

# PERSONNEL RULES & REGULATIONS MANUAL

## SECTION 1100 EMPLOYEE CONDUCT

### Section 1101. City Identification & Security Standards

#### 1101.1 Purpose

To enhance the City's mission of providing high quality public service; to provide standards and requirements for the issuance and display of identification; to provide a consistent method of identification; to provide an additional means of establishing a safe workplace for employees; to provide a safe environment for the public to conduct business.

#### 1101.2 Scope

This policy applies to all employees of the City of Gaithersburg while on City property and/or while conducting City business in the community; and to all visitors to City facilities or properties.

#### 1101.3 Exceptions

Exceptions to this policy may be requested in writing by the Department Head and must be approved by the City Manager or his/her designee.

#### 1101.4 Policy

It is the policy of the City of Gaithersburg that employees and the public be provided with the highest quality public service in the safest possible environment while conducting business. All persons working or conducting business on City property and/or in the community will adhere to these identification and security standards.

#### 1101.5 Procedure

##### a. Employee Identification Badge

##### 1. Issuance

(a) The Human Resources Department will issue employee identification badges to all incumbent employees upon initial implementation of this policy (2009). Following policy implementation, new employees will be issued an identification badge on or about the employee's hire date.

(b) Badges are the property of the City of Gaithersburg; and employees are responsible for safeguarding the badge issued to them at all times.

(c) Employees may not loan their badge to any other person nor shall they attempt to use an identification badge not assigned to them for any purpose.

(d) Identification badges of all City employees may be updated/reissued on regular intervals as determined by the City Manager or his/her designee.

(e) The Human Resources Department will maintain a master list of all employees to whom identification badges are issued.

##### 2. Display

(a) All City employees (as outlined in this policy) must be prepared to present their identification badge upon request at all times. Employees are encouraged to wear their identification badges while on City property or in a City facility, and/or while conducting City business in the community, except when wearing the identification badge presents a safety issue due to the nature of the work being performed.

(b) The Department Head has the authority to require some or all employees in his/her Department to wear their identification badges while on City property, in a City facility, and/or while conducting City business in the community. Any employee required to wear his/her identification badge shall be notified in writing by the Department Head; notification shall include guidelines indicating when the badge is required to be worn.

(c) When wearing the identification badge it should be worn in a location of the employee's choosing, preferably at waist level or above so the employee identification photo side of the badge is clearly visible to others at all times. The City will provide a clip or lanyard for each employee to wear the identification badge.

(d) The identification badge must be kept free of decoration and may not be defaced or altered with pins, stickers, decals, etc.

### 3. **Replacement**

#### (a) **Temporary Replacement**

(1) An employee who reports to work without his/her identification badge must immediately advise his/her supervisor or Department Head and request issuance of a temporary identification badge.

(2) The temporary identification badge will be issued by the Director of Human Resources or his/her designee. The badge will be date-stamped and issued for no more than two consecutive business days.

(3) The employee must produce his/her permanent identification badge prior to the expiration of the temporary badge and return the temporary badge to the Director of Human Resources or his/her designee.

(4) If the employee cannot produce his/her permanent identification badge prior to the expiration of the temporary badge, he/she must follow the procedure to replace the badge as outlined in subsection (b).

(5) An employee who requests a temporary replacement identification badge more than two (2) times in a calendar year may be subject to disciplinary action.

#### (b) **Replacement of Lost/Stolen/Destroyed Badge**

(1) An employee whose identification badge is lost, stolen, or destroyed must advise his/her supervisor or Department Head as soon as he/she becomes aware of the loss.

(2) An employee will be allowed one (1) free replacement within any 36 month period. Thereafter, the employee will be charged \$10.00 for a replacement identification badge and \$5.00 for a clip or lanyard. There will be no charge for issuance of a new badge due to name change or department transfer.

(3) The employee must contact the Human Resources Department to schedule an appointment to have his/her identification badge replaced.

### 4. **Surrender**

(a) Each Department is responsible for ensuring that, as part of the employee employment separation procedure, the identification badge is collected prior to the issuance of a final paycheck.

(b) The Department Head or his/her designee shall collect the identification badge and clip/lanyard from an employee separating from City service and immediately forward them to the Human Resources Department. The identification badge must be surrendered if:

(1) The employee is permanently separating from City service, voluntarily or involuntarily.

(2) The employee is suspended or placed on leave due to disciplinary action.

(3) The employee is on a voluntary or involuntary extended period of absence or leave (more than 30 days), paid or unpaid; except the badge need not be surrendered if the employee's absence is due to family medical leave, professional or military training, or jury service.

5. **Disciplinary Action/Penalties**

(a) Improper use of an employee identification badge, or failure to comply with this policy, will result in disciplinary action as set forth in the City's Personnel Ordinance.

(b) Failure to surrender the employee identification badge at the time of separation or other absence as set forth in this policy will result in a \$250 fine to be deducted from the employee's paycheck or other legal action as deemed appropriate.

b. **Security Access Rights**

Department Heads will designate those employees who are granted security access rights and therefore authorized to use their identification badge to enter or access City facilities or secure work areas. Designation will be based on need (for example, employees responsible for opening facility, employees who work outside a facility's normal hours of operation, etc.).

c. **Unauthorized Persons**

An employee who observes any unauthorized individual (employee or visitor) in a secure work area should, at their discretion:

1. Immediately report the person to a supervisor or Department Head; or

2. Initiate a request for emergency assistance (9-1-1).

**Section 1102. Discrimination and Harassment**

**1102.1 Purpose**

The City of Gaithersburg is committed to providing a work environment in which all individuals are treated with respect and dignity. The City believes that all employees are entitled to a workplace free of discrimination and harassment, including sexual harassment; and expects employees to treat each other and its customers with courtesy and respect. No person should be required to endure discrimination or harassment by supervisors or coworkers or work in a hostile environment as a condition of employment.

The purpose of this policy is to make it clear that the City strictly prohibits any form of unlawful discrimination or harassment in the workplace and to establish procedures for reporting behavior prohibited by the law and this policy.

**1102.2 Policy**

Unlawful discrimination/harassment undermines the integrity of the employment relationship, compromises equal employment opportunity, debilitates morale, and interferes with work productivity. The City does not tolerate any form of unlawful discrimination or harassment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities in City employment, City operated programs, services or facilities.

### **1102.3 Applicability**

This policy applies to all employees of the City of Gaithersburg. Conduct prohibited by this policy is unacceptable in the workplace and in any location that can be reasonably regarded as an extension of the workplace, including but not limited to business trips, any off-site business-related social function, or any facility where City business is being conducted and discussed.

### **1102.4 Examples of Prohibited Conduct**

Discrimination and harassment may take many forms, including but not limited to:

a. **Discrimination**

Personnel decisions based on stereotypes or assumptions about the abilities, traits, or performance of individuals on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities; denying employment opportunities to a person because of marriage to, or association with, an individual on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities.

b. **Verbal Harassment**

Use of epithets, innuendos, threats, derogatory comments or references, slurs or jokes, gestures, pranks, teasing, or other banter, including negative stereotyping, on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities. Verbal harassment may also include sexual remarks or well-intentioned compliments about a person's clothing, body, or sexual activities.

c. **Physical Harassment**

Assault, unwelcome or hostile touching or contact, intimidation, impeding or blocking movement, and/or any physical interference with normal work or movement when directed at an individual on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities.

d. **Visual Forms of Harassment**

Displaying or distributing written or graphic material in the workplace that is derogatory, demeaning, or displays hostility on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities, including but not limited to jokes, posters, notices, bulletins, magazines, cartoons, drawings, advertisements, videos, Internet sites, or other electronic media.

e. **Sexual Favors**

Unwelcome sexual advances, expectations, propositions, requests, demands, or pressure for sexual favors, and other verbal or physical conduct of a sexual nature which are implicitly or explicitly a term or condition of an employee's employment, are used as the basis of employment decisions, or affect or interfere with the employee's work performance.

f. **Hostile Environment**

Conduct including the above-referenced behavior(s) that has the purpose or effect of creating an intimidating, hostile, or offensive work environment on the basis of race, religion, sex, sexual orientation, gender identity, color, ancestry, serious medical condition, national origin, age, disability, marital or parental status, political opinions or affiliations, or lawful employee organization activities.

## **1102.5 Responsibilities and Expectations**

### **a. City Manager**

The City Manager shall be responsible for assigning responsibility and accountability for implementation of the City's discrimination and harassment policy and procedures. He/She shall take all steps necessary to set a positive example and to support and encourage actions and attitudes in the organization that prevent discrimination and harassment from occurring. He/She shall direct the investigation and respond to all complaints involving Department Heads, the Assistant City Manager(s), the City Attorney, and the Director of Human Resources.

### **b. Director of Human Resources**

The Director of Human Resources shall be responsible for ensuring that all complaints of discrimination and harassment are investigated thoroughly and are responded to in a timely fashion. He/She shall direct the investigation and respond to all complaints involving City employees except as indicated in subsection (a) of this section.

The Director of Human Resources shall assist, advise, or consult with employees, supervisors, and Department Heads regarding the harassment and discrimination policy, complaint procedures, and incidents.

### **c. Department Heads and Supervisors**

Department Heads and Supervisors are responsible for enforcing this policy and expected to take all steps necessary to set a positive example, prevent discrimination/harassment from occurring, and maintain a productive, non-hostile and non-discriminatory work environment.

Department Heads/Supervisors are expected to take all allegations of discrimination or harassment, including sexual harassment, seriously. Any Department Head or Supervisor who is aware of discrimination and/or harassment in the workplace and condones it by action or inaction or fails to report or investigate it will be subject to disciplinary action and may become legally liable.

Department Heads/Supervisors shall assist, advise, or consult with employees and the Director of Human Resources regarding the harassment policy, complaint procedures, and incidents and shall assist in the investigation of complaints involving employee(s) in their departments. If a complaint is substantiated, the Department Head/Supervisor shall take appropriate corrective or disciplinary action.

### **d. Employees**

Employees are expected to treat each other with respect and consideration and shall not engage in actions or behaviors that violate or encourage violation of the City's discrimination and harassment policy.

Prompt, appropriate, direct action must be taken to stop incidents of discrimination or harassment. In some situations, a person may not realize that his/her behavior is unwelcome and/or offensive. Therefore, an offended employee is encouraged to clearly tell the offending individual that the behavior is unwelcome, offensive, and/or inappropriate and request that the conduct stop immediately. However, such action by the offended employee is not required prior to reporting the incident(s) or initiating a complaint.

An employee who believes that he/she has been subjected to any form of prohibited discrimination/harassment, or who witnesses another individual or group of individuals being subjected to such discrimination or harassment, is strongly encouraged to promptly report the incident(s) to a non-involved supervisor, Department Head, Director of Human Resources, or City Manager, and/or file a complaint. Prompt action will help ensure that the problem is identified, investigated, and resolved as expediently as possible.

Employees are expected to fully cooperate with investigations of discrimination and harassment incident(s). Failure to cooperate in an investigation may result in disciplinary action.

### **1102.6 Complaint Process**

An employee who feels that he/she has been a victim of discrimination or harassment may make a complaint, without fear of retaliation, according to procedures set forth in the City's Grievance Procedures. The complaint will be investigated promptly and thoroughly according to the guidelines of that policy; and if found to have merit, immediate steps will be taken to end the discrimination or harassment and appropriate disciplinary action will be taken.

### **1102.7 Prohibition Against Retaliation**

Retaliation against any employee who alleges that he/she was the victim of discrimination and/or harassment or against any employee who provides information in the course of an investigation into claims of unlawful discrimination/harassment in the workplace is prohibited by this policy. Any employee bringing a complaint, providing information for an investigation, or testifying in any proceeding under this policy will not be subject to adverse employment consequences based upon such involvement or be the subject of retaliation.

Retaliation in any form against a complainant who exercises his/her right to make a complaint under this policy is strictly prohibited, and will itself be cause for appropriate disciplinary action. In addition, the failure by a department head or supervisor to promptly initiate disciplinary action after having been directed to do so by the City Manager or Director of Human Resources will also be cause for appropriate disciplinary action.

### **1102.8 False Accusations and Information**

Any employee who knowingly makes a false accusation of unlawful discrimination or harassment, or who knowingly provides false information in the course of an investigation of a complaint, may be subject to disciplinary action.

### **1102.9 Confidentiality**

All complaints and investigations shall be handled, to the extent possible, in a manner that will protect the privacy interests of those involved; however, confidentiality cannot be guaranteed.

### **1102.10 Training**

The City will provide information and training to all employees regarding the discrimination and harassment policy, prevention of unlawful discrimination and harassment, and the procedure to be followed in filing complaints when unlawful discrimination/harassment has allegedly occurred. Training will be provided during the orientation process at the time of hire and at other regular intervals as determined by the City Manager and Director of Human Resources.

Department Heads, supervisors, and other managerial staff will periodically receive specialized training to assist them in creating an environment of respect in the workplace and in recognizing, responding to, and resolving complaints of unlawful discrimination and harassment. New Department Heads, supervisors, or managers will receive specialized training within 60 days of their appointment.

All employees shall sign an acknowledgment as evidence of training after completing each training session.

## **Section 1103. Drug-Free Workplace – Drug & Alcohol Testing Procedures**

### **1103.1 Purpose and Goal**

The City of Gaithersburg is committed to protecting the safety, health, and well being of all employees and individuals in the workplace. The City recognizes that alcohol abuse and drug use pose a significant threat to the City's goals. The City has established a drug-free workplace program that balances the respect for individuals with the need to maintain an alcohol- and drug-free environment.

### **1103.2 Applicability**

Any individual who conducts business for the City, is applying for a position, or is conducting business on the City's property is covered by the drug-free workplace policy. The policy applies during all

working hours, whenever conducting business or representing the City, including while on call or on standby status.

### **1103.3 Prohibited Behavior**

It is a violation of the drug-free workplace policy to use, possess, or sell, except as required by an individual's job duties, or trade, alcohol, illegal drugs, or intoxicants.

### **1103.4 Drug and Alcohol Testing**

Each employee, as a condition of employment, will be required to participate in pre-employment, post-accident, reasonable suspicion, return-to-duty and follow-up testing upon selection or request of management. Safety sensitive employees, as defined in this policy, shall also be required to participate in random testing.

To ensure the accuracy and fairness of the testing program, all testing will be conducted according to Department of Health & Human Services (DHHS)/Substance Abuse and Mental Health Services Administration (SAMHSA) guidelines where applicable and will include a screening test; a confirmation test; the opportunity for a split sample; review by a Medical Review Officer, including the opportunity for employees who test positive to provide a legitimate medical explanation, such as a physician's prescription, for the positive result; and a documented chain of custody.

Any employee who tests positive will be immediately removed from duty and will be placed on administrative leave without pay for the remainder of the day.

An employee will be subject to the same consequences of a positive under the influence test if he/she refuses the screening or the test, adulterates or dilutes the specimen, substitutes the specimen with that from another person or sends an imposter, will not sign the required forms or refuses to cooperate in the testing process in such a way that prevents completion of the test.

All drug testing information will be maintained in separate confidential records. All information received by the City through the drug-free workplace program is confidential communication. Access to this information is limited to those who have a legitimate need to know in compliance with relevant laws and management policies.

### **1103.5 Substances to be Tested For**

When drug and alcohol screening is required under the provisions of the policy, a urinalysis test and evidential breath test will be given to detect the presence of the following substances:

- a. Alcohol (ethyl)
- b. Amphetamines (e.g., speed)
- c. Barbiturates (e.g., Amobarbital, Butobarbital, Phenobarbital, Secobarbital)
- d. Benzodiazepines
- e. Cocaine or cocaine metabolite
- f. Opiates (e.g., Codeine, Heroin, Morphine, Hydromorphone, Hydrocodone)
- g. Phencyclidine (PCP)
- h. THC (Marijuana)

### **1103.6 Reasons for Testing**

#### **a. Job Applicant Testing: General Standard**

All job applicants will be required to undergo a drug and alcohol test as part of a pre-placement physical examination prior to their final appointment. Failure to successfully pass this test shall constitute reasonable cause for elimination of that individual from any further consideration for employment.

#### **b. Employee Testing: Reasonable Suspicion**

In order to maintain a safe, secure, and productive environment for employees, the City may require a current employee to undergo drug and alcohol testing if there is reasonable suspicion that the

employee is under the influence of drugs or alcohol during work hours, or when the employee is acting in any capacity in which the employee may be representing the City. Circumstances which constitute a basis for determining reasonable suspicion may include, but are not limited to:

1. Specific, personal observation by employee's supervisor, division head, or Department Head concerning employee's job performance including but not limited to: increased tardiness or absenteeism, increased mistakes, missing deadlines, undependability, lying, overreacting to criticism, performance far below job expectations.

2. Specific, personal observation by employee's coworker, supervisor, Department Head, or other reliable and credible source of:

(a) Abnormal, erratic, unusual, or uncharacteristic behavior, including but not limited to: nervous, sleepy, confused, excited, fatigued, insulting, aggressive, belligerent, exaggerated politeness, combative, quarrelsome, uncooperative, and/or overly talkative.

(b) Physical symptoms of drug and/or alcohol use, including but not limited to: glassy, bloodshot, or watery eyes; breath or body odors; slurred, rambling, thick, or slow speech; unusual sweating, crying, tremors, or quick/erratic movements; poor coordination and/or reflexes such as stumbling, falling, staggering or needing support.

3. Direct observation of drug or alcohol use.

The supervisor of an employee suspected of being impaired by drugs or alcohol will immediately convene a meeting with the suspected employee to question the employee on his/her behavior. The supervisor with concurrence of his/her Department Head will then make a determination as to whether the employee is to return to the worksite or should be referred to the City's Director of Human Resources, the Department Head, or the City Manager for further assessment and/or testing.

An employee suspected or determined to be under the influence of alcohol or drugs will be provided transportation to and from the testing facility. Additional arrangements will be made to ensure the employee's safety and well being, if deemed necessary.

Supervisors are required to detail in writing the special facts, symptoms, or observations which formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. Copies of this documentation shall be forwarded to the appropriate Department Head and to the Director of Human Resources. The facts underlying the determination of reasonable suspicion should be disclosed to the employee at the time the determination to refer the employee to testing is made.

c. **Employee Testing: Random**

The following employees who are in safety sensitive positions which could endanger public health, safety, and welfare will be subject to random drug and alcohol testing:

1. Employees who are required to operate City vehicles or heavy machinery and/or whose class specification indicates that they are required to maintain a valid driver's license.

2. Employees who are sworn police officers.

3. Employees to whom a City vehicle has been assigned.

4. Employees who receive, process, prepare and/or distribute cash or checks or handle credit card transactions as an essential part of their position.

5. Employees who work with children or youth.

6. The City Manager, City Attorney, Assistant City Managers, and Department Heads of all Departments established by the City Manager.

An employee who moves into a safety sensitive position from a position that is not safety sensitive will be notified in writing by the Department Head that he/she is subject to random drug and alcohol testing. No random testing will take place until at least 30 days after the employee receives the written notification.

The random selection process will take place as follows:

1. Each employee subject to testing will be assigned a number.
2. These numbers will be entered into a random selection.
3. The employee whose number is selected will be subject to random drug testing.
4. If the employee selected is absent from work, or if the Department Head does not send the employee for testing on the scheduled day, the employee will be rescheduled for testing at a later date.
5. If the test is cancelled by either the testing laboratory or the employer, the employee selected for testing will be placed back into the selection pool.

d. **Employee Testing: CDL**

This policy is required by the Omnibus Transportation Employee Testing Act of 1991 and the regulations promulgated thereto. (49 CFR Part 382) (the "federal regulations").

Effective January 1, 1995, the Department of Transportation (DOT) requires all employees that hold a CDL and could potentially drive a vehicle requiring a CDL be subjected to the DOT Drug and Alcohol Testing Regulations. This will include all employees while they are or could be expected to operate and inspect, service, attend, load, or unload a commercial vehicle. All City of Gaithersburg CDL required positions shall comply with the DOT testing regulations, which include testing 50 percent of CDL license holders per year.

e. **Employee Testing: Post-Accident**

Post-accident drug and alcohol testing will be conducted on an employee involved in an on-the-job accident (vehicular or otherwise) where the performance of the employee could have contributed to the accident as follows:

1. **Post-Accident: Vehicle**

The driver or operator of any City-owned or leased vehicle or other motorized equipment involved in an accident.

2. **Post-Accident: Non-Vehicle**

Any employee whose performance either contributed to any accident or injury or whose performance cannot be completely discounted as a contributing factor to an accident.

An employee failing to report an accident to his/her supervisor as soon as reasonably possible following the accident may be subject to disciplinary action.

Post-accident drug and alcohol testing should be administered as soon as possible following the accident. The employee's supervisor or Department Head will arrange for transporting the employee to the collection site. Nothing in this policy shall be construed to require the delay of necessary medical attention for injured people following an accident.

The alcohol test should be administered within two (2) hours, but no more than eight (8) hours, following the accident; and the drug test should be administered no later than thirty-two (32) hours following the accident. If the tests cannot be performed within the specified time frame, the reasons for failure to test should be documented by the supervisor or Department Head and given to the Director of Human Resources.

No employee required to take a post accident alcohol test shall use alcohol for eight hours following the accident or until the alcohol test has been performed, whichever occurs first. A driver who is subject to post-accident testing shall remain readily available for the testing or shall be deemed by the City as having refused to submit to testing. An employee who refuses to be tested or avoids meeting the specified time limits will be considered as having a positive test result and will be subject to disciplinary action.

In the event that federal, state, or local officials conduct breath or blood tests for the use of alcohol and/or urine tests for the use of controlled substances following an accident, the City may request testing documentation from such agencies, and may require the employee to sign a release allowing the City to obtain such test results.

If the driver is so seriously injured that he/she cannot provide a sample of urine, breath, or saliva at the time of the accident, the City may require the driver to provide authorization for the City to obtain hospital records or other documents that would indicate the presence of controlled substances or alcohol in the driver's system at the time of the accident.

#### **1103.7 Testing Procedure – Employee Random & CDL**

Department Heads will be notified by confidential memo of those employees selected for testing. The memo will include the name of the employee(s) selected for testing, the date the test is to be done, directions to the testing site, and the test forms the employee will need to take with him/her to the testing site.

On the scheduled testing day, the Department Head will notify the employee he/she has been selected to be tested and instruct the employee to report to the testing facility within one hour following receipt of notification. The Department Head may send the employee for testing at any time during the employee's work day/shift; however, the employee should be sent for testing as early in the work day/shift as possible. If the employee selected is absent from work or if the department head does not send the employee for testing on the scheduled testing day, the employee will be rescheduled for testing at a later date. Refusal to take the test on the scheduled day may result in disciplinary action up to and including dismissal.

#### **1103.8 Prohibitions for Alcohol**

A driver may not report for duty or stay on safety sensitive duty if they:

- a. Have used alcohol in the past four (4) hours;
- b. Have an alcohol concentration of 0.02 or greater.

Employees are prohibited from using or being in possession of alcohol while on the job (unless it is being transported in cargo).

#### **1103.9 Prohibitions for Controlled Substances/Drugs**

Drivers who use drugs are considered medically unqualified to drive. A driver may not report for duty or stay on safety sensitive duty if they:

- a. Have used any controlled substance. The exception to this rule would be if a physician has prescribed the substance and has advised the driver that it does not interfere with the ability to safely operate a motor vehicle. In this case, the employee must notify his/her supervisor that he/she has such

a prescription and provide written proof that the physician will allow the employee to perform his/her duties at work.

- b. Have tested positive for a controlled substance.

### **1103.10 Alcohol Testing**

The process for alcohol testing must meet the standards set by the National Highway Traffic Safety Administration. Regulations require that an Evidential Breath Test (EBT) device be used for alcohol testing. The test must be administered by a Breath Alcohol Technician (BAT). The procedure will be as follows:

- a. The test will be done in an area that provides privacy and prevents unauthorized personnel from seeing or hearing the test results.
- b. The employee tested must provide approved picture identification (i.e., driver's license) to the BAT, and if requested, the BAT must provide identification to the employee.
- c. The federally approved Breath Alcohol Testing Form will be used. Refusal to sign the form will have the same result as the refusal to test.
- d. The test involves having the employee blow into the mouthpiece of the EBT for at least six seconds, or until an adequate amount of breath is obtained for testing.
- e. The BAT must show the employee the test results from the EBT. The results will then be given to the employer in a confidential manner.
- f. If the employee refuses to be tested or refuses to sign the form, the BAT will note this and notify the employer immediately. Refusal to test will have the same result as a positive test.
- g. If the employee is unable or states that he/she is unable to test, then:
  - 1. The BAT will make a second attempt to test.
  - 2. If the second attempt is unsuccessful, the BAT will note that a second attempt was made and then notify the employer immediately and
    - (a) The employer will require the employee to be evaluated by a physician (selected by the employer) concerning the medical ability for the employee to take the test;
    - (b) If the physician determines that the employee has a medical condition that will prevent the employee from testing, the physician will provide the employer with a written statement to that effect. The result cannot be regarded as a refusal to test.
  - 3. If the physician determines that there is no medical condition that would prevent the employee from testing, the results will have the same result as a refusal to take the test.

### **1103.11 Drug Testing**

Drug testing will be done by analyzing an employee's urine sample. This analysis will be done at a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the Department of Health and Human Services (DHHS). The procedure will be as follows:

- a. Urine collection will be done in a location that provides privacy to the employee. The sample will be split into two separate containers, sealed, labeled, and sent to the drug testing laboratory. One sample will be tested and the second sample will be saved for future use as a confirmation test, if needed. Refusal to submit to a urine test will have the same results as testing positive.

b. A screening test will be performed on the primary sample. If this test is positive, a confirmation test will be performed for each drug identified in the screening test.

c. A medical review officer (MRO) will examine the test results. If the primary test sample is positive, the MRO will make reasonable effort to contact the employee to report the positive result and to determine if there is a medical reason for the positive test result. If the employee can document why the test result is positive, and if the MRO finds it is a legitimate medical use, the test may be reported as negative to the employer.

d. Upon notification of a positive test, the employee then has 72 hours to request a test of the second split sample. If so requested, the MRO will direct the laboratory, in writing, to send the split specimen to another DHHS-certified laboratory for the confirmation test.

e. If the analysis of the split sample or reanalysis of the first sample does not confirm the presence of a drug, the MRO will cancel the results of prior tests and report this to the employer and the employee.

f. The MRO will interpret all drug tests and give the results to the employer by any confidential means of communication. Within three days, the MRO will follow up with a signed written notification of the test results.

g. The MRO must show the employee the results from the test. The results will then be given to the employer in a confidential manner.

h. If the employee refuses to be tested or refuses to sign the form, the MRO will note this and notify the employer immediately. Refusal to test will have the same result as a positive test.

### **1103.12 Confirmation of Test Results**

The split sample of an employee or job applicant whose primary drug test yields a positive result will be tested to confirm the positive test results. An employee or job applicant whose primary alcohol test yields a positive result shall be given a second test. If the results from the initial test are different than the confirmation test, the confirmation test results will be used.

### **1103.13 Consequences of a Confirmed Positive Test Result**

One of the goals of the drug-free workplace program is to encourage employees to voluntarily seek help with alcohol and/or drug problems. If, however, an individual violates the policy, the consequences are serious.

#### **a. Applicants**

Job applicants will be denied employment with the City if their initial positive drug test results have been confirmed. Applicants shall be informed in writing by the City if they are rejected on the basis of confirmed positive drug test results.

#### **b. Probationary & Part-Time Employees**

If a probationary or part-time employee's positive test result has been confirmed, the City may dismiss the employee or at the City's sole discretion, may refer probationary or part-time employee to mandatory participation in an approved counseling program. Any probationary or part-time employee referred to such a program will be subject to the same participation and retesting requirements as stated for classified employees and unclassified management employees, below.

#### **c. Classified Employees and Unclassified Management Employees**

If an employee's positive test result has been confirmed, the employee is subject to mandatory participation in an approved substance abuse counseling program. Any employee participating in such a counseling program will retain his or her position of employment with the City unless (1) the City learned of the positive test result as a consequence of a motor vehicle or work related accident or (2) an employee has had a prior positive test result. If condition (1) or (2) is applicable, the

City reserves the right to dismiss the employee. In addition, the City reserves the right to take any other disciplinary action including, but not limited to, suspension and/or demotion. If additional tests result in a confirmed positive test, the employee is subject to immediate dismissal. An employee required to have rehabilitation requiring lost time from work will be required to use (in this order) accumulated annual leave, compensatory leave, and sick leave during this absence. Participation in the substance abuse program will be monitored by the Director of Human Resources. All information regarding treatment will be held in the strictest confidence.

Follow-up testing will be unannounced, and at least six (6) tests must be conducted in the first 12 months once an individual tests positive. Follow-up testing may be extended for up to 60 months following return to duty. Subsequent positive tests will result in disciplinary action up to and including dismissal. Factors to be considered in determining the appropriate disciplinary response include the employee's work history, length of employment, current job performance, and the existence of past disciplinary actions. For all sworn police officers, any disciplinary action shall be conducted in accordance with the Law Enforcement Officer's Bill of Rights.

#### **1103.14 Appeals**

If disciplinary action is taken because of a positive test result, an eligible employee may file a grievance as set forth in Section 1700, Grievance Procedures.

#### **1103.15 Mandatory Referral to an Approved Counseling Program**

The City of Gaithersburg recognizes that alcohol and drug abuse and addiction are treatable illnesses. The City also realizes that early intervention and support improve the success of rehabilitation.

To support City employees, upon the first confirmed determination that an employee has a positive test for under the influence of drugs or alcohol, the City shall refer the employee to an approved counseling program for assessment, counseling, and rehabilitation unless the employee's drug or alcohol use has resulted in an accident serious enough to warrant dismissal. Participation in this counseling program is mandatory. Refusal to participate in mandatory counseling will result in disciplinary action up to and including dismissal. Disciplinary action based on a violation of the City's drug and alcohol policy is not automatically suspended by an employee's participation in an approved counseling program and may be imposed when warranted.

Voluntary participation in an approved counseling program prior to an under the influence confirmed test result is encouraged. An employee seeking participation in such a program shall contact the Director of Human Resources who shall coordinate and oversee the participation. Any such contact will be held in the strictest of confidence by the Director of Human Resources. No disciplinary action will be brought as a result of volunteering to participate in such a program. Employees who, prior to an under the influence test result, voluntarily identify themselves as drug or alcohol users and obtain counseling and rehabilitation through an approved counseling program shall not be disciplined for their drug and/or alcohol use if they thereafter refrain from violating the City's policy on drug and alcohol abuse. All employees, however, can be disciplined for any incidents resulting from their violation of the City's policy and drug and alcohol abuse or violation of the work rules. The Director of Human Resources will provide information about approved employee counseling services, if requested by a City employee.

#### **1103.16 Return to Duty and Follow-Up Testing**

Following evaluation and treatment, if any in order to return-to-duty, the employee must submit to and successfully complete follow-up testing. Follow-up testing is separate from and in addition to the City's reasonable suspicion, post-accident, and random testing procedures. The schedule for follow-up testing shall be unannounced and in accordance with the instructions described above.

#### **1103.17 Confidentiality of Test Results**

All information from an employee's or applicant's drug and alcohol test is confidential and only those with a need to know are to be informed of test results. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the employee or applicant. Any person who inappropriately discloses confidential information is subject to disciplinary

action up to and including termination. The results of positive drug tests shall not be released until the results are confirmed. The records of unconfirmed positive test results and negative test results shall be destroyed by the testing laboratory.

### **1103.18 Supervisor Training**

Supervisory personnel shall be trained in identifying drug and alcohol use among employees. The purpose of this training will be to help supervisors recognize the conduct and behavior giving rise to a reasonable suspicion of drug or alcohol use; identify employees who need counseling and employee assistance programs; be aware of those employees who pose an immediate safety threat; communicate City policy on drug and alcohol use; indicate available employee assistance resources; understand how they can deal with an employee suspected of drug or alcohol use; and communicate and take appropriate disciplinary action.

This training will consist of at least 60 minutes on recognizing alcohol misuse, and at least 60 minutes on recognizing controlled substances use. The training shall cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances.

### **1103.19 Employee Education**

The City will conduct education/outreach of employees via:

- a. Discussion groups on drug abuse/City policy;
- b. Videotapes/pamphlets on drugs in the workplace;
- c. Communication of available employee assistance;
- d. Communication of available health benefits for drug/alcohol treatment.

### **1103.20 Prior Notice of Testing Policy**

The City will provide written notice of its drug and alcohol testing policy to all employees. No testing will take place until at least 30 days after notice of the existence of this policy.

### **1103.21 Consent**

Compliance with the City's Drug and Alcohol Testing Policy is a prerequisite to employment and a condition of continued employment for all City staff positions.

Before a drug and alcohol test is administered, job applicants will be asked to sign a consent form authorizing the test and permitting release of test results to those municipal officials with a need to know. Those municipal officials with a need to know include the City Manager, Assistant City Manager, City Attorney, Director of Human Resources, and the employee's Department Head. The consent form shall provide space for employees and applicants to acknowledge that they have been notified of the City's drug testing policy. Employees and applicants may at the time of the test provide the Medical Review Officer a list of those medications that have been recently used. The list of medications, if provided, shall be sealed and held as confidential until there has been a positive test result. In the event of a confirmed positive test result, the list of medications shall only be disclosed to the Medical Review Officer who will determine whether the positive result was due to the lawful use of any of the listed medications. Also, employees and applicants may choose to provide to their supervisor or the Director of Human Resources such a list after being notified of a confirmed positive result. The Director of Human Resources will then provide this list to the Medical Review Officer.

#### **a. Refusal to Consent: Applicants**

A job applicant who refuses to consent to a drug and alcohol test will be denied employment with the City.

#### **b. Refusal to Consent: Employees**

An employee who refuses to consent to a drug and alcohol test is subject to disciplinary action up to and including dismissal. An employee, upon written request to the appropriate Department Head within three (3) days of his/her refusal, shall be entitled to a hearing prior to the City's decision that such refusal warrants disciplinary action. The reason(s) for the refusal shall be considered in determining the appropriate disciplinary action. The hearing shall be held in accordance with the

provisions of City of Gaithersburg Code. If disciplinary action is taken because of refusal to consent, an eligible employee may file a grievance as set forth in Section 1700, Grievance Procedures.

### **1103.22 Drug Free Workplace Requirements**

Each employee engaged in the performance of a federal grant shall be given a copy of the City's drug and alcohol policy. As a condition of employment under a federal grant, all employees will abide by the terms of this policy and the drug free workplace requirements of the federal grant and notify the City in writing of any conviction for a violation of a criminal drug statute occurring in the workplace no later than five days after such conviction.

The City will notify the appropriate grant agency in writing within ten calendar days after receiving a notice for violation of a criminal drug statute providing the person's title and grant identification number.

Within thirty calendar days upon receiving a notice for violation of a criminal drug statute, the City will follow the actions as noted in the Gaithersburg City Code.

### **Section 1104. Ethics**

Chapter 7A of the Gaithersburg City Code entitled "Ethics Code" applies to all City employees, regardless of position. Employees, officials, and representatives of the City must maintain the highest standards of political and professional responsibility and maintain the highest respect for the interests of the citizens and the City. The City's Ethics law establishes clearly articulated standards of conduct, a procedure for resolving questions that may arise concerning the propriety of specific acts, and a forum for receipt and review of complaints and questions, whether raised by concerned citizens, employees, or those doing business with the City. The City Ethics Commission, appointed by the Mayor and City Council, processes and makes determinations concerning complaints filed by anyone alleging violations of the City's Ethics Ordinance.

The Conflict of Interest provisions of the Ethics Ordinance prohibit an employee from:

- a. Participating on behalf of the City in any matter which would, to their knowledge, have a direct financial impact on them, their spouse, their children, their siblings, their parents, any other relative who shares their legal residence or over whose financial affairs the employee has legal or actual control, or any business entities with which they are affiliated, as distinguished from the public generally.
- b. Holding or acquiring interests of either 5 percent or greater in business entities that have or are negotiating contracts with the City of \$5,000 or more or are regulated by their agency, except as exempted by the Ethics Commission.
- c. Being employed by business entities that have or are negotiating contracts of more than \$5,000 with the City or are regulated by their agency, except as exempted by the Ethics Commission.
- d. Holding any outside employment relationships that would directly impact their impartiality or independence of judgment with regard to their official capacities.
- e. Representing any parties, for contingent fees, before any City agency or department.
- f. Within one year following separation from City service, acting as compensated representatives of others in connection with any specific matters within their official responsibilities in which they participated substantially as a City employee.
- g. Soliciting any gift from any person or business entity.
- h. Accepting any gift from any person or business entity that has or seeks a business relationship with the City or is regulated by their office or department, except where such gifts would not violate the City's Ethics law. (See Section 7A of the City Code for additional information.)

- i. Using the prestige of their position except to aid or benefit the public generally.
- i. Passing on confidential information acquired in their official City position for their own benefit or for the benefit of others.
- k. While employed with the City or within one year following separation from City service, purchasing any property or equipment from the City, either directly or through a third party such as an auction house, unless the purchase is subject to prior written approval by the City Manager.

The Ethics Commission developed a "Conflict of Interest Statement" to educate employees regarding their duties and obligations as a City employee under the Ethics law. All employees are required to read and sign this Statement at the time of hire.

An employee is also required to file a disclosure statement for each incident when there is non-compliance with the requirements of the Ethics Ordinance. The statement must identify the date of the occurrence, donor, gift, value, and reason for acceptance, and must be filed with the Ethics Commission within 30 days of the date of the occurrence. All occurrences in which honoraria in excess of the gift limit have been accepted must be reported. The City Manager, City Attorney, Assistant City Manager(s), and Department Heads are required to file a financial statement annually, no later than January 31 of each calendar year, with the Ethics Commission.

A violation of this policy shall be administered in accordance with Section 1400, Disciplinary Actions.

For more information on the City's Ethics Ordinance, see Chapter 7A of the Gaithersburg City Code.

## **Section 1105. Information Technology Resources Use**

### **1105.1 Purpose/Overview**

The purpose of this policy is to set forth the guidelines and standards for use of the City's information technology resources, including but not limited to desktop computers, servers, networks, related equipment and software applications, supporting systems and the data transmitted on those systems, Internet services, Intranet services (), telephones, voice mail, electronic mail (email), facsimile machines, photocopiers, printers, and related office equipment and supplies.

The City of Gaithersburg maintains technological resources to facilitate operations and communications, to improve access to and exchange of information, to increase efficiency and productivity, to connect citizens to government, and to assist City employees in providing effective and high quality services to the public.

All employees of the City of Gaithersburg are subject to the provisions of this policy. Contractors of the City of Gaithersburg are not authorized any personal use of City technology unless it is specifically permitted by contract or other memoranda of agreement.

### **1105.2 Privacy and Confidentiality**

Information technology resources are the sole property of the City of Gaithersburg. The City reserves the right to inspect technology systems, including any and all files stored thereon, and monitor communications for improper use at any time without advance notice or consent. The use of technology resources is not necessarily secure, private, or anonymous.

Business telephone calls may be monitored or recorded for legitimate business purposes such as providing training, instruction, or protection against abusive calls.

### **1105.3 Regulations/Procedures**

Employees are authorized to use the City's information technology resources in accordance with the obligations and responsibilities specified below:

#### **a. Authorized Purposes for Use**

Employees shall use information technology resources for purposes related to their employment with the City and for the enhancement of their job related functions. Occasional and incidental personal use of the City of Gaithersburg's technology resources may be permitted, provided that such use does not:

1. Interfere with the performance, productivity, employment duties, or other obligations to the City, of the user, or any other City employee.
2. Interfere with the use of technology resources by the City.
3. Burden the City with anything more than *de minimis* additional costs, to be determined in the City's sole discretion. *De minimis* means a minimal amount as defined by Internal Revenue Service (IRS) regulations.
4. Include any activity that is prohibited under any City policy.
5. Damage the integrity or operability of the City's IT resources and/or systems.

#### **b. Authorized Access**

Employees shall keep server account identification and passwords confidential. Only those employees who have been authorized by a Department Head shall have access to City applications that contain confidential or sensitive information or data (such as addresses, phone numbers, customer purchase history, customer payment history, etc.). Under no circumstances shall an employee use such information or data for personal reasons or for any purpose other than carrying out defined job duties.

Employees are prohibited from accessing or attempting to access information technology resources for which they do not have explicit authorization by means of user accounts, valid passwords, file permissions, or other legitimate access and authentication methods. It is a violation of this policy to grant another individual access to any City accounts that have been authorized to an employee or to use another employee's authorized accounts, user ID's, or passwords.

#### **c. Prohibited Activities**

Certain use of City equipment is prohibited, including but not limited to:

1. Viewing, sending, soliciting, downloading, or storing material that is likely to be considered threatening, disruptive, defamatory, inflammatory, profane, obscene, pornographic, or sexually explicit; that could be construed as a harassment or disparagement of others based on their race, national origin, citizenship, ethnicity, ancestry, marital status, sex, sexual orientation, age, disability, religion, or political beliefs; that pertains to or advocates violence, illegal gambling, illegal weapons, or terrorist activities; that promotes unethical practices; or any activity prohibited by Federal or State law or City regulation or policy. The City reserves the right to determine whether any material or activity violates this prohibition. The incidental and unsolicited receipt of sexually explicit or extremist material, such as might be received through email, shall not constitute a violation of this section, provided that the material is promptly deleted and neither stored nor forwarded to other parties, provided that forwarding to and storing by the City's spam filter shall not be considered a violation of this policy.
2. Uploading or otherwise transferring out of the City's direct control any software licensed to the City or data owned or licensed by the City without explicit written authorization.

3. Loading software onto City equipment without the approval and guidance of a supervisor and the Information Technology Department. Software includes, but is not limited to, computer games, screen savers, chat programs, customized cursors, freeware, shareware, and non-City email programs.

3.5 The installation of hardware onto City computers, networks, phones, or office equipment. Hardware includes, but is not limited to, desktop computers, laptop computers, printers, disk storage devices, Random Access Memory (RAM), and monitoring devices.

4. Using sensitive or confidential data from City applications for any purpose other than carrying out defined job duties, and/or transmitting sensitive or confidential data to non-City parties including, but not limited to, citizens, contractors, organizations, and members of the press, without the permission of a Department Head.

5. Using technology for commercial purposes or in support of other "for profit" activities such as outside employment or business (for example, selling real estate, preparing and copying a newsletter, or preparing tax returns for a fee).

6. Using technology to raise funds for any outside activity or personal cause, to endorse any product or service, to participate in lobbying or prohibited partisan political activity (e.g., expressing opinions about candidates or distributing campaign literature), except for communication with elected officials in the course of regular job duties.

7. Acquiring, reproducing, transmitting, distributing, or using: any controlled information, including computer software and data, protected by copyright, trademark, privacy laws; other proprietary data or material with other intellectual property rights beyond fair use; or export-controlled software or data.

8. Using technology resources to post personal messages to external news groups, bulletin boards, or other public forums. Employees must not give the appearance that they are acting in an official capacity or that the City endorses or sanctions their personal activities or beliefs.

9. Repeatedly downloading or sending/storing large files via email. Allowable sizes can vary according to bandwidth and storage capabilities, to be determined in the City's sole discretion.

10. Creating, copying, or transmitting chain letters or other mass mailings, regardless of the subject matter.

11. Engaging in disruption or vandalism of technology resources, including but not limited to uploading, downloading, or creating computer viruses and/or in any other malicious attempt to harm or destroy technology equipment, materials, or the data of any other user.

12. Removing from City premises any City technology resources or equipment without the express permission of the Information Technology Director.

13. Making long distance phone calls, except in an emergency. Personal long distance phone calls should be made by using a personal calling card.

d. **Duty to Report**

Employees shall report promptly any security problem or misuse of any City system to their immediate supervisor or to the Information Technology Director.

**1105.4 Email Access on Mobile Communications Devices**

At the City's discretion, the City may provide access to the City email system via cellular telephones, Personal Digital Assistant (PDA) devices, etc. The use of personal (non-City) devices to access mail must first be approved by a Department Head.

In the event that any device is lost, users must contact the IT Department within 24 hours so that IT staff can disassociate the device from the email system. Additionally, the City reserves the right to utilize its remote management capabilities to electronically disable or remove data from the lost device. The City will do so without regard to the potential loss of personal data or third-party applications which may have been purchased by the device's user.

#### **1105.5 Closing of Accounts**

The City shall close an employee's accounts and terminate access to files, email, networks, and other technology resources when the individual's employment with the City ends, unless it is in the City's best interest to maintain that access. Access to a separated employee's email and files may be provided to a replacement employee if it is in the City's best interest to do so.

#### **1105.6 Violations**

Any employee who violates any provisions of this policy is subject to suspension or revocation of access privileges and/or disciplinary action up to and including dismissal, civil litigation, and/or criminal prosecution for misuse of information technology resources. A violation of this policy shall be administered in accordance with Section 1400, Disciplinary Actions.

#### **Section 1106. Political Activity**

No employee of the City may participate in political activity during working hours or while representing the City in an official capacity. An employee who is elected or appointed as Mayor or a member of the City Council of the City of Gaithersburg must resign his/her position with the City prior to taking office.

#### **Section 1107. Secondary Employment**

The primary position held by a classified employee or unclassified management employee of the City shall take precedence over any other occupational interest of the employee. No classified employee or unclassified management employee of the City shall engage in any secondary position that (1) will cause or could cause a conflict of interest, or the appearance of a conflict of interest, with City employment and/or (2) interfere with or take precedence over the employee's performance of the duties and responsibilities of his/her primary position.

Any employee desiring to engage in secondary employment, including self-employment, shall request approval from his/her Supervisor and Department Head prior to accepting or engaging in such employment (or if already engaged in such employment, prior to continuing) by completing and gaining approval for the secondary employment via the Application for Secondary Employment.

If the Supervisor and/or Department Head determine that a conflict of interest exists, the request to engage in secondary employment will be denied. If the request is approved, such approval will remain in effect until (1) the employee ends the secondary employment voluntarily; (2) circumstances regarding the secondary employment change necessitating submission of a new Application; or (3) in the opinion of the Department Head, the secondary employment has resulted in a conflict of interest or is interfering with or taking precedence over the employee's performance of the duties and responsibilities of his/her primary position and approval of the secondary employment is rescinded.

Secondary Employment Applications will be maintained by the Human Resources Department in the employee's personnel file. It is the employee's responsibility to advise his/her Department Head and the Human Resources Department of changes in or termination of secondary employment.

Classified employees and unclassified management employees may occupy part-time positions with the City, provided the duties of the part-time position are significantly different from those of the primary position. The Director of Human Resources or his/her designee shall verify that the employee's part-time employment is in a different capacity than the employee's primary employment (pursuant to Fair Labor Standards Act regulations). Requests will be approved by the Director of Human Resources; requests denied will be returned to the Department Head, who will advise the employee.

Employees sustaining an injury arising out of non-City employment resulting in lost time from the City will not be covered by the City of Gaithersburg. Lost time due to such an injury will be charged to the employee's accrued paid leave.

A police officer applying for secondary employment which may require the employee to exercise his/her law enforcement powers while working secondary employment must enter into a Secondary Employment Agreement with the secondary employer. The signed Agreement and all liability insurance and workers' compensation endorsements or certifications required by the Secondary Employment Agreement must be submitted to the Human Resources Department before the employee can begin working the secondary employment.

Employees who hold secondary employment and fail to maintain a valid Secondary Employment Application will be subject to disciplinary action as set forth in Section 1400, Disciplinary Actions.

### **Section 1108. Smoking in the Workplace**

The City of Gaithersburg is committed to providing a safe and healthy environment for employees, citizens, and other users of City facilities. Accordingly, as provided in Chapter 18A of the Gaithersburg City Code, "Smoking and Tobacco Products Placement," smoking is prohibited in all City-owned and City-leased offices, buildings, and vehicles.

Each facility has a designated outdoor area where smoking is permitted. The area is equipped with an appropriate receptacle for discarding spent tobacco, ashes, and cigarette butts. Smoking is discouraged at or near main entrances to City-owned or City-leased buildings where the public normally enters and exits.

As provided in Chapter 18A, Section 18A-3, of the City Code, smoking may be permitted in private, enclosed offices in City government workplaces when the door leading to another workplace is closed, or in workplace areas so large that smoking by one person would not affect another person (as designated by the City Manager or his designee). If a private, enclosed office is a shared workplace, smoking is permitted only with the consent of the nonsmokers and only if appropriate ventilation is provided.

Complaints concerning violations of this policy should be directed to the employee's immediate supervisor for resolution. Complaints concerning violation of this policy where the employee or person is not known should be reported to the supervisor of that office/area and that area should be monitored when possible. Violations of the policy shall be administered in accordance with Section 1400, Disciplinary Actions.

For more information on the City's Smoking Ordinance, see Chapter 18A of the Gaithersburg City Code.

### **Section 1109. Animals in the Workplace**

Employees are not permitted to bring or keep animals (dogs, cats, birds, fish, reptiles, other domesticated pets, etc.) in workplace areas of any City building or facility (e.g., offices, hallways, conference/meeting rooms, service areas, etc.) except with the prior approval of the City Manager or as specifically exempted as indicated below. Failure to comply with this policy will result in removal of the animal from City property and may result in disciplinary action against the employee who is the owner or keeper of the animal.

Animals listed below are exempted from this policy. The employee responsible for owning, keeping, or handling any animal exempted by this policy shall take full responsibility for the needs and behavior of the animal and must obey all applicable local laws regarding animals and City property. Animal waste must be picked up and disposed of properly.

The employee responsible for owning, keeping, or handling any animal exempted by this policy shall also be responsible for ensuring that the animal is in good health and properly maintained so as to

not be disruptive or threatening. The Department of Human Resources will investigate any complaint regarding the condition or behavior of the animal. If it is determined that the animal is ill, disruptive, threatening, or acting outside the appropriate scope of its duties/purpose for being permitted in the workplace, the employee will be instructed to remove the animal until he/she produces appropriate documentation indicating that sufficient medical care or training has taken place to allow the animal in the workplace.

Animals exempted from this policy are:

- a. Police dogs that are part of the City of Gaithersburg or any other K-9 unit.
- b. Animals/domesticated pets participating in a City-sponsored class, demonstration, activity, or event **only** on the day of the class, demonstration, activity, or event, **and** with the prior approval of the employee's supervisor.
- c. Animals in the temporary custody (12 hours or less) of the City's Animal Control Division.
- d. Service animals performing duties/tasks for the individual they accompany. A service animal is specially trained to perform one or more specific functions or activities of daily living for an individual with a documented disability. Service animals include, but are not limited to, guide dogs for those with visual or hearing impairments, or service dogs to perform tasks for the mobility-impaired (i.e., pulling a wheelchair, retrieving dropped items, etc.).

Service animals may enter any City facility with the employee they accompany. Any animal being used as a service animal inside any City facility should wear a harness or other device identifying it as a service animal.

Employees using service animals inside any City facility must notify and provide medical documentation to the Department of Human Resources of the need to use a service animal during employment. The City reserves the right to require the employee to present documentation from a veterinarian that the service animal is in good health and has appropriate shots and is in compliance with all applicable state and local health laws, especially when the service animal will be present on a regular basis in an employment setting, or in the case of a medical emergency related to the animal (such as a bite). The employee may be asked to present updated documentation annually. The City also reserves the right to request documentation that the animal has been trained to act as a service animal.

## **Section 1110. Reporting of Improper or Illegal Actions in City Government**

### **1110.1 Purpose**

The City of Gaithersburg recognizes that it has a responsibility to its citizens for stewardship of its resources; and therefore requires its officials and employees to observe high standards of business, professional, and personal ethics in the conduct of their duties and responsibilities. Misconduct by a single individual can discredit all City employees or officials. As employees and representatives of the City, honesty and integrity must be practiced in conducting business and fulfilling responsibilities on behalf of the City, complying with all applicable laws and regulations, and maintaining the public trust.

In accordance with Section 17-2.1 of the Gaithersburg City Code, this policy governs the reporting and investigation of improper or illegal acts in City government, as well as the protection afforded to those who report such acts. The purpose of this policy is to:

- a. Help promote a culture of openness, transparency, accountability, responsibility, respect, and integrity.
- b. Provide a safe and confidential environment for employees and other individuals to make good faith reports of actions by City officials and employees that are believed to be improper or illegal.

c. Establish a process and procedure for thoroughly reviewing and investigating reports of improper or illegal actions.

d. Enable management to be informed at an early stage about suspected improper or illegal actions in order to bring violations to a halt as soon as reasonably possible after discovery and to ensure that steps are taken to mitigate the risk of future occurrences.

e. Reassure employees that they will be protected from retaliation, penalty, or unfair treatment for in-good-faith reporting of actions believed to be improper or illegal in accordance with this policy.

### **1110.2 Scope**

This policy applies to all employees of the City of Gaithersburg. This policy does not affect or change the City's policies and procedures for individual employee grievances or complaints relating to job performance, terms and conditions of employment, and/or disciplinary actions or appeals thereof which will continue to be administered and reviewed as set forth in this Manual.

### **1110.3 Roles & Responsibilities**

Every City employee has the right, responsibility, and obligation to report, in good faith, their belief that an improper or illegal action in City government has occurred, and to be protected from an act of retaliation for taking an action protected by this section. Additionally:

#### **a. Employees**

All employees who are interviewed or asked to provide information or otherwise participate in an investigation of a reported improper or illegal action or of reported retaliation for taking an action protected by this section have a duty to fully cooperate and/or assist with the investigation to the extent requested. As investigations are confidential, participants must refrain from discussing or disclosing matters concerning the investigation with employees or other persons not involved in the investigation.

An employee may not, directly or indirectly, intimidate, harass, coerce, retaliate against, penalize, threaten with retaliation or penalty, or otherwise interfere with an employee or other person reporting or disclosing information concerning an improper or illegal action, or an employee or other person cooperating with, or in any way assisting in, an investigation concerning a reported improper or illegal action in accordance with the provisions of this section.

#### **b. Department Heads, Managers & Supervisors**

Department Heads, managers, and supervisors are responsible for ensuring these procedures are fully implemented within their areas of responsibility and that disciplinary actions for substantiated reports of improper or illegal actions or of retaliation for taking an action protected by this section are applied quickly, consistently, fairly, and appropriately.

#### **c. Director of Human Resources**

The Director of Human Resources is responsible for communicating this policy and the procedures set forth in this section and for assisting in protecting employees against retaliatory actions. This includes ensuring that this policy and these procedures are:

1. Permanently posted where all employees will have reasonable access to them;
2. Made available to any employee upon request; and
3. Provided to all newly-hired employees.

#### **d. City Attorney**

The City Attorney is responsible for:

1. The day-to-day administration and stewardship of this policy.

2. Receiving, in confidence, all reports of improper or illegal actions or of alleged retaliation for taking an action protected by this section except as otherwise provided in this policy.
3. Overseeing the review and conducting and/or overseeing the investigation of reports of improper or illegal actions or of alleged retaliation for taking an action protected by this section made in accordance with these policies and procedures except as otherwise provided in this policy.
4. Notifying appropriate parties of investigations and outcomes.
5. Providing regular reports to the City Manager and the Mayor and City Council.
6. Ensuring the confidential retention of investigation documentation in accordance with the City's records retention policy.

**e. City Manager**

The City Manager is responsible for implementing the City of Gaithersburg policies and procedures and demonstrating management's commitment to protecting public resources.

**f. Mayor & City Council**

The Mayor is responsible for overseeing the review and investigation of reports of improper or illegal actions or of alleged retaliation for taking an action protected by this section made in accordance with these policies and procedures if the City Attorney, or an employee directly supervised by the City Attorney, makes or is the subject of the report.

Additionally, the Mayor and City Council are responsible for:

1. Ensuring that the City, its officials and employees, are committed to the highest standards of ethical behavior and the principles of integrity, accountability, responsibility, leadership, respect, and openness; and that substantiated reports of improper or illegal actions or of retaliation for taking an action protected by this section are addressed quickly, consistently, fairly, and appropriately.
2. Reviewing findings, recommendations, and actions taken and making a final determination regarding the matter as requested by the City Attorney (see Sections 1110.7 and 1110.8 of this policy).
3. Reviewing appeals filed as permitted by Section 1110.9 of this policy.

**g. Preliminary Review Panel**

A Preliminary Review Panel is convened for each report received under this policy. The Panel is responsible for conducting a preliminary review to determine if the report merits further investigation (see Section 1110.7). Each Preliminary Review Panel shall consist of three members: the City Attorney or Mayor (or individual appointed by the Mayor), as appropriate, who will serve as Chairperson, one representative from the Department of Human Resources, and one employee representative chosen by lottery from a pool of employees who have volunteered to serve on the Panel. An employee who serves on a Preliminary Review Panel must sign a confidentiality agreement prior to his/her participation on a Panel.

An employee in the Panel volunteer pool is not eligible for selection to a Panel convened for a report if (1) the employee is employed by the same department as the individual making the report and/or the same department as the individual who is the subject of the report; (2) the employee is a relative (as defined in Appendix A [Definitions] of this Manual) of the individual making the report, the individual who is the subject of the report, or an individual who is named in the report as a potential witness or contact person; or (3) the employee's participation on the Panel may pose an actual or potential conflict of interest or may give an improper appearance (for example, the employee who made the report is supervised by a Panel volunteer's spouse). If an actual or perceived conflict is determined

after an employee has been selected for a Panel, the employee's participation on that Panel will cease and a replacement will be selected from the volunteer pool.

If an employee of the Department of Human Resources makes or is the subject of the report, an employee from the volunteer pool will be selected by lottery to serve on the Preliminary Review Panel in place of the representative from the Department of Human Resources.

#### **1110.4 Acting in Good Faith Required**

Any employee making a report in accordance with this policy must do so in good faith and have reasonable grounds for believing the information disclosed indicates an improper or illegal action or an act of retaliation for taking an action protected by this section. The act of making a report that proves to be frivolous, unsubstantiated, and/or made maliciously, recklessly, or with foreknowledge that the allegations are false or misleading is a serious offense and may result in disciplinary action up to and including dismissal from City service. Disciplinary action taken against an employee who has not acted in good faith is not deemed to be retaliation.

#### **1110.5 Reporting Improper or Illegal Actions**

An employee who has knowledge, directly or indirectly, or has good faith reason to suspect that an improper or illegal action in City government has occurred, has a responsibility to report the allegations. Reports should be made as soon as possible after the event, incident, matter, or issue that is the subject of the report occurs, but must be made within one year after the date of occurrence of a reported event, incident, matter, or issue, or within one year of the last date of occurrence in a series of reported events or incidents, in order to be reviewed or investigated; except, that within the first 90 workdays of the effective date of this policy, an employee may report an improper or illegal action that he/she believes has occurred within the previous three years.

##### **a. Making a Report**

Reports of improper or illegal action in City government should be made using one of the following methods:

##### **1. Gaithersburg Whistleblower Hotline**

The Gaithersburg Whistleblower Hotline, operated and monitored by an independent third-party contractor, provides employees, officials, and the general public with a confidential way to report actions they believe to be improper or illegal. Reports made through the Hotline are documented and forwarded to the City for review and appropriate action (see Section 1110.7).

Reports may be made through the Hotline by:

- **CALLING** toll free at 855-214-5993 (available 24-hours, 7 days a week).
- **SUBMITTING** the report through the interactive website online report form ([www.reportlineweb.com/gaithersburgmd](http://www.reportlineweb.com/gaithersburgmd)).

##### **2. Written Report**

A written report may be filed directly with the City Attorney using the Report Form (Appendix D). In cases of emergency, where the employee making the report believes that damage to persons or property may result if action is not taken immediately, it is recommended the report be made directly to the City Attorney. If the City Attorney or an employee directly supervised by the City Attorney is the subject of the report, a written report may be filed with the Mayor.

##### **b. Actions Reported**

Actions which may be reported under this policy include, but are not limited to:

- Criminal action or conduct.
- Theft or unauthorized use of City property or resources.

- Needless, careless, or extravagant expenditure of City funds, incurring of unnecessary expenses, or misuse of City property or resources (i.e., cash, records, equipment, supplies, or materials, including computer hardware and software).
- Falsifying financial or personnel records or payroll and/or timekeeping information.
- Misappropriation of funds, securities, supplies, or other asset.
- Irregularities in the handling or reporting of accounting transactions.
- Forgery or alteration of any document.
- Alteration, destruction, forgery, or manipulation of data for fraudulent purposes.
- Grossly violating, disregarding, or circumventing City or departmental policies, procedures, or regulations.
- Contract or procurement fraud.
- Abuse of the worker's compensation system.
- Soliciting or accepting a kickback or bribe.
- Fraudulent travel or other reimbursement claims.
- Creating or ignoring safety hazards.
- Actions resulting in the City being exposed to liability or financial loss.
- Misuse of authority or using one's position with the City for personal gain or to advance a private interest.
- Violating City conflict of interest or ethics laws, regulations, or rules.
- Deliberately concealing information relating to a reported improper or illegal action.
- Retaliating or directing another person to retaliate against any employee or other individual for in good faith filing a report or otherwise cooperating with any investigation conducted in connection with suspected improper or illegal actions reported in accordance with these policies and procedures.

This reporting process is not intended for the submission of suggestions or to replace or supersede any normal managerial and/or personal communication channels. Employees should not use this reporting process for addressing:

- Routine issues between supervisors and employees.
- Issues normally handled through the City's grievance process.
- Questions or concerns regarding benefits, compensation, or terms and conditions of employment.
- Issues that are the responsibility of other government agencies.

**c. Information Provided**

An employee filing a report (either through the Hotline or directly to the City Attorney) should be prepared to provide as much information as possible to allow for proper evaluation of the nature and extent of the suspected improper or illegal action and for the urgency for review and investigation. When reporting information, be prepared to provide the following:

1. A description of the alleged event, incident, matter, or issue that is the subject of the report. State the facts with as much detail as possible (what, where, when, how, amounts). Avoid speculation or drawing conclusions.
2. The name(s) of the individual(s) involved and their department or departments (if known).
3. If the report involves specific event(s) or incident(s), the approximate date and time of each event/incident and the location where such event/incident occurred.
4. How the person making the report knows about the event, incident, matter, or issue.
5. The names and contact information of other person(s) who may be aware of the event, matter, or issue and/or potential witnesses.

6. Any additional information, documentation, or other evidence available to support or substantiate the allegation.

The employee making the report is not expected to provide proof of the allegation; however, the report must demonstrate that there are sufficient grounds for belief that the action/conduct occurred. Reports alleging unspecified wrongdoing or containing broad allegations without verifiable evidentiary support will be less likely to be investigated.

The employee making the report should not act on his/her own in conducting any investigative activities, nor does he/she have a right to participate in any investigative activities other than as requested by the City Attorney or other entity conducting the investigation on behalf of the City.

**d. Confidentiality and Anonymity**

The City recognizes that confidentiality is important to all parties involved in the investigation of a reported improper or illegal action. Reports of improper or illegal acts, the identity of the individual making such report, the identity of persons subject to or participating in any review or investigation relating to such report, and all materials and information gathered and/or prepared in the course of reviewing and/or investigating such report, will be kept confidential to the fullest extent possible within this policy and as provided by law, consistent with the need to conduct an adequate review and investigation and with the Maryland Public Information Act.

Reports of suspected improper or illegal actions may be made anonymously at the discretion of the individual making the report. However, all individuals making an anonymous report under this policy are encouraged to provide sufficient contact information, such as a telephone number or email address, in case additional information is needed, so that the matter may be reviewed and/or investigated as thoroughly as possible, and/or so that the results of any review or investigation may be reported back to the individual making the report.

It is very difficult for a thorough review and investigation to be conducted when a report is made anonymously and no contact information for the individual making the report is provided. It can be extremely difficult or impossible to obtain and verify facts and/or evidence and to assess the credibility of the report, and this may limit the effectiveness of the review or investigation or make it less likely that an investigation can occur. Employees reporting suspicion of an improper or illegal act in good faith have protection from retaliation under this policy (see Section 1110.6); therefore, all individuals making a report are strongly encouraged to provide their name and/or sufficient contact information to ensure that a proper review and investigation of the report can be conducted.

The identity of and contact information for the individual making the report will be known only to the Preliminary Review Panel and/or to such other entity assigned to investigate the report who has a legitimate need to know in order to carry out the investigation. The City Attorney or other entity investigating the report will use their best efforts to maintain the anonymity or the confidentiality of the individual making the report within the legitimate needs of law and the investigation, including any information that would lead to the disclosure of the person's identity, unless the person who made the report provides written authorization for the disclosure. If the person making the report discloses his or her identity publicly, the City will not be obligated to maintain the confidentiality or anonymity of the individual's identity.

Individuals making a report in accordance with this policy are cautioned that discussing the report with others, including family, friends, and coworkers, may jeopardize confidentiality.

**e. Acknowledgments**

Except in cases where a report is submitted anonymously and no contact information is provided, the individual making the report will receive an acknowledgment of receipt within three workdays.

### **1110.6 Protection Against Retaliatory Actions**

The City will not tolerate retaliation or interference by any person or group, directly or indirectly, against any employee or other individual who, in good faith and in compliance with the law, reports an improper or illegal action or who cooperates with, participates in, or otherwise provides assistance to any review, investigation, and/or resulting proceedings related to a report made in accordance with these policies and procedures. This protection against retaliatory actions extends to an individual regardless of whether or not the allegations made in the report are verified by an investigation, except as otherwise provided in this section.

An employee's right to protection from retaliation does not extend to protection from appropriate disciplinary action if the employee reports his/her own improper or illegal action or if it is found during a review or investigation that an employee had knowledge of, or was otherwise complicit in, the improper or illegal action and did not report it.

#### **a. Retaliatory Actions Prohibited**

A City employee is prohibited from using his/her official authority or influence, directly or indirectly, to threaten, intimidate, coerce, interfere with, penalize, or take any other retaliatory action against an individual, including any retaliatory personnel action against any City employee, for:

1. Refusing to obey an instruction to participate in or be otherwise involved in an improper or illegal action; or
2. Disclosing to a Federal, State, County, or City official or employee information concerning improper or illegal actions in City government with a reasonably good faith belief that the information disclosed is accurate; or
3. Initiating, pursuing, or making a report of improper or illegal action; or
4. Participating in or otherwise cooperating or assisting with any internal or external review and/or investigation of a report of improper or illegal action.

City of Gaithersburg employees are expected to treat each member of the public courteously, impartially, ethically, fairly, and in compliance with the law. An employee is prohibited from taking any retaliatory public action, or encouraging or directing another employee to take any retaliatory public action, contrary to such conduct in retaliation against a member of the public because the individual took an action protected by Section 17 of the Gaithersburg City Code.

A retaliatory personnel action is making, or encouraging or directing another employee to make, an unwarranted adverse change in an employee's employment status, or the employee's terms and conditions of employment, because the employee took an action protected under this section. Retaliatory personnel actions include, but are not limited to, denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations; demotion; transfer or reassignment; reduction in pay; denial of promotion; suspension, dismissal, or other unwarranted disciplinary action; or other change in the employee's duties or responsibilities which is arbitrary, capricious, or otherwise inconsistent with the employee's grade, salary, or job description.

#### **b. Reporting Retaliatory Actions**

Employees who believe they have been retaliated against for taking an action protected under this section may make a report in the same manner as described in Subsection 1110.5(a). The report must be made within one year of an alleged retaliatory action or within one year of the last occurrence in a series of alleged retaliatory actions; except, that within the first 90 workdays of the effective date of this policy, an employee may report an alleged retaliatory action that he/she believes has occurred within the previous three years. The report should specify:

1. The alleged retaliatory action.
2. The name(s) of the employee(s) who made and/or encouraged or directed another employee to make the retaliatory action(s).
3. The date(s) on which and/or the frequency with which the retaliatory action occurred.
4. The basis for the employee's belief that he/she has been retaliated against for taking an action protected under this section. (In order to establish retaliation under this section, an individual must demonstrate that his/her claim is more likely than not a result from his/her actions protected under this section or that his/her actions protected under this section were a substantial motivating factor for the alleged retaliatory personnel action.)
5. The name(s) of employees or other individuals who may have witnessed the act(s) of retaliation.
6. Any evidence or documentation that would support or substantiate the allegation of retaliation.
7. The relief requested (what the individual believes should happen to resolve the complaint).

**c. Exceptions**

An employee is not protected under this section if:

1. The employee fails to make a good faith attempt to follow the City's procedures in reporting improper or illegal actions; or
2. The employee makes a frivolous report or discloses information that he or she knows is false or with disregard for the truth or falsity of the information, misrepresents any material facts, or conceals any evidence, documents, or information for the purpose of misleading the investigation; or
3. The employee was the subject of an otherwise proper personnel action that would have been taken regardless of the employee's disclosure of information concerning improper or illegal action in City government.

**1110.7 Review and Investigation**

Except as otherwise provided in this section, the City Attorney will coordinate and oversee the review and investigation (if warranted) initiated in accordance with a report of improper or illegal action or of alleged retaliation for taking an action protected by this section made in accordance with this policy. The City Attorney is responsible for ensuring that all reports are taken seriously and handled confidentially; that all are subject to an appropriate, thorough, timely, objective, and impartial review, investigation, and resolution; that there are no conflicts of interest on the part of any party involved in a specific review and/or investigation; and that ethical, legal, and professional standards are observed throughout.

The City Attorney will also serve as Chairperson of the Preliminary Review Panel which is responsible for determining the manner in which an investigation (if warranted) will be carried out and by whom; facilitate communications across investigative channels as necessary; monitor significant elements and progress of investigations to ensure the report is being addressed in a timely and thorough manner and that investigations are appropriately documented; ensure that appropriate parties are notified or advised of and updated on the progress and outcome of any review or investigation being conducted; coordinate and facilitate in an advisory capacity the corrective and/or disciplinary action that may be initiated in accordance with applicable procedures; and ensure the confidential retention of review/investigation documentation.

If the City Attorney or an employee directly supervised by the City Attorney makes or is the subject of the report of improper or illegal actions or of alleged retaliation for taking an action protected by this section, the Mayor or an individual appointed by the Mayor, will carry out the responsibilities of the City Attorney in all reviews and investigations required in accordance with these policies and procedures. If this is the case, for the purposes of this section, "City Attorney" shall mean the Mayor or the individual appointed by the Mayor to carry out these responsibilities.

All reports made in accordance with these policies and procedures will be reviewed and, if appropriate, investigated as follows:

**a. Preliminary Review**

A Preliminary Review Panel will be convened to conduct the preliminary review of each report made under this policy to determine if the report merits further investigation (see Section 1110.3). The preliminary review may include all steps and utilize any resources deemed appropriate to assist in determining the validity of the report including, but not limited to, evaluating any evidence provided with the report, gathering other relevant documentation from any City department or other source, and interviewing the individual making the report and other persons with relevant information. Once the preliminary review has begun, the Preliminary Review Panel will take immediate action to prevent the theft, alteration, or destruction of relevant records.

Unless absolutely necessary, the employee against whom the report has been made and his/her supervisor and/or Department Head will not normally be advised of the allegations during the preliminary review process. The preliminary review must be completed and an appropriate course of action determined within 15 workdays of receipt of the report. The findings of all preliminary reviews must be documented and maintained.

An investigation of the report will generally be initiated unless it is reasonably determined during the preliminary review that:

1. The action reported, if true, would not constitute an improper or illegal action as defined in this Manual; or
2. The action reported has previously been investigated or adjudicated in any court; or
3. The action reported has been discontinued and proper corrective measures have already been taken by the City; or
4. There is not enough specific information provided in the report, nor methods for obtaining further information; or
5. The action is not otherwise eligible to be reviewed under this policy.

In such cases, the Preliminary Review Panel will recommend that the matter be concluded with no action taken. However, at the Preliminary Review Panel's discretion, matters that do not meet the standard for investigation may be recommended for management review in order to address underlying causes and take appropriate actions to mitigate the risk of further occurrence.

If it is reasonably determined during the preliminary review that the report was made in bad faith, was frivolous, was made for the purposes of harassment or retaliation, or contains information that the individual making the report knows to be false, or the individual making the report disclosed information with disregard for the truth or falsity thereof, no further investigation will be conducted. The individual making such report may be subject to disciplinary action up to and including dismissal from City service.

Except in cases where a report is submitted anonymously and no contact information is provided, the City Attorney will notify the individual making the report of the course of action determined during the preliminary review.

## **b. Investigation**

### **1. Process**

The Preliminary Review Panel will determine the manner in which a report made under this policy will be investigated depending on the seriousness and nature of the allegations. At the Preliminary Review Panel's discretion, an investigation may be carried out by the City Attorney directly; assigned to management in the area affected, to an internal investigative team appointed by the Preliminary Review Panel, to an appropriate City board, committee, or commission, or to an independent third party investigator or investigative agency; or re-directed to a more appropriate existing process.

If the Preliminary Review Panel determines that the report involves allegations of criminal activity, the report may be referred to a law enforcement agency of proper jurisdiction; and the City Attorney will coordinate any further investigation with such law enforcement agency. If criminal charges are formally filed, the City's investigation may be suspended until completion of criminal action.

An employee against whom the report has been made and his/her supervisor and Department Head will normally be informed of the allegations by the City Attorney at the outset of the investigation; the employee will have opportunities for providing his/her input during the investigation. Depending on the nature of the allegations, the Preliminary Review Panel may recommend that the employee who is the subject of the report be placed on administrative leave with full pay and benefits for the duration of the investigation as provided in Section 1406 of this Manual.

Any party assigned to conduct an investigation in accordance with this section may utilize all internal technical and other resources and processes available. Any evidence or documentation gathered during the preliminary review will be available to the investigator. The City reserves the right to consolidate investigations when reports allege the same or similar improper, illegal, or retaliatory actions; and the City Attorney may close an investigation at any time he/she determines that no further action is warranted and shall so notify the employee against whom the allegations have been made and the individual making the report (if known).

All employees have an obligation to assist the City Attorney or other investigating entity in the course of the investigation, including but not limited to providing records and making statements. Employees will be interviewed without loss of pay.

The City Attorney will notify the individual making the report (if known) when the investigation is begun and approximately when it will be concluded. An investigation conducted under this section shall normally be completed within 45 workdays following initiation of the investigation; however, the City Attorney may authorize reasonable extensions in his/her discretion for cases that require extended timelines.

### **2. Written Findings & Recommendations**

After completing the investigation, the City Attorney or other lead investigator must prepare a written report containing the findings and conclusions of the investigation and the recommendations for action(s) to be taken. If the report is not investigated directly by the City Attorney, he/she will review the investigation summary and indicate in writing whether or not he/she concurs with the findings and conclusions of the investigation and/or the recommendations for action(s) to be taken. If the City Attorney does not concur, he/she shall indicate in writing the reason(s) why and his/her findings and recommendations, and request that the Mayor and City Council review all findings and recommendations and make a determination regarding the matter.

Conclusions and recommendations of possible actions to be taken may include, but are not limited to:

- a. Dismiss the report and take no further action based upon the conclusion that no violation of this policy occurred.
- b. Determine that a violation of this policy occurred but was inadvertent and minor and was or is being satisfactorily corrected so that no further action is warranted.
- c. Determine that a violation of this policy occurred and appropriate corrective and/or disciplinary action is warranted.
- d. Direct that the results of the investigation be referred to law enforcement authorities for criminal investigation.
- e. Direct that findings are inconclusive and additional investigation is warranted.
- f. Direct that other actions deemed appropriate to protect the interests of the City of Gaithersburg be taken.

### **3. Resolution and Notifications**

Upon completion of the investigation, the City Attorney shall provide a copy of the written report of findings and recommendations to the employee against whom the allegations have been made and, if determined that a violation of this policy has occurred, to the employee's supervisor, Department Head, the City Manager, and to the Mayor and City Council. The City Attorney shall also advise the individual reporting the improper or illegal action or alleged retaliation (if known) of a summary of the results of the investigation, except that disciplinary or other personnel actions taken as a result of the investigation may be kept confidential.

#### **c. Retention and Documentation of Reports and Investigations**

The City Attorney will ensure that all reports made under this policy and all corresponding documentation collected during the preliminary review or investigation of any report is confidentially retained in accordance with the City's records retention policy.

In the case of reports of alleged retaliation, when there is no finding of retaliation, such record shall be placed in a confidential file maintained in the office of the City Attorney.

A summary of all reports made under this policy and the outcomes of subsequent investigations will be submitted annually by the City Attorney to the City Manager and the Mayor and City Council.

#### **1110.8 Violations; Corrective or Disciplinary Action**

An employee who is found to be responsible for an improper or illegal action in violation of this policy, who knowingly or intentionally makes false allegations or furnishes false or fraudulent evidence, documents or information or misrepresents any material fact, who conceals, destroys, alters, or otherwise tampers with any evidence, documents, or information for the purpose of misleading an investigation, who refuses to cooperate with a review or investigation, or who engages in prohibited retaliatory actions in violation of this policy, shall be subject to corrective and disciplinary action up to and including dismissal from City service, consistent with Section 1400 of this Manual (Disciplinary Actions).

If the Department Head or the City Manager declines to follow the corrective or other disciplinary action recommended upon completion of an investigation, he/she shall report the reasons for failing to do so to the City Attorney. If the City Attorney determines that the reasons provided are inadequate or insufficient, or has reason to believe that the corrective or disciplinary action was not applied fairly or consistently or in accordance with Section 1400 of this Manual, he/she may request that the Mayor and City Council review the findings, recommendations, and action taken and make a final determination regarding the matter.

## **1110.9 Appeals**

### **a. Appeal of Disciplinary Action Resulting from Violation of This Policy**

All classified employees, except for sworn law enforcement officers and employees who have not successfully completed their probationary period (as defined in this Manual), are eligible to utilize the grievance procedures set forth in Section 1700, Grievance Procedures, to file a grievance concerning any form of disciplinary action resulting from a violation of this policy up to and including suspension of three working days or less. Grievances of disciplinary actions against sworn law enforcement officers shall be administered under the Law Enforcement Officers' Bills of Rights (Public Safety Article of the Annotated Code of Maryland, Section 3-101, *et seq.*).

All classified employees, except for sworn law enforcement officers and employees who have not successfully completed their probationary period (as defined in this Manual), who have been suspended for more than three working days for a single event or for a total of more than three working days in a one-year period, or who have been demoted or dismissed from employment as a result of a violation of this policy are eligible to file an appeal of the City Manager's final action pursuant to Chapter 17 of the Gaithersburg City Code, Personnel Ordinance, Section 17-9, entitled "Filing of Appeal," which states:

"a. All classified employees who have successfully completed their probationary period and have been suspended for more than three working days for a single event or for a total of more than three working days in a one-year period, demoted, or dismissed from employment may file an appeal in writing to the Personnel Review Board and may request a hearing thereon. Such appeal shall state the pertinent facts relative to the action which is being appealed and shall be signed by the employee and filed with the Personnel Review Board within five work days after receipt by the employee of final action on such suspension, demotion, or dismissal."

"b. This section shall not apply to sworn law enforcement officers as all disciplinary actions against sworn law enforcement officers shall be administered under the Law Enforcement Officers' Bill of Rights (Public Safety Article of the Annotated Code of Maryland, Section 3-101, *et seq.*).

### **b. Appeal by Reporting Employee**

If an employee making a report of improper or illegal action or retaliatory action using the procedures set forth in this policy reasonably believes that an adequate investigation was not undertaken by the City to determine whether the action occurred, or that insufficient action was taken by the City to address the reported action, or that for other reasons the action is likely to recur, the employee may file an appeal with the Mayor and City Council.