

**TITLE 4****MUNICIPAL PERSONNEL****CHAPTER**

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**CHAPTER 1****SOCIAL SECURITY FOR OFFICERS AND EMPLOYEES****SECTION**

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**4-101. Policy and purpose as to coverage.** It is hereby declared to be the policy and purpose of this municipality to provide for all eligible employees and officials of the municipality, whether employed in connection with a governmental or proprietary function, the benefits of the system of federal old age and survivors insurance. In pursuance of said policy, and for that purpose, the municipality shall take such action as may be required by applicable state and federal laws or regulations. (1970 Code, § 1-701)

**4-102. Necessary agreements to be executed.** The mayor is hereby authorized and directed to execute all the necessary agreements and amendments thereto with the state executive director of old age insurance, as agent or agency, to secure coverage of employees and officials as provided in the preceding section. (1970 Code, § 1-702)

**4-103. Withholdings from salaries or wages.** Withholdings from the salaries or wages of employees and officials for the purpose provided in the first section of this chapter are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations,

and shall be paid over to the state or federal agency designated by said laws or regulations. (1970 Code, § 1-703)

**4-104. Appropriations for employer's contributions.** There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, and the same shall be paid over to the state or federal agency designated by said laws or regulations. (1970 Code, § 1-704)

**4-105. Records and reports to be made.** The municipality shall keep such records and make such reports as may be required by applicable state and federal laws or regulations. (1970 Code, § 1-705)

**4-106. Exclusion of coverage due to another retirement system.** There is hereby excluded from this chapter any authority to make any agreement with respect to any position or any employee or official now covered or authorized to be covered by any other ordinance creating any retirement system for any employee or official of the municipality. (1970 Code, § 1-706)

## CHAPTER 2

### VACATION AND SICK LEAVE

#### SECTION

- 4-201. Applicability of chapter.
- 4-202. Vacation leave.
- 4-203. Sick leave.
- 4-204. Leave records.

**4-201. Applicability of chapter.** This chapter shall apply to all full-time municipal officers and employees except those operating under the jurisdiction of a utility or other separate board or commission. (1970 Code, § 1-801)

**4-202. Vacation leave.** (1) All officers and employees who have been employed continuously by the municipality for at least one (1) year, but less than six (6) years, shall be given two (2) weeks of annual vacation leave with pay.

(2) All officers and employees who have been employed continuously by the municipality for at least six (6) years, but less than sixteen (16) years, shall be given three (3) weeks of annual vacation leave with pay.

(3) All officers and employees who have been employed continuously by the municipality for at least sixteen (16) years shall be given four (4) weeks of annual vacation leave with pay.

(4) Unused vacation leave may be accrued to a maximum not to exceed one hundred twenty (120) hours. On retirement, separation or termination of employment such unused vacation leave of an employee will be paid at the most recent pay rate of the employee at the time of payment.

(5) For the purpose of this section, the number of years of employment of all officers and employees shall be computed from and after one (1) year prior to the date of the adoption of this code. (1970 Code, § 1-802, as amended by Ord. #310, Jan 2020 *Ch5\_6-9-20*)

**4-203. Sick leave.** (1) All officers and employees who have been employed continuously by the municipality for at least one (1) year shall be given ten (10) days of sick leave with pay each year. Unused sick leave for any year shall accrue for the use by an employee during the next and succeeding years, but no such carry over and accrual shall at anytime exceed a total of twenty (20) days of sick leave. Sick leave shall be taken only when approved by the mayor or by such other officer as he may designate. Sick leave shall be approved for all officers and employees whose absence from duty is due to illness, bodily injury, exposure to contagious disease, or death in the immediate family of the officer or employee. However, the mayor may, in his discretion,

require doctor's certificates or other satisfactory evidence that absences are properly chargeable as sick leave. When an officer or employee is entitled to receive or receives workman's compensation, then he shall not be given sick leave.

(2) For the purpose of this section, the number of years of employment of all officers and employees shall be computed from and after one (1) year prior to the date of the adoption of this code. (1970 Code, § 1-803, as amended by Ord. #291, Dec. 2015)

**4-204. Leave records.** The mayor shall cause to be kept, for each officer and employee, a record currently up to date at all time showing leave taken under this chapter. (1970 Code, § 1-804)

## CHAPTER 3

### MISCELLANEOUS PERSONNEL REGULATIONS

#### SECTION

- 4-301. Business dealings.
- 4-302. Acceptance of gratuities.
- 4-303. Outside employment.
- 4-304. [Repealed.]
- 4-305. Use of municipal time, facilities, etc.
- 4-306. Use of position.
- 4-307. Strikes and unions.
- 4-308. Group medical insurance coverage.

**4-301. Business dealings.** Except for the receipt of such compensation as may be lawfully provided for the performance of his municipal duties, it shall be unlawful for any municipal officer or employee to be privately interested in, or to profit, directly or indirectly, from business dealings with the municipality. (1970 Code, § 1-901)

**4-302. Acceptance of gratuities.** No municipal officer or employee shall accept any money or other consideration or favor from anyone other than the municipality for the performance of an act which he would be required or expected to perform in the regular course of his duties; nor shall any officer or employee accept, directly or indirectly, any gift, gratuity, or favor of any kind which might reasonably be interpreted as an attempt to influence his actions with respect to city business. (1970 Code, § 1-902)

**4-303. Outside employment.** No full-time officer or employee of the municipality shall accept any outside employment without written authorization from the mayor. The mayor shall not grant such authorization if the work is likely to interfere with the satisfactory performance of the officer's or employee's duties, or is incompatible with his municipal employment, or is likely to cast discredit upon or create embarrassment for the municipality. (1970 Code, § 1-903)

**4-304. [Repealed.]** (1970 Code, § 1-904, modified, as repealed by Ord. #220, June 2003)

**4-305. Use of municipal time, facilities, etc.** No municipal officer or employee shall use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself or any other private person or group. Provided, however, that this prohibition shall not apply where the board of mayor and aldermen has authorized the use of such time, facilities,

equipment, or supplies, and the municipality is paid at such rates as are normally charged by private sources for comparable services. (1970 Code, § 1-905)

**4-306. Use of position.** No municipal officer or employee shall make or attempt to make private purchases, for cash or otherwise, in the name of the municipality, nor shall he otherwise use or attempt to use his position to secure unwarranted privileges or exemptions for himself or others. (1970 Code, § 1-906)

**4-307. Strikes and unions.** No municipal officer or employee shall participate in any strike against the municipality, nor shall he join, be a member of, or solicit any other municipal officer or employee to join any labor union which authorizes the use of strikes by government employees. (1970 Code, § 1-907)

**4-308. Group medical insurance coverage.** (1) Subject to action taken from time to time by an incumbent board of mayor and aldermen subscribing to an annual group medical insurance coverage plan or program for full-time municipal employees and subject to funding of any cost thereof on the part of the municipality being made on an annual basis by specific appropriation or by a line item appropriation included in the annual fiscal year budget and appropriations ordinance, there will be subscribed by the city on an annual basis a group medical insurance plan for full-time city employees with the insurer and with the plan terms to be exclusively selected and determined by the city. Participation by a full-time employee in the plan will be purely voluntary.

(2) For full-time employees the city will pay one hundred percent (100%) of the premium cost for the full-time employee.

(3) For those present full-time employees now having family coverage under the existing plan the city will continue to pay for such employees one hundred percent (100%) of the premium cost for their family coverage less not to exceed twenty dollars (\$20.00) per week on such family coverage and fifteen dollars (\$15.00) per week for spousal coverage only. This family coverage cost sharing for existing employees will continue for so long as they remain full-time employees continuously without an interruption of service. For a full-time employee hired or re-hired on and after May 1, 2016 desiring family coverage under a plan then in effect the city will pay eighty percent (80%) of the premium cost for family coverage if applicable with the employee being responsible for the other twenty percent (20%) thereof. (as added by Ord. #293, April 2016)

## CHAPTER 4

### OCCUPATIONAL SAFETY AND HEALTH PROGRAM

#### SECTION

4-401. Created.

4-402. Title.

4-403. Program director designated.

4-404. Program standards.

4-405. Effective date of plan.

**4-401. Created.** There is hereby created a safety and health program for the employees of the City of McEwen as follows. (1970 Code, § 1-1001)

**4-402. Title.** This chapter shall be known as the "Occupational Safety and Health Program for the Employees of the City of McEwen." (1970 Code, § 1-1002)

**4-403. Program director designated.** The board of mayor and aldermen shall from time to time appoint a person to serve at their pleasure as the Director of the City's Occupational Safety and Health Program. Such Director shall prepare and submit to the board for approval a safety and health program to comply with the requirements of the Tennessee Occupational Safety and Health Act of 1972. Upon approval thereof the director shall implement the plan in accordance with this chapter. (1970 Code, § 1-1003, modified)

**4-404. Program standards.** This plan shall be at least as effective as the federal or state standards on the same issues and shall include the following:

(1) The director or his authorized representatives shall have the right to enter at any reasonable time any establishment, construction site, plant, work place, environment, or other area where work is performed in the City of McEwen; and to inspect and investigate any such place of employment and all pertinent conditions, processes, machines, devices, equipment, and materials therein, and to question privately any supervisor or employee.

(2) The director may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence under oath for the purpose of confirming or supplementing his findings.

(3) The director shall provide for education and training of personnel for the administration of the program, and, he shall provide for the education and training of all employees of the city to the extent that same is necessary for said employees to recognize and report safety and health problems as defined in the applicable standards.

(4) All employees shall be informed of the policies and the standards

set forth by the Tennessee Occupational Safety and Health Act.

(5) All employees of the city shall be informed of safety hazards, exposure to toxic or harmful materials and imminent danger situations that may occur in their jobs.

(6) The director or his authorized representative shall upon any allegation of imminent danger immediately ascertain whether there is a reasonable basis for the complaint. He shall make a preliminary determination of whether or not the complaint appears to have merit. If such is the case he or his authorized representative shall cause an immediate inspection of the alleged imminent danger location.

(7) Any employee shall be given the right to participate in an investigation or inspection which involves a safety and/or health situation which concerns his work area.

(8) The director shall establish a safety and health training program designed to instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to his work environment.

(9) The director shall contact the Commissioner of Labor of the State of Tennessee by telephone in the event of the death of an employee involved in a work-related accident. This notification will be done as soon as possible but not to exceed 48 hours.

(10) The director shall set up a procedure for requesting a variance from the Tennessee Department of Labor in the event an operation within the city does not meet the standards set by the Occupational Safety and Health Act and immediate action to alleviate the discrepancy is not possible.

(11) The director shall establish and maintain a system for collecting and reporting safety and health data required under the Tennessee Occupational Safety and Health Act.

(12) The director shall apply this program to employees of each administrative department, commission, board, division or other agency of the City of McEwen.

(13) The director shall make an annual report to the Commissioner of Labor for the State of Tennessee showing the accomplishments and progress of the City of McEwen in its Occupational Safety and Health Program.

(14) The director shall provide a means whereby any employee may submit a report of what he feels is a safety and/or health hazard to his immediate supervisor and the director without fear of jeopardizing his job or chances for future promotion. Such reports shall be preserved and the action thereon shall be noted on said reports and signed by the director or his designees.

(15) In implementing the plan the director shall adopt therein all the words and phrases designated as "definitions" in the Tennessee Occupational Safety and Health Act, promulgated regulations and standards thereunder.

(16) The director shall submit said plan to the Tennessee Department of Labor for approval on or before November 1, 1974. (1970 Code, § 1-1003,



modified)

**4-405. Effective date of plan.** The plan, upon its approval by the Tennessee Department of Labor, shall become effective to the City of McEwen and at this time shall become a part of this chapter as fully and completely as if set out herein. (1970 Code, § 1-1004)

## CHAPTER 5

### DEFERRED COMPENSATION AND RETIREMENT PLAN

#### SECTION

- 4-501. Establishment of plan and administration.
- 4-502. Pension and retirement board.
- 4-503. Eligibility for participation.
- 4-504. Effective date of participation.
- 4-505. Modification or termination of participation.
- 4-506. Authorized investments of deferred compensation.
- 4-507. Compensation eligible to be deferred.
- 4-508. Normal retirement age.
- 4-509. Maximum compensation deferrable.
- 4-510. Option to purchase authorized investments ownership of funds.
- 4-511. Death of a participant-designation of beneficiary.
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- 4-513. Determination of total disability.
- 4-514. Option to pay out in lump sum.
- 4-515. Benefits must commence no later than age 70½.
- 4-516. Transfer of authorized investments to participant.
- 4-517. Plan in addition to other benefits.
- 4-518. Non-assignability of benefits.
- 4-519. Withdrawals for certain emergencies.
- 4-520. Termination by the city.
- 4-521. Governing law.
- 4-522. Effective date.

**4-501. Establishment of plan and administration.** The city hereby establishes for the benefit of individuals who perform services to the city as full-time employees or as elected or appointed officials a deferred compensation retirement and disability plan (hereinafter called the "plan"). The plan shall be administered by the person who shall be duly elected to and holding the office of mayor of the city from time-to-time as reflected in the records (hereinafter referred to as the "plan administrator"). (Ord. #147-1, June 1990)

**4-502. Pension and retirement board.** The board of mayor and alderman (the "board") shall ex-officio constitute the pension and retirement board of the city and shall have general supervision of the plan and to whom the plan administrator shall be responsible. (Ord. #147-1, June 1990)

**4-503. Eligibility for participation.** Participation in the plan shall be voluntary. Any individual who is a full-time employee of the city who is paid a salary or wage, but not a part-time or temporary employee, and any individual

who is elected or appointed to an office with the city may become a participant in the plan by executing a compensation reduction authorization agreement (hereinafter called a "CRA") in a form acceptable to the board, specifying the amount of his or her includable compensation to be deferred on a regular basis to be used by the board to provide the benefits set forth in the plan. No employee or officer of the city or person furnishing services to the city shall be entitled to any benefit conferred herein who has not become a participant by executing a CRA. (Ord. #147-1, June 1990)

**4-504. Effective date of participation.** Participation may be effected by any eligible individual on July 1 of any year provided he or she was employed by the city or serving as an elected or appointed officer thereof on January 1 prior thereto. (Ord. #147-1, June 1990)

**4-505. Modification or termination of participation.** Modification or termination of participation in the plan is effected by executing a subsequent CRA which will supersede and nullify a prior CRA. Such modification will be effected by either increasing or decreasing the amount of compensation to be deferred. A termination of deferrals will be effected by reducing to zero the amount of compensation to be deferred. All amounts of compensation deferred pursuant to a CRA, whether subsequently modified or terminated, shall be legally binding upon the participant and shall be irrevocable when accomplished. A request for a modification or termination shall be made no later than on the second pay day of the participant prior to the effective date of such modification or termination. (Ord. #147-1, June 1990)

**4-506. Authorized investments of deferred compensation.** When submitting a CRA a participant will select, in a form suitable to the board, one or more life insurance policies, annuity contracts or other insurance product permitted by law on his or her life having aggregate premiums equal to the amount of compensation deferred (hereinafter referred to as "authorized investments"). Authorized investments of a participant shall serve as the measure of his or her benefits to be paid under the plan. A participant shall specify the authorized investments to be purchased. Any insurer whose products are thus specified must be a duly licensed insurer authorized to do business in the State of Tennessee. The insurer selected by a participant shall hereinafter be referred to as the "insurer". In the absence of a selection of authorized investments by a participant, the plan administrator may treat the same as the selection of a fixed annuity contract on the participant's life to be purchased by the plan administrator from Metropolitan Life Insurance Company and such annuity contract when purchased shall constitute an authorized investment for the purpose of the plan. (Ord. #147-1, June 1990)

**4-507. Compensation eligible to be deferred.** Compensation which may be deferred shall be the amount of compensation which is includable in a participant's gross income for the taxable year. It shall not include amounts which are used to purchase an annuity contract under Section 403(b) of the code or amounts deferrable under the plan or any other plan meeting the requirements of Section 457 of the code. Such compensation shall be considered at its present value. (Ord. #147-1, June 1990)

**4-508. Normal retirement age.** Normal retirement age under the plan shall mean the date on which a participant attains the age of sixty-five (65) years (hereinafter called "normal retirement age"). (Ord. #147-1, June 1990)

**4-509. Maximum compensation deferrable.** Except as hereinafter provided the maximum amount of compensation which a participant may have deferred under the plan for any taxable year shall be the lesser of:

- (1) \$7,500 or
- (2) 1/3 of his or her includable compensation.

If a participant is involved in any other annuity or deferred compensation arrangement meeting the requirements of Section 403(b) or Section 457 of the code, then the maximum deferrable amount for the taxable year shall be reduced by the amounts, if any, excluded or deferred under any other elective deferral arrangement such as amounts excluded to purchase an annuity contract under Section 403(b), Section 402(a)(8), Section 401(k), Section 402(h)(1)(B), SEP's and Section 501(c)(18), all of the code. For one or more of a participant's last three taxable years before attaining normal retirement age the maximum amount of compensation which may be deferred under this plan shall be the lesser of:

- (a) \$15,000 or
- (b) The sum of the maximum amount which he or she may defer for the taxable year as herein provided and the difference between the maximum amount which he or she could have deferred as herein provided in all prior taxable years since participation commenced and the amount actually deferred in all such prior taxable years. (Ord. #147-1, June 1990)

**4-510. Option to purchase authorized investments ownership of funds.** The plan administrator may, but is not required to, purchase with the city as owner the authorized investments selected by a participant pursuant to the plan. All amounts of compensation deferred by and for a participant under the plan, all authorized investments purchased by the plan administrator and all income therefrom shall be and remain solely the property and rights of the city, subject only to claims of the general creditors of the city. Nothing in the plan shall be construed or interpreted to give any participant or the beneficiary of any participant at any time any security interest in an authorized

investment. Nor shall the plan be construed or interpreted so as to place any authorized investment in trust with the plan administrator for the city for the benefit of a participant or for the benefit of his or her beneficiaries. City shall be the sole owner of all authorized investments and shall have the exclusive right to all benefits therefrom. Authorized investments shall not be deemed to be collateral security for the payment of any benefits under the plan and shall be available to the city to meet its general obligations if the need shall arise; provided however, if the plan administrator does not purchase the authorized investments selected by a participant or if any authorized investment purchased is liquidated for any reason, then any and all benefits under the plan shall be paid from other funds and revenues of the city in amounts determined as set forth under the benefit portions of the plan. (Ord. #147-1, June 1990)

**4-511. Death of a participant-designation of beneficiary.** In the event of a participant's death the plan administrator shall make such payments as required to be made to the participant pursuant to the plan to any other person designated as beneficiary in writing with the plan administrator. A participant may change a designation of beneficiary from time to time either before or after payments shall commence. A change of beneficiary shall be accomplished and shall become effective upon receipt by the plan administrator of a written designation of beneficiary in a form acceptable to the board. In the absence of any written designation of a beneficiary the spouse of a participant, if any, at the time of death shall be deemed the designated beneficiary, otherwise the designated beneficiary shall be deemed to be the estate of the participant. (Ord. #147-1, June 1990)

**4-512. Payments of deferred compensation.** Payments of deferred compensation under the plan shall begin when a participant is actually separated from service with the city as an employee or as an elected or appointed official and is totally disabled or has reached normal retirement age or has died. In no event shall any distributions under the plan commence later than April 1 following the year in which a participant attains the age of 70½ years. Commencing with the first full calendar month following a participant's retirement from actual service due to total disability or upon death or upon a participant reaching normal retirement age and electing to cease active service, the plan administrator will cause monthly payments to be made to the participant for the remainder of his or her life with a total minimum guarantee of 120 such monthly payments. In the case of death such payments shall be made to his or her designated beneficiary. Such payments shall be equal in amount to what would be payable by the insurer to the city at the insurer's settlement rates in effect on the date of the participant's retirement, death or disability as if all the authorized investments selected by the participant, or otherwise, pursuant to the plan, had been purchased and as if, upon the participant's retirement, the city were to elect settlement of all such authorized

investments under an option providing for equal monthly payments for the life of the participant with a total minimum guarantee of 120 such payments. If a participant shall die before or after the plan administrator has caused payments hereunder to commence and if his or her designated beneficiary shall thereafter die before the final minimum monthly payments payable hereunder have been made, then the plan administrator shall promptly ascertain and cause to be paid in one lump sum to the beneficiary's estate an amount equal to what would be the commuted value of the remaining amount payable by the insurer to the city as if the city had elected a settlement option described above with respect to all authorized investments on the participant's life. If no designated beneficiary survives the participant then the plan administrator shall promptly ascertain and cause to be paid in one lump sum to the participant's estate an amount equal to what would be the commuted value of the remaining amount payable by the insurer to the city as if the city had elected the settlement option described above with respect to all authorized investments on his or her life. (Ord. #147-1, June 1990)

**4-513. Determination of total disability.** Retirement because of total disability to perform services for the city shall be determined by the board on a uniform basis applicable to all participants. (Ord. #147-1, June 1990)

**4-514. Option to pay out in lump sum.** Whenever the commuted value of amounts which would be payable by the insurer to the city under this plan is less than \$5,000 as of the date which would be the starting date of the full 120 payments payable under the plan, the plan administrator shall, in lieu of such 120 payments cause an amount equal to such commuted value to be paid in one lump sum. (Ord. #147-1, June 1990)

**4-515. Benefits must commence no later than age 70½.** In no event shall any distributions under the plan commence later than April 1 following the year in which a participant attains the age of 70½ years. Notwithstanding any other provisions of the plan a participant who is actually performing services for the city shall cause payments hereunder to commence upon proper application to the plan administrator during the calendar year in which he or she attains 70½ years. Such payments shall commence with the first full calendar month following the application. (Ord. #147-1, June 1990)

**4-516. Transfer of authorized investments to participant.** Notwithstanding any other provisions contained in the plan, upon the termination of employment or cessation in office of a participant, the board may, in its discretion, upon application of a participant, in lieu of the benefits provided under this plan, authorize the transfer and assignment to the participant of any authorized investments which the plan administrator has acquired on the life of the participant pursuant to the plan, any deferrals of

compensation that have not been invested in authorized investments and the value of any authorized investments that have been liquidated. For the purpose of applying this provision deferred compensation that is not invested in authorized investments and the value of any authorized investments that are liquidated, shall, while held by the city, bear interest at the rate of 6.00% per annum while not invested in authorized investments, except that no interest shall accrue with respect to deferred of compensation invested in an authorized investment within four (4) months of the date of deferral. City may, from time to time, change the rate of interest as herein provided by appropriate amendment hereto. If a transfer of assets is made hereunder all obligations of the city to pay benefits under the plan to a participant or to his or her beneficiary or estate shall terminate at the time of the transfer. (Ord. #147-1, June 1990)

**4-517. Plan in addition to other benefits.** The benefits payable pursuant to the plan are in addition to and not in lieu of any other retirement or disability benefits otherwise generally provided by the city from time-to-time. (Ord. #147-1, June 1990)

**4-518. Non-assignability of benefits.** No participant under the plan may assign, transfer or in any way encumber the benefits payable under the plan and any attempt to do so shall result in forfeiture of all rights to such benefits. The obligation of the city hereunder shall not be construed so as to give any participant any prior claim to any particular asset of the city. (Ord. #147-1, June 1990)

**4-519. Withdrawals for certain emergencies.** If a participant hereunder shall hereafter be faced with an unforeseeable emergency causing severe financial hardship, as hereafter defined or as defined in regulations issued of the Secretary of the Treasury of the United States pursuant to Section 457 of the code, the participant may apply, in a form acceptable to the board, for a withdrawal of any specified portion, as of the date of such application, of what would be the value of all authorized investments on his or her life as if the plan administrator had purchased from the insurer all the authorized investments selected by the participant, or otherwise, pursuant to the plan. Except as may be provided in regulations issued by the Secretary of the Treasury of the United States pursuant to Section 457 of the code, the phrase "unforeseeable emergency causing severe financial hardship" shall mean any sudden or unforeseen event or casualty beyond the control of the participant and which causes unexpected major expense and which is not in fact reimbursed from insurance or otherwise. Such an event or casualty may include an illness or accident involving the participant or a member of his or her immediate family; an accident or casualty causing serious damage or loss to his or her property; or any other situation causing unexpected major expense and which would not normally be budgeted

and which, if withdrawal were not permitted, would result in bankruptcy or in impending bankruptcy under federal law or under state law. Such shall not include the need for foreseeable expenditures which are normally budgetable, such as down payments for purchase of a home, payments for the purchase of motor vehicles or payments for college expenses. In the event of a withdrawal by a participant due to an unforeseeable emergency causing severe financial hardship the deferred compensation benefits payable pursuant to the plan shall be reduced to the extent any authorized investment on the life of the participant may be invaded for the purpose of such withdrawal as if the city had surrendered for its cash value or otherwise liquidated such authorized investment, in whole or in part, to obtain funds with which to pay the participant's requested withdrawal. Deferred compensation benefits thereafter shall be payable only on the basis of what would be the net remaining value cash or other value of such authorized investment on the date when deferred compensation benefits otherwise become payable pursuant to the plan. No withdrawal may in any event exceed the amount needed by a participant to meet the particular severe financial hardship including the estimate by the plan administrator of any increased federal or state income tax liability attributable to the amount of withdrawal pursuant hereto. (Ord. #147-1, June 1990)

**4-520. Termination by the city.** The city may terminate this plan at any time without the consent of any participant; provided, however, the plan shall be legally binding and irrevocable with respect to all deferrals of compensation effected prior to the effective date of such termination. Accordingly, any termination of this plan shall apply only to compensation of any participant earned after the effective date of such termination. (Ord. #147-1, June 1990)

**4-521. Governing law.** The plan as herein adopted shall be construed under and in accordance with the laws of the State of Tennessee. (Ord. #147-1, June 1990)

**4-522. Effective date.** This chapter shall take effect July 1, 1990, the welfare of the city requiring it. (Ord. #147-1, June 1990)



## CHAPTER 6

### SEXUAL HARASSMENT

#### SECTION

- 4-601. Definitions.
- 4-602. Prohibition.
- 4-603. Reports.
- 4-604. Confidentiality.
- 4-605. Retaliation.
- 4-606. Investigation.
- 4-607. Sanctions or corrective actions.

**4-601. Definitions.** The following definitions shall apply:

(1) "Sexual harassment" is unwanted sexual conduct by an employee's supervisor or by a fellow employee that adversely affects an employee's job or job performance.

(2) "Sexual conduct" includes sexual advances, requests for sexual favors, propositions of a sexual nature, physical touching, indecent sexual exposure, sexually provocative language, sexual oriented jokes, broadcasts or displays of sexually oriented recordings, pictures, photographs, cartoons or other form of written, printed or magnetically recorded sexually explicit materials.

(3) "Employee" is a full-time or part-time employee or appointed or elected official of the city. (as added by Ord. #183, § 1, Feb. 1997)

**4-602. Prohibition.** No employee shall engage in sexual harassment. (as added by Ord. #183, § 2, Feb. 1997)

**4-603. Reports.** An employee shall immediately report incidents of sexual harassment in writing to the mayor and to the city attorney. (as added by Ord. #183, § 3, Feb. 1997)

**4-604. Confidentiality.** All reports of sexual harassment and all actions taken in regard thereto shall be handled with as much confidentiality as possible in order to protect the reporting employee and the employee against whom any complaint is made. (as added by Ord. #183, § 4, Feb. 1997)

**4-605. Retaliation.** No retaliation in any form shall be taken against any employee who reports or makes a complaint of sexual harassment or who is called as a witness in regard thereto unless it is later found that such charge or report was untrue and made for an improper purpose such as malice toward the person charged or against whom a report is made. (as added by Ord. #183, § 5, Feb. 1997)

**4-606. Investigation.** The mayor and the city attorney, jointly or separately, shall immediately investigate all reports and complaints of sexual harassment toward the end of determining all facts in connection therewith and in an effort to arrive at the truth and to be as fair as possible to all parties involved. A written report of the result of the investigation shall be prepared. Sworn statements shall be taken from any complaining employee and from any witnesses. An employee against whom a charge of sexual harassment is made shall be permitted to present such evidence as he or she deems relevant. (as added by Ord. #183, § 6, Feb. 1997)

**4-607. Sanctions or corrective actions.** (1) As regards an employee of the city (other than the mayor or an alderman) against whom a complaint is made or who is accused of sexual harassment, the mayor shall make a determination whether or not the evidence by its greater weight supports the occurrence of sexual harassment as reported or charged and if an employee is guilty thereof. Any employee (except the mayor or an alderman) guilty of sexual harassment shall be disciplined as the mayor shall direct to include, but not necessarily limited to, written reprimand, demotion and discharge. The decision of the mayor may be appealed by the sanctioned employee to the board of mayor & aldermen whose decision shall be final.

(2) If the mayor is the employee against whom a report or a charge of sexual harassment is made, the city attorney shall investigate the same and shall prepare a confidential report which shall be submitted to the board of aldermen who shall make the determination from the greater weight of the evidence whether or not the mayor is guilty of sexual harassment. The board of aldermen shall take such corrective action as a majority thereof shall prescribe by way of public or private censure or by authorization of the filing of proceedings for ouster from office for misconduct as provided by law.

(3) If an alderman is the employee against whom a report or a charge of sexual harassment is made, the city attorney shall investigate the same and shall prepare a confidential report which shall be submitted to the board of mayor & aldermen who shall make the determination from the greater weight of the evidence whether or not the alderman is guilty of sexual harassment. The board of mayor & aldermen shall take such corrective action as a majority thereof shall prescribe by way of public or private censure or by authorization for filing of proceedings for ouster from office for misconduct as provided by law.

(4) The corrective action taken or sanctions imposed shall reflect the severity of the sexual harassment found to have occurred, the relative positions of the personnel involved and the likelihood of such corrective action serving as a deterrence to further such misconduct in the work place.

(5) If after a fair investigation it is determined that sexual harassment as charged or reported did not occur or that there is insufficient evidence to justify a finding that it did occur, then such conclusion shall be communicated

to the complaining or reporting employee along with a written statement of the reasons for the determination. (as added by Ord. #183, § 7, Feb. 1997)

## CHAPTER 7

### INTERNAL PERSONNEL POLICIES

#### SECTION

- 4-701. At-will employer.
- 4-702. Policy applies to all employees; exception.
- 4-703. Full-time, part-time, and temporary and/or seasonal employees.
- 4-704. Hiring objective.
- 4-705. Application for employment.
- 4-706. Examinations may be required of applicants.
- 4-707. Holidays.
- 4-708. Grievance procedure.
- 4-709. City is an equal opportunity employer.
- 4-710. Regular work week; overtime.
- 4-711. Military leave.
- 4-712. Employees required to have commercial driver's license.
- 4-713. Employees subject to alcohol and drug testing.
- 4-714. Separation of employment.

**4-701. At-will employer.** City is an at-will employer. Nothing in its personnel policies or regulations will be construed as creating a property right or contract right in any job or any employee in municipal service. (as added by Ord. #191, July 1998)

**4-702. Policy applies to all employees; exception.** Unless otherwise specifically provided, no internal personnel policy of the city will apply to:

- (1) Elected city officials;
- (2) Members of appointed city boards and commissions;
- (3) Consultants, advisers and legal counsel to the city rendering temporary or professional service;
- (4) The city attorney;
- (5) Independent contractors and/or contract employees of the city;
- (6) Volunteer personnel performing service to the city; and
- (7) The city judge.

All other employees of the city are subject to all personnel policies and regulations unless specifically excluded therefrom. (as added by Ord. #191, July 1998)

**4-703. Full-time, part-time, and temporary and/or seasonal employees.** Unless otherwise specifically defined, full-time employees of the city for all purposes are individuals employed by the city for a normal work week of at least 30 hours per week/ and part-time employees of the city are those individuals who do not work on a daily basis or who work on a daily basis, but

for fewer than 8 hours a day or fewer than 30 hours per week or who are temporary and/or seasonal employees. (as added by Ord. #191, July 1998)

**4-704. Hiring objective.** The primary objective in the hiring of employees for city service is to insure compliance with the law and to obtain qualified personnel to serve the citizens of the city. City officials will make reasonable accommodations in all hiring procedures to accommodate persons with disabilities. (as added by Ord. #191, July 1998)

**4-705. Application for employment.** All persons seeking regular or part-time employment with the city must complete a standard application form provided by the city. Applications for employment will be received during regular office hours only. Applications will remain in active status for (6) months after they are accepted or until the particular job for which a particular application is submitted has been filled, whichever period of time is less. (as added by Ord. #191, July 1998)

**4-706. Examinations may be required of applicants.** Applicants may be required to undergo a validated physical agility examination related to the essential functions of a particular job, validated written and/or oral tests related to the essential functions of such job, drug testing, and upon a conditional offer of employment, a medical examination to determine his or her ability to perform the essential functions of the job. Reasonable accommodations will be made in the physical agility exam for applicants with disabilities making a request for accommodations. (as added by Ord. #191, July 1998)

**4-707. Holidays.** (1) Full-time employees of the city are allowed paid holidays for a regular eight (8) hour work day during each calendar year as follows:

- (a) New Year's Day of January 1 or if that day falls on a Saturday or Sunday then on the Friday prior thereto;
- (b) Martin Luther King Birthday on the third Monday in January;
- (c) President's Day on the third Monday in February;
- (d) Memorial Day on the last Monday of May;
- (e) Independence Day on July 4 or if that day falls on a Saturday or Sunday then on the Friday prior thereto;
- (f) Labor Day on the first Monday in September;
- (g) Columbus Day on the second Monday in October;
- (h) Veterans Day on November 11 or if that day falls on a Saturday or Sunday then on the Friday prior thereto;
- (i) Thanksgiving Day on the fourth Thursday of November;
- (j) Friday after Thanksgiving Day;

(k) Christmas Eve of December 24 or if that day falls on a Saturday or Sunday then on the Friday prior thereto;

(l) Christmas Day of December 25 or if that day falls on a Saturday or Sunday then on the Monday following; and

(m) Good Friday.

(2) Employees must be in a pay status on the work day before and on the work day after the holiday, unless otherwise excused by the mayor, in order to receive compensation for a holiday. An employee required to work on regular paid holiday will be granted 8 hours off on an alternate day approved by the mayor or a city department head. (as added by Ord. #191, July 1998, and amended by Ord. #261, Nov. 2010, and Ord. #287, Sept. 2015)

**4-708. Grievance procedure.** There will be uniform disposition of grievances presented by individual city employees. A grievance is a written question, disagreement or misunderstanding concerning administrative orders involving only the employee's work area, reasonable accommodations under Americans with Disabilities Act, physical facilities, unsafe equipment or unsafe material used. A grievance must be submitted within five (5) working days of the incident causing the grievance. There is no grievance until the mayor has been made aware of the dissatisfaction by such written notice. Once done, the following steps will be taken:

Step 1. Discuss the problem with the mayor. If satisfaction is not obtained, the grievance is advanced to the second step.

Step 2. Discuss the problem with the board of mayor and alderman at a regular or special meeting. The decision of the board is the last and final step in the process. Such decision is binding on all parties involved. (as added by Ord. #191, July 1998)

**4-709. City is an equal opportunity employer.** The city is an equal opportunity employer. Except as otherwise permitted by law, the city will not discharge nor fail or refuse to hire an individual or otherwise discriminate against any individual with respect to compensation, terms, conditions or privileges of employment because of race, color, religion, gender or national origin, nor because the individual is forty (40) or more years of age. City will not discriminate against a qualified individual with a disability because of the disability in regard to job application procedures, hiring or discharge, employee compensation, job training or other terms, conditions and privileges of employment. (as added by Ord. #191, July 1998)

**4-710. Regular work week; overtime.** The terms and requirements of the federal Fair Standards Act shall govern the payment of overtime compensation to city employees. The regular work week is forty (40) hours and

commences at 12:00 A.M. on Sunday and ends at 11:59 P.M. on the following Saturday. The beginning and end of a regular work day for any particular employee will be prescribed by the mayor or a city department head. A lunch or dinner break of a specified time is allowed. No employee will begin work prior to the commencement of his or her regular work day period or shift without the approval of the mayor or a city department head. No employee will work over-time without the approval of the mayor, or a city department head. (as added by Ord. #191, July 1998)

**4-711. Military leave.** All city employees who are members of the Tennessee National Guard are entitled to leave while engaged in duty or training under competent orders. They will be given such leave with pay not exceeding 15 working days in any one calendar year. All other military leave shall be without pay. Any employee of the city who leaves his or her job, voluntarily or involuntarily, to enter active duty in the armed forces of the United States may return to the job in accordance with applicable federal and state law. (as added by Ord. #191, July 1998)

**4-712. Employees required to have commercial driver's license.**  
Employees driving

- (1) A vehicle with a gross weight or more than 26,000 pounds;
- (2) A trailer with a gross weight of more than 10,000 pounds;
- (3) A vehicle designed to transport more than 15 passengers, including the driver; or
- (4) Any size vehicle hauling hazardous waste requiring placards, will have a valid Tennessee Commercial Driver's License in accordance with state law. (as added by Ord. #191, July 1998)

**4-713. Employees subject to alcohol and drug testing.** All employees in police, fire or other safety-sensitive positions are subject to alcohol and drug testing in accordance with the federal Omnibus Transportation Employee Testing Act of 1991 and the requirements thereof will be followed. In addition, every employee shall be subject to alcohol or drug testing whenever there is reasonable suspicion that the employee is using or under the influence of drugs or alcohol while on duty. Failure of an employee to submit to any required testing will be reason for immediate termination of his or her employment. (as added by Ord. #191, July 1998)

**4-714. Separation of employment.** Any employee of the City of McEwen, Tennessee shall serve at the pleasure of the board of mayor and alderman and such employee may be discharged at the pleasure of said board. No employee will be discharged for reasons that are prohibited by state and federal law. All separations of employees within the City of McEwen, Tennessee will be accomplished by: resignation, layoff, disability, death, retirement and dismissal. At the time of separation and prior to final payment, all records,

assets and other city property in the employees custody must be returned to the city. Any amount due because of shortages shall be withheld from the employees final compensation.

Any employee of the City of McEwen, either in part time or full time status may appeal any disciplinary action taken against them by a city department head or the mayor before the Board of Mayor and Alderman of the City of McEwen meeting in either called or regular session. The decision of the board of mayor and alderman by majority vote shall be final. The board of mayor and alderman may take any action in the matter, including but not limited to the reinstatement of any employee, the withdrawal of any suspension imposed, the reinstatement of lost pay to any employee who has been discharged or suspended, to remove a written reprimand from any employee's file, to reduce the punishment of any employee and to clear the name of any employee.

Any employee that desires to make an appeal to the board of mayor must do so within 15 days of the date in which the action was taken against them and must make such request in writing and deliver the same to the city recorder.

Any employee dissatisfied with the action of any department head must first appeal to the mayor, this appeal must be made within five (5) days of the action that was taken against them. The employee must personally notify the mayor of his/her desire to appeal within five (5) days. After the mayor reviews the situation and makes his decision, the employee may appeal to the board of mayor and alderman using the method as indicated above. The decision of the board of mayor and alderman shall be final and entered into the official minutes of the city by the city recorder. (as added by Ord. #191, July 1998)



## CHAPTER 8

### DRUG AND ALCOHOL TESTING

#### SECTION

- 4-801. Policy.
- 4-802. Definitions.
- 4-803. Pre-employment testing.
- 4-804. Post-accident testing.
- 4-805. Random testing.
- 4-806. Reasonable suspicion testing.
- 4-807. Return to duty testing.
- 4-808. Follow-up testing.
- 4-809. Breath alcohol testing.
- 4-810. Urine specimen collection procedures.
- 4-811. Testing methodology.
- 4-812. Review of results.
- 4-813. Specimen re-testing requested by employee.
- 4-814. Consequence of positive drug or alcohol test result of an employee.
- 4-815. Self-reporting.
- 4-816. Employee acknowledgment of policy.
- 4-817. Repeal of existing policies.

**4-801. Policy.** (1) The use of alcohol or an illegal drug or the unlawful or irregular use of a prescription drug by an employee during working hours and for a period of four (4) hours prior to commencement thereof and for a period of eight (8) hours following an on-the-job accident or injury in which the employee is involved is prohibited.

(2) Being under the influence or impaired by use of alcohol or a drug while operating a municipal vehicle or equipment or while otherwise engaging in municipal business by an employee is prohibited.

(3) An employee called to work at other than regularly scheduled hours must disclose to his or her immediate supervisor his or her use of alcohol or drugs for the four (4) hours immediately prior to reporting for such work or duty. To the extent the supervisor reasonably determines the employee is under the influence or impaired by use of alcohol or under the influence or impaired by use of a drug the employee will be excused from work or duties, without pay, during the continuation of such impairment. Disclosure made voluntarily by the employee will relieve penalty or sanction otherwise provided herein, but will not thereafter exempt the employee from any subsequent testing requirement or the sanction otherwise provided in connection therewith. (as added by Ord. #226, Aug. 2003)

**4-802. Definitions.** Unless otherwise defined for the purposes hereof the following definitions shall apply:

- (1) "Alcohol." An intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.
- (2) "Controlled substance." Amphetamines, cannabinoids, cocaine, barbiturates, opiates, and phencyclidine.
- (3) "Drug." Controlled substances and prescription drugs.
- (4) "Employee." A full- or part-time person, temporary, permanent or probationary, including a volunteer fireman, employed by the municipality, but excluding the mayor and members of boards, commissions or committees.
- (5) "Municipality." City of McEwen, Tennessee.
- (6) "Prescription drug." Medication requiring a prescription of a licensed physician or other licensed medical practitioner which impairs the ability to safely perform a work function.
- (7) "Under influence or impaired by use of alcohol." Having a blood or breath alcohol concentration of 0.04% or greater. (as added by Ord. #226, Aug. 2003)

**4-803. Pre-employment testing.** (1) Applicants for positions of employment must submit to drug and alcohol testing as a pre-requisite to employment. A negative test result must be received before a final offer of employment is made. Refusal to submit to testing will be disqualification from municipal employment.

(2) A positive test result for a prescription drug will not per se disqualify if the applicant discloses regular lawful use of such prescription drug prior to the testing and it is determined that continued use will not unreasonably interfere with the performance of the job for which applied. (as added by Ord. #226, Aug. 2003)

**4-804. Post-accident testing.** (1) If an employee is involved in an accident causing injury to the employee or to another person sufficient to require treatment for the injury, the employee will submit to an alcohol and drug test.

(2) A drug and alcohol test must be administered within two (2) hours following an accident. The employee must notify his or her supervisor immediately to insure action is taken to meet this testing requirement.

(3) An employee must refrain from using alcohol for eight (8) hours following an accident or until he or she has submitted to a drug and alcohol test, whichever first occurs; otherwise he or she will be considered as having refused to submit to testing.

(4) An employee must remain available for testing or will be considered as having refused to. submit to testing.

(5) Refusal to comply with a testing requirement is grounds for immediate termination of employment. (as added by Ord. #226, Aug. 2003)

**4-805. Random testing.** (1) Employees are subject to random testing for drugs and alcohol. Random testing will be done in a fair and equitable manner.

(2) Testing may be done at any time an employee is at work. In the case of an employee who is not subject to regular or routine hours of employment the test will be administered at the first reasonable opportunity after he or she has been selected for such testing.

(3) Selection of employees for random testing will be by a computer-based random number generator matched with employee Social Security numbers such that every employee shall have an equal chance of being selected. In order to comply with testing requirements for holders of Commercial Driver Licenses (CDL) those employees holding a CDL will be grouped into a separate database and shall be randomly selected from such separate database so as to assure that minimum annual testing requirements are met. Likewise volunteer firemen will be grouped into a separate database and at least one (1) volunteer fireman will be randomly selected for testing at the same time of random selection of employees in the general employee database.

(4) Random tests will be unannounced and spread reasonably throughout the year.

(5) Employees notified of selection for random testing shall proceed immediately to the designated collection site. (as added by Ord. #226, Aug. 2003)

**4-806. Reasonable suspicion testing.** An employee operating a municipal vehicle or mechanical equipment or while otherwise engaging in municipal business who acts in an abnormal manner sufficient to cause reasonable suspicion that he or she has violated § 4-801 hereof must submit to an alcohol and/or drug test upon direction of the mayor. (as added by Ord. #226, Aug. 2003)

**4-807. Return to duty testing.** An employee allowed to return to duty following referral, evaluation, and treatment as a result of a positive alcohol or drug test must submit to a return-to-duty alcohol and/or drug test. A blood alcohol concentration test result of less than 0.02% and a negative drug test must be obtained before return to duty is considered or allowed. (as added by Ord. #226, Aug. 2003)

**4-808. Follow-up testing.** In the event an employee is allowed to return to duty following referral, evaluation, and treatment, a minimum of six (6) unannounced alcohol and/or drug tests shall be required during the succeeding twelve (12) months of employment. Follow-up testing may continue up to sixty (60) months following return to duty. The cost of such additional testing shall be paid by the employee. (as added by Ord. #226, Aug. 2003)

**4-809. Breath alcohol testing.** Breath Alcohol Testing (BAT) will be performed by a certified technician trained in the principles of Evidential Breath Testing (EBT) device methodology, operation and calibration checks; the fundamentals of breath analysis for alcohol content; and the procedures required

for obtaining a breath sample; and interpreting and recording EBT results. The EBT device must be approved to the standards of the National Highway Traffic Safety Administration (NHTSA).

(1) Alcohol testing will be conducted in a location affording reasonable visual and aural privacy to the employee being tested. Unauthorized persons will not be permitted access to a testing location when a test is in progress.

(2) EBT will require an individually sealed mouthpiece attached to the EBT device. Employee will blow into the mouthpiece forcefully until an adequate amount of breath has been obtained. EBT device must record the result, display it, and print the result immediately. The printed result will be recorded on a breath testing form by attaching with tamper proof tape.

(3) If a BAT result is less than 0.02% no further testing is authorized and the result will be transmitted to the mayor.

(4) If the BAT result is 0.02% or greater, a confirmation test must be performed to verify the initial test. The confirmation test will be conducted no less than fifteen (15) minutes nor more than twenty (20) minutes after the initial test. In the event the initial and confirmation test results are different, the confirmation test result will be deemed to be the final result upon which any action is based.

(5) Following completion the BAT result will be dated and a certification entered on the form by the technician. The employee must sign the certification and fill in the date on the form.

(6) Refusal to submit to a test or to comply with testing procedures shall be treated the same as if the result were 0.04 or greater.

(7) BAT results will be kept in a secure and confidential manner so that disclosure of information to unauthorized persons does not occur; provided, however:

(a) An employee will have access to his or her test records upon written request.

(b) Post-accident testing information must be disclosed as part of an accident investigation.

(c) Records may be made available to a subsequent employer upon receipt of a written request from the employee.

(d) Records may be disclosed to the employee, counsel for the municipality and to the decision-maker in legal or other proceedings initiated by or on behalf of the employee. This includes worker's compensation, unemployment compensation, or other proceedings relating to a benefit sought by the employee.

(8) An employee who attempts, but fails to provide an adequate amount of breath, will be directed to obtain, as soon as practical, an evaluation from a licensed physician acceptable to the mayor concerning any claim of medical inability to provide an adequate amount of breath based on a medical reason. If no medical reason exists to prevent an employee from providing an adequate amount of breath, he or she shall be deemed as having refused to take the test. (as added by Ord. #226, Aug. 2003)

**4-810. Urine specimen collection procedures.** (1) Procedures for collection, shipment and accession of urine specimens to a designated laboratory will account for the integrity of each urine specimen and will track its handling and storage from point of collection to final disposition of the specimen.

(2) Urine specimen collections may be done in-house or by an outside source that meets security requirements. Collection sites will be secure locations to allow maximum privacy to include a toilet for completion of urination and a source of water for washing hands which is excluded from the area provided for urination.

(3) No person who is not involved in the collection process will be present or gain access to a collection area during the collection process. Specimens must remain in the direct control of the collection site collector. No person other than the collection site collector may handle specimens prior to the same being placed securely in a mailing container.

(4) An employee reporting to a collection site for specimen collection will present a photo I.D. and will remove all unnecessary outer garments (e.g., coat or jacket), and set aside all personal belongings except his or her wallet.

(5) An employee will be allowed to provide a urine specimen in the privacy of a stall.

(6) If the collection site collector believes tampering or adulteration has occurred, a second specimen will be collected immediately under direct observation of a same-gender collection site collector. Both samples will be sent to the laboratory.

(7) Refusal to submit to a test will be considered a verified positive result.

(8) In all cases the employee and the collection site collector will keep the specimen in view at all times prior to being sealed and labeled. The specimen will be labeled with tamper proof seals. The employee will sign appropriate places on the chain of custody document and initial the seal on the bottle attesting that the specimen is specific to the employee providing the sample. (as added by Ord. #226, Aug. 2003)

**4-811. Testing methodology.** (1) Urine specimens will undergo an initial screening followed by confirmation of all positive screen results.

(2) The laboratory will report the test results directly to the mayor within five (5) working days. The report will indicate the drug/metabolites screened, whether the results are positive or negative, the specimen number assigned by the collection site collector and the laboratory identification number.

(3) A portion of the urine specimen will be retained by the laboratory for possible retesting for up to thirty (30) days. (as added by Ord. #226, Aug. 2003)

**4-812. Review of results.** (1) A licensed physician possessed of a knowledge of drug abuse disorders may be utilized to review and interpret positive results obtained from the laboratory and to assess and determine

whether alternate medical explanations can account for a positive test result. The physician may conduct a medical interview of the employee, review the employee's medical history and review any other relevant bio-medical factors.

(2) During the course of an interview of an employee who tested positive, if the physician learns of a medical condition which could, in reasonable medical judgment, pose a risk to safety, the physician will report that information to the mayor. (as added by Ord. #226, Aug. 2003)

**4-813. Specimen re-testing requested by employee.** An employee who has a confirmed positive drug test has seventy-two (72) hours in which to request a re-testing of the split specimen. If the employee makes such a request, the laboratory will be directed to provide the specimen to another certified laboratory for analysis. If the analysis of the specimen fails to reconfirm the presence of the drug or drug metabolite found in the primary specimen, or if the specimen is unavailable, inadequate for testing, or not susceptible to test, the re-test will be canceled. Re-testing of a specimen and the associated costs is the responsibility of the employee. (as added by Ord. #226, Aug. 2003)

**4-814. Consequence of positive drug or alcohol test result of an employee.** (1) A verified positive test result for an illegal drug and/or an alcohol breath test with a confirmed result of 0.04% or greater shall result in the immediate termination of an employee from his or her employment.

(2) A confirmed alcohol breath test result is 0.02% or greater, but less than 0.04%, or a confirmed test result of use of a prescription drug without satisfactory demonstration that it was used lawfully and regularly shall subject an employee to disciplinary action including, but not necessarily limited to a specified duration of suspension followed by a retest of the employee at his or her expense.

(3) In all cases of a verified positive drug test result and/or a confirmed alcohol breath test result the employee will be referred to a substance abuse professional for evaluation, referral and treatment as a condition of any retention of employment. The employee is responsible for any expense incurred for such treatment or rehabilitation subject to any health insurance benefits which may apply. (as added by Ord. #226, Aug. 2003)

**4-815. Self-reporting.** (1) An employee who approaches the mayor for assistance through rehabilitation for drug or alcohol abuse prior to testing will be afforded positive consideration for a medical leave of absence, without pay, for treatment and/or counseling to be pursued.

(2) An employee regularly taking lawfully prescribed prescription drugs must report such fact to his or her immediate supervisor and furnish a copy of the prescription form for inclusion in his or her personnel record. (as added by Ord. #226, Aug. 2003)

**4-816. Employee acknowledgment of policy.** Within thirty (30) days from the effective date hereof all employees as a condition for continued employment and all future applicants for employment as a condition for initial employment shall execute and file with the municipality as a part of his or her personnel record a statement that he or she has received a copy of this policy on alcohol and drug use and testing and understands and agrees to abide therewith. (as added by Ord. #226, Aug. 2003)

**4-817. Repeal of existing policies.** All existing policies of the municipality relative to drug or alcohol use in the workplace or for testing of employees are hereby abrogated, rescinded and repealed. (as added by Ord. #226, Aug. 2003)