Cumberland Town Council
Ordinance 2018-14
Amending Policies on Intermittent Leave

Whereas, the Town of Cumberland Employee Handbook, section 6.06, designates the Town’s policies under the Family Medical Leave Act ("FMLA"); and

Whereas, under the FMLA, employees may take intermittent leave in the same minimum increments as allowed for other forms of leave; and

Whereas, the Town’s practice is to require employees, when taking leave intermittently, to take leave in a minimum increment of one hour; and

Whereas, the Council find that Section 6.06 of the Employee Handbook should be amended to designate that intermittent leave taken under the FMLA must be taken in the minimum increment of one hour; and

Whereas, the Council finds the Section 6.01, “Vacation Leave,” Section 6.02, “Sick Leave,” Section 6.03 “Attendance Incentive” and Section 6.05 “Bereavement Leave” of the Employee Handbook, which is currently silent on the incremental use of these leaves, should be amended to conform to past practice and clarify that use of these leaves may be also be used in increments of less than a full day, with a minimum increment of one hour; and

Whereas, the Council finds that other technical changes should be made to section 6.06 regarding the administration of and accounting for FMLA leave in order to better inform employees regarding the use of the FMLA leave benefit.
Therefore, it is Ordained that sections 6.05 and 6.06 of the Town of Cumberland Employee Handbooks are amended to reflect these changes, and the amended policies shall read as written in Exhibit A.

It is further ordained that any provision of the Employee Handbook which is not specifically amended by this ordinance shall remain in full force and effect.

It is further ordained that this ordinance shall become effective upon adoption.

Adopted this 20th day of June, 2018

Cumberland Town Council

Anna Pea, President

Joe Siebler, Vice President

Brian Gritter, Member

Nicole Bell, Member

Aaron Cutshaw, Member

Attest:

Erica Salmon, Clerk-Treasurer
Exhibit A

6.05.1 Incremental Use of Vacation, Sick Leave, Personal Days and Bereavement Leave: Employees may use Vacation Leave, Sick Leave, Personal Days awarded pursuant to the Attendance Incentive, and Bereavement Leave in increments of less than a full work day. The minimum increment of leave is one hour. If an employee uses leave for a full day, the employee will be charged with the number of hours he or she was scheduled to work on the day of leave.

6.06 LEAVE UNDER THE FAMILY MEDICAL LEAVE ACT (FMLA)

6.06.1 FMLA Leave: Federal law grants to employees the right to take up to 12 weeks of unpaid leave during a 12-month period, if the employee qualifies, under the Family Medical Leave Act (FMLA) for a serious health condition. The Town recognizes an employee’s rights and obligations under FMLA. Employees of the Town are eligible for up to four weeks of paid FMLA and up to eight weeks of unpaid FMLA leave per year.

6.06.2 Serious Health Condition: The Department of Labor has defined a “serious health condition” as involving any illness, injury, or physical or mental condition that involves:

- In-patient care in a medical facility; or
- Incapacity requiring three days’ absence from work, school, or other daily activities; and, supervision or continuing treatment by a health care provider; or
- A chronic, long-term, or incurable condition which is under the care, supervision, or treatment of a health care provider and if untreated would result in at least three days’ incapacity from work or other daily activities.

6.06.3 Events for which Leave is Available: The Town allows up to 12 work weeks of unpaid leave during any 12 month period to an employee who requests the leave:

- To care for a newborn child, or a child who is newly placed in the employee’s custody through adoption or foster care;
- To care for a spouse, child, stepchild, foster child or parent (but not a parent-in-law) who has a "serious health condition," or
- Because the employee has a "serious health condition," that makes the employee unable to perform his/her job.

6.06.3.1. The Town allows up to twenty-six (26) work weeks of leave during any twelve-month period to an employee who requests the leave to be a military caregiver.

6.06.4 Eligibility Requirements: The twelve month period starts the first day that the employee takes the leave. The provisions of this policy shall not apply to any employee of the Town who has been employed for less than 12 months or who has worked less than 1,250 hours during the preceding 12 month period.

6.06.5 Notice Required: An employee who seeks to obtain leave pursuant to this policy shall give at least 30 calendar days' notice of the leave, if possible. He or she shall also schedule medical treatment to cause as little disruption to his or her employment as possible.

6.06.6 Compensation for FMLA Leave: Employees will be required to first use any vacation and sick days before taking unpaid family leave. An eligible employee shall take any accrued sick leave or vacation leave prior to taking unpaid leave under the FMLA. Such paid leave will be counted towards the employee’s 12 work weeks of FMLA leave granted per leave year. For example, if an employee has one week of vacation leave that can be applied toward the 12 work weeks leave, then only 11 work weeks unpaid leave needs to be provided.

6.06.7 Intermittent or Reduced Hours Leave: Under normal circumstances, any leave obtained pursuant to this policy shall be taken in consecutive days unless the Town Manager or Chief of Police and the employee agree to another arrangement. In the case of leave taken to care for a seriously ill spouse, child, or parent, or due to the employee’s own serious health condition, an employee may take leave intermittently (i.e., periodically) or on a reduced hours schedule (i.e., reduced number of working hours per day or per week) only when such leave is medically necessary, as certified by the employee’s or family member’s health-care provider. Otherwise, such leave is not permitted except at the sole discretion of the Town. An employee who takes leave intermittently or on
a reduced leave schedule may be temporarily transferred to another position for which the employee is qualified to better accommodate that leave.

When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employee may take such leave for any period of a day, but the minimum period of leave is one hour. However, the employee will not be charged FMLA leave for periods of time during which the employee is working. In accounting for FMLA leave taken, the Town will charge the time taken on such leave based upon the actual work week of the employee. For example, if the employee has a 40-hour 5-day regular work week, and takes off one day (eight hours), the employee will be charged with using one-fifth (1/5th) of a week. If the employee works a part-time 30-hour week and takes off 10 hours of FMLA leave, the employee will be charged with using one-third (1/3rd) of a week. If the employee’s work week varies from week to week to such an extent that the Town is unable to determine with any certainty how many hours the employee would otherwise have worked (but for taking the FMLA leave), the Town will use a weekly average of hours scheduled to work over a 12 month period prior to the beginning of the leave period (including any hours for which the employee took leave of any type) in order to calculate the employee’s leave entitlement. If the employee would normally be required to work overtime, but is unable to do so because of a FMLA-qualifying reason that limits the employee’s ability to work overtime, the hours which the employee would have been required to work will be counted against the FMLA entitlement. For example, if the employee would normally be required to work 48 hours in a particular week but is only able to work 40 hours, the employee would be charged with using one-sixth (1/6th) of a week of FMLA leave. Voluntary overtime will not be counted against the FMLA entitlement.