

## Chapter 2

### **ADMINISTRATION**

#### **Article I. In General**

- Sec. 2-1. Notices; service and proof.
- Sec. 2-2. Electronic notice of public hearings.
- Secs. 2-3—2-28. Reserved.

#### **Article II. Mayor and Town Council**

##### Division 1. Generally

- Sec. 2-29. Regular, adjourned and recessed meetings.
- Sec. 2-30. Adjournment for lack of quorum.
- Sec. 2-31. Mayor—Duties generally.
- Sec. 2-32. Same—General duties at meetings.
- Sec. 2-33. Same—Appointing of special committees; vacating the chair.
- Sec. 2-34. Mayor pro tempore.
- Sec. 2-35. Motions; prerequisites to consideration.
- Sec. 2-36. Election by ballot.
- Sec. 2-37. Effective date of ordinances.
- Sec. 2-38. Resignation of member.
- Sec. 2-39. Agenda.
- Secs. 2-40—2-70. Reserved.

#### **Article III. Officers and Employees**

##### Division 1. Generally

- Sec. 2-71. Contracts; conflict of interest.
- Secs. 2-72—2-86. Reserved.

##### Division 2. Personnel

- Sec. 2-87. General provisions.
- Sec. 2-88. Position classification plan.
- Sec. 2-89. Salary plan.
- Sec. 2-90. Recruitment, selection and appointment.
- Sec. 2-91. Conditions of employment.
- Sec. 2-92. Employee benefits, holidays and leaves of absence.
- Sec. 2-93. Travel.
- Sec. 2-94. Separation.
- Sec. 2-95. Disciplinary action.
- Sec. 2-96. Grievance procedure.
- Secs. 2-97—2-107. Reserved.

## CARY CODE OF ORDINANCES

### **Article IV. Departments**

#### Division 1. Generally

Sec. 2-108. Department names; organization.  
Secs. 2-109—2-128. Reserved.

#### Division 2. Department of Inspections and Permits

Sec. 2-129. Created.  
Sec. 2-130. Right of entry.  
Sec. 2-131. Stop work orders.  
Sec. 2-132. Records.  
Secs. 2-133—2-143. Reserved.

#### Division 3. Police Department

Sec. 2-144. Established.  
Sec. 2-145. Duties.  
Sec. 2-146. Chain of command.  
Sec. 2-147. Uniforms and equipment.  
Sec. 2-148. Duties of chief of police.  
Sec. 2-149. Police reserves.  
Secs. 2-150—2-160. Reserved.

### **Article V. Boards and Commissions and Authorities**

Sec. 2-161. Boards and Commissions purpose statement.  
Sec. 2-162. General provisions.  
Sec. 2-163. Membership, general.  
Sec. 2-164. Terms of office.  
Sec. 2-165. Conflicts of interest.  
Sec. 2-166. Attendance at board meetings.  
Sec. 2-167. Reimbursement for expenses.  
Sec. 2-168. Meetings.  
Sec. 2-169. Rules and records.  
Sec. 2-170. Cooperation with others.  
Sec. 2-171. Planning and zoning board.  
Sec. 2-172. Zoning board of adjustment.  
Sec. 2-173. Parks, recreation and cultural resources advisory board.  
Sec. 2-174. Historic Preservation Commission.  
Sec. 2-175. Public art advisory board.  
Sec. 2-176. Reserved.  
Sec. 2-177. Information services advisory board.

## ADMINISTRATION

- Sec. 2-178. Reserved.
- Sec. 2-179. Environmental advisory board.
- Sec. 2-180. Reserved.



**ARTICLE I. IN GENERAL****Sec. 2-1. Notices; service and proof.**

(a) Unless otherwise specifically provided, whenever a notice is required to be given pursuant to any section of this Code such notice shall be given either by personal delivery to the person to be notified or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the person to be notified at his last known business or residence address as the same appears in the public records or other records pertaining to the matter for which such notice is served or by any other method of delivery approved by law. Service by mail shall be deemed to have been completed at the time of deposit in the post office or any United States mailbox.

(b) Proof of giving any notice may be made by the certificate of any officer or employee of this town or by affidavit of any person over the age of 18 years who actually accomplished personal service in conformity with this Code or other provisions of law applicable to the subject matter concerned, or by a return receipt signed by the recipient notified by United States mail.  
(Code 1976, § 1-13; Code 1982, § 2-2)

**Sec. 2-2. Electronic notice of public hearings.**

(a) *Authority:* Session Law 2014-410 authorizes the Town to give notice of public hearings through electronic means, including, but not limited to, the Town's Internet site. This ordinance states the Town's intent to provide legal notice of Town of Cary public hearings electronically by publishing such notice on the Town's website in lieu of publishing such notice in a newspaper.

(b) *Public Hearing Notice:* Notwithstanding anything to the contrary contained in Town Ordinances, all notices of public hearings ('Public Hearing Notice') may be published on the Town's website instead of in a newspaper. Any such website Public Hearing Notice shall state the subject, date, time and location of the public hearing, and such other information as may be required by state law or Town ordinance for the particular public hearing. The Public Hearing Notice shall be posted to the website according to the publication schedule required by state law or Town ordinance. The Public Hearing Notice shall remain posted until the day after the day on which the associated public hearing closes.

A copy of the Public Hearing Notices published on the Town's website shall be maintained according to the Records Retention and Disposition Schedule. This copy shall serve as proof that the Public Hearing Notice was published by posting to the Town's website, and shall show the date(s) the Notice was published on the website.

(c) *Additional Notice Requirements:* This ordinance does not replace any statute or ordinance that requires notice by mail for public hearings or posting signs on property. Those methods of notification remain in effect.  
(Ord. 2014-Code-01, 1-9-2014)

**Secs. 2-3—2-28. Reserved.**

## ARTICLE II. MAYOR AND TOWN COUNCIL\*

### DIVISION 1. GENERALLY

#### **Sec. 2-29. Regular, adjourned and recessed meetings.**

(a) *Regular meeting.* The town council shall adopt a regular meeting schedule at its December meeting. This schedule shall outline the dates, times and locations of all regular town council meetings for the following year.

(b) *Adjourned and recessed meeting.* Any regular or duly called special meeting may be recessed to reconvene at a time and place certain, or may be adjourned to reconvene at a time and place certain, by the town council.

(Code 1976, § 2-1; Code 1982, § 2-17; Ord. No. 86-7, § 1, 3-13-1986; Ord. No. 86-21, § 1, 6-12-1986)

**State law reference**—Notice of public meetings, G.S. 143-318.12.

#### **Sec. 2-30. Adjournment for lack of quorum.**

If a quorum is not present, a meeting of the town council shall stand adjourned to the next regularly scheduled town council meeting.

(Code 1976, § 2-5; Code 1982, § 2-18)

**State law reference**—Quorum, G.S. 160A-74.

#### **Sec. 2-31. Mayor—Duties generally.**

The mayor shall:

(1) Keep himself informed as to the town's business.

(2) Execute official documents for the town.

(Code 1976, § 2-22; Code 1982, § 2-19; Ord. No. 77-37, 10-13-1977)

**Charter references**—Election of mayor, § 3.2; mayor's authority to vote § 3.3.

#### **Sec. 2-32. Same—General duties at meetings.**

At the hour appointed for the meeting of the town council, the mayor shall take the chair and direct the clerk to note the absentees. The mayor shall preserve order and decorum. He shall decide all questions of order.

(Code 1976, § 2-6; Code 1982, § 2-20)

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\***Charter reference**—Mayor, town council and appointees, art. III.

**State law references**—Mayor and town council, G.S. 160A-59—160A-82; meetings of public bodies, G.S. 143-318.9 et seq.

**Sec. 2-33. Same—Appointing of special committees; vacating the chair.**

The mayor shall appoint all special committees, including those comprised of elected officials, except where the council shall otherwise order. He may, when present, appoint any member of the council to perform the duties of the chair, but such substitution shall not extend beyond adjournment, except by special consent of the town council, nor shall it affect his right to vote.

(Code 1976, § 2-15; Code 1982, § 2-21)

**Sec. 2-34. Mayor pro tempore.**

The mayor pro tempore shall perform the duties of the mayor in the event of the absence of the mayor, or in case of sickness of the mayor or other causes which would prevent the mayor from attending to the duties of the office.

(Code 1976, § 2-7; Code 1982, § 2-22)

**Sec. 2-35. Motions; prerequisites to consideration.**

No motion shall be considered or put at a council meeting until seconded and shall be reduced to writing by the member making it upon the request of the presiding officer or any other member. It may be withdrawn at any time before decision, commitment or amendment.

(Code 1976, § 2-14; Code 1982, § 2-24)

**Sec. 2-36. Election by ballot.**

All elections by the council shall be made by ballot if required by any two members present, and all votes shall be by yeas and nays and shall be entered upon the records on request of one member. Provided, that no election, appointment or motion shall be valid or adopted unless a quorum is present and voting.

(Code 1976, § 2-16; Code 1982, § 2-25)

**Sec. 2-37. Effective date of ordinances.**

Every ordinance enacted by the town council and filed in accordance with state law shall be in force from its passage, unless otherwise ordered or otherwise provided by state law.

(Code 1976, § 2-21; Code 1982, § 2-26; Ord. No. 77-37, 10-13-1977)

**State law reference**—Ordinances, G.S. 160A-75 et seq.

**Sec. 2-38. Resignation of member.**

No member of the town council shall be allowed to tender a resignation of his office except in writing.

(Code 1976, § 2-17; Code 1982, § 2-27)

**Sec. 2-39. Agenda.**

The business to be transacted before the town council shall be governed and regulated by an agenda prepared by the town clerk.

(Code 1976, § 2-9; Code 1982, § 2-41; Ord. No. 89-25, § 1, 2-23-1989)

**Secs. 2-40—2-70. Reserved.**

### **ARTICLE III. OFFICERS AND EMPLOYEES\***

#### **DIVISION 1. GENERALLY**

**Sec. 2-71. Contracts; conflict of interest.**

No officer or employee of the town, appointed or elected, shall undertake any venture, or make any contract, for his own benefit, under his official authority, or be in any manner concerned or interested in making such contracts, or in the profits thereof, unless authorized by the town council and not in conflict with G.S. 14-234 and any other applicable state or federal law or regulation. (Code 1976, § 2-31; Code 1982, § 2-58; Ord. No. 2018-Code-02, § 1, 6-28-2018)

**Secs. 2-72—2-75. Reserved.**

**Editor's note**—Ord. No. 06-008, adopted April 27, 2006, repealed §§ 2-72—2-75 in their entirety. Formerly, said sections pertained to the duties of the town manager, town attorney, town clerk and town treasurer, respectively, as enacted by Code 1976, §§ 2-23—2-25; as subsequently amended. The users attention is directed to the Town Charter for similar provisions.

**Secs. 2-76—2-86. Reserved.**

#### **DIVISION 2. PERSONNEL**

**Sec. 2-87. General provisions.**

(a) *Purpose.* The purpose of this article is to establish a fair and uniform system of personnel administration for all employees of the town under the supervision of the town manager. Nothing contained in this article should be construed as creating any type of employment contract between or among the town and any of its employees, either express or implied. Additionally, nothing contained in this article shall restrict the town's right to unilaterally change the policies, practices and procedures described herein. While, in the normal course of events, the town intends to follow the provisions set forth in this article, in whole or in part, and other policies, practices and procedures affecting personnel, certain situations may occur in which the town, at its sole discretion, will not follow this division unless otherwise required by law.

*[Next printed page is page CD2:19.]*

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\***Charter reference**—Mayor, town council and appointees, art. III.



(b) *Personnel ordinance and plans.* The town council is responsible for approving this division, the position classification plan and the salary plan.

(c) *Administration.* The town manager is the head of the administrative branch of town government and is directly responsible to the town council for the administration of town affairs. The town manager is the final authority for directing the activities of all classified employees; therefore, the town manager shall establish personnel policies, practices and procedures as necessary, provided these are not in conflict with the town charter, town code, federal or state laws.

(d) *Human resources department.* There shall be a human resources department, under the supervision of the town manager, which has continuing responsibility and authority with respect to personnel matters. The town manager may delegate to the human resources department the responsibility for various functions as he/she sees fit. It has primary responsibility for advising the town manager and employees on policies, rules, regulations, benefits and procedures, and maintaining all employee records. All employees shall have full access to the human resources department for the purposes described herein.

(e) *Employee organizations.* The town recognizes the right of its employees to belong or not to belong freely and without discrimination to any organization whose purpose, existence or activities are not in conflict with a local, state or federal law.

(f) *Application.* The personnel ordinances and plans and all policies, practices and procedures adopted pursuant to them shall be binding on all town employees who are under the direction of the town manager. Any employee failing to carry out the full implementation of these policies may be subject to disciplinary action.

(g) *Departmental policies, practices and procedures.* Due to operational requirements of the various town departments, each department is authorized to establish supplemental policies, practices and procedures applicable only to the personnel of that department. All such policies, practices and procedures shall be subject to the approval of the town manager, and shall not conflict with the provisions of this division, but rather supplement it.

(h) *Statement of affirmative action and equal employment opportunity policy.* The policy of the town is to foster, maintain and promote equal employment opportunity. Recruitment of applicants for town employment will actively provide for measures to improve the diversity of the applicant pool. The town shall select employees on the basis of the applicant's qualifications for the job and award them, with respect to compensation and opportunity for training and advancement, including upgrading and promotion, without regard to age, sex, race, color, religion, national origin, nondisqualifying disability or political affiliation. Applicants with disabilities shall be given equal consideration with other applicants for positions in which their disabilities do not represent an unreasonable barrier to satisfactory performance of essential job functions.

(i) *Implementation of affirmative action and equal employment opportunity policy.* All personnel responsible for recruitment and employment will continue to review regularly the implementation of this personnel policy and relevant practices and procedures to assure that equal employment

opportunity based on reasonable, job-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, religion, nondisqualifying disability, national origin or political affiliation.

(j) *Merit principle.* Appointments, promotions, and other human resource transactions shall be made solely on the basis of merit, except where organizational needs warrant other considerations. (Code 1982, § 2-63; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

#### **Sec. 2-88. Position classification plan.**

(a) *Purpose.* The position classification plan provides a complete and accurate description and specification for each class of employment within the town service. The plan standardizes job titles, each of which is indicative of a definite range of duties and responsibilities.

(b) *Full-time employees.* Full-time employees are those who are in positions for which an average work week over a one-month period of at least 37½ hours per week is required by the town.

(c) *Part-time employees.* Part-time employees are those who are in positions for which an average work week over a one-month period is less than 37½ hours per week.

(d) *Temporary employees.* Temporary employees are those who are in positions which are expected to last less than 24 consecutive months. Unless specifically included, the provisions of this division do not apply to temporary employees; however, the phrase "any employee" shall be deemed to include temporary employees.

(e) *Probationary employees and trainees.* All full-time and part-time employees hired into an authorized position and given a probationary appointment shall be considered probationary employees. A trainee is an employee not fully qualified to meet the requirements of a position, but who is expected to do so within a reasonable period of time.

(f) *Regular employees.* All full-time and part-time employees who have completed initial probation, as defined by section 2-91, shall be considered regular employees. The term "regular," as used in this division, specifically sections 2-87 through 2-96, shall not be construed to guarantee any employee continued employment.

(g) *Use.* The position classification plan is to be used:

- (1) As a guide in recruiting and examining applicants for employment;
- (2) In determining lines of progression and in developing employee training programs;
- (3) In determining salary to be paid for various types of work;
- (4) In determining human resource service items in departmental budgets; and
- (5) In providing uniform job terminology.

(h) *Administration.* The town manager shall be responsible for the administration of the position classification plan, and shall periodically review the entire position classification plan. The human resources department, under the direction of the town manager, shall have continuing responsibility to assure that this plan is implemented.

(i) *Adoption.* The position classification plan shall be adopted by the town council.

(j) *Amendment.* Classes of positions shall be added to and deleted from the position classification plan upon approval of the town council, or the town manager, based on criteria established by the town council.

(Code 1982, § 2-64; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

### **Sec. 2-89. Salary plan.**

(a) *Definition.* The salary plan includes the basic salary schedule and position authorization plan. The salary schedule consists of minimum and maximum rates of base salary for all classes of positions included in the position classification plan. The position authorization plan includes a complete inventory of authorized positions and a designation of the hours in the work week for each position. The salary schedule shall be adopted by the town council. A position authorization plan shall be adopted by the town council each fiscal year and may be amended during the fiscal year by the town council or by the town manager based on criteria established by the town council.

(b) *Pay rates in promotion, demotion, and transfer.* When an employee is promoted, demoted or transferred, the rate of salary for the new position will be established in accordance with the following rules:

- (1) An employee who is promoted will receive a salary consistent with the provisions of subsection 2-91(g);
- (2) An employee who is demoted will receive a salary consistent with the provisions of subsection 2-91(j);
- (3) An employee who is transferred from a position in one class to a position in another class where the new position is assigned to the same salary grade as the old position will continue to receive the same salary.

(c) *Pay rates in salary range revisions and reclassifications.* When the town council approves a change in salary grade for a position or class of positions, the salaries of employees whose positions are reallocated are affected as follows:

- (1) When a position or a class of positions is assigned to a higher salary grade, eligible employees in that class may receive a salary increase based on the pay for performance policy;
- (2) When a position or a class of positions is assigned to a lower salary grade, the salary of any employee in that position or class will remain unchanged. If this assignment to a lower salary range results in an employee being paid at a rate above the maximum established

for the new class, the base salary of that employee shall be maintained at that level at least until such time as the employee's salary grade is increased above the employee's current salary and the employee is eligible for an increase.

(d) *Starting salaries.* All persons employed in positions contained in the position authorization plan shall be employed at the minimum salary for the classification in which they are employed, provided they possess the minimum qualifications required; however, on the recommendation of the department director and with the approval of the town manager, well-qualified applicants may be employed above the minimum rate.

(e) *Trainee salaries.* An applicant who is hired as a trainee, or an employee who is promoted to a trainee, may be appointed at a trainee rate. A trainee rate is normally at least five percent below the minimum rate of the assigned salary grade.

(f) *Performance appraisal.* Each employee will receive a performance review at times established by the town manager, but at least once a year. During this review, the employee and his/her supervisor shall discuss the employee's tasks and responsibilities and identify areas of good performance and areas for additional improvement. The supervisor shall document such review to the employee's human resource file, in a form approved by the town manager.

(g) *Anniversary dates for merit performance reviews.* Anniversary dates for performance reviews shall be established by the town manager for all employees. The anniversary date will remain unchanged by promotions and reclassifications, unless either action results in a salary increase of more than 15 percent. Interim appointments will not affect anniversary dates.

(h) *Performance awards.* When an employee becomes eligible for a performance award, such increase shall be the decision of the department director, based on the quality of the employee's performance and conduct and approved by the chief human resources officer as to the sufficiency of documentation, adherence to policies, and other technical and legal matters. The town manager will grant performance awards to department directors, upon eligibility and based upon their performance and personal conduct.

(i) *Reserved.*

(j) *Overtime.*

(1) Any employee of the town may be required to work the hours necessary to fulfill the needs of the town as determined by the town manager or department director. Any overtime hours must be approved, normally in advance, by the employee's supervisor.

(2) The town shall comply with minimum wage, overtime salary, recordkeeping and other applicable provisions, if any, of the Fair Labor Standards Act (FLSA). The town manager shall determine which positions are covered by the FLSA ("nonexempt") and which positions are not covered ("exempt") by the FLSA provisions concerning overtime.

- (3) Any employees in nonexempt positions will be paid the regular rate of salary for hours worked up to the limit established by the FLSA for their positions (usually 40 hours in a seven-day period). Hours worked above the FLSA-established limit will be compensated at the appropriate overtime rate or through compensatory time.

(Code 1982, § 2-65; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-029, 6-26-1997; Ord. No. 98-003, 5-28-1998; Ord. No. 2010-Code-09, 12-16-2010; Ord. No. 2019-Code-04, 10-10-2019)

#### **Sec. 2-90. Recruitment, selection and appointment.**

(a) *Recruitment sources.* When position vacancies occur, department directors shall notify the human resources department concerning the number and classification of positions which are to be filled. Certain vacancies may be made available only to current employees. The human resources department will publicize all other opportunities for employment, including applicable salary information and employment qualifications. Information on job openings and hiring practices shall be provided to recruitment sources, including organizations and news media available to minority applicants. In addition, notice of vacancies shall be posted at designated conspicuous sites within departments. Individuals shall be recruited from a geographic area as wide as is necessary to ensure that well-qualified applicants are obtained for town service.

(b) *Job advertisements.* Employment advertisements shall contain assurances of equal employment opportunity and affirmative action, and shall comply with federal and state statutes.

(c) *Applications for employment.* All persons expressing interest in positions for which the town is recruiting externally will be given the opportunity to file an application for employment.

(d) *Selection.* Department directors shall make such investigations and conduct such examinations as deemed appropriate to assess fairly the aptitude, education, and experience; knowledge, skill, and ability; and other qualifications required to perform the essential function of a job with or without reasonable accommodation. All selection devices administered by the town, or by persons or agencies for the town, shall be valid measures of job performance.

Pre-employment background checks may include criminal conviction record checks for all positions and additional verifications depending upon the position.

(e) *Employment procedure.* When a job opening occurs and the procedures set forth in this division have been completed, the human resources department shall then screen all applications for the position and identify the best qualified applicants for the department director or other designated supervisory personnel. The department director or supervisor, following standard procedures, shall interview the appropriate applicants.

(Code 1982, § 2-66; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998; Ord. No. 2007-11, 9-11-2007)

#### **Sec. 2-91. Conditions of employment.**

(a) *Employment of immediate family and close relatives.* "Immediate family" and "close relatives" are defined in subsection 2-92(q). The town prohibits the hiring and employment of immediate family and close relatives in authorized positions within the same work unit. The town

also prohibits the hiring of any person into a temporary or authorized position who is an immediate family member or close relative of individuals holding the following positions: Mayor, mayor pro tem, town councilmember, town manager, deputy town manager, assistant town manager, town clerk, town attorney, finance director or chief human resources officer. Otherwise, the town will consider employing families or related persons in the service of the town, provided that such employment does not result in immediate family or close relatives supervising relatives or having any responsibility for the payroll, hours of work, or human resource records of relatives, or for making any decision affecting the employment of a relative. Employment of individuals who are cohabiting or were formerly related, as defined by subsection 2-92(q), shall be subject to the same conditions as immediate family or close relatives. For the purpose of this division, "cohabiting" shall mean to live together in a sexual relationship when not legally married.

(b) *Probationary and trainee periods defined.*

- (1) An employee who is newly appointed shall serve an initial probationary period of at least 12 months. "Initial probation" or "initial probationary period," where used in this division, shall mean within the current term of employment.
- (2) An employee who is transferred, as provided in subsection (k), or promoted to an authorized position, as provided in subsection (g), shall also serve a probationary period of at least six months, except that new firefighters and law enforcement officers shall serve at least a 12-month probationary period.
- (3) An applicant who is hired, or an employee who is promoted and who is not fully qualified to meet the established requirements of the position, may be appointed as a trainee.

(c) *Probationary and training periods: evaluations and recommendations.* The supervisor of a probationary employee or trainee shall accomplish and document the following at least every three months of employment:

- (1) That there has been discussed with the employee the employee's accomplishments, failures, strengths and weaknesses;
- (2) Whether the employee is performing satisfactory work;
- (3) Whether the employee's conduct is satisfactory;
- (4) Whether the employee should be retained in the position or whether the employee should be terminated or, if applicable, reinstated to his/her former position or one of comparable seniority, status and pay, if available and appropriate. Before the end of the probationary or training period, the supervisor shall make final evaluations and recommendations. Upon successful completion of the training period, trainees shall become probationary employees.

(d) *Probationary and training periods: discipline and appeal.*

- (1) A probationary employee or a trainee who has not previously completed initial probation is not subject to the same disciplinary procedures as a regular employee. A probationary employee or a trainee who has not completed initial probation may be terminated without resorting to any of the steps outlined in section 2-95.
- (2) Termination relating to job performance should normally be preceded by one or more counseling sessions to assist the employee in fulfilling the responsibilities of the position. Such counseling sessions are not a prerequisite to termination. Particularly, termination relating to personal conduct may occur without prior counseling or warning.
- (3) A probationary employee or a trainee who has not previously completed initial probation and who is dismissed shall have the right to appeal through the grievance procedure only if alleging unlawful employment discrimination based on age, sex, race, color, religion, national origin, political affiliation or disability.
- (4) A probationary employee or a trainee who had previously successfully completed initial probation during this term of employment is subject to disciplinary action up to and including dismissal in accordance with the provisions for a regular employee (section 2-95) and is entitled to the same process as a regular employee under the grievance procedure (section 2-96).

(e) *Promotions, interim appointments and special assignments of employees.*

- (1) It is the policy of the town to encourage promotions from within the town work force whenever possible. Employees will be considered based on merit, job performance and personal conduct in current and previous town positions, and relevant experience and training. Interim appointments may be made by the town manager or department director if a vacancy or leave is reasonably anticipated to exceed 30 calendar days. Interim appointments will only be made if the employee will spend a significant portion of time performing higher level duties. Interim appointments may be terminated by the town at any time.
- (2) Special assignments are long-term temporary assignments where the duties differ significantly from those duties typical in the employee's normal job classification. Special assignments may be terminated by the town at any time for any reason. Special assignments are authorized by the town council.

(f) *Promotion, interim appointments and special assignments; salary.* When an employee who meets all established requirements is promoted to a position in a higher salary grade, the employee's salary will normally be increased to the minimum level for the new pay range, or at least the equivalent of a five-percent increase. Employees receiving interim appointments to positions in a higher salary grade, or special assignments at a higher level, may be granted a salary increase which will not affect anniversary dates and will be rescinded upon the expiration of the interim appointment or special assignment.

(g) *Promotion; probationary conditions.* An employee who is promoted shall be considered on probation for the purposes of evaluation, but shall not be denied any of the employee benefits that would be provided if the promotion had not occurred. The probationary period shall last at least six months, except for newly appointed firefighters and police officers, who shall be on probation at least 12 months. If, at any time during the probationary period, the promoted employee's work performance is found to be unsatisfactory, the disciplinary procedure for evaluation as set forth in subsections 2-95(a), (b), (c), and (d) will be followed. To avoid termination, the employee may be reinstated in the employee's former position or one of comparable seniority, status and salary, if available. If no such position is available, the employee may be terminated. Before the end of the probationary period, the supervisor shall make the evaluations and recommendation as required by the provisions of subsections (c) and (d).

(h) *Outside employment.* An employee's work and interests of the town will take precedence over all other occupational interests of employees. All outside employment for salaries, wages or commission and all self-employment must be reported in advance to the employee's supervisor, who in turn will report it to the department director. The department director will review such employment for possible conflict of interest then submit a record of the employment and review to personnel. Conflicting or unreported outside employment is grounds for disciplinary action up to and including dismissal.

(i) *Demotion: disciplinary, voluntary, administrative.* Any employee whose work performance is unsatisfactory or personal conduct is detrimental may be transferred to a position in a lower salary grade if the employee possesses the qualifications necessary for performance in the new position. Such a disciplinary demotion should normally be preceded by the warning procedures outlined in section 2-95. When a transfer to a lower level position is not acceptable to the prospective department director, an employee may instead be given a within-grade salary reduction. A voluntary demotion may be requested by an employee at any time but must be approved by the town. An administrative demotion may be imposed by the town when the safety or health of the employee, public, or co-workers is at serious risk.

(j) *Pay rate for demotional transfer.* When an employee is transferred to a position in a lower salary grade for which the employee is qualified, the salary shall be set at the rate in the new pay range which provides the smallest or no decrease in salary, provided the action is taken for reasons other than discipline. If the action is for disciplinary purposes, the salary shall be set at an appropriate point in the lower range that is less than the existing salary.

(k) *Transfer.* Any employee of the town may be transferred to another position in the same department, or in another department of the town, if approved by the town manager. The employee shall not be denied any of the employee benefits that would be provided if the transfer had not occurred; however, if the transfer results in a change in department or classification, or is for disciplinary purposes, then the employee shall serve a probationary period as provided for by the provisions of subsection (b)(2).

(l) *Rehiring.*

(1) An employee who resigns while in good standing may be rehired with the approval of the town manager, and will be regarded as a new employee subject to all the provisions of this division.



- (2) An employee in good standing who is terminated due to a reduction in force shall be given the first opportunity to be rehired in the same or a similar position. An employee who is terminated due to a reduction in force and is then rehired within two years shall have his/her sick leave balance and vacation accrual rate reinstated.

(m) *Acceptance of gifts and favors.* No official or employee of the town shall:

- (1) Accept any gift, favor or thing of value that may tend to improperly influence or be perceived to improperly influence such employee in the discharge of the employee's duties; or
- (2) Grant in the discharge of duty an improper favor, service, or thing of value.

(n) *Political activity restricted.* Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, and may advocate and support the principles or policies of civic or political organizations in accordance with the Constitution and laws of the State of North Carolina and America; however, no employee shall:

- (1) Engage in any political or partisan activity while on duty;
- (2) Use official authority or influence for the purpose of interfering with or affecting the result of a nomination or an election for office;
- (3) Be required as a duty of employment or as condition for employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- (4) Coerce or compel contributions from another employee of the town for political or partisan purposes;
- (5) Use any supplies or equipment of the town for political or partisan purposes;
- (6) Be a candidate for nomination or election to office under the town charter.

Any violation of this section shall subject such employee to dismissal or other disciplinary action.

**State law reference**—Other restrictions on political activity, G.S. 160A-169.

(o) *Additional conditions of employment for the deputy town manager, assistant town manager and department directors.* Any deputy town manager, assistant town manager, or department director may be terminated without following the process outlined in section 2-95 of this article. The town manager shall advise the town council of his intentions prior to terminating a covered employee under this provision. Such a termination may be recorded as a resignation and will entitle a covered employee who has completed initial probation to severance pay based on the following:

<i>Continuous years of town service</i>	<i>Weeks of severance pay</i>
Less than 2	4
2 or more, but less than 5	8
5 or more	12

Employees age 40 or older on the effective date of severance will receive an additional four weeks of severance pay. All such severance pay is in addition to any other benefits to which the employee is otherwise entitled and is contingent upon the employee agreeing to such terms and conditions of severance as the town may deem appropriate. Severance pay does not include any type of pay other than base pay.

(Code 1982, § 2-67; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 93-34, § 1, 9-23-1993; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-029, 6-26-1997; Ord. No. 98-003, 5-28-1998; Ord. No. 2010-Code-09, 12-16-2010; Ord. No. 2018-Code-04, 8-23-2018; Ord. No. 2019-Code-04, 10-10-2019)

**Sec. 2-92. Employee benefits, holidays and leaves of absence.**

(a) *Eligibility.* All regular and probationary employees, as well as trainees employed by the town and other employees, as specifically provided herein, are eligible for employee benefits provided for in this section which are subject to change at the town's discretion (see also subsection 2-63(a)). Temporary employees, whether full-time or part-time, are only eligible for workers compensation, family and medical leave subject to the provisions of the family and medical leave policy, and participation in the Local Government Credit Union subject to credit union rules and regulations.

(b) *Group health plans.*

- (1) The town will make reasonable effort to provide full-time employees with at least one group health plan, including family coverage, and to pay the total individual cost for the individual employees enrolling in that plan. Employees will pay all or a portion, as determined by the town council, of the cost of coverage for qualified dependents if the individual employee desires such coverage.
- (2) Part-time employees may, if they so desire, purchase available group health through the town, either for themselves or for themselves and their qualified dependents. A pro rata amount of the cost of coverage paid for a full-time employee shall be paid for by the town, with the remainder of the cost being paid by the employee. This pro rata amount shall be based on regularly scheduled hours.
- (3) Employees who retire may remain on a town group health plan to Medicare eligibility or age 65, whichever comes first. Retirees are eligible for a payment towards the retiree's individual health insurance premium based on criteria established by Town Council.
- (4) Information concerning cost and benefits shall be available to all employees through the human resources department.

(c) *Local Government Employees' Retirement System.* Each employee who is required to work for the town more than 1,000 hours annually shall, as a condition of employment, join the Local Government Employees' Retirement System (LGERS) beginning with the date of hire. Employees who are already members of LGERS, the Teachers and State Employees Retirement System or other North Carolina retirement systems at the time they are hired, continue participation in LGERS.

(d) *Compensation for off-duty employees on standby status.* The town must provide certain critical services 24 hours a day, seven days a week. To ensure that employees with necessary skills are readily available, the town places some off-duty employees on standby status and provides town council-approved compensation for the inconvenience created.

(e) *Tuition reimbursement.* Full-time employees who have completed initial probation may apply for tuition reimbursement for courses taken on their own time, whenever possible, which will improve their skills for their current job or prepare them for promotional opportunities within the town service. Tuition, registration fees, laboratory fees and student fees are eligible expenses and are subject to reimbursement according to current standard procedure. Satisfactory completion of the course will be required for reimbursement. (Also see subsection (dd), education leave, of this section.)

(f) *Paid leave policy.* The policy of the town is to provide vacation, sick leave, holiday leave, and certain other paid leaves to all full-time and part-time employees. Paid leave does not include leave while receiving short-term disability insurance or while receiving benefits under worker's compensation. An employee must work or be on paid leave for more than half the regularly scheduled hours in a biweekly pay period to accrue leave for that period.

(g) *Holidays.* The Town designates New Year's Day, Martin Luther King Jr. Day, Good Friday, Memorial Day, Juneteenth, Independence Day, Labor Day, Veterans Day, Thanksgiving Day (including the day after Thanksgiving Day), and Christmas Day (including the day before and after Christmas day) as paid holidays. If any of the Town holidays fall on a Saturday or Sunday, the Town will adopt the same holiday schedule as the State of North Carolina for that specific holiday. If a Town holiday not observed by the State falls on a Saturday or Sunday, it will be observed on the preceding Friday or following Monday, respectively. Town staff will be notified of the schedule each calendar year. Holiday leave earned by employees having a work week with fewer hours than the basic workweek shall be determined in accordance with the formula set forth in subsection (v) of this section.

(h) *Effect of holidays on other types of leave.* Regular holidays which occur during a vacation, sick leave, or other paid leave period of any officer or employee of the town shall not be considered as vacation, sick leave, or other leave.

(i) *Holiday compensation.* An employee who works or is on paid leave the entire workday prior to and following a designated holiday will receive paid holiday leave. An employee of the town who is required to work on any designated holiday due to work schedule or at the direction of a supervisor is entitled to additional holiday compensation. The employee shall receive compensation at the regular rate for hours worked. In addition, such employee is also entitled to a choice of either compensation in the form of time off or pay, selected with the approval of the supervisor. Such compensation, whether in compensatory time or pay, shall be computed at a rate of time-and-one-half for the actual hours worked. Temporary employees, the deputy town manager, the assistant town manager, and all department and division directors shall be exempt from this provision. Departments with employees working 24 hours a day may elect to compensate those employees for working on the "true" holiday rather than the designated holiday.

(j) *Religious holidays.* Any employee of the town desiring to observe a religious holiday other than those designated shall be permitted to do so as determined by federal regulations. Such absences are accounted for through use of vacation or compensatory time, if available. Any such employee shall advise his or her immediate supervisor of the proposed leave at least one week in

advance of that date, and the employee's work schedule should be adjusted accordingly to permit such observance.

(k) *Schedule for taking vacation.* Employees shall be granted use of earned vacation upon request, in advance in writing, at those times designated by the town manager or department director, which will least inconvenience normal operations of the town.

(l) *Unscheduled vacation.* Unscheduled vacation is vacation which is taken, but has not been approved in advance by the appropriate town official. Unscheduled vacation will be considered as an improper use of leave privileges and may subject an employee to disciplinary action as outlined in section 2-95.

(m) *Vacation leave: initial appointment, probationary employees and trainees.* Employees who have not completed initial probation may accumulate vacation leave; however, the employee shall not be permitted to take vacation leave unless the denial of such leave would create an unusual hardship or unless it is to be used as supplemental pay while on workers compensation. Vacation leave, except as a supplement to workers compensation, may be taken during this period only with the prior approval of the town manager. Firefighters and law enforcement officers shall be allowed to take accumulated vacation leave after six months' satisfactory service.

(n) *Vacation leave: rate.*

(1) Full-time employees working the basic workweek shall earn vacation leave at the following rates:

<i>Years of aggregate service in an authorized position</i>	<i>Hours earned in one year</i>	<i>Days earned in one year</i>
Less than 2	80	10
2 but less than 5	96	12
5 but less than 10	120	15
10 but less than 15	144	18
15 but less than 20	168	21
20 or more	192	24

(2) Vacation earned by employees having a workweek with greater or fewer hours than the basic workweek shall be determined in accordance with the formula set forth in subsection (v) of this section.

(3) With approval of the town council, the town manager can authorize a higher-than-vacation accrual when necessary to attract an applicant to a critical position during a tight labor market. Such accrual shall not exceed 24 days per year.

(o) *Vacation; maximum accumulation.*

(1) Vacation may be accumulated without any applicable maximum until the last day of the first full payroll period in June; however, if the employee separates from service, payment for accumulated vacation shall not exceed 240 hours. On the last day of the first full payroll

period in June, any employee with more than 240 hours of accumulated vacation leave will have the excess amount converted to sick leave.

- (2) Employees are cautioned not to retain excess accumulation of vacation until late in the fiscal year; due to the necessity of keeping all town functions in operation, large numbers of employees cannot be granted vacation at any one time. If any employee has excess leave accumulation during the latter part of the fiscal year and is unable to take such leave because of staffing demands, the employee will not receive special consideration, either in having vacation scheduled or in receiving any exception to the maximum accumulation.

(p) *Payment for accumulated vacation upon death.* The estate of an employee who dies while employed by the town will normally be entitled to payment for all the accumulated vacation credit to the employee's account, not to exceed a maximum of 240 hours; however, an employee may stipulate in writing to the human resources department to whom payment should be made in the event of death.

- (q) *Sick leave.*

- (1) Sick leave with salary is not a right that an employee may demand, but a privilege granted for the benefit of an employee when sick.
- (2) Sick leave may be granted to an employee temporarily absent from work for any of the following reasons: Sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease when continuing work might jeopardize the health of others.
- (3) Sick leave may be used when an employee must temporarily care for a member of his or her immediate family who is ill. Such leave is normally limited to 12 weeks total in any 12-month period. Sick leave may also be used for death in the employee's immediate family or the death of a close relative. For the death of an immediate family member, an employee may take up to five days of sick leave for any one occurrence. For a close relative, sick leave may not exceed three days for any one occurrence. Additional leave time required for any such occurrence may be charged to vacation. For the purpose of this section, "immediate family" is defined as wife, husband, mother, father, guardian, brother, sister, daughter and son. For the purpose of this section, "close relative" is defined as mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandmother, grandfather, grandson, and granddaughter. Also included in both definitions are the various combinations of "step," "half" and adopted relationships.
- (4) Sick leave may also be used to supplement pay received under worker's compensation.
- (5) Up to 80 hours of sick leave may be used singly or jointly by parents adopting a child.
- (6) An employee on sick leave who, upon advice of a competent physician, is determined by the town to be unable to return to work and who is vested in the retirement system may continue to use accrued sick leave, provided that he/she is actively applying for service or disability retirement. Where the employee is not vested, the employee may exhaust sick leave accrued while employed with the town.

(r) *Sick leave rate and accumulation.* Sick leave shall accrue at a rate of one day per month of service or 12 days per each calendar year of service. Sick leave for employees whose workweek is less than full-time shall be calculated proportionately, as described in subsection (v) of this section. Sick leave shall accumulate without remittal for as long as that person remains an employee of the town.

(s) *Policy for taking sick leave.* Notification of the desire to take leave should be submitted to the employee's supervisor prior to the leave, but, in any event, not later than one hour after the beginning of the scheduled workday.

(t) *Physician's certificate.*

(1) The department director may require a physician's certificate stating the nature of the employee's or immediate family member's illness and the employee's capacity to resume duties for each occasion on which an employee uses sick leave. The employee may be required to submit to such medical examination or inquiry as the department director deems desirable. The department director shall be responsible for the application of this provision to the end that:

- a. Employees shall not be on duty when they might endanger their health or the health of other employees; and
- b. There will be no abuse of leave privileges.

(2) Claiming sick leave under false pretense to obtain a day off with salary shall subject the employee to disciplinary action.

(u) *Sick leave; retirement credit for accumulated sick leave.* Sick leave may be granted as retirement credit consistent with the provisions of the state local governmental employees retirement system.

(v) *Calculation of holiday leave, vacation and sick leave.* Holiday leave, vacation and sick leave earned by employees having a regularly scheduled workweek with fewer hours than the basic workweek shall be determined in accordance with the following formula. Vacation leave for employees having a regularly scheduled workweek with greater hours than the basic workweek shall also be determined by the following formula:

- (1) The number of hours worked by such employees shall be divided by the number of hours in the basic workweek;
- (2) The proportion obtained in step (1) shall be multiplied by the number of hours of leave earned annually by employees working the basic workweek;
- (3) The number of hours in step (2) divided by 26 shall be the number of hours of leave earned biweekly by the employees concerned.

(w) *Workers compensation.*

- (1) All employees of the town, whether full-time, part-time, regular, probationary or temporary, are covered by state workers compensation and are required to report all injuries arising out of and in the course of employment to their immediate supervisor, at the time of the injury, in order that appropriate action may be taken at once.
- (2) Responsibility for claiming compensation under the workers compensation act is on the injured employee. The human resources department will assist the employee in filing the claim. An employee absent from duty because of sickness or disability due to an on-the-job injury and covered by the North Carolina workers compensation act (G.S. ch. 97) may receive workers compensation benefits. Regular employees, probationary employees and trainees may elect to use accumulated vacation and sick leave as a supplemental payment for the difference between regular salary and the payments received under the workers compensation act. The combination of workers compensation payments and pay from any supplemental leave shall not exceed the employee's normal base salary. Computation of salary rate for any leave taken shall be based on the employee's base salary rate.
- (3) The town directs all medical treatment through its third party administrator. Unauthorized medical treatment is not covered.

(x) *Family, parental, maternity and medical leaves.* All employees who have met certain criteria are eligible for family and medical leave as prescribed by the family and medical leave act of 1993. Specific guidelines and employee notification requirements are outlined in separate town policies and procedures.

(y) *Leave without salary generally.*

- (1) To ensure public accountability, the town normally does not pay employees for scheduled hours not worked when there is no leave time accrued or available which is appropriate to cover the absence. Leave without pay for employees who are exempt from the overtime provisions of the fair labor standards act will only be used in a manner which preserves the employee's exempt status. A regular employee may be granted a leave of absence without salary for up to one year by the town manager. The leave may be used for reasons of:
  - a. Personal disability after both sick leave and the desired amount of vacation has been exhausted;
  - b. Continuation of education or special work that will permit the town to benefit by the experience gained or the work performed; or
  - c. For other reasons deemed justified by the town manager.
- (2) The employee shall apply in writing to the town manager for leave. The employee is obligated to return to duty with the town at the end of the time determined appropriate by the town manager. Upon returning to duty after being on leave without salary, the employee will normally return to the same position held at the time leave was granted or to one of like classification, seniority and salary. If the employee decides not to return to work, the

employee should notify the supervisor immediately. Failure to report at the expiration of a leave of absence, unless an extension has been approved, shall be considered a resignation.

(z) *Leave without salary: retention and continuation of benefits.* An employee shall retain all unused vacation and sick leave while on leave without salary. An employee ceases to earn leave when he/she works or is on paid leave one-half or less of the regularly scheduled hours in a pay period. The employee may continue to be eligible for benefits under the town's group health plans, subject to any regulations established by the respective insurance carriers and the provisions of the town's family and medical leave policy.

(aa) *Effect of absences on performance review dates.* An employee's merit review eligibility may be delayed one month for each calendar month the employee is on leave without salary, sick leave, workers compensation, absent while receiving short-term disability insurance, or any other combination of such absences more than one-half the scheduled hours in that month.

(bb) *Military leave.* An employee who is a member of an armed forces reserve organization or the national guard shall be granted two calendar weeks per year of leave with pay for military training. While on military leave, benefits will accrue as though present for duty. This leave is not charged as vacation; however, any salary payment which the employee receives from the military shall be deducted from the amount paid by the town.

(cc) *Civil leave.* An employee called for jury duty or as a subpoenaed court witness for the federal or state government, or a subdivision thereof, shall be entitled to leave with pay for such duty in addition to keeping fees received for such duty if the town is provided documentation for each day. An employee called as a witness in a private court case must take leave without pay, vacation, or compensatory leave.

(dd) *Education leave.* Education leave at full or part pay for a period not to exceed nine months may be granted to an employee with the approval of the town manager. If the educational leave exceeds 15 days or any equivalent in a period of one year, it shall also be approved by the town council. An employee granted educational leave with pay for a period of 15 or more days shall enter into a formal contract with the town, in which the employee agrees to return to the service of the town upon completion of the training and remain an employee of the town for a period equal to twice the educational leave which the employee received, or reimburse the town for all compensation received while on educational leave.

(ee) *Reinstatement generally.* An employee of the town who is on education, parental, sick or other authorized leave will normally be reinstated to the former position, or one comparable in seniority, status and salary, if such employee returns to town service at the expiration of such leave or authorized extension thereof. An employee who fails to return within the required time shall be considered as having voluntarily resigned.

(ff) *Reinstatement following military service.* An employee called to extended active duty with the United States military forces who does not volunteer for service beyond the period for which called shall be reinstated to the position he/she would have attained but for military service, provided the employee:

- (1) Applies for reinstatement as provided for by law; and



- (2) Is able to perform the essential functions of the former position with or without reasonable accommodation; or
- (3) If unable to perform the essential functions of the former position with or without reasonable accommodation, due to disability sustained as a result of military service, but is able to perform the duties of another position in the service of the town, he/she shall be employed in such other position as will provide the nearest approximation of the seniority, status and pay which he/she otherwise would have been provided. Upon re-employment, an employee is entitled to benefits the individual would have attained, with reasonable certainty, had he or she remained continuously employed.

(gg) *Payment of leave upon separation.* Regular employees and probationary employees who have completed six months' satisfactory service and given a minimum required notice shall be paid for accumulated vacation not to exceed 240 hours. Employees who are dismissed, all in full or in part, for detrimental personal conduct or grossly inefficient job performance shall not receive pay for accumulated vacation. All employees, except department directors, the deputy town manager, and the assistant town manager, are paid for any accumulated holiday leave upon separation. Any employees also shall be paid for accumulated compensatory time earned while nonexempt from the overtime provisions of the fair labor standards act. All remaining sick leave shall end and terminate without compensation when an employee separates from town employment.

(Code 1982, § 2-68; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 97-013, 4-24-1997; Ord. No. 98-003, 5-28-1998; Ord. No. 2008-04, 3-13-2008; Ord. No. 2010-Code-09, 12-16-2010; Ord. No. 2019-Code-04, 10-10-2019; Ord. No. 2021-Code-02, 5-27-2021)

#### **Sec. 2-93. Travel.**

The town manager shall be responsible for establishing, administering, revising and maintaining a travel policy applicable to all town employees. Vehicles owned by the town will be provided to certain personnel for town business only and shall not be used for personal purposes. If a town vehicle is involved in an accident, either on public or private property, the police department, the appropriate supervisor, and the risk management specialist shall be notified immediately.

(Code 1982, § 2-69; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

#### **Sec. 2-94. Separation.**

(a) *Types.* All separations of employees from positions in the service of the town will normally be designated as one of the following types and will normally be accomplished in the manner indicated: Resignation, reduction in force, disability, voluntary retirement, unavailability, dismissal or death.

(b) *Resignation and notice.* An employee may resign by submitting in writing to his/her immediate supervisor the reasons for resignation and the effective date as far in advance as possible. The minimum notice requirement is two weeks, unless, by agreement prior to employment or promotion, a longer period has been specified. Failure to provide minimum notice shall result in payment for accumulated vacation leave being forfeited, unless the notice is waived upon recommendation of the department director and approval of the town manager. Employees may not

use leave in lieu of a notice. Three consecutive days of absence without reporting in the manner required by the department director may be considered to be a voluntary resignation without minimum notice.

(c) *Reduction in force.* Reduction in force may include deletion of a specific position or positions or overall reduction of town staffing. Where specific positions are no longer needed by the town, the incumbents, if any, shall be subject to the reduction in force. In the event that an overall reduction in force becomes necessary, primary consideration shall be given to organizational needs, as well as the quality of each employee's past performance, conduct, and seniority, in determining those employees to be retained. The town will determine how to weigh these factors in order to best serve the needs of the town. Employees who are laid off because of a reduction in force shall be given at least 30 days' notice of anticipated layoff. No employee shall be separated while there are temporary employees serving in the same class in the department, unless the employee is not willing to transfer to the position held by the temporary employee. An employee who has been reduced in force may be considered for internal job listings for a period of two years.

(d) *Disability.* An employee who cannot satisfactorily perform the essential functions of a job because of a physical or mental disability may be separated. If requested by the employee, the town and employee must first fully explore reasonable accommodation(s) which might permit the employee to resume satisfactory performance. Reasonable accommodation may include transfer to a different position. Action may be initiated by the employee or the town, but, in all cases, it must be accompanied by medical evidence acceptable to the town manager. The town may require an examination, at the town's expense, performed by a physician of the town's choice.

(e) *Voluntary retirement.* An employee who meets the conditions set forth under the provisions of the state local government employees retirement system may elect to retire and receive all benefits earned under the retirement plan.

(f) *Unavailability when leave is exhausted.* An employee may be separated if he/she becomes or remains unavailable for work after all applicable leave and benefits (not including COBRA) have been exhausted and management, for sufficient reasons, does not grant leave without pay.

(g) *Dismissal.* An employee may be dismissed in accordance with the provisions and procedures of this article.

(h) *Effective dates.* Resignations and dismissals shall normally be effective the last day actually worked. The effective date of these separations may not be a holiday, a vacation day, or a compensatory leave day; however, the effective date of separation for employees who are not returning from short-term disability, sick leave, or leave without pay or similar status will be determined individually. The effective date for an employee who dies shall be the date of death.

(Code 1982, § 2-70; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

#### **Sec. 2-95. Disciplinary action.**

(a) *Progressive discipline.* Progressive discipline is intended to encourage employees to make permanent corrections to performance deficiencies and minor problems relating to personal conduct. Progressive discipline may be based on repeated performance deficiencies or detrimental

personal conduct of the same or of a different nature. Progressive discipline shall involve consideration of all previous disciplinary actions, if any, whether for unsatisfactory job performance or for detrimental personal conduct. In determining the appropriate level of discipline for unsatisfactory job performance, consideration shall also be given to the time lapsed since the last warning for unsatisfactory performance or detrimental personal conduct, if any.

(b) *Disciplinary action for unsatisfactory or grossly inefficient job performance.* A regular employee may be placed on disciplinary suspension, demoted, or terminated for unsatisfactory job performance if, after following the procedure outlined in subsection 2-95(c), the employee's job performance is still deemed to be unsatisfactory. Employees may also be warned, suspended, demoted or terminated for grossly inefficient job performance, as outlined in 2-95(c). All cases of disciplinary suspension, demotion or termination must be approved by the town manager or his designee prior to giving final notice to the employee.

- (1) Unsatisfactory and grossly inefficient job performance defined.
  - (2) Unsatisfactory job performance includes any aspects of the employee's job which are not performed as required to meet the standards set by the department director or the town manager. Examples of unsatisfactory job performance include, but are not limited to, the following:
    - a. Demonstrated inefficiency, negligence, or incompetence in the performance of duties;
    - b. Careless or negligent use of town property or equipment;
    - c. Discourteous treatment of the public or other employees;
    - d. Absence without approved leave;
    - e. Repeated improper use of leave privileges;
    - f. Repeated failure to report for duty at the assigned time and place; or
    - g. Failure to carry out supervisory responsibilities.
  - (3) Grossly inefficient job performance is a disregard for any aspect of an employee's job which results or could result in severe damage to town property, serious injury to or death of an employee or citizen, significant impact on town finances, or a loss of public confidence in town government. Examples of grossly inefficient job performance include, but are not limited to, the following:
    - a. Failure to wear required personal protective equipment or to observe other safety work rules.
    - b. Failure to follow standard procedures or practices which result in a significant loss of revenue to the town.
    - c. Failure to properly secure or protect town equipment or property which results in damage to that property or other property, or injury to an individual.
- (c) *Procedure for disciplinary action for unsatisfactory or grossly inefficient job performance.*
- (1) An employee's supervisor shall notify the employee of any deficiency in job performance and what is required for satisfactory job performance.

- (2) An employee whose job performance is unsatisfactory should normally receive progressive warnings before disciplinary action resulting in dismissal is taken by the department director or the town manager; however, in cases of grossly inefficient job performance, an employee may receive a step 2 warning, a step 3 warning or may be dismissed without any prior disciplinary action. When appropriate, progressive warnings should include the following steps:
  - a. Step 1: one or more documented oral warnings from the employee's supervisor;
  - b. Step 2: A written warning to the employee from a supervisor, outlines the performance deficiencies and serves as notice that corrected performance must take place immediately in order to avoid a further disciplinary action, including demotion;
  - c. Step 3: A final written warning from a supervisor serving notice upon the employee that corrected performance must take place immediately in order to avoid further disciplinary action, including dismissal.
- (3) A demotion to a lower salary grade or within grade may be imposed no earlier than step 3. A disciplinary suspension without pay may be imposed at step 2 or step 3 or in conjunction with a later warning.
- (4) The supervisor shall record the dates of any discussions with the employee, the performance deficiencies discussed, the corrective actions recommended and any time limits set, and submit such information to the employee's permanent human resource file.

(d) *Disciplinary action for detrimental personal conduct.* With the approval of the town manager, an employee may be placed on disciplinary suspension, demoted or dismissed without prior warning due to personal conduct detrimental to town service in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. In less serious or less disruptive situations, steps similar to those listed under subsection 2-95(d) above may be in order. When an employee is suspended or dismissed immediately, the employee may be told to leave town property at once and either to report to a supervisor at a specific time or to remain away until further notice.

(e) *Detrimental personal conduct defined.* Detrimental personal conduct includes behavior, whether on-duty or off-duty, intentional or unintentional, of such a serious detrimental nature that the functioning of the town may be or has been impaired; the safety of persons or property may be or has been threatened; the laws of the government may be or have been violated; or public confidence in government is likely to be undermined. Examples of detrimental personal conduct include, but are not limited to, the following:

- (1) Fraud;
- (2) Conviction of a felony or the entry of a plea of nolo contendere thereto;
- (3) Falsification of records for personal profit, to grant special privileges, or to obtain employment;
- (4) Willful misuse or gross negligence in the handling of town funds;
- (5) Willful or wanton damage or destruction to property;

- (6) Willful or wanton acts that endanger life or property;
- (7) Possession of unauthorized firearms or other lethal weapons on the job or bringing such onto town property;
- (8) Communication of a threat or engaging in threatening behavior;
- (9) Gross misuse or repeated personal use of town vehicles or equipment;
- (10) Request for or acceptance of a gift or gifts in exchange for "favors" or influence;
- (11) Engaging in or condoning sexual harassment or other prohibited harassment;
- (12) Reporting to work, or working, under the influence of alcoholic beverages, narcotic drugs, or any other unlawful drug, or partaking or possessing of such while on duty;
- (13) Withholding, misrepresentation or falsification of information necessary for the investigation of alleged violations of this Code when such information is requested by a supervisor, the town manager, or designee;
- (14) Failure to comply with a reasonable order from an appropriate supervisor (insubordination);
- (15) Flagrant behavior or repeated rude or uncivil behavior directed toward citizens or co-workers.

(f) *Disciplinary actions relating to special job requirements.* An employee may be placed on disciplinary suspension, demoted or dismissed without prior warning for failing to obtain or maintain a required license, certificate, registration or similar document, or for failing to maintain a satisfactory driving record when driving town equipment or vehicles is a job requirement.

(g) *Nondisciplinary suspension.* During the investigation, hearing, or trial of an employee on any criminal charge, or during an investigation related to alleged detrimental personal conduct, or during the course of civil action involving an employee, when suspension would, in the opinion of the town manager, be in the best interest of the town, the town manager may suspend the employee for the duration of the proceedings as a nondisciplinary action. Department directors may place an employee on nondisciplinary suspension in the absence of the town manager, when such employee's alleged actions constitute detrimental personal conduct. In such cases, the town manager or department director may:

- (1) Relieve the employee temporarily of all duties and responsibilities and allow the employee no compensation for the period of the suspension; or
- (2) Assign the employee new duties and responsibilities and allow the employee to receive such compensation as is in keeping with the new duties and responsibilities. If the employee is reinstated following the suspension, such employee may be restored any benefits to which the employee would otherwise have been entitled had the suspension not occurred; however, a written warning and a disciplinary suspension of 80 hours or less without pay may be imposed based on the extent to which the employee's behavior may have constituted detrimental personal conduct. If the employee is dismissed following the

suspension, the employee shall not be eligible for any pay from the date of suspension; provided, however, all other benefits, with the exception of the accrual of vacation and sick leave, shall be maintained during the period of suspension.

(h) *Disciplinary suspension and deductions.*

- (1) Any employee who is nonexempt from the overtime provisions of the FLSA may be suspended without pay, normally for one day, in conjunction with a step 2, step 3, or subsequent warning relating to performance of duties.
- (2) Any employee who is exempt from the overtime provisions of the FLSA may be suspended without pay, normally for one day, in conjunction with a step 2, step 3 or subsequent warning on job performance involving any serious violation of safety rules relating to the prevention of serious danger to the town's property or to other employees. For performance problems not relating to safety, accrued vacation or holiday leave may be reduced, normally by one day.
- (3) For nonexempt employees, suspension of 80 hours or less may be imposed, along with a written warning relating to detrimental personal conduct. For exempt employees to be suspended, the detrimental personal conduct must involve serious safety violations, or must be in one-week increments. In other cases of detrimental personal conduct, deductions of 80 hours or less may be made from accrued vacation or holiday leave of an exempt employee.
- (4) All disciplinary deductions from accrued leave shall be considered the equivalent of a disciplinary suspension.

(i) *Predisciplinary conference and notification of disciplinary action.*

- (1) When an employee is proposed to be placed on disciplinary suspension, demoted or dismissed, the town manager shall insure that the employee is given written notice of the proposed disciplinary action, advised of the evidence supporting the proposed action, and is provided with an opportunity to respond to the proposed disciplinary action. The employee's response shall be given due deliberation prior to making a final determination. Mechanical recording of all or any part of a conference or other meeting pertaining to the disciplinary action is prohibited without prior agreement of all parties subject to being recorded.
- (2) At the time an employee is notified of any final disciplinary decision involving disciplinary suspension, involuntary demotion, or dismissal, or as soon as possible thereafter, the town manager shall insure that the employee is provided with written notice of the action taken, the effective date, the reason or reasons for the action, and the recourse, if any, available to the employee under the provisions of this article.

(j) *Employee appeal.* An employee who has completed initial probation or a probationary employee who alleges unlawful employment discrimination and who is disciplined may appeal the disciplinary action in accordance with the grievance procedure.

(Code 1982, § 2-71; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998)

**Sec. 2-96. Grievance procedure.**

(a) *Policy.* It is the policy of the town to provide a just procedure for the presentation, consideration and disposition of employee grievances. The purpose of this section is to outline the procedure and to assure all employees that a response to their complaints and grievances will be prompt and fair.

(b) *Definition and limitations.* A grievance is a claim or complaint by an employee based upon an event or condition which affects the circumstances under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.

(1) Appeals involving a disciplinary suspension, involuntary demotion, dismissal or suspension of driving privileges by the town are initiated at step 3 of the grievance procedure. All appeals must be filed within 20 calendar days of the date the final disciplinary decision is communicated to the employee.

(2) Grievances concerning performance evaluations or performance awards may only be appealed up to step 2 of the grievance procedure; however, department directors may appeal to the town manager.

(c) *Purposes.* The purposes of the grievance procedure include, but are not limited to, the following:

(1) Providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;

(2) Encouraging employees to express themselves about the conditions of work which affect them as employees;

(3) Promoting better understanding of policies, practices, and procedures which affect employees;

(4) Increasing employees' confidence that human resource actions taken are in accordance with established, fair and uniform policies and procedures; and

(5) Increasing the sense of responsibility exercised by supervisors in dealing with their employees.

(d) *Procedure.* When an employee or a group of employees has a grievance, the following successive steps are to be taken unless otherwise provided. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. The time limits at any step, however, may be extended by mutual consent or due to unusual circumstances beyond the reasonable control of either party. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. Mechanical recording of all or part of any meeting is prohibited without prior agreement of all parties subject to being recorded. While all parties are entitled to seek legal advice, attorneys may not be present at administrative or investigative meetings related to the grievance without the consent of all parties. At each step, the individual responding to the grievance is encouraged to consult with any

employee of the town, or others as appropriate, in order to reach a fair, impartial, and equitable resolution. All employees consulted during a grievance are required to cooperate to the fullest extent possible. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved in advance by the town manager.

- (1) *Informal grievance.* The employee with a grievance is encouraged to resolve the grievance with the appropriate supervisor in an informal face-to-face meeting, before going on to the formality required in the following steps. Either the employee or the supervisor may involve the respective department director and/or chief human resources officer as a resource to help resolve the grievance. Using the informal grievance does not change the grievance deadline unless both parties mutually agree to an extension.
- (2) *Formal grievance.* To be considered, a grievance must be filed within the time limit described in this section and must include the full basis for the employee's complaints, all information which supports the employee's position, and a statement outlining what the employee wishes to have happen as a result of the grievance.
  - a. Step 1: If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor in writing. The grievance must be presented within 20 calendar days of the event or within 20 calendar days of learning of the event or condition. The supervisor shall have a response to the grievance delivered to the employee within 20 calendar days after receipt of the grievance. The response shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The supervisor shall send copies of the grievance and answer to the human resources department.
  - b. Step 2: If the grievance is not resolved to the satisfaction of the employee by the supervisor, the employee may appeal, in writing, to the appropriate department director, within 20 calendar days after receipt of the response received in step 1. The department director shall respond to the appeal, stating his or her decision within 20 calendar days after receipt of the appeal. Such response shall be in writing and shall be signed by the employee to acknowledge receipt. The department director shall send copies of the grievance and the response to the human resources department.
  - c. Step 3: If the grievance is not resolved to the satisfaction of the employee at the end of step 2, the employee may appeal, in writing, to the town manager within 20 calendar days after receipt of the response received in step 2. The town manager shall respond to the appeal in writing. The response shall be signed by the town manager and hand-delivered or mailed to the employee within 20 calendar days of completing the review. A mailed response shall be sent by certified or registered mail with return receipt requested. The town manager's decision shall be the final decision.

(e) *Grievance and adverse action appeal procedure; unlawful employment discrimination.* Any applicant for town employment, town employee, or former town employee who has reason to believe that any employment action, including promotion, training, classification, pay, disciplinary warning, disciplinary suspension, transfer, demotion, layoff, or termination of employment was based on age, sex, race, color, national origin, religion, or disability has the right to appeal such action using the



grievance procedure outlined in subsection (d) of this article, if he or she so desires. While employees are encouraged to use the progressive steps outlined in the grievance procedure, employees claiming discrimination shall have the right to appeal directly to the town manager (refer to step 3 above). A failure to demonstrate that unlawful discrimination was the basis for the act shall render the balance of the appeal moot.

(f) *Back pay awards.* Back pay and benefits may be awarded to reinstated employees in disciplinary suspension, demotion, dismissal and discrimination cases.

(g) *Conflict with policies and regulations.* No decision or determination of any grievance shall in any way conflict with the town policies, resolutions, ordinances or statutes applicable thereto. (Code 1982, § 2-72; Ord. No. 91-5, § 1, 2-28-1991; Ord. No. 95-007, § 1, 1-26-1995; Ord. No. 96-010, § 1, 10-24-1996; Ord. No. 98-003, 5-28-1998; Ord. No. 2019-Code-04, 10-10-2019)

**Secs. 2-97—2-107. Reserved.**

## ARTICLE IV. DEPARTMENTS

### DIVISION 1. GENERALLY

#### **Sec. 2-108. Department names; organization.**

The town manager may create, change, abolish, and consolidate offices, positions, and departments of the Town and generally organize and reorganize Town government in order to promote orderly and efficient administration of town affairs, subject to the limitations contained in N.C.G.S. 160A-146. All references in this Code of Ordinances to a specific department or position shall be deemed to be a reference to any successor department or position, or to the department or position that has assumed responsibility for the subject matter of the relevant Code section. (Ord. No. 2019-Code-04, 10-10-2019)

**Secs. 2-109—2-128. Reserved.**

### DIVISION 2. DEPARTMENT OF INSPECTIONS AND PERMITS

#### **Sec. 2-129. Created.**

The department of inspections and permits is hereby created, and the executive official in charge thereof shall be known, and referred to in this article, as the "director." (Code 1976, § 15-5; Code 1982, § 2-74)

#### **Sec. 2-130. Right of entry.**

The director or his agent shall make the inspections and tests necessary to obtain compliance with the Code. In cases of new construction, alterations or repairs, the right of entry upon any

premises for inspections and tests is absolute between the hours of 9:00 a.m. and 5:00 p.m. on any working day.(Code 1976, § 15-6; Code 1982, § 2-75)

**Sec. 2-131. Stop work orders.**

Whenever any work or activity subject to regulation by the department of inspections and permits is undertaken in substantial violation of any state or local law, or in a manner that endangers life or property, the appropriate inspector may order the specific part of the work or activity that is in violation or presents such a hazard to be immediately stopped. Such order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the specific reasons therefor, and the conditions under which the work or activity may be resumed. A copy of the order shall be delivered to the holder of the development approval and the owner of the property (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person delivering the stop work order shall certify that the order was delivered. A stop work order involving alleged violation of the State Building Code or any approved local modification may be appealed pursuant to G.S. 160D-1114. Violation of a stop work order shall constitute a Class 1 misdemeanor.

(Code 1976, § 15-7; Code 1982, § 2-76; Ord. No. 2021-Code-02, 6-24-2021)

**Sec. 2-132. Records.**

The department of inspections and permits shall keep official records of applications received, permits and certificates issued and fees collected. File copies of all papers in connection with building operations shall be retained in the official records as required by the municipal records retention and disposition schedule. Blueprints and plans of structures subject to regulation under the North Carolina Residential Code for One- and Two-family Dwellings and miscellaneous work may be approved, stamped by the inspections and permits department and returned to the contractor at the time of issuance of the building permit. These approved plans must be kept on the job site at all times until the issuance of a certificate of compliance.

(Code 1976, § 15-8; Code 1982, § 2-77; Ord. No. 81-13, § 1, 9-24-1981; Ord. No. 2022-Code-01, 4-28-2022)

**Secs. 2-133—2-143. Reserved.**

**DIVISION 3. POLICE DEPARTMENT\***

**Sec. 2-144. Established.**

The police department of the town is hereby established. It shall consist of a chief and as many police officers and other staff as the town council shall from time to time determine based on recommendation of the town manager.

(Code 1976, § 12-1; Code 1982, § 15-1; Ord. No. 03-002, 1-9-2003)

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\*State law reference—Law enforcement, G.S. 160A-281 et seq.

**Sec. 2-145. Duties.**

The police department shall carry out all orders of the town council, enforce all laws and ordinances of the town and the state and shall at all times preserve the peace, protect the property and the safety of the citizens of Cary.

(Code 1976, § 12-4; Code 1982, § 15-2; Ord. No. 03-002, 1-9-2003)

**Sec. 2-146. Chain of command.**

All officers and members of the police department shall be accountable to the chief.

(Code 1976, § 12-2; Code 1982, § 15-3; Ord. No. 03-002, 1-9-2003)

**Sec. 2-147. Uniforms and equipment.**

The chief of police and other police officers and members shall wear such uniforms and equipment as shall be issued or approved by the town and shall keep the same in a neat condition, and upon discharge, resignation or dismissal, surrender such uniform and equipment when the

## CARY CODE OF ORDINANCES

same shall have been purchased by the town for their use. Police officers retiring in good standing may be authorized to keep certain uniform items or equipment pursuant to state law and town policy. (Code 1976, § 12-5; Code 1982, § 15-4; Ord. No. 03-002, 1-9-2003)

**Sec. 2-148. Duties of chief of police.**

(a) The chief of police shall formulate a set of rules and regulations to govern the department and shall be responsible to the town manager for the personnel, morale and general efficiency of the department.

(b) The chief shall cause to be conducted a continuing program of training, including suitable drills and instruction and all other matters generally considered essential. (Code 1976, § 12-3; Code 1982, § 15-5; Ord. No. 03-002, 1-9-2003)

**Sec. 2-149. Police reserves.**

Reserve police officers shall be called to active duty only on emergency or on special occasions when regular police officers of the town require their assistance and shall be subject to call of the chief, or designee, for training or other duty at other times. The chief of the police department is authorized to determine when the services of reserve police officers are required. (Code 1976, § 12-6; Code 1982, § 15-6; Ord. No. 03-002, 1-9-2003)

**Secs. 2-150—2-160. Reserved.**

**ARTICLE V. BOARDS AND COMMISSIONS AND AUTHORITIES**

**2-161. Boards and Commissions purpose statement.**

The Cary Town Council recognizes and values the importance of citizen participation in local government. Two of Cary's value statements directly speak to this:

- Our organization exists to serve our citizens. We will be open, ensure access, encourage involvement and be accountable to our citizens.
- We will achieve the best results through effective teamwork, strategic partnerships and community participation.

To achieve these values, the Cary Town Council utilizes volunteer boards as a mechanism to engage citizens in the democratic process. The primary responsibility of these boards is to provide advice to the town council from a citizen perspective.

Sections 2-161 through 2-170 shall function as the basic Bylaws for all Town Boards and Commissions, along with the board or commission specific section 2-171 through 2-179 as set forth below.

Failure of the town, council or any board or commission to strictly comply with the provisions of this Article V shall not be grounds for claiming a procedural defect in any action taken. (Ord. No. 2009-Code-11, 10-8-2009)

**Sec. 2-162. General provisions.****(a) Definitions.**

- (1) **Board.** For the purposes of this article, the word "board" shall mean and include any board, commission, committee, agency or similar group made up in whole or in part of nonelected appointees of the town council, whether established by general statute, charter, ordinance, resolution, motion or otherwise. Notwithstanding the preceding, for special committees, task forces and the like this Article shall apply only as appropriate, and the mayor shall have appointment responsibility as provided in Town Code section 2-33.
- (2) **Board Year.** Board year shall mean a 12-month time period beginning with the term effective date.

**(b) Use of provisions.** Unless otherwise required by North Carolina General Statutes, where any provision of this article conflicts with any provisions imposed elsewhere in the Code, the provisions of this article shall be deemed to be controlling.

(Code 1976, § 2-19; Code 1982, § 2-3; Ord. No. 77-37, 10-13-1977; Ord. No. 80-3, § 1, 1-24-1980; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2012-Code-05, 9-6-2012)

**Sec. 2-163. Membership, general.**

**(a) Membership eligibility and appointment process.** In order to be eligible for appointment to a board, a person must be 18 years of age or older and a Cary resident for the duration of the appointment term, unless otherwise expressly provided by law or ordinance, and must file an application on a form provided by the town clerk. Unless otherwise directed, or unless otherwise explicitly provided for elsewhere in this Code, all appointments to all boards, and all appointments of the chair of all boards, shall be made by the council as a whole, and neither the power to appoint nor the power to recommend persons for appointment shall be delegated to any board or to any committee of the council. Unless otherwise directed, no person shall serve on more than one board at the same time. No town employee shall be appointed to any board.

**(b) Unexpired terms.** The council intends to make appointments to fill unexpired portions of terms, created by vacancies, as expeditiously as needed. Further, the council recognizes that the urgency of filling such vacancies may vary depending upon the circumstances of the vacancy.

**(c) Removal.** All members of all boards shall serve at the pleasure of the town council, regardless of the terms for which appointed, and the town council may in its discretion at any time remove any members of any board for any reason, including inefficiency, neglect of duty, or malfeasance in office.

**(d) Resignations.** If a member concludes that he or she will have difficulty fulfilling the volunteer commitment, the member may voluntarily resign from the board. Notice should be communicated in writing to the town clerk's office. Members who have been removed from a board or who have resigned prior to completion of their term shall disclose such fact in any subsequent application for board appointment.

(e) More specific appointment procedures are found in Policy 162, process for appointments to volunteer boards and commissions. This Policy may be amended or repealed from time to time in accordance with council practices and procedures.

(f) Members who have resigned or been removed from office generally are not eligible for subsequent appointment to a board or commission unless good cause is shown.  
(Code 1976, § 2-20; Code 1982, § 2-4; Ord. No. 77-37, 10-13-1977; Ord. No. 77-40, § 2, 10-27-1977; Ord. No. 79-2, § 1, 2-8-1979; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

#### **Sec. 2-164. Terms of office.**

The terms of office of members of all boards shall be three years unless a vacancy is being filled, in which case a term may be one, two, or three years, depending on the remainder of the term. Terms on all boards shall be staggered, with the terms of approximately one-third of the membership expiring each year to ensure there is always one or more members with experience on each board. The term of office of the chair of each board shall be one year. All terms shall begin on October 1 following appointment. A person shall normally serve no more than two consecutive full terms on the same board; however, the council may waive this requirement on a case-by-case basis.  
(Code 1976, § 2-19; Code 1982, § 2-3; Ord. No. 77-37, 10-13-1977; Ord. No. 80-3, § 1, 1-24-1980; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

**Charter reference**—Terms of commissions, committees and boards, § 3.16.

#### **Sec. 2-165. Conflicts of interest.**

All board members shall read and be familiar with such laws, policies and guidelines as may be in effect from time to time concerning ethics and conflicts of interest for town advisory boards and commissions and shall sign such policies and guidelines of the Town as required by their terms. Refer to state law and policy statement 147 as revised from time to time in accordance with council practices and procedures, for the conflict of interest guidelines that apply to boards.  
(Code 1976, § 2-19; Code 1982, § 2-3; Ord. No. 77-37, 10-13-1977; Ord. No. 80-3, § 1, 1-24-1980; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006; Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2021-Code-02, 6-24-2021)

#### **Sec. 2-166. Attendance at board meetings.**

Although recognizing and appreciating the fact that members of the boards are generally citizen volunteers, the town council deems it essential that members of all town boards attend meetings regularly for the prompt and efficient transaction of town affairs. The staff liaison of each board shall maintain attendance records, including attendance at regular meetings, work sessions and all special called meetings. Members participating electronically in their meetings shall abide by Policy 150. If at any time during a board year any member misses three meetings (not including a meeting in which the member participated electronically according to Policy 150), that board member is responsible for notifying the deputy town clerk and the town council liaison to that board. The deputy town clerk shall include an item on the next available town council meeting agenda requesting that the council as a whole make a decision on this member's continued service on that board.

As a courtesy, prior to the town council's annual appointments to boards, the deputy town clerk shall review the attendance records and shall notify all board members who have missed three or more meetings in a 12-month board year that they must reapply if they wish to be considered by the town council to finish their original appointed term. Council will then consider the applications of those members during the normal selection and appointment process.

(Code 1982, § 2-5; Ord. No. 79-2, § 2, 2-8-1979; Ord. No. 91-6, § 1, 2-28-1991; Ord. No. 91-50, § 1, 12-12-1991; Ord. No. 94-001, 1-13-1994; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2013-Code-01, 4-18-2013)

#### **Sec. 2-167. Reimbursement for expenses.**

All board members shall serve without compensation, but may be reimbursed for pre-approved expenses from funds allocated by the town council during the budget process.

(Ord. No. 2009-Code-11, 10-8-2009)

#### **Sec. 2-168. Meetings.**

All boards shall meet as often as necessary to conduct the business before it. All meetings and hearings of all boards shall be subject to the open meetings law.

(Ord. No. 2009-Code-11, 10-8-2009)

#### **Sec. 2-169. Rules and records.**

All boards shall adhere to Policy Statement 150, General Rules of Order, as amended from time to time in accordance with council practices and procedures, which includes the general parliamentary procedures for the board. Each board shall keep minutes of its proceedings and discussions, showing the vote of each member upon every question, or a member's absence or failure to vote, and shall keep records of its resolutions, findings, recommendations, and other official actions.

(Ord. No. 2009-Code-11, 10-8-2009)

#### **Sec. 2-170. Cooperation with others.**

All boards shall cooperate in all respects with other town boards, town officials and employees.

(Ord. No. 2009-Code-11, 10-8-2009)

#### **Sec. 2-171. Planning and zoning board.**

(a) *Membership.* The planning and zoning board shall consist of nine members. Eight members shall be appointed by the town council and shall reside within the corporate boundaries of the town. The other member shall reside outside the corporate boundaries of the town but within the town's extraterritorial planning jurisdiction and be recommended by the town council for appointment by the county board of commissioners. All members shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within or outside of the town's corporate boundaries.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the planning and zoning board in the



absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the planning and zoning board members to serve as the chair of the planning and zoning board.

(d) *Amending section.* Amendments to this Section 2-171 shall be in accordance with the procedures set forth in N.C.G.S. § 160D-601.

(Code 1982, § 2-6; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006; Ord. No. 07-002, 2-8-2007; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2012-Code-05, 9-6-2012; Ord. No. 2021-Code-02, 6-24-2021)

**State law reference(s)**—Planning board authorized, G.S. 160D-301.

#### **Sec. 2-172. Zoning board of adjustment.**

(a) *Membership.* The zoning board of adjustment shall consist of five members plus two alternates appointed by the town council. Six of the seven total members shall be appointed by the town council and shall reside within the corporate boundaries of the town. One member shall reside outside the town's corporate boundaries but within the town's extraterritorial planning jurisdiction and be recommended by the town council for appointment by the county board of commissioners. All members (including the alternates when serving in the absence or temporary disqualification of a regular member or to fill a vacancy) shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within or outside of the town's corporate boundaries. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(b) *Officers.* The town council shall appoint one member to serve as chair.

(c) *Board decisions.* As appropriate, decisions rendered by the board shall be recorded with the register of deeds in the county where the property subject to the decision is located.

(d) *Amending section.* Amendments to this Section 2-172 shall be in accordance with the procedures set forth in N.C.G.S. § 160D-601.

(Code 1982, § 2-7; Ord. No. 03-006, 5-22-2003; Ord. No. 06-006, 3-23-2006; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. 2012-Code-05, 9-6-2012; Ord. No. 2013-Code-04, 9-26-2013; Ord. No. 2021-Code-02, 6-24-2021)

**State law reference**—Zoning board of adjustment, G.S. 160D-302.

#### **Sec. 2-173. Parks, recreation and cultural resources advisory board.**

(a) *Membership.* The board shall consist of ten members appointed by the town council. All members shall reside within the corporate boundaries of the town.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the parks, recreation and cultural

resources advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one member to serve as chair.

(d) *Other resources.* Policy Statement 148, parks, recreation and cultural resources committee structure policy, as amended from time to time in accordance with council policies and procedures, sets forth additional structure and appointment procedures for the committees affiliated with the parks, recreation and cultural resources advisory board.

(Code 1982, § 2-8; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

#### **Sec. 2-174. Historic Preservation Commission.**

(a) *Membership.* The historic preservation commission shall consist of seven members appointed by the town council in accordance with the process set forth in Section 2-163 except as modified herein. All members shall reside within Cary's planning and development regulation jurisdiction. If there are historic districts or designated landmarks in the extraterritorial area, six of the seven total members shall be appointed by the town council and shall reside within the corporate boundaries of Cary. One member shall reside outside Cary's corporate boundaries but within Cary's extraterritorial planning jurisdiction and be recommended by the town council for appointment by the county board of commissioners. All members shall have equal rights, privileges, and duties regardless of whether the matter at issue arises within or outside of the town's corporate boundaries. If there are no historic districts or designated landmarks in the extraterritorial area, all seven total members shall be appointed by the town council and shall reside within the corporate boundaries of the town. A majority of members shall have demonstrated special interest, experience or education in history, architecture, or related fields. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered "members of the board" for calculation of the requisite supermajority if there are no qualified alternates available to take the place of such members.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the Historic Preservation Commission in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one member to serve as chair.

(d) *Terms of Office.* Member terms shall be three-year terms in accordance with Section 2-164 except that initial appointments to the newly established seven-member commission will be as follows: positions 1 and 2 will initially serve a four-year term, with three-year terms being assigned

thereafter, positions 3 through 5 will be assigned three-year terms, with three-year terms being assigned thereafter, and positions 6 and 7 will be assigned two-year terms, with three-year terms being assigned thereafter in order to create staggered terms for the overall membership.

(e) *Board decisions.* As appropriate, decisions rendered by the Historic Preservation Commission shall be recorded with the register of deeds in the county where the property subject to the decision is located.

(f) *Amending section.* Amendments to this Section 2-174 shall be in accordance with the procedures set forth in G.S. § 160D-601.

(Ord. No. 2014-Code-03, 6-26-2014; Ord. No. 2021-Code-02, 6-24-2021; Ord. No. 2022-Code-03, 9-22-2022; Ord. No. 2023-LDO-03, 6-22-2023)

**State law reference**—Historic Preservation Commission, G.S. Chapter 160D, Article 9, Part 4.

#### **Sec. 2-175. Public art advisory board.**

(a) *Membership.* The public art advisory board shall consist of nine members appointed by the town council. All members shall reside within the corporate boundaries of the town. The board shall be composed of representatives from local visual arts organizations, working artists, architects, private development interests, and the general public. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this advisory board.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the public art advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the members to serve as the chair.  
(Code 1982, § 2-10; Ord. No. 03-006, 5-22-2003; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

#### **Sec. 2-176. Reserved.**

#### **Sec. 2-177. Information services advisory board.**

(a) *Membership.* The information services advisory board shall consist of ten members appointed by the town council. The board shall be composed of two members with special training or expertise in internet applications, development or design; two members with special training or expertise in marketing, advertising or public relations; and two members with special training or expertise in mass media such as radio, television, cable or newspaper and four other members from the private sector or general public. All members shall reside within the corporate boundaries of the town. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this advisory board.

(b) *Alternate member.* The town council may, in its discretion, appoint an alternate member from within the corporate boundaries of the town to serve on the information services advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate member shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate member, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the members to serve as the chair.  
(Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009)

**Sec. 2-178. Reserved.**

**Sec. 2-179. Environmental advisory board.**

(a) *Membership.* The environmental advisory board shall consist of nine members appointed by the town council. All members shall reside within the corporate boundaries of the town. At least four members of the board shall have technical expertise working with environmental issues or partner associations with organizations that work with environmental issues. If representation as described above cannot be achieved due to the applications received, the town council may make other appropriate appointments in keeping with the intent of this advisory board.

(b) *Alternate member(s).* The town council may, in its discretion, appoint up to two alternate members from within the corporate boundaries of the town to serve on the environmental advisory board in the absence or temporary disqualification of any regular member or to fill a vacancy pending appointment of a member. The alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. The alternate members, while attending any regular or special meeting of the board and serving on behalf of any regular member, shall have and may exercise all the powers and duties of a regular member.

(c) *Officers.* The town council shall appoint one of the members to serve as the chair.  
(Ord. No. 2008-Code-02, 6-12-2008; Ord. No. 2008-Code-06, 10-30-2008; Ord. No. 2009-Code-11, 10-8-2009; Ord. No. - , 9-23-2021)

**Sec. 2-180. Reserved.**