

**CITY COUNCIL
AGENDA COVER
SHEET**

9/04/12
City Council Chamber
194 North Main Street

Agenda Topics

- 1. Citizen of the Month – Selected by Council Member Clark**
- 2. Consent Agenda:**
 - A. Approval of Minutes – August 21, 2012 Regular City Council Meeting Minutes
- 3. Public Comment Period**
- 4. Public Appearance – Marion Business Association**
- 5. Presentation by Police Department on Use of Technology and Crime Mapping**
- 6. Schedule Dedication for New Clinchfield Community Park**
- 7. City Manager’s Report**
- 8. Add Ons:**
 - 1.
 - 2.
 - 3.

CERTIFICATE OF APPRECIATION

IS PRESENTED TO

JOHN LEWIS

AS RECOMMENDED BY COUNCIL MEMBER EVERETTE CLARK
IN RECOGNITION OF SERVICE TO THE CITIZENS OF THIS COMMUNITY.

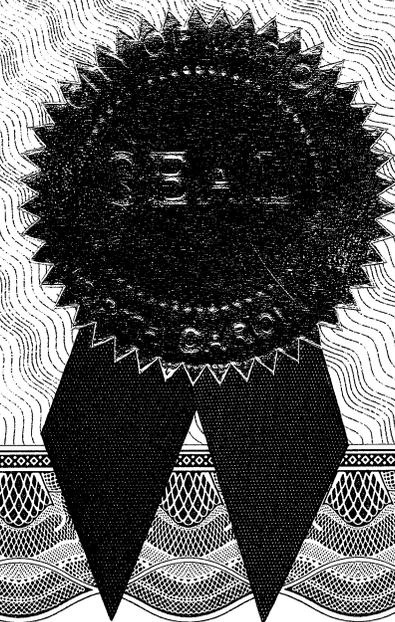
PRESENTED THIS THE 4TH DAY OF SEPTEMBER, 2012.

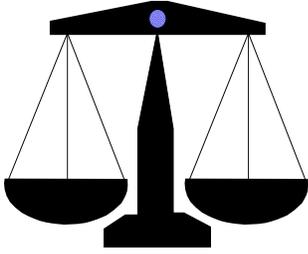
BY MAYOR STEPHEN R. LITTLE

AND THE

MARION CITY COUNCIL

STEPHEN R. LITTLE
MAYOR





Memo

To: Mayor/City Council

From: Bob Boyette, City Manager

Re: Comments on September 4, 2012 Agenda Items

Date: August 30, 2012

1. Citizen of the Month – Council Member Clark will present the Citizen of the Month for September.
2. Consent Agenda – These items are considered routine in nature. Any Council Member may request that an item be removed from the Consent Agenda and discussed separately. The items on the Consent Agenda are as follows:
 - A. Approval of August 21, 2012 Regular City Council Meeting Minutes.

ITEM 2A

3. Public Comment Period - Council previously directed that the Public Comment Period be held after scheduled public hearings and public appearances.

ITEM 3



4. Public Appearance – Marion Business Association – Marion Business Association (MBA) President Becky Poteat or another representative will present the MBA's 2011-12 Annual Report, which is attached for your information.

ITEM 4

5. Presentation by Police Department on Use of Technology and Crime Mapping – The Police Department will make a presentation on how technology and crime mapping is used to deploy our patrol resources. Council Member Clark had requested this

information and I thought it would be good for everyone to hear how our patrolling takes place.



ITEM 5

6. Schedule Dedication for New Clinchfield Community Park – By the time of the September 4 Council meeting, the paving may have been fully completed at the new Clinchfield Community Park on Hill Street. Council has traditionally held dedication ceremonies for new parks. It would be a good idea to include our property donors, Frank and Debra Boldon, in the dedication ceremony. The dedication could be held on a date that works for Council.



ITEM 6

7. City Manager's Report - I have attached a brief summary of activities since the last City Council meeting. I will highlight a few of these items at the meeting, along with any matters that have arisen after the packets were prepared. Please let me know if you need any additional information about any of these items.

ITEM 7

**STATE OF NORTH CAROLINA
COUNTY OF McDOWELL
CITY OF MARION**

The City Council for the City of Marion met in Regular Session on Tuesday evening, August 21, 2012 at 7:00 P.M. in the City Council Chamber located at 194 North Main Street.

BOARD MEMBERS PRESENT: Mayor Stephen R. Little, Mayor Pro Tem Lloyd Cuthbertson, Council Members Juanita Doggett, Billy Martin and Don Ramsey.

Council Member Everette Clark was not present for this meeting due to attending a North Carolina Rural Center meeting in Raleigh.

OTHERS PRESENT: Bob Boyette, City Manager; Debi Sherlin, Administrative Assistant; Harriett Thomas, CPA, Finance Director; Heather Cotton, AICP, Planning and Development Director, Mark Brooks, Police Chief; Brant Sikes, Public Works Director; Don Price, Water Plant Superintendent; Mike Conley, News Reporter, McDowell News.

GUESTS PRESENT: Larry Scott, 141 Overlook Drive, Marion, NC; Lester Hunley, 36 Currier Avenue, Marion, NC; Harvey Souther, Old Fort, NC; Pat Davis, Lake Tahoma Road, Marion, NC; David Patneau, 2986 US 221 North, Marion, NC; Carl Beatty, PO Box 532, Marion, NC; Harrison Corpening, 349 Capital Hill Apartments, Marion, NC; Eugene Holland, Railroad Street, Marion, NC; Jr. Edwards, Marion, NC; Michael MacDonald, 278 Church Street; Mark Shuman, 391 East Court Street, Marion, NC; Tabby Hill, 41 North McDowell Avenue, Marion, NC; Ronnie Burgin, Nebo, NC.

OPENING OF MEETING: Mayor Little opened the meeting with a moment of silence.

CONSENT AGENDA: Upon a motion by Mayor Pro Tem Cuthbertson, seconded by Council Member Doggett, those members of council present voted to approve the consent agenda as follows:

A. Approval of Minutes – July 17, 2012 Regular City Council Meeting Minutes.

B. Adopt Traffic Schedule Ordinance Amendment

**ORDINANCE
AMENDING SECTION 18
TRAFFIC SCHEDULE
MARION CITY CODE**

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That the Traffic Schedule of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Section 18-239 is amended by adding the following:

STREET NAME	REGULATION	REG. APPLICATION
MAIN STREET (SOUTH)	LOADING/ UNLOADING ZONE	WEST SIDE, BEGIN 14 FT. NORTH OF THE NW CORNER OF SOUTH MAIN STREET AND RAILROAD STREET AND CONTINUING 22 FT. NORTHERLY

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of August, 2012.

Stephen R. Little
Mayor

ATTEST:

J. Robert Boyette
City Manager/Clerk

Ordinance Number: O-12-08-21-1

PUBLIC HEARING – ZONING TEXT AMENDMENT: Mayor Little opened the Public Hearing.

Planning and Development Director Heather Cotton advised that Tabby Hill of Special Gifts Adults Program, Inc. has requested an amendment to the City Code to allow Adult Day Cares and similar establishments within the M-1 Industrial Zoning District.

Ms. Cotton reported that the North Carolina Administrative Code defines and regulates this type of use according to the following:

Section .5400 - Day Activity for Individuals of All Disability Groups
10A NCAC 27G .5401 Scope

(a) Day activity is a day/night facility that provides supervision and an organized program during a substantial part of the day in a group setting to individuals who are mentally ill, developmentally disabled, or have substance abuse disorders.

(b) Participation may be on a scheduled or drop-in basis.

(c) The service is designed to support the individual's personal independence and promote social, physical and emotional well-being through activities such as social skills development, leisure activities, training in daily living skills, improvement of health status, and utilization of community resources.

Further, 10A NCAC 27G.0103 defines language within the administrative code as follows:

"Adult" means a person 18 years of age or older or a person under 18 years of age who has been married or who has been emancipated by a court of competent jurisdiction or is a member of the armed forces.

"Day/night service" means a service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.

While substance abuse is not specifically defined within the North Carolina Administrative Code it is referred to in definitions for "Drug abuse and Drug dependence" as follows:

"Drug abuse" means psychoactive substance abuse which is a residual category for noting maladaptive patterns of psychoactive substance use that have never met the criteria for dependence for that particular class of substance which continues despite adverse consequences.

"Drug dependence" means psychoactive substance dependence which is a cluster of cognitive behavioral, and physiologic symptoms that indicate that a person has impaired control of psychoactive substance use and continues use of the substance despite adverse consequences.

Ms. Cotton stated that staff included definitions within the proposed code amendment that would be compatible with the State's definition of such use, and included child day care to the list of uses since both uses are regulated by the State in a similar manner.

Ms. Cotton advised that, in addition to defining the use, Staff reviewed the Comprehensive Land Use Plan to determine if the request was compatible with its recommendations. The Plan identifies Marion's older industrial mill sites, which are zoned M-1 Industrial, as Traditional Redevelopment Overlay Areas. These areas were identified in the Plan due to their limited land use activity due to changes in economic conditions; their close proximity to densely populated neighborhoods; and the community's desire to see these sites revitalized to serve new commercial and/or residential uses in the future. Similar to the Marion Manufacturing office building that was converted into the Employment Security Commission and Job Link Office, other sites have buildings that were originally constructed for office type uses. Day care centers offer an opportunity for adaptive reuse of these underutilized and vacant buildings, and are a type of land use that would typically be located near densely populated residential areas. While a new Redevelopment Overlay District has not yet been created, Staff finds that adult/child day care centers and similar type uses would be a compatible use within the redevelopment areas and therefore compatible with the Comprehensive Land Use Plan.

Ms. Cotton advised that staff does have a concern that adult/child day care centers might be incompatible with uses typically permitted and located within the M-1 Industrial Zoning District, and that there is a potential risk to public safety by co-locating such uses. However, it is common for modern industries to provide onsite day care centers as an employee benefit, and

have facilities constructed for this purpose. Since many of these sites are older and have been modified over time, Staff has included additional regulations that improve safety, and reduce the risk to public safety or conflict between incompatible land uses.

Ms. Cotton reported that the Planning Board voted unanimously at their meeting on August 2 to recommend approval of the Zoning Text Amendment.

There were no citizens present to discuss this item.

Mayor Little closed the Public Hearing.

Upon a motion by Mayor Pro Tem Cuthbertson, seconded by Council Member Ramsey, those members of Council present voted to adopt the following Zoning Text Amendment:

**ORDINANCE
AMENDING CHAPTER 21
ZONING
MARION CITY CODE**

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 21, Zoning, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. That Chapter 21, Zoning, Section 21.21 Definition to add the following:

Sec. 21-21 Definitions

Day Care Center. A facility licensed by the state, that provides care, supervision, and an organized program to children or adults who do not reside in the facility, are present during daytime hours, and do not stay overnight.

Section 3. That Chapter 21, Zoning, Section 21.206.2 Permitted Uses within the M-I Industrial Zoning District is amended to add the following:

(10) Adult/Child Day Care Facility.

a. All outdoor activity areas are screened and/or are enclosed by six-foot high fence.

b. Facility has a primary entrance separate from any industrial or manufacturing land use activity located within the same building, and all accessible points of ingress or egress of the adult/child day care facility are equipped with security and safety features.

c. Located in a Traditional Redevelopment Overlay Area indentified in the Comprehensive Land Use Plan, as may be amended, or where such land use is ancillary to and directly serves the employees of an approved use within the zoning district.

Section 4. That Chapter 21, Zoning, Section 21.204.2 Permitted Uses within the C-1 Central Business Zoning District is amended to add the following:

(49) Adult/child day care facility provided that all outdoor activity areas are screened and/or enclosed by six-foot high fence.

Section 5. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of August, 2012.

Stephen R. Little, Mayor

ATTEST:

J. Robert Boyette, City Manager/ Clerk

Ordinance Number: O-12-08-21-2

PUBLIC APPEARANCE – MR. MARK SHUMAN: Mr. Shuman stated that he was here to request that the Zoning Ordinance amendment adopted by Council on July 17, 2012 regarding regulation of manufactured housing

be repealed or significantly revised. Mr. Shuman advised that several people were present to support this request.

Mr. Shuman stated that there were numerous and varied reasons that he and others oppose the recent Zoning Text Amendment. However, the following two issues are of particular concern:

1. Although it is understandable that Council wants to limit the placement of mobile homes in the city, we are concerned about people, both owner occupants, as well as investors, who already own mobile homes in the city. When a need to replace an existing mobile home arises, whether a catastrophe (fire, etc.), or for some other reason, it would be virtually impossible to find a 3 year old or newer replacement home that would make economic sense. The reason is that such newer mobile homes are simply too expensive.

Consequently, as a solution to their first concern, Mr. Shuman said that he would propose the following:

- Please allow replacement homes to be 1976 or newer.
 - Or, if that is unacceptable, please consider replacement of homes to be 1981 (1981 was year that, “National Manufactured Housing Construction Safety Standards Act of 1974” was amended) or newer.
 - Or, at least allow replacement mobile homes to be no older than the existing mobile home, as is permitted in the City of Asheville Zoning Ordinance?
2. Prior to the adoption of this aforementioned amendment, people were free to put an older singlewide mobile home on a vacant lot in the R-2 General Residential District. Such a home would provide very affordable housing and make economic sense in today’s local economy. With the adoption of this amendment, many vacant lots in this R-2 district will remain vacant. Placing doublewides, newer singlewides or building a house on many of these lots is simply not practical or economical.
- Consequently, as a solution to this second issue, we would simply Mr. Shuman proposed allowing singlewide mobile home 1976 or newer to be placed on these R-2 District vacant lots.

Mr. Shuman stated that the Zoning Text Amendment discriminates against people living on fixed incomes. He advised that neighborhoods like Eastfield and Clinchfield simply will not support the placement of houses or doublewides.

Council Member Doggett stated that the residents of Eastfield and Clinchfield were as much a part of Marion as any other neighborhood and also deserved reasonable protections.

Mr. Shuman thanked Council Members for their time and asked that they consider the above described issues, which are quite important to him and others present tonight, as well as many other citizens.

Mayor Little asked the City Manager to give a summary of the procedures followed to create this Ordinance.

The City Manager stated that State law requires that amendments to the Zoning Ordinance be advertised in the newspaper and, in the case of map amendments, that signs be placed on the affected property and notices sent to adjoining properties. Such requests must be reviewed by the Planning Board, with a public hearing scheduled and held before City Council. The City Manager stated that, because Mr. Shuman's request came in too late for a public hearing to be advertised and held in August, no action can be taken on this request by Council tonight. The next step will be for the request to go back before the Planning Board in September. The City Manager stated that Ms. Cotton had scheduled and was advertising the discussion of this request for the September 6 Planning Board and September 18 City Council meetings.

Mayor Little stated that he as well as City Council Members take this matter very seriously. He said that City Council realizes that there are many citizens here in support of this request. Mayor Little asked for all persons present in support of the items to stand.

Mayor Little thanked everyone for coming and stated that this item would come back before Council in September, after review by the Planning Board.

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE TO ANEX PROPERTY OWNED BY THE CITY CONTIGUOUS TO

THE MUNICIPAL BOUNDARIES: Mayor Little opened the Public Hearing.

The City Manager advised that this public hearing was scheduled for the annexation of part of the City's Water Tank Property on Summit Street. Annexation of this property would allow the City, rather than the State, to receive utility franchise tax revenue for electrical service for this property. The City Manager stated that Council could adopt an ordinance to annex the property immediately, after the Public Hearing.

Mayor Little closed the Public Hearing.

Upon a motion by Mayor Pro Tem Cuthbertson, seconded by Council Member Martin, those members of Council present voted to adopt the following ordinance to annex the contiguous City owned property effective immediately:

**AN ORDINANCE TO EXTEND
THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA –
CITY OWNED PROPERTY – SUMMIT STREET - 2012**

WHEREAS, the City Council has adopted a resolution under G.S. 160A-31 stating its intent to annex the area described below; and

WHEREAS, a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, August 21, 2012, after due notice by publication on Wednesday, August 8, 2012; and

WHEREAS, the City Council finds that the proposed annexation meets the requirements of G.S. 160A-31;

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-31, the following described territory is hereby annexed and made part of the City of Marion as of August 21, 2012:

BEGINNING at the Southwest corner of a Lot recorded in Plat Book 1, Page 183 in the office of the McDowell County Register of Deeds, and shown on plat as "Town Reservoir Lot", said Lot also being described as Lot 8392 Block 26 on the current McDowell County Tax Map 1701-09; thence from said point, North 26° 15' 24" West a distance of 198.25 feet; thence North 52° 15' 54 East 94.86 feet to a point, said point being a point on the current Marion Corporate Limits; thence following the boundary of Marion Corporate Limits in a Southerly direction to a point on the southern boundary of said Lot 8392; thence following the boundary of said lot South 52° 15' 54" West to the Point of BEGINNING.

Section 2. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

ADOPTED this the 21st day of August, 2012.

Stephen R. Little, Mayor

ATTEST:

Approved As To Form:

J. Robert Boyette, City Clerk

City Attorney

Ordinance Number: O-12-08-21-3

PUBLIC HEARING – ADOPTION OF ANNEXATION ORDINANCE TO ANNEX PROPERTIES OWNED BY THE CITY NOT CONTIGUOUS TO THE MUNICIPAL BOUNDARIES: Mayor Little opened the Public Hearing.

The City Manager advised that this public hearing was scheduled for the annexation of four City owned parcels not contiguous to the City Limits, including the Pleasant Gardens Pump Station on Highway 70 West, the PRP

Pump Station on Old Highway 221, the Victory Drive Pump Station and the Buck Creek Water Intake off of Highway 70 West. Annexation of these properties would allow the City, rather than the State, to review utility franchise tax revenue for electrical and/or telephone service for these properties. The City Manager stated that Council could adopt an ordinance to annex the property immediately, after the Public Hearing.

A citizen asked if the City's extraterritorial zoning jurisdiction (ETJ) would be expanded once the City annexed these satellite areas. The City Manager advised that the City does not exercise an ETJ and that ETJ distances are measured from the primary corporate limits, not from satellite areas.

Mayor Little closed the Public Hearing

Upon a motion by Martin, seconded by Mayor Pro Tem Cuthbertson, those members of Council present voted to adopt the following ordinance to annex the non-contiguous City owned properties effective immediately:

**AN ORDINANCE
TO EXTEND THE CORPORATE LIMITS OF THE
CITY OF MARION, NORTH CAROLINA –
CITY OWNED PROPERTIES NOT CONTIGUOUS TO CITY
LIMITS - 2012**

WHEREAS, the City Council has adopted a resolution under G.S. 160A-58.7, stating its intent to annex the area described below; and

WHEREAS, a public hearing on the question of this annexation was held at City Hall at 7:00 P.M. on Tuesday, August 21, 2012, after due notice by publication on Wednesday, August 8, 2012; and

WHEREAS, the City Council finds that the proposed annexation meets the requirements of G.S. 160A-58.1(b), as follows:

- a. The nearest point on the proposed satellite corporate limits is not more than three (3) miles from the corporate limits of the City of Marion;

- b. No point on the proposed satellite corporate limits is closer to the primary corporate limits of another municipality than to the primary corporate limits of the City of Marion;
- c. The area is so situated that the City of Marion will be able to provide the same services within the proposed satellite corporate limits that is provides within the primary corporate limits;
- d. The area is not a subdivision; and
- e. The area within the proposed satellite corporate limits, when added to the area within all other satellite corporate limits, does not exceed ten percent (10%) of the area within the primary corporate limits of the City of Marion; and

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marion, North Carolina that:

Section 1. By virtue of the authority granted by G.S. 160A-58.7, the following described noncontiguous property owned by the City of Marion is hereby annexed and made part of the City of Marion as of August 21, 2012:

Tract One – Pleasant Gardens Pump Station/Highway 70 West

Beginning on a #5 Rebar with cap set at the eastern edge of the right of way of U.S Highway 70, and N.C.G.S. Station “Pleasant Gardens”, N=72-452.109 E=1088209.835 N.A.D. 1983 is located South 72 degrees 6’ 22” West 7483.93 feet from this iron rebar control corner; thence runs 39 degrees 00’ 25” East 106.33 feet to a #5 rebar with cap set, being line L5 as shown on the hereinafter referred to map; thence runs South 42 degrees 04’ 46” East 42.01 feet to a #5 rebar with cap set (L1); thence runs South 47 degrees 49’ 29” West 70.61 feet to a # 5 rebar with cap set (L2); thence runs South 38 degrees 55’ 20” West 30.00 feet to a #5 rebar with cap set (L3); thence runs North 51 degrees 04’ 40” West 30.73 feet to a #5 rebar with cap set (L4) to the BEGINNING.

Tract Two – PRP Pump Station/Old Highway 221

BEGINNING AT A RAILROAD SPIKE SET in the center of State Secondary Road 1768 (OLD U.S. 221) and which BEGINNING point is

located North 01 degrees 40 minutes 30 seconds West 59.91 feet from a railroad spike set in the center of the State Secondary Road 1768 and which point is identified as the point of BEGINNING of that tract described at Deed Book 493, Page 325, McDowell County Public Registry; thence from said BEGINNING point, North 47 degrees 48 minutes 43 seconds West 81.45 feet to a number five rebar with id cap set; thence South 88 degrees 18 minutes 30 seconds West 66.52 feet to a number five rebar with id cap set; thence North 01 degrees 41 minutes 30 seconds West 50.01 feet to a number five rebar with id cap set; thence North 88 degrees 27 minutes 45 seconds East 65.05 feet to a number five rebar with id cap set; thence South 01 degrees 07 minutes 36 seconds East 25.66 feet to a number five rebar with id cap set; thence South 86 degrees 27 minutes 52 seconds East 60.70 feet to a railroad spike set in the center of State Secondary Road 1768 (Old U.S. 221); thence with the center of SSR 1768, South 01 degrees 40 minutes 30 seconds East 75.10 feet to the point and place of BEGINNING.

Tract Three – Victory Drive Pump Station

BEGINNING at the beginning corner as set out in Deed Book 263 Page 378 and as described in Deed Book 763 Page 391 in the office of the McDowell County Register of Deeds, thence South 85 degrees 08 minutes 49 seconds East 316.14 feet to an iron pin set; thence North 4 degrees 51 minutes 01 seconds East 20.00 feet to an iron pin set, and South 85 degrees 08 minutes 49 seconds East 90.49 feet to an iron pin set, iron pin also being the Northeast corner of said property, said property being described as Lot 3395 Block 61 on the current McDowell County Tax Map 1702-19; thence in a Southwesterly direction 84.3 feet to a point; thence in a Westerly direction 345 feet to a point; said point also being on the Eastern boundary of SR 1504 (Victory Drive); thence following the boundary of said property and SR 1504 in a Northerly direction 34.4 feet to the BEGINNING.

Tract Four – Buck Creek Water Intake Part A/Highway 70 West

BEGINNING at a stake, which stake is located South 35° 10' East 537 feet from the southwest corner of the south barn of the party of the first part, and said stake also being located North 10° 25 ' East from the top of the transmitter tower of Radio Station WBRM, and said stake also being located South 64° 30' West 180 feet from the beginning corner of a tract of land conveyed to the party of the second part in fee simple in a Deed from Mrs. Eva Curtis, dated the 24th day of February, 1955, and runs thence from the

said point of beginning, North 64°30' East 72 feet to a stake in the center of Buck Creek; thence down the center of said Creek, South 25° 30' East 125 feet to a stake in the center of said Creek, thence South 64° 30' West 72 feet to an iron stake; thence North 25° 30' West 125 feet to the BEGINNING, and containing 0.21 acres; said tract of land to which reference is hereby made described further in Deed Book 131 Page 562 of the office of the McDowell County Register of Deeds.

Tract Five – Buck Creek Water Intake Part B/Highway 70 West

BEGINNING at an iron stake, which stake is located South 11°35' East 804 feet from the Southwest corner of the south barn of the party of the first part, and said stake also being located north 64°30' East 180 feet from an iron stake, which stake is the beginning corner of a certain tract of land conveyed to the Town of Marion by Mrs. Minnie E. Finely, by deed dated the 25 day of February, 1955, and runs thence from said point of beginning, South 25°30' East 125 to an iron stake; thence South 64° 30' west 108 feet to a stake in the center of Buck Creek; thence North 25° 30' West up the center of said Creek 125 feet to an iron stake in the center of the creek; thence North 64° 30' East 108 feet to the BEGINNING, containing 0.31 acres, more or less; said tract of land to which reference is hereby made described further in Deed Book 131 Page 564 of the office of the McDowell County Register of Deeds.

Section 2. The Mayor of the City of Marion shall cause to be recorded in the office of the Register of Deeds of McDowell County, and in the office of the Secretary of State at Raleigh, North Carolina, an accurate map of the annexed territory, described in Section 1 above, together with a duly certified copy of this ordinance. Such a map shall also be delivered to the McDowell County Board of Elections, as required by G.S. 163-288.1.

ADOPTED this the 21st day of August, 2012.

Stephen R. Little, Mayor

ATTEST:

Approved As To Form:

J. Robert Boyette, City Clerk

City Attorney

Ordinance Number: O-12-08-21-4

PUBLIC HEARING - ZONING MAP AMENDMENTS – ASSIGN ZONING TO CITY OWNED PROPERTIES: Mayor Little opened the Public Hearing.

The City Manager advised that, as indicated on the information presented to Council, the Planning Board met on August 2 and recommended that R-2 General Residential zoning be assigned to the City owned property on Summit Street (a portion of the Water Tank property) that was annexed by Council earlier in the agenda and that M-1 Industrial zoning be assigned to the City owned properties on Highway 70 West (Pleasant Gardens Wastewater Pump Station and Buck Creek Water Intake), on Old 221 (Performance Rail Wastewater Pump Station) and Victory Drive (Victory Drive Wastewater Pump Station) that was also annexed by Council earlier in the agenda. The R-2 zoning was recommended for the Summit Street property to match zoning of the surrounding neighborhood and the portion of the Water Tank property already in the City. This zoning district permits utility facilities. The M-1 Industrial zoning was recommended to be consistent with zoning of other City water and wastewater facilities.

Mayor Little closed the Public Hearing

Upon a motion by Mayor Pro Tem Cuthbertson, seconded by Council Member Martin, those members of Council present voted to adopt the following ordinance assigning R-2 zoning to the City-owned property on Summit Street (a portion of the Water Tank property) and to assign M-1 zoning to the City-owned properties on Highway 70 West (Pleasant Gardens Wastewater Pump Station and Buck Creek Water Intake), on Old 221 (Performance Rail Wastewater Pump Station) and Victory Drive (Victory Drive Wastewater Pump Station):

**ORDINANCE
AMENDING CHAPTER 21 ZONING
MARION CITY CODE**

CITY-OWNED PUBLIC UTILITY PROPERTIES

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 21, Zoning, of the Code of Ordinances, City of Marion, North Carolina, (hereinafter "City Code") is amended as follows:

Section 2: The City of Marion is amending the Official Zoning District Map to assign zoning to city-owned properties being voluntarily annexed having the current Parcel Identification Numbers 1619.00-36-7443, 1629.00-38-2832, 0792.00-52-3701, 1702.19-61-3395, and a portion of 1701.10-26-8392 as adopted by City Council on August 2, 2012 having the Ordinance Numbers O-12-08-21-3 and O-12-08-21-4;

Section 3: The City of Marion is assigning the M-1 Industrial Zoning District to the subject properties identified in Ordinance Number O-12-08-21-4 and having the Parcel Identification Number 1619.00-36-7443, 1629.00-38-2832, 0792.00-52-3701, and 1702.19-61-3395.

Section 4. The City of Marion is assigning the R-2 General Residential Zoning District to the subject property identified in Ordinance Number O-12-08-21-3 and having the current Parcel Identification Number 1701.10-26-8392.

Section 5. The proposed zoning map amendment is consistent with the adopted Comprehensive Plan.

Section 6. Pursuant to Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 21-321 of the City Code, the Planning Board considered the zoning map amendment during a duly noticed public hearing on August 2, 2012.

Section 7. In accordance with Sections G.S. 160A-364 and G.S. 160A-384, North Carolina Statutes, and Section 21-321 of the City Code, notice has been given of the public hearing for the proposed adoption of this ordinance.

Section 8. The City Council finds that the adoption of the zoning map amendment is in the best interest of the City and complies with all applicable laws and promotes the health, safety, and welfare of the community.

Section 9. The zoning map amendment is hereby adopted as part of the Official Zoning Map of the City.

Section 10. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of August 2012.

Stephen R. Little, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-12-08-21-5

PUBLIC COMMENT PERIOD: There were no unscheduled citizens present to speak to Council.

REVIEW OPTIONS FOR CITY PROPERTY LIABILITY COVERAGE: The City Manager reported that the City's contracted insurance agent, Marsh Dark of Morrow Insurance, received a renewal quote for the City's property and liability insurance coverage for 2012-13 from Millenium Insurance. The City's 2011-12 premium from Millenium was \$83,000. Millenium's 2012-13 premium quote is \$111,000, which represents a \$28,000, or 34 percent, increase over 2011-12. Millenium blamed the premium increase on the amount and frequency of claims.

The City Manager advised that Millenium agreed to bill the City's 2012-13 premium in quarters and to prorate the City's premium, if the City decided to terminate coverage with them. Marsh talked to other insurance companies, in an attempt to obtain additional quotes. Marsh could not obtain a quote from Berkley Insurance, which is not writing new local government policies now, due to high claims and concerns about local government budget cuts leading to additional claims. He could not obtain a reasonable quote from Travelers Insurance. Marsh obtained a quote of \$101,416 from Houston Casualty, which, according to him, is the dominant insurance provider for local governments in Texas and the Midwest, and which has recently begun writing local government policies in North and

South Carolina. Houston Casualty's proposed coverage is essentially the same as Millenium, with an additional \$1 million of umbrella coverage provided per occurrence.

The City Manager stated that he had hoped to have a quote from the N.C. League of Municipalities by the time of the meeting, but reported that Finance Director Harriett Thomas had learned earlier in the day that the League's quote would not be received until the next day.

The City Manager advised that Houston Casualty's quote is good through August 22. Therefore, if the City wishes to consider Houston Casualty's \$101,416 quote, Council direction will be needed at tonight's meeting.

Council Member Martin asked how time sensitive this matter was. Mayor Little stated that the longer Council waits to make a decision, the City will pay a higher premium and may lose the Houston Casualty quote altogether, costing the City \$10,000.

Mayor Little suggested that Council accept the Houston Casualty bid and asked if Council wished to accept a lower bid from the N.C. League of Municipalities the next day.

Mayor Pro Tem Cuthbertson suggested that the City accept a lower bid from the League, only if the bid was five percent or more lower than that submitted by Houston Casualty.

Upon a motion by Mayor Pro Tem Cuthbertson, seconded by Council Member , Council voted unanimously to award the contract for the City's 2012-13 property and liability insurance coverage to Houston Casualty for \$101,416, with the condition that the City will award the contract for the City's 2012-13 property and liability insurance coverage to the North Carolina League Municipalities, if the League quote is received no later than 2:00 p.m. local time on Wednesday, August 22, 2012 and if the League's quote is five percent or more lower than that of Houston Casualty.

CONSIDER ADOPTION OF ORDINANCE TO REVISE PROHIBITIONS ON DISCHARGE OF FIREARMS IN CITY:

The City Manager advised that, as was directed by Council at the July 17 Council meeting, he had looked at ordinances from other cities related to discharge of firearms. After discussing the matter with Police

Chief Mark Brooks, the City Manger stated that he would recommend Council consideration of the proposed ordinance, which states that the discharge of firearms in the City Limits is not permitted, with four listed exceptions: in self-defense, by a law enforcement officer in the discharge of his or her duties, in a licensed shooting gallery or at a historical, ceremonial or commemorative function with the approval of the Police Chief, provided that in no event shall live ammunition be used or discharged.

Upon a motion by Council Member Martin, seconded by Council Mayor Pro Tem Cuthbertson, those members of Council present voted to adopt the following Ordinance as presented:

**ORDINANCE
AMENDING CHAPTER 11
OFFENSES
MARION CITY CODE**

BE IT ORDAINED by the City Council of the City of Marion, North Carolina as follows:

Section 1. That Chapter 11, Offenses, of the Code of Ordinances, City of Marion, North Carolina, is amended as follows:

Section 2. Chapter 11 is amended by deleting Section 11-8 in its entirety and replacing it with the following:

Sec. 11-8. Discharge of firearms and fireworks prohibited; exceptions.

(a) No person shall fire any pistol, gun or other firearm, fireworks or other pyrotechnics in the City Limits.

(b) Subsection (a) shall not apply when a weapon is used in a lawful manner:

- (1) In self-defense;
- (2) By a law enforcement officer in the discharge of his or her duties;
- (3) In a licensed shooting gallery; or
- (4) At a historical, ceremonial or commemorative function with the

approval of the Police Chief, provided that in no event shall live ammunition be used or discharged.

Section 3. This ordinance shall become effective upon its adoption.

Adopted this the 21st day of August, 2012.

Stephen R. Little, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Ordinance Number: O-12-8-21-6

DISCUSS DOWNTOWN LANDSCAPING PLAN: Planning and Development Director Heather Cotton gave a report on recommended changes to the City's landscaping in the downtown area.

Ms. Cotton stated that staff recommends that the potted fern containers across from the intersection of Main and State Street be relocated next spring to side streets that previously had flower pots, including East and West Court Streets and West Henderson Streets. Mayor Pro Tem Cuthbertson suggested that at least one container be placed in front of Main Street Exxon on North Main Street. Ms. Cotton stated that this location could be explored as well.

Ms. Cotton further recommended that the initial plan was to removal all containers after the Mountain Glory Festival in October, but that she would now suggest that a few containers be kept with some flowers, such as pansies, that could survive colder weather.

Ms. Cotton advised that eight benches have been ordered by the City for Main Street, of which six have been sponsored, leaving two remaining to be sponsored. She stated that the new benches and trash cans would soon be placed on Main Street.

Ms. Cotton reported that she presented information to the Tree Board that morning concerning the purchase of grates to be used around the ginko trees on Main Street. Ms. Cotton stated that the grates would cost around \$19,000 to \$20,000. She advised that the Tree Board recommended that the City purchase these grates, by either budgeting for this expenditure in the 2013-14 budget or by seeking other funding for the grates.

Council Member Doggett asked about several flower locations on South Main Street that have not been able to sustain flowers this summer.

Public Works Director Brant Sikes stated that the City's contracted landscaper, Lawrence Moore, had replanted these locations three times this year and had finally determined that the planter locations contained contaminated soil with high levels of salt. These areas are now being replenished with sixty percent peat moss and can then be replanted.

By consensus, Council endorsed the recommendations made above by Ms. Cotton.

CONSIDER ADOPTION OF PERSONNEL POLICY UPDATE:

Finance Director Harriett Thomas advised that, as was discussed at the July 17 Council meeting, updates have been completed to the Personnel Policy to incorporate amendments made in recent years and to revise some language.

Ms. Thomas stated that the new provisions proposed for the Personnel Policy include the following:

A. Amending Article VI, Section 2, Designated On-Call Time, to change Responsibilities of the Marion Police Department to the Responsibilities of McDowell County Communications due to the consolidation of dispatching services with the County.

B. Amending Article VII, Section 4, Vacation Leave, to add subsection (b) Employees with Previous Local Government Service to allow for previous local government service to count toward vacation accruals; to revise subsection (c) Vacation Leave – Manner of Accrual, by proposing vacation accruals of 15 days per year for employees with 10-25 years of service (previously this amount of accrual was for employees with 10 or more years of service) and proposing vacation accruals of 20 days per year for employees with 25 or more years of service. This item is important for

recruiting employees with experience by allowing them to count their previous local government service for purposes of vacation accruals and by adding additional vacation leave for employees with 25 or more years of service.

C. Amending Article VII, Section 4, Sick Leave, to add subsection (a) Employees with Previous Local Government Service to allow for previous local government service to count toward sick leave accruals; to revise subsection (b) Sick Leave – Manner of Accrual, by proposing sick leave accruals of 5 days for year for employees with 0-5 years of service and 12 days per year for employees with 5 or more years of service (the current policy provides for 5 days of sick leave for employees with 0-5 years of service and 10 days of sick leave for employees with 5 years or more of service). This revised proposal is based on discussions at the July 17 Council meeting. The previous version included 15 day per year of sick leave for employees with 20 years or more of service, but the revised Policy proposal caps sick leave accrual at 12 days per year. This item is important for recruiting employees with experience by allowing them to count their previous local government service for purposes of sick leave accruals and by increasing sick leave for employees with 5 or more years of service to the Statewide standard amount of 12 days per year.

D. Amending Article VII, Section 6, Family Medical Leave Act to include changes required by 2009 updates to the Federal Family and Medical Leave Act regulations.

E. Amending Article X, Section 6, Law Enforcement Special Separation Allowance to add subsection (c) to state that the Law Enforcement Special Separation Allowance ceases on the first day of reemployment by a local government employer in any capacity that requires participation in the North Carolina Local Governmental Employees' Retirement System (NCLGERS). This provision is now allowed by the State and is in the City's best interest to include.

F. Amending Article XI, Personnel Records and Reports to reflect changes to the North Carolina Public Records Law regarding Personnel Records effective October 1, 2010.

The City Manager stated that Ms. Thomas had done a great job with the Personnel Policy revisions.

Upon a motion by Council Member Martin, seconded by Mayor Pro Tem Cuthbertson, those members of Council present voted to adopt the following revised Personnel Policy as presented:

**CITY OF MARION
PERSONNEL POLICY**

EFFECTIVE 10/1/2012

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PERSONNEL POLICY OF THE CITY OF MARION

WHEREAS, the Mayor and City Council of the City of Marion recognizes the importance of its municipal employees in meeting the service needs of City residents; and

WHEREAS, it is the desire of the Mayor and City Council to maintain a municipal work force composed of qualified, competent, dedicated employees; and

WHEREAS, the Mayor and City Council recognize the necessity of equitable rates of pay and reasonable conditions of employment in the maintenance of such a work force; and

WHEREAS, it is the desire of the Mayor and City Council to establish a system of personnel administration that will assure equity of compensation and fair and reasonable employee treatment consistent with the needs of the City and the circumstances of the situation which may be faced from time to time;

NOW, THEREFORE, THE MAYOR AND CITY COUNCIL OF THE CITY OF MARION ADOPTS the following rules and regulations to govern the appointment, classification, salary, promotion, demotion, and employment conditions of the employees of the City of Marion, North Carolina, replacing, where appropriate, the existing articles and sections on personnel, pay plans, class specifications, and benefits.

ADOPTED this 21st day of August, 2012.

Article I. Policy

Section 1.

The employment relationship between the City and the employee is terminable at the will of either at any time, with or without cause and with or without notice. No employee, officer, agent or representative of the City has any authority to enter into any agreement or representation, verbally or in writing, which alters, amends, or contradicts this provision or other provisions in these policies. Any exception to this policy of “at will” employment must be expressly authorized in writing, approved by the City Council, and executed by the officers designated by the City Council.

Section 2.

None of the benefits or policies set forth herein is intended because of their publication to confer any rights or privileges upon employees or to entitle them to be or remain employed by the City. The contents of this document and procedure herein are presented as a matter of information.

Section 3.

These personnel policies are not a binding contract, but merely a set of guidelines for the implementation of personnel policies. The City explicitly reserves the right to modify any of the provisions of these policies at any time and without any notice to employees. Notwithstanding any of the provisions within these policies, employment may be terminated at any time, either by the employee or by the City, with or without cause and with or without advance notice.

Section 4.

Since each department of the City has particular personnel and operational requirements, each is authorized to establish supplemental written rules and regulations applicable only to the personnel of that department. All such rules and regulations shall be subject to the final approval of the City

Manager and shall not in any way conflict with the provisions of this policy but shall be considered as a supplement to this policy.

Article II. General Provisions

Section 1. Purpose

The purpose of these policies is to establish a personnel system that will recruit, select, develop and maintain an effective and responsible work force. These policies are established under the authority of the General Statutes of North Carolina.

The City Personnel Policy has been designed to provide the employees of the City with a copy of the general policies as adopted by the Marion City Council. A brief summary of employee rights and responsibilities are included.

This policy is not an exclusive statement of all the terms of employment. It is also not a guarantee to any employee of the matters covered in any particular topic.

The topics covered herein are subject to change without advance notice, and the individual employer reserves the right to make final decisions as to interpretation of each policy and practice covered herein.

No policy, benefit, or procedure contained herein creates an employment contract for any period of time. All employees will be considered as employees-at-will. Employees may be terminated for failure to satisfactorily perform their duties or simply at the will of the employer, but they shall not be terminated for a discriminatory or illegal purpose.

Section 2. Coverage

This policy shall cover all regular and probationary employees except as specifically exempted. The City Manager, City Attorney, members of the City Council, members of advisory boards and Councils, and part-time employees will be exempted except in sections where specifically included.

Section 3. Definitions

- (a) Probationary Employee. A person appointed to a budgeted position that has not yet completed the probationary period.
- (b) Part-time Employee. An employee, either permanent regular or temporary, who is regularly scheduled less than, or not to exceed 1040 hours. Permanent part-time employees are defined as those in a regular position who work between 1000 but less than 2080 hours a year.
- (c) Regular/Full-time Employee. An employee who has successfully completed the prescribed probationary periods shall be considered regular. However, all City positions are subject to budget review and approval each year by the City Council, and all employees' work and conduct must meet standards of performance and behavior. Therefore, reference to "regular" employees or permanent positions should not be construed as a contract or right to perpetual funding or employment. Regular employees are entitled to all City benefits.
- (d) Seasonal/Temporary Employee. Qualified employees appointed to serve in a position for a defined time period, usually less than six months. Such employees are not entitled to City benefits.
- (e) Grievance. A claim or complaint based upon an event or condition affecting the circumstance under which an employee works, allegedly caused by misinterpretation, unfair application, or lack of established policy pertaining to employment conditions.
- (f) Adverse Action. A demotion, dismissal, reduction in pay, layoff, suspension or undesirable transfer.
- (g) Parent. Biological or adoptive person or one who stood in loco parentis to an employee when the employee was a child.
- (h) Child. Son, daughter under 18 years of age or 18 or greater who is incapable of self-care because of mental or physical disability that is either: biological, adopted, foster, step, legal ward or child for which employee is standing in loco parentis.
- (i) Spouse. Husband or wife recognized by State law.

Section 4. Merit Principle

The purpose of this policy and the rules and regulations set forth is to establish a fair and uniform system of modern personnel administration for all employees of the City.

The City shall embrace the following merit system principles in administering its personnel program:

- (a) Applicants and employees shall be assured of fair treatment in all aspects of personnel administration without regard for political affiliation, religious creed, sex, national origin, color, race, or disability. Individuals shall likewise be treated with proper regard for their privacy and constitutional rights as citizens.
- (b) Employees shall be recruited, selected, trained, and advanced on the basis of their ability, knowledge, skill, and performance.
- (c) Employees shall be retained on the basis of the adequacy of their performance. They shall be guided in ways to correct inadequate performance and separated when inadequate performance cannot be corrected.
- (d) Employees shall be protected against coercion for partisan political purposes.
- (e) Employees shall receive equitable pay and benefits and eligible employees may receive merit pay increases based upon their performance subject to the availability of funds.

Section 5. Responsibility of City Council

The City Council will establish personnel policies and rules, including the classification and pay plan.

The position of City Clerk is appointed, promoted, suspended and dismissed by the City Council upon recommendation of the City Manager. The City Council will adopt or provide for rules and regulations, resolutions or ordinances concerning personnel policies and other measures that promote the hiring and retention of capable, diligent, and honest employees under the authority of the North Carolina General Statutes, to be administered by the City Manager

The City Council will approve all payroll deductions from employees' payroll checks to outside companies offering a product which could benefit the employee. Some examples include short-term disability, cancer coverage, and vision coverage, etc.

Section 6. Responsibility of the City Manager

The City Manager shall administer the affairs of the City within the authority granted by the adoption of the Council-Manager form of government. The City Manager shall be responsible for assisting in the preparation and maintenance of the position classification plan and the pay plan, and shall perform such other duties in connection with a modern personnel program as are required. The City Manager will prescribe the office hours, workdays, and holidays to be observed by the various offices and departments of the City. All matters dealing with personnel shall be routed to the City Manager. The manager will see that a complete system of personnel files and records are maintained. The City Manager may perform any or all of these duties and responsibilities or assign them to staff employees.

Section 7. Responsibility of Department Heads

The head of each City department, with the approval of the City Manager, shall manage operations and supervise employees assigned to the department under such rules, regulations and procedures as may be required by the City Manager's standard operational procedures manuals or guidelines as appropriate.

Article III. Recruitment and Employment

Section 1. Statement of Equal Employment Opportunity Policy

It is the policy of the City of Marion to foster, maintain, and promote equal employment opportunity. The City shall select employees on the basis of the applicants' qualification and without regard to age, sex, race, color, creed, religion or national origin. Applicants with disabilities shall be given equal consideration with other applicants for positions if such applicants can, with or without reasonable accommodation, perform the essential requirements of the position.

Section 2. Implementation of EEO Policy

All personnel responsible for recruitment and employment shall continue to review regularly the implementation of this personnel policy and

relevant practices to assure that equal employment opportunity based on reasonable performance-related job requirements is being actively observed to the end that no employee or applicant for employment shall suffer discrimination because of age, sex, race, color, creed, religion, national origin, or disability. Notices with regard to equal employment matters shall be posted in conspicuous places on City government premises in places where notices are customarily posted. In addition, the City will comply with the provisions contained within the American's With Disabilities Act (ADA) as amended. It is the City Manager's responsibility to insure compliance and make recommendations for actions to bring the organization into compliance.

Section 3. Recruitment

All opportunities for employment shall be publicized, including applicable salary ranges and employment qualifications. Some jobs will only be advertised within the City workforce. Information on job openings and hiring practices may be provided to recruitment sources including organizations and various media serving the appropriate labor market. In addition, notice of vacancies shall be posted at designated conspicuous sites within City buildings. Individuals shall be recruited from a geographic area as wide as is necessary to insure that well qualified applicants are obtained for City service.

Section 4. Job Announcements

Employment announcements shall contain assurances of equal employment opportunity and shall comply with federal and state statutes prohibiting discrimination in employment matters.

Section 5. Applications for Employment

All persons expressing interest in employment with the City shall be given the opportunity to file an application for employment when a position is vacant or when the City is advertising to fill such positions. Applications will remain active only until that position is filled.

Section 6. Application Reserve File

Upon inquiring, each potential applicant shall be informed of the current job openings. After the active period of six months, applications for candidates not selected shall be kept in a file for two (2) years, in accordance with Equal Employment Opportunity and City Council guidelines and the Records Retention Schedule issued by the NC Division of Archives and History.

Section 7. Qualification Standards/Pre-Employment Requirements

Employees shall meet the employment standards established by the position classification plan and such other reasonable, job-related minimum standards of character, aptitude, knowledge, skills, abilities, and physical condition as may be established by the City Manager with the advice and recommendation of department heads. These qualifications may also include the requirements that applicants be drug free prior to entering the workforce.

(a) Pre-employment Testing. The City Manager has the authority to require pre-employment testing for those who have a conditional offer of employment for full time, permanent positions as well as part time positions. Additionally, the State of North Carolina and the federal government may also establish requirements for pre-employment testing in some instances. In the absence of specific requirements by the City Manager, the procedures for pre-employment testing are set out as follows:

(1) Confidentiality. The results of all tests administered as part of the screening process, including the name of applicants will remain as confidential as possible taking into consideration the fact that the City is a public employer.

(2) Medical Screening for Physical Fitness. Individuals who have applied for a job and have been extended a conditional offer of employment, regardless of full-time permanent or part time status, will be required to undergo a thorough medical screening to be administered by a doctor or healthcare technician chosen and paid for by the City. The determination to require physical examinations and other medical screenings will be based on the responsibilities of the position and other relevant considerations.

Normally, any medical screening will relate to and take into account the physical and/or mental requirements of the job as listed in the relevant job description, or any OSHA requirements. A Medical Review Officer, designated by the City, will review and make the final determination concerning the applicant's fitness for the job.

Current employees may also be required to undergo a physical examination to determine ability to perform the duties of his/her position. Such examinations may become particularly important when an employee is being considered for a transfer or a promotion and the City needs to take into consideration the physical requirements of the job as listed in the relevant job description.

When an applicant or an existing employee is being considered for a job that is subject to OSHA requirements for medical review, fitness for duty and the ability to meet the OSHA standards, then all OSHA requirements shall apply and shall be included in the medical screening process. If the results of any required test are unsatisfactory so that a favorable recommendation for employment cannot be obtained by the doctor or health care personnel, then any conditional offer of employment to an applicant may be withdrawn or the promotion or change in job by a current employee may be denied.

(3) Medical Testing and Fitness for Duty. Generally, employees are not required to undergo physicals, psychological or emotional testing or other types of medical testing. However, fitness for duty is a concern to the City so that the City can be assured that the employee is capable of performing his/her duties and is not a risk to the employee or coworkers. If there is any question concerning the employee's fitness for duty, the City may require the employee to undergo a physical or to otherwise participate in appropriate medical screenings to insure the ability to perform the duties and a safe workplace. Under normal circumstances, physicals and other medical testing results from workplace accidents, injuries and events are required as a condition of returning to employment and will be paid for by the City, but for accidents and injuries occurring outside the workplace or for second opinions requested by the employee, the employee may be required to pay the costs.

Certain OSHA programs require medical screenings for employees who are subject to or fall under these programs. As a condition of continued employment, the employee shall be required to participate in the screening and to have medical clearance issued by the City's medical service provider.

(4) **Medical Screening for Mental or Emotional Fitness.** Once an applicant is extended a conditional offer of employment, the applicant may be required to undergo an examination by a licensed psychologist for mental or emotional fitness for duty. Unsatisfactory results from such testing will result in the conditional offer of employment being withdrawn.

(5) **Drug and Alcohol Testing.** Applicants for full time, part time and temporary positions that have been extended a conditional offer of employment by the City will be required to undergo alcohol and drug tests. Applicants for employment with the City will be advised that a clean result on a drug and alcohol test is a condition of employment. See "Substance Abuse Policy" for more information.

(6) **Criminal/Background Investigations.** An applicant who has been extended a conditional offer of employment will be subjected to a background investigation in order to determine suitability for employment. A thorough investigation of personal records and background may be obtained to secure the public's interest regarding an applicant's personal and employment history.

(b) Qualifications shall be reviewed periodically to assure that requirements are fair and conform to the actual job performance requirements.

(c) The City may employ an applicant in a trainee capacity that does not meet all minimum qualifications for a particular job if the deficiencies can be eliminated through orientation and on-the-job training.

Section 8. Selection

Department heads shall make such investigations and conduct such examinations as deemed appropriate to assess fairly the aptitude, education and experience, knowledge and skills, character, physical fitness, and other qualifications required for positions in the service of the City. All selection devices administered by the City or by persons or agencies for the City shall be valid measurers of job requirements.

Section 9. Appointments

It is the City's policy to create career opportunities for its employees when possible. Therefore, when a current employee applying for a vacant position possesses the best qualifications of all applicants, that applicant shall

be appointed to that position. However, if other applicants possess comparable qualifications and if the City would continue any historical discriminatory employment practices by automatically promoting or transferring the current employee without considering other applicants, then the City must carefully consider the qualifications of other applicants in filling this position.

Section 10. Probationary Period of Employment

An employee appointed to a permanent position shall serve a probationary period of six (6) months, however the City will provide life, medical and dental insurance for the employee at the end of one month of service. New police (sworn) employees are required to serve a twelve (12) month probationary period for certification purposes as required by the State but will be eligible to come off the City probationary period at the end of six months of service and to use leave and receive other benefits which are provided at the end of probation. This time period is to be considered a continuation of the

selection process. An employee serving a probationary period following initial appointment may be dismissed with or without cause and without right of appeal at any time during the probationary period. A regular employee serving a probationary period following a promotion shall be

demoted as provided in this article if unable to perform assigned duties of the new job satisfactorily.

A probationary employee whose work is unsatisfactory may receive a written warning before being terminated by the department head. If the employee's work is not satisfactory or he/she has not met all the conditions of employment (i.e. CDL, etc.) during the probationary period, the employee may be terminated.

An employee serving a probationary period following initial employment in a permanent position will receive all benefits provided in accordance with this ordinance, with the following exception or as otherwise provided:

- (a) Employees may accumulate vacation and sick leave but will not be permitted to use vacation or sick leave during the probationary period.
- (b) Employees serving in a probation period following promotion will continue to receive all benefits provided in accordance with this policy.

In unusual cases, for specific reasons approved by the City Manager, the probationary period may be extended for a maximum of an additional six (6) months. In such cases, the employee must be notified of the purpose of the extension, the conditions and performance expectations, and the length of time of the extension. However, sick and vacation leave may be used by the employee in this extended probationary period with prior approval of the department head. Likewise police personnel serving in the second half of his/her twelve (12) month State probationary period may use accumulated sick and vacation with prior approval of the Police Chief.

Section 11. Performance Evaluation

A supervisor shall evaluate performance beginning with the employee's first day on the job. Through open communications with his/her supervisor, the employee should obtain a clear understanding of what is expected related to job performance and a periodic assessment of his/her job strengths and weaknesses. A formal evaluation shall be completed for an employee prior to the completion of his/her probationary period and at least once each year

thereafter. The City's performance evaluation program provides a system for appraising the employee's work.

Section 12. Notification of Action and Pre-disciplinary Action

Before suspensions of three (3) days or more, demotion, or dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the Department Head will conduct a pre-disciplinary conference. At this conference, the employee may present a response to the proposed disciplinary action. The Department Head will consider the employee's response, if any, to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, notify the employee in writing of the final decision to take disciplinary action. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal rights.

Section 13. Promotion

Department Heads shall endeavor to anticipate retirements and turnover and to have employees trained to assume positions of greater responsibility. In filling vacancies an effort shall be made to promote qualified employees from within the City work force before seeking an outside replacement.

When a vacancy occurs, the supervisor and department head in whose department the vacancy occurs shall review all applications received, including those from current City employees wishing to be promoted into the position. If a current City employee is chosen for promotion, the department head shall forward the employee's name to the City Manager and/or the Personnel Department with written recommendations for classification, salary and reasons for selecting the employee over other applicants.

Candidates for promotion shall be chosen on the basis of existing or anticipated job openings, on their qualifications, and on their work records. Employees being promoted must meet the qualification standards to include education, training, and experience for the classification to which the promotion is being made.

Section 14. Demotion

Any employee who fails to maintain high standards of personal conduct or whose work in his/her present position 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 for cases involving inability to perform duties or failure in performance of duties. An employee who wishes to accept a position with less complex duties and responsibility may be demoted for reasons other than unsatisfactory performance of duties or failures in personal conduct.

In all cases involving demotion, following the pre-disciplinary conference, the employee shall be provided with written notice citing the recommended effective date, reasons for demotion, and appeal rights available, if any.

Section 15. Violation of Good Employment Practices Leading to Suspension, Demotion, or Dismissal

- (a) Each employee will be expected to keep his/her personal affairs arranged in such a way that the City of Marion will not be embarrassed.
- (b) While on duty, the use of alcohol or illegal substances is strictly prohibited and may be cause for immediate dismissal.

Should an employee require the use of a medication (prescription or over-the-counter) that has side effects (dizziness, drowsiness, etc.), that employee should report the medicine to the immediate supervisor to prevent improper accusations on the part of the supervisor. A decision shall be made as to the employee's ability to stay on his/her regular job, carry out lighter duties or be sent home. The decision will be rendered from the aspect as to the safety of the employee, other personnel and the citizens of the City. The Department Head shall determine if the employee should work or be sent home.

If there is reasonable suspicion by someone in a supervisory capacity or regular employee as to the use of an intoxicant (alcohol, drugs, etc.) by another employee arriving to the job or while on the job with the City of Marion, then the following action may be taken:

- (a) The employee or employees involved shall be asked to remain at the location of the incident.
- (b) A City Police Officer shall be called to the location of the incident. Upon arriving, the officer shall determine if a law has been possibly violated and take appropriate action. An employee not arrested or charged with a crime, may still be disciplined under City policies.
- (c) The employee or employees may be asked to take a drug test or breathalyzer test subject to the requirements of the Substance Abuse Policy. The test shall be at the City's expense.

Refusing to remain at the location of the incident, refusing to comply with the Police Officer's request; or refusing to take either of the tests shall be grounds for a three (3) day suspension subject to dismissal. During the three (3) days, a determination will be made as to the use of an intoxicant on the employee's part. If it is determined that a reasonable suspicion does exist or actual proof is obtained, then the employee or employees will be dismissed.

Section 16. Transfer

An employee who has successfully completed a probationary period may be transferred to the same or similar class in a different department. As vacancies occur in other departments to which an employee would be eligible for transfer, the employee shall notify his/her supervisor of interest in the transfer and submit notice of a desire for transfer to the various department head(s) for consideration. If a department head wishes to hire that employee, the transfer is subject to the approval of the City Manager.

Section 17. Reduction in Force

In the event that a reduction in force becomes necessary, the quality of each employee's past performance and the needs of the City as well as seniority shall be considered in determining those employees to be retained. Regular employees who are to be terminated due to reduction in force shall normally be given at least ten (10) working days' notice of the anticipated layoff.

Article IV. Classification Plan

Section 1. Adoption

The position classification plan, as amended from time to time, is hereby adopted as the position classification plan for the City.

Section 2. Allocation of Positions

The City 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 City Manager shall be responsible for the administration and maintenance of the position classification plan so that it will accurately reflect the duties performed by the employees in the classes to which their positions are allocated. Department heads shall be responsible for bringing to the attention of the City Manager (1) the need for new positions, and (2) material changes in the nature of duties, responsibilities, working conditions or other factors that may affect the classification of any existing position.

When the City Manager finds that a substantial change has occurred in the nature or level of duties and responsibilities of an existing position, the existing class specification shall be revised or reallocated to the appropriate class within the existing classification plan, or the position classification plan shall be amended establishing a new class to which the position may be allocated.

Section 4. Amendment of Position Classification Plan

Classes of positions shall be added and deleted from the position classification plan by the City Council upon recommendation of the City Manager.

Article V. The Pay Plan

Section 1. Adoption

The schedule of salary ranges and class titles assigned to salary ranges, as amended from time to time, is hereby adopted as the pay plan for the City.

Section 2. Maintenance of the Pay Plan

The City Manager 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 rates of pay for comparable positions in private and public employment in the area, changes in the cost of living, the financial conditions of the City, and other factors. To this end, the City Manager shall from time to time make comparative studies of all factors affecting the levels of salary ranges and shall recommend to the City Council such changes in salary ranges as appear to be warranted.

Section 3. Use of Salary Ranges

Salary ranges are intended to furnish administrative flexibility in recognizing individual performance among employees holding positions in the same class by rewarding employees for meritorious service. The following general provisions will govern the granting of increases within the pay range:

(a) The minimum rate established for the class is the normal hiring rate, except in those cases where unusual circumstances appear to warrant appointment at a higher rate. Appointment above the minimum rate may be made with the approval of the City Manager when deemed necessary and in the best interest of the City. Above-the-minimum appointments will be based on such factors as the qualifications of the applicant being higher than the desirable education and experience for the class, a shortage of qualified applicants available at the minimum rate, the refusal of qualified applicants to accept employment at the minimum rate, or other similar factors.

(b) All increases are reserved to reward employees for meritorious service. Each year, the City Manager may require department heads to consider the eligibility of employees to receive salary increases and to recommend such advancement or retention at the same rate. Department heads shall consider all factors affecting employee performance and shall submit their recommendations in writing, giving the reasons to advance or retain the employee at the same rate. All

such advancements and retention in the salary range must be approved by the City Manager.

Section 4. Payment at a Listed Rate

All employees covered by the salary plan shall be paid at a listed rate within the salary range established for their respective job classes except for employees in a “trainee status”, or employees whose present salaries are above the established maximum rate following transition to a new pay plan.

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, may be appointed at a rate in the pay plan below the minimum established for the position. In such cases, a plan for training, including a time schedule will be prepared.

Trainee salaries may be no more than ten percent below the minimum salary established for the position for which the person is being trained. An employee will remain on the trainee rate until the department head determines that the trainee is qualified to assume the full responsibilities of the position. The department head shall review the progress of each employee in a trainee status monthly, or more frequently as necessary, to determine when the trainee is qualified to assume the full responsibilities of the position. Provided, however, that a trainee shall not be in such status for longer than one (1) year.

Section 6. Pay Rates in Promotion, Demotion, Transfer, Reclassification, and Completion of Probationary Period

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

- (a) Promotion: An employee who is promoted shall receive an increase to the minimum of the new pay grade range.
- (b) Demotion: The salary of an employee who is demoted may be adjusted to meet the appropriate salary range of the new position, at the recommendation of the Department Head and approval of the City Manager.

If the salary of the demoted employee falls above the maximum of the new salary range, the salary shall be frozen until such time as the salary range increases sufficient to include the demoted employee's salary.

(c) Transfer: An employee transferring from a position in one class to a position in another class assigned the same pay range shall continue to receive the same salary.

(d) Reclassification: An employee whose position is reclassified to a class having a higher salary range may be eligible for an appropriate increase, with the recommendation of the City Manager. If the position is reclassified to a lower pay range and the employee is receiving a salary above the maximum established for the new class, the salary of the employee may be adjusted to meet the appropriate salary range of the new position at the recommendation of the Department Head and approval of the City Manager.

(e) Probationary Period: An employee who successfully completes the probationary period may receive a five percent pay increase. subject to the availability of funds.

Section 7. Pay Rates in Salary Range Revisions

When the City Council approves a change in salary ranges or the City Manager changes the range for a class of positions, the salaries of employees whose positions are allocated to that class shall be affected as follows:

(a) When a class of positions is assigned to a higher pay range, employees in that class shall receive a five percent pay increase or an increase to the minimum of the new pay range, whichever is higher.

(b) When a class of positions is assigned to a lower pay range, the salaries of 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.

(c) When an adjustment is made to a pay range to reflect market changes, or as a result of a complete revision to the classification and pay plan by the City or consultant resulting in reclassification employees in classes within that pay range may or may not receive adjustments, depending on the City's financial condition or recommendations from the revision study.

Section 8. Pay for Part-Time Work

The provisions of this section of the policy apply only to full-time positions. Employees appointed to temporary and part-time positions will be paid at an hourly rate within the appropriate salary range for regular positions, or as determined by the department head.

Section 9. Overtime

To the extent that local government jurisdictions are so required the City will comply with the Fair Labor Standards Act (FLSA).

The City Manager, following FLSA regulations, shall determine which jobs are “non-exempt” and are therefore subject to the Act in areas such as hours of work and work periods, rates of overtime compensation, and other provisions. Non-exempt employees in the general work force will be compensated at a straight time rate for hours up to the FLSA established limit for their positions (usually 40 hours in a 7 day period); non-exempt sworn law enforcement officers in the police department shall be compensated at one and one half times their regular rate of pay for all hours in excess of the maximum hours for the designated work period, as established by FLSA. Non-exempted employees who qualify as firefighters under the FLSA shall be compensated at one and one half times their regular rate of pay for all hours worked in excess of the maximum hours for the designated work period, as established by FLSA. In determining eligibility for overtime in a work period, only hours actually worked shall be considered. Pay for time not worked such as a vacation leave and sick leave will not be counted when determining these threshold hours for overtime eligibility.

Whenever practicable, departments will schedule time off on an hour-for-hour basis within the applicable work period for non-exempt employees, instead of paying overtime. When time off within the work period cannot be granted, overtime worked will be paid at a time-and-one-half rate or taken as compensatory time at a time-and-one-half rate, in accordance with FLSA regulations. Compensatory time may be accumulated up to 80 hours with any hours in excess of this limit to be paid to the employee. Accumulated compensatory time shall be used before accumulated vacation leave.

Overtime work must be of an unusual, unscheduled, or emergency nature and be directed or authorized by the department head or authorized representative of the department head. If an employee is called out for emergencies, then the employee will receive overtime pay unless constraints are placed on the budget.

Exempt Employees. Employees in positions determined to be "exempt" from the FLSA (as Executive, Administrative, or Professional staff) will not receive pay for hours worked in excess of their normal work periods. These employees may be granted occasional compensatory leave by their department heads or the City Manager where the convenience of the department allows. In rare cases, such as under conditions designated by the City Council as "Declared Emergency", exempt employees may be eligible for additional pay or time off for extra hours worked, as approved by the City Manager.

The City intends to make deductions from the pay of exempt employees for authorized reasons and prohibits improper pay deductions. Exempt employees who wish to question deductions they believe to be improper may use the City's Grievance procedure, as explained in this policy. If the deduction is found to be improper the City will reimburse the employee for lost pay.

Starting and ending times may vary depending on departmental needs and for operations on a twenty-four hour schedule.

Section 10. Merit System

When the quality of an employee's performance is worthy of special recognition, the employee's salary may be advanced within the same assigned salary rate. Such merit award shall be done only after recommendation of the department head and based on the quality of the individual's work performance. Any such increases in wages and salaries require City Council funding.

Following successful completion of an employee's probationary period, the quality of his/her performance shall continue to be reviewed and appropriate instruction and counsel shall be provided in methods for improving job performance.

Merit awards shall not be granted automatically. A merit award within the applicable salary grade may be granted with the approval of the City Manager to deserving full-time employees in accordance with the following provisions:

- (a) When a new employee has completed the initial probationary period, and annually thereafter following a year of continuous service.
- (b) A promoted employee shall be eligible for a merit award after a year of continuous service from the date of promotion.
- (c) Such an award shall not exceed the maximum salary rate for the class of his/her position.
- (d) When the work of the employee is determined to be within the requirements contained in the City of Marion's Performance Evaluation guidelines, as documented on the employee's performance evaluation. All employee awards are dependent upon City Council funding.
- (e) When an employee has completed courses, certifications or the recipient of degrees beneficial to the City, the employee may be approved by the City Manager or pursuant an adopted educational incentive schedule, to receive a merit increase.

When an employee's productivity, behavior, attendance or work quality need to be improved, the department head shall not grant a merit award with the approval of the City Manager, and the employee shall be told where improvement needs to be made.

Section 11. Merit Bonus Plan

The purpose of the merit bonus is to reward employees who have reached the top of their salary range with a merit bonus when their work performance is determined to be meritorious and with City Council Funding.

All regular full-time employees of the City are eligible for a maximum of five merit awards after reaching the top of the employee's salary range. The merit bonus payment (if any) shall be awarded based on the performance of the employee as reflected on the annual performance evaluation. Merit bonuses may be awarded every other year after the employee reaches the top of the salary range for the position classification. Eligible merit bonus payments shall be made in a lump sum and will be payable at the discretion of the employer.

If an employee fails to achieve a merit bonus payment on his/her eligible year, the employee shall become eligible again the following year, provided, however, that the employee shall not earn more than one (1) merit bonus payment in a two (2) year period or a total of five (5) merit bonus payments.

Section 12. Payroll Deductions

Federal Law: Federal Income Tax, Social Security and Medicare

State Law: State Income Tax and Retirement
Employees: Dependent Coverage (Health, Life, Dental)

Credit Union

Volunteer Contributions to 401K or Loans

Child Support

Bankruptcy

Garnishment

Contributions (United Way)

Other – Coverage elected by employee

Section 13. Longevity Pay

Longevity pay is to recognize long-term service of regular, non-elected, full-time employees who have served at least one (1) year with the City of Marion. An employee who is out of work in a leave status will not earn longevity credit.

Time and Method of Payment

- (a) Longevity pay is automatic - payment shall be made when all eligibility requirements are met.
- (b) Longevity payments shall be made in a lump sum.
- (c) The hiring cut-off date will be November 1st, with payment being made during the month of November.

Pay Amounts

Annual longevity pay amounts are based on the length of consecutive years of service with the City of Marion.

For employees with hire dates prior to February 15, 2011, amounts shall be computed in the following manner:

More than 1, but less than 2 years service	1 days pay
More than 2, but less than 3 years service	2 days pay
More than 3, but less than 4 years service	3 days pay
More than 4, but less than 5 years service	4 days pay
More than 5, but less than 6 years service	5 days pay

Individuals with six (6) or more years of service will receive five (5) days plus an established fixed amount, times the number of months of service above five (5) years. This fixed amount will be the same for all regular full-time employees approved by the City Council.

For employees with hire dates after February 15, 2011, pay amounts shall be computed as \$50 per year for each year of service with the City of Marion.

Eligibility Requirements

- (a) To qualify for longevity pay an employee must be in a current pay status. Employees who have resigned, retired, or otherwise left employment with the City prior to this time shall not qualify for payment. In addition, employees on unpaid leave for 6 months during the previous year shall not qualify for payment.
- (b) An employee shall have at least one (1) year of regular, non-elective, full-time service before being eligible for any longevity payments.
- (c) The employee must have a regular appointment.
- (d) Credit for the service requirement shall not be given for temporary regular or temporary part-time employment and periods of leave.

Records Responsibility

Accurate records on an employee's length of service and the amount of longevity pay shall be kept in the City's personnel department.

Effect of Longevity Pay

Longevity pay is not to be considered a part of annual base pay for classification and pay purposes, nor is it to be recorded in personnel records as a part of annual base salary.

Payroll Deductions

The following payroll deductions are to be made from each longevity payment:

- Social Security Tax (FICA)
- Medicare
- Employee's Retirement

No other deductions are to be made. (Such as: savings bonds, credit union savings or payments, or insurance premiums.)

Continuance of Longevity

The continuance of longevity pay as an employee benefit is subject, on a year to year basis, to the availability of funds.

Article VI. Work Conditions and Expectations

Section 1. Work Period

The work period is defined as seven consecutive days. Full-time, non-exempt, employees (other than public safety shift employees) normally work 40 hours per work period and are subject to the overtime provisions set forth within these policies. Police officers and firefighter's work schedule(s) will be established and maintained in accordance with FLSA and work periods will be set as 28 consecutive days. Non-exempt police officers, regardless of rank, are subject to overtime after 171 hours of work over 28 consecutive days. Non-exempt fire-fighters, regardless of rank, are subject to overtime after 212 hours of work over 28 consecutive days. Exempt employees in administrative, professional or managerial positions shall work the number of hours necessary to assure the satisfactory performance of their duties.

When the activities of a particular department require some other schedule to meet work needs, the City Manager may authorize department heads to create deviations from the normal schedule.

Due to the variation in work schedules and needs among departments, the City makes no attempt to define a uniform policy for rest periods or breaks. Department heads may establish appropriate rest period practices which best serve the City's interest within the work units under their supervision. Such

practices shall be subject to review of the City Manager, and shall be limited to one rest period or break in the morning and in the afternoon no longer than 15 minutes each.

All employees are normally allowed thirty (30) minutes or one hour for one (1) meal break during any normal working day. Breaks of at least 30 minutes taken for mealtime will not be counted as part of any employee's normal work hours

Section 2. Designated On-Call Time

Weekend call duty will start at 5:00 PM on Friday and continue through to 7:00 AM Monday morning.

Responsibilities Of McDowell County Communications (located lower level of Marion Police Department)

The dispatcher will screen all calls to determine:

- (a) If a police officer can handle the situation or
- (b) If the on-call person should be contacted.

Setting up cones to designate hazardous situations, checking of small leaks, etc. should be carried out by the police department. If a dead animal on a street is reported during the week-end, a police officer will remove the animal out of the travel lane to the edge of the street. The on-call person will be contacted at 8:00 AM on Saturday and Sunday to remove any animals reported during the night and at 4:00 PM for any animals reported during the day.

If the call is outside the City Limits, the on-call person will be contacted.

When the dispatcher receives any calls concerning any alarms due to pump stations or either of the treatment plants, they will call the treatment plant to reach the plant operator and if no one is reached, they will page and call the designated on call personnel.

Restrictions

The individual that participates in the weekend program is prohibited from using alcohol or taking medications that cause drowsiness in order that they are fit for duty if called to return.

This individual will have a phone and carry a cell phone with them at all times for communication with the McDowell County Communications or the Marion Police Department. All complaints are to come through the McDowell County Communications. An on-call cell phone is available at Public Works to be provided to the on-call personnel, if needed, for the weekend call duty.

A response time not exceeding thirty (30) minutes will be required. Upon receiving a call, the Public Works on-call person is to respond to the McDowell County Communications dispatcher. The on-call person for the Waste Treatment plant is to respond to the Marion Wastewater Treatment facility operator, if the operator cannot be reached then the on call person should contact the McDowell County Communications dispatcher.

This individual will have access to a City vehicle which will remain parked at the Public Works facility, or Wastewater Treatment Facility. Keys to the Public Works facility, if needed, can be checked out through the Marion Police Department.

This vehicle is not to be used for any personal business. No one is to be allowed in the vehicle except for City employees and the vehicle is to be used only as transportation to and from the job site. The consumption of alcohol or the use of medication that causes drowsiness is prohibited when driving a City vehicle. (see above)

The Public Works on-call individual is to come to the Marion Police Department to punch in on their time card. Once the work has been completed, the on-call person will return to the Marion Police Department and punch out. The Wastewater Treatment on-call individual will punch in and out at the facility.

If it is determined that a problem is too serious for one individual to deal with, the on-call person will have the police dispatcher contact the

superintendent of the affected area. (Water Distribution Superintendent or Street Superintendent).

If the superintendents are unavailable, the Public Works Director is to be contacted. If none of these individuals are available, the firefighters on duty at the Marion Fire Department will have the authority to authorize additional personnel.

When it is a major problem (broken water mains, water plant failure, street cave-ins, etc.), the Public Works Director along with the superintendent of the affected area is to be contacted immediately by the Police Department.

For Wastewater Treatment personnel - if it is determined that the problem is too serious for one individual to deal with or if the problem concerns an environmental impact, then the Operator in Responsible Charge should be called. In the event that a more serious problem or the Operator in Responsible Charge cannot be contacted, then the Plant Superintendent should be called.

When the McDowell County Communications receives a complaint on week days (Monday through Friday), it is to be passed on to the superintendent of the affected area.

When the Public Works Director, the Water Distribution Superintendent or the Street Superintendent leave town, they are to report to the Marion Police Department as to the time of departure and as to the expected time of arrival back in town.

Payment for Call Duty

The on-call person will receive an established payment amount of to be determined by the City Manager (necessary tax deductions etc. will apply) as compensation for taking weekend call duty. If the individual is called out, they will receive their regular rate of pay for all hours worked up to forty and time and half for all hours over forty.

If the weekend call person cannot be contacted within 30 minutes of the first attempt by the McDowell County Communications or Plant

Operator, the entire weekend call duty pay will be forfeited, and the employee may be subject to disciplinary action.

The on-call person taking duty during established holidays by the City of Marion will receive four (4) hours off with pay for each day of duty. The schedule for time taken off will be arranged through the employee's supervisor. This time off, if possible, shall be taken within one (1) work week.

Section 3. Volunteer Service

The City encourages and shall permit employees to participate as members of a volunteer emergency service to the extent that such volunteer activities do not interfere with the employee's responsibilities in the City service. However, no employee will be required or will be allowed to volunteer his/her time to the City to perform the same or similar work performed as a regular employee.

Section 4. Safety, Accidents And Driver's License

It is the intent of the City to provide for an ongoing program that assures a safe, healthy work environment for all employees and complies with all safety laws and regulations. To that end, each supervisor shall be responsible for:

- (a) Providing safe work procedures and environments;
- (b) Implementing safety policies and programs;
- (c) Informing and training employees in safe work habits;
- (d) Detecting and correcting unsafe practices and conditions;
- (e) Investigating accidents and preparing accident reports;
- (f) Encouraging employees to report unsafe conditions and to submit practical safety suggestions.

Likewise, each City employee shall be responsible for:

- (a) Developing and maintaining safe work habits;
- (b) Promptly reporting all accidents and injuries;
- (c) Pointing out what are believed to be dangerous practices and working conditions;
- (d) Assisting with investigations of accidents;

- (e) Taking proper care of safety equipment;
- (f) Wearing proper clothing and avoiding loose sleeves, cuffs, rings, bracelets and long hair around moving machinery; and
- (g) Knowing the location and use of fire extinguishers, the location of fire exits and the best method for reporting a fire.
- (h) Abiding by all safety laws and regulations.

Reporting Vehicle Accidents

If a City vehicle or equipment is involved in an accident, either on a public street or private property, it is not to be moved. The Police Department and the immediate supervisor or department head must be notified immediately. Failure to do so may be grounds for dismissal or other disciplinary action.

An investigation is to be carried out by the immediate supervisor, department head, and the personnel department.

If an employee is involved in an accident that involves a fatality, or any accident in which the driver is issued a citation under state or local laws, for a moving traffic violation, arising from the accident, that employee will be required to submit to an Alcohol and Controlled Substance Test. Testing will be administered immediately following the accident or as soon as medically and legally possible.

Driver's License

Many jobs with the City of Marion require a valid North Carolina driver's license. The following is the policy of the City of Marion regarding suspended and/or revoked driver's license after employment. This policy may not apply to the Police or Fire Departments.

I. Requirement for Driver's License – All employees in the following departments are required to have a valid North Carolina driver's license:

- (a) Sanitation
- (b) Street
- (c) Water
- (d) Water Treatment
- (e) Waste Water Treatment

- (f) Public Works Administration
- (g) Purchasing
- (h) Personnel
- (i) Planning and Zoning
- (j) Inspections
- (k) Fleet Maintenance

II. Suspension and/or Revocation of Driver's License – The following procedure shall be followed regarding suspension and/or revocation of driver's license.

- (a) An employee is required to report the loss of his/her driver's license to his/her immediate supervisor the following scheduled workday. Failure to comply will lead to suspension or dismissal.
- (b) Any employee may continue to work for a period of 30 days if his/her driver's license has been suspended unless such license suspension will have a detrimental impact on City operations, in which case suspension of the employee without pay, or dismissal may be authorized by the City Manager.
- (c) If the employee's license is reinstated before the end of this time period, no action will be taken. A suspension or revocation for 31 days to 90 days will result in the employee having a non-disciplinary suspension, without pay. If the employee's license is reinstated before this time period ends, the employee may return to his/her position prior to suspension.
- (d) An employee, whose license has been suspended or revoked for a period of time longer than 90 days, and is required to have a driver's license, will be dismissed.

III. Restricted Driver's License – If a restrictive license can be obtained whereby an employee can fulfill his/her job requirement, then employment with the City may continue.

IV. Application – Please note that all reasons for losing one's license cannot be contained in this policy. Therefore, in application of this policy, an employee's work record and reason for loss of license must be taken into consideration in determining the length of suspension, in determining dismissal or in determining reinstatement. Every effort will be made to treat every employee as fairly as possible.

In addition to the above provisions, the City will maintain a safety manual which details safety related procedures and responsibilities. Employees shall be expected to comply with those provisions.

Section 5. Gifts and Favors

- (a) No elected official or employee of the City shall accept any gift whether in the form of service, loan, thing of value or promise from any person who to the employee's knowledge is interested directly or indirectly in any manner whatsoever in business dealings with the City.
- (b) No elected 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 elected official or employee shall grant in the discharge of duties any improper favor, service, or thing of value.

Section 6. Political Activity Restricted

Each employee has a civic responsibility to support good government by every available means and in every appropriate manner. Each employee may join or affiliate with civic organizations of a partisan or political nature, may attend political meetings, 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 in accordance with the Constitution and laws of the United States of America. However, no employee shall:

- (a) Engage in any political or partisan activity while on duty;
- (b) Use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office;
- (c) Be required as a duty of employment or as a condition for employment, promotion, or tenure of office to contribute funds for political or partisan purposes;
- (d) Coerce, solicit or compel contributions for political or partisan purposes by another employee of the City;
- (e) Use any supplies or equipment of the City for political or partisan purposes, or
- (f) Be a candidate for the City Council.

Any violation of this section shall subject such employee to disciplinary action up to and including dismissal.

Section 7. Outside Employment

The work of the City will take precedence over other occupational or special interest of employees that may interfere or be perceived as creating a conflict or interference. All outside employment for salaries, wages, or other compensation and all self-employment must be reported to and approved by the employee's department head and City Manager. Outside employment causing or perceived as a conflict of interest shall be disapproved. The City Manager shall be responsible for final interpretation. Conflicting outside employment will be grounds for disciplinary action up to and including dismissal.

The City Manager may restrict the number of hours of outside employment to be worked by an individual employee. As a guideline, the average outside employment hours worked over a calendar year should be no more than one-half the amount of hours worked weekly for the City in a normal work week with no overtime (20 hours per week for a 40 hour employee, 21 hours per week for a 42 hour employee, 28 hours per week for a 56 hour employee).

Employees working a second job are not to apply for unemployment benefits with the outside employer without notifying their supervisor in writing. Authorization to apply for unemployment benefits from an outside employer must be given in writing by the City Manager, in order for the employee to apply for such benefits, since the City will be held responsible for the majority of the unemployment benefit as the primary employer. It is the responsibility of the employee to determine if the outside employer has filed for unemployment benefits on the employee's behalf. Failure to follow this policy shall be grounds for disciplinary action up to and including dismissal. The employee shall be required to reimburse the City for all unemployment benefits charged to the City as a result of outside employment.

Off the job injuries: An employee who sustains an injury or illness in connection with outside employment and is receiving Workers' Compensation benefits from that employer shall not be entitled to receive City Workers Compensation benefits or use accrued City sick leave.

Section 8. Limitation of Employment of Relatives

- (a) Members of an immediate family shall not be employed in the same department or same building at the same time. Neither shall two (2) members of an immediate family be employed at the same time if such employment would result in an employee directly or indirectly supervising a member of the immediate family.
- (b) This policy shall not be retroactive, and no action will be taken concerning those members of the same family employed in conflict with (a) above prior to the adoption of this policy.
- (c) Immediate family is defined for the purpose of this section as spouse, mother, father, guardian, children, sister, brother, grandparents, grandchildren plus the various combinations of half, step, in-law and adopted relationships that can be derived from those names, or anyone living as a part of the same household.
- (d) No member of any employee's immediate family shall be hired without prior approval of the City Manager.
- (e) Immediate family members of the Mayor, City Council and City Manager shall not be employed in any capacity, either full-time, part-time, temporary or as a contract employee.

Section 9. Conformance to Immigration Law Requirements

All employees are required to furnish proof of citizenship or other required documents indicating a legal right to work in the United States. Copies of the completed form I-9 shall be a permanent part of their personnel file.

Section 10. Confidential Information

No appointed official or employee shall, without the approval of his/her department head, disclose confidential information concerning the property, government, or affairs of the City. Nor shall they, under any circumstance, use such information to advance the financial or other private interest of themselves or others.

Section 11. Controlled Substances

No employee shall use intoxicating beverages or non-prescribed controlled drugs of any kind while on duty. Nor shall an employee report for duty while under the influence of an intoxicant or non-prescribed controlled drug. Any employee using medication or a controlled drug by prescription that may affect job performance or safety shall notify their supervisor. The City's substance abuse, testing, referral and rehabilitation administrative policy contained in the City's drug testing policy will apply in most circumstances. The City Manager will be responsible for administration of this program.

Substance Abuse Policy

Policy Statement:

The use, possession, purchase, sale or manufacture of alcohol, illegal drugs or non – prescribed drugs or being under the influence of alcohol, illegal drugs, or non – prescribed drugs while on City property, while operating City vehicles, or while engaging in City business is strictly prohibited.

Scope:

Employees Subject to Testing – All applicants for full or part time positions at the City and all full time and part-time employees.

Alcohol – Means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol including methyl and isopropyl alcohol.

No employee shall report for work or remain at work while having an alcohol concentration of 0.02 or greater.

No employee shall report for work within eight (8) hours after using alcohol.

No employee required to take a post-accident test shall use alcohol for eight hours following the accident, or until he/she undergoes a post-accident alcohol test, whichever occurs first.

Controlled Substance – The U.S. Department of Transportation (DOT)

Requires testing for amphetamines, cannabinoids, cocaine, opiates, phencyclidine, and illegal substances or non – prescribed drugs.

No employee shall report for work or remain when the employee uses any controlled substance, except when the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee’s ability to safely operate a motor vehicle.

No employee shall report for work or remain on duty, if the employee tests positive for controlled substances.

Prescribed Medications - All employees taking prescribed medications that could impair their ability to safely operate a motor vehicle or related activities associated with loading, unloading, inspection and maintenance or other activity that is classified as “on duty time” 49 CFR 395.2 must report this to their immediate supervisor as directed by this policy.

Qualifications for Employment and Prohibited Conduct

Prohibited Conduct – The City prohibits any alcohol misuse and/or drug use that could affect employee performance, including:

Alcohol

- (a) Use while at work.
- (b) Use during eight (8) hours before reporting for work.
- (c) Reporting for work or remaining at work with an alcohol concentration of 0.02 or greater.
- (d) Possession of alcohol, including the possessions of medicines containing alcohol (prescription or over the counter), unless the packaging seal is unbroken.
- (e) Use during the eight (8) hours following an accident or until he/she undergoes a post-accident test.
- (f) Refusal to take a required test.

Note: An employee found to have an alcohol concentration of 0.02 or greater shall not be permitted to remain at work and may be subject to disciplinary action.

Controlled Substance

- (a) Use of any drug, except by doctor's prescription, and then only if the doctor has advised that the drug will not adversely affect the employee's ability to safely operate equipment.
- (b) Testing positive for illegal drugs; and
- (c) Refusing to take a required test.

Consequences and Disqualifications

- (a) The employee shall not work or be permitted to work if any of the above listed prohibitions are violated.
- (b) Any employee violating these prohibitions will be discharged from employment.

Testing Circumstances

Pre-employment Testing

All applicants for part-time or full-time positions who have been extended a conditional offer of employment or persons transferring to positions requiring commercial driver's license, will be directed to submit to an Alcohol and Controlled Substance Test.

An alcohol test result must indicate an alcohol concentration of less than 0.02 in order for the employee to be considered for employment.

A drug test will be conducted during the pre-employment process and a negative drug test result must be received before a final offer of employment is made.

Post-Accident-Testing

If an employee is involved in an accident/incident or is injured in an accident/incident involving equipment or vehicles, arising out of and in the course of employment, that employee will be required to submit to an Alcohol and Controlled Substance Test. Testing will be administered

immediately following the accident/incident or as soon as medically and legally possible.

The alcohol test must be administered within (2) hours following the accident and in no case shall more than (8) hours elapse before the test is administered. It is the employee's responsibility to notify the City immediately to insure actions are taken to meet the testing requirements.

The driver must refrain from using alcohol for (8) hours following the accident, or until he/she submits to an alcohol test, whichever comes first.

The drug test must be administered within 32 hours following the accident. The driver must remain available for testing, or the City will consider the driver to have refused to submit to the testing.

Note:

Nothing in this requirement should be construed as to require the delay of necessary medical attention for injured people following an accident.

Random Testing:

Random testing will be done on percentage basis in a fair and equal manner for employees with DOT-required CDL positions and all safety-sensitive positions such as Public Safety employees and volunteers.

For alcohol or drug testing an employee may be tested at any time that the employee is at work for the City.

Selection of employees for random testing will be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with drivers' Social Security numbers, payroll identification numbers, or other comparable identifying numbers.

Each time a random selection is made, every employee will have an equal chance of being selected. Random tests will be unannounced and spread reasonably throughout the year. Employees when notified that they have been selected for random testing will proceed immediately to the collection site.

Reasonable Suspicion Testing

Any employee, while on City property, while operating a City Vehicle, or while engaging in City business, acts in a manner sufficient to cause reasonable suspicion that he/she is under the influence of alcohol or drugs will, be required to submit to an Intoxilyzer test and/or a controlled substance test upon the approval and directions of a Marion Police Officer.

Alcohol testing under this section will only be performed by a Marion Police Officer holding a permit issued by the North Carolina Department of Health and Human Services to perform chemical analysis of breath.

Alcohol testing will only be performed using an Intoxilyzer, Model 5000 in accordance with current regulations of the North Carolina Commission of Human Services.

Return to Work Testing

Any employee that, based on the City approval, is allowed to return to work following referral, evaluation, and treatment as a result of a positive alcohol or drug test will be required to submit to a return-to-work alcohol and/or controlled substance test. An alcohol concentration of less than 0.02 and a negative drug test will be required before a return-to-work decision is made.

Follow-up Testing

In the event an employee is allowed to return to work following referral, evaluation, and treatment, a minimum of six (6) unannounced alcohol and/or drug tests will be required during the next twelve (12) months of employment. Follow up testing may continue for up to 60 months following returning to work at the City's discretion, based on recommendations from the Substance Abuse Professional.

Alcohol testing and Controlled substance testing may be performed at any time the employee is at work for the City.

Discipline And Consequences

Pre-employment/Pre-duty

An applicant for part time, full time or transfer with a verified positive controlled substance test result and/or a verified positive controlled substance test result and/or a confirmed breath test result of 0.02 or greater will be denied employment.

Reasonable Cause

Any employee of the City subject to the terms of this policy, as a result of reasonable cause testing, with a verified positive controlled substance test result and/or an alcohol breath test with a confirmed test result of 0.02 or greater will be terminated from employment.

Post-accident

Any employee of the City subject to the terms of this policy as a result of a post-accident test, with a verified positive controlled substance test result and/or a confirmed alcohol breath test with a confirmed test result of 0.02 or greater will be terminated from employment.

Random

Any employee of the City subject to the terms of this policy, as a result of a random test, with a verified positive controlled substance test and/or a confirmed alcohol test result of 0.02 or greater will be terminated from employment.

Supervisory Training as required by DOT will be provided to all Supervisors.

Educational material as required by DOT will be provided to all employees in safety – sensitive positions.

If an Employee should approach the City for assistance through rehabilitation for drug abuse or alcohol abuse prior to a testing request by the City, the City will consider a medical leave of absence for treatment.

Under no circumstances will the City pay for any counseling or rehabilitation for drug or alcohol abuse except as indirectly paid by the employee's City paid medical insurance policy.

Any questions regarding this policy should be directed to the City of Marion.

Section 12. Use of City Owned Equipment

The personal use of any City owned equipment or supplies by any employee elected or appointed official or individual is prohibited unless authorized by the City Manager. Should authorization be granted, use will be limited to the use specified in the authorization.

Use of a City owned vehicle is governed by the following:

(a) Vehicles owned by the City may be provided to one or more employees in connection with City business and shall be used only on City business. When the vehicle is not used in the City's business, it is kept on the City's business premises. Pursuant to Federal and State law, neither the employee, nor any person, whose use would be taxable to the employee, may use the City vehicle for personal use. No one is to be allowed in the vehicle except for City employees.

(b) For bona fide non-compensatory business reasons, the City may require certain employees to commute to and from work in City vehicles that are not exempted by IRS regulations. In accord with federal and state law, an employee may not use the City owned vehicle for personal uses other than commuting. Under these conditions, the City will account for commuting use as specified and required in IRS regulations.

Section 13. Travel and Expense Reimbursement

Employees and elected and appointed officials will from time to time, be involved in out-of-city travel to attend schools, business meetings, conferences, etc. All reasonable expenses (e.g., meals, lodging, etc.) shall be reimbursed at actual costs for elected and appointed officials, and at the amount set by the Travel Expense Requisitions schedule for employees, while travel in a personal car will be reimbursed at a mileage rate consistent with prevailing IRS limits to the extent authorized by the City Council for non-taxable reimbursements authorized by the City Council.

Advances of travel and expenses may be authorized in unusual cases. The City Manager will approve all requests for travel advances. Such requests shall be made at least ten (10) work days in advance of the actual expenses.

Employees attending meetings, conferences, etc., where lodging is offered and available at the institution, shall be required to use such accommodations.

Reimbursement for meal expenses shall be guided by the adopted Travel Expense Requisition schedule for employees. Meal expenses shall ordinarily be reimbursable only when incurred on overnight out-of-City travel or when the meal itself is the occasion of a business meeting. Meal expenses shall not be reimbursed when a part of lodging (i.e. breakfast included) or provided as part of the seminar.

All travel claims must be supported by detailed documentation, usually in the form of receipts or similar vouchers.

The City Manager, upon the recommendation by the Finance Director, may deny reimbursement of any questionable, unsupported, or excessive expense claims submitted by employees.

Any violation of the provisions in this section shall be deemed improper conduct and may subject the employee to discharge or other disciplinary action.

Section 14. Discrimination/Sexual Harassment

The City is committed to maintaining a work environment that is free of discrimination. In keeping with this commitment, no discrimination shall be exercised, threatened, or promised against or in favor of any applicant or employee because of his/her race, religion, color, creed, national origin, age, political beliefs, sex or disability.

Harassment consists of unwelcome conduct, whether verbal, physical, of or visual that is based upon a person's protected status. The City will not tolerate harassing conduct that affects tangible job benefits, that interferes

with an individual's work performance, or that creates an intimidating, hostile, or offensive working environment.

An employee who feels they have been harassed are highly encouraged to bring it to the attention of either the Department Head or the City Manager who shall conduct a thorough investigation and develop a course of appropriate action. The complaint should be submitted in writing. If the employee works directly for the City Manager, the complaint may be filed with the Mayor.

The City forbids retaliation against anyone who has reported harassment. If allegations warrant, the City will investigate to the fullest extent practicable, and will try to keep complaints and the policy of the complaint confidential.

Sexual harassment:: The City expressly prohibits any form of sexual harassment and seeks to guarantee all employees the right to work in an environment free from such harassment.

A particular form of harassment, sexual harassment is defined as Unwelcome sexual advances, request for sexual favors, and other physical, verbal, or visual conduct based on sex, constitutes sexual harassment. Sexual harassment happens when submission to the conduct is an explicit or implicit term of condition of employment; submission to or rejection of the conduct is used as the basis for an employment decision; the conduct has the purpose or effect of reasonably interfering with an individual's work performance. Sexual harassment may include explicit sexual propositions, sexual innuendo's, suggestive comments, sexual oriented "kidding" or "teasing", "practical jokes", jokes about gender specific traits, foul or obscene language or gestures, displays of foul or printed or visual material, and physical contact, such as patting, pinching, or brushing against another's body.

The City recognizes that false accusations of sexual harassment can have a serious effect on innocent men and women. Individuals falsely accusing another of sexual harassment will be disciplined in accordance with the nature and extent of his/her false accusation.

Section 15. Personal Appearance and Property

Employees will be expected to wear clothing appropriate to the department and environmental working conditions. Clothing such as shorts and tank tops should not be worn while at work.

Facial jewelry will not be allowed (example: nose, lip, eyebrow, cheek, and tongue). Earrings should be conservative in nature and not pose a safety risk to the employee. Clothing must cover tattoos that are considered offensive in nature.

It shall be the policy of the City of Marion not to replace personal items of City employees lost, damaged, or stolen.

The City will replace, under existing policies, safety gear furnished by the City.

Section 16. Surrender of Property

An employee who is suspended or discharged shall be required to return all items of equipment and supplies, including uniforms issued, rented, or owned by the City. Return of such equipment must precede the issuance of such an employee's final pay check.

Section 17. Loaning of Equipment

The City of Marion will not loan out any equipment, chairs, tables, or other types of materials and/or supplies.

This policy does not apply to Federal, State, or local governments, including the Recreation Department, Senior Center, Health Department, School System, McDowell Technical Community College, Keep McDowell County Beautiful, the Marion Downtown Business Association, contractors working for the City of Marion, or any other organization with whom the City has a funding relationship.

Section 18. Residency

The City Manager is required to maintain a residence in the City Limits of Marion. The City Council may grant the City Manager a

reasonable period of time after his or her initial appointment to establish residency in the City.

The following positions are designated as emergency response sensitive positions and are encouraged to maintain a principal residence within the city limits of Marion:

Fire Chief
Police Chief
Public Works Director

Persons in these positions wishing to reside outside the city limits may request a waiver from this requirement. The City Manager may grant a waiver from this requirement, if the ability to respond to emergency situations is not hampered, however, such positions should reside no more than six miles from the primary City Limits, which does not include satellite annexation areas.

An employee falling under this requirement, who plans to change residence, must give prior notice to the City Manager.

Section 19. Telephones, e-mail and Internet

Usage of City telephones and computers for personal communications and Internet connections or email for personal reasons should be brief. Likewise, employee use of personal cellular telephones and text messaging devices on the job should be brief.

The Internet service or City owned cellular telephones may not be used for transmitting, retrieving or storing any communications of a discriminatory or harassing nature or which are derogatory to any individual or group, obscene, pornographic or X-rated, or defamatory or threatening in nature or for “chain letters” or any other purpose which is illegal or against City policy or contrary to the City’s interest.

Text messaging and receiving or transmitting photographs on City owned cellular telephones should be limited to that only necessary to conduct City business as additional charges are incurred. In addition, downloading of music or additional ring-tones is prohibited. City land line telephones shall not be used for personal long-distance calls.

These systems are intended for business use of the City and all computer information, voice mail and electronic mail messages are considered City records. Therefore, the City maintains the right and ability to enter into any of these systems and to inspect and review any and all data recorded in those systems without prior notice. Since the City reserves the right to obtain access to these systems, employees should not assume that voice mail and electronic mail messages are private and confidential.

Any employee found to be abusing the privilege of City facilitated access to the Internet, use of City owned cellular telephones or City land line telephones will be subject to disciplinary action, which may include termination.

Section 20. Inclement Weather

The Department Head may be called to determine if the offices will be open or closed. An employee unable to work due to inclement weather may use vacation or compensatory time. In emergency situations, designated supervisors or employees may be required to report to work.

Article VII. Leaves of Absence

Section 1. Holidays

The following days, and other days as the City Council may designate, are holidays with pay for employees and appointed officers of the City working the basic workweek.

New Year's Day

Martin Luther King Day

Good Friday

Memorial Day

July 4th

Labor Day

Veterans Day

Thanksgiving-Two Days-Thursday and Friday

Christmas - Two to Three Days

Christmas -The City will try to observe the same holidays or schedule as McDowell County not exceeding the established holidays as set forth in this policy.

New Year's Day, July 4th and Veterans Day are floating holidays. The day observed is the day of the week on which the holiday actually falls. If the Holiday should fall on a Saturday, Friday is observed, if the holiday falls on Sunday, Monday is observed.

Martin Luther King Day, Memorial Day and Labor Day are taken on the Monday that these holidays are observed according to the calendar.

Christmas is usually taken the workday before, Christmas Day, and the workday after.

All employees involved in a twenty-four (24) hour, seven (7) day a week operation will be granted eleven (11) or twelve (12) days off, depending on the number of holidays granted other employees, in lieu of fixed holidays. These days can be taken at a time that is agreeable with the department head and the operational schedule of the department.

The granted time off will equal the regular scheduled shift hours that one would normally work. If one is scheduled to work eight (8) hours, then eight (8) hours will be granted off for the holiday. These days may not be taken prior to the passing of the holiday.

For employees having a workweek with greater hours than the basic workweek, holiday leave shall be granted in the same proportion as their workweek is to a forty (40) hour workweek.

Employees still on probation will be given time off, without pay, for holidays.

Section 2. Effect of Holidays on Other Types of Leave

Regular holidays which occur during a vacation, sick or other leave period of any appointed officer or employee of the City shall not be considered as vacation, sick or other leave.

Section 3. Holiday-When Work Is Required

Employees required to perform work on regularly scheduled holidays may be granted “holiday compensatory time off” or paid at their hourly rate for the hours actually worked in addition to any holiday pay to which they may be entitled. “Holiday compensatory time” shall be granted whenever feasible and shall be taken within three (3) months from the time it is earned.

“Holiday

compensatory time”, not taken within three (3) months will be paid out to the employee, unless an extension of time is specifically requested by the employee. An extension of time up to, but not exceeding, twelve (12) months may be granted when specifically requested. Accumulated “holiday compensatory time” shall be used before accumulated vacation leave. Should an employee leave prior to being able to use the holiday, the employee will be paid for the holiday time not taken.

Section 4. Vacation Leave

Vacation leave shall be used for rest and relaxation and in emergencies when sick leave has been exhausted.

(a) Initial Appointment

Probationary Employees serving a probationary period following initial appointment may accumulate vacation leave but shall not be permitted to take vacation leave during the probationary period.

(b) Employees with Previous Local Government Service

Employees with verifiable previous local government service shall be given credit for those years served when computing annual Vacation. These years must be remaining in the employees account, i.e. not cashed out and verifiable via ORBIT.

(c) Vacation Leave-Manner of Accrual

Each full-time regular and probationary employee shall earn vacation leave annually, provided the employee is active and eligible to contribute to the North Carolina Local Government Retirement System, as follows:

Years of Service	Amount of leave earned*
0 - 10 years	10 days (80 hours)
10 - 25 years	15 days (120 hours)
25 and thereafter	20 days (160 hours)

(* hours of vacation earned annually based on an 8 hour work day)

Employees who are out of work in a leave status shall not be eligible for accumulation of vacation leave. For the purposes of vacation leave accumulation, in no case shall the average number of hours for a position be less than the maximum number of hours an employee in that classification may work under the requirements of the FLSA. The amount of vacation leave earned shall be determined by dividing the annual leave total by the number of pay periods each year and this amount shall be credited to each active employee each pay period.

(d) Vacation Leave-Maximum Accumulation

Annual leave may be accumulated up to 200 hours maximum for 40 hour employees, up to 210 hours maximum for 42 hour employees and up to 280 hours maximum for 56 hour employees. At the end of each calendar year, vacation accumulated beyond this amount will automatically be converted to sick leave on an hour for hour basis. Additional accumulated vacation time may be converted to sick leave upon written request from the employee and approval by the City Manager. If the employee separates from service, payment for accumulated annual leave shall not exceed the maximum accumulation listed above. Like regular sick leave, any unused converted sick leave may be counted toward creditable service at retirement, if allowed by the rules of the Local Government Employees' Retirement System.

(e) Vacation Leave-Manner of Taking Leave

Vacation leave may be taken as accumulated by regular employees subject to policy and approval by the department head. General guidelines are fourteen (14) day notice for a five (5) day or longer vacation request; five (5) day notice for three (3) to four (4) day vacation request; and two (2) day notice for a one (1) to two (2) day vacation request.

(f) Vacation Leave-Previous Leave Credit

Vacation leave credit accumulated by each employee as of the adoption of these personnel administration policies shall be retained as of the effective date of these policies.

(g) Vacation Leave-Terminal Pay of Vacation Leave

An employee resigning from municipal employment shall be paid for vacation leave accumulated to the date of separation not to exceed a maximum of 200 hours for 40 hour employees, up to 210 hours maximum for 42 hour employees and up to 280 hours maximum for 56 hour employees.

(h) Vacation Leave-Payment for Accumulated Vacation upon Death

The designated beneficiary of an employee who dies while employed by the City shall be entitled to payment for all of the accumulated vacation leave credited to the employee's account, not to exceed a maximum of 200 hours for 40 hour employees, up to 210 hours maximum for 42 hour employees and up to 280 hours maximum for 56 hour employees, at the time of death.

Section 5. Sick Leave

(a) Employees with Previous Local Government Service

Employees with verifiable previous local government service shall be given credit for those years served when computing annual Sick Leave. These years must be remaining in the employees account, i.e. not cashed out and verifiable via ORBIT.

(b) Sick Leave-Manner of Accrual

Each full-time regular and probationary employee shall accrue sick leave annually at a rate of the average number of hours scheduled per week multiplied by 1 for employees with less than 5 years of service and multiplied by 2.4 for employees with over 5 years of service provided the employee is active and eligible to contribute to the Local Government Retirement System. Employees who are out of work on a leave status shall not be eligible for accumulation of sick leave. For the purposes of sick leave accrual, in no case shall the average number of hours for a position be less than the maximum number of hours an employee in that classification may work under the requirements of the FLSA. The amount of sick leave accrued shall be determined by dividing the annual leave total by the number of pay periods each year and this amount shall be credited to each active employee each pay period.

(c) Sick Leave-Maximum Accrual

Sick leave shall accumulate with no maximum accumulation, and may be used as credit for service under the NC Local Governmental Employee's Retirement System.

(d) Sick Leave-Physician's Certificate

The employee's supervisor or department head may require a physician's certificate concerning the nature of the illness and the employee's physical capacity to resume duties for each occasion on which an employee uses sick leave.

Sick leave with pay is not a right that an employee may demand but a privilege granted by the City Council for the benefit of an employee when sick. Sick leave shall be granted to an employee absent from work for any of the following reasons: sickness, bodily injury, required physical or dental examinations or treatment, or exposure to a contagious disease. Sick leave may also be used for illness in the employee's family that requires the care of the employee.

Good attendance is extremely important as it allows each City department to carry out the services and projects assigned to it and expected of it. When employees are absent, projects are delayed, service delivery suffers, and other employees must work harder to complete the same amount of work. Therefore, it is in the interest of employees, supervisors, and the City as a whole to promote good attendance.

Abuse of sick time shall not be tolerated and shall subject the employee to disciplinary action. Examples of abuse of sick time shall include, but not be limited to: taking unapproved leave, failure to notify a supervisor in advance of the need to take a personal day, use of all sick time accrued, or lying about the need for or use of sick time. Supervisors may require the presentation of a physician's note for an employee using sick time to go to a medical or dental appointment for themselves or a family member.

Notification of the desire to take sick leave shall be submitted to the employee's supervisor as early as possible, but in no case later than two hours after the beginning of the scheduled workday. Employees who resign or are dismissed from City employment shall lose all sick leave credits. Employees

who retire with the City may apply sick leave credits toward retirement, subject to the rules of the North Carolina Local Government Employee's Retirement System. An employee may transfer sick leave from another governmental agency. Such transferred sick leave may be used in the same manner as sick leave accrued as a City employee. Retroactive transfers of sick leave from another governmental agency are allowed provided that the employee provides documentation from the previous employer of the number of hours to be transferred.

Incentives

Along with disciplining employees for abuse of sick time, it is the policy of the City of Marion to reward employees for excellent attendance. Therefore, the following incentives shall apply for various levels of attendance:

An employee who does not use any sick leave in a three (3) month period, or quarterly, shall receive four (4) hours of personal leave. Such awards shall be made on January 1, April 1, July 1 and October 1 of every year. In order to be eligible for this award, the employee must have been employed with the City of Marion as of the first day of that three (3) month period (October 1 for a January 1 award, January 1 for an April 1 award, April 1 for a July 1 award and July 1 for an October 1 award).

An employee who completes one (1) calendar year of perfect attendance without using any sick leave shall therefore receive sixteen (16) hours of personal leave. Personal leave awarded in accordance with this section will be treated as vacation time, its use approved in advance by the supervisor, with the requirements for notice as are in place for use of vacation time.

Shared Sick Leave

It shall be the policy of the City of Marion to allow a city employee to donate up to fifty percent (50%) of all accumulated sick leave time, in excess of forty (40) hours, to any other city employee having exhausted all of his/her sick leave and vacation leave due to the employee's major illness and/or major surgery.

Sick leave time contributed will remain with the employee given the time and no portion of the time contributed will be returned to the employee contributing the time. Time contributed will be on an hour for hour basis without regard to the hourly rate paid each employee.

Requests for shared sick leave time shall be submitted to the employee's department head. The department head will review the request to insure compliance with the policy and notify the City Manager. If approved by the department head and City Manager, proper notification will be given to all city employees of the request. The notice shall state only the employee's name, department, and need of donated sick leave time.

Any employee interested in donating sick leave time will complete the necessary forms provided by the city.

The employee contributing the sick time will be required to sign a notarized statement including, at least, the following information:

- (a) The date the contribution is made.
- (b) The name and department of the employee to receive the time.
- (c) The name and department of the employee donating the time.
- (d) The number of hours contributed.
- (e) The balance of accumulated sick leave time left after the time contributed is deducted.

Employees Leaving

If an employee is leaving and has already turned in their resignation with department heads well aware of their separation date, the employee will not be allowed to contribute any sick time to another employee who has exhausted their time. If the sick time is not used due to sickness on the employee's part or not applied to retirement, then it will be lost.

If an employee has decided to leave and has not turned in a resignation and the department heads are not aware of the employee quitting, the employee can complete all shared sick leave forms and contribute time to another employee who has met all the criteria to receive shared sick leave time. The forms must be fully processed with all appropriate signatures to be valid.

Section 6. Family Medical Leave Act

The City will grant up to 12 weeks of family and medical leave per rolling twelve month period to eligible employees in accordance with the Family and Medical Leave Act of 1993 (FMLA). A rolling twelve month period is measured backward from the date of any FMLA leave taken. This leave may be paid (coordinated with the City's Vacation and Sick Leave policies), unpaid, or a combination of paid and unpaid. Additional time away from the job beyond the 12 week period may be approved in accordance with the City's Leave without Pay policy.

To qualify for FMLA coverage, the employee must have worked for the City for at least twelve(12) months or fifty-two (52) weeks; these do not have to be consecutive. However, the employee must have worked at least 1,250 hours during the twelve month period immediately before the date when the FMLA time begins.

Family and medical leave can be used for one or more of the following reasons:

- (a) The birth of a child and in order to care for that child;
- (b) Placement of a child for adoption or foster care.
- (c) To care for a spouse, child, or parent with a serious health condition;
- (d) The serious health condition of the employee; or
- (e) Military exigency.

An employee who takes leave under this policy will return to the same job or a job with equivalent status, pay, benefits, and other employment terms. The position will be the same or one which entails substantially equivalent skill, effort, responsibility, and authority.

Once an employee has exhausted the FMLA, or is in an unpaid leave status, the City will continue to pay the cost of medical insurance for a full thirty (30) days before the employee becomes responsible for the premiums.

A serious health condition is defined as a condition which requires inpatient care at a hospital, hospice, or residential medical care facility, or a condition which requires continuing care by a licensed health care provider. This policy covers illness of a serious and long-term nature resulting in recurring or lengthy absences. Generally, a chronic or long term health condition which results in a period of incapacity or more than three days would be considered a serious health condition.

When the need for intermittent or reduced-schedule leave is foreseeable and is based upon a planned course of medical treatment, the employee must make a reasonable attempt to schedule his/her absences so as to disrupt workplace operations as little as possible.

If a husband and wife both work for the City and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (not parent in-law) with a serious health condition, the

husband and wife together may only take a total of 12 weeks leave under FMLA.

An employee taking leave for the birth of a child may use paid sick leave for the period of actual disability, based on medical certification. The employee shall then use all paid vacation and accrued compensatory time for the remainder of the 12 week period.

The request for use of leave must be made in writing by the employee and approved by the Department Head and Town Manager.

Military Exigency is a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military service member (Reserve or National Guard) under a call or order to federal active duty in support of a contingency operation. Qualifying events are:

- (a) Deployment of service member with seven or fewer days' notice;
- (b) Military ceremonies and events such as family-assistance or informational programs related to the family member's active duty or call to active duty;
- (c) Urgent, immediate childcare or arranging for alternative childcare for the children of service members;
- (d) Attending school or daycare meetings relating to the child of service member;
- (e) Making financial or legal arrangements related to a family member's active duty status or call to active duty; or
- (f) Post-deployment activities for a period of ninety days after the termination of the service member's active duty status.

Military Caregiver Leave authorizes 26 weeks of absence for an employee whose spouse, son, daughter, parent or next of kin is a current service member who is undergoing treatment, therapy, recuperation or outpatient or has temporary disability retirement, for injury or illness sustained in the line of duty.

The amount of military caregiver leave allowed is:

- (a) Limit of one-time per service member per injury;

- (b) Total of 26 weeks of combined FMLA, qualifying exigency and military caregiver leave in any twelve month period in which an employee takes military caregiver leave;
- (c) The twelve month period begins on the first day that an employee takes military caregiver leave and ends twelve months later, regardless of method of calculating FMLA year.

Section 7. Maternity Leave

An employee desiring to take a leave of absence from work for reasons caused by or contributed to by pregnancy, miscarriage, childbirth, or recovery from should apply in writing to her supervisor stating the nature of her condition and the anticipated dates and duration of the requested leave. The supervisor shall forward the request to the City Manager for approval.

Failure to report at the expiration of the leave of absence unless an extension has been requested and approved shall be considered a resignation.

An employee may elect to use accumulated vacation leave and/or to use sick leave for the period of actual disability. If an employee wishes to retain all accumulated sick leave and vacation leave, leave without pay may be taken for the entire period.

Leave without pay is available as required by circumstances, agreed on by the department head and the City Manager, and/or medically determined.

Employers are prohibited from terminating, refusing to hire or failing to promote a woman solely because she is pregnant.

Employers must treat pregnancy and childbirth the same as other disabilities under their employee fringe benefit plans.

Mandatory leaves for pregnant employees based on arbitrary time periods in their pregnancy, which are not based on the individual's ability to work are prohibited.

Reinstatement rights of women on leave for pregnancy-related reasons, including credit for previous service, accrued retirement benefits, and accumulated seniority must be observed.

Section 8. Leave Without Pay

A regular employee with at least two (2) years of service may be granted a leave of absence without pay for up to one (1) year by the City Manager. The employee shall apply in writing to the City Manager for leave, stating the reason and the length of time for the leave of absence request.

The employee is obligated to return to duty within, or at the end of the time determined appropriate by the City Manager. Upon returning to duty after being on leave without pay, the employee shall be entitled to return to the same position held at the time leave was granted or to one of like classification, seniority and pay. If the employee decides not to return to work, the supervisor should be notified immediately. Failure to report at the expiration of a leave of absence, unless an extension has been requested and approved, shall be considered a resignation.

(a) Leave Without Pay-Effect on Benefits

An employee shall retain all unused vacation and sick leave while on leave without pay. An employee ceases to earn or accrue leave credits on the date leave without pay begins. The employee may continue to be eligible for benefits under the City's group insurance plans. If the leave without pay including worker's compensation leave as described below, will continue beyond 30

consecutive days employees may continue in the various insurance plans as allowed by the rules and regulations of the insurance carriers by paying for both employee and dependent premium payments for the duration of such leave without pay.

These arrangements require prior acknowledgment and agreement by both City and employee affected. Any other benefits continuation issues should also be resolved prior to the commencement of the unpaid leave.

Section 9. Worker's Compensation Leave

An employee injured in an accident arising out of and in the course of employment may elect to use sick leave and/or vacation leave in order to receive the difference between the Worker's Compensation payment and his/her regular salary while he/she is disabled.

This will also apply to an employee injured on the job who is out of work for less than the seven day waiting period required by Worker's Compensation. Once sick/vacation leave is exhausted, the employee will only be entitled to the Worker's Compensation payment. Donated sick leave is not permitted in a Worker's Compensation situation.

Temporary and/or probationary employees will be placed in a leave without pay status and will receive all benefits for which they may be adjudged eligible under the Workers' Compensation Act subject to the provisions of Section 8 of this article.

Section 10. Funeral Leave

An employee, after completing the probationary period, may have up to three (3) days leave at full pay without charge to annual leave or sick leave when attending the funeral of an immediate family member. An immediate family member is defined as a spouse, parent, grandparent, child (or stepchild), grandchild, sibling, stepbrother, stepsister, stepparent or spouse's parents.

Additional time to settle affairs of the family may be taken with the approval of the department head and should be charged to vacation leave. Leave to attend funerals of other than the immediate family may be granted by the department head and charged to sick leave.

Section 11. Temporary Disability Leave

Accumulated sick leave is available to employees for the period of temporary disability in the same manner as for any other illness.

Leave without pay may be used by the employee during or after the disability ends as long as a doctor's certification continues to support the disability. The employee may elect to use accumulated vacation leave (1) before going on sick leave, (2) after accumulated sick leave has been exhausted, and/or (3) after the temporary disability has ended. If an employee

is temporarily disabled and has exhausted all accumulated sick leave, that employee may be eligible to receive leave without pay for personal disability under the provisions of Section 8 of this article. If an employee wishes to retain all accumulated sick leave and vacation leave, leave without pay may be taken for the entire period.

Reinstatement to the same position or one of like classification, seniority and pay shall be made upon the employee's return to work.

Section 12. Military Leave

Regular employees who are members of the National Guard or Armed Forces Reserve will be allowed two (2) calendar weeks military training leave annually. This leave is to be granted at no loss of regular compensation. Employees will be paid the difference between military pay and the employee's pay but only the amount to make up the difference if the military pay is lower than the regular pay. In no circumstances will the City supplement the military pay to an extent that would yield compensation that is greater than the regular pay of the employee. Employees are required to submit proof of military pay before this supplement is calculated and paid. The employee may elect to use annual leave to cover part or all of the military leave.

If such military duty is required beyond this two (2) calendar week period, the employee shall be eligible to take accumulated vacation leave or be placed in a leave without pay status. Regular employees, who are members of the National Guard or Armed Forces Reserves, have all job rights specified in the Uniformed Services Employment and Reemployment Act.

An employee ceases to accrue vacation or sick leave credits on the date military leave begins however, the time spent in military service is to be considered service to the City and upon reemployment returned to a position the employee would have held had he/she been working during the period of military service. In addition, upon reemployment, the City shall allocate the employer's contribution to a retirement plan for the employee for the period of military service.

Section 13. Civil Leave

(a) An employee who is called for jury duty shall be entitled to leave with pay for such duty and may keep all fees received for jury duty, provided the employee reports for work during required working hours, when not required to be in court. No charge shall be made against his/her accrued leave.

(b) If any employee is subpoenaed to testify in a court case, not related to City employment, the employee must notify his/her supervisor or department head. Charge will be made against the employee's accrued leave, if notice of the leave is provided in advance. Time spent in court by law enforcement officers and others called to testify in cases related to their City employment will be considered work time.

Section 14. Educational Leave with Pay

A leave of absence with pay during regular working hours will be granted to an employee to take courses required by the City as a condition of employment. The City shall reimburse the employee for tuition, fees, and books as well as the travel costs, as provided for in Article VI Work Conditions and Expectations, Section 13, Travel and Expense Reimbursement, for the courses provided the employee submits a receipt for such expenses. However, if such course results in a certification that would possibly benefit the employee in employment elsewhere and the employee ends employment within twelve (12) months of such certification, the employee will reimburse the City for all costs associated with the certification.

An employee on educational leave with full pay shall continue to earn leave credits and any other benefits to which City employees are entitled.

Section 15. Light Duty

In the event of an injury, either on duty or off duty related, an employee is expected to return to duty when authorized by competent medical authority. Some light duty may be authorized but only with work within the department assigned and only within work limits described by the medical authority. The City will not be obligated to create light duty to maintain an employee on the

clock. The Department Head is responsible for supervision and assignment of light duty within these guides. Once released by the medical authority the employee is expected to return to perform the full range of regular work within the position description of the position assigned.

Section 16. Leave for Employees with Adverse Reactions to Smallpox Vaccinations.

A regular/full-time employee is entitled to continuation of salary and to leave in addition to the sick leave otherwise available under the following circumstances:

The absence from work is due to an adverse reaction resulting from the employee receiving in employment vaccination against small pox pursuant to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act. The provisions of this section shall not exceed the maximum amount allowed for such leave by the State of North Carolina. An employee qualifying for this leave shall be required to provide their department head with certification from a health care provider justifying the need for leave after the first 24 hours of leave taken pursuant to this section.

Situations involving part-time employees who have an adverse reaction resulting from the employee receiving in employment vaccination against smallpox pursuant to the Administration of Smallpox Countermeasures by Health Professionals, section 304 of the Homeland Security Act will be treated as Worker's Compensation claims.

Section 17. School Involvement Leave

In keeping with the provisions of N.C. G. S. 95-28, full-time regular employees who are parents, guardians, or persons "standing in loco parentis" of a school-aged child shall be granted four hours per year of unpaid leave to attend or otherwise be involved at their child's school. However, the leave is subject to the following conditions:

- (a) The leave shall be at a mutually agreed upon time between the supervisor and the employee;
- (b) A written request must be submitted to the supervisor for the leave at least 48 hours before the time desired for the leave;

For the purposes of this section, “school” means any public school, private church school, church of religious charter, non-public school, preschool and child daycare facilities.

Employees may be allowed to use accumulated vacation or compensatory time with approval of the supervisor

Section 18. Excessive Absenteeism

(a) Absence: Two (2) days of unexcused absences in a four (4) week period is reason for dismissal. Unexcused absences involve taking unapproved leave, or using sick time for an unapproved reason as defined above. Excused absences, when possible, should be authorized in advance by the immediate supervisor. Three (3) days without reporting to work or contacting the appropriate official shall be considered a voluntary resignation.

(b) Tardiness: Twice (2) in a one- (1) week period or three (3) times in a four- (4) week period is reason for dismissal. Tardiness will be considered unexcused except in emergency situations approved by the immediate supervisor. Tardiness will be defined as follows: Reporting to work eight (8) minutes or more after the regular start work time of each employee as with the respective departments.

(c) Leaving Early: Except in emergency situations, employees will be limited to leave work early two (2) times in a four-week period. Employees are encouraged to take care of personal business on their own time.

Article VIII. Separation, Disciplinary Actions and Reinstatement

Section 1. Types of Separation

All separations of employees from positions in the service of the City shall be designated as one of the following types and shall be accomplished in the manner indicated:

(a) Resignation: A minimum of a two (2) week notice is expected of all resigning personnel. Such notice should be given to the department head (or in the case of department heads, to the City Manager). Employees who do not give proper notice will not be paid for their accumulated vacation leave balance upon termination. Three (3) days without reporting to work or

contacting the appropriate official shall be considered a voluntary resignation.

(b) 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 that order, in determining those employees to be retained. Employees who are laid off because of reduction in force shall be given at least one (1) pay period notice of anticipated layoff. 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.

(c) Disability: An employee may be separated for disability when the employee cannot perform the required duties because of a physical or mental impairment and reasonable accommodations, as required by the American with Disabilities Act (ADA), cannot be made. The employee or the City may initiate action, but in all cases it shall be supported by medical evidence as certified by a

competent physician. The City may require an examination at its expense and performed by a physician of its choice. Before an employee is separated for disability, a reasonable effort shall be made to locate alternative positions within the City's service for which the employee may be suited.

(d) Death: All compensation due in accordance with Article VII, Section 4 of these policies will be paid to the designated beneficiary of a deceased employee. The date of death shall be recorded as the separation date for computing compensation due.

(e) Dismissal: If the appointing authority determines that a dismissal action is appropriate, before dismissal action is taken, whether for failure in personal conduct or failure in performance of duties, the Department Head will conduct a pre-disciplinary conference. At this conference, the employee may present any response to the proposed disciplinary action. The Department Head will consider the employee's response, if any, to the proposed disciplinary action, and will, within three working days following the pre-disciplinary conference, notify the employee in writing of the final decision to take disciplinary action. The notice of the final disciplinary action shall contain a statement of the reasons for the action and the employee's appeal rights.

Section 2. Disciplinary Action

An employee may be suspended, demoted, or dismissed by the department head because of failure in performance of duties or failure in personal conduct. The department head shall provide the employee with a written notice including the effective date, reasons for the action, and appeal rights available to the employee.

(a) Failure in Performance of Duties

Failure in the performance of duties includes any aspects of the employee's job, which are not performed as required to meet the standards set by the City Manager.

The following causes relating to failure in the performance of duties are representative, but not all inclusive, of those considered to be adequate grounds for suspension, demotion or dismissal:

- (1) Inefficiency, negligence or incompetence in the performance of duties;
- (2) Careless, negligent or improper use of City 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.
- (8) Willful insubordination.

Prior to making a decision to terminate employment, the Department Head or City Manager will conduct a pre-disciplinary conference.

(b) Failure in Personal Conduct

An employee may be suspended, demoted or dismissed for causes relating to personal conduct detrimental to City service without warning in order to avoid undue disruption of work to protect the safety of persons or property. Before a final decision is made the Department Head or City Manager will conduct a pre-disciplinary conference.

The following causes relating to failure in personal conduct are representative, but not all inclusive, of those considered to be adequate grounds for suspension, demotion, or dismissal:

- (1) Fraud in securing appointment;
- (2) Conduct unbecoming a public officer or employee;
- (3) Conviction of a felony or of a misdemeanor which would adversely affect performance of duties, or the entry of a plea of “no contest” to either;
- (4) Misappropriation of City funds or property;
- (5) Falsification of City records for personal profit or to grant special privileges;
- (6) Reporting to work under the influence of alcohol or narcotic drugs or partaking of such things while on duty or while on public property, except prescribed medication may be taken within the limits set by a physician so long as medically necessary;
- (7) Willful damage or destruction of property;
- (8) Willful acts that would endanger the lives and property of others;
- (9) Acceptance of gifts in exchange for “favours” or “influence”;
- (10) Incompatible outside employment or conflict of interest;
- (11) Violation of political activity restrictions.

(c) Disciplinary Suspension

An employee who is suspended for disciplinary reasons shall be relieved temporarily of all duties and responsibilities and shall receive no compensation for the period of suspension. The Department Head or City Manager will conduct a pre-disciplinary conference.

(d) Immediate Disciplinary Suspension

An employee may be suspended without notice by the department head for causes related to personal conduct in order to avoid undue disruption of work, to protect the safety of persons or property, or for other serious reasons. Before a final decision is made the Department Head or City Manager will conduct a pre-disciplinary conference. When a department head suspends an employee the employee needs to leave City property at once and remain away until further notice.

(e) Non-Disciplinary Suspension

During the investigation, hearing or trial of an employee on any criminal charge or during the course of any civil action involving an employee, the department head may suspend the employee without pay for the duration of the proceedings as a non-disciplinary action. However, the investigation, hearing, trial, or civil action must involve matters that may form the basis for disciplinary suspension, demotion or dismissal in order for the non-disciplinary suspension to be allowed.

Full recovery of pay and benefits for the period of non-disciplinary suspension may be authorized by the City Manager, if the suspension is terminated with full reinstatement of employee.

Exempt employees: In accordance with FLSA requirements to maintain exempt status, suspensions for exempt employees shall normally be for one full work week, especially if the suspension is for failure in performance of duties issues. Under FLSA suspensions of less than a week are authorized for major safety violations or infractions of workplace conduct rules (detrimental personal conduct).

Section 3. Employee Appeal

A regular employee wishing to appeal a demotion, suspension or dismissal may present the matter in accordance with the provisions of the grievance procedure prescribed in these policies.

Section 4. Reinstatement

An employee who resigns while in good standing or who is dismissed because of reduction in force may be reinstated within one (1) year of the date of separation, with the approval of the City Manager. An employee who enters extended active duty with the Armed Forces of the United States, the Public Health Service or with a Reserve Component of the Armed Forces will be granted reinstatement rights as allowed by the Uniformed Services Employment and Reemployment Rights Act.

An employee who is reinstated shall be credited with previous service and previously accrued sick leave and will receive all benefits provided in accordance with this policy and state law. The salary paid a reinstated employee shall be as close as reasonably possible, given the circumstance of each employee's case, to the salary previously attained by the employee in the salary range for the previous class of work, plus any across-the-board pay increases.

Article IX Grievance Procedure and Adverse Action Appeal

Section 1. Policy

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

Employees utilizing the grievance procedures shall not be subjected to retaliation or any form of harassment from supervisors or employees for exercising their rights under this policy. Supervisors or other employees who violate this policy shall be subject to disciplinary action up to and including dismissal from City service.

Section 2. Grievance Defined

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

Section 3. Purposes of the Grievance Procedure

The purposes of the grievance procedure include, but are not limited to:

- (a) providing employees with a procedure by which their complaints can be considered promptly, fairly, and without reprisal;
- (b) encouraging employees to express themselves about the conditions of work which affect them as employees;
- (c) promoting better understanding of policies, practices, and procedures which affect employees;
- (d) increasing employees' confidence that personnel actions taken are in accordance with established, fair, and uniform policies and procedures;
- (e) increasing the sense of responsibility exercised by supervisors in dealing with their employees.
- (f) encouraging conflicts to be resolved between employees and supervisors who must maintain an effective future working relationship, and therefore, encouraging conflicts to be resolved at the lowest level possible of the chain of command through collaboration and/or mediation; and
- (g) creating a work environment free of continuing conflicts, disagreements, and negative feelings about the City or its leaders, thus freeing up employee motivation, productivity, and creativity.

Section 4. Procedure

When an employee has a grievance, the following successive steps are to be taken. The number of calendar days indicated for each step should be considered the maximum, unless otherwise provided, and every effort should be made to expedite the process. However, the time limits set forth may be extended by mutual consent. The last step initiated by an employee shall be considered to be the step at which the grievance is resolved. A decision to rescind a disciplinary suspension, demotion or dismissal must be approved by the City Manager before the decision becomes effective.

Informal Resolution. Prior to the submission of a formal grievance, the employee and supervisor should meet to discuss the problem and seek to resolve it informally. Either the employee or the supervisor may involve the Finance Director as a resource to help resolve the grievance. Mediation may be used at any step in the process and is encouraged. Mediation is the neutral facilitation of the conflict between or among parties where the facilitator help the parties find a mutually agreeable outcome.

Step 1. If no resolution to the grievance is reached informally, the employee who wishes to pursue a grievance shall present the grievance to the appropriate supervisor (the person who took the action which created the grievance issue, could be immediate supervisor, Division Head, Department Head, etc.) in writing. The grievance must be presented within seven calendar days of the event or within seven calendar days of learning of the event or condition. The written grievance should identify the action that is deemed unfair and the reason the grieving employee believes it to be unfair. The supervisor shall respond to the grievance within seven calendar days after receipt of the grievance. The supervisor should, and is encouraged to, consult with any employee of the City in order to reach a correct, impartial, fair and equitable determination or decision concerning the grievance. Any employee consulted by the supervisor is required to cooperate to the fullest extent possible.

The response from the supervisor for each step in the formal grievance process shall be in writing and signed by the supervisor. In addition, the employee shall sign a copy to acknowledge receipt thereof. The responder at each step shall send copies of the grievance and response to the Finance Director.

Step 2. If the grievance is not resolved by the first level supervisor to the satisfaction of the employee by the supervisor, the employee may appeal in writing to the next level supervisor (Division Head, Department Head, City Manager, etc.) within seven calendar days after receipt of the response from Step 1. The next level supervisor shall respond to the appeal, stating the determination of decision within seven calendar days after receipt of the appeal.

Step 3. If the grievance is not resolved to the satisfaction of the employee at the end of Step 2, the employee may appeal, in writing, to the City Manager within seven calendar days after receipt of the response from Step 2. The City Manager shall respond to the appeal, stating the determination of decision within ten calendar days after receipt of the appeal. The City Manager's decision shall be the final decision. The City Manager would notify the City Council of any impending legal action or any grievance that has not been resolved to the satisfaction of the City Manager and employee(s).

Department Heads. In the case of Department Heads or other employees where the City Manager has been significantly involved in determining disciplinary action, including dismissal, the City may wish to obtain a neutral outside party to either:

- (a) provide mediation between the grieving Department Head and the City Manager (see definition of mediation in informal resolution above); or
- (b) consider the appeal and make recommendations back to the City Manager concerning the appeal. Such parties might consist of human resource professionals, attorneys, mediators, or other parties appropriate to the situation.

The City Manager's decision shall be the final decision. The City Manager would notify the City Council of any impending legal action.

Section 5. Role of the Finance Director

Throughout the grievance procedure, the Finance Director shall:

- (a) advise parties (including employee, supervisors, and City Manager) of their rights and responsibilities under this policy, including interpreting the grievance and other policies for consistency of application;
- (b) be a clearinghouse for information and decisions in the matter including maintaining files of all grievance documents.
- (c) give notices to parties concerning timetables of the process, etc.;
- (d) assist employees and supervisors in drafting statements;
- (e) facilitate the resolution of conflicts in the procedures or of the grievance at any step in the process; and
- (f) help locate mediation or other resources as needed.

The Finance Director shall also determine whether or not additional time shall be allowed to either side in unusual circumstances if the parties cannot agree upon extensions when needed or indicated.

Section 6. Grievance and Adverse Action Appeal Procedure for Discrimination

When an employee, former employee, or applicant, believes that any employment action discriminates illegally (i.e. is based on age, sex, race, color, national origin, religion, creed, political affiliation, or non-job related handicap), he or she has the right to appeal such action using the grievance procedure outlined in this Article (Section 4 above). While such persons are encouraged to use the grievance procedure, they shall also have the right to appeal directly to the Finance Director or City Manager. Employment actions subject to appeal because of discrimination include promotion, training, classification, pay, disciplinary action, transfer, layoff, failure to hire, or termination of employment. An employee or applicant should appeal an alleged act of discrimination within thirty calendar days of the alleged discriminatory action, but may appeal for up to six months following the action.

Article X. Insurance/Retirement Benefits

Section 1. Insurance Benefits

The City offers group hospitalization, life insurance and a separate death benefit that is offered through the North Carolina Local Governmental Employees' Retirement System to employees. The City may make other group insurance plans available for its employees upon authorization of the City Council.

Regular employees are eligible for these benefits beginning on the 31st day of employment.

Employees retiring from City employment after serving the City of Marion for a minimum of twenty (20) years and reaching fifty-five (55) years of age; at fifty (50) years of age retiring under disability with fifteen (15) years of service; or retiring with thirty (30) years of service at any age are eligible to remain on the City's insurance plan, subject to the provisions for payment of premiums listed below. Other employees retiring or separating from City service without meeting the service requirements listed above shall not be permitted to remain on the City's insurance plan, except as required by Federal law.

It shall be the policy of the City of Marion to pay one hundred dollars (\$100.00) per month to the City's Medical Insurance Carrier toward Medical Insurance Coverage for employees retiring from City employment after serving the City of Marion for a minimum of twenty (20) years and reaching age fifty-five (55) years of age; or age fifty (50) retiring under disability with fifteen (15) years of service; or retiring with thirty (30) years of service at any age.

That said retired employee will be required to pay in advance, the difference between the actual cost of medical insurance coverage and the one hundred dollars (\$100.00) per month contributed by the City. The employee may continue to provide insurance coverage for his/her dependents, carried at the time of retirement, by paying the total necessary premiums, in advance for medical insurance coverage.

Upon becoming eligible for Medicare, a retired employee may continue to receive the one hundred dollar (\$100.00) per month City contribution to go toward the purchase of a Medicare supplement. These employees will be required to purchase a Medicare supplement. Said

employee will be eligible to remain on the City's insurance plan or may purchase coverage elsewhere.

Should the City of Marion, at any time, decide to discontinue this benefit to retired City employees, said employees meeting the requirements listed above will be given the opportunity to continue to carry medical insurance coverage by paying to the City, in advance, the entire premiums for medical insurance, subject to the provisions listed above for switchover to Medicare and Medicare supplements.

Section 2. Unemployment Insurance

In accordance with the North Carolina General Statutes, local governments are covered by unemployment insurance. City employees who are laid off or released from the City service may apply for unemployment compensation through the local office of the Employment Security Commission who will determine the employee's eligibility for this benefit.

Section 3. Old Age and Survivor's Insurance

The City, to the extent of its lawful authority and power, has extended social security benefits for its eligible employees and eligible groups and classes of such employees.

Section 4. Retirement Benefits

The City provides retirement benefits for its employees through the North Carolina Local Governmental Employees' Retirement System (NCLGERS).

All employees who are budgeted to work 1000 hours or more annually are required to join NCLGERS retirement plan according to NC General Statutes.

It shall be the policy of the City of Marion to provide each employee retiring from employment with the City of Marion, after a minimum of twenty (20) years of service, a cash gift equal to two (2) weeks' pay. This gift shall be in addition to any payment for unused vacation leave.

Said gift shall not be paid from the City Taxes or from other State collected Local taxes not authorized for such purposes.

Said retiring employee shall not be paid a longevity payment for any time worked since the last longevity payment was issued by the City.

Section 5. 401K Supplemental Retirement Income Plan

The City provides a 401K plan for active law enforcement personnel, each month contributing an amount equal to five percent (5%) of each officers' salary as required by G.S. Chapter 143 Article 12E. In addition, the City provides a contribution to the 401K plan for non - law enforcement employees. City Council sets the percentage of contribution upon recommendation by the City Manager.

Section 6. Law Enforcement Special Separation Allowance

The City provides a monthly separation allowance to retired sworn law enforcement officers as required in Chapter 143-166.42 of the General Statutes of North Carolina beginning in the month in which the officer retires on basic service retirement. To qualify for the allowance, the officer shall:

- (a) Have:
 - (1) Completed 30 or more years of creditable services: or
 - (2) Have attained 55 years of age and completed five or more years of creditable service
- (b) Not have attained 62 years of age; and
- (c) Have completed at least five years of continuous service as a law enforcement officer immediately preceding retirement.

Payment to a retired officer under the provisions of this section shall cease at the first of:

- (a) Death of the officer; or
- (b) The last day of the month in which the officer attains 62 years of age;
or
- (c) The first day of reemployment by a local government employer in any capacity that requires participation in the North Carolina Local Governmental Employees' Retirement System (NCLGERS).

This section does not affect the benefits to which an individual may be entitled from State, local, federal or private retirement systems.

Section 7. Employee Assistance Program

The City of Marion recognizes that a wide range of behavioral problems can affect an employee's job performance. Examples of such behavioral problems include alcohol and/or drug abuse, marital or family distress, emotional instability, financial or legal issues or other problems. Many times, these problems may result in deterioration of job performance or efficiency. In most instances, the employee will overcome such personal problems independently and job performance will return to an acceptable level. In some instances, supervisory assistance will serve as either motivation or guidance by which problems can be resolved. There may be times when both the efforts of neither the employee nor the supervisor have the desired effect on resolving personal problems and unsatisfactory employee 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 full job efficiency. The program is designed to identify the problem at the earliest stage, motivate the employee to seek help, and to direct the employee to the appropriate assistance.

The City of Marion believes it is in the interest of the employee, the employee's family, and the company, to provide an employee service which deals with such persistent problems. For the Employee Assistance Program to be successful, the following must be carried out:

- (a) Personal problems which affect work performance and attendance are legitimate concerns of management. Management recognizes that these behavioral problems can be successfully treated provided they are identified early and referral is made to the appropriate resource.
- (b) Personal problems requiring assistance include alcohol/drug abuse, marital or family distress, mental illness, emotional, financial or legal problems, along with many others.
- (c) The purpose of the EAP is to assure employees that if such personal problems are the cause of unsatisfactory job performance that they will receive an offer of assistance to help resolve such problems in an effective and confidential manner.

- (d) No employee will have his or her job security or promotional opportunities jeopardized for participating in the program.
- (e) Strict confidentiality of records is essential and will be maintained.
- (f) Employees are encouraged to use the EAP voluntarily when he or she needs professional help or guidance.
- (g) If an employee has not sought help independently for a personal problem, it will be the responsibility of the supervisor to follow a procedure which will insure that no employee with a behavioral disorder will fail to be offered the benefit of diagnosis and treatment.
- (h) As for any illness, accrued sick leave will be granted in accordance with the Section titled Article VII – Leaves of Absence, Section 5. Sick Leave as it relates to medical appointments.
- (i) Any expense incurred in seeking assistance, beyond that covered by medical insurance, will be the responsibility of the employee.
- (j) It is the employee's responsibility to cooperate in the designated treatment or rehabilitation plan. After a reasonable opportunity for progress, disciplinary procedures, up to and including dismissal, may apply unless there is noticeable improvement in job performance.
- (k) The program is also available to family members living within the household of regular full time employees.

Section 8. Workers' Compensation

All employees are covered with workers' compensation insurance as required by the General Statutes of North Carolina. This insurance provides payment of medical bills and lost wages as allowed. Employees are required to notify the City as soon as possible after the accident. Failure to notify the City may jeopardize any employee claim for workers' compensation benefits.

Article XI. Personnel Records and Reports

Section 1. Personnel Records Maintained

Such personnel records as are necessary for the proper administration of the personnel system will be maintained by the City Manager or his/her designee. The City shall maintain, in personnel records, only information that is relevant to accomplishing personnel administration purposes.

Section 2. Public Personnel Records Defined

The following information on each City employee is part of an employee's public personnel record:

- (a) Name;
- (b) Age;
- (c) Date of original employment;
- (d) Terms of any contract;
- (e) Current position and title;
- (f) Current salary;
- (g) Office to which employee is currently assigned;
- (h) Date and amount of each increase or decrease in salary;
- (i) Date and type of each promotion, demotion, transfer, suspension, separation or other change in position classification;
- (j) The date and general description of the reasons for each promotion;
- (k) The date and type of each dismissal, suspension, or demotion for disciplinary reasons;
- (l) For dismissals due to disciplinary reasons, a copy of the written notice of the final decision setting forth the specific acts or omissions that are the basis of the dismissal.

Section 3. Access to Personnel Records

As required by NC General Statute, 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 City Council may adopt. Access to such information shall be governed by the following provisions:

- (a) 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; and purpose for which information is requested. This information must be retained for a period of two years.
- (b) Upon request, the record of disclosure shall be made available to the employee to whom it pertains.

- (c) Any individual examining a personnel record may copy the information. Any available photocopying facility may be provided and the cost may be assessed to the individual.
- (d) Refusal to comply with public records request may be challenged by requesting party.
- (e) If challenging party prevails, party can be awarded attorney fees if the City was not substantially justified in denying access to the records. Attorney fees can be charged directly against the local government or by order of the court, directly to any public employee or public official individually if the court finds the refusal to provide public records was knowingly or intentionally committed in violation of the law.
- (f) Section 21(c) of HB 961 specifically provides that the court may not award attorney fees if the City acted in reliance upon a judgment or an order of a trial court, or a written opinion, decision, or letter of the Attorney General.

Section 4. Confidential Information

All information contained in the City employee's personnel file, other than the information listed in Section 1 of this Article will be maintained as confidential and shall be open to 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/her patient.
- (b) A licensed physician designated in writing by the employee may examine the employee's medical record.
- (c) A City 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 the employee's personnel file as may be ordered by the court.
- (e) An official of an agency of the State or Federal government, or any political subdivision of the State, may inspect any portion of a personnel file when such inspection is deemed by the official having custody of the personnel records to be necessary and
- (f) 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, such 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.

(g) An employee may sign a written release, to be placed with his/her 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.

(h) Each individual requesting access to confidential information will be required to submit satisfactory proof of identity.

(i) A record shall be made of each disclosure and placed in the employee's file (except of disclosures to the employee and the supervisor).

Section 5. Records of Former Employees

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

Section 6. Records of Applicants

Applicants and other information gathered with respect to an applicant will be kept confidential. The City will not release this information without written permission from the applicant.

Section 7. Remedies of Employees Objecting to Material in File

An employee who objects to material in his/her file may place in the file a statement relating to the material considered to be inaccurate or misleading. The employee may seek the removal of such material in accordance with established grievance procedures.

Section 8. Penalty for Permitting Access to Confidential File by Unauthorized Person

The NC General Statutes 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's personnel file, except

as permitted by the statute, is guilty of a misdemeanor and upon conviction shall be fined in an amount not to exceed five hundred dollars (\$500.00).

Section 9. Penalty for Examining and/or Copying Confidential Material without Authorization

NC General Statutes 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 (\$500.00).

Section 10. Destruction of Records Regulated

No person may destroy, sell, loan, or otherwise dispose of any public record except as allowed by NC General Statute. Whoever unlawfully removes a public record from the offices 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 no less than ten dollars (\$10.00) and not more than five hundred dollars (\$500.00).

Article XII. Implementation of Policy

Section 1. Conflicting Policies Repealed

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

Section 2. Separability

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

Section 3. Violations of Policy Provisions

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

Section 4. Effective Date

ADOPTED by the City Council of the City of Marion this the 21st day of August 2012 with the effective date of October 1, 2012.

Stephen R. Little, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Policy Number: P-12-08-21-1

SCHEDULING OF CITY COUNCIL PLANNING SESSION:

The City Manager advised that it may be helpful for City Council to schedule a Planning Session in the near future to allow for time to discuss various issues.

A brief discussion followed.

It was the consensus of those members of Council present to schedule the next City Council Planning Session for Monday, October 8 at 6:00 p.m. at City Hall.

ADD ON - REQUEST FOR USE OF CITY STAGE BY FAMILY SERVICES OF MCDOWELL COUNTY: The City Manager advised that Family Services of McDowell County contacted him requesting that they be allowed to use the City's state for a band to play at their car show fundraiser on Saturday, September 22. The car show will take place on Main Street and has previously been approved by Council. Family Services has proposed that the stage be set up on the Courthouse lawn on Friday before the event.

The City Manager reported that, in 2011, Council revised the Loaning of City Equipment to add provisions for the use of City stages for events. Family Services can meet most of the criteria.

Mayor Little stated that the section of the policy that states where the City has a funding relationship would fit Family Services, but that it would not hurt to revise the policy.

Upon a motion by Council Member Martin, seconded by Mayor Pro Tem Cuthbertson, those members of Council present voted to approve the request of Family Services of McDowell County to use the City's stage for a band to play at their car show fundraiser on Saturday, September 22 on the Courthouse Lawn on Main Street and to adopt the following revised Loaning of Equipment Policy:

**City of Marion
Policy on Loaning of City Equipment**

The City of Marion, with the exceptions listed below, strictly prohibits the loaning of City owned supplies or equipment to individuals, businesses, groups or outside agencies. The use of City owned vehicles and equipment by an employee for personal use is also strictly prohibited. With the permission of the City Manager, City owned equipment and supplies such as tables, chairs, stages, the p.a. system and other approved equipment, not to include in any case vehicles or motorized equipment, may be loaned to the following outside agencies:

1. McDowell County
2. Town of Old Fort
3. McDowell County Schools
4. McDowell Technical Community College
5. McDowell House
6. McDowell County Rescue Squad
7. McDowell Arts and Crafts Association
8. McDowell Trails Association
9. Carson House
10. Any non-profit agency with which the City has or has had a funding relationship. As of July 1, 2012, these agencies will be restricted to the Marion Business Association (MBA), the McDowell Chamber of Commerce, McDowell Mission Ministries, the Marion Firefighter's Association, the McDowell Economic Development Association (MEDA) and Family Services of McDowell, Inc.

In addition to the preceding, City stages may be set up for individuals, businesses organizations or groups under the following conditions:

1. The stage(s) will be set up and removed by City employees at such times such as to prevent the City paying overtime.
2. The stage(s) will be set up on public property within the City of Marion.
3. An event of public interest will be held that is open to the public and for which approval has been granted pursuant to City policy.
4. The event will not require the payment of an admission fee, although donations may be requested.
5. Any donations received through the event shall be used to fund one of the organizations specifically listed above.
6. A fee of \$50.00 shall be paid to the City by the requesting individual, business, organization or group to offset the costs of the setup and removal of the stage(s).
Prior to any equipment or supplies being loaned under this policy, an employee or representative of the agency borrowing the equipment must sign a statement acknowledging the equipment or supplies that they are borrowing, accepting total responsibility for said equipment or supplies and acknowledging that the agency will immediately pay for any damages sustained by the equipment that is borrowed.

Adopted by the City Council of the City of Marion this the 21st day of August, 2012.

Stephen R. Little, Mayor

ATTEST:

J. Robert Boyette, City Manager/Clerk

Policy Number: P-12-08-21-2

ADD ON – DISCUSSION OF WATER COMPLAINTS: Public Works Director Brant Sikes advised that the City had received complaints regarding taste and odor issues in City water. Upon investigation and consultation with the North Carolina Department of Environment and Natural Resources Public Water Supply Section (NCDENR PWSS) staff, it was determined that the City has an algae outbreak affecting the Buck Creek water intake.

Mr. Sikes stated that the NCDENR PWSS staff conducted toxicity tests at the Buck Creek intake, the results of which should come back in the next two days. He said that the State believes that the toxicity tests will be negative.

Mr. Sikes stated that the State has advised the City not to flush the water system, until it can be demonstrated that the Water Plant is producing finished drinking water free of taste and odor issues.

Water Plant Superintendent Don Price stated that Water Plant staff had implemented various changes at the Water Plant to address the problems, including reducing the use of the Buck Creek intake to the degree possible, adding a temporary carbon feed to absorb the odor causing compounds in the algae and thoroughly cleaning all of the water plant basins.

The City Manager stated that the State has worked closely with the City on this matter and assured him that City staff are taking all of the right steps. He added that the City had asked McGill Associates to thoroughly examine the City's water system and response to these problems later in the week, to make sure that all of the correct steps had been taken. Unfortunately, this is a natural occurrence that other cities, such as Lenoir and Woodfin, have had to deal with in the past.

The City Manager stated that complaints have been received from approximately one percent of the City's water customers and that staff would continue to leave no stone unturned until the problem is completely solved.

Mayor Little and Council Members thanked City staff for this report and for the efforts to address the taste and odor complaints.

CITY MANAGER COMMENTS: The City Manager gave a brief report on current projects.

The City Manager advised that the Street Committee met on July 20 and reviewed the following items:

A. Siting of Mobile Food Vendor at Community Building Park – The Street Committee proposed that the snow-cone mobile food vendor approved by Council at the July 17 Council meeting set up in the corner of the

Community Building Upper Level parking lot closest to the steps leading down to the Splash Pad. Staff will propose a Zoning Text Amendment to change one of the allowed mobile food vendor locations from “On the sidewalk on Logan Street in front of the Marion Community Building Park” to “the Marion Community Building Park.” This will grant Council more flexibility in reviewing future requests. This Zoning Text Amendment will go before Planning Board and Council in the near future.

B. Request for Handicapped Parking Space on West Court Street Next to McDowell County Library – The Street Committee had concerns about how this request could be accommodated and the possible precedent it would set. The City Manager said that he checked with DOT District Engineer Doug McNeal to see if there were requirements for an on-street parallel handicapped parking space on a DOT street such as West Court Street. Doug stated that DOT has no requirements, other than maintaining 12 foot travel lanes, and referred the City Manager to Federal ADA requirements. For a parallel on-street handicapped parking space, the ADA requires a width of 13 feet. A handicapped ramp adjacent to the space, with a minimum width of 5 feet, is also required.

The City Manager advised that a handicapped parking space in the requested location would either need to stick out 5.5 feet, since current spaces on West Court Street are about 7.5 feet wide, into what is now the travel lane or the City would need to cut about 5.5 feet into the sidewalk. The sidewalk is approximately 10 feet wide currently, with the brick part taking up approximately the first 3.5 feet. In addition, the City would have to add a handicapped ramp at least 5 feet wide from a point next to the parking space to the sidewalk.

The City Manager stated that Council Member Clark later asked if West Court Street could accommodate angled parking, like the City has in place on East Court Street. Public Works Director Brant Sikes took some measurements and determined that a standard angled parking space would leave only a 10.5 foot travel westbound travel lane on West Court Street, below the 12 feet DOT would require. Therefore, the angled parking idea will not work, unless the City cuts into the curblines, something the Street Committee does not recommend.

The City Manager stated that the Street Committee recommended that no action be taken on the request at this time, other than to suggest that the

County perhaps designate a parking space at the Recreation Department as handicapped.

C. Request for Street Light on Mitchell Street – The Street Committee determined that there is definitely a need for a street light in the middle section of Mitchell Street, since there were no lights except at both ends of the street. A light will be added on this street.

D. Request for Speed Hump or Mirror on Oak Street – The Street Committee did not recommend placement of a speed hump or mirror in the 90 degree curve on Oak Street. The Street Committee felt that a mirror could be dangerous for motorists and noted that two speed humps are already in place close to this curve.

No objection were stated by Mayor Little or Council Members to the Street Committee recommendations. No action was required by Council regarding any of these items.

The City Manager reported that the YMCA Community Health Forum would be held on Thursday, September 13, from 9:30 a.m. to 12:00 p.m. at the YMCA. The City Manager stated that Council Member Doggett planned to attend, along with Planning and Development Director Heather Cotton and himself, but that the YMCA had asked that another Council member attend. Mayor Pro Tem Cuthbertson stated that he would try to attend the forum.

The City Manager advised that the City continues to seek participants for the third session of Marion 101, which will take place on seven consecutive Thursday evenings from September 13 until October 25.

The City Manager advised that our Tax Collector Brett Moore had mailed City tax bills on August 16, which is slightly later than last year.

The City Manager stated that the City should receive information from DOT by January regarding the preliminary plans for the US 221 widening project and the resulting impact on City water and sewer relocations and existing commercial buildings.

The City Manager advised that DOT is finalizing the replacement of traffic signal heads and pedestrian crossing signals on Main Street, as part of the Downtown Streetscape Project.

Public Works Director Brant Sikes stated that the Clinchfield Community Park paving should take place within about two weeks. The paving has been delayed to allow time for the base to set up.

The City Manager presented a map to Council, showing the proposed donation to the City of approximately three acres of property on Forest Heights Drive by Everette and Rachel Carnes. The City Manager stated that Mr. Carnes believed that this property could provide a future access to the City's property on Mt. Ida.

Mayor Little stated that the property offer from Mr. Carnes is fantastic and could be the solution to access to Mr. Ida for which the City has been looking for several years.

Upon a motion by Council Member Martin, seconded by Mayor Pro Tem Cuthbertson, those members of Council present voted to accept the proposed donation to the City of approximately three acres of property on Forest Heights Drive by Everette and Rachel Carnes.

COUNCIL MEMBER COMMENTS:

Mayor Pro Tem Cuthbertson stated that Mr. Walter Rowe had asked that DOT be contacted regarding a hole between the sidewalk and the curb along East Court Street, related to recent drainage work completed in this area by DOT. The City Manager stated that he would pass this complaint on to DOT immediately.

Mayor Pro tem Cuthbertson stated that there are persons sitting on trash receptacles at the corner of West Henderson and Main Street. The City Manager stated that the old trash receptacles on Main Street will soon be replaced with new trash cans of a design that will be difficult to be used as a seat.

Council Member Ramsey noted that the tables and chairs have not been placed on the West Henderson Street side of Main Street Pub and Deli, as had been requested by the business and approved by Council in July. The

City Manager reported that the Marion Business Association had reminded Main Street Pub and Deli of the need to put the tables and chairs in place as soon as possible.

Council Member Ramsey advised that the school zone flashing signals were not yet operational around Marion Elementary School. Public Works Director Brant Sikes stated that the flashing signals would be turned on prior to school starting on August 27.

Council Member Ramsey reported a street light out on South Garden Street in front of the Marion Garden Condominiums. The City Manager advised that this street light would be reported again to Duke Energy.

The City Manager commended Police Chief Mark Brooks and the entire Police Department for the great job they did with the National Night Out event on Main Street on Tuesday, August 7. It was a great event, with excellent attendance.

ADJOURNMENT: Upon a motion by Council Member Martin, seconded by Council Member Doggett, those members of Council present voted to adjourn.

Stephen R. Little, Mayor

ATTEST:

J. Robert Boyette, City Manager



Marion
Business
Association, Inc.
Where Main St. Meets The Mountains

(828) 652-2215

PO Drawer 700, Marion, North Carolina, 28752

July, 2011 - June 2012

Annual Report of Marion Business Association

Economic Development Report

24- New Businesses Opened

9 - Businesses Closed –

10 -Business Opportunity Inquiries

9 - Business Loan Inquiries

7 - Business Grant Inquiries

799 - Business Visits

12- Property Referral Inquiries

9- Property Owner Contacts w/ available buildings

2 - Contacts with interested Commercial Developers

1- New Businesses Breaking Ground

16- Façade Grant Inquires

9- Façade Grant Awarded (MBA & MEDA Historic Marion Façade Grant Program and MBA Sign Grant)

2- Properties sold

Other Economic Activity:

- *Historic Marion Façade Grants* – Awarded 6 grants to downtown businesses located in City. Funded from MBA and MEDA. Awarded 2 MBA Sign Grants
- *Community Innovators sponsored the “Best of McDowell” Photo Contest.* Community Innovators meet bi-monthly to discuss changes in the economy and affect on local quality of life issues.
- Partnered with MTCC Small Biz Center for two *REAL* class series. Had 16 participants finish the entrepreneur class with a completed business plan.
- Attended *Micro Loan training at NC Rural Center.* The MBA is an intake office for Rural Center Micro Loans.
- *Historic Marion Tailgate Market* opened May 15, 2012. 2011 was a very successful season for the market.
- MBA continues to meet with the *WNC Rail Committee* to promote passenger rail service to WNC.
- MBA maintains an *Available Commercial Properties* listing of properties in the City of Marion.
- *Business for Breakfast* topics covered Facebook, Customer Service/Streetscape Update, Free Local Services for Employers, Surviving Christmas & Saving Your Sanity, The IRS & State Want What??
- The MBA is working with the City of Marion, McDowell Chamber Commerce, McDowell County and McDowell Tourism to apply for **Certified Retirement Community** designation by the Dept of Commerce. Several presentations have been presented to community organizations. A presentation to the community is scheduled for 5:30 PM, Tuesday, April 24 at the Community Building. The application is due July 31.

Special Events Report *Bobbie Young retired and Lou Godfrey was hired in April, 2012.*

July 4 Celebration – Largest crowd ever, great comments about fireworks display
July 15, Business for Breakfast Topic – “Facebook”
August 5, First Friday Concert – Fair attendance.
August 6, Sidewalk Yard Sale – Fair participation.
August 17, Hosted Rural Center Regional Meeting @ Depot
September 5, Labor Day Concert with Terry McKinney. Due to rain, held concert inside depot.
October 8 – Mountain Glory Festival = One of the best festivals ever. Most vendors reported above average sales. Very good attendance.
October 25 – Historic Marion Tailgate Market Fall Festival = Trick or Treating for the kids; costume contest; pumpkin painting; market vendors. Great event and making plans for 2012.
November 20 – Marion Christmas Parade. Very well attended and good entry participation.
December 1 – Melodies on Main – Live Santa for the children. Melodies is a very good annual children’s event. Largest Melodies on Main ever.
December 31 – Rotary of Marion’s New Year’s Eve Celebration – 3rd event!
February 14 - First Valentine’s Day Dance with homemade desserts and dancing. Sold out all the tickets.
March 31 – Easter Egg Hunt with YMCA. The children had a great time and loved Mr. & Mrs. Bunny
May 5 – Sidewalk Yard Sale – Great Day until a quick rain shower sent everyone in!
June 1 – 6th Liver Mush Festival –Had to move to Shade Shelter due to rainy weather forecast.
It was a great event!! “It’s a Squeal!” t-shirts sold out!

Volunteer Hours Committed – 870.5

Other MBA Activity

The MBA Board updated and approved a new mission and vision statement. They also created and approved a plan of work for the Association. The Plan of Work is four areas as defined by the NC Main Street Office: Design, Organization, Economic Development and Promotion/Special Events. (See attachment)

Mission Statement.....The mission of the Marion Business Association is to broaden the economic base of the community while preserving the historic character of the downtown and promoting Marion as a desirable place to visit, work, shop, play and live.

Vision Statement. Marion will continue its role as the heart of the community. It will offer a unique experience with inviting outdoor cafes, galleries and boutiques framed by distinctive historic architecture. Marion will be a walkable downtown with adjoining greenways. It will be enhanced by the civic, cultural, and economic diversity of its citizens. Marion will be a thriving center for business and entertainment.

Active Committees

MBA Board of Directors
MBA Executive Committee
Events & Promotion Committee
Economic Development Committee
Community Innovators
Mountain Glory Festival Committee
Historic Marion Tailgate Market
Business for Breakfast

The total cost over the life of the streetscape project thus far \$446,441.50, and total spent 2011-2012 was \$333,182.23.

Other Committees MBA Supports -
MEDA
McDowell House
McDowell Non-profit Organizations

**City Manager's Report
Current Activities
September 4, 2012**

New Items/Items Previously Reported with Updated Information

1. Retail Sales Growth – As indicated in the enclosed spreadsheet, retail sales in McDowell County grew by 13.23 percent in 2011-12 over 2010-11, compared to growth of 6.27 percent across the State as a whole. McDowell County has outpaced the State growth in retail sales for five of the past six years. Since 2005-06, McDowell County's growth in retail sales has been 23.0 percent, while the growth in State retail sales for the same time period was only 1.24 percent. The State no longer tracks retail sales for cities. In 2009, when the State stopped collecting sales tax data for cities, the City of Marion accounted for 76 percent of retail sales in McDowell County. This is the figure I continue to use, although there is a good chance the percentage is now actually higher.

REPORT ITEM 1

2. Congratulatory Letter from McGill – Keith Webb of McGill sent the attached letter, congratulating the City on receiving the State Area Wide Optimization Program (AWOP) award again for excellent performance at the Water Plant. Despite recent taste and odor issues that were a result of an algae outbreak, our Water Plant continues to perform at a very high level.

REPORT ITEM 2

3. Water System Taste and Odor Complaints – As previously reported, as of late August, we continue to make progress with taste and odor issues in the City's water system. We are flushing dead end lines, as problems are reported. The dead end lines seem to be the remaining issue.
4. Manufactured Home Regulations – The Planning Board will review possible revisions to the City's manufactured housing zoning regulations at its September 6 meeting. It is likely that recommendations will be forwarded for consideration at the September 18 Council meeting. Further research has indicated that there is case law in North Carolina that prohibits regulating the age of manufactured housing since the Federal code was instituted in 1976. Therefore, the Planning Board recommendations will definitely include eliminating references to the age of manufactured housing, except for going back to the old prohibition against manufactured housing constructed prior to the establishment of the Federal code in 1976.
5. Downtown Streetscape Project – As requested by the Tree Board, Heather obtained prices for metal grates to go around the base of our ginkgo trees on Main

Street. The total cost of the grates will be around \$19,000-\$20,000. Heather has looked at an out of state manufacturer, as well as local options. The price is likely to be similar. The Tree Board recommended at its August 21 meeting that the City purchase the tree grates as part of the 2013-14 budget, using a local option for the grates if at all possible. The Tree Board understood that an expenditure in the neighborhood of \$20,000 would be very difficult to handle, without being included in the annual budget. If Council agrees with this recommendation, I can work to include this expenditure in the 2013-14 City budget.

By the time of the September 4 Council meeting, DOT will hopefully have finalized the replacement of traffic signal heads and pedestrian crossing signals on Main Street and also filled in brick and concrete where needed at intersections on Main Street, as part of the Downtown Streetscape Project.

We have ordered the trash receptacles and benches for downtown. The benches and trash cans should arrive and be installed by early September, if not sooner.

6. Marion Travel Plaza Water Extension – In September, the County Commissioners will hopefully approve the use of remaining \$298,000 of Sugar Hill Road Water and Sewer Extension loan funds for the extension of water under I-40 to Marion Travel Plaza on Sugar Hill Road on the south side of I-40. I spoke with Chuck about this request and he told me that he thought this was an excellent use of the remaining loan money.

The County Commissioners discussed this request at their meeting on August 13. Chuck reported that the Commissioners seemed to like the idea of this project, but had a couple of questions, so no action was taken. Chuck hopes that the Commissioners will approve the project at their September meeting, which will allow us to start work on the project design and permitting.

7. Council Meeting Items – I wanted to update you on items from the August 21 and other recent Council meetings, as follows:
 - A. East Court Street Complaint – I advised Doug McNeal with DOT of the complaint Mayor Pro Tem Cuthbertson received from Mr. Rowe about a hole located between the sidewalk and curb on East Court Street. Mr. Rowe thought that this hole was related to the recent DOT drainage project in this area. Doug said that he would look at the location and take necessary steps to correct the problem.
 - B. Main Street Pub and Deli – Main Street Pub and Deli was given approval to place table and chairs on the West Henderson Street sidewalk of their business. The MBA has followed up with the business, which indicates that they will put the tables and chairs in place in the near future.

- C. Traffic Signal Request – I resubmitted a request to DOT for a traffic signal at Wilhemia and West Henderson Streets. DOT Division Traffic Engineer Anna Henderson advised me that she will have this request reviewed and new traffic counts taken after school starts, in order to get the most accurate picture of traffic flow.
 - D. Old West Henderson Street Parking Lane Paving – This item has not been pursued further by McDonald’s, after concerns were expressed by Allen Gurley. There have been no further complaints by Farm Bureau about parking along Old West Henderson Street, so this may no longer be an issue.
 - E. South Main Street Flowers – Brant looked into the situation with the flowers on South Main Street. Lawrence Moore has always, to our knowledge and according to our contract, maintained these flowers. Lawrence has been instructed to plant flowers that are heartier and to maintain them better. Lawrence replaced the dead flowers and appears to be maintaining them properly. However, we still have had some problems with some of the planting locations, leading Lawrence to believe that we may have some soil issues in places. Lawrence has subsequently replaced soil in some of the problem locations and will be replanting these spots by early fall. We will continue to address this issue until it is solved.
 - F. School Zone Flashing Signals – The school zone flashing signals were turned back on around Marion Elementary School and East McDowell Junior High School prior to school starting on August 27.
 - G. Street Light Out – We reported again a street light out on South Garden Street in front of the Marion Garden Condominiums, as had been reported by Council Member Ramsey.
8. Planning Session Item Updates – I wanted to continue to update you on items discussed during the April 20-21 Council Planning Session. These items are as shown below. Please note that work on some of the items discussed at the Planning Session may take some time.
- A. New Year’s Eve Event – When the Marion Rotary Club, City, MBA and County start planning for the New Year’s Eve Event, we will pass on Council’s desire to open the event to outside food and beverage vendors, so that we can at least have some hot beverages and some food on the street.
 - B. Water Plant Study/Old Fort Interconnection Idea – We have set up a meeting between City Council and the Old Fort Board of Aldermen for Thursday, September 6 at 6:30 p.m. at the Police Department Training Room. At this meeting, McGill will make a presentation on opportunities

for cooperation between Marion and Old Fort, ranging from a water interconnection to consolidation of the utility systems of both towns. Any course of action would certainly require considerable study before any decisions could be made by Council.

- C. Railroad Street – We will repaint the centerline of Railroad Street near West Henderson Street. We have a few streets that need centerline striping completed. Brant is writing specifications for centerline striping and will soon seek bids to have this work completed.
- D. Cemetery Street Restoration – Brant will work in some asphalt curbing with the resurfacing of the street in Oak Grove Cemetery next to the creek. This street work is included in the proposed 2012-13 budget.
- E. Handicapped Parking – We will add one or more handicapped parking spaces to our leased parking lot at West Henderson and Logan Streets, likely when we complete the resurfacing of the lot in the 2012-13 Fiscal Year. Our crews will soon begin work on rebuilding the steps leading from the parking lot to the West Henderson Street sidewalk.
- F. Severe Weather Alert System – Jim Neal is talking with the County Fire Commission about the idea of a phone or e-mail severe weather alert system. Jim said that this idea has been discussed previously, but never implemented. A phone or e-mail alert system was considered preferable to an audible alarm, given the limited range of an alarm.
- G. Transportation Planning – I talked to new School Superintendent Dr. Gerri Martin about Council’s concerns with the traffic situation around the High School and West Junior High, once the School System expands the High School and goes with the Middle School concept. I urged Dr. Martin to have the School System go ahead and ask DOT to take over maintenance of the entire High School Road, even if that means the gates have to be removed. I also asked that we begin planning for the expansion as soon as possible. I advised that we would soon start work on a City Comprehensive Transportation Plan and that this matter would be a top issue.

We will be sure to stress the Sugar Hill Road, North Main Street and Baldwin Avenue sidewalks, as well as the High School access and traffic flow, along with long-standing City TIP requests and other Safe Routes to School pedestrian recommendations, in the City Comprehensive Transportation Planning Process. The City plan will take about one year to complete, according to DOT. I will advise when DOT gives us a schedule for the Planning Process to begin.

- H. MBA Board/Downtown Business and Property Owner Survey – The MBA has surveyed downtown businesses about the idea of downtown appearance regulations for buildings, smoking on sidewalks and a parking validation program. A total of 26 responses were received. The MBA Board reviewed the survey results at their August 14 meeting. The MBA Economic Development Committee reviewed the surveys in detail and will make a recommendation back to the full Board in September. We can then hopefully receive the MBA recommendation in time for review at the September 18 Council meeting or the next Council Planning Session.
 - I. Dilapidated Housing – Jay will seek to make progress with dilapidated housing enforcement in 2012-13, hopefully assisted by some funding appropriated for that purpose in the budget.
9. Marion 101 – We continue to seek participants for the third session of Marion 101, which will take place on seven consecutive Thursday evenings from September 13 until October 25. As of August 28, we had 11 people signed up for Marion 101. We can handle as many as 25 people. At the first session on September 13, we will discuss, among other things the role of City Council. Please join us for this session if at all possible. Please mention Marion 101 to people who may be interested.
10. Street Resurfacing/Paving/Patching – As right-of-way is acquired for Bakersville Road and Overlook Drive, we will bid out our 2012 Street Resurfacing/Paving Priorities and will present the bid results to Council for review. I do not see any need to bid out our street resurfacing until we have the right-of-way in place.

Bakersville Road was closed to traffic on May 16 and will remain closed until the street can be repaired, which will likely take a few months. In the near future, I hope to finalize the right-of-way acquisition from the Cook family and Hospice, as authorized by Council. There will be no payment for the right-of-way, but the City will remove the dilapidated house from the Cook property. The cost of the house removal will be \$3,800, which is much cheaper than the cost of purchasing right-of-way on both sides of the street.

We are also working to acquire needed right-of-way on Overlook Drive. Property owners on Overlook Drive previously agreed to provide necessary right-of-way at no charge and that will hopefully still be the case.

Our crews have recently patched some potholes and problem spots on streets, including Willow/Broad Streets, Fern Avenue and Forest Heights Drive. Additional problem spots are being identified and more patching will take place in the near future.

11. Mirror at Railroad/South Main Streets – Nancy Hollifield of Realty One has complained that the mirror placed at Railroad and South Main Streets is blocking

the visibility and beauty of her building, which she recently painted. Brant and I looked at the mirror and did not see a good way to move it, without affecting the visibility from Railroad Street. This may be something at which the Street Committee needs to look.

12. Water Projects – Our crews have started work on a water line replacement on Vale Street. This project has been on our priority list for some time and is particularly needed with the new townhouse development taking place on the street. This work will be completed in the near future, although our crews have been pulled off of this project at times to deal with other emergency issues and to make new water and service taps.
13. US 221 Widening – We anticipate hearing back from DOT by January regarding their preliminary plans for the US 221 widening project. The preliminary plans should give us a good idea of the impact of the project on water and sewer line relocations and on existing commercial buildings. In the minutes provided by DOT of the July meeting concerning this project, DOT acknowledged that the project could be delayed if the community objects to the design and/or feels that the impacts of the project are too great. However, DOT would not want to delay the project, so we might have to fight for a delay. Hopefully, the preliminary design will truly minimize the impacts and be acceptable to us.

Chuck and I have had conversations about the County assisting us with the utility relocation cost. Chuck raised the idea with DOT and Representative Mitch Gillespie of devoting DOT secondary road funds earmarked for McDowell County to paying for the US 221 utility relocation costs, if permitted by law. Chuck recently told me that he has received negative comments about this idea from DOT and Representative Gillespie.

14. Temporary Events – I received complaints from Ms. Vernice Francis, who lives on Francis Street across from the vacant lot next to Burger King on West Henderson Street. Ms. Francis frequently complains about the temporary events that take place on this property, which is owned by Dr. O.D. Rowe. The faith healing revival that took place for about two weeks in early to mid August particularly seemed to bother Ms. Francis. She asked that I pass on to Council complaints about the noise that results from these events and how late these events sometimes last.

On Sunday night, August 12, Ms. Francis called the Police Department about noise from the revival at 11:25 p.m. The event ended for the night by the time our officer arrived a short time later. On Monday night, August 13, Ms. Francis called about noise at 10:01 p.m. The revival settled down when our officer arrived a short time later. A few years ago, Council put in place some zoning regulations on temporary events that set a restriction on the frequency of events (by type) for a particular property and set other restrictions on temporary events. The regulations include a requirement that temporary uses held outside of a

building and within 500 feet of any residence cease operation by 10:00 p.m. and that noise be controlled so that no adjoining property owner or occupant is unduly disturbed by the temporary use.

I asked our staff to stress to the people in charge of this revival the need to keep noise down and to cease operations by 10:00 p.m. If a temporary use does not comply, then the Police Department has to deal with complaints after hours. It is particularly awkward to have the City shutting down a church service.

Dr. Rowe's property has been in compliance with the frequency of events. Ms. Francis is asking for Council to address this matter. I think that the hours that events last is more of an issue than the frequency of events, but the 10:00 p.m. end time does not seem to be unreasonable. Staff can look into this issue, if so directed by Council.

I did not mention this issue at the August 21 Council meeting, due to other important issues that needed to be addressed, but will seek to mention the issue at the September 4 meeting.

15. Sugar Hill Road Sewer Extension/Wal-Mart Supercenter Development – There are no new businesses confirmed for the shopping center or outparcels, beyond what I have already reported to you. However, we are hearing that additional development, perhaps on a large scale, could soon take place along the Sugar Hill Road corridor.

Big Lots has submitted plans to lease a little less than one-half of the old Wal-Mart building and has placed a "Coming Soon" sign on the building. Big Lots will hopefully obtain its permits and start work on the renovation of the building in the near future.

The medical development at Sugar Hill Road and Steppe Streets may begin construction by the end of 2012 or perhaps be delayed as much as one year.

16. Drainage Issues – I previously advised you of a drainage complaint from Ms. Terry Johnson of 51 Miller Avenue, related to stormwater draining across private property from Euclid Avenue to Miller Avenue. The Street Committee recommended that the City not have direct involvement in this matter. Council Member Ramsey is working with the Blue Ridge Baptist Association to complete drainage work on Ms. Johnson's property, with no cost charged for labor. This work will likely be completed by early September. Ms. Johnson is paying for the materials. Ms. Johnson was very appreciative of the efforts of Council Member Ramsey to secure the volunteer labor and of Brant to come up with a plan to help her.

17. Mountain Glory Festival Committee – The Mountain Glory Festival Committee is completing plans for this year’s 29th Annual Mountain Glory Festival, to take place on Saturday, October 13
18. Mt. Ida Property – At the August 21 Council meeting, Council voted to accept the donation of property from Mr. Everette Carnes behind his home on Forest Heights Drive as a future parking area and walking trail access to the City’s Mt. Ida property. Mr. Carnes seems willing to donate property or grant a right-of-way across a vacant lot he owns next to the Dan and Barbara Davis property for access and then donate around 3 to 3.5 or more acres to the City. Mr. Carnes said that the property has some slope, but there is an area that could make a good parking lot. He suggested that, with switchbacks, a future walking trail could be constructed to the City’s Mt. Ida property.

Mr. Carnes said that he will make a decision about the exact boundaries of the property to be donated and then get back to us soon. I thanked Mr. Carnes for his generosity.

19. Eastfield Area Sidewalks CDBG Project – Heather continues to make progress getting easements signed for the Eastfield Area Sidewalks CDBG Project. As of August 29, we have obtained signatures for 20 of the 24 easements needed. We have verbal consent and are awaiting signatures for two additional properties. With one property owner, Jennifer Jackson is having difficulty determining ownership. We have two properties (Burgin and Pyatt) that have initially said no to providing easements. After we obtain the other 22 easements, we will then approach Pyatt and then Burgin. With the Pyatt property on Perry Street, the residents support the project, but the owner (the father of the resident) has not wanted to sign thus far. I will let you know as we make progress and certainly when we get to the point of negotiating with Mr. Burgin.

We checked on the required completion date of this project. Please remember that we were initially turned down for funding of this project, before being approved in 2010. We have until September 2013 to close out the project.

20. Water System Hydraulic Model – In late August, the N.C. Rural Center approved our grant for completion of a Water System Hydraulic Model. This project will cost an estimated \$30,000. The Rural Center grant will be for one-half of the project cost. As suggested by Council Member Clark, we are also exploring Golden Leaf Foundation funding for this project.
21. Greenway Behind Police Department/Creek Clean-Up – The Muddy Creek Partnership received a \$152,471 grant from the N.C. Division of Water Quality (DWQ) to construct a short Greenway behind the Police Department, Dr. Nevant’s property and the School Central Office property. There will also be stormwater improvements and streambank restoration, which is the main reason

the grant was funded. The value of the donated property and City labor to provide assistance with the project will serve as the City's match.

This project will start by summer and hopefully be wrapped up by fall. Dr. Nevant and the School System had previously agreed to donate the small amount of property needed along their rear property lines to allow the project to take place. Due to budget constraints with this project, property acquisition will likely not be needed for the School Board property, since the project may not be able to go that far right now. We will hopefully finalize the needed property acquisition from Dr. Nevant in the near future.

Work should begin on this project in September. Future phases can hopefully take the project further south. We have some additional property owners interested in having the Greenway extend across the back of their properties.

22. Images of Marion Book – Kim Clark submitted the Images of Marion book to Arcadia Publishing in late August. This book was written as a fundraiser for the McDowell House Committee. We do not know how soon the book will be published. The McDowell House Committee had wanted the books available to be sold at the Overmountain Victory Trail Event at the McDowell House in late September and at the Mountain Glory Festival in October.

23. US 70 West Right of Way Annexation – The General Assembly approved a bill annexing the US 70 West right of way between the current City Limits and the Greenway entrance in the area of the new sidewalk to be constructed by NCDOT. The bill read exactly the way we requested. We added three streetlights in this area.

DOT District Engineer Doug McNeal advised me that DOT will soon award the contract for the construction of the sidewalk on US 70 West between the West McDowell Junior High School ballfield and the Greenway entrance. Doug said that the contract will call for the sidewalk to be completed by November.

24. House Burning – On August 25, the Fire Department burned a dilapidated house at 81 Mitchell Street, as approved by Council in July. Later this year, the Fire Department was planning to burn two dilapidated houses on High Street. However, Jim said that these houses are too far gone to burn safely. I will have ordinances brought before Council very soon to condemn these two houses, along with some of our other dilapidated structures around the City.

25. DOT – As previously reported, DOT has agreed to install a delayed left turn signal for south bound traffic on North Main Street at the New Street intersection. DOT advised that it would take three to four months to prepare the plans, after which time the signal improvements could be done.

DOT continues work on the Logan Street resurfacing project, which will include repairing the drains that have long created a traffic hazard on the street. I asked DOT for a schedule of when the resurfacing work will take place, since the project is dragging on longer than we anticipated. DOT District Engineer Doug McNeal advised me on August 28 that the resurfacing would take place the week of September 3-7.

DOT has replaced some storm drainage on East Court Street between the DSS and NAPA buildings. DOT had to remove four cherry trees planted by the City, but will replace the trees in the fall once the weather cools a bit.

As previously reported, Heather and I met with DOT District Engineer Doug McNeal and Division Traffic Engineer Anna Henderson on December 13 to discuss various issues and requests, particularly involving the downtown area. I spoke to Anna on March 28 and learned that DOT is still reviewing the traffic signal requests in the downtown area. DOT is also approving an ordinance to restrict trucks from turning from East Court Street onto North Main Street. I learned in early April that DOT will not need City Council to approve a concurring ordinance for this turning restriction.

26. McDowell Mission Ministries – McDowell Mission Ministries completed HVAC work at the Friendship Home in late August. Jay inspected the work and confirmed that it had been completed. Therefore, upon receipt of an invoice, I authorized payment of the \$10,000 budgeted for McDowell Mission Ministries for this project. Chuck told me that the County would also release its 2012-13 appropriation for the Mission. I believe that the County's amount is \$15,000.
27. North Carolina Utilities Commission/Duke Energy – To date, we have received no response from the North Carolina Utilities Commission about the letter from Mayor Little, expressing the City's displeasure over Duke Energy's withdrawal of their Economic Recovery Rider Program. Based on the past track record of the Utilities Commission, I would not expect any action to be taken.

Items Unchanged From Previous Reports

28. Greenway – In response to a recent incident of vandalism, we have begun locking the Greenway gate between dusk and dawn. The signs damaged by the vandal(s) have been replaced.

The McDowell Trails Association (MTA) will likely come to an upcoming Council meeting to discuss again the idea of clearing out an area beside the Greenway and along the Catawba River as a picnic area and beach. I would request that, even if Council likes this idea (which you previously stated you did not), you allow staff to work with the MTA to determine a way to minimize maintenance responsibility for the City, since we already have a great deal to maintain at the Greenway.

As previously reported, the County Commissioners voted on March 12 to evenly split the local match for Phase 2 of the Joseph McDowell Historical Catawba Greenway, up to a maximum \$45,000 County contribution, as requested by the City.

As previously discussed, we are now under contract with the State for a \$238,800 N.C. Parks and Recreation Trust Fund (PARTF) grant to fund one-half of the costs of Phase 2 of the Joseph McDowell Historical Catawba Greenway. We have until March 30, 2015, to complete the Phase 2 project.

In mid-May, we received word that we had received the \$75,000 Recreational Trails Program (RTP) grant. Therefore, we have all of the funding in place for Phase 2 of the Greenway. The MTA is working on plans for fundraising. As previously reported, I have asked the McDowell Trails Association to raise at least \$36,000 toward the \$126,000 local match, with the County and City splitting the remaining local match. It will likely be mid-2013 (hopefully the 2013-14 Fiscal Year) before we will start construction. With the three year PARTF grant implementation, it would be preferable if we could spend our appropriation after July 1, 2013. However, we may need to fund some design expenses for the 2012-13 Fiscal Year. The County is dividing its \$45,000 contribution into two fiscal years, 2012-13 and 2013-14. I have proposed doing the same in the 2012-13 budget.

With the selection of McDowell County for the Kate B. Reynolds Foundation Healthy Counties Initiative, there is a chance (perhaps a good chance) that we could obtain funding for the local match for Phase 2 of the Greenway, other City and County trail projects and maybe even some sidewalk connections. We will have to learn more about this program, funding requirements and the process that will be used to make funding decisions. All we know at this point is that our County will hopefully receive several million dollars in funding over 10 years to improve health in the County.

29. Certified Retirement Community Designation – We submitted the application for the Certified Retirement Community Designation to the North Carolina Department of Commerce in late July. We hope to hear back from the State regarding the selection in the next few months. The City received great cooperation on this application from the Chamber, TDA, MBA, County, Board of Realtors and other agencies.
30. Downtown Walking Trail Brochure – Our crews will be completing the crosswalk painting and making any needed repairs on the downtown walking trail routes. Due to other needed work, this project is taking some time. As of early August, we had completed about two-thirds of the crosswalks. In late April, DOT made crosswalk and pedestrian crossing signal improvements at West Henderson and Railroad Streets.

We will soon be printing the walking trail brochures, a project included in the adopted 2012-13 Budget.

31. N.C. League of Municipalities Conference – Please advise if you wish to attend the N.C. League of Municipalities Conference, to be held in Charlotte from Sunday, October 21 to Tuesday October 23. We will be happy to register you if you wish to attend.
32. Advisory Board/Volunteer Dinner – The Advisory Board/Volunteer Dinner has been scheduled for Tuesday, October 9 at 6:00 p.m. at the Community Building. Ms. Callie Cash will cater this dinner for us.
33. Kate B. Reynolds Foundation Healthy County Initiative – As previously mentioned, McDowell County was recently one of three Tier 1 counties selected for the initial round of the Kate B. Reynolds (KBR) Foundation Healthy Counties Initiative. While we had understood that the initial three counties selected would split \$100 million over 10 years, the news release announcing the grant selection indicated that 10-15 counties would split \$100 million over 10 years. This would reduce the amount invested in McDowell County to \$6 million to \$10 million over 10 years, which is still a very considerable amount.

KBR's areas of emphasis include obesity prevention, diabetes prevention and access to health care. Tim Blenco with the YMCA said that he understands that the money may be given out in a community-input, Golden Leaf type of process. The KBR representative I spoke to previously seemed very interested in the trail/greenway projects being pursued by the City, County and McDowell Trails Association. It is possible that we may be able to obtain some funding for the greenway and maybe even for some sidewalk connections. If nothing else, the community as a whole will greatly benefit by this selection. I will let you know as we learn more.

34. National Health and Nutrition Examination Survey – The Health Department has advised that McDowell County has been selected for the National Health and Nutrition Examination Survey (NHANES). This survey is conducted annually by the U.S. Center for Disease Control (CDC) as a way to obtain health data about the United States. About 15 counties are selected each year, based on statistical sampling. In these 15 counties, about 5,000 people are surveyed (300-400 per county), with information collected on height, weight, blood sugar, blood pressure, cholesterol, bone density, tooth decay and other measures. Another survey of youth is also done. McDowell County did not apply, but was selected. The CDC will bring four tractor trailers, which will be joined together to form a 100' x 100' mobile clinic, from September 22 to November 12. Individuals will be chosen based on statistical sampling and their willingness to participate. The individuals who participate will receive \$120, free babysitting if needed and a copy of their individual results. The CDC and Health Department will receive the

total results, but no individual information, due to privacy concerns. I put the Health Department in touch with Byron Phillips regarding possibly parking the trailers on the Great Meadows property on either side of US 70. The trailers will be placed on the Phillips property on the former Mayland Mobile Home site on Highway 70 West across from Lowe's.

35. Post Office – We followed up again with the Post Office concerning the schedule for the relocation of a mailbox at the Library to make it a drive-up mailbox and for a drive-up mailbox to be relocated from the Bank of America parking lot to the City-County Parking Lot on South Garden Street. The Post Office said that this project is “on hold”. The Postmaster said that she would request again that final approval be given. Once the new boxes arrive, the Postmaster pledged she would have them placed within one day. The McDowell News ran a story on this project in late July, which hopefully will get the attention of the Post Office. The Post Office spokesperson said that the request remains under review.
36. Farmer's Market – The Farmer's Market opened for the 2012 season on Tuesday afternoons on May 15. The Tuesday afternoon market should run through late September or early October. The Saturday morning market began on June 23 and run through late August or early September.
37. Glenwood Sewer Request – As previously reported, Grayson England says that he plans to have Brooks Engineering look at the ability of the Glenwood Elementary School pump station and the City's force main sewer line to handle the additional wastewater flow from the convenience store and residential units (9 units in total) on Old 221 in Glenwood. There has been no movement on this project in several months.
38. Safe Routes to School Plan – We have been waiting for a year and a half for DOT to approve our Safe Routes to School (SRTS) Plan. Other communities are facing the same problem. The problem, as usual, is due to inaction by DOT staff in Raleigh. DOT staff at the local and division level have been very helpful, but they are not authorized to approve SRTS plans. The DOT staff member working with us on the McDowell County Comprehensive Transportation Plan is trying to get some answer from the person in charge of SRTS. DOT previously indicated that an SRTS Plan was needed to apply for SRTS implementation funds for pedestrian and bicycle improvements in the vicinity of schools. DOT has not yet opened up an SRTS funding cycle, to our knowledge, so we have not yet lost the opportunity to apply for funding, but we feel that our SRTS Plan should still be approved by DOT. We will stay on this matter and use any leverage we can find. I mentioned this matter to Representative Mitch Gillespie, who said that he would see what he could do to push DOT for approval of our plan.

I hope that this information is helpful. Please let me know if you have any questions, or if there is any item that I did not include.

Retail Sales Growth - McDowell County and State of North Carolina

<u>Year</u>	<u>McDowell County</u>	<u>% Increase</u>	<u>State of North Carolina</u>	<u>% Increase</u>
2011-12	\$281,250,189	13.23%	\$102,830,051,937	6.27%
2010-11	\$248,385,595	1.78%	\$96,759,102,306	2.26%
2009-10	\$244,051,224	3.18%	\$94,620,555,817	-5.09%
2008-09	\$236,529,412	-2.75%	\$99,691,217,415	-7.64%
2007-08	\$243,209,446	2.55%	\$107,937,193,038	1.27%
2006-07	\$237,168,391	9.50%	\$106,587,219,763	4.96%
2005-06	\$216,592,725	N/A	\$101,551,856,254	N/A

Note: A comparison of retail sales is not possible before and after 2005, due to changes in how the State tracks retail sales. Prior to 2005, the State tracked Gross Retail Sales. Beginning in 2005, the State compiled Taxable Retail Sales, which discount certain purchases exempt from sales tax. Through 2011-12, the growth in Countywide retail sales exceeded the growth of, or was less than the loss in, that of the State as a whole for five of the past six years. The City of Marion accounts for 76 percent of retail sales in McDowell County.

From 2005 to 2012, retail sales in McDowell County increased by 23.0 percent, while retail sales in the State as a whole increased by only 1.24 percent.



August 21, 2012

Mr. Bob Boyette, Manager
City of Marion
Post Office Drawer 700
Marion, North Carolina 28752

Re: Area Wide Optimization Award (AWOP)
North Carolina Division of Water Resources
Public Water Supply Section

Dear Bob:

McGill Associates would like to congratulate you and your staff on the receipt of the **Area Wide Optimization Award (AWOP)** recognizing the exemplary performance of the City of Marion's surface water treatment facilities from the North Carolina Division of Water Resources, Public Water Supply Section. The award is a very significant achievement that represents true value to every user that is connected to Marion's water system. This high level of treated water reflects the hard work of many dedicated employees and the conscious effort of the town to operate and maintain an excellent water system.

McGill Associates is pleased to have had the opportunity to assist you and the town with the design and improvements to your water plant and other system components in the past and trust that these improvements have in some small way contributed to your award. You may be aware that about one third of the thirty-five (35) recipients of this year's awards have water treatment facilities that were designed and/or modified by McGill Associates. We are quite proud of the successful record of performance of water treatment plants that McGill Associates has had a hand in the design process. We fully understand that your dedication along with that of your staff is the key to the ultimate performance of these vital facilities and that the successful partnerships between you, your staff and McGill Associates make awards like this possible.

Once again, congratulations on this well deserved award and if there is any assistance we can provide to you or your staff please feel free to contact me or any of the staff at McGill Associates'.

Sincerely,
McGill Associates, PA


M. Keith Webb, P.E.
Vice-President

E n g i n e e r i n g • P l a n n i n g • F i n a n c e

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