

## **Title 2**

### **ADMINISTRATION AND PERSONNEL**

#### **Chapters:**

- 2.04 Board of Commissioners**
- 2.08 Building Official**
- 2.12 Board of Housing Appeals**
- 2.16 Code of Ethics**
- 2.20 Abandoned Property**

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## Chapter 2.04

### BOARD OF COMMISSIONERS

#### Sections:

- 2.04.010 Order of proceedings.**
- 2.04.020 Rules of procedure.**

#### **2.04.010 Order of proceedings.**

The order of proceedings of the Board of Commissioners shall be as follows:

- A. Unless deferred for cause on motion, approval of minutes of any preceding meetings then unapproved, upon reading thereof or upon prior advance delivery of a copy thereof to each member;
- B. Review and approval of financial report(s); authorization to pay the bills; amendments to the budget and other financial matters;
- C. Administrator's report, including introduction of ordinances or resolutions;
- D. Public hearings and appointments before the board;
- E. Miscellaneous business not included in any of the preceding orders;
- F. Closed meetings. (Amended during 1996 codification; prior code § 4-2 (A))

#### **2.04.020 Rules of procedure.**

The Board of Commissioners may by resolution adopt such rules of procedure, not inconsistent with the town Charter or this section, as the board may consider to be desirable. (Prior code § 4-2(B))

## Chapter 2.08

### BUILDING OFFICIAL

#### Sections:

- 2.08.010 Office of building official created.**
- 2.08.020 Duties of building official generally.**
- 2.08.030 Duty to inspect- Enforcement Authority -Variations.**

#### **2.08.010 Office of building official created.**

The office of building official is created. (Prior code § 42-2)

#### **2.08.020 Duties of building official generally.**

The building official shall enforce all provisions of this code and other town ordinances and all laws relating to the construction, alteration, repair, removal and demolition of buildings and structures. (Prior code § 42-4)

#### **2.08.030 Duty to inspect - Enforcement Authority - Variations.**

A. The building official shall inspect all buildings or structures during construction, alteration or removal to see that the provisions of this code and the state law are complied with and that the work is prosecuted safely. Whenever, in his opinion, by reason of defective or illegal work in violation of a provision of law or this code, the continuance of a building operation is contrary to public welfare, he may order all further work to be stopped and may require suspension of work until the condition in violation has been remedied.

B. The building official may permit, on the basis of duly authenticated reports from recognized sources, the use of new materials or modes of construction not provided for in this code, and may, for the purpose of carrying out the intent of this code, adopt accepted standards of material or workmanship of federal or state bureaus, national technical organizations or fire underwriters. (Prior code § 42-5)

## Chapter 2.12

### BOARD OF HOUSING APPEALS

#### Sections:

- 2.12.010 Creation of board - Composition, appointment, terms and vacancies.**
- 2.12.020 Chairman - Rules of procedures -Records.**
- 2.12.030 Powers and duties.**

#### **2.12.010 Creation of board - Composition, appointment, terms and vacancies.**

The board of housing appeals is created, which shall consist of five members appointed by the Mayor, confirmed by the Board of Commissioners and removable for cause upon written charges and after a public hearing. The term of office shall be three years, and vacancies shall be filled for the unexpired term of any member whose term becomes vacant. (Prior code § 12-1)

#### **2.12.020 Chairman - Rules of procedures - Records**

The board of housing appeals shall elect one of its members as chairman and shall adopt such rules of procedures as it may deem necessary. Such board shall keep official records of its proceedings, examinations and official actions. (Prior code § 12-2)

#### **2.12.030 Powers and duties.**

A. The board of housing appeals is directed to hear petitions from persons upon whom violation notices, emergency orders or orders of condemnation have been served, and sustain, modify or withdraw such notices or orders according to the findings of the board as to compliance with the provisions of Charter 15.16, Housing Standards.

B. In sustaining or modifying such notices, emergency orders or orders of condemnation, the board of housing appeals may set the time period

for compliance with the provisions, may specify the sequence of actions necessary to reach compliance, may require vacation of all or part of a dwelling or dwelling unit which is in violation, if warranted by conditions, or may require any other conditions that it deems necessary to carry out the provisions of this chapter.

C. The board of housing appeals may also modify any notice or emergency order so as to authorize a variant from the provisions of this chapter when, because of special conditions, a literal enforcement of the provisions would result in practical difficulty or unnecessary hardship; provided that the spirit of this chapter is observed, public health and welfare secured and substantial justice done. In authorizing such a variant, the board of housing appeals shall state the special conditions which cause the practical difficulty or unnecessary hardship. (Prior code § 12-3)

## Chapter 2.16

### CODE OF ETHICS

#### Sections:

- 2.16.010 Short title.**
- 2.16.020 Applicability.**
- 2.16.030 Ethics Commission.**
- 2.16.040 Conflicts of Interest.**
- 2.16.050 Financial Disclosure – Elected Officials and Candidates to be Elected Officials.**
- 2.16.060 Financial Disclosure - Employees and Appointed Officials.**
- 2.16.070 Lobbying.**
- 2.16.080 Exemptions and Modifications.**
- 2.16.090 Enforcement.**

#### **2.16.010 Short title.**

Chapter 2.16 may be cited as the Town of Elkton's Ethics Ordinance.

#### **2.16.020 Applicability.**

The provisions of Chapter 2.16, all or in part, shall apply to all elected officials, persons appointed to Town boards and commissions, the Town Administrator, and Town employees, collectively referred to as "*officials*," unless otherwise provided under this chapter.

#### **2.16.030 Ethics Commission.**

A. There shall be a Town of Elkton Ethics Commission ("Commission") that shall consist of five (5) members appointed by the Mayor and confirmed by the Commissioners.

B. The Commission shall:

1. Create, receive, and maintain all forms required by this chapter;
2. Develop procedures and policies for advisory opinion requests and provide published advisory opinions to persons subject to this chapter regarding the applicability of the provisions of this chapter to them;
3. Develop procedures and policies for the processing of complaints to make appropriate determinations regarding complaints filed by any person alleging violations of this chapter;

and

4. Conduct a public information program regarding the purposes and application of this chapter.

C. The Commission may use the Town's attorney or engage independent counsel for advice and guidance. The cost of counsel for the Commission shall be borne by the Town.

D. The Commission shall certify to the State Ethics Commission on or before October 1 of each year that the Town is in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, for elected officials.

E. The Commission shall determine if changes to this chapter are required to be in compliance with the requirements of State Government Article, Title 15, Subtitle 8, Annotated Code of Maryland, and shall forward any recommended changes and amendments to the Mayor and Commissioners for enactment.

F. The Commission may adopt other policies and procedures to assist in the implementation of the Commission's programs established in this chapter.

(Ordinance 3-2014 Effective 12/9/14)

#### **2.16.040 Conflicts of Interest.**

A. In this section, "*qualified relative*" means a spouse, parent, child, or sibling.

B. All Town elected officials, persons appointed to Town boards and commissions, the Town Administrator, and Town employees, collectively "*officials*," as set forth under §2.16.020, are subject to this section.

C. Participation prohibitions. Except as permitted by Commission regulation or written opinion, an official may not participate in:

1. Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision of the matter, any matter in which, *to the knowledge of the official or a qualified relative of the official*, the official has an interest.
2. Except in the exercise of an administrative or ministerial duty that does not affect the disposition or decision with respect to the matter, any matter in which any of the

following is a party:

- a. A business entity in which the official has a direct financial interest of which the official may reasonably be expected to know;
  - b. A business entity for which the official or a qualified relative of the official is an officer, director, trustee, partner, or employee;
  - c. A business entity with which the official or, to the knowledge of the official, a qualified relative, is negotiating employment or has any arrangement concerning prospective employment.
  - d. If the contract reasonably could be expected to result in a conflict between the private interests of the official and the official's duties, a business entity that is a party to an existing contract with the official, or which, to the knowledge of the official, is a party to a contract with a qualified relative;
  - e. An entity, doing business with the Town, in which a direct financial interest is owned by another entity in which the official has a direct financial interest, if the official may be reasonably expected to know of both direct financial interests; or
  - f. A business entity that:
    - i. The official knows is a creditor or obligee of the official or a qualified relative of the official with respect to a thing of economic value; and
    - ii. As a creditor or obligee, is in a position to directly and substantially affect the interest of the official or a qualified relative of the official.
3. A person who is disqualified from participating under paragraphs (1) or (2) of this subsection shall disclose the nature and circumstances of the conflict and may participate or act if:
    - a. The disqualification leaves a body with less than a quorum capable of acting;
    - b. The disqualified official is required by law to act; or
    - c. The disqualified official is the only person authorized to act.
  4. The prohibitions of paragraph 1 and 2 of this subsection do not apply if participation is allowed by regulation or opinion of the Commission.
- D. Employment and financial interest restrictions.
1. Except as permitted by regulation of the Commission when the interest is disclosed or when the employment does not create a conflict of interest or appearance of conflict, an official may not:
    - a. Be employed by or have a financial interest in any entity:
      - i. Subject to the authority of the official or the Town department, board, commission with which the official is affiliated; or
      - ii. That is negotiating or has entered a contract with the Town department, board, or commission with which the official is affiliated; or
    - b. Hold any other employment relationship that would impair the impartiality or independence of judgment of the official.
  2. This prohibition does not apply to:
    - a. An official who is appointed to a regulatory or licensing authority pursuant to a statutory requirement that persons subject to the jurisdiction of the authority be represented in appointments to the authority;
    - b. Subject to other provisions of law, a member of a board or commission in regard to a financial interest or employment held at the time of appointment, provided the financial interest or employment is publicly disclosed to the appointing authority and the Commission;
    - c. An official whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted by and in accordance with regulations adopted by the Commission; or

- d. Employment or financial interests allowed by regulation of the Commission if the employment does not create a conflict of interest or the appearance of a conflict of interest or the financial interest is disclosed.
- E. Post-employment Limitations and Restrictions.
  - 1. A former official may not assist or represent any party other than the Town for compensation in a case, contract, or other specific matter involving the Town if that matter is one in which the former official significantly participated as an official.
  - 2. Until the conclusion of the next regular session that begins after the elected official leaves office, a former member of the Town Board may not assist or represent another party for compensation in a matter that is the subject of legislative action.
- F. Contingent Compensation. Except in a judicial or quasi-judicial proceeding, an official may not assist or represent a party for contingent compensation in any matter before or involving the Town.
- G. Use of Prestige of Office.
  - 1. An official may not intentionally use the prestige of office or public position for the private gain of that official or the private gain of another.
  - 2. This subsection does not prohibit the performance of usual and customary constituent services by an elected local official without additional compensation.
- H. Solicitation and acceptance of gifts.
  - 1. An official may not solicit any gift.
  - 2. An official may not directly solicit or facilitate the solicitation of a gift on behalf of another person from an individual regulated lobbyist.
  - 3. An official may not knowingly accept a gift, directly or indirectly, from a person that the official knows or should reasonably know:
    - a. Is doing business with or seeking to do business with the Town or any of its departments, boards, or commissions with which the official is affiliated;
    - b. Has financial interests that may be substantially and materially affected in a manner distinguishable from the public generally by the performance or nonperformance of the official duties of the official;
- c. Is engaged in an activity regulated or controlled by the official's department or the official's duties; or
- d. Is a lobbyist with respect to matters within the jurisdiction of the official.
- 4. Paragraph (5) of this subsection does not apply to a gift:
  - a. That would tend to impair the impartiality and the independence of judgment of the official receiving the gift;
  - b. Of significant value that would give the appearance of impairing the impartiality and independence of judgment of the official; or
  - c. Of significant value that the recipient official believes or has reason to believe is designed to impair the impartiality and independence of judgment of the official.
- 5. Notwithstanding paragraph (3) of this subsection, an official may accept the following:
  - a. Meals and beverages consumed in the presence of the donor or sponsoring entity;
  - b. Ceremonial gifts or awards that have insignificant monetary value;
  - c. Unsolicited gifts of nominal value that do not exceed \$20 in cost or trivial items of informational value;
  - d. Reasonable expenses for food, travel, lodging, and scheduled entertainment of the official at a meeting which is given in return for the participation of the official in a panel or speaking engagement at the meeting;
  - e. Gifts of tickets or free admission extended to an elected local official to attend a charitable, cultural, or political event, if the purpose of this gift or admission is a courtesy or ceremony extended to the elected official's office;
  - f. A specific gift or class of gifts that the Commission exempts from the operation of this subsection upon a finding, in writing,

that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the Town and that the gift is purely personal and private in nature;

g. Gifts from a person related to the official by blood or marriage, or any other individual who is a member of the household of the official; or

h. Honoraria for speaking to or participating in a meeting, provided that the offering of the honorarium is not related in any way to the official's position.

I. Disclosure of confidential information. Other than in the discharge of official duties, an official may not disclose or use confidential information that the official acquired by reason of the official's public position and that is not available to the public for the economic benefit of the official or that of another person.

J. Participation in procurement.

1. An individual or a person that employs an individual who assists a Town department in the drafting of specifications, an invitation for bids, or a request for proposals for a procurement may not submit a bid or proposal for that procurement or assist or represent another person, directly or indirectly, who is submitting a bid or proposal for the procurement.

2. The Commission may establish exemptions from the requirements of this section for providing descriptive literature, sole source procurements, and written comments solicited by the procuring agency.

(Ordinance 3-2014 effective 12/9/14)

## **2.16.050 Financial Disclosure - Elected Officials and Candidates to be Elected Officials.**

A. Applicability

1. This section applies to all elected officials and candidates to be elected officials.

2. Except as provided in subsection (b) of this section, an elected official or a candidate to be an elected official shall file the financial disclosure statement required under this section:

a. On a form provided by the Commission;

b. Under oath or affirmation; and

c. With the Commission.

3. Deadlines for filing statements.

a. An incumbent elected official shall file a financial disclosure statement annually no later than April 30 of each year for the preceding calendar year.

b. An individual who is appointed to fill a vacancy in an office for which a financial disclosure statement is required and who has not already filed a financial disclosure statement shall file a statement for the preceding calendar year within thirty (30) days after appointment.

c. An individual who, other than by reason of death, leaves an office for which a statement is required shall:

i. File a statement within 60 days after leaving the office.

ii. The statement shall cover:

aa. The calendar year immediately preceding the year in which the individual left office, unless a statement covering that year has already been filed by the individual; and

bb. The portion of the current calendar year during which the individual held the office.

B. Candidates to be elected officials.

1. Except for an official who has filed a financial disclosure statement under another provision of this section for the reporting period, a candidate to be an elected official shall file a financial disclosure statement each year beginning with the year in which the certificate of candidacy is filed through the year of the election.

2. A candidate to be an elected official shall file a statement required under this section:

a. In the year the certificate of candidacy is filed, no later than the filing of the certificate of candidacy;

b. In the year of the election, on or before the earlier of the first Tuesday of May or the last day for the withdrawal of candidacy; and

c. In all other years for which a statement

is required, on or before April 30.

3. A candidate to be an elected official:
  - a. May file the statement required under §2.16.050B(2)(a) of this chapter with the administrative office secretary or Board of Supervisors of Elections with the certificate of candidacy or with the Commission prior to filing the certificate of candidacy; and
  - b. Shall file the statements required under §2.16.050B(2)(b) and (c) with the Commission.

4. If a candidate fails to file a statement required by this section after written notice is provided by the administrative office secretary or Board of Supervisors of Elections at least twenty (20) days before the last day for the withdrawal of candidacy, the candidate is deemed to have withdrawn the candidacy.

5. The administrative office secretary or Board of Supervisors of Elections may not accept any certificate of candidacy unless a statement has been filed in proper form.

6. Within 30 days of the receipt of a statement required under this section, the administrative office secretary or Board of Supervisors of Elections shall forward the statement to the Commission. *A copy of all statements required under this section shall be retained by the administrative office secretary.*

C. Public record.

1. The administrative office secretary on behalf of the Commission shall maintain all financial disclosure statements filed under this section.

2. Financial disclosure statements shall be made available during normal office hours for examination and copying by the public subject to reasonable fees and administrative procedures established by the Commission.

3. If an individual examines or copies a financial disclosure statement, the Commission or the administrative office secretary shall record:

- a. The name and home address of the individual reviewing or copying the statement; and
- b. The name of the person whose financial

disclosure statement was examined or copied.

4. Upon request by the official whose financial disclosure statement was examined or copied, the Commission or the administration office secretary shall provide the official with a copy of the name and home address of the person who reviewed the official's financial disclosure statement.

D. Retention requirements. The Commission or the administration office secretary shall retain financial disclosure statements for four (4) years from the date of receipt.

E. Contents of statement.

1. Interests in real property.

a. A statement filed under this section shall include a schedule of all interests in real property wherever located.

b. For each interest in real property, the schedule shall include:

i. The nature of the property and the location by street address, mailing address, or legal description of the property;

ii. The nature and extent of the interest held, including any conditions and encumbrances on the interest;

iii. The date when, the manner in which, and the identity of the person from whom the interest was acquired;

iv. The nature and amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired;

v. If any interest was transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and the identity of the person to whom the interest was transferred; and

vi. The identity of any other person with an interest in the property.

2. Interests in corporations and partnerships.

a. A statement filed under this section

- shall include a schedule of all interests in any corporation, partnership, limited liability partnership, or limited liability corporation, regardless of whether the corporation or partnership does business with the Town.
- b. For each interest reported under this paragraph, the schedule shall include:
    - i. The name and address of the principal office of the corporation, partnership, limited liability partnership, or limited liability corporation;
    - ii. The nature and amount of the interest held, including any conditions and encumbrances on the interest;
    - iii. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received for the interest, and, if known, the identity of the person to whom the interest was transferred; and
    - iv. With respect to any interest acquired during the reporting period:
      - aa. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and
      - bb. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.
  - c. An individual may satisfy the requirement to report the amount of the interest held under item (b)(ii) of this paragraph by reporting, instead of a dollar amount:
    - i. For an equity interest in a corporation, the number of shares held and, unless the corporation's stock is publicly traded, the percentage of equity interest held; or
    - ii. For an equity interest in a partnership, the percentage of equity interest held.
3. Interests in business entities doing business with Town.
    - a. A statement filed under this section shall include a schedule of all interests in any business entity that does business with the Town, other than interests reported under paragraph (2) of this subsection.
    - b. For each interest reported under this paragraph, the schedule shall include:
      - i. The name and address of the principal office of the business entity;
      - ii. The nature and amount of the interest held, including any conditions to and encumbrances in the interest;
      - iii. With respect to any interest transferred, in whole or in part, at any time during the reporting period, a description of the interest transferred, the nature and amount of the consideration received in exchange for the interest, and, if known, the identity of the person to whom the interest was transferred; and
      - iv. With respect to any interest acquired during the reporting period:
        - aa. The date when, the manner in which, and the identity of the person from whom the interest was acquired; and
        - bb. The nature and the amount of the consideration given in exchange for the interest or, if acquired other than by purchase, the fair market value of the interest at the time acquired.
  4. Gifts.
    - a. A statement filed under this section shall include a schedule of each gift in excess of \$20 in value or a series of gifts totaling \$100 or more received during the reporting period from or on

- behalf of, directly or indirectly, any one person who does business with or is regulated by the Town.
- b. For each gift reported, the schedule shall include:
    - i. A description of the nature and value of the gift; and
    - ii. The identity of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.
5. Employment with or interests in entities doing business with Town.
- a. A statement filed under this section shall include a schedule of all offices, directorships, and salaried employment by the individual or member of the immediate family of the individual held at any time during the reporting period with entities doing business with the Town.
  - b. For each position reported under this paragraph, the schedule shall include:
    - i. The name and address of the principal office of the business entity;
    - ii. The title and nature of the office, directorship, or salaried employment held and the date it commenced; and
    - iii. The name of each Town department with which the entity is involved.
6. Indebtedness to entities doing business with Town.
- a. A statement filed under this section shall include a schedule of all liabilities, excluding retail credit accounts, to persons doing business with the Town owed at any time during the reporting period:
    - i. By the official; or
    - ii. By a member of the immediate family of the official if the official was involved in the transaction giving rise to the liability.
  - b. For each liability reported under this paragraph, the schedule shall include:
    - i. The identity of the person to whom the liability was owed and the date the liability was incurred;
    - ii. The amount of the liability owed as of the end of the reporting period;
    - iii. The terms of payment of the liability and the extent to which the principal amount of the liability was increased or reduced during the year; and
    - iv. The security given, if any, for the liability.
7. A statement filed under this section shall include a schedule of the immediate family members of the official employed by the Town in any capacity at any time during the reporting period.
8. Sources of earned income.
- a. A statement filed under this section shall include a schedule of the name and address of each place of employment and of each business entity of which the official or a member of the official's immediate family was a sole or partial owner and from which the official or member of the official's immediate family received earned income, at any time during the reporting period.
  - b. A minor child's employment or business ownership need not be disclosed if the official's department or the official does not regulate, exercise authority over, or contract with the place of employment or business entity of the minor child.
9. A statement filed under this section may also include a schedule of additional interests or information that the individual making the statement wishes to disclose.
- F. For the purposes of §2.16.050G(1), (2), and (3) of this chapter, the following interests are considered to be the interests of the individual making the statement:
1. An interest held by a member of the official's immediate family, if the interest was, at any time during the reporting period, directly or indirectly controlled by the official.

2. An interest held by a business entity in which the official held a 30% or greater interest at any time during the reporting period.
3. An interest held by a trust or an estate in which, at any time during the reporting period:
  - a. The official held a reversionary interest or was a beneficiary; or
  - b. If a revocable trust, the official was a settlor.

G. 1. The Commission shall review the financial disclosure statements submitted under this section for compliance with the provisions of this section and shall notify an official submitting the statement of any omissions or deficiencies.

2. The Commission may take appropriate enforcement action to ensure compliance with this section.

**2.16.060 Financial Disclosure - Employees and Appointed Officials.**

A. This section only applies to the following appointed officials:

1. Town Administrator;
2. Department Managers;
3. Appointments to the Elkton Planning Commission;
4. Appointments to the Board of Zoning Appeals;
5. Appointments to the Housing Board of Appeals;
6. Appointments to the Historical and Architectural Review Committee;
7. Appointments to the Board of Supervisors of Elections;
8. Appointments to the Ethics Commission; and
9. Any other officials designated by the Mayor and Commissioners.

B. A statement filed under this section shall be filed with the Commission under oath or affirmation.

C. On or before January 31<sup>st</sup> of each year during which an official holds office, the official shall file a statement disclosing gifts received during the preceding calendar year from any person that contracts with or is regulated by Town, including

the name of the donor of the gift and the approximate retail value at the time or receipt.

D. An official shall disclose employment and interests that raise conflicts of interest or potential conflicts of interest in connection with a specific proposed action by the official sufficiently in advance of the action to provide adequate disclosure to the public.

E. The Commission shall maintain all disclosure statements filed under this section as public records available for public inspection and copying as provided in this chapter.

**2.16.070 Lobbying.**

A. A person shall file a lobbying registration statement with the Commission if the person:

1. Personally appears before a Town official with the intent to influence that person in performance of the official duties of the official; and
2. In connection with the intent to influence, expends or reasonably expects to expend in a given calendar year in excess of \$ 20.00 on food, entertainment, or other gifts for officials of Town.

B. A person shall file a registration statement required under this section on or before the later of January 15 of the calendar year or within five (5) days after first performing an act that requires registration in the calendar year.

- C. 1. The registration statement shall identify:
- a. The registrant;
  - b. Any other person on whose behalf the registrant acts; and
  - c. The subject matter on which the registrant proposes to make appearances specified in subsection A of this section.
  - d. The registration statement shall cover a defined registration period not to exceed one (1) calendar year.

D. Within thirty (30) days after the end of any calendar year during which a person was registered under this section, the person shall file a report with the Commission disclosing:

1. The value, date, and nature of any food, entertainment, or other gift provided to a Town official; and

2. If a gift or series of gifts to a single official exceeds \$20.00 in value, the identity of the official.

E. The Commission shall maintain the registrations and reports filed under this section as public records available for public inspection and copying for four (4) years after receipt by the Commission.

#### **2.16.080 Exemptions and Modifications.**

The Commission may grant exemptions and modifications to the provisions of §2.16.040 and §2.16.060 of this chapter to officials when the Commission finds that an exemption or modification would not be contrary to the purposes of this chapter and the application of this chapter would:

- A. Constitute an unreasonable invasion of privacy; and
- B. Significantly reduce the availability of qualified persons for public service.

#### **2.16.090 Enforcement.**

- A. The Commission may:
  1. Assess a late fee of \$2 per day up to a maximum of \$250 for a failure to timely file a financial disclosure statement required under §2.16.060 and/or §2.16.070 of this chapter;
  2. Assess a late fee of \$10 per day up to a maximum of \$250 for a failure to file a timely lobbyist registration or lobbyist report required under §2.16.070 of this chapter; and
  3. Issue a cease and desist order against any person found to be in violation of this chapter.
- B. 1. Upon a finding of a violation of any provision of this chapter, the Commission may:
  - a. Issue an order of compliance directing the respondent to cease and desist from the violation;
  - b. Issue a reprimand; or
  - c. Recommend to the appropriate authority other appropriate discipline of the respondent, including censure or removal if that discipline is authorized by law.
2. If the Commission finds that a respondent

has violated §2.16.070 of this chapter, the Commission may:

- a. Require a respondent who is a registered lobbyist to file any additional reports or information that reasonably relates to the information that is required under §2.16.070 of this chapter;
- b. Impose a fine not exceeding \$1,000 for each violation; and
- c. Suspend the registration of an individual registered lobbyist if the Commission finds that the lobbyist has knowingly and willfully violated §2.16.070 of this chapter or has been convicted of a criminal offense arising from lobbying activities.

C. 1. Upon the request of the Commission, the Commission's attorney may file a petition for injunctive or other relief in the Circuit Court of Cecil County or in any other court having proper venue for the purpose of requiring compliance with the provisions of this chapter.

2. The court may:
  - a. Issue an order to cease and desist from the violation;
  - b. Except as provided in paragraph 3, void an official action taken by an official with a conflict of interest prohibited by this chapter when the action arises from or concerns the subject matter of the conflict and if the legal action is brought within ninety (90) days of the occurrence of the official action, if the court deems voiding the action to be in the best interest of the public; or
  - c. Impose a fine of up to \$1,000 for any violation of the provisions of this chapter, with each day upon which the violation occurs constituting a separate offense.

3. A court may not void any official action appropriating public funds, levying taxes, or providing for the issuance of bonds, notes, or other evidences of public obligations.

D. In addition to any other enforcement provisions in this chapter, a person who the Commission or a court finds has violated this chapter and who is an

employee of the Town:

1. Is subject to personnel action by the Town, including disciplinary action and/or termination; and
2. May be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the Commission or the court.

E. Violation of §2.16.070 of this chapter shall be a misdemeanor subject to a fine of up to \$1,000 or imprisonment of up to one (1) year.

F. A finding of a violation of this chapter by the Commission is public information.

(Ordinance 4-2011, effective 11/8/2011)

## Chapter 2.20

### ABANDONED PROPERTY

#### Sections:

- 2.20.010 Purpose.**
- 2.20.020 Disposition of abandoned or found property.**
- 2.20.030 Abandoned or found property to be inventoried.**
- 2.20.040 Disposition of property validly seized.**

#### **2.20.010 Purpose.**

The purpose of this chapter is to provide for disposal of abandoned, found or validly seized property in the possession of the police department. (Ord. 6-95 § 2 (part): prior code § 25-1)

#### **2.20.020 Disposition of abandoned or found property.**

A. Whenever personal property of any kind, except money, comes into custody of the police department and the person entitled to possession of the property cannot be identified, located and/or fails to claim the property for a period of sixty (60) days, the chief of police may dispose of same at a public sale at a place which shall be convenient and accessible to the public, provided that the time, place and terms of said sale, together with a description of said personal property, shall be published in one or more newspapers of general circulation in the Town of Elkton at least once each week for two consecutive weeks prior to the sale. The chief of police shall, in his description, fix the terms of sale and may employ an auctioneer to make the sale. If the property is of the kind for which a certificate of title or registration shall or should have been issued by the state of Maryland, or any other state or federal agency, the chief of police shall follow those procedures established under the laws of the state of Maryland affecting the disposition of

said property.

B. All funds received by the Town of Elkton resulting from the disposition of abandoned and/or unclaimed property shall be placed in the general fund.

C. Any unidentified personal property of any kind, except money, in the custody of the police department for a period of sixty (60) days may be retained for use by the Town of Elkton in accordance with the policy and procedures approved by the Mayor and Commissioners.

D. Stolen, abandoned, and/or lost money received by the police department shall be retained in accordance with the policy and procedures established by the police department and approved by the Mayor and Commissioners, which shall provide for the disposition of unclaimed and/or unidentified money to the general fund. (Ord. 6-95 § 2 (part): prior code § 25-2)

#### **2.20.030 Abandoned or found property to be inventoried.**

All personal property, including money, in the custody of the police department shall be maintained in accordance with the policy and procedures established by the police department and approved by the Mayor and Commissioners. (Ord. 6-95 § 2 (part): prior code § 25-3)

#### **2.20.040 Disposition of property validly seized.**

Disposition of property validly seized will be pursuant to and in compliance with the laws of the state of Maryland. (Ord. 6-95 § 2 (part): prior code § 25-4)



## Chapter 2.24

### POLICE DEPARTMENT LABOR CODE

#### Sections:

- 2.24.010 Purpose.**
- 2.24.015 Sense of the Mayor and Commissioners.**
- 2.24.020 Definitions**
- 2.24.030 Employee rights.**
- 2.24.040 Town rights.**
- 2.24.050 Recognition of employee organizations.**
- 2.24.060 Negotiations.**
- 2.24.065 Parity for police lieutenants.**
- 2.24.070 Unfair labor practices.**
- 2.24.080 Right of check-off dues and service fees.**
- 2.24.085 Dispute resolution.**
- 2.24.090 Grievance procedure.**
- 2.24.100 Strikes prohibited.**

#### **2.24.010 Purpose**

It is the policy of the Mayor and Commissioners of the Town of Elkton and the purpose of this Police Department Labor Code to promote a fair, harmonious, peaceful and cooperative relationship between the management of the Town and the employees of the Elkton Police Department, and to permit employees of the Elkton Police Department to participate in the formulation and implementation of personnel policies affecting their employment, and to protect and serve the public interest by assuring the effective, efficient, responsive, orderly and consistent operation of the Elkton Police Department.

#### **2.24.015 Sense of the Mayor and Commissioners**

It is the sense of the Mayor and Commissioners that the word "Council", wherever used in Charter §C9-4, refers to the Mayor and Commissioners of the Town of Elkton.

#### **2.24.020 Definitions**

A. "*Confidential Employee*" - an individual employed by the Town who has access to

confidential information, including budgetary and fiscal data, subject to use by the Town in collective bargaining or in the adjustment of grievances, or works in a close and continuing confidential relationship assisting or aiding a management employee.

B. "*Employee*" – an individual employed by the Town and assigned to the Elkton Police Department; provided that, the term employee does not include the Chief of Police, or police officers serving at the rank of lieutenant or above or any supervisory employees, managerial employees or confidential employees, or any employee employed on a casual or temporary basis or while in the employee's probationary period, but does include probationary police officers who have completed their initial entrance level training for certification by the Maryland Police Training Commission.

C. "*Employee Organization*" – any lawful organization which admits employees to membership and exists for the purpose, in whole or in part, of representing employees in collective bargaining with the Town regarding their terms and conditions of employment.

D. "*Grievance*" – a dispute concerning the application or interpretation of the terms of a collective bargaining agreement.

E. "*Impasse Panel*" – the panel of three (3) arbitrators, as referenced in the Charter of the Town of Elkton, Article IX., § C9-4., B., utilized to resolve any disputed issues arising out of the negotiation of a collective bargaining agreement.

F. "*Majority*" – 50% plus one of the valid votes cast in an election conducted pursuant to Section 2.24.050.

G. "*Managerial employee*" – an individual employed by the Town who has authority to formulate policies that are applicable throughout a bargaining unit, or has a significant role in personnel administration, employee relations or the preparation and administration of Town budgets, or may assist directly in the preparation for and conduct of collective bargaining negotiations on behalf of the Town, or has a significant role in the administration of any collective bargaining agreements on behalf of the Town.

H. "*Secondary Boycott*" – an activity by an employee organization or its members which is intended to induce, encourage, or coerce persons doing business with the Town to withhold, withdraw, or in any respect curtail their business relations with the Town.

I. “*Strike*” – the refusal or failure by an employee or group of employees to perform their duties of employment as assigned if a purpose of the refusal or failure is to induce, force, or require the Town to act or refrain from acting with regard to any matter, including the willful absence of a group of employees from their positions, and the engaging in a slow-down by employees, and the refusal of employees to perform job duties.

J. “*Supervisory Employee*” – an individual employed by the Town authorized to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, or responsibly direct employees, or adjust the grievances of employees, or effectively recommend any of the above actions.

K. “*Terms and Conditions of Employment*” – include employee wages, hours of employment, health care benefits, compensated and uncompensated leave, expense allowances for employment-related clothing and equipment, retirement and/or pension system participation, participation in a deferred compensation program, training, discipline, promotional qualifications and examinations, job performance standards and grievance and safety procedures.

#### **2.24.030 Employee rights.**

Employees shall have the right of self-organization, to form, join, assist or participate in any employee organization and to negotiate collectively through eligible representatives of their own choosing regarding their terms and conditions of employment. Employees shall also have the right to refrain from any and all such activities. Exercise of any rights pursuant to this Section shall be subject to the Charter and applicable provisions of any law or ordinance and the terms of any collective bargaining agreement. Nothing in this Chapter or in any collective bargaining agreement shall prohibit an employee from presenting, discussing or resolving any complaint, whether or not arising out of a collective bargaining agreement, directly with a supervisory or managerial employee or the Chief of Police, and without participation of any employee organization; provided that, no such resolution shall be in derogation of any other employee’s rights pursuant to law or any collective bargaining agreement.

#### **2.24.040 Town rights.**

Notwithstanding any other provision contained in this Chapter, it is the exclusive right of the Town to determine the amount of funds it will allocate to its Police Department and to each of its other departments and governmental activities, to determine the mission of its public safety and law enforcement department, to set standards of service to be offered to the public, and to exercise control and direction over its organization and operations, including the right to determine shifts and the number of employees on each such shift or to subcontract work or use volunteers. It is also the right of the Town to direct its employees, to hire, promote, transfer, assign or retain employees in positions within the Police Department and, in that regard, to establish work rules. The Town also retains the right to suspend, demote, discharge or take any other disciplinary action against its employees for any reason, not inconsistent with law, or to relieve its employees from duty in the event of lack of funds, or for other legitimate reasons. The foregoing provisions of this Section shall be a provision in every collective bargaining agreement reached between the Town and an employee organization. No collective bargaining agreement or impasse or grievance arbitration decision shall be binding on any party if said agreement or decision conflicts with or limits this Section.

#### **2.24.050 Recognition of employee organizations.**

A. Unless otherwise agreed by the Town, there shall be two (2) units of employees eligible for representation by an exclusive bargaining agent: UNIT A, consisting of all sworn police officers below the rank of lieutenant, including sergeants, corporals and probationary police officers who have completed their initial entrance level training for certification by the Maryland Police Training Commission, and UNIT B, consisting of all other employees of the Police Department as defined in Section 2.24.020B of this Chapter.

B. An employee organization seeking recognition as exclusive bargaining agent for a unit of employees may file a petition seeking that recognition with the Town Administrator in the form approved by the Town Administrator.

C. When a petition is presented to the Town Administrator that demonstrates that at least thirty percent (30%) of the employees in Unit A or Unit B have stated in writing that they seek to be

represented for purposes of collective bargaining by the petitioning employee organization and said employee organization is eligible to represent that unit of employees, the Town Administrator shall, on behalf of the Town, grant recognition to the employee organization after verifying, by a secret ballot election conducted by the Board of Supervisors of Elections, that a majority of employees in said unit of employees desire such representation. The secret ballot election shall be conducted between fifteen (15) and thirty (30) calendar days after the Town Administrator determines that the petition satisfies the aforesaid thirty percent (30%) requirements. When an election is scheduled, other eligible employee organizations that demonstrate support by ten percent (10%) of the employees in the same unit of employees may intervene within seven (7) calendar days after the election date is announced, and such intervener may be on the ballot. Where two (2) or more employee organizations are on the ballot and no employee organization receives the vote of a majority of the employees and a majority also do not vote against representation by any of the employee organizations, a run-off election shall be held within thirty (30) calendar days after the first election date, with the choices being a vote for representation by the employee organization receiving the highest number of votes in the first election and a vote against representation by said employee organization.

D. When an employee organization has been recognized, it shall have the exclusive right to represent employees for the purpose of collective bargaining with the Town regarding the terms and conditions of employment of the represented employees.

E. When an employee organization is recognized by the Town as the exclusive bargaining agent for a unit of employees, an employee or group of employees in that bargaining unit or the Town may file a petition with the Town Administrator, in the form approved by the Town Administrator, asserting that the recognized employee organization no longer represents a majority of the employees in said unit of employees. If the petition is filed by an employee or group of employees, the petitioner(s) must demonstrate that at least thirty percent (30%) of the employees in said unit of employees have stated in writing that they do not wish to be represented by said employee organization. Upon receipt of a petition by the Town or by an employee or group of employees that meets the aforesaid thirty percent

(30%) requirement, the Town Administrator shall, on behalf of the Town, certify that the employee organization is no longer recognized as the exclusive representative of that unit of employees after verifying, by secret ballot election conducted by the Board of Supervisors of Elections, that less than a majority of the employees in said unit of employees desire such representation. Subsection C (except for the first sentence thereof) shall be applicable to elections conducted pursuant to this Subsection E.

F. No petition may be filed pursuant to this Section when the unit of employees affected by the petition is covered by a collective bargaining agreement that expires later than the June 30 that next follows the petition date, unless said agreement will have been in effect for three (3) years or more as of said June 30. After October 31, 2005, a petition may be filed only during the month of November in each year. No election shall be conducted more than once in any twelve (12) months among the employees in any unit of employees. The same employee organization (including its parent body, any subsidiary organization of said parent body or any affiliate thereof) may not, at the same time, be the exclusive representative of the employees in Unit A and Unit B.

#### **2.24.060 Negotiations**

A. Upon recognition of an employee organization as the exclusive representative of a unit of employees, the Town and the employee organization shall have the duty, through appropriate officials or their representatives, to negotiate collectively and in good faith with respect to the terms and conditions of employment of those employees. The obligation to negotiate in good faith does not require either party to agree to a proposal of the other or to make any concession. Negotiations for a first collective bargaining agreement between the parties or for modification or termination of an existing collective bargaining agreement shall commence within ten (10) business days after either party makes a written request of the other to commence such negotiations; provided that, said request to commence negotiations for modification or termination of an existing contract shall not be made earlier than one hundred and eighty (180) calendar days prior to the expiration date of said existing collective bargaining agreement.

B. Negotiations with an employee organization which has been accorded exclusive

recognition may be conducted during the duty hours of the employee organization representatives involved in the negotiations, provided that their attendance does not interfere seriously with the normal operations of the Town and that they have given at least two (2) days advanced notice to the Chief of Police.

C. The Director, Department of Human Resources, shall act as the Town's primary representative for the purpose of maintaining communication between the Town and the employee organization regarding collective bargaining negotiations. The employee organization shall designate a primary representative for the same purpose and shall provide the Director, Department of Human Resources, with the name and the necessary contact information of the employee organization's primary representative.

D. When the representatives of the parties reach agreement on the terms of a collective bargaining agreement, they shall prepare a written agreement and submit it to the Town Administrator, who shall subsequently present it to the Mayor and Commissioners for its ratification or rejection for its ratification or rejection. However, any agreement governing the relationship between the Town and a recognized employee organization shall conform to the provisions of this Chapter and all other applicable laws of the Town, State or Federal government. In the event of any conflict or inconsistency between a collective bargaining agreement and any such law, the provisions of said law shall prevail.

E. Impasse panel. In the event that the parties are unable to reach an agreement by March 1 of any year in which collective bargaining is being conducted, the Town and the employee organization are authorized to submit to binding arbitration any unresolved issues arising out of the collective bargaining. The disputed issues shall be submitted to an impasse panel consisting of three (3) individuals who shall be selected as follows: 1) the Town and the employee organization shall each select one member within three (3) business days after the request by either party for convening an impasse panel; 2) the two (2) members so selected shall select a third member within three (3) business days after their selection. If the two members are unable to agree to a third member of the impasse panel, they shall make their selection from a panel maintained by an independent third party agency agreeable to both parties. If the parties are unable to agree on the independent third

party agency, the third member shall be selected from a panel provided by the Federal Mediation and Conciliation Service. The third member of the impasse panel so selected shall serve as the panel's chairperson. The impasse panel shall hold a hearing on all disputed issues within thirty (30) calendar days of the selection of its chairperson and shall issue its final decision within thirty (30) calendar days of the conclusion of the hearing. The decision of the panel shall be final and binding upon the Town and the employee organization. The cost of the impasse panel proceedings (excluding any costs attributable to an impasse panel member unilaterally selected by one of the parties) shall be divided equally between the Town and the employee organization. Notwithstanding the aforementioned process, nothing shall be construed herein to prohibit the impasse panel from mediating the disputed issues at any time prior to the issuance of its final and binding decision.

F. The panel from which the third member is selected pursuant to Subsection E shall consist of seven (7) members of the National Academy of Arbitrators, and the selection shall be determined by the alternate striking of names (the first to strike being determined by coin toss), with the last unstruck name being the third member. If the third member so selected is unwilling to serve or cannot serve within the time specified in Subsection E, the next to last name shall be the third member, and so on. Members of the impasse panel designated by the Town and the employee organization are not required to be neutral, except that they may not be employees of the Town or the employee organization (or its parent or any affiliates).

G. If unresolved bargaining issues are to be submitted to an impasse panel pursuant to Subsection E, each party shall serve on the other party, no later than five (5) business days after the third member is selected, a complete contract proposal, including both agreed and disputed issues. Each party shall serve on the other party, no later than ten (10) business days after the third member is selected or five (5) business days prior to the opening of the impasse hearing, whichever is earlier, a final contract proposal including both agreed and disputed issues. The final contract proposal of each party, as to any disputed issue, shall be no less favorable to the other party than its last previous proposal on that issue. As to each separate disputed issue, the impasse panel may choose only the Town's final proposal or the employee organization's final proposal as they are

set forth in the final contract proposal previously served by each party on the other party.

H. In making its decision, which shall be in writing and include its opinion as to each issue before it, the impasse panel shall take into consideration, among other pertinent factors:

1. The existing terms and conditions of employment of the bargaining unit employees.

2. The terms and conditions of employment of other individuals employed by the Town, and the impact its decision would have on those individuals and on the other governmental activities of the town.

3. The terms and conditions of employment of employees performing like duties under like conditions in comparable police departments in Maryland, also taking into account differences in cost-of-living and ability to pay in the other jurisdictions.

4. Changes in the Consumer Price Index (All Urban Consumers: Washington-Baltimore, DC-MD-VA-WV, 1996=100).

5. The availability to the Town of discretionary, general operating funds, not including funds already committed or budgeted, or funds in capital expenditure or contingency ("rainy days") funds.

6. The effect of any proposal on the ability of the Police Department to accomplish its mission.

7. The impasse panel may not choose any proposal that would require the Town to treat or result in the Town treating bargaining unit employees differently from other individuals employed by the Town with regard to any aspect of health care benefit plans and any decision contrary to this provision shall be void and the other proposal on that issue shall be binding.

I. If a collective bargaining agreement expires without there being a successor agreement resulting either from an agreement of the parties or from a decision of an impasse panel, the Town may unilaterally institute all or any part of its final contract proposal pursuant to Subsection G; provided that, the Town may agree in writing to waive its rights pursuant to the Subsection.

J. The parties may, by written agreement, waive any of the time limits and dates set forth in this Section.

K. Subsections E. through I. of this Section 2.24.060 shall not be effective until March 1, 2006.

## **2.24.65 Parity for police lieutenants**

A. If Unit A, as delineated in Section 2.24.050A, is represented by an employee organization, police lieutenants (1) as a class, shall receive pay increases from the Town that are no less favorable to them than those received by sergeants as a result of collective bargaining negotiations between the Town and said employee organization, and (2) subject to any legal restrictions applicable to employee benefit plans, shall be permitted to be participants in any retirement/pension plans applicable to sergeants.

B. Except as otherwise provided by Subsections C. and D. of this Section and/or by the Law Enforcement Officers' Bill of Rights (Public Safety Article, §§ 3-101., et seq., Annotated Code of Maryland, as amended), lieutenants may be terminated or demoted from that rank at will.

C. If terminated from his/her employment as a sworn police officer of the police department for administrative, non-punitive reasons, a lieutenant who was promoted to the rank of lieutenant from a lower sworn rank within the police department shall be treated as if he/she were first demoted to the rank of sergeant and then simultaneously terminated from employment as a sergeant. In such case, the terminated lieutenant shall have the same right to grieve or otherwise challenge his/her termination as would a sergeant, and the validity of his/her termination shall be judged by the same standard and by the same procedure as would apply to the termination of a sergeant. If the challenge to the termination is sustained, the lieutenant shall remain employed by the police department as a sergeant.

D. If demoted to a rank below sergeant for administrative, non-punitive reasons, a lieutenant who was promoted to the rank of lieutenant from a lower sworn rank within the police department shall have the same right to grieve or otherwise challenge the demotion to said lower rank as would a sergeant demoted to said lower rank, and the validity of his/her demotion below the rank of sergeant shall be judged by the same standard and by the same procedure as would apply to the demotion of a sergeant to a lower rank. If the challenge to said demotion is sustained, the lieutenant shall remain employed by the police department as a sergeant.

## **2.24.070 Unfair labor practices**

A. The Town and any agent thereof are prohibited from engaging in the following unfair labor practices with respect to this Chapter: 1) interfering with, restraining or coercing employees

in the exercise of their rights of set forth in Section 2.24.030; 2) encouraging or discouraging membership in an employee organization by discrimination in employment, seniority, promotion or other terms or conditions of employment; 3) controlling or dominating an employee organization by any means; and/or 4) failing to negotiate in good faith with an employee organization.

B. An employee organization and any agent thereof are prohibited from engaging in the following unfair labor practices with respect to this Chapter: 1) interfering with, restraining or coercing employees in the exercise of their rights set forth in Section 2.24.030; 2) inducing the Town or its representatives to commit any unfair labor practices; 3) failing to negotiate in good faith with the Town or its representatives; 4) interfering with, restricting or coercing the Town in its selection of representatives to deal with any employee organization or to exercise the Town's authority in dealing with employees represented by a recognized employee organization; and/ or 5) engaging in a secondary boycott.

#### **2.24.080 Right of check-off of dues and service fees.**

If there is provision for check-off in a collective bargaining agreement, the employee organization party to said agreement, upon the presentation of payroll deduction authorization cards to the Town's finance department, in a form approved by the Town and duly executed by individual employees, shall be entitled to have each such employee's membership dues or service fees deducted from the employee's wages and remitted to the designated employee organization. Any such authorization may be revoked by the employee upon thirty (30) days written notice by the employee to the employee organization and the Town's finance department or immediately upon the expiration of a collective bargaining agreement applicable to such employee. An employee organization may not charge a service fee to non-members that exceeds seventy-five percent (75%) of the then current dues it is charging members of the employee organization.

#### **2.24.085 Dispute resolution**

If a dispute arises between the Town and any employee organization as to a question concerning representation arising under Section 2.24.050, or if there is a claim by the Town or any employee organization that there has been a violation of

Section 2.24.070, the dispute or claim shall be heard by a single Hearing Officer selected by the parties in the same manner as the chairperson of an impasse panel is selected pursuant to Section 2.24.060, and the cost of such proceeding shall be apportioned in the same manner as set forth in Section 2.24.060. The Hearing Officer shall issue a written decision which includes his opinion as to the matter before him and, where appropriate, a remedy. The Hearing Officer may not order a remedy that is not permitted under the federal National Labor Relations Act. The Hearing Officer's decision, if it conforms to the Town's Charter and Code and all other applicable laws, shall be final and binding on the Town and the employee organization which are the parties to the proceeding. Where not otherwise provided or governed by applicable law, including this Chapter, the Hearing Officer, in making decisions pursuant to this Section, may be guided, but not bound, by the law under the federal National Labor Relations Act. Any hearings conducted pursuant to this Section or Section 2.24.060 shall not be open to the general public and the number of members or employees of the parties (other than participants in the hearing) who are permitted to attend a hearing shall be determined by the Hearing Officer or the chairperson of an impasse panel, whichever is applicable.

#### **2.24.090 Grievance procedure.**

A collective bargaining agreement between the Town and an employee organization may provide procedures for consideration and resolution of grievances by binding arbitration. In the event that an employee claims that there has been a violation of the laws, rules or regulations of the Town or the State affecting the terms or conditions of the employee's employment, and said claim may also be a grievance as defined in this Chapter, the employee has the right to choose whether to proceed through the grievance procedure or through a Town or State dispute resolution procedure which may be applicable to such claims. Once an employee has elected to pursue a specific procedure, the employee is bound by that election and subsequently may not choose to follow a different procedure. If the employee elects the Town or State procedure, the claim may not also be the subject of a grievance as defined in this Chapter. Where a matter may be the subject of both a grievance and an unfair labor practice claim, the Town or employee organization or employee seeking relief may proceed only through one

process (i.e., grievance or unfair labor practice claim).

**2.24.100 Strikes prohibited.**

Strikes are prohibited. An employee organization shall not engage in, initiate, sponsor, support or direct a strike. If a strike occurs that is in violation of the preceding sentence, the employee organization representing any employees engaging in a strike shall publicly repudiate said strike and shall take every affirmative action requested of it by the Town to effect an immediate termination of the strike. If any employee organization violates this provision, its recognition as exclusive representative, if any, may, at the Town's option, be revoked and any collective bargaining agreement to which it is a party may, at the Town's option, be annulled, and it shall not be eligible, without the consent of the Town, to participate in elections or be recognized as an exclusive representative for a period of one (1) year thereafter for each calendar day in which it is acting or failing to act in violation of this Subsection. Any employee participating in a strike may, at the Town's option, be terminated or otherwise disciplined without recourse to any contractual procedure or any procedure in this Chapter and without regard to the discipline of any other employee engaging in such strike.

**Chapter 2.28  
Police Pension Plan**

**Sections:**

<b>2.28.010</b>	<b>Police Pension Plan</b>
<b>2.28.020</b>	<b>Short title</b>
<b>2.28.030</b>	<b>Qualifying under Internal Revenue Code</b>
<b>2.28.040</b>	<b>Applicability</b>
<b>2.28.050</b>	<b>Transfer from Money Purchase Pension Plan</b>
<b>2.28.060</b>	<b>Construction of terms</b>
<b>2.28.070</b>	<b>Definitions</b>
<b>2.28.080</b>	<b>Participation requirements</b>
<b>2.28.090</b>	<b>Reemployment</b>
<b>2.28.100</b>	<b>Enrollment</b>
<b>2.28.110</b>	<b>Credit for service with Town</b>
<b>2.28.120</b>	<b>Leaves of absence</b>
<b>2.28.130</b>	<b>Fractional credit for service</b>
<b>2.28.140</b>	<b>Service for other employers</b>
<b>2.28.150</b>	<b>Pre-employment military service</b>
<b>2.28.160</b>	<b>Transfers of credited service to other plans</b>
<b>2.28.170</b>	<b>Payment of contributions</b>
<b>2.28.180</b>	<b>Disposition of forfeitures</b>
<b>2.28.190</b>	<b>Actuarial examination</b>
<b>2.28.200</b>	<b>Pick-up contributions</b>
<b>2.28.210</b>	<b>Normal retirement</b>
<b>2.28.220</b>	<b>Early retirement</b>
<b>2.28.230</b>	<b>Deferred retirement</b>
<b>2.28.240</b>	<b>Disability benefits</b>
<b>2.28.250</b>	<b>Other terminations of employment</b>
<b>2.28.260</b>	<b>Maximum limitations on benefits</b>
<b>2.28.270</b>	<b>Post termination changes</b>
<b>2.28.280</b>	<b>Cost of living adjustments</b>
<b>2.28.290</b>	<b>Death benefits</b>
<b>2.28.300</b>	<b>Limitations on death benefits</b>
<b>2.28.310</b>	<b>Method of payment</b>
<b>2.28.320</b>	<b>Optional forms of benefits</b>
<b>2.28.330</b>	<b>General provisions applicable to options</b>
<b>2.28.340</b>	<b>Eligible rollover distributions</b>
<b>2.28.350</b>	<b>Distributions to non-spouse Beneficiaries</b>
<b>2.28.360</b>	<b>Designation of Beneficiaries</b>
<b>2.28.370</b>	<b>Location of Participants and Beneficiaries</b>
<b>2.28.380</b>	<b>Investment of funds</b>
<b>2.28.390</b>	<b>Prohibition against diversion of funds</b>

- 2.28.400 Prohibition against assignment of benefits
- 2.28.410 Administrative authority
- 2.28.420 Town administration
- 2.28.430 Retirement Plan Committee
- 2.28.440 Mutual exclusion of responsibility
- 2.28.450 Uniformity of discretionary acts
- 2.28.460 Fiduciary standards
- 2.28.470 Litigation
- 2.28.480 Payment of administration expenses
- 2.28.490 Review procedure
- 2.28.500 Right to amend
- 2.28.510 Right to terminate
- 2.28.520 Automatic termination of contributions
- 2.28.530 Allocation and distribution
- 2.28.540 Priorities for allocation of trust assets
- 2.28.550 Alternative to immediate distribution of the Trust
- 2.28.560 Modification of allocation provisions
- 2.28.570 Plan combinations and transfers
- 2.28.580 Limitations on liability of Town
- 2.28.590 Construction

**2.28.010 Police Pension Plan.**

The Town of Elkton, Maryland establishes a pension plan for certain sworn police officers of the Town of Elkton by the adoption of this chapter 2.28 of Title 2 entitled "Police Pension Plan," as amended from time to time.

**2.28.020. Short title.**

This Plan may be referred to as the "Town of Elkton Police Pension Plan."

**2.28.030 Qualifying under Internal Revenue Code.**

A. *Qualification of Plan under Internal Revenue Code.* The Plan is intended to be a governmental plan, within the meaning of Section 414(d) of the Internal Revenue Code, that will qualify under Section 401(a) of the Internal Revenue Code, and the Trust established under the Plan is intended to be exempt from tax under Section 501(a) of the Internal Revenue Code.

B. *Qualification of Pick-Up Contributions under Internal Revenue Code.* The Town also intends that, effective for the pay period beginning July 1, 2010, the contributions made by Plan Participants pursuant to subsection A.(1) of Section 2.28.200 through payroll deductions will be characterized as "pick-up" contributions, as described in Section 414(h)(2) of the Internal Revenue Code.

**2.28.040 Applicability.**

The provisions of the Plan shall apply only to an individual who meets the definition of Covered Employee set forth herein and whose employment with the Town terminates on or after the Effective Date.

**2.28.050 Transfer from Money Purchase Pension Plan.**

Prior to the Effective Date, Covered Employees participated in the Town of Elkton, Maryland Money Purchase Pension Plan, a defined contribution plan. By the adoption of this chapter 2.28, the Mayor and Commissioners of the Town of Elkton authorize the transfer of account balances attributable to contributions made by the Town from the Town of Elkton, Maryland Money Purchase Pension Plan to this Plan for Covered Employees who are eligible to participate in this Plan and who consent to the transfer.

**2.28.060 Construction of terms.**

For all purposes of the Plan, where the context admits, the singular shall include the plural, and the plural shall include the singular, and references to persons shall include individuals, receivers, trustees, guardians, fiduciaries, corporations, partnerships, associations, estates and trusts. Headings of sections, subsections and paragraphs are inserted only for convenience of reference and are not to be considered in the construction of the Plan.

**2.28.070 Definitions.**

The following terms, as used herein, unless a different meaning is clearly implied by the context, shall have the following meanings:

"Accrued Benefit" means

1. The benefit to which a Participant is entitled, pursuant to the provisions of Sections 2.28.210 through 2.28.300, expressed as the normal form of monthly benefit commencing at Normal Retirement Date or the Actuarial Equivalent thereof.

2. The Accrued Benefit as of any date preceding the Participant's Normal Retirement Date shall be the greater of (a) the sum of the Participant's Transferred Benefit plus his or her Employee Contributions Benefit or (b) 2.0% multiplied by the Participant's Average Compensation and multiplied by his or her Years of Service.

3. In no event, however, shall the Accrued Benefit exceed the maximum limitation determined, as of the date of computation, pursuant to Section 2.28.260.

4. The portion of the Participant's Accrued Benefit attributable to the transfers made pursuant to subsection B. of Section 2.28.110 and to the contributions made pursuant to Section 2.28.200 shall be equal to the Actuarial Equivalent of the Participant's Employee Contributions Benefit plus his or her Transferred Benefit, expressed as the normal form of monthly benefit commencing at Normal Retirement Date.

"Actuarial Equivalent" means

1. A form of benefit differing in time, period or manner of payment from a specific benefit provided under the Plan but having the same value when computed based upon the RP2000 mortality table (projected to 2020 at scale AA 80% male, 20% female) and a 5% per annum interest rate.

2. The foregoing factors, to the extent applicable, shall be utilized (whether or not there is a specific reference to this definition) whenever in the administration of the Plan a calculation of actuarial equivalence is to be made.

"Average Compensation" means the average monthly rate of a Participant's Compensation, equal to 1/36th of the total amount of a Participant's monthly Compensation for the 36 consecutive full calendar months of the Participant's employment which produce the highest average.

"Beneficiary" means any person entitled to death benefits in accordance with the provisions of Sections 2.28.360 and 2.28.370.

"Benefit Commencement Date" means the day on which the sole payment is made or the first day of the period for which the first in a series of payments constituting the distribution of an Accrued Benefit is made.

"Cash-out" means a distribution in settlement of a benefit otherwise payable under the Plan, and which is equal to the Participant's Employee Contributions Benefit plus his or her Transferred Benefit.

"C/L Increase" means an automatic increase (without necessity of Plan amendment) in a dollar value set forth or described in the Plan, for the purpose of reflecting increases in the cost of living to the extent prescribed in or pursuant to regulations under Section 415(d) of the Internal Revenue Code, but only to the extent permitted by the operative Internal Revenue Code or regulatory provision specifically governing the dollar value in question.

"Committee" means the Retirement Plan Committee designated in accordance with the provisions of Section 2.28.430 to administer and operate the Plan.

"Compensation" for an employee whose regular work schedule is 80 hours per pay period means the monthly equivalent of the Participant's base annual salary rate or wages in effect on the first day of the month. Compensation for an employee whose regular work schedule is 84 hours per pay period means 105% of the monthly equivalent of the Participant's base annual salary rate or wages in effect on the first day of the month. Compensation is determined without regard to:

1. Overtime, bonuses, shift differentials, additional holiday pay, shoes allowances, field training allowances, plain clothes allowances and other extra remuneration;

2. Amounts in excess of 1/12th of the applicable dollar limit in effect as of the first day of the Plan Year under Section 401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(b) of the Internal Revenue Code.

3. Contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit plan; or

4. Direct reimbursement for expenses; provided, however, that Compensation shall include any amount that would have qualified as Compensation but for the fact that it constitutes salary reduction under any plan described in

Section 414(h)(2) or 125 of the Internal Revenue Code.

Effective July 1, 2009, "Compensation" shall include differential wage payments.

"Coordinator" means the Town's Director of Human Resources to whom certain administrative duties may be delegated by the Committee pursuant to subsection D.(2) of Section 2.28.420.

"Covered Employee" means any Employee who is classified as a "sworn police officer." The term "Covered Employee" does not include a person during any period that he or she qualifies as an Excluded Employee.

"Differential Wage Payments" mean differential wage payments as defined in Section 3401(h) of the Internal Revenue Code. A differential wage payment generally refers to the Town's payment to an employee called to Military Service for more than thirty (30) days that represents all or a portion of the compensation the employee would have received from the Town if the employee were performing services.

"Effective Date" means the Effective Date of the Plan, which shall be July 1, 2010.

"Employee" means any person employed by the Town and includes a person receiving differential wage payments on or after July 1, 2009.

"Employee Contributions Benefit" means the sum of the following amounts (net of any previous distributions):

1. The contributions made by the Participant through salary reduction and "picked up" by the Town, as described in Section 2.28.200; plus
2. Interest on the amounts described in (1) above computed on June 30 of each year as follows and compounded annually:
  - a. 1.5% of the amount contributed during the current Plan Year.
  - b. 3.0% of any amount contributed or transferred prior to the current Plan Year.

"Employment Commencement Date" means the date on which the Employee first performs an hour of service for the Town as a Covered Employee.

"Excluded Employee" means (1) any person employed by the Town during any period that he or she does not qualify as a sworn police officer and (2) the individual serving as the Chief of Police on July 1, 2010.

"Internal Revenue Code" means the Internal Revenue Code of 1986, or any provision or section thereof herein specifically referred to, as such Internal Revenue Code, provision or section may from time to time be amended or replaced.

"Leave of Absence" means an authorized absence from active service, under conditions described in Section 2.28.120, which does not constitute a termination of employment, and during which the Employee completes no service as a Covered Employee.

"Maryland Employer" means the State of Maryland and any municipality or political subdivision within the State of Maryland.

"Military Service" means service in the uniformed services within the meaning of the Uniformed Services Employment and Reemployment Rights Act of 1994.

"Normal Retirement Age" means the date on which the Participant attains age 60 and completes 10 Years of Service. A Participant's right to his or her Accrued Benefit will be fully vested and non-forfeitable on attainment of Normal Retirement Age.

"Normal Retirement Date" means the earlier of:

1. The first day of the month on or following the date on which the Participant completes 25 Years of Service; or
2. The first day of the month on or following the date on which the Participant reaches his or her Normal Retirement Age.

"Participant" means any Employee who is currently benefiting under the Plan, and, where appropriate according to the context of the Plan, any former Employee who is or may become (or whose beneficiaries may become) eligible to receive a benefit under the Plan. Effective July 1, 2007, "Participant" shall include any Employee on a Leave of Absence for Military Service.

"Period of Severance" means the continuous period beginning with an Employee's Termination Date and ending with the Employee's Reemployment Commencement Date, if any.

"Per-Pay Compensation" means, for an employee whose regular work schedule is 80 hours per pay period, one-twenty-sixth (1/26<sup>th</sup>) of the salary listed in the pay scale in effect for the Participant's grade and step in effect for that pay period. Per-pay Compensation means, for an employee whose regular work schedule is 84 hours per pay period, 105% of one-twenty-sixth (1/26<sup>th</sup>) of the salary listed in the pay scale in effect for the Participant's grade and step in effect for that pay period. Per-pay Compensation is determined without regard to:

1. Overtime, bonuses, shift differentials, additional holiday pay, shoes allowances, field training allowances, plain clothes allowances and other extra remuneration;

2. Amounts in excess of 1/12th of the applicable dollar limit in effect as of the first day of the Plan Year under Section 401(a)(17) of the Internal Revenue Code and regulations promulgated thereunder, as adjusted by the Commissioner of the Internal Revenue Service for increases in the cost of living in accordance with Section 401(a)(17)(b) of the Internal Revenue Code.

3. Contributions, credits or benefits under this Plan or under any other retirement, deferred compensation, fringe benefit or employee welfare benefit plan; or

4. Direct reimbursement for expenses; provided, however, that Compensation shall include any amount that would have qualified as Compensation but for the fact that it constitutes salary reduction under any plan described in Section 414(h)(2) or 125 of the Internal Revenue Code.

"Plan" means the Town of Elkton Police Pension Plan set forth herein and as amended from time to time.

"Plan Administrator" means the Committee designated in accordance with the provisions of Section 2.28.430 to administer and operate the Plan.

"Plan Year" means the 12 month period ending on the last day of the month of June.

"Reemployment Commencement Date" means the date on which an Employee first performs an hour of service after a Period of Severance.

"Termination Date" means the date of the first to occur of:

1. A termination of employment by reason of resignation, discharge, mutual agreement, total and permanent disability, retirement or death;

2. The date on which a Leave of Absence expires without a return to active employment; or

3. The date on which an Employee ceases to be a Covered Employee.

"Town" means the Town of Elkton, a municipal corporation existing under the laws of the State of Maryland.

"Transferred Benefit" means the amount transferred to this Plan from the Participant's account under The Town of Elkton, Maryland Money Purchase Plan plus interest from the date transferred at the rate of 3% per annum. The Participant will have a one-time opportunity to elect the transfer. This Plan will accept the transfer from The Town of Elkton, Maryland Money Purchase Plan only if the Participant elects to transfer the Participant's account balance attributable to contributions made by the Town under the Town of Elkton, Maryland Money Purchase Plan to this Plan.

"Trust" means the trust fund established pursuant to the Plan, maintained in accordance with the terms of the trust agreement, as from time to time amended, between the Town and the Trustees, which trust agreement constitutes a part of the Plan; where appropriate according to the context, the term Trust shall also refer to the trust agreement.

"Trustees" means, collectively, the trustee or trustees named in the Trust and such successor and/or additional Trustees as may be named pursuant to the terms of the Trust.

"Year of Service" means a year that is counted for purposes of calculating a Participant's eligibility for normal retirement under Section 2.28.210 of the Plan. The rules for calculating a Participant's Years of Service are set forth in Sections 2.28.110 through 2.28.150 with reference to the continuous period beginning with the Employee's Employment Commencement Date or

Reemployment Commencement Date and ending with the Employee's Termination Date, excluding any period during which the Employee is not a Covered Employee.

**2.28.080 Participation requirements.**

A. Generally. A Covered Employee's participation in this Plan, and the agreement to make contributions hereunder, as described in Section 2.28.200, is mandatory as a condition of employment with the Town. Every individual who becomes a Covered Employee on or after July 1, 2010 shall become a Participant on the date he or she first performs service as a Covered Employee.

B. *Election by Chief of Police not to participate.* Notwithstanding Subsection A. above, an individual who becomes the Chief of Police after July 1, 2010 may elect not to participate in the Plan as of the date he or she first performs an hour of service as the Chief of Police. Such election shall be irrevocable and shall be made no later than 10 days before the effective date of the individual's appointment as the Chief of Police.

**2.28.090 Reemployment.**

If an Employee or Participant who reaches a Termination Date is subsequently reemployed as a Covered Employee, his or her status with respect to the Plan shall be governed by the following:

A. *Eligibility for participation.* If the reemployed Employee was not a Participant prior to his or her Termination Date, or the Employee's Reemployment Commencement Date occurs prior to July 1, 2010, the Employee shall become a Participant in accordance with the provisions of Section 2.28.080. If the reemployed Employee was a Participant prior to such termination, or the individual's Reemployment Commencement Date occurs after June 30, 2010, his or her participation shall commence immediately upon the resumption of status as a Covered Employee.

B. *Vesting.* Subject to subsection C. below, if the reemployed Employee was a Participant prior to his or her termination, that Employee's prior Years of Service shall be aggregated with Years of Service performed after his or her Reemployment Commencement Date for purposes of determining eligibility to receive his or her Accrued Benefit (with respect to the periods before and after the Period of Severance).

C. *Cash-out.*

1. If, after his or her Termination Date, (a) the Participant receives a Cash-out of his or her

Employee Contributions Benefit plus his or her Transferred Benefit, and (b) the Participant resumes status as a Covered Employee, then the Years of Service with respect to which the distribution was received shall be disregarded in subsequent determinations of Participant's eligibility to receive his or her Accrued Benefit.

2. However, if the Participant resumes status as a Covered Employee, and within 90 days of the his or her Reemployment Commencement Date, repays to the Trust the full amount of the Cash-out, plus interest from date of distribution to date of repayment at the rate of 3% per annum, compounded annually, his or her eligibility will be determined taking into account the Participant's Years of Service before as well as after the Termination Date.

**2.28.100 Enrollment.**

Participation hereunder shall be automatic when the requirements of Section 2.28.080 have been met; provided, however, that the Town may, in its discretion, require each Covered Employee to execute a written application containing such items as may be desired by the Town including, but not limited to, the Employee's consent to be bound by all the terms and conditions of the Plan and all amendments thereto.

**2.28.110 Credit for service with Town.**

A. *Service generally.* Except as otherwise provided in Sections 2.28.080 through 2.28.150, a Participant will receive credit only for Years of Service for his or her actual service with the Town as a Covered Employee.

B. *Service prior to the Effective Date.* A Participant who consents to the transfer of his or her account balance attributable to Town contributions from the Town of Elkton, Maryland Money Purchase Pension Plan to this Plan as described in Section 2.28.050 shall receive credit for all of his or her Years of Service. A Participant who does not consent to the transfer of his or her to the transfer of his or her account balance attributable to Town contributions from the Town of Elkton, Maryland Money Purchase Pension Plan to this Plan as described in Section 2.28.050 shall not receive credit for his or her Years of Service prior to the Effective Date.

**2.28.120 Leaves of absence.**

A. *Temporary absence is not a termination of employment.* A Covered Employee's employment will not be deemed to have terminated though it is interrupted by a temporary absence from active service, extending for not more than 6 months, under conditions which are not treated by the Town as a termination of employment. The performance of an hour of service after a Leave of Absence has commenced will constitute an expiration of the Leave of Absence.

B. *Basis for computing Compensation and/or Average Compensation.* If, during a Leave of Absence, a Participant is unpaid or the Participant's rate of basic pay is reduced, then, for purposes of computing plan benefits, the Participant's Compensation and/or Average Compensation will be computed as if he or she were being paid at a rate equivalent to that in effect for his or her position at the end of the calendar month immediately preceding the month in which the Leave of Absence began.

C. *Expiration of Leave of Absence.* If any Participant on Leave of Absence fails to answer an inquiry by the Town as to the status of the Leave of Absence, or if the Town is not notified of the death or disability of such Participant, and the Town has no actual knowledge thereof, the Town may determine that the Leave of Absence had or has expired.

D. *Crediting of service during paid Leaves of Absence.* Service with respect to a Leave of Absence will be credited pursuant to the following:

1. Paid Leaves of Absence will constitute continuation of employment.

2. Service will be credited for the customary period of work during a paid Leave of Absence, and Section 2.28.200 contributions will continue to be made.

3. An individual on a Leave of Absence for reasons of illness will be deemed to be on a paid Leave of Absence so long as the individual's rate of pay is not reduced and so long as he or she is paid directly by the Town or through Town-financed wage continuation insurance; but the individual will not be considered to be on a paid Leave of Absence under circumstances where payments are made solely for the purpose of complying with workers' compensation, unemployment insurance or disability insurance laws.

E. *Crediting of service during unpaid Leave of Absence.* A Leave of Absence where the

Participant's rate of pay is reduced shall constitute an unpaid Leave of Absence. Service credit shall not be granted for an unpaid Leave of Absence (other than for military service or family leave, as described below).

F. *Credit for service during unpaid Leave of Absence for Military Service.* A Participant will receive credit for service during an unpaid Leave of Absence for Military Service to the extent required by law. If a Participant fails to again become an Employee as a result of the employee's death while in Military Service on or after July 1, 2007, the Participant shall be entitled to receive credit for such Military Service.

G. *Credit for service during unpaid Leave of Absence for Family Leave.* A Participant will receive credit for service for that portion of an unpaid Leave of Absence during which the Participant is deemed eligible for leave under the Family and Medical Leave Act of 1993 for a reason other than those covered in subsections D. and E. above.

**2.28.130 Fractional credit for service.**

For purposes of determining the extent to which a Participant is vested in his or her Accrued Benefit and for purposes of determining eligibility for normal retirement benefits under Section 2.28.210, the Participant shall receive credit on the basis of the number of whole Years of Service. The Participant shall receive fractional credit equal to 1/12th of a Year of Service for each calendar month during which he or she was a Covered Employee for the entire month, but shall receive no fractional credit with respect to any calendar month during which he or she was not a Covered Employee for the entire month.

**2.28.140 Service for other employers.**

No credit for Years of Service shall be given under this Plan for service credited under any other retirement plan or system, including, but not limited to, a retirement or pension system sponsored by a Maryland Employer.

**2.28.150 Pre-employment military service.**

Participants shall not receive credit for Years of Service for service in the armed forces of the United States which precedes the Participant's Employment Commencement Date.

**2.28.160 Transfers of credited service to other plans.**

If a Participant terminates employment for the Town, becomes an employee of another Maryland Employer and becomes eligible to participate in a retirement plan sponsored by another Maryland Employer, the Participant may elect to transfer service earned under this Plan to the retirement plan sponsored by such other Maryland Employer to the extent allowed by such other retirement plan.

Notwithstanding any provision to the contrary herein or any provision of the retirement plan sponsored by such other Maryland Employer, the Plan shall not be required to transfer to such other Maryland Employer any Accrued Benefits with respect to the Participant, other than the Participant's Employee Contributions Benefit plus his or her Transferred Benefit.

**2.28.170 Payment of contributions.**

The funding of the Plan and payment of benefits hereunder shall be provided for through the medium of the Trust. The Trust shall accept transfer of funds from the Town of Elkton, Maryland Money Purchase Pension Plan, consistent with the elections made by Participants pursuant to subsection B. of Section 2.28.110. The Town, from time to time, shall make contributions to the Trust in amounts determined, in accordance with generally accepted actuarial principles, to be sufficient to fund the benefits provided by the Plan. Contributions made by the Town to the Trust are irrevocable and may not be returned to the Town except as provided in paragraph C.5 of Section 2.28.540.

**2.28.180 Disposition of forfeitures.**

Any forfeiture arising under the provisions of the Plan shall be used to reduce the then current or future costs of funding the benefits provided in the Plan.

**2.28.190 Actuarial examination.**

The Committee shall, at least once every other Plan Year, cause the liabilities of the Plan to be evaluated by an enrolled actuary who shall report to the Committee as to the soundness and solvency of the Trust in relation to the said liabilities and the amount of the Town's contributions sufficient to meet the requirements of Section 2.28.170.

**2.28.200 Pick-up contributions.**

Under limited circumstances described below, Participant contributions may be accepted by the Plan.

*A. Town pick-up contributions.*

1. Effective for the pay period beginning July 1, 2010, and for each pay period thereafter, each Participant shall make contributions to the Plan equal to 8.0% of his or her Per-pay Compensation in accordance with rules established by the Committee.

2. The Participant's contributions referred to in subsection A.(1) of this Section 2.28.200 shall be separately accounted for, but shall be made a part of the Participant's Employee Contributions Benefit, which shall be part of the Accrued Benefit of the respective Participant.

3. The Participant contributions referred to in this Section 2.28.200 shall be (a) picked up by the Town, as described in Section 414(h)(2) of the Internal Revenue Code, (b) deducted from the pay of the contributing Participants as salary reduction contributions, and (c) paid by the Town to the Trustees with reasonable promptness after the total of such contributions during any month has been determined, and in any event by the end of the succeeding month.

4. The Participant contributions referred to in subsection A.(1) of this Section 2.28.200, although designated as Participant contributions, are being paid by the Town in lieu of contributions by the Participant pursuant to Section 414(h)(2) of the Internal Revenue Code.

*B. Suspension of contributions.* A participant's salary reduction contributions shall be automatically suspended for any payroll period during which the Participant is not a Covered Employee or during which he or she is on an unpaid Leave of Absence

*C. Withdrawals of pick-up contributions.* A Participant who has reached his or her Termination Date may elect, at any time, to receive a Cash-out of the Employee Contributions Benefit plus his or her Transferred Benefit by filing a written notice of such election with the Town. Such Cash-out shall constitute full payment of all benefits due to such Participant under the Plan.

*D. Forfeiture of remaining Accrued Benefit.* In the event of a Cash-out to a Participant pursuant to subsection C., then, subject to restoration provided in subsection C.(2) of Section 2.28.090, the Participant shall forfeit the entire remaining portion of his or her Accrued Benefit.

E. *Vesting of pick-up contributions.* Notwithstanding any provisions of this Plan to the contrary, Participant contributions picked up by the Town and made to the Plan shall be fully vested at all times.

F. *Payment of benefits.* Subject to the right of withdrawal described above, the benefits purchased from the Participant's contributions shall be payable at the same time, in the same manner, and, in the event of the Participant's death, to the same Beneficiary or Beneficiaries, as is the remainder of his or her Accrued Benefit.

G. *Plan termination.* In the event of a termination of the Plan, distribution to each Participant of the portion of the Participant's Accrued Benefit attributable to his or her contributions picked up by the Town shall, notwithstanding any other provisions of Section 2.28.540, be treated as a priority distribution ahead of any other distribution to Participants based upon the remainder of the Trust.

#### **2.28.210 Normal retirement.**

Except as otherwise provided in Sections 2.28.210 through 2.28.300, a Participant shall retire on his or her Normal Retirement Date. A Participant who retires on his or her Normal Retirement Date shall be entitled to receive a monthly retirement income, beginning with the Participant's Normal Retirement Date and continuing for the remainder of his or her life. Subject the limitations set forth in Section 2.28.260: the amount of the monthly retirement income for a participant who reaches his or her Normal Retirement Date by attaining age 60 and completing 10 or more Years of Service shall be 2.0% of his or her Average Compensation times his or her Years of Service, and the amount of the monthly retirement income for a participant who reaches his or her Normal Retirement Date by completing 25 Years of Service shall be 50% of his or her Average Compensation.

#### **2.28.220 Early retirement.**

The Plan will not pay early retirement benefits.

#### **2.28.230 Deferred Retirement.**

In the event a Participant remains a Covered Employee after the Participant reaches his or her Normal Retirement Date, then, subject to the limitations set forth in Section 2.28.260, and except as otherwise provided in Section 2.28.330, the Participant shall be entitled to receive, commencing on the first day of the month coincident with or otherwise next following his or

her Termination Date, a monthly benefit equal to 2.0% multiplied by the Participant's Years of Service not in excess of 25 Years of Service multiplied by the Participant's Average Compensation. If a Participant retires after he or she completes 25 Years of Service, the participant shall be entitled to receive the benefit to which the Participant would have been entitled pursuant to Section 2.28.210 if he or she had retired after completing 25 Years of Service, but adjusted by taking into account any increases in Average Compensation which may be generated by increases in Compensation earned since his or her completion of 25 Years of Service.

#### **2.28.240 Disability benefits.**

The Plan shall not pay disability benefits.

#### **2.28.250 Other terminations of employment.**

A. *Amount of termination benefit.* If a Participant reaches a Termination Date for any reason other than normal retirement as described in Section 2.28.210 or deferred retirement as described in Section 2.28.230, the Participant shall receive a Cash-out of his or her Employee Contributions Benefit plus his or her Transferred Benefit, in which case such Cash-out automatically shall be made as soon as administratively feasible following the Participant's request for a Cash-out.  
B. *Form of benefits.* The benefits payable pursuant to this Section 2.28.250 shall be payable in a single lump sum.

#### **2.28.260 Maximum limitation on benefits.**

A. *Maximum benefit.* To the extent necessary to prevent disqualification under Section 415 of the Internal Revenue Code, and subject to the remainder of this Section, the maximum monthly benefit to which any Participant may be entitled at any time (the "Maximum Benefit") shall be equal to one-twelfth (1/12) of the amount set forth in Section 415(b)(1)(A) of the Internal Revenue Code, as adjusted by C/L Increases, (the "Monthly Dollar Limit"). The rate of benefit accrual shall be frozen or reduced accordingly to comply with the limitations.

B. *Actuarial adjustment of monthly dollar limit.* The Monthly Dollar Limit shall be subject to actuarial adjustment as follows:

1. If the benefit is payable in any form other than a single life annuity or a qualified joint and survivor annuity (as defined for purposes of

Section 415 of the Internal Revenue Code), the **Monthly Dollar Limit** shall be reduced so that it is the actuarial equivalent of the single life annuity. For purposes of this paragraph (1), the Monthly Dollar Limit shall be the actuarial equivalent of the straight life annuity limit based on a 5% interest rate and the applicable mortality table under Treasury Regulation §1.417(e)-1(d)(2) that is effective for the annuity starting date.

2. With respect to a benefit beginning before age 62, the **Monthly Dollar Limit** shall be reduced to the actuarial equivalent of a monthly benefit in the amount of the Monthly Dollar Limit beginning at age 62. For purposes of this paragraph (2), the Monthly Dollar Limit shall be the actuarial equivalent of the age 62 amount based on a 5% interest rate and the applicable mortality table under Treasury Regulation §1.417(e)-1(d)(2) that is effective for the annuity starting date and the age 62 dollar amount multiplied by the ratio of the annual amount of the immediately commencing straight life annuity under the Plan to the annual amount of the straight life annuity under the Plan commencing at age 62. Notwithstanding the foregoing, however, in no event shall the Monthly Dollar Limit applicable to benefits beginning before age 62 be reduced for Participants who have earned at least 15 Years of Service as a Covered Employee, including Military Service.

3. With respect to a benefit beginning after age 65, the dollar limit shall be increased so that it is the actuarial equivalent of the **Monthly Dollar Limit** applicable to a benefit beginning at age 65.

C. *Reducing dollar limit.* The dollar limit shall be reduced (but not by more than 90%) by 1/10th for each year of service less than 10, considering only those years of service during any part of which the Participant was participating in the Plan.

D. *Limitation year.* The limitation year shall be defined as the calendar year, except as otherwise provided by adoption of a written resolution by the Town.

E. *Other reductions in maximum benefit.* In addition to the foregoing, the Maximum Benefit shall be reduced, and the rate of benefit accrual shall be frozen or reduced accordingly, to the extent necessary to prevent disqualification of the Plan under Section 415 of the Internal Revenue Code, with respect to any Participant who is also a participant in:

1. Any other tax-qualified pension plan maintained by the Town, including a defined benefit plan in which an individual medical benefit account (as described in Section 415(l) of the

Internal Revenue Code) has been established for the Participant;

2. Any welfare plan maintained by the Town in which a separate account (as described in Section 419A(d) of the Internal Revenue Code) has been established to provide post-retirement medical benefits for the Participant; and/or

3. Any retirement or welfare plan, as aforesaid, maintained by a related employer, as described in Section 414(b), (c), (m) or (o) of the Internal Revenue Code.

#### **2.28.270 Post termination changes.**

Any change in benefits provided for by amendment to the Plan shall not apply to any Participant whose Termination Date with the Town occurred prior to the Effective Date of such amendment, except as otherwise specifically provided for in the Plan or in such amendment.

#### **2.28.280 Cost of living adjustments.**

The monthly retirement income, as computed pursuant to Section 2.28.210, of any Participant shall be not subject to any cost of living adjustment.

#### **2.28.290 Death benefits.**

A. *Death prior to Benefit Commencement Date.* In the event of the death of a Participant, including a Participant who is on a leave of absence for Military Leave, prior to his or her Benefit Commencement Date, the Participant's Beneficiary shall be entitled to receive as a single lump sum an amount equal to the Participant's Employee Contributions Benefit plus his or her Transferred Benefit: and

B. *Death after Benefit Commencement Date.* If a Participant dies after the Participant's Benefit Commencement Date, the benefits, if any, to which his or her Beneficiary shall be entitled shall depend upon the form in which the Participant's benefits were payable at the time of death, under the applicable form of benefit described in Sections 2.28.310 through 2.28.340.

### **2.28.300 Limitations on death benefits.**

All death benefits payable pursuant to Section 2.28.290 shall be distributed only in accordance with a reasonable, good faith interpretation of Section 401(a)(9) of the Internal Revenue Code, as follows:

A. *Lump sum benefit.* All benefits payable under Section 2.28.290 shall be distributed in full not later than the last day of the calendar year containing the fifth anniversary of the death of the Participant.

B. *Surviving spouse annuity benefit.* If the Participant's Beneficiary is the Participant's surviving spouse, then, unless the Participant's spouse elects to receive the lump sum benefit under subsection C. of Section 2.28.320, benefits payable under Section 2.28.290 to or for the benefit of the spouse, and which begin not later than the later of the last day of the calendar year containing the first anniversary of the Participant's death, or the last day of the calendar year in which the Participant would have reached age 70-½, may be distributed over the life of the spouse or a period certain not extending beyond the life expectancy of the spouse, under a method of distribution which meets the requirements of subsection A. of Section 2.28.330. The life expectancy shall be based upon the spouse's attained age as of the spouse's birthday in the calendar year in which falls:

1. The date on which non-annuity benefits are required to commence pursuant to this subsection; or
2. If earlier, the date on which annuity benefits actually commence.

C. *Surviving spouse dies prior to commencement of benefits.* If benefits are payable in accordance with subsection B. of this Section, and the surviving spouse dies after the Participant but prior to:

1. The date on which non-annuity benefits are required to commence pursuant to subsection B of this Section; or
2. The date on which annuity distributions meeting the requirements of subsection B of this Section actually commence;

Then, in either case, the aforesaid 5 year limit, and the alternate limit set forth in subsection A of this Section are to be applied as if the spouse were the Participant, so that such limits shall be measured from the death of the spouse.

D. *When annuity benefits commence before participant's death.* If annuity benefits meeting the requirements of Section 2.28.330 had commenced

prior to the Participant's death, then the death benefits payable pursuant to Section 2.28.290 may be distributed without regard to the aforesaid 5-year limit, but must be distributed at least as rapidly as they would have been under the pre-death method of distribution.

### **2.28.310 Method of payment.**

A. All benefit distributions shall be in cash (or in annuity contracts as provided herein).

B. The **Committee** shall determine, in its discretion, whether the distribution shall be funded through periodic payments made directly from the Trust, or through the purchase of annuity contracts, or whether a combination of such methods of distribution shall be used, and the **Committee** shall give to the Trustees such directions and information as may be necessary for the Trustees to carry out the decision of the **Committee**.

C. If the **Committee** shall determine that the whole or any part of the distribution is to be funded through the purchase of an annuity contract for a Participant, the **Committee** shall select such form of contract (including a variable annuity) to be so purchased and shall direct the Trustees to pay the premium of such contract to the issuing company.

D. The **Committee** shall direct that all right, title and interest in such contract shall remain in the Trustees under the terms of the Plan, and the Participant shall have no right, title or interest therein except to receive the payments therefrom as provided therein, and to change the Beneficiary from time to time.

E. Alternatively, the **Committee** may direct that the contract shall be purchased in the name of the Participant and distributed to the Participant free and clear of the Trust, in which case:

1. The contract shall be issued so as to be nontransferable;
2. It shall not contain a death benefit in excess of the greater of the reserve or the total premiums paid for annuity benefits; and
3. It shall not contain provisions that expand upon, change or eliminate any plan provisions applicable to distributions in annuity form.

### **2.28.320 Optional forms of benefit.**

A Participant, subject to the conditions hereinafter set forth, may elect to receive, in lieu of the normal monthly form of retirement income described in Section 2.28.210, a benefit which is its Actuarial Equivalent, payable in any of the following forms and in the form described in Section 2.28.340:

A. *Joint and survivor option.*

1. The joint and survivor option is a monthly income payable during the Participant's lifetime and continuing after the Participant's death at the rate of either 50% or 100% (as elected by the Participant) to his or her Beneficiary for the remainder of such Beneficiary's life.

2. If, before the Participant's Benefit Commencement Date (whether before or after the Participant's Termination Date), the Participant's Beneficiary dies, the election shall thereupon become void.

3. If, after the Participant's Benefit Commencement Date but before the death of the Participant, the Participant's Beneficiary dies, the election shall remain effective and the Participant shall continue to receive the reduced retirement income payable to him or her in accordance with the option.

B. *Life only option.* The life only option, which is the normal form of benefit under the Plan, is a monthly income payable during the Participant's lifetime, with no payments to be made after the last payment prior to the Participant's death.

C. *Lump sum option.* A Participant may elect, at any time after his or her Termination Date and before his or her Benefit Commencement Date, to receive a lump sum cash payment of the Participant's Employee Contributions Benefit plus his or her Transferred Benefit in lieu of all other benefits under the Plan and, upon payment of that lump sum cash payment, then, subject to restoration provided in subsection D. of Section 2.28.090, the entire remaining portion of his or her Accrued Benefit shall be forfeited by the Participant.

D. *Single life annuity with refund.* The single life annuity with refund option is a monthly income payable during the Participant's lifetime, and, as soon as administratively feasible following the Participant's death, the Participant's Beneficiary will receive a lump sum payment of an amount which is the unpaid balance of the Participant's Employee Contributions Benefit plus his or her Transferred Benefit.

**2.28.330 General provisions applicable to options.**

A. *Minimum distribution requirements.* Notwithstanding any other provision in the Plan to the contrary, distribution shall be made only in accordance with a reasonable, good faith interpretation of Section 401(a)(9) of the Internal Revenue Code. To the extent required thereby,

distribution of benefits shall comply with the following limitations:

1. Except as otherwise provided below, distribution shall begin not later than the later of April 1<sup>st</sup> of the calendar year (hereinafter referred to as the "commencement year") in which the Participant retires or attains age 70-½, whichever occurs later.

2. Distribution shall be made (a) over the life of the Participant or the lives of the Participant and the Participant's Beneficiary; and/or (b) over a period certain not extending beyond the life expectancy of the Participant or the joint life and last survivor expectancy of the Participant and his or her Beneficiary, all as described in proposed treasury regulation §401(a)(9)-1 or, if shorter, the alternate period described in proposed treasury regulation §1.401(a)(9)-(2).

3. A required distribution shall be deemed to have been made during the commencement year if actually made by the following April 1<sup>st</sup>, but such delayed distribution shall not change the amount of such distribution, and the distribution otherwise required during the subsequent calendar year shall be calculated as if the first distribution had been made on the last day of the commencement year.

4. Benefits paid prior to the commencement year shall reduce the aggregate amount subject to (but shall not otherwise negate) the minimum distribution requirements described herein.

5. Nothing contained in this subsection shall prevent distribution of annuity benefits providing for non-increasing (except as otherwise permitted in treasury regulation section 1.401(a)(9)-1) payments beginning not later than the commencement year (except as provided in subsection A.(4) of this Section) and payable at least annually over a period permitted by this subsection (for which purpose, if benefit commencement under the annuity precedes the commencement year, each relevant life expectancy shall be based on the individual's attained age as of his or her birthday occurring in the calendar year in which benefit commencement occurs).

B. *Election procedures.* An election of any optional form of benefit described in Section 2.28.320, or any revocation or change of such election, must be made by a Participant in writing, on a form supplied by or acceptable to the **Committee**. Upon the Participant's Benefit Commencement Date, such election (including the designation of a Beneficiary) shall be irrevocable.

C. *Effect of death.* In the event of the death of a Participant prior to his or her Benefit

Commencement Date, no benefits shall be payable to the Participant's spouse or other Beneficiary except as provided in subsection A. of Section 2.28.290, regardless of whether or not the Participant has elected an optional form of benefit pursuant to Section 2.28.320.

D. *Timing of benefit commencement.* Notwithstanding any other Plan provision to the contrary, in no event (unless the Participant otherwise elects pursuant to any elective provision which may be then present in the Plan) shall benefits begin later than the 60th day after the close of the Plan Year in which occurs the later of:

1. The date on which the Participant attains his or her Normal Retirement Age; or
2. The termination of the Participant's employment with the Town.

#### **2.28.340 Eligible rollover distributions.**

A. Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Section, a distributee may elect, at the time and in the manner prescribed by the **Committee**, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover.

B. *Definitions.*

1. *Eligible rollover distributions.* An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (a) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten years or more; (b) any distribution to the extent such distribution is required under Section 401(a)(9) of the Internal Revenue Code in accordance with the regulations under Section 401(a)(9); and (c) the portion of any distribution that is not includable in gross income.

2. *Eligible retirement plan.* An "eligible retirement" plan is: (a) an individual retirement account described in Section 408(a) of the Internal Revenue Code; (b) an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (c) a qualified trust described in Section 401(a) of the Internal Revenue Code or an annuity plan described in Section 403(a) of the

Internal Revenue Code, that accepts the eligible rollover distribution; (d) an annuity contract described in Section 403(b) of the Internal Revenue Code; (e) an eligible plan under Section 457(b) of the Internal Revenue Code which is maintained by a state, a political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state which agrees to separately account for amounts transferred into such plan from this Plan; or (f) a Roth IRA described in Section 408A of the Internal Revenue Code. However, in the case of an eligible rollover distribution to the surviving spouse of a Participant or former Participant, an eligible retirement plan is an individual retirement account or individual retirement annuity.

3. *Distributee.* A "distributee" includes a Participant or former Participant. In addition, the Participant's or former Participant's surviving spouse and the Participant's or former Participant's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Internal Revenue Code, are distributees with regard to the interest of the spouse or former spouse.

4. *Direct rollover.* A "direct rollover" is a payment by the Plan to the eligible retirement plan specified by the distributee.

#### **2.28.350 Distributions to non-spouse beneficiaries.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit the options of the Beneficiary of a deceased Participant who is not a distributee (within the meaning of Section 2.28.340), the **Committee** shall, upon the request of such a Beneficiary transfer a lump sum distribution to the trustee of an individual retirement account established under Section 408 of the Internal Revenue Code in accordance with the provisions of Section 402(e)(11) of the Internal Revenue Code.

#### **2.28.360 Designation of Beneficiaries.**

A. *Participant designates Beneficiary.* Each Participant may designate a Beneficiary or Beneficiaries (who may be named contingently or successively) to receive such benefits as may be payable under the Plan upon or after the Participant's death, and, subject to the provisions of Sections 2.28.310 through 2.28.340, such designation may be changed from time to time by the Participant by filing a new designation. Each designation will revoke all prior designations by

the same Participant, shall be in form prescribed by the **Committee**, and shall be effective only when filed in writing with the **Committee** prior to the Participant's Benefit Commencement Date.

B. *Absence of valid Beneficiary designation.* In the absence of a valid Beneficiary designation (except in conjunction with the election of a form of benefit payment which does not require the designation of a specific Beneficiary), or if, at the time any benefit payment is due to a Beneficiary, there is no living Beneficiary validly named by the Participant eligible to receive the payment, the **Committee** shall direct the Trustees to distribute any such benefit payment to:

1. The Participant's spouse, if then living; otherwise to
2. The Participant's then living descendants, if any, per stirpes; otherwise to
3. The Participant's then living parent or parents, equally; otherwise to
4. The Participant's estate.

C. *Question regarding right of a person to receive a benefit payment.* In determining the existence or identity of anyone entitled to a benefit payment, the **Committee** and the Trustees may rely conclusively upon information supplied by the Participant's personal representative. In the event of a lack of adequate information being supplied to the **Committee**, or in the event that any question arises as to the right of any person to receive a benefit payment as aforesaid, or in the event that a dispute arises with respect to any such payment, then, notwithstanding the foregoing, the **Committee**, in its sole discretion, may, in complete discharge of the Town, the **Committee** and the Trustees, and without liability for any tax or other consequences which might flow therefrom, direct the Trustees to:

1. Distribute the payment to the Participant's estate;
2. Retain such payment, without liability for interest, until the rights thereto are determined; or
3. Deposit the payment into any court of competent jurisdiction.

#### **2.28.370 Location of Participants and Beneficiaries.**

A. *Notice to last post office address.* Any communication, statement or notice addressed to a Participant or Beneficiary at his or her last post office address filed with the **Committee**, or if no such address was filed with the **Committee**, then at the individual's last post office address as shown on the Town's records, shall be binding on the

Participant or Beneficiary for all purposes of the Plan. Except for the **Committee's** sending of a registered letter to the last known address, neither the Trustees nor the **Committee** shall be obliged to search for any Participant or Beneficiary.

B. *Distribution to next of kin if Participant or Beneficiary fails to claim amount.* If the **Committee** notifies any Participant or Beneficiary that he or she is entitled to an amount under the Plan and the Participant or Beneficiary fails to claim such amount or make his or her location known to the **Committee** within three years thereafter, then, except as otherwise required by law, if the location of one or more of the next of kin of the Participant, including the Participant's surviving spouse, is known to the **Committee**, it may direct distribution of such amount to any one or more or all of such next of kin, and in such proportions as the **Committee** determines.

C. *If location of Participant, Beneficiary, or next of kin cannot be determined.* If the location of none of the foregoing persons can be determined, the **Committee** shall have the right to direct that the amount payable shall be deemed to be a forfeiture and treated in accordance with Section 2.28.180, except that the dollar amount of the forfeiture, unadjusted for gains or losses in the interim, shall be reinstated if a claim for the benefit is made by the Participant or Beneficiary to whom it was payable. If any benefit payable to an unlocated Participant or Beneficiary is subject to escheat pursuant to applicable state law, neither the Trustees nor the **Committee** shall be liable to any person for any payment made in accordance with such law.

#### **2.28.380 Investment of funds.**

A. All contributions under the Plan shall be paid to the Trustees and deposited in the Trust.

B. Such contributions, all investments made therewith and proceeds thereof and all earnings and profits thereon, less the authorized disbursements therefrom, shall constitute the Trust, which Trust, and the agreement under which it is maintained, shall in all respects constitute a part of the Plan.

C. The Town reserves the right to select, and from time to time to change, the Trustees, to amend the Trust with the consent of the Trustees, or to adopt a different funding vehicle.

**2.28.390 Prohibition against diversion of funds.**

It shall be impossible by operation of the Plan or Trust, by natural termination of either, by power of revocation or amendment, by the happening of any contingency, by collateral arrangement or by other means, for any part of the corpus or income of the Trust, or any funds contributed thereto, to inure to the benefit of the Town or otherwise be used for or diverted to purposes other than providing benefits to Participants and Beneficiaries and defraying reasonable expenses of administering the Plan, except as otherwise set forth in paragraph C. (5) of Section 2.28.540 and the Trust with respect to the conditions under which Trust assets may be returned to the Town.

**2.28.400 Prohibition against assignment of benefits.**

A. Except as provided below, no benefit payable at any time under this Plan may be anticipated, assigned (either at law or in equity), alienated or subject to attachment, garnishment, execution, levy or other legal and equitable process.

B. However, the prohibitions of the preceding sentence shall not apply to, and the Trustees shall fully recognize the creation, assignment or recognition of a right to any benefit payable pursuant to a "qualified domestic relations order."

C. For the purposes hereof, a "qualified domestic relations order" shall mean a judgment, decree or order made pursuant to a state domestic relations law which relates to the provision of child support, alimony payments or marital property rights and which clearly specifies:

1. The name, social security number, date of birth and last known mailing address of the Participant and alternate payee covered by the order;

2. The amount or percentage of the Participant's benefits to be paid by the Plan to the alternate payee, or the manner in which such amount or percentage is to be determined;

3. The number of payments or period for which payments are to be made;

4. The name of the Plan and the **plan administrator**; and

D. Notwithstanding subsection C. of this Section 2.28.400, an order will not be a "qualified domestic relations order," if it:

1. Requires this Plan to provide any type or form of benefit or benefit option not otherwise provided under the Plan;

2. Requires this Plan to provide increased benefits (determined on the basis of actuarial value); or

3. Requires the payment of benefits to an alternate payee which are required to be paid to another alternate payee;

4. Provides for payment of benefits to an alternate payee which commence before the commencement of benefit payments to the Participant;

5. Provides for payment of benefits to an alternate payee over a period longer than the lifetime of the Participant;

6. Allows an alternate payee to designate a beneficiary to receive payments following the death of the alternate payee; or

7. Fails to specifically provide that, upon the death of the alternate payee while benefits are in pay status and prior to the death of the Participant, the payments being made to the alternate payee will be paid to the Participant;

**2.28.410 Administrative authority.**

A. *Sole responsibility and control.* Except as otherwise specifically provided herein, the Town shall have the sole responsibility for and the sole control of the operation and administration of the Plan.

B. *Powers, duties and responsibilities.* The Town shall have the power and authority to take all action and to make all decisions and interpretations which may be necessary or appropriate in order to administer and operate the Plan, including, without limiting the generality of the foregoing, the power, duty and responsibility to:

1. Resolve and determine all disputes or questions arising under the Plan, including the power to determine the rights of Employees, Participants and Beneficiaries, and their respective benefits, and to remedy any ambiguities, inconsistencies or omissions;

2. Adopt such rules of procedure and regulations as in its opinion may be necessary for the proper and efficient administration of the Plan and as are consistent with the Plan;

3. Implement the Plan in accordance with its terms and such rules and regulations;

4. Direct the Trustees with respect to the eligibility of any Employee as a Participant and the crediting and distribution of the Trust, which are to be made only upon the basis of instructions from the Town pursuant to the terms of the Plan; and

5. Establish and carry out a funding policy and method consistent with the objectives of the

Plan, pursuant to which the Town shall determine the Plan's liquidity and financial needs and communicate them to the Trustees (or other fiduciaries who are charged with determining investment policy).

C. *Act through Mayor and Commissioners.* Subject to the power to delegate in the manner described in Section 2.28.420, the Town shall act through the Mayor and Commissioners of the Town of Elkton.

#### **2.28.420 Town administration.**

The Plan shall be operated and administered on behalf of the Town by the **Committee** which shall be governed by the following:

A. *Powers of the Committee.* Except as the Town shall otherwise expressly determine, the **Committee** shall have the following powers:

1. To make and enforce rules and regulations as it shall deem necessary or proper for the efficient administration of the Plan;

2. To make and enforce procedures to be followed by Employees in filing applications for benefits and for furnishing the evidence necessary to establish the Employees' right to benefits;

3. To make and enforce determinations concerning the rights of Employees applying for or receiving benefits;

4. To make and enforce procedures which afford a mechanism for adjusting complaints of an Employee dissatisfied with determinations of the **Committee**;

5. To make and enforce procedures for determining the service credit of Employees which affords Employees an opportunity to object, in writing, and to establish service credit in advance of retirement;

6. To make and enforce procedures for authorizing disbursements from the fund created under the Plan and to authorize disbursements from the Trustees of the fund in accordance with the Plan documents;

7. To compute the amount of benefits that shall be payable to any person in accordance with the Plan documents;

8. To interpret the Plan;

9. To otherwise decide questions concerning the eligibility of any Employee to Participate in the Plan or to receive benefits from the Plan;

10. To employ or engage actuaries to make actuarial evaluations of the liabilities under the Plan, to recommend the mortality and other tables and interest rates to be used from time to time in actuarial and other computations for any purpose

of the Plan, to recommend the amounts of contributions to be made by the Town and to perform such other services as the **Committee** shall deem necessary or desirable in connection with the administration of the Plan;

11. To employ or engage accountants as it shall deem necessary or desirable in connection with the administration of the Plan;

12. To employ or engage legal counsel as it shall deem necessary or desirable in connection with the administration of the Plan;

13. To employ or engage any other experts as it shall deem necessary or desirable in connection with the administration of the Plan;

14. To determine the mortality and other tables and interest rates to be used from time to time in actuarial or other computations for any purpose of the Plan;

15. To recommend to the Town the amounts of contributions to be made by the Town, from time to time, under the provisions of the Plan; and

16. To act for the Town before all persons in any matter directly pertaining to the Plan.

B. *Limits on power.* The **Committee** shall have no power to:

1. Amend or terminate the Plan;

2. Determine Town contributions; or

3. Affect the employer-employee relationship between the Town and any Employee, all of which powers are reserved to the Town unless expressly granted to the **Committee**.

C. *Fiduciary powers, duties and responsibilities.* Fiduciary duties, powers and responsibilities (including those reserved to the Trustees, with respect to management or control of trust assets) may be allocated among the fiduciaries (if there be more than one) to whom such duties, powers and responsibilities have been delegated, so long as such allocation is pursuant to action of the **Committee** or by written agreement executed by the involved fiduciaries and approved by the **Committee** in which case, such fiduciary shall have any liability, with respect to any duties, powers or responsibilities not allocated to him, for the acts or omissions of any other fiduciary. Any person may serve in more than one fiduciary capacity under the Plan, including those of **Committee** and Trustee.

D. *Specialized advice or assistance.*

1. *Appoint persons or firms; rely upon advice.* The **Committee** may appoint any persons or firms, or otherwise act to secure specialized advice or assistance, as it deems necessary or desirable in connection with the administration and

operation of the Plan. The **Committee** shall be entitled to rely conclusively upon, and shall be fully protected in any action or omission taken by it in good faith reliance upon, the advice or opinion of such firms or persons.

2. *Delegation to Coordinator.* The **Committee** shall have the power and authority to delegate from time to time by written instrument all or any part of its duties, powers or responsibilities under the Plan, both ministerial and discretionary, as it deems appropriate, to the Human Resources Manager of the Town (the "Coordinator"), and in the same manner to revoke any such delegation of duties, powers or responsibilities. Any action of the Coordinator in the exercise of such delegated duties, powers or responsibilities shall have the same force and effect for all purposes hereunder as if such action had been taken by the **Committee**. Further, the **Committee** may authorize the Coordinator to execute any certificate or document on behalf of the **Committee**, in which event any person notified by the **Committee** of such authorization shall be entitled to accept and conclusively rely upon any such certificate or document executed by such person as representing action by the **Committee** until such third person shall have been notified of the revocation of such authority. The **Committee** shall not be liable for any act or omission of any person to whom the **Committee's** duties, powers or responsibilities have been delegated, nor shall the Coordinator have any liabilities with respect to any duties, powers or responsibilities not delegated to him or her.

E. *Liability.* The Trustees and the **Committee** shall use ordinary care and diligence in the performance of their duties pertaining to the Plan, but no such individual shall incur any liability:

1. By virtue of any contract, agreement, bond or other instrument made or executed by the individual or on his or her behalf in the individual's official capacity with respect to the Plan;

2. For any act or failure to act, or any mistake or judgment made, in his or her official capacity with respect to the Plan, unless resulting from the individual's gross negligence or willful misconduct; or

3. For the neglect, omission or wrongdoing of any other person involved with the Plan.

F. *Indemnity.* The Plan shall indemnify and hold harmless each such individual from the effects and consequences of the individual's acts, omissions and conduct in his or her official capacity with respect to the Plan, except to the extent that such

effects and consequences shall result from the individual's own willful misconduct or gross negligence; provided, however, that any person who shall claim the right to any payment or damage as a result of the actions of any individual in connection with the performance of their duties pertaining to the Plan, shall be entitled to look only to the Trust fund created by the Plan for payment. Such individual shall have no other right, claim or demand therefor against the Town.

G. *Liability insurance.* The Plan shall purchase, using Plan assets and as an expense of the Plan, liability insurance for the Plan and for its fiduciaries to cover liability or losses occurring by reason of an act or omission of a fiduciary.

H. *Fiduciary's benefits.* Nothing in the Plan shall be construed so as to prevent any fiduciary from:

1. Receiving any benefit to which he or she may be entitled as a Participant or Beneficiary; or

2. Receiving any reasonable compensation for services rendered, or for the reimbursement of expenses properly incurred in the performance of his or her duties under the Plan (except that no person so serving who receives compensation as an Employee shall receive compensation from the Plan, except for reimbursement of expenses properly incurred); or

3. Serving as a fiduciary in addition to being an officer, Employee, agent, or other representative of the Town or any related entity.

However, the fiduciary shall not be entitled to vote or act upon, or execute on behalf of the Plan, documents specifically relating to, his or her own participation in the Plan.

#### **2.28.430 Retirement Plan Committee.**

Except to the extent that the Town has retained any power or authority, or allocated duties and responsibilities to another fiduciary, **the** Committee shall have full power and authority to administer and operate the Plan in accordance with its terms and, in acting pursuant thereto, shall have full power and authority to deal with all persons in any matter directly connected with the Plan, including, but not limited to, the Trustees, other fiduciaries, insurance companies, investment advisors, other advisors and specialists, Participants, Beneficiaries and their representatives, in accordance with the following provisions:

A. *Individuals serving on the Committee.* The Committee shall consist of those individuals who hold the following positions:

1. Town Administrator as Chair of the Committee;
2. Town Finance Director
3. Representative of Elkton Police FOP Lodge 124;

B. *Compensation, acceptance of duties and responsibilities.* Subject to his or her right to resign at any time, each member of the Committee shall serve without compensation at the pleasure of the Town, and the Town may appoint, and may revoke the appointment of, additional members to serve with the Committee as may be determined to be necessary or desirable from time to time. Each member of the Committee, by accepting appointment to the Committee, shall thereby be deemed to have accepted all of the duties and responsibilities of such appointment, and to have agreed to the faithful performance of his or her duties thereunder.

C. *Organization; voting*

1. The Committee shall adopt such formal organization and method of operation as it shall deem desirable for the conduct of its affairs.

2. The Committee shall act as a body, and the individual members of the Committee shall have no powers and duties as such, except as provided herein.

3. The Committee shall act by vote of a majority of its members at the time in office (other than those disqualified from voting pursuant to subsection H. of Section 2.28.420, either at a meeting or in writing without a meeting.

D. *Decisions final.* Except as set forth in Section 2.28.490, the determination of the Committee on any matter pertaining to the Plan within the powers and discretion granted to it shall be final and conclusive on the Town, the Trustees, all Participants and beneficiaries and all those persons dealing in any way or capacity with the Plan.

**2.28.440 Mutual exclusion of responsibility.**

Neither the Trustees nor the **Committee** shall be obliged to inquire into or be responsible for any act or failure to act, or the authority therefor, on the part of the other.

**2.28.450 Uniformity of discretionary acts.**

Whenever in the administration or operation of the Plan discretionary actions by the Town, the Committee or the Trustees are required or permitted, such action shall be consistently and uniformly applied to all persons similarly situated, and no such action shall be taken which shall discriminate in favor of highly-compensated employees as defined in Section 414(q) of the Internal Revenue Code.

**2.28.460 Fiduciary standards.**

The **Committee** and all other persons in any fiduciary capacity with respect to the Plan shall discharge their duties with respect to the Plan:

A. Solely in the interest of the Participants and Beneficiaries and for the exclusive purposes of providing benefits to Participants and their Beneficiaries and defraying reasonable expenses of administering and operating the Plan;

B. With the care, skill, prudence and diligence under the circumstances then prevailing that a prudent individual acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; and

C. In accordance with the documents and instruments governing the Plan.

**2.28.470 Litigation.**

In any action or judicial proceeding affecting the Plan and/or the Trust, except as may be otherwise required by law, no Participant or Beneficiary shall be entitled to any notice or service of process, and any final judgment entered in such action shall be binding on all persons interested in, or claiming under, the Plan.

**2.28.480 Payment of administration expenses.**

Expenses incurred in the administration and operation of the Plan shall be paid by the Trustees out of the Trust unless the Town, in its discretion, elects to pay them.

**2.28.490 Review procedure.**

An Employee aggrieved by a decision of the **Committee** may request that the **Committee** review its decision, and the **Committee** shall then

review its decision. The decision of the **Committee** following such review upon request of an Employee shall be final and conclusive.

**2.28.500 Right to amend.**

A. Except as otherwise provided herein, all rights, benefits and obligations of officers or Employees of the Town with respect to pensions or retirement are provided under the terms of this Plan and this Plan supersedes and prevails over the terms of any rules, regulation, resolution or ordinance concerning such matters.

B. The Town shall have the right to amend the Plan, at any time by ordinance, and all parties claiming any interest under this Plan shall be bound thereby. Notwithstanding any other provision of Town law, no Town resolution or ordinance which relates to the subject matter of the Plan or conflicts with, narrows, or expands any term of this Plan shall be effective unless the Town acts by ordinance which specifically amends the provisions of this Plan. No amendment shall reduce a Participant's Accrued Benefit or deprive a Participant of an already vested interest to the extent funded unless required by law. No amendment shall cause any assets of the Trust to revert to the Town except that, if after the Plan is terminated there are assets remaining after all Plan liabilities have been provided for, such assets may be returned to the Town. No amendment which affects the rights, duties, responsibilities or immunities of the Trustees shall be binding upon the Trustees in the absence of their consent thereto.

C. Notwithstanding the provisions of this Section, the Plan and Trust may be amended at any time, by amendment to the Code of the Town, retroactively if required, if found necessary in order to conform to the provisions and requirements of the Internal Revenue Code or any similar act or any amendments thereto or regulations promulgated thereunder; no such amendment shall be considered prejudicial to any interest of a Participant or Beneficiary hereunder.

**2.28.510 Right to terminate.**

It is the present intention of the Town to maintain the Plan throughout the Town's existence. Nevertheless, the Town reserves the right, at any time, to permanently discontinue further contributions to the Trust or to terminate the entire Plan and Trust.

**2.28.520 Automatic termination of contributions.**

The liability of the Town to make contributions to the Trust shall automatically terminate upon liquidation of the Town, upon its adjudication as a bankrupt or upon the making of a general assignment for the benefit or creditors.

**2.28.530 Allocation and distribution.**

A. *Causation.*

1. This Section shall become operative in any of the following events: (a) a complete termination of the Town's liability to make further contributions to the Trust; (b) a complete discontinuance of contributions by the Town to the Trust; or (c) a complete termination of the Plan.

2. The provisions of this Section shall also become operative in the event of a partial termination of the Plan, but only with respect to that portion of the Plan attributable to the Participants to whom the termination is applicable.

B. *Effective date set by ordinance of the Town.*  
The effective date of any termination or discontinuance of contributions shall be as set forth in an ordinance adopted by the Town.

C. *Actions upon termination or discontinuance of contributions.*

1. Upon the effective date of any such event, then, notwithstanding any other provisions of the Plan, subject to the remainder of this Section 2.28.530: (a) no persons who were not theretofore Participants shall be eligible to become Participants; (b) no further benefits shall accrue; and (c) the Accrued Benefits of all Participants not theretofore vested, and not theretofore forfeited shall immediately become fully vested.

2. The Accrued Benefits of all Participants and Beneficiaries shall be determined and distributed to them, as soon as is practicable after such termination or discontinuance, in accordance with Sections 2.28.210 through 2.28.350

3. The assets in the Trust shall be allocated for the purposes set forth below and in the order set forth below, to the extent the assets are sufficient therefor. The allocations may be implemented by distribution of Trust assets, or by the purchase and distribution by the Trustees of insurance company annuity contracts, or by a combination of these methods.

**2.28.540 Priorities for allocation of trust assets.**

Upon termination of the Trust, the Trustees shall liquidate all assets remaining in the Trust. After deduction of estimated expenses in liquidating and distributing the Trust, and any reasonable compensation for the Trustees agreed upon with the Town, the balance of the Trust assets shall be allocated so as to provide the Accrued Benefits otherwise payable under the Plan pursuant to the following order of priorities:

A. *Participants in first priorities.* To provide Accrued Benefits for each Participant who:

1. Had begun to receive benefits at least three years prior to the effective date of the termination of the Plan;

2. Would have begun to receive retirement benefits at least three years prior to the effective date of the termination of the Plan but for the fact that commencement of benefits was deferred; or,

3. Would have been eligible to receive retirement benefits at least three years prior to the effective date of the termination of the Plan but for the fact that the Participant did not actually retire; and,

B. *Other Participants.* To provide Accrued Benefits for all other Participants, in the following order of preference:

1. For each Participant who would have qualified under the priority described in subsection A. above, but for the fact that the entitling event occurred or would have occurred within three years of the effective date of the termination of the Plan, and

2. For all other Participants in the priority described in this subsection B.

C. *Trust assets utilized according to priority.*

1. Trust assets shall be utilized under a particular priority only after all Accrued Benefits set forth in all preceding priorities shall have been fully provided for.

2. For purposes of the allocation of funds within each priority, as set forth in this Section 2.28.540, funds will be credited to each Participant to provide the Accrued Benefits to which the Participant is so entitled, but only to the extent that such Accrued Benefits have not been provided under a preceding priority.

3. Any reductions in Accrued Benefits within a particular priority (or within any particular preference set forth within a priority) as set forth above, due to insufficient Trust assets, shall be allocated pro-rata among the Participants within that priority (or preference) on the basis of then

present values of the respective Accrued Benefits described in that priority (or preference) for each such Participant.

4. Any reference to Accrued Benefits payable to Participants shall also be deemed to include Accrued Benefits payable to beneficiaries of deceased Participants.

If any balance of Trust assets remains after all of the allocations described above, and after all liabilities with respect to Participants and retired Participants and their Beneficiaries, if any, are satisfied, then the balance shall be returned to the Town, and the Trust shall terminate. Upon making such distribution, the Trustees shall be discharged from all obligations under the Trust and no Participant shall have any further right or claim therein.

D. *Death of Participant after effective date of termination.* Notwithstanding any provision to the contrary in Section 2.28.530 or this Section 2.28.540, if a Participant dies or otherwise terminates employment with the Town during the interim between the effective date of termination and the distribution of Trust assets, and if the Participant's Benefit Commencement Date had not yet occurred as of the effective date of termination, the amount distributable to the Participant or to his or her Beneficiary, and the timing thereof, shall be determined pursuant to Section. 2.28.290.

**2.28.550 Alternative to immediate distribution of the Trust.**

A. *Event entitling Participant to benefit.* As an alternative to immediate distribution of the Trust, the **Committee**, in its discretion, and subject to its option at any time to require the complete distribution of the Trust to the then Participants in accordance with Section 2.28.530, may defer commencement of benefits to each Participant until such Participant reaches an event which would otherwise entitle him or her to benefit commencement pursuant to Sections 2.28.210 through 2.28.250, at which time the provisions of Sections 2.28.310 through 2.28.350 shall become applicable.

B. *Separate account.* During the interim period, there shall be established and maintained a separate account in the name of each Participant, based upon the values established pursuant to Sections 2.28.530 through 2.28.560. The separate account shall thereafter define and measure the amount available for benefits distributable to the Participant, and there shall be credited or charged

thereto any income, expenses, gains or losses (whether or not realized, based upon fair market value of invested assets) attributable or allocable thereto as of each Trust valuation date (or the date of complete distribution of the Trust) with respect to the period since the last valuation date.

**2.28.560 Modification of allocation provisions.**

The provisions set forth in Sections 2.28.530 through 2.28.550 shall be subject to such modification, retroactively if required, without necessity of formal amendment to the Plan, as may be necessary in order to cause the termination of the Plan and/or Trust, and any distributions made pursuant thereto and to conform to any requirements which may be imposed by the Internal Revenue Service to prevent disqualification of the Plan and/or Trust, and no such modification shall be deemed prejudicial to the interest of any Participant or Beneficiary.

**2.28.570 Plan combinations and transfers.**

In the case of any merger or consolidation of the Plan with, or transfer of assets or liabilities of the Trust to, any other plan, the transaction shall be structured so that each Participant in the Plan would (if the Plan then terminated) receive a benefit immediately after the transaction which is at least equal to the benefit the Participant would have been entitled to receive immediately before the transaction (if the Plan had then terminated).

**2.28.580 Limitations on liability of Town.**

A. *No rights except as provided by law, Plan, provisions, or terms of insurance of annuity policy.*

Neither the establishment of the Plan or Trust, nor any modification thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or other person any legal or equitable right against the Town (or any person connected therewith) the Trustees or any insurance company, except as provided by law, by any Plan provision or by the terms of any insurance or annuity policy.

B. *Town does not guarantee the Trust.* The Town does not in any way guarantee the Trust from loss or depreciation, nor does the Town guarantee the payment of any money which may be or become

due to any person from the Trust. Any person having a right or claim under the Plan shall look solely to the Trust assets, and in no event shall the Town (or any person connected therewith) be liable to any person on account of any claim arising by reason of the provisions of the Plan or of any instrument or instruments implementing its provisions, or for the failure of any Participant, Beneficiary or other person to be entitled to any particular tax consequences with respect to the Plan, the Trust or any contribution thereto or distribution therefrom.

C. *Town not liable for failure to make contributions.* The Town shall not be liable to any person for failure on its part to make contributions as provided in Section 2.28.170 nor shall any action lie to compel the Town to make such contributions.

D. *Town not liable for failure of plan to qualify under Internal Revenue Code.* The Town (or any person connected therewith) shall not have any liability to any person by reason of the failure of the Plan to attain and/or maintain qualified status under Section 401(a) of the Internal Revenue Code, or the failure of the Trust to attain and/or maintain tax exempt status under Section 501(a) of the Internal Revenue Code, regardless of whether or not such failure is due to any act or omission (willful, negligent or otherwise) of the Town (or any person connected therewith).

**2.28.590 Construction.**

A. *Intended to comply with requirements for qualification under Internal Revenue Code.* The Plan is intended to comply with all requirements for qualification under Section 401(a) of the Internal Revenue Code and, if any provision of the Plan is subject to more than one interpretation or construction, such ambiguity shall be resolved in favor of that interpretation or construction which is consistent with the Plan being so qualified.

B. *Severability.* In case any provision of the Plan shall be held to be illegal or void, such illegality or invalidity shall not affect the remaining provisions of the Plan, but shall be fully severable, and the Plan shall be construed and enforced as if said illegal or invalid provisions had never been inserted herein.

C. *Laws of State of Maryland shall govern.* Except to the extent preempted by the laws of the United States of America, the laws of the State of Maryland shall govern, control and determine all questions arising with respect to the Plan and the

interpretation and validity of its respective provisions. Participation under the Plan will not give any Participant the right to be retained in the service of the Town **or** any right or claim to any benefit under the Plan unless such right or claim has specifically accrued hereunder.

(Ordinance 3-2012, effective 6/5/12)  
(Prior Ordinance 7-2010, effective 9/7/10)