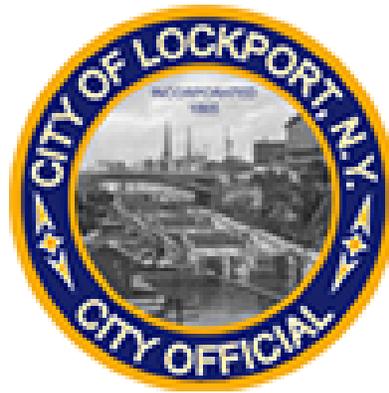


CITY OF LOCKPORT EMPLOYEE HANDBOOK



Adopted by Resolution 112018.11 – November 20, 2018

TABLE OF CONTENTS

I.	Purpose	1
II.	Code of Ethics	1
A.	Purpose	1
B.	Definitions	2
C.	Applicability	2
D.	Prohibition On Use Of Municipal Position For Personal Or Private Gain	3
E.	Disclosure Of Interest In Legislation And Other Matters	3
F.	Treatment of public.	3
G.	Recusal And Abstention	3
H.	Exceptions	4
I.	Investments In Conflict With Official Duties	5
J.	Private Employment In Conflict With Official Duties	5
K.	Future Employment.	5
L.	Personal Representations And Claims Permitted	6
M.	Use Of Municipal Resources	6
N.	Interests In Contracts	7
O.	Nepotism	7
P.	Political Solicitations And Campaign Activities	7
Q.	Confidential Information	7
R.	Gifts	8
S.	Board of Ethics	9
T.	Complaints And Investigations	11
U.	Enforcement	11
V.	Confidential Ethics Advisory Opinions	12
W.	Penalties for Offenses	12
III.	Civility Policy	12
IV.	Standards of Conduct	13
V.	Progressive Discipline	14
VI.	Confidentiality	15
VII.	Dress Code	15
VIII.	Hours of Work / Time Records	15
IX.	Attendance	16
X.	Secondary Employment	16
XI.	Sick Leave, Vacation and/or Personal Leave	16
XII.	Other Leaves Of Absence	16
A.	Military Service Leave	17
B.	Blood Donation / Bone Marrow Donation Leave	17
C.	Lactation Breaks	18
D.	Voting Leave	18
E.	Crime Victims Leave	18
XIII.	Tardiness	19
XIV.	Break and Lunch periods	19
XV.	Safety	19

XVI.	Reporting Accidents or Incidents	20
XVII.	Motor Vehicle Use and Safety	20
	A. Purpose	20
	B. Scope	20
	C. Driving Rules And Regulations	20
	D. In Case of Accident	24
	E. Insurance	25
	F. Travel / Mileage Reimbursement	25
	G. Defensive Driving Program	26
XVIII.	Use of City Property and Equipment	26
XIX.	Family and Medical Leave	27
XX.	Workers' Compensation	33
XXI.	Medical Coverage	33
XXII.	Unemployment Insurance	35
XXIII.	Agency Shop	35
XXIV.	Defense and Indemnification	35
XXV.	Drug Free Workplace	35
XXVI.	Employee Assistance Program	36
XXVII.	Drug and Alcohol Testing Policy – Safety Sensitive Positions	37
	A. Purpose	37
	B. Program Requirement	38
	C. Testing Requirements	39
	D. Testing Procedures	42
	E. Consequences of the Use of Drugs and the Misuse of Alcohol	44
	F. Training And Responsibilities	45
XXVIII.	Reasonable Suspicion Testing	47
XXIX.	Non-Smoking Workplace	51
XXX.	Equal Employment Opportunity	51
XXXI.	Discrimination, Harassment and Retaliation	52
XXXII.	Reasonable Accommodation For Disability	54
XXXIII.	Health and Safety in the Workplace	55
XXXIV.	Safety Committee	56
XXXV.	Building Evacuation	56
XXXVI.	Civil Service Law - An Overview	57
	A. Classifications	57
	B. Appointments	57
	C. Probationary Period	58
	D. Civil Service Examinations	59

XXXVII. Residency Requirement	59
XXXVIII. Personnel Office	59
XXXIX. Personnel files	59
XL. Resignations	60
XLI. Contact Information and Personal Data Changes	60
XLII. Reference Policy	61
XLIII. Workplace Violence Policy	61
A. Complaint Procedure	62
B. Retaliation Prohibited	63
XLIV. Sexual Harassment Policy	63
XLV. Acceptable Use of Communications Technology	72
XLVI. Public Relations	74
XLVII. Social Media	74
XLVIII. Telephones and Other Electronic Devices	76
XLIX. Acknowledgment of Receipt	78
LIST OF CURRENT LOCKPORT POLICIES	79

Appendix A. - City of Lockport Universal Complaint Form / Incident Report

I. Purpose

This Handbook is intended to inform you of various rules, policies and procedures that relate to your employment with the City of Lockport. This Handbook does not attempt to address every rule, policy or procedure that may apply to your employment. There are many day-to-day practices, for example, that are generally known by all employees. In addition, most employees are covered by a collective bargaining agreement, the terms of which are specific to each agreement and are not set forth herein. The City recommends that its employees familiarize themselves with any such agreement that governs their employment. To the extent anything set forth herein is inconsistent with your collective bargaining agreement, the terms of the collective bargaining agreement will control.

This Handbook is not intended to cover every situation that might arise during your employment. It should be used as a guideline and for reference purposes. Anything contained herein that conflicts or is inconsistent with applicable legal authority shall be void, and the applicable legal source will control.

This Handbook is not intended as an employment contract, and does not constitute an expressed or implied contract of employment.

The City expressly reserves the right to change, modify, add to or delete from the provisions set forth in this Handbook, and may unilaterally do so without notice. City personnel will be notified of any changes to the Handbook once they are adopted by the City's Common Council. The Handbook shall be distributed or made readily available to City personnel as soon as practicable following the adoption of any changes thereto.

If you have any questions regarding the content of this Handbook, please submit your question in writing to the attention of your respective department head and Corporation Council.

This Handbook applies to all elected and appointed officials and all City employees.

This Handbook shall be made available at each departmental office and placed on the City's website.

II. Code of Ethics

The City, by and through its Common Council, has adopted the following Code of Ethics:

A. Purpose

Officers and employees of the City of Lockport hold their positions to serve and benefit the public and not for obtaining unwarranted personal or private gain in the exercise and performance of their official powers and duties. The City of Lockport recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This Code of Ethics establishes those standards.

B. Definitions

As used in this chapter, the following terms shall have the meanings indicated:

- Board -- The Common Council and any municipal administrative board (e.g., Planning Board, Zoning Board of Appeals), commission or other agency or body comprised of two or more municipal officers or employees.
- Code -- This Code of Ethics.
- Interest -- A direct or indirect financial or material benefit, but does not include any benefit arising from the provision or receipt of any services generally available to the residents or taxpayers of the municipality or an area of the municipality, or a lawful class of such residents or taxpayers. A municipal officer or employee is deemed to have an interest in any private organization when he or she, his or her spouse or a member of his or her household is an owner, partner, member, director, officer or employee or directly or indirectly owns or controls more than 5% of the organization's outstanding stock.
- Municipality -- The City of Lockport. The word "municipal" refers to the municipality.
- Municipal Officer or Employee -- A paid or unpaid elected or appointed officer or employee of the City of Lockport, including, but not limited to, the members of any municipal board.
- Relative -- A spouse, domestic partner, parent, step-parent, sibling, sibling's spouse, step-sibling, step-sibling's spouse, child, step-child, uncle, aunt, nephew, niece or household member of a municipal officer or employee and individuals having any of these relationships to the spouse of the officer or employee.

C. Applicability

This Code of Ethics applies to the officers and employees of the City of Lockport and shall supersede any prior municipal Code of Ethics. The provisions of this Code of Ethics shall apply in addition to all applicable state and local laws relating to conflicts of interest and ethics, including, but not limited to, Article 18 of the General Municipal Law and all rules, regulations, policies and procedures of the City of Lockport.

This Code of Ethics shall be subject to Article 75 of the New York State Civil Service Law and the respective Collective Bargaining Agreement for the Employee.

This Code of Ethics shall be subject to Article 6 (Freedom of Information Law) and Article 7 (Open Meetings Law) of the Public Officers Law of the State of New York.

In the event of any inconsistency between this Code and a Collective Bargaining Agreement or Article 75 of the New York State Civil Service Law the Collective Bargaining Agreement or Article 75 of the New York Civil Service Law shall supersede.

D. Prohibition on Use of Municipal Position for Personal or Private Gain

No municipal officer or employee shall use his or her municipal position or official powers and to secure a financial or material benefit for himself or herself, a relative or any private organization in which he or she is deemed to have an interest.

E. Disclosure of Interest in Legislation and Other Matters

Whenever a matter requiring the exercise of discretion comes before a municipal officer or employee, either individually or as a member of a board, and disposition of the matter could result in a direct or indirect financial or material benefit to himself or herself, a relative or any private organization in which he or she is deemed to have an interest, the municipal officer or employee shall disclose, in writing, the nature of the interest.

The disclosure shall be made when the matter requiring disclosure first comes before the municipal officer or employee or when the municipal officer or employee first acquires knowledge of the interest requiring disclosure, whichever is earlier.

In the case of a person serving in an elective office, the disclosure shall be filed with the Common Council of the municipality. In all other cases, the disclosure shall be filed with the person's supervisor, or, if the person does not have a supervisor, the disclosure shall be filed with the municipal officer, employee or board having the power to appoint to the person's position. In addition, in the case of a person serving on a municipal board, a copy of the disclosure shall be filed with the board. Any disclosure made to a board shall be made publicly at a meeting of the board and must be included in the minutes of the meeting.

F. Treatment of public.

An officer or employee of the City of Lockport shall treat all members of the public, whether a person, firm or corporation or other organization, with respect and in a professional manner, with equal consideration and without special advantage in carrying out his or her official duties.

G. Recusal and Abstention

No municipal officer or employee may participate in any decision or take any official action with respect to any matter requiring the exercise of discretion including discussing the matter and voting on it, when he or she knows or has reason to know that the action could confer a direct or indirect financial or material benefit on himself or herself, a relative or any private organization in which he or she is deemed to have an interest.

In the event that this section prohibits a municipal officer or employee from exercising or performing a power or duty:

(1) If power or duty is vested in a municipal officer as a member of a board, then the power or duty shall be exercised or performed by the other members of the board; or

(2) If the power or duty is vested in a municipal officer individually, then the power or duty shall be exercised or performed by his or her deputy, or if the officer does not have a deputy, the power or duty shall be performed by another person to whom the officer may lawfully delegate the function; or

(3) If the power or duty is vested in a municipal employee, he or she must refer the matter to his or her immediate supervisor, and the immediate supervisor shall designate another person to exercise or perform the power or duty.

H. Exceptions

This Code's prohibition on use of a municipal position (Paragraph¹ D), disclosure requirements (Paragraph E) and requirements relating to recusal and abstention (Paragraph G) shall not apply with respect to the following matters:

- (1) Adoption of the municipality's annual budget.
- (2) Any matter requiring the exercise of discretion that directly affects any of the following groups of people or a lawful class of such groups:
 - (a) All municipal officers or employees;
 - (b) All residents or taxpayers of the municipality or an area of the municipality; or
 - (c) The general public.
- (3) Any matter that does not require the exercise of discretion.

Recusal and abstention shall not be required with respect to any matter:

- (1) Which comes before a board when a majority of the board's total membership would otherwise be prohibited from acting by Paragraph G of this Code.
- (2) Which comes before a municipal officer when the officer would be prohibited from acting by Paragraph G of this Code and the matter cannot be lawfully delegated to another person.

¹ Please note that all references to "Paragraph" or "subparagraph" within the Code of Ethics shall refer to the applicable section(s) of this Code, and not to any other section of the Employee Handbook.

I. Investments in Conflict with Official Duties

No municipal officer or employee may acquire the following investments:

- (1) Investments that can be reasonably expected to require more than sporadic recusal and abstention under Paragraph G of this Code; or
- (2) Investments that would otherwise impair the person's independence of judgment in the exercise or performance of his or her official powers and duties; or
- (3) Investments from any City of Lockport auction if the employee or officer is in the position to negotiate, prepare, authorize or approve the contract for the sale upon which he or she is bidding.

This section does not prohibit a municipal officer or employee from acquiring any other investments or the following assets:

- (1) Real property located within the municipality; or
- (2) Less than 5% of the stock of a publicly traded corporation; or
- (3) Bonds or notes issued by the municipality and acquired more than one year after the date on which the bonds or notes were originally issued.

J. Private Employment in Conflict with Official Duties

No municipal officer or employee, during his or her tenure as a municipal officer or employee, may engage in any private employment, including the rendition of any business, commercial, professional or other types of services, when the employment:

- (1) Can be reasonably expected to require more than sporadic recusal and abstention pursuant to Paragraph G of this Code; or
- (2) Can be reasonably expected to require disclosure or use of confidential information gained by reason of serving as a municipal officer or employee; or
- (3) Violates § 805-a(1)(c) or (d) of the General Municipal Law; or
- (4) Requires representation of a person or organization other than the municipality in connection with litigation, negotiations or any other matters to which the municipality is a party.

K. Future Employment.

No municipal officer or employee may ask for, pursue or accept a private post-government employment opportunity with any person or organization that has a matter

requiring the exercise of discretion pending before the municipal officer or employee, either individually or as a member of a board, while the matter is pending or within the 90 days following final disposition of the matter.

No municipal officer or employee, for the one-year period after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any matter involving the exercise of discretion before the municipal office, board, department or comparable organizational unit for which he or she serves.

No municipal officer or employee at any time after serving as a municipal officer or employee, may represent or render services to a private person or organization in connection with any particular transaction in which he or she personally and substantially participated while serving as a municipal officer or employee.

L. Personal Representations and Claims Permitted

This Code shall not be construed as prohibiting a municipal officer or employee from:

- (1) Representing himself or herself, or his or her spouse or minor children, before the municipality; or
- (2) Asserting a claim against the municipality on his or her own behalf, or on behalf of his or her spouse or minor children.

M. Use of Municipal Resources

Municipal resources shall be used for lawful municipal purposes. Municipal resources include, but are not limited to, municipal personnel and the municipality's money, vehicles, equipment, materials, supplies or other property.

No municipal officer or employee may use or permit the use of municipal resources for personal or private purposes, but this provision shall not be construed as prohibiting:

- (1) Any use of municipal resources authorized by law or municipal policy; or
- (2) The use of municipal resources for personal or private purposes when provided to a municipal officer or employee as part of his or her compensation; or
- (3) The occasional and incidental use during the business day of municipal telephones and computers for necessary personal matters such as family care and changes in work schedule.

No municipal officer or employee shall cause the municipality to spend more than is reasonably necessary for transportation, meals or lodging in connection with official travel.

N. Interests in Contracts

- (1) No municipal officer or employee may have an interest in a contract that is prohibited by § 801 of the General Municipal Law.
- (2) Every municipal officer and employee shall disclose interests in contracts with the municipality at the time and in the manner required by § 803 of the General Municipal Law.

O. Nepotism

Except as otherwise required by law:

- (1) Effective October 15, 2014, no municipal officer or employee, either individually or as a member of a board, may participate in any decision specifically to appoint, hire, promote, discipline or discharge a relative for any position at, for or within the municipality or a municipal board.
- (2) Effective October 15, 2014, no municipal officer or employee may supervise a relative in the performance of the relative's official powers or duties.

P. Political Solicitations and Campaign Activities

No municipal officer or employee shall directly or indirectly compel or induce a subordinate municipal officer or employee to make, or promise to make, any political contribution, whether by gift of money, service or other thing of value.

No municipal officer or employee may act or decline to act in relation to appointing, hiring, promoting, discharging or disciplining, or in any manner changing the official rank, status or compensation of, any municipal officer or employee, or an applicant for a position as a municipal officer or employee, on the basis of the giving or withholding or neglecting to make any contribution of money or service or any other valuable thing for any political purpose.

No municipal employee shall engage in political campaign activities during his or her official City of Lockport workday nor shall any municipal officer or employee engage in any political activities on any City property, or in any building nor use any City equipment or resources in support of political activities.

Q. Confidential Information

No municipal officer or employee who acquires confidential information in the course of exercising or performing his or her official powers or duties may disclose or use such information unless the disclosure or use is required by law or in the course of exercising or performing his or her official powers and duties.

R. Gifts

- (1) No municipal officer or employee shall solicit, accept or receive a gift in violation of § 805-a(1)(a) of the General Municipal Law as interpreted in this section.
- (2) No municipal officer or employee may directly or indirectly solicit any gift.
- (3) No municipal officer or employee may accept or receive any gift, or multiple gifts, from the same donor, having an annual aggregate value of \$75 or more when:
 - (a) The gift reasonably appears to be intended to influence the officer or employee in the exercise or performance of his or her official powers or duties; or
 - (b) The gift could reasonably be expected to influence the officer or employee in the exercise or performance of his or her official powers or duties; or
 - (c) The gift is intended as a reward for any official action on the part of the officer or employee.
- (4) For purposes of this section, a gift includes anything of value, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form. The value of a gift is the gift's fair market value, determined by the retail cost of the item or a comparable item. The fair market value of a ticket entitling the holder to food, refreshments, entertainment or any other benefit is the face value of the ticket, or the actual cost to the donor, whichever is greater. Determination of whether multiple gifts from a single donor exceed \$75 must be made by adding together the value of all gifts received from the donor by an officer or employee during the twelve-month period preceding the receipt of the most recent gift.
- (5) Gifts intended to influence or reward.
 - (a) A gift to a municipal officer or employee is presumed to be intended to influence the exercise or performance of his or her official powers or duties when the gift is from a private person or organization that seeks municipal action involving the exercise of discretion by or with the participation of the officer or employee.
 - (b) A gift to a municipal officer or employee is presumed to be intended as a reward for official action when the gift is from a private person or organization that has obtained municipal action involving the exercise of discretion by or with the participation of the officer or employee during the preceding 12 months.

- (6) This section does not prohibit any other gift, including:
- (a) Gifts made to the municipality;
 - (b) Gifts from a person with a family or personal relationship with the officer or employee when the circumstances make it clear that the personal relationship, rather than the recipient's status as a municipal officer or employee, is the primary motivating factor for the gift;
 - (c) Gifts given on special occasions, such as marriage, illness or retirement, which are modest, reasonable and customary;
 - (d) Unsolicited advertising or promotional material of little intrinsic value, such as pens, pencils, note pads and calendars;
 - (e) Awards and plaques having a value of \$150.00 or less which are publicly presented in recognition of service as a municipal officer or employee or other service to the community; or
 - (f) Meals and refreshments provided when a municipal officer or employee is a speaker or participant at a job-related professional or educational conference or program and the meals and refreshments are made available to all participants.

S. Board of Ethics

The Board of Ethics shall consist of three members and one alternate, each appointed by a super majority of the Common Council based upon recommendation by the Mayor. Members of the Ethics Board shall be appointed to a three-year term or until such time as a successor is appointed.

If a vacancy shall occur otherwise than by expiration of term, the Common Council shall appoint the new member for the unexpired term based upon a recommendation by the Mayor. The Common Council shall have the power to remove, after public hearing, any member of the Board for cause.

- (1) Qualification of Board Members.
- (a) All members of the Board of Ethics must be residents of the municipality.
 - (b) The members of the Board of Ethics should be qualified by temperament and experience to carry out the duties and responsibilities of the Board.

- (c) No member of the Board of Ethics may hold office in a partisan political party or hold elective office in the City of Lockport. A Board member may make campaign contributions and vote.
 - (d) Not more than two members of the Board of Ethics may be members of the same political party.
 - (e) No current officer or employee of the City of Lockport is eligible to serve on the Board of Ethics.
- (2) Compensation. Members of the Board of Ethics shall serve without compensation but may be reimbursed for reasonable and necessary expenses, as approved by the Common Council.
- (3) Powers and duties of the Board of Ethics.
- (a) The Board of Ethics shall select its own Chairperson from within the Board for a one-year term and appoint such staff as necessary to carry out its duties under this chapter and to delegate authority to the Chairperson, if any, to act in the name of Board between meetings of the Board, provided that the delegation is in writing and the specific powers to be delegated are enumerated, and further provided that the Board may not delegate the power to conduct hearings, determine violations, recommend disciplinary action, impose civil fines, refer any matter to a prosecutor or render advisory opinions, except as stated in subparagraph (i) below. The City of Lockport will provide legal counsel as necessary.
 - (b) To prescribe and promulgate rules and regulations governing its own internal organization and procedures in a manner not inconsistent with this chapter or state or federal law.
 - (c) To conduct investigations pursuant to Paragraph T.
 - (d) To conduct hearings, recommend disciplinary action and initiate appropriate actions and proceedings pursuant to Paragraphs R and S.
 - (e) To issue advisory opinions pursuant to Paragraph V.
 - (f) To provide ethics training and education to City officers and employees on the provisions of the City Ethics Law and Article 18 of the General Municipal Law.
 - (g) The Ethics Board of the City of Lockport may act only with respect to officers and employees of the municipality and persons having business dealing with the municipality. The termination of a City officer's or employee's term of office or employment with the City

shall not affect the jurisdiction of the City Ethics Board with respect to requirements imposed by this chapter on former City officers or employees to the extent permitted by law.

- (h) The City Ethics Board may refer any matter within its jurisdiction to the County Ethics Board in its discretion.
- (i) A member of the Board of Ethics may be removed from office by a majority vote of the Common Council for failure to fulfill the duties of the office or for violation of this chapter. The Common Council must give the Board member written notice and an opportunity to reply.
- (j) The Ethics Board must prepare an annual report to the Common Council on its activities and recommend changes to the City Ethics Law.

T. Complaints and Investigations

Upon receipt of a form duly sworn by the person requesting an investigation of an alleged violation of this chapter or upon the Board determining on its own initiative that a violation of this chapter may exist, the Ethics Board shall have the power and duty to conduct any investigation necessary to carry out the provisions of this chapter. In conducting any such investigation, the Board may administer oaths or affirmations, subpoena witnesses and compel their attendance and require the production of any books or records which it may or deem relevant or material. The form to be utilized in requesting an investigation of an alleged violation of this chapter shall be the form available in the office of the City Clerk and on the City website.

The City Ethics Board investigation shall be confidential until such time that a final determination of the City Ethics Board has been made. Thereafter, the City Ethics Board shall state, in writing, its disposition of every sworn complaint it receives and of every investigation it conducts and shall set forth the reasons for the disposition to the Common Council. Any findings of violations of this chapter or other applicable law shall be served upon the subject of the investigation within seven days of such service of any findings of violations of this chapter, and violations shall be made a public record and shall be indexed and maintained on file by the City Clerk.

U. Enforcement

In its discretion and after a hearing in accordance with Article 3 of the State Administrative Procedure Act (SAPA), and subject to § 75 of the Civil Service Law and any collective bargaining agreements, to the extent practicable, the City Ethics Board may recommend for action appropriate disciplinary action which may include a written warning, or reprimand, forfeiture of accrued leave with pay, required attendance at ethics training seminars, suspension or termination of employment to the authority or person or body authorized by law to impose such sanctions.

The City Ethics Board shall conduct and complete the hearing with reasonable promptness and shall not act without notice and opportunity to be heard and shall observe appropriate due process.

V. Confidential Ethics Advisory Opinions

The Board of Ethics shall render confidential advisory opinions only to officers and employees of the City of Lockport with respect to Article 18 of the General Municipal Law and this Code of Ethics. Officers and employees of the municipality are encouraged to seek advisory opinions whenever they are uncertain whether their conduct may violate the Code of Ethics.

The Board of Ethics will prepare an advisory opinion based on a thorough review of the facts and applicable law. The Board's opinion is to be based solely on the facts presented in the request or subsequently submitted in a written, signed document. The opinion will be rendered, in writing, to the requester as expeditiously as is practicable, with special attention to the time requirements of a given case.

An officer or employee of the municipality whose conduct or action is the subject of an advisory opinion will not be subject to penalties or sanctions by virtue of acting, or failing to act, due to a reasonable reliance on the opinion, unless material facts were omitted or misstated in the material submitted by the requester.

The Board of Ethics will maintain a confidential, indexed file of all advisory opinions issued by the Board.

W. Penalties for Offenses

Any municipal officer or employee who violates this code may be censured, fined, suspended or removed from office or employment in the manner provided by law.

III. Civility Policy

The City expects all of its employees, supervisors, Department Heads and officials to accomplish their work in a respectful and professional manner, and to treat one another in the same fashion. The City prohibits behavior contrary to this policy, including but not limited to yelling, name-calling, using profanity, and any other conduct that is inconsistent with a respectful and professional work environment. Please refer to the Standards of Conduct Policy for additional examples of prohibited behavior.

Any alleged violations of this policy should be reported immediately to a direct supervisor or the Mayor so that appropriate corrective action may be taken as necessary. Violations of this policy may result in disciplinary action.

IV. Standards of Conduct

To function effectively, all City employees are required to observe certain standards of behavior and performance. In general, conduct that is disruptive, unproductive, unethical or illegal will not be tolerated. Below is a non-exhaustive list of activities that are prohibited and are likely to lead to disciplinary action, up to and including termination:

1. Fighting or provoking a fight;
2. Disorderly conduct;
3. Falsifying records;
4. Engaging in fraud;
5. Sale or possession of alcohol beverages or illegal or illicit substances (other than medical prescriptions) on City premises, or being under the influence of alcohol or drugs on City premises or during work time;
6. Immoral conduct or indecency of any kind;
7. Engaging in criminal activity;
8. Conviction of a crime, which relates to or could affect the performance of his/her duties;
9. Abusive, threatening or discourteous treatment or language toward co-workers, supervisors or member of the public, or any other conduct that does not warrant public trust;
10. Using offensive or profane language on City premises;
11. Insubordination or failure to follow the reasonable direction or order of a supervisor;
12. Willful violation of safety rules or practices;
13. Restricting or interfering with work production or a fellow employee work production;
14. Destruction, theft or unauthorized use of City property, tools or equipment;
15. Failure to report to work, including failure to report following the expiration of an approved leave of absence;
16. Repeated tardiness and/or absenteeism without proper approval or sufficient notice;

17. Unreasonable number of absences, failure to report absences or any unauthorized absences;
18. Unauthorized possession of firearms, weapons or explosives on employee's person or City property;
19. Violating the Code of Ethics;
20. Leaving work prior to the end of your shift without supervisor authorization;
21. Illegal gambling on City premises;
22. Circulating malicious or slanderous rumors;
23. Performing other than incidental personal business during working hours;
24. Sleeping during working hours;
25. Repeated failure to return to work in a timely fashion following break;
26. Smoking in prohibited areas;
27. Failure to work scheduled overtime;
28. Failure to treat or interact with members of the public with courtesy and respect; and
29. Harassment or retaliation of any kind.

None of the foregoing is intended to restrict communications or actions protected or required by state or federal law.

V. Progressive Discipline

In general, the City endorses and follows a policy of progressive discipline. However, progressive discipline will not apply in all circumstances. The City expressly reserves the right to impose discipline, up to and including termination, immediately for any misconduct or other violations of this Handbook that the City deems to be particularly serious or for repeated violations, subject to any protections afforded by the law or applicable collective bargaining agreement. Several factors will be considered in determining the nature and level of discipline to be issued. Those factors may include the employee's job performance, disciplinary history, probationary status, severity of the offense and other relevant circumstances.

Please note that progressive discipline shall not apply to any reductions in force or during probationary periods.

VI. Confidentiality

As part of their jobs, many City employees deal with confidential matters and information. It is critical that employees with such knowledge or information adhere to appropriate laws and departmental policies governing confidentiality. Failure to do so is considered a serious offense and could result in disciplinary action. Upon termination of your employment, you will be required to promptly return all documentation and other information relating to City business that you obtained in the course of your employment that are in your possession or control.

VII. Dress Code

It is expected that all City employees report to work dressed appropriately. The City acknowledges that appropriate clothing may vary depending on the duties of a particular position. All dress, however, should be clean and consistent with an employee's job duties. In general, inappropriate dress includes but is not limited to clothing that reveals undergarments or underwear, that exposes areas of the body that are normally covered in the workplace, that contains profanity or nude pictures, sweatpants, hats in an office setting, and flip-flops. This list is not exhaustive and may include items not specifically identified.

In the event that an employee is determined to be dressed inappropriately, he or she may be directed to change into appropriate attire. Repeated violations of the dress code may result in counseling or disciplinary action.

VIII. Hours of Work / Time Records

City offices shall be open for the conduct of business and convenience of the public in accordance with the hours set forth by the Common Council and Department Heads, and in accordance with all applicable laws, rules and regulations.

Accurate records of time worked shall be maintained by each City Department. Arriving early or leaving late solely for your own convenience is not included in working time, provided that you perform no authorized or specified duties for the City during such intervals.

IX. Attendance

In order to function effectively as a City government, it is essential that employees report to work, on time, every day. The City's operations depend upon its employees reporting to work and performing the duties for which they were hired. Employee attendance is an essential function of every position with the City. Excessive absenteeism and/or tardiness will result in disciplinary action.

X. Secondary Employment

Employees covered by this policy understand and agree that their employment with the City is of basic and primary importance, and that secondary employment must not inhibit or impede the efficient and effective performance of their job duties, responsibilities, or attendance; nor shall it impair their judgement in the exercising of their official duties. Department Heads, Deputy Department Heads and Division Heads engaged in secondary employment will notify the Mayor's Office of the details of their employment.

Certain positions covered by this manual also have a prohibition on secondary employment embodied in New York State statute or local rule.

XI. Sick Leave, Vacation and/or Personal Leave & Leaves of Absence

In general, most full-time regular City employees will receive or be entitled to accrue various forms of paid leave pursuant to the terms of the collective bargaining agreement that governs their employment. Please refer to the agreement that governs your employment for additional details in this regard.

XII. Other Leaves of Absence

There are numerous laws under which employees may be entitled to leave depending on the circumstances at hand. If you believe you may be entitled to some form of leave, or are unsure whether you qualify, you are encouraged to contact the Mayor with any questions.

In addition to the various forms of leave addressed in other sections of this Handbook, please note that eligible employees may be entitled to the following leaves:

A. Military Service Leave

The City recognizes the obligation of those employees serving in any branch of the military or other uniformed services of the United States. Employment status within the City is protected by the Uniformed Services Employment and Reemployment Rights Act of 1994 and state military leave provisions.

Employees who serve on active or reserve duty will be granted a leave of absence up to the maximum time required by law for eligible military service. The City is committed to preserving the job rights of employees absent on military leave in accordance with law. Military leave is unpaid. However, employees on military leave may choose to apply any accrued paid leave to their absence.

If you need to take military service leave, you or an authorized military service officer should notify your Department Head at least thirty (30) days prior to the start of the anticipated leave. If you are unable to provide thirty (30) days advance notice because of military necessity or for other reasons, you should provide as much advance notice as possible. Notice may be provided verbally or in writing, and should be accompanied by a copy of your military orders, training notice or order to active duty.

Employees on military leave can continue group health insurance through COBRA. If the leave is longer than 6 months, the employee must pay the full premium for the coverage plus a small administrative fee. For more information on COBRA, please contact the payroll office.

In accordance with New York State law, spouses of members of the U.S. armed forces, National Guard or reserves who have been deployed to a combat area during a period of military conflict are entitled to up to ten (10) days of unpaid leave. The military personnel must be on leave from military service at the time the spousal leave is taken. To be eligible for military spouse leave, an employee must work an average of twenty (20) hours or more per week. Notice of leave must be provided to your Department Head as far in advance as possible. The City reserves the right to request documents supporting a request for spousal leave under this policy.

B. Blood Donation / Bone Marrow Donation Leave

1. Blood Donation

Employees who work an average of twenty (20) hours or more per week are entitled to up to three (3) hours of unpaid leave in any 12-month period to donate blood off site. The 12-month period will be based on the calendar year. Exempt employees may be provided time off with pay when necessary to comply with state and federal wage and hour laws.

Employees are requested to give as much advance notice as possible. Employees who donate blood must provide the department head with written verification of the purpose and length of each leave.

2. Bone Marrow Donation

In accordance with New York State law, the City offers employees a leave of absence for the purpose of bone marrow or blood donation. Employees who work an average of twenty (20) hours or more each week are eligible to receive up to twenty-four (24) work hours of unpaid leave to donate bone marrow. Exempt employees may be provided time off with pay when necessary to comply with state and federal wage and hour laws. Employees are requested to give as much advance notice as possible. Employees who donate bone marrow must provide the department head with verification from a physician as to the purpose and length of leave requested.

C. Lactation Breaks

All employees who are nursing mothers are eligible to take reasonable breaks under this policy to express breast milk for up to three years after the birth of the employee's child. The City requires all eligible employees who intend to take breaks under this policy to notify Personnel/Civil Service Officer of their intent prior to taking leave, for example, when they are discussing their return to work following leave relating to childbirth.

Eligible employees may take a reasonable amount of break time to accommodate the employee's need to express breast milk for the employee's nursing child. Lunch breaks may also be used for this purpose. Eligible employees should notify the Personnel/Civil Service Officer of the frequency, timing and duration of lactation breaks they need to take, and to obtain information regarding the designated location(s) for such breaks in closest proximity to their work area. The City will make a reasonable effort to provide employees with a nearby private area or room, which is not a bathroom, in which the employee may express breast milk. No employee will be penalized or retaliated against for requesting or taking lactation breaks or for filing a related complaint.

D. Voting Leave

New York Election Law § 3-110 provides that registered voters who do not have sufficient time outside of his/her working hours to vote at an election may be entitled to up to two hours of paid leave in order to vote. An employee is not eligible for voting leave if the employee has four consecutive non-working hours in which to vote either between the polls opening and the beginning of the employee's shift, or between the end of the employee's shift and the polls closing. Employees seeking voting leave must notify his/her Department Head at least two, but not more than ten, working days before Election Day. The City reserves the right to designate that such leave be taken at the beginning or end of the employee's work shift.

E. Crime Victims Leave

The City acknowledges that, on occasion, employees may have an obligation to participate in criminal legal proceedings either as a witness or because the employee was victimized by a criminal act. The City authorizes reasonable and necessary leave from work, without pay, to attend or participate in legal proceedings pertaining to the crime.

Affected employees must give the City reasonable notice of the need for leave. You will be required to submit a copy of the subpoena or other documentation supporting the need for your appearance, as well as the time(s) and date(s) of your appearance.

XIII. Tardiness

Any employee not at his or her assigned area at the designated time of work shall be considered late. An employee shall be subject to disciplinary action if he or she is late repeatedly or excessively. If an emergency is likely to cause an employee to be tardy, the employee must phone his or her supervisor as soon as practicable and provide an expected time of arrival.

XIV. Break and Lunch periods

Scheduling of breaks and lunch periods is done by the employee's immediate supervisor or Department Head. Employees shall be required to take all break and lunch periods mandated by law.

Breaks and lunch periods may be staggered to ensure continuous coverage of a workstation or operation. A Department Head may reschedule an employee's lunch period to meet any special requirements or emergency conditions.

XV. Safety

Employee safety is important to the City. Occupational accidents and illnesses can cause suffering and financial loss to employees as well as to the City. In order to ensure that employees are afforded a safe environment in which to work, every employee must conduct him or herself in a safe manner, abide by established work rules and practices, and immediately notify a supervisor of any unsafe conditions or unsafe behavior by any individuals. If you do not understand procedures, instructions, or the rules, you should seek clarification from your supervisor. Safety rules are made for your protection.

While on the job you should only use City-approved equipment. You are expected to always use the appropriate or required personal safety equipment for a particular task. If you are unsure what equipment to use, safety or otherwise, you must ask a supervisor before attempting to perform the task.

If you observe or otherwise learn about a safety hazard, the City expects you to report it to a supervisor as soon as possible. Do not ignore obvious hazards. Offices and other workplaces should be kept as clean and orderly as possible, including keeping aisles clear of potential tripping hazards.

You must report any incident or injury to anyone, including visitors, that occurs on City property or that appears in any way to have been caused by the City or anyone in its employ to the City Clerk. Report any incident or injury immediately, regardless of the nature or extent of the injury.

XVI. Reporting Accidents or Incidents

All accidents or unusual incidents involving City personnel or equipment, or occurring on City property must be reported to the City Clerk. An unusual incident may be a disturbance, threat, or other event that does not occur on regular basis. These incidents may appear minor but could lead to more serious future incidents. It is therefore important to record such incidents. All such reports should be made in writing, using the appropriate form, as soon as possible following the event at issue. Completed reports should be presented to the City Clerk's Office for handling.

XVII. Motor Vehicle Use and Safety

Municipal vehicles are easily identified and constitute a traveling advertisement seen by many citizens. They have what advertisers call "high exposure". In your relationship with other motorists and pedestrians while operating your vehicle, you control an important influence upon good or bad public relations with the municipality. City-owned vehicles must be used in strict conformance with the provisions set forth herein.

A. Purpose

To establish rules and procedures for the prevention of injuries and the safe operation of all motor vehicle and motorized equipment owned or operated by the City of Lockport.

B. Scope

These provisions apply to **ALL** personnel operating or riding in City-owned vehicles or privately-owned vehicles operated for official City business.

C. Driving Rules and Regulations

All drivers of City vehicles and those using their personal vehicles in pursuit of municipal business will obey **ALL** applicable laws of the State of New York as well as any additional regulations of the City of Lockport. Drivers must have a valid New York State driver's license appropriate for the class of vehicle he/she is driving. Employees operating their own vehicles on behalf of the City must have appropriate insurance in effect. Non-employees may not operate City-owned vehicles. Employees and passengers shall only be allowed access and use of City vehicles for City purposes.

1. EQUIPMENT

- a) The driver and all passengers in City owned or operated motor vehicles/motorized equipment shall wear the appropriate passenger restraints while the vehicle/motorized equipment is in motion.
- b) Vehicles used to transport employees and/or other passengers shall have seats firmly secured and adequate for the number of employees and/or passengers to be carried.
- c) Vehicles/motorized equipment with moveable windshields are to have these windshields in the "closed" position while in operation.
- d) Portable or detachable doors may not be removed from the vehicles/motorized equipment unless: (i) it is necessary in order to perform the job; and (ii) mirrors remain on the vehicle/motorized equipment when the doors are off.
- e) Vehicles'/motorized equipment' doors are not to be left open while the vehicle/motorized equipment is in motion or standing. Nor are doors to be tied open.
- f) Turn signals will be utilized by all drivers at all times in ample time to warn oncoming or following vehicles of the intent to turn.
- g) All motor vehicles/motorized equipment will use yellow cautionary lights if the vehicle/motorized equipment are so equipped. *(NOTE: the yellow cautionary light is a cautionary device to protect our employees as well as alert the general public that work is being performed. This device should be used whenever applicable. Any non-working lights should be reported to the supervisor using standard procedures for repair).*
- h) Drivers will ensure that the windows, headlights, taillights and windshield wipers are operational at all times.
- i) Tailgates will be up and locked when vehicles equipped are motion. If a vehicle's function requires that the tailgate remain in the open position, red flags will be attached to the outward corners of the gate.
- j) If the vehicle does not have a tailgate, but is loaded, the driver of the vehicle will ensure that the load is secure on the truck and that overhangs are properly marked in accordance with applicable State and Local Laws (Sec. 380 MVL)

2. GENERAL

- a. No one shall operate a motor vehicle unless he/she is properly licensed to do so and properly trained for the operation of specialized motor vehicles or equipment.

- b. Drivers will carry their State Driver's License at all times when operating City owned vehicle/motorized equipment or using their personal vehicle for City use. Suspension or loss of driving privileges will result in full-time drivers being temporarily reclassified if required until such time as their driving privileges are reinstated or temporary restricted license is issued.
- c. Each employee who operates a vehicle regularly or occasionally is required to report any suspensions or revocation of his/her license to his/her supervisor immediately. Failure of any employee to report a change in license status will result in disciplinary action.
- d. The driver shall make certain that all passengers are safely within the vehicle, in proper seats and properly restrained.
- e. Visual inspection of each vehicle or motorized equipment will be conducted by the driver before operation each day. Any damage, defects, etc. shall be reported to your supervisor or Department Head.
- f. No person shall be allowed to stand in any motor vehicle while the vehicle is in motion unless said vehicle is designed to be operated in that manner.
- g. No one shall get on or off a motor vehicle while it is in motion.
- h. Passengers shall get in/on and out/off at the right curb only.
- i. Riding on running boards is prohibited.
- j. Posted speed limits shall be adhered to. This includes cautionary limits.
- l. Drivers will direct their full attention to driving only. Inspections of streets, trees, signs, etc. shall be made by a second person other than the driver unless the vehicle is parked.
- m. Know and use all signals appropriate to your operation.
- n. Obey all New York State vehicle and traffic laws and report any and all traffic infractions received while using a City vehicle to their supervisor or department head.
- o. Trailers are to be fastened securely to hitches. Safety chains will be crossed under hitch and securely fastened before moving the vehicle.
- p. Tools and materials shall be secured to prevent movement when transported.
- q. No more than three (3) persons shall ride in the front seat of any vehicle. Where only two single seats exist, there is to be only one rider per seat. No person shall sit in any area of a motor vehicle unless in a prescribed seat. No riding in back of trucks (Sec. 1213 MVL)
- r. Consumption of alcohol beverages, narcotics or other illegal drugs immediately prior to or during operation of a motor vehicle is prohibited.

- s. No motor vehicle shall be operated by an employee under the influence of intoxicating beverages, legal drugs causing drowsiness or other impairments, or illegal drugs. (Sec.1192 MVL).
- t. Backing up vehicles without a clear view of the area of the rear end will be done only with assistance of a guide. If a second person is in the vehicle, he/she will get out of the vehicle and guide the vehicle using the appropriate hand and voice signals. If the driver is alone and the situation warrants it, the driver will get out of the vehicle and inspect the area behind him before backing up the vehicle. Strict caution should be observed.
- u. To the greatest extent possible no municipal vehicle, except emergency vehicles, is to be left running unattended. If the vehicle is not in use, it should be turned off.
- v. ALL City vehicles and motorized equipment shall be locked up when not in use.

3. SPECIAL EQUIPMENT

- a. Special equipment such as tractors, backhoes, hi-lifts or any other unit which has special devices added for a specific type of work will require formal instruction prior to use by a driver.
- b. Construction type equipment will obey all prescribed safety and operational restrictions including the use of yellow flashing light and flashers if so equipped. Triangular orange-colored slow-moving vehicle signs will be displayed on the rear of the vehicle.
- c. Special equipment operators shall follow all rules set forth in this policy.

4. VEHICLE IDENTIFICATION

- a. All City owned vehicles, except unmarked police vehicles, shall be identified with a City decal on both sides of the vehicle. *(NOTE: Police and Fire Departments may utilize their respective department decal. All others shall use City decal).*
- b. All City vehicles, except unmarked police vehicles and shall bear identification numbers on both sides of the vehicle as well as the rear of the vehicle.

5. USE OF VEHICLE

- a) All City vehicles are to be used only for official City business during the normal departmental working day, unless specifically directed otherwise by a supervisor

D. In Case of Accident

Applying the principles of defensive driving should help you avoid accidents. However, should you be involved in an accident involving City owned vehicles, the following procedure must be followed:

1. Call 911 immediately.
2. Notify the Police Department immediately and request an investigation at the scene. Make sure the accident exchange information forms are completed for all drivers.
3. Notify your Department Head and/or Supervisor immediately. Within one (1) hour of the accident the City employee shall be transported by his/her supervisor or Department Head to the City Physician for an evaluation and drug/alcohol screen. The Department Head and/or Supervisor shall report this accident to the City Clerk's Office immediately. The City Clerk shall notify the Mayor's Office of the event as soon as practical but in no instance later than the end of that business day.
4. In the event the investigator fails to appear within a reasonable time, exchange names, drivers' license numbers and vehicle numbers with the other person(s) involved. Offer no information regarding the responsibility for the accident or what should have been done to avoid the accident. Proceed to the Police Department (suggest other driver(s) do the same) to report the accident.
5. The City employee involved in an accident using a city vehicle shall submit the following to his/her Supervisor or Department Head:
 - a) Accident Reporting Kit
 - b) Copy of Supervisor's/Department Head's Report of Motor Vehicle Accident Investigation.
 - c) Copy of Accident Report from the Police Department (MV 104A)
 - d) Accident Exchange Information Form.
6. The employee's supervisor shall complete and remit an accident assessment form to the City Clerk within 24 hours for the purposes of evaluating the accident and in determining whether counseling or disciplinary actions are warranted.

The Clerk upon receipt of the accident report kit shall copy same to each member of the Public Health and Safety Committee. Any two (2) members of the Public Health and Safety Committee may call for a meeting to investigate any accident. In the event of an accident the Fleet Safety Committee shall convene in a timely fashion. The Committee shall serve in an advisory capacity only and will examine the circumstances of the accident. The Public Health and Safety Committee is charged with making

recommendations to the Mayor and Supervisors/Department Heads about what corrective measures may include but are not limited to training, disciplinary action, or the establishment of certain driving protocol. The Committee shall have the power to require the attendance of any City employee involved in an accident and also the Supervisors/Department Heads of said employee in an investigation meeting.

E. Insurance

In general, when operating a City-owned vehicle for purposes of conducting City business, the employee and passengers will be protected by the City's insurance coverage, subject to the terms of the applicable policy and any exclusions or disclaimers. The employee may be entitled to Workers' Compensation benefits for any injuries sustained in that scenario.

When operating a personal vehicle for purposes of conducting City business, the primary insurance protection (personal injury, comprehensive and collision) will be provided by your personal insurance policy with secondary coverage provided by the City's policy. Workers' Compensation benefits may still be available to the employee in the event he or she suffers personal injury while using a personal vehicle to conduct City business.

F. Travel / Mileage Reimbursement

1. All requests for attendance at seminars or conferences will be submitted to and approved by the Finance Committee.
2. Department attendees to seminars or conferences shall be at the discretion of the Department Head and within the constraints of the departmental budget.
3. Only actual travel and lodging expenses directly attributable to the authorization permitting the travel shall be paid or reimbursed.
4. A City vehicle shall be used for travel whenever practicable. In the event that a privately-owned vehicle (POV) is utilized, reimbursement will be made based on the Internal Revenue Service's established rate per mile. The Director of Finance will verify said rate. Only one (1) mileage reimbursement shall be paid for each POV, transporting up to four employees.
5. Hotel accommodations will be paid or reimbursed only at a "governmental rate", or less. Payment or reimbursement will not be made for hotel suites unless the rate paid is less than the average individual room rate for the total number of individuals staying in the room. "Tax Exempt Forms" shall be presented to the hotel upon registration and prior notification of tax-exempt status should be made when reservations are confirmed.
6. When housed under the "American Plan" (all-inclusive rate), only normal charges will be paid or reimbursed. Room service charges will not be permitted.
7. Maximum meal payments or reimbursements shall be at the rate not to exceed \$7.00 for breakfast, \$12.00 for lunch and \$27.00 for dinner. No reimbursements shall be made for alcoholic beverages.

8. Utilization of the City's credit card is encouraged when making reservations. In no way should travel expenses be incurred without an approved purchase order.
9. All charges and reimbursement requests shall be submitted in accordance with current procedures and within five (5) business days upon returning. Only the original receipts will be honored for payment. In the event of a lost receipt, the employee is responsible for obtaining a duplicate from the vendor or a signed statement detailing the circumstances shall be submitted.

G. DEFENSIVE DRIVING PROGRAM

The Public Health and Safety Committee shall have the power to establish a defense driving program for all City employees engaged in the use of a motor vehicle in the performance of their job. Said program will be proactive, in that it is designated to raise the awareness of safe driving practices in an effort to avoid accidents and it shall be reactive, in that any employee involved in an accident that is deemed to be a result of the employee's negligence said employee shall attend a driver's safety course.

XVIII. Use of City Property and Equipment

The City provides employees with the property and equipment necessary to carry out the responsibilities of their positions. Employees are not permitted to use City property or equipment for personal use.

All City property and equipment should be returned to their proper place when not being used. Any missing or damaged property/equipment should be reported to your supervisor immediately. Removal of any City property, equipment or supplies, or removal of other employees' personal property by an employee without prior management authorization is deemed an act of theft and will result in disciplinary action up to and including discharge. Employees shall not damage or tamper with City or personal property assigned or owned by another City employee. The City is not responsible for the loss of an employee's personal property and asks that each employee exercise care in safeguarding valuable items.

Examples of activities that are expressly prohibited by this section include but are not limited to using copy machines for personal use; permitting family members, or anyone other than the employee entrusted with a City vehicle, to use a City vehicle for transportation, plowing or like activities, removal or use of City trees, limbs, soil, blacktop, millings, scrap steel and road signs and related materials.

Department Heads are responsible for City property and equipment assigned to their respective departments, and to prevent abuse and misuse of same.

XIX. Family and Medical Leave

Employees who have been employed for at least one (1) year, and for at least 1,250 hours during the preceding 12-month period, are eligible for leave under the Family and Medical Leave Act of 1993, as amended (“FMLA”). A break in employment for military service (i.e. call to active duty) should not interrupt the twelve (12) month/1,250 hours of employment requirement and should be counted toward fulfilling this prerequisite. The law covers both full-time and part-time employees.

The City uses a 12-month period measured forward from the first date an employee takes FMLA leave (the next 12-month period would begin the first time the employee takes FMLA leave after the completion of the prior 12-month period) of any FMLA usage as its method for calculating the leave year period for the commencement of the FMLA leave period. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

The following is a general overview of your rights and responsibilities under the FMLA. This does not address each and every provision of the FMLA. Should you have any questions regarding your rights or obligations under the FMLA, or any questions related to the provisions herein, please contact the Personnel / Civil Service Director.

Eligible employees may be granted leave for one (1) or more of the following reasons:

- a) The birth of a child and care for the child;
- b) Adoption of a child and care for the child;
- c) The placement of a child with the employee from foster care;
- d) To care for a spouse, minor child or parent who has a “serious health condition” as defined by the FMLA;
- e) To care for an adult child who is incapable of self-care due to a disability (regardless of date of the onset of disability) and has a “serious health condition” as defined by the FMLA;
- f) A “serious health condition” of the employee, as defined by the FMLA, that prevents the employee from performing his/her job;
- g) Because of any qualifying exigency arising out of the fact that the employee’s spouse, child, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation; and/or
- h) To care for a covered military member with a qualifying injury or illness if the employee is the spouse, child, parent or next of kin of the service member.

Birth or Child Placement

The entitlement to leave for the birth or placement of a child shall expire at the end of the twelve (12) month period beginning on the date of such birth or placement. Spouses who are eligible for FMLA leave and are both employed by the City shall be limited to a combined total of twelve (12) weeks of leave during any 12-month period if the leave is taken for the birth of the employee's child or the care for the child after birth, for placement of a child with the employee for adoption or foster care or to care for the employee's parent with a serious health condition.

Serious Health Condition

In general, a "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider that renders the person incapacitated for more than three (3) consecutive calendar days. Other circumstances, as defined by the law, may also constitute a "serious health condition," including but not limited to an overnight stay in a hospital, incapacity due to pregnancy or for prenatal care, and incapacity due to a chronic serious health condition. See e.g. 29 U.S.C. § 2611(11); 29 C.F.R. Part 825, Subpart A.

Military Qualifying Exigency Leave

In any case in which the necessity for leave due to a qualifying exigency is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. This military-related leave is for up to twelve (12) weeks during a single twelve (12) month period. Leave may be taken intermittently or on a reduced leave schedule. Upon an employer's request, an employee must provide a copy of the military member's active duty order to support the employee's request for qualifying exigency leave. In addition, the employer may request the following information:

- a) A statement or description of appropriate facts regarding the exigency that is needed;
- b) The approximate date on which the exigency commenced or will commence;
- c) An estimate of the frequency and duration of the exigency if leave is needed on a reduced scheduled basis or intermittently;
- d) If the exigency requires meeting with a third party, the contact information for the third party and description of the purpose of the meeting;
- e) Additionally, the certification for qualifying exigency leave for Rest and Recuperation Leave must include a copy of the military members Rest and Recuperation Leave Orders, or other documentation by the military setting forth the dates of the military member's leave.

Military Caregiver Leave

All employees who meet the applicable time-of-service requirements may be granted a total of twenty-six (26) weeks of FMLA leave, during any 12-month period (the 12-month period commences with the first day of FMLA leave), to care for a covered service member with a serious injury or illness if the employee is the spouse, child, parent or next of kin of the service member. This military caregiver leave is available during a single twelve (12) month period during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave. Military caregiver leave may be combined with other forms of FMLA-related leave providing a combined total of twenty-six (26) weeks of possible leave for any single twelve (12) month period; however, the other form of FMLA leave when combined cannot exceed twelve (12) of the twenty-six (26) weeks of combined leave. Military caregiver leave has a set “clock” for calculating the twelve (12) month period for when FMLA leave begins and tolling starts at the first day of leave taken.

An application for military caregiver leave must be accompanied by a Certification for Serious Injury or Illness of a Covered Service member for Military Family Leave, a copy of which can be found on the City of Lockport’s web page in the Employee Portal. This certification must be completed by an authorized health care provider of the covered service member.

Substitution of Paid Leave

An eligible employee shall be allowed to use sick leave for leave provided under reasons a), b), c) or g) listed herein and shall be required to use accrued paid vacation or personal leave for any additional time beyond these ten days for any part of the remaining twelve-week period of such leave.

An eligible employee shall be required to use accrued paid vacation leave, personal leave, sick leave or family sick leave for leave provided under reasons d), e), f) or h) herein for any part of the twelve-week period of such leave.

The City shall maintain coverage for health insurance to an employee on leave pursuant to this section for the duration of the twelve-week period, and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave. The City may recover the premium that the City paid for maintaining coverage for the employee under such group health plan during any period of unpaid leave if the employee fails to return from leave after the twelve week period except if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave under d), e), f) or h) herein or, other circumstances beyond the control of the employee.

The City may designate an employee’s leave as FMLA leave, and may do so prospectively or retroactively, provided that the leave is FMLA qualifying. See 29 C.F.R.

§ 825.301. In the event that the City designates an employee's leave as FMLA leave or requires the employee on FMLA leave to substitute his or her paid leave, the City shall notify the employee of same as soon as practicable.

Application for Leave

In order to request FMLA leave, employees must complete a Request for Family and Medical Leave of Absence Form, a copy of which can be found on the City of Lockport's web page in the Employee Portal, and submit it to Personnel / Civil Service Director. Whenever possible, the form should be submitted thirty (30) days in advance of the effective date of the leave. Spouses who are both FMLA-eligible and employed by the City may be limited to a combined total of 12 weeks of leave. A notation must be provided on the appropriate request form completed and submitted by any employee requesting FMLA leave and whose spouse also works for the City.

Employee Notice Requirements

Whenever practicable, and whenever the need for leave is foreseeable, the employee must provide thirty (30) days advance notice of his or her need for FMLA leave. Otherwise, the employee must provide notice as soon as practicable under the circumstances, which is ordinarily within one or two business days of when the need for leave becomes known to the employee. The employee should provide as much advance notice as possible so that the City can make appropriate arrangements to cover any work that needs to be performed in the employee's absence.

An employee must submit an application for FMLA leave that explains the reason(s) for needing leave with sufficient particularity so as to allow the City to determine whether it is for an FMLA-qualifying reason, as discussed further below. Leave may be denied if the employee fails to explain the reason. The employee must also provide the anticipated timing and duration of the leave, and if the timing and duration subsequently changes, to notify the City of same as soon as practicable. Failure to provide this information in a timely fashion may result in a delay in or the denial of the leave, or cause the absence to be considered unexcused, which will lead to disciplinary action. The employee is responsible for complying with any local rules with regard to reporting absences.

When the need for leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment of the employee or the employees' spouse, child or parent, the employee must provide the City at least thirty (30) days' advance notice.

Special rules apply when the employee fails to give advance notice of the need for leave and the City does not learn of the reason for the absence until the employee's return (e.g., where the employee was absent for only a brief period). In such circumstances, if the City does not designate the leave as FMLA leave and the employee desires it to be counted as FMLA leave, the employee must, within two business days after resuming to work, notify the City that the leave was for an FMLA reason. In the absence of such timely

notification by the employee, the employee may not subsequently assert FMLA protections for the absence.

An employee taking FMLA leave is required to report periodically on his or her leave status and intention to return to work. If an employee needs leave beyond the anticipated date originally provided for the ending of such leave, the employee must provide reasonable notice to the City as soon as possible and no later than within two business days after learning of the need for an extension of the leave. If the employee is able to return to work earlier than expected, the employee must provide the City with reasonable notice as soon as possible and no later than two days after the employee learns that he or she will be able to return to work earlier than expected. In most circumstances, the City will require at least five (5) business days' advance notice of an employee's anticipated return to work, absent unusual circumstances beyond the employee's control. Failure to provide sufficient notice may result in a delay in returning the employee to work.

Benefits

An employee on FMLA leave is entitled to have health benefits maintained while on leave. If an employee was paying all or part of the premium payments prior to leave, the employee will continue to pay his/her share during the leave period. Failure of the employee to pay his or her share of the health insurance premium may result in loss of coverage if payment is more than thirty (30) days late. In some cases, the City may recover premiums paid for maintaining an employee's health coverage if the employee fails to return to work from FMLA leave.

In most instances, an employee has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave. The City cannot guarantee that an employee will be returned to his or her original job. Whether a position is "equivalent" will be decided by the City.

An exception to the employment restoration provisions of the FMLA exists for employees designated as "key employees" or "highly compensated employees." The law defines such employees as salaried employees who are among the highest paid 10 percent of employees employed within 75 miles off the facility at which the employee works. Job restoration may be denied to such employees where doing so would cause substantial and grievous economic injury to the operations of the City.

An employee's failure to return to work following the expiration of his or her FMLA leave may result in termination. If you require additional leave beyond the amount of leave afforded under the FMLA, it is your obligation to contact the Mayor to discuss the issue before your FMLA leave has expired.

An employee is not entitled to the accrual of leave credits while on unpaid FMLA leave. An employee who takes FMLA leave will not lose any employment benefits that accrued before the date the leave began.

Medical Certification

An application for leave based on the serious health condition of the employee or the employee's spouse, child or parent must be accompanied by a certification completed by the health care provider who is treating the individual and set forth the following information: the date on which the condition commenced, the probable duration of the condition, and the appropriate medical facts regarding the condition. If the request for leave is to care for the serious health condition of someone other than the employee, the certification must provide an estimate of the time needed to care for the individual involved. If the request for leave is based on an employee's serious health condition, the certification must state that the employee cannot perform the functions of his or her job.

The employee's direct supervisor should not contact any health care provider regarding the employee's condition; all contact in this manner should be made by a health care provider (employed by the City), or the Personnel / Civil Service Officer, a human resource professional, a leave administrator or a management official

When the leave is foreseeable, the employee should submit a medical certification before leave begins whenever possible. Failure to provide a required medical certification within fifteen (15) days after the employee is notified of the requirement to submit the certification, or within a reasonable time under the pertinent circumstances, may result in a delay in or denial of the employee's continuation of FMLA leave and may cause the absence to be considered unexcused, which will subject the employee to disciplinary action. If the employee fails to produce the certification, the leave may not be FMLA leave.

If the medical certification provided by the employee is found to be deficient, the employer must identify the deficiencies, in writing, and give the employee seven (7) days to provide corrected materials to cure any deficiency prior to any action being taken. The City reserves the right to require additional medical certifications and/or recertification as permitted under the FMLA and its attendant regulations. Failure to submit a required recertification may result in disciplinary action up to and including termination.

Prior to an employee's return to work from FMLA leave based on the employee's own serious health condition, the City may require the employee to furnish certification from the employee's health care provider that the employee is able to resume work. The City may also require that the certification specifically address the employee's ability to perform the essential functions of his or her job. The City may delay restoration to employment until an employee submits any required fitness for duty certification. The employee shall be responsible for any costs associated with obtaining such a certification, and will not be entitled to any pay for the time or travel costs spent in acquiring the certification.

Notice of FMLA Rights

A notice published by the United States Department of Labor regarding employee rights under the FMLA shall be posted in each building in which City employees work.

For more information please contact the Personnel / Civil Service Officer.

XX. Workers' Compensation

City employees are covered by Workers' Compensation, which provides benefits for injury or diseases that are sustained as a direct result of performing your job. Eligibility for and the amount of benefits are determined by New York State Workers' Compensation Law.

Every work-related injury **must be reported** to your Department Head or his/her designee as soon as possible. Prompt reporting is critical and necessary, and serves to protect you. You must complete an incident/accident report and return the form to your Department Head. Failure to promptly and timely report an injury or disease may result in a denial of benefits or delay your receipt of benefits. Employees injured while on duty are encouraged to seek medical attention.

XXI. Medical Coverage

City employees are entitled to join one of the health plans offered by the City, in accordance with the terms of the applicable collective bargaining agreement. Please refer to your collective bargaining agreement for further details in this regard

The City is not responsible for an employee's failure to notify the City or health insurance carrier of important changes that may impact the employee's health insurance, such as the addition of a dependent, marriage, change of address and becoming Medicare eligible, for example. Any failure to properly report such changes could result in lack of adequate coverage for you or your family.

Group Health Insurance Continuation Coverage

Continuation coverage is offered to employees and their families at their own expense for a temporary extension of health coverage at group rates in certain instances where coverage under the plan would otherwise end such as reduction in your hours of employment or the termination of your employment, pursuant to the Consolidated Omnibus Budget Reconciliation Act ("COBRA"). In accordance with COBRA, in the event the City's obligation concerning medical coverage ceases, an employee may continue to participate in the medical program by paying the full cost of premium, plus applicable administrative costs allowed by law, necessary to maintain such coverage directly to the City of Lockport in accordance with their current practice for the period allowed by law or applicable Union Collective Bargaining Agreement. The following is intended to summarize your rights and obligations under COBRA.

If you are an employee of the City covered by a health plan, you have a right to choose this continuation coverage if you lose your group health coverage for any reason.

If you are the spouse of a City employee, you have the right to choose continuation coverage for yourself if you lose group health coverage for ANY of the following reasons:

- 1) The death of a spouse;

- 2) A termination of your spouse's employment (for reasons other than gross misconduct) or reduction in your spouse's hours of employment;
- 3) Divorce or legal separation from your spouse;

In the case of a dependent child, he or she has the right to continuation coverage for any of the following reasons:

- 1) The death of a parent;
- 2) The termination of a parent's employer (for reasons other than gross misconduct) or reduction in a parent's hours of employment with the City;
- 3) Parent's divorce or legal separation;
- 4) The dependent ceases to be a "dependent child."

The employee or a family member has the responsibility to inform the City's payroll department of a divorce, legal separation, child losing dependent status, death, termination of employment or reduction in hours, or Medicare eligibility. Failure to promptly notify the payroll department will result in the termination of coverage, denial of payment of claims or required reimbursement to the City. When the payroll department is notified that one of these events has happened, you have the right to inform the City that you choose to continue coverage. If you do not choose continuation of coverage, your group health insurance will end.

If you choose continuation coverage, the City offers you the same coverage provided under the plan to similarly situated employees or family members. You have the opportunity to maintain continuation coverage for three (3) years unless you lost group health coverage because of a termination of employment or reduction in hours. In that case the required continuation coverage period is eighteen (18) months. Continuation coverage may be cut short for any of the following five reasons:

- 1) The City no longer provides group health coverage to any of its employees;
- 2) The premium for our continuation coverage is not paid;
- 3) You become an employee covered under another group health plan;
- 4) You become eligible for Medicare;
- 5) You were divorced from a covered employee and subsequently remarry and are covered under your new spouse's group health plan.

You do not have to show that you are insurable to choose continuation coverage.

XXII. Unemployment Insurance

City employees are covered by the New York State Unemployment Insurance. Its primary purpose is to provide temporary financial assistance to workers who may become unemployed. The conditions under which a person may be eligible for unemployment benefits, the amount of individual payments, the maximum period for payments, are all determined by the New York State Department of Labor. Therefore, questions concerning Unemployment Benefits must be directed to the New York State Unemployment Insurance Office.

XXIII. Agency Shop

The Public Employees Fair Employment Act (the Taylor Law) specifically prohibits any requirement that any employee must become a member of any labor organization. Recent decisions of the United States Supreme Court have precluded public employers and public-sector unions from extracting agency fees or any other payment to the union from non-participating, nonconsenting employees.

XXIV. Defense and Indemnification

Pursuant to Public Officers Law § 18, the City will provide for the defense and indemnification of an employee, as defined therein, in any civil action or proceeding arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting in good faith and within the scope of his/her public employment or duties. This duty shall not apply to an action or proceeding that is brought by or at the behest of the City. An employee seeking the benefits afforded herein is required to submit a written request for defense and indemnification along with the summons to the City Clerk, City Attorney, or Mayor along with a copy of the summons, complaint, demand or other legal process served upon him or her within ten (10) days after he or she is served with such document(s). The employee must extend his or her full cooperation to the defense of the matter. The City expressly reserves the right to withdraw a defense and/or indemnification to any employee who fails to extend his or her full cooperation.

If an employee seeks a defense and indemnification from the City, it is important that they immediately contact the City Attorney to ensure that all procedural requirements are satisfied to those protections.

XXV. Drug Free Workplace

The City of Lockport prohibits the unlawful manufacture, distribution, dispensing, possession or use of controlled substances, as defined in the Drug Free Workplace Act of 1988, in all City workplaces. As a condition of employment under federally funded programs or contracts, each employee will (i) comply with said prohibition; and (ii) notify

the City of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.

In addition, the City prohibits employees from consuming, possessing or being under the influence of alcohol while at work. Employees who fail to comply with any terms set forth herein may be subject to disciplinary action, up to and including termination.

Employees seeking information about the dangers of drug abuse in the workplace and/or the availability of drug counseling, rehabilitation or other assistance should refer to the City's Employee Assistance Program and/or contact the City's Civil Service / Personnel Department.

XXVI. Employee Assistance Program

A. Introduction

The implementation of the Policy for the Employee Assistance Program will be the cooperative effort of the City of Lockport and the members of the Civil Service Employees Association (Local 832), American Federal of State, County and Municipal Employees (Local 855), the Hickory Club PBA Inc., and the Lockport Professional Firefighters Association (Local 963) and the City of Lockport Department Head Association. The success of the program will depend on the cooperative efforts of the Unions, the City, management and individual employees.

The Administration of the City of Lockport, CSEA (Local 832), AFSCME (Local 855), Lockport Professional Firefighters Association (Local 963), the Hickory Club PBA, Inc. and the City of Lockport Department Head Association recognize that a wide range of problems not directly associated with one's job function can have an effect on an employee's job performance.

The City of Lockport and CSEA (Local 832), AFSCME (Local 855), Lockport Professional Firefighters Association (Local 963), the Hickory Club PBA Inc. and the City of Lockport Department Head Association believe it is in the interests of the employee, employee's family, the Unions and the City of Lockport to provide an employee service which deals with such persistent problems. The Employee Assistance Program is designed to offer help to employees who have personal problems such as family difficulties, alcohol and substance abuse, or other behavioral and emotional disorders which result in absenteeism, and/or deteriorating job efficiency.

In order to serve the needs of our employees, this program is intended to acquaint employees with community agencies or resources most appropriate to help them with their problems. As a result, we hope to retain their services as valuable employees by restoring them to full job efficiency while, at the same time, helping them and their families to resolve the difficulties facing them.

B. Policy

The program is designed to (1) identify the problem at the earliest possible stage, (2) motivate the individual to seek help, and (3) direct him/her to the best assistance available. The success of the program depends primarily upon the efforts of the Unions and the City of Lockport to carry out the joint labor/management policy as expressed by the following:

1. The purpose of this policy is to assure employees that they will receive careful consideration and an offer of assistance to help resolve such problems in an effective and confidential manner.
2. Behavioral problems which affect work performance and attendance are legitimate concerns of the administration. They may be the result of alcohol abuse, drug abuse, compulsive gambling, marital problems, poor interpersonal relations or a personal or emotional crisis in the employee's life. Early identification and referral for help frequently results in successfully treating the individuals.
3. The City of Lockport and the Unions recognize that alcoholism is a treatable disease and as with other behavioral problems mentioned above, offers guidance in securing treatment. The assistance is provided through the Employee Assistance Program.
4. Employees are assured that their job security and promotional opportunities will not be jeopardized by utilizing the Employee Assistance Program. All information and records regarding employees' or dependents' involvement with the program will be strictly **CONFIDENTIAL** in accordance with Federal Regulations (Title 42, Part 2 CFR).
5. Employees who may have personal problems which they feel may affect their job performance are encouraged to voluntarily contact the Employee Assistance Counselor at 282-1228.
6. Implementation of this policy and program does not cancel or conflict with any other agreements, contracts, rules or regulations and unsatisfactory job performance or unacceptable job behavior may result in disciplinary action.
7. Since an employee's work performance is often affected by the problems of an employee's spouse or dependents, the program is available to families of the employees as well.

XXVII. Drug and Alcohol Testing Policy – Safety Sensitive Positions

A. Purpose

The purpose of this policy is to establish the City of Lockport policy regarding federal law and rules governing drug and alcohol testing for employees.

As an employer, the City of Lockport maintains a strong commitment to provide a safe, efficient work environment for its employees and the public they serve. This policy is based upon the City's practice and policy prohibiting the use of alcohol and drugs on the job, or prior to reporting to work. This policy is consistent with the Federal Drug Free Workplace Act of 1989 and the Omnibus Transportation Employee Testing Act (OTETA). It is the intent of this policy to assure compliance with Federal and State Law regulations regarding drug and alcohol testing of employees.

As a result of enactment of OTETA, the Federal Highway Administration (FHWA) instituted rules that mandate alcohol and drug testing for employees in positions requiring a Commercial Driver's License (CDL) and defined as safety sensitive. These rules require pre-employment, reasonable suspicion, post-accident, random, follow-up, and return-to-duty drug and alcohol testing.

B. Program Requirement

1. Employees Subject to Testing

FHWA rules provide that safety sensitive employees who operate vehicles requiring a CDL must be subject to drug and alcohol testing. A CDL is required of any person who operates a motor vehicle defined as a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:

- a) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle rating of more than 10,000 pounds;
- b) has a gross vehicle weight rating of 26,001 or more pounds;
- c) is designed to transport 16 or more passengers, including the driver;
- d) is of any size and is used in the transportation of materials found to be hazardous for the purpose of the Hazardous Materials Transportation Act.

2. Participation as a Condition of Employment

All employees in, or applicants for, safety sensitive positions as defined by the Omnibus Transportation Act of 1991 and FHWA rules must participate in the drug and alcohol testing program prescribed by FHAW as a condition of employment. Failure to participate and comply with program requirements may result in disciplinary action up to and including termination of employment.

3. Prohibited Behavior

- a) No employee shall report to work unfit for duty at the beginning of a shift or upon returning from any break, lunch or rest period as a result of consuming alcohol, illegal drugs, or other intoxicant. Further, no employee notified of being in a safety-sensitive position as defined by the Omnibus Transportation Act of 1991 and FHWA rules shall report to work in a condition that violates that Act and the corresponding rules.
- b) No employee shall use, sell, distribute, dispense, possess, or manufacture any alcoholic beverages or illegal drugs or any other intoxicating substance on a job site or City property while on duty or while in a City owned vehicle, a vehicle leased for City business, or a privately-owned vehicle being used for City business during the employee's work hours.
- c) An employee on paid standby status shall remain fit for duty at all times in accordance with this policy.
- d) An employee in a safety-sensitive position as defined by the Omnibus Transportation Act of 1991 and FHWA rules is further prohibited from the use of alcohol four (4) hours prior to performing safety-sensitive functions. No supervisor having knowledge that an employee in such a position has used alcohol within four (4) hours shall permit that employee to perform safety-sensitive functions.
- e) While prescription drugs are not prohibited, they should not render an employee unfit for duty. In some cases, the use of over-the-counter drugs may cause impairment which prohibits the employee from performing safety-sensitive functions. It is the responsibility of the employee taking prescription or over-the-counter medication which may impair performance to consult with his/her physician or pharmacist regarding this effect and inform his/her supervisor if he/she may be impaired. An employee may be required to have his/her physician certify that medication does/does not adversely affect the employee's fitness for duty.

C. **Testing Requirements**

1. Pre-employment

Any new hire, promotion or transfer to a position requiring a CDL must be given pre-employment drug and alcohol tests. Applicants may not be hired or assigned to a safety-sensitive function as defined by the Omnibus Transportation Act of 1991 and FHWA rules unless they complete and pass the tests. Prior to conducting the tests, departments must inform the applicant or employee of the testing

requirements. Vacancy announcements and job posting must stipulate that passing drug and alcohol tests is a condition of employment.

2. Reasonable Suspicion Testing

When a supervisor has a reasonable suspicion to believe that an employee has used a prohibited drug or has misused alcohol, they will send that employee for a test. The request to undergo a reasonable suspicion test must be based on specific, contemporaneous, articulable, reliable, observations of the employee's appearance, behavior, speech, or body odor including statements of the employee.

3. Post-Accident Testing

Any driver involved in an accident involving the loss of human life or if the driver receives a citation under State of Local Law for a moving traffic violation arising from the accident, testing must occur. Drug testing must be performed within eight (8) hours. If an alcohol test is not administered within (2) hours following the accident, then the department must still attempt to administer the test and must also prepare and maintain a record stating the reason(s) the test was not promptly administered.

If an alcohol test is still not administered within eight (8) hours following the accident, then the department shall cease attempts to administer an alcohol test and shall maintain the same record.

A safety-sensitive employee shall not use alcohol for eight (8) hours following an accident or until the employee undergoes a post-accident alcohol test, whichever occurs first.

The requirement to test for alcohol and drugs following an accident shall in no way delay necessary medical attention for injured people or prohibit an employee from leaving the scene of an accident to obtain necessary emergency medical care. However, an employee who is subject to post-accident testing shall remain readily available for such testing or may be deemed to have refused to submit to testing.

4. Random Testing

The selection of employees for random drug and alcohol testing shall be made by a scientifically valid random-number selection method. The selection process shall assure that each employee shall have an equal chance of being tested each time selections are made. Selection shall be determined by the third-party organization employed to administer the alcohol and drug testing program.

The minimum annual percentage for random alcohol testing shall be twenty-five percent (25%) of the average number of drivers available.

The minimum annual percentage for random drug testing shall be fifty percent (50%) of the average number of drivers available.

The test dates shall be spread reasonably throughout the year with no established pattern. Testing will be unannounced as well as random.

Once an employee has been notified that he/she has been selected for random testing, the employee shall report immediately to the collection site. Employees shall be individually and discretely notified to report to the collection site.

5. Return-To-Duty Testing

Before any employee is allowed to return to perform a safety-sensitive function following a verified drug test, an alcohol result of 0.04 or greater or a refusal to submit to a test, that employee must undergo a return-to-duty test. The return-to-duty alcohol test result must indicate an alcohol concentration of less than 0.02. The return-to-duty test result must indicate a verified negative result for controlled substance use.

Before a return-to-duty test is performed, the employee must be evaluated by a substance abuse professional, through the City's Employee Assistance Plan, who shall determine what assistance, if any, the employee may need and shall determine whether the employee has followed recommendations by a substance abuse professional including participation in any rehabilitation program. Any and all return-to-duty tests costs will be the employee's responsibility.

6. Follow-up Testing

Once allowed to return to work, an employee shall be subject to unannounced follow-up testing for at least twelve (12) months but no more than sixty (60) months. A minimum of six (6) tests must be conducted in a twelve-month period. Employees subject to follow-up testing must also remain in the standard random pool. Follow-up testing costs will be the employee's responsibility.

7. Behavior that Constitutes a Refusal to Submit to a Test

The following actions or behaviors shall constitute a refusal to a required test:

- a) refusal to take the test;
- b) inability to provide sufficient quantities of breath or urine to be tested without a valid medical explanation;
- c) tampering with, or attempting to adulterate, the specimen or collection procedure;
- d) failure to report to the collection site in the time allotted; or
- e) failure to remain readily available for post-accident testing for eight (8) hours or until the employee undergoes testing, whichever occurs first.

D. Testing Procedures

1. Drug Testing

Drug testing is conducted by analyzing the employee's urine specimen. Specimens are collected in an off-site facility which must meet the "Procedures for Transportation Drug and Alcohol Testing Program" (49 CFR, Part 40) requirements to assure privacy and the integrity of specimen collection. The employee provides a urine specimen, which is sealed and labeled by an authorized agent of the testing organization. A chain of custody document is completed and the specimen is shipped to a certified laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification, and integrity are not compromised.

The OTETA requires that drug testing procedures for safety-sensitive employees include split specimen techniques. Each urine specimen is sub-divided into two containers labeled as primary and split specimens. Both specimens are forwarded to a laboratory certified by the U.S. Department of Health and Human Services (DHHS). Only the primary specimen is used in the urinalysis. The split specimen remains sealed and stored unless, and until, it is required for confirmation of a positive test.

An initial screening test is performed. If the test is positive for one or more drugs, then a confirmation test is performed for each identified drug using a gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications are not reported as positive results.

If the analysis of the primary specimen confirms the presence of controlled substances, then the employee has seventy-two (72) hours to request that the split specimen be sent to another DHHS certified laboratory for analysis. The split specimen procedures may provide the employee with an opportunity for a second opinion.

All drug tests are reviewed and interpreted by a physician, Medical Review Officer (MRO), before they are reported. If the laboratory reports a positive result to the MRO, then the MRO contacts the employee and conducts an interview to determine if there is an alternative medical explanation for the presence of a controlled substance in the specimen.

If the employee provides appropriate documentation and the MRO determines that there is a legitimate medical use of the prohibited drug, then the test result is reported as negative.

Urine specimens are analyzed for the following drugs:

- Marijuana (THC metabolite)
- Cocaine
- Amphetamines
- Opiates (including heroin)

- Phencyclidine (PCP)

2. Alcohol Testing

FHWA rules provide that alcohol testing is conducted using evidential breathing testing (EBT) devices approved by the National Highway Traffic Safety Administration (NHTSA). The breath test must be performed by a breath alcohol technician (BAT) trained in the operation of the EVT and in the alcohol testing procedures prescribed by the rules.

Two breath tests are required to determine if a person has a prohibited alcohol concentration. Any result from the screening test is considered negative if the alcohol concentration is less than 0.02. If the alcohol concentration is 0.02 or greater, then a confirmation test must be conducted. The confirmation test must be conducted, using an EBT that prints the results, date, time, in sequential test numbers, and the name and serial number of the EBT to ensure the reliability of the results.

The EBT shall be conducted by BAT's employed by a drug and alcohol testing organization under contract with Niagara County. Agents of Niagara County, the City of Lockport or any of its departments shall not perform the breath alcohol test.

Law enforcement officers will not conduct the tests as part of roadside inspections. Under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable.

3. Confidentiality of Test Results

Employees' alcohol and drug testing results and records are maintained under strict confidentiality by the City of Lockport, the drug testing laboratory, the alcohol testing facility, and the medical review officer. The results cannot be released to any other party except a substance abuse professional without the written consent of the employee.

Statistical records and reports are maintained by the City of Lockport and the alcohol and drug testing provider. This information is aggregate data and is used only to monitor compliance with the FHWA rules.

All time spent administering an alcohol or controlled substance test, including travel time, will be paid at the employee's regular rate of pay, or at their overtime, if applicable. The employer shall pay all costs associated with the administration of alcohol and controlled substance tests for pre-employment, reasonable suspicion, post-accident and random testing. If an employee tests positive, "split specimen, return-to-duty and follow-up testing are to be paid by the employee. Should a positive test then prove negative, the City will reimburse the employee for the costs of the tests and their lost time, and the employee will not be required to use any accrued leave time.

4. Continuation of Pay

Employees undertaking rehabilitation will be required to utilize any and all accumulated leave during their period of absence.

Discipline that may result from a violation of the alcohol and controlled substance policies shall be progressive and subject to the grievance and arbitration procedures of the Collective Bargaining Agreement.

Nothing in this policy is to be construed as a denial of rights guaranteed by any applicable collective bargaining agreement and/or those portions of State and Federal Law which supersede said agreement.

E. Consequences of the Use of Drugs and the Misuse of Alcohol

1. Consequences of Alcohol Misuse

Employees who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. The following circumstances constitute prohibited behavior:

- a) Employee has an alcohol concentration of 0.02 or greater, but less than .04, as determined by EBT results, when tested just before, during or just after performing safety-sensitive functions;
- b) Employee has used alcohol within four (4) hours prior to performing safety-sensitive functions;
- c) Employee has used alcohol while performing safety-sensitive functions;
- d) Employee has used alcohol during the eight (8) hours following an accident or until the employee has undergone a post-accident alcohol test;
- e) Employee refused to submit to a required alcohol test;
- f) Employee has an alcohol concentration of 0.04 or greater, as determined by EBT results, when tested just before, during or just after performing safety-sensitive functions.

Employees found to have violated any of the above provisions shall be immediately removed from safety-sensitive duty for twenty-four (24) hours, and the incident shall be recorded.

No employee who has engaged in any prohibited alcohol conduct shall be allowed to perform safety-sensitive functions until the employee has been evaluated by a substance abuse professional. Before an employee returns to duty to performing a safety-sensitive function, the employee must undergo a return-to-duty alcohol test, with a result indicating alcohol concentration of less than 0.02. Employee will be subject to random testing at the discretion of the employer for a period of six months from their date of return to work.

Any verified positive alcohol test will result in disciplinary action up to, and including termination of employment.

2. Consequences of Use of Drugs

An employee who has a verified positive drug test result must be immediately removed from safety-sensitive functions. The employee who has verified positive drug test result shall not be allowed to perform safety-sensitive functions until the employee has been evaluated by a substance abuse professional. Before an employee returns to duty performing a safety-sensitive function, the employee must undergo a return-to-duty substance test with a negative result. Employee will be subject to random testing at the discretion of the employer for a period of six months from their date of return to work.

Failure of an employee to follow counseling and/or rehabilitation program as determined by the substance abuse professional will be subject to the disciplinary provisions of this policy.

Any verified positive drug test will result in disciplinary action up to, and including termination of employment.

3. Refusal to Submit to a Required Alcohol or Drug Test

Refusal or failure to submit to a required alcohol or drug test constitutes a failed test resulting in immediate removal from safety-sensitive duty and appropriate disciplinary action. The employee may not return to safety-sensitive duty until he/she has undergone return-to-duty testing with verified negative results. The employee shall be subject to the provision for follow-up testing.

F. Training and Responsibilities

1. Training for Supervisors

The City of Lockport shall ensure that all supervisors and other persons designated to determine whether reasonable suspicion exists to require an employee to undergo testing must receive a minimum of sixty (60) minutes of training on alcohol misuse and a minimum of sixty (60) minutes of training on controlled substance use. The training shall include the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

The training shall include an overview of the program requirements, disciplinary procedures, confrontation and documentation procedures, and rehabilitation and treatment options which are available through videos and written material provided by the firm currently under contract with the City handling the entire drug and alcohol testing program.

2. Training for Safety-Sensitive Employees

The City of Lockport shall ensure that all employees performing job functions deemed safety-sensitive shall be training for a minimum of sixty (60) minutes on the effects and consequences of prohibited drug use on personal health, safety, and the work environment, as well as manifestations and behavioral signs that may indicate prohibited use, as per the training material provided by the testing program firm.

3. Supervisory Responsibilities

It is the policy of the City of Lockport that supervisors are responsible for determining through direct observation whether an employee is capable of performing his or her assigned duties.

Employees who are suspected of being unfit for duty as a result of alcohol or drug use shall be required to undergo reasonable suspicion drug and/or alcohol testing in accordance with FHWA rules and this policy. Supervisors should immediately bring their observations to the attention of their managers or Department Heads in order that arrangements for testing can be implemented as soon as practical.

Incidents and behavior described above should be witnessed and documented immediately. The supervisor's Department Head should be consulted and advised of the incident. An employee who is impaired shall not be allowed to drive home from the work place. The supervisor should arrange to send the unfit employee home with a member of the employee's family or friend of the employee or in a taxi at the employee's expense. If all other alternative are exhausted, a supervisor may allow an employee who is unfit for duty to then be driven home in a City vehicle.

4. Management Responsibilities

It is the policy of the City of Lockport that a drug and alcohol-free workplace shall be maintained through the efforts and personal example of management.

Supervisors, Managers and Department Heads who fail to perform their duties and responsibilities as outlined in this policy will be subject to disciplinary action up and to, and including, termination of employment.

Although the above represents the City of Lockport policy with respect to compliance with the Omnibus Transportation Employee Testing Act of 1991, be it understood that the City of Lockport shall seek the input from all affected employee organizations in the implementation of this policy.

Employee Drug and Alcohol Testing Upon Reasonable Suspicion

In accordance with the various collective bargaining agreements between the City of Lockport and its unions, the City may require an employee to undergo testing for the presence of alcohol or illegal drugs upon reasonable suspicion that the employee is under

the influence of such drugs and/or alcohol while on duty. In the case of alcohol testing, all testing will be done by breath testing. In the case of illegal drug testing, all testing shall be done by urinalysis. Only laboratories which are certified by the U.S. Department of Health and Human Services under National Laboratory Certification Program (NLCP) to participate in the U.S. Department of Transportation drug testing program pursuant to 49 CFR Part 40 shall be used to administer breathe tests or perform urinalysis under this agreement.

The use of illegal or controlled substances and alcohol by an employee adversely affects the mission of the City, impairs the efficiency of the workforce, endangers the lives and security of employees and undermines the public trust.

The City fully supports the Employees Assistance Program (hereafter EAP) and encourages employees who are using illegal substances and alcohol to seek the confidential services of the EAP at the workplace. Information regarding the use of illegal controlled substances and alcohol revealed to EAP representatives by an employee cannot be used against the employee for any purpose.

XXVIII. Reasonable Suspicion Testing

1. Determination of reasonable Suspicion: The person designated to confirm whether reasonable suspicion exists to require a covered employee to undergo drug and alcohol testing must be a unit supervisor or administrator. The behavior giving rise to reasonable suspicion shall be a recognized symptom of impairment, due to alcohol or a controlled substance.
2. Initial Training of Supervisors: Supervisors designated to determine whether reasonable suspicion exists to require a covered employee to undergo drug and alcohol testing shall receive formal training. Such training must be completed before the supervisor can require an employee to undergo a test.
3. Right to Representation: When a decision is made to test, the employee shall be advised that the employee can consult with a union representative, where applicable, who has received the formal training referred to in paragraph 2 above, as long as the union representative can respond without undue delay. Reasonable efforts shall be made (without delaying the process) to assist the employee in contacting a trained union representative.

4. All time spent administering a controlled substance and alcohol test, stemming from reasonable suspicion, will be paid at the employee's regular rate of pay or at their overtime rate, if applicable, and will include travel time.
5. Any employee who is not allowed to return to work while awaiting test results arising out of reasonable suspicion may use any accumulated paid leave benefits as noted in the applicable collective bargaining agreement during the waiting period for time lost and will be reimbursed for the time lost should the test results be negative.
6. If the employee requests the split specimen be tested by a certified laboratory of their choosing, the employee is responsible for the cost of such a test. However, if the results of the second test show the initial test results were a false positive, the City shall assume the costs of the second test, and the employee shall be reimbursed for any lost wages.

Application

1. In determining whether to order a test in a particular case, the City must balance said employee's right to privacy from unreasonable intrusions against the City's interest in assuring the integrity of the employees.
2. The order must be justified by a reasonable suspicion that the covered employee has reported to work under the influence of illegal controlled substances or alcohol.
3. While the "reasonable suspicion" standard does not lend itself to precise definition or mechanical application; vague, particularized, unspecified, or rudimentary hunches or intuitive feelings do not meet the standard.
4. Reasonable suspicion may be based upon, among other matters, observable phenomena such as direct observation of use and/or the physical symptoms of using or being under the influence of illegal controlled substances or alcohol such as slurred speech, disorientation, a pattern of abnormal conduct or erratic behavior.
5. Reasonable suspicion is the quantum of knowledge sufficient to induce an ordinarily prudent and cautious person to act under the circumstances. Reasonable suspicion must be directed at a specific person and be based on specific and articulable facts and the logical inferences and deductions that can be drawn from these facts.

6. The City will not test solely on information or anonymous sources unless the information is corroborated by reliable and credible sources or objective evidence.
7. The employee will sign a consent form designating the Mayor or designees as the person or persons to whom information shall be released by the Medical Review Officer (MRO).
8. The MRO is a licensed physician (medical doctor or doctor of osteopathy) and is responsible for receiving laboratory results generated by an employer's drug testing program. The MRO shall have knowledge of substance abuse disorders, and have appropriate medical training to interpret and evaluate an individual's confirmed positive test results, together with their medical history and any other relevant biomedical information.

Procedure

1. Whenever trained supervisors reasonably suspect, based on their own observations, that an employee has reported to work in an impaired condition due to the use of alcohol or an illegal controlled substance, such information should immediately be communicated to the employee's respective Department Head in such a manner as to protect the confidentiality and the privacy of the employee. However, this reporting requirement does not affect the process of directing an employee to submit to a drug or alcohol test, which should proceed without delay.
2. A covered employee of the City of Lockport ordered to submit to testing shall be advised that they have a right to consult with a union representative, when applicable, who has received the formal training without delaying the process in excess of sixty (60) minutes. Reasonable efforts to assist the employee in contacting a trained Union representative shall be made.
3. Throughout all aspects of these procedures, including transportation and the actual obtaining of the sample, the employer will assure the dignity and privacy of the employee. Every effort shall be made to avoid public attention and these procedures shall be carried out as discreetly as possible.
4. Collection, testing, and medical review shall be in conformance with Federal Highway Administration (hereafter FHWA protocols for "Commercial Drivers Licensed (CDL) drivers.)
5. If the results of the initial and/or the confirming tests are negative, the request for testing, the finding of reasonable suspicion, as well as the result of said test will not be kept. If both confirming tests are positive, or if the first test is positive and the employee waives his/her right to request a second confirming test, the

employee may face discipline up to and including termination as prescribed by City policy or the respective Collective Bargaining Agreement, State or Federal law, rule or regulation.

General Provisions

1. An employee's refusal to submit to ordered testing or his or her refusal to cooperate in any legal aspect of testing procedures shall be communicated to the respective Department Head or Mayor and may subject the employee to disciplinary action as appropriate under the respective Collective Bargaining Agreement or City policy and law, rule or regulation.
2. At the conclusion of the testing procedures, the employee may be disciplined independent of the test results only if the facts, standing alone, would normally justify such action and constitute a basis under City policy, the respective Collective Bargaining Agreement or law. In a case where an employee is judged to be too impaired to continue to work, they are to be assisted with making arrangements for transport home. The employee is to be strongly encouraged not to drive. If the employee insists on driving, the respective Department Head, the Mayor or other appropriate authority should be immediately notified.
3. When written reports of the laboratory tests are received by the respective Department Head or the Mayor, a copy shall be forwarded to the employee who was tested. If the results are positive, the MRO informs the employee of the results and the designees or the employer shall also be notified.
4. Where any provision of this memorandum of agreement is determined to be in conflict with the appropriate collective bargaining agreement or law, statute, rule or regulation, including civil service law, said collective bargaining agreement, law, statute, rule or regulation will control. It is not the intent of this Memorandum of Agreement to abridge any rights an employee may have under applicable collective bargaining agreements, law, statutes, or rules and regulations.
5. Records concerning positive results will be kept separate from Civil Service files in a locked file cabinet in the Civil Service Office (Confidentiality CFR Title 4).
6. If, as a result of the investigation, the City determines the existence of just cause discipline, such discipline may be imposed consistent with the provisions of the respective collective bargaining agreement or City policy.
7. An employee whose test is confirmed positive will have an opportunity to seek appropriate counseling and or treatment.

8. An employee who claims to have been tested under this policy without reasonable suspicion can assert such a claim as a defense in any disciplinary proceeding brought against them. Nothing in this policy shall be construed to deprive an employee of any other appropriate defenses or arguments in Arbitration and/or any other course of action available to the employee.
9. Defamation, Invasion of Privacy, Confidentiality and Constitutional concerns: An employer who engages in drug testing may also be subject to claims by employees in another forum for defamation, invasion of privacy and violation of constitutional rights. If an employer were to disclose the results of an employee's drug and/or alcohol test which were later proven to be inaccurate; and the employee can establish that the employer acted in a reckless manner or in a manner with intent to damage the employee, that employer could be subject to a claim for defamation. Employees may also raise claims based on their constitutional rights, including invasion of privacy, unlawful search or seizure or denial of due process depending on the manner in which testing is conducted and the circumstances of the case.

XXIX. Non-Smoking Workplace Include vaping, e-cigarettes etc., chewing tobacco

As per New York State Law (Public Health Law, Article 13-E), smoking is prohibited in all places of employment, which is defined as “any indoor area or portion thereof under control of an employer in which employees of the employer performs services, including company vehicles.” It is unlawful for any person to smoke in such places, and it is unlawful for the City to fail to comply with the provisions associated with this law. Accordingly, it is the City’s policy to act in accordance with this law and its attendant regulations. Employees found smoking in violation thereof will be subject to disciplinary action.

XXX. Equal Employment Opportunity

The City is an equal opportunity employer and complies with all applicable federal, state and local laws that prohibit discrimination. The City strictly prohibits and does not tolerate discrimination against employees, applicants, or any other covered persons because of race, color, religion, creed, national origin, gender, disability, age, veteran status, marital status, genetic information or any other protected status under federal, state or local law. This section applies to all terms and conditions of employment, including but not limited to hiring, promotion, compensation, discipline and termination. City employees are strictly prohibited from engaging in any form of unlawful discrimination.

If an employee believes he or she has been subject to any form of unlawful discrimination, the employee must report the conduct in the manner set forth in Section XXX. of this Handbook.

XXXI. Discrimination, Harassment and Retaliation

The City prohibits all forms of discrimination, harassment and retaliation, including but not limited to such conduct based on an employee's race, color, religion, creed, national origin, gender, disability, age, veteran status, marital status or genetic information. The City strives to maintain a workplace that is free of such conduct. There are multiple laws in place that protect employees against unlawful discrimination, including but not limited to Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Age Discrimination in Employment Act, and New York's Executive Law (Human Rights Law). Discrimination, harassment and retaliation will not be tolerated regardless of the working relationship between the individuals involved. The City will take all steps necessary to prevent and stop the occurrence of such unlawful action. All employees, including elected officials, Department Heads and supervisory personnel, are responsible for ensuring a work environment free of discrimination, harassment and retaliation.

Harassment, discrimination and retaliation may include a range of subtle and not so subtle behaviors, and may involve individuals of the same or different protected status. Harassment may include, for example, "off color" stories or jokes concerning a protected status; displaying lewd or indecent pictures or other material depicting a particular protected status; unwanted or inappropriate physical contact or gestures; or denial of employment, promotion, or benefits because an individual is in a protected class.

In the event that you believe you have been subjected to any discrimination, harassment or retaliation, or if you witness or are otherwise made aware of a possible occurrence, you are obligated to report such information as soon as possible to the City Attorney's Office. Prompt and timely reporting is necessary in order for the City to effectively address and/or investigate the allegations. Procedures for reporting alleged discrimination, harassment or retaliation are set forth below.

It is important that all perceived incidents of discrimination, harassment or retaliation are reported, regardless of the accused's identity or position. At the outset, you are encouraged to address the issue with the accused, such as advising the accused that his/her behavior is unwelcome and request that it cease, if you are comfortable doing so. Such conversations may, and often do, resolve the problem immediately. **Please note that confronting the accused is NOT required. All employees have the right to file a good faith complaint without first communicating with the accused.**

All employees who do not wish to communicate directly with the accused for any reason, or where such communications have not resolved the problem, should report the issue to the City Attorney's Office or the Mayor. Employees are encouraged to use the Complaint Form attached as Appendix C when making an internal complaint and identify in detail the alleged discrimination, harassment or retaliation.

Employees making an internal complaint are encouraged to do so in writing using the attached Complaint Form. Written reports enhance the City's ability to fully and effectively address and investigate the reported conduct. However, verbal complaints will be accepted and handled in accordance with this policy. Victims and witnesses should

provide as much detail as possible when making a report. Complaints will remain as confidential as possible and will be disclosed only as necessary to effectively investigate the allegations and/or as required by law. The complainant, the alleged perpetrator and any witnesses to the conduct should refrain from discussing the allegations except as requested by the City or its investigator during the course of the investigation.

The complainant will be notified of the City's receipt of his or her complaint. If the complainant does not receive such notification promptly, the complainant is encouraged to contact the City Attorney to confirm receipt.

Upon receipt and review of a complaint filed pursuant to this policy, the City, in consultation with its corporation counsel and/or outside legal counsel, as necessary, will make the following preliminary determinations as soon as practicable: whether the complaint appears to allege a violation of this policy; the nature and extent of any investigation that may be required to determine if this policy has been violated; and whether interim measures are necessary during the pendency of an investigation to protect the alleged victim, complainant and/or witnesses based on the circumstances alleged. The City may utilize corporation counsel, outside counsel or other appropriate third parties to conduct or participate in the investigation. At a minimum, the investigator shall interview the complainant, the alleged victim, and the accused, and shall conduct those interviews separately.

Investigations shall be completed as promptly as circumstances permit. The investigator shall submit a written report of his or her findings to the Mayor upon completion of the investigation. The length of the investigation will depend upon the complexity and particular circumstances of each complaint. Any notes, memoranda, or other records created by the City and/or its investigator shall be deemed confidential and privileged to the extent allowed by law.

Once the investigation has concluded, the complainant and the accused shall be notified, in writing, as to whether or not any discrimination, harassment or retaliation was found to have occurred. Any remedial or disciplinary action taken in response to a complaint will only be disclosed to the individual(s) against whom the action is taken, unless otherwise necessary or required by law. All investigations, including any remedial or disciplinary action in connection therewith, will comply with state and federal law, as well as any applicable collective bargaining agreement(s).

The City prohibits any retaliatory behavior directed against an employee because he/she filed a complaint under this policy, or based on his/her participation in any investigation related thereto. If you believe you have been subjected to any retaliatory action, you are encouraged to report such conduct in the manner set forth above.

The City takes seriously all complaints of alleged discrimination, harassment or retaliation. Any such complaints that are determined to be malicious, based on false allegations, or made in bad faith may result in disciplinary action against the complaining party.

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

XXXII. Reasonable Accommodation for Disability

The City complies with the Americans with Disabilities Act, as amended by the ADA Amendments Act, New York's Executive Law ("Human Rights Law"), and all other applicable state and local fair employment practices laws, and is committed to providing equal employment opportunities to qualified individuals with disabilities. It is the City's policy to provide reasonable accommodations to employees and applicants with disabilities, in accordance with this policy and applicable law.

To be entitled to a reasonable accommodation, the disabled individual must possess the requisite job qualifications as well as be able to satisfactorily perform the job, with or without reasonable accommodation. In addition, the individual must have a qualifying disability and a need for an accommodation that are known, or are made known, to the City. Please note that not every disability will require the consideration of reasonable accommodations. Only those disabilities which actually impede, as a matter of fact, the individual in performing the essential functions of the job will give rise to a consideration of reasonable accommodation. Essential functions are those fundamental to the position. What is an essential function is a factual question to be determined on a case by case basis.

If you believe you require an accommodation because of your disability, you are responsible for requesting a reasonable accommodation. All requests shall be made in writing to the Personnel/Civil Service Officer. If the employee is unsure what or whether reasonable accommodation is needed, the employee is encouraged to speak to their physician. A request for reasonable accommodation shall include a description of the issue(s) underlying your request, such as the task(s) you are unable to perform; a description of the accommodation(s) you are seeking, if known; the reason you believe you require the accommodation(s); and how the accommodation(s) will help you perform the essential functions of your job.

Upon receipt of a request for reasonable accommodation, the City will consider the request and discuss it with you as part of an interactive process. The City is not required to make the specific accommodation requested by you. The City may explore the feasibility of alternative accommodations, and may ultimately grant an accommodation other than the one you specifically requested if the City determines that the alternative accommodation will allow you to perform the essential functions of your position. You are required to cooperate with and participate in any discussions requested by the City related to your request for reasonable accommodation.

Whether an accommodation is reasonable will depend on a variety of factors, including the potential efficacy or benefit of the accommodation toward removing impediments to performance, the convenience of the requested accommodation in relation to alternative accommodations, and the burden of the accommodation, such as its costs or problems it

may cause to the City's operations or to other employees. Accommodations that pose an undue hardship on the City are not required. All requests for reasonable accommodation will be evaluated on an individualized and case-by-case basis, and in light of all relevant circumstances.

The City may request and is entitled to medical or other information that is necessary to verify the existence of a qualifying disability, to assess the need for an accommodation and/or to evaluate potential effective accommodations. The City may request such information from the applicable healthcare provider directly. The City will not request and is not entitled to medical information that is unrelated to the subject disability or requested accommodation(s). If an employee refuses to furnish pertinent medical information requested by the City, his or her request for reasonable accommodation may be denied. The City reserves the right to have an employee examined by a medical professional of its choosing, at the City's expense, should the employee fail to provide sufficient information upon which it can be determined that the employee suffers from a qualifying disability that requires reasonable accommodation. All medical information provided to the City in connection with a request for reasonable accommodation will be kept confidential. The City may, at its discretion, require an employee to undergo a functional capacity test to determine the extent of disability and ability to perform the essential functions of their job.

Employees requesting reasonable accommodation must make the disability and need for accommodation known to the City, and must cooperate with the City in the consideration and implementation of a reasonable accommodation. You have the right to refuse an accommodation if you are able to perform the essential functions of your position without accommodation.

Individuals will not be retaliated against for requesting a reasonable accommodation. The City expressly prohibits such retaliation. If you believe you have been subject to any retaliation, please refer to the complaint procedures set forth in Section XXX Discrimination, Harassment, and Retaliation section of this Handbook.

XXXIII. Health and Safety in the Workplace

The City of Lockport is committed to maintaining a safe workplace, and each department will provide a place to work that is as free of hazards as possible. Occupational accidents and illnesses can cause suffering and financial loss to employees as well as to the City. It is therefore imperative that City personnel conduct themselves in a safe manner and notify a supervisor of any unsafe conditions or unsafe behavior that they observe or learn about. Obvious or potential hazards should never be ignored.

Employees are also required to comply with all laws, rules and practices designed to maintain a safe workplace, including, for example, using City-approved tools/equipment only, using all required safety equipment, and maintaining work areas organized and free of potential hazards. Aisles, entrances/exits and stairwells should be kept clear of

stumbling hazards. It is also important that employees use proper technique when lifting to avoid back injuries.

Safety rules and practices are made for your protection -- if you observe them, your chances of avoiding painful injuries greatly increase. If you are performing a task for the first time or have any questions regarding same, you should seek clarification from your supervisor before attempting to perform the task. Likewise, if you do not understand a rule, procedure or instruction you should immediately seek clarification from your supervisor.

Any alleged injury to a visitor should be reported to the City Clerk's Office immediately, however slight it may appear. Please contact the City Clerk with any questions with respect to reporting incidents or injuries.

Failure to comply with these terms may result in discipline, up to and including termination.

XXXIV. Safety Committee

A Safety Committee consisting of department heads and departmental representatives, the City Clerk, and insurance representatives has been established.

The purpose of this committee is to review all injuries reported occurring to City employees, inspect City operations and departments to ascertain that proper safety procedures are being utilized, and to make recommendations regarding training needs and changes in City policy or procedures to encourage workplace safety. The Committee also works with the City's insurance representatives to create and provide training sessions.

XXXV. Building Evacuation

Building evacuations may be necessary in certain circumstances in order to prevent injury or death to City employees or clients. Incidents such as fires, explosions, tornadoes, structural problems or bomb threats are examples of incidents that may require evacuation.

When any such incident is discovered, the person who discovers it should pull the nearest fire alarm and report the incident to a supervisor or Department Head. If it is a small fire and you are trained to use a fire extinguisher or other firefighting equipment, you may utilize any such equipment available to put out the fire. In all other circumstances, including if you determine you are unable to extinguish the fire for any reason, you should evacuate the building immediately using the nearest available exit. If you are aware of anyone inside the building you should immediately notify the Fire Department or other responding emergency personnel on scene. Under no circumstance should anyone be allowed to re-enter the building until the Fire Department or other official in charge of the scene permits re-entry.

During a fire or other building evacuation, it is essential that everyone exit the building a calm and orderly fashion, and in accordance with any instructions provided by the City official or emergency responders. Failure to evacuate or otherwise comply with the intent of this section will result in discipline up to and including termination.

XXXVI. Civil Service Law - An Overview

Many terms and conditions of your employment with the City of Lockport are governed by the Civil Service Law and Rules, as well as other State Laws. As an employee in public service, you are in Civil Service. In general, the term "Civil Service" has come to mean jobs based on the merit and fitness of candidates, or a system of appointing government employees on the basis of competitive examination, rather than political patronage.

A. Classifications

The Civil Service is divided into the unclassified and classified service. Unclassified service includes, for example, the Mayor, City Clerk, other elected officials, City Treasurer and Corporation Counsel. The classified service includes all other City employees and is divided into four groups: competitive class, non-competitive class, labor class and exempt class.

- COMPETITIVE CLASS - Includes all positions for which it is practical to determine merit and fitness of applicants by competitive examination.
- NON-COMPETITIVE CLASS – Includes positions determined impractical to fill through competitive examination and that are not in the exempt or labor class, such as motor equipment operators. Merit and fitness for these positions are determined by a review of candidates' training and experience.
- LABOR CLASS – Includes unskilled laborer positions for which there are generally no minimum job qualifications.
- EXEMPT CLASS – Includes policy-making functions and/or confidential positions, such as private secretaries to elected officials. Positions in this class do not require examinations.

Periodic job studies are made to determine whether sufficient changes in duties and responsibilities have occurred to warrant reclassification of a given position. Such studies are typically made by the City's Civil Service Department at the request of a Department Head or individual employee(s).

B. Appointments

Permanent Appointment can be made only to a position in a jurisdictional class in which there is a permanent vacancy. That is, to a position to which no other employee has a prior claim. All permanent appointments to Competitive Class positions must be made from applicable eligible lists.

Provisional Appointment can be made only to a Competitive Class position for which no eligible list exists. (See Provisional Appointments and Limitations Below). This means that a person who meets all minimum qualifications for the title may be appointed to the position until an examination is held, an eligible list is established and a canvass of eligible is completed. A provisional appointee must compete in the first exam held for the title of the position in which he/she is serving. Willful failure to compete will result in termination of provisional appointment. Service under provisional appointment does not confer or establish any prior right toward any permanent appointment. In order to receive permanent appointment, the provisional appointee must be reachable on the eligible list when it is established. When a person without permanent status under any title in the classified service accepts provisional or temporary competitive class appointment, time served under such appointment is not counted towards seniority for retention in case of layoffs nor counted toward establishing a basis for accruing fringe benefits. If an examination does not create an eligible list a provisional appointee may be reappointed provisionally to the position once, pending a second examination. Failure to establish a passing score on two successive examinations for the same title will result in termination of provisional appointment and removal from the position.

Temporary Appointments are made under different sets of circumstances, the most common being to fill a vacancy which exists because an employee having a prior claim to the position is on an approved leave of absence. The permanent incumbent has a right to return to it at a future time. Temporary Appointments may also be made where, for example, a newly created title has not yet been assigned to a jurisdictional class. In addition, temporary appointments may be made to any position which is created for a specified and limited period of time, usually less than one year.

Substitute Appointments are made only to fill a vacancy created by a Military Leave of Absence of the permanent incumbent, who may return to the position after military service is completed.

Lastly, seasonal Appointments are made to positions which are not continuous throughout the year, but which may total as much as five (5) months of cumulative seasonal service in a single year, and which is successive in each consecutive year.

C. Probationary Period

The probationary period is part of the permanent appointment process. Every permanent appointment from a Civil Service eligible list (competitive class) and every appointment to a position in the non-competitive, exempt, or labor class is for a probationary term. This is the time when the conduct, quality, quantity and the value of the work performed by the appointee is observed and evaluated. Permanent status will not be awarded and your employment will be terminated should your job performance fail to meet the City's expectations during the probationary period. The length of the probationary term is set by the City's Civil Service Department in conjunction with the applicable Collective Bargaining Agreement.

D. Civil Service Examinations

Civil Service examinations are administered by the City's Civil Service Department at various times throughout the year. Examinations may be offered for job titles on an open competitive or promotional basis. Please note that examinations issued by Niagara County, including any eligible lists generated in connection therewith, are not controlling and do not apply to City positions.

Open competitive examinations are open to the public as well as to current City employees. Anyone who meets the announced requirements is eligible to participate. Promotional examinations are limited to City employees who have a permanent position in a specific job title.

XXXVII. Residency Requirement

In general, the City seeks to employ individuals whose primary and permanent residence is located within the City of Lockport. The City may solicit and consider applications from non-residents where qualified candidates cannot be found within the City, or where the City determines that a broader search would be in the City's best interests. Public Officers of the City, whether identified by New York State Law or the City Charter, are required to maintain residency in the City for the duration of their appointment unless otherwise allowable by law. Failure to maintain residency will be considered an abandonment of the position and separation of employment.

XXXVIII. Personnel Office

The Personnel Office, also referred to as the Civil Service Department, serves two basic functions: to administer the Civil Service Law and to serve as the central personnel agency for City government. The Personnel Officer has the authority to adopt Civil Service rules governing appointments, promotions, reinstatements, leaves of absences and similar matters governing City employment and other political subdivisions under its jurisdiction.

Functions of this office include holding examinations; maintain employment history for all Civil Service employees in the City; review qualifications of all appointees to Civil Service positions; advise individual employees of their rights, benefits and responsibilities under the law and under collective bargaining agreements; provide assistance and information concerning retirement matters; handle and/or assist with claims for unemployment, disability; training and other personnel related matters.

XXXIX. Personnel files

The Personnel Office maintains an individual personnel file for each City employee. In it are copies of the necessary data, forms, appraisals, and records relating to his or her employment. The file is the sole property of the City and for its own use.

No material related to an employee's conduct, performance, character or personality, which is derogatory in nature, shall be placed in the personnel file without notification to the employee. The employee shall be given an opportunity to read such material and shall acknowledge that he/she has read such material by signing the material to be filed, with the understanding that such signature merely acknowledges that the employee has read such material and does not indicate agreement with the contents. The employee shall receive a copy of such material upon request. Signature is not deemed to constitute approval of the contents of any document. Signature is not mandatory. If signature is declined, a statement notifying the declination will be added to the document.

The City grants all employees the right to review their individual personnel file during their employment upon request at a mutually agreeable time. Employees do not have the right to review or receive copies of their personnel file upon termination of employment, whether voluntary or involuntary, or thereafter.

XL. Resignations

All resignations shall be submitted in writing. If the resignation fails to identify an effective date, the resignation will be deemed effective upon the City's receipt of the resignation. If the resignation identifies an effective date, the City reserves the right to continue his/her employment through said date or deem the resignation effective immediately upon receipt. In either event, the employee is entitled to continue to receive his or her pay and benefits until the effective date of the resignation, unless the employee is on an unpaid leave of absence or other extenuating circumstances exist that would not warrant such pay or benefits continuing. If a resignation is submitted while an employee is on a leave of absence without pay, the resignation will be deemed effective as of the date of the commencement of said leave for purposes of determining eligibility for reinstatement.

Notwithstanding the foregoing, if an employee submits a resignation while disciplinary charges are pending or forthcoming, the City may elect to disregard the resignation and prosecute the charges. If the employee is found guilty of the charges and dismissed from service, his or her termination will be recorded as a dismissal rather than a resignation.

A resignation may not be withdrawn, canceled, or amended after it is delivered to the City without the City's consent.

XLI. Contact Information and Personal Data Changes

It is essential to the City's operations that it have current and up to date contact information for all of its employees. It is similarly important that the City be notified of any changes to an employee's marital status or health insurance. In this regard, it is your responsibility to immediately inform the Personnel Office of any changes to the following as soon as possible: name; address; telephone number; marital status; name, birthdate

and relationship of all dependents; and health insurance. The City is not responsible for any acts or omissions attributable to an employee's failure to notify the City of any changes to such information.

XLII. Reference policy

Only dates of employment and position held are given in response to reference requests. No other information will be provided. A copy of this will be provided upon request.

XLIII. Workplace Violence Policy

It is the policy of the City of Lockport to provide an employment and business environment free from violence. This policy is designed to meet the requirements of New York State Labor Law, Article 2, § 27-b, and to promote the safety and well-being of all people in our workplace.

Workplace violence is any physical assault or act of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment, including but not limited to:

- An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee;
- Any intentional display of force which would give an employee reason to fear or expect bodily harm;
- Intentional and wrongful physical contact with a person without his or her consent that entails some injury; or
- Stalking an employee with the interest in causing fear of physical harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment.

Acts of violence against any City employees where any work-related duty is performed will be investigated and appropriate action will be taken, including involving law enforcement authorities when warranted. All employees are responsible for helping to create an environment of mutual respect for each other as well as clients and visitors, following all policies, procedures and practices, and for assisting in maintaining a safe and secure work environment.

It shall be a violation for anyone who is authorized to recommend or take personnel actions affecting an employee, or who is otherwise authorized to transact business or perform other acts or services on behalf of the City:

- a) To make real or perceived threats, or engage in acts of physical or verbal violence in the workplace.
- b) To recommend, impose, grant, withhold or refuse to take any personnel or other action consistent with his or her duties and responsibilities because of workplace violence or as a reprisal against an employee or other individual who has complained about or reported workplace violence.
- c) To disregard and fail to investigate allegations of workplace violence whether reported by the employee or individual who is the subject of the alleged violence or a witness, and to fail to take immediate corrective action in the event misconduct has occurred.

Whenever such misconduct exists, prompt and corrective action is required, in accordance with any applicable discipline procedures is required.

A. Complaint Procedure

Employees or other individuals who feel aggrieved because of workplace violence have several ways to make their concerns known:

- a) Aggrieved persons who feel comfortable doing so should directly inform the person engaging in the violent behavior that such conduct or communication is inappropriate and must stop. The City recognizes, however, that it is not necessary for an individual to talk directly to the person engaging in the violent behavior if the individual feels uncomfortable doing so.
- b) All aggrieved individuals who do not wish to communicate directly with the person whose conduct or communication is inappropriate, or if direct communication with the offending party has been unavailing or would constitute a risk of harm, should complete and submit a Workplace Violence Incident Report form to their supervisor or Department Head. A copy of the Workplace Violence Incident Report form is attached as Appendix C. Verbal complaints will be accepted; however, employees are encouraged to submit any complaints of workplace violence using the Incident Report form. If an employee does not submit a written complaint, it is the responsibility of the employee's supervisor or Department Head to document the complaint using the Workplace Violence Incident Report form.
- c) Aggrieved persons alleging failure by supervision to take immediate action on the individual's complaint may also file a formal grievance in accordance with the provisions of the appropriate grievance procedure.

Regardless of the means selected for resolving the problem, the initiation of a complaint of workplace violence will not cause any reflection on the complainant nor will it affect such person's future dealings with the City, the employee's employment, compensation or work assignments.

False and malicious complaints, as opposed to complaints which, even if erroneous, are made in good faith, will be subject to disciplinary action.

Any complaint of workplace violence should be submitted as soon as possible following the incident(s) in question. Every effort should be made to file such complaints as soon as possible, while facts and potential testimony of witnesses, if any, are still fresh. The City's ability to effectively investigate the incident and take any appropriate corrective action depends in large part on the prompt reporting of the incident and the level of detail reported. That said, there is no specific time limit in which to submit a workplace violence complaint. However, should an employee pursue a complaint utilizing a grievance procedure, please keep in mind that those procedures have time limits that must be followed.

All supervisors and City officials have a responsibility for implementation of this policy. If behavior is observed which violates this policy, the person observing such behavior shall bring the matter to the attention of the supervisor responsible for that area. When a problem is beyond the capability of such supervisor to effectively correct the matter, it shall be referred to Personnel Office for handling.

In all cases and regardless of the individual remedial measures that have been undertaken, the supervisor or Department Head to whom the complaint has been referred shall complete a written report of each complaint and submit it to the Mayor and Personnel Office within ten (10) days of receipt of the complaint. The report should: (i) identify the date of receipt; (ii) identify the complainant; (iii) identify the all involved parties and actions complained of, including relevant background and circumstances; (iv) set forth each step of the investigation; (v) identify the results of the investigation; and (vi) indicate what, if any, corrective measures were taken or pursued and the date they were implemented.

All workplace violence complaints and reports in response thereto will be maintained by Personnel Office.

B. Retaliation Prohibited

It is a violation of this policy to retaliate against any employee or other individual who has complained of workplace violence. Intimidation, coercion, threats, reprisal, or other forms of discrimination directed at an individual who has complained of workplace violence is prohibited. Any employee who is found to have committed an act of retaliation will be subject to disciplinary action. Acts of retaliation should be reported immediately and will be promptly investigated.

XLIV. Sexual Harassment Policy

Introduction

The City of Lockport is committed to maintaining a workplace free from sexual harassment. Sexual harassment is a form of workplace discrimination. All employees are required to work in a manner that prevents sexual harassment in the workplace. This Policy is one component of the City of Lockport's commitment to a discrimination-free

work environment. Sexual harassment is against the law² and all employees have a legal right to a workplace free from sexual harassment and employees are urged to report sexual harassment by filing a complaint internally with the City of Lockport. Employees can also file a complaint with a government agency or in court under federal, state or local antidiscrimination laws.

Policy:

1. City of Lockport's policy applies to all employees, applicants for employment, interns, whether paid or unpaid, contractors and persons conducting business, regardless of immigration status, with the City of Lockport. In the remainder of this document, the term "employees" refers to this collective group.
2. Sexual harassment will not be tolerated. Any employee or individual covered by this policy who engages in sexual harassment or retaliation will be subject to remedial and/or disciplinary action (e.g., counseling, suspension, termination).
3. Retaliation Prohibition: No person covered by this Policy shall be subject to adverse action because the employee reports an incident of sexual harassment, provides information, or otherwise assists in any investigation of a sexual harassment complaint. The City of Lockport will not tolerate such retaliation against anyone who, in good faith, reports or provides information about suspected sexual harassment. Any employee of the City of Lockport who retaliates against anyone involved in a sexual harassment investigation will be subjected to disciplinary action, up to and including termination. All employees, paid or unpaid interns, or non-employees³ working in the workplace who believe they have been subject to such retaliation should inform a supervisor, manager, the Mayor or the City Attorney. All employees, paid or unpaid interns or non-employees who believe they have been a target of such retaliation may also seek relief in other available forums, as explained below in the section on Legal Protections.
4. Sexual harassment is offensive, is a violation of our policies, is unlawful, and may subject the City of Lockport to liability for harm to targets of sexual harassment. Harassers may also be individually subject to liability. Employees of every level who engage in sexual harassment, including managers and supervisors who engage in sexual harassment or who allow such behavior to continue, will be penalized for such misconduct.

² While this policy specifically addresses sexual harassment, harassment because of and discrimination against persons of all protected classes is prohibited. In New York State, such classes include age, race, creed, color, national origin, sexual orientation, military status, sex, disability, marital status, domestic violence victim status, gender identity and criminal history.

³ A non-employee is someone who is (or is employed by) a contractor, subcontractor, vendor, consultant, or anyone providing services in the workplace. Protected non-employees include persons commonly referred to as independent contractors, "gig" workers and temporary workers. Also included are persons providing equipment repair, cleaning services or any other services provided pursuant to a contract with the employer.

5. The City of Lockport will conduct a prompt and thorough investigation that ensures due process for all parties, whenever management receives a complaint about sexual harassment, or otherwise knows of possible sexual harassment occurring. The City of Lockport will keep the investigation confidential to the extent possible. Effective corrective action will be taken whenever sexual harassment is found to have occurred. All employees, including managers and supervisors, are required to cooperate with any internal investigation of sexual harassment.
6. All employees are encouraged to report any harassment or behaviors that violate this policy. The City of Lockport will provide all employees a complaint form for employees to report harassment and file complaints.
7. Managers and supervisors are **required** to report any complaint that they receive, or any harassment that they observe or become aware of, to the Mayor or City Attorney.
8. This policy applies to all employees, paid or unpaid interns, and non-employees and all must follow and uphold this policy. This policy must be provided to all employees and should be posted prominently in all work locations to the extent practicable (for example, in a main office, not an offsite work location) and be provided to employees upon hiring.

What Is “Sexual Harassment”?

Sexual harassment is a form of sex discrimination and is unlawful under federal, state, and (where applicable) local law. Sexual harassment includes harassment on the basis of sex, sexual orientation, self-identified or perceived sex, gender expression, gender identity and the status of being transgender.

Sexual harassment includes unwelcome conduct which is either of a sexual nature, or which is directed at an individual because of that individual's sex when:

- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment, even if the reporting individual is not the intended target of the sexual harassment;
- Such conduct is made either explicitly or implicitly a term or condition of employment; or
- Submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment.

A sexually harassing hostile work environment includes, but is not limited to, words, signs, jokes, pranks, intimidation or physical violence which are of a sexual nature, or which are directed at an individual because of that individual's sex. Sexual harassment also consists of any unwanted verbal or physical advances, sexually explicit derogatory statements or

sexually discriminatory remarks made by someone which are offensive or objectionable to the recipient, which cause the recipient discomfort or humiliation, which interfere with the recipient's job performance.

Sexual harassment also occurs when a person in authority tries to trade job benefits for sexual favors. This can include hiring, promotion, continued employment or any other terms, conditions or privileges of employment. This is also called "quid pro quo" harassment.

Any employee who feels harassed should report so that any violation of this policy can be corrected promptly. Any harassing conduct, even a single incident, can be addressed under this policy.

Examples of sexual harassment

The following describes some of the types of acts that may be unlawful sexual harassment and that are strictly prohibited:

- Physical acts of a sexual nature, such as:
- Touching, pinching, patting, kissing, hugging, grabbing, brushing against another employee's body or poking another employee's body;
- Rape, sexual battery, molestation or attempts to commit these assaults.
- Unwanted sexual advances or propositions, such as:
- Requests for sexual favors accompanied by implied or overt threats concerning the target's job performance evaluation, a promotion or other job benefits or detriments;
- Subtle or obvious pressure for unwelcome sexual activities.
- Sexually oriented gestures, noises, remarks or jokes, or comments about a person's sexuality or sexual experience, which create a hostile work environment.
- Sex stereotyping occurs when conduct or personality traits are considered inappropriate simply because they may not conform to other people's ideas or perceptions about how individuals of a particular sex should act or look.
- Sexual or discriminatory displays or publications anywhere in the workplace, such as:
- Displaying pictures, posters, calendars, graffiti, objects, promotional material, reading materials or other materials that are sexually demeaning or pornographic. This includes such sexual displays on workplace computers or cell phones and sharing such displays while in the workplace.
- Hostile actions taken against an individual because of that individual's sex, sexual orientation, gender identity and the status of being transgender, such as:
- Interfering with, destroying or damaging a person's workstation, tools or equipment, or otherwise interfering with the individual's ability to perform the job;
- Sabotaging an individual's work;
- Bullying, yelling, name-calling.

Who can be a target of sexual harassment?

Sexual harassment can occur between any individuals, regardless of their sex or gender. New York Law protects employees, paid or unpaid interns, and non-employees, including independent contractors, and those employed by companies contracting to provide services in the workplace. Harassers can be a superior, a subordinate, a coworker or anyone in the workplace including an independent contractor, contract worker, vendor, client, customer or visitor.

Where can sexual harassment occur?

Unlawful sexual harassment is not limited to the physical workplace itself. It can occur while employees are traveling for business or at employer sponsored events or parties. Calls, texts, emails, and social media usage by employees can constitute unlawful workplace harassment, even if they occur away from the workplace premises, on personal devices or during non-work hours.

Retaliation

Unlawful retaliation can be any action that could discourage a worker from coming forward to make or support a sexual harassment claim. Adverse action need not be job-related or occur in the workplace to constitute unlawful retaliation (e.g., threats of physical violence outside of work hours).

Such retaliation is unlawful under federal, state, and (where applicable) local law. The New York State Human Rights Law protects any individual who has engaged in “protected activity.” Protected activity occurs when a person has:

- made a complaint of sexual harassment, either internally or with any anti-discrimination agency;
- testified or assisted in a proceeding involving sexual harassment under the Human Rights Law or other anti-discrimination law;
- opposed sexual harassment by making a verbal or informal complaint to management, or by simply informing a supervisor or manager of harassment;
- reported that another employee has been sexually harassed; or
- encouraged a fellow employee to report harassment.

Even if the alleged harassment does not turn out to rise to the level of a violation of law, the individual is protected from retaliation if the person had a good faith belief that the practices were unlawful. However, the retaliation provision is not intended to protect persons making intentionally false charges of harassment.

Reporting Sexual Harassment

Preventing sexual harassment is everyone's responsibility. The City of Lockport cannot prevent or remedy sexual harassment unless it knows about it. Any employee, paid or unpaid intern or non-employee who has been subjected to behavior that may constitute sexual harassment is encouraged to report such behavior to a supervisor, manager, Mayor or City Attorney. Anyone who witnesses or becomes aware of potential instances of sexual harassment should report such behavior to a supervisor, manager, Mayor or City Attorney.

Reports of sexual harassment may be made verbally or in writing. A form for submission of a written complaint is attached to this Policy, and all employees are encouraged to use this complaint form. Employees who are reporting sexual harassment on behalf of other employees should use the complaint form and note that it is on another employee's behalf.

Employees, paid or unpaid interns or non-employees who believe they have been a target of sexual harassment may also seek assistance in other available forums, as explained below in the section on Legal Protections.

Supervisory Responsibilities

All supervisors and managers who receive a complaint or information about suspected sexual harassment, observe what may be sexually harassing behavior or for any reason suspect that sexual harassment is occurring, **are required** to report such suspected sexual harassment to the Mayor or City Attorney.

In addition to being subject to discipline if they engaged in sexually harassing conduct themselves, supervisors and managers will be subject to discipline for failing to report suspected sexual harassment or otherwise knowingly allowing sexual harassment to continue.

Supervisors and managers will also be subject to discipline for engaging in any retaliation.

Complaint and Investigation of Sexual Harassment

All complaints or information about sexual harassment will be investigated, whether that information was reported in verbal or written form. Investigations will be conducted in a

timely manner, and will be confidential to the extent possible.

An investigation of any complaint, information or knowledge of suspected sexual harassment will be prompt and thorough, commenced immediately and completed as soon as possible. The investigation will be kept confidential to the extent possible. All persons involved, including complainants, witnesses and alleged harassers will be accorded due process, as outlined below, to protect their rights to a fair and impartial investigation.

Any employee may be required to cooperate as needed in an investigation of suspected sexual harassment. The City of Lockport will not tolerate retaliation against employees who file complaints, support another's complaint or participate in an investigation regarding a violation of this policy.

While the process may vary from case to case, investigations should be done in accordance with the following steps:

- Upon receipt of complaint, the City Attorney and City Clerk will conduct an immediate review of the allegations, and take any interim actions (e.g., instructing the respondent to refrain from communications with the complainant), as appropriate. If complaint is verbal, encourage the individual to complete the "Complaint Form" in writing. If he or she refuses, prepare a Complaint Form based on the verbal reporting.
- If documents, emails or phone records are relevant to the investigation, take steps to obtain and preserve them.
- Request and review all relevant documents, including all electronic communications.
- Interview all parties involved, including any relevant witnesses;
- Create a written documentation of the investigation (such as a letter, memo or email), which contains the following:
 - A list of all documents reviewed, along with a detailed summary of relevant documents;
 - A list of names of those interviewed, along with a detailed summary of their statements;
 - A timeline of events;
 - A summary of prior relevant incidents, reported or unreported; and
 - The basis for the decision and final resolution of the complaint, together with any corrective action(s).
- Keep the written documentation and associated documents in a secure and confidential location.
- Promptly notify the individual who reported and the individual(s) about whom the complaint was made of the final determination and implement any corrective actions identified in the written document.
- Inform the individual who reported of the right to file a complaint or charge externally as outlined in the next section.

Legal Protections and External Remedies

Sexual harassment is not only prohibited by the City of Lockport but is also prohibited by state, federal, and, where applicable, local law.

Aside from the internal process at the City of Lockport, employees may also choose to pursue legal remedies with the following governmental entities. While a private attorney is not required to file a complaint with a governmental agency, you may seek the legal advice of an attorney.

In addition to those outlined below, employees in certain industries may have additional legal protections.

State Human Rights Law (HRL)

The Human Rights Law (HRL), codified as N.Y. Executive Law, art. 15, § 290 et seq., applies to all employers in New York State with regard to sexual harassment, and protects employees, paid or unpaid interns and non-employees, regardless of immigration status. A complaint alleging violation of the Human Rights Law may be filed either with the Division of Human Rights (DHR) or in New York State Supreme Court.

Complaints with DHR may be filed any time **within one year** of the harassment. If an individual did not file at DHR, they can sue directly in state court under the HRL, **within three years** of the alleged sexual harassment. An individual may not file with DHR if they have already filed a HRL complaint in state court.

Complaining internally to the City of Lockport does not extend your time to file with DHR or in court. The one year or three years is counted from date of the most recent incident of harassment.

You do not need an attorney to file a complaint with DHR, and there is no cost to file with DHR.

DHR will investigate your complaint and determine whether there is probable cause to believe that sexual harassment has occurred. Probable cause cases are forwarded to a public hearing before an administrative law judge. If sexual harassment is found after a hearing, DHR has the power to award relief, which varies but may include requiring your employer to take action to stop the harassment, or redress the damage caused, including paying of monetary damages, attorney's fees and civil fines.

DHR's main office contact information is: NYS Division of Human Rights, One Fordham Plaza, Fourth Floor, Bronx, New York 10458. You may call (718) 741-8400 or visit: www.dhr.ny.gov.

Contact DHR at (888) 392-3644 or visit dhr.ny.gov/complaint for more information about filing a complaint. The website has a complaint form that can be downloaded, filled out, notarized and mailed to DHR. The website also contains contact information for DHR's regional offices across New York State.

Civil Rights Act of 1964

The United States Equal Employment Opportunity Commission (EEOC) enforces federal anti-discrimination laws, including Title VII of the 1964 federal Civil Rights Act (codified as 42 U.S.C. § 2000e et seq.). An individual can file a complaint with the EEOC anytime within 300 days from the harassment. There is no cost to file a complaint with the EEOC. The EEOC will investigate the complaint, and determine whether there is reasonable cause to believe that discrimination has occurred, at which point the EEOC will issue a Right to Sue letter permitting the individual to file a complaint in federal court.

The EEOC does not hold hearings or award relief, but may take other action including pursuing cases in federal court on behalf of complaining parties. Federal courts may award remedies if discrimination is found to have occurred. In general, private employers must have at least 15 employees to come within the jurisdiction of the EEOC.

An employee alleging discrimination at work can file a "Charge of Discrimination." The EEOC has district, area, and field offices where complaints can be filed. Contact the EEOC by calling 1-800-669-4000 (TTY: 1-800-669-6820), visiting their website at www.eeoc.gov or via email at info@eeoc.gov.

If an individual filed an administrative complaint with DHR, DHR will file the complaint with the EEOC to preserve the right to proceed in federal court.

Local Protections

Many localities enforce laws protecting individuals from sexual harassment and discrimination. An individual should contact the county, city or town in which they live to find out if such a law exists. For example, employees who work in New York City may file complaints of sexual harassment with the New York City Commission on Human Rights. Contact their main office at Law Enforcement Bureau of the NYC Commission on Human Rights, 40 Rector Street, 10th Floor, New York, New York; call 311 or (212) 306-7450; or visit www.nyc.gov/html/cchr/html/home/home.shtml.

Contact the Local Police Department

If the harassment involves unwanted physical touching, coerced physical confinement or coerced sex acts, the conduct may constitute a crime. Contact the local police department.

XLV. Acceptable Use of Communications Technology

The City provides employees access to computers, internet, email, software, hardware, networks, communications systems, cellular phones and other IT resources (collectively referred to as “Technology”). This policy shall put all City officials and employees (collectively referred to as “Users” herein) on notice of their responsibilities and obligations regarding the use of Technology.

Technology is provided to enable Users to perform the duties of their respective positions. Generally, it is not to be used for personal use or personal business, or for any purpose other than City business.

Generally, the same standards of acceptable conduct that applies to any aspect of job performance shall apply to use of Technology. All Users are expected to use Technology in a lawful and ethical manner that is consistent with the terms set forth in the Code of Ethics, Standards of Conduct, Civility Policy and all other provisions of this Handbook. Users are expected to use proper business etiquette in their communications.

Users may be subject to limitations on their use of Technology as determined by the appropriate supervisor or Department Head. The City monitors Technology usage. **Users have no right to privacy with respect to their use of Technology**, which is the sole property of the City. The City monitors the usage of Technology for a variety of reasons, including but not limited to security, network management and to ensure compliance with this policy. The City has the right to inspect any item of Technology, which shall be furnished immediately by the User(s) upon request from the City. By participating in the use of Technology, Users agree to the terms set forth in this policy.

Users who violate any copyright declarations, software licensing rules, or property rights are acting outside the course and scope of their employment and will be personally responsible and liable for such infringing activities.

In addition to the prohibited conduct identified above or in other sections of this Handbook, the following uses of Technology are strictly prohibited:

- Sending or displaying offensive or obscene messages or pictures;
- Using profanity or inappropriate language;
- Derogatory or inflammatory remarks about an individual’s race, color, gender, marital status, age, disability, religion, national origin, physical attributes, sexual preference or any characteristic protected by law;
- Using the password or username of someone other than yourself;
- Accessing information stored on Technology for which you have no business purpose to access;

- Using any device or other technology to override filters or obstruct the City's ability to monitor Technology usage;
- Using Technology in any way that results in unauthorized charges or expenses to the City;
- Damaging, disabling or otherwise interfering with the operation of Technology;
- Using Technology for personal gain, including but not limited to soliciting non-City business;
- Disrupting other Users, services or equipment, including but not limited to distributing advertising, installing or sharing viruses or any other activity designed to hinder the use of Technology;
- Using Technology for private, recreational or entertainment purposes, including but not limited to "computer games";
- Accessing personal social media accounts;
- Sending messages that hide the identity of the sender, or represents the sender as someone else;
- Using Technology in a discriminatory or harassing manner;
- Attempting to circumvent security measures;
- Sharing usernames or passwords;
- Deleting search histories or any other files without express authorization to do so;
- Downloading or installing any software or hardware that is not expressly authorized by the City;
- Posting any information to a website maintained by the City without express authorization; and/or
- Using Technology to access or share any sexually explicit information.

*** If a User accidentally accesses an unauthorized website (e.g. website containing sexually explicit content, or any content contrary to the foregoing), you must immediately disconnect from the website and notify your direct supervisor. Likewise, you must immediately notify your direct supervisor if you inadvertently download any unauthorized software or hardware.

Failure to comply with the terms of this policy may result in disciplinary action, up to and including termination, and/or criminal prosecution.

XLVI. Public Relations

The City of Lockport provides numerous services to its residents through its various Departments. In order for each Department to function as efficiently and effectively as possible, it is imperative that chain of command be observed and respected at all times. Department Heads are responsible for the operations of their respective Departments, and are the spokespersons for their Departments. There may be times when it is necessary or appropriate to inform the public regarding a particular event, emergency or provide other information relative to a Department. In order to provide City residents with the most accurate and current information, all communications to the public on behalf of a Department shall be made by the appropriate Department Head or his/her designee. This includes responses to inquiries made by the news media. Employees contacted by the news media for information pertaining to City operations are encouraged to direct said inquiries to their respective Department Head. Nothing herein prohibits or restricts an employee from engaging in activities that are protected by law.

XLVII. Social Media

This policy recognizes the personal use of social networking sites by employees, and identifies prohibited activities by employees on such social media sites. This policy is not meant to address one particular form of social media; rather social media in general, as advances in technology will occur and new tools will emerge. In general, social media refers to social networking sites (e.g. Facebook, Instagram), blogs, microblogging sites (e.g. Twitter, Nixle), photo and/or video sharing sites (e.g. Flickr, YouTube, Instagram), wikis, news sites, or any other online website or platform where users can post or share information.

City personnel are free to express themselves as private citizens on social media sites to the degree that their speech does not impair working relationships of the City for which loyalty and confidentiality are important, impede the performance of duties, or impair harmony among co-workers. City personnel shall not post, transmit, or otherwise disseminate any information to which they have access as a result of their employment without the express authorization of the applicable Department Head or his/her designee. For safety and security reasons, personnel are cautioned to consider not disclosing their employment with the City of Lockport nor shall they post information pertaining to any other member of the City without their permission. In this regard, personnel are cautioned to consider avoiding the following:

- Displaying City logos, uniforms, or similar items on personal web pages without the written permission of the applicable Department Head or his/her designee.
- Posting personal photographs or providing similar means of personal recognition that may cause them to be identified as an employee of the City.

When using social media, personnel should be mindful that their speech becomes part of the worldwide electronic domain. Statements made on social media are subject to the

rules and provisions set forth in this Handbook. In particular, personnel are prohibited from the following:

- Speech containing obscene or sexually explicit language, images, or acts and statements or other forms of speech that ridicule, malign, disparage, or otherwise express bias against any race, any religion, or any protected class of individuals;
- False statements, or speech based on false or inaccurate information, that criticizes, ridicules or otherwise negatively comments about the administration or other members of the City.
- Speech involving themselves or other City personnel reflecting behavior that would reasonably be considered reckless or irresponsible.

City personnel shall not post, transmit, or otherwise disseminate any information to their personal social media accounts while on duty regardless if from a City computer or other personally owned device without the expressed authorization of the applicable Department Head or his/her designee. Personnel will not divulge information gained by reason of their authority; make any statements, speeches, appearances, and endorsements; or publish materials that could reasonably be considered to represent the views or positions of the City without express authorization of the applicable Department Head or his/her designee.

City personnel should be aware that they may be subject to civil litigation for:

- Publishing or posting false information that harms the reputation of another person, group, or organization (defamation).
- Publishing or posting private facts and personal information about someone without their permission that has not been previously revealed to the public, is not of legitimate public concern, and would be offensive to a reasonable person.
- Using someone else's name, likeness, or other personal attributes without that person's permission for an exploitive purpose.
- Publishing the creative work of another, trademarks, or certain confidential business information without the permission of the owner.

City personnel should be aware that privacy settings and social media sites are constantly in flux, and they should never assume that information posted on such sites is protected. Similarly, City personnel should expect that any information created, transmitted, downloaded, exchanged, or discussed in a public online forum may be accessed by the City at any time without prior notice.

Reporting Violations

Any employee becoming aware of or having knowledge of a social media posting or of any website or web page in violation of the provisions of this policy has an obligation to notify his or her supervisor immediately. Violations of this policy may result in discipline, up to and including termination.

Nothing herein prohibits or restricts an employee from engaging in activities that are protected by law.

XLVIII. Telephones and Other Electronic Devices

It is important that City telephone lines be free during working hours for business-related calls. The City recognizes that there may occasionally be a need to use the City's telephones for non-business-related matters. Such calls should only be made when necessary and must be limited to an absolute minimum. Under no circumstance should the City's telephones be used to place long distance calls that are not business-related.

Most of today's hand-held electronic devices make it easy to bring music, entertainment, and personal communications to the workplace. However, due to safety, productivity and efficiency reasons, the use of personal cell phones, smart phones, iPads, iPods, MP3 players, PDAs, handheld video games, and other personal electronic devices must be limited to break and meal periods. Such devices may not be used during work time unless they are being used for business reasons and with the authorization of your direct supervisor or Department Head.

If an emergency arises where an employee anticipates the need to use or have access to a personal cell phone during work time, the employee should notify and request permission from his/her immediate supervisor or Department Head in advance whenever practicable. Any such communications should be limited to an absolute minimum. Permission will be withdrawn if the employee is perceived to be abusing the limited privilege, or if the circumstances render the employee unable to fulfill his/her duties.

A. Posting and Distribution of Handbook

A. The Mayor must promptly cause a copy of this Code, and a copy of any amendment to this Code, to be posted publicly and conspicuously in each building under the municipality's control. The Code must be posted within 10 days following the date on which the Code takes effect. An amendment to the Code must be posted within 10 days following the date on which the amendment takes effect.

B. The Mayor must promptly cause a copy of this Code, including any amendments to the code, to be made available to every person who is or becomes an officer or employee of the City of Lockport.

C. Every municipal officer or employee who a copy of this code is made available, or an amendment to the code, must acknowledge such receipt in writing. Such acknowledgment must be filed with the City Clerk who must maintain such acknowledgment as a public record.

D. The failure to post this code, or an amendment to the code, does not affect either the applicability or enforceability of the code or the amendment. The failure of a municipal officer or employee to receive a copy of this Code of Ethics, or an amendment to the code, or to acknowledge receipt thereof in writing, does not affect either the applicability or enforceability of the code or amendment to the code.

XLIX. Acknowledgment of Receipt

I, _____, acknowledge that on _____, I have been
(FULL NAME) (DATE)

Informed of the City of Lockport Employee Handbook adopted on _____.
(DATE)

and its location in my work center and Employee Portal on the city web page.

I understand that it is my responsibility to be familiar with and abide by its contents. The policies, procedures and benefits described in this Handbook are not promissory and do not set terms or conditions of employment or create an employment contract.

I also understand that the terms set forth in the Handbook work in conjunction with, and do not replace, amend or supplement any terms or conditions of employment stated in any applicable collective bargaining agreement that governs my employment with the City of Lockport. If such an agreement exists and governs my employment, I understand that I should consult the terms of that collective bargaining agreement. Wherever employment terms in this Handbook differ from the terms expressed in said agreement, I understand that the specific terms of the collective bargaining agreement will control. I understand that this version of the Handbook supersedes all prior versions published or distributed by the City of Lockport.

Printed Name / Position

Signature

Date

LIST OF CURRENT LOCKPORT POLICIES

- A. AFFIRMATIVE ACTION POLICY - incorporated**
- B. POLICY FOR COMPUTER AND INTERNET USE - incorporated**
- C. EMPLOYEE ASSISTANCE PROGRAM - incorporated**
- D. FMLA - incorporated**
- E. MOTOR VEHICLE SAFETY- incorporated**
- F. PROMOTION POLICY - incorporated**
- G. SEXUAL HARASSMENT POLICY - incorporated**
- H. CODE OF ETHICS - incorporated**
- I. DRUG ALCOHOL POLICY - incorporated**
- J. EXTENDED MILITARY LEAVE - incorporated**
- K. UNREPRESENTED EMPLOYMENT POLICY – not incorporated**

City of Lockport

Complaint Form/Incident Report

Complaint/Incident Information

Type of Incident or Complaint: _____

Date of Event: _____

Time of Event: _____

Location of Event: _____

Your Name: _____

Phone Number: _____

Department: _____

Describe the specific event or act: (Include witness names and contact information, injuries (if applicable), medical or law enforcement personnel attending, narrative of what occurred; use additional pages as necessary)

Name(s) of Involved Person(s) (use additional pages as necessary)

Name

Address

Phone Number

Note: Immediately notify the City Clerk by telephone of any incident. Incident Report Forms MUST be completed and submitted by fax within 48 hours of the incident. Address the call and fax to the City Clerk. The City Clerk fax is 716-439-6702. Complaints of discrimination, harassment, retaliation and workplace violence must be reported to the City Attorney's Office or the Mayor's Office and will remain as confidential as possible.