

**TITLE 4**

**MUNICIPAL PERSONNEL**

**CHAPTER**

1. CITY RETIREMENT SYSTEM.
2. OCCUPATIONAL SAFETY AND HEALTH PROGRAM FOR CITY EMPLOYEES.

**CHAPTER 1**

**CITY RETIREMENT SYSTEM<sup>1</sup>**

**SECTION**

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**4-101. Definitions.** As used in this chapter and only in this chapter, the following words and phrases shall have the meaning indicated, unless otherwise defined or required by the context of this chapter:

(1) "City of Jackson, or city" shall mean the city government of Jackson, Tennessee.

(2) "Employee" shall mean any person who is regularly employed by the city and is compensated in whole or in part by the city for personal services rendered to the city and shall include:

(a) Any person who is an appointed official of the city;

(b) Any person who is an official of the city who is elected by popular vote; and

(c) Any person who is regularly employed by the city and who is appointed by an elected official of the city. In all cases of doubt, the

pension board shall determine whether or not a person is an employee as defined herein.

(3) "System" shall mean this retirement system.

(4) "Former plan" shall mean any of the following pension plans:

(a) "City of Jackson Teacher Retirement Plan" created by Chapter 357 of the Private Acts of 1943 of the General Assembly of the State of Tennessee, as amended;

(b) "Firemen and Policemen Pension Fund" of the City of Jackson, created by Chapter 150 of the Private Acts of 1943 of the General Assembly of the State of Tennessee, as amended;

(c) "Water and Administrative Pension Fund" of the City of Jackson, created by Chapter 172 of the Private Acts of 1945 of the General Assembly of the State of Tennessee, as amended;

(d) "Health and Sanitation Department Pension Fund," created by Chapter 144 of the Private Acts of 1949 of the General Assembly of the State of Tennessee, as amended;

(e) "Street Maintenance Department Pension Fund" of the City of Jackson, created by Chapter 370 of the Private Acts of 1949 of the General Assembly of the State of Tennessee, as amended.

(5) "Participant in a former plan" shall mean any employee who on the effective date was covered under a former plan or then had a right to receive a benefit from a former plan.

(6) "Board" shall mean the pension board created in accordance with § 4-103 of this chapter.

(7) "Retired employee" shall mean a member who is no longer an employee and who is eligible to receive a pension provided by this system.

(8) "Fund" shall mean the fund of the City of Jackson, Tennessee, Retirement System, set up and maintained in accordance with § 4-127.

(9) "Fiscal year" shall mean the fiscal year adopted from time to time by the city.

(10) "Termination" shall mean the termination of an employee's employment from the city.

(11) "Effective date" shall mean January 1, 1966.

(12) "Prior service" shall mean the number of years and completed calendar months of service of an employee of the city, whether continuous or not, prior to the effective date; provided, however, that any person who becomes an employee after the effective date shall not be allowed credit for prior service.

(13) "Current service" shall mean all continuous, uninterrupted service of an employee of the city, expressed in years and completed calendar months, after the effective date and prior to the date as of which current service is being determined; provided, however, current service shall not include any time after an employee has reached his seventieth (70th) birthday. Current service shall not be deemed to be interrupted by, but shall not include:

(a) Extended sick leave; or

(b) Other authorized leave of absence; or

(c) Any service voluntary or involuntary, in the Armed Forces of the United States if the employee is entitled to reemployment under the provision of the Universal Military Training and Service Act and amendments hereto, or any law applicable to such reemployment, and provided that the employee shall apply for reemployment with the city within the time specified by law and in the manner and under the conditions prescribed by law.

(14) "Credited service" shall mean the sum of prior service, if any, and current service. Credited service shall be expressed in years and a decimal fraction of a year based on completed calendar months.

(15) "Earnings" shall mean the total compensation paid to an employee for his personal services rendered to the city, excluding overtime payments, fees of office, compensation paid to members of boards or commissions of the city for personal services rendered as members of such boards or commissions, prerequisites, or other compensation not a part of the set scale for an established normal working period; provided, however, that any compensation paid by the State of Tennessee or the city upon which benefits under the Tennessee State Retirement System or Tennessee State Teacher Retirement System, or any other retirement system, other than this system, are based shall be excluded from "earnings" as defined herein.

(16) "Base earnings" shall mean that part of earnings in any calendar year which is subject to social security tax.

(17) "Excess earnings" shall mean that part of earnings in any calendar year which is not subject to social security tax.

(18) "Average" shall mean an arithmetic average determined for the five (5) full calendar years of credited service of a member during which his earnings were highest, or determined on such lesser number of full calendar years of credited service actually completed by said member.

(19) "Normal retirement date" shall mean the first day of the month next following the sixty-fifth (65th) birthday of a member.

(20) "Delivery to the board" shall mean delivery to any member of the board or delivery to the board in care of the city recorder, City of Jackson, Tennessee. (1995 Code, § 4-101)

**4-102. System established.** There is created and established, as of the effective date, a pension system for employees of the city to be known as the "City of Jackson Employees Retirement System." All transactions by said system shall be in the name of the system. The system shall function as hereinafter provided. All benefits payable to retired persons and their survivors from any former plan shall continue unimpaired, and such benefits shall not be an obligation or liability of this system. Any benefit payable to a retired member in accordance with the provisions of this system shall not be payable during any

period of time he becomes or is an employee, notwithstanding anything in this system to the contrary. (1995 Code, § 4-102)

**4-103. Composition and organization of pension board.** The pension board shall be the council of the city. A majority of the members of the board shall constitute a quorum, and all action taken by the board shall be by affirmative vote of the majority of all members of the board. The board shall meet at least once in each quarter of each calendar year, and the board may meet in special session upon call by any member of the board. Any two (2) members of the board shall execute any certificate, statement, or written direction on behalf of the board, and any person interested in the system shall be entitled to rely upon such execution as being an action of the board. (1995 Code, § 4-103)

**4-104. Duties and powers of the pension board.** (1) The pension board shall have complete control of the administration of the system, subject to the provisions of this chapter with all powers necessary to enable it properly to carry out its duties in that respect. Not in limitation, but in amplification of the foregoing, the board shall have the power, not inconsistent with the provisions of this system, to construe any provision of this system and to determine all questions that may arise hereunder, including questions relating to eligibility of employees to become members and the amount of benefit to which any member, beneficiary, survivor or contingent annuitant may become entitled hereunder, subject however, to requirements or limitations reserved to the insurance carrier or trustee, in the group annuity contract or trust agreement respectively, as the case may be.

(2) The board shall select the insurance carrier or bank, or both, as the case may be, to administer the fund created by this system and to administer the system in such other ways as the board may direct, and shall hereby be authorized to execute a group annuity contract or trust agreement, or both, to effect the purposes of this system.

(3) The decisions of the board upon all matters within the scope of its authority shall be final. The board shall establish rules and procedures to be followed by members, beneficiaries, survivors and contingent annuitants in filing applications for benefits, in furnishing and verifying proofs necessary to determine age, earnings, or in any other matters required to administer the system.

(4) The board shall receive all applications for benefits. Upon receipt by the board of such an application, it shall determine all facts which are necessary to establish the right of the applicant to benefits under the provisions of the system and the amount thereof as provided herein. Upon request, the board will afford any applicant the right of hearing with respect to any findings of fact or determination. The board, as it sees fit, shall prepare from time to time information concerning the system and distribute such information to employees

and members. The board shall prepare and publish an annual financial report showing all receipts, disbursements, assets and liabilities of the system. All proceedings and records of the board shall be open for inspection by the public.

(5) To enable the board to perform its functions, the city shall supply full and timely information to the board on all matters relating to the earnings of members, their length of service, their retirement or other causes of termination of employment, contributions by members, and other pertinent facts as the board may require.

(6) The board shall certify to all interested parties the signatures of all members of the board. Any person shall be entitled to rely on the last received such certification of signatures until written notice to the contrary from the board has been received.

(7) The board shall be empowered to employ the services of legal counsel, investment consultants, actuarial consultants, and the services of others which in the sole discretion of the board, may be necessary to maintain a soundly designed, administered and financed pension system. The board shall be empowered to pay from the fund all expenses incurred by or on behalf of the board in the administration of the system during each fiscal year. Members of the board shall serve without compensation as members of the board, but members of the board shall be reimbursed for the actual expenses incurred by them in the performances of their duties.

(8) As soon as practicable after the effective date, the board shall adopt such actuarial rates, values and other tables, and forms as are necessary for the administration of the system. An annual valuation shall be ordered by the board to determine the contingent assets, contingent liabilities and funding requirements of the system. At least once in each five (5) year period, the board shall cause an actuarial investigation to be made of the experience of the system relating to the actuarial assumptions. The board shall adopt from time to time, as it sees fit or as may be necessary, new actuarial rates, values and other tables and forms necessary for the administration of the system.

(9) The board shall be entitled to rely upon all tables, valuations, certificates and reports furnished by any consultant or actuary or insurance company, as the case may be; all opinions given by any legal counsel selected or approved by the board; and any advice of a qualified consultant. The board shall be fully protected with respect to any action taken or suffered by the board in good faith in reliance upon the advice or opinion of any such consultant, actuary, legal counsel, investment consultant, or insurance company, and all actions so taken or suffered shall be conclusive upon each of them and upon all members and other persons interested in the system.

(10) The board shall have no power in any way to modify, alter, add to or subtract from any provision of this system.

(11) The board shall be authorized and empowered to do all things and take all actions necessary to effect social security coverage for members of this system, including those who voluntarily elected to become covered by social

security and to transfer their coverage from a former plan to this system, as provided in § 4-119. The city shall hereby be authorized and empowered to negotiate any agreement or modification of an existing agreement with the State of Tennessee to accomplish such social security coverage. The city shall determine the date as of which such coverage shall be effective, and the city shall promptly execute any agreement or modifications of an existing agreement which may be necessary to accomplish such social security coverage. The city shall be authorized and empowered to pay from the funds of any of the former plans to the Social Security Administration the amount of any retroactive social security taxes as may be required by such agreement or agreements or modifications of any existing agreements. (1995 Code, § 4-104)

**4-105. Personal interest of members of pension board prohibited.**

No member of the board shall have any interest direct or indirect in commissions or fees paid to anyone for any services to the system, or in the gains or profits of any investment made in the fund, except to the extent any member of the board may be a member, survivor, or beneficiary of the system. No member of the board shall receive, directly or indirectly, any pay or emolument for his services. No member of the board shall, directly or indirectly, for himself or as an agent, use in any manner the funds or deposits of the system, except to make such payments therefrom as are authorized by the board, nor shall any member of the board become an endorser or surety or in any manner an obligor for monies loaned by or borrowed from the system. (1995 Code, § 4-105)

**4-106. Members' contribution account.** The members' contribution account shall be the account to which all members' contributions, as provided in this system, shall be credited. From this account shall be paid any refund of contributions to each member terminating his service other than by retirement or death; and at the time a member retires or dies, his account balance shall be transferred to the retirement allowance account as defined in § 4-108. Contributions by a member shall be deducted from his earnings for each payroll period subsequent to his becoming a member and the amount so deducted shall be credited to the member's individual account of the members' contribution account. Contributions by members provided for in this system shall be made notwithstanding that the minimum compensation provided by law for any member shall be reduced thereby. Every employee by his becoming a member shall consent and agree to the payroll deductions made as provided in this system; and payment of salaries or wages, less such deductions, shall be a full and complete discharge of all claims for services rendered by such members during the period covered by such payment. (1995 Code, § 4-106)

**4-107. Coverage by Social Security Act.** All members of this system shall be covered by the Social Security Act. Any participant of a former plan who

desires to transfer his coverage from a former plan to this system must do so by written notice of his election delivered to the board within one (1) year from the effective date. Each participant of a former plan who elects to transfer his coverage from a former plan to this system shall as a condition of transfer, contribute social security taxes from the date that social security coverage is made effective in addition to the contributions he shall make to this system as provided in § 4-125.

In the case of a member of a former plan who voluntarily elects to transfer his membership to this system in accordance with § 4-120, an amount equal to the required taxes, if any, under the Federal Insurance Contributions Act payable by such member for any period of time that such coverage under the Social Security Act is made retroactive, shall be deducted from amounts credited to his individual account, if any, of the members' contribution account. (1995 Code, § 4-107)

**4-108. Retirement allowance account.** The retirement allowance account shall be the account in which all employer contributions, all amounts transferred from the members' contribution account, and all incomes from any invested assets of any fund shall be accumulated. From this account shall be paid the expenses of the board in administering the system, premiums on account of any insurance or annuity benefits as may be required, death and retirement benefits, to the extent such benefits are not provided by any insurance carrier, and any other benefits payable after a member's retirement or death. (1995 Code, § 4-108)

**4-109. Correction of errors.** If any change in records or error results in any member, survivor, contingent annuitant, or beneficiary receiving from the system more or less than he would have been entitled to receive had the records been correct or had the error not have been made, the board, upon discovery of such error, shall correct the error by adjusting, as far as practicable, the payments in such a manner that the benefits to which the member, survivor, contingent annuitant, or beneficiary was correctly entitled shall be paid. If any change in records or error results in any member or the employer contributing to the fund more or less than should have been contributed had the records been correct or had the error not been made, the board, upon discovery of such error, shall correct the error by adjusting, as far as practicable, the contribution payable to the member or the employer so that the total contributions paid will equal the amount payable had the records been correct or had the error not been made. (1995 Code, § 4-109)

**4-110. Retirement benefits exempt from taxation, execution or assignment.** All retirement benefits and other benefits accrued or accruing to any person under the provisions of this chapter, and the contributions by members as well as the employer, and the other assets of the fund are hereby



exempted from any county or municipal tax and shall not be subject to execution, attachment, garnishment, or any other process whatsoever, nor shall any assignment thereof be enforceable in any court. (1995 Code, § 4-110)

**4-111. False statements.** Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the system, in any attempt to defraud the system shall forfeit all rights and benefits to which he would otherwise be entitled. (1995 Code, § 4-111)

**4-112. Legally incompetent.** If any member, retired member, survivor, beneficiary or contingent annuitant is a minor, or is in the judgment of the board otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him hereunder, the board may, unless and until claim shall have been made by a duly appointed guardian or conservator of such person, direct that such payment or any part thereof be made to such person's spouse, child, parent, brother, or sister, deemed by the board to have incurred expenses for or assumed responsibility for the expenses of such person. Any payment so made shall be a complete discharge of any liability under the system for such payment. (1995 Code, § 4-112)

**4-113. Amendment or repeal.** An amendment or repeal of any provision of this system shall be made only following an actuarial determination of its effect on the soundness of the system's design as well as its effect on the cost of the system, and disclosure of such information to all interested persons, and following a determination by the board that any such amendment or repeal meets all the requirements of Tennessee statutes relating to the actuarial soundness of the program and following a determination by the board that any such amendment or repeal meets the requirements of section 401(a) of the Internal Revenue Code of 1954, as amended, or of any federal law of a similar nature relating to qualified pension plans. No amendment or repeal of a provision of this system shall affect in any way the benefits then being paid to members, survivors, contingent annuitants or beneficiaries or benefits based on service completed prior to the date of such amendment or repeal, except as provided in § 4-114; provided however, that in determining such accrued benefits payable to members, average earnings shall be determined as of the date of the amendment or repeal, as the case may be. (1995 Code, § 4-113)

**4-114. Repeal of entire system.** (1) In event of repeal of this system in its entirety, including amendments thereto, the board shall prepare a list of all members, retired members, survivors, contingent annuitants and beneficiaries, showing for each, as of the date of such repeal, the following:

- (a) For each retired member, survivor, beneficiary or contingent annuitant receiving benefits, the amount and terms of payment of such benefits.

(b) For each member entitled to a deferred benefit as provided in § 4-134(1), the amount and terms of payment of such benefit.

(c) The benefits shown on the above list will then be separated into "priority classes" as follows:

"Priority Class A." Benefits for members who have reached their sixty-fifth (65th) birthdays, benefits for retired members who have reached their sixty-fifth (65th) birthdays, and benefits for survivors, beneficiaries and contingent annuitants of all deceased members or retired members.

"Priority Class B." Benefits for members, retired members who are receiving benefits, terminated members entitled to a deferred benefit as provided in § 4-134(1); provided that they have reached their fifty-fifth (55th) but not their sixty-fifth (65th) birthdays and have completed twenty (20) years of credited service.

"Priority Class C." Benefits to all other members, terminated members and retired members.

(2) The board will then arrange for the liquidation of all assets held in the fund maintained in connection with the system and prepare a statement of the liquidated value of such assets. The board will then arrange for the application of the assets of the fund to purchase annuities from an insurance company or companies, to provide in full, if such assets are sufficient to do so, the benefits in Priority Class A. If such assets are not sufficient to purchase one hundred percent (100%) of benefits in Priority Class A, they shall be applied in full to purchase such uniform percentage as can be purchased. If the assets of the fund are more than sufficient to purchase one hundred percent (100%) of the benefits in Priority Class A, the remainder shall be applied in the same manner to purchase all or a uniform percentage of benefits in Priority Class B. If the remaining assets are more than sufficient to purchase one hundred percent (100%) of the benefits in Priority Class B, the remainder shall be applied in the same manner to purchase all or a uniform percentage of benefits in Priority Class C. If the remaining assets are more than sufficient to purchase one hundred percent (100%) of the benefits in Priority Class C, the remainder shall revert to the city. Upon completion of the steps specified above, this system shall be considered repealed, and no member, retired member, survivor, beneficiary or contingent annuitant shall have any further right or claim to benefits under this system. (1995 Code, § 4-114)

**4-115. Internal Revenue Service requirements; State of Tennessee requirements.** It is a stated intention that this plan be a qualified plan according to Section 401 of the Internal Revenue Code of 1954, as amended, or of any similar, successor law. It is also the intention that this system shall conform to all laws of the State of Tennessee which relate to actuarial requirements of public employee plans for cities in the State of Tennessee.

Accordingly, any such requirement of any federal law or law of the State of Tennessee shall be deemed to be included as a part of this system and the system shall be administered by the board in such manner that the system conforms to all legal requirements referred to in this section. (1995 Code, § 4-115)

**4-116. Termination of system by default.** In the event the city fails for four (4) consecutive fiscal years to contribute in accordance with the provisions of § 4-106, the system shall automatically terminate and the provisions of § 4-114 shall apply in the same manner as though the system in its entirety has been repealed. (1995 Code, § 4-116)

**4-117. Right of employment.** Nothing contained in this system shall be deemed to give any member or employee the right to be retained in the employment of the city or to interfere with the right of the city to discharge any member or employee, regardless of the effect which such discharge would have upon him as a member. (1995 Code, § 4-117)

**4-118. Certain employees to become members of Tennessee Consolidated Retirement System; transfers into state plan.** (1) Each and every person becoming a full-time regular employee of the City of Jackson on and after May 1, 1974, shall, as a condition of employment, become a member of the Tennessee Consolidated Retirement System as of his date of employment, subject to such terms and conditions, rules and regulations, deductions and assessments, as may be in effect from time to time, applicable to such retirement system. Employees who are presently a member of the "City of Jackson Employees Retirement System," adopted December 14, 1965, may remain a member of such retirement system or may elect to transfer their membership to the Tennessee Consolidated Retirement System. Such election, however, to be made on or before the 1st day of May, 1974, which such election when once made shall be final. Election to transfer membership to the Tennessee Consolidated Retirement System may be made quarterly under such terms and conditions as may conform with the provisions of the Tennessee Consolidated Retirement System.

(2) Present employees who have remained members of a "former plan" as defined in § 4-101(4), shall have the same right of transfer to the Tennessee Consolidated Retirement System, as set forth above for present members of the "City of Jackson Employees Retirement System," subject to the identical terms and conditions, more fully set forth above.

(3) Any present full-time regular employee of the City of Jackson not now covered by any retirement plan may elect to become a member of the Tennessee Consolidated Retirement System in the same manner and under the same conditions as set forth above for present members of the other existing city retirement plans. (1995 Code, § 4-118)

**4-119. Eligibility and participation of a member of a former plan who transfers his membership to this system.** Each employee who is a participant in a former plan and who voluntarily elects in writing to transfer his membership to this system, in accordance with the provisions of this system, shall upon becoming a member of this system, cease to be a member or a participant in a former plan, and shall thereafter have no rights to any benefit provided by any former plan and all contributions made by him which stand to his credit in a former plan as of the date he transfers to this system shall be transferred to this system. All such amounts transferred shall be credited to his individual account in the members' contribution account.

Any employee on the effective date who desires to transfer to this system shall deliver within one (1) year from the effective date written notice to the board of his election to become a member of this system. He shall become a member as of the effective date and his employee contributions to the system shall be due and payable from the effective date. In the case of an employee on authorized leave of absence on the effective date, such written notice must be delivered to the board within ninety (90) days of his return to active employment. If an employee does not deliver such written notice within the time limits prescribed in this section, he shall be deemed to have refused membership in this system, and he shall forfeit his right to any credit for prior service if he subsequently delivers such written notice, notwithstanding anything in this system to the contrary. He may subsequently deliver such written notice to the board, but he shall not have any right to credit for prior service and he shall pay into the fund all contributions he would have made from the effective date to the date such written notice is delivered by him to the board. (1995 Code, § 4-119)

**4-120. Eligibility and participation of employees on the effective date who are not members of a former plan.** Each employee on the effective date who is not then a member of any former plan shall be eligible to become a member of this system on the effective date. (1995 Code § 4-120)

**4-121. Termination of membership in the system.** If a member terminates his membership in this system, he shall thereafter forfeit all rights to any benefit or benefits provided by this system arising from service completed prior to the date his membership is terminated, except as otherwise provided in this system. The membership of any member shall terminate upon:

(1) Withdrawal of his contributions at, or any time after, termination of employment, regardless of his length of credited service;

(2) Termination of employment, unless at such termination of employment he has completed twenty (20) years of credited service and he does not withdraw his contributions;

(3) Retirement, except disability retirement followed by reemployment as an employee subject to § 4-135, or early retirement, if a monthly deferred

early retirement benefit was elected, followed by reemployment as an employee subject to § 4-134;

(4) Death;

(5) Teachers of the Jackson School Department now members of the city retirement system, or members of a former plan as defined in § 4-101(4)(a) thereof, who are eligible for membership in the Tennessee Consolidated Retirement System may transfer from the city retirement system, or a former plan, to the Tennessee Consolidated Retirement System as a Class A member, provided such teachers indicate in writing to the superintendent of the city school system on or before the thirty-first (31st) day of December, 1973, that they desire to effect such transfer. Such decision when made shall be irrevocable. Any teacher not electing to transfer shall remain a member of the plan or system of which he or she is now a member. Transfers requested after the thirty-first (31st) day of December, 1973, will not be considered. (1995 Code, § 4-121)

**4-122. Designation of beneficiary; contingent annuitant.** A member may designate any person as beneficiary or contingent annuitant, as the case may be, to receive benefits provided by this system and payable upon the death of the member. A change in such designation may be made at any time by the member, subject to the provisions of § 4-143. Such designation or change in designation shall be submitted in writing to the board in such form and manner as the board may prescribe. No designation of beneficiary or contingent annuitant shall be effective unless and until it has been received by the board prior to the date of death of the member. Upon any change in designation, the rights of each previously designated beneficiary or contingent annuitant to receive any benefits payable from this system upon the death of a member shall cease. (1995 Code, § 4-122)

**4-123. Prior service certificates.** As soon as practicable after the effective date, the board shall determine the prior service of each member who was an employee on the effective date and shall issue to such member a certificate of his prior service. If the board discovers that the prior service recorded on a certificate is incorrect, a corrected certificate superseding any certificate previously issued shall be issued promptly. Copies of such certificates shall become a part of the permanent records maintained by the board for the purpose of determining benefits payable to members or to their beneficiaries or contingent annuitants. In establishing such records, the board may require, in its discretion, members, beneficiaries, contingent annuitants and other persons to submit affidavits as to any information and data which affect benefits payable to members or their beneficiaries or contingent annuitants. When a member terminates his membership as provided in § 4-121, his certificate of prior service shall become void. (1995 Code, § 4-123)

**4-124. Members entitled to benefits from the State of Tennessee Teachers' Retirement System.** Notwithstanding any provision in the plan to the contrary, any monthly retirement benefit due a member shall be increased by an amount of "supplemental benefit" which shall be determined so that it has the same actuarial value as the amounts due the City of Jackson, Tennessee Retirement System from the State of Tennessee Teachers' Retirement System on account of the time that a member is covered by said state system other than the time during which he is covered by this system. (1995 Code, § 4-124)

**4-125. Employee contributions.** Each member shall contribute by payroll deduction two percent (2%) of his base earnings plus six percent (6%) of his excess earnings. Contributions shall commence on the effective date, or on the first day of the month coinciding with or next following completion of six (6) months of credited service, whichever is later. For administrative convenience, the board in its sole discretion may determine the rate at which base earnings and excess earnings shall apply to each payroll period for purposes of raking deductions.

Each member's contributions shall be recorded by the city to an individual account in the name of the member. The city shall keep the board informed as to the status of each member's individual account, as the board shall request. (1995 Code, § 4-125)

**4-126. Employer contributions.** The cost of the system not provided for by the contributions of members will be borne by contributions made by the city. Contributions by the city shall be made irrevocably and shall be used solely for the benefits of members, retired members, beneficiaries, and contingent annuitants. Contributions made by the city to the system for the benefit of all members shall not be allocated to each member. The amount of annual contributions made by the city each year, commencing in 1966, shall be subject to a minimum percent of payroll of members based on a normal contribution plus five percent (5%) of unfunded past service liabilities; such minimum shall be based on the results of the most recent actuarial valuation made to determine the extent of unfunded liabilities and normal contribution rates.

The amount of normal contribution and unfunded past service liabilities shall be determined by an insurance company or by a qualified actuary on the basis of reasonable and conservative assumptions and on the basis of accepted actuarial methods approved by the board. (1995 Code, § 4-126)

**4-127. Medium of financing the system.** Investment of all contributions made toward the cost of the system and payment of benefits pursuant to this system will be accomplished by a fund held and administered pursuant to a trust agreement with a national bank or a group annuity contract with an insurance company licensed to do business in the State of New York, or

both, as executed and as may be amended from time to time. Any such executed instrument shall constitute a part of this system. (1995 Code, § 4-127)

**4-128. Benefits, conditions.** Before any benefit provided for in §§ 4-128 through 4-144 can be payable, all conditions applicable to the payment of the benefit must be met, application for the benefit must be presented to the board in such form and manner as the board shall prescribe, and payment of the benefit must be authorized by the board. If any monthly retirement income provided for in §§ 4-128 through 4-142 is less than twenty dollars (\$20.00) per month, the board in its discretion may authorize the payment of the actuarial equivalent value of such benefit in one lump sum or in such other manner as the board may determine. Notwithstanding any provision in this system to the contrary:

(1) Any condition applicable to the payment of any benefit in this system included in any insurance contract that is a part of this system, shall be a requirement of this system, and

(2) Any person eligible to receive any benefit from a former plan, shall not be eligible to receive any benefit from this system. (1995 Code, § 4-128)

**4-129. Normal retirement conditions.** Each member shall be eligible to retire on his normal retirement date and to receive a benefit as provided in § 4-130. (1995 Code, § 4-129)

**4-130. Normal retirement benefit.** A member shall, upon retirement on his normal retirement date, receive a monthly normal retirement benefit which shall be payable on his normal retirement date and on the first day of each month thereafter during his lifetime, computed as of his normal retirement date as one-twelfth (1/12th) of the difference, if any of (1) minus (2), as follows:

(1) Fifty percent (50%) of average earnings;

(2) Computed amount of primary social security.

Provided, however, the amount so determined shall be reduced four percent (4%) for each year, if any, that credited service is less than twenty-five (25) years.

The benefit so computed, however, shall not be less than a monthly benefit which has a commuted value actuarially equivalent to twice the total amount that the member has contributed to the system. The "computed amount of primary social security," as used in this system, shall be determined by the board in accordance with the method by which the primary insurance amount is determined in accordance with the social security law as such law existed on the date of termination, except that the primary insurance amount shall be based on the amount of his average earnings on the date of termination. Should a retired member prove to the satisfaction of the board that the actual amount of his monthly primary social security benefit, not reduced by reason of any earnings, is less than the computed amount, the board shall thereupon adjust

his retirement benefit provided under this section, or option elected, as the case may be, according to the actual rather than the computed amount of his primary social security benefit. (1995 Code, § 4-130)

**4-131. Delayed retirement, conditions.** A member may remain in the active employment of the city beyond his normal retirement date, if requested in writing to do so by the head of his department and with the written approval of the board and shall be eligible to retire on his delayed retirement date which shall be the first day of any month following the effective date and his normal retirement date, and to receive a benefit as provided in § 4-132. (1995 Code, § 4-131)

**4-132. Delayed retirement benefit.** A member shall, upon retirement on his delayed retirement date, receive a monthly delayed retirement benefit, which shall be payable on his delayed retirement date and on the first day of each month thereafter during his lifetime, computed in the same manner set forth in § 4-130, except that such computation shall be made as of his delayed retirement date. (1995 Code, § 4-132)

**4-133. Early retirement, conditions.** A member who has reached his fifty-fifth (55th) birthday and has completed twenty (20) years of credited service, or who has reached age sixty-two (62), shall be eligible to retire on his early retirement date which shall be the first day of any month thereafter but prior to his normal retirement date and to receive a benefit as provided in § 4-134. (1995 Code, § 4-133)

**4-134. Early retirement benefit.** A member shall, upon retirement on his early retirement date, receive either (1) or (2) as he may elect in writing to the board, as follows:

(1) A monthly deferred early retirement benefit, which shall be payable on his normal retirement date, provided he is then living, and on the first day of each month thereafter during his lifetime, computed in the same manner set forth in § 4-132, except that such computation shall be made as of his early retirement date and the amount to be reduced by multiplying by the ratio of his credited service at time of termination to the amount of credited service he would have if he continued as an employee until his normal retirement date; provided however, that if the date of death of such member occurs after his termination of employment and prior to his normal retirement date, his beneficiary shall receive a refund of the contributions standing to the credit of such deceased member; or

(2) An immediate monthly early retirement benefit, which shall be payable on his early retirement date and on the first day of each month thereafter during his lifetime, the amount of which shall be actuarially equivalent in value to the benefit provided in subsection (1) of this section.



If a member who has elected a monthly deferred early retirement benefit as provided in subsection (1) of this section is re-employed by the city, his credited service shall not be deemed to have been interrupted, but shall not include any time during which he was not an employee. (1995 Code, § 4-134)

**4-135. Definition of disability, requirements.** Disability shall mean a physical or mental condition of a member which has persisted for six (6) continuous months, which is likely to be permanent, and which has rendered him incapable of performing work which would provide income at a rate of twenty-five percent (25%) or more of his regular rate of earnings at the time such disability began. Loss by severance of both hands at or above the wrists, or both feet at or above the ankles, or one hand above the wrist and one foot at or above the ankle, or the complete irrecoverable loss of the sight of both eyes, shall conclusively determine disability, notwithstanding the extent of the income of the member after the date of such loss.

Notwithstanding any provision of this section to the contrary, disability as defined in this section shall not include a physical or mental condition which results directly or indirectly from:

- (1) Injuries intentionally self-inflicted;
- (2) Injury or disease resulting from military service; or
- (3) Injury or disease suffered or contracted prior to the date last hired

as an employee by the city.

The board shall have the exclusive authority to determine the existence of disability. The board, in its sole discretion, may secure such medical and other evidence as it deems necessary and appropriate. Once each calendar year, the board may require any retired member who is receiving a disability benefit and who has not reached his normal retirement date to undergo a medical examination by a physician or physicians designated by the board; and such examination shall be made at the place of residence of such retired member or any other place the board designates. If the board determines from such medical examination or any other evidence that the disability of the retired member has ceased, his disability benefit shall be discontinued as of the date of such determination. If a retired member refuses to submit to such medical examination, his disability benefit shall be discontinued until he shall actually undergo such medical examination; and if he fails to undergo such medical examination for one (1) year from the date the board requires such medical examination, his disability benefit shall be discontinued permanently. Prior to July 1 in each year, each retired member who receives a disability benefit in the preceding calendar year and who has not reached his normal retirement date shall submit proof satisfactory to the board of the amount of his income earned in such preceding calendar year and derived from performing work. If the board determines that such income is twenty-five percent (25%) or more of his regular rate of annual earnings at the time such disability began, his disability benefit shall be discontinued as of the date of such determination; provided however,

that if the retired member reapplies for disability benefits and the board determines that disability exists, payment of his disability benefit shall resume as of the date of such determination. If a retired member refuses or fails to submit such proof to the board prior to July 1, in each calendar year, his disability benefit shall be discontinued after such date and until he actually submits such proof; and if he fails to submit such proof within one (1) year of such date, his disability benefit shall be discontinued permanently. If the disability benefit of a retired member is discontinued prior to his normal retirement date and he is re-employed by the city within six (6) months following the date his disability ceases, his credited service shall not be deemed to have been interrupted, but shall not include any time during which he was not an employee. (1995 Code, § 4-135)

**4-136. Disability not in line of duty, conditions.** A member who is an employee, who has completed fifteen (15) years of credited service and who has become disabled as defined in § 4-135 shall be eligible to retire from the active employment of the city on his disability retirement date, which shall be the first day of the month following the determination by the board that he is disabled, and to receive a disability benefit as provided in § 4-138. (1995 Code, § 4-136)

**4-137. Disability in line of duty, conditions.** A member or an employee hired after April 6, 1965, and who becomes disabled, as defined in § 4-135, as a direct result of any act occurring or thing done which, as determined in the discretion of the board, was required of him in the performance of his duty as an employee, shall be eligible to retire from the active employment of the city on his disability retirement date, which shall be the first day of the month following the determination by the board that he is disabled, and to receive a disability benefit as provided in § 4-138. (1995 Code, § 4-137)

**4-138. Disability benefit.** A member who has become disabled, shall receive a monthly disability retirement benefit, which shall be payable on his disability retirement date, and on the first day of each month thereafter during the period of his disability and during his lifetime until he reaches his otherwise normal retirement date. Such disability retirement benefit shall be determined as:

A monthly benefit equal to one-twelfth (1/12th) of the difference between (1) fifty percent (50%) of average earnings determined as of his disability retirement date and (2) a computed amount of primary social security, provided however, that the amount of monthly benefit shall not be less than fifty dollars (\$50.00).

If a disabled member remains disabled, upon attaining his otherwise normal retirement date, he shall thereafter be entitled to receive a monthly

retirement benefit which shall be payable on his normal retirement date and on the first day of each month thereafter during his lifetime which shall be determined in accordance with § 4-130, except that his credited service shall include the period of time during which he received a disability retirement benefit.

A member who is eligible to receive a disability benefit shall submit proof satisfactory to the board that he has filed with the Social Security Administration an application for disability benefits in accordance with the provisions of the Social Security Act. The board may require from time to time a member who is eligible to receive a disability benefit in accordance with the provisions of subsection (2) of this section to file an application for disability benefits with the Social Security Administration. If such member fails or refuses to file such application, the board shall determine the amount of his computed primary social security. (1995 Code, § 4-138)

**4-139. Death benefits before retirement.** If the date of death of a member who was in the active employment of the city on such date, occurs prior to the commencement of any benefits provided by this system, but after (1) the first day of the month following his fifty-fifth (55th) birthday and his completion of twenty (20) years of service or after (2) the first day of the month following his sixty-second (62nd) birthday, his then living beneficiary shall receive a monthly survivor benefit, which shall be payable on the first day of the month following the date of death of the member and during the lifetime of such beneficiary. Such monthly survivor benefit shall be computed as though the member had retired on the day before his date of death and had elected Option A as provided in § 4-144; provided however, that if no beneficiary is living on the date of death of the member, a refund of his contributions shall be payable to his estate. In lieu of all other benefits payable to a beneficiary upon the death of a member, the beneficiary may elect to receive a lump sum payment of the member's contributions standing to the credit of the deceased member.

If the date of death of a member occurs prior to the commencement of any benefits provided by this system and prior to the first day of the month following his fifty-fifth (55th) birthday and his completion of twenty (20) years of credited service, or prior to the first day of the month following his sixty-second (62nd) birthday if he has completed less than twenty (20) years of credited service, his beneficiary shall receive a lump sum payment of the member's contributions standing to the credit of the deceased member. (1995 Code, § 4-139)

**4-140. Death benefits after retirement.** No death benefit shall be payable in the case of a retired member whose date of death occurs after retirement, unless an optional form of benefit pursuant to §§ 4-143 through 4-144 which specifically provides for a death benefit is in effect at the time retirement benefits commence. (1995 Code, § 4-140)

**4-141. Termination of employment before completing twenty (20) years of credited service.** Any member who has completed less than twenty (20) years of credited service at the time of his termination of employment shall receive, in lieu of all other benefits he is eligible to receive, a refund of the member's contributions standing to his credit. (1995 Code, § 4-141)

**4-142. Termination of employment after completing twenty (20) years of credited service.** A member who has completed at least twenty (20) years of credited service at the time of his termination of employment may elect to receive, in lieu of all other benefits he is entitled to receive, either (1) or (2), as follows:

- (1) A refund of the members' contributions standing to his credit; or
- (2) A monthly deferred vested retirement benefit, which shall be payable on his normal retirement date, provided, he is then living and on the first day of each month thereafter during his lifetime, computed in the same manner set forth in § 4-134(1).

If a member who has elected a monthly deferred vested retirement benefit as provided in subparagraph (2) of this section is re-employed by the city, his credited service shall not be deemed to have been interrupted, but shall not include any time during which he was not an employee. (1995 Code, § 4-142)

**4-143. Optional retirement benefits.** A member entitled to a retirement benefit, other than the disability benefit as provided in § 4-138, shall be deemed to have elected Option D provided in § 4-144 unless he revokes such election in writing delivered to the board, but he may elect at any time prior to his retirement date to have a retirement benefit payable under any one of the other options set forth in § 4-144 in lieu of all the benefits he may otherwise be entitled to receive. A member may revoke his election of an option and he may make a new election at any time prior to retirement; but, notwithstanding the foregoing, election of any option shall be subject to any requirements of the insurance carrier, if any, and shall be made by the member in writing and in such form and manner as the board may prescribe. The benefit shall be paid in accordance with the terms of the option elected. The beneficiary or contingent annuitant last designated by the member prior to the date he delivers written application for an option to the board shall be the beneficiary or contingent annuitant, as the case may be, to receive any benefits payable after his death. The election of Option A or Option B by a member shall be null and void if the member or his contingent annuitant, as the case may be, dies before benefits commence. (1995 Code, § 4-143)

**4-144. Description of options.** The amount of any optional retirement benefit set forth in this section shall be based on option rates adopted from time to time by the board or as prescribed in the contract with the insurance carrier, and shall be actuarially equivalent in value to the amount of benefit that would

otherwise be payable from this system to a retired member; provided however, that an optional retirement benefit in lieu of the delayed retirement benefit as provided in § 4-132 shall not be less than if based on the option rate that would have been applicable had retirement occurred at his normal retirement date.

Option A, Joint and Survivor Option: A decreased retirement benefit payable to the retired member for life which shall continue after his death to the surviving contingent annuitant for life in the same amount as that payable to the retired member.

Option B, Modified Joint and Survivor Option: A decreased retirement benefit payable to the retired member for life which shall continue after his death to the survivor contingent annuitant for life in the amount of fifty percent (50%) of the amount that was payable to the retired member.

Option C, Social Security Option: An increased retirement benefit payable to the retired member during his lifetime until his normal retirement date and a reduced retirement benefit payable thereafter for life in order to have a more level retirement income when such reduced retirement benefit is added to his primary insurance amount payable under the Social Security Act. The optional benefit shall be based on the retired members estimated primary insurance amount payable under the Social Security Act as such exists on his early retirement date.

Option D, 120 Payments Certain and Life Option: A decreased retirement benefit payable for life with the first one hundred twenty (120) payments guaranteed. Any guaranteed payments due after the death of the retired member shall be payable to his beneficiary. (1995 Code, § 4-144)

## CHAPTER 2

### OCCUPATIONAL SAFETY AND HEALTH PROGRAM FOR CITY EMPLOYEES

#### SECTION

- 4-201. Purpose and coverage.
- 4-202. Definitions.
- 4-203. Employer's rights and duties.
- 4-204. Employee's rights and duties.
- 4-205. Administration,
- 4-206. Standards authorized.
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- 4-208. Recordkeeping and reporting
- 4-209. Employee complaint procedure.
- 4-210. Education and training.
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- 4-212. Imminent danger procedures.
- 4-213. Abatement orders and hearings.
- 4-214. Penalties.
- 4-215. Confidentiality of privileged information.
- 4-216. Compliance with other laws not excused.

**4-201. Purpose and coverage.** The purpose of this plan is to provide guidelines and procedures for implementing the Occupational Safety and Health Program for the employees of the City of Jackson.

This plan is applicable to all employees, part-time or full-time, seasonal or permanent.

The City of Jackson in electing to update and maintain an effective occupational safety and health program for its employees,

- (1) Provide a safe and healthful place and condition of employment.
- (2) Require the use of safety equipment, personal protective equipment, and other devices where reasonably necessary to protect employees.
- (3) Make, keep, preserve, and make available to the Commissioner of Labor and Workforce Development, his designated representatives, or persons within the Department of Labor and Workforce Development to whom such responsibilities have been delegated, including the director of the division of occupational safety and health, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.

- (4) Consult with the Commissioner of Labor and Workforce Development or his designated representative, with regard to the adequacy of the form and content of records.

(5) Consult with the Commissioner of Labor and Workforce Development regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be resolved under an occupational safety and health standard promulgated by the state.

(6) Assist the Commissioner of Labor and Workforce Development or his monitoring activities to determine program effectiveness and compliance with the occupational safety and health standards.

(7) Make a report to the Commissioner of Labor and Workforce Development annually, or as may otherwise be required, including information on occupational accidents, injuries, and illnesses and accomplishments and progress made toward achieving the goals of the occupational safety and health program.

(8) Provide reasonable opportunity for and encourage the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices which may be injurious to employees' safety and health. (1995 Code, § 4-201, as replaced by Ord. #2015-012, Aug. 2015)

**4-202. Definitions.** For the purpose of this chapter the following definitions apply:

(1) "Commissioner of Labor and Workforce Development" means the chief executive officer of the Tennessee Department of Labor and Workforce Development. This includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Labor and Workforce Development.

(2) "Employer" means the City of Jackson and includes each administrative department, board, commission, division, or other agency of the City of Jackson.

(3) "Occupational health and safety officer or officer" means the person designated by the establishing policy, or executive order to perform duties or to exercise powers assigned so as to plan, develop, and administer the occupational safety and health program for the employees of City of Jackson.

(4) "Inspector(s)" means the individual(s) appointed or designated by the officer to conduct inspections provided for herein. If no such compliance inspector(s) is appointed, inspections shall be conducted by the officer.

(5) "Appointing authority" means any official or group of officials of the employer having legally designated powers of appointment, employment, or removal therefrom for a specific department, board, commission, division, or other agency of this employer.

(7) "Employee" means any person performing services for this employer and listed on the payroll of this employer, either as part-time, full-time, seasonal, or permanent. It also includes any persons normally classified as volunteers provided such persons received remuneration of any

kind for their services. This definition shall not include independent contractors, their agents, servants, and employees.

(8) "Person" means one (1) or more individual, partnership, association, corporation, business trust, or legal representative of any organized group of persons.

(9) "Standard" means an occupational safety and health standard promulgated by the Commissioner of Labor and Workforce Development in accordance with section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 which requires conditions or the adoption or the use of one (1) or more practices, means, methods, operations, or processes or the use of equipment or personal protective equipment necessary or appropriate to provide safe and healthful conditions and places of employment.

(10) "Imminent danger" means any conditions or practices in any place of employment which are such that a hazard exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such hazard can be eliminated through normal compliance enforcement procedures.

(11) "Establishment or worksite" means a single physical location under the control of this employer where business is conducted, services are rendered, or industrial type operations are performed.

(12) "Serious injury or harm" means that type of harm that would cause permanent or prolonged impairment of the body in that:

(a) A part of the body would be permanently removed (e.g., amputation of an arm, leg, finger(s); loss of an eye) or rendered functionally useless or substantially reduced in efficiency on or off the job (e.g., leg shattered so severely that mobility would be permanently reduced), or

(b) A part of an internal body system would be inhibited in its normal performance or function to such a degree as to shorten life or cause reduction in physical or mental efficiency (e.g., lung impairment causing shortness of breath).

On the other hand, simple fractures, cuts, bruises, concussions, or similar injuries would not fit either of these categories and would not constitute serious physical harm.

(13) "Act or TOSHAct" shall mean the Tennessee Occupational Safety and Health Act of 1972.

(14) "Governing body" means the County Quarterly Court, board of aldermen, board of commissioners, city or town council, board of governors, etc., whichever may be applicable to the local government, government agency, or utility to which this plan applies.

(15) "Chief executive officer" means the chief administrative official, county judge, county chairman, mayor, city manager, general manager, etc., as may be applicable. (1995 Code, § 4-202, as replaced by Ord. #2015-012, Aug. 2015)



**4-203. Employer's rights and duties.** Rights and duties of the employer shall include, but are not limited to, the following provisions:

(1) Employer shall furnish to each employee conditions of employment and a place of employment free from recognized hazards that are causing or are likely to cause death or serious injury or harm to employees.

(2) Employer shall comply with occupational safety and health standards or regulations promulgated pursuant to section VI (6) of the Tennessee Occupational Safety and Health Act of 1972.

(3) Employer shall refrain from any unreasonable restraint on the right of the Commissioner of Labor and Workforce Development to inspect the employers place(s) of business. Employer shall assist the Commissioner of Labor and Workforce Development in the performance of their monitoring duties by supplying or by making available information, personnel, or aids reasonably necessary to the effective conduct of the monitoring activity.

(4) Employer is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearing on proposed standards, or by requesting the development of standards on a given issue under section 6 of the Tennessee Occupational Safety and Health Act of 1972.

(5) Employer is entitled to request an order granting a variance from an occupational safety and health standard.

(6) Employer is entitled to protection of its legally privileged communication.

(7) Employer shall inspect all worksites to insure the provisions of this program are complied with and carried out.

(8) Employer shall notify and inform any employee who has been or is being exposed in a biologically significant manner to harmful agents or materials in excess of the applicable standard and of corrective action being taken.

(9) Employer shall notify all employees of their rights and duties under this program. (1995 Code, § 4-203, as replaced by Ord. #2015-012, Aug. 2015)

**4-204. Employee's rights and duties.** Rights and duties of employees shall include, but are not limited to, the following provisions:

(1) Each employee shall comply with occupational safety and health act standards and all rules, regulations, and orders issued pursuant to this program and the Tennessee Occupational Safety and Health Act of 1972 which are applicable to his or her own actions and conduct.

(2) Each employee shall be notified by the placing of a notice upon bulletin boards, or other places of common passage, of any application for a permanent or temporary order granting the employer a variance from any provision of the TOSHAct or any standard or regulation promulgated under the act.

(3) Each employee shall be given the opportunity to participate in any hearing which concerns an application by the employer for a variance from a standard or regulation promulgated under the act.

(4) Any employee who may be adversely affected by a standard or variance issued pursuant to the act or this program may file a petition with the Commissioner of Labor and Workforce Development or whoever is responsible for the promulgation of the standard or the granting of the variance.

(5) Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by an applicable standard shall be provided by the employer with information on any significant hazards to which they are or have been exposed, relevant symptoms, and proper conditions for safe use or exposure. Employees shall also be informed of corrective action being taken.

(6) Subject to regulations issued pursuant to this program, any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the director or inspector at the time of the physical inspection of the worksite.

(7) Any employee may bring to the attention of the officer any violation or suspected violations of the standards or any other health or safety hazards.

(8) No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection under or relating to this program.

(9) Any employee who believes that he or she has been discriminated against or discharged in violation of subsection (8) of this section may file a complaint alleging such discrimination with the officer. Such employee may also, within thirty (30) days after such violation occurs, file a complaint with the Commissioner of Labor and Workforce Development alleging such discrimination.

(10) Nothing in this or any other provisions of this program shall be deemed to authorize or require any employee to undergo medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others, or when a medical examination may be reasonably required for performance of a specific job.

(11) Employees shall report any accident, injury, or illness resulting from their job, however minor it may seem to be, to their supervisor or the officer within twenty-four (24) hours after the occurrence. (1995 Code, § 4-204, as replaced by Ord. #2015-012, Aug. 2015)

**4-205. Administration.** (1) The officer is designated to perform duties or to exercise powers assigned so as to administer this occupational safety and health program.

(a) The officer may designate person or persons as he deems necessary to carry out his powers, duties, and responsibilities under this program.

(b) The officer may delegate the power to make inspections, provided procedures employed are as effective as those employed by the director.

(c) The director shall employ measures to coordinate, to the extent possible, activities of all departments to promote efficiency and to minimize any inconveniences under this program.

(d) The officer may request qualified technical personnel from any department or section of government to assist him in making compliance inspections, accident investigations, or as he may otherwise deem necessary and appropriate in order to carry out his duties under this program.

(e) The officer shall prepare the report to the Commissioner of Labor and Workforce Development required by § 4-201(7) of this plan.

(f) The officer shall make or cause to be made periodic and follow-up inspections of all facilities and worksites where employees of this employer are employed. He shall make recommendations to correct any hazards or exposures observed. He shall make or cause to be made any inspections required by complaints submitted by employees or inspections requested by employees.

(g) The officer shall assist any officials of the employer in the investigation of occupational accidents or illnesses.

(h) The officer shall maintain or cause to be maintained records required under § 4-208 of this plan.

(i) The officer shall, in the eventuality that there is a fatality or an accident resulting in the hospitalization of three or more employees insure that the Commissioner of Labor and Workforce Development receives notification of the occurrence within eight (8) hours.

(2) The administrative or operational head of each department, division, board, or other agency of this employer shall be responsible for the implementation of this occupational safety and health program within their respective areas.

(a) The administrative or operational head shall follow the directions of the director on all issues involving occupational safety and health of employees as set forth in this plan.

(b) The administrative or operational head shall comply with all abatement orders issued in accordance with the provisions of this plan or request a review of the order with the officer within the abatement period.

(c) The administrative or operational head should make periodic safety surveys of the establishment under his jurisdiction to

become aware of hazards or standards violations that may exist and make an attempt to immediately correct such hazards or violations.

(d) The administrative or operational head shall investigate all occupational accidents, injuries, or illnesses reported to him. He shall report such accidents, injuries, or illnesses to the officer along with his findings and/or recommendations in accordance with Appendix V of this plan.<sup>1</sup> (1995 Code, § 4-205, as replaced by Ord. #2015-012, Aug. 2015)

**4-206. Standards authorized.** The standards adopted under this program are the applicable standards developed and promulgated under section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 or which may, in the future, be developed and promulgated. Additional standards may be promulgated by the governing body of this employer as that body may deem necessary for the safety and health of employees. (1995 Code, § 4-206, as replaced by Ord. #2015-012, Aug. 2015)

**4-207. Variances procedure.** The officer may apply for a variance as a result of a complaint from an employee or of his knowledge of certain hazards or exposures. The officer should definitely believe that a variance is needed before the application for a variance is submitted to the Commissioner of Labor and Workforce Development.

The procedure for applying for a variance to the adopted safety and health standards is as follows:

(1) The application for a variance shall be prepared in writing and shall contain:

(a) A specification of the standard or portion thereof from which the variance is sought.

(b) A detailed statement of the reason(s) why the employer is unable to comply with the standard supported by representations by qualified personnel having first-hand knowledge of the facts represented.

(c) A statement of the steps employer has taken and will take (with specific date) to protect employees against the hazard covered by the standard.

(d) A statement of when the employer expects to comply and what steps have or will be taken (with dates specified) to come into compliance with the standard.

(e) A certification that the employer has informed employees, their authorized representative(s), and/or interested parties by giving them a copy of the request, posting a statement summarizing the application (to include the location of a copy available for examination) at

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<sup>1</sup>All appendices to this program are located in Appendix B of this municipal code.

the places where employee notices are normally posted and by other appropriate means. The certification shall contain a description of the means actually used to inform employees and that employees have been informed of their right to petition the Commissioner of Labor and Workforce Development for a hearing.

(2) The application for a variance should be sent to the Commissioner of Labor and Workforce Development by registered or certified mail.

(3) The Commissioner of Labor and Workforce Development will review the application for a variance and may deny the request or issue an order granting the variance. An order granting a variance shall be issued only if it has been established that:

(a) The employer

(i) Is unable to comply with the standard by the effective date because of unavailability of professional or technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology.

(ii) Has taken all available steps to safeguard employees against the hazard(s) covered by the standard.

(iii) Has an effective program for coming into compliance with the standard as quickly as possible.

(b) The employee is engaged in an experimental program as described in subsection (b), section 13 of the act.

(4) A variance may be granted for a period of no longer than is required to achieve compliance or one (1) year, whichever is shorter.

(5) Upon receipt of an application for an order granting a variance, the commissioner to whom such application is addressed may issue an interim order granting such a variance for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than one hundred eighty (180) days.

(6) The order or interim order granting a variance shall be posted at the worksite and employees notified of such order by the same means used to inform them of the application for said variance (see subsection (1)(e) of this section). (1995 Code, § 4-207, as replaced by Ord. #2015-012, Aug. 2015)

**4-208. Recordkeeping and reporting.** (1) Recording and reporting of all occupational accident, injuries, and illnesses shall be in accordance with instructions and on forms prescribed in the booklet, RECORDKEEPING REQUIREMENTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (Revised 2003) or as may be prescribed by the Tennessee Department of Labor and Workforce Development.

(2) The position responsible for recordkeeping is shown on the Safety and Health Organizational Chart, Appendix V to this plan.<sup>1</sup>

(3) Details of how reports of occupational accidents, injuries, and illnesses will reach the recordkeeper are specified by Accident Reporting Procedures, Appendix V to this plan.<sup>1</sup> (1995 Code, § 4-208, as replaced by Ord. #2015-012, Aug. 2015)

**4-209. Employee complaint procedure.** If any employee feels that he is assigned to work in conditions which might affect his health, safety, or general welfare at the present time or at any time in the future, he should report the condition to the officer.

(1) The complaint should be in the form of a letter and give details on the condition(s) and how the employee believes it affects or will affect his health, safety, or general welfare. The employee should sign the letter but need not do so if he wishes to remain anonymous (see § 4-201(8) of this plan).

(2) Upon receipt of the complaint letter, the officer will evaluate the condition(s) and institute any corrective action, if warranted. Within ten (10) working days following the receipt of the complaint, the officer will answer the complaint in writing stating whether or not the complaint is deemed to be valid and if no, why not, what action has been or will be taken to correct or abate the condition(s), and giving a designated time period for correction or abatement. Answers to anonymous complaints will be posted upon bulletin boards or other places of common passage where the anonymous complaint may be reasonably expected to be seen by the complainant for a period of three (3) working days.

(3) If the complainant finds the reply not satisfactory because it was held to be invalid, the corrective action is felt to be insufficient, or the time period for correction is felt to be too long, he may forward a letter to the chief executive officer or to the governing body explaining the condition(s) cited in his original complaint and why he believes the answer to be inappropriate or insufficient.

(4) The chief executive officer or a representative of the governing body will evaluate the complaint and will begin to take action to correct or abate the condition(s) through arbitration or administrative sanctions or may find the complaint to be invalid. An answer will be sent to the complainant within ten (10) working days following receipt of the complaint or the next regularly scheduled meeting of the governing body following receipt of the complaint explaining decisions made and action taken or to be taken.

(5) After the above steps have been followed and the complainant is still not satisfied with the results, he may then file a complaint with the Commissioner of Labor and Workforce Development. Any complaint filed with

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<sup>1</sup>All appendices to this program are located in Appendix B of this municipal code.

the Commissioner of Labor and Workforce Development in such cases shall include copies of all related correspondence with the officer and the chief executive officer or the representative of the governing body.

(6) Copies of all complaint and answers thereto will be filed by the officer who shall make them available to the Commissioner of Labor and Workforce Development or his designated representative upon request. (1995 Code, § 4-209, as replaced by Ord. #2015-012, Aug. 2015)

**4-210. Education and training.** (1) Officer and/or compliance inspector(s):

(a) Arrangements will be made for the officer and/or compliance inspector(s) to attend training seminars, workshops, etc., conducted by the State of Tennessee or other agencies.

(b) Reference materials, manuals, equipment, etc., deemed necessary for use in conducting compliance inspections, conducting local training, wiring technical reports, and informing officials, supervisors, and employees of the existence of safety and health hazards will be furnished.

(2) All Employees (including managers and supervisory personnel):  
A suitable safety and health training program for employees will be established. This program will, as a minimum:

(a) Instruct each employee in the recognition and avoidance of hazards or unsafe conditions and of standards and regulations applicable to the employees work environment to control or eliminate any hazards, unsafe conditions, or other exposures to occupational illness or injury (such as falls, electrocution, crushing injuries (e.g., trench cave-ins), and being struck by material or equipment).

(b) Instruct employees who are required to handle poisons, acids, caustics, explosives, and other harmful or dangerous substances (including carbon monoxide and chlorine) in the safe handling and use of such items and make them aware of the potential hazards, proper handling procedures, personal protective measures, personal hygiene, etc., which may be required.

(c) Instruct employees who may be exposed to environments where harmful plants or animals are present of the hazards of the environment, how to best avoid injury or exposure, and the first aid procedures to be followed in the event of injury or exposure.

(d) Instruct employees required to handle or use flammable liquids, gases, or toxic materials in their safe handling and use and make employees aware of specific requirements contained in subparts H and M and other applicable subparts of TOSHAct standards (1910 and/or 1926).

(e) Instruct employees on hazards and dangers of confined or enclosed spaces.

(i) Confined or enclosed space means space having a limited means of egress and which is subject to the accumulation of toxic or flammable contaminants or has an oxygen deficient atmosphere. Confined or enclosed spaces include, but are not limited to, storage tanks, boilers, ventilation or exhaust ducts, sewers, underground utility accesses, tunnels, pipelines, and open top spaces more than four feet (4') in depth such as pits, tubs, vaults, and vessels.

(ii) Employees will be given general instruction on hazards involved, precautions to be taken, and on use of personal protective and emergency equipment required. They shall also be instructed on all specific standards or regulations that apply to work in dangerous or potentially dangerous areas.

(iii) The immediate supervisor of any employee who must perform work in a confined or enclosed space shall be responsible for instructing employees on danger of hazards which may be present, precautions to be taken, and use of personal protective and emergency equipment, immediately prior to their entry into such an area and shall require use of appropriate personal protective equipment. (1995 Code, § 4-210, as replaced by Ord. #2015-012, Aug. 2015)

**4-211. General inspection procedures.** It is the intention of the governing body and responsible officials to have an occupational safety and health program that will insure the welfare of employees. In order to be aware of hazards, periodic inspections must be performed. These inspections will enable the finding of hazards or unsafe conditions or operations that will need correction in order to maintain safe and healthful worksites. Inspections made on a pre-designated basis may not yield the desired results. Inspections will be conducted, therefore, on a random basis at intervals not to exceed thirty (30) calendar days.

(1) In order to carry out the purposes of this program, the director and/or compliance inspector(s), if appointed, is authorized:

(a) To enter at any reasonable time, any establishment, facility, or worksite where work is being performed by an employee when such establishment, facility, or worksite is under the jurisdiction of the employer and;

(b) To inspect and investigate during regular working hours and at other reasonable times, within reasonable limits, and in a reasonable manner, any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and to question privately any supervisor, operator, agent, or employee working therein.



(2) If an imminent danger situation is found, alleged, or otherwise brought to the attention of the officer or inspector during a routine inspection, he shall immediately inspect the imminent danger situation in accordance with § 4-212 of this plan before inspecting the remaining portions of the establishment, facility, or worksite.

(3) An administrative representative of the employer and a representative authorized by the employees shall be given an opportunity to consult with and/or to accompany the officer or inspector during the physical inspection of any worksite for the purpose of aiding such inspection.

(4) The right of accompaniment may be denied any person whose conduct interferes with a full and orderly inspection.

(5) The conduct of the inspection shall be such as to preclude unreasonable disruptions of the operation(s) of the workplace.

(6) Interviews of employees during the course of the inspection may be made when such interviews are considered essential to investigative techniques.

(7) Advance notice of inspections. (a) Generally, advance notice of inspections will not be given as this precludes the opportunity to make minor or temporary adjustments in an attempt to create a misleading impression of conditions in an establishment.

(b) There may be occasions when advance notice of inspections will be necessary in order to conduct an effective inspection or investigation. When advance notice of inspection is given, employees or their authorized representative(s) will also be given notice of the inspection.

(8) The officer need not personally make an inspection of each and every worksite once every thirty (30) days. He may delegate the responsibility for such inspections to supervisors or other personnel provided:

(a) Inspections conducted by supervisors or other personnel are at least as effective as those made by the officer.

(b) Records are made of the inspections and of any discrepancies found and are forwarded to the officer.

(9) The officer shall maintain records of inspections to include identification of worksite inspected, date of inspection, description of violations of standards or other unsafe conditions or practices found, and corrective action taken toward abatement. Said inspection records shall be subject to review by the Commissioner of Labor and Workforce Development or his authorized representative. (1995 Code, § 4-211, as replaced by Ord. #2015-012, Aug. 2015)

**4-212. Imminent danger procedures.** (1) Any discovery, any allegation, or any report of imminent danger shall be handled in accordance with the following procedures:

(a) The officer shall immediately be informed of the alleged imminent danger situation and he shall immediately ascertain whether there is a reasonable basis for the allegation.

(b) If the alleged imminent danger situation is determined to have merit by the officer, he shall make or cause to be made an immediate inspection of the alleged imminent danger location.

(c) As soon as it is concluded from such inspection that conditions or practices exist which constitute an imminent danger, the officer or compliance inspector shall attempt to have the danger corrected. All employees at the location shall be informed of the danger and the supervisor or person in charge of the worksite shall be requested to remove employees from the area, if deemed necessary.

(d) The administrative or operational head of the workplace in which the imminent danger exists, or his authorized representative, shall be responsible for determining the manner in which the imminent danger situation will be abated. This shall be done in cooperation with the officer or compliance inspector and to the mutual satisfaction of all parties involved.

(e) The imminent danger shall be deemed abated if:

(i) The imminence of the danger has been eliminated by removal of employees from the area of danger.

(ii) Conditions or practices which resulted in the imminent danger have been eliminated or corrected to the point where an unsafe condition or practice no longer exists.

(f) A written report shall be made by or to the officer describing in detail the imminent danger and its abatement. This report will be maintained by the officer in accordance with § 4-211(9) of this plan.

(2) Refusal to abate. (a) Any refusal to abate an imminent danger situation shall be reported to the officer and/or chief executive officer immediately.

(b) The officer and/or chief executive officer shall take whatever action may be necessary to achieve abatement. (1995 Code, § 4-212, as replaced by Ord. #2015-012, Aug. 2015)

**4-213. Abatement orders and hearings.** (1) Whenever, as a result of an inspection or investigation, the officer or compliance inspector(s) finds that a worksite is not in compliance with the standards, rules or regulations pursuant to this plan and is unable to negotiate abatement with the administrative or operational head of the worksite within a reasonable period of time, the officer shall:

(a) Issue an abatement order to the head of the worksite.

(b) Post, or cause to be posted, a copy of the abatement order at or near each location referred to in the abatement order.

(2) Abatement orders shall contain the following information:

(a) The standard, rule, or regulation which was found to be violated.

(b) A description of the nature and location of the violation.

(c) A description of what is required to abate or correct the violation.

(d) A reasonable period of time during which the violation must be abated or corrected.

(3) At any time within ten (10) days after receipt of an abatement order, anyone affected by the order may advise the officer in writing of any objections to the terms and conditions of the order. Upon receipt of such objections, the officer shall act promptly to hold a hearing with all interested and/or responsible parties in an effort to resolve any objections. Following such hearing, the officer shall, within three (3) working days, issue an abatement order and such subsequent order shall be binding on all parties and shall be final. (as added by Ord. #2015-12, Aug. 2015)

**4-214. Penalties.** (1) No civil or criminal penalties shall be issued against any official, employee, or any other person for failure to comply with safety and health standards or any rules or regulations issued pursuant to this program.

(2) Any employee, regardless of status, who willfully and/or repeatedly violates, or causes to be violated, any safety and health standard, rule, or regulation or any abatement order shall be subject to disciplinary action by the appointing authority. It shall be the duty of the appointing authority to administer discipline by taking action in one of the following ways as appropriate and warranted:

- (a) Oral reprimand
- (b) Written reprimand
- (c) Suspension for three (3) or more working days
- (d) Termination of employment.

(as added by Ord. #2015-12, Aug. 2015)

**4-215. Confidentiality of privileged information.** All information obtained by or reported to the officer pursuant to this plan of operation or the legislation (ordinance, or executive order) enabling this occupational safety and health program which contains or might reveal information which is otherwise privileged shall be considered confidential. Such information may be disclosed to other officials or employees concerned with carrying out this program or when relevant in any proceeding under this program. Such information may also be disclosed to the Commissioner of Labor and Workforce Development or their authorized representatives in carrying out their duties under the Tennessee Occupational Safety and Health Act of 1972. (as added by Ord. #2015-12, Aug. 2015)

**4-216. Compliance with other laws not excused.** Compliance with any other law, statute, ordinance, or executive order, as applicable, which regulates safety and health in employment and places of employment, shall not

excuse the employer, the employee, or any other person from compliance with the provisions of this program.

Compliance with any provisions of this program or any standard, rule, regulation, or order issued pursuant to this program shall not excuse the employer, the employee, or any other person from compliance with the law, statute, ordinance, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, ordinance, or executive order, as applicable, is specifically repealed. (as added by Ord. #2015-12, Aug. 2015)