

# Davidson County North Carolina



## Personnel Resolution

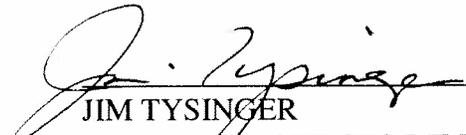
**COUNTY OF DAVIDSON NORTH CAROLINA  
PERSONNEL RESOLUTION**

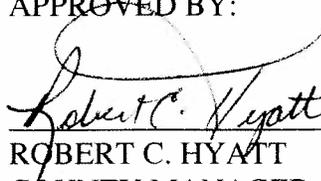
ADOPTED AND APPROVED BY BOARD OF COUNTY COMMISSIONERS

EFFECTIVE DATE: 5-18-15

REVISION: PREPARED BY:

APPROVED BY:

  
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HUMAN RESOURCES DIRECTOR

  
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ROBERT C. HYATT  
COUNTY MANAGER

**BOARD OF COUNTY COMMISSIONERS**

**APPROVED**

**DATE**

TODD YATES, CHAIRMAN

  
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5-13-15

STEVE JARVIS, VICE-CHAIRMAN

  
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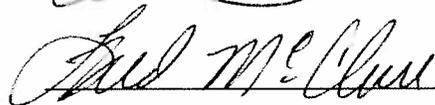
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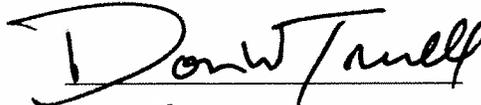
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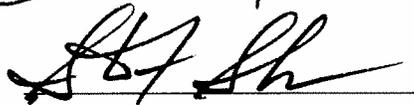
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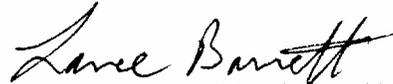
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5-14-15

APPROVED AND ADOPTED ON 5-12-15  
(Date)

**PERSONNEL RESOLUTION**

**DAVIDSON COUNTY, NORTH CAROLINA**

Be it resolved by the Board of County Commissioners of Davidson County that the following rules and regulations shall govern the appointment, classification, salary, promotion, demotion, dismissal and conditions of employment of the employees of Davidson County.

Be it further resolved that Davidson County is an Equal Opportunity, Affirmative Action Employer, and hires only United States Citizens and lawfully authorized alien workers.

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## **ARTICLE I. ORGANIZATION OF PERSONNEL SYSTEM**

### **Section 1. Purpose**

The purpose of this resolution is to establish a personnel system which will recruit, select, develop and maintain an effective and responsible work force. This resolution is established under the authority of Chapter 153A and Chapter 126 of the General Statutes of North Carolina.

### **Section 2. Coverage**

- (a) All employees in the county's service shall be subject to this resolution, except as provided in this section.
- (b) The following officials and employees are exempt:
  - (1) Elected Officials
  - (2) County Manager
  - (3) County Attorney
- (c) The following employees shall be covered only by the specifically designated Articles and Sections:
  - (1) Employees governed by the North Carolina Human Resources Act shall be subject to all Articles except Article II.
  - (2) Employees of the North Carolina Agricultural Extension Service shall be subject to all Articles except Articles II, III, IV, and IX.
  - (3) The Supervisor of Elections shall be subject to all Articles except Articles IV, V, VII, and VIII.
  - (4) Temporary employees, as designated by the Board of Commissioners, shall be subject to all Articles except Articles VI and IX.
- (d) The Sheriff and the Register of Deeds have the exclusive right to hire, discharge, and supervise the employees in their respective departments under the authority of 153A-103 of the N.C. General Statutes. However, the Employees are subject to this resolution.

### **Section 3. Definitions (Listed Alphabetically)**

- (1) Adverse Action. A demotion, dismissal, reduction in pay, layoff, or involuntary transfer or suspension.
- (2) Anniversary Date. One Year after date of hire in a regular position. This date will change if an employee receives a promotion or reclassification increase. Lateral moves do not establish a new anniversary date.
- (3) Appointing Authority. Any board or position with legal or delegated authority to make hiring decisions.
- (4) Basic Work Week is forty (40) hours per week.
- (5) Class. A position or group of positions having similar duties and responsibilities requiring similar qualifications, which can be properly designated by one title indicative of the nature of work performed, and which carry the same salary range.
- (6) Competitive Service Employee. An Employee of the Department of Social Services, Department of Public Health, or Office of Emergency Management receiving federal grant-in-aid funds and subject to the North Carolina Human Resources Act.
- (7) Demotion. The reassignment of an employee to a position or classification having a lower salary range than the position from which the reassignment is made.
- (8) Employment Date. The date an employee was employed in a full-time budgeted position with benefits. This is the date used for longevity pay.
- (9) Full-time Employee. An employee appointed for an established full time position approved by the Board of Commissioners who works an average of 30 or more hours on a weekly basis. An employee working in a full time position is eligible to participate in employee benefits programs.
- (10) General County Employee. A County employee assigned to a department not subject to the North Carolina Human Resources Act.
- (11) Grievance. A claim or complaint 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. A grievance may involve alleged safety or health hazards, unsatisfactory physical facilities, surroundings, materials or equipment, unfair or discriminatory supervisory or disciplinary practices, unjust treatment by fellow workers, unreasonable work quotas, or any other inequity relating to conditions of employment.
- (12) Minimum Pay Grade Rate. The starting salary of the pay grade which is normally paid an employee when hired into County service.
- (13) Maximum Salary Rate. The maximum salary authorized for an employee within an assigned salary grade.

- (14) Performance Based Increase. An increase in salary within the same salary grade, based on meritorious service and on performance of duties above the standard for the assigned position. Increases are given on employee's anniversary date subject to pre-fiscal year policy approval by Board of County Commissioners.
- (15) Part-time Employees.
- (a) Part Time Employee with Retirement: An employee appointed to an established position approved by the Board of Commissioners who work an average of 20 hours or more per week, or 1000 hours or more per year (twelve month period), and less than an average of 30 hours per week is a part time employee and must participate in the employee Retirement benefit. A part time employee with retirement only is not eligible for participation in other County provided benefits.
- (b) Part Time Employee with No Benefits: An employee appointed to an established part time position approved by the Board of Commissioners who works less than an average of 20 hours per week and less than 1000 hours per year (twelve months). This part time employee is not eligible to participate in employee benefit programs.
- (16) Pay Plan. A schedule of pay ranges systematized into sequential rates including minimum rate, mid-point and maximum rates for each class assigned to any given salary range.
- (17) Pay Status. A person who is appointed to a regularly established position regularly receiving pay or on paid leave. Employees on approved Military Leave, Leave without pay, or Family Medical Leave without pay will not be considered in pay status.
- (18) Regular Position. A position which has been approved by the Board of Commissioners, and in which the duties and responsibilities are required to be fulfilled on a continuous and annually recurring basis, normally requiring full-time employment of an individual. Exceptions to full-time employment are where the recurring duties and responsibilities of a regular position can be attended in less than a regular workday and/or workweek.
- (19) Position. A group of current duties and responsibilities, assigned by competent authority, requiring the full or part-time employment of one person, but the existence of a position or its identity does not depend upon its being occupied by an employee.
- (20) Position Classification Plan. An approved plan by the Board of Commissioners that assigns classes (positions) to the appropriate pay grade.
- (21) Probationary Employee. A person appointed to a regular position who has not completed the probationary period. A probationary employee is not eligible to take vacation leave and will not be compensated for any vacation accrual if they resign or are terminated from employment with the County during the probationary period.
- (22) Probationary Period. The required period of time an employee serves before obtaining regular status when entering County service.
- (23) Promotion. The reassignment of an employee to an existing position or classification in the county service having a higher salary range than the position or classification from which the reassignment is made.

- (24) Range Revision. When one or more salary grades are assigned a different minimum and/or maximum salary range or when a classification(s) is assigned a new pay grade.
- (25) Reclassification. The reassignment of an existing position from one class to another based on changes in job content such as duty, kind, difficulty, required skill and responsibility of the work performed.
- (26) Regular Full-time Employee. An employee who has completed at least three (3) months of satisfactory County service and has been approved by his/her Department Head and County Manager. Employee is eligible to use vacation accrual.
- (27) Salary Grade. All positions which are sufficiently comparable to warrant one range of pay rates. For the purpose of this definition, the words "grade", "salary range", "level" and "range" are used interchangeably.
- (28) Salary Plan Revision. The uniform raising and lowering of the salary ranges of every grade within the salary plan.
- (29) Salary Range. The minimum and maximum salary for a given classification.
- (30) Salary Range Revision. The raising or lowering of the salary range for one or more specific classes of positions within the classification plan.
- (31) Salary Schedule. A listing by grade and step of all the approved minimum, intermediate and maximum salary ranges authorized by the Board of Commissioners for various position classifications of County government.
- (32) Temporary Employee. A person appointed to serve in a temporary position. The schedule may or may not require a full day or a full week. (Temporary employees are not subject to participation in benefit programs.) Temporary positions are paid from the part-time salary line item in each department.
- (33) Transfer. The reassignment of an employee from one position or department to another.

#### **Section 4. Responsibility of Board of Commissioners**

The Board of Commissioners shall establish personnel policies and rules including the classification and pay plan and shall:

- (a) Make and confirm appointments of the County Manager
- (b) Approve the appointment of Department Heads by the County Manager consistent with Article 1, Section 5 of this Personnel Resolution.
- (c) Make and confirm such other appointments when required by law.

#### **Section 5. Responsibility of County Manager**

The County Manager shall be responsible to the Board of Commissioners for the administration of the personnel program. Except for Department Heads, County officers, employees and agents who are elected by the people or whose appointment is otherwise provided by law, the County Manager shall be permitted to appoint, suspend, and remove all County officers and employees, without first securing the approval of the Board of Commissioners. The County Manager shall appoint, suspend, and remove all Department Heads, subject to the Board of Commissioners approval. The County Manager shall make appointments, dismissals and suspensions in accordance with G.S. 153A-82 and Articles IV, V, VII, and VIII of this Personnel Resolution.

#### **Section 6. Responsibility of Human Resources Director**

The County Manager shall appoint a Human Resources Director who shall assist in the preparation and maintenance of the position classification plan and the pay plan, and perform such other duties in connection with modern Human Resource programs and activities as the Manager shall require, such as:

- (a) Apply, interpret, and carry out this Resolution and the policies adopted thereunder, as directed by the County Manager;
- (b) Establish and maintain records of all persons in the county service, setting forth each officer and employee, class title of position, pay or status history and other relevant employment data;
- (c) Develop and administer such recruiting programs as may be necessary to obtain an adequate supply of competent applicants to meet the needs of the County;
- (d) Encourage and exercise leadership in the development of effective personnel administration within the various county departments, and to make available the facilities of the Human Resources office to this end;
- (e) Investigate, from time to time, the operation and effect of this Resolution and of the policies made thereunder, and report his/her findings and recommendations to the Manager;
- (f) Make such recommendations to the Manager regarding the personnel functions, as well as revisions to the personnel system, as he/she may consider appropriate;

- (g) Issue and publish any necessary administrative directives, supplements, interpretations, and necessary prescribed forms and reports for any personnel matters for the proper functioning, maintenance, and documentation of the procedures established by and in accordance with this Resolution.

All matters dealing with Human Resources/Personnel shall be routed through such official, who shall maintain a complete system of personnel files and records. Assist Department Heads in screening and interviewing all applicants for vacancies and/or new positions approved by Board of County Commissioners.

**Section 7. Responsibility of Employee**

Understand and comply with this Personnel Resolution, and all written and unwritten County and applicable departmental policies. If an employee is unsure about a policy or procedure, it is the employee's responsibility to request/obtain clarification from the Human Resources Director, Department Head, or supervisor as appropriate.

## **ARTICLE II. CLASSIFICATION PLAN**

### **Section 1. Adoption**

The position classification plan, as from time to time approved by the Board of County Commissioners, is hereby adopted as the position classification plan for Davidson County.

### **Section 2. Allocation of Positions**

The County Manager shall allocate each position covered by the classification plan to its appropriate class in the plan.

### **Section 3. Administration of the Position Classification Plan**

The County Manager, or person(s) designated by the County Manager, shall be responsible for the administration and maintenance of the position classification plan so that it will accurately reflect the duties performed by employees in the classes to which their positions are allocated. Department Heads shall be responsible for bringing to the attention of the County Manager (1) the need for new positions, and (2) material changes in the nature of duties, responsibilities, working conditions, or other factors affecting the classifications of any existing positions. The Human Resources Director shall restudy the position and report the findings and recommendations to the County Manager.

New positions shall be established only with the approval of the Board of Commissioners after which the County Manager shall either (1) allocate the new position to the appropriate class within the existing classification plan, or (2) recommend that the Board of Commissioners amend the position classification plan to establish a new class to which the new position may be allocated.

When the County Manager finds that a substantial change has occurred in the nature or level of duties and responsibilities of an existing position, the County Manager shall (1) direct that the existing class specification be revised, (2) reallocate the position to the appropriate class within the existing classification plan, or (3) recommend that the Board of Commissioners amend the position classification plan to establish a new class to which the position may be allocated. Any action taken by the County Manager either to revise an existing class specification or to reallocate a position within the existing classification plan shall not be effective until such action is approved by the Board of County Commissioners.

### **Section 4. Amendment of Position Classification Plan**

Classes of positions shall be added to and deleted from the position classification plan by the Board of Commissioners based on the recommendation of the County Manager.

## **ARTICLE III. THE PAY PLAN**

### **Section 1. Adoption**

The schedule of salary ranges and class titles assigned to salary ranges is hereby adopted as the pay plan by the Personnel Resolution.

In order to implement this policy, the salaries of all current employees appointed to regular board authorized positions shall be established according to the Pay Plan as adopted by the Board of Commissioners and any later Board approved amendments to the Pay Plan. Other than employees in work-against or trainee status eligible for pre-determined salary increases contingent on meeting qualification requirements, there is no procedure for granting salary increases other than procedures outlined in Sections 6 and 7 of this Article, without specific Board approval.

Any salary increase, including cost-of-living increases, shall be granted by the Board in any amount and on any date determined by the Board.

### **Section 2. Maintenance of the Pay Plan**

The Human Resources Director shall be responsible for the administration and maintenance of the pay plan. The pay plan is intended to provide equitable compensation for all positions, reflecting differences in duties and responsibilities, the comparable rates of pay for positions in private and public employment in the area, changes in the cost of living, the financial condition of the county and other factors. To this end, the Human Resources Director shall, from time to time, make comparative studies of all factors affecting the level of salary ranges and shall recommend to the Board of Commissioners such changes in salary ranges as appear to be warranted.

### **Section 3. Use of Salary Ranges**

Salary ranges are intended to permit the recognition of individual performance. The following general provisions shall govern the granting of within-range pay increments.

- (a) The minimum of the pay grade established for the class is the normal hiring rate. When unusual circumstances appear to warrant appointment at a higher rate; appointment above the minimum rate may be made on submission of the Department Head's recommendation and justification with the approval of the County Manager, when deemed necessary in the best interest of the County. Above minimum appointments will be based on such factors as applicant qualifications being higher than the minimum education and training of the class, shortage of qualified applicants available at the minimum rate, and the refusal of qualified applicants to accept employment at the minimum rate. The Department Head will use the established formula and review the recommended salary with the Human Resources Director. The maximum hiring rate shall be the pay grade midpoint. After approval by the County Manager, the salary may be offered to the applicant. It is the Department Head's responsibility to ensure availability of funds.
- (b) An employee's salary may not exceed the maximum of their assigned pay grade.
- (c) Employees that are at or near the maximum of their respective salary range and an increase would push the salary above the maximum amount shall receive the complete amount of the increase as a one-time bonus check. The amount will not increase their current salary level. The check will be issued in the same pay period increases are instituted.

#### **Section 4. Anniversary Dates**

The anniversary date shall be one year from the date of hire in a regular Board authorized position. In the event of promotion or reclassification, wherein salary increases are granted, the anniversary date shall be one year from the effective date of the action. In the event of class pay grade adjustments, cost-of-living adjustments, and related increases, the anniversary date will not change.

#### **Section 5. Salary of Trainee**

An applicant hired or an employee promoted to a position in a higher class, who does not meet all the established requirements of the position, must be appointed to a rate in the pay plan below the minimum of the pay grade rate established for the position. Employees subject to the North Carolina Human Resources Act will be designated "Trainees" in accordance with the rules and regulations established by the North Carolina Human Resources Commission. All other county employees shall be designated "Trainees" based upon recommendations of the Department Head with the approval of the Human Resources Director. An employee will remain in the trainee status until the Department Head certifies that the trainee is qualified to assume full responsibility of the position and the proper documentation is provided to the Human Resources Director for approval. The Department Head shall review the progress of each employee in a trainee status at the end of six (6) months of employment or more frequently as necessary to determine when the trainee is qualified to assume the full responsibilities of the position. When the proper documentation has been provided to the Human Resources Director certifying the trainee is fully qualified, he/she shall be moved to the minimum rate of the class. No county employee shall remain in a "trainee" status more than one year unless a longer period is required for an employee covered under the North Carolina Human Resources Act.

#### **Section 6. Pay Rates in Promotion, Demotion, Transfer, and Reclassification**

When an employee is promoted, demoted, transferred or reclassified, the rate of pay for the new position shall be established in accordance with the following rules:

- (a) An employee who is promoted and whose salary is below the minimum rate shall be increased to the new position minimum pay grade rate. If the salary is at or above the new minimum rate, it may be increased up to five (5) percent provided that the adjusted salary does not exceed the new pay grade maximum.
- (b) When a demotion occurs and the employee is transferred involuntarily or voluntarily to a position in a lower salary range, the employee's salary will be reduced to:
  - (1) Where the salary would have been in that range as calculated by the Human Resources Department, or
  - (2) If recommended by the Department Head and approved by the County Manager, to the new pay grade minimum. When circumstances merit - the County Manager may make meritorious exceptions.
- (c) When a lateral transfer occurs and results in a position being assigned to another position in the same pay grade, the salary of the affected employee will not change.

- (d) When a position is reclassified to a higher pay grade, the incumbent's salary shall be increased to the new pay grade minimum. If the salary is at or above the new minimum rate, it may be increased up to five (5) percent, provided it does not exceed the new pay grade maximum. If the position is reclassified to one in a lower pay grade, the salary shall not be changed. If it is above the new pay grade maximum, it shall be maintained at that level until the pay grade range exceeds the employee's salary.

## **Section 7. Pay Ranges in Salary Range Revisions**

When the Board of Commissioners approves a change in a salary range for a class of positions, the salaries of employees whose positions are allocated to that class shall be affected as follows.

- (a) General across the board pay increases granted by the Board of Commissioners and implemented by the Budget ordinance for a particular year shall only apply to regular employees eligible to receive benefits, except as provided in Section 8 below.
- (b) When a class of position is assigned to a higher pay range, employees in that class may receive up to a five percent (5%) or an increase to the minimum step of the new range whichever is higher.
- (c) When a class of position is assigned to a lower pay range, the salaries of the employees in that class will remain unchanged. If this assignment to a lower pay range results in an employee being paid at a rate above the maximum established for the new class, the salary of the employee shall be maintained at that level until such time as the employee's pay range is increased above the employee's current salary.

## **Section 8. Pay for Part-time/Temporary Work**

Compensation for any employee appointed for part time/temporary service shall be computed on an hourly basis. Said employees will be covered by Workers Compensation and Social Security but will receive no additional fringe benefits. The salaries of employees in part-time (less than an average of 20 hours per week), temporary, call-basis, relief, or any other non-Board authorized positions shall be established according to the following:

- (a) The salary of employees who meet the minimum qualifications of the class to which appointed shall be at least the pay grade minimum.
- (b) The initial salary of employees who do not meet the qualification standards of the class to which appointed shall be less than the pay grade minimum. When the employee meets the standards, his/her salary shall be increased to the pay grade minimum.
- (c) Employees shall be eligible for other salary increases in accordance with this Resolution.

## **Section 9. Overtime**

It is the policy of Davidson County to abide by all applicable sections of the Fair Labor Standards Act along with the Fair Labor Standards Amendments of 1985. Under such implementation, Davidson County will properly record all applicable overtime accrued for each covered employee.

This policy shall be applicable to all employees of Davidson County who are covered under FLSA provisions to the extent applicable to Davidson County.

- (a) Employees are expected to work during all assigned periods exclusive of bona fide breaks, mealtimes or unscheduled hours, etc. Employees are not to perform work during such non-work breaks, mealtimes or unscheduled hours, unless they receive approval from their immediate supervisor except in cases of extreme emergency. An extreme emergency exists when an employee is called upon to perform work for Davidson County that could result in damage to property or persons or which requires immediate attention of the employee which cannot possibly be postponed. Employees who work excess hours due to an emergency shall properly advise their immediate supervisor of the overtime worked as soon as practical for final approval or disapproval.
- (b) Fluctuating workweek - Emergency Medical Technicians and other designated employees “Fixed salary for fluctuating hours.” The regular rate for an employee whose hours of work fluctuate from week to week who is paid a stipulated salary with the clear understanding that it constitutes straight-time pay for all hours worked, whatever their number and whether few or many, will vary from week to week. The employee’s regular rate is determined each week by dividing the salary by the number of hours he or she worked in that week. The regular rate cannot, of course, be less than the applicable minimum wage. Since the employee has been paid his or her straight-time compensation, he or she must receive additional overtime pay for each overtime hour worked in the week at not less than one-half the regular rate. Take the example of an employee who works no more than 50 hours and is compensated on a fluctuating work week basis at a weekly salary of \$280.00. If during the course of four weeks the employee works 40, 44, 48 and 50 hours, the employee’s regular rate in each of these weeks is \$7.00, \$6.36, \$5.83, and \$5.60. Since the employee has been paid his or her straight-time pay for all hours worked, only additional half-time pay is due. The employee's pay would be computed as follows: for the first week the employee is due \$280.00; for the second week the employee is due \$292.72 ( $\$280 + (4 \text{ hours} \times \$3.18)$ ); for the third week the employee is due \$303.32 ( $\$280 + (8 \text{ hours} \times \$2.915)$ ); for the fourth week the employee is due \$308.00 ( $\$280 + (10 \text{ hours} \times 2.80)$ ).
- (c) It is the policy of Davidson County that non-exempt employees will be compensated (paid) at one and one-half times their regular rate of pay for hours worked over forty (40) per pay week (excluding those on approved Fluctuating workweeks). Upon prior approval by the County Manager, Department Heads may grant utilization of compensatory time in lieu of actual pay (wages). Non-exempt employees may request to receive compensatory time off at a rate of not less than one and one-half hours for each hour of employment for which overtime is required under the Fair Labor Standards Act.

## **Section 10. Call Back Pay**

Any county employee eligible to receive overtime compensation under this policy will be guaranteed a minimum payment of two (2) hours wages for being called back to work outside of normal working hours.

## **Section 11. Payroll Deductions**

Federal and State income taxes, Social Security tax, and retirement contributions shall be payroll deducted as authorized by law and the County Commissioners. Any other payroll deduction must be approved by the Board of Commissioners. (See Article IX)

**Section 12. Payroll Procedure**

All employees shall be paid on a bi-weekly basis except those employees on an hourly or day-rate basis who may be paid otherwise. All deductions and withholdings will be evenly divided by 26 (the number of pay periods during the year) for all employees unless the deductions are identified as monthly or otherwise.

**Section 13. Effective Date of Salary Adjustments**

Salary adjustments, including retroadjustments will be approved by the County Manager when proper documentation is provided showing the employee's increase was an oversight or error.

**Section 14. Longevity Pay Plan**

The plan will be applicable to all regular status full-time employees who are eligible to participate in the Local Government or Law Enforcement Retirement Systems with Davidson County. Procedures used to determine longevity pay are as follows:

- (a) Based on continuous service in a full-time Board authorized position with the County.
- (b) A service year is 12 completed months of service.
- (c) Service months will be calculated through December 31<sup>st</sup> of each calendar year.
- (d) Adjustments will be made in increments of whole months for leave without pay, including Family and Medical Leave Without Pay.
- (e) Longevity pay will be subject to income tax withholdings, Social Security and Local Government or Law Enforcement Retirement.
- (f) In the event that longevity pay is paid to an employee and employee subsequently leaves County employment between the payment date and December 31<sup>st</sup> of that year, the County will reduce the employee's final pay check by the amount of the longevity pay.
- (g) Funding for longevity will be determined on an annual basis.
- (h) Longevity will be determined as follows:

<b>Years of continuous Davidson County service</b>	<b>Amount</b>
3-10 years	\$35.00 per year
10-19 years	\$50.00 per year
20 years or more	\$75.00 per year

- (i) Employees who receive longevity pay and do not have three years of continuous service will receive \$50.00.

**Section 15. Christmas Bonus**

Employees with full benefits will receive a Christmas Bonus under the following guidelines:

- (a) Employees are paid \$1.00 per month of service, with the maximum of \$100.00  
Employees with a hire date of September 30<sup>th</sup> and prior will be eligible for the bonus.
- (b) Employees hired October 1<sup>st</sup> and later will not be eligible for the bonus for that year.
- (c) Service calculations will be made through December 31<sup>st</sup> of that year.

- (d) Employees with six months of service and less will receive \$15.00. For purposes of this calculation employees with a hire date of July 1<sup>st</sup> through September 30<sup>th</sup> will be considered to have six month or less of service and will receive \$15.00.
- (e) Employees with more than six months and less than twenty-five months of service will receive \$25.00. For purposes of this calculation employees with a hire date of January 1<sup>st</sup> of the previous year through June 30<sup>th</sup> of the current year will be considered to have more than six months and less than 25 months of service and will receive \$25.00.
- (f) Employee hire dates will be verified and the bonus will be given in whole dollar amounts.

## **ARTICLE IV. RECRUITMENT AND EMPLOYMENT**

### **Section 1. Statement of Equal Employment Opportunity Policy**

It is the policy of the County to maintain a systematic, consistent recruitment program, to promote equal employment opportunity, and to identify and attract the most qualified applicants for all present and future vacancies. This intent is achieved through consistency in announcing all positions, and evaluating all applicants on the same criteria. To avoid discrimination, equal employment opportunities are provided without regard to age, race, color, gender, national origin, religion, marital status, veteran status, or disability.

### **Section 2. Recruitment - Responsibility of Human Resources Director**

Upon determining that internal/external recruitment has been exhausted, the Human Resources Director shall be responsible for an active recruitment program to meet current and projected manpower needs, through procedures that will assure equal employment opportunities based on reasonable performance related job requirements. To accomplish this, the efforts of the Human Resources Department and all County Departments must be coordinated in a timely manner.

All position announcements shall be posted for a minimum of seven (7) working days at (1) The County Human Resources Department, and (2) The Joblink System (DWS, DavidsonWorks, DCCC), which have been designated as the established referral sources. Optional recruiting publicity shall be carried out through media appropriate to the program. Position announcements may be posted "in-house" before posting outside in order to promote from within when appropriate.

### **Section 3. Job Advertisements**

Recruiting announcements shall include information pertinent to the position/work involved, including at minimum, the title, salary grade and range, key duties, knowledge and skill requirements, physical requirements required with or without accommodations, minimum education and experience standards, contact person, special certification or licensing requirements, and application closing date. In addition, assurance of Equal Employment Opportunity Affirmative Action compliance, as well as the County's commitment to comply with the Immigration Reform and Control Act of 1986, shall be contained therein.

### **Section 4. Application for Employment**

The standard application form accepted for any and all position listings shall be the Davidson County Application Form and/or the North Carolina State Application Form. No applications for external recruitment may be accepted within a department unless processed through the County Human Resources Department. All Competitive Service agencies shall provide the County Human Resources Department with a copy of all applications accepted within the agency immediately following acceptance.

### **Section 5. Application Tracking**

The Human Resources Department shall be responsible for maintenance of permanent records of all job announcements, including posting and closing dates, all optional referral sources utilized during the recruitment process, and the specifics on the pool of applicants considered for each vacancy.

The specifics shall include an alphabetized listing of all applicants and test scores, when applicable, for each and every job vacancy. To the extent that it is practical, reference to these records shall be made periodically in connection with the County's overall selection procedures, to insure that equal consideration is given to all qualified applicants.

## **Section 6. Qualification Standards**

- (a) All applicants considered for employment or promotion, shall meet the employment standards established by the class specifications relating to the position to which the appointment is being made.
- (b) All appointments shall be made on the basis of merit and without regard to age, race, color, gender, national origin, religion, marital status, veteran status, disability, or politics.
- (c) Consideration may be given to "Trainee/Work-Against" appointments when there is an absence of qualified applicants from which to make a selection. In this instance, the deficiencies may be eliminated through orientation and on-the-job training, and the class is granted a trainee status by the County Manager (County General Positions) and the North Carolina Human Resources Act "Work-Against" (for all positions subject to the North Carolina Human Resources Act).
- (d) Work-Against Appointment (Competitive Service Employees Only). When qualified applicants are unavailable and there is no trainee provision for the vacant classification, an appointment may be made below the level of the regular classification in a work-against situation for the purpose of allowing the employee opportunity to gain the qualifications needed for the full class through on-the-job experience. The appointee must meet the minimum education and experience standard of the class to which initially appointed. A work-against appointment may not be made when applicants are available who meet the education and experience requirements for the full class of the position in question.

## **Section 7. Selection**

Department Heads shall develop, utilize, and document, on a consistent, routine basis, a selection process which best suits the needs in filling positions within each individual agency/department. All selection methods developed and utilized by the Department Head shall be valid measures of job performance.

## **Section 8. Appointments**

Prior to any applicant/new hire officially beginning work, the Department Head shall coordinate with the Human Resources Director regarding the appointment. The Personnel Action Form, the original application for employment, test score sheet, when applicable, the State PD-100 or other official documents approved by North Carolina Human Resources Commission and any additional supporting documents, (positions subject to the North Carolina Human Resources Act), shall be forwarded to the Human Resources Director. The Human Resources Director shall determine if the classification and starting salary is appropriate. A draft of a hire letter, including salary, hire date, probationary period, drug testing, background check and any special requirements or conditions of employment should be reviewed by the Human Resources Director before being issued to the prospective employee.

- (a) If the duties of the position may involve operation of county owned/insured vehicles, the Department Head or Human Resources Director with the written permission of the applicant offered the position (as a condition of employment they must possess a safe driving record with no DWI charges within the past five (5) years) will initiate a safe driving record check to be completed by the Davidson County Sheriff's Department or the North Carolina Department of Motor Vehicles. If they possess a safe driving record, this record will become a part of the employee's Personnel File.
- (b) The Sheriff and Register of Deeds shall have authority over the appointment in their respective departments, with the Human Resources Director determining the class and salary of new employees.
- (c) By the authority of Chapter 153A-103 of the N. C. General Statutes, the Board of Commissioners must approve the appointment by the Sheriff or Register of Deeds of a relative by blood or marriage of nearer kinship than first cousin or of a person who has been convicted of a crime involving moral turpitude.
- (d) In the case of a Department Head, the County Manager must secure approval of the Board of County Commissioners prior to making a commitment to employ or promote an individual to such position.

**Section 9. Probationary Period of Employment**

An employee appointed to a regular position shall serve a probationary period of three (3) months. Any employee serving a probationary period following initial appointment may be dismissed at any time during the probationary period if found to be performing assigned duties unsatisfactorily. A regular employee serving a probationary period following a promotion shall be demoted as provided in Section 11 of this Article if unable to perform assigned duties of the new job satisfactorily.

No employee shall remain on probation for more than nine (9) months. No employee serving a probationary period following the initial appointment will be eligible to take or be compensated for accrued vacation leave. If he/she resigns or is terminated, he/she will not be eligible for compensation of any accrued vacation leave. The accrual will be indicated on the payroll check, when an employee attains regular status.

Employees completing the probationary period in a satisfactory manner will be considered regular employees unless his/her Department Head (except the Sheriff and Register of Deeds) indicates in writing, for the County Manager's approval, that the employee:

- (a) Is not performing satisfactory work;
- (b) Should have his/her probationary period extended (not to exceed three (3) months) and has been advised of his/her progress (accomplishments, strengths and weaknesses) and requested extension;
- (c) Should not be retained in the present position or should be released, transferred or demoted.

## **Section 10. Promotion**

- (a) Candidates for promotion shall be chosen on the basis of their qualifications and their work records without regard to age, race, color, gender, national origin, religion, marital status, veteran status, disability or any other non-job related factor. Performance appraisals and work records for all personnel who apply and meet minimum qualifications for the position shall be carefully examined when openings for positions in higher classifications occur.
- (b) Vacancies in positions shall be filled as far as practical by the promotion of employees already in service with the County.
- (c) If a current County employee is chosen for promotion, the Department Head shall forward the request and selection justification to the Human Resources Director. The promoted employee's new salary shall be increased to the new position minimum pay grade rate. If the salary is at or above the new minimum rate, it may be increased up to five (5) percent provided that the adjusted salary does not exceed the new pay grade maximum.
- (d) Department Heads may conduct background investigations, including criminal records checks, prior to approval of promotional or transfer applicants.

## **Section 11. Demotion**

Any employee whose work in his present position is unsatisfactory or whose personal conduct is unsatisfactory may be demoted provided the employee shows promise of becoming a satisfactory employee in another position. Such a demotion shall be preceded by the warning procedures outlined in Article VII. Representative cause for demotion because of failure in work performance and failure in personal conduct are listed in Article VII, Sections 7 and 8.

If the demotion is for failure in performance of duties or failure in personal conduct, the employee shall be provided with written notice citing the recommended effective date and reasons for demotion and appeal rights available to the employee as stated in Article VIII of this Resolution. An employee who wishes to accept a position with less complex duties and reduced responsibilities may request a demotion for reasons other than unsatisfactory performance or failure in personal conduct. If approved the employee's salary will be adjusted in accordance with Article III, Section 6 (b). When circumstance warrant - meritorious request may be made to the County Manager for exceptions to transfer to the minimum rate.

## **Section 12. Transfer**

If a vacancy occurs and an employee eligible for transfer from another department wishes to be considered for the appointment, a written request and application must be forwarded to the Human Resources Director during the recruitment period for the position. The request for transfer shall be subject to approval of the County Manager. Any employee transferred without his/her having requested it may appeal the action in accordance with the grievance procedure outlined in Article VIII.

Any employee who has successfully completed a probationary period may be transferred to the same or similar class in a different department without serving another probationary period. This decision will be made at the time of transfer by the Department Head and recommendation will be forwarded

to the Human Resources Director. Transfer shall not affect an employee's anniversary date or eligibility for any scheduled salary increase for which the employee is eligible.

### **Section 13. Employee Photo Identification Cards**

**Purpose:** To provide a secure method of identifying those authorized to be present on the premises of Davidson County or to identify those authorized to conduct business on behalf of the County.

The Human Resources Department will issue a photo ID card to all employees. It should be worn at all times the employee is on duty. Exceptions may be made by the supervisor if the wearing of the ID card presents a safety hazard. Employees will be instructed to present the photo ID when conducting business on behalf of the County.

The identification card will display the employee's name, department, and photo.

There will be a \$5.00 charge for non-secure sensitive badges and \$10.00 for secure sensitive badges to replace a lost, stolen or misplaced card. The Photo Identification Card shall be surrendered upon separation from employment.

## **ARTICLE V. CONDITIONS OF EMPLOYMENT**

### **Section 1. Workweek**

The standard workweek for all employees of the various departments of the County shall be from 8:00 A.M. until 5:00 P.M. Monday through Friday. Exceptions will be made by Department Heads and approved by the County Manager when alternative schedules facilitate the provision of County services. Department Heads shall work those hours necessary to ensure the satisfactory performance of their departments, but not less than forty (40) hours per week.

Employees are expected to be in their positions of duty and ready to begin their work at 8:00 A.M., except where exception has already been noted. If an employee is late less than 15 minutes, the employee's lunch hour will be docked for each minute late. If the employee is more than 15 minutes late or uses more than one hour for lunch, this must be counted and such time will be deducted on a minute for minute basis from the following workday's lunch hour. If an employee is more than thirty (30) minutes late, he/she must use vacation leave. (Vacation leave must be taken in increments of at least (30) minutes.) It is the responsibility of the Department Head to see that this time is accounted for properly. Consistent tardiness will result in disciplinary action or dismissal.

When the activities of a particular department require some other schedule to meet work needs, the County Manager may authorize a deviation from the normal schedule.

### **Section 2. Gifts and Favors**

- (a) No official or employee of the County shall accept any gift, whether in the form of a service, loan, thing or promise from any person, firm or corporation, who in the employee's knowledge, is interested directly or indirectly in any manner whatsoever in business dealings with the County.
- (b) No official or employee shall accept any gift, favor or thing of value that may tend to influence that employee in the discharge of duties.
- (c) No official or employee shall grant in the discharge of duties any improper favor, service or thing of value.
- (d) Gratuities in the form of money shall be refused by all County employees.

### **Section 3. Political Activity Restricted**

Every employee of Davidson County has a civic responsibility to support good government by every available means and in every appropriate manner. Any employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, 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 by the Constitution and Laws of the United States of America. However, while on duty, no employee of Davidson County shall:

- (1) Engage in any political or partisan activity;

- (2) Use official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
- (3) Be required as a duty of employment or as a condition of employment, promotion or tenure of office to contribute funds for political or partisan purposes;
- (4) Coerce or compel contributions for political or partisan purposes by another employee of the County; or
- (5) Use funds, supplies or equipment of the County for political or partisan purposes.

Employees subject to the North Carolina Human Resources Act and employees in certain federally-aided programs are subject to the Hatch Act as amended in 2013. This Federal Act, in addition to prohibiting (2), (3), and (4) above, would prohibit candidacy for elective office in a partisan election by employees in positions that are financed by Federal funds.

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

#### **Section 4. Outside Employment**

The work of the County will take precedence over other occupational interests of employees. All outside employment for salaries, wages, or commission and all self-employment must not conflict with or reflect adversely on the County. The Department Head shall report any potentially conflicting employment to the County Manager. Conflicting outside employment may be deemed improper conduct and shall subject each employee to disciplinary action, up to, and including, dismissal.

#### **Section 5. Limitation of Employment of Relatives**

The employment of close relatives within the service of the County, within the same department or unit/section of a division, at the same time, is to be avoided.

- (a) Two (2) members of an immediate family shall not be employed full time or part time within the same department or unit/section or division of a department, if such employment will result in one supervising a member of his/her immediate family member, or where one member occupies a position of influence in the positions, salary administration, management, or personnel considerations. This will apply to all employees employed after the adoption of this section.
- (b) For the purposes of this policy, the term "immediate family" shall be understood to refer to that degree of closeness of relationship which would suggest that problems might be created within the work unit or that the public's philosophy of fair play in providing equal opportunity for employment to all qualified individuals may be violated. For the purpose of this section, "immediate family" shall be defined as wife, husband, mother, father, guardian, son, daughter, brother, sister, grandchildren and grandparents, aunts, uncles, nieces, and nephews as well as the various combinations of half, step, in-law, and adopted relationships that can be derived from those named herewith.
- (c) The Board of Commissioners shall approve the appointment by the Sheriff or the Register of Deeds of a relative by blood or marriage of nearer kinship than first cousin as required by Chapter 153A-103(1) of the North Carolina General Statutes.

Any exceptions to this policy require Department Head justification/recommendation and County Manager approval. In no case will exceptions be made when an employee is in the supervisory chain-of-command of an immediate family member or has any influence over the other's employment, salary, or any other personnel consideration.

## **Section 6. Substance Abuse**

Davidson County will not tolerate the unlawful manufacture, distribution, possession, or use of controlled substances or illegal drugs, and the misuse of alcohol is prohibited for all employees. The policy and procedures pertaining to Substance Abuse are contained in the Substance Abuse Policy, Appendix A.

An employee charged and convicted of a DWI shall forfeit all rights to driving a County owned vehicle during the entire duration his/her license is revoked even though he/she may have been granted driving privileges.

## **Section 7. Sexual Harassment**

No employee of Davidson County shall engage in conduct that can be defined as sexual harassment. No personnel decision shall be made on the basis of granting or denial of sexual favors. All employees are guaranteed the right to work in an environment free from sexual harassment.

Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or a condition or an individual's employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or the effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

Any employee who believes he or she may have been sexually harassed in violation of this policy may file a grievance through the County Grievance procedures outlined in the Davidson County Personnel Resolution. Prior to filing a formal grievance, any applicant for County employment or any current or past County employee who feels he/she has been sexually harassed, may request a meeting with the County Human Resources Director or County Manager.

**DISCRIMINATION AND HARASSMENT:** Any applicant for County employment, County employee or former County employee who has reason to believe that employment related discrimination or harassment has occurred may appeal directly to the County Manager. No employee or applicant shall be harassed or discriminated against because of age, race, color, gender, national origin, religion, political affiliation or disability except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary for proper and efficient administration.

Such appeal shall be handled through the County Manager and investigated by said County Manager or referred to such Investigating Official designated by the County Manager to investigate the discrimination and harassment complaint. Affected parties must appeal an alleged act of discrimination or harassment within thirty (30) days of the alleged discriminatory action.

## **Section 8. Unlawful Workplace Harassment**

No employee shall engage in conduct that can be defined as unlawful workplace harassment. All employees are guaranteed the right to work in an environment free from harassment and retaliation.

Unlawful workplace harassment is defined as unwelcome or unsolicited speech or conduct based on age, race, color, gender, religion, national origin, marital status, veteran status, or disability as defined by G.S. 168 A-3 that creates a hostile work environment or circumstances involving quid pro quo. A hostile work environment is one which a reasonable person would find hostile or abusive, one in which an employee perceives workplace actions or behavior to be hostile or abusive, and/or which unreasonably interferes with an employee's work performance. Quid pro quo harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when submission to or rejection of such conduct is either implicitly or explicitly made a term or condition of employment and is used as a basis for employment decisions. Retaliation is adverse treatment which occurs because of opposition to unlawful workplace harassment.

General County employees shall file complaints, allegations, and appeals per Article VIII of this resolution. Competitive Service Employees and former employees subject to the North Carolina Human Resources Act must file complaints, allegations, and appeals in accordance with the following procedures:

1. A former employee may appeal directly to the Office of Administrative Hearings.
2. Any employee who alleges unlawful workplace harassment based on age, sex, race, color, national origin, religion, creed, or handicapping condition as defined in G.S. 168A-3 must submit a written complaint within 30 calendar days of the alleged harassing action.
3. The agency shall take the appropriate remedial action within 60 calendar days from receipt of written complaint and shall provide a written response to employee when the agency has determined what action, if any, will result from the employee's written complaint.
4. After the agency's 60 calendar day response has expired and the employee is not satisfied with the agency's response to the complaint, then he/she may appeal directly to the Office of Administrative hearings and the North Carolina Human Resources Commission within 30 calendar days.
5. Any employee or former employee with a grievance concerning a denial of employment, promotion, training, or transfer or concerning a demotion, layoff, transfer, or termination due to discrimination based on age, sex, race, color, national origin, religion, creed, political affiliation or handicapping condition as defined by G.S. 168A-3, or a grievance based on retaliation for opposition to alleged discrimination may still appeal directly to the Office of Administrative Hearings and the North Carolina Human Resources Commission.

## ARTICLE VI. LEAVE

### Section 1. Paid Holidays Observed

The following holidays, and such others as the Board of Commissioners may designate, shall be observed by County Offices, and shall be counted as hours worked:

New Year's Day	Independence Day	Thanksgiving Day
Martin Luther King Day	Labor Day	Day after Thanksgiving
Good Friday	Veteran's Day	Christmas (3 Days)
Memorial Day		

All employees appointed to a regularly established position shall receive these holidays with pay, provided the employee is on pay status the day before and the day after the holiday. Pay status, for the purposes of this policy, includes pre-approved leave without pay. An employee who is terminating his/her employment with Davidson County must work the day after the holiday in order to receive holiday pay. Employees, specifically assigned to the Davidson County Schools who observe school closures, will not be required to work the day before and the day after a holiday in order to receive holiday pay under this policy, except if terminating employment. Part-time regular employees will receive pro-rated holiday pay based on hours scheduled per pay period.

In order for new employees to be eligible for holiday pay in their initial pay period, a full time employee must have worked a full regularly scheduled workday before and after the holiday. Temporary or part-time employees including call basis employees are not eligible for holiday pay. This will apply to all employees terminating employment with Davidson County; who must be on payroll status the day before and the day after in order to be paid for the holiday.

Employees may wish to be away from work on certain days for religious observances or other recognized holidays. Department Heads should attempt to arrange the work schedule so that an employee may be granted annual leave when it is requested because the day is a major religious observance or recognized holiday for that employee.

Annual leave should be denied only when it would create an emergency situation which cannot be prevented in any other manner.

### Section 2. Effect of Work on Holidays and Other Types of Paid Leave

Regular holidays which occur during a vacation, sick or other paid leave period of any officer or employee of the County shall not be charged as vacation, sick, or other paid leave.

### Section 3. Holidays - When Work Required

A holiday is defined as eight (8) hours.

Exempt Employees required to perform work on regularly scheduled holidays shall be granted compensatory time off for the holiday; it shall be taken within the same pay period as earned unless otherwise granted by the Department Head or his/her designee. The employee's schedule must be approved by the applicable supervisor.

Non-exempt employees required to perform work on a regularly scheduled holiday shall be paid at his/her hourly rate for hours actually worked in addition to any holiday hours to which entitled.

#### **Section 4. Adverse and Emergency Weather Conditions-Leave Policy**

At or before 6:00 A.M. the County Manager will consult with the Chairman of the Board of County Commissioners, to assess and confer on the existing weather conditions and the projected weather forecast to arrive at a decision on whether regular County offices will be open, closed or operate on a delayed opening.

Announcements will be made at or before 6:00 A.M. on television stations WGHP-TV Channel 8, WXII-TV Channel 12, WFMY-TV Channel 2, and News 14 Carolina (for Time Warner Cable subscribers), and on radio station WLXN AM-14.40 in Lexington, as well as on the Davidson County Web Page advising County personnel on the status of business hours. Employees may call the Weather Closings phone number for closings/delayed openings at 336-242-2840.

The announcement shall state whether County Offices will be open, closed or have a delayed opening. Should the message contain information regarding a delayed opening, please continue to monitor the source for additional or updated information due to potential changes in weather or road conditions. The sites listed above will be updated as soon as possible with any change in opening status due to changing conditions.

The County Manager, the Chairman of the Board of County Commissioners, and the Clerk to the Board are the only three people allowed to contact the media with the status of business hours.

In an adverse weather condition the County Manager may advise each department head to select a skeletal staff to keep offices open. The department head is to use discretion on what staff to use on the skeletal crew. Department heads are requested to pre-plan their skeletal staff and prearrange their own adverse weather transportation, as their attendance is required.

If the decision to close is made prior to the start of an employee's scheduled reporting time, the employee will receive administrative pay for his/her shift, up to a maximum of eight (8) hours. If there is a delayed opening and the employee reports at the delayed opening schedule of his/her shift, they will receive administrative pay for the difference of the regular schedule and the delayed opening, not to exceed eight (8) hours. Employees taking additional time by not reporting at the delayed starting time, but arrive at a later time will need to take vacation leave or leave without pay for the time between the delayed opening and the actual time they arrived, but they will be eligible to receive the administrative leave pay from the regular opening time to the delayed opening time. If the decision to close is made during the employee's scheduled shift and the employee remains at their work station until the County is officially closed, then the employee will receive administrative pay for the remainder of their shift, not to exceed eight (8) hours. If the employee chooses to leave before the County is officially closed, the employee will not receive administrative pay and will have to take vacation time or leave without pay as stated above. Employees who feel that it is unsafe to either report to work or stay after they have arrived will take vacation pay if available, or leave without pay, and will not be eligible for administrative pay. Under no circumstances shall administrative pay exceed eight (8) hours in any given day.

Each employee is to be made aware of his/her options if he/she decides conditions exist that render attempted arriving at or remaining at work unsafe. Employees may use vacation time for hours missed as a result; if accumulated leave is unavailable, the time not worked is leave without pay. We want each employee to know that they are of great value as employees and there will not be any disciplinary action against them for choosing not to travel to work or for leaving early if they feel conditions are unsafe.

This plan does not apply to emergency departments. Emergency departments are identified as those that are continuously open 24 hours a day.

**STATE OF EMERGENCY:**

If the nature of an emergency exists because of a man-made or natural disaster within the County or in another North Carolina County, wherein the situation requires the deployment of personnel to cope with the emergency, the County Manager or Chairman of the Board of County Commissioners will declare a state of emergency. Declaration of a state of emergency and services provided by employees in response to that emergency will entitle both non-exempt and exempt employees to payment of overtime for those emergency services provided as well as payment for approved costs associated with the emergency, e.g. travel and lodging. Overtime reimbursement eligible services must be provided at the direction of the applicable Department Head and approval of the County Manager and/or Board.

**Section 5. Annual Vacation Leave**

For the purpose of earning and accruing annual leave, the twelve (12) calendar month period between January 1<sup>st</sup> and December 31<sup>st</sup> is established as the leave year.

**Section 6. Vacation Leave - Initial Appointment Probationary Employees**

Employees serving a probationary period following initial appointment shall not be permitted to take vacation leave until successful completion of the probationary period.

**Section 7. Vacation Leave - Manner of Accumulation**

<u>Years of Service</u> <u>(Based upon 40 hrs/week)</u>	<u>Hours Earned</u> <u>Per Pay Period</u>	<u>Days Earned</u> <u>Per Pay Period</u>
Less than 3 years	3.08 hours	10 days
3 but less than 6 years	3.69 hours	12 days
6 but less than 9 years	4.62 hours	15 days
9 years or more	5.54 hours	18 days

**Section 8. Vacation Leave - Maximum Accumulation**

Annual leave may accumulate from year to year to a maximum of thirty (30) working days (a working day defined as eight (8) hours) or a maximum of 240 hours annually. At the end of the calendar year, any vacation hours in excess of the maximum (240) will be transferred to sick leave. This sick leave may be used like any other accumulated sick leave.

Employees are cautioned not to retain excess accumulation of annual leave until late in the calendar year; due to the necessity to keep all county functions in operation, large numbers of employees cannot be granted annual leave at any one time. If an employee has excess leave accumulation during the latter part of the year and is unable to take such leave because of staffing demands, the employee shall receive no special consideration either in having annual leave scheduled or in receiving any exception to the maximum accumulation. However, upon recommendation by Department Head and the County Manager and approval of the Board of Commissioners, an employee who, at the convenience of the County, has been unable to take vacation leave and is in peril of losing that leave, may be paid for all or part of the earned vacation leave in lieu of time off.

**Section 9. Vacation Leave - Approval/Manner of Taking Leave**

Vacation leave earned by an employee shall be taken only upon prior approval of the immediate supervisor or Department Head. All Department Heads and other employees so designated by the County Manager must take at least five (5) consecutive workdays of accrued vacation leave per calendar year. Vacation leave must be taken in increments of at least thirty (30) minutes. Vacation leave shall not be granted a newly appointed employee before completion of his/her probationary period.

**Section 10. Vacation Leave - Previous Leave Credit**

Any employee who separates in good standing and is reinstated within one (1) year may receive previous credit time for the purpose of accruing vacation leave. The total months of previous verified service time will be recognized at the beginning of re-employment.

**Section 11. Vacation Leave - Terminal Pay and Repayment of Vacation Leave**

All full-time regular employees who are separated shall be paid for vacation leave not to exceed a maximum of twenty-five (25) days or 200 hours and shall be calculated to the nearest hour and paid in his/her final payroll check. Any vacation leave owed the County shall be deducted from the employee's final compensation. Employees terminated or resigning shall be paid their accrual of vacation as recorded in the Finance Department effective on their last day of employment. Employees must work the entire termination notice period and may not take vacation or sick leave. Any exception regarding sick leave requires a Doctor's statement and/or must be recommended by the applicable Department Head and approved by the County Manager.

Any exception regarding vacation leave during the last two weeks of employment requires approval of the Department Head and County Manager. A probationary employee who resigns or is terminated shall not be compensated for any vacation accrual at time of separation.

**Section 12. Vacation Leave - Payment for Accumulated Vacation Leave Upon Death**

The estate of an employee who dies while employed by the County shall be entitled to payment for all of the accumulated vacation leave credited to the employee's account not to exceed a maximum of twenty five (25) days or 200 hours.

### **Section 13. Sick Leave**

Sick leave with pay is not a right which an employee may demand but a privilege granted by the Board of Commissioners. Sick leave may be taken in fifteen (15) minute increments. An employee may be granted sick leave if the absence is due to:

- (a) Sickness or bodily injury which may prevent an employee from performing his/her regular duties.
- (b) Medical/Dental appointments.
- (c) The actual period of temporary disability caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom. Since there is no certainty as to when disability actually begins and ends, a doctor's certificate shall be required verifying the employee's period of temporary disability recognized as sick leave.
- (d) Quarantine due to a contagious disease in the employee's immediate family or exposure to a contagious disease when continuous work might jeopardize the health of others.
- (e) Death in the employee's immediate family, not to exceed three (3) days, for any one occurrence. Additional leave time, under exceptional circumstances, up to ten (10) days may be authorized by the Department Head. Immediate family is defined as wife, husband, mother, father, brother, sister, children, grandparents, grandchildren, plus the various combinations of half, step, in-law, and adopted relationships that can be derived from those named.
- (f) Sick leave may also be used when illness or a medical appointment of an employee's spouse, child, or parent requires the presence of the employee.

Notification of the desire to take sick leave should be submitted to the employee's supervisor prior to the leave, or not later than one (1) hour after the beginning of a scheduled workday. Such notice shall include the nature of the absence and the expected duration.

Any absence(s) while on sick leave that meets the definition for the Family Medical Leave Act will be designated as such (see FMLA, Article VI, Section 20 of this Personnel Resolution).

### **Section 14. Sick Leave - Manner of Accumulation**

Each regular employee, occupying an established budgeted position, shall earn sick leave at a rate of 8 hours per month which is 96 hours per year based upon a 40 hour a week work schedule. Employee working a schedule less than 40 hours per week will receive the amount proportioned by their work schedule.

At the time of separation, any sick leave owed the County shall be deducted from the employee's final compensation.

## **Section 14.A. Voluntary Shared Leave Policy**

### **Purpose**

There are occurrences brought about by prolonged medical conditions that cause employees to exhaust all available leave and therefore be placed on leave-without-pay. It is recognized that such employees forced to go on leave without pay could be without income at the most critical point in their work life. It is also recognized that fellow employees may wish to voluntarily donate some of their vacation/sick leave so as to provide assistance to a fellow county employee. This policy provides an opportunity for employees to assist another employee affected by a medical condition that requires absence from duty for a prolonged period of time resulting in possible loss of income due to lack of accumulated leave.

### **Policy**

In cases of prolonged medical condition an employee may apply for or be nominated to become a recipient of leave transferred from the sick or vacation leave accounts of another county employee. For purposes of this policy, medical condition means medical condition of an employee or their spouse, parents, children, or other dependents that is likely to require an employee's absence from duty for a prolonged period of at least 20 consecutive workdays, with exceptions recommended by the employee's Department Head and approved by the County Manager. If an employee has had previous random absences for the same condition that has caused excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last twelve months, the Department Head may recommend an exception to the 20-day period. The intent of this policy is to allow one employee to assist another in case of a prolonged medical condition that results in exhaustion of all earned leave.

### **General Guidelines**

- (a) Leave must be donated on a one-to-one basis.
- (b) Individual leave records are confidential and only individual employees may reveal their donation or receipt of leave. The employee donating leave can not receive any form of remuneration for the leave donated.

### **Eligibility**

- (a) The recipient must have successfully completed the probationary period and is a regular full-time employee prior to the date of the request for donation. Participation in this program shall be based on the employee's past compliance with leave rules.
- (b) Non-qualifying conditions: The policy will not ordinarily apply to short-term or sporadic conditions or illnesses. This would include such things as sporadic, short-term recurrences of chronic allergies or conditions: short-term absences due to contagious diseases; or short-term, recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive; each case must be examined and decided based on its conformity to policy intent and must be handled consistently and equitably.

### **Application Procedure**

- (a) By letter or application to the Human Resources Director, a recipient shall apply, or be nominated by a fellow employee to participate in the program.
- (b) Application for participation would include name, job title, department, description of the medical condition, and estimated length of time needed to participate in the program. A doctor's statement must be attached to the application.

- (c) The Privacy Act makes medical information confidential. When disclosing information on an approved recipient, only a statement that the recipient has a prolonged medical condition (or the family member) needs to be made. If the employee wishes to make the medical status public, the employee must sign a release to allow the status to be known.
- (d) The Human Resources Director shall present the application (the recipient shall be anonymous) including the past record of leave utilization to the Human Resources Director, which shall determine if the request is approved or disapproved.

### **Recipient Guidelines**

- (a) A prospective recipient may make application for voluntary shared leave at such time as medical evidence is available to support the need for leave beyond the employee's available accumulated leave.
- (b) Participation in this program is limited to 1,040 hours, either continuously or, if for the same condition on a recurring basis. However, management may grant employee continuation in the program, month by month, if management would have otherwise granted leave without pay.
- (c) Subject to the maximum of 1,040 hours, the number of hours of leave an employee can receive is equal to the projected recovery of treatment period, less the employee's combined vacation and sick leave balance as of the beginning of the recovery or treatment period. The employee must exhaust all available leave before using donated leave.
- (d) At the expiration of the medical condition, any unused leave in the recipient's donated leave account shall be treated as follows:
  - 1) The recipient's vacation and sick leave account balance shall be zero.
- (e) If a recipient separates due to resignation, death, or retirement from County Government, participation in the program ends

### **Donor Guidelines**

- (a) The minimum amount to be donated is 8 hours.
- (b) An employee donating leave to a qualified recipient under this policy may donate up to a maximum of 40 hours per calendar year, but may not reduce his/her vacation or sick leave balances below 40 hours.
- (c) A donor may not donate leave during a resignation notice period.

### **Leave Accounting Procedures**

- (a) Certificates of appreciation will be placed in the donor's personnel file, with the amount of hours donated listed thereon.
- (b) A centralized system of leave accountability will accurately record leave donations and recipient's use.
- (c) Such accounts shall provide a clear and accurate record for financial and management audit purposes.
- (d) All leave donated shall be credited to the recipient's sick leave balance and deducted from the donor(s) sick or vacation leave accounts. Voluntary shared leave available in the recipient's sick leave account will be charged according to the County Personnel Policy.
- (e) Leave transferred under this program will be available for use on a current basis, beginning on the date of the adoption of this policy.
- (f) Each approved medical condition shall stand alone and the recipient's Department Head shall notify the donor and the recipient.

**Section 15. Sick Leave - Maximum Accumulation**

Sick leave is cumulative for an indefinite period.

**Section 16. Sick Leave - Physician's Certificate**

The employee's Department Head or County Manager may require a statement from the physician, or other acceptable proof, that the employee was unable to report for work to the end that there will be no abuse of sick leave privileges. At the expiration of an authorized sick leave, the employee's Department Head or County Manager may require a physical and/or mental examination at the County's expense and by a physician of its choice to determine if the employee is able to resume his/her normal duties.

**Section 17. Sick Leave - Retirement Credit for Accumulated Sick Leave**

Sick leave earned monthly is allowed as creditable service at time of retirement to employees who are members of the N. C. Local Governmental Employee's Retirement System. One month of credit is allowed for each twenty (20) days of unused sick leave when you retire, and an additional month for any part of twenty (20) days left over.

**Section 18. Sick Leave - Transfer From Other Agencies/Entities**

Any person that was employed by a North Carolina State, County, or Municipal Jurisdiction immediately prior to his/her employment with the County will have his/her accumulated sick leave transferred intact. This transfer will be in accordance with the Local Government Retirement System, G.S. 128-26(e).

**Section 19. Sick Leave - Separated Employees**

Employees who retire or resign and are not reinstated with Davidson County within a one (1) year period shall lose all sick leave credits. No employee shall be paid for any accrued sick leave at termination.

**Section 20. Family and Medical Leave Policy**

**PURPOSE:** To define Davidson County's Policy and Procedure with Regard to Family and Medical Leave

**GENERAL:** Davidson County is an employer subject to the provision of the Family and Medical Leave Act of 1993 and the regulations issued relating to said Act by the U.S. Department of Labor. If at any time it is determined that the terms of this policy violate or differ from the provision of said Act or said regulations then, in that event the Act or Regulations shall control County Policy.

Employees who have been employed for at least twelve (12) full months and for at least 1,250 hours during the year preceding the start of a family or medical leave are eligible for family and medical leave as provided by the terms of this policy. Any request for family or medical leave by an employee that is not eligible under the terms of this policy must be reviewed by the County Manager after consultation with the employee's department head in accordance with Article VI, Section 21 Leave Without Pay. Ineligible employees are not entitled to any family or medical leave under the terms of FMLA. Employees will be returned to the same or to an equivalent position upon their return from leave.

If family and medical leave is granted, the employee must first use and apply all of his or her accrued paid vacation leave and sick leave to the family and medical leave period. The remainder of the leave will then consist of unpaid leave; the total cumulative family and medical leave shall not exceed twelve (12) weeks in any twelve (12) month period.

**REASONS FOR FMLA:** An eligible employee may be granted a total of twelve (12) weeks of family and medical leave during any twelve (12) month period. Said twelve (12) month period being measured backward from the date leave is used.

- (a) the birth of the employee's child in order to care for such child;
- (b) the placement of a child with the employee for formal adoption or foster care;
- (c) care for the employee's spouse, child or parent who has a serious health condition; (one which requires either inpatient care or continuing treatment of a health care provider); or
- (d) a serious health condition that renders the employee unable to perform the functions of his or her job.

**RESTORATION TO EMPLOYMENT:** An employee eligible for family and medical leave---with the exception of in certain circumstances of those employees designated as "key" employees ---will be restored to his or her position or to a position with equivalent pay, benefits, and other terms and conditions of employment. Davidson County cannot guarantee that an employee will be returned to his or her original job. The determination as to whether a position is an "equivalent position" will be made by Davidson County. Upon requesting family and medical leave, an employee must be notified of his or her status as a "key" employee if there is any possibility that the employee may be denied reinstatement after the leave.

**RETURN FROM FMLA:** An employee must complete a "notice of Intention to Return from Family and Medical Leave" before he or she can be returned to active status. If an employee wishes to return to work prior to the expiration of a family or medical leave absence, notification must be given to the employee's supervisor at least five (5) working days prior to the employee's planned return. An employee returning from FMLA must provide a release to return from the applicable health care provider.

**FAILURE TO RETURN FROM FMLA:** The failure of an employee to return to work upon the expiration of a family or medical leave of absence will subject the employee to immediate termination unless an extension is granted. Any employee who requests an extension of family or medical leave due to the continuation, recurrence or onset of her or his own serious health condition, or of the serious health condition of the employee's spouse, child or parent, must submit a request for an extension, in writing, to the employee's immediate supervisor. This written request should be made as soon as the employee realizes that she or he will not be able to return at the expiration of leave period.

**PRIVACY ISSUES AND CERTIFICATIONS:** Under the Americans With Disabilities Act, an employer must keep information concerning a disabled employee's medical condition confidential. The information must be maintained in separate medical files, and access to the files must be restricted to those who have specific need for the information. Thus, an employer must keep confidential a written certification verifying an employee leave request based on a condition that would also allow the employee protection under the ADA. Employers must be careful not to inquire into possible future effects of an employee's "serious health condition" during the certification process. For example, if a written certification verifies that an employee has cancer, the employer may not inquire into whether the employee's illness is terminal. Supervisors are not to discuss leave requests or medical conditions with employees. Someone in each department, knowledgeable about leave policies and the ADA, shall

be designated as responsible for processing leave request to the Human Resources Department. The employee's supervisor should only be told that the employee will be taking leave and will return at a specified date.

The entitlement to leave for the birth or placement of a child for adoption or foster care will expire twelve (12) weeks from the date of the birth or placement.

**APPLICATION FOR FMLA:** In all cases, an employee requesting leave must complete an "Application for Family and Medical Leave" and return to the designated person in their department to process with the Human Resources Department. The completed application must state the reason for the leave, the anticipated duration of the leave, and the starting and ending date of the leave.

**NOTICE OF FMLA:** An employee intending to take family or medical leave because of an expected birth or placement for adoption or foster care or because of a planned medical treatment, must submit an application and notice for leave at least thirty (30) days before the leave is to begin unless such notice is not practicable under the circumstances. In all other instances the employee must give notice and application to his or her immediate supervisor as soon as practicable as the necessity for leave arises.

**MEDICAL CERTIFICATION OF FMLA:** An application for leave based on the serious health condition of the employee or the employee's spouse, child or parent must also be accompanied by a "Medical Certification Statement" completed by the applicable health care provider. The certification must state the date on which the health condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition.

If the employee is needed to care for a spouse, child or parent, the certification must so state along with an estimate of the amount of time the employee will be needed. If the employee has a serious health condition, the certifications must state that the employee cannot perform the functions of his or her job.

Davidson County may require addition medical certification every thirty (30) days or as authorized by law.

**BENEFITS COVERAGE DURING FMLA:** During a period of family or medical leave, an employee will be retained on the Davidson County employees' health plan and under the same conditions that applied before leave commenced. To continue health coverage, the employee must continue to make any required contributions that he or she was required to make to the plan before taking leave. Failure of the employee to pay his or her share of the health insurance premium may result in loss of coverage.

If the employee fails to return to work after the expiration of the leave, the employee will be required to reimburse Davidson County for payment or health insurance premiums during the family leave, unless the reason the employee fails to return in the presence of a serious health condition which prevents the employee from performing his or her job or to circumstances beyond the employee's control.

Any employee is not entitled to accrual of any seniority or employment benefits that would have accrued if not for the taking of the leave. An employee who takes family or medical leave will not lose his seniority or employment benefits that accrued before the leave begin.

**APPLICATIONS FORMS:** All Applications for Family or Medical Leave, Notice of Intention to Return from Leave, and Certification of Physician or Practitioner Forms are available by contacting the Human Resources Department.

## **Section 21. Leave Without Pay – Policy**

Leave without pay is an administrative decision and may be granted by the County Manager, upon recommendation of the Department Head for the following:

- (a) Leave without pay may only be granted when the employee has taken all his/her vacation accrual.
- (b) Leave without pay cannot be granted if the request for leave qualifies for FMLA.
- (c) Leave without pay may be requested by probationary employees who are not eligible to take annual leave or are not eligible to apply for FMLA and the request is under the guidelines of amount of time of FMLA. However, the employee's probationary period will be extended by that time.
- (d) Leave without pay may be requested by regular employees who are not eligible for FMLA and the request is under the guidelines of FMLA.
- (e) The Department Head may approve leave without pay for up to forty hours (40) per calendar year. The Human Resources Director shall from time to time monitor employees leave without pay status during the year.
- (f) An employee may request leave without pay to attend school for up to one (1) year. The request must be approved by the Department Head and the County Manager. Employee must use all his/her accrued vacation leave before going on leave without pay status. Request for leave without pay to attend school must be a requirement of the employee's position or will better equip the employee to perform his/her assigned duties of their position. Educational reimbursement is not applicable. Employee and department head must have a full understanding of the leave and the employees return to County employment before the leave is granted.

Failure to report for duty at the expiration of all leave-without-pay periods, shall be considered a resignation.

## **Section 22. Employee Leave for Involvement in Children's Schools**

All parents, guardian or any person standing "in loco parentis" of a school aged child shall be granted four (4) hours of unpaid leave to attend or otherwise be involved in activities at the child's school.

These four (4) hours are subject to the following conditions:

- (a) The leave shall be mutually agreed upon time between the employer and employee;
- (b) The employee shall provide his/her supervisor with a written request at least 48 hours before the time desired for the leave; and
- (c) The supervisor may require the employee to furnish written verification from the child's school that the employee attended or was otherwise involved at the school during the time of the leave.
- (d) If approved the request shall be granted as vacation leave.

## **Section 23. Workers' Compensation Leave**

Sickness or Disability Covered by Workers' Compensation. An employee absent from duty because of sickness or disability covered by the Workers' Compensation Laws shall be eligible for the following benefits:

- (a) Elect to use accumulated vacation or sick leave for the first seven calendar days of sickness or disability covered by Workers' Compensation.
- (b) If sickness or disability continues beyond seven days and the employee's claim is compensable, the employee shall receive from the Workers' Compensation Insurance carrier, compensation equal to 2/3 of their wage loss subject to the maximum per week set forth by law.
- (c) The County will continue to pay the county portion of his/her medical and life insurance premiums for the entire covered period.
- (d) The employee covered under Workers' Compensation will continue to accrue sick and vacation leave for a period of sixty days.
- (e) The employee shall be responsible for his/her continued payments for other benefit programs in which he/she has elected to participate.
- (f) Upon returning to work following an absence of an approved Workers' Compensation claim, the employee may purchase credit for the period of time he/she received Workers' Compensation benefits from the Local Government Retirement System as outlined in the employee handbook for Retirement Benefits.
- (g) The County has established guidelines for utilizing the benefits under workers' compensation which include a managed care network of authorized physicians and specialists as well as approved pharmacies where workers' compensation prescriptions may be filled.

#### **Section 24. Military Leave**

Each regular salaried employee, occupying an officially budgeted position, who is a member of the National Guard or Armed Forces Reserve, will be allowed ten (10) workdays of military training leave annually with partial compensation. If the compensation received while on military leave is less than the salary that would have been earned during this same period as an active employee, the employee shall receive partial compensation equal to the difference in the base salary earned as a reservist or a guardsman and the salary that would have been earned during this same period as a County employee. The effect will be to maintain the employee's salary at the normal level during this ten (10) workday period.

If such military duty is required beyond this ten (10) workday period, the employee shall be eligible to take accumulated vacation leave or be placed on leave without pay status.

While taking military leave with partial pay or without pay, the employee's leave credits and other benefits shall continue to accrue as if the employee physically remained with the County during this period. Employees who are guardsmen and reservists have all job rights specified in the Veterans Readjustment Assistance Act.

#### **Section 25. Civil Leave (Court)**

A County employee called for jury duty or as a court witness for the Federal or State government, or a subdivision thereof, is entitled to a leave with pay for the period of absence required. He/she is entitled to regular compensation plus fees received for jury duty.

## **Section 26. Educational Improvement Reimbursement**

An employee may receive reimbursement for one course at a time taken outside of the working hours which will better equip the employee to perform assigned duties, such reimbursement is subject to the prior recommendation of the Department Head and the prior approval of the County Manger. The County shall reimburse the employee for tuition, fees and books for the course, provided the employee submits a receipt of course expenses and a notice of successful completion (passing grade or better) of the course. An employee is not eligible for reimbursement of such expenses for schools or courses that merely further the general education of the employee or that are in subject areas that do not specifically enable the employee to better perform his or her assigned duties; the final decision as to whether particular courses meet the criteria for reimbursement shall be in the discretion of the County Manager. Any employee attending school during normal working hours to further their general education or to cross train in subject matters that are not required for the position for which they were employed shall be required to take vacation leave to attend school.

## **ARTICLE VII. SEPARATION, DISCIPLINARY ACTION, AND REINSTATEMENT**

### **Section 1. Types of Separation**

All separations of employees from positions in the service of the County shall be designated as one of the following types and shall be accomplished in the manner indicated: resignation, reduction in force, disability, retirement, dismissal, death or other.

### **Section 2. Resignation**

A minimum of two (2) weeks' notice is required of all resigning personnel. Such notice should be given to the Department Head. In the case of Department Heads or the County Manager, a four (4) week notice is expected. Failure to do so will result in forfeiture of accumulated annual leave.

### **Section 3. Reduction in Force**

In the event that a reduction in force becomes necessary, consideration shall be given to the quality of each employee's past performance, organizational needs, and seniority in determining those employees to be retained. Employees who are laid off because of reduction in force shall be given at least two (2) weeks' notice of anticipated lay-off. No regular employee shall be separated while there are temporary employees serving in the same class in the department unless the regular employee is not willing to transfer to the position held by the temporary employee. The implementation of a reduction in force will be administered in accordance with the Davidson County Reduction in Force Policy, as from time to time amended. (See Appendix B)

### **Section 4. Disability**

An employee may be separated for disability when the employee cannot perform the essential duties because of a physical or mental impairment. Action for disability separation may be initiated by the employee or the County, but in all cases consideration for disability separation shall be supported by medical evidence as certified by a licensed physician. The County may require a physical and/or mental examination at its expense and by a physician of its choice. In Accordance with the Americans With Disabilities Act, before an employee is separated for disability, a reasonable effort shall be made to locate alternative positions within the County's service for which the employee may be suited.

### **Section 5. Death**

All compensation due in accordance with Article VI, Section 11 of this policy will be paid to the estate of a deceased employee. The date of death shall be recorded as the separation date for computing compensation due.

### **Section 6. Disciplinary Action, Suspension and Dismissal**

- (a) Any employee subject to this resolution, regardless of occupation, position, or profession may be warned, demoted or suspended by the authority or their designee or dismissed by the appointing authority. Such actions may be taken against employees subject to the North Carolina Human Resources Act who have acquired regular status, as defined in 25 NCAC 11.2002(a)(2), only for just cause. The provisions set forth in this section are guidelines for

disciplinary action, suspension and dismissal of County employees who have acquired regular status and are not subject to the North Carolina Human Resources Act. The degree and type of action taken shall be based upon the sound and considered judgment of the appointing authority in accordance with the provisions of this Rule. This section is to be construed as general guidelines. Davidson County employees not subject to the North Carolina Human Resources Act are employees at will and this policy is not intended to provide property right to employees.

- (b) There are two bases for the discipline or dismissal of employees. These two bases are:
  - 1. Discipline or dismissal imposed on the basis of unsatisfactory job performance, including grossly inefficient job performance.
  - 2. Discipline or dismissal imposed on the basis of unacceptable personal conduct.
- (c) Either unsatisfactory or grossly inefficient job performance or unacceptable personal conduct, as defined in 25 NCAC 11.2302(a); .2303(a); and .2304(b), constitutes just cause for discipline or dismissal. The categories are not mutually exclusive, as certain actions by employees may fall into both categories, depending upon the facts of each case. No disciplinary action shall be invalid solely because the disciplinary action is labeled incorrectly.
- (d) Unsatisfactory Job Performance is work related performance that fails to satisfactorily meet job requirements as specified in the relevant job description, work plan or as directed by the management of the work unit or agency. The list that follows is not all inclusive.

Examples of Unsatisfactory Job Performance:

- 1. Inefficiency, negligence or incompetence in the performance of duties;
  - 2. Careless, negligent or improper use of County property or equipment;
  - 3. Physical or mental incapacity to perform duties;
  - 4. Discourteous treatment of the public or other employees;
  - 5. Absence without approved leave;
  - 6. Habitual improper use of leave privileges;
  - 7. Habitual pattern of failure to report for duty at the assigned time and place.
- (e) Grossly Inefficient Job Performance occurs in instances in which the employee: fails to satisfactorily perform job requirements as specified in the job description, work plan, or as directed by the management of the work unit or agency; and that failure results in:
    - 1. The creation of the potential for death or serious harm to a client(s), employee(s), members of the public or to a person(s) over whom the employee has responsibility;  
or

2. The loss of or damage to County property or funds that result in a serious impact on the agency and/or work unit.

(f) Unacceptable Personal Conduct is:

1. Conduct unbecoming a public officer or employee;
2. Conduct for which no reasonable person should expect to receive prior warning;
3. Job related conduct which constitutes a violation of state or federal law;
4. Conviction of a felony, misdemeanor or an offense involving moral turpitude that is detrimental to or impacts the employee's service to the County;
5. The willful violation of known or written work rules, including safety regulations;
6. Conduct unbecoming an employee that is detrimental to the County's service;
7. The mistreatment or willful endangerment, abuse, of client(s), patient(s), student(s) or a person(s) over whom the employee has charge or to whom the employee has a responsibility, or of an animal owned or in the custody of the County;
8. Falsification of an employment application or other employment documentation; records, reports, time sheets, grant applications;
9. Absence from work after all authorized leave credits and benefits have been exhausted;
10. Insubordination which is the willful failure or refusal to carry out a reasonable order from an authorized supervisor. Insubordination is considered unacceptable personal conduct for which any level of discipline, including dismissal, may be imposed without prior warning;
11. Violation of confidentiality;
12. Being under the influence of drugs or beverages, alleged sale, unauthorized use or possession of dangerous, controlled or intoxicating drugs or beverages while on duty or on premises or in contact with clients;
13. Theft of money or supplies;
14. Sexual harassment of a service recipient or of a County employee;
15. Damaging, defacing, mishandling, or seriously neglecting equipment or property of the County, service recipients, or other employees;
16. Misrepresenting one's education, training, and qualifications to the County or to anyone seeking services from the County;

17. Failing to distinguish in public between statements and actions as an individual and those as a representative of the County, when they are clearly contrary to County policy or are clearly controversial in nature;
18. Failing to utilize fully those authorized channels for resolution of grievances and solving of problems designated by the County before going outside of the County's internal means, or going beyond the appeals channels provided by the County, except as such actions may be sanctioned by law or regulation;
19. Conviction of a felony;
20. Misrepresentation or fraud in dealing with the public, conduct relevant to fitness to perform one's duties, or conduct reflecting the inability to perform one's duties with due regard to the health and safety of the public.
21. Violation of political activity restrictions
22. Possession of unauthorized fire arm or other lethal weapon on the job.

The above list shall not be considered all inclusive.

## **Section 7. Written Warning**

### **Applicability:**

Unsatisfactory Job Performance and some cases involving Gross Inefficiency and Unacceptable Personal Conduct.

### **Essential Considerations:**

- (a) Determine who will administer and sign the written warning. This warning should be issued by the supervisor with the support of the Department Head, and, with prior review by the Human Resources Director.
- (b) Conduct a conference with the employee and explain all information in the written warning.

The written warning must include the following:

- (1) A detailed description of deficiencies/issues including dates, times, and places; and specific examples which constitute evidence of the infraction.
- (2) A corrective action plan detailing the expected levels of performance or correction of deficiencies and the time frame allowed for making the required improvements/corrections. The time frame will be sixty (60) calendar days if it is not specified.
- (3) A section indicating the consequences, up to and including dismissal, of failure to comply with the corrective action plan or to meet any other performance or personal conduct requirements.

- (c) Other steps that should occur prior to or in conjunction with a written warning.
- (1) Review of the reasonableness of standards, the deficiencies/violations that occurred, and the impact of the employee's failure to meet these standards.
  - (2) Inform the employee in writing that this is a written warning; i.e. an official disciplinary action, and not some other non-disciplinary process, such as counseling.
  - (3) Summarize any previous disciplinary actions.
  - (4) Inform the employee of the Employee Assistance Program (EAP) that is available to the employee and his/her immediate family members. Accessing EAP can be by self-referral or referral by the supervisor.
  - (5) Provide a copy of the written warning and accompanying letter to the employee and the appropriate management staff during the conference or by the end of the day.
  - (6) Forward a copy of the disciplinary action (or summary) to Human Resources for inclusion in the employee's personnel file. It will remain on active status for twelve (12) months unless the Department Head requests an extension prior to expiration of the twelve (12) month period. When it becomes inactive it will be so noted and remain part of the personnel file.

Employee Assistance may be integrated into the disciplinary process. The supervisor may refer the employee to EAP and/or make time available for the initial appointment. However, EAP is not mandatory. Further, should the employee go to EAP for assistance, the assistance received from the EAP may not alleviate the problem behavior. The supervisor shall address the work related issue (the Behavior) necessitating the written warning. Disciplinary action can still be continued up to and including dismissal.

It is not required that successive disciplinary actions all concern the same type of unsatisfactory performance. Disciplinary actions related to personal conduct may be included.

## **Section 8. Pre-Dismissal Conference**

### **Applicability:**

Dismissal of a regular employee for Unsatisfactory Job Performance, Grossly Inefficient Job Performance or Unacceptable Personal Conduct.

### **Essential Considerations:**

- (a) The employees must be informed of his/her right to a pre-dismissal conference with the County Manager prior to dismissal of regular employees for any reason and one will be scheduled if requested. The employee may waive the pre-dismissal conference.
- (b) Advance written notice to the employee is required (as much time as is practical under the circumstance, preference would be a one day notice).

(c) The notice should include the following:

- (1) Inform employee it will be a pre-dismissal conference. Include time, date and location of conference.
- (2) Provide a summary of the evidence and the issues for which dismissal is being considered.
- (3) Indicate that the action is being considered but a decision has not been reached.
- (4) Inform employee he/she will have an opportunity to respond at the conference.
- (5) Have Human Resources review the notice before it is issued to the employee.

(d) During the Conference:

- (1) Review information verbally.
- (2) Management may have present a second representative and, if necessary, security personnel.
- (3) No attorneys may be present.
- (4) Present specific reasons for proposed action and supporting evidence.
- (5) Assure the employee that no final decision has been made.
- (6) Solicit information from the employee which will allow him/her to present his side/perspective of the issues.
- (7) Listen carefully and inquire where appropriate to obtain any information the employee wishes to provide.
- (8) The employee does not have the option of presenting witnesses.
- (9) Terminate the conference for the purpose of evaluating and weighing all information/evidence presented.

(e) Meet with appropriate management/staff/legal resources, evaluate all available information, and determine the most appropriate course of action. If the decision is to dismiss, the decision shall not be communicated to the employee prior to the next business day following the conclusion of the pre-dismissal conference or after the end of the second business day following the completion of the pre-dismissal conference.

(f) Notify the employee of the decision. If the employee is to be terminated, the Department Head may present the letter or send by certified mail, return receipt requested.

(g) Any action taken as the result of a pre-dismissal conference.

## **Section 9. Dismissal**

### **Essential Considerations:**

- (a) Before any employee will be dismissed for Unsatisfactory Job Performance, the employee must first receive a written warning per Section 7. In the event of grossly inefficient work performance or unacceptable personal conduct no warning is required
- (b) Prior to any dismissal the employee will be informed in writing of pre-dismissal rights and the County Manager shall conduct a pre-dismissal conference in accordance with procedural requirements if one is requested. The affected employee may waive pre-dismissal conference rights.

## **Section 10. Dismissals-Preparation of Documentation**

### **Applicability:**

Dismissal for cause of regular employees for Unsatisfactory Job Performance, Grossly Inefficient Job Performance and Unacceptable Personal Conduct.

### **Essential Considerations:**

- (a) Review applicable policy to insure that all requirements have been met including warnings and notifications.
- (b) Schedule and conduct a pre-dismissal conference if one is requested by the employee.
- (c) Prepare letter of dismissal which should include:
  - (1) Reference to earlier warnings where appropriate.
  - (2) If dismissal is preceded by investigatory placement, briefly summarize purpose and findings.
  - (3) Include in detail specific reasons and evidence, if appropriate.
  - (4) Brief reference to the pre-dismissal conference and employee's responses.
  - (5) Emphasize reasonableness of standards and County policies and impact of employee's actions, failures or omissions.
- (d) Review documentation and dismissal letter with appropriate personnel/legal counsel to assure that all procedural and evidentiary issues have been addressed.
- (e) Present dismissal letter or send to the employee by certified mail, return receipt requested.
- (f) File dismissal letter, related evidence and procedural materials in employee's file with copies to appropriate parties.
- (g) Follow comparable procedures in 1-5 above for disciplinary demotion and disciplinary suspension actions.

## **Section 11. Disciplinary Demotion**

### **Applicability:**

- 1. For Unsatisfactory Job Performance after the receipt of at least one prior disciplinary action.
- 2. For any instance of Grossly Inefficient Job Performance or Unacceptable Personal Conduct.

### **Essential Considerations:**

- (a) A pre-demotion conference is required following applicable procedures from the guidelines for conducting a pre-dismissal conference. Advance oral or written notice of the conference is required.
- (b) Provide the employee a written statement setting forth the specific reasons for the demotion.

Include in the statement:

- (1) How and to what extent the demotion will affect the employee's salary and pay grade.
- (2) It is recommended that, if appropriate, a revised job description outlining the employee's revised duties and responsibilities be attached.
- (3) Reference to the employee's grievance rights per Article VII.

## **Section 12. Disciplinary Suspension**

### **Applicability:**

1. For Unsatisfactory Job Performance after the receipt of at least one prior disciplinary action.
2. For any instance of Unacceptable Personal Conduct or any instance of Grossly Inefficient Job Performance

### **Essential Considerations:**

- (a) A pre-disciplinary suspension conference is required following applicable procedures from the guidelines for conducting a pre-dismissal conference, except that this conference may be conducted by the Department Head or his/her designee. Advance oral or written notice of the conference is required.
- (b) The suspension must be for at least one full work day with a maximum time of two work weeks.
- (c) Furnish the employee a written statement setting forth the specific reasons for the suspension and notification of the employees' right to grieve the action.
- (d) This disciplinary action must be reviewed by the County Manager. If the decision to suspend for disciplinary reasons is upheld, the suspension will be without pay. If the suspension is not upheld, it is with pay. The Department Head may refer to Investigatory Status with pay.

## **Section 13. Placement on Investigation with Pay**

### **Applicability:**

1. To investigate allegations of performance or conduct deficiencies that would constitute just cause for disciplinary action.
2. To avoid disruption of the work place and/or to protect the safety of persons or property.
3. To provide time within which to schedule and conduct a pre- disciplinary (demotion, suspension or dismissal) conference.

### **Essential Considerations:**

- (a) Placement on investigation with pay does not constitute a disciplinary action and is not subject to appeal.
- (b) Management shall notify the employee, in writing, no later than the second scheduled work day after the beginning of the placement, of the reasons for the investigatory placement.

- (c) The maximum length of time for an investigatory placement with pay is 30 calendar days unless extended. If an extension beyond the 30 days is required, the Department Head shall notify the employee, in writing, of the extension, the specific reasons for the extension and the length of the extension.
- (d) Under no circumstances, is it permissible to use placement on investigation status for the purpose of delaying an administrative decision on an employee's work status pending the resolution of a civil or criminal court matter involving the employee.

#### **Section 14. Dismissal of an Employee for Failure to Obtain or Maintain Credentials**

**Applicability:** To employees who fail to obtain or maintain any license registration or certification required by a relevant law, rule, or provision when the duties of the position require that license, registration or certification.

#### **Essential Considerations:**

- (a) The employee is responsible for obtaining and maintaining current, valid credentials required by law, rule, or regulation.
- (b) Requirements for credentials are specified in the statement of essential qualifications for recruitment standards for classifications established in the position description for the position.
- (c) An employee who is dismissed for failure to obtain or maintain credentials shall be dismissed under the procedural requirements applicable to dismissals for Unacceptable Personal Conduct or Grossly Inefficient Job Performance.

#### **Section 15. Competitive Service Employee Appeal Procedure for Employees Subject to North Carolina Human Resources Act**

- (a) In the continuing effort to provide and maintain the best possible conditions of work for all County employees and to improve cooperative and harmonious relationships among the entire staff, the following procedure is provided to encourage the prompt, fair settlement of problems and differences through an orderly appeals procedure. Every employee shall have the right to present his or her concern in accordance with these procedures, free from interference, coercion, restraint, discrimination, penalty, or reprisal. The employee may also appeal per North Carolina Human Resources Act procedure and guidelines. This includes any cause for dissatisfaction outside the employee's control or anything connected with his or her job that he or she feels is wrong. Every employee will be allowed such time off from his or her regular duties as may be deemed necessary and reasonable by the employee's supervisor for the processing of an appeal under these procedures without loss of pay, vacation, or of other time credits. Appeal procedures only apply to "regular" employees (not probationary or temporary).
- (b) The County is determined to make every effort to insure that no employee is subjected to unfair treatment. The objectives of this policy include the following:
  1. To ensure employees means of getting their concerns considered rapidly, fairly, and without fear of reprisal.

2. To encourage employees to express how their conditions of work affect them as employees.
  3. To provide better understanding of policies, practices, and procedures which affect employees.
  4. To provide supervisors with greater opportunity both to exercise proper responsibility in dealing with employees and to improve their effectiveness in carrying out established policies.
  5. To improve opportunities for all staff members to perform their duties with effectiveness and satisfaction.
  6. To encourage clear understanding and to reduce fears or false impressions of unfair treatment.
- (c) Employees and their supervisors are urged to communicate freely with one another concerning conditions of employment, allowances, promotions, rates of pay, and the like. Supervisors should keep themselves well informed on personnel policies and procedures.
- (d) In utilizing the appeal procedures, employees are expected to adhere to the sequence of events enumerated in the following steps. The administrative chain of command should be followed. At any given level in the appeal procedure, either party may consult the Human Resources Director, supervisors or others pertinent to the appeal.
- (e) Throughout the procedure the Human Resources Director shall be available to advise the employee and to assure that the employee's rights are safeguarded. The Human Resources Director may also advise the administrative chain of command regarding the applicability of law, regulations, policy or sound personnel practice.

**Who May File.** A complaint may be filed by an employee of Davidson County who is subject to the North Carolina Human Resources Act and believes that an adverse employment condition exists and/or that discrimination in employment has been practiced against him/her. A complaint of general discriminatory employment practices may also be filed by an employee, provided, however, that upon request of the County Manager, the complainant shall furnish names of individuals who are adversely affected by those practices.

- (f) **What May be Appealed.** Only demotion, dismissal, suspension and reduction in force may be appealed through this formal County procedure. All other issues should be addressed through the programmatic chain of command and/or appealed to the North Carolina Human Resources Commission.

#### STEP 1 - DISCUSSION BETWEEN EMPLOYEES AND IMMEDIATE SUPERVISOR

The employee who has a concern should discuss it as soon as possible with his or her immediate supervisor. If not satisfied, the employee may within 15 days of the (most recent) occurrence of the cause of dissatisfaction notify the supervisor in writing with a copy to the Human Resources Director. The request must include the action(s) being appealed, the reasons the action(s) are perceived to be wrong, unfair or offensive and a proposed resolution or remedy. This triggers the formal appeal procedure.

(The Human Resources Department will then contact the employee to make sure he/she has a copy of this policy.) The employee shall receive a written and dated answer as soon as possible, but no later than five (5) working days, or be advised as to when an answer may be expected. The Human Resources Director shall receive a copy of the response.

## STEP 2 - APPEAL TO THE DEPARTMENT HEAD

If a satisfactory solution is not achieved in Step 1, or if the employee fails to receive an answer within the period provided in Step 1, the employee may, within five (5) working days, appeal in writing to the next level (senior) supervisor with a copy to the Human Resources Director.

The employee shall receive a written and dated answer as soon as possible, but no later than five (5) working days, or be advised as to when an answer may be expected. The Human Resources Director shall receive a copy of the response.

NOTE: If the supervisor appealed to is not a Department Head, the same process shall continue through the chain of command until it reaches a Department Head. At each step the employee shall have five (5) working days to appeal in writing and the supervisor shall respond in writing within five (5) working days. The Human Resources Director shall receive a copy of all appeals and all responses.

**Hearing.** A complainant filing a formal complaint may request a hearing, which shall be transcribed or recorded. The hearing shall be conducted within sixty (60) calendar days from the date the hearing is requested, during regular working hours of the County. The Department Head, the complainant, and any person whose alleged conduct is the cause of the complaint shall have the right to call and cross-examine witnesses and offer evidence. The hearing shall be instituted and conducted by the Department Head. The Department Head shall render a decision within thirty (30) calendar days of the hearing.

## STEP 3 - APPEAL TO THE OFFICE OF ADMINISTRATION HEARING

If the appeal is regarding demotion, suspension, dismissal or reduction in force, and only in such cases, and if the employee is not satisfied with the decision rendered through the Local Appeals process, he/she may file a written appeal within 30 days with the Office of Administration Hearings, Post Office Drawer 27447, Raleigh, NC 27611-7447. A copy of the request for appeal shall be sent to the County Manager and Department Head in accordance with GS-126-37.

If an appeal to the Office of Administration Hearings, the employee should provide the following seven items of information:

- (a) Your name, address and telephone numbers for both your work location and at home;
- (b) The position which you held and the position which you applied for, or our present position;
- (c) The name of the agency you are complaining against;
- (d) Provide a basic statement of your grievance, e.g. dismissal, discrimination, etc;
- (e) If the employee has an attorney, he/she should provide the name, address and telephone of the attorney;

(f) State clearly the nature of the complaint(s) and provide basic facts at this time;

(g) State what relief or remedy you desire.

### APPEAL PROCEDURE

Employees subject to the jurisdiction of the North Carolina Human Resources Commission shall have the right to appeal to the North Carolina Human Resources Commission not later than thirty (30) days after receipt of notice of the third step decision, provided the employee has obtained regular status in accordance with the rules and regulations of the North Carolina Human Resources Commission and the complaint does not involve discrimination, but does involve demotion, suspension, dismissal or reduction in force.

The decisions of the North Carolina Human Resources Commission shall be binding in appeals of the local employees subject to the North Carolina Human Resources Act if the Commission finds that the employee has been subjected to discrimination or in any case where a binding decision is required by applicable Federal Standards. However, in all other local employee appeals, the decision of the North Carolina Human Resources Commission shall be advisory to the local appointing authority.

### MAINTENANCE OF RECORDS

All documentation, records and reports will be retained for a minimum of two (2) years and shall be held by the Human Resources Director. These records will be subject to review by the grievant, the employee's Department Head, the County Manager and the Commissioners.

### PROCEDURE FOR RECORDING RECEIPT AND DISPOSITION OF ALL COMPLAINTS

The County Manager will keep a record of all written complaints filed with him through the programmatic chain of command regarding a non-appealable issue. If a complaint is withdrawn, the record shall include any statement from the complainant indicating the reason for withdrawal.

### ALTERNATIVE REMEDIES

The existence of these grievance procedures does not preclude any individual from pursuing other alternatives available under law.

### **Section 16. County Employee Appeal Procedure**

County employees do not have any appeal rights under this article and must exercise their rights under Article VIII in order to grieve an employment action or working condition.

### **Section 17. Re-employment**

#### POLICY:

It is the policy of the County that former employees shall be considered for re-employment using the following procedures:

PROCEDURES:

- (a) The Human Resources Department shall review information contained in the records on a former employee seeking re-employment either upon the application being submitted or upon request from the hiring supervisor before interviewing the former employee.
- (b) A former employee shall not be eligible for re-hire if so stated on his/her termination report based on objectives as referenced in the Disciplinary Action Policy and the Resignation/Separation Policy as stated in the Personnel Resolution.
- (c) If a former employee was “discharged for cause” he/she shall not be eligible for re-employment. Cause means dismissed for failure in personal conduct or failure in job performance.
- (d) A former employee who failed to give proper notice in accordance with County policy will not be eligible for re-employment unless he/she can provide verification of a continuous, stable employment record for a one year period. Circumstances of notice will be reviewed.
- (e) A former employee who is re-hired will be considered a new employee consistent with applicable policies, including the requirement to serve a probationary period. If former employees are reinstated within one year, sick leave balance and vacation accrual rate will be restored. Additionally, their original date of hire will be used for the purpose of establishing longevity pay, employee recognition award, and Christmas bonus eligibility. However, any time spent in non-County service will be deducted from their total time calculated for those purposes.

## **ARTICLE VIII. GRIEVANCE PROCEDURES**

### **Section 1. Purpose**

The grievance procedures outlined herewith establish policies and procedures in employment and personnel management providing for an adequate and fair hearing of grievances for each individual, without regard to age, race, color, gender, national origin, religion, marital status, veteran status, or disability, where the grievance is based upon denial of equal employment opportunity or discrimination. These procedures also relate to all other phases of employment for all employees of Davidson County.

### **Section 2. Applicability/Coverage**

These grievance procedures apply to all departments and all employees employed by Davidson County.

### **Section 3. Policy**

Every employee shall have the right to present his/her problem or grievance in accordance with these procedures free from interference, coercion, restraint, discrimination, penalty or reprisal. This includes any cause for dissatisfaction outside the employee's control or anything connected with his/her job that he/she thinks or feels is wrong. Every employee will be allowed such time off from his/her regular duties as may be necessary and reasonable as determined by the Department Head and/or County Manager for the processing of a grievance under these procedures without loss of pay, vacation or of other time credits.

### **Section 4. Objectives**

The objectives of these procedures is to insure that no employee is subjected to unfair treatment and includes the following:

- (a) To assure employees of a means to get their complaints considered rapidly, fairly and without fear of reprisal.
- (b) To encourage employees to express themselves about how their conditions of work affect them as employees.
- (c) To provide better understanding of policies, practices and procedures which affect employees.
- (d) To provide Department Heads and supervisors with greater opportunity, both to exercise proper responsibility in dealing with employees and to improve their effectiveness in carrying out established policies.
- (e) To improve employee opportunities in performing duties with effectiveness and satisfaction.
- (f) To encourage clear understanding and reduce fears or false impressions of unfair treatment or retaliation for filing a grievance or registering a complaint.

## **Section 5. Administration**

The County Manager has assigned Department Heads the duties of coordinating all activities relating to grievance procedures for their respective departments. The Department Head shall consult with the Human Resources Director when an employee has a grievance. The Human Resources Director and Department Head shall:

- (a) Coordinate a system for (1) counseling an aggrieved employee who believes he/she has been discriminated against and (2) attempting to resolve informally any matter raised by the aggrieved employee.
- (b) Arrange for the receipt and investigation of individual complaints of discrimination or any other matter raised by the aggrieved employee.
- (c) Arrange for the receipt and investigation of general allegations by organizations or other third parties of discrimination which are necessary on individual complaints, including any disciplinary action that is warranted when an employee has been found to have engaged in a discriminatory practice.
- (d) Review the file on any individual complaint, before a decision is made under the complaint procedure, and make any recommendation to the County Manager that he considers desirable including any disciplinary action that is warranted by the circumstances.

## **Section 6. Conditions for Which an Employee May File a Grievance or Complaint**

In the continuing effort to provide and maintain the best possible work conditions for all County employees and to improve cooperative and harmonious relationships among all its staff, the following internal procedure is provided to encourage prompt, fair settlement of problems and differences through an orderly grievance and complaint procedure. Every employee shall have a right to present his or her concern in accordance with these procedures, free from interference, coercion, restraint, discrimination, penalty, or reprisal. It includes any cause for dissatisfaction outside the employee's control or anything connected with the employee's job that he or she feels is wrong. Dismissal or disciplinary actions resulting from dismissal conferences per Article VII may not be grieved.

The employee may not be represented by external representatives, external counsel or internal representatives. Employees may present active County employee witnesses, and the employee and any witnesses will be allowed such time off from his or her job as may be deemed necessary by the employee's supervisor, Department Head, or County Manager for the processing of a grievance or complaint under these procedures without loss of pay, vacation, or other time credits. Grievance procedures apply only to "regular" employees, not to temporary or probationary employees.

## **Section 7. Protection of Complaints, Employees, Witnesses from Interference, Harassment, Intimidation and Reprisal**

All employees shall be free from any or all restraint, interference, coercion or reprisal on the part of their associates or Department Heads in making any complaint or appeal; in appearing as witnesses or in seeking information in accordance with these procedures. The above principles apply with equal force after a complaint has been resolved. Should these principles be violated, the facts shall be

brought to the attention of the County Manager by the appellant or the person affected so that the appropriate remedial action may be taken.

### **Section 8. Procedure for Informal Resolution of Complaints**

The County Manager is designated to act in an effort to mediate or conciliate informal complaints. However, initially, employees should attempt to resolve informal complaints at the lowest possible supervisory level. Informal complaints may be filed by anyone eligible to file a formal complaint.

If the grievance is not resolved at the lowest level, the grievant may proceed to the next supervisory level and this procedure may be repeated until the complaint reaches the County Manager. An informal complaint not resolved to the employee's satisfaction by the County Manager must thereafter be handled through the formal complaint procedures.

When an informal complaint has been received by an immediate supervisor, a memorandum shall be prepared by the supervisor to the Department Head. The memorandum should advise him of the complaint; outline the circumstances of the complaint, discuss attempts to resolve the complaint; cite the recommendation of the supervisor, and state the conclusion or recommendation for further action.

All informal complaints will be heard by the immediate supervisor as rapidly as possible and in no more than thirty (30) calendar days after receiving the complaint. If no satisfactory solution can be found for the complainant by the supervisor, the complainant may proceed to the next higher supervisory level.

In any case where the complainant feels that he/she cannot present the complaint, or would not receive proper consideration for the complaint at the immediate supervisor level, he/she may, without prejudice, move up the supervisory channel to any higher level and then may take the complaint directly to the County Manager.

### **Section 9. Formal Complaint Procedure**

The procedure for processing of formal complaints of employment discrimination or any other matter by employees of Davidson County is as follows, except that Competitive Service Employees may file discrimination complaints directly to the North Carolina Human Resources Commission:

If the informal procedures do not attain a result satisfactory to the complainant or if the complainant has suitable reason not to follow the informal procedure, he/she may file a formal complaint to be submitted in writing and signed and also stating why their complaint was not properly handled internally. The formal complaint should state concisely the basis for the complaint and, if based on alleged discrimination, indicate whether the alleged discrimination was based on age, race, color, gender, national origin, religion, marital status, veteran status, or disability. A statement from the complainant describing the conduct or condition complained of with greater particularity may be required as the investigation proceeds.

- (a) Who May File. A complaint may be filed by any employee of Davidson County who believes that an adverse employment condition exists and/or that discrimination in employment has been practiced against him/her and/or that an employment practice in Davidson County has resulted or will result in discrimination in employment against him/her. A complaint of general discriminatory employment practices may also be filed by an

employee, provided, however, that upon request of the County Manager, the complainant shall furnish names of individuals who are adversely affected by those practices.

- (b) For employees in the Sheriff's Department and the Register of Deeds Office, there shall be no appeal beyond the decision of the respective Department Head.
- (c) For employees of the Davidson County Library, they may first file their complaint with the Library Board of Trustees.
- (d) Competitive Service Employees shall follow the grievance procedure as outlined by their Governing Board.
- (e) Right of Representation. A grievance is an internal procedure and the grievant is not entitled to internal or external representation. If the complainant requests participation of an active Davidson County employee as a witness, such employee, as well as an employee-complainant, shall have a reasonable amount of official time with pay, if he/she is in a pay status, for the purpose of appearing at any hearing on the complaint. The rights and privileges set forth in this paragraph shall also be available to any person whose alleged conduct is the cause of the complaint.
- (f) Where Filed. All employees who wish for their complaint to be handled under the Formal Grievance Procedure of Davidson County should file their complaint in writing with the County Manager who will investigate the complaint, and will schedule a hearing within thirty (30) calendar days after receiving the complaint.
- (g) When Filed. A complaint shall be submitted within fifteen (15) calendar days of the conduct giving rise to the complaint. The County Manager may extend the time limit for good cause. Competitive Service Employees must file appeals of demotion, suspension and dismissals within fifteen (15) calendar days of his/her receipt of written notice of action. A direct appeal to the North Carolina Human Resources Commission alleging discrimination must be filed with the Commission within thirty (30) days of the alleged discriminatory act.
- (h) Hearing. The formal grievance or complainant hearing with the County Manager shall be transcribed or recorded and shall be conducted within thirty (30) calendar days from the date the complaint is received during regular working hours of the County. The hearing date may be extended by mutual agreement of the County Manager and the grieving party. The County Manager, the complainant, and any person whose alleged conduct is the cause of the complaint shall have the right to call and cross-examine witnesses and offer other evidence. The hearing shall be instituted and conducted by the County Manager, who shall render a decision within thirty (30) calendar days of the hearing. The decision is final and not subject to internal appeal

#### **Section 10. Appeal Procedure (Competitive Service Employees)**

Employees subject to the jurisdiction of the North Carolina Human Resources Commission shall have the right to appeal to the North Carolina Human Resources Commission not later than thirty (30) days after receipt of notice of the Department Head's decision, provided the employee has obtained regular status in accordance with the rules and regulations of the North Carolina Human Resources Commission, and the complaint does not involve discrimination but does involve demotion, suspension, dismissal or reduction in force.

The decisions of the North Carolina Human Resources Commission shall be binding in appeals of local employees subject to the North Carolina Human Resources Act if the Commission finds that the employee has been subjected to discrimination or in any case where a binding decision is required by applicable Federal Standards. However, in all other local employee appeals, the decision of the North Carolina Human Resources Commission shall be advisory to the local appointing authority.

**Section 11. Maintenance of Records**

All documentation, records, and reports will be retained for a minimum of two (2) years and shall be held by the Human Resources Director. These records will be subject to review by the grievant, the employee's Department Head, the County Manager, and the Commissioners.

**Section 12. Procedure for Recording Receipt and Disposition of All Complaints**

The County Manager will keep a record of all informal complaints filed with him. If a complaint is withdrawn, the record shall include any statement from the complainant indicating the reason for withdrawal.

**Section 13. Alternative Remedies**

The existence of these grievance procedures does not preclude any individual from pursuing other remedies available under law.

## **ARTICLE IX. EMPLOYEE BENEFITS**

### **Section 1. Insurance Benefits**

The County may provide both hospitalization and life insurance under the group insurance program to all employees occupying budgeted positions who work at least 30 hours per week. Employees shall be enrolled in the programs in accordance with the provisions of the insurance contracts and on the first day of the month following a thirty (30) day waiting period. The employer paid premiums for ten month employees who are employed in accordance with school schedules will be paid for the entire twelve months. Deductions shall be allowable, at the option of the employee, to provide hospitalization and life coverage for dependents in accordance with the provisions of the insurance contracts.

### **Section 2. Unemployment Insurance**

In accordance with the Public Law 94-566 and Chapter 1124 of the Session Laws of 1977 of the North Carolina General Assembly, local governments are covered by unemployment insurance. Davidson County employees who are laid off or released from the County service may apply for unemployment compensation through the local office of the Division of Workforce Solutions (DWS). Eligibility for unemployment insurance will be determined by the Division of Workforce Solutions (DWS).

### **Section 3. Social Security**

The County, to the extent of its lawful authority and power, shall contribute to social security benefits for its eligible employees in accordance with the provisions of the Social Security Act.

### **Section 4. Retirement Benefits**

Each employee in a budgeted position, working a minimum of 1000 hours per year, as a condition of employment, must join the Local Government Employees' or Law Enforcement Officers Retirement System upon employment. Employees must contribute, through payroll deduction, six percent (6%) of the gross salary each month to the system. The County (employer) contributes an actuarially determined percentage of the gross payroll each month to the system.

### **Section 5. Death Benefit**

If an employee dies before age 70, while still in active service, after one year as a contributing member of the Retirement System, your beneficiary will receive a single lump sum payment. This payment will equal the highest twelve (12) months' salary in a row during the 24 months before you die, but no more than \$50,000. This benefit is also paid if you die within 180 days after the last day for which you are paid a salary. This benefit is in addition to any other benefits to which you may be entitled through the Retirement System.

### **Section 6. Law Enforcement Officers Separation Allowance**

The County shall provide a special separation allowance to qualified officers who retire early or who leave service early, and who meet all of the following qualifications:

- (a) The officer must have completed 30 years or more of creditable service, or have attained 55 years of age and completed five or more years of creditable service;

- (b) The officer must not yet be age 62; and
- (c) The officer must have completed at least five years of continuous service as a law enforcement officer immediately prior to service retirement.

The separation allowance ceases when the officer reaches age 62 or when the officer dies or is re-employed in any capacity by a city, town, county, or the state.

**Section 7. Supplemental Retirement Income Plan Available to Law Enforcement Officers**

All law enforcement officers automatically become a member of the Supplemental Retirement Income Plan, on the date of hire, provided the officer has the full power of arrest with the primary duty of enforcing criminal laws.

**Section 8. Benefits/Other - Fixed**

Davidson County, as the employer, provides the following additional benefits to its employees:

Workers' Compensation - Provides coverage to all full and part-time employees to cover medical expenses and loss time from work due to work related injuries.

**Section 9. Benefits/Other - Flexible**

Additional deductions/benefits may be allowed, at the option of the employee, under the provisions of the insurance contracts, Deferred Compensation Program and other programs the County may authorize employee participation and may be payroll deducted.

**Section 10. 30 Year Employees -Retirees/Continued Benefits**

- (a) The Employee Group Health Plan allows an employee under 65 that was hired prior to June 30, 2009, who meets the requirements for Early Retirement (Reduced Benefits) under the North Carolina Local Government Employees' Retirement Plan, to remain on the Employee Group Health insurance after retirement until the retiree reaches age 65.
- (b) Any employee retiring from Davidson County Government may keep the same coverage, at his/her expense, that has been in effect for at least one (1) year prior to retirement, or reduced health coverage at the time of retirement. Employees may not add or increase health coverage at the time of retirement.
- (c) As with all benefits not mandated by Federal or State Law, the County reserves the right to change, modify or discontinue this policy through action, whenever so determined by the Board of County Commissioners.

**Section 11. Employee Recognition**

All full time employees eligible for benefits with Davidson County, when they attain five, ten, fifteen, twenty, twenty-five, or thirty or more years of continuous service as of January 1st, shall be recognized annually in January with a gift of their choice from the selection catalog provided by the Human Resources Department. Elected official's eligibility shall be calculated as of the date of election or appointment. The years of service will be adjusted in the same manner as the Longevity.

**Section 12. Retiree Health Benefits**

After retirement, employee health insurance will continue to be paid if the retiree has met the following conditions:

- (1) Was hired prior to June 30, 2009 (Retiree Benefits discontinued per Board Approval effective July 1, 2009).
- (2) At least twenty years of service in North Carolina state and/or local government, of which the last ten years must have been consecutive with Davidson County government.
- (3) The retiree must be 55 years of age or older.
- (4) If a retiree becomes employed by another employer and is eligible for health insurance with that employer, he or she is ineligible for coverage under this provision then or in the future.
- (5) The premium for retirees will be actuarially established by the plan's Third Party Administrator, or if the current plan is changed to an indemnity one, it will be established by the indemnity plan's insurance carrier.
- (6) The County portion of the premium for retirees will be based on its contribution to the premium of regular employees. Contribution levels for total service will be as follows:
  - a. 30 years or more 100%
  - b. 25-30 years 66 2/3%
  - c. 20 years 33 1/3%
- (7) It will not apply to dependent coverage.

## **ARTICLE X. PERSONNEL RECORDS AND REPORTS**

### **Section 1. Personnel Records Maintenance**

Such personnel records as are necessary for the proper administration of the personnel system will be maintained by the Human Resources Director. The County shall maintain in personnel records only information that is relevant to accomplishing personnel administration purposes.

The following information with respect to each County employee is a matter of public record:

- (1) Name.
- (2) Age.
- (3) Date of original employment or appointment to County services.
- (4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the county has the written contract or a record of the oral contract in its possession.
- (5) Current position.
- (6) Title
- (7) Current salary.
- (8) Date and amount of each increase or decrease in salary.
- (9) Date and type of each promotion, demotion, transfer, suspension, separation, or other change in position classification
- (10) Date and general description of the reasons for each promotion.
- (11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the county. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the county setting forth the specific acts or omissions that are the basis of the dismissal.
- (12) The office to which the employee is currently assigned.

### **Section 2. Access to Personnel Records**

As required by G. S. 153A-98, any person may have access to the information listed in Section 1 of this article for the purpose of inspection, examination, and copying, during the regular business hours, subject only to such rules and regulations for the safekeeping of public records as the Board of Commissioners may adopt. Access to such information shall be governed by the following provisions:

- (1) All disclosures of records shall be accounted for by keeping a written record (except for authorized persons processing personnel actions) of the following information: Name of employee; information disclosed; date information was requested; name and address of the person to whom the disclosure is made. This information must be retained for a period of two years.
- (2) Upon request, records of disclosure shall be made available to the employee to whom it pertains.
- (3) An individual examining a personnel record may copy the information; any available photo-copying facilities may be provided and the cost may be assessed to the individual.
- (4) Any person denied access to any record shall have a right to compel compliance with these provisions by application to a court for writ of mandamus or other appropriate relief.

### **Section 3. Confidential Information**

All information contained in a County employee's personnel file, other than the information listed in Section 1 of this article will be maintained as confidential in accordance with the requirement of G. S. 153A-98 and shall be open to public inspection only in the following instances:

- (a) The employee or his/her duly authorized agent may examine all portions of his/her personnel file, except, (1) letters of reference solicited prior to employment, and (2) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to his patient.
- (b) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (c) A County employee having supervisory authority over the employee may examine all material in the employee's personnel file.
- (d) By order of a court of competent jurisdiction, any person may examine such portion of an employee's personnel file as may be ordered by the court.
- (e) An official of any agency of the State or Federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such information is deemed by the official having custody of such records to be necessary and essential to the pursuance of a proper function of the inspecting agency, but no information shall be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of such records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
- (f) An employee may sign a written release, to be placed with his personnel file, that permits the person with custody of the file to provide, either in person, by telephone, or by mail, information specified in the release to prospective employers, educational institutions, or other persons specified in the release.
- (g) The County Manager, with concurrence of the Board of County Commissioners, or, in counties not having a manager, the Board of County Commissioners may inform any person of the employment or nonemployment, promotion, demotion, suspension or other disciplinary action, reinstatement, transfer, or termination of a county employee and the reasons for that personnel action. Before releasing the information, the manager or board shall determine in writing that the release is essential to maintaining public confidence in the administration of county services or to maintaining the level and quality of county services. This written determination shall be retained in the office of the manager or the county clerk, is a record available for public inspection and shall become part of the employee's personnel file.

### **Section 4. Records of Former Employees**

The provisions for access to records apply to former employees as they apply to present employees.

**Section 5. Remedies of Employees Objecting to Material in File**

An employee who objects to material in his/her file may place in his/her file a statement relating to the material he/she considers to be inaccurate or misleading. The employee may seek the removal of such material in accordance with established grievance procedures. (See Article VIII)

**Section 6. Penalty for Permitting Access to Confidential File by Unauthorized Person**

G. S. 153A-98 provides that any public official or employee who knowingly and willfully permits any person to have access to any confidential information contained in an employee personnel file, except as expressly authorized by the designated custodian, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars.

**Section 7. Penalty for Examining and/or Copying Confidential Material Without Authorization**

G. S. 153A-98 provides that any person, not specifically authorized to have access to a personnel file designated as confidential, who shall knowingly and willfully examine in its official filing place, remove or copy any portion of a confidential personnel file shall be guilty of a misdemeanor and upon conviction shall be fined in the discretion of the court, but not in excess of five hundred dollars.

**Section 8. Destruction of Records Regulated**

No public official may destroy, sell, loan, or otherwise dispose of any public record, except in accordance with G. S. 121-5, without the consent of the State Department of Cultural Resources. Whoever unlawfully removes a public record from the office where it is usually kept, or whoever alters, defaces, mutilates or destroys it will be guilty of a misdemeanor and upon conviction will be fined not less than ten dollars nor more than five hundred dollars as provided in G. S. 132-3.

## **ARTICLE XI. IMPLEMENTATION OF RESOLUTION**

### **Section 1. Conflicting Policy Repealed**

All policies, ordinances or resolutions that conflict with the provisions of this Resolution are hereby repealed.

### **Section 2. Separability**

If any provision of this Resolution or any rule, regulations or order thereunder or the application of such provision to any person or circumstances is held invalid, the remainder of this Resolution and the application of such remaining provisions of this Resolution of such rules, regulations or orders to persons or circumstances other than those held invalid will not be affected thereby.

### **Section 3. Violations of Resolution Provision**

An employee violating any of the provisions of this Resolution shall be subject to suspension and/or dismissal, in addition to any civil or criminal penalty, which may be imposed for the violation of the same.

## **APPENDIX A**

### **DAVIDSON COUNTY TRAVEL POLICY**

#### County Policies Governing Travel and Expense Allowances

#### **I. PURPOSE OF REGULATIONS**

- (a) This procedure sets forth travel policies and regulations for authorization for and reimbursement of expenditures for official County travel. Some departments may set forth additional policies as required by State regulations.
- (b) County officers and employees may have their travel expenses reimbursed by the county, subject to the limitations contained in these regulations. Under no circumstances may duplicate reimbursement be made for that portions of an employee's expenses paid or reimbursed from a county or non-county source.
- (c) All travel is contingent upon the availability of funds in the proper budget sub-heads.

#### **II. DEFINITION OF TERMS**

For purposes of these regulations, the following definitions apply:

- (a) **Transportation:** All activities involving expenses for transportation, automobile, taxi, bus, train, airplane, motor pool charges, rental of automobiles, toll and parking fees.
- (b) **Subsistence:** All cost related to meals and lodging, food costs include gratuities therein.
- (c) **Other Travel Expenses:** Cost incurred while in travel status for services and/or goods other than for transportation and subsistence. Other travel expenses include cost of registrations, telephone charges, supplies, baggage handling gratuities and other appropriate items.
- (d) **County Funds:** Any funds deposited with the County Finance Office, subject to G.S. 159.
- (e) **Employees:** Any employee, whether temporary or permanent, who is paid on a county payroll.
- (f) **Duty Station:** The job location at which and employee spends the majority of their working hours. The duty station may vary according to daily assignments.
- (g) **Conference:** A formal gathering for the purpose of conducting business and exchanging information. Registration fees may be paid for such meetings.
- (h) **Common Carrier:** Commercial scheduled airline, rail, and bus.
- (i) **In-state:** Within the borders of North Carolina.

- (j) Out-of-State: All of the continental United States except North Carolina.
- (k) In-county: Within the Borders of Davidson County.

### **III. COUNTY POLICIES GOVERNING TRAVEL AND EXPENSE ALLOWANCES**

#### **A. Travel Allowances for County Officers and Employees**

Expenses for travel on official business by employees of county departments, which operate from funds which are subject to the G. S. 159, deposited with the County Finance Officer shall be reimbursed at the following rates as set forth by the Davidson County Board of Commissioners.

- (a) For transportation by privately owned automobile, approved mileage rate per mile of travel and the actual cost of road, bridge and ferry tolls paid. Mileage reimbursement shall be for direct road mileage between points on the employee's itinerary and shall conform to established county mileage standards where applicable. Employee's itinerary shall indicate points of duty.
- (b) For transportation by airline, bus, railroad or other conveyance, actual coach fare.
- (c) For subsistence:
  - (1) Reimbursement for subsistence expense (meal, tips for meals and taxes) will be no more than the approved rates, without receipts. Receipts shall be required for meal expense in excess of approved rates and for all lodging expense. If receipts are provided, reimbursement will be at the actual cost of the meal providing the reimbursement requested is reasonable and approved by both the Department Head and the Finance Director.

On each given trip for which reimbursement is requested the employee must select either the per diem rate method or actual meal cost method. If the per diem rate method is selected it will apply to every meal. If the actual meal cost method is selected, the employee must submit a receipt for every meal for which reimbursement is requested.

- (2) For one-day trips, a breakfast meal and/or dinner meal will not be reimbursed unless the employee departs before 7:00 a.m. and/or returns after 7:00 p.m. On the day of return when overnight lodging was incurred, a dinner meal will not be reimbursed unless the employee returns after 7:00 p.m. In each case, of a breakfast meal and/or dinner meal is claimed, a statement must be attached to the employee's request for reimbursement which sets forth the circumstances regarding the early departure and/or late return.
- (3) Conferences, Institutes, and Out-of-State - Reimbursement for all subsistence in excess of established rates shall be documented by receipts.

- (4) Reimbursement will not be allowed for laundry, alcoholic beverages, set-ups, between meal snacks and other personal expense. A motel receipt must be attached to the employee's expense report to substantiate overnight lodging.

(d) For registration fees, actual cost.

## **B. Authorization Procedures**

- (a) All out- of- County travel by county employees on official business must be authorized by the Department Head or the official designated by the Department Head.
- (b) All overnight stays must be approved in advance by the Department Head or the official designated by the Department Head.
- (c) All travel reimbursement requests shall be subject to review and approval by the Department Head who shall determine the reasonableness of the request.

## **C. Travel Advances**

- (a) All checks paid to individuals and/or vendors PRIOR to receipt of appropriate documentation as to the validity of such payment are included in this class. All such requests of this nature shall be made at least two (2) weeks prior to the date the check(s) is (are) needed and shall not be made for less than \$100.00. Normally, these requests may be made using the regular check request procedure except that explanations should be included detailing the need for the advance.
- (b) Travel advances need only include a summary of anticipated expenditures. Such advances may be made payable only to the requesting individual or anticipated final vendor - they will NOT be made payable to "cash", or the program or to any third party.
- (c) The account coding on such check request should indicate the account number(s) to which the eventual expense will be charged except travel advances should indicate account number 11-1140-00. When receiving a check for an advance, care should be taken to retain the "stub" portion of the check.
- (d) A Travel Expense Report and/or check request should be prepared after the purposes for the advance and requesting the difference. If the advance is underspent, the difference should be refunded to the County. The "stub" from the advance check should be attached, along with all receipts so the expense documents can be matched with the original advance check.
- (e) Reconciliation shall be within five working days after travel completion.
- (f) A record will be maintained by the Department Head or designee of all such advances indicating (1) Check number (2) Check date (3) Payee (4) Amount (5) Employee to whom the advance was entrusted (6) Date on which supporting documentation (receipts) was received and disposition (additional check number or date of deposit). Follow-up request for documentation not received shall also be noted. If documentation is NOT RECEIVED after reasonable efforts to receive such, the AMOUNT of the advance WILL BE DEDUCTED FROM EMPLOYEE'S SALARY following notification to the employee and consultation with the Department Head.

#### **IV. RATE SCHEDULE**

##### **MILEAGE**

Rate per mile for reimbursable mileage shall be the prevailing IRS approved rate rounded down to the nearest whole cent.

##### **SUBSISTENCE**

Breakfast, lunch, and dinner meals will be reimbursed at \$8.00 per meal when receipts are not provided.

## **APPENDIX B**

### **DAVIDSON COUNTY REDUCTION IN FORCE POLICY**

#### **INTRODUCTION**

This policy establishes guidelines for the administration of a reduction in force in which employees are separated due to shortages of funds or work, abolishment of a position, or other significant changes in duties or organization.

#### **AUTHORITY**

Davidson County Personnel Resolution, Chapter 126 of the General Statutes of North Carolina and the Personnel Policies for Local Government Employees Subject to the North Carolina Human Resources Act authorizes the implementation of such a policy and expresses the essential elements required of the department in planning a reduction in force. The policy is copied below in its entirety from the North Carolina Human Resources Manual and is followed by guidelines for its use. The policy states the following:

For reasons of curtailment of work or lack of funds, the appointing authority may separate employees. Retention of employees in classes affected shall be based on systematic consideration of type of appointment, length of service, and relative efficiency. No regular employee shall be separated while there are emergency, intermittent, temporary, provisional, probationary, or trainee employees serving in the same class in the department unless the regular employee is not willing to transfer to the position held by the non-status employee.

An employee with a satisfactory employment record who is terminated in accordance with the provisions of this policy will be considered for any vacant position for which he/she meets job specific qualifications as stated in the job announcement. Copies of such job announcements will be forwarded to qualified individuals at the address provided by the individual for a period of twelve (12) months after the effective date of the termination. A regular employee who is separated due to reduction in force shall have the right to appeal in accordance with the County Personnel Ordinance to the State Personnel Commission for a review to assure that systematic procedures were applied equally and fairly.

#### **GUIDELINES**

##### **I. Determining the Scope of the Reduction and the Layoff Unit.**

Budgetary restrictions, consolidation or abolishment of function or organizational units, curtailment of work or activities, or other reasons may result in the need to abolish a position(s) or to so substantially redesign a position(s) that the incumbent does not qualify for the revised responsibilities, thus effectively abolishing the position, or that the resulting reclassification results are such that the incumbent would not reasonably be considered a candidate for the new position. When this happens, the County Manager shall examine the organizational and program scope of operations of the department to determine the need to designate a "layoff unit". Then the County Manager will determine the necessary reallocation, reassignment (transfer), and/or abolishment of positions.

In considering the above, the following factors are among those which may be considered in this determination:

- Legal mandates for programs
- Impact on overall program objectives
- Possible redistribution of available resources
- Organization structure
- Funding sources and budget guidelines
- Composition of the work force
- Equal employment and affirmative action considerations
- Economy and efficiency in service

Once the above factors have been identified, the County Manager, after discussion with the Board of Commissioners, shall identify the layoff units(s) and designate the necessary reallocation, reassignment, and/or abolishment of positions.

The layoff unit, designated for the purpose of handling any necessary separation of employees, may be an entire department, any division, or any organizational, geographic or program sub-unit of the department. It may also include staff specialty within a division or program unit. The layoff unit need not coincide with the program, function, or activity that is the cause of the abolishment(s). Layoff unit designations allow management to distribute staff resources according to service priorities of the County.

All planning efforts dealing with the abolishment of position(s) shall reflect a review process identifying the reasons for the results of the specific organizational program and/or position changes.

## **II. Employee Coverage and Exemptions.**

The reduction in force policy covers all regular employees as defined on the next page.

For purposes of this policy, the term regular employee means a person who has satisfactorily completed a prescribed probationary period of at least six months duration in a regular position in a department or who entered department employment with regular status.

## **III. Establishing a Plan and Procedure for Employee Separation.**

The necessary separation of employees in the layoff unit(s) shall be determined based on the systematic consideration of the type of employment, length of service and relative efficiency of the employees. The following factors shall apply in determining and scheduling employees for separation.

- (a) The type of appointment shall be the first determinant. No regular employee in an affected classification shall be separated while there are emergency, intermittent, temporary, probationary or trainee employees working in the same class in the department.
- (b) Separation of non-regular employees shall be made in the following order:
  - (1) Emergency, intermittent, and temporary employees.  
For this purpose, the three categories will be treated as one group.

- (2) Probationary and trainee employees.

For this purpose, the two categories will be treated as one group.

Non-regular employees shall be given written notice of separation as soon as possible in advance of the scheduled separation.

- (c) Separation of regular employees from positions in the affected classifications in the layoff unit shall be made upon systematic consideration of length of service and relative efficiency.

For the purposes of this policy, service shall be determined by length of continuous service (paid employment) with Davidson County. Service with other governmental jurisdictions will not be a part of this computation.

- (d) Performance evaluations and warnings received in accordance with the provisions of the County Personnel Ordinance will be included in consideration of relative efficiency.

- (e) Nothing in this policy shall be interpreted as assigning to an employee the right to displace or "bump" a regular employee from a position in order to create a vacancy.

#### **IV. Notice Requirements**

After the necessary separation decisions are made through application of the above criteria, the County Manager, in cooperation with the appropriate Department Heads, shall give formal written notice to all regular employees scheduled for separation. The notice shall be given as soon as possible. The appropriate Department Head shall review with the employee the reasons for the action and discuss mutual rights and responsibilities under the reduction in force policy.

#### **V. Appeal Rights**

A regular employee, as defined in this policy, who is separated due to a reduction in force, shall have the right to appeal the separation in accordance with the Davidson County Grievance Procedure, or in the case of employees subject to the North Carolina Human Resources Commission, directly to said Commission. Appeal to the North Carolina Human Resources Commission must be done within 30 days after the date of separation.

#### **LETTER TO EMPLOYEE(S)**

##### **STEP 1            SITUATION STATEMENT**

- (a) Describe conditions which necessitate the separation of employees whether the conditions are brought about because of the curtailment of work or lack of funds.
- (b) Explanation of Procedures (Example: Agency studies the situation. Considered available alternatives and chose these actions. Board voted to . . . . .)

STEP 2 RIGHTS OF THE EMPLOYEE

- (a) Priority - Regular employees have priority over emergency, intermittent, temporary, provisional, probationary or trainee employees in the same class.
- (b) Retention in affected classes is based on systematic consideration of type of appointment, length of service, and relative efficiency.

STEP 3 IDENTIFY ANY AVAILABLE EMPLOYMENT OPTIONS FOR EMPLOYEES WITHIN THE ORGANIZATION

(Example: Opportunity to apply for any vacancies which may exist and where qualified.)

STEP 4 REINSTATEMENT RIGHT OF THE EMPLOYEE

- (a) Employees may be considered for reinstatement at the request of the department, if suitable employment becomes available. Specific eligibility period for reinstatement is based on length of continuous service. (pertaining to employees subject to the North Carolina Human Resources Act)
- (b) Employees with regular status, temporary status, probationary status, or trainee status may have reinstatement rights for one year.

STEP 5 APPEAL RIGHTS OF THE EMPLOYEE

Employee has the right of appeal in accordance with the County Personnel Resolution and to the North Carolina Human Resources Commission for a review to assure that procedures were applied systematically and fairly.

STEP 6 EXPLANATION OF ANY BENEFITS AVAILABLE

(Example -- unemployment insurance)

STEP 7 EMPLOYMENT OPTIONS FOR EMPLOYEE IN THE AREA

Management efforts in placing employees in suitable employment in other organizations.

## **APPENDIX C**

### **DAVIDSON COUNTY VEHICLE POLICY**

#### **POLICY**

The County of Davidson has the responsibility to provide a safe work environment for employees and for the public. In addition, the County has the obligation to ensure, to the best of its ability, that all of its vehicle operators are properly licensed and maintain a safe driving record. County owned or leased vehicles are to be used only for County business purposes.

Appropriate action(s) will be taken to enforce this policy.

Employees who violate this policy and/or who do not maintain a safe driving record are subject to disciplinary action(s) up to and including dismissal and/or loss of privileges to drive County vehicles.

A driver's history shall be obtained on all prospective employees. The driver's history is a record of a licensed driver's driving history as provided by the North Carolina Division of Motor Vehicles.

#### **ORGANIZATIONS AFFECTED**

All departments/agencies.

#### **PURPOSE**

To establish and enforce the provisions of a County Vehicle Policy and to establish procedures for obtaining and reviewing driver's license history, as a means of ensuring the driving requirements for particular positions may be met by prospective applicants and by regular employees who may be required to operate a vehicle for the County of Davidson. In addition to meeting the requirements, this policy shall ensure employees are properly licensed for the vehicle they operate.

#### **I. AUTHORIZATION FOR VEHICLE USE**

The operation and use of a County vehicle is a privilege and not a right.

No one shall operate a County vehicle unless he is an employee of the County.

No County employee shall operate a County-owned vehicle except upon the express direction and authorization of the department head who supervises his regular work activity.

No County-owned vehicle may be used except in the conduct of official business in the interest of the County. Reports of private use of County vehicles will be received and investigated by the department/agency head with action to be taken according to Article VII, Section 6 of the Davidson County Personnel Resolution.

New employees who will drive County vehicles will be informed of the County vehicle policy and told of their obligation maintain a good driving record.

## **II. DRIVING REQUIREMENTS**

Driving histories shall be obtained for all prospective new employees. If a position requires an operator's license, then the possession of a valid North Carolina license will be required to operate the vehicle.

Driving histories of employees operating County-owned vehicles shall be obtained periodically. Periodic driving histories may be obtained to confirm or deny a possible license suspension, revocation or conviction(s) for accidents and/or motor vehicle violations.

Any employee who receives a traffic citation while operating a County-owned vehicle must immediately inform their department/agency head.

Employee driving records are under continued review. Excessive points on their motor vehicle report and/or County driving record may result in termination, demotion, or suspension of County driving privileges for a (specified) period of time until the driver can demonstrate that he/she has earned the right to again drive a County vehicle. The personnel action shall be taken by the department/agency head and filed in the employee's personnel file. Management reserves the right, where unusual circumstances exists, to discipline a driver regardless of the points assigned to either his/her State Motor Vehicle Report or County driving record.

The employee shall resolve the problems resulting in the continued suspension or revocation of license within a reasonable amount of time, but not to exceed sixty (60) days to have continued employment with the County of Davidson.

Documentation shall be presented to the department head to ensure that the license has been reinstated.

An applicant and/or employee having received a driving while impaired (DWI) conviction shall be prohibited from operating a County-owned vehicle.

An applicant and/or employee who has a limited driving privilege may be deemed unable to drive a County-owned vehicle until his/her unrestricted license has been reinstated.

Failure of an employee to inform their department/agency head of a traffic citation or a motor vehicle accident while operating a County-owned vehicle (or a personal vehicle being used for County business) may result in disciplinary action up to and including termination in accordance with the Personnel Resolution (Article VII).

## **III. COMMERCIAL DRIVERS LICENCSE (CDL)**

A Commercial Drivers License is required and must be current for every County employee who operates a motor vehicle designed or used to transport passengers or property in the following instances:

- If the vehicle has a gross weight rating of 26,001 or more pounds.
- If the vehicle is designed to transport 16 or more passengers, including the driver, or
- If the vehicle is transporting hazardous materials and is required to display a placard in accordance with the Hazardous Materials Transportation Act (49CFR Part 172, Subpart F).

A special endorsement on a CDL also is required in to haul hazardous materials and transport passengers. Additional information on CDLs is in the North Carolina Commercial Drivers Manual.

#### **IV. ACCIDENT PREVENTION**

It shall be the responsibility of all drivers of County-owned vehicles or personal vehicles being driven on County business to drive defensively as to prevent accidents in spite of the incorrect actions of others or adverse road conditions.

Every employee assigned a driving position with the County is required to complete a defensive driving course within six (6) months of their assignment. Periodic courses scheduled with educational facilities, law enforcement units, insurance groups, etc., shall be made available to County vehicle operators, and they shall be required to attend a minimum number of hours for that type of instruction.

#### **V. VEHICLE ACCIDENT REVIEW BOARD**

The frequency of accidents and the damage to county and private property calls for careful attention to developing preventative driving measures. The Vehicle Accident Review Board operates to ensure good driving standards and to determine the preventability of all accidents that occur in the operation of County vehicles.

The Vehicle Accident Review Board shall function under the direction of the Davidson County Board of Commissioners and shall be composed of the following individuals or their designated representatives:

- A. Risk Manager (Chairperson)
- B. Inspections Director
- C. Emergency Services Director
- D. Human Resource Director
- E. Sheriff's Department Safety Officer
- F. Public Health Director
- G. (3) Non-Exempt Employees

The purpose of the Vehicle Safety Review Board shall be to:

- A. To establish a fair and impartial review system for all vehicular accidents involving County employees resulting in injuries and/or property damage. With the primary objective being to improve the overall safety of County operations.
- B. To establish the cause for each reviewed accident, and determine whether preventable or non-preventable.
- C. To establish uniformity of discipline.
- D. To make recommendations for corrective action to Department Heads, County Manager and/or the County Board of Commissioners.

## **VI. ACCIDENT PROCEDURES**

### **A) Reporting**

#### **1) At the scene**

- Call ambulance if needed.
- Notify police, highway patrol, sheriff's office, depending on location.
- Call office (if communications are available) and notify your supervisor or department head.
- Do not move vehicle unless instructed by investigating officer.
- Obtain name/address of other driver(s)/passenger(s)/pedestrian(s) involved.
- Insurance policy and number of other driver.
- Name(s) of witnesses.
- Investigating officer's report.
- Do not become involved in an argument or make any statement concerning fault or liability.

- 2) When any County vehicle is involved in an accident or otherwise damaged, particulars of the employee and the details of the accident and damages shall be reported to your supervisor or department/agency head. The department/agency head will forward the completed Vehicle Accident Report along with the police report to the Risk Manager.

The Risk Manager will notify the County Garage of the accident and make arrangements for the repairs.

### **B) Accident Review**

- 1) The Vehicle Accident Review Board shall be convened within forty-five (45) days of the date of the accident and shall review the investigating officer's report, the employee's statement and other information prior to hearing an oral presentation by the employee.
- 2) At the time of the hearing, the employee may wish to present supporting material or witnesses to help in his/her defense.
- 3) The review and consideration of an accident by the Board will include the following elements:
  - The past driving record of the employee
  - The report of the investigating officer
  - Oral presentation by the employee
  - Supporting materials or testimony of witnesses
- 4) If it is clear that the employee is not at fault and could not have prevented the accident, the Board may rule the accident non-preventable and it will not be charged to the employee.

## C) Decision of Board

Upon reviewing all the details of the accident and meeting with the employee in question, the Accident Review Board shall meet privately to reach a decision. When a majority decision has been reached by the Board, the decision will be communicated to the department/agency head. If the board decides that the driver was at fault or he/she displayed unsatisfactory job performance, it will be the department/agency head's responsibility to see that the decision is carried out according to the Personnel Resolution, Article VII, Sections 7 and 8.

## VII. MAINTAINENCE

The preventative maintenance and service of County vehicles shall be the function of the County Garage.

A preventative maintenance checklist shall be provided each vehicle to be verified by the operator and mechanic servicing that vehicle. This checklist will provide mileage intervals and the maintenance completed at those intervals.

Each employee assigned a County-owned vehicle shall be responsible for ensuring that their vehicle is in good working condition at all times. A safety checklist will be made available to operators to assist them in checking their vehicles.

## VIII. SEAT BELTS

Seat belts and shoulder harnesses must be worn by drivers and passengers in County vehicles whenever the vehicle is in motion on public or private thoroughfares and roads. Employees who drive their personal vehicles for County business or who are passengers in personal vehicles being used for County business, shall also wear safety belts and harnesses, where provided.

## IX. DRIVING DISTRACTIONS

Distracted driving is a dangerous epidemic on America's roadways. In 2011 alone, over 3,000 people were killed in distracted driving crashes.

1) All employees who drive while conducting County business of any sort are required to safely pull off the road or end the call until the employee can reach an area where the driver can safely park the vehicle and resume the call. This applies to all County-owned vehicles, as well as rentals and personal vehicles.

2) Texting while driving is illegal under G.S. 20-137 and strictly prohibited. This includes the use of GPS devices.

It is the ultimate responsibility of each individual driver to comply with this policy.

It is also recommended that all vehicle occupants ensure that drivers comply with this policy.

## X. PERSONAL USE OF COUNTY VEHICLES EXCEPT FOR COMMUTING

(1) The vehicle is owned or leased by Davidson County and is provided to one or more employees for use in connection with Davidson County business and is used in Davidson County.

- (2) For bona fide business reasons, Davidson County may require and must pre-approve the employee to commute to and/or from work in vehicle.
- (3) The Vehicle Policy establishes a written policy under which the employee may not use the vehicle for personal purposes, other than commuting or de minimis personal use (such as a stop for a personal errand between a business delivery and the employee's home);
- (4) Davidson County accounts for the commuting use to be included in the employee's gross income; (specified in Treasury regulations) and
- (5) There must be evidence that would enable the Internal Revenue Service to determine whether the use of the vehicle met the four preceding conditions.

**PRIVATE USE OF PUBLICLY OWNED VEHICLES**

**N.C. GENERAL STATUTE 14-247**

It shall be unlawful for any officer, agent or employee of the State of North Carolina, or of any county or of any institution or agency of the State, to use for any private purpose whatsoever any motor vehicle of any type or description whatsoever belonging to the State, or to any county, or to any institution or agency of the State. It is not a private purpose to drive permanently assigned state-owned motor vehicle between one's official work station and one's home as provided in G.S. 143-341(8)i7a.

**VIOLATION MADE MISDEMEANOR**

**N.C. GENERAL STATUTE 14-251**

Any person, firm or corporation violating any of the provisions of G.S. 14-247 shall be guilty of a misdemeanor punishable by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), imprisonment for not more than six months, or both such fine and imprisonment.

**FAILURE IN PERFORMANCE OF DUTIES**

**DAVIDSON COUNTY PERSONNEL RESOLUTION**

The following causes relating to failure in the performance of duties are representative of those considered to be adequate grounds for suspension, demotion, or dismissal:

- (b) Careless, negligent or improper use of County property or equipment.

## APPENDIX D

### EMPLOYEE ASSISTANCE PROGRAM

#### I. POLICY

Davidson County recognized that a wide range of behavioral/medical problems could affect an employee's job performance. Examples of such behavioral/medical problems include alcoholism, other drug dependencies, marital or family distress, emotional instability and financial or legal problems. These problems usually result in deterioration of job efficiency.

In many instances, the employee will overcome such behavioral/medical problems independently and the effect on job performance will be negligible. In other instances, normal supervisory assistance will serve either as motivation or guidance, by which such problems can be resolved, so the employee's job performance will return to an acceptable level. In some cases, however, neither the efforts of the employer nor supervisor have the desired effect on resolving the employee's problems or unsatisfactory performance persists over a period of time, either constantly or intermittently.

The purpose of the Employee Assistance Program is to help the employee to overcome his/her problem and to restore that employee to acceptable job efficiency. The program is designed to identify the problem at the earliest possible stage, motivate the employee to seek help and to direct the employee to the appropriate assistance.

Davidson County believes it is in the best interest of the employee, the employee's family and the County to provide an employee service which deals with such persistent problems.

- (1) Behavioral/medical problems that affect work performance and attendance are legitimate concerns of management. Management recognized that these behavioral/medical problems could be successfully treated, provided they are identified early and referral is made to the appropriate treatment resource.
- (2) Behavioral/medical problems requiring assistance include alcoholism, other drugs dependencies, marital and family distress, mental illness, emotional, financial or legal problems.
- (3) Davidson County considers the moral stigma often associated with some behavioral/medical problems, particularly alcoholism, to be both out-of-date and erroneous. Realistic acceptance by our county of these conditions as being treatable will help you overcome this stigma and accelerate referral to diagnosis and treatment.
- (4) The purpose of the Employee Assistance Program is to assure the employees, that if such behavioral/medical problems are the cause of unsatisfactory job performance, they will receive an offer of assistance to help resolve such problems in an effective and confidential manner.
- (5) No employee will have his or her job security or promotional opportunities jeopardized for participating in the program.

- (6) Strict confidentiality is essential and will be maintained. The pertinent information and records of employees with behavioral/medical problems will be preserved in the same manner as all other medical records.
- (7) Employees are encouraged to use the Employee Assistance Program voluntarily when they need professional help or guidance.
- (8) If an employee has not sought help independently for a behavioral/medical problem, it will be the responsibility of the supervisor to follow a procedure, which will ensure that no employee with a behavioral/medical disorder will fail to have the benefit of diagnosis and treatment.
- (9) It is the employee's responsibility to cooperate in the designated treatment or rehabilitation plan. After reasonable opportunity for progress, discipline, up to and including job dismissal, may occur unless there is noticeable improvement in job performance.
- (10) Since employee's work performance can be affected by the problems of an employee's spouse or other dependents, the program is available to the families of our employees as well.
- (11) Implementation of this policy will not require, or result in, any special regulations, privileges or exemptions from the standard administrative practices applicable to job performance.

## II. PROCEDURES

Any employee of Davidson County may use the Employee Assistance Program on a self-referral basis by contacting the program director at 1-800-950-3434 or 242-2973

When an employee's job performance begins to decline, supervisors will:

- (1) By means of continued observation, be alert to changes in the work and behavior pattern of all personnel under their supervision, not attempt to determine or diagnose the problems of the employees, and will never attempt to counsel with the employee relative to a personal problem.
- (2) Document or record particular instances in which an employee's job performance or behavior fails to meet minimum established standards, or in which their individual pattern seems to be changing or deteriorating.
- (3) Conduct a corrective interview with employees when the documented record of their unsatisfactory performance warrants it. At the end of the interview, inform the employee that the services of the Employee Assistance Program are available

Note: The interview should include the following:

- (a) Review with the employee each instance that is recorded
- (b) Explain precisely why the level of job performance is considered unsatisfactory  
Allow the employee to give reasons for his/her actions or failure
- (c) Make suggestions for corrections as they apply to job performance.
- (d) Write a report of the interview for any future use.

- (4) If the employee's performance continues to deteriorate, the supervisor may conduct a second interview. Conclude with a strong recommendation that the employee use the services of the Employee Assistance Program on a confidential basis. Also inform the employee that failure to improve his/her job performance could result in other disciplinary action, up to and including job dismissal. (Article VII of this Resolution)

# Davidson County North Carolina



## Substance Abuse Policy

Revised January 17, 2011

This document replaces, in its entirety, the previous Davidson County Substance Abuse Policy adopted by the Davidson County Board of Commissioners on April 13, 1996.

COUNTY OF DAVIDSON, NORTH CAROLINA  
SUBSTANCE ABUSE POLICY

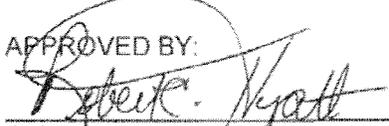
ADOPTED AND APPROVED BY BOARD OF COUNTY COMMISSIONERS On January 11, 2011.

EFFECTIVE DATE: January 17, 2011

REVISION: PREPARED BY:

  
\_\_\_\_\_  
Jim Fysinger  
Human Resources Director

APPROVED BY:

  
\_\_\_\_\_  
Robert Hyatt  
County Manager

APPROVED BY:

  
\_\_\_\_\_  
Sam Watford, Chairman  
Davidson County Board of Commissioners

This document replaces, in its entirety, the previous Davidson County Substance Abuse Policy adopted by the Davidson County Board of Commissioners on April 13, 1996.

**SUBSTANCE ABUSE POLICY**  
**Davidson County Government**

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## **SUBSTANCE ABUSE POLICY**

### **Davidson County Government**

#### **A. PURPOSE**

1) The Davidson County Government, hereafter also call the County, provides public services for the residents of *Davidson County*. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, Davidson County declares that the unlawful manufacture, distribution, dispenses, possession, or use of controlled substances or illegal drugs, and the misuse of alcohol is prohibited for all employees.

2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug- Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, for Davidson County Government, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for County positions, and prohibits performance of job functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

#### **B. APPLICABILITY**

This Drug and Alcohol Testing Policy applies to all employees when performing County duties with the exception of election poll workers.

#### **C. DEFINITIONS**

*Accident:* An occurrence of a workplace injury resulting in medical treatment of an employee in a safety-sensitive position beyond basic first aid. An occurrence associated with the operation of a vehicle by an employee in an identified safety-sensitive position, if as a result:

1. An individual dies;
2. An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
3. One or more vehicles incur disabling damage as the result of the occurrence and is transported away from the scene by a tow truck or other vehicle. For purposes of this definition, *disabling damage* means damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement

without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Adulterated specimen:* A specimen that has been altered, as evidence by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

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

*Alcohol Concentration:* Expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.

*Aliquot:* A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

*Canceled Test:* A drug test that has been declared invalid by a Medical Review Officer. A canceled test is neither positive nor negative.

*Confirmatory Drug Test:* A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

*Confirmatory Validity Test:* A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

*Designated Employer Representative (DER):* An employee authorized by the employer to take immediate action to remove employees from duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

*Department of Transportation (DOT):* Department of the federal government which includes the, Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carriers' Safety Administration, Research and Special Programs, and the Office of the Secretary of Transportation.

*Dilute specimen:* A urine specimen with creatine and specific gravity values that are lower than expected for human urine.

*Disabling damage:* Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that makes them inoperative.

*Employee:* An individual who works part-time or full-time (including temporary and interns) for Davidson County Government (except election poll workers) including an applicant or transferee who is being considered for hire.

*Evidentiary Breath Testing Device (EBT):* A Device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

*Initial Drug Test: (Screening Drug Test)* The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

*Initial Specimen Validity Test:* The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid.

*Invalid Result:* The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

*Laboratory:* Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

*Limit of Detection (LOD):* The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated. *Limit of Quantization: For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.*

*Medical Review Officer (MRO):* A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

*Negative Dilute:* A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative result:* The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

*Non-negative test result:* A urine specimen that is reported as adulterated, substitute, invalid, or positive for drug/drug metabolites.

*Oxidizing Adulterant:* A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

*Performing (a function):* A covered employee is considered to be performing a function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

*Positive result:* The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

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

*Reconfirmed:* The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

*Rejected for Testing:* The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

*Vehicles:* All vehicles that are used by the County or that require a CDL to operate.

*Safety Sensitive Position:* A position where the duties involve such a great risk of injury to others that even a momentary lapse of attention can have disastrous consequences. Employees who drive to carry out their regular duties on a regular basis are considered safety sensitive.

*Substituted specimen:* A urine specimen with creatinine and specific gravity values that are so diminished that they are not consistent with normal human urine.

*Test Refusal:* The following are considered a refusal to test if the employee:

- (1) Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
- (2) Fails to remain at the testing site until the testing process is complete
- (3) Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of providing a specimen
- (5) Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
- (6) Fails or declines to take a second test the employer or collector has requested
- (7) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures
- (8) Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
- (9) If the MRO reports that there is verified adulterated or substituted test result
- (10) Failure or refusal to sign the necessary testing form
- (11) In the case of a directly observed collection, fails to follow the observer's instructions or otherwise interferes with the collection process

(12) Possesses or wears a prosthetic or other device that could be used to interfere with the collection process

(13) Admits to the collector or MRO that the test has been adulterated or that a substitute specimen was given

*Verified negative test:* A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS). *Verified positive test:* A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

*Validity testing:* The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

#### **D. EDUCATION AND TRAINING**

1) Every employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all employees will undergo training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.

2) All supervisory personnel or County officials who are in a position to determine employee fitness for duty will receive reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

#### **E. PROHIBITED SUBSTANCES**

1) Prohibited substances addressed by this policy include the following. a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines (including methamphetamine and ecstasy), opiates (including heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines (including methamphetamine and ecstasy), opiates (including heroin), and phencyclidine as described in Section H of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

a. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a County supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her job functions.

b. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food) or any other substances such that alcohol is present in the body while performing safety sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions. Under Davidson County Government authority, an alcohol test can be performed any time a covered employee is on duty.

## **F. PROHIBITED CONDUCT**

1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.

2) Each employee is prohibited from consuming alcohol while performing job functions or while on-call to perform job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.

3) The County shall not permit any employee to perform or continue to perform functions if it has actual knowledge that the employee is using alcohol.

4) Each employee is prohibited from reporting to work or remaining on duty requiring the performance of functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.

5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.

6) No employee shall consume alcohol within four (4) hours prior to the performance of job functions.

7) Davidson County Government, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.

8) Consistent with the Drug-free Workplace Act of 1988, all Davidson County employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including its premises and vehicles.

## **G. DRUG STATUTE CONVICTION**

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the Davidson County Government management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

## **H. TESTING REQUIREMENTS**

1) Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49CFR part 40 as amended. All employees shall be subject to testing prior to employment (pre-employment) and for reasonable suspicion. Employees in safety-sensitive positions shall be subject to testing following an accident identified in Section C and random testing as defined in Section K, L, M, and N of this policy, and return to duty/follow-up.

2) A drug test mandated by this policy can be performed any time an employee is on duty; a reasonable suspicion and random test can be performed just before, during, or after the performance of a job function. Under Davidson County Government authority, an alcohol test can be performed any time a covered employee is on duty; just before, during, or after the performance of a job function.

3) In cases of reasonable suspicion, post-accident and random testing, all covered employees will be subject to urine drug testing and breath alcohol testing as a condition of ongoing employment with Davidson County Government. Any employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

## **I. DRUG TESTING PROCEDURES**

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

2) The drugs that will be tested for include marijuana, cocaine, opiates (including heroin), amphetamines (including methamphetamine and ecstasy), and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

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

attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Davidson County Human Resources Representative. If a legitimate explanation is found, the MRO will report the test result as negative to the designated Human Resources Representative and no further action will be taken.

4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.

5) Any employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Davidson County Government will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however the County will seek reimbursement for the split sample test from the employee.

6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be cancelled. If the split specimen is not available to analyze the MRO will direct the County to retest the employee under direct observation.

7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the Medical Review Officer. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year.

8) Observed collections

a. Consistent with 49 CFR part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:

i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to Davidson County Government that there was not an adequate medical explanation for the result;

ii. The MRO reports to Davidson County Government that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;

- iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
- iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- v. The temperature on the original specimen was out of range;
- vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
- vii. All follow-up-tests; or
- viii. All return-to-duty tests

## **J. ALCOHOL TESTING PROCEDURES**

1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

2) An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.

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

4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

## **K. PRE-EMPLOYMENT TESTING**

- 1) All applicants shall undergo urine drug testing prior to performance of a job function.
  - b. All offers of employment for positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform job functions unless the applicant takes a drug test with verified negative results.
  - c. A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results.
  - d. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and approved treatment plan. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
  - e. When an employee being placed, transferred, or promoted from one position to another position considered as "safety-sensitive" submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.
  - f. If a pre-employment/pre-transfer test is canceled, Davidson County Government will require the applicant to take and pass another pre-employment drug test.
  - g. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
  - h. Applicants are required to report previous DOT covered employer drug and alcohol test results. Failure to do so will result in the employment offer being rescinded. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide Davidson County Government proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

## **L. REASONABLE SUSPICION TESTING**

- 1) All County employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. Human Resources is to be consulted prior to referring

an employee for testing. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a job function. However, a reasonable suspicion alcohol/drug test may be performed any time the employee is on duty.

2) Davidson County Government shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to the Human Resources Dept.

4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred to the EAP for an assessment. Davidson County Government shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the Human Resources Department. Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority. However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

#### **M. POST-ACCIDENT TESTING (Safety-Sensitive Positions Only)**

1) All covered employees will be required to undergo urine and breath testing if they are involved in an accident with a vehicle that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident.

2) In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident.

a. As soon as practicable following an accident, as defined in this policy, the County supervisor investigating the accident will notify the covered employee operating the vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

b. The appropriate County supervisor shall ensure that the covered employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s)

for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.

c. Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.

d. Any covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.

e. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit any covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

f. In the rare event that Davidson County Government is unable to perform an FTA drug and alcohol test (i.e., covered employee is unconscious, covered employee is detained by law enforcement agency), Davidson County Government may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

#### **N. RANDOM TESTING (Safety-Sensitive Positions Only)**

1) All employees performing safety-sensitive functions will be subjected to random, unannounced testing. The selection of these employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of covered employees.

2) The dates for administering unannounced testing of randomly selected covered employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.

3) The number of covered employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA equals twenty-five percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent of the number of covered employees in the pool.

4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Covered employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.

5) Covered County employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of other covered employees that are included solely under County authority.

6) Random tests can be conducted at any time during a covered employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. However, under the County's authority, a random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of a covered employee's shift.

7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

## **O. RETURN-TO-DUTY TESTING**

Davidson County Government will terminate the employment of any employee who tests positive or refuses a test as specified in section Q of this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the Davidson County Government, the employee must complete the return-to-duty process prior to the performance of job functions. All employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return to Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP/EAP will recommend a course of rehabilitation unique to the individual. The SAP/EAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undo concerns for public safety.

## **P. FOLLOW-UP TESTING**

Employees that have returned to duty following self admission of drug use or after a positive test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP/EAP reflecting the SAP/EAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to duty testing.

## **Q. RESULT OF DRUG/ALCOHOL TEST**

1) Any employee that has a verified positive drug or alcohol test will be removed from his/her position and will be terminated. The terminated employee will be informed of any known SAP/EAP educational/rehabilitating programs available.

2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.

3) A positive drug and/or alcohol test will also result in disciplinary action as specified herein.

a. After receiving notice of a verified positive drug test result, a confirmed alcohol test result, or a test refusal, the Human Resources Director will contact the employee's supervisor to have the employee cease performing any job function.

- b. The employee shall be referred to a Substance Abuse Professional/EAP and will be terminated.
- 4) Refusal to submit to a drug/alcohol test shall be considered a positive test result and shall result in termination. A test refusal includes the following circumstances:
- (a) A covered employee who consumes alcohol within eight (8) hours following involvement in an accident without first having submitted to post-accident drug/alcohol tests.
  - (b) A covered employee who leaves the scene of an accident without a legitimate explanation prior to submission to drug/alcohol tests.
  - (c) An employee who provides an insufficient volume of urine specimen or breath sample without a valid medical explanation. The medical evaluation shall take place within 5 days of the initial test attempt.
  - (d) A verbal or written declaration, obstructive behavior, or physical absence resulting in the inability to conduct the test within the specified time frame.
  - (e) An employee whose urine sample has been verified by the MRO as substitute or adulterated.
  - (f) An employee fails to appear for any test within a reasonable time, as determined by the employer, after being directed to do so by the employer.
  - (g) An employee fails to remain at the testing site until the testing process is complete.
  - (h) A covered employee fails to provide a urine specimen for any drug test required by Part 40 or DOT agency regulations.
  - (i) An employee fails to permit the observation or monitoring of a specimen collection.
  - (j) An employee fails or declines to take a second test the employer or collector has directed you to take.
  - (k) A covered employee fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures.
  - (l) An employee fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process).
  - (m) Failure to sign the required Substance/Alcohol Testing forms.
  - (n) Failure to follow the observer's instructions during an observed collection.
  - (o) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.

(p) Admit to the collector or MRO that you adulterated or substituted the specimen.

5) An alcohol test result of 0.02 to 0.039 BAC shall result in the removal of the employee from duty for eight hours or the remainder of the work day whichever is longer. The employee will not be allowed to return to duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC. If the employee has an alcohol test result of 0.02 to 0.039 two or more times within a six month period, the employee will be removed from duty and referred to the SAP/EAP for assessment and treatment consistent with Section Q of this policy.

6) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:

a. Mandatory referral to a SAP/EAP for assessment, formulation of a treatment plan, and execution of a return to work agreement.

b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from County employment. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP/EAP the employee is cooperating with his/her SAP/EAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as defined in Section P of this policy.

c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination.

d. A self-referral or management referral to the SAP/EAP that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline.

e. Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result.

f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with the County.

g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

7) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

## **R. GRIEVANCE AND APPEAL**

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration. Employees may exercise their right to present an appeal/grievance in accordance with the Davidson County Personnel Resolution, Article VII, Section 15 or Article VIII.

## **S. PROPER APPLICATION OF THE POLICY**

Davidson County Government is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

## **T. INFORMATION DISCLOSURE**

- 1) Drug/alcohol testing records shall be maintained by the Davidson County Government Human Resources Director and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP/EAP referrals and follow-up testing plans.
- 3) Records of a verified positive drug/alcohol test result shall be released to the Human Resources Director, and other appropriate County management personnel only on a need to know basis.
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- 5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding.
- 6) Records will be released to the National Transportation Safety Board during an accident investigation.
- 7) Information will be released in a criminal or civil action resulting from an employee's performance of job duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
- 8) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over Davidson County Government or the employee.
- 9) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.

10) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

## **Attachment A (Safety-Sensitive Job List)**

*Safety Sensitive Position:* A position where the duties involve such a great risk of injury to others that even a momentary lapse of attention can have disastrous consequences. Employees who drive to carry out their regular duties on a regular basis are considered safety sensitive.

- Bus Drivers
- Garage Mechanics
- Truck Drivers (ISW)
- Heavy Equipment Operators
- Delivery Drivers
- Law Enforcement Officers
- Detention Officers
- Emergency Medical Technicians
- 911 Operators/Telecommunicators
- Public Works Technicians
- Nurses
- Construction Inspectors
- In-Home Aides
- Caseworkers (Caseworkers that are required to drive regularly and perform home/client visitation)
- Fire Marshall
- Fire Inspectors
- Environmental/Health Inspectors
- Tax Appraisers
- Zoning Officers
- Grounds Keeper Technicians
- Recreation Supervisors
- Recreation/Playground Assistants

Note: The above list is subject to change as needed due to changes in job responsibilities/functions.

## Attachment B Contacts

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s): Davidson County Government Human Resources Director.

Name: Jim Tysinger  
Title: Davidson County Human Resources Director (DER)  
Address: 913 Greensboro Street, Lexington, NC 27292  
Telephone Number: (336) 242.2919

Medical Review Officer  
Name: J. Sloan Manning, MD  
Title: MRO  
Address: 280C Charlois Blvd., Winston Salem, NC 27114  
Telephone Number: (336) 718-1140

Substance Abuse Professional  
Name: PrimeCare  
Contact: Susan Grimmer  
Title: Toxicology Supervisor  
Address: 1399 Westgate Center Dr., Winston-Salem, NC 27103  
Telephone Number: (336) 760-5632

REACH EAP  
Davidson County EAP  
Telephone Number: (336) 242-2973 or 1-800-950-3434

Quest Diagnostics  
1777 Montreal Circle  
Tucker, GA 30084  
Telephone Number: (770) 934-9200

Collection Site:  
Novant Health Thomasville Medical  
Occupational Medicine Center  
207 Old Lexington Rd.  
Thomasville, NC 27360  
Telephone Number: (336) 474-8199

Note: The names of contact individuals (above) are subject to change as needed due to change in personnel and service providers/vendors.

Contact Amended: May 23, 2014



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**ZERO TOLERANCE  
DRUG AND ALCOHOL PROGRAM AND TESTING POLICY  
DAVIDSON COUNTY TRANSPORTATION SYSTEM**

**Adopted: December 9, 2014**

**Effective: January 1, 2015**

**A. PURPOSE**

- 1) The **Davidson County Transportation System (DCTS)** provides public transit and paratransit services for the residents of **Davidson County, North Carolina**. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. In keeping with this mission, **DCTS** declares that the unlawful manufacture, distribution, dispense, possession, or use of controlled substances or misuse of alcohol is prohibited for all employees.
  
- 2) Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988, and the Omnibus Transportation Employee Testing Act of 1991. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U.S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.
  
- 3) Any provisions set forth in this policy that are included under the sole authority of **DCTS** and are not provided under the authority of the above named Federal regulations are underlined. Tests conducted under the sole authority of **DCTS** will be performed on non-USDOT forms and will be separate from USDOT testing in all respects.

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## **B. APPLICABILITY**

This Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full- or part-time) when performing safety sensitive duties DCTS **employees that do not perform safety-sensitive functions are also covered under this policy under the sole authority of DCTS.** See Attachment A for a list of employees and the authority under which they are included.

A safety-sensitive function is operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or persons controlling the movement of revenue service vehicles. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in Attachment A. Supervisors are only safety sensitive if they perform one of the above functions. Volunteers are considered safety sensitive and subject to testing if they are required to hold a CDL, or receive remuneration for service in excess of actual expense.

## **C. DEFINITIONS**

*Accident:* An occurrence associated with the operation of a vehicle even when not in revenue service, if as a result:

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

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*Adulterated specimen:* A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

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

*Alcohol Concentration:* Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

*Aliquot:* A fractional part of a specimen used for testing, It is taken as a sample representing the whole specimen.

*Canceled Test:* A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which is cancelled. A canceled test is neither positive nor negative.

*Confirmatory Drug Test:* A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify the presence of a specific drug or metabolite.

*Confirmatory Validity Test:* A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

*Covered Employee Under FTA Authority:* An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (See Attachment A for a list of covered employees).

*Covered Employee Under Company Authority:* An employee, applicant, or transferee that will not perform a safety-sensitive function as defined by FTA but is included under the company's own authority. (See Attachment A).

*Designated Employer Representative (DER):* An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Parts 40 and 655.

*Department of Transportation (DOT):* For the purposes of Drug and Alcohol regulatory oversight, DOT is the department of the federal government which includes the, Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carriers' Safety Administration,

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Pipeline & Hazardous Materials Safety Administration, United States Coast Guard, and the Office of the Secretary of Transportation.

*Dilute specimen:* A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

*Disabling damage:* Damage which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, or windshield wipers that makes them inoperative.

*Evidentiary Breath Testing Device (EBT):* A Device approved by the NHTSA for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the National Highway Traffic Safety Administration (NHTSA) conforming products list.

*Initial Drug Test: (Screening Drug Test)* The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

*Initial Specimen Validity Test:* The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

*Invalid Result:* The result reported by an HHS-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

*Laboratory:* Any U.S. laboratory certified by HHS under the National Laboratory Certification program as meeting standards of Subpart C of the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

*Limit of Detection (LOD):* The lowest concentration at which a measurand can be identified, but (for quantitative assays) the concentration cannot be accurately calculated.

*Limit of Quantitation:* For quantitative assays, the lowest concentration at which the identity and concentration of the measurand can be accurately established.

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*Medical Review Officer (MRO):* A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

*Negative Dilute:* A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

*Negative result:* The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

*Non-negative test result:* A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

*Oxidizing Adulterant:* A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or metabolites, or affects the reagents in either the initial or confirmatory drug test.

*Performing (a safety-sensitive function):* A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

*Positive result:* The result reported by an HHS- Certified laboratory when a specimen contains a drug or drug metabolite equal or greater to the cutoff concentrations.

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

*Reconfirmed:* The result reported for a split specimen when the second laboratory is able to corroborate the original result reported for the primary specimen.

*Rejected for Testing:* The result reported by an HHS- Certified laboratory when no tests are performed for specimen because of a fatal flaw or a correctable flaw that has not been corrected.

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*Revenue Service Vehicles:* All transit vehicles that are used for passenger transportation service.

*Safety-sensitive functions:* Employee duties identified as:

- (1) The operation of a transit revenue service vehicle even when the vehicle is not in revenue service.
- (2) The operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL).
- (3) Maintaining a revenue service vehicle or equipment used in revenue service.
- (4) Controlling the movement of a revenue service vehicle and
- (5) Carrying a firearm for security purposes.

*Split Specimen Collection:* A collection in which the urine collected is divided into two separate bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

*Substance Abuse Professional (SAP):* A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed marriage and family therapist, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse(ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC)) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

*Substituted specimen:* A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

*Test Refusal:* The following are considered a refusal to test if the employee:

- (1) Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
- (2) Fails to remain at the testing site until the testing process is complete
- (3) Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations
- (4) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen

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- (5) Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
  - (6) Fails or declines to take a second test the employer or collector has directed you to take
  - (7) Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures
  - (8) Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
  - (9) If the MRO reports that there is verified adulterated or substituted test result
  - (10) Failure or refusal to sign Step 2 of the alcohol testing form
  - (11) Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
  - (12) Possess or wear a prosthetic or other device that could be used to interfere with the collection process
  - (13) Admit to the collector or MRO that you adulterated or substituted the specimen.

*Vehicle:* A bus, electric bus, van, automobile, railcar, trolley car, trolley bus, or vessel. A public transit vehicle used for public transportation or for ancillary services.

*Verified negative test:* A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (HHS).

*Verified positive test:* A drug test result reviewed by a medical review officer and determined to have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as revised.

*Validity testing:* The evaluation of the specimen to determine if it is consistent with normal human urine. Specimen validity testing will be conducted on all urine specimens provided for testing under DOT authority. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

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#### **D. EDUCATION AND TRAINING**

- 1) Every covered employee will receive a copy of this policy and will have ready access to the corresponding federal regulations including 49 CFR Parts 655 and 40, as amended. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training also includes manifestations and behavioral cues that may indicate prohibited drug use.
- 2) All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

#### **E. PROHIBITED SUBSTANCES**

- 1) Prohibited substances addressed by this policy include the following.
  - a. Illegally Used Controlled Substance or Drugs Under the Drug-Free Workplace Act of 1988 any drug or any substance identified in Schedule I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812), and as further defined by 21 CFR 1300.11 through 1300.15 is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines (including methamphetamine and ecstasy), opiates (including heroin), phencyclidine (PCP), and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which cause drug or drug metabolites to be present in the body above the minimum thresholds is a violation of this policy

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all employees covered under FTA authority be tested for marijuana, cocaine, amphetamines (including methamphetamine

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and ecstasy), opiates (including heroin), and phencyclidine as described in Section H of this policy. Employees covered under company authority will also be tested for these same substances. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

- b. Legal Drugs: The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgment may be adversely affected must be reported to a DCTS supervisor and the employee is required to provide a written release from his/her doctor or pharmacist indicating that the employee can perform his/her safety-sensitive functions.
- c. Alcohol: The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. A random or reasonable suspicion alcohol test can only be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions. Under DCTS authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

## **F. PROHIBITED CONDUCT**

- 1) All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR PART 40, as amended.
- 2) Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report for duty. The covered employee will subsequently be relieved of his/her on-call responsibilities and subject to discipline for not fulfilling his/her on-call responsibilities.
- 3) The Transit Department shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol

- 4) Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.02 or greater regardless of when the alcohol was consumed.
- 5) No covered employee shall consume alcohol for eight (8) hours following involvement in an accident or until he/she submits to the post-accident drug/alcohol test, whichever occurs first.
- 6) No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.
- 7) DCTS, under its own authority, also prohibits the consumption of alcohol at all times the employee is on duty, or anytime the employee is in uniform.
- 8) Consistent with the Drug-free Workplace Act of 1988, all **DCTS** employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances in the work place including transit system premises and transit vehicles.

#### **G. DRUG STATUTE CONVICTION**

Consistent with the Drug Free Workplace Act of 1998, all employees are required to notify the **DCTS** management of any criminal drug statute conviction for a violation occurring in the workplace within five days after such conviction. Failure to comply with this provision shall result in disciplinary action as defined in Section Q of this policy.

#### **H. TESTING REQUIREMENTS**

- 1) Analytical urine drug testing and breathe testing for alcohol will be conducted as required by 49CFR part 40 as amended. All employees covered under FTA authority shall be subject to testing prior to performing safety-sensitive duty, for reasonable suspicion, following an accident, and random as defined in Section K, L, M, and N of this policy, and return to duty/follow-up. All employees covered under company authority will also be subject to testing for reasonable suspicion, post-accident, random and return to duty/follow-up using non-DOT testing forms.
- 2) A drug test can be performed any time a covered employee is on duty. A reasonable suspicion and random alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function. Under

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DCTS] authority, a non-DOT alcohol test can be performed any time a covered employee is on duty.

- 3) All covered employees will be subject to urine drug testing and breathe alcohol testing as a condition of ongoing employment with **DCTS**. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline as defined in Section Q of this policy.

## **I. DRUG TESTING PROCEDURES**

- 1) Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Service (HHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedure, and the validity of the test result.
- 2) The drugs that will be tested for include marijuana, cocaine, opiates (including heroin), amphetamines (including methamphetamine and ecstasy), and phencyclidine. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a HHS certified laboratory. An initial drug screen and validity test will be conducted on the primary urine specimen. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GC/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.
- 3) The test results from the HHS certified laboratory will be reported to a Medical Review Officer. A Medical Review Officer (MRO) is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an

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opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records as appropriate to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the **DCTS** Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM.

- 4) If the test is invalid without a medical explanation, a retest will be conducted under direct observation. Employees do not have access to a test of their split specimen following an invalid result.
- 5) Any covered employee who questions the results of a required drug test under paragraphs L through P of this policy may request that the split sample be tested. The split sample test must be conducted at a second HHS-certified laboratory. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. **DCTS** will ensure that the cost for the split specimen are covered in order for a timely analysis of the sample, however **DCTS** will seek reimbursement for the split sample test from the employee.
- 6) If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled. If the split specimen is not available to analyze the MRO will direct **DCTS** to retest the employee under direct observation.
- 7) The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. If the primary is positive, the primary and the split will be retained for longer than one year for testing if so requested by the employee through the Medical Review Officer, or by the employer, by the MRO, or by the relevant DOT agency.

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8) Observed collections

- a. Consistent with 49 CFR part 40, as amended, collection under direct observation (by a person of the same gender) with no advance notice will occur if:
  - i. The laboratory reports to the MRO that a specimen is invalid, and the MRO reports to **DCTS** that there was not an adequate medical explanation for the result;
  - ii. The MRO reports to **DCTS** that the original positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
  - iii. The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see §40.197(b)(1)).
  - iv. The collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
  - v. The temperature on the original specimen was out of range;
  - vi. Anytime the employee is directed to provide another specimen because the original specimen appeared to have been tampered with.
  - vii. All follow-up-tests; or
  - viii. All return-to-duty tests

**J. ALCOHOL TESTING PROCEDURES**

- 1) Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath

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Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted no sooner than fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

- 2) An employee who has a confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The consequences of a positive alcohol test are described in Section Q. of this policy. Even though an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, the employee shall still be removed from duty for at least eight hours or for the duration of the work day whichever is longer and will be subject to the consequences described in Section Q of this policy. An alcohol concentration of less than 0.02 will be considered a negative test.
- 3) **DCTS** affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not result in a cancelled test.
- 4) The alcohol testing form (ATF) required by 49 CFR Part 40 as amended, shall be used for all FTA required testing. Failure of an employee to sign step 2 of the ATF will be considered a refusal to submit to testing.

#### **K. PRE-EMPLOYMENT TESTING**

- 1) All applicants for covered transit positions shall undergo urine drug testing prior to performance of a safety-sensitive function.

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- b. All offers of employment for covered positions shall be extended conditional upon the applicant passing a drug test. An applicant will not be allowed to perform safety-sensitive functions unless the applicant takes a drug test with verified negative results.
  - c. An employee shall not be placed, transferred or promoted into a position covered under FTA authority or company authority until the employee takes a drug test with verified negative results.
  - d. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded and the applicant will be referred to a Substance Abuse Professional. Failure of a pre-employment drug test will disqualify an applicant for employment for a period of at least one year. Before being considered for future employment the applicant must provide the employer proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G. The cost for the assessment and any subsequent treatment will be the sole responsibility of the applicant.
  - e. When an employee being placed, transferred, or promoted from a non-covered position to a position covered under FTA authority or company authority submits a drug test with a verified positive result, the employee shall be subject to disciplinary action in accordance with Section Q herein.
  - f. If a pre-employment test is canceled, **DCTS** will require the applicant to take and pass another pre-employment drug test.
  - g. In instances where a FTA covered employee does not perform a safety-sensitive function for a period of 90 consecutive days or more regardless of reason, and during that period is not in the random testing pool the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
  - h. Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
  - i. Applicants are required (even if ultimately not hired) to provide **DCTS** with signed written releases requesting FTA drug and alcohol records from all previous, DOT-covered, employers that the applicant has worked for within the last two years. Failure to do so

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will result in the employment offer being rescinded. **DCTS** is required to ask all applicants (even if ultimately not hired) if they have tested positive or refused to test on a pre-employment test for a DOT covered employer within the last two years. If the applicant has tested positive or refused to test on a pre-employment test for a DOT covered employer, the applicant must provide **DCTS** proof of having successfully completed a referral, evaluation and treatment plan as described in section 655.62 of subpart G.

#### **L. REASONABLE SUSPICION TESTING**

- 1) All **DCTS** FTA covered employees will be subject to a reasonable suspicion drug and/or alcohol test when the employer has reasonable suspicion to believe that the covered employee has used a prohibited drug and/or engaged in alcohol misuse. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by one or more supervisors who are trained to detect the signs and symptoms of drug and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. However, under **DCTS**'s authority, a non-DOT reasonable suspicion alcohol test may be performed any time the covered employee is on duty. A reasonable suspicion drug test can be performed any time the covered employee is on duty. All employees covered under the sole authority of **DCTS** will also be subject to non-USDOT reasonable suspicion testing procedures modeled off the provisions in 49 CFR Part 40.
  
- 2) **DCTS** shall be responsible for transporting the employee to the testing site. Supervisors should avoid placing themselves and/or others into a situation which might endanger the physical safety of those present. The employee shall be placed on administrative leave pending disciplinary action described in Section Q of this policy. An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action as specified in Section Q of this policy.

- 3) A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation. This written record shall be submitted to **DCTS Management**.
- 4) When there are no specific, contemporaneous, articulable objective facts that indicate current drug or alcohol use, but the employee (who is not already a participant in a treatment program) admits the abuse of alcohol or other substances to a supervisor in his/her chain of command, the employee shall be referred for assessment and treatment consistent with Section Q of this policy. DCTS shall place the employee on administrative leave in accordance with the provisions set forth under Section Q of this policy. Testing in this circumstance would be performed under the direct authority of the DCTS. **Since the employee self-referred to management, testing under this circumstance would not be considered a violation of this policy or a positive test result under Federal authority.** However, self-referral does not exempt the covered employee from testing under Federal authority as specified in Sections L through N of this policy or the associated consequences as specified in Section Q.

#### **M. POST-ACCIDENT TESTING**

- 1) **FATAL ACCIDENTS** - All covered employees will be required to undergo urine and breathe testing if they are involved in an accident with a transit vehicle regardless of whether or not the vehicle is in revenue service that results in a fatality. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance could have contributed to the accident.
- 2) **NON-FATAL ACCIDENTS** - A post-accident test of the operator will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident.
  - a. As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the decision.

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- b. The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than eight (8) hours of the accident for alcohol, and no longer than 32 hours for drugs. If an alcohol test is not performed within two hours of the accident, the Supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within (8) eight hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
  - c. Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until he/she undergoes a post-accident alcohol test.
  - d. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of his or her location if he or she leaves the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
  - e. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
  - f. In the rare event that **DCTS** is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), **DCTS** may use drug and alcohol post-accident test results administered by local law enforcement officials in lieu of the FTA test. The local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with local law.

## **N. RANDOM TESTING**

- 1) All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of

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safety-sensitive employees. Employees covered under company authority will be selected from a pool of non-DOT-covered employees.

- 2) The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year, day of the week and hours of the day.
- 3) The number of employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations for those safety-sensitive employees subject to random testing by Federal regulations. The current random testing rate for drugs established by FTA equals twenty-five percent of the number of covered employees in the pool and the random testing rate for alcohol established by FTA equals ten percent of the number of covered employees in the pool.
- 4) Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection.
- 5) Covered transit employees that fall under the Federal Transit Administration regulations will be included in one random pool maintained separately from the testing pool of non-safety-sensitive employees that are included solely under **DCTS** authority.
- 6) Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety sensitive duty. However, under **DCTS's** authority, a non-DOT random alcohol test may be performed any time the covered employee is on duty. Testing can occur during the beginning, middle, or end of an employee's shift.
- 7) Employees are required to proceed immediately to the collection site upon notification of their random selection.

#### **O. RETURN-TO-DUTY TESTING**

**DCTS** will terminate the employment of any employee that tests positive or refuses a test as specified in section Q of this policy. However, in the rare event an employee is reinstated with court order or other action beyond the control of the

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transit system, the employee must complete the return-to-duty process prior to the performance of safety-sensitive functions. All covered employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the Substance Abuse Professional before returning to work. For an initial positive drug test a Return-to-Duty drug test is required and an alcohol test is allowed. For an initial positive alcohol test a Return-to-Duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. The SAP will recommend the return-to-duty test only when the employee has successfully completed the treatment requirement and is known to be drug and alcohol-free and there are no undo concerns for public safety.

#### **P. FOLLOW-UP TESTING**

Covered employees that have returned to duty following a positive or refused test will be required to undergo frequent, unannounced drug and/or alcohol testing following their return-to-duty test. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

In the instance of a self-referral or a management referral, the employee will be subject to non-USDOT follow-up tests and follow-up testing plans modeled using the process described in 49 CFR Part 40. However, all non-USDOT follow-up tests and all paperwork associated with an employee's return-to-work agreement that was not precipitated by a positive test result (or refusal to test) does not constitute a violation of the Federal regulations will be conducted under company authority and will be performed using non-DOT testing forms.

#### **Q. RESULT OF DRUG/ALCOHOL TEST**

- 1) Any covered employee that has a verified positive drug or alcohol test, or test refusal, will be removed from his/her safety-sensitive position, informed of educational and rehabilitation programs available, referred to a Substance Abuse Professional (SAP) for assessment, and will be terminated.

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- 2) Following a negative dilute the employee will be required to undergo another test. Should this second test result in a negative dilute result, the test will be considered a negative and no additional testing will be required unless directed to do so by the MRO.
- 3) Refusal to submit to a drug/alcohol test shall be considered a positive test result and a direct act of insubordination and shall result in termination and referral to an SAP. A test refusal includes the following circumstances:
- a. Fails to appear for any test (excluding pre-employment) within a reasonable time, as determined by the employer, after being directed to do so by the employer
  - b. Fails to remain at the testing site until the testing process is complete
  - c. Fails to provide a urine or breath specimen for any drug or alcohol test required by Part 40 or DOT agency regulations
  - d. In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of your provision of a specimen
  - e. Fails to provide a sufficient amount of urine or breath when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure
  - f. Fails or declines to take a second test the employer or collector has directed you to take
  - g. Fails to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER as part of the "shy bladder" or "shy lung" procedures
  - h. Fails to cooperate with any part of the testing process (e.g., refuse to empty pockets when so directed by the collector, behave in a confrontational way that disrupts the collection process)
  - i. If the MRO reports that there is verified adulterated or substituted test result
  - j. Failure or refusal to sign Step 2 of the alcohol testing form
  - k. Failure to follow the observer's instructions during an observed collection including instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.
  - l. Possess or wear a prosthetic or other device that could be used to interfere with the collection process
  - m. Admit to the collector or MRO that you adulterated or substituted the specimen.
- 4) An alcohol test result of  $\geq 0.02$  to  $\leq 0.039$  BAC shall result in the removal of the employee from duty for eight hours or the remainder of the work day

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whichever is longer. The employee will not be allowed to return to safety-sensitive duty for his/her next shift until he/she submits to an alcohol test with a result of less than 0.02 BAC.

- 5) In the instance of a self-referral or a management referral, disciplinary action against the employee shall include:
- a. Mandatory referral for an assessment by an employer approved counseling professional for assessment, formulation of a treatment plan, and execution of a return to work agreement;
  - b. Failure to execute, or remain compliant with the return-to-work agreement shall result in termination from **DCTS** employment.
    - i. Compliance with the return-to-work agreement means that the employee has submitted to a drug/alcohol test immediately prior to returning to work; the result of that test is negative; the employee is cooperating with his/her recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing as described in Section P of this policy; however, all follow-up testing performed as part of a return-to-work agreement required under section Q.5 of this policy is under the sole authority of **DCTS** and will be performed using non-DOT testing forms.
  - c. Refusal to submit to a periodic unannounced follow-up drug/alcohol test shall be considered a direct act of insubordination and shall result in termination. **All tests conducted as part of the return to work agreement will be conducted under company authority and will be performed using non-DOT testing forms.**
  - d. **A self-referral or management referral to the employer's counseling professional that was not precipitated by a positive test result does not constitute a violation of the Federal regulations and will not be considered as a positive test result in relation to the progressive discipline defined in Section Q of this policy.**
  - e. Periodic unannounced follow-up drug/alcohol test conducted as a result of a self-referral or management referral which results in a verified positive shall be considered a positive test result in relation to the progressive discipline defined in Section Q of this policy.
  - f. A Voluntary Referral does not shield an employee from disciplinary action or guarantee employment with **DCTS**.
  - g. A Voluntary Referral does not shield an employee from the requirement to comply with drug and alcohol testing.

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- 6) Failure of an employee to report within five days a criminal drug statute conviction for a violation occurring in the workplace shall result in termination.

## **R. GRIEVANCE AND APPEAL**

The consequences specified by 49 CFR Part 40.149 (c) for a positive test or test refusal is not subject to arbitration.

## **S. PROPER APPLICATION OF THE POLICY**

DCTS is dedicated to assuring fair and equitable application of this substance abuse policy. Therefore, supervisors/managers are required to use and apply all aspects of this policy in an unbiased and impartial manner. Any supervisor/manager who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy in regard to subordinates, shall be subject to disciplinary action, up to and including termination.

## **T. INFORMATION DISCLOSURE**

- 1) Drug/alcohol testing records shall be maintained by the **DCTS** Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- 2) The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.
- 3) Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.
- 4) Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- 5) Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on

behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding.

- 6) Records will be released to the National Transportation Safety Board during an accident investigation.
- 7) Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information. The employer will release the information to the decision maker in the proceeding with a binding stipulation that it will only be released to parties of the proceeding.
- 8) Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- 9) Records will be released if requested by a Federal, state or local safety agency with regulatory authority over **DCTS** or the employee.
- 10) If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken
- 11) In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

This Policy was adopted by the **Davidson County Board of Commissioners** on \_\_\_\_\_.

\_\_\_\_\_  
Signature of Board Chairperson

\_\_\_\_\_  
Date

(SEAL)

ATTEST: \_\_\_\_\_

TITLE: \_\_\_\_\_

## **Attachment A**

<u>Job Title</u>	<u>Job Duties</u>	<u>Testing Authority</u>
Route Driver – Operates LTVs, passenger vans and mini vans during revenue and non-revenue services.		Federal Transit Authority NCDOT/PTD DCTS Davidson County HR
Mechanic – Performs repairs and preventive maintenance on LTVs, passenger vans and mini vans during non-revenue services.		Federal Transit Authority NCDOT/PTD DCTS Davidson County HR
Dispatcher – Schedules and dispatches para-transit services, Provides operational support and instructions for fixed and deviated fixed route services		Federal Transit Authority NCDOT/PTD DCTS Davidson County HR
Route Supervisor – Provides operational support and instructions for para-transit, fixed route and deviated fixed route services.		Federal Transit Authority NCDOT/PTD DCTS Davidson County HR

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## **Attachment B Contacts**

Any questions regarding this policy or any other aspect of the substance abuse policy should be directed to the following individual(s).

DCTS Drug and Alcohol Program Manager

Name: Terry Myers

Title: Transportation Manager

Address: 945 North Main Street Suite B. Lexington, NC  
27292

Telephone Number: 336-242-2252

Medical Review Officer

Name: Substance Abuse Consultants/ Dr. Steven Merlin

Title: Principal

Address: 3031 Scotsman Rd. Suite 17, Columbia SC 29223

Telephone Number: 803-419-1023

Substance Abuse Professional

Name: Leroy Glen, Jr

Title: SAP

Address: 1001 North Fairfax Street, Suite 201, Alexandria Va. 22314-  
1535

Telephone Number: 336-896-9990

HHS Certified Laboratory Primary Specimen

Name: Alere Toxicology Services

Address: 450 Southlake Blvd. Richmond Va. 23236

Telephone Number: 804-378-9130

HHS Certified Laboratory Split Specimen

Name: Alere Toxicology Services

Address: 450 Southlake Blvd. Richmond Va. 23236

Telephone Number: 804-378-9130

Note: The names of contact individuals (above) are subject to change as needed due to change in personnel and service providers/vendors.



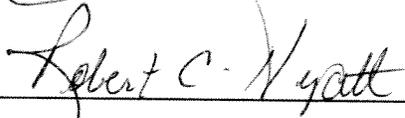
## DAVIDSON COUNTY SUBSTANCE ABUSE POLICY – ADDENDUM

### ADDENDUM #1- Drug and Alcohol Program and Testing Policy Davidson County Transportation System

Effective January 01, 2015, all employees of the Davidson County Transportation System will adhere to the attached Zero Tolerance Drug and Alcohol Program and Testing Policy. All other county employees of Davidson County Government will continue to adhere to the Davidson County Substance Abuse Policy, dated January 17, 2011.

Effective January 1, 2015, this addendum to the Substance Abuse Policy, Zero Tolerance Drug and Alcohol Program and Testing Policy, for the employees of the Davidson County Transportation System supersedes and has authorization over any previous policy, documents, statements which reference or impacts the policy or practice related to the Davidson County Substance abuse Policy.

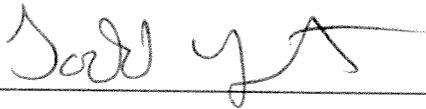
Approved by:



Robert Hyatt, County Manager

12-16-14

Date



Todd Yates, Board of Commissioners

12-16-14

Date