

**COMMITTEE OF THE WHOLE
CITY HALL, THIRD FLOOR
TUESDAY, OCTOBER 24, 2023**

8:30 A.M.

Present: Mayor Joe Gibbons, Mayor Pro-Tem Crissy Thomas, Jonathan Beal, Kent Greer, Todd Perdue, Ike Perkins, and David Stevens.

Staff Present: City Manager Scott Hildebran, City Clerk Shirley Cannon, Finance Director Donna Bean, Public Services Director Radford Thomas, Planning Director Hannah Williams, Interim Planning Director Ed Evans, Downtown Event Coordinator Matthew Anthony, Parks & Recreation Director Phil Harper, Fire Chief Norman Staines, and Police Major Andy Wilson.

Absent: Councilman Ralph Prestwood, Police Chief Brent Phelps, Public Utilities Operations Manager Jeff Church, Public Works Operation Manager Jon Hogan and Communications Director Joshua Harris.

I. Mayor Pro-Tem Thomas welcomed everyone and called the meeting to order.

II. Citizen Comments

A. There were no citizen comments presented at this time.

III. Committee Items:

A. Update; Public Services: Radford Thomas, Public Services Director, read the reports as submitted by Public Works Operation Manager Jon Hogan and Public Utilities Operations Manager Jeff Church due to their participating in a class at the UNC School of Government (SOG).

B. Update; Public Works:

1. **Smith Crossroads Gateway Sign:** Documents have all been signed including the temporary construction and permanent maintenance easement. Construction is about 2 weeks out from beginning.
2. **LFD Infrastructure Repair (Sinkhole):** Preliminary survey work has been completed. CVET has completed soft digs and survey work for shoring portion. Golden Leaf application was submitted but has been put on hold until first week in October due to an increase in available funding. Our resubmittal could possibly see funding up to \$2,000,000. Current construction estimate is \$3,708,366. Project is still on schedule.
3. **Hospital Avenue Sidewalk Project:** Asplundh has completed tree work. Duke has relocated poles and is currently moving utilities. According to meeting with NCDOT on 9/25 the additional \$1,640,000.00 in LAPP funding was approved. Will work with DOT to update agreement within the EBS portal.

4. **Greenway; Google Connection, HWY 18 Crossing and PED Counts:** Google has completed stream bank restoration project. Mattern & Craig is working on a bid packet for this Greenway connection which will connect the pedestrian bridge at Google to the future Morganton Boulevard Crossing. We will work with NCDOT on prescribed crossing options. Currently Pedestrian counts are being measured at the Lower Creek Trailhead and Quest Trailhead as part of the Midblock Crossing Application.
5. **Freese and Nichols: 1003 Pennell St. Phase 1 Stormwater:** Documents have been executed to begin Phase 1 which will include a study of the area, historical flood data, current condition analysis, conceptual alternatives and recommendations.
6. **23-02 N.C. Forest Service Urban and Community Forestry Financial Assistance Award - Tree Canopy Cover Assessment: This is Phase 1 of a 3 Phase Forestry Grant Project.**
 - **Phase 1** – Canopy cover assessment completed by the forestry service. Current cost is \$6,932.00 with a 50% shared cost of \$3,466.00.

C. Update; Public Utilities:

1. **Asset Inventory and Assessment Grant (ARPA & SRP):** McGill has begun preliminary work on the AIA studies. Work order records are being reviewed and a list of needed City documents are currently being prepared.
2. **Crossroads Sewer Project:** The original work and punch list work have both been completed except for painting/stripping at Yokefellow donation drop-off entrance. Closeout paperwork is being prepared.
3. **Finley Water Project:** Plans and specs are being prepared for submittal to DWI by the end of this week, September 25-29, 2023. BLE is preparing a proposal to drill additional borings for the potential water tank location.

McGill Engineering requested a 2-month time extension for all project milestones due to pending geotechnical results and to enable existing conditions plans to be updated before finalizing water line layouts.

Current deadlines are summarized below:

- October 2, 2023: bid and design package submittal (all permits obtained)
 - February 1, 2024: bid and design package approval
 - June 3, 2024: advertise project, receive bids, submit bid information, and receive authority to award
 - July 1, 2024: execute construction contract(s)
 - December 31, 2026: receive last reimbursement (statutory, not extendable)
5. **Freeze and Nichols Lead and Copper Inventory Project:** FNI presented on public communication requirements of the revisions to the lead and copper rule (LCRR). There is a target date of January 2024 for publishing LCRR communication. Identifying as much service line material as possible to minimize the magnitude of required public communication effort is a high priority.
 6. **Rhodhiss Flashmix Basin Repairs Project:** McGill has been in contact with a potential bidder to identify work to be performed by the City to allow them to bid the project. McGill is also coordinating those clarifications to the bid documents with SKA and developing a bidding schedule.

IV. Community Development

- A. Update; Events: Matthew Anthony, Downtown Event Coordinator, shared the Wood, Fire, Smoke, Festival held on Saturday, October 21 was a huge success and well attended. He expressed appreciation to City Staff, Fire & Police Departments plus the Main Street volunteers for all of their assistance during the event. He reported several of the vendors were very popular with the crowd. Matthew further stated two façade grant applications were submitted for the Harper office building and the Lenoir Service League building.

Three additional workshops are scheduled for people who wish to purchase and decorate a commemorative tile that will be placed on the new clock tower. The tiles are \$75.00 each.

Upcoming events include the Downtown Trick or Treat event on Friday, October 27 from 3:00 p.m. – 6:00 p.m. The Mad Hatters Pumpkin Patch Parade will be held at 3:00 p.m. with the “Run for Your Life” race following the parade. The movie “the Night before Christmas” will be shown on the downtown stage at 6:30 p.m. Light up Lenoir is scheduled to begin on Thursday, November 16 from 5:00 p.m. – 7:30 p.m. Also, the downtown carriage rides will begin in December.

- B. Planning Board: The Planning Board and Board of Adjustment did not meet in October. Ed Evans, Interim Planning Director, presented a report of current projects. Director Evans led a discussion regarding the absence of a retaining wall and sidewalk at Mavis Tire. He stated Mavis was currently under code enforcement and the City has informed them of the City’s plans to begin levying daily fines. He reported NCDOT has also stated Mavis Tire has to adhere to the original plans for the site and they are also responsible for moving a portion of the guardrail in front of their business.

Director Evans reported the future site for Farm Bureau, which consists of 4 ½ acres, has been graded without the City’s knowledge. He stated the City does not issue grading permits, but we should have been working to improve communication with Caldwell County inspections, NCDOT, and WPCOG and NCDEQ.

1. Vacant Property Maintenance Overview: Interim Director Ed Evans reported there were several downtown businesses with deteriorating conditions. He pointed out the City has a minimum housing ordinance, but currently does not have one for commercial buildings. He stated Caldwell County also does not have the authority to abate existing buildings. Director Evans explained he contacted Tyler Mulligan with the School of Government (SOG) and found out if the City sees conditions that may cause public safety issues, City Council has the authority to abate the property pursuant to N.C.G.S. §160A-193, Abatement of Public Health Nuisances. (A copy of the statute is attached to the minutes as information.

In addition, Director Evans shared a color coded handout from the UNC School of Government (SOG) pertaining to Repair of Nonresidential Buildings: NC Local Government Authority. (A copy of the handout is attached to these minutes as information.)

The handout includes information for 1) Regulation/Order, 2) NCGS Authority, 3) Statutory Standards and 5) Recoup Costs. Green stands for good condition but vacant. Yellow means obviously vacant or visible maintenance deficiencies (not dangerous or hazardous.) Red means a building is dangerous or hazardous but can be repaired at a reasonable cost and black & blue conditions mean the building is in need of demolition or removal.

Director Evans stated developing an ordinance would be a two-month process and the City could use the color coded chart to rank its 13 buildings that need to be addressed.

It was the consensus of City Council to move forward with an ordinance. He further stated that two of these building can be repaired. As information, Director Evans mentioned that two homes are set for demolition this week.

Director Evans shared that today is his last day with the City of Lenoir and stated he has enjoyed working with everyone. He will be returning to his job at Mattern and Craig. Mayor Gibbons and everyone wished him well.

- C. Parks & Recreation Advisory Board: The Parks & Recreation Advisory Board met on Monday, October 16. Phil Harper, Parks & Recreation Director presented the following report:

Director Harper reported that Bernhardt Industries donated mulch to the Department and they are in the process of distributing it at the playgrounds. In addition, a concrete wall is being constructed at the Martin Luther King, Jr. Center. Also, an adult soccer area has been installed at Wilson Field. He said people are also enjoying using the pickleball courts and playing ping pong and tennis.

V. FINANCE & ADMINISTRATION

- A. Update; Donna Bean, Finance Director: September Financial Summary: Director Bean reviewed the Financial Summary as of September 30, 2023. The over/under balance in the General Fund is \$10,524,074.50, Downtown District (\$34,556.65) and Water & Sewer Fund \$730,395.90.

A copy of the September Financial Summary is attached to these minutes as information.

Director Bean stated the financials were on track and revenue was where she anticipated it would be.

- B. Personnel Policy Revision; Substance Use: Staff recommends approval to change the guidance in the post-accident testing portion of the Personnel Resolution as submitted. Director Bean explained Staff is recommending changing the word accident to "incident" throughout the document.

A copy of the personnel policy revision is attached to these minutes as information.

Motion

Upon a motion by Councilmember Beal, City Council voted 6 to 0 to adopt the updates to the personnel policy revision for substance use as recommended by Finance Director Bean.

- C. Consideration of Employee Holiday Bonus: Finance Director Bean asked City Council for their consideration of approval of a holiday bonus for City employees this year. Director Bean stated funding would come from former lapsed salaries and insurance and no additional funding is needed from the General Fund. She stated this is the eighth year employees have received a bonus. Employees will receive a \$250.00 bonus check on Wednesday, November 22 following Council's approval. Director Bean remarked the bonus is very much appreciated by employees.

A copy of the holiday bonus request is attached to these minutes as information.

A brief discussion was held by City Council regarding the importance of the City employees and how much they are appreciated.

Motion

Upon a motion by Councilmember Perkins, Council voted to 6 to 0 to approve the holiday bonus of \$250.00 as recommended by Finance Director Bean.

- D. Public Communications: Joshua Harris, Public Information Officer, was not present at the meeting due to currently participating in a course at the UNC School of Government. The communication report for September was included in the agenda packet as information.

VI. Public Safety

- A. Update; Police Department: Andy Wilson, Police Major, referred to the Department's Quarterly Report for July, August & September and stated the numbers were similar to last quarter's information. Major Wilson shared the Department was not currently fully staffed, but they would receive several applicants following their graduation from the Basic Law Enforcement Training (BLET) course.
- B. Update; Fire Department: Norman Staines, Fire Chief, stated the Department's third quarterly report for July, August & September was submitted as information. Chief Staines reported the clock has been ordered for Station No. 1 downtown and mentioned Staff was continuing their training on the new fire truck.

Fire Department Risk Review: Chief Staines said he met with a representative from the North Carolina League of Municipalities (NCLM) and stated the NCLM will be conducting a risk review of the department. Staff will incorporate any recommendations they may suggest.

VII. OTHER

- A. The November calendar was provided in packet as information listing committee meetings and upcoming events.
- B. City Manager Hildebran reviewed the schedule of events City Council will be attending on Friday, October 27.
- C. Councilmembers Ike Perkins and Crissy Thomas informed everyone they are seeking donations of frozen turkeys for the annual Turkey Tuesday event on Tuesday, November 21

beginning at 5:00 p.m. at the Martin Luther King, Jr. Center. Councilman Perkins stated their goal is to give away 400+ turkeys to families in need.

VIII. ADJOURN

A. There being no further business, the meeting was adjourned at 9:58 a.m.

Attachments

N.C.G.S. §160A-193, Abatement of Public Health Nuisances

Repair of Nonresidential Buildings: NC Local Government Authority

September Financial Summary

Bonus Request

Personnel Policy Revision

§ 160A-193. Abatement of public health nuisances.

(a) A city shall have authority to summarily remove, abate, or remedy everything in the city limits, or within one mile thereof, that is dangerous or prejudicial to the public health or public safety. Pursuant to this section, the governing board of a city may order the removal of a swimming pool and its appurtenances upon a finding that the swimming pool or its appurtenances is dangerous or prejudicial to public health or safety. The expense of the action shall be paid by the person in default. If the expense is not paid, it is a lien on the land or premises where the nuisance occurred. A lien established pursuant to this subsection shall have the same priority and be collected as unpaid ad valorem taxes.

(b) The expense of the action is also a lien on any other real property owned by the person in default within the city limits or within one mile of the city limits, except for the person's primary residence. A lien established pursuant to this subsection is inferior to all prior liens and shall be collected as a money judgment. This subsection shall not apply if the person in default can show that the nuisance was created solely by the actions of another.

(c) The authority granted by this section does not authorize the application of a city ordinance banning or otherwise limiting outdoor burning to persons living within one mile of the city, unless the city provides those persons with either (i) trash and yard waste collection services or (ii) access to solid waste dropoff sites on the same basis as city residents. (1917, c. 136, subch. 7, s. 4; C.S., s. 2800; 1971, c. 698, s. 1; 1979, 2nd Sess., c. 1247, s. 20; 2001-448, s. 1; 2002-116, s. 3; 2014-120, s. 24(h).)

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UNC School of Government

Tyler Mulligan

Repair of Nonresidential Buildings: NC Local Government Authority

Regulation / Order	NCGS Authority	Statutory standards	Recoup costs
Green Condition: Good condition but vacant			
 Ordinance could require: Vacant property registration	160A-174 & 153A-121 (General ordinance-making power) 160A-194 & 153A-134 (Regulating businesses)	<u>"detrimental"</u> to the health, safety, or welfare of its citizens and the peace and dignity" of the city/county	- Admin fee - Decriminalized civil penalty (GS 160A-175)
Yellow Condition: Obviously vacant or visible maintenance deficiencies (not dangerous or hazardous)			
 Ordinance could require: - Keep bldg. appearance in good repair - Exhibit no evidence of vacancy Failure to comply, obtain: - Injunction or - Court order of abatement Gov't may effectuate if owner cited for contempt for failing to comply with court order	160A-174 & 153A-121 (General ordinance-making power) 160A-194 & 153A-134 (Regulating businesses) In urban redevelopment area: "program of compulsory repair" and "loans therefor" 160A-503 & 160A-512 via 160D-1311	<u>"detrimental"</u> to the health, safety, or welfare of its citizens and the peace and dignity" of the city/county <i>State v. Jones</i> (1982): <u>"aesthetic"</u> considerations may constitute a valid basis for the exercise of the police power" if public benefit outweighs private harm: "protection of property values" "preservation of the character and integrity of the community" "promotion of the comfort, happiness, and emotional stability of area residents"	- Admin fee - Decriminalized civil penalty (GS 160A-175) - Costs of executing court order are mechanic's lien on property (GS 160A-175)
Red Condition: Building is dangerous or hazardous but can be repaired at reasonable cost			
 May order repair only if: 160D-1129: "dangerous and injurious" bldg. with repair cost <50% bldg. "value" (EXCEPT manuf. & warehousing) 160D-1201: "abandoned structure" that is a "hazard" with repair cost that is "reasonable" as determined by local government	160D-1129 (Nonresidential Buildings) 160D-1201 (Minimum Housing for any "abandoned" structure that is a "hazard") In urban redevelopment area: "program of compulsory repair" and "loans therefor" 160A-503 & 160A-512 via 160D-1311	160D-1129: Repair cost LESS than 50% building value & "standards shall address only conditions that are dangerous and injurious to public health, safety, and welfare and identify circumstances under which a public necessity exists for the repair, closing, or demolition of such buildings or structures." OR 160D-1201: Repair cost is "reasonable" (% defined by local govt per GS 160A-443) for "...any abandoned structure which [is] a health or safety hazard [for enumerated reasons]." 	- Admin fee - Civil penalty authorized under GS 160D-1129 but NOT 160D-1201 - Costs become lien collected as special assessment - Costs also lien on owner's other property within city (but not home)
Black & Blue Condition: Building in need of demolition or removal			
 Ordinance can be enacted "to prevent the demolition by neglect of any designated landmark or any [structure] within an established historic district."	160D-949/950 (Delay in demolition of landmarks and buildings in historic district) 40A-3(b)(8) (Eminent domain)	Governing board may establish standards and requirements but ordinance shall "provide appropriate safeguards to protect property owners from undue economic hardship."	General authority to enforce & effectuate ordinances (same as yellow condition) (GS 160A-175)



**City of Lenoir
Financial Summary
As of 9/30/2023**



General Fund					
	2023-2024 Budget	9/30/2023	% of Budget	Change from Previous Year	9/30/2022
Total Revenue	\$ 22,066,505.00	\$ 15,914,303.05	72%	\$ (331,299.86)	\$ 16,245,602.91
Expenditures	\$ 22,066,505.00	\$ 5,390,228.55	24%	\$ 162,973.87	\$ 5,227,254.68
Over/Under	\$ -	\$ 10,524,074.50		\$ (494,273.73)	\$ 11,018,348.23
Downtown District					
	2023-2024 Budget	9/30/2023	% of Budget	Change from Previous Year	9/30/2022
Revenues	\$ 236,900.00	\$ 19,895.58	8%	\$ 1,595.90	\$ 18,299.68
Expenditures	\$ 236,900.00	\$ 54,452.23	23%	\$ (92,359.31)	\$ 146,811.54
Over/Under	\$ -	\$ (34,556.65)		\$ 93,955.21	\$ (128,511.86)
Water/Sewer Fund					
	2023-2024 Budget	9/30/2023	% of Budget	Change from Previous Year	9/30/2022
Revenues	\$ 10,726,980.00	\$ 2,844,074.25	27%	\$ 78,946.31	\$ 2,765,127.94
Expenditures	\$ 10,726,980.00	\$ 2,113,678.35	20%	\$ 348,329.78	\$ 1,765,348.57
Over/Under	\$ -	\$ 730,395.90		\$ (269,383.47)	\$ 999,779.37

Bonus Request							
Cost of Bonus							
2023							
General Fund				Public Utilities			Total
Full Time Employees to Receive Bonus			215			45	260
Amount of Bonus			\$ 250.00			\$ 250.00	
Cost of Bonuses			\$ 53,750.00			\$ 11,250.00	\$ 65,000.00
FICA & Benefits			\$ 12,174.38			\$ 2,548.13	\$ 14,722.50
Gross Cost of Bonuses			\$ 65,924.38			\$ 13,798.13	\$ 79,722.50
Funding Sources	Employee's Salary	FICA & Benefits	Total to Apply Toward Bonuses	Employee's Salary	FICA & Benefits	Total to Apply Toward Bonuses	Grand Total
Budgeted Funds for Salaries Unused Due to Personnel Changes /Retirements/Lapsed Salaries	\$ 27,033.33	\$ 6,123.05	\$ 33,156.38	\$ 27,612.50	\$ 6,254.23	\$ 33,866.73	\$ 67,023.11
Lapsed Health Insurance			\$ 59,078.00			\$ 7,260.00	\$ 66,338.00
Total To Apply Toward Bonuses			\$ 92,234.38			\$ 41,126.73	\$ 133,361.11
(Additional Funds Needed)/Excess	\$ -	\$ -	\$ 26,310.00	\$ -	\$ -	\$ 27,328.61	\$ 53,638.61
To be distributed on 11-22-23 as a check for active employees as of 11-3-23							

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Human Resources Manager

The Human Resources Manager is responsible for the day-to-day implementation of this policy including employee training as it relates to this policy, obtaining informed consent for testing from all final employment candidates, maintaining related documentation, and for identifying employees covered by The Omnibus Act.

Department Managers

All Department Heads are responsible for insuring that supervisors attend training pertaining to the City's substance policy and adhere to its requirements. Department Managers are also responsible for properly applying this policy and taking disciplinary actions that are necessary.

Employees

All City employees are responsible for knowing and adhering to the requirements of this policy. Employees are also expected to share the responsibility of promoting and maintaining a drug-free work environment. Any employee who knows or strongly suspects that another employee is illegally using, under the influence, or is in possession of prohibited substances shall immediately report the facts and circumstances to the supervisor.

Definitions:

APPLICANT is a person who applies for employment with the City of Lenoir, for initial employment or a transfer or promotional opportunity.

COMMERCIAL DRIVER'S LICENSE (CDL) is a license required to operate a commercial motor vehicle which:

- Has a gross vehicle weight rating of 26,001 or more pounds, or;
- Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating or more than 10,000 pounds
- Is designed to transport 16 or more passengers, including the driver, or
- Requires a HAZMAT placard regardless of vehicle weight

EMPLOYEE is any person employed in a part-time, full-time, or temporary position with the City of Lenoir. Appointed board members and elected officials are excluded.

EMPLOYEE ASSISTANCE PROGRAM (EAP) is a program of services which include assessment, evaluation, counseling, referral, and follow-up procedures provided to City employees.

MEDICAL REVIEW OFFICER (MRO) is a licensed physician with knowledge of drug abuse disorders whose duties include reviewing and interpreting all positive laboratory test results.

OMNIBUS TRANSPORTATION EMPLOYEE TESTING ACT OF 1991 (Omnibus Act) is a federal law that requires alcohol and drug testing for covered employees in transportation industries. Covered employees with the City of Lenoir include those employees who are required to hold a Commercial Driver's License (CDL) to perform their job duties.

ON-DUTY describes an employee who is engaged in activity on behalf of the City of Lenoir and is being compensated by the City of Lenoir for such activity.

SAFETY SENSITIVE FUNCTIONS include the following:

- Driving
- Waiting to be dispatched

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- Inspecting, servicing, or conditioning equipment
- Being in or on unit unless "off duty" in sleeper berth
- Loading, unloading, or supervising such activities
- Preparing or receiving invoices/bills
- Securing/attending a vehicle following an ~~accident~~ incident
- Repairing or attending a disabled vehicle

SUBSTANCE ABUSE PROFESSIONALS (SAP) determine the level of assistance, if any, required for a CDL driver to be eligible to return to duty after certain drug and alcohol violations.

TRAINED SUPERVISORS are those City of Lenoir supervisors who have completed 2 hours of training on alcohol misuse and controlled substances use.

Employees Affected

All City of Lenoir employees, excluding appointed board members and elected officials, are covered by this policy. Special provisions of this policy, where noted, apply only to employees holding a Commercial Driver's License who are covered under the Omnibus Act.

Prohibited Substances

Prohibited substances as addressed by this policy include the following:

1. Illegally Used Controlled Substances

Using any illegal drug, misusing legally prescribed drugs and using illegally obtained prescription drugs is prohibited. Illegal drugs include, but are not limited to, marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine, as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration or the U.S. Food and Drug Administration.

2. Legal Drugs

The appropriate use of prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which adversely affects an employee's ability to perform essential job functions must be reported to supervisory personnel and medical advice must be sought by the employee, as appropriate, before performing work related duties.

3. Alcohol

On-the-job consumption or impairment caused by beverages or other substances such as medications, mouthwash, food, or candy that contain alcohol is prohibited.

Prohibited Conduct

1. Manufacture, Trafficking, Possession, and Use

All employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of prohibited substances. Employees who violate this provision will be subject to disciplinary action. Law enforcement shall be notified, as appropriate, when criminal activity is suspected.

Any employee who is charged with, arrested, or convicted for violating any criminal drug statute shall notify his/her supervisor of such charge, arrest, or conviction as soon as possible. Such notification shall constitute grounds for reasonable suspicion testing as outlined in this policy.

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2. Alcohol Use

No employee shall use or possess alcohol while on duty, shall use alcohol within eight hours of reporting for duty, or shall use alcohol while on call. No employee shall report for duty or remain on duty when his/her breath alcohol concentration (BAC) is 0.02 or greater. No employee required to undergo a ~~post-accident incident~~ test shall use alcohol for eight hours following the ~~accident incident~~, or until he/she undergoes the test, whichever occurs first.

***Note:** Alcohol use prohibitions may be waived for public safety officers when such alcohol use is deemed a bona fide job requirement.*

3. Controlled Substance Use

No employee shall report for duty or remain on duty when the employee uses any controlled substance, except when the use is pursuant to the instructions of a licensed medical practitioner who has advised the employee that such use will not impair the employee's ability to perform essential job functions. No employee shall report for duty or remain on duty if the employee tests positive for controlled substances.

4. Non-Compliance with Testing Requirements

No employee shall refuse to comply with the testing requirements. No employee shall provide false information in connection with a test or falsify test results through tampering, contamination, adulteration, or substitution.

5. Improper Application of the Policy

Failure to use and apply all aspects of this policy in an unbiased and impartial manner is prohibited. Any supervisor who knowingly disregards the requirements of this policy or who is found to deliberately misuse the policy in regard to subordinates shall be subject to disciplinary action.

Testing Requirements

1. Pre-employment

All final candidates for employment with the City of Lenoir, including current employees who apply for other City positions or who transfer into safety sensitive positions, are required to undergo post-offer conditional pre-employment controlled substance testing.

2. ~~Post-accident incident~~ Testing

Under City authority, any employee who is involved in an ~~accident incident~~ involving any motorized and/or energized equipment and resulting in injury or property damage must, as soon as practicable, be transported by a supervisor or their designee to the City's contracted medical testing facility to undergo ~~post-accident incident~~ alcohol and controlled substance testing. Until a negative test result can be confirmed, the employee may continue to work so long as no vehicles or motorized/energized equipment are operated.

If the circumstances surrounding the ~~accident incident~~ cause reasonable suspicion for alcohol or controlled substance abuse, the Reasonable Suspicion Testing guidelines should be followed. After review of this policy, if there are still questions about whether or not a test is necessary, please contact the Human Resources Manager or the Risk Manager for more information.

Omnibus Act Employees

Employees covered under the Omnibus Act are required to undergo ~~post-accident incident~~ testing under federal authority when the ~~accident incident~~ meets the following criteria:

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- (1) involves a fatality,
- (2) results in vehicle damage which requires towing and a citation for a moving traffic violation, or
- (3) results in the need for immediate medical attention away from the ~~accident~~ incident scene and a citation for a moving traffic violation.

Accidents ~~Incidents~~ meeting the federal ~~post-accident~~ incident guidelines must be reported and records must be maintained in accordance with the Omnibus Act.

Time Frame for Testing

Alcohol testing should be performed within two hours of the ~~accident~~ incident, but no longer than eight hours after the ~~accident~~ incident. If the test is not given within two hours, the reason must be documented and maintained.

Controlled substance testing is required within thirty-two hours following the ~~accident~~ incident. If not, the reason must be documented and maintained (49CFR382.303). Employees who are subject to ~~post-accident~~ incident testing shall remain readily available for such testing or will be deemed to have refused to submit to testing. After submitting to testing, employees must return to work as soon as possible or once cleared by medical personnel.

3. Random Testing

Due to the safety-sensitive nature of their job duties, random alcohol and controlled substances testing will be required for employees in the following positions:

- Sworn Law Enforcement Officers
- Telecommunications Officers
- Evidence Technicians
- Firefighters
- Employees covered under the Omnibus Act

The selection of employees for random alcohol and controlled substances testing shall be made by a scientifically valid method for randomness. Under the selection process used, each employee shall have an equal chance of being tested each time selections are made. Once notified, randomly selected employees must immediately report to the City's contracted medical testing facility for testing.

Sworn Law Enforcement Officers, Telecommunications Officers, Evidence Technicians, and Firefighters

Each calendar year, a minimum of 15% of the average number of sworn law enforcement officers, telecommunication officers, evidence technicians, and firefighters will be randomly tested for alcohol and controlled substances.

Omnibus Transportation Employee Testing Act

Each calendar year, employees covered under the Omnibus Act will be randomly tested for alcohol and controlled substances at a rate established by the Omnibus Act. These required rates are published annually by the US Department of Transportation.

Random alcohol testing is only authorized under the Omnibus Act during, just preceding, or just after an employee performs safety-sensitive functions.

ARTICLE IX. UNSATISFACTORY JOB PERFORMANCE AND DETRIMENTAL PERSONAL CONDUCT

Section 1. Disciplinary Action for Unsatisfactory Job Performance

A regular employee may be placed on disciplinary suspension, demoted, or dismissed for unsatisfactory job performance, if after following the procedure outlined below, the employee's job performance is still deemed to be unsatisfactory. All cases of disciplinary suspension, demotion, or dismissal must be approved by the City Manager prior to giving final notice to the employee.

Section 2. Unsatisfactory Job Performance Defined

Unsatisfactory job performance includes any aspects of the employee's job which are not performed as required to meet the standards set by the Department Head or City Manager.

Examples of unsatisfactory job performance include, but are not limited to, the following:

- 1) Demonstrated inefficiency, negligence, or incompetence in the performance of duties;
- 2) Careless, negligent or improper use of City property or equipment;
- 3) Physical or mental incapacity to perform duties after reasonable accommodation;
- 4) Discourteous treatment of the public or other employees;
- 5) Absence without approved leave;
- 6) Improper use of leave privileges;
- 7) Failure to report for duty at the assigned time and place;
- 8) Failure to complete work within time frames established in work plan or work standards;
- 9) Failure to meet work standards over a period of time; or
- 10) Failure to follow the chain of command to address work-related issues.

Section 3. Communication and Warning Procedures Preceding Disciplinary Action for Unsatisfactory Job Performance

When an employee's job performance is unsatisfactory, or when ~~accidents~~ incidents or inappropriate actions warrant, the supervisor shall meet with the employee as soon as possible in one or more counseling sessions to discuss specific performance problems. A brief summary of these counseling sessions shall be noted in the employee's file by the supervisor.

An employee whose job performance is unsatisfactory over a period of time should normally receive at least two documented warnings, one of which may be in the final written warning, from the supervisor before disciplinary action resulting in dismissal is taken by the City Manager. In each case, the supervisor should record the dates of discussions with the employee, the performance deficiencies discussed, the corrective actions recommended, and the time limits set. If the employee's performance