

**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 the city to provide for the employees and officials of the city, not excluded by law or this chapter, whether employed in connection with a governmental or proprietary function, the benefits of the system of federal old age and survivors insurance as authorized by the Federal Social Security Act, and amendments thereto, including Public Law 734, 81st Congress. In pursuance of said policy, and for that purpose, the city shall take

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<sup>1</sup>Ord. #188, as amended by Ord. #197 and Ord. #265, established personnel manning levels, wage scales, rules of conduct, etc. for city employees. These ordinances are of record in the office of the city recorder.

such action as may be required by applicable state and federal laws or regulations. (1976 Code, § 1-901)

**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. (1976 Code, § 1-902)

**4-103. Withholdings from salaries or wages.** Withholdings from the salaries or wages of employees and officials, for the purpose provided in § 4-101 hereof, 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. They shall be paid over to the state or federal agency designated by said laws or regulations. (1976 Code, § 1-903)

**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. (1976 Code, § 1-904)

**4-105. Records and reports.** The city shall keep such records and make such reports as may be required by applicable state and federal laws or regulations. (1976 Code, § 1-905)

**4-106. Personnel excluded from coverage.** There is hereby excluded from this chapter any authority to make any agreement with respect to emergency, part-time and fee basis employees and elective legislative officials as of January 1, 1952, or any employee or official authorized to be covered by any other ordinance creating any other retirement system for any employee or official of the city, or any employee or official not authorized to be covered by applicable federal or state laws or regulations. Acting under § 4-102 hereinabove contained, the mayor is directed to amend the Social Security Agreement so as to extend the benefits of the System of Federal Old Age and Survivors Insurance to include the services of part-time employees as of January 1, 1978 and to exclude the services performed by election officials and election workers if the remuneration paid for such services is less than \$100.00 in a calendar year, to be effective not earlier than the last day of the calendar quarter in which a modification to the agreement is mailed to the Federal Social Security Administration, pursuant to federal law. (Ord. #158, June 1981)

**4-107. Exclusion of election officials.** The mayor is authorized and directed to execute an amendment to said agreement of January 1, 1952 to

exclude from coverage under the Federal System of Old Age, Survivors, Disability, Health Insurance, the services of an election worker and an election official if the remuneration paid for such services in a calendar year is less than \$1,000 on or after January 1, 1995, and ending on or before December 31, 1999 and, the adjusted amount determined under section 218(c)(8)(B) of the Social Security Act for any calendar year, commencing on or after January 1, 2000, with respect to services performed during any such calendar year. This exclusion to be effective in and after a calendar year in which a state's modification is mailed, or delivered by other means, to the appropriate federal official. (Ord. #256, March 1995)

## CHAPTER 2

### PERSONNEL RULES AND REGULATIONS

#### SECTION

- 4-201. Purpose.
- 4-202. Coverage.
- 4-203. Classes of employees.
- 4-204. Hiring procedures.
- 4-205. Separation and discipline.
- 4-206. Compensation.
- 4-207. Benefits.
- 4-208. Miscellaneous personnel policies.

**4-201. Purpose.** The purpose of this chapter is to establish a system of personnel administration in the City of Smithville that is based on merit and fitness. The system shall provide means to select, develop, and maintain an effective municipal work force through impartially applying personnel policies and procedures free of personal and political considerations and regardless of race, color, gender, age, creed, national origin, or disability. (Ord. #240, Aug. 1992, as amended by Ord. #261, March 1996; and replaced by Ord. #287, Aug. 1999)

**4-202. Coverage.** All offices and positions of the City of Smithville are divided into the classified service and the exempt service. The classified service shall include all regular full-time and regular part-time positions in the city/town's service unless specifically placed in the exempt service. All offices and positions of the City of Smithville placed in the exempt service are as follows:

- (1) All elected officials;
- (2) The city treasurer;
- (3) Members of appointed boards and commissions;
- (4) Consultants, advisors, and legal counsel rendering temporary professional service;
- (5) City attorney;
- (6) Independent contractors;
- (7) People employed by the municipality for not more than three months during a fiscal year;
- (8) Part-time employees paid by the hour of the day and not considered regular;
- (9) Volunteer personnel appointed without compensation;
- (10) City judge;
- (11) Police chief;
- (12) Fire chief;

(13) Department heads; and

All employment positions of the City of Smithville not expressly exempt from coverage by this section shall be subject to the provisions of the town charter. (Ord. #240, Aug. 1992, as amended by Ord. #260, March 1996; Ord. #261, March 1996; and replaced by Ord. #287, Aug. 1999)

**4-203. Classes of employee.** (1) Regular full-time. Regular full-time employees are individuals employed by the city who work more than 40 hours per week and have completed a 60 day probationary period. Regular full-time employees receive full benefits unless specifically excluded by the city charter, code, or ordinances.

(2) Regular part-time. Regular part-time employees are individuals who do not work on a daily basis and whose hours cannot exceed 32 hours per week unless approved by the department head. Regular part-time employees are excluded from all benefits afforded full-time employees.

(3) Temporary employee. A temporary employee is an individual who works for the city no more than seven months during one calendar year. Temporary employees receive no benefits.

(4) Temporary part-time employee. A temporary part-time employee is an individual who works up to 32 hours per week. Temporary part-time employees receive no benefits.

(5) Volunteer employee. A volunteer is an individual who works for the city for little or no compensation.

(6) Volunteer firefighters. Volunteer firefighters are selected by the fire chief. After successfully completing a 90 day probationary period and after approval of the fire chief, their continuance is subject to approval of the board of mayor and aldermen. Volunteer firefighters are compensated per fire-call with no other benefits except coverage under the Volunteer Firefighter's Insurance Coverage Policy. (Ord. #254, Aug. 1994, as replaced by Ord. #287, Aug. 1999)

**4-204. Hiring procedures.** (1) Purpose. The primary purpose of this hiring policy is to ensure compliance with the law and to obtain qualified personnel to serve the citizens of the city. Appointments to positions are based on merit, technical knowledge, and work experience. Persons shall not be employed, promoted, demoted, discharged, or in any way favored or discriminated against because of race, gender, age, color, religion, creed, ancestry, disability, or national origin. The city reserves the right to alter or change any or all of these rules without prior notice to employees.

(2) Recruitment. The city will employ only capable and responsible personnel who are of good character and reputation. When a vacancy occurs in any department, the position will be filled by promotion from a lower position within the organization, if a qualified employee is available. When

qualifications are considered equal, then the length of continuous service in the organization will be the determining factor for selection.

(3) Application process. All people seeking appointment or employment with the city shall complete a standard application form as provided by the municipal government. Employment applications shall be submitted to the treasurer's office during regular office hours only. The treasurer's office will make reasonable accommodations in the application process to applicants with disabilities making a request for such accommodations.

(4) Interviews. Upon receipt of applications, the treasurer, commissioners, and mayor shall screen the applicants and determine the applicants who may be interviewed. All interviews shall be conducted in compliance with the American with Disabilities Act.

(5) Appointments. All appointments subsequent to the probationary period shall be made by the board of mayor and aldermen. Following a conditional offer of employment, every prospective employee, when required, may be given a medical examination and a general physical exam by a licensed physician designated by the City of Smithville to ensure they can perform the essential functions tested for in the medical examination shall have the offer of employment by the city withdrawn only if they:

- (a) Cannot perform the essential functions of the job due to a disability that cannot reasonably be accommodated;
- (b) Pose a threat to themselves and/or others;
- (c) Are unable to perform the essential functions due to a temporary condition or disability not protected by ADA.

(6) Citizenship and alien status verification. The city will not discriminate on the basis of a person's national origin or citizenship status with regard to recruitment, hiring, or discharge. However, the city will not knowingly employ any person who is or becomes an unauthorized alien. In compliance with the Immigration Reform and Control Act, all employees hired after Nov. 6, 1986, regardless of national origin, ancestry, or citizenship, must provide suitable documentation to verify identity and employability. The documentation must be provided within three days of employment or the individual will not be hired.

(7) Probation. Applicants appointed to positions with the City of Smithville are required to serve a 60 day probationary period. During this period, the employee's work performance will be subject to review regarding the competence of the employee to fill the position. An employee may be terminated during this period for any reason without respect or reference to the procedures set forth in this document, the charter, or other ordinance. If the probationary period is satisfactory, the employee may be recommended for a full-time appointment. The probationary period may be extended by written approval of the department head.

(8) Transfers. The board of mayor and aldermen may make transfers of employees or delegate this authority. A transfer may also be implemented as a reasonable accommodation when an employee is unable, due to a disability, to continue to perform the essential functions of the job.

(9) Promotions/demotions. The board of mayor and aldermen may make promotions/demotions of employees or delegate this authority. A demotion may also be implemented as a reasonable accommodation when an employee, due to a disability, becomes unable to perform the essential functions of the job. (as added by Ord. #287, Aug. 1999)

**4-205. Separation and discipline.** (1) Types of separation. All separations of employees from city positions shall be designated as one of the following types and shall be accomplished in the manner indicated: resignation, layoff, death, retirement, dismissal, and the inability to perform the essential job functions with or without reasonable accommodation due to a disability. At the time of separation and prior to final payment, all records, assets, and other items of city property in the employee's custody must be transferred to the department. Any amount due because of shortages shall be withheld from the employee's final compensation.

(2) Resignation. In the event an employee decides to leave the city's employ, a two-week notice shall be given to his/her supervisor so that arrangements for a replacement can be made. In such a case, employees will be expected to return any or all city equipment assigned. An unauthorized absence from work for a period of three consecutive working days may be considered by the department head as resignation. If a former employee returns to city employment, his/her status of seniority, pay, leave, etc. will be the same as any new employee beginning work for the first time.

(3) Layoff. The department head, upon approval from the mayor of board and aldermen, may lay off an employee in the city service when he/she deems it necessary by reason of shortage of funds, the abolition of a position, or other material changes in the duties or organization of the employee's position, or for related reasons that are outside the employer's control and that do not reflect discredit upon the employee's service. Temporary employees shall be laid off before probationary or regular employees. The order of layoff shall be in reverse order to total continuous time served upon the date established for the layoff to become effective.

(4) Disability. An employee may be separated for disability when he/she cannot perform the essential functions of the job because of physical or mental impairment that cannot be accommodated without undue hardship or because the disability poses a direct threat to the health and safety of others. A reasonable accommodation may include transfer to a comparable position for which the individual is qualified. Action may be initiated by the employee or the municipality, but in all cases it must be supported by medical evidence acceptable to the mayor and board of aldermen, and the disability must prevent

the employee from performing the essential functions of the job. The city may require an examination as its expense to be performed by a licensed physician of its choice.

(5) Retirement. Whenever an employee meets the conditions set forth in the retirement system's regulations, he/she may elect to retire and receive all benefits earned under the appropriate retirement system.

(6) Death of the employee. Separation shall be effective as of the date of death of an employee. All compensation due in accordance with these rules shall be paid to the estate of the employee, except for such sums as by law must be paid to the surviving spouse.

(7) Dismissal. The City of Smithville may dismiss an employee for just cause that is for the good of the city service. Reasons for dismissal may include, BUT SHALL NOT BE LIMITED TO: misconduct, negligence, incompetence, insubordination, unauthorized absences, falsification of records, violation of any of the provisions of the charter, ordinances, or these rules.

With the exception of a Reduction Force (RIF), full time employees and non-elected officials will be terminated only for "cause." When it has been determined that an employee's conduct warrants termination, the department head, with the concurrence of the mayor, will suspend the employee, without pay, until a hearing can be conducted. When an employee is suspended pending termination, a hearing will automatically be held within three (3) working days of the suspension. The hearing will be conducted by a board consisting of the mayor (chairman), department commissioner, and the secretary-treasurer. The employee will be afforded an opportunity to state his/her case and explain his/her position in the matter. At the conclusion of the hearing, the board will decide whether the suspension was warranted. In the event that it is determined that suspension was without just cause, the employee will be returned to work with full pay for the period of suspension. If the board upholds the suspension, the employee is terminated. If the employee is not satisfied with the action of the hearing board, the employee may, in writing, request a hearing before the board of mayor and aldermen at its next scheduled meeting.

In the event of the city judge, secretary-treasurer, city attorney, or the judicial commissioner, there shall be no suspension. If an allegation of the violation, of rules of conduct is made against any of these non-elected officials, it shall be the duty of the mayor to make an initial decision as to the validity of the allegation after an investigation. If the mayor determines that the allegation is without merit, the matter will be dismissed. If the mayor determines that the allegation has merit he shall present the matter to the board of aldermen, which shall afford the official involved an opportunity to present his position in the matter. At the conclusion of the hearing, the mayor and board of aldermen shall make its decision as to whether the allegation is without merit or well-founded, and thereafter take appropriate action to either discipline the official or dismiss the matter. (as added by Ord. #287, Aug. 1999)



**4-206. Compensation.** (1) Wage/salaries. The board of mayor and aldermen shall set all wages and salaries paid by the city. Due consideration shall be given to duties performed, responsibilities, technical knowledge and skills required to perform the work satisfactorily, the labor market, and availability of people having the desired qualifications.

(2) Hours of work. The board of mayor and aldermen shall establish the hours of work per week for each position in the service of the city. Employees unavoidably late or absent from work due to illness or other cause must notify their supervisor within the time frame established by each department (unless unusual circumstances prevent the employee from making proper notification). Such employees must explain the reason for the absence and, if possible, an anticipated time and date of return to work. Failure to notify one's supervisor of absences may result in disciplinary action. Employees found falsifying time sheets will be subject to disciplinary action up to and including dismissal. Excessive tardiness is regarded as sufficient reason for termination.

(3) Employee breaks. Employees are entitled to one 20 minute break per eight hour shift. The break is to be taken with approval from your supervisor, in a designated area, and at a designated time. Your supervisor will choose the proper time and place for rest breaks. Lunch breaks shall be for periods determined by the immediate supervisor, but in no event shall such breaks be more than one hour.

(4) Death of an employee. Upon the death of a full-time regular employee, his/her beneficiary will receive his/her next due payroll check, pay for accrued vacation and sick leave time. Further, his/her beneficiary shall be given complete assistance by the City of Smithville in settling retirement, life, and hospital insurance benefits.

(5) Payday. All administrative and hourly employees of the City of Smithville shall be paid on a weekly basis. If you have questions about your work time, salary, or paycheck, call them to the attention of the department head within the pay period in question or immediately thereafter. If you are absent on payday and wish to have someone else obtain your check for you, you may send a signed note authorizing the city to give your check to the bearer.

If you lose your check, notify your department head immediately. You will be required to sign an affidavit that your check has been lost, and a new one will be issued. If you resign, your last check will be issued within 14 days, provided all equipment is turned in to the city. You should give written notice of where the check should be sent if you are not available to pick it up.

(6) Payroll deductions. (a) Federal income tax. Federal income taxes are withheld from employees' paychecks based on the number of dependents claimed by the individual. Employees are required to keep on file with the city a copy of the W-4 form. In the event of changes in the employee exemption status, a revised W-4 must be filed before payroll deduction adjustments will be made.

(b) Social Security. Social Security payments and deductions will be made in accordance with the Social Security Act. The treasurer's office shall keep such records and make such reports as may be required by applicable state and federal laws or regulations.

(c) Others. Other deductions include retirement, uniform pay (where applicable), and garnishment.

(7) Overtime. Employees required to work overtime shall be compensated in accordance with the FLSA at a rate of 1½ the employee's regular pay rate. Department heads are excluded from the overtime provisions of the city. (as added by Ord. #287, Aug. 1999)

**4-207. Benefits.** (1) Eligibility. All full time employees are eligible for all benefits provided by the city.

(2) Vacation and sick leave. (a) Vacation. All full time officers and employees shall be given one week of vacation pay after they have been employed with the city for a one year period. After four years of service, all full time officers and employees shall be given two weeks paid vacation. Such vacation leave shall be taken at a time approved by the mayor or department head. "Full-time officer and employee shall be deemed to be any employee who works 1,500 hours per year or more."

(b) Sick leave. All officers and employees shall be given a credit of one day of sick leave with pay for each month of employment hereafter served. Sick leave, up to the number of days accrued, shall only be taken when an officer or employee's absence is due to his/her illness, bodily injury, exposure to contagious disease, or serious illness or death in the officer or employee's immediate family. "Immediate family" shall only include spouse, parent, grandparent, child or a sibling. In the event of a death of an immediate family member, the officer or employee shall be allowed up to three days sick leave. The mayor or department head may require a doctor's certificate or other satisfactory evidence that any absence is properly chargeable as sick leave. If the officer or employee is required to provide proof of their absence and they fail to do so, then they will not be allowed sick leave pay. The maximum credit for accrued sick leave under this provision shall be sixty days.

(3) Holidays. Full-time employees are allowed a day off with pay on the following holidays:

- (a) New Year's Day Jan. 1
- (b) Good Friday Friday before Easter Sunday
- (c) Memorial Day Last Friday in May
- (d) Independence Day July 4
- (e) Labor Day First Monday in September
- (f) Thanksgiving Fourth Thursday in November
- (g) Christmas Eve Dec. 24
- (h) Christmas Day Dec. 25

If a holiday falls on Sunday, it will be observed on the following Monday. If the holiday falls on Saturday, it will be observed on the preceding Friday. To receive compensation for the holiday, employees must be in a pay status on the workday before and on the workday after the holiday unless otherwise excused by the supervisor.

(4) Holiday pay. When an employee must work on a holiday, the employee will be paid at the rate of straight time of their regular pay rate for all scheduled and unscheduled time worked on the day observed as the holiday. Employees must work the day immediately preceding the holiday and the day immediately after, with the exception of an approved vacation or sick day, in order to receive holiday pay.

(5) Miscellaneous leave. (a) Funeral/bereavement leave. Employees may use up to three days of accumulated leave for funeral leave.

(b) Civil leave. Civil leave with pay may be granted to employees to:

- (i) Serve on jury duty,
- (ii) Answer a subpoena to testify for the city/town, and/or
- (iii) Perform emergency duty for national defense.

Employees selected for civil service shall be excused for the actual duration of the civil service. Upon release from civil duty during the employee's normal working hours, he/she is expected to return to duty. Employees will receive full pay during such service.

(c) Voting. When elections are held in the state, leave for the purpose of voting shall be in accordance with Tennessee Code Annotated, § 2-1-106, herein reprinted:

**"EMPLOYERS MAY DESIGNATE PERIODS OF PERMISSIBLE ABSENTEEISM-**Any person entitled to vote in an election held in this state may be absent from any service or employment on the day of the election for a reasonable period of time, not to exceed three hours, necessary to vote during the time the polls are open in the county where he/she is a resident. A voter who is absent from work to vote in compliance with this section may not be subjected to any penalty or reduction in pay for his absence. If the tour of duty of an employee begins three or more hours after the opening of the polls or ends three or more hours before the closing of the polls of the county where he/she is a resident, he/she may not take time off under this section. The employer may specify the hours during which the employee may be absent. Request for such an absence shall be made to the employer before twelve noon of the day before the election."

(d) Military leave. Any regular employee who has completed six months of satisfactory employment and who enters the U.S. armed forces will be placed on military leave. The mayor and board of aldermen shall approve military leave without pay when the employee presents his/her

official orders. The employee must apply for reinstatement within 90 days after release from active military duty.

The employee will be reinstated to a position in the current classification plan at least equivalent to his/her former position. His/her salary will be the salary provided under the position classification and compensation plan prevailing at the time of reinstatement or re-employment for the position to which he/she is assigned. If no position is available at the time of the employee's return, the employee will be reinstated into the first available position. No current full-time employee will be terminated or laid off to allow for the reinstatement.

Any regular full-time employee who is a member of the U.S. Army Reserve, Navy Reserve, Air Force Reserve, Marine Reserve, or any of the armed forces will be granted military leave for any field training or active duty required (excluding extended active duty). Such leave will be granted upon presentation of the employee's official order to his/her jurisdictional official. Compensation for such leave will be paid pursuant to Tennessee Code Annotated, § 8-33-109.

It will be the employee's responsibility to arrange with the department supervisor to attend monthly meetings on regular off-time, with pay being applicable to the annual two-week training period. Employees entering an extended active duty will be given fifteen (15) days pay when placed on military leave.

Firefighters who are members of the U.S. Army Reserve, Navy Reserve, Air Force Reserve, or Marine Reserve shall be allowed seven and a half (7.5) shift days for reserve training.

(6) Workers' compensation. All injuries arising out of and in the course of one's employment shall be governed by the Tennessee workers' compensation law. Employees on occupational disability leave shall receive only those benefits due under workers' compensation.

In all cases of occupational disability, the responsibility of determining the character, degree, and potential duration of an injury shall rest with the licensed, practicing medical doctor(s) designated by the City of Smithville. The medical doctor(s) may make periodic examinations, progress reports, and recommendations as deemed necessary by the department head.

Before an employee is returned to full duty, the employee may be required to demonstrate his/her fitness for duty by passing a performance test administered by the department head. This will only test for ability to perform routine tasks using those skills required for the position. Should an employee be unable to return to work within six months from the day following the date of injury, the employee may be subject to separation only if he/she:

- (a) Cannot perform the essential functions due to a disability that cannot reasonably be accommodated; and
- (b) Poses a direct threat to himself/herself and/or others.

(7) Insurance coverage. The City of Smithville provides basic health, dental, and life insurance coverage. Should circumstances dictate terminating benefits, the city will offer employees and their dependents the opportunity to extend their health insurance coverage under COBRA. (as added by Ord. #287, Aug. 1999)

**4-208. Miscellaneous personnel policies.** (1) Political activity. No municipal government employee, whether on or off duty, whether in or out of uniform, and whether on or off City of Smithville property, shall at any time or any place become a candidate for or campaign for an elective municipal government office. The city will not compensate employees for time when the employee is not performing work for the city. Any time off from work used by the employee for participation in political activities shall be limited to earned days off, vacation days, or by any other arrangements worked out between the employee and the city. Law enforcement officers are prohibited from engaging in political activities, supporting or opposing any candidate, party, or measure in any election when on duty or acting in such officer's official capacity.

(2) Municipal elections. No city employee, whether on or off duty, whether in or out of uniform, and whether on or off city property, shall at any time or any place:

(a) Become a candidate for or campaign for an elective city office in the City of Smithville;

(b) Directly or indirectly solicit, receive, collect, handle, disburse, or account for assessments, contributions, or other funds for a candidate for city office;

(c) Organize, sell tickets to, promote, or actively participate in a fund-raising activity of a candidate for city office;

(d) Take an active part in managing the political campaign for a candidate for city office;

(e) Solicit votes in support of or in opposition to a candidate for city office;

(f) Act as a clerk, watcher, challenger, or similar officer at the polls on behalf of a candidate for city office;

(g) Drive voters to the polls on behalf of a candidate for city office;

(h) Endorse or oppose a candidate for city office in a political advertisement, broadcast, campaign literature, or similar material;

(i) Address a rally or similar gathering of the supporters of opponents of a candidate for city office;

(j) Initiate or circulate a nominating petition for a candidate for city office;

(k) Wear campaign buttons, pins, hats, or other similar attachment, or distribute campaign literature in supporting or opposing a candidate for city office.

(3) In all other elections for public office. Municipal government employee shall enjoy the same rights of other citizens of Tennessee to be a candidate for any county, state, or federal political office, the right to participate in political activities by supporting or opposing political parties, political candidates, and petitions to governmental entities. The City of Smithville is not required to pay the employee's salary for work not performed for the municipality.

(4) Personal telephone calls. Using the office telephone during regular work hours for local and/or long-distance personal calls, except in emergency cases, is discouraged.

(5) Driving records. Any employee who is required as an employment condition to possess and maintain a valid Tennessee driver's or commercial driver's license must immediately, before reporting for duty the next workday, inform his/her supervisor should his/her license become denied, expired, restricted, suspended, or revoked any time during employment with the city. Periodic review of employees' driving records will be conducted by the department head to assure adherence to this policy.

(6) Lockers. Lockers are the property of the municipality and may be inspected at any time without notice as there may be no expectation of privacy in such property. Employee assigned lockers (that are locked by the employee) are also subject to inspection after reasonable advance notice, unless such notice is waived by the mayor, commissioner, or treasurer.

(7) Garnishments. An employee who is garnished for more than one indebtedness within a 12-month period may be subject to disciplinary action in accordance with the following schedule:

First offense: Oral reprimand.

Second offense: Written reprimand.

Third offense: May be discharged in accordance with the discipline and dismissal policy.

(8) Bulletin boards. At numerous locations, the city maintains bulletin boards on which important information connected with an employee's work is posted from time to time. Cooperation is needed in protecting the posted material. All material to be placed on the bulletin boards must be approved by the appropriate supervisor before it is posted.

(9) Use of city vehicle prohibited. All city vehicles and equipment are for official use only. No person other than a city employee may operate a city vehicle or piece of machinery. Drivers and/or operators must have a valid Tennessee driver's license and be approved by the department head. (as added by Ord. #287, Aug. 1999, and replaced by Ord. #345, June 2003)

## CHAPTER 3

### OCCUPATIONAL SAFETY AND HEALTH PROGRAM

#### SECTION

- 4-301. Purpose and coverage.
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- 4-312. Imminent danger procedures.
- 4-313. Abatement orders and hearings.
- 4-314. Penalties.
- 4-315. Confidentiality of privileged information.
- 4-316. Compliance with other laws to excused.

**4-301. Purpose and coverage.** The purpose of this plan is to provide guidelines and procedures for implementing the Occupational Safety and Health Program for the employees of the City of Smithville.

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

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

- (1) Provide a safe and healthful place and condition of employment.
- (2) Require the use of safety equipment, personal protective equipment, and other devices where reasonably necessary to protect employees.
- (3) Make, keep, preserve, and make available to the commissioner of labor, his designated representatives, or persons within the department of labor to whom such responsibilities have been delegated, including the director of the division of occupational safety and health, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.
- (4) Consult with the commissioner of labor or his designated representative with regard to the adequacy of the form and content of such records.
- (5) Consult with the commissioner of labor regarding safety and health problems which are considered to be unusual or peculiar and are such that they

cannot be resolved under an occupational safety and health standard promulgated by the state.

(6) Assist the commissioner of labor or his monitoring activities to determine program effectiveness and compliance with the occupational safety and health standards.

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

(8) Provide reasonable opportunity for and encourage the participation of employees in the effectuation of the objectives of this program, including the opportunity to make anonymous complaints concerning conditions or practices which may be injurious to employees' safety and health. (1976, Code, § 1-1201, as replaced by Ord. #300, April 2000)

**4-302. Definitions.** For the purpose of this program, the following definitions apply:

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

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

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

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

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

(6) "Employee" means any person performing services for this employer and listed on the payroll of this employer, either as part-time, full-time, seasonal, or permanent. It also includes any persons normally classified as "volunteers" provided such persons received remuneration of any kind for their services. This definition shall not include independent contractors, their agents, servants, and employees.



(7) "Person" means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives, or any organized group of persons.

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

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

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

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

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

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

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

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

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

(14) "Chief executive officer" means the chief administrative official, county judge, county chairman, mayor, city manager, general manager, etc., as may be applicable. (1976 Code, § 1-1202, as replaced by Ord. #300, April 2000)

**4-303. Employer's rights and duties.** Rights and duties of the employer include, but are not limited to, the following provisions:

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

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

(3) Employer shall refrain from and unreasonable restraint on the right of the commissioner of labor to inspect the employer's place (s) of business. Employer shall assist the commissioner of labor in the performance of their monitoring duties by supplying or by making available information, personnel, or aids reasonable necessary to the effective conduct of the monitoring activity.

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

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

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

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

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

(9) Employer shall notify all employees of their rights and duties under this program. (1976 Code, § 1-1203, as replaced by Ord. #300, April 2000)

**4-304. Employee's rights and duties.** Rights and duties of employees shall include, but are not limited to, the following provisions:

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

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

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

(4) Any employee who may be adversely affected by a standard or variance issued pursuant to the Act or this program may file a petition with the commissioner of labor or whoever is responsible for the promulgation of the standard or the granting of the variance.

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

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

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

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

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

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

(11) Employees shall report any accident, injury, or illness resulting from their job, however minor it may seem to be, to their supervisor or the director within twenty-four (24) hours after the occurrence. (1976 Code, § 1-1204, as replaced by Ord. #300, April 2000)

**4-305. Administration.** (1) The director of occupational safety and health is designated to perform duties or to exercise powers assigned so as to administer this occupational safety and health program.

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

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

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

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

(e) The director shall prepare the report to the commissioner of labor required by subsection (7) of § 4-301 of this plan.

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

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

(h) The director shall maintain or cause to be maintained records required under § 4-308 of this plan.

(i) The director shall, in the eventuality that there is a fatality or an accident resulting in the hospitalization of three or more employees, insure that the commissioner of labor receives notification of the occurrence within eight (8) hours.

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

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

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

(c) The administrative or operational head should make periodic safety surveys of the establishment under his jurisdiction to become aware of hazards or standards violations that may exist and make an attempt to immediately correct such hazards or violations.

(d) The administrative or operational head shall investigate all occupational accidents, injuries, or illnesses reported to him. He shall

report such accidents, injuries, or illnesses to the director along with his findings and/or recommendations in accordance with Appendix V of this plan.<sup>1</sup> (1976 Code, § 1-1205, as replaced by Ord. #300, April 2000)

**4-306. Standards authorized.** The standards adopted under this program are the applicable standards developed and promulgated under Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 or which may, in the future, be developed and promulgated. Additional standards may be promulgated by the governing body of this employer as that body may deem necessary for the safety and health of employees. (1976 Code, § 1-1206, as replaced by Ord. #300, April 2000)

**4-307. Variance procedure.** The director may apply for a variance as a result of a complaint from an employee or of his knowledge of certain hazards or exposures. The director should definitely believe that a variance is needed before the application for a variance is submitted to the commissioner of labor.

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

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

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

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

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

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

(e) A certification that the employer has informed employees, their authorized representative(s), and/or interested parties by giving them a copy of the request, posting a statement summarizing the application (to include the location of a copy available for examination) at the places where employee notices are normally posted and by other appropriate means. The certification shall contain a description of the means actually used to inform employees and that employees have been informed of their right to petition the commissioner of labor for a hearing.

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<sup>1</sup>Ord. #300, April 2000 and all appendices thereto are of record in the city recorder's office.

(2) The application for a variance should be sent to the commissioner of labor by registered or certified mail.

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

(a) The employer

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

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

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

(b) The employee is engaged in an experimental program as described in subsection (2), § 4-313 of the Act.

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

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

(6) The order or interim order granting a variance shall be posted at the worksite and employees notified of such order by the same means used to inform them of the application for said variance (see subsection (1) (e) of this section). (1976 Code, § 1-1207, as replaced by Ord. #300, April 2000)

**4-308. Recordkeeping and reporting.** (1) Recording and reporting of all occupational accident, injuries, and illnesses shall be in accordance with instructions and on forms prescribed in the booklet, RECORDKEEPING REQUIREMENTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (Revised 1978) or as may be prescribed by the Tennessee Department of Labor.

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

(3) Details of how reports of occupational accidents, injuries, and illnesses will reach the recordkeeper are specified by Accident Reporting

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<sup>1</sup>Ord. #300, April 2000 and all appendices thereto are of record in the city recorder's office.

Procedures, Appendix V to this plan.<sup>1</sup> (1976 Code, § 1-1208, as replaced by Ord. #300, April 2000)

**4-309. Employee complaint procedure.** If any employee feels that he is assigned to work in conditions which might affect his health, safety, or general welfare at the present time or at any time in the future, he should report the condition to the director of occupational safety and health.

(1) The complaint should be in the form of a letter and give details on the condition(s) and how the employee believes it affects or will affect his health, safety, or general welfare. The employee should sign the letter but need not do so if he wishes to remain anonymous (see subsection (8) of § 4-301 of this plan).

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

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

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

(5) After the above steps have been followed and the complainant is still not satisfied with the results, he may then file a complaint with the commissioner of labor. Any complaint filed with the commissioner of labor in such cases shall include copies of all related correspondence with the director and the chief executive officer or the representative of the governing body.

(6) Copies of all complaint and answers thereto will be filed by the director who shall make them available to the commissioner of labor or his

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<sup>1</sup>Ord. #300, April 2000 and all appendices thereto are of record in the city recorder's office.

designated representative upon request. (1976, § 1-1209, as replaced by Ord. #300, April 2000)

**4-310. Education and training.** (1) Director and/or compliance inspector(s):

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

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

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

(a) Instruct each employee in the recognition and avoidance of hazards or unsafe conditions and of standards and regulations applicable to the employee's work environment to control or eliminate any hazards, unsafe conditions, or other exposures to occupational illness or injury.

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

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

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

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

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



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

(iii) The immediate supervisor of any employee who must perform work in a confined or enclosed space shall be responsible for instructing employees on danger of hazards which may be present, precautions to be taken, and use of personal protective and emergency equipment, immediately prior to their entry into such an area and shall require use of appropriate personal protective equipment. (1976 Code, § 1-1210, as replaced by Ord. #300, April 2000)

**4-311. General inspection procedures.** It is the intention of the governing body and responsible officials to have an occupational safety and health program that will insure the welfare of employees. In order to be aware of hazards, periodic inspections must be performed. These inspections will enable the finding of hazards or unsafe conditions or operations that will need correction in order to maintain safe and healthful work sites. Inspections made on a pro-designated basis may not yield the desired results. Inspections will be conducted, therefor, on a random basis at intervals not to exceed thirty (30) calendar days.

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

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

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

(2) If an imminent danger situation is found, alleged, or otherwise brought to the attention of the director or inspector during a routine inspection, he shall immediately inspect the imminent danger situation in accordance with § 4-312 of this plan before inspecting the remaining portions of the establishment, facility, or worksite.

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

- (4) The right of accompaniment may be denied any person whose conduct interferes with a full and orderly inspection.
- (5) The conduct of the inspection shall be such as to preclude unreasonable disruptions of the operation(s) of the workplace.
- (6) Interviews of employees during the course of the inspection may be made when such interviews are considered essential to investigative techniques.
- (7) Advance notice of inspections. (a) Generally, advance notice of inspections will not be given as this precludes the opportunity to make minor or temporary adjustments in an attempt to create misleading impression of conditions in an establishment.
- (b) There may be occasions when advance notice of inspections will be necessary in order to conduct an effective inspection or investigation. When advance notice of inspection is given, employees or their authorized representative(s) will also be given notice of the inspection.
- (8) The director need not personally make an inspection of each and every worksite once every thirty (30) days. He may delegate the responsibility for such inspections to supervisors or other personnel provided:
- (a) Inspections conducted by supervisors or other personnel are at least as effective as those made by the director.
- (b) Records are made of the inspections and of any discrepancies found and are 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. Said inspection records shall be subject to review by the commissioner of labor or his authorized representative. (1976 Code, § 1-121, as replaced by Ord. #300, April 2000)

**4-312. Imminent danger procedures.** (1) Any discovery, any allegation, or any report of imminent danger shall be handled in accordance with the following procedures:

- (a) The director shall immediately be informed of the alleged imminent danger situation and he shall immediately ascertain whether there is a reasonable basis for the allegation.
- (b) If the alleged imminent danger situation is determined to have merit by the director, he shall make or cause to be made an immediate inspection of the alleged imminent danger location.
- (c) As soon as it is concluded from such inspection that conditions or practices exist which constitutes an imminent danger, the director or compliance inspector shall attempt to have the danger corrected. All employees at the location shall be informed of the danger and the supervisor or person in charge of the worksite shall be requested to remove employees from the area, if deemed necessary.

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

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

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

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

(f) A written report shall be made by or to the director describing in detail the imminent danger and its abatement. This report will be maintained by the director in accordance with subsection (9) of § 4-311 of this plan.

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

(b) The director and/or chief executive officer shall take whatever action may be necessary to achieve abatement. (1976 Code, § 1-1212, as replaced by Ord. #300, April 2000)

**4-313. Abatement orders and hearings.** (1) Whenever, as a result of an inspection or investigation, the director or compliance inspector(s) finds that a worksite is not in compliance with the standards, rules or regulations pursuant to this plan and is unable to negotiate abatement with the administrative or operational head of the worksite within a reasonable period of time, the director shall:

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

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

(2) Abatement orders shall contain the following information:

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

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

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

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

(3) At any time within ten (10) days after receipt of an abatement order, anyone affected by the order may advise the 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 an effort to resolve any objections. Following such hearing, the director shall, within three (3) working days, issue an abatement order and such subsequent order shall be binding on all parties and shall be final. (as added by Ord. #300, April 2000)

**4-314. Penalties.** (1) No civil or criminal penalties shall be issued against any official, employee, or any other person for failure to comply with safety and health standards or any rules or regulations issued pursuant to this program.

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

- (a) Oral reprimand.
- (b) Written reprimand.
- (c) Suspension for three (3) or more working days.
- (d) Termination of employment. (as added by Ord. #300, April

2000)

**4-315. Confidentiality of privileged information.** All information obtained by or reported to the director pursuant to this plan of operation or the legislation (ordinance, or executive order) enabling this occupational safety and health program which contains or might reveal information which is otherwise privileged shall be considered confidential. Such information may be disclosed to other officials or employees concerned with carrying out this program or when relevant in any proceeding under this program. Such information may also be disclosed to the commissioner of labor or their authorized representatives in carrying out their duties under the Tennessee Occupational Safety and Health Act of 1972. (as added by Ord. #300, April 2000)

**4-316. Compliance with other laws not excused.** (1) Compliance with any other law, statute, ordinance, or executive order, as applicable, which regulates safety and health in employment and places of employment shall not excuse the employer, the employee, or any other person from compliance with the provisions of this program.

(2) Compliance with any provisions of this program or any standard, rule, regulation, or order issued pursuant to this program shall not excuse the employer, the employee, or any other person from compliance with and law, statute, ordinance, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, ordinance, or executive order, as applicable, is specifically repealed. (as added by Ord. #300, April 2000)

## CHAPTER 4

### INFECTIOUS DISEASE CONTROL POLICY

#### SECTION

- 4-401. Purpose.
- 4-402. Coverage.
- 4-403. Administration.
- 4-404. Definitions.
- 4-405. Policy statement.
- 4-406. General guidelines.
- 4-407. Hepatitis B vaccinations.
- 4-408. Reporting potential exposure.
- 4-409. Hepatitis B virus post-exposure management.
- 4-410. Human immunodeficiency virus post-exposure management.
- 4-411. Disability benefits.
- 4-412. Training regular employees.
- 4-413. Training high risk employees.
- 4-414. Training new employees.
- 4-415. Records and reports.
- 4-416. Legal rights of victims of communicable diseases.

**4-401. Purpose.** It is the responsibility of the City of Smithville to provide employees a place of employment which is free from recognized hazards that may cause death or serious physical harm. In providing services to the citizens of the City of Smithville, employees may come in contact with life-threatening infectious diseases which can be transmitted through job related activities. It is important that both citizens and employees are protected from the transmission of diseases just as it is equally important that neither is discriminated against because of basic misconceptions about various diseases and illnesses.

The purpose of this policy is to establish a comprehensive set of rules and regulations governing the prevention of discrimination and potential occupational exposure to Hepatitis B Virus (HBV), the Human Immunodeficiency Virus (HIV), and Tuberculosis (TB). (Ord. #239, July 1992)

**4-402. Coverage.** Occupational exposures may occur in many ways, including needle sticks, cut injuries or blood spills. Several classes of employees are assumed to be at high risk for blood borne infections due to their routinely increased exposure to body fluids from potentially infected individuals. Those high risk occupations include but are not limited to:

- (1) Paramedics and emergency medical technicians;
- (2) Occupational nurses;
- (3) Housekeeping and laundry workers;

- (4) Police and security personnel;
- (5) Firefighters;
- (6) Sanitation and landfill workers; and
- (7) Any other employee deemed to be at high risk per this policy and an exposure determination. (Ord. #239, July 1992)

**4-403. Administration.** This infection control policy shall be administered by the mayor or his/her designated representative who shall have the following duties and responsibilities:

- (1) Exercise leadership in implementation and maintenance of an effective infection control policy subject to the provisions of this chapter, other ordinances, the city charter, and federal and state law relating to OSHA regulations;
- (2) Make an exposure determination for all employee positions to determine a possible exposure to blood or other potentially infectious materials;
- (3) Maintain records of all employees and incidents subject to the provisions of this chapter;
- (4) Conduct periodic inspections to determine compliance with the infection control policy by municipal employees;
- (5) Coordinate and document all relevant training activities in support of the infection control policy;
- (6) Prepare and recommend to the board of mayor and aldermen any amendments or changes to the infection control policy;
- (7) Identify any and all housekeeping operations involving substantial risk of direct exposure to potentially infectious materials and shall address the proper precautions to be taken while cleaning rooms and blood spills; and
- (8) Perform such other duties and exercise such other authority as may be prescribed by the board of mayor and aldermen. (Ord. #239, July 1992)

**4-404. Definitions.** (1) "Body fluid" - fluids that have been 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 an individual's normal job duties.

(3) "Hepatitis B Virus (HBV)" - a serious blood-borne virus with potential 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" - refers to 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. (Ord. #239, July 1992)

**4-405. Policy statement.** All blood and other potentially infectious materials are infectious for several blood-borne pathogens. Some body fluids can also transmit infections. For this reason, the Center for Disease Control developed the strategy that everyone should always take particular care when there is a potential exposure. These precautions have been termed "universal precautions."

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. #239, July 1992)

**4-406. General guidelines.** General guidelines which shall be used by everyone include:

(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) Soap and water kill many bacteria and viruses on contact. If hands are contaminated with blood or other potentially infectious materials to which universal precautions apply, then 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, then use a waterless antiseptic hand cleaner according to the manufacturers recommendation for the product.

(4) All workers shall take precautions to prevent injuries caused by needles, scalpel blades, and other sharp instruments. To prevent needle stick injuries, needles shall not be recapped, purposely bent or broken by hand, removed from disposable syringes, or otherwise manipulated by hand. After

they are used, disposable syringes and needles, scalpel blades and other sharp items shall be placed in puncture resistant containers for disposal. The puncture resistant container shall be located as close as practical to the use area.

(5) The city will provide gloves of appropriate material, quality and size for each affected employee. The gloves are to be worn when there is contact (or when there is a potential 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. Employees shall not wash or disinfect surgical or examination gloves for reuse.

(6) Resuscitation equipment shall be used when necessary. (No transmission of HBV or HIV infection during mouth-to-mouth resuscitation has been documented.) However, because of the risk of salivary transmission of other 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 emergency response personnel from contact with a victims' blood and blood contaminated saliva, respiratory secretion, and vomitus, are available to all personnel to provide or potentially provide emergency treatment.

(7) Masks or protective eyewear or face shields shall be worn 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. They are not required for routine care.

(8) Gowns, aprons, or lab coats shall be worn during procedures that are likely to generate splashes of blood or other potentially infectious materials.

(9) Areas and equipment contaminated with blood shall be cleaned 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.

(10) Contaminated clothing (or other articles) shall be handled carefully and washed as soon as possible. Laundry and dish washing cycles at 120° are adequate for decontamination.

(11) Place all disposable equipment (gloves, masks, gowns, etc...) 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. NOTE: Sharp objects must be placed in an impervious container and properly disposed of the objects.



(12) Tags shall be used 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 operation is completed.

All required tags shall meet the following criteria:

(a) Tags shall 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 or such greater distance as warranted by the hazard.

(c) All employees shall be informed of the meaning of the various tags used throughout the workplace and what special precautions are necessary.

(13) Linen soiled with blood or other potentially infectious materials shall be handled 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.

(14) Whenever possible, disposable equipment shall be used to minimize and contain clean-up. (Ord. #239, July 1992)

**4-407. Hepatitis B vaccinations.** The City of Smithville shall offer the appropriate Hepatitis B vaccination to employees at risk of exposure free of charge and in amounts and at times prescribed by standard medical practices. The vaccination 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 Infectious Disease Control Coordinator. (Ord. #239, July 1992)

**4-408. Reporting potential exposure.** 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, etc...):

(1) Notify the Infectious Disease Control Coordinator of the contact incident and details thereof.

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

(3) Arrangements will be made for the person to be seen by a physician as with any job-related injury.

Once an exposure has occurred, a blood sample should be drawn after consent is obtained from the individual from whom exposure occurred and tested for Hepatitis B surface antigen (HBsAg) and/or antibody to human immunodeficiency virus (HIV antibody). Testing of the source individual should be done at a location where appropriate pretest counseling is available. Post-test counseling and referral for treatment should also be provided. (Ord. #239, July 1992)

**4-409. Hepatitis B virus post-exposure management.** For an exposure to a source individual found to be positive for HBsAg, the worker 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.

For exposure from an HBsAg-positive source to workers who have previously received the vaccine, the exposed worker should 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 worker's blood sample is inadequate (ie., 10 SRU by RIA, negative by EIA).

If the source individual is negative for HBsAg and the worker has not been vaccinated, this opportunity should be taken to provide the hepatitis B vaccine series. HBIG administration should 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 workers who receive an exposure from a source who refuses testing or is not identifiable should be individualized. (Ord. #239, July 1992)

**4-410. Human immunodeficiency virus post-exposure management.** For any exposure to a source individual who has AIDS, who is found to be positive for HIV infection, or who refuses testing, the worker should 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 worker should 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.

Following the initial test at the time of exposure, seronegative workers should 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) exposed workers should follow the U.S. Public Health service recommendation for preventing transmission of HIV. These include refraining from blood donations and using appropriate protection during

sexual intercourse. During all phases of follow-up, it is vital that worker confidentiality be protected.

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 should be individualized. Serologic testing should be made available by the city to all workers who may be concerned they have been infected with HIV through an occupational exposure. (Ord. #239, July 1992)

**4-411. Disability benefits.** Entitlement to disability benefits and any other benefits available for employees who suffer from on-the-job injuries will be determined by the Tennessee Worker's Compensations Bureau in accordance with the provisions of T.C.A. 50-6-303. (Ord. #239, July 1992)

**4-412. Training regular employees.** On an annual basis all employees 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 materials.

They shall also be counseled regarding possible risks to the fetus from HIV/HBV and other associated infectious agents. (Ord. #239, July 1992)

**4-413. Training high risk employees.** In addition to the above, high risk 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 material as per this policy. (Ord. #239, July 1992)

**4-414. Training new employees.** During the new employee's orientation to his/her job, all new employee will be trained on the effects of infectious disease prior to putting them to work. (Ord. #239, July 1992)

**4-415. Records and reports.** (1) Reports. Occupational injury and illness records shall be maintained by the infectious disease control coordinator. Statistics shall be maintained on the OSHA-200 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-200.

(2) Needle sticks. 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, etc...) shall be recorded.

(3) Prescription medication. Likewise, the 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.

(4) Employee interviews. Should the city be inspected by the U.S. Department of Labor Office of Health Compliance, the compliance safety and health officer may wish to interview employees. Employees are expected to cooperate fully with the compliance officers. (Ord. #239, July 1992)

**4-416. Legal rights of victims of communicable diseases.** Victims of communicable diseases have the legal right to expect, and municipal employees, including police and emergency service officers are duty bound to provide, the same level of service and enforcement as any other individual would receive.

(1) Officers assume that a certain degree of risk exists in law enforcement and emergency service work and accept those risks with their individual appointments. This holds true with any potential risks of contacting a communicable disease as surely as it does with the risks of confronting an armed criminal.

(2) Any officer who refuses to take proper action in regard to victims of a communicable disease, when appropriate protective equipment is available, shall be subject to disciplinary measures along with civil and, or criminal prosecution.

(3) Whenever an officer mentions in a report that an individual has or may have a communicable disease, he shall write "contains confidential medical information" across the top margin of the first page of the report.

(4) The officer's supervisor shall ensure that the above statement is on all reports requiring that statement at the time the report is reviewed and initiated by the supervisor.

(5) The supervisor disseminating newspaper releases shall make certain the confidential information is not given out to the news media.

(6) All requests (including subpoenas) for copies of reports marked "contains confidential medical information" shall be referred to the city attorney when the incident involves an indictable or juvenile offense.

(7) Prior approval shall be obtained from the city attorney before advising a victim of sexual assault that the suspect has, or is suspected of having a communicable disease.

(8) All circumstance, not covered in this policy, that may arise concerning releasing confidential information regarding a victim, or suspected victim, of a communicable disease shall be referred directly to the appropriate department head or city attorney.

(9) Victims of a communicable disease and their families have a right to conduct their lives without fear of discrimination. An employee shall not make public, directly or indirectly, the identity of a victim or suspected victim of a communicable disease.

(10) Whenever an employee finds it necessary to notify another employee, police officer, firefighter, emergency service officer, or health care provider that a victim has or is suspected of having a communicable disease, that information shall be conveyed in a dignified, discrete and confidential manner. The person to whom the information is being conveyed should be reminded that the information is confidential and that it should not be treated as public information.

(11) Any employee who disseminates confidential information in regard to a victim, or suspected victim of a communicable disease in violation of this policy shall be subject to serious disciplinary action and/or civil/and/or criminal prosecution. (Ord. #239, July 1992)

## CHAPTER 5

### TRAVEL REIMBURSEMENT REGULATIONS

#### SECTION

- 4-501. Enforcement.
- 4-502. Travel policy.
- 4-503. Travel reimbursement rate schedule.
- 4-504. Administrative procedures.

**4-501. Enforcement.** The mayor of the city or his or her designee shall be responsible for the enforcement of these travel regulations. (Ord. #245, July 1993)

**4-502. Travel policy.** (1) In the interpretation and application of this chapter, the term "traveler" or "authorized travel" means any elected or appointed municipal officer or employee, including members of municipal boards and committees appointed by the mayor or the municipal governing body, and the employees of such boards and committees who are traveling on official municipal business and whose travel was authorized in accordance with this chapter. "Authorized traveler" shall not include the spouse, children, other relatives, friends, or companions accompanying the authorized traveler on city business, unless the person(s) otherwise qualifies as an authorized traveler under this chapter.

(2) Authorized travelers are entitled to reimbursement of certain expenditures incurred while traveling on official business for the city. Reimbursable expenses shall include expenses for transportation; lodging; meals; registration fees for conferences, conventions, and seminars; and other actual and necessary expenses related to official business as determined by the mayor. Under certain conditions, entertainment expenses may be eligible for reimbursement.

(3) Authorized travelers can request either a travel advance for the projected cost of authorized travel, or advance billing directly to the city for registration fees, air fares, meals, lodging, conferences, and similar expenses.

Travel advance requests aren't considered documentation of travel expenses. If travel advances exceed documented expenses, the traveler must immediately reimburse the city. It will be the responsibility of the mayor to initiate action to recover any undocumented travel advances.

(4) Travel advances are available only for special travel and only after completion and approval of the travel authorization form.

(5) The travel expense reimbursement form will be used to document all expense claims.

(6) To qualify for reimbursement, travel expenses must be:

(a) directly related to the conduct of the city business for which travel was authorized, and

(b) actual, reasonable, and necessary under the circumstances.

The mayor may make exceptions for unusual circumstances.

Expenses considered excessive won't be allowed.

(7) Claims of \$5 or more for travel expense reimbursement must be supported by the original paid receipt for lodging, vehicle rental, phone call, public carrier travel, conference fee, and other reimbursable costs.

(8) Any person attempting to defraud the city or misuse city travel funds is subject to legal action for recovery of fraudulent travel claims and/or advances.

(9) Mileage and motel expenses incurred within the city aren't ordinarily considered eligible expenses for reimbursement. (Ord. #245, July 1993)

**4-503. Travel reimbursement rate schedules.** Authorized travelers shall be reimbursed according to the State of Tennessee travel regulation rates. The city's travel reimbursement rates will automatically change when the state rates are adjusted.

The municipality may pay directly to the provider for expenses such as meals, lodging, and registration fees for conferences, conventions, seminars, and other education programs. (Ord. #245, July 1993)

**4-504. Administrative procedures.** The city adopts and incorporates by reference--as if fully set out herein--the administrative procedures submitted by MTAS to, and approved by letter by, the Comptroller of the Treasury, State of Tennessee, in June 1993. A copy of the administrative procedures is on file in the office of the city recorder.

This chapter shall take effect upon its final reading by the municipal governing body. It shall cover all travel and expenses occurring on or after July 1, 1993. (Ord. #245, July 1993)

**CHAPTER 6****RETIREMENT SYSTEM FOR EMPLOYEES****SECTION**

4-601. Established.

**4-601. Established.** A retirement system is established by and through the mayor and board of aldermen of the City of Smithville, Tennessee, as follows:

(1) The retirement plan for the City of Smithville employees shall be a defined-benefits plan patterned after an "eligible" plan as provided by Internal Revenue Code Section 457(B).

(2) First City Bank is hereby selected as the administrator of the plan.

(3) The plan will allow any present employee to pay into the plan up to three (3%) percent of that employee's income for up to five (5) years of prior service. The City of Smithville will match any amount paid into the plan for any prior service up to three percent (3%) per year of such prior service. Thereafter, the City of Smithville will match any amount paid into the plan by an employee up to three percent (3%) per year.

(4) A probationary period of three (3) months shall be established prior to an employee being allowed to participate in the plan.

(5) With the concurrence of the mayor, the city recorder, the city accountant, and the city attorney, the plan administrator shall develop rules and regulations which will effectively implement the plan. Once such rules and regulations are approved, no substantive change in employee benefits can be made without an amendment to this chapter. (Ord. #258, Dec. 1995)



## CHAPTER 7

### FAMILY AND MEDICAL LEAVE POLICY

#### SECTION

4-701. Family and medical leave.

**4-701. Family and medical leave.** (1) Eligibility. An eligible employee may take up to 12 weeks of unpaid leave in a 12-month period for the birth and care of a child or the placement and care of a child for adoption or foster care. (Note: Under the Tennessee Maternity Leave Act (TMLA), a female employee may take an additional four weeks of unpaid leave if the three-month advance notice has been complied with.) Leave may also be taken to care for the employee, a child, spouse, or a parent who has a serious health condition. The right to take leave applies equally to male and female employees who are eligible.

Unpaid leave to care for a newborn child or a newly placed adopted or foster care child must be taken before the end of the first 12 months following the date of birth or placement.

An expectant mother may take unpaid medical leave upon the birth of the child, or prior to the birth of the child, for necessary medical care and if her condition renders her unable to work. Similarly, for adoption or foster care, leave may be taken upon the placement of the child or leave may begin prior to the placement if absence from work is required for the placement to proceed.

An employee may take unpaid leave to care for a parent or spouse of any age who, because of a serious mental or physical condition, is in the hospital or other health care facility. An employee may also take leave to care for a spouse or parent of any age who is unable to care for his/her own basic hygiene, nutritional needs, or safety. Examples include a parent or spouse whose daily living activities are impaired by such conditions as Alzheimer's disease, stroke, recovering from major surgery, or the final stages of terminal illness.

Eligible employees who are unable to perform the functions of their position because of a serious health condition may request up to 12 weeks unpaid leave. The term "serious health condition" covers conditions or illnesses that affect an employee's health to the extent that he/she must be absent from work on a recurring basis or for more than a few days for treatment or recovery.

Employees requesting medical leave due to their own illness or injury shall use any balance of sick leave, annual leave, or floating holidays prior to the beginning of unpaid leave. The combination of sick leave, annual leave, floating holidays, and unpaid leave may not exceed 12 weeks. Employees requesting family leave may use unpaid leave. The combination of annual leave, floating holidays, and unpaid leave may not exceed 12 weeks.

During periods of unpaid leave, an employee will not accrue any additional seniority or similar employment benefits during the leave period.

If spouses are employed by the same employer and wish to take leave for the care of a new child or a sick parent, their aggregate leave is limited to 12 weeks. For example, if the father takes eight weeks of leave to care for a child, the mother would be entitled to four weeks leave, for a total of 12 weeks.

(2) Right to return to work. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commence, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his/her position has been restructured to accommodate the employee's absence.

If the employee is unable to perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under the FMLA. However, the employer's obligations may be governed by the American with Disabilities Act.

(3) Notification and scheduling. An eligible employee must provide the employer at least 30 days of advance notice of the need for leave for birth, adoption, or planned medical treatment, when the need for leave is foreseeable. This 30-day advance notice is not required in cases of medical emergency or other unforeseen events, such as premature birth or sudden changes in a patient's condition that require a change in scheduled medical treatment.

People who are awaiting the adoption of a child and are given little notice of the unavailability of the child may also be exempt from this 30-day notice.

It is the city's responsibility to designate leave in writing as FMLA leave and to notify the employee. Employees may not retroactively claim that leave was for FMLA.

The employer will provide the FMLA leave notice in alternate formats.

(4) Certification. The employer reserves the right to verify an employee's request for family/medical leave. If an employee requests leave because of a serious health condition or to care for a family member with a serious health condition, the employer requires that the request be supported by certification issued by the health care provider of the eligible employee or the family member as appropriate. If the employer has reason to question the original certification, the employer may, at the employer's expense, require a second opinion from a different health care provider chosen by the employer. That health care provider may not be employed by the employer on a regular basis. If a resolution of the conflict cannot be obtained by a second opinion, a third opinion may be obtained from another provider and that opinion will be final and binding.

This certification must contain the date on which the serious health condition began, its probable duration, and appropriate medical facts within the knowledge of the health care provider regarding the condition. The certification must also state the employee's need to care for the son, daughter, spouse, or

parent and must include an estimate of the amount of time that the employee is needed to care for the family member.

Medical certifications given will be treated as confidential and privileged information. An employee will be required to report periodically to the employer the status and the intention of the employee to return to work.

Employees who have taken unpaid leave under this policy must furnish the employer with a medical certification from the employee's health care provider at the employees expense, stating that the employee is able to resume work before return is granted.

(a) Maintenance of health and COBRA benefits during unpaid leave. The employer will maintain health insurance benefits, paid by the employer for the employee, during periods of unpaid leave without interruption. Any payment for family coverage/premiums or other payroll deductible insurance policies must be paid by the employee or the benefits may not be continued.

The employer has the right to recover from the employee all health insurance premiums paid during the unpaid leave period if the employee fails to return to work after leave. Employees who fail to return to work because they are unable to perform the functions of their job because of their own serious health condition or because of the continued necessity of caring for a seriously ill family member may be exempt from the recapture provision.

Leave taken under this policy does not constitute a qualifying event that entitles an employee to Consolidated Omnibus Budget Reconstruction (COBRA) insurance coverage. However, the qualifying event triggering COBRA coverage may occur when it becomes clearly known that an employee will not return to work, and therefore ceases to be entitled to leave under this policy.

(b) Reduced and intermittent leave. Leave under this policy can be taken intermittently or on a reduced leave schedule when medically necessary as certified by the health care provider. Intermittent or reduced leave schedules for routine care of a new child can be taken only with approval of the mayor and board of aldermen. the schedule must be mutually agreed upon by the employee and the employer.

Employees on intermittent or reduced leave schedules may be temporarily transferred by the employer to an equivalent alternate position that may better accommodate the intermittent or reduced leave schedule.

Intermittent or reduced leave may be spread over a period of time longer than 12 weeks, but will not exceed the equivalent of 12 workweeks in a 12-month period.

(c) Restoration. Employees who are granted leave under this policy will be reinstated to an equivalent or the same position held prior to the commencement of their leave.

Employees voluntarily accepting a light duty assignment in lieu of continuing FMLA leave maintain their right to restoration to the original or an equivalent job until the twelve (12) weeks of FMLA leave has passed.

(d) The 12-month FMLA period. The 12-month period during which an employee is entitled to 12 workweeks of FMLA leave is measured forward from the date the employee's first FMLA leave begins. An employee is entitled to 12 weeks of leave during the 12-month period after the leave begins. The next 12-month period will begin the first time the employee requests FMLA leave after the completion of the previous 12-month period. (The employer may choose as the 12-month period either the calendar year, a fixed 12-month period, or the 12-month period counted backward from the date of leave.)

(e) Denial of FMLA leave. If an employee fails to give timely advance notice when the need for FMLA leave is foreseeable, the employer may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employer of the need for FMLA leave.

If an employee fails to provide in a timely manner a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employer may delay continuation of FMLA leave until an employee submits the certificate. If the employee never produces the certification, the leave is not FMLA leave.

If an employee fails to provide a requested fitness-for-duty certification to return to work, an employer may delay restoration until the employee submits the certificates. (as added by Ord. #287, Aug. 1999)

## CHAPTER 8

### RULES OF CONDUCT

#### SECTION

4-801. Purpose.

4-802. Expectations.

4-803. Penalties.

**4-801. Purpose.** Reasonable rules of conduct are necessary for the orderly and efficient operation of the city government. Rules of conduct should be reasonable and should be for the purpose of promoting efficiency, effectiveness, and safety. Rules should tell the employee what is expected of him/her and the sanctions for violating the rules. Such being the case, rules for employees and non-elected officials of the City of Smithville and the penalties for violation of said rules are set forth in section 4-802. Any violation of these rules shall constitute just cause for disciplinary action and/or discharge of any city employee or non-elected official. (as added by Ord. #287, Aug. 1999)

**4-802. Expectations.** The City of Smithville has the right to expect that the employee will:

- (1) Be at work on time
- (2) Give a full day's work
- (3) Respond positively to directions
- (4) Learn the present and new job
- (5) Adjust to changes
- (6) Get along with other employees, officials, and the general public
- (7) Be physically and mentally fit for normal duty
- (8) To know and follow the rules
- (9) Not to use excessive unscheduled absences. Unscheduled absence is calling in on short notice and reporting that you will not be in for work. Unscheduled absences that are 20% more than average are deemed excessive.
- (10) Not to use excessive sick leave. Excessive sick leave is leave that is taken one or two days at a time without excuse. Sick leave is excessive when the amount of time taken a day or two at a time is more than 20% of average sick leave. Sick leave that is taken for longer periods of time, where the employee is actually sick, is not excessive sick leave.
- (11) To be productive in his/her work.
- (12) To take proper care of city equipment.
- (13) To report in a timely manner, damage to equipment that is assigned to or that is being used by the employee.
- (14) Not to violate the city's drug free policies. The employee is obligated to inform his/her supervisor of any prescription drugs that the

employee is taking, the side effects of which may cause drowsiness or impair the ability of the employee to operate city equipment.

(15) Not to report to work without a driver's license, if the employee is required to have a drivers license to perform the job to which he/she is assigned. The employee is not to operate a city vehicle without a drivers license in his/her possession.

(16) To be courteous in dealing with fellow employees and the general public.

(17) Employees, other than police officers, are not to carry guns or knives, with a blade longer than three inches, in any city vehicle. City owned equipment that is used for cutting grass, weeds, or trees shall not be considered a violation of this rule.

(18) Not to make an excessive number of errors in carrying out job duties. (as added by Ord. #287, Aug. 1999)

**4-803. Penalties.** The penalties listed in this section for violations are intended to be the penalties for the normal type of violation that have normal consequences. Subject to an appeal to the city council, more severe disciplinary measures may be taken where violations have serious consequences. Conversely, the city may take less severe disciplinary measures under the opposite circumstances.

#### Conduct and penalties

(1) Demonstrated inability or unwillingness to respond positively to directions from supervisors.

First offense	3 days off without pay
Second offense	Discharge

(2) Failure to take proper care of city equipment, or theft of city property.

Discharge

(3) Failure to get along with others. Fighting with, threatening or intimidating other employees, or horseplay, on city property or while performing work on city time will not be condoned.

First offense	2 days off without pay
Second offense	5 days off without pay
Third offense	Discharge

(4) Failure to be at work on time. Being absent without reasonable cause or absence without proof of just cause; or frequent lateness; or leaving the job without approval of the supervisor.

First offense	2 days off without pay
Second offense	5 days off without pay
Third offense	Discharge

(5) Use of excessive unscheduled absences. Walking off the job or unauthorized absence from work place during scheduled work hours.

First offense	1 day off without pay
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- |      |                                                                                                                                                                                                                                                    |                                                        |
|------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------|
|      | Second offense                                                                                                                                                                                                                                     | 3 days off without pay                                 |
|      | Third offense                                                                                                                                                                                                                                      | Discharge                                              |
| (6)  | Failure to report in a timely manner, damage to equipment that is assigned to or that is being used by the employee.                                                                                                                               |                                                        |
|      | First offense                                                                                                                                                                                                                                      | Reprimand, plus pay cost of damages                    |
|      | Second offense                                                                                                                                                                                                                                     | 3 days off without pay, plus cost of damages           |
|      | Third offense                                                                                                                                                                                                                                      | Discharge, plus cost of damages                        |
| (7)  | Violating or disregarding safety rules and common safety practices or contributing to unsanitary or unhealthy conditions.                                                                                                                          |                                                        |
|      | First offense                                                                                                                                                                                                                                      | Reprimand                                              |
|      | Second offense                                                                                                                                                                                                                                     | 3 days off without pay                                 |
|      | Third offense                                                                                                                                                                                                                                      | Discharge                                              |
| (8)  | Deliberate falsifying of city records (water meter books, gasoline logs, accident reports, police logs, etc.)                                                                                                                                      |                                                        |
|      | First offense                                                                                                                                                                                                                                      | 5 days off without pay, plus restitution if applicable |
|      | Second offense                                                                                                                                                                                                                                     | Discharge                                              |
| (9)  | Abuse of sick leave. Sick leave that is taken regularly for a day or two at a time, without excuse, and that is twenty percent (20%) greater than the average sick leave taken by other city employees shall be considered an abuse of sick leave. |                                                        |
|      | First offense                                                                                                                                                                                                                                      | Warning                                                |
|      | Second offense                                                                                                                                                                                                                                     | 3 days off without pay                                 |
|      | Third offense                                                                                                                                                                                                                                      | Discharge                                              |
| (10) | Failure to be productive in his/her work.                                                                                                                                                                                                          |                                                        |
|      | First offense                                                                                                                                                                                                                                      | Warning                                                |
|      | Second offense                                                                                                                                                                                                                                     | 3 days off without pay                                 |
|      | Third offense                                                                                                                                                                                                                                      | Discharge                                              |
| (11) | Intentional deviation from established work procedures without authorization from the supervisor.                                                                                                                                                  |                                                        |
|      | First offense                                                                                                                                                                                                                                      | Warning                                                |
|      | Second offense                                                                                                                                                                                                                                     | 3 days off without pay                                 |
|      | Third offense                                                                                                                                                                                                                                      | Discharge                                              |
| (12) | Deliberate falsification of application for employment or insurance claim that would seriously affect employment.                                                                                                                                  |                                                        |
|      | Discharge                                                                                                                                                                                                                                          |                                                        |
| (13) | Unsettled or frequent assignment of levy of wages.                                                                                                                                                                                                 |                                                        |
|      | First offense                                                                                                                                                                                                                                      | Warning                                                |
|      | Second offense                                                                                                                                                                                                                                     | Reprimand                                              |
|      | Third offense                                                                                                                                                                                                                                      | Discharge                                              |
| (14) | Gambling on city property at any time.                                                                                                                                                                                                             |                                                        |
|      | First offense                                                                                                                                                                                                                                      | 3 days off without pay                                 |
|      | Second offense                                                                                                                                                                                                                                     | Discharge                                              |

(15) Possession of illegal drugs, other than personal prescriptions; or consuming such drugs or intoxicating beverages on city property; or reporting for work under the influence of such illegal drugs or intoxicating beverages. The employee is obligated to inform his supervisor if he is taking a prescription drug, while on duty, the side effects of which are known to cause drowsiness or impair his/her ability to operate city equipment.

First offense 3 days off without pay

Second offense Discharge

(16) Sleeping during working hours on city property or city time.

First offense 1 day off without pay

Second offense 3 days off without pay

Third offense Discharge

(17) Intentional ringing or punching the time card of another employee, having the time card punched by another employee, unauthorized alteration or mutilation of a time card, for the purpose of defrauding the City of Smithville.

Discharge

(18) The conviction of any felony in any court, federal or state.

Discharge

(19) Failure to give a full day's work.

First offense 1 day off without pay

Second offense 3 days off without pay

Third offense Discharge

The above rules are not all inclusive, but cover the most common infractions. Penalties for other unacceptable conduct will be administered consistent with the seriousness of the offense.

In addition to all of the rules of conduct set out above, the employees and non-elected officials of the city shall be subject to any and all of the charter provisions applicable to such employees or officials.

Further, the city judge shall be subject to the Code of Professional Responsibility, and the Code of Judicial Conduct, being Rules 8 and 10, respectively, of the RULES OF THE SUPREME COURT OF THE STATE OF TENNESSEE. Further, the city attorney will be subject to the Code of Professional Responsibility, being Rule 8 of the RULES OF THE SUPREME COURT OF THE STATE OF TENNESSEE. The judicial commissioner shall further be subject to the provisions of Title 40, Chapter 5, Chapter 6, and Chapter 7 of the Tennessee Code Annotated. The secretary-treasurer shall be subject to the Rules of Conduct as set out above. The chief of police, in addition to complying with the Rules of Conduct set out above, shall comply with any and all provisions contained in the Tennessee Code Annotated, applicable to law enforcement officers, and in addition thereto, shall comply with the city adopted police manual. (as added by Ord. #287, Aug. 1999)



## CHAPTER 9

### GRIEVANCE POLICY

#### SECTION

- 4-901. Purpose.
- 4-902. Requests for accommodation.
- 4-903. Duty of employee to inform supervisors of grievance.
- 4-904. Employee rights in grievance process.
- 4-905. Records.
- 4-906. Right to contact elected officials.

**4-901. Purpose.** The purpose of this policy is to set forth the principles of the City of Smithville for employees who may feel that they have been treated unfairly and to prescribe uniform procedures for the individual employee to have his/her grievance heard. (as added by Ord. #287, Aug. 1999)

**4-902. Requests for accommodation.** When a request for an accommodation is denied, a disabled employee may also file a grievance in accordance with this policy or the grievance procedures adopted pursuant to ADA. Employees will be treated fairly in all respects. Those who feel they have been subjected to unfair treatment have the right to present their grievance to the proper person for prompt consideration and a fair decision. (as added by Ord. #287, Aug. 1999)

**4-903. Duty of employee to inform supervisors of grievance.** Employees must remember that there is no grievance until the department head or other appropriate person has been made aware of the dissatisfaction. Once this is done, the following steps are to be taken:

(1) If any employee has a grievance concerning any aspect of their employment, the employee should first discuss that grievance with their immediate supervisor.

(2) If the employee is not satisfied with the results of the immediate supervisor's actions, then the next step should be to present the grievance in writing to their department head.

(3) If the employee is not satisfied with the results of the action of the department head, then he/she shall present the written grievance to the commissioner of their respective department.

(4) If the employee is still not satisfied with the actions taken by any of the persons here before mentioned, then the employee shall be entitled to a hearing before the mayor. At such hearing, the mayor shall have the written record of the grievance and findings of supervisors, department heads, and commissioners, and may require the attendance of anyone whom he deems necessary.

(5) If the employee is not satisfied with the actions taken at that meeting, then the final step in the appeal process shall be a hearing before the mayor and board of aldermen. The decision of the mayor and board of aldermen shall be final. (as added by Ord. #287, Aug. 1999)

**4-904. Employee rights in grievance process.** An employee with a grievance shall be notified in writing of the right to:

- (1) A grievance or appeals hearing as specified in this policy;
- (2) Receive written notification of the reason for the action that led to the grievance;
- (3) Be represented at all stages of the grievance proceedings by legal counsel retained at the employee's expense;
- (4) Present witnesses in his/her own behalf and cross-examine witnesses in support of the city's action;
- (5) Examine and copy all documents that will be used by the municipality as justification for its actions; and
- (6) Be free from threats, coercion, intimidation, or discrimination from other employees because he/she has made complaints, testified, or assisted in any manner in the above-stated grievance and appeals procedures. (as added by Ord. #287, Aug. 1999)

**4-905. Records.** Records shall be made of all proceedings pertaining to the grievance actions, and these records shall be maintained in the city's permanent file by the treasurer's office. (as added by Ord. #287, Aug. 1999)

**4-906. Right to contact elected officials.** It is not the intent of these policies and procedures to restrict in any way the employee's right to contact an elected official. (as added by Ord. #287, Aug. 1999)

## CHAPTER 10

### SEXUAL HARASSMENT PROHIBITED

#### SECTION

4-1001. Purpose.

4-1002. Sexual harassment defined.

4-1003. Initiating a sexual harassment complaint.

4-1004. The complaint.

4-1005. Investigating and reporting sexual harassment complaints.

**4-1001. Purpose.** The city may be held liable for the actions of all employees. The city will take immediate and positive steps to stop such harassment when and if it occurs. The city may be responsible for acts of sexual harassment in the workplace when the city (or its agents or supervisory employees) know or should have known of the conduct, unless it can be shown that the city took immediate and appropriate corrective action. The municipality may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the municipal government (or its agents or supervisory employees) know or should have known of the conduct and failed to take immediate and appropriate action.

This policy applies to all officers and employees of the City of Smithville, including but not limited to full and part-time employees, elected officials, permanent and temporary employees, employees covered or exempt from the personal rules or regulations of the city, and employees working under contract for the city. The following rules shall be strictly enforced. (as added by Ord. #287, Aug. 1999)

**4-1002. Sexual harassment defined.** The following actions constitute an unlawful employment practice and are absolutely prohibited by the city when they affect employment decisions, create a hostile job environment, cause distractions, or unreasonably interfere with work performance. They are:

- (1) Sexual harassment or unwelcome sexual advances;
- (2) Request for sexual favors;
- (3) Verbal or physical conduct of a sexual nature in the form of pinching, grabbing, patting, or propositioning;
- (4) Explicit or implied job threats or promises in return for submission to sexual favors;
- (5) Inappropriate sex-oriented comments on appearance;
- (6) Embarrassing sex-oriented stories;
- (7) Displaying sexually explicit or pornographic material, no matter how the material is displayed; and/or
- (8) Sexual assault on the job by supervisors, fellow employees, or, on occasion, non-employees.

Sexual harassment includes conduct directed by men toward women, conduct directed by men toward men, conducted directed by women toward men, and conduct directed by women toward women. (as added by Ord. #287, Aug. 1999)

**4-1003. Initiating a sexual harassment complaint.** An employee who feels he/she is subjected to sexual harassment should immediately contact a person (listed below) with whom the employee feels the most comfortable. Complaints may be made orally or in writing to:

- (1) The employee's immediate supervisor.
- (2) The employee's department head,
- (3) A city commissioner
- (4) The treasurer
- (5) The, mayor, or
- (7) The mayor and board of aldermen. (as added by Ord. #287, Aug. 1999)

**4-1004. The complaint.** Employees have the right to circumvent the employee chain-of-command when selecting the person to complain to about sexual harassment. The employee should be prepared to provide the following information:

- (1) His/her name, department, and position title;
- (2) The name of the person or people committing the sexual harassment, including their title(s), if known;
- (3) The specific nature of the sexual harassment, how long it has gone on, any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the employee as a result of the harassment, or any other threats made against the employee as a result of the harassment.
- (4) Witnesses to the harassment; and
- (5) Whether the employee has previously reported the harassment and, if so, when and to whom. (as added by Ord. #287, Aug. 1999)

**4-1005. Investigating and reporting sexual harassment complaints.** (1) Investigating. The mayor is the person the city designates as the investigator of sexual harassment complaints against employees. In the event the sexual harassment complaint is against the mayor, the investigator shall be a municipal employee appointed by the board of aldermen.

(2) Reporting. When an allegation of sexual harassment is made by any employee, the person to whom the complain is made shall:

- (a) Immediately prepare a report of the complaint according to the preceding section and submit it to the department head.
- (b) Make and keep a written record of the investigation at the time the verbal interview is in progress, including notes on:

- (i) Verbal responses made to the investigator by the person complaining of sexual harassment.
  - (ii) Witnesses interviewed during the investigation,
  - (iii) The person against whom the complaint of sexual harassment was made, and
  - (iv) Any other person contacted by the investigator in connection with the investigation.
- (3) Findings. Within 5 days of receiving the complaint, prepare and present the findings to the mayor in a report, which will include:
  - (a) The written statement of the person complaining of sexual harassment,
  - (b) The written statements of witnesses,
  - (c) The written statement of the person against whom the complaint of sexual harassment was made, and
  - (d) All the investigator's notes connected to the investigation.
- (4) Action on complaints of sexual harassment. Upon receiving an investigation report of sexual harassment complaint, the mayor shall immediately review the report. If the mayor determines that the report is not complete in some respect, he/she may question the person complaining of sexual harassment, the person against whom the complaint has been made, witnesses to the conduct in question or any other person who may have knowledge about the harassment.

Based upon the report and his/her own investigation (where a separate investigation is made), the mayor shall, within a reasonable time, determine whether the conduct in question constitutes sexual harassment. In making that determination the mayor shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct, the context in which the alleged actions occurred, and the behavior of the person complaining. Whether sexual harassment took place will be determined on a case-by-case basis.

If the mayor determines that the harassment complaint is founded, he/she shall take immediate and appropriate disciplinary action against the person committing the offense, consistent with his/her authority under the municipal charter, ordinances, resolutions, or rules governing his/her authority to discipline employees. If the mayor feels that the harassment warrants disciplinary action stronger than he/she is authorized to impose by the charter, ordinances resolutions, or rules governing employee discipline, he/she shall make that determination known, along with the report of the investigation, to the Board of Aldermen of Smithville. If the governing body determines that the sexual harassment complaint is founded, it may discipline the employee consistent with its authority under the municipal charter, ordinances, resolutions, or rules governing employee discipline.

The disciplinary action shall be consistent with the nature and severity of the offense, the employee's rank, and any other factors the board of aldermen believes relate to fair and efficient administration of the city. This includes, but

is not limited to the effect of the offense on employee morale, public perception of the offense, and the light in which it casts the city. The disciplinary action may include demotion, suspension, dismissal, warning, or reprimand. Determining the level of disciplinary action shall also be made on a case-by-case basis. A written record shall be kept of disciplinary actions, including verbal reprimands.

In all events, an employee found to have committed sexual harassment shall be warned not to retaliate in any way against the person making the complaint, witnesses, or any other person connected with the investigation.

In cases where sexual harassment is committed by a non-employee against a city employee in the workplace, the mayor shall take whatever lawful action necessary against the non-employee to bring the sexual harassment to an end.

(5) Obligation of employee. Employees are not only encouraged to report instances of sexual harassment, they are obligated to report them. Employees are also obligated to cooperate in every harassment investigation. The obligation includes, but is not necessarily limited to, coming forward with evidence (both favorable and unfavorable) about a person accused of such conduct, fully and truthfully making written reports, or verbally answering questions when required to do so by an investigator. Employees are also obligated to refrain from making bad faith accusations of sexual harassment.

Disciplinary action may be taken against employees who fail to report instances of sexual harassment, fail or refuse to cooperate in the sexual harassment investigation, or file a complaint of sexual harassment in bad faith. (as added by Ord. #287, Aug. 1999)

**CHAPTER 11****DRUG AND ALCOHOL TESTING****SECTION**

4-1101. Purpose.

**4-1101. Purpose.** To provide a safe, healthy, productive, and drug-free working environment for its employees to properly conduct the public business, the city has adopted a drug and alcohol testing policy. Any employee for the city who is required to have a commercial driver's license (CDL) shall be subject to controlled substance and alcohol test. Employee who fail to comply with the policy are subject to disciplinary action as set forth in the policy. (as added by Ord. #287, Aug. 1999)

## CHAPTER 12

### EMPLOYEE PERSONALLY IDENTIFYING INFORMATION

#### SECTION

4-1201. Right to privacy.

4-1202. Information defined.

4-1203. Procedures for requesting information on individual employees.

**4-1201. Right to privacy.** As a matter of policy, the City of Smithville will not disclose personally identifying information about specific employees or applicants, if the employee invokes his/her right to privacy, personal security and bodily integrity. If the employee does not invoke his/her right to privacy, personal security and bodily integrity, the information will be released to the requestor. (Ord. #284, § 1, June 1999)

**4-1202. Information defined.** Personally identifying information includes addresses, phone numbers, drivers' licenses, and social security numbers. It also includes, but is not limited to the names, addresses, phone numbers, drivers' licenses, and social security numbers of family members, if such information is in the city's personnel files. (Ord. #284, § 2, June 1999)

**4-1203. Procedures for requesting information on individual employees.** (1) All requests to review a file or information from a file must be handled by the personnel administrator. In his/her absence, requests will be referred to the city manager/administrator.

(2) The person(s) requesting the information must complete a form (copy attached) specifying what information is being requested and the reason for the request. The request shall be as specific as possible.

(3) The personnel administrator will offer the requestor a work history on the employee and may also provide copies of individual items from the file with the personally identifying information deleted or blacked out.

(4) Requests for unedited copies of an employee's file or any personally identifying information will result in notification to the employee whose information has been requested. The personnel administrator will notify the employee within 48 hours that the request has been made to disclose personally identifying information. The employee then will have 24 hours to object to the information being disclosed.

(5) If the employee makes no objection to full disclosure, the personnel administrator will allow the unedited file or personally identifying information to be disclosed.

(6) If the employee objects to the disclosure, the information will not be disclosed. If the requestor objects, the requestor will be referred to the city attorney for appropriate resolution.



(7) The personnel administrator or city manager/administrator are the only officials authorized to verify employment upon request. These officials may not release or verify an employee's social security number, address, driver's license, or other personally identifying information, unless compelled to do so by a final order of a court of competent jurisdiction.

(8) Any requests for this information must be made in writing; and all request(s) for police officers' personally identifying information must be handled by the personnel administrator or city manager/administrator. (Ord. #284, § 3, June 1999)

## CHAPTER 13

### EXCAVATION SAFETY POLICY

#### SECTION

- 4-1301. Purpose.
- 4-1302. Trench excavations.
- 4-1303. Safety precautions.
- 4-1304. Other hazards.

**4-1301. Purpose.** Trenching and excavation work poses serious risks to all workers involved. The primary hazard, however, for excavation workers, is from cave-ins. When cave-ins occur, they are much more likely to result in worker fatalities than other excavation-related accidents. The City of Smithville has developed these policies and procedures and requires strict compliance to prevent or greatly reduce the risk of cave-ins as well as other excavation-related accidents.

The occupational Safety and Health Administration (OSHA) requires that employees exposed to cave-in hazards be protected by

- (1) Sloping or benching the sides of the excavation,
- (2) By supporting the sides of the excavation, or
- (3) By placing a shield between the side of the excavation and the work area. (as added by Ord. #331, Dec. 2002)

**4-1302. Trench excavations.** (1) Sloping. The safety and health of excavation workers can be ensured by effectively sloping the sides of a trench or excavation to an angle not steeper than one and one-half horizontal to one vertical (34 degrees measured from the horizontal). A slope of this gradation or less is considered safe for any type of soil.

All simple slope excavations of 16 feet or less in depth shall have a maximum allowable slope of 1 and 1/2:1. Any excavation of greater depth than 16 feet will be undertaken by an outside contractor.

(2) Trench boxes and shields. Trench boxes and shields designed or approved by a registered professional engineer, or based on data prepared or approved by a registered professional engineer, may be used to ensure the safety of excavation workers. Trench boxes may be constructed of timber, aluminum, or other suitable material as may be approved by a registered professional engineer.

(3) Responsibility. It shall be the responsibility of the town's public works supervisor or to ensure that all excavations, where city employees are carrying out the excavation, or a contractor employed by the city, are carried out using either the sloping or trench boxes and shield safety methods. Under no circumstances shall the supervisor or manager permit an excavation of more than four feet in depth without using proper sloping or trench boxes and shields,

unless the public works supervisor has determined that the excavation is made entirely in stable rock, is less than four feet deep, or an examination of the ground finds no indication of a potential cave-in. (as added by Ord. #331, Dec. 2002)

**4-1303. Safety precautions.** (1) Stability of structures. Adjacent structures such as buildings, walls, sidewalks or pavements shall be shored, braced, or underpinned to ensure stability. Excavation shall not be undertaken below the level of the base or footing of any foundation or retaining wall unless

- (a) A support system such as underpinning is provided,
- (b) The excavation is in stable rock, or
- (c) A registered professional engineer determines that the structure is sufficiently removed from the excavation and that the excavation will not pose a hazard to employees.

Excavations under sidewalks and pavements are also prohibited unless an appropriately designed support system is provided.

(2) Installation and removal of protective systems. Installing support systems shall be undertaken in accordance with the following procedures for the protection of employees:

- X Securely connect members of support systems,
- X Safely install support systems,
- X Never overload members of support systems, and
- X Install other structural members to carry loads imposed on the support system when temporary removal of individual members is necessary.

Excavations of 2 feet or less below the bottom of the members of a support or shield system of a trench may be undertaken if

- (a) The system is designed to resist the forces calculated for the full depth of the trench, and
- (b) There are no indications, while the trench is open, of a possible cave-in below the bottom of the support system. Also, the installation of support systems must be closely coordinated with the excavation of trenches.

Upon completion of the work, the excavation should be back filled as the protective system is dismantled. After the excavation has been cleared, workers should slowly remove the protective system from the bottom up, taking care to release members slowly.

(3) Materials and equipment. The city of Smithville is responsible for the safe condition of materials and equipment used for protective systems. Defective and damaged materials and equipment can result in the failure of a protective system and cause excavation hazards.

- The public works supervisor of the City of Smithville must ensure that
- (a) Materials and equipment are free from damage or defects,

(b) Manufactured materials and equipment are used and maintained in a manner consistent with the recommendations of the manufacturer and in a way that will prevent employee exposure to hazards, and

(c) While in operation, damaged materials and equipment are examined by a competent person to determine if they are suitable for continued use. If materials and equipment are not safe for use, they must be removed from service. These materials cannot be returned to service without the evaluation and approval of a registered professional engineer. (as added by Ord. #331, Dec. 2002)

**4-1304. Other hazards.** (1) Exposure to falls, falling loads, and mobile equipment. In addition to cave-in hazards and secondary hazards related to cave-ins, there are other hazards from which workers must be protected during excavation related work. These hazards include exposure to falls, falling loads, and mobile equipment. To protect employees from these hazards, the public works supervisor shall take the following precautions:

- X Keep materials or equipment that might fall or roll into an excavation at least 2 feet from the edge of excavations, or have retaining devices, or both.
- X Provide warning systems such as mobile equipment, barricades, hand or mechanical signals, or stop logs, to alert operators of the edge of an excavation. If possible, keep the grade away from the excavation.
- X Provide scaling to remove loose rock or soil or install protective barricades and other equivalent protection to protect employees against falling rock, soil, or materials.
- X Prohibit employees from working on faces of sloped or benched excavations at levels above other employees unless employees at lower levels are adequately protected from the hazard of falling, rolling, or sliding material or equipment.
- X Prohibit employees under loads that are handled by lifting or digging equipment. To avoid being struck by a spillage or falling materials, require employees to stand away from vehicles being loaded or unloaded. If cabs of vehicles provide adequate protection from falling loads during loading and unloading operations, the operators may remain in them.

(2) Water accumulation. Employees are prohibited from working in excavations where water has accumulated or is accumulating unless adequate protection has been taken. If water removal equipment is used to control or prevent water from accumulating, the equipment and operations of the equipment must be monitored by a competent person to ensure proper use.

Diversion ditches, dikes, or other suitable means shall be used to prevent surface water from entering an excavation and to provide adequate drainage of

the area adjacent to the excavation. The supervisor of public works must inspect excavations subject to runoffs and heavy rains.

(3) Hazardous atmospheres. The public works supervisor shall test excavations greater than 4 feet in depth as well as ones where oxygen deficiency or a hazardous atmosphere exists or could reasonably be expected to exist, before an employee of the city enters the excavation. If hazardous conditions exist, controls such as proper respiratory protection or ventilation must be provided. Controls used to reduce atmospheric contaminants to acceptable levels must be tested regularly.

Where adverse atmospheric conditions may exist or develop in an excavation, the employer also must provide and ensure that emergency rescue equipment, (e.g., breathing apparatus, a safety harness and line, basket stretcher, etc.) is readily available and attended when used.

When an employee of the town enters bell-bottom pier holes and similar deep and confined footing excavations, the employees must wear a harness with a lifeline. The lifeline must be securely attached to the harness and must be separate from any line used to handle materials. While the employee wearing the lifeline is in the excavation, an observer must be present to ensure that the lifeline is working properly and to maintain communication with the employee.

(4) Access and egress. The City of Smithville must provide safe access and egress to all excavations. When employees are required to be in trench excavations 4 feet deep or more, adequate means of exit, such as ladders, steps, ramps or other safe means of egress, must be provided and be within 25 feet of lateral travel. If structural ramps are used as a means of access or egress, they must be designed by a professional engineer if used for employee access or egress, or a competent person qualified in structural design if used by vehicles. Structural members used for ramps and runways must be uniform in thickness and joined in a manner to prevent tripping or displacement. (as added by Ord. #331, Dec. 2002)