



# MEMORANDUM

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**To:** Mayor and City Councilors  
**From:** Rich Olson, City Manager  
**Date:** January 23, 2013  
**Re:** Consideration - Suggested Procedures for Bringing Concerns to City Manager

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***BACKGROUND:***

In June 2010, the City Attorney and I were asked to develop a procedure that would provide some guidance to the City Council when issues arise with City employees and department heads. The policy that was developed was discussed in a Closed Session in June 2010. No action was taken on the proposed policy.

Mayor Peel asked staff to place the policy back on the agenda for further discussion during a Closed Session on January 14, 2013. The Council directed staff to place this matter on the agenda for the January 28, 2013 Work Session for further discussion.

Attached you will find the policy that was drafted in 2010.

***ANALYSIS:***

The proposed procedure is a fairly simple process. If a City Councilor has an issue with a department head or employee, they will provide the City Manager with a written communication (email, memo, letter, etc.) outlining the inappropriate behavior exhibited by the department head or employee. Once received, the City Manager will have up to 15 days to investigate the incident and must provide back to the City Councilor a written response. If the City Manager's response does not satisfy the City Councilor who brought forward the issue, that Councilor may request that a Closed Session be held to discuss the issue. Depending on the outcome of the Closed Session, the Council may request additional information or that corrective action be taken by the City Manager. However, the City Manager's decision on the personnel matter will be final.

***STAFF RECOMMENDATION:***

As the Council directs.

RCO/vdw

**Suggested Procedure for Councilors' Bringing Concerns re:**

**City Staff Performance to City Manager**

State law requires that all personnel decisions (with the exception of those dealing with the City Manager or City Attorney, both of whom serve at Council's pleasure) regarding employees of Cities which follow the Council-Manager form of government be made and implemented by the City Manager (NC Gen Stat. Sect. 160A-148, attached. See also City Charter Sect. 4.2). This rule is in place, in part, to protect against, and to insulate from, litigation by disgruntled employees against elected officials. Realizing that Councilors may interact with City employees, including Department Heads, and that there may be concerns regarding job performance by those employees which need to be brought to the attention of the City Manager, the City Attorney recommends that the following procedure be followed in such a case:

(1). The Councilor sends a written communication to the City Manager identifying the employee in question and identifying his/her direct supervisor, if known. In that communication, the Councilor shall specify in as much detail as possible the specific concern(s) he/she has regarding the employee's performance, the date(s) on which the behavior in question was exhibited, the specifics of the inappropriate behavior, the name(s), if known, of any others who might have observed the behavior in question, and the corrective action he/she would like to see taken.

(2). Upon receipt of such a report, the City Manager shall, as soon as reasonably possible (but in any event within 15 days of the receipt of the report), investigate the behavior or incident in question and shall, within 30 days of his receipt of the report,

respond in writing to the Councilor with the results of his/her investigation and the corrective action, if any, which he or she shall take to resolve the matter.

(3). If the Councilor in question is not satisfied with the City Manager's handling of the situation, he or she may ask that the incident and employee in question be the subject of a Closed Session discussion for personnel matters at an upcoming Council Meeting, at which time the entire Council shall be apprised of the situation and may suggest additional corrective action be taken by the City Manager. The City Manager's decision regarding personnel matters shall, however, be final, as required by applicable State law and our Charter.

**§ 160A-148. Powers and duties of manager.**

The manager shall be the chief administrator of the city. He shall be responsible to the council for administering all municipal affairs placed in his charge by them, and shall have the following powers and duties:

- (1) He shall appoint and suspend or remove all city officers and employees not elected by the people, and whose appointment or removal is not otherwise provided for by law, except the city attorney, in accordance with such general personnel rules, regulations, policies, or ordinances as the council may adopt.
- (2) He shall direct and supervise the administration of all departments, offices, and agencies of the city, subject to the general direction and control of the council, except as otherwise provided by law.
- (3) He shall attend all meetings of the council and recommend any measures that he deems expedient.
- (4) He shall see that all laws of the State, the city charter, and the ordinances, resolutions, and regulations of the council are faithfully executed within the city.
- (5) He shall prepare and submit the annual budget and capital program to the council.
- (6) He shall annually submit to the council and make available to the public a complete report on the finances and administrative activities of the city as of the end of the fiscal year.
- (7) He shall make any other reports that the council may require concerning the operations of city departments, offices, and agencies subject to his direction and control.
- (8) He shall perform any other duties that may be required or authorized by the council. (1969, c. 629, s. 2; 1971, c. 698, s. 1; 1973, c. 426, s. 22.)

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*This document (also available in PDF and RTF formats) is not an official document.  
Please read the caveats on the main NC Statutes page for more information.*

**Sec. 3.5. Special elections and referenda.**

Special elections and referenda may be held only as provided by this Charter, general law, or applicable local acts of the General Assembly.

**ARTICLE IV. ORGANIZATION AND  
ADMINISTRATION**

**Sec. 4.1. Form of government.**

The City shall operate under the council-manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

**Sec. 4.2. City manager; appointment; powers and duties.**

The Council shall appoint a City Manager who shall be responsible for the administration of all departments of the City government. The City Manager shall have all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

**Sec. 4.3. City attorney.**

The Council shall appoint a City Attorney licensed to practice law in North Carolina. It shall be the duty of the City Attorney to represent the City, advise City officials, and perform other duties as required by law or as the Council may prescribe.

**Sec. 4.4. City clerk.**

The Manager shall appoint a City Clerk, subject to the confirmation of the Council, to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform other duties as required by general law or prescribed by the Council.

**Sec. 4.5. Tax collector.**

Notwithstanding G.S. 105-349, the Manager shall appoint a Tax Collector and any Assistant Tax Collectors, subject to the confirmation of the

Council, to collect all taxes owed to the City and to perform those duties specified in G.S. 105-350 and such other duties as required by general law or prescribed by the Council.

**Sec. 4.6. Other administrative officers and employees.**

The Council may authorize other positions to be filled by appointment by the City Manager, subject to the confirmation of the Council, and may organize the City government as deemed appropriate, subject to the requirements of general law.

**Sec. 4.7. Council-manager relationship.**

The Council shall hold the City Manager responsible for the proper management of the affairs of the City, and the City Manager shall keep the Council informed of the conditions and needs of the City and shall make reports and recommendations as may be requested by the Council or deemed necessary by the City Manager. The City Manager shall have the authority to appoint, subject to the confirmation of the Council, and remove all officers, department heads and employees in the administrative service of the City, except the City Attorney. The City Manager shall have direct supervisory authority over all officers, department heads, and employees in the administrative service of the City. Neither the Mayor, the City Council, nor any member of the City Council shall direct the conduct or activities of any City employee, directly or indirectly, except through the City Manager.

**Sec. 4.8. Settlement of claims by city manager.**

The Council may authorize the City Manager to settle claims against the City for: (1) personal injuries or damages to property when the amount involved does not exceed the sum of five thousand dollars (\$5,000) and does not exceed the actual loss sustained, including loss of time, medical expenses, and any other expenses actually incurred; and (2) the taking of small portions of private property that are needed for the rounding of corners at intersections of streets, when the amount involved in any such settlement does not