

TITLE 4

MUNICIPAL PERSONNEL<sup>1</sup>

CHAPTER

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CHAPTER 1

SOCIAL SECURITY

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 city to provide for all eligible employees and officials of the city, 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 city shall take such action as may be required by applicable state and federal laws or regulations.

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 city.

There is hereby excluded from this chapter any authority to make any agreement with respect to any position, or any employee or official,

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<sup>1</sup>See Ord. #2002-15 (Nov. 2002) of record in the recorder's office for employee position descriptions, duties and qualifications.

compensation for which is on a fee basis, or any position, or any employee or official not authorized to be covered by applicable state or federal laws or regulations. (1984 Code, § 1-801)

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. (1984 Code, § 1-802)

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. (1984 Code, § 1-803)

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. (1984 Code, § 1-804)

4-105. Records and reports to be made. The city shall keep such records and make such reports as may be required by applicable state and federal laws or regulations. (1984 Code, § 1-805)

## CHAPTER 2

WORK, VACATION LEAVE, AND HOLIDAY REGULATIONS

## SECTION

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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 school, utility or other separate board or commission. (1984 Code, § 1-801)

4-202. Hours of work. Normally, all full-time employees of the city shall work forty (40) hours per week. Special provisions may be made in any department that requires additional hours to meet any existing conditions or emergency contingencies and which such special provisions shall be approved by the city manager prior to the effective date thereof. (1984 Code, § 1-902)

4-203. Attendance. All full-time employees of the city shall be in attendance at their regular work and at their regular place of work as may be designated by the department head under whose supervision such employees shall work. The head of every city department shall keep daily an attendance record of the employees working under such supervisor and shall report the same to the city manager. (1984 Code, § 1-903)

4-204. Holidays. (1) Except as to such other holidays as may be from time-to-time declared by the board of mayor and aldermen the following shall be official holidays for employees of the City of Waverly:

Holiday NameHoliday Date

New Year's Day

January 1st of each year

Dr. Martin Luther

King, Jr.'s Birthday

Third Monday in January

<u>Holiday Name</u>	<u>Holiday Date</u>
Good Friday	Friday before Easter of each year
Memorial Day	Last Monday in May of each year
Independence Day	July 4th of each year
Labor Day	First Monday in September of each year
Armistice Day	November 11th of each year
Thanksgiving Day	Fourth Thursday in November of each year
Christmas Day	December 25th of each year

(2) When a holiday shall fall on a Saturday the preceding Friday shall be observed as the holiday and when a holiday shall fall on a Sunday the following Monday shall be observed as the holiday.

(3) All regular and full-time employees of the city shall be compensated for any holiday granted herein or by the board of mayor and aldermen from time to time for eight (8) hours off with pay either on the date of such holiday or on such other day as may be designated by the city manager. If such holiday with pay is in anyway detrimental to the interest of the city the employee may be required to work on such holiday and draw a regular compensation and in addition be paid an amount equal to eight (8) hours at the straight time in effect as of the date of such holiday.

(4) All fire and police employees who are granted compensatory time in lieu of holidays shall take such compensatory holiday time within three (3) months following such holiday for which it is granted.

(5) No employee shall be authorized to work on any holiday except with the prior approval of the head of the department for which such employee shall work concurred in by the city manager.

(6) Any employee who is absent without leave on any working day immediately preceding or immediately following any holiday shall not be entitled to be paid for such holiday. (1984 Code, § 1-904, as amended by Ord. #1997-1, § 1, Jan. 1996)

4-205. Vacation leave. (1) All regular and full-time employees of the city who have been employed by the city for one full year of continuous service shall be allowed vacation leave time with pay according to the following schedule:

<u>Years of Service</u>	<u>Annual Vacation Leave Time Allowed</u>
After 1 year service	5 working days per calendar year
After 2 years of service but less than 10 years service	10 working days per calendar year
For 10 years service and over	15 working days per calendar year

For vacation leave purposes the term "working day" as it applies herein shall be computed on an eight (8) hours basis.

(2) Vacation leave time shall be accounted for and controlled on a calendar year basis.

(3) Vacation leave compensation shall be computed at the employees regular straight time pay rate in effect as of the date that the vacation leave time shall be earned.

(4) The date of service to be used in determining vacation leave time accrual rate is the beginning date of the employees current period of continuous service or the date on which the employee was initially employed or appointed (exclusive of any leave periods), whichever is more recent.

(5) Vacation leave may not be taken before it is earned.

(6) Temporary, casual or part-time employees are not eligible for accrual of vacation leave.

(7) For vacation purposes any reinstated employee shall be considered as a new employee regardless of the reason for separation.

(8) Earned vacation leave may be taken in whole or in part throughout the year at such times as may be approved from time to time by the head of the department for which such employee shall work and concurred in by the city manager. No less than one (1) day may be taken at any one time. In the case of employees who handle receipt of payments of taxes, water bills, court fines, or other funds being paid over to the City of Waverly, such employees shall not take any vacation time of less than five (5) days at one period.

(9) Unused vacation leave may not be carried forward from one calendar year to the next.

(10) Any official holiday falling within a period of vacation leave shall be charged as holiday leave rather than vacation leave.

(11) Any employee moving from one department to another shall retain all accrued or unused vacation leave.

(12) Accumulated vacation leave pay is a condition of employment and any regular, full-time employee that is separated from employment with the city for any reason, including retirement, may receive terminal vacation leave pay

for any unused portion of his or her accumulated vacation leave. (1984 Code, § 1-905, as amended by Ord. #1988-21, Oct. 1988)

4-206. Sick leave. (1) All full-time employees of the city shall be allowed to accumulate sick leave with pay at the rate of one (1) working day for each full calendar month of service completed up to an unused maximum of sixty (60) working days. All such employees shall periodically be credited in the personnel records of the city with any accumulated sick leave days in accordance with such accrual rate. Sick leave shall be considered a benefit and privilege and not a right for the employees to use at his or her discretion. Employees shall, therefore, utilize their accumulated sick leave allowance for absences due to personal illness or physical incapacity resulting from causes beyond the employee's control, exposure to contagious disease thereby endangering the health of other employees, personal illness within the immediate family of the employee, enforced quarantine of the employee in accordance with community health regulations, disability resulting from pregnancy, childbirth or related medical conditions, or so as to keep an appointment with a licensed medical doctor, dentist or other recognized health care practitioner, bereavement time on the death of a spouse, parent, grandparent, brother, sister, child, grandchild, mother in law, father in law, son in law, daughter in law, or grandparent, include those in step relation.

(2) The city manager may, in his discretion, require that a health care practitioner's certificate or other satisfactory evidence be filed with the city evidencing the absence before it may be properly chargeable as sick leave.

(3) For sick leave purposes the term "working day" as it applies in this section shall be computed on an eight (8) hour basis.

(4) Sick leave compensation shall be figured at the employees straight time pay rate in effect at the date it is used by the employee.

(5) The date of service to be used in determining sick leave time accrual rate is the beginning date of the employees current period of continuous service or the date on which the employee was initially employed or appointed (exclusive of any leave period), whichever is more recent.

(6) Sick leave shall begin to accrue at the end of the first calendar month of employment but shall be granted to employees and probationary status only upon approval of the city manager. An employee starting to work at any time after the first work day of the month shall not accumulate a sick leave day until the end of the following month.

(7) Temporary, casual or part-time employees are not eligible for accrual of sick leave.

(8) For sick leave purposes any reinstated employee shall be considered as a new employee regardless of the reason for his or her separation unless determined otherwise by the city manager in his sole discretion.

(9) Any employee who abuses the sick leave provisions of the city or who shall deliberately make or cause to be made any false or misleading

statement or claim concerning the same, shall be subject to the loss of any such benefits, dismissal from his or her employment with the city and such other disciplinary action as the city manager may determine.

(10) Any employee of the city who shall be injured when engaging in his employment for the city may be carried on sick leave for any accumulated sick leave that he or she shall have to his or her credit but in no case shall any employee be allowed to receive sick leave pay while drawing any workers compensation or other disability payments resulting from any benefit provided by the city.

(11) Health insurance coverage as made available by the city for the benefit of full-time active municipal employees and their family members, when the availability thereof is provided by annual appropriations being made therefor necessary to fund the same, shall be provided for retired municipal employees who have retired with not less than thirty five (35) years of continuous municipal service to include credit as may be allowed for up to four (4) years of continuous military service during periods of armed conflict as defined by the Tennessee Consolidated Retirement System. This retiree coverage shall be provided for such retired employees and their eligible family members upon their contribution of fifty percent (50%) of the premiums charged therefor. (1984 Code, § 1-906, as amended by Ord. #2008-13, June 2008)

4-207. Absence without leave. An absence without leave is an absence from duty which was not authorized or approved and for which either a request for leave was not made by the employee or when made such request was denied. Under such circumstances any employee may be subject to such disciplinary action, including termination from employment with the city, as the city manager deems necessary or appropriate. (1984 Code, § 1-907)

4-208. Absence without pay. An absence without pay is an absence which may or may not have been known and which has resulted from suspension, abandonment of position, or leave without pay granted by the city. The heads of all departments shall be responsible for maintaining accurate records of any employee who is absent from duty for any reason and shall report promptly the same to the city manager. (1984 Code, § 1-908)

4-209. Occupational disability or injury leave. (1) Any employee compelled to be absent from work because of any injury sustained in the course of his or her employment with the city and determined to be compensable under the provisions of the Worker's Compensation Act of the State of Tennessee shall be granted an occupational disability or injury leave in accordance with the provisions as set out by the insurance carrier for the city. Such leave shall be granted, however, in periods of three (3) months or less and shall not be extended unless expressly authorized by the city manager.

(2) Regular and full-time employees on occupational disability leave shall receive full pay from the city less any benefits received under Worker's Compensation and disability income insurance provided by the city for the first three (3) calendar months following the date of such injury, provided that the injury or disability shall be determined to be compensable under the provisions of the Worker's Compensation Act and provided further that the employee follows the procedures for reporting such injury or disability as required by the insurance carrier for the city.

(3) The total amount of money paid the employee during each pay period shall not exceed the full pay which such employee would have received for such period at his or her regular straight time pay in effect as of the date of the injury had he or she remained on the job.

(4) Time lost from employment with the city by the employee due to an on-the-job injury shall not be charged against sick leave or vacation leave nor shall sick leave be granted for on-the-job injury which is compensable under Worker's Compensation.

(5) Sick leave shall continue to accrue at the employee's regular rate in accordance with these provisions herein while such employee is on occupational disability or injury leave.

(6) Employees shall report immediately any injury incurred in the course of his or her employment, however minor, to his or her supervisor or department head and shall receive such first aid or medical treatment as may be necessary. Any employee determined to have been able but who shall fail to make such report shall not be eligible for any occupational disability or injury leave.

(7) The city manager shall report to the mayor all occupational disability leaves that extend for a period of more than thirty (30) days.

(8) Should an employee be unable to return to work within twelve (12) months from the day following the date of his or her injury then his or her service, seniority and employment and pay with the city shall be terminated. (1984 Code, § 1-909)

4-210. Leave without pay. A regular or part-time employee who is in good standing may be granted a leave without pay for a period not to exceed ninety (90) calendar days in any one calendar year upon the approval of the city manager concurred in by the mayor. (1984 Code, § 1-910)



CHAPTER 3

MISCELLANEOUS RESTRICTIONS ON PERSONNEL

SECTION

- 4-301. Business dealings.
- 4-302. Acceptance of gratuities.
- 4-303. Outside employment.
- 4-304. Political activity.
- 4-305. Use of city time, facilities, etc.
- 4-306. Use of position.
- 4-307. Strikes and unions.
- 4-308. Employee conduct and working relationships.
- 4-309. Residency of city employees.
- 4-310. Adoption of rules and regulations.
- 4-311. Violation of chapter, rules or regulations.
- 4-312. Municipally-owned motor vehicle use policy.

4-301. Business dealings. Except for the receipt of such compensation as may be lawfully provided for the performance of his city duties, it shall be unlawful for any city officer or employee to be privately interested in, or to profit, directly or indirectly, from business dealings with the city, unless it is less than or does not exceed the price of others. (1984 Code, § 1-1001)

4-302. Acceptance of gratuities. No city officer or employee shall accept any money or other consideration or favor from anyone other than the city 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. (1984 Code, § 1-1002)

4-303. Outside employment. No full time officer or employee of the city 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 city employment, or is likely to cast discredit upon or create embarrassment for the city. (1984 Code, § 1-1003)

4-304. Political activity. (1) City officers and employees may individually exercise their right to vote and privately express their political views as citizens. No city officer or employee shall solicit political campaign contributions or engage in or actively participate in any city political campaign. These restrictions shall not apply to elective officials.

(2) No full-time employee of the city shall seek or accept election to any city public office or take any active part in any city political campaign without first having resigned his or her full time position or having asked for and obtained permission from the mayor for a leave of absence without pay. No full time employee of the city shall seek or accept election to any county, state or federal public office or take any active part in any such county, state or federal political campaign where the office involved has an annual salary or pay in excess of \$500 unless the employee first resigns his or her full-time position with the city or asks for and obtains permission from the mayor for a leave of absence without pay from his or her city employment. It shall be permissible for any full-time employee of the city to seek and accept election to a county, state or federal public office or to take an active part in a county, state or federal political campaign where the office has an annual pay to the office holder of \$500 or less, provided that the seeking of such office or serving therein or the taking part in the active campaign therefor shall in no wise affect the duties of such employee as a full-time employee of the city.

(3) Nothing herein shall be construed as to anyway preclude any employee of the city or his or her right to privately express his or her opinion in regard to any political campaign or to cast his or her vote in the way or manner that such employee sees fit or to prevent any such employee from becoming a member of or continuing to be a member of any political organization or from attending any political meeting as an ordinary citizen.

(4) Any willful violation of any of the provisions hereof shall be sufficient grounds for the immediate discharge of any full-time employee guilty of such violation. (1984 Code, § 1-1004, as amended by Ord. #1986-8, June 1986)

4-305. Use of city time, facilities, etc. No city officer or employee shall use or authorize the use of city 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 city is paid at such rates as are normally charged by private sources for comparable services. (1984 Code, § 1-1005)

4-306. Use of position. No city officer or employee shall make or attempt to make private purchases, for cash or otherwise, in the name of the city, nor shall he otherwise use or attempt to use his position to secure unwarranted privileges or exemptions for himself or others. (1984 Code, § 1-1006)

4-307. Strikes and unions. No city officer or employee shall participate in any strike against the city, nor shall he join, be a member of, or solicit any other city officer or employee to join any labor union which authorizes the use of strikes by government employees. (1984 Code, § 1-1007)

4-308. Employee conduct and working relationships. (1) No employee of the city shall engage in any criminal, dishonest, infamous, immoral or notoriously disgraceful conduct or behavior, activity or association which discredits such employee and/or the city. Such standard of conduct shall apply to any employee of the city whether on or off his or her job and if such conduct occurs off the job of such employee with the city it shall be sufficient to justify disciplinary action if such conduct is shown to reflect in any manner or to any degree upon the city.

(2) It shall be the duty and requirement upon each employee of the city to maintain high standards of cooperation, efficiency and economy in his or her work for the city. When an employee's work habits, attitude, production or personal conduct shall fall below a desirable standard as may be determined from time to time by the mayor or the city manager then such official shall at once point out such deficiency to such employee. Ordinarily a warning shall proceed any disciplinary action but nothing herein shall prevent the immediate formal action of termination of employment whenever the mayor shall determine that the conduct of such employee is such that it would be in the best interest of the city that dismissal occur. (1984 Code, § 1-1008)

4-309. Residency of city employees. (1) All regular and full-time employees of the city serving in the critical response positions of firemen or police, shall maintain a residence and shall continually reside within five (5) miles of the city hall of the city during the term of their employment and such residency of such critical response employees shall be at such location as shall permit such employees to report to work at the time required during normal or emergency periods and regardless of road or weather conditions. Any new applicant for such critical response positions shall indicate upon his or her application for employment that they understand the requirements for their residency and their willingness and agreement to comply at all times with such provisions. Any new employee hired in such critical response positions shall be allowed a period of six (6) months from and after the date of his or her employment within which to come into compliance with such residency requirements.

(2) When requests shall have been made in writing setting forth a detailed explanation or reason and the circumstances therefor the mayor may in his sole and absolute discretion grant such waiver or waivers to any critical response employee regarding his place of residency upon a finding that there are good and sufficient reasons therefor and that an extreme hardship would be worked upon said employee and that the damage, if any, would be minimal on the part of the city and that the granting of such waiver would be in the best interest of the city.

(3) All employees of the city shall be required as a part of and a condition of their continuing employment with the city to furnish to the office of the city manager with up-to-date information concerning their personal

marital status, family members, current address and telephone number, and such other personnel information as may be required. (1984 Code, § 1-1009)

4-310. Adoption of rules and regulations. The city manager of the City of Waverly, Tennessee upon approval of the mayor is hereby granted authority to adopt from time to time such rules and regulations as may be necessary in interpreting, implementing, explaining, or otherwise detailing any of the provisions as herein contained or as may affect any personnel matter of any full time employee of the city. Such regulations when adopted shall be filed as a part of the minutes of the next meeting of the board of mayor and aldermen occurring after the adoption and approval thereof. The original of such regulations when adopted and reported to the board of mayor and aldermen shall be entered in the book of ordinances as a part of the permanent records of the city. Any such rule or regulation shall be subject to repeal at any time by resolution of the board of mayor and aldermen. (1984 Code, § 1-1010)

4-311. Violation of chapter, rules or regulations. Any employee of the City of Waverly who shall violate any of the foregoing provisions relative to personnel restrictions or who shall violate any rule or regulation duly adopted and filed by the city manager pursuant hereto, shall be subject to termination from his or her employment with the city in addition to any other penalty as may be provided by law. (1984 Code, § 1-1011).

4-312. Municipally-owned motor vehicle use policy. 1. Except as otherwise provided no employee or official of the municipality shall use or allow a municipality-owned motor vehicle be used for personal benefit.

2. The city manager, the director of public works, the director of water and sewer services, and the director of public safety are authorized to use designated municipally-owned motor vehicles which are assigned to them on a continuing basis for commuting to and from their places of residence and to park the same at their residences during off-duty hours.

3. Subject to prior specific approval by the mayor on a case-by-case basis, the director of public safety may authorize a municipal police officer or fireman to use a designated municipally-owned motor vehicle on a continuing basis for commuting to and from his or her place of residence and park the same at his or her residence during off-duty hours.

4. No municipally-owned motor vehicle shall be operated by a non-municipal officer or employee nor by a municipal officer or employee specifically prohibited from using the same nor by a municipal officer or employee prohibited from driving on the public highways by reason of lack of general or special driving privileges.

5. A municipally-owned motor vehicle may be used by a municipal officer or employee for bona fide non-compensatory de minimis personal use incidental to official business to include stops for meals in the course of

employment and infrequent stops for personal business when going to and from a work-site or place of official business where such incidental use does not materially increase the number of miles that the vehicle is driven.

6. Except as otherwise provided all municipally-owned motor vehicles not in use by a municipal employee or officer on official business shall be secured on municipally-owned property unless temporarily located elsewhere during the course of official business or for maintenance and repair. (as added by Ord. #2005-4, March 2995)

CHAPTER 4

FLEXIBLE BENEFITS PLAN FOR EMPLOYEES

SECTION

- 4-401. Policy and purpose of plan.
- 4-402. Definitions.
- 4-403. Participation.
- 4-404. Salary reduction.
- 4-405. Benefits available.
- 4-406. Insurance premiums paid reimbursement programs.
- 4-407. Medical, dental and dependent care assistance expense reimbursement programs.
- 4-408. Compliance with law and regulations.
- 4-409. Termination of plan.
- 4-410. Termination of employment.
- 4-411. Group term life insurance.
- 4-412. Powers of the administrator.
- 4-413. Selection of the plan administrator.

4-401. Policy and purpose of plan. The City of Waverly Flexible Benefit Plan (hereinafter called the "plan") has as its purpose and it is declared to be the policy of the city to recognize the contribution made to the city by its employees and to reward them by providing benefits for those thereof and their beneficiaries who shall qualify under the plan. The plan is designed to permit eligible employees to receive those tax-free benefits available thereunder in lieu of taxable compensation from the city and it is the intention of the city that the plan qualify as a "cafeteria compensation" or "flexible benefits plan" within the meaning of Section 125 of the Internal Revenue Code of 1954, as amended (hereinafter called the "code"). (Ord. #1985-11, Oct. 1985)

4-402. Definitions. As used in this chapter the following definitions shall apply:

(1) "Allocation" is the portion of the participating employees annual compensation from the city which the employee has committed to any particular program under the plan.

(2) "Anniversary date" shall be the first day of September 1985 and each September 1 of every year thereafter.

(3) "Benefit" means any benefit under any program of the plan as adopted by this chapter.

(4) "Compensation" shall mean the most recently available wages, salary, or remuneration received by an eligible and participating employee of the city which is shown as taxable income on Internal Revenue Service Form W-2.

(5) "Dependents" shall mean any individuals as defined in Section 152 of the code.

(6) "Effective date" means October 1, 1985.

(7) "Employee" means any full-time or part-time employee of the city who receives compensation or remuneration from the city in the form of salary or wages which is subject to withholding requirements and/or payment of social security taxes under federal laws.

(8) "Expense" means any expense paid or incurred by a participating employee, the reimbursement of which by the city, would not be includable in the taxable income of the participating employee under any section of the code.

(9) "Non-taxable benefits" means those benefits that the city could have provided and funded as a tax deductible expense if it were a private employer liable for the payment of income taxes and would not have been included in the gross income of the participating employee.

(10) "Plan" means the provisions adopted by this chapter and shall also be known as the "City of Waverly Employees Cafeteria Benefits Plan of 1985" (also known as the "City of Waverly Flexible Benefit Plan.")

(11) "Plan administrator" shall mean such person or corporation as selected by the city to carry out the administration of the plan. (Ord. #1985-11, Oct. 1985)

4-403. Participation. (1) Any employee of the city on the effective date of the plan shall be an eligible participant in the plan as of such effective date.

(2) Any person who shall become an employee after the effective date shall become an eligible participant on the first day of the next calendar quarter after he or she has had three (3) months of continuous service with the city.

(3) Any person who shall be re-employed by the city after leaving its previous employment shall become an eligible participant in the plan on the anniversary date coincident with or next following the date on which such re-employed employee again performs a full calendar quarter of service. (Ord. #1985-11, Oct. 1985)

4-404. Salary reduction. By participating in the plan any employee thereby agrees to have his or her annual compensation reduced by the cost of the benefits selected by such employee under the plan to the extent of his or her allocation thereto. (Ord. #1985-11, Oct. 1985)

4-405. Benefits available. A participating employee of the city may have his or her compensation from the city for services rendered or labor performed reduced by his or her allocation and be reimbursed to the extent of the allocation for expenses incurred by such employee during any calendar year in the following programs of the plan:

- (1) Medical and dental insurance premiums paid program;
- (2) Medical expense reimbursement program;

- (3) Dependent care assistance program;
- (4) Group term life insurance premiums paid program (but not for group term life insurance coverage in excess of \$50,000);
- (5) Dependent life insurance premiums paid program (but not for premiums paid for coverage in excess of \$5,000 of any spouse or dependent child);
- (6) Accidental death and dismemberment insurance premiums paid program; and
- (7) Disability income premiums paid program. (Ord. #1985-11, Oct. 1985)

4-406. Insurance premiums paid reimbursement programs. (1) In each of the insurance premiums paid reimbursement programs of the plan the city shall reimburse all participating employees for such insurance premium expense incurred by them up to the maximum amount allowed by law and provided that there shall be no reimbursement of such premiums to such participating employees by reimbursement from any other source.

(2) The city may at its discretion pay directly to any insurance company or carrier the premiums due on behalf of any participating employee and to the extent paid directly by the city the compensation of the participating employee shall be reduced by an amount equivalent thereto or, alternatively, the employee shall submit to the city documentation of the payment of such premium by the employee and which amount shall be reimbursed to the employee and deducted from compensation as contemplated by the plan. (Ord. #1985-11, Oct. 1985)

4-407. Medical, dental and dependent care assistance expense reimbursement programs. (1) The city shall reimburse all participating employees for any medical or dental or dependent care assistance expenses incurred by the participating employee and eligible therefor pursuant to the code up to the maximum amount allowed by law upon the employee submitting to the plan administrator satisfactory evidence of such expenses.

(2) To the extent of any reimbursement by the city for such expenses the compensation of the employee shall be reduced accordingly. (Ord. #1985-11, Oct. 1985)

4-408. Compliance with law and regulations. It is the intent of this plan that the same fully comply with Sections 44a, 79, 105, 106, 125 and 129 of the Internal Revenue Code of 1954, as amended, and every regulation issued or adopted thereunder or in connection therewith. (Ord. #1985-11, Oct. 1985)

4-409. Termination of plan. The city may terminate the plan at any time upon notification to the employees participating hereunder. (Ord. #1985-11, Oct. 1985)



4-410. Termination of employment. In the event that any participating employee shall terminate his or her employment with the city then his or her participation in the plan shall automatically terminate therewith and the city shall have no further obligations under the plan to such terminating employee. (Ord. #1985-11, Oct. 1985)

4-411. Group term life insurance. Each participating employee may elect to be reimbursed under the plan for personal term life insurance premiums for coverage up to the amount of \$50,000 pursuant to the city's master group term life insurance policy as may be in effect at any time. (Ord. #1985-11, Oct. 1985)

4-412. Powers of the administrator. The plan administrator shall perform the duties and exercise the powers and discretion given to him, her or it pursuant to this chapter and the decisions and actions of such plan administrator shall be final and conclusive as to all persons affected thereby. The plan administrator shall supervise the establishment and maintenance of the records by the city containing all relevant data pertaining to any person affected by the plan and his or her rights thereunder and shall ascertain that such person receives the benefits to which he or she is entitled under the plan. The plan administrator shall prepare an annual report for the city as of the last day of each calendar year and such forms as may be required by the city and shall provide such other services including accounting services as may be agreed upon from time-to-time by and between such plan administrator and the mayor. (Ord. #1985-11, Oct. 1985)

4-413. Selection of the plan administrator. The mayor of the City of Waverly, Tennessee is authorized to select and name a plan administrator to carry out the duties conferred upon the plan administrator by this chapter and pursuant to the plan. The mayor is authorized to enter into such contracts in connection therewith as may be required and any such contract so entered into shall incorporate by reference the terms of this chapter which shall thus be made a part thereof. The provisions of this chapter shall control over the provisions of any term, condition or provision of any such contract. The mayor shall be authorized to negotiate with such plan administrator such fee or fees for the services of the plan administrator in connection with the administration of the plan and any fees thus agreed upon to be paid on the part of the city shall be paid only out of funds appropriated therefor by the board of mayor and aldermen. (Ord. #1985-11, Oct. 1985)

CHAPTER 5

INFECTIOUS DISEASE CONTROL POLICY

SECTION

4-501. Generally.

4-502. Administration.

4-503. Definitions.

4-504. General guidelines.

4-505. Hepatitis B vaccinations.

4-506. Reporting potential exposure.

4-507. Hepatitis B virus post-exposure management.

4-508. Human immunodeficiency virus post-exposure management.

4-509. Training regular full-time employees.

4-510. Training high risk employees.

4-511. Training of new employees.

4-512. Reports.

4-501. Generally. Occupational exposures to infectious diseases in the work place may occur in many ways, including needle sticks, cut injuries or blood spills. Several classifications of employment are assumed to be at high risk for blood borne infections due to their routinely increased exposure to infectious materials from potentially infected individuals. High risk occupations within the city employment are the following:

- (1) Police personnel;
- (2) Firefighters; and
- (3) Sanitation workers. (Ord. #1992-4, Sept. 1992)

4-502. Administration. Control or risks in contracting infectious diseases shall be administered by the city health officer who shall have the following powers, duties and responsibilities:

- (1) Exercise leadership in implementation and maintenance of an effective infectious disease control program subject to the provisions of this chapter and federal and state laws relating to occupational safety and health and regulations promulgated thereunder;
- (2) Make continuing exposure determinations for all employee classifications within the city to determine possible exposure to blood or other potentially infectious materials;
- (3) Maintain records on all employees in high risk occupations and on all incidents subject to the provisions of this chapter;
- (4) Conduct periodic inspections to determine compliance by employees in high risk occupations;
- (5) Coordinate and document all relevant training activities;

- (6) Recommend to the board of mayor and aldermen any amendments or changes to this chapter;
- (7) Identify any and all operations involving substantial risk of direct exposure to potentially infectious materials;
- (8) Issue such administrative orders as may be necessary hereunder to carry out his duties and responsibilities; and
- (9) Perform such other duties and exercise such other authority as may be prescribed by the board of mayor and aldermen. (Ord. #1992-4, Sept. 1992)

4-503. Definitions. (1) "Body fluids" - fluids that are recognized by the Center for Disease Control as directly linked to the transmission of HIV and/or HBV and/or to which universal precautions apply: blood, semen, blood products, vaginal secretions, cerebrospinal fluid, synovial fluid, pericardial fluid, amniotic fluid and concentrated HIV or HBV viruses.

(2) "Exposure" - the contact with blood or other potentially infectious materials to which universal precautions apply through contact with open wounds, non-intact skin, or mucous membranes during the performance of normal job duties.

(3) "Hepatitis B Virus (HBV)" - a serious blood-borne virus with potentiality for life-threatening complications. Possible complications include: massive hepatic necrosis, cirrhosis of the liver, chronic active hepatitis and hepatocellular carcinoma.

(4) "Human Immunodeficiency Virus (HIV)" - the virus that causes acquired immunodeficiency syndrome (AIDS). HIV is transmitted through sexual contact and exposure to infected blood or blood components and perinatally from mother to neonate.

(5) "Tuberculosis (TB)" - an acute or chronic communicable disease that usually affects the respiratory system, but may involve any system in the body.

(6) "Universal precautions" - a system of infectious disease control which assumes that every direct contact with body fluid is infectious and requires every employee exposed to direct contact with potentially infectious materials to be protected as though such body fluid were HBV or HIV infected. Universal precautions stress that all persons should be assumed to be infectious for HIV and/or other blood-borne pathogens. Universal precautions apply to blood, tissues and other potentially infectious materials. Universal precautions also apply to semen, (although occupational risk or exposure is quite limited), vaginal secretions, and to cerebrospinal, synovial, pleural, peritoneal, pericardial and amniotic fluids. Universal precautions do not apply to feces, nasal secretions, human breast milk, sputum, saliva, sweat, tears, urine and vomitus unless these substances contain visible blood. (Ord. #1992-4, Sept. 1992)

4-504. General guidelines. City employees who are in high risk occupations shall:

(1) Think when responding to emergency calls and exercise common sense when there is potential exposure to blood or other potentially infectious materials which require universal precautions.

(2) Keep all open cuts and abrasions covered with adhesive bandages which repel liquids.

(3) Be aware that soap and water kill many bacteria and viruses on contact and if hands are contaminated with blood or other potentially infectious materials to which universal precautions apply, then to wash immediately and thoroughly. Hands shall also be washed after gloves are removed even if the gloves appear to be intact. When soap and water or handwashing facilities are not available, a waterless antiseptic hand cleaner shall be used according to the manufacturers recommendation for the product.

(4) Take precautions to prevent injuries caused by needles, scalpel blades, and other sharp instruments.

(5) Wear gloves of appropriate material, quality and size. The gloves are to be worn when there is contact (or when there is a potential for contact) with blood or other potentially infectious materials to which universal precautions apply:

(a) While handling an individual where exposure is possible;

(b) While cleaning or handling contaminated items or equipment;

(c) While cleaning up an area that has been contaminated with one of the above;

Gloves shall not be used if they are peeling, cracked, or discolored or if they have punctures, tears, or other evidence of deterioration.

(6) Use resuscitation equipment when necessary. Because of the risk of salivary transmission of infectious diseases and the theoretical risk of HIV or HBV transmission during artificial resuscitation, bags shall be used. Pocket mouth-to-mouth resuscitation masks designed to isolate an employee from contact with a victims' blood and blood contaminated saliva, respiratory secretion, and vomitus shall be available to all personnel to provide or potentially provide such emergency treatment.

(7) Wear protective eyewear or face shields during procedures that are likely to generate droplets of blood or other potentially infectious materials to prevent exposure to mucous membranes of the mouth, nose and eyes.

(8) Clean areas and equipment contaminated with blood as soon as possible. A household (chlorine) bleach solution (1 part chlorine to 10 parts water) shall be applied to the contaminated surface as a disinfectant leaving it on for a least 30 seconds. A solution must be changed and re-mixed every 24 hours to be effective.

(9) Carefully handle and wash contaminated clothing (or other articles) as soon as possible at laundry and dish washing cycles of 120° F.

(10) Place all disposable equipment in a clearly marked plastic bag. Place the bag in a second clearly marked bag (double bag). Seal and dispose of by placing in a designated "hazardous" dumpster. Sharp objects shall be placed in an impervious container and shall be properly disposed.

(11) Affix tags as a means of preventing accidental injury or illness to employees who are exposed to hazardous or potentially hazardous conditions, equipment or operations which are out of the ordinary, unexpected or not readily apparent. Tags shall be used until such time as the identified hazard is eliminated or the hazardous operations are completed. Tags shall meet the following criteria:

(a) Contain a signal word and a major message. The signal word shall be "BIOHAZARD" or the biological hazard symbol. The major message shall indicate the specific hazardous condition or the instruction to be communicated to employees.

(b) The signal word shall be readable at a minimum distance of five (5) feet by persons of 20/20 eyesight or such greater distance as warranted by the hazard.

High risk occupation employees shall be informed of the meaning of the various tags used throughout the workplace and what special precautions are necessary.

(12) Handle linen soiled with blood or other potentially infectious materials as little as possible and with minimum agitation to prevent contamination of the person handling the linen. All soiled linen shall be bagged at the location where it was used. It shall not be sorted or rinsed in the area. Soiled linen shall be placed and transported in bags that prevent leakage. The employee responsible for transported soiled linen should always wear protective gloves to prevent possible contamination. After removing the gloves, hands or other skin surfaces shall be washed thoroughly and immediately after contact with potentially infectious materials.

(13) Whenever possible use disposable equipment to minimize and contain clean-up. (Ord. #1992-4, Sept. 1992)

4-505. Hepatitis B vaccinations. There shall be offered free of charge appropriate hepatitis B vaccinations to high risk employees in amounts and at times prescribed by standard medical practices. Vaccinations shall be voluntarily administered. High risk employees who wish to take the HBV vaccination should notify their department head who shall make the appropriate arrangements through the city health officer. (Ord. #1992-4, Sept. 1992)

4-506. Reporting potential exposure. All city employees shall observe the following procedures for reporting a job exposure incident that may put them at risk for HIV or HBV infections (i.e., needle sticks, blood contact on broken skin, body fluid contact with eyes or mouth):

(1) Notify the city health officer and their department head of the contact incident and details thereof.

(2) Complete the appropriate accident reports and any other specific form required.

(3) Pursuant to arrangements being make, see a physician as with any job-related injury.

Once an exposure has occurred, a blood sample shall be drawn if consent is obtained from the individual from whom exposure occurred. Such sample will then be tested for hepatitis B surface antigen (HBsAg) and/or antibody to human immunodeficiency virus (HIV antibody). (Ord. #1992-4, Sept. 1992)

4-507. Hepatitis B virus post-exposure management. (1) For an exposure to a source individual found to be positive for HBsAg, an employee who has not previously been given the hepatitis B vaccine should receive the vaccine series. A single dose of hepatitis B immune globulin (HBIG) is also recommended if it can be given within seven (7) days of exposure.

(2) For exposure from an HBsAg-positive source, an employee who has previously received the vaccine shall be tested for antibodies to hepatitis B surface antigen (anti-HBs), and given one dose of vaccine and one dose of HBIG if the antibody level in the employee's blood sample is inadequate (ie., 10 SRU by RIA negative by EIA).

(3) If the source individual is negative for HBsAg and an employee has not been vaccinated, an opportunity shall be given to provide the hepatitis B vaccine series. HBIG administration shall be considered on an individual basis when the source individual is known or suspected to be at high risk of HBV infection. Management and treatment, if any, of previously vaccinated employee who receives an exposure from a source who refuses testing or is not identifiable shall be individualized. (Ord. #1992-4, Sept. 1992)

4-508. Human immunodeficiency virus post-exposure management.

(1) For any exposure to a source individual who has AIDS or who is found to be positive for HIV infection or who refuses testing an employee shall be counseled regarding the risk of infection and evaluated clinically and serologically for evidence of HIV infection as soon as possible after the exposure. The employee shall be advised to report and seek medical evaluation for any acute febrile illness that occurs within 12 weeks after the exposure. Such an illness, particularly one characterized by fever, rash, or lymphadenopathy, may be indicative of recent HIV infection.

(2) Following the initial test at the time of exposure, a seronegative employee shall be retested 6 weeks, 12 weeks, and 6 months after exposure to determine whether transmission has occurred. During this follow-up period (especially the first 6 - 12 weeks after exposure) an exposed employee shall follow the U.S. Public Health Service recommendations for preventing transmission of HIV. These include refraining from blood donations and using

appropriate protection during sexual intercourse. During all phases of follow-up, employee confidentiality shall be protected.

(3) If the source individual was tested and found to be seronegative, baseline testing of the exposed worker with follow-up testing 12 weeks later may be performed if desired by the worker or recommended by the health care provider. If the source individual cannot be identified, decisions regarding appropriate follow-up procedures shall be individualized. Serologic testing should be made available to all employees who may be concerned they have been infected with HIV through an occupational exposure. (Ord. #1992-4, Sept. 1992)

4-509. Training regular full-time employees. On an annual basis all city employees in regular full-time service shall receive training and education on precautionary measures, epidemiology, modes of transmission and prevention of HIV/HBV infection and procedures to be used if they are exposed to needle sticks or potentially infectious material. They shall also be counseled regarding possible risks to the fetus from HIV/HBV and other associated infectious agents. (Ord. #1992-4, Sept. 1992)

4-510. Training high risk employees. High risk occupation employees shall also receive training regarding the location and proper use of personal protective equipment. They shall be trained concerning proper work practices and understand the concept of universal precautions as it applies to their work situation. They shall also be trained about the meaning of color coding and other methods used to designate contaminated material. Where tags are used, training shall cover precautions to be used in handling contaminated materials. (Ord. #1992-4, Sept. 1992)

4-511. Training of new employees. During all new employee orientations he/she will be instructed on the effects of contracting infectious diseases. (Ord. #1992-4, Sept. 1992)

4-512. Reports. (1) Occupational injury and illness records shall be maintained by the city health officer. Statistics shall be maintained on the OSHA-2000 report. Only those work-related injuries that involve loss of consciousness, transfer to another job, restriction of work or motion, or medical treatment are required to be put on the OSHA-2000 report.

(2) Needle sticks, like any other puncture wound, are considered injuries for recordkeeping purposes due to the instantaneous nature of the event. Therefore, any needle stick requiring medical treatment (i.e. gamma globulin, hepatitis B immune globulin, hepatitis B vaccine) shall be recorded.

(3) Use of prescription medication (beyond a single dose for minor injury or discomfort) is considered medical treatment. Since these types of treatment are considered necessary, and must be administered by physician or licensed medical personnel, such injuries cannot be considered minor and must be reported. (Ord. #1992-4, Sept. 1992)

CHAPTER 6

[REPEALED]

(Ord. #1997-2, § 1, Jan. 1997, as repealed and replaced by Ord. #1997-4, April 1997, as repealed by Ord. #2005-11, July 11, 2005)



## CHAPTER 7

EMPLOYEE DEFERRED COMPENSATION PROGRAM

## SECTION

- 4-701. Name.
- 4-702. Definitions.
- 4-703. Eligibility.
- 4-704. Reduction of compensation.
- 4-705. Coordination with tax deferred annuity 403(b) plans.
- 4-706. Benefits.
- 4-707. Withdrawal for hardship.
- 4-708. Amendment or termination.
- 4-709. Nonassignability.
- 4-710. Headings.
- 4-711. Waiver.
- 4-712. Types of investments.
- 4-713. Applicable law.
- 4-714. Distribution of benefits.

4-701. Name. This chapter shall be known as the Waverly Employee Deferred Compensation Program ("Program"). (as added by Ord. #1998-12, Dec. 1998)

4-702. Definitions. The following definitions apply unless otherwise specifically defined:

(1) "Compensation" is all payments for normal service rendered by a participant, including, but not limited to, the gross salary or remuneration of the participant, before deductions for federal or state taxes or pension plan contributions.

(2) "City" is the City of Waverly, Tennessee, a municipal corporation.

(3) "Includable compensation" results after deferred compensation or tax deferred annuity reduction amounts have been reduced from compensation and is shown on the IRS Form W-2 or IRS Form 1099 of a participant.

(4) "Compensation reduction" is that amount deferred by a participant's election to reduce his or her compensation under a joinder's agreement in accordance with the program.

(5) "Participant" is an individual eligible to defer compensation who fulfills the eligibility requirements of the program.

(6) "Beneficiary" is the persons (whether one or more) designated in his or her joinder amendment by a participant.

(7) "Normal retirement" is cessation from service with city effective on the first date of the calendar month after the participant attains normal retirement age.

- (8) "Normal retirement age" is age 65.
- (9) "Early retirement" is cessation from service with city effective prior to normal retirement age, but after age 50.
- (10) "Late retirement" is cessation from service with city which becomes effective after a participant attains normal retirement, but not later than age 70 1/2.
- (11) "Termination of service" is cessation of a participant's employment with city prior to retirement by reason other than death or disability or cessation of a participant's independent professional contractor relationship rendering service to city.
- (12) "Disability" is total and permanent impairment which prohibits a participant from engaging in any substantial gainful activity by reason of a medically determinable physical or mental condition which can be expected to result in death or be of a long and indefinite duration.
- (13) "Underutilized deferrals" is the amount by which actual compensation for previous taxable months exceeds the amount which would have been included in compensation had the maximum deferral been utilized.
- (14) "Effective date" is January 1, 1999.
- (15) "Tax ID number" is 62-6000432.
- (16) "Enrollment period" is November 1 through December 31 of each year during which a participant can make changes and new employees or independent professional contractors can elect to participate. (as added by Ord. #1998-12, Dec. 1998)

4-703. Eligibility. An eligible employee or independent professional contractor with the consent of city may irrevocably elect to reduce and defer his or her compensation as specified in section 4-704 through execution of a joinder agreement. (as added by Ord. #1998-12, Dec. 1998)

4-704. Reduction of compensation. (1) By executing a joinder agreement an eligible employee or independent professional contractor becomes a participant and agrees with city and city agrees with such participant that the participant's compensation otherwise receivable during a period of employment or service subsequent to January 1 following execution of the joinder agreement shall be irrevocably reduced by the compensation reduction as specified in the joinder agreement.

- (2) Annual compensation reduction will not exceed the lesser of:
  - (a) 25% of compensation; or
  - (b) 33-1/3% of includable compensation; or
  - (c) \$7,500.
- (3) A participant may utilize limited "catch-up" for any, or all, of the last three (3) taxable years of the participant immediately preceding his or her normal retirement age. The maximum that can be deferred in any taxable year

through the utilization of both the defined contribution limits and the "catch-up" amount may not exceed the underutilized deferrals.

(4) An eligible employee or independent professional contractor with respect to participation commencing in the initial year of the program, or an employee or independent professional contractor when first eligible to participate, may become a participant prior to or within 60 days after the program becomes effective or after first becoming eligible by agreeing to defer compensation not yet earned, but such agreement must be made prior to the beginning of the period in which it is to become effective.

(5) A participant shall have the right exercisable within thirty (30) days prior to the beginning of any calendar month to elect to increase or decrease the compensation reduction for the ensuing calendar year by executing another joinder agreement.

(6) A participant failure to file written notice of his or her elective choice as provided in (5) above shall constitute a waiver by participant of his or her right to elect a different reduction sum for the next succeeding calendar year and an affirmation and ratification to continue the stated compensation reduction as chosen in the prior period.

(7) A participant may elect to discontinue compensation reduction for any subsequent calendar year following the effective date of his or her joinder agreement; provided, however, a participant shall notify city of such discontinuance at least thirty (30) days prior to the subsequent calendar month. (as added by Ord. #1998-12, Dec. 1998)

4-705. Coordination with tax deferred annuity 403(b) plans. If a participant participates in a tax deferred annuity 403(b) plan, contributions made thereunder reduce the includable compensation limitations. The maximum combined annual contribution to such a plan and the program shall not exceed the lesser of 25% of compensation or \$7,500. The only exception to this normal rule is where a participant uses the "catch-up" provisions explained in section 4-704(3). (as added by Ord. #1998-12, Dec. 1998)

4-706. Benefits. (1) The following alternative types of benefits shall be available to participants:

(a) Retirement benefits. A participant must elect the method by which deferred amounts are to be paid no later than thirty (30) days prior to his or her actual retirement. For the purposes of this subsection, the definitions of early, normal, or late retirement will be used in determining the actual retirement date. The methods of distribution are found in subsection (e) hereafter. Payments will begin not later than thirty (30) days after the actual retirement date.

(b) Termination benefits. Should a participant terminate services other than by retirement, disability, or death, the city will make payment to such participant as elected in his or her joinder agreement.

These elections include any of those mentioned in subsection (e) which follows. Such payments will begin not later than thirty (30) days after said termination.

(c) Disability benefits. Prior to his or her normal retirement age, if a participant becomes totally and permanently disabled, city will pay benefits to the participant so qualifying as elected in his or her joinder agreement. Such payments will begin not later than thirty (30) days after receipt of proof of such disability.

(d) Death benefits. In the event a participant dies prior to his or her normal retirement age, city will pay death benefits to the participant's beneficiary as elected in his or her joinder agreement. Such payments will begin not later than thirty (30) days after receipt of proof of death.

(e) Joinder agreement settlement options. The settlement options are:

- (i) Life annuity; or
- (ii) Life annuity with 120 or 240 months certain; or
- (iii) Unit refund life annuity; or
- (iv) Joint and survivor;
- (v) Joint and survivor with 120 or 240 months certain,
- (vi) Any other mutually agreeable payout option.

(2) Factors determining benefits are age at the time compensation is deferred; the amounts of compensation reduction; the funding vehicle used; and age at retirement, termination, disability, or death. To determine benefits, a participant's age on his or her birth date nearest the date he or she elects to defer compensation will be used as the "age at the time compensation is deferred".

(3) Benefits shall be dependent upon the amount which has accumulated in the city's general account with respect to a participant or his or her beneficiary for whom such payments are being determined under the funding media selected.

(4) A participant shall designate his or her beneficiary, including a contingent beneficiary, to receive any benefits which may be payable upon the death of the participant. A participant shall have the right to change any beneficiary. Changes of a beneficiary are binding only if made in a manner acceptable to city prior to the payment of the amounts that become due.

(5) City has no obligation to set aside, earmark, or entrust any fund, policy, or money with which to pay its obligations under the program. A participant, and any successor in interest, shall be and remain simply a general creditor of city with respect to compensation deferred under the program in the same manner as any other creditor who has a general claim for an unpaid liability. City shall be the sole owner and beneficiary of any assets acquired for its general account under the program. City shall not make any substantial loans nor extend substantial credit to a participant or beneficiary which will be

offset by the benefits payable under the program. (as added by Ord. #1998-12, Dec. 1998)

4-707. Withdrawal for hardship. A participant may request withdrawal under the program prior to retirement or termination of service, but such a request will not be honored unless great hardship conditions exist. Hardship conditions must be the result of a real emergency beyond the control of the requesting participant or his or her beneficiary. Withdrawals are limited to amounts necessary to meet the hardship. A written request for withdrawal stating the hardship conditions shall be presented to city to determine the existence of an unforeseeable emergency and, if found to exist, the amount needed to satisfy the emergency. City's decision shall be final and binding. A withdrawal shall be effective upon approval by city and shall be paid in lump sum to a participant. (as added by Ord. #1998-12, Dec. 1998)

4-708. Amendment or termination. (1) City reserves the right to amend any provision of the Program at any time to the extent it deems advisable without the consent of a Participant or his or her beneficiary.

(2) City reserves the right to terminate the program at any time. Upon termination, city shall pay to each participant an amount of money which would have been available had a participant terminated his or her service at that time. City will make the payments in lump sum not later than thirty (30) days after termination of the program. (as added by Ord. #1998-12, Dec. 1998)

4-709. Nonassignability. No benefits under the program shall be subject in any manner to anticipation, alienation, sale, transfer, assignments, pledge, or encumbrance. Any attempt to do so shall be void. Benefits shall not be subject to or liable for the debts, contracts, liabilities, engagements, or torts of a participant nor those of his or her beneficiary. (as added by Ord. #1998-12, Dec. 1998)

4-710. Headings. Headings and subheadings contained herein are inserted for convenience of reference only and do not constitute a part of program provisions. (as added by Ord. #1998-12, Dec. 1998)

4-711. Waiver. Notwithstanding any other provision herein contained, city shall not be liable to a participant, nor to his or her beneficiary, for any mistakes in judgment in the making or retaining any investments 'nor for any loss from investing the funds so long as city performs its obligations in good faith. (as added by Ord. #1998-12, Dec. 1998)

4-712. Types of investments. (1) Deferred amounts, at the sole discretion of city, may be invested in commercial bank FDIC insured certificates of deposit, U. S. Treasury obligations, annuities, mutual funds or insurance products. City

shall provide all information on account transactions to participants upon request, but not more frequently than quarterly, and shall issue an annual account statement to participants showing deposits, withdrawals, and dividends paid.

(2) Nothing shall require city to purchase investments or assets, but in the event city purchases investments or assets, it shall not be required to exercise any option, election or right with respect to such investments or assets. If exercising any option, election, or right under such investments or assets, city shall not be required to exercise such option, election, or right in any particular manner. (as added by Ord. #1998-12, Dec. 1998)

4-713. Applicable law. This program shall be construed under the laws of the State of Tennessee and section 457 as the same may be in effect and amended from time to time. (as added by Ord. #1998-12, Dec. 1998)

4-714. Distribution of benefits. (1) Pursuant to the election of a participant city shall distribute to participant or to his or her beneficiary any amount to which he or she is entitled under the program.

(2) Any distribution to a participant must meet the requirements of Internal Revenue Code Section 401(a)(9) and regulations thereunder to the extent the same are consistent with the provisions of Section 457.

(a) If a participant's entire interest is to be distributed in other than a lump sum, the amount to be distributed each year must be at least an amount equal to the quotient obtained by dividing a participant's entire interest by his or her life expectancy or that of the last survivor of his or her beneficiary.

(b) If a participant's deferred compensation is to be distributed over a period in excess of a participant's then life expectancy, the then present value of the payments to be made over the period of a participant's life expectancy must be more than sixty-six and two-thirds (66-2/3) of the then present value of the total payments to be made to a participant and to his or her beneficiary.

(c) Notwithstanding any provision in the program to the contrary, a participant's benefits shall be distributed not later than April 1 of the calendar year following the calendar year in which the participant attains age 70-1/2. Alternatively, distributions to a participant must begin not later than the April 1 following such calendar year and must be made over the life of the participant (or the lives of the participant and his or her beneficiary) or the life expectancy of the participant (or the life expectancies of the participant and his or her beneficiary).

(3) For purposes of the program, the life expectancy of a participant and his or her beneficiary (other than in the case of a life annuity) shall be redetermined annually in accordance with IRS Regulations. Life expectancy

and joint and last survivor expectancy shall be computed using the return multiples in Tables V and VI of IRS Regulations Section 1.72-9. (as added by Ord. #1998-12, Dec. 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 technician.
- 4-810. Evidential breath testing device.
- 4-811. Alcohol testing procedures.
- 4-812. Urine specimen collection procedures.
- 4-813. Testing methodology.
- 4-814. Review of results.
- 4-815. Specimen re-testing requested by employee.
- 4-816. Consequences of positive drug or alcohol test result of an employee.
- 4-817. Self-reporting.
- 4-818. Employee acknowledgment of policy.
- 4-819. Repeal of existing policies.

4-801. Policy. 7. The use, possession, purchase or sale of alcohol and illegal drugs, or of prescription drugs which are irregularly used and not as prescribed by lawful authority, or being under the influence of alcohol, by employees while operating municipal vehicles or equipment or while otherwise engaging in municipal business, and in the case of illegal drugs and of prescription drugs irregularly used for a period of four (4) hours prior to commencement thereof, and in the case of an accident during the course of employment, for a period of eight (8) hours following such accident or until a post-accident test is conducted, is strictly prohibited.

8. An employee called in to work or to perform his or her duties at other than during regularly scheduled hours shall disclose to his or her immediate supervisor his or her lawful use of alcohol or a prescription drug prior to reporting for such work or duty. To the extent that the supervisor reasonably determines that the employee is under the influence of alcohol or a prescription drug the employee shall be excused from work or duties, without pay, during the continuation of such impairment. Such a disclosure made voluntarily by the employee shall relieve him or her of the penalty of any sanction otherwise provided herein, but shall not thereafter exempt him or her from any



subsequent testing requirement or the sanction or penalty otherwise provided in connection therewith. (as added by Ord. #1999-6, June 1999)

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

1. "Employee." A full or part-time person, temporary, permanent or probationary, including a volunteer fireman, employed by the municipality, including the mayor, aldermen, city manager, city attorney and city judge, but excluding members of boards, commissions or committees.

2. "Alcohol." The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols including methyl and isopropyl alcohol.

3. "Under influence of alcohol." Having a blood alcohol concentration of 0.04 or greater.

4. "Controlled substance." Amphetamines, cannabinoids, cocaine, opiates, and phencyclidine.

5. "Prescription drugs." Medications requiring a prescription of a licensed physician or other licensed medical practitioner which impairs the ability to safely perform a work function.

6. "Municipality." The City of Waverly, Tennessee.

7. "Drug." Controlled substances and prescription drugs. (as added by Ord. #1999-6, June 1999)

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 shall be disqualification from employment.

2. A positive test result for a prescription drug shall not be per se disqualifying if the applicant shall have disclosed the regular lawful use of such prescription drug prior to the testing and it is determined that its continued use will not unreasonably interfere with his or her performance of the job for which he or she has applied. (as added by Ord. #1999-6, June 1999)

4-804. Post-accident testing. 1. If an employee is involved in an accident which causes injury to the employee or to another person sufficient to require treatment for the injury, the employee shall submit to an alcohol and drug test.

2. An alcohol test must be administered within two (2) hours following an accident and in no case shall more than eight (8) hours elapse before the test is administered. The employee shall notify his or her supervisor immediately to insure action is taken to meet this testing requirement.

3. An employee shall refrain from using alcohol for eight (8) hours following the accident or until he or she has submitted to an alcohol test,

whichever first occurs, or shall be considered as having refused to submit to testing.

4. A drug test must be administered within thirty-two (32) hours following an accident. An employee must remain available for testing or shall be considered as having refused to submit to testing.

5. Refusal to comply with a testing requirement shall be grounds for termination of employment. (as added by Ord. #1999-6, June 1999)

4-805. Random testing. 1. Employees shall be subject to random testing for drugs and alcohol. Random testing shall be done on a percentage basis 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 shall be administered at the first reasonable opportunity after he or she has been randomly selected for such testing.

3. Selection of employees for random testing shall 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 drivers licenses (CDL) those employees holding a CDL shall 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.

4. Random tests shall 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. #1999-6, June 1999)

4-806. Reasonable suspicion testing. An employee while operating a municipal vehicle or equipment or while engaging in municipal business, acting in an abnormal manner sufficient to cause reasonable suspicion that he or she has violated the provision of § 4-801 hereof, shall submit to an alcohol and/or drug test upon the approval and direction of the city manager or mayor. (as added by Ord. #1999-6, June 1999)

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 shall be required to 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 shall be required before return-to-duty is considered or allowed. (as added by Ord. #1999-6, June 1999)

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. (as added by Ord. #1999-6, June 1999)

4-809. Breath alcohol technician. Alcohol testing will only be performed by a certified Breath Alcohol Technician (BAT) 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. (as added by Ord. #1999-6, June 1999)

4-810. Evidential breath testing devices. Alcohol testing will only be performed using an EBT device approved by the National Highway Safety Administration (NHTSA). (as added by Ord. #1999-6, June 1999)

4-811. Alcohol testing procedures. 1. Alcohol testing shall 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. BAT shall open an individually sealed mouthpiece and attach it to the EBT device. Employee shall be instructed to blow into 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 the result is less than 0.02 no further testing is authorized and the result shall be transmitted to the city manager and the mayor.

4. If the 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 15 minutes nor more than 20 minutes after the initial test. In the event the initial and confirmation test results are different, the confirmation test result shall be deemed to be the final result upon which any action shall be based.

5. Following completion of the test, BAT will date and sign a certification on the form. The employee shall 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 is 0.04 or greater.

7. Alcohol test results shall be kept in a secure and confidential manner so that disclosure of information to unauthorized persons does not occur.

a. An employee shall have access to any of his/her alcohol test records upon written request.

b. Post-accident testing information must be disclosed to the National Transportation Safety Board 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 or to the decision-maker in a lawsuit or other proceeding initiated by or on behalf of the employee. This includes worker's compensation, unemployment compensation, or other proceeding 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 city manager or 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 regarded as having refused to take the test. (as added by Ord. #1999-6, June 1999)

4-812. Urine specimen collection procedures. 1. Procedures for collection, shipment and accession of urine specimens to a designated laboratory shall account for the integrity of each urine specimen and shall 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 the services of an outside source such as a doctor's office, clinic, hospital or other facility may be used that meets security requirements. Collection sites shall 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 shall 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 shall present a photo I.D. and shall remove all unnecessary outer garments (i.e., coat or jacket), and secure all personal belongings except his or her wallet.

5. An employee shall 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 shall be collected immediately under direct observation of a same-gender collection site collector. Both samples shall be sent to the laboratory.

7. Refusal to submit to a test shall be considered as a verified positive result.

8. In all cases the employee and the collection site collector shall keep the specimen in view at all times prior to being sealed and labeled. The

specimen shall be labeled with tamper proof seals. The employee shall 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. #1999-6, June 1999)

4-813. Testing methodology. 1. Every urine specimen shall undergo an initial screening followed by confirmation of all positive screen results.

2. The laboratory shall report the test results directly to the city manager and the mayor within five (5) working days. The report shall 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 shall be retained by the laboratory for possible retesting for up to thirty (30) days. (as added by Ord. #1999-6, June 1999)

4-814. 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 shall report that information to the city manager and the mayor. (as added by Ord. #1999-6, June 1999)

4-815. Specimen re-testing requested by employee. An employee who has a confirmed positive drug test has 72 hours in which to request a re-testing of the split specimen. If the employee makes such a request, the laboratory shall be requested 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. #1999-6, June 1999)

4-816. Consequence of positive drug or alcohol test result of an employee.  
1. An employee, except the mayor or an alderman, as a result of testing, with a verified drug test result and/or an alcohol breath test with a confirmed test result of 0.04 or greater shall be immediately terminated from his or her employment. In the case of the mayor or an alderman, he or she shall be subject

to public censure by the board of mayor and aldermen at any regular or special meeting thereafter.

2. If a confirmed alcohol breath test result is 0.02 or greater, but less than 0.04, the employee, except the mayor or an alderman, shall be subject 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. In the case of the mayor or an alderman, he or she shall be subject to public censure by the board of mayor and aldermen at any regular or special meeting thereafter.

3. In all cases of a verified positive drug test result and/or a confirmed alcohol breath test result the employee, except in the case of the mayor or an alderman, shall 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. #1999-6, June 1999)

4-817. Self-reporting. 1. An employee who approaches the city manager or mayor for assistance through rehabilitation for drug or alcohol abuse prior to testing, shall 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 a lawfully prescribed prescription drug shall report that 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. #1999-6, June 1999)

4-818. Employee acknowledgment of policy. Within thirty (30) days from the effective date hereof all employees, except the mayor and an alderman, as a condition for continued employment and all new hires as a condition for employment shall execute and file with the municipality as a part of his or her personnel record the following statement:

"I have received a copy of the City of Waverly Policy on Alcohol and Drug Testing. I understand and agree to abide by the policy." (as added by Ord. #1999-6, June 1999)

4-819. Repeal of existing policies. All existing policies of the municipality relative to drug or alcohol use by or testing of employees are hereby abrogated, rescinded and repealed, except in the case of a more stringent prohibition or administrative policy relative to use of drugs or alcohol while on duty as may apply to a public safety employee. (as added by Ord. #1999-6, June 1999)

CHAPTER 9

SEXUAL HARASSMENT

SECTION

4-901. General policy.

4-902. Definition.

4-903. Employee complaints.

4-904. Investigation.

4-905. Corrective action.

4-906. Determination of lack of basis for charge.

4-907. Review of determination.

4-901. General policy. The City of Waverly has a strict policy against sexual harassment in the municipal employment workplace. Sexual harassment in the municipal workplace by an employee or appointed or elected official will not be tolerated. (as added by Ord. #2001-2, March 2001)

4-902. Definition. Sexual harassment is unwanted sexual conduct or conduct based upon sex by a supervisor or fellow employee or others in the municipal workplace that adversely affects an employee's job or job performance. Examples of conduct that may constitute sexual harassment are sexual advances, requests for sexual favors, propositions, physical touching, sexually provocative language, sexual jokes, and display of sexually-oriented devices, pictures or photographs. (as added by Ord. #2001-2, March 2001)

4-903. Employee complaints. Any municipal employee who believes that he or she has been subjected to sexual harassment should immediately report this to the city manager or, if the city manager is the one against whom the complaint is made, then to the mayor. The matter will be handled with as much confidentiality as possible. There will be no retaliation against an employee who makes a complaint of sexual harassment or who is a witness to such harassment. (as added by Ord. #2001-2, March 2001)

4-904. Investigation. The city manager, or the mayor, or the latter's designee, will conduct an immediate investigation in an attempt to determine all the facts concerning the alleged harassment. In performing the investigation, the investigator will strive to be fair to all parties involved. (as added by Ord. #2001-2, March 2001)

4-905. Corrective action. If the fair investigation determines that sexual harassment has occurred, the city manager or the mayor, as the case may be, will take corrective action. This corrective action may include a reprimand, demotion, discharge, or other appropriate action against the offender. If by an

elected or appointed official the results shall be reported to the board of mayor and aldermen who will take corrective action which may include dismissal, reprimand, public or private censure as appropriate. Corrective action will reflect the severity of the improper conduct. The complaining employee will be notified of the corrective action taken. (as added by Ord. #2001-2, March 2001)

4-906. Determination of lack of basis for charge. If it is determined that no sexual harassment occurred or that there was insufficient evidence that sexual harassment occurred then such finding will be communicated to the complaining employee along with the reasons for such determination. (as added by Ord. #2001-2, March 2001)

4-907. Review of determinations. At the request of the complainant or the offending employee a neutral committee will be established and commissioned to review and further investigate a complaint and any initial determination thereof. The recommendation of the neutral committee will be implemented in the same manner. (as added by Ord. #2001-2, March 2001)



CHAPTER 10

E-MAIL POLICY

SECTION

- 4-1001. General.
- 4-1002. Purpose and scope.
- 4-1003. Ownership.
- 4-1004. Usage policy.
- 4-1005. Monitoring.
- 4-1006. Personal use.
- 4-1007. Authorized use.
- 4-1008. Use subject to written approval.
- 4-1009. Encrypting e-mail message.
- 4-1010. Prohibited uses.
- 4-1011. Confidential information.
- 4-1012. Messages to legal counsel.
- 4-1013. Copyright infringement.
- 4-1014. Policy violations.
- 4-1015. Acknowledgment.

4-1001. General. This enactment shall be known as the "policy for the use and monitoring of electronic mail" or as the "e-mail policy." (as added by Ord. #2001-10, June 2001)

4-1002. Purpose and scope. Electronic mail (e-mail) is provided to selected employees of the municipality for use in performing official duties. The e-mail policy sets forth rules and expectations for the proper use of electronic mail. All electronic mail is a municipal record and may be considered a "public record" for the purposes of the Tennessee Public Records Act. (as added by Ord. #2001-10, June 2001)

4-1003. Ownership. All municipal-owned electronic mail systems, computers and other hardware, software, and temporary or permanent files thereon, e-mail messages and any related systems or devices used in the transmission, receipt, or storage of e-mail through or over such municipal-owned facilities are the property of the municipality. (as added by Ord. #2001-10, June 2001)

4-1004. Usage policy. The municipal e-mail system, like other municipal assets, shall be used only for official business for the benefit of the municipality. Use of e-mail that violates these policies or state and/or federal law is prohibited and may lead to disciplinary action up to and including termination. Any and all statements and opinions made by individuals using e-mail, whether implied

or expressed, are those of the individual and not necessarily the opinions of the municipal corporation or its officials. (as added by Ord. #2001-10, June 2001)

4-1005. Monitoring. Municipal officials may monitor messages under certain circumstances. Supervisors may monitor, retrieve, read and inspect the contents of any equipment, files, calendars, or electronic mail of their subordinates in the normal course of their supervisory responsibilities and without the express permission from the users. Reasons for inspecting, monitoring or retrieving e-mail messages include an investigation triggered by indications of impropriety, to locate substantive information relevant to a breach of security of the e-mail system, to determine and correct system hardware or software problems, to perform regular system maintenance, to respond to a lawsuit or other legal action involving the municipality, to investigate reasonable suspicion of a crime or a violation of the e-mail policy, to comply with lawful requests under the Public Records Act, to respond to law enforcement officials if legally required to do so, and to perform work or provide a service when the user-employee is unavailable. (as added by Ord. #2001-10, June 2001)

4-1006. Personal use. Personal messages, although not permitted, will be treated no differently than other messages and may be accessed, monitored, reviewed, copied, deleted, or disclosed. (as added by Ord. #2001-10, June 2001)

4-1007. Authorized uses. Supervisors or department heads may authorize the use of e-mail to send and receive messages and subscribe to list-servers from recognized professional organizations and entities relating to an employee's official duties. All employees are authorized to use e-mail as they would otherwise use any other official communication tool. Communication by e-mail is encouraged when it results in a more efficient or effective means of communication. (as added by Ord. #2001-10, June 2001)

4-1008. Use subject to written approval. Using hardware, related computer equipment, and software not owned or purchased by the municipality for official e-mail related to municipal business requires prior written approval of the city manager. (as added by Ord. #2001-10, June 2001)

4-1009. Encrypting e-mail messages. Unless specifically authorized by the city manager, and not then without depositing the encryption key with the city manager, no employee shall encrypt e-mail messages. (as added by Ord. #2001-10, June 2001)

4-1010. Prohibited uses. Except as otherwise provided herein, there is strictly prohibited the intercepting, eavesdropping, recording, or altering another person's e-mail message; forwarding chain letters; adopting the identity or another person on any e-mail message; attempting to send electronic mail

anonymously; using another person's password; misrepresenting one's self or affiliation with the municipality in an e-mail message; composing e-mail that contains racial, religious, or sexual slurs or jokes; sending harassing, intimidating, abusive, or offensive material to or about others; using e-mail for any personal commercial or promotional purpose, including personal messages offering to buy or sell goods or services; using e-mail to conduct employee organization, association, or union business; or sending or receiving any software in violation of copyright laws. (as added by Ord. #2001-10, June 2001)

4-1011. Confidential information. Employees must exercise a greater degree of caution in transmitting confidential information via e-mail than with other forms of communication because it facilitates with ease the way for another person to redistribute such information almost effortlessly. Confidential information may not be transmitted or forwarded to other employees inside or outside the municipal government who do not have a "need to know." To reduce the chance that confidential information inadvertently may be sent to the wrong person, employees shall avoid misuse of distribution lists and make sure that all lists are current. Confidential information includes, but is not limited to, information from a personnel file, including medical records; information about undercover detectives such as home addresses, telephone numbers, identities of family members; social security numbers; information relating to an administrative hearing or litigation of a civil or criminal nature; information that, if released, would give a competitive advantage to one prospective bidder over another for municipal contracts; private correspondence of elected officials; trade secrets or commercial or financial information of outside businesses; information regarding an ongoing criminal investigation; and taxpayer information. E-mail messages that contain confidential information shall have a confidentiality declaration printed at the top of the message as follows: "THIS MESSAGE CONTAINS CONFIDENTIAL INFORMATION. UNAUTHORIZED USE OR DISCLOSURE IS PROHIBITED." (as added by Ord. #2001-10, June 2001)

4-1012. Messages to legal counsel. All messages to and from legal counsel seeking or giving legal advice shall be marked with the following legend in all capital letters at the top of the page: "CONFIDENTIAL ATTORNEY/CLIENT PRIVILEGED INFORMATION." (as added by Ord. #2001-10, June 2001)

4-1013. Copyright infringement. The ability to attach a document to an e-mail message for distribution increases the risk of copyright infringement prohibited by federal law. Individual users will be liable for the unauthorized copying and distribution of copyrighted material through e-mail. Copyrighted material of a third party, such as software, database files, documentation, articles, graphics files, and downloaded information, shall not be attached to

e-mail and transmitted unless it is confirmed in advance from appropriate sources that the municipality has the right to copy or distribute such material. (as added by Ord. #2001-10, June 2001)

4-1014. Policy violations. Violations of the e-mail policy will be reviewed on a case-by-case basis and can result in disciplinary action against the violator up to and including termination. (as added by Ord. #2001-10, June 2001)

4-1015. Acknowledgment. Each employee using municipal e-mail facilities as a condition therefor shall sign the following statement which shall be included as a permanent item in his or her official personnel file: "I have received and read a copy of the Policy for the Use and Monitoring of E-mail. I understand that all municipal E-Mail communications systems and the information received from, transmitted by, or stored in these systems are the property of the municipality. Except with respect to certain content deemed confidential by state and federal law, I have no expectation of privacy in connection with any E-Mail messages, the use of municipal equipment, or the transmission, receipt, or storage of information with this equipment. I consent to the monitoring of my use of E-Mail at any time deemed necessary in accordance with the E-Mail Policy. Monitoring may include reading and printing out all electronic mail entering, stored in, or disseminated by the municipal system and equipment. I will not use a code, access a file, or retrieve any stored information unless authorized to do so. This consent is a condition of my employment and/or continued association with the municipality. I understand all the provisions specified in the E-Mail Policy. I recognize that a violation of that policy may result in disciplinary action including possible termination." (as added by Ord. #2001-10, June 2001)

CHAPTER 11

OCCUPATIONAL SAFETY AND HEALTH PROGRAM

SECTION

- 4-1101. Purpose.
- 4-1102. Applicability.
- 4-1103. Administration.
- 4-1104. Program plan.
- 4-1105. Applicable standards.
- 4-1106. Variance procedure.
- 4-1107. Training.
- 4-1108. Powers of director.
- 4-1109. Abatement of dangers.
- 4-1110. Incident reporting.

4-1101. Purpose. 1. Pursuant to chapter 3 of title 50, Tennessee Code Annotated (hereinafter referred to as "TOSHA") there is established an occupational safety and health program (the "program") for the employees of the City of Waverly (the "city").

- 2. It is the intent of the program to:
  - a. Provide a safe and healthful place and conditions of employment.
  - b. Articulate and promote management commitment and employee involvement.
  - c. Continually analyze worksites to identify all hazards and potential hazards.
  - d. Develop and maintain methods for preventing and controlling existing or potential hazards.
  - e. Train managers, supervisors, and employees to understand and deal with worksite hazards.
  - f. Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonably necessary to protect employees.
  - g. Make, keep, preserve, and make available to the Tennessee Department of Labor and Workforce Development ("department") adequate records of all occupational accidents, illnesses and personal injuries involving city employees.
  - h. Provide reasonable opportunity for participation by city employees in effectuating the objectives of the program, including opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.

- i. Provide for education and training of employees to promote the fair and efficient administration of occupational safety and health standards. (as added by Ord. #2003-44, Dec. 2003)

4-1102. Applicability. The provisions of the program apply to all employees of the city, whether part-time or full-time, seasonal or permanent. (as added by Ord. #2003-44, Dec. 2003)

4-1103. Administration. The city manager is designated director of occupational safety and health ("director") and shall perform duties and exercise powers assigned to such position pursuant hereto. (as added by Ord. #2003-44, Dec. 2003)

4-1104. Program plan. 1. A plan of operation for the program (the "plan") is adopted and implemented to establish guidelines and procedures as follows:

- a. Occupational safety and health standards promulgated by the department in accordance with TOSHA which relate to conditions, practices, means, methods, operations and processes or to the use of equipment or personal protective equipment to provide safe and healthful conditions and places of employment shall be followed by the city and all of its employees.

- b. City shall furnish each employee conditions of employment and a place of employment free from recognized hazards that cause or are likely to cause death or serious injury or harm.

- c. City shall continually inspect all work sites to insure that provisions of the program are observed and enforced.

- d. City shall notify an employee who has been or is being exposed in a biologically significant manner to harmful agents or materials in excess of applicable standards and of the corrective action being taken.

- e. City shall notify employees of their rights and duties under the program and under TOSHA.

- f. A notice shall be placed on bulletin boards and other places of common passage of applications for permanent or temporary orders granting city a variance from any provision of TOSHA or any promulgated standard or regulation under it.

- g. Employees shall have opportunity to participate in any hearing which concerns an application for a variance from a standard or regulation promulgated under TOSHA.

- h. An employee exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided by any applicable standard shall be provided information on significant hazards of such exposure, relevant symptoms, and proper conditions for safe use and of corrective action being taken.

i. An employee has the right to request an inspection and consult with inspectors at the time of any physical inspection of a worksite.

j. An employee may bring to the attention of inspectors any violation or suspected violation of applicable standards or any other health or safety hazards.

k. No employee will be discharged not discriminated against because such employee files a complaint or institutes or causes to be instituted any proceeding or inspection under or relating to the program.

l. Director may designate persons he deems necessary to carry out his powers, duties, and responsibilities under the program.

m. Director may delegate his power to make inspections, provided the procedures employed are as effective as those employed by director.

n. Director shall employee measures and coordinate activities to promote efficiency and minimize any inconveniences under the program.

o. Director may request qualified technical personnel to assist in making compliance inspections, accident investigations, or as he otherwise deems necessary and appropriate in order to carry out his duties under the program.

p. Director shall maintain and prepare all reports to the department as required by TOSHA.

q. Director shall make inspections of all facilities and work sites where employees are employed and correct any hazards or exposures observed and make inspections required by complaints submitted by or requested by employees.

r. The administrative and operational heads of each department, division, board, or other agency of city shall:

i. Be responsible for implementation of the program within their respective areas.

ii. Follow the directions of the director on all issues involving occupational safety and health as set forth in the plan.

iii. Comply with all abatement orders issued in accordance with the provisions of the plan or request a review of an order by the director within the abatement period.

iv. Make periodic safety surveys of the operations under his jurisdiction to become aware of hazards or of standards violations that may exist and make an attempt to immediately correct such hazards or violations.

v. Investigate all occupational accidents, injuries or illnesses reported to him and report the same to the director

along with findings and/or recommendations. (as added by Ord. #2003-44, Dec. 2003)

4-1105. Applicable standards. The standards adopted under the program are the applicable standards developed and promulgated under TOSHA or those which may, in the future, be developed and promulgated. Additional standards may be promulgated by the city as it deems necessary for the safety and health of its employees. (as added by Ord. #2003-44, Dec. 2003)

4-1106. Variance procedure. 1. Director may apply to the department for a variance as a result of a complaint from an employee or arising from his knowledge of certain hazards or exposures.

2. Applications for variances shall be prepared in writing and contain:

a. Specification of the standard or portion thereof for which the variance is sought.

b. Detailed statement of the reasons why city is unable to comply with the standard supported by representations by qualified personnel having first-hand knowledge of the facts represented.

c. Statement of the steps taken and to be taken to protect employees against the hazard covered by the standard.

d. Statement when city expects to comply and what steps have or will be taken to come into compliance with the standard.

e. Certification that city has informed employees, their authorized representatives, and/or interested parties by giving them a copy of the application request, posting the application at the places where employee notices are normally posted and by other appropriate means.

f. Certification that employees have been informed of their right to petition the department for a hearing on the application. (as added by Ord. #2003-44, Dec. 2003)

4-1107. Training. 1. Suitable safety and health training for employees will be established. Such training as a minimum will:

a. Instruct employees to recognize and avoid hazards or unsafe conditions and in standards and regulations applicable to employee work environment and to control or eliminate hazards, unsafe conditions, or other exposures to occupational illness or injuries.

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, and personal hygiene, which may be required.



c. Instruct employees exposed to environments where harmful plants or animals are present how to best avoid injury or exposure and 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 safe handling and use and awareness of specific requirements contained in Subparts H and M and other applicable subparts of TOSHA standards 1910 and 1926.

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

2. Employees will be given general instruction on hazards involved, precautions to be taken, and use of personal protective and emergency equipment required and on all specific standards or regulations applicable to work in dangerous or potentially dangerous areas.

3. Immediate supervisors of employees performing work in a confined or enclosed space shall instruct employees on dangers and 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. (as added by Ord. #2003-44, Dec. 2003)

4-1108. Powers of director. 1. In order to carry out the purposes of the program, the director is authorized:

a. To enter 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 city.

b. To inspect and investigate any such place of employment and all pertinent conditions, processes, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any supervisor, operator, agent, or employee working therein.

2. If an imminently dangerous situation is found, alleged, or otherwise brought to the attention of the director during a routine inspection, he shall immediately inspect the imminent danger situation before inspecting the remaining portions of the establishment, facility, or worksite.

3. A representative authorized by the employees shall be given an opportunity to consult with and/or to accompany the director during physical inspections of any worksite for the purpose of aiding such inspection.

4. Accompaniment may be denied to any person whose conduct interferes with a full and orderly inspection.

5. Inspection shall be conducted in a manner to preclude unreasonable disruptions of the operations of the workplace.

6. Interviews of employees during the course of an inspection may be made when considered essential to investigate techniques.

7. Advance notice of inspections will not be given unless necessary to conduct an effective inspection or investigation.

8. The director need not personally make periodic inspections of each and every worksite, but 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 director.

b. Records are made of the inspections and of any discrepancies found and forwarded to the director.

9. The director 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. Inspection records shall be subject to review by the department. (as added by Ord. #2003-44, Dec. 2003)

4-1109. Abatement of dangers. 1. Discovery, allegation, or report of an imminent danger shall be handled in accordance with the following procedures:

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

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

c. As soon as the inspection is concluded the conditions or practices existing which constitute an imminent danger shall be 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, shall be responsible for determining the manner in which the imminent danger situation will be abated. This shall be done in cooperation with the director and to the mutual satisfaction of all parties involved.

e. An imminent danger shall be deemed abated if:

i. The immediate 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 the director describing in detail the imminent danger and its abatement.

g. Refusal to abate an imminent danger situation shall be reported to the director immediately.

h. The director shall take whatever action may be necessary to achieve abatement.

i. As a result of an inspection or investigation for any worksite not in compliance with applicable standards, rules or regulations, the director shall:

i. Issue an abatement order to the head of the worksite.  
ii. Post a copy of the abatement order at or near the location.

j. Abatement orders shall contain the following information:

i. The standard, rule, or regulation found to be violated.  
ii. A description of the nature and location of the violation.  
iii. A description of what is required to abate or correct the violation.

iv. A reasonable period of time during which the violation must be abated or corrected.

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

l. 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 the program.

m. An 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 city. It shall be the duty of the city manager to administer discipline by taking action in one of the following ways as appropriate and warranted:

i. Oral reprimand;  
ii. Written reprimand;  
iii. Suspension for three (3) or more working days;  
iv. Termination of employment. (as added by Ord.

#2003-44, Dec. 2003)

4-1110. Incident reporting. Employees shall report all accidents, injuries, or illnesses to the director as soon as possible, but no later than twenty-four (24) hours after occurrence. Such report may be verbal or in writing. All fatalities or accidents involving hospitalization shall be reported to the director and/or record keeper immediately, either by telephone or verbally, and will be

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followed by a written report within four (4) hours after their occurrence. The director will cause an investigation to be made as he deems appropriate. (as added by Ord. #2003-44, Dec. 2003)