town will provide each person subject to this policy a copy of the policy. The Town will also provide printed material which describes the effects of alcohol and/or controlled substances on the individual's health, work and personal life, as well as information on the signs and symptoms of alcohol or controlled substances and methods of treatment or intervention for drug or alcohol abuse. In addition, the Town will provide periodic training on substance abuse awareness for affected employees.

Section 8 INSUBORDINATION.

Insubordination, including refusal or failure to follow lawful instructions, perform work in the manner assigned, or comply with safety rules and regulations, shall not be tolerated, nor will the use of profane or abusive language to supervisors or other employees.

Section 9 HORSEPLAY.

All horseplay, pranks, practical jokes, or any other acts which interfere with or endanger any employee or other person, or interferes with the conduct of official duties of other employees is prohibited.

Section 10 SAFETY.

Employees who encounter safety hazards in their job or workplace should report the condition immediately to their supervisor or department head. Accidents must be reported to the supervisor, department head, or Town Manager's office immediately. All injuries must be reported immediately. Failure to use safety equipment or follow safety rules or practices may result in disciplinary action.

ARTICLE IX DISCIPLINARY PROCESS

A. Violation of these policies may result in disciplinary action including, but not limited to: verbal warning, written warning, suspension (with or without pay), demotion, and termination of employment;

1. Verbal Warning. The employee's immediate supervisor shall issue a verbal warning to the employee stating the nature of the violation and will offer remedial suggestions.

a. With the Department Head's approval, a memorandum that a verbal warning was administered, signed by the supervisor and the employee shall be placed in the employee's personnel file for not less than one (1) year.

b. If the violation is not repeated the memorandum of verbal warning shall be removed from the employee's personnel file.

c. There shall be no limit to the number of verbal warnings which may be issued to an employee.

2. Written Warning. The written warning shall explain the nature of the violation and will offer remedial suggestions. The written warning shall be signed by the employee, the immediate supervisor and the department head.

a. The written warning together with all existing memoranda of verbal warnings shall be placed in the employee's personnel file.

b. The written warning shall remain on file for not less than two (2) years following the date of the written warning.

3. Suspension. The Department Head may recommend to the Town Manager, in writing, that an employee be suspended. Employees who have been recommended for suspension may be placed on administrative leave pending a hearing before the Town Manager. Employees shall receive no pay of any kind for the duration of the suspension, but shall continue to receive insurance benefits and accrue leave.

The recommendation shall be forwarded within five (5) working days of the violation with a copy to the employee. A copy shall be put in the employee's personnel file. The Town Manager shall meet with the Department Head and the employee as soon as practicable but within five (5) working days and will render a written decision within ten (10) working days of the violation.

4. Termination. At the recommendation of the Department Head, employment with the Town may be terminated. The employee shall be provided a written notice of termination which shall state the cause for the action.

B. Authority. The appointing authority, with the approval of the Town Manager, may demote, suspend without pay for not more than ten (10) working days, or permanently dismiss any municipal employee whose conduct or work performance justifies the following action.

C. Notices of Disciplinary Action. Notices of disciplinary action against an employee shall be in writing and received by the employee not later than the effective date of the action. The notice shall specify the penalty and contain a statement of the reason or reasons for the action taken against the employee.

D. Administrative Leave. An employee may be ordered to serve an administrative leave of absence in the event the employee stands accused of a crime or other offense which would materially and negatively affect their ability to perform the duties of their position, or presents a potential risk or hazard to other employees pending legal or disciplinary action. Employees on administrative leave shall continue to receive their regular pay and benefits, including accrual of leave and holiday pay for the duration of the administrative leave.

E. Employee's Right of Appeal.

1. Employees shall have the right to appeal any disciplinary action.

2. Appeals must be made in writing to the Town Manager within five (5) work days of the Notice of Disciplinary Action.

3. The Town Manager shall schedule a hearing on the employee's appeal as soon as possible, and shall render a written decision on the appeal within five (5) work days from the date of the close of the hearing. The Town Manager's decision shall be final.

4. If the disciplinary action being appealed was initiated by the Town Manager, the appeal must be made in writing to the Town Council within five (5) work days of the Notice of Disciplinary Action.

ARTICLE X GRIEVANCE PROCEDURE

A. Purpose. A grievance is a written dispute, claim or complaint which is filed and signed by an employee and which arises under an employee's tenure and conditions of employment. Grievances are limited to disputes, claims or complaints of those issues which are related to aspects of the employer-employee relationship between the employee and the Town of Windham.

B. Informal Resolution. Nothing contained in this policy shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate department member or other Town official, and having the grievance resolved without the formal application of this policy, except as provided by law and provided the grievance resolution is not inconsistent with the terms of this policy.

C. Content. A grievance shall set out the following:

1. a clear and concise statement of the facts giving rise to the grievance, including date, time and place of the alleged incident, if any, relating to the grievance, and characterizing each particular act or omission;
2. a copy of any documents appurtenant to the grievance; and
3. a statement setting forth the remedy sought.

D. Procedure.

1. Grievances filed under this policy shall be filed in writing with the Department Head within five (5) work days from the date of the alleged act or omission giving rise to the grievance, or from the date of the aggrieved's first knowledge thereof, unless the grievance arises from an alleged act or omission on the part of the Department Head; in which case, the grievance shall proceed under subparagraph 2.
2. The Department Head shall hold a hearing on the matter as soon as possible and issue a written decision within five (5) work days from the date of the close of the hearing.
2. The aggrieved may appeal the decision to the Town Manager within five (5) work days of the date of receipt of the Department Head's decision or, if the grievance arises from an alleged act or omission on the part of the Department Head, the grievance shall be filed with the Town Manager within five (5) work days from the date of the alleged act or omission which gave rise to the grievance, or from the date of the aggrieved's first knowledge thereof. The Town Manager shall hold a hearing on the matter as soon as possible and issue a written decision within five (5) work days from the date of the close of the hearing. The Town Manager's decision shall be final.

3. If the grievance arises from an alleged act or omission on the part of the Town Manager, other than a decision of the Town Manager on appeal of a grievance or disciplinary action, the grievance shall be filed with the Town Council within five (5) work days of the alleged act or omission which gave rise to the grievance, or from the date of the first knowledge thereof.

E. Advocate.

In any grievance hearing under the provisions above, the employee may be represented by an advocate. The advocate may be a fellow employee, a Department Head, a friend, or an attorney. If the employee chooses to retain an attorney as advocate, such representation shall be at the employee's expense unless the Town Manager has agreed, in writing, to provide legal representation to the employee.

F. Promotions.

1. Final award of promotions shall not be made until the fifteen (15) day period, during which a grievance may be filed by other candidates regarding the promotional process, has passed.

2. In the event that the grievance arises from an alleged incident or improper action in the course of the promotional process, which would potentially affect the outcome of that promotional process, such promotion(s) shall be held in abeyance pending the outcome of the grievance process.

3. If an employee who has been tentatively awarded a promotion which is the subject of a grievance, who is not the aggrieved party, that employee shall be notified that a grievance has been filed and that the promotion will be held pending its outcome. Such notice shall be provided by the Department Head, in writing as soon as possible.

G. Time Limits.

The parties to any grievance shall make an effort to adhere to the time limitations set forth in this policy; however, nothing in this policy shall be construed to be a limitation of the parties' ability to agree to extend or suspend any time limit herein.

Digest of Amendments

October 14, 1997	Completely rewritten, supersedes all previous versions. (97-166)
June 23, 1998	Added long-term disability insurance as an employee-paid benefit. (98-129)
October 27, 1998	Added seasonal overtime rules for Public Works hourly employees, and allowed use of sick time to make up hours during power failures or inclement weather. (98-210)
January 26, 1999	Delayed implementation of performance based pay until July 1, 2000. (99-27)
July 1, 2005	Adjusted longevity pay amounts based on budget approved by the Town Council on May 24, 2005 (05-92) and Town Meeting on June 18, 2005.
July 1, 2006	Increased mileage reimbursement rate from 22¢ per mile to 37.5¢ per mile (Article VI, Section 5) on May 23, 2006 (06-65) and Town Meeting on June 17, 2006.
Sept. 14, 2010	Added council-staff communications policy in Article VIII, Section 11 (10-167)
June 25, 2012	Adjusted mileage reimbursement rate to “prevailing IRS rate” per Council order 12-087.
January 28, 2014	Added second retirement investment option, allowing employees to contribute upon date of hire and after two years of service be vested in the Town’s matching contributions. (12-087)
June 28, 2016	Article VI, Section 6, Family Medical Leave was replaced with a reference to the council-adopted Family and Medical Leave Act Policy. (16-106) Article VI, Section 21, Worker’s Compensation was replaced with a reference to the council-adopted Work Related Injury Policy. (16-107)
June 26, 2018	Removed council-staff communications policy in Article VIII, Section 11 (18-127)
April 9, 2019	Amended Article VI, Section 18 Retirement Plan, to allow for a 6% match upon hire to the deferred compensation plan. (19-061)
April 9, 2019	Amended Article VII, Section 8, Power Failure/Inclement Weather, employees will be paid for hours if Town elects to close early, open late or not open at all. (19-062)
Sept. 10, 2019	Amended Article VI, Section 3, Sick Leave was replaced and reduced the maximum accrual of sick time to 720 hours. (19-069)
January 12, 2021	Amended Article VI, Section 4, Vacation was replaced with Earned Paid Leave, allowing employees working less than 30 hours/pay period to accrue 1 hour of leave for every 40 hours worked (to a maximum of 40 hours per year) and lifts the six month waiting period to utilize earned time.