



# CITY OF KINSTON

## Personnel Policy

Subject:  Fair Labor Standards Act (FLSA) Hours Worked and Overtime Compensation	Section: <b>Human Resources</b>		Review Responsibility: Director of Human Resources		
	Policy #: 4	Effective Date: 09/12/2018	Rev. #: 3	Revision Date: 9/12/2018	Page: 1 of 14
	Supersedes: 08/07/2017	Prepared By: Gloria Blake <i>Gloria W. Blake</i>	Approved By: Tony Sears <i>Tony Sears</i>		

### 1.0 Purpose

To establish policies and procedures for the City of Kinston that will ensure compliance with the federal Fair Labor Standards Act (FLSA) requirements.

### 2.0 Departments Affected

All City employees working in all departments.

### 3.0 Policy

The FLSA establishes minimum wage, overtime, and record keeping standards for all employees and exempts certain employees from some of those requirements. FLSA requires overtime premium pay or compensatory time off be granted to all non-exempt employees who work in excess of forty(40) hours in an established work week. For non-exempt employees engaged in law enforcement and firefighting activities, the overtime threshold is 171 hours worked in a 28 day work period and 204 hours in a 27 day work period, respectively.

3.1 Wages. All regular full-time and regular part-time employees of the City of Kinston are compensated on an annual, hourly basis for all hours of work. The annual salary is paid on a bi-weekly basis for the established work period.

3.2 Minimum Wage compliance. No annual salary will be established which computes to less than the applicable federal minimum wage.

3.3 Overtime Compensation. The payment of premium time and one-half regular rates in the form of monetary compensation or compensatory time off is required for hours worked in excess of the applicable overtime threshold.

Employees considered as Executive, Administrative, or Professional employees are exempt from overtime compensation under the Act. Definitions for Executive, Administrative, and Professional are noted in Subsection 3.21.

No overtime shall be worked by an employee except as authorized by the City Manager. However, the City Manager may delegate to department heads as necessary the authority to approve overtime. All employees are expected to perform overtime as required, when required. The City will attempt to provide advance notice whenever possible; however, employees are not guaranteed advance notice and may, in emergency situations, be called

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upon to work overtime with little or no advanced notice. Overtime for an employee working in two positions with different rates of pay is paid at the average of the two rates of pay for each position.

Department Heads shall hold hours worked by the employee to the City's established work period standards except in those cases where overtime is necessary due to weather conditions, necessary seasonal activity, or other work emergencies. Department heads may determine that overtime is necessary taking into account the best interests of the City. Although each Department Head is responsible for authorizing overtime, supervisors share an equal responsibility in controlling unauthorized overtime. Unauthorized work shall be counted as hours worked if the Department Head and/or supervisor should have stopped it but did not, or knows, or suspects that such practices are occurring.

Payment of overtime to employees who have not worked such hours or to exempt employees is prohibited.

Department heads are responsible for internal controls which will provide a mechanism for reviewing and evaluating the use of overtime. These controls are subject to review by the City Manager.

### 3.4 Compensation

All overtime compensation shall be paid in accordance with the Fair Labor Standards Act, U.S. Code of Federal Regulations, Title 29, Parts 553 and 778. Non-exempt employees (as defined below in this policy) shall receive straight-time for all hours worked in the work period applicable to the position to which they are assigned. Any hours worked in excess of the established work period shall be compensated through either premium overtime pay (monetary compensation) or compensatory time off.

It is the policy of the City, whenever possible, to grant compensatory time off in lieu of premium overtime pay for hours worked in excess of the established work period.

### 3.5 Authorization of Compensatory Time Off

Compensatory time off shall be scheduled at the discretion of the City; however, reasonable effort will be made to accommodate the employee as to such scheduling. Employees shall be permitted to use such time off within a reasonable period after making a request to use accrued compensatory time, provided such use does not unduly disrupt the City's operations.

### 3.6 Calculation of Compensatory Time

A non-exempt employee shall be given compensatory time off on the basis of one and one-half times the amount of time worked beyond the standard hours during a

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designated work period. Such compensatory time off must be taken within a reasonable period after the occurrence of the overtime, but it must be taken no later than 26 pay periods from the time that it was earned. If earned compensatory time is not taken off within 26 pay periods from the date it was earned, it must be included in pay given to the employee on the first pay period following the 26th pay period. Department Heads shall take affirmative steps to ensure that earned compensatory time is taken off within the 26 pay period time limit unless otherwise approved by the City Manager.

3.6.1 The exempt or non-exempt status of full-time personnel will be determined under the terms of exemption for executive, administrative, and professional employees as outlined in the section on Exempt Employees (Section 3.21). With regard to non-exempt employees the following additional compensatory time provisions apply:

- i. Non-exempt employees may be given, at the discretion of the City, compensatory time off in lieu of cash payment for overtime hours worked.
- ii. Compensatory time off must be used no later than 26 pay periods from the time that it was incurred.
- iii. Compensatory time off earned but not used within the 26 pay period time frame must be included in pay given to the employee on the first pay period following the expiration of the 26th pay period.
- iv. If an employee under these provisions has a positive balance of earned compensatory time off and is promoted to an exempt position, the accumulated compensatory time off must be paid in cash.
- v. Employees cannot accumulate more than 240 hours of compensatory time off. Any overtime earned that would cause an employee to exceed the 240 hour threshold must be paid in cash.

### 3.7 Termination Pay

Upon termination of employment of a non-exempt employee from the City, any accumulated and unused compensatory time will be paid for at not less than either the average regular rate received by the terminating employee during the last three years of employment or the final regular rate of pay, whichever is higher. This provision shall not apply to exempt employees.

### 3.8 Calculation of Overtime Rates of Pay

Overtime pay shall be calculated at time and one-half the employee's regular rate of pay. The regular rate of pay includes all remuneration for employment paid to or on behalf of the employee, except payments specifically excluded by the FLSA.

### 3.9 Work Period/Workweek Defined

The work period is defined as a regularly recurring period of standard work hours for the City. The following work periods are established:

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- a) All regular full-time employees with the exception of Police and Fire Department personnel work a standard 40 hour workweek within a regularly recurring work period of 168 consecutive hours.
- b) All regular, full-time shift employees of the Police Department work a standard "workweek" of 171 hours within a regularly recurring work period of 672 hours (28 days).
- c) All regular, full-time shift employees of the Fire Department work a standard "workweek" of 204 hours within a regularly recurring work period of 648 hours (27 days).
- d) The workweek may begin any day of the week and any hour of the day, but it must in each case be established in advance. The workweek may be changed, but only if the change is intended to be permanent and is not made to evade the overtime policy. The standard workweek for all regular employees begins at 12:01 am each Monday and ends at 12:00 am the following Sunday.

### 3.10 Hours Worked

Generally, all the time during which an employee is required, suffered, or permitted to be on City property or on duty at a prescribed work site is considered hours worked. This is so even if the duties are performed voluntarily, are pleasurable rather than burdensome, and/or even if no productive work is actually performed. Only meal times or other designated period when the employee is completely free from duty for a minimum of thirty (30) uninterrupted minutes will be excluded from hours worked for FLSA purposes.

### 3.11 Recording and Computing Hours Worked.

Non-exempt employees will accurately record all hours or fraction thereof worked on a daily basis to the nearest 1/10th of an hour. For purposes of reporting hours and computing payroll, time worked in increments of less than a full hour shall be rounded, as permitted by FLSA, in accordance with the following table:

TIME RECORDED ON TIME CLOCK OR PAYROLL ROSTERS	DECIMAL PERCENTAGE TO BE USED
1 - 3	Minutes 0
4 - 9	Minutes .1
10 - 15	Minutes .2
16 - 21	Minutes .3
22 - 27	Minutes .4
28 - 33	Minutes .5

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34 - 39	Minutes	.6
40 - 45	Minutes	.7
46 - 51	Minutes	.8
52 - 57	Minutes	.9
58 - 60	Minutes	1.0

This method of computing working time may be used so long as it does not result in a loss of compensable time to the non-exempt employee and so long as it is not used to avoid paying employees for bona fide work time.

Time spent in preparing for work or preparing to leave work (e.g. changing clothes, washing, putting personal belongings in a locker or closet) shall not be considered compensable hours worked, provided the employee does not engage in any work and the time spent in the prepping activity does not exceed 5 minutes.

### 3.12 Unrecorded and Unauthorized Work

Unrecorded or unauthorized work by a non-exempt employee, whether directed by, permitted by or unknown to a Supervisor and/or Department Head, is prohibited. Such hours worked by an employee without the Supervisor and/or Department Head's permission or contrary to instructions are considered as hours worked and must be compensated. Unrecorded hours worked such as beginning work before an assigned shift, working during an assigned meal period, or working after the close of an assigned shift must be counted as hours worked. Therefore, Department Heads, supervisors, and employees shall be aware that non-exempt employees are not permitted to voluntarily work unrecorded hours before or after a shift or during meal periods, regardless of the reason.

### 3.13 Record keeping

Records of hours worked and wages paid shall be kept on all employees subject to this policy. These records shall include the following information:

- a) Name
- b) Home address
- c) Date of birth (if under 19)
- d) Gender and position classification in which employed
- e) Time and day of week the workweek or work period begins
- f) Total wages paid each pay period
- g) Date of payment and pay period covered
- h) Basis on which wages are paid (e.g. \$4.00 hr., \$200 wk., or \$1,000 mo.)
- i) Regular hourly rate of pay for any workweek or work period in which overtime is worked
- j) Amount and nature of any payment excluded from regular rate
- k) Hours worked each workday and total hours worked each workweek or work period
- l) Total daily or weekly straight-time earnings or wages

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- m) Total overtime earnings for the workweek
- n) Total additions to or deductions from wages paid each pay period plus the dates, amounts and nature of the items which make up the total additions and deductions
- o) Compensatory time accrued, used or paid

The City will make every effort to insure that its time records are accurate. It is the responsibility of every Department Head, supervisor and employee to assure that time records accurately reflect actual hours worked.

### 3.14 Standby Pay

In providing City services, it may be necessary to identify certain positions to be on standby in case of an emergency. Employees occupying these positions receive additional compensation for being on standby and for being required to report upon contact. Standby time is not considered as work time for overtime purposes. The employee is free to engage in personal pursuits during any portion of the standby shift; such personal pursuits should not restrict the employee from returning to work. Since employees receive additional compensation for being on standby, the additional compensation must be included in the computations when determining overtime payments. Time spent to standby on City premises or so close thereto that the time cannot be used for the employee's own purposes is considered work time, even though no productive work is accomplished.

### 3.15 Call-in Pay

It is City policy to provide additional compensation for employees who respond to emergency "call-in" in order to perform necessary work at a time other than during the employee's regularly scheduled hours of work. An employee who is called in to work before or after his/her scheduled hours of work or on non-work days shall be allowed compensatory time off or overtime pay, as the facts in each case would require. Time on call-in is determined from the time the employee is notified to return to work until the time the work is completed. Should the employee not depart immediately to report for emergency "call-in", the reasonable time for travel that should be considered compensable shall be determined by the Department Head. Employees who are called in while on standby duty shall be compensated at their regular rate of pay for each hour or portion of an hour worked. This includes travel time to and from the work site. Employees not on standby who are called in to work will be paid one hour's pay at their regular rate plus their regular compensation call-in pay for the time actually worked, including travel time.

3.15.1 During a local emergency or disaster, an employee "engaged to wait" on site is paid at his/her regular rate of pay. These "engaged to wait" hours are included in computing hours of work for overtime per the Fair Labor Standards Act.

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3.15.2 During a local emergency or disaster, an employee choosing to stay on the employer's premises, but not "called-in," "engaged to wait," or otherwise required to work, is not required to be compensated by the Fair Labor Standards Act, and shall not be compensated for such "nonworking" hours.

3.15.3 An exempt employee may be required to work outside of his/her normal work schedule during an emergency. Payment of hours over 40 is not guaranteed but may occur by the City Manager's authorization per the Inclement Weather policy, EXE-04, dated 01/01/2011, Section 6.2.2.

### 3.16 Effect of Annual, Sick, Holiday and Compensatory Time Taken

Non-exempt employees must account for all hours of their established work period with any combination of hours worked and/or vacation, sick or holiday leave or compensatory time earned. Insufficient accrued leave or earned compensatory time to cover an employee's absences from work will result in an adjustment in compensation for the pay period in which the absence(s) occurred.

In determining the number of hours worked by an employee within a given work period, time spent on vacation, sick leave and holidays will not be counted as hours worked. Such time off must be included in straight-time pay, but is not included in computing hours of work for overtime pay.

### 3.17 Meal Periods

A meal period, for purposes of this policy, is a span of at least 30 consecutive minutes (never less) during which an employee is completely relieved of duty and free to use the time for his/her own purposes. It is not counted as hours worked or paid time. Any so called "meal period" of less than 30 consecutive minutes or any allowance of "suffering, expected, or permitted" performance of any duty passive or active during this period will result in the total meal period becoming compensable work time.

The standard meal period for City employees is one hour; however, some flexibility in granting meal periods is necessary to meet the needs of departments and their employees; therefore, meal periods may be granted in segments ranging from a minimum of 30 minutes to 2 hours as long as the normal daily scheduled hours are met. To meet work demands and office coverage, departments may also use rotating meal schedules or with approval allow employees to work through a meal period with compensation or work a shorter day.

Department Heads are responsible for structuring meal period assignments and schedules within these policy guidelines and informing all employees of such assignments and schedules.

### 3.18 Grievance Time

The time an employee spends during a regular work schedule in presenting a grievance under the City's policy on Employee Grievances and Appeals is work

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time. Employees shall be granted a reasonable amount of time to prepare the initial presentation of a grievance and such time as may be needed for grievance meetings at each step of the grievance procedure, exclusive of time away from work to consult legal counsel. Time spent outside the employee's regular work schedule is work time only if the employee's attendance is required by the City.

### 3.19 Training Time

Attendance required by the City at training sessions, workshops and other meetings, whether before, during or after the employee's regular work schedule, is work time. Training time is not considered work time if all four of the following criteria are met:

- a) Attendance is in fact voluntary
- b) The course, lecture, or meeting is not directly related to the employee's job
- c) Attendance is outside of the employee's regular schedule of work hours
- d) The employee does not perform any productive work during such attendance.

It should be noted that attendance is voluntary only if the employee is not led to believe that working conditions or continued employment would be adversely affected by non-attendance.

### 3.20 Travel Time

Whether travel time is considered work time depends upon the circumstances surrounding the travel; therefore, travel's relevance to work time will be determined on a case-by-case basis.

#### A. Home to Work

Normal home to work and back home travel time is not compensable work time.

#### B. Home to Work on Special One-Day Assignments in Another City

An employee who works at a fixed location in the city may be requested to go on a one-day assignment to another city; such travel time cannot be regarded as ordinary home-to-work travel. Such travel is considered to be for the City's benefit and at the City's special request; it thus becomes part of the principle activity which the employee was hired to perform on that particular workday. All the time involved, however, need not be counted as work time. Since, except for the special assignment, the employee would have had to report to the regular job site, the travel between home and airport, or the usual time required to travel from home to work may be deducted, such time being in the "home-to-work" category. Also, of course, the usual meal time would be deductible.

#### C. Travel that is All in the Day's Work

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Time spent by an employee in travel as part of the employee's principal assignments, such as travel from job site to job site during the workday, must be counted as hours worked. When an employee is required to report at the normal job site, or at another meeting place, to receive instructions or to perform other work there, the travel time from this designated place to the work place is part of the day's work and must be counted as hours worked.

#### D. Overnight Travel Away From the City

When a non-exempt employee is sent to work or to attend a meeting requiring an overnight stay, only the travel time that falls within the regularly scheduled work hours is compensable time. If the employee is working while traveling, all the hours are compensable. (For example, an employee driving a vehicle to transport passengers or property is working and all that time must be counted as hours of work)

#### E. Air Time/Auto

Should an employee be offered transportation by air which usually takes less time and the employee elects to drive his car instead, the City will treat the time required to complete the trip by air in figuring time worked, not the amount of time to go by car.

### 3.21 Exempt Employees.

The Human Resources Department shall determine which employees are exempt from hours of work and overtime pay, based upon the definitions noted below. Notations of exemption or non-exemption shall be placed in each employee's official file and each employee shall be so notified.

The exempt or non-exempt status of any particular employee must be determined on the basis of whether duties, responsibilities and salary meet the requirements for exemption. The employee's title or job classification alone is not determinative of whether the tests for exemption are met.

#### A. Executive Employee

An employee is exempt as an executive, if the following conditions are met:

- a) Primary duty is "management"
- b) Regularly supervises two or more full-time employees or equivalent
- c) Has the authority to hire and fire (or suggestions on hiring and firing carry heavy weight)
- d) Paid a salary or fee of the minimum set by FSLA

#### B. Administrative Employee

An employee is exempt as an administrative employee, if the following conditions are met:

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- a) Primary duties consist of performing office or non- manual work directly related to management policies or general business operations of the city or any department or sub-division thereof.
- b) Customarily and regularly exercises discretion and independent judgement with respect to matters of significance.
- c) Paid a salary or fee of the minimum set by FSLA

#### C. Professional Employee

An employee is exempt as a professional employee, if the following conditions are met:

- a) The employee's primary duties consist of work:
  - i. requiring knowledge of an advanced type in a field of science or learning, customarily acquired by a prolonged course of specialized intellectual instruction (not general or training in routine mental, manual, or physical processes); or
  - ii. requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.
- b) Paid a salary or fee of the minimum set by FSLA

#### 3.22 Overtime Pay for Exempt Employees

No employee whose position is designated as exempt from overtime compensation provisions shall be paid in any way for hours worked in excess of the standard workweek (i.e. 40 workweek, 171 hour "workweek", 204 hour "workweek" as indicated in Subsection 3.9).

### 4.0 Special Provisions

#### 4.1 Child Labor

Sixteen years is the minimum age for most employment covered by FLSA, with limited exceptions. The 16- year age minimum includes employment in agriculture during school hours or in any occupation in agriculture declared hazardous by the Secretary of Labor, again, with limited exceptions.

Eighteen years is the minimum age for employment in a non-agricultural occupation declared particularly hazardous by the Secretary of Labor. Of particular interest to the City are Hazardous Orders prohibiting the employment of minors between 16 and 18 years of age such as motor vehicle drivers and helpers, operators of elevators and in occupations involving the operation of certain power driven woodworking tools.

#### 4.2 Agricultural Workers

Employees working exclusively in any week in agricultural activities, including nursery operations, are exempt from overtime pay or compensatory time in that week. The exemption applies on a week by week basis. If any work is performed

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other than agricultural or horticultural work, the exemption is lost for that week only.

#### 4.3 Tour of Duty and Compensable Hours of Work

The term “tour of duty” is a unique concept applicable only to employees in law enforcement and fire protection activities. This term means the period of time during which an employee is considered to be on duty for purposes of determining compensable hours. It may be a scheduled or unscheduled period. Scheduled periods also include time spent in work outside the “shift” which is assigned as a necessary part of the job. Unscheduled periods include time spent in court by officers, time spent handling emergency situations and time spent working after a shift to complete an assignment. Such time must be included as compensable time even though the specific work performed may not have been assigned in advance. The tour of duty does not include time spent working on an occasional or sporadic and part-time basis in a different capacity from the regular work. It also does not include time spent substituting for other employees by mutual agreement. The tour of duty also does not include time spent in volunteer law enforcement and fire protection activities performed for a different jurisdiction, even if undertaken pursuant to a mutual aid agreement.

#### 4.4 Special Compensatory Time Provisions for Law Enforcement and Fire Fighting Personnel

The exempt or non-exempt status of law enforcement personnel will be determined under the terms of exemption for executive, administrative, and professional employees as outlined in the section on Exempt Employees (Section 3.21). With regard to non-exempt employees engaged in law enforcement or firefighting duties, the following additional compensatory time provisions apply:

- a) Non-exempt employees in law enforcement or firefighting may be given, at the discretion of the City, compensatory time off in lieu of cash payment for overtime hours worked.
- b) Compensatory time off must be used no later than 26 pay periods from the time that it was incurred.
- c) Compensatory time off earned but not used within the 26 pay period time frame must be included in pay given to the employee on the first pay period following the expiration of the 26th pay period.
- d) If an employee under these provisions has a positive balance of earned compensatory time off and is promoted to an exempt position, the accumulated compensatory time off must be paid in cash.
- e) Employees cannot accumulate more than 480 hours of compensatory time off. Any overtime earned that would cause an employee to exceed the 480 hour threshold must be paid in cash.

#### 4.5 Part-time/ Occasional or Sporadic Employment

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Employees may solely at their option work occasionally or sporadically on a part-time basis for the City in a different capacity from their regular job. The hours of the second job are not counted or totaled with the hours of the primary job in determining overtime pay or compensatory time. If the second job becomes more than occasional or sporadic, then the hours of both jobs count as one with all hours over the standardized workweek becoming overtime hours. If the duties are not different from the primary job, all the hours count as one job when calculating overtime even if the second job is occasional or sporadic.

In order to be “occasional or sporadic” it is essential that the character of the activity be intermittent, infrequent, irregular, or occurring in scattered instances.

#### 4.6 Employee Substitution

Two employees, solely at their option and with the approval of their supervisor may substitute for one another during scheduled work hours in performance of work in the same capacity. The hours of the substitution will not be counted toward the employee’s regular hours of work even if the time substituted caused one or both employees to exceed the standard workweek hours. Repayment of hours substituted is a matter between the employees. The City will not keep records of hours of substitute work. There is also no limit on the period of time during which hours worked may be traded or paid back among employees.

The City may suggest that an employee substitute or “trade time” with another employee working in the same capacity during regularly scheduled hours; however, each employee will be free to refuse to perform such work without sanction and without being required to explain or justify that decision.

Employees wishing to participate in a substitution arrangement must make arrangements through and get approval of their supervisor.

#### 4.7 Volunteers

Persons may volunteer to perform services for the City without becoming an employee if the individual does not expect or receive compensation other than a nominal fee, reasonable benefits or reimbursement for expenses. This includes persons who are already employed by the City; however, current employees cannot volunteer to perform services which are the same or similar to the services that they are employed to perform.

Generally, the City does not recognize volunteer work as creating an employer-employee relationship so as to require coverage under wage and hour and overtime compensation standards.

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#### 4.8 Joint Employment

A single individual may stand in the relation of an employee to two or more employers simultaneously under FLSA. The Act does not prevent an individual employed by one employer from also entering into an employment relationship with a different employer. However, the City may be liable for compliance with an employee who may be compensated by another employer but whose work also benefits the City or one of its programs.

The City and the other joint employer(s) are responsible, both individually and jointly, for compliance with all applicable provisions of the Act, including the payment of overtime at time and one-half rate (weighted average if different rates) for all hours over the standard hours worked, for the entire employment and for the particular workweek. In discharging the joint obligations each employer may take credit toward the minimum wage and overtime requirements for all payments made to the employee by the other joint employer(s).

Where the employee performs work which simultaneously benefits two or more employers at different times during the workweek, a joint employment relationship generally will exist, especially in situations such as:

- a) An arrangement between employers to share an employee's services. Where one employer is acting directly or indirectly in the interest of the other employer(s) in relation to the employee (such as a temporary help agency).
- b) Where the employers are not completely disassociated with the employment of a particular employee and share control of the employee, either directly or indirectly.
- c) Fact one employer controls, is controlled by, or is under common control with the other employer.

If the facts established in each case, indicate that the City and one or more other employers are acting entirely independently of each other and are completely disassociated with the employment of a particular employee, who during the same workweek performs work for more than one of the employers, each employer may disregard all work performed by the employee for the other employer in determining his own responsibility under the Act. A decision by the City concerning the application of joint employment will not be reached without a careful review of the facts in each case. The fairness to the employee and the lost benefits to the employee are not relevant issues no matter how greatly desired. The relationship between the City or other joint employers will be accurately assessed. If the employers are not acting completely and entirely independently, then the employee is jointly employed regardless of the lost benefits and lost wages to the employee and negative impact to the employers.

#### 5.0 Procedures

Procedures for determining positions exempt or non-exempt from FLSA and other procedures needed to comply with FLSA will be developed and published by the Human Resources Department.

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## 6.0 Enforcement

The City of Kinston is committed to complying with the requirements of the Fair Labor Standards Act not only to avoid penalties that may occur because of non-compliance but because of its responsibilities to its dedicated employees. All supervisors are expected to become thoroughly familiar with this policy and to follow its guidelines with regard to hours of work and overtime compensation. Non-compliance with the policy may be grounds for disciplinary action.

The Department of Human Resources shall have the responsibility to ensure enforcement and compliance with provisions of FLSA. Any persons having questions or concerns regarding regulations should contact the Human Resources Director.