

# CHATTANOOGA CITY CODE

## Chapter 2

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<sup>1</sup> **Cross references**—Air pollution control board, § 4-6; beer board, § 5-16 et seq.; control of airport, Ch. 8; beautification commission, § 9-16 et seq.; city court clerk, § 12-36 et seq.; civil defense, Ch. 13; board of electrical examiners, § 14-46 et seq.; fire department, § 16-26 et seq.; police department, § 16-41 et seq.; bureau of fire prevention, § 17-16 et seq.; board of examiners of gasfitters and installers, § 19-66 et seq.; metropolitan transit authority, Ch. 23; administration of traffic rules and regulations, § 24-61 et seq.; Miller Park board, § 26-71 et seq.; board of examiners of plumbers, § 27-36 et seq.

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### ARTICLE I. IN GENERAL

#### Sec. 2-1. Corporate seal.

(a) The official seal of the city shall be circular, bearing in circular form around the outer portion thereof the words “Corporation Seal” and a drawing presenting a view of downtown Chattanooga and a part of Moccasin Bend as seen from the vantage of Point Park on Lookout Mountain, such vantage being represented by the drawing of a cannon on a rock within the lower left-hand quadrant of the outer and inner portion of the seal. It shall be unlawful for any person to use any other seal as the corporate seal of the City of Chattanooga, Tennessee; provided, however, that, it shall be lawful for the city finance officer and other officers of the city to use the former seal of the City of Chattanooga, Tennessee, as authorized by Ordinance No. 618, until such time as the seal described in this section is prepared; and the presence, after the effective date of this section [June 15, 1975], of such former seal on any document, correspondence, affidavit, certification, bond, voucher or other instrument on which the seal must be affixed according the law shall not affect the validity of such instrument.

(b) The official seal of the city adopted and described in this section shall be reproduced for all purposes in substantially the same form and appearance as shown on the copy of the artist's rendering of the original made a part hereof by reference.  
(Code 1986, §2-1; Ord. No. 9654, §8, 01-06-92)

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**Sec. 2-2. Mayor to report neglect or misconduct of city officers.**

The mayor shall report to the city council any violation or neglect of duty on the part of any officer which may come to his knowledge.

(Code 1986, §2-2; Ord. No. 9654, §2, 01-06-92)

**Sec. 2-3. Hours of operation; Holidays; Work Schedules; and Meal Periods.**

(a) Offices of City government shall be opened for transaction of public business from eight o'clock in the morning (8:00 a.m.) until four thirty in the afternoon (4:30 p.m.) except on Saturday, Sunday and when City Hall and related offices are closed unless otherwise designated.

(b) City Hall and related offices shall be closed on City recognized holidays. When holidays fall on a Saturday, then City Hall and related offices shall be closed on the preceding day (Friday). When holidays fall on a Sunday, then City Hall and related offices shall be closed the next day (Monday).

(c) All employee work weeks and work periods as required by the Fair Labor Standards Act shall be established by department administrators and made available in writing to employees and filed with the Departments of Finance and Personnel.

(d) Each employee shall have a minimum of a thirty (30) minute unpaid meal period (one hour maximum) if scheduled to work six (6) hours consecutively. The meal period shall not be scheduled within the first or last hour of the scheduled work day or shift unless specifically authorized by the immediate supervisor on a sporadic basis.

(e) Department heads are to ensure that all regular employees work their scheduled standard hours.

(Code 1986, §2-3; Ord. No. 12414, § 1, 7-20-10)

**Sec. 2-4. Officer to furnish new bond where original bond defective or security insufficient.**

If at any time an official bond becomes defective for any reason or the sureties thereon have become insufficient, the internal auditor shall notify at once the officer whose duty it is to furnish a new bond in accordance with the provisions of section 2-3. If such officer fails to comply within ten (10) days after being so notified, his office shall automatically become vacant, and such vacancy shall be filled as provided by law.

(Code 1986, §2-4; Ord. No. 9654, §3, 01-06-92)

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### **Sec. 2-5. Departmental inventories of city property.**

Each department and agency of the city shall, under the supervision of the city finance officer, keep a perpetual inventory of the city property under its control, and shall furnish such reports in relation thereto as the city finance officer may require.  
(Code 1986, §2-5; Ord. No. 9654, §4, 01-06-92)

### **Sec. 2-6. Records, documents open to public inspection.**

All accounts and records, including papers, books, documents, memoranda and reports of all kinds in any departments or offices of the city shall be open to public inspection at all reasonable times except as otherwise provided by state statutes.  
(Code 1986, §2-6)

### **Sec. 2-7. City authorized to contribute to pension funds created, operated by labor organizations.**

Contributions during each fiscal year, in the sum of twenty cents (\$0.20) per hour, fifteen cents (\$0.15) per hour, and fifteen cents (\$0.15) per hour, may be paid to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers; Central States Southeast and Southwest Areas Pension Fund; and Laborers' International Union of North America National (Industrial) Pension Fund, respectively, for pensions coverage of certain hourly employees of the city. Specific payments, whether past due or to become due, or contracts for future payments, shall be authorized by resolution adopted by the city council.  
(Code 1986, §2-7; Ord. No. 9654, §2, 01-06-92)

**Cross reference--**City personnel regulations generally, §2-136 et seq.; social security for city employees generally, §2-231 et seq.; social security for educational personnel, §2-251 et seq.; supplemental pension benefits, §2-661 et seq.

### **Sec. 2-8. City and employees contribution rate for general pension plan.**

(a) The city contribution rate for the general pension plan shall be and is hereby established at four and one-half (4 1/2) percent of the salaries and wages of the covered participants in the general pension plan.

(b) The employee contribution rate shall be and is hereby set at an amount equal to two (2) percent of the amount of salary and wages covered by social security and five (5) percent of the amount of salaries and wages not covered by social security.  
(Code 1986, §2-8)

**Cross reference--**City contribution to firemen's and policemen's insurance and pension fund, §16-8; increase in pension benefits, §16-8.1.

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### **Sec. 2-9. City relief bureau – Duties of mayor.**

A city relief bureau is hereby created and established under the general supervision and administration of the mayor, who shall make periodic reports to the city council as to the status and operations of the bureau. The mayor shall recommend to the city council for adoption by resolution such rules and regulations as may be reasonably necessary for the proper operation of the bureau. Expenditures of the bureau shall be consistent with other ordinances governing expenditure of public funds.

(Code 1986, §2-9; Ord. No. 9654, §5, 01-06-92)

### **Sec. 2-10. Same-Truthfulness of applicant's statements; certification; penalty for violation.**

(a) Each applicant for assistance to the city relief bureau shall execute a statement on a form to be provided by the bureau stating that the application and all statements made in support thereof are true to the best of the applicant's knowledge, information and belief.

(b) Each applicant to the city relief bureau shall be required to sign a statement authorizing the bureau to verify any statement made in support of the application for assistance with the applicant's family, employer, physicians, landlord, welfare case worker, or any other appropriate official or person possessing information pertinent to the application and the eligibility of the applicant for assistance.

(c) It shall be unlawful for any applicant to the city relief bureau knowingly to make any false statement to the bureau in any application for assistance.

(d) Any person convicted of violating paragraph (c) of this section shall be ineligible for any form of assistance from the city relief bureau for one (1) year from the date of the conviction.

(Code 1986, §2-10)

### **Sec. 2-11. Alternate site for City Council meetings.**

The Hamilton County Board of Commissioners Assembly Room, located at the Courthouse at 7th and Georgia Avenues, is hereby designated by the City Council of the City of Chattanooga as an alternate site for meetings of the City Council of the City when in joint session with the Hamilton County Board of Commissioners.

(Code 1986, §2-11; Ord. No. 9654, §2, 01-06-92)

**Editor's note--**Ordinance No. 8646, enacted June 10, 1986, provided for amendment of Part II of the Chattanooga City Code, but did not specify the manner of such amendment; hence, codification of the substantive provisions of §1 of the ordinance as §2-11 was at the discretion of the editor.

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**Sec. 2-12. Boards and commissions – removal of members.**

(a) The chairman of any duly authorized board or commission shall notify the Mayor in writing of any member’s failure to attend three (3) consecutive meetings, or if a member misses more than fifty percent (50%) of the meetings in any twelve (12) month period.

(b) Any duly appointed member of a board or commission may be removed by the Mayor, after notice to the City Council, for neglect of duty, or, malfeasance. Neglect of duty may be determined if a member of a board or commission fails to attend three (3) consecutive meetings or misses more than fifty percent (50%) of the meetings during any twelve (12) month period.

(Ord. No. 10849, §1, 05-11-99)

**Secs. 2-13 – 2-25. Reserved.**

**ARTICLE II. OFFICERS<sup>2</sup>**

**DIVISION 1. GENERALLY**

**Secs. 2-26 – 2-40. Reserved.**

**DIVISION 2. CITY ATTORNEY<sup>3</sup>**

**Sec. 2-41. Attendance and services at meetings of city council.**

The city attorney shall attend all regular special meetings of the city council and shall give his advice and counsel to the council whenever it is requested.

(Code 1986, §2-41; Ord. No. 9654, §6, 01-06-92)

**Sec. 2-42. To be notified of service of process or notices.**

Whenever any process or notice shall be served on the mayor in any legal proceeding against the city, he shall immediately deliver the same to the city attorney or notify him that he has been served therewith.

(Code 1986, §2-42)

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<sup>2</sup> **Cross reference**—City court clerk, § 12-36 et seq.; fire and police departments, Ch. 16; city traffic engineer, §24-96 et seq.

<sup>3</sup> **Charter reference**—City attorney generally, §3.61 et seq.

**Cross reference**—City attorney to assist in investigation of suspected arson, §17-31.

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### **Sec. 2-43. Docket and opinion book.**

The city attorney shall keep a docket containing a complete record of all suits in which the city may be interested, and shall keep a further book in which shall be recorded such opinions as he may be called upon to furnish to any of the departments or agencies of the city.

(Code 1986, §2-43)

### **Sec. 2-44. When other counsel to represent city.**

The city attorney, when any suit is brought against the city which he is incompetent to defend because of former connection with the plaintiffs or for any other reasons, shall report the fact at once to the mayor, and the city attorney shall engage the services of competent counsel to defend such suit.

(Code 1986, §2-44; Ord. No. 9654, §7, 01-06-92)

### **Sec. 2-45. Qualifications, duties of assistants.**

Each assistant city attorney shall be a practicing attorney, and shall be a resident of the state licensed to practice in the state. The assistant city attorney shall be subordinate to and shall assist the city attorney in the performance of the duties incident to his office.

(Code 1986, §2-45)

### **Sec. 2-46. Appointment of subordinates.**

The city attorney shall appoint and/or contract for the services of assistants, special counsel, agents and stenographers, or other employees who shall serve at the pleasure of the city attorney.

(Code 1986, §2-46)

### **Sec. 2-47. Investigator for office of city attorney.**

The office investigator for the office of the city attorney is hereby created and established, which shall be composed of one (1) or more persons on a full-time, part time, temporary or contractual basis, who shall be subordinate to and shall assist the city attorney in the performance of the duties incident to his office. The appointment and services shall be pursuant to section 2-46. Upon appointment, such person shall comply with section 16-42; and shall have and possess the authority contained in section 16-45 and the last sentence of section 5-43, together with any other applicable ordinances or laws, but such appointment shall not be subject to the personnel policies of the city.

(Code 1986, §2-47)

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### **Sec. 2-48. Payment for legal services.**

The city attorney is authorized to execute contracts for professional legal services pursuant to sections 2-46 and 2-356, whereby such attorneys will be paid a maximum retainer, whether, as periodic fees or as a salary, against which charges for legal services rendered for general corporate legal counseling, advising and drafting, etc., on behalf of the city will be debited and any credit balance shall be applied against additional fees for legal services relating to litigation involving the city, including matters involving administrative tribunals, title search and certifications, and security transactions; and all of such compensation shall not be inconsistent with Rule 8, Canon 2-106(B)1-8, of the Tennessee Supreme Court; and, further, that such arrangement is authorized for all other or subsequent attorneys in the office of the city attorney; provided, however, that any such additional payments as fees for legal services rendered by a special counsel relative to litigation shall be within budgetary limitations, and in order to comply with such budgetary limitations any such professional legal service contracts with special counsel shall provide that all retainer and/or fee determinations shall be made by the city attorney and his judgment on such questions shall be final and conclusive.

(Code 1986, §2-48)

### **Secs. 2-49 – 2-60. Reserved.**

## DIVISION 3. CITY FINANCE OFFICER<sup>4</sup>

### **Sec. 2-61. Oath of office.**

The city finance officer shall, before entering upon the discharge of the duties of his office, take an oath to faithfully and honestly discharge such duties.

(Code 1986, §2-61; Ord. No. 9654, §8, 01-06-92)

### **Sec. 2-62. Official bond.**

The city finance officer shall execute a guaranty bond in the penal sum of one hundred thousand dollars (\$100,000.00) before entering upon the duties of his office, conditioned that he will faithfully and fully discharge all the duties imposed on him by law or ordinance, and will well, truly and faithfully pay over and account for, according to law, all money or funds that may come into his hands, or under his control, by virtue of his office.

(Code 1986, §2-62; Ord. No. 9654, §8, 01-06-92)

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<sup>4</sup>**Charter reference**—City finance officer [auditor] generally, §3.95 et seq.

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### **Sec. 2-63. Custody of public records.**

The city finance officer shall be responsible for the care and protection of all public records kept at the city hall whose custody is not assigned to another officer by law or ordinance.

(Code 1986, §2-63; Ord. No. 9654, §8, 01-06-92)

### **Sec. 2-64. Resolution book.**

The clerk of the city council shall maintain a suitable wellbound book, to be called "resolution book," in which he shall copy all resolutions passed by the city council. He shall place at the head of each resolution entered an appropriate caption indicating the nature of such resolution, with the name of the mover, and shall properly enter the caption in the index of the book, with the number of such resolution, and the number of the page in the book on which it is copied. He shall not be required to spread any resolution in full on the minute book or journal of the board, but when reference to any resolution is made in the minutes, it shall be by caption or number and the number of the page of the resolution book where such resolution is copied.

(Code 1986, §2-64; Ord. No. 9654, §9, 01-06-92)

### **Sec. 2-65. Payment for publication of ordinances granting franchises.**

The cost of advertising ordinances granting franchises shall be paid by the grantees of the franchise rights as a condition precedent to the publication of such ordinances and the passage thereof on the third and final reading. The clerk of the city council, before the publication by him of any ordinance granting any franchise, shall ascertain the cost of publication thereof in a daily newspaper published in the county and shall collect from the grantee of the franchise the cost of publication before delivering the ordinance to such newspaper for publication.

(Code 1986, §2-65; Ord. No. 9654, §10, 01-06-92)

**Charter reference--**Requirements of ordinances granting franchises, §7.2.

### **Sec. 2-66. Franchise book.**

The clerk of the city council shall keep in a separate book known as the "franchise book," a record of franchises granted by the city, the date of passage of the ordinance granting any franchise, the limitation as to time in which streets must be built upon, if any, and the motive power to be employed in the exercise of such franchise, if any.

(Code 1986, §2-66; Ord. No. 9654, §10, 01-06-92)

### **Sec. 2-67. Assistant city finance officer.**

The office of assistant city finance officer is hereby created. The assistant city finance officer shall exercise the same authority as the city finance officer relative to

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countersigning vouchers, certifying the availability of funds, and certifying the correctness of public records, and he shall perform such other duties as may be imposed upon him from time to time by the city finance officer; however, the assistant city finance officer at all times shall be subordinate to and shall assist the city finance officer in the performance of the duties incident to his office. When the office of the city finance officer is vacant, or when the city finance officer is absent or unable to perform his duties, the assistant city finance officer shall act for and in the stead of the city finance officer. The assistant city finance officer shall be appointed by the city finance officer with the approval of the mayor and city council, but shall serve at the pleasure of the city finance officer, and shall give bond with good and sufficient sureties in the sum of fifty thousand dollars (\$50,000.00).  
(Code 1986, §2-67; Ord. No. 9654, §11, 01-06-92)

### **Sec. 2-68. Budget officer; assistant budget officer.**

(a) The office of budget officer is hereby created. He shall be appointed by the city finance officer with the approval of the mayor and city council, but shall serve at the pleasure of the city finance officer, and shall give bond with good and sufficient sureties in the sum of fifty thousand dollars (\$50,000.00). The budget officer, under the direction of the city finance officer, shall be responsible for the formulation and the keeping of all records relating to the annual budget and any capital budget of the city; the certification that funds are available to meet expenditures covered by purchase orders; the approval of vouchers for payment of purchases pursuant to a prior purchase order; and for countersigning vouchers and requisitions drawn for the payment of funds when such voucher has been signed by the officer of the department, agency, board or commission or other division who is responsible by law for the expenditure of the appropriation against which such voucher or requisition is drawn. The budget officer shall be subordinate to and shall assist the city finance officer and the assistant city finance officer in the performance of their respective duties. The budget officer shall act for and in the stead of the city finance officer when both the city finance officer and the assistant city finance officer are absent or unable to perform their respective duties or there is a vacancy in both of such offices.

(b) The office of assistant budget officer is likewise created, who shall have the same authority as the budget officer but shall be subordinate to and assist the budget officer as well as the superiors of the budget officer.  
(Code 1986, §2-68; Ord. No. 9654, §11, 01-06-92)

**Secs. 2-69 -- 2-80. Reserved.**

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DIVISION 4. ENGINEER<sup>5</sup>

**Sec. 2-81. Duty to prepare map.**

The city engineer shall prepare a map of the city on which the town lots and their numbers shall be designated in such manner as to be of assistance in assessing such property for taxation.

(Code 1986, §2-81)

**Sec. 2-82. Duty to survey streets.**

The city engineer shall survey accurately all the streets in the city and keep a record of such survey.

(Code 1986, §2-82)

**Sec. 2-83. Duty to establish, keep record of grades.**

The city engineer shall establish the permanent grade of all streets and sidewalks in the city and shall prepare a suitable map of the city, showing such grades, which shall be kept for reference in his office, and shall keep a record of such grades in a book provided for that purpose.

(Code 1986, §2-83)

**Sec. 2-84. Reserved.**

**Sec. 2-85. Maps showing rights-of-way granted by city.**

The city engineer shall, upon request of the clerk of the city council, prepare and place on file in the franchise book of the city a map or plat showing the streets over which a right-of-way granted by the city is to extend, the number of tracks, if any, whether single or double, and the location of all switches and turnouts.

(Code 1986, §2-85; Ord. No. 9654, §14, 01-06-92)

**Sec. 2-86. Profile of grades to be made.**

Whenever the grade is ordered to be established on any street in the city, the city engineer shall give such grade, under the direction of the mayor, and shall make a profit thereof and preserve the same in the city engineer's office for public use. Under the direction of the mayor, he shall give the owners of abutting property the grade of sidewalks. No fees or other allowance shall be made him for such work.

(Code 1986, §2-86; Ord. No. 9654, §15, 01-06-92)

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<sup>5</sup>**Charter reference**—City engineer generally, §3.111.

**Cross reference**—City traffic engineer, §24-96 et seq.

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**Secs. 2-87 – 2-100. Reserved.**

DIVISION 5. TREASURER<sup>6</sup>

**Sec. 2-101. Offices of treasurer and tax collector consolidated.**

The offices of city treasurer and city tax collector are hereby consolidated. The duties pertaining to both offices shall devolve upon and be discharged by one (1) officer who shall be known as the city treasurer.  
(Code 1986, §2-101)

**Sec. 2-102. Official bond.**

The city treasurer shall execute a guaranty bond in at least the penal sum of five hundred thousand dollars (\$500,000.00), conditioned that he will faithfully and fully discharge all the duties imposed on him by law or ordinance and will well, truly and faithfully pay over and account for, according to law, all money or funds that may come into his hands or under his control by virtue of his office.  
(Code 1986, §2-102)

**Sec. 2-103. Extra compensation prohibited.**

The city treasurer shall receive no extra compensation for any service performed which the mayor deems to be within the legitimate function of his office.  
(Code 1986, §2-103; Ord. No. 9654, §13, 01-06-92)

**Sec. 2-104. Tax collections and receipts.**

The city treasurer shall collect all taxes due the city and shall issue to each taxpayer a receipt for taxes paid by him, which shall contain a clear description of the property taxed and the amount of tax assessed.  
(Code 1986, §2-104)

**Sec. 2-105. Assistant treasurer – Office created; appointment.**

The office of assistant city treasurer is hereby created as a subordinate position in the department of public affairs and finance. Such office shall be filled by appointment by the mayor, with the consent of the city council.  
(Code 1986, §2-105; Ord. No. 9654, §2, 01-06-92)

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<sup>6</sup> **Charter reference**—City treasurer generally, §3.102; finance and taxation generally, Title 6.

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### **Sec. 2-106. Same-Duties.**

The assistant city treasurer shall keep books in connection with the issuance and retirement of paving bonds and the collection of taxes as they mature against owners of property in the various paving districts. In addition he may, under the direction of the city treasurer, receive taxes and receipt for the same. He shall prepare and file with the mayor, on the tenth day of each month, a trial balance of the paving tax funds for the preceding month. (Code 1986, §2-106)

### **Sec. 2-107. Official bonds of assistant treasurer and deputies.**

The assistant city treasurer and each deputy in the office of the city treasurer shall execute a guaranty bond in the penal sum of fifty thousand dollars (\$50,000.00), conditioned that he will faithfully and fully discharge all the duties imposed on him by law or ordinance and will well, truly and faithfully pay over and account for all city funds received by him, or that come into his possession. (Code 1986, §2-107)

### **Sec. 2-108. Licenses and permits-Issuance; posting.**

The city treasurer shall, unless otherwise provided, issue all licenses and permits required under the provisions of this Code or any ordinance. Each person to whom a license is issued pursuant to the payment of a privilege tax shall keep such license posted conspicuously in his place of business for the entire year for which such license was issued. The city treasurer shall collect an administrative charge of five dollars (\$5.00) for the issuance of each such license and permit in addition to the fees imposed therefor under the provisions of this Code or any ordinance. (Code 1986, §2-108; Ord. No. 9202, §1, 07-25-89)

**Cross reference--**Businesses, trades and occupations generally, Ch. 11.

### **Sec. 2-109. Licenses and permits.**

(a) Failure to obtain. It shall be unlawful for any person who engages in any vocation, occupation or business for which a privilege license is required or a permit is required to fail to pay the license fee or permit fee and obtain a license or permit for such vocation, occupation or business. Each day's violation shall constitute a separate offense.

(b) Settlement upon termination or transfer of business.

(1) If any person liable for any tax, penalty or interest levied hereunder shall sell out the person's business or stock of goods, or shall quit the business, the person shall make a final return and payment within fifteen (15) days after the date of selling or quitting the business.

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- (2) The person's successor, successors, or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, interest and penalties due and unpaid until such former owner shall produce a receipt from the proper city tax collector stating that no taxes, interest or penalties are due.
- (3) If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided, the purchaser shall be personally liable for the payment of the taxes, interest and penalties accruing and unpaid on account of the operation of the business by any former owner, owners, or assigns.
- (4)
  - (i) Nothing in this section shall apply to any license transferring a business from one (1) location to another, within the municipality, on a one-time basis during any annual taxable period.
  - (ii) In this event a licensee shall notify the local tax collector at least five (5) days prior to the last day of business at the old location, submitting information and payment of a five dollar (\$5.00) recording fee for the new location.
  - (iii) Succeeding transfers by the same licensee, with the same annual taxable period, shall be subject to a final return and payment within fifteen (15) days, plus a new minimum business license and recording fee for the new location.

(Code 1986, §2-109; Ord. No. 10561, §1, 04-29-97)

### **2-110. Partial Payments of property taxes and water quality fees.**

- (a) The City Treasurer shall accept partial payments of annual property taxes and water quality fees beginning October 1. Notwithstanding the following schedule, the entire amount of taxes and fees due must be paid in full prior to the first day of March following the year of levy otherwise interest and penalties will be applied on balance on March 1.
- (b) No penalties, fines, interest or other fees shall be assessed against the payer of taxes or fees except as provided by the Chattanooga City Code and/or the laws of the State of Tennessee.
- (c) Prior to the final reading of this ordinance, the City Treasurer shall transmit to the State Comptroller of the Treasury a copy of this ordinance which shall serve as the plan required by T.C.A. § 6-56-109(b). To fulfill this requirement, the City hereby declares that:

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1. The City has the appropriate accounting technology to implement this program; and
  2. The City can implement this program within existing resources.
- (d) The City's Partial Payment Plan will be as follows:
1. Current year property tax bills are mailed in September with a due date of October 1. Taxes may be paid without penalty and interest through February of the following year.
  2. Prepayments for current year taxes and water quality fees may be made any time during the calendar year in which assessed. Payments made prior to billing for a calendar year must be made in person at the City Treasury.
  3. Any partial payment or property taxes other than electronic transfer made within ten (10) days of the delinquency date, or at any time following such delinquency date, may subject the property to a tax lien and enforcement by tax sale or other legally authorized procedures.
  4. Partial payments of **PROPERTY TAXES** and **WATER QUALITY FEES** are subject to the following:
    - A. This plan shall NOT apply to the following:
      - i. Properties that have applied for bankruptcy;
      - ii. Escrow accounts.
    - B. No more than one (1) partial payment shall be made in one calendar month;
    - C. May not be made in installments of less than \$50.00, except for final payment;
    - D. Cancelled Check will serve as a receipt for taxpayers who mail in payments by check.
    - E. Payments received March 1 or later following year of levy are subject to penalty and interest.
    - F. Any voucher issued pursuant to a tax relief program shall be used as all or a portion of the final payment.
    - G. Payments made after the delinquency date or after the last day of February will be applied as outlined below in Item K.
    - H. Partial payments received on or after the first day of any month following the last day of February will decrease the penalty and interest for the following month only.
    - I. Partial payment may be made by cash (except for mail in payments), credit card (including online payments), debit card, check or money order.

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- J. Partial payments will be applied to the oldest year with delinquent amounts due not in bankruptcy.
- K. Partial payments will be applied in the following order:
  - i. Payment of Water Quality Fee.
  - ii. Oldest year first for current owner
    - a. Interest
    - b. Fee
  - iii. Property taxes
    - a. Oldest year first not filed in Chancery Court
      - (1) Interest and penalty
      - (2) Tax
- L. Any partial payments except electronic payments must be remitted to: Office of City Treasurer, 101 East 11<sup>th</sup> Street, Suite 100, Chattanooga, TN 37402.

(Ord. No. 12535, 8/9/11)

**Secs. 2-111 – 2-135. Reserved.**

**ARTICLE III. PERSONNEL ORDINANCE<sup>7</sup>**

DIVISION 1. GENERAL

**Sec. 2-136. Title.**

This Article shall be known as the “Personnel Ordinance.”  
(Code 1986, § 2-136; Ord. No. 11638, §1, 11-02-04)

**Sec. 2-137. General purpose.**

(a) It is the purpose of this division to establish a fair and uniform system of personnel administration for all employees of the city in order that the most effective services possible may be delivered to the citizens of the community.

(b) In order that this purpose may be accomplished, it shall be the policy of the city that:

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<sup>7</sup> **Cross reference**—City authorized to contribute to pension funds created and operated by labor organizations, §2-7; mayor authorized to prescribe rules and regulations for police department, §16-43; superintendent authorized to issue rules and regulations for administration of garbage and refuse chapter, §18-4; superintendent’s authority to make rules and regulations for identification of private garbage collectors, §18-67; minimum pension for teachers with 25 years service, §30-1; pension for personnel for whom city receives reimbursement, §30-2.

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- (1) Employment shall be based on merit and fitness, without regard to age, sex, race, religion, physical disability, national origin, protected veteran or military status or political affiliations, except where such category or class constitutes a bona fide occupational qualification.
- (2) Just and equitable incentives and conditions of employment shall be established and maintained.

(c) This division shall not apply to employees of the Electric Power Board, Chattanooga Housing Authority, Chattanooga-Hamilton County Regional Planning Commission, and joint agencies either created and/or funded by the city together with other governmental bodies; provided, however, that these joint agencies (the payrolls of which are processed and paid by the city, and the expenditures of such agencies are likewise processed and paid by the city) shall be governed by this division as to its personnel policies unless there is a contrary agreement between the city and one (1) or more other funding governmental entities.

(d) This article is controlling in regard to all city employment matters to the extent that this article is lawful under applicable state or federal laws. If any portion of this article is deemed unlawful under the City Charter or an applicable state or federal law, such portion shall be stricken and, if needed, replaced with the minimum standard necessary for the city to comply with its Charter or with the applicable state or federal law.  
(Code 1986, § 2-137; Ord. No. 11638, §1, 11-02-04)

### **Sec. 2-138. Definitions.**

*Absence without leave:* An absence from duty which was not authorized or approved.

*Administrative leave:* Temporary removal of an employee from their normal job duties with pay at the discretion of the Mayor or department head.

*Appeal:* Procedures as prescribed by this division for appealing disciplinary actions, employee evaluations or other individual grievances relative to some aspect of employment.

*Applicant:* An individual applying for employment, promotion or transfer within City government.

*Base pay:* Established salary or hourly rate of pay for employees.

*Class:* The group of positions having substantially similar duties and responsibilities.

*Classified services:* The classified service shall include positions in the City service except categories of positions listed under non-classified service.

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*Demotion:* A type of action which lowers the rank and/or pay of an employee of the City.

*Department:* The divisions of City government, as established by the Mayor and approved by the City Council

*Department head:* Supervisor of a major administrative department of City government.

*Disciplinary action:* Action which may be taken by a department head or appropriate supervisor against an employee when he/she is in violation of established rules or regulations of his/her department and/or the personnel administration sections of this Code. The types of disciplinary action are oral or written warnings and reprimands, suspension, demotion and dismissal. Employee suspensions, demotions and dismissals are subject to the approval of the department head or their designated deputy.

*Due process:* An established course for proceedings or other City activities to safeguard the legal rights of employees.

*Employee:* A person working in the service of the city government in one (1) of the following capacities:

- (1) Regular employee: An employee who works full time and who has received a regular appointment to a permanent position, excepting elected officials, after satisfactorily completing a probationary period.
- (2) Regular part-time employee: A regular employee who works less than full time on a regular basis.
- (3) Probationary employee: New probationary employees are classified as “at-will” employees subject to discharge without cause or due process. Employees promoted to a higher position are probationary in that position for six months and may be demoted back to their prior pay classification without cause or due process.” Probationary periods for new employees or promoted employees may be extended for an additional six months at the discretion of the department head or administrator.
- (4) Seasonal employee: An employee whose employment is limited to three (3) calendar months or less in any twelve (12) month period.
- (5) Temporary employee: An employee whose employment is for a specified period, not to exceed two (2) years.

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- (6) Intermediate employee: An employee occupying a position outside of the classification and pay system whose length of employment shall be in excess of two years based on their assignment or project. The actual length of employment shall be determined by the department head. Intermediate employees are ineligible for City benefits.

In addition, a person working in the service of the city government will also fall into one (1) of the two following categories:

- (1) Hourly employee: An employee whose wage is calculated and paid based upon the number of hours worked during a given work week.
- (2) Salaried employee: An employee whose wage is calculated and paid upon any basis other than an hourly basis. Unless otherwise provided, a salaried employee's wage shall be paid based upon a forty-hour work week.

*Examination:* One of the tools used for filling positions, which may include but are not limited to abilities, skills, performance, aptitude, preference and knowledge.

*Exempt employee:* An employee occupying a position ineligible for overtime pay pursuant to the Fair Labor Standards Act.

*Fitness for duty evaluation:* An assessment to determine if a current employee is or is not able to perform essential job functions because of physical, psychological or psychiatric conditions.

*Grievance:* An employee's formal registration of his/her feeling of differences, disagreements or disputes relative to some aspect of his/her employment.

*Gross Misconduct:* Act by an employee that is intentional, deliberate, wanton, willful and reckless or in deliberate indifference to established standards of conduct.

*Holiday:* One of the official dates which has been declared a holiday by the City.

*Hours worked:* Except as may be otherwise required, hours worked shall include all the time the employee is required to be on the employer's premises on duty, or at a prescribed workplace.

*Human Resources Director:* The individual appointed by the Mayor, subject to confirmation of the City Council, who is the head of the Human Resources Department.

*Lay-Off:* A separation from City service of an employee because of a shortage of funds, materials or work.

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*Leave of absence:* The excused absence with or without pay of an employee for a period of time during which the employee retains the right to return to his/her position.

*Maximum allowable hours:* For the purposes of the overtime pay and premium compensatory leave provisions of this division, maximum allowable hours worked shall be forty (40) during any established work week for all employees not engaged in fire protection or law enforcement activities. Department heads for employees engaged in fire protection or law enforcement activities shall establish work periods based on established 7(k) exemptions to minimize overtime.

*Non-classified service:* The non-classified service shall include the following categories of positions and shall mean that the persons employed to fill such positions shall be exempt from competitive service requirements:

- (1) Members of boards and commissions created by the City Council;
- (2) Volunteer personnel and personnel appointed to serve without pay;
- (3) Consultants and employees rendering a professional service;
- (4) Positions involving seasonal, temporary, intermediate or part-time employment;
- (5) Students, interns and college work-study employees;
- (6) Persons appointed to positions under the direct supervision of the Mayor, City Council or department heads. When persons filling these positions are newly hired upon a change of elected officials or department heads, such persons may be terminated without cause by any newly elected official or appointed department head, viz: mayor. (The foregoing provision shall be effective from and after the change in administration in April 1987.) If an elected official or department head appoints a person to a position under their direct supervision who is already employed by the City, then upon a change in administration or department head, such person who was already employed by the City shall not be terminated without cause, notice and hearing before the City Council as provided by the Charter, but may be moved to another position in the City government at a salary not less than the salary such person was being paid immediately prior to first being appointed.
- (7) Charter officials designated by the City Charter or such other positions as may be designated by resolution of the city council.

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*Non-exempt employee:* An employee occupying a position eligible for overtime pay pursuant to the Fair Labor Standards Act.

*Overtime pay:* Compensation for hours worked by non-exempt employees that are in excess of the maximum allowable hours worked.

*Personal leave:* Paid leave from an accrued balance approved by an employee's department head or supervisor.

*Premium compensatory leave time:* Paid leave granted to non-exempt employees earned at one and one-half times the hours worked in lieu of overtime pay to compensate employees for applicable overtime hours worked. Use of premium compensatory leave shall be approved by the employee's department head or supervisor.

*Probationary period:* The designated period of time after employment as a regular employee or after an employee is promoted in which the employee shall be required to demonstrate his/her fitness for the position by actual performance.

*Regular rate:* Unless otherwise provided, shall mean:

- (1) For all hourly employees, the normal hourly rate of pay.
- (2) For all salaried employees, the weekly rate shall first be determined. To determine the weekly rate, a biweekly salary is divided by two (2). The weekly rate shall then be divided by the total number of hours in which the salary is intended to compensate to give the regular rate.
- (3) For all employees in the Fire Department who are (i) engaged in fire protection and emergency response activities, (ii) members of the Fire and Police Pension Fund and (iii) normally scheduled to work a twenty-four hour shift, the employees annual salary divided by three thousand one hundred and twenty (3,120) hours or one hundred and twenty (120) hours per bi-weekly pay period. This is an equalized pay rate that shall be used for calculation of bi-weekly pay and for payment of accrued personal leave but shall not be used for the calculation of any overtime pay.

(Ord. No. 12470, § 1, 1-25-11)

*Reprimand:* A type of disciplinary action, oral or written, that denotes a less serious violation of regulations than suspension or dismissal, which becomes part of the employee's personnel record.

*Seniority:* Length of service with the City as a regular employee.

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*Special pay compensation:* Special pay as authorized by City Council.

*Standards of conduct:* Employees are to fulfill certain duties and expectations that support the values of the City and are expected to conduct themselves in a manner deserving of public trust.

*Supervisor:* An employee with the official task of overseeing the work of a person or a group of persons that requires the use of independent judgment.

*Work day:* Any one (1) shift in which a department is open for business or on which an employee is scheduled to work.

*Work period:* Fixed and regularly recurring number of days for employees engaged in fire protection or law enforcement activities.

*Work week:* Fixed and regularly recurring period of up to a maximum of forty (40) hours.  
(Code 1986, § 2-138; Ord. No. 9346, § IV, 3-27-90; Ord. No. 9654, § 16, 1-6-92; Ord. No. 10163, §§ 1-2, 1-17-95; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12470, § 1, 1-25-11; Ord. No. 12736, § 2, 7-2-13)

### **Sec. 2-139. Human Resources Department; director.**

The City Human Resources Department shall have the responsibility for carrying on a comprehensive personnel program for all city employees in keeping with the provisions of the City Charter and ordinances as they apply to personnel matters. The duties of the Human Resources Director, who shall be in charge of the department, shall be to:

- (1) Supervise the Human Resources Department operations;
- (2) Administer a comprehensive personnel program in keeping with the provisions of the City Charter and ordinances;
- (3) Work with each department of city government in setting necessary standards and requirements for the recruitment and selection of employees for both entry level and promotional classes;
- (4) Recruit qualified candidates for city employment and assist department heads in identifying qualified employees for promotion;
- (5) Assist the department heads in the screening and selection of candidates for employment and promotion;

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- (6) Establish and maintain employee improvement programs;
- (7) Maintain a classification plan;
- (8) Keep a list of job descriptions;
- (9) Maintain centralized personnel records; and

(10) Perform such other duties as may be assigned to him/her by the Mayor.

(Code 1986, § 2-140; Ord. No. 9654, § 17, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12736, § 2, 7-2-13)

**Cross references**--Inspection department § 2-621 et seq.; human serves department, § 2-641 et seq.; fire department; § 16-26 et seq.; police department, § 16-41 et seq.

### **Sec. 2-140. Employment process.**

The Human Resources Director shall have duties including the recruitment of qualified candidates for city employment and of assisting department heads in identifying qualified employees for hiring and promotional considerations. As provided by the City Charter, with the exception of laborers whose occupation requires no special skill or fitness, and temporary and seasonal employees, and those officials whose qualifications, nominations or elections are prescribed by the charter, all officers, agents and employees of the city shall be nominated, appointed or employed by the mayor. The Human Resources Director shall keep a record of qualified applicants for the various positions in the classification plan and, except as to non-classified service, the Human Resources Director shall certify the names of those determined by testing procedures to be the most qualified of such available applicants to the mayor.

(Code 1986, § 2-141; Ord. No. 9654, § 18, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12736, § 2, 7-2-13)

### **Sec. 2-141. Employees and appointed officials to be residents or legally qualified voters.**

Every person employed by the City shall either be registered to vote in the State of Tennessee or eligible to vote in the State of Tennessee except those employees employed and living outside of the State of Tennessee on January 18, 1990, shall be exempt from this provision. Employees are required to maintain their current home address and telephone number on record with the City.

The Mayor, at his/her discretion, may designate a residency requirement more narrowly defined based on the necessity of emergency operations.

(Code 1986, § 2-142; Ord. No. 9654, § 19, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

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DIVISION 2. QUALIFICATIONS

**Sec. 2-142. Basis for determining qualifications for employment and promotion.**

(a) Qualifications for employment or in-service promotions shall be based upon merit and fitness. The Human Resources Director shall work closely with department heads to prepare relevant examination components and procedures tailored to meet the specific needs of the departments and to ensure the employment of the best qualified applicants.

(b) Only regular classified service and permanent, part-time employees shall be eligible to apply for in-service promotional full-time positions.

(c) It shall be unlawful for one (1) person to be employed in more than one (1) position at the same time without specific prior approval of the Mayor.  
(Code 1986, § 2-143; Ord. No. 9654, §§ 13 & 20, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12736, § 2, 7-2-13)

**Sec. 2-143. Physical examinations, drug and alcohol testing.**

(a) Successful completion of post-offer employment physicals shall be required for all candidates for regular full-time classified service positions within City government prior to beginning work. In addition, regular part-time applicants in child or safety sensitive positions as defined by federal or state statutes shall be required to successfully complete all components of post-offer employment physicals prior to beginning work. The City shall be responsible for the expense of such physicals.

(b) In-service promotional candidates shall be required to successfully complete a post-offer physical, at the expense of the City, as required by federal or state regulations. This shall include any child or safety sensitive positions.

(c) After employment, participants of the Fire and Police Pension Fund shall be required to participate in periodic screening tests or examinations relating to heart and lung conditions, such as but not limited to cholesterol tests, blood pressure checks, pulmonary function tests, and blood tests. If any screening examination suggests the need for a more complete medical evaluation, the employee shall be scheduled for a fitness-for-duty examination by a physician selected by the city. The city may also order a fit-for-duty examination where other circumstances suggest that an employee may not be able to perform the essential functions of a fire fighter or police officer. Nothing herein shall preclude more comprehensive testing or examination of fire fighters or police officers subjected to particular occupational hazards, such as, but not limited to, members of the hazardous materials response team. The physician shall furnish to the department head a medical report indicating whether the employee passed or failed the required components of the position with a copy to

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the employee. All screening tests and medical examination reports shall be maintained as a confidential record based on applicable federal and state regulations.

(d) The Human Resources Department shall promulgate written policies and procedures prior to implementation of the provisions of this section.

(e) If, in the opinion of the supervisor, an employee having permanent status is incapacitated for work on account of illness or injury, such employee may be required to submit to a physical and/or psychological examination by a physician or psychologist, as the case may be, named by the city at the expense of the city.

(f) The city or employees shall have the right to request a second opinion from a qualified physician and/or psychologist, selected by the city or employee, if the original diagnosis is questionable. The city shall be responsible for the expense of the second opinion.

(Code 1986, § 2-143 (in part) & 2-172; Ord. No. 9654, §§ 13, 20, & 24, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12736, § 2, 7-2-13)

### **Sec. 2-144. Probationary period.**

All persons employed or promoted to permanent positions shall serve a probationary period of six (6) months, except that persons employed in fire protection or law enforcement positions in the Departments of Police and Fire shall serve a probationary period of twelve (12) months. Before the end of the probationary period, the supervisor shall indicate the following in writing to the department head:

- (1) That he/she discussed with the employee the employee's accomplishments, failures, strengths and weaknesses;
- (2) Whether the employee is performing satisfactory work;
- (3) Whether the employee should be retained in the position;
- (4) Whether the employee, if a new employee, should be discharged;
- (5) Whether the employee, if on probation following promotion, should be reinstated in his/her former class; or
- (6) Whether the employee should have his/her probationary period extended a given number of months not to exceed an additional six (6) months.
- (7) Probationary employees shall not be entitled to any due process hearing with respect to suspension or termination.

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(Code 1986, § 2-144; Ord. No. 10366; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-145. Training.**

(a) It shall be the policy of the City to provide basic training for all employees to the extent that it is necessary to successfully complete all components of their respective positions.

(b) It shall be the policy of the City to provide comprehensive in-service training for all employees as necessary in order to help them provide the most effective services possible to the citizens of the City.

(Code 1986, §§ 2-194 & 2-195; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

## DIVISION 3. EVALUATION PROCESS

### **Sec. 2-146. Employee evaluation generally.**

(a) Probationary newly hired or promoted employees of the City shall receive periodic evaluations at the mid-point and at the end of their respective probationary periods.

(b) Supervisors shall evaluate the attendance and work performance of their employees on a periodic basis (periodic basis determined by department head). Supervisors shall review with employees any attendance or work performance issues that need improvement. Written documentation shall be placed in the respective employee department and Personnel file with a copy provided to the employee of any issues.

(Code 1986, § 2-196; Ord. No. 9539, § 1, 4-16-91; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-147. Use of employee evaluation.**

Employee evaluations may be used to assist in the awarding of merit pay increases, to assist in choosing employees for promotion, to determine lay-off implementation when two (2) or more employees are basically qualified to fill one (1) position; to be considered in disciplinary action which may be assessed against employees; and to be considered as a basis for termination of those employees who receive unsatisfactory evaluations and have not improved their performance.

(Code 1986, § 2-197; Ord. No. 9539, § 1, 4-16-91; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

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### **Sec. 2-148. Employee to review evaluation and grievance procedure.**

Any employee having concerns over the content of his/her evaluation shall contact his/her supervisor or department head in accordance with the grievance procedures set forth in the Chattanooga City Code.

(Code 1986, § 2-198; Ord. No. 9539, § 1, 4-16-91; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

## DIVISION 4. BENEFITS

### **Sec. 2-149. Medical benefits for certain employees.**

(a) The spouse and dependent children of an employee shall be entitled to continued health care coverage, not to exceed thirty-six (36) months, if they would otherwise lose coverage because of:

- (1) the employee's death;
- (2) the employee's divorce or legal separation;
- (3) a dependent ceasing to be eligible for dependent coverage; or
- (4) a Medicare ineligible spouse.

(b) Employees and their eligible dependents shall be entitled to continued health care coverage, not to exceed eighteen (18) months, if the employee loses coverage because of:

- (1) reduction of hours worked or is discharged for reason other than cause;
- (2) the employee voluntarily quits or resigns (but this does not include retirement); and
- (3) layoffs for economic reasons causing the employee to lose his/her job.

(c) An individual may elect health care coverage for less than the entire thirty-six (36) months (or eighteen (18) months).

(d) Any election of continued health care coverage by an employee may be made retroactively to the date of the event enabling such person or dependent to be entitled to the rights granted by this section, as long as such election is made within the time limits established in subsection (f).

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(e) Whenever an employee dies, is divorced or legally separated, or dependent child ceases to be eligible for dependent coverage, or loses coverage because of reduction of work hours or is discharged or voluntarily quits or resigns (this does not include retirement), or is laid-off for economic reasons, the Human Resources Director of the city shall notify the medical insurance program administrator within fifteen (15) days. Within seven (7) days of receipt of such notice from the Human Resources Director, the administrator shall notify any eligible employee or eligible dependent individual of his/her right to elect continued health care coverage pursuant to this section. The administrator shall provide a separate notice to any dependent child not residing with the eligible employee or the spouse of the eligible employee. Such notice by the administrator shall be given in writing by mail to the last known address of the eligible employee or eligible dependent individual.

(f) A person entitled to the coverage referred to in this section shall pay one hundred two percent (102%) of a reasonable estimate calculated on an actuarial basis of the cost of providing coverage for similarly situated individuals during the upcoming plan year which shall begin on the first day of July of each year. Prior to the first day of July in each year, the city council shall establish by resolution the premiums to be paid during the next plan year beginning on the first day of July of that year.

All premiums shall be paid prospectively. Individuals eligible for coverage continuation must elect such continuation within sixty (60) days of a qualifying event. In the event the election to continue health care coverage is made retroactively, such person shall be given forty-five (45) days within which to bring his/her premium payments current and continue such premium payments on a monthly basis thereafter. In the event a premium payment is not received within thirty (30) days of its monthly due date, coverage shall terminate automatically without further notice to such person. Notwithstanding the provisions of the foregoing sentence, the administrator shall cause notice to be given by mail to any participant whose coverage under the plan has been terminated for nonpayment of premium or for any other reason.

(g) The coverage of any participant hereunder shall terminate immediately upon the occurrence of any of the following:

- (1) The city shall cease altogether to provide any group health plan for any employees;
- (2) The premium is not paid within thirty (30) days of its due date;
- (3) The former employee, spouse or dependent child becomes covered by Medicare or becomes covered as an employee under any other group health plan; or

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- (4) A former spouse remarries and becomes covered under another group health plan.

(h) The administrator shall notify by mail any person of termination of his/her coverage under the plan. Upon termination of coverage under the plan, any premium paid in advance shall be refunded on a pro rata basis for the period of time for which the premium had been paid but for which coverage has been terminated.

(i) Nothing herein is intended to amend or modify section 2-150 relative to hospitalization and other benefits after retirement nor should it be so construed. (Code 1986, § 2-175.1; Ord. No. 9366, 5-15-90; Ord. No. 9570, § 1, 7-2-91; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-150. Hospitalization and other benefits after retirement.<sup>8</sup>**

(a) Hereafter, any official or employee of the city who retires or otherwise separates from employment by the City, as the case may be, (referred to hereinafter as “retirement” or “retiree” or “former employee”):

- (1) After twenty-five (25) years of employment with and/or under the City; or
- (2) Is at least sixty-two (62) years of age and who separates after at least ten (10) consecutive years of service immediately preceding said separation; or
- (3) Is an elected official separating with twenty-five (25) years of credited service as defined for pension purposes under the general pension plan, which twenty-five (25) years may include any other service as a city employee in the classified or non-classified service; or
- (4) Is an elected official sixty-two (62) years of age or more separating with ten (10) years of credited service as defined for pension purposes under the general pension plan preceding said separation; or
- (5) Retires on a disability pension under any pension plan operated by the City, or with which the City has a participation agreement, because of a job related disability regardless of the number of years of credited service; or
- (6) Retires on a disability pension plan under any pension plan operated by the City, or with which the City has a participation agreement, because of a non-job-related disability if the official or employee has at least ten (10) years of credited service but less than twenty-five (25) years of credited service

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<sup>8</sup> **Editor’s note**—Ordinance No. 11159, Section 1, adopted July 10, 2001, provides that all persons who retire from City employment on or before January 2, 2002, shall continue to be governed by the terms of Section 2-175 as it existed immediately prior to the effective date of said Ordinance.

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shall have the right and be entitled to continue medical, hospitalization and prescription drug coverage (referred to hereinafter as “health care benefits”) then in effect for regular city officials and employees by authorizing a deduction from his/her monthly pension payment equal to one and one-half (1.5) times that paid by regular city officials and employees for such health care benefits or he/she shall pay an amount in advance to the City through the employee benefits administrator, on a monthly basis equal to one and one-half (1.5) times the amount payable from time to time by city officials and employees for the same health care benefits. If a retiree desires “family plan” health care benefits for such person’s spouse, and/or then-eligible children, then such retiree shall authorize a deduction from his/her monthly pension payment equal to one and one-half (1.5) times the amount paid by regular city officials and employees for such health care benefits or he/ she will pay one and one-half (1.5) times the amount in advance to the City through the employee benefits administrator. The medical coverage provided at any point in time hereunder for an eligible retiree shall be the same as is provided at such point in time for officials and employees regularly working for the City. However, if any person retires under subsection (a)(2), or (a)(4), or (a)(6) above, said person shall authorize a deduction from his or her monthly pension payment or shall pay in advance to the City through the administrator on a monthly basis an amount which shall be calculated as follows:

Subtract from the total monthly premium an amount equal to the product of the number of years of service multiplied by the quotient of the premium less the retiree’s contribution divided by 25.

Deduction = TMP - (YS) (TMP Contribution / 25)

TMP = Total Monthly Premium

YS = Years of Service

Contribution = Retiree’s Contribution

The premium shall be calculated by the employee benefits administrator, and such figure for individual and family health care benefits may be changed from time to time.

The option to continue health care benefits shall be offered to officials and employees on a one-time basis. The decision to continue such health care benefits shall be filed in writing by the end of the last day of regular employment.

(b) If an official or employee who is eligible to retire with health insurance benefits but has not yet done so, should die leaving a spouse or a dependent orphan child or children, who meets the eligibility requirements of the insurance plan currently in effect, then either such surviving spouse or such surviving dependent orphan child or children shall be entitled to continue such health care benefits, including dental benefits (if the former employee had dental benefits at the time of death), for the same cost as would have been

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available to the deceased spouse/ parent. The right to continue such benefits shall expire when and if said spouse should remarry; or when said dependent orphan child no longer meets the insurance plan's eligibility requirements. If a spouse of a deceased official or employee should subsequently die leaving a dependent child or children, meeting the aforesaid criteria, then such dependent child or children may continue such benefits as said spouse had until said child shall no longer be dependent, as defined by the insurance plan currently in effect. The foregoing provisions in only this subsection shall be given retroactive effect. In any event, the surviving spouse and/or dependent children of a deceased employee or official shall continue to be covered for purposes of health care benefits, including dental benefits (if the former employee had dental benefits at the time of death) for a period of thirty-one (31) days after such employee or official deceased. If any surviving spouse and/or dependent child of an employee or official who is killed in the line of duty or who dies as a result of a service-connected disability or disease elects to continue such health care benefits, such person shall within thirty-one (31) days make application for such health care benefits at the same cost as the spouse or dependent children of those retiring under subsection (a)(1) hereof.

(c) If any retired official or employee, or any spouse thereof obtains employment elsewhere after retirement and as a result is eligible for the health care benefits, then such health care benefit plan shall be considered as affording the primary coverage and the health care benefits afforded by the City shall be considered as secondary coverage. If a spouse has family health care benefits elsewhere, then such coverage shall be primary as to said spouse and dependents. Every regular official or employee, or retired official or employee, shall apply for all Medicare benefits available, including, but not limited to, Part A, Part B and any prescription drug benefits, that may become available when eligible to do so. The health care benefits afforded by the City to regularly employed or retired officials or employees, and/or any such health care coverage afforded to the spouse thereof shall be in accordance with the order of benefit determination required by federal law for those having Medicare coverage regardless of whether or not such former official or employee, and/or spouse, applies for Medicare coverage. Failure to apply for health care coverage after employment elsewhere by a retiree or spouse as set forth above, or for all available Medicare coverage when eligible, shall result in termination of post-retirement health care benefits.

(d) If any retired official or employee desires to continue dental insurance coverage, then he/she shall authorize the necessary deduction from his/her pension or pay to the City through the medical insurance program administrator in advance on a monthly basis the premium that may be charged from time to time to regular city officials or employees.

(e) After January 2, 2002, the foregoing provisions for health care costs for any person(s) may be amended or repealed so as to affect rates.

(f) Employees eligible for post-retirement medical benefits pursuant to subsection (a) as of July 1, 2010, and firefighters or police officers hired on or before March 31, 1986 otherwise eligible to receive Medicare benefits based upon City employment shall continue

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to be eligible for the benefits set-forth in subsections (a) through (e). (Ord. No. 12411, § 1, 7-06-10; Ord. No. 12441, § 1, 11-16-10)

(g) Employees not eligible for post-retirement medical benefits pursuant to subsection (a) as of July 1, 2010, shall be eligible for post-retirement medical benefits as provided in and subject to the limitations of subsections (a) through (e) until they reach eligibility for Medicare. The surviving spouses of such retirees may continue to receive medical benefits until they become eligible for Medicare or age 65, whichever shall first occur, and surviving dependent children so long as they remain eligible under the insurance plan then in effect as provided in and subject to the limitations of sub-sections (a) through (e). (Ord. No. 12411, § 1, 7-06-10)

(h) Post-retirement medical benefits provided in this section shall be subject to continuing appropriations in the annual budget ordinances. No employee, retiree, spouse or dependent shall have any vested right in any such benefit. (Ord. No. 12411, § 1, 7-06-10) (Code 1986, § 2-175; Ord. No. 9588, § 1, 7-30-91; Ord. No. 9654, §§ 25-26, 1-6-92; Ord. No. 11071, § 1, 9-19-00; Ord. No. 11159, §§ 1-2, 7-10-01; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12441, § 1, 11-16-10)

### **Secs. 2-151 – 2-153. Repealed Ordinance No. 12781 by referendum of citizens on August 7, 2014.**

(Ord. No. 11638, §1, 11-02-04; Ord. No. 12413, § 1, 7-13-10)

## DIVISION 5. ADMINISTRATIVE LEAVE AND OVERTIME

### **Sec. 2-154. Administrative leave.**

Administrative leave is the temporary removal of an employee with pay from their normal job duties at the discretion of their department head. The City recognizes the following types of administrative leave:

- (a) Employees working in fire protection or law enforcement activities may be temporarily removed from duty at the discretion of the respective chiefs for a serious, documented, work-related incident, such as an incident involving a shooting or some other post-traumatic event.
- (b) Any department head may place any employee on administrative leave for up to a maximum of five (5) business days for the sole purpose of collecting information to determine the facts to support a disciplinary action against an employee. Administrative leave is necessitated by allegations of misconduct against an employee, pending mandatory alcohol and drug screen results or any other action that shall result in the best business practice of removing an employee from the work site.

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- (c) From time to time, the Mayor, at his/her discretion, may close certain offices, dismiss non-essential personnel and authorize the use of administrative leave.
- (d) In no event shall the use of administrative leave exceed a maximum of thirty (30) calendar days unless authorized by the Mayor.  
(Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-155. Overtime and Premium Compensatory Leave.**

(a) Whenever any job classification is created or modified, which the Human Resources Director believes is exempt from Section 7 of the Fair Labor Standards Act, the Human Resources Director shall forward the job description of such classification to the Office of the City Attorney, the Mayor, City Finance Office and the City Council.

(b) Employees affected by a change in their classification from non-exempt to exempt status (or vice-versa) shall be notified by their department head of the change in their status and any overtime pay provisions within thirty (30) days as provided by this Chapter. Any premium compensatory leave earned as a non-exempt employee shall either be used prior becoming an exempt employee or the balance paid as overtime pay.

(c) A supervisor may require an employee to work at any time when circumstances require work beyond the maximum allowable hours. All employees shall be subject to duty and call in case of emergency.

(d) The office of the City Finance Officer shall monitor overtime records and report at each regular meeting of the City Council the amount of overtime authorized and/or paid by each department, agency or branch of government since the date of the last regular meeting of the City Council.

(e) Each department head shall be responsible for establishing work schedules and work periods for employees within his/ her department so as to minimize the amount of overtime pay and premium compensatory time. The Fire Chief and Police Chief shall establish written policies on overtime pay, premium compensatory leave and pay calculations for employees engaged in fire protection or law enforcement activities. Such policies shall comply with the provisions of the Fair Labor Standards Act.

(f) Non-exempt employees shall be able to elect to receive premium compensatory leave in lieu of overtime pay. No overtime compensation or premium compensatory time shall be paid or granted by the City in any form except as provided herein or as required by the Fair Labor Standards Act. All overtime compensation or premium compensatory leave shall be paid or earned at one and one-half times the employee's regular rate for hours worked over the established workweek or work period.

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(g) Overtime pay or premium compensatory leave shall be awarded to an employee in quarter hour increments after working their standard workweek or work period.

(h) Any paid time off shall not be used to calculate the total hours worked in determining overtime pay or premium compensatory leave during the workweek or work period.

(i) Employees eligible for overtime pay or premium compensatory leave shall only work beyond the maximum allowable hours when it is authorized by a department head or supervisor. Any employee who fails to obtain authorization for working beyond the maximum allowable hours shall be subject to disciplinary action. However, no department head or supervisor shall deny overtime pay or premium compensatory leave for work performed beyond the maximum hours allowable that has already been performed.

(j) The provisions of this paragraph shall apply to premium compensatory leave for employees in regular, non-exempt positions:

- (1) Non-exempt employees shall be required to work 40 hours during the established workweek prior to eligibility for overtime pay or premium compensatory leave.
- (2) Payment for premium compensatory time shall be made at the rate earned by the non-exempt employee at the point the employee utilizes the premium compensatory time. Upon termination of employment, a non-exempt employee shall be paid for unused premium compensatory time.
- (3) A non-exempt employee who has accrued premium compensatory time shall be permitted to use such time off within a reasonable period after making a request to use such time, unless such use would unduly disrupt the operations of his/her department and not just cause mere inconvenience.
- (4) A supervisor can require an employee to use premium compensatory leave when the workload is light.
- (5) The maximum accrual of premium compensatory leave for non-exempt employees in this paragraph is 240 hours.
- (6) Accrued premium compensatory leave shall not be transferable to another employee.

(k) Overtime pay and premium compensatory leave provisions for certain employees engaged in fire protection or law enforcement activities are as follows:

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- (1) Law enforcement personnel. Certain sworn personnel engaged in law enforcement activities shall receive overtime compensation as follows:
  - (A) Non-exempt Police personnel engaged in law enforcement shall receive overtime pay or premium compensatory leave for all hours worked in excess of their normally scheduled work period.
  - (B) Notwithstanding any other provision of this chapter, part-time law enforcement personnel shall be compensated for all hours worked in excess of the maximum allowable hours in a work period. The work period for part-time law enforcement personnel shall be the same as for regular, full-time law enforcement personnel.
- (2) Fire protection personnel. Non-exempt Fire personnel engaged in fire protection activities shall receive overtime pay for all hours in excess of their established work period set forth by the Fair Labor Standards Act 7(k) exemption.
- (3) Court appearances for fire and law enforcement personnel. Court appearances which arise out of the employee's duties as a City employee shall be used in calculating whether the above persons exceed such hours per work period.
- (4) Non-exempt employees engaged in "seasonal," "public safety," or "emergency response" activities as defined by 29 U.S.C. § 207(o)(3)(A) and 29 C.F.R. § 553.24 may accrue up to 480 hours of premium compensatory leave.
  - (l) Exempt employees shall not be eligible to receive overtime pay or compensatory leave.

(m) Notwithstanding the provisions in subsection (j), employees in regular non-exempt provisions may receive overtime pay or premium compensatory leave if they are required to work on one of the City recognized holidays set forth in Section 2-160. This subsection shall not apply to sworn personnel or employees assigned to a 24/7 work schedule or more than a five (5) day work schedule.

(Code 1986, § 2-152; Ord. No. 9654, §§ 21-23, 1-6-92; Ord. No. 10163, § 5, 1-17-95; Ord. No. 10302, § 1, 10-10-95; Ord. No. 10584, § 1, 6-10-97; Ord. No. 10695, § 1, 4-28-98; Ord. No. 10719, § 1, 7-7-98; Ord. No. 11638, §1, 11-02-04; Ord. No. 11753, § 1, 10-22-05; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12423, 8-17-2010; Ord. No. 12672, § 1, 12-4-12)

**Editor's note--**Ordinance No. 12423, enacted August 17, 2010, revised the application date of any changes to this section by Ordinance No. 12414 (7-20-10) from July 2, 2010 to August 27, 2010.

## DIVISION 6. LEAVE/ABSENCES

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### **Sec. 2-156. Charging absences against leave and use of leave.**

(a) Periods of absence from duty shall be charged in multiples of 15 minute increments against the employee's leave record. Absences through 7 minutes and 59 seconds or less shall be rounded back to the previous quarter hour and employees will not be charged for any leave. Absences of 8 up to 15 minutes within the quarter hour shall result in a deduction of 15 minutes from the employee's applicable leave balance or pay.

(b) Premium compensatory leave and personal leave shall be used prior to leave without pay.

(Code 1986, § 2-146; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-157. Extended leave periods to be stipulated-timing of request.**

In order that the status of an employee on leave may at any time be determined, leaves of absence with or without pay shall be for a definite stipulated period of time, when possible, or as required under the Family and Medical Leave Act. Employees applying for a leave of absence with pay shall present the request in writing to their department head for review a minimum of two (2) weeks in advance of such absence. Employees shall apply for a leave of absence without pay, including Family and Medical Leave, prior to the commencement of leave without pay if such employee is aware of the necessity for the leave. In the event an employee is unable to request an anticipated extended leave of absence without pay, including Family and Medical Leave, within twenty-four (24) hours of the commencement of leave without pay, the department head shall place the employee on the applicable leave and forward applicable written documentation to such employee.

(Code 1986, § 2-147; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-158. Return to duty after leave.**

At the expiration of any leave of absence, an employee reporting for duty shall thereby be returned to the position filled by him/her when such leave was granted, except as otherwise provided in sections dealing with unauthorized absences or leaves of absence without pay. Absences in excess of 40 hours (60 hours for Fire employees engaged in fire protection activities) due to documented medical reasons, whether paid or unpaid, will require a return to work release from the applicable medical professional.

(Code 1986, § 2-148; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-159. Leave authorization.**

Department heads and supervisors have authority to approve family, medical, personal, court, meeting and military leave with pay in conformance with the regulations hereinabove set forth. All other leaves of absence, for whatever purposes, whether with pay or without pay, must be authorized by the mayor, except as otherwise expressly provided.

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(Code 1986, § 2-174; Ord. No. 9346, § VIII, 3-27-90; Ord. No. 9654, § 13, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-160. Holiday Leave.**

The following shall be recognized holidays: New Year's Day; Dr. Martin Luther King, Jr.'s Birthday; Good Friday; Memorial Day; July 4; Labor Day; Thanksgiving Day; the Friday following Thanksgiving Day; Christmas Day. When any of these days falls on a Saturday, then the preceding day (Friday) will be observed as a holiday. When any of these days falls on a Sunday, the next day (Monday) will be observed as a holiday.

Memorial Day shall be observed on the Monday which is nationally recognized. Other special holidays may be designated by the city council by resolution.

Employees in the Fire Department who are (i) engaged in fire protection and emergency response activities, (ii) members of the Fire and Police Pension Fund and (iii) normally scheduled to work a twenty-four hour shift, shall not take the recognized holidays and shall be required to take holidays as required by the Fire Chief, including the requirement that any firefighter working a twenty-four hour shift must take twelve (12) hours of personal leave in each twenty seven (27) day scheduling period.

(Code 1986, § 2-149; Ord. No. 9383, § 1, 5-29-90; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12470, § 2, 1-25-11)

### **Sec. 2-161. Personal leave.**

- (a)(1) Personal leave shall be granted to regular full-time (permanent) employees, probationary employees and executive, special and administrative assistants in lieu of sick leave, annual leave, City Hall closure or leave time granted in the City Charter.
- (4) When feasible, every city employee shall be given an approved holiday as set out in Section 2-160 of this Code; any employee who does not work on such a holiday shall be charged applicable hours of personal leave. An employee shall not be charged personal leave when an approved holiday falls on his or her regularly scheduled day off. When an employee must work on one of such holidays, he or she shall not be charged with the use of personal leave. In all cases, department heads shall attempt to arrange working schedules to permit employees to use personal leave on holidays. The provisions of this subsection (a) (2) shall not apply per se to any operation conducted by personnel of the city that requires work on more than five days per week.
- (b)(1) Effective July 2, 2010, employees in the Fire Department who are (i) engaged in fire protection and emergency response activities, (ii) members of the Fire and Police Pension Fund and (iii) normally scheduled to work a twenty-four

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hour shift, shall earn personal leave at a rate of 17.08 hours per two-week accrual period (equivalent to the established biweekly payroll period) during the first ten complete years of continuous service. This calculation of personal leave is based upon an equalized pay system of one hundred and twenty (120) hours per bi-weekly pay period, the removal of any “Kelly Days” previously provided and the requirement for these employees to take twelve (12) hours of mandatory personal leave every twenty-seven (27) day work period.

Beginning with the first accrual period of the eleventh year of continuous service, such employees shall earn personal leave at a rate of 19.85 hours per two-week accrual period. Beginning with the first accrual period of the eighteenth year of continuous service, such employees shall earn personal leave at a rate of 22.15 hours per two-week accrual period.

<b>YEARS OF SERVICE</b>	<b>0-10</b>	<b>11-17</b>	<b>18+</b>
Hours accrued biweekly	17.08	19.85	22.15
Hours accrued annually	444	516	576
Days accrued annually	37	43	48

- (2) Personal leave shall be earned by sworn firefighting personnel who are not regularly scheduled to work a twenty-four hour shift and by sworn police personnel at a rate of 11.08 hours per two-week accrual period (equivalent to the established biweekly payroll period) during the first ten years of continuous service. Beginning with the first accrual period of the eleventh year of continuous service and with each year of continuous service thereafter, said employees shall earn personal leave at the rate of 12.62 hours per two-week accrual period of employment. Beginning with the first accrual period of the eighteenth year of continuous service and with each year of continuous service thereafter, said employees shall earn personal leave at a rate of 13.85 hours per two-week accrual period of employment.

<b>YEARS OF SERVICE</b>	<b>0-10</b>	<b>11-17</b>	<b>18+</b>
Hours accrued biweekly	11.08	12.62	13.85

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Hours accrued annually	288	328	360
Days accrued annually	36	41	45

- (5) Personal leave shall be earned by all other regular and probationary employees at a rate of 11.08 hours per two-week accrual period (equivalent to the established biweekly payroll period) during the first ten years of continuous service. Beginning with the first accrual period of the eleventh year of continuous service and with each year of continuous service thereafter, said regular and probationary employees shall earn personal leave at the rate of 12.31 hours per two-week accrual period of employment. Beginning with the first accrual period of the eighteenth year of continuous service and with each year of continuous service thereafter, said regular and probationary employees shall earn personal leave at a rate of 13.54 hours per two-week accrual period of employment. Regular and probationary employees who are paid on a weekly basis shall earn and accrue personal leave on a biweekly basis in the same manner as employees who are paid on a biweekly basis.

<b>YEARS OF SERVICE</b>	<b>0-10</b>	<b>11-17</b>	<b>18+</b>
Hours accrued biweekly	11.08	12.31	13.54
Hours accrued annually	288	320	352
Days accrued annually	36	40	44

- (6) The Fire Department schedule for employees engaged in fire protection activities and shall be established by the head of the Department of Fire so as to minimize compensatory leave and overtime pay to the extent possible. This shall include the ability to require employees scheduled for more than two hundred and four (204) hours in any twenty-seven day work period to take personal leave to reduce the employee's schedule to two hundred and four (204) hours during any twenty-seven (27) day period. A twenty-four hour shift on duty shall count as two days worked and twenty-four hours off duty shall count as two days off for the purposes of this subsection. The Fire Department schedule for employees engaged in fire protection activities is established to be a twenty-seven-day work period during which each shift shall be scheduled to work nine twenty-four-hour shifts.
- (7) All other employees in the Departments of Fire and Police not governed by the provisions in subsection (b) (1) or (2) above shall be governed by the provisions of subsection (b) (3) above.

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(c) New hires, rehires and persons reinstated shall earn personal within the accrual period of employment if they receive pay for a minimum of one-half (equivalent to the standard hours per week) of the applicable period. Personal leave shall also be earned by an employee who is on a leave of absence with pay, but shall not be earned by an employee who has leave without pay or is suspended without pay for more than one-half (hours in excess of the standard hours per week) of the applicable accrual period. Earned personal leave shall be accumulated subject to the following limitations:

- (1) Personal leave shall be earned before it is taken and shall be scheduled so as to meet the operational requirements of the City and, insofar as possible, the preference of the employee.
- (2) The end of the personal leave year shall be defined as the first accrual period in March that includes the last calendar day in February. The beginning of the subsequent personal leave year shall commence the day after the first leave accrual is added in March. Each employee shall be eligible to carry over from one leave year to the next leave year not more than ten (10) days (days equivalent to standard hours for a two week period) of personal leave in addition to his/her personal leave days carried over from the previous leave year. Such carry over shall also be limited by the provisions of subsection (c) (7).
- (3) Personal leave shall not be taken in excess of twenty-five consecutive working days if such would necessitate the hiring of another person to perform the work of the person seeking leave. Personal leave for more than twenty-five consecutive working days must be approved in advance by the employee's department head.
- (4) Except upon separation from employment subject to the provisions of Section 2-180(c) of this Code, accumulated personal leave shall not be paid in cash in lieu of time off unless by resolution of the governing body of the city it is so authorized.
- (5) All employees shall provide no less than twenty-four hours notice to their respective departments of their intention to take personal leave; in cases of a verified emergency or death in the immediate family of the employee, an employee shall notify his/her supervisor of the emergency or death as soon as practicable. Any employee who fails to give the required notice may be subject to disciplinary action. In any situation when a personal leave day is taken for personal illness of the employee or a non-job-related injury, the employee shall notify his/her supervisor no less than fifteen (15) minutes prior to the commencement of his/her working day. Additionally, the employee

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must keep his/her supervisor informed of his/her condition and (2) furnish a doctor's statement if requested by the supervisor. Failure to furnish a doctor's statement to justify the employee's use of personal leave when requested or failure to provide a doctor's statement clearing an employee to return to work shall be cause for disciplinary action.

- (6) Employees shall not accrue personal leave while receiving payments under the injured on duty program. Notwithstanding the foregoing, any employee who is on an approved injured on duty leave during any leave year may not carry over to the next leave year more than ten days of personal leave in addition to the number of days of personal leave that such employee had carried over from the previous leave year. Such carry over shall also be limited by the provisions of subsection (c)(7) even if the employee is receiving injured-on-duty pay, at the end of the leave year.
- (7) No employee may carry over more than 150 days of personal leave to calendar year 1993 or any subsequent calendar year. Provided further, that no employee employed after March 27, 1990, may carry forward to calendar year 1994 or any subsequent leave year more than 100 days of personal leave.
- (8) Any personal leave which is required to be taken by this Code, but which is not used by an employee, shall be deducted from such employee's accumulated personal leave at the end of the respective leave year in which such leave was required to be taken.

(d) Any employee who is subject to the provisions of subsection (b)(1) above who transfers to any job position with the City of Chattanooga which is subject to the provisions of subsection (b)(2) or (3) shall automatically have one-third of his or her hours of accrued personal leave subtracted. Any employee subject to the provisions of subsection (b)(2) or (3) above who transfers to any job position with the City of Chattanooga which is subject to the provisions of subsection (b)(1) above shall automatically have fifty percent of his or her hours of accrued personal leave added to his or her accrued personal leave. Any employee who is subject to the provisions of subsection (b)(1), (b)(2), or (b)(3) above and who transfers to an agency previously exempted from this Division 6 shall be subject to the operating agreement between the City and the respective agency. An employee transferring from an agency with a leave system different from this code shall not transfer any accrued leave. For the purposes of accruing future personal leave, the original employment date shall be used.

(e) Personal leave shall accumulate as aforesaid and shall be taken subject to the discretion of the heads of the respective departments. Personal leave shall be granted at the request of the employee within a reasonable time for the request unless the operations of the department would be unduly disrupted by the employee's absence.

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(f) Accrued personal leave shall not be counted as part of the employee's "credited service" for pension purposes under the General Pension Plan. At the time of payment for personal leave, accrued personal leave shall not have deductions made for the General Pension Plan (Fire and Police Pension Fund participants also excluded – contributions only on base salary). Payment of personal leave shall not exceed the annual maximum payable under Section 2-161(c) (7).

(g) Buy-back of personal leave. Upon application of an employee, the City of Chattanooga may purchase back from its employees personal leave which they have accrued, but only under the following circumstances and conditions which must be agreed to by each employee seeking to sell the leave:

- (1) No more than sixty (60) days of leave will be purchased from any employee during his/her employment with the City;
- (2) The City will pay to the employee seventy percent (70%) of the employee's daily salary for each day of leave sold back to the City by the employee;
- (3) The employee agrees in writing that the cap on the amount of days that employee is entitled to accumulate over his/her career will be reduced on a day-for-day basis for the number of days the City is purchasing;
- (4) The City will not purchase any days which would lower the employee's total accumulated leave below thirty (30) days unless authorized in writing by the Mayor;
- (5) The practice of buying back leave will be subject to the availability of funds to do so at the time of the request, the determination of which availability will be at the sole discretion of the city administration; and
- (6) Funds realized by employees from the sale of leave will be excluded from pension-eligible earnings and will be treated as earned income.

(Formerly Sec. 2-151) (Ord. No. 9346, § II, 3-27-90; Ord. No. 9978, § 1, 11-16-93; Ord. No. 9979, § 1, 11-16-93; Ord. No. 10163, §§ 3-4, 1-17-95; Ord. No. 10281, § 1, 8-22-95; Ord. No. 11638, §1, 11-02-04; Ord. No. 12217, § 1, 3-10-09; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12441, § 2, 11-16-10; Ord. No. 12470, § 3, 1-25-11)

### **Sec. 2-162. Personal leave transfer program.**

There is hereby created and established a personal leave transfer program to permit the transfer of personal leave from one or more employees to another employee subject to the following conditions:

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- (a) Employees must establish a formal leave status (Family and Medical Leave or Leave of Absence without Pay) to be eligible to receive transferred personal leave. Qualifying conditions include the birth of a child, or placement of a child with the employee for adoption or foster care; the employee's serious injury or illness; to care for a member of the employee's immediate family member with a serious injury or illness or qualifying exigency for military family leave. The department head shall determine whether or not the employee meets all of the conditions set forth in this section and either approve or disapprove the employee's participation in the program.
- (b) Eligible employees shall be eligible to receive transferred personal leave while on a leave without pay status for a maximum of six months unless extended by written notice of the Mayor.
- (c) Prior to being eligible to receive a transfer of personal leave from other employees, the employee shall be required to exhaust all personal leave hours and to have gone 40 hours (60 hours for Fire personnel engaged in fire protection activities) without pay. This section shall only apply to the original absence. The leave without pay stipulation shall be waived for any future absences that are verified by the department head to be related to the original occurrence.
- (d) The contribution of leave shall be prorated to reflect the difference in pay between the donor and donee.
- (e) Employees who donate personal leave, other than members of the immediate family, must maintain a minimum balance of 240 hours (360 hours for Fire personnel engaged in fire protection activities) of personal leave.
- (f) The donor employee shall authorize the donation of personal leave to the donee employee upon forms provided by the Human Resources Department, and except for members of the immediate family, may authorize the transfer of a minimum of one (1) up to the standard hours of the donee employee's payroll period per request form.
- (g) The request forms shall be routed to applicable department heads for review and approval (approval of two (2) separate department heads if the donor employee and donee employee work in separate departments). After approval, the forms shall be routed to the Human Resources Department. In the event a department head does not approve the transfer request, said department shall notify in writing to the intended donee employee and the donor employee the reason for denial. The transfer form will be forwarded to the Human Resources Department along with a copy of the memorandum denying the request. The intended recipient may file a grievance within the

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guidelines contained in the Chattanooga City Code if he/she disagrees with the reason for denying the transfer of leave.

- (h) The donor employee's personal leave balance shall be adjusted to deduct the leave donated upon receipt of the request by the Human Resources Department. Hours transferred shall take into account the differences in wages between the donor employee and donee employee and as prescribed in Section 2-162 (d). The Human Resources Department shall inform the donee employee's department of the total hours of transferred leave. Such leave shall be returned to the donor employee in the event of the following:
  - (1) It is determined later that the donee employee fails to meet the eligibility requirements;
  - (2) Donee employee returns to work on a full-time basis with an unused balance of transferred personal leave.

The donee employee's department shall inform the Human Resources Department of any outstanding transferred personal leave balances that need to be returned to the respective donor(s).

- (i) An employee shall be ineligible to receive more than six (6) months of transferred personal leave from other employees within a three (3) year term; subject to an exception granted in the discretion of the Mayor for the good of the City.
- (j) This policy shall apply only to employees of the City of Chattanooga; however, managers of independent agencies or joint agencies whose payroll is administered by the City may establish a similar program for their employees subject to any federal or state regulations to the contrary.

(Ord. No. 9832, § 1, 1-26-93; Ord. No. 9894, § 1, 6-29-93; Ord. No. 10138, §§ 1-2, 12-6-94; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12441, § 3, 11-16-10)

### **Sec. 2-163. Leave of absence without pay.**

(a) Leave of absence without pay may be granted to employees by their department heads after the employee has exhausted his/her paid leave and any applicable Family and Medical Leave. Approval shall be in thirty (30) day increments with the employee required to present a written request each period unless illness or other causes outside of the control of the employee prevents such action. Employees shall be required to use all earned premium compensatory leave and personal leave prior to being placed on leave without pay.

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(b) An employee on an approved leave of absence without pay may at the employee's election continue health care coverage or life insurance then in effect for such employee upon the following conditions:

- (1) The employee represents that he/she will return to city employment on a specified date within six (6) months, unless the specification of the date is impossible due to illness or other causes outside of the control of the employee.
- (2) Any employee receiving health care coverage or life insurance benefits shall pay for the employee contributions during such period of absence at the same rate established for active employees.

(c) The total period of absence without pay from City employment shall not exceed six (6) months. This shall include any period of Family and Medical Leave without pay.

(Code 1986, § 2-168; Ord. No. 9654, § 13, 1-6-92; Ord. No. 10163, § 7, 1-17-95; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-164. Unauthorized absences.**

No employee shall absent himself/herself from duty without authorized leave, except in the case of sickness or emergency. An employee who is absent without authorized leave three (3) consecutive working days shall be deemed to have abandoned his/her position and to have resigned unless he/she shall, within a period of ten (10) working days next succeeding such three (3) days, prove to the satisfaction of the supervisor that such failure was excusable; provided, however, that nothing contained in this section shall be construed as preventing a supervisor from recommending to his/her department head or to the mayor suspension or dismissal of an employee because of unauthorized absence.

(Code 1986, § 2-145; Ord. No. 9654, § 13, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-165. Family and medical leave.**

(a) The Family and Medical Leave Act of 1993 ("FMLA") provides that any employee who has been employed for at least twelve (12) months by the City as a permanent, full-time employee and who has at least 1,250 hours of service during the previous twelve (12) month period shall be eligible to take leave for family and medical reasons, including the birth, adoption, or placement of a child, the care of a child, spouse or parent who has a serious health condition, for his or her own serious health condition, or a qualifying exigency arising from a spouse, child or parent on active military duty in support of a contingency operation as a member of the National Guard or Reserves. Family and Medical Leave is subject to certain provisions set forth below:

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(b) **Definitions.** For the purposes of this section, the following terms and definitions shall apply:

- (1) Parent shall mean the biological, adoptive or step- parent of an employee or an individual who stood in loco parentis to an employee when the employee was a son or daughter. It shall not include parents-in-law.
- (2) Reduced leave schedule shall mean a leave schedule that reduces the usual number of hours per work week, or hours per work day, of an employee.
- (3) Serious health condition shall mean an illness, injury, impairment, or physical or mental condition that involves:
  - (i) inpatient care in a hospital, hospice, or residential medical care facility (that requires an overnight stay); or
  - (ii) continuing treatment by a health care provider that requires absence from work, school, or other regular daily activity.
- (4) Son or daughter shall mean a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is:
  - (i) under eighteen (18) years of age; or
  - (ii) eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.
- (5) Spouse shall mean a husband or wife, as recognized by the State of Tennessee.
- (6) Next of kin shall mean the nearest blood relative other than the covered service member's spouse, child or parent.
- (7) Additional definitions. Except as herein defined, any term herein which has been defined in either the Family and Medical Leave Act of 1993 or in regulations promulgated by the Department of Labor in 29 Code of Federal Regulations, Part 825, as the same may be amended from time to time, shall be used to interpret this section as it is the purpose of this section to comply with said Act.

(c) Any eligible employee shall be granted, upon request, up to twelve (12) work weeks unpaid leave after using premium compensatory and personal leave during any twelve (12) month period for the birth or adoption or placement of a child, for the care of a child,

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spouse or parent who has a serious health condition, because the employee has a serious health condition that makes the employee unable to perform the functions of the position of such employee. The twelve-month period will be measured forward for each employee, beginning on the date on which the employee first takes FMLA leave. An eligible employee who is the spouse, child, parent or next of kin of an active service member of the Armed Forces, including the National Guard or Reserves, is limited to a total of twenty-six (26) work weeks of unpaid leave during a single twelve (12) month period. Nothing herein shall be deemed to limit the right of any employee to use accumulated personal leave when the employee has a serious health condition that makes the employee unable to perform the functions of the position of such employee.

(d) Any employee using leave pursuant to the provisions of this section shall at the time the leave begins or as soon as the employee believes that the leave qualifies under this section explain the reasons therefore so that the City may determine that the leave qualifies under this section and properly account for same.

(e) When such leave is foreseeable, the employee shall provide the City with at least thirty (30) days written notice before the beginning of the anticipated leave, and when circumstances preclude giving thirty (30) days' notice, the employee shall provide such notice as is practicable, normally within two (2) working days of when the employee becomes aware of the need for FMLA leave. Family and Medical Leave will begin on the first work day of leave without pay for employees providing advanced written notice. Departments will automatically place employees on Family and Medical Leave after two (2) working days of leave without pay if the employee has failed to apply and the employee's absence is based on one of the qualifying factors for eligibility. Departments will inform employees in writing. When such leave is requested to care for a family member having a serious health condition or for treatment because of the employee's own serious health condition which is foreseeable, the employee shall:

- (1) make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the employer, subject to the approval of the health care provider of the employee or the health care provider of the child, spouse, or parent of the employee, as appropriate; and
- (2) provide the employer with not less than thirty (30) days notice, before the date the leave is to begin, of the employee's intention to take leave under such subparagraph, except that if the date of the treatment requires leave to begin in less than thirty (30) days, the employee shall provide such notice as is practicable.

(f) When leave is for the care of a seriously ill spouse, child, or parent or for the employee's own serious health condition, the City may require that request for leave be supported by a certification issued by a health care provider within sixteen (16) calendar days of the request. The certification must include the following information:

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- (1) the date upon which the serious health condition commenced;
- (2) probable duration of the condition;
- (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
- (4) a statement that the eligible employee is needed to care for the child, spouse or parent and an estimate of the amount of time that such employee is needed.

(g) If there is any reason to doubt the validity of the certification provided, the City may require, at the expense of the City, an opinion of a second health care provider designated or approved by the City. If the second opinion differs from the first opinion, then the City may require at its expense, that the employee obtain the opinion of a third health care provider designated and approved jointly by the City and the employee. The opinion of the third health care provider shall be considered final and binding on the City and the employee.

(h) The City may require that the employee obtain subsequent re-certification on a reasonable basis.

(i) FMLA leave may be taken intermittently or on a reduced leave (part-time) basis. However, if FMLA leave is taken on an intermittent or reduced leave basis, the employee may be transferred temporarily to an available alternative position which better accommodates recurring periods of leave. In addition, if FMLA leave is taken for the birth or placement of a child, it must be taken at one time, not intermittently or on a reduced leave basis.

(j) Upon completion of FMLA leave, the employee shall be restored to the same position of employment or an equivalent position with no loss of benefits, pay or other terms of employment.

(k) If both husband and wife work for the City, then the aggregate number of work weeks of leave of both spouses are entitled for birth or placement for adoption or foster care, shall be limited to twelve (12) work weeks during any twelve (12) month period.

(l) The employee shall maintain health care coverage during the duration of the leave in the same manner as provided to any other employee on a paid leave of absence, subject to continuing deduction of the employee's share of health care coverage during paid leave. If the employee goes into a status of leave without pay, then to maintain health care coverage the employee shall pay the employee's share to the Employee Benefits Office on or before the tenth day of each month. The City may recover the then applicable reasonable

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estimate calculated on an actuarial basis of the cost of providing health care coverage for health care that it pays under the following conditions:

- (1) the employee fails to return from leave after the period of leave is expired; or
- (2) the employee fails to return to work for a reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond the control of the employee.

(Code 1986, § 1-165; Ord. No. 9346, § VI, 3-27-90; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-166. Parental leave.**

(a) A employee who has been employed by the City for at least twelve (12) consecutive months as a full-time employee may be absent from such employment for a period not to exceed four (4) months for pregnancy, childbirth and nursing the infant, where applicable (such period to be hereinafter referred to as "parental leave").

- (b)(1) An employee who gives at least three (3) months' advance notice to the City of the anticipated date of departure for parental leave, the length of parental leave, and the intention to return to full-time employment after parental leave, shall be restored to his or her previous or a similar position with the same status, pay, length of service credit and seniority, wherever applicable, as of the date of her leave.
- (2) An employee who is prevented from giving three (3) months advance notice because of a medical emergency which necessitates that parental leave begin earlier than originally anticipated shall not forfeit his/her rights and benefits under this section solely because of his/her failure to give three (3) months' advance notice.
- (c)(1) Parental leave is without pay. However, nothing herein shall be deemed to limit the right of any employee to use accumulated personal leave when the employee desires to take parental leave. Further, parental leave shall not affect the employee's right to receive personal leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which he/she was eligible at the date of his/her leave, and any other benefits or rights of employment incident to his/her employment position; provided, that the City need not provide for the cost of any benefits, plans or programs during the period of parental leave.
- (2) If an employee's job position is so unique that the City cannot, after reasonable efforts, fill that position temporarily, then the City shall not be

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liable under this section for failure to reinstate the employee at the end of the parental leave period.

- (3) The purpose of this section is to provide leave time to employees for pregnancy, childbirth and nursing the infant, where applicable; therefore, if the City finds that the employee has utilized the period of parental leave to actively pursue other employment opportunities or if the City finds that the employee has worked part time or full time for another employer during the period of parental leave, then the City shall not be liable under this section for failure to reinstate the employee at the end of his/her leave.
- (4) Whenever the City shall determine that the employee will not be reinstated at the end of parental leave because his/her position cannot be filled temporarily or because he/she has used parental leave to pursue employment opportunities or to work for another employer, the City shall so notify the employee.

(d) Nothing contained within the provisions of this section shall be construed to diminish or restrict the rights of teachers to leave for parental leave pursuant to Tennessee Code Annotated § 49-5-701, *et seq.*, or to return for reinstatement after leave. (Code 1986, § 1-165; Ord. No. 9346, § VI, 3-27-90; Ord. No. 9924, § 1, 7-20-93; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-167. Military leave.**

(a) Any employee of the city called to enter the military services of the United States shall be given a leave of absence for the duration of such military service, and upon the termination of such service, the mayor or department head in the department in which such employee was employed shall reinstate the employee in the position he/she held at the time he/she entered such military service, if such position exists. If the position has been abolished, the employee shall be given a position of equal rank and at a salary of not less than that which he/she received before such military service or would have held had he/she not entered such military service. Such employee shall retain all rights and benefits which he/she had under any civil service or tenure law of the city, and shall retain all rights and benefits he/she had under insurance and pension law of the city at the time he/she entered such service for the United States Government, and shall be given credit for the years spent in the military service in computing the time served for pension purposes.

(b) Unless his/her military organization requires a specified time for the training period, the employee shall arrange with his/her department head for a mutually suitable time period. Employees shall be granted twenty (20) days of paid leave for each calendar year for active-duty training. (Ord. No. 12410, § 13, 7-06-10; Ord. No. 12523, §13, 6-28-11)

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(c) Every employee returning from military leave shall submit to his/her department head proof of the number of days spent on duty. (Code 1986, § 2-161; Ord. No. 9564, § 13, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12410, § 13, 7-06-10; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-168. Court leave.**

(a) An employee who is summoned or subpoenaed to appear as a party, witness or juror shall be granted court leave with pay upon presentation of such summons or subpoena.

(b) When a city employee is requested by the office of the city attorney to appear in court on behalf of the city, he/she shall appear or be subject to disciplinary procedures, and he/she shall have the same benefits as though he/she were summoned or subpoenaed. Such an employee cannot be disciplined for his/her testimony to the extent that said testimony is true and/or reasonably believed to be true.

(c) Employees 1) who appear in court at the request of the office of the city attorney or 2) such as police officers, who appear in court in the normal course and scope of their duties, shall do so as part of their job duties and shall not be considered to be on leave with pay for such appearances.

(d) When an employee has been granted leave for court attendance and is excused by proper court authority, he/she shall report back to his/her place of duty. Leave with pay for court attendance shall not be granted when the employee is the plaintiff or defendant in personal litigation. When the litigation is the result of an act performed by the employee as a part of his/her official duties, then leave with pay shall be granted.

(e) Upon receiving a summons to report for jury duty, any employee shall on the next day the employee is engaged in such employee's employment exhibit the summons to the employee's immediate supervisor, and the employee shall thereupon be excused from employment for the day or days required of the employee while serving as a juror in any court of the United States or the state of Tennessee; provided, that such employee's responsibility for jury duty exceeds three (3) hours during the day for which excuse is sought.

(f) If an employee summoned for jury duty is working a night shift or is working during hours preceding those in which court is normally held, such employee shall also be excused from employment as provided by this section for the shift immediately preceding the employee's first day of service on any lawsuit. After the first day of service, when such person's responsibility for jury duty exceeds three (3) hours during a day, then such person shall be excused from the person's next scheduled work period occurring within twenty-four (24) hours of such day of jury service. Any question concerning the application of the provisions of this subsection to a particular work shift or shifts shall be conclusively resolved by the trial judge of the court to which the employee has been summoned.

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(g) Notwithstanding the excused absence as herein provided, the employee shall be entitled to such employee's usual compensation received from such employment. Employees subpoenaed for jury duty shall keep any compensation for serving as a juror.

(h) Employees who are paid on a mileage basis will be paid the mileage pay they would have received had they reported for work rather than for jury service on each day covered by the provisions of this section.

This section shall not apply to any temporary employee as defined by this code.  
(Code 1986, § 2-163; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-169. Leave for job-related meetings.**

Whenever it is deemed to be in the best interest of the City, an employee may be granted leave with pay by his/her department head to attend professional and technical institutes or conferences or such other meetings as may contribute to the effectiveness of his/her service to the City upon his/her return to duty.

(Code 1986, § 2-164; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-170. Educational leave.**

Leave with pay may be granted by a department head for the purpose of continuing studies or taking special training at accredited institutions in courses which are directly related to the type of work in which the employee is engaged. Such leave shall be for a period equivalent to the period of attendance and reasonable travel time to and from the educational institution. Leave for more than thirty (30) days shall be approved by the mayor except when an employee is attending the Federal Bureau of Investigation Academy.

(Code 1986, § 2-166; Ord. No. 9654, § 13, 1-6-92; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

## DIVISION 7. DISCIPLINE

### **Sec. 2-171. Disciplinary action generally.**

Disciplinary action in the City service is necessary from time to time in order that the City operate in as an effective a manner as possible. Disciplinary action may take the following recognized forms: oral reprimand, written reprimand, suspension, demotion, or dismissal.

(Code 1986, § 2-182; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-172. Oral reprimand.**

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An official oral reprimand will be given by the applicable supervisor when necessary. In order to officially be on record that an employee's action necessitated such type of reprimand, the fact and subject of the oral reprimand shall be entered into the employee's official personnel file.

(Code 1986, § 2-183; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-173. Written reprimand.**

Where a more serious reprimand is needed, a formal written reprimand will be prepared and presented by the applicable supervisor to the employee. A copy of the formal written reprimand shall be inserted in the employee's official personnel file.

(Code 1986, § 2-184; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10)

### **Sec. 2-174. Discipline, dismissal, suspension or demotion – authority of the Mayor and department heads; appeals.**

(a) No City employee shall be demoted, suspended or dismissed for political reasons or for any other unjust or arbitrary cause, or because of age, gender, race, religion, disability, national origin, protected veteran or military status, or political affiliations (except where such category or class constitute a bona fide occupational qualification). The tenure of office of every permanent employee shall be during good behavior and the satisfactory performance of his/her duties. This provision shall not be interpreted to prevent the separation of an employee because of lack of funds or curtailment of work.

(b) Disciplinary action up to and including dismissal may be taken for any just cause including, but not limited to, the following:

- (1) Incompetence or inability to perform duties of position;
- (2) Insubordination;
- (3) Inefficiency or negligence in the performance of one's duties;
- (4) Intoxication, use of an illegal drug or abuse of prescription medication during working hours;
- (5) Violation of department or city ordinance(s), rule(s), regulation(s) or law(s) or violation of any applicable state law, rule or regulation subject to the provisions of this Code;
- (6) Conduct unbecoming a public employee;
- (7) Absence from work without proper notification or authorization;

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- (8) Willful harassment;
- (9) Participating in a strike, work stoppage, work slow-down, sick-in or other so-called job actions;
- (10) Indictment, arrest, or conviction of a felony or misdemeanor; or
- (11) Employment or activity during non-duty hours that is inconsistent, incompatible or in moral, legal or technical conflict with the employee's duties, functions and responsibilities as a City employee.

Nothing herein shall prohibit the Mayor or department heads to provide by administrative directive for a disciplinary review board to recommend disciplinary action prior to a decision by said elected official and department heads.

(c) The Mayor or department head may, for just cause, discipline any City employee. Such disciplinary action may include demotion, suspension and or dismissal. Unless otherwise provided in this Section, no such punitive suspension shall exceed thirty (30) calendar days. Any demotion, suspension or dismissal of a City employee shall be reported to the City Council by the Mayor or department head taking such action. No employee in the classified service, excluding probationary employees, may be demoted involuntarily, suspended, or dismissed without having the opportunity to have a hearing before the Mayor or their department head, whoever initiated the action, in which such employee shall be advised of the charges of misconduct and in which the employee shall be afforded an opportunity to be heard in response to such charges.

(d) A City employee who shall be demoted, suspended or dismissed shall be furnished with written charges within twenty-four (24) hours from such disciplinary action that specifically states the offenses with which such employee is charged. The statement of written charges shall be signed by the Mayor or department head, whoever initiated the action, or the department head's designated subordinate with a copy placed in the employee's official personnel file.

(e) Any City employee arrested, charged or indicted for a crime, other than a minor traffic offense, shall report such arrest to their respective department head within 48 hours. In the case of an employee who is incarcerated, a member of his/her immediate family shall contact the department head on behalf of said employee. Any such employee arrested and charged with a Class A misdemeanor or felony shall be placed on administrative leave with pay for a maximum of seventy-two (72) hours to allow the City time to review the nature of the crime, the facts and circumstances.

(f) Failure to report an arrest, charge or indictment for a crime shall result in disciplinary action up to and including termination of employment.

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(g) If the nature of the crime, the facts and circumstances are substantiated by the City, employees arrested, charged or indicted for a Class A misdemeanor or a felony shall immediately be placed on leave without pay. In the event a nexus occurs between the nature of the arrest, charges or indictment to the employee's duties and responsibilities of their position, the Mayor or department head shall also have the option of terminating the employment of said employees.

(h) Employees arrested, charged or indicted for any other misdemeanor punishable by incarceration and committed while acting within the course and scope of such employee's duties as a City employee may be either dismissed or suspended until such employee is either found guilty, not guilty, or the charges are dismissed. Any employee convicted of any misdemeanor committed in the course and scope of his or her duties as a City employee shall be subject to disciplinary action. Such disciplinary action may include dismissal if in the opinion of the Mayor or the department head, after taking all mitigating factors into consideration, the conduct of the employee requires dismissal.

(i) The period of leave without pay for employees arrested, charged or indicted on criminal charges shall not exceed six months. Upon six months, said employee shall be terminated from employment.

(j) Employees arrested, charged or indicted with a crime, other than a minor traffic offense, shall be required to inform their department head within 48 hours on the outcome of a criminal case.

(k) A judgment on a verdict or a plea of guilty or *nolo contendere* for employees arrested, charged or indicted for a Class A misdemeanor or a felony shall result in immediate termination of employment.

(l) Any employee convicted of a misdemeanor and incarcerated for fifteen (15) consecutive days or more shall be immediately dismissed.

(m) If any employee is found guilty of a Class B or greater misdemeanor which would have otherwise disqualified such employee for employment in the position currently occupied, such employee shall be either dismissed or demoted to another employment position, if available, for which such employee is qualified notwithstanding the misdemeanor conviction.

(n) If an employee has a Class A misdemeanor or felony charge reduced to a lesser misdemeanor charge, disciplinary action may be taken against the employee as otherwise provided in this Code.

(o) If an employee is arrested, charged or indicted on a Class A misdemeanor, a felony or any other misdemeanor has said charges dismissed for whatever reason and is on a

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leave without pay, such employee shall be returned to duty unless there is sufficient evidence to show that the employee is not a fit or suitable employee, then he or she shall be dismissed.

(p) If a former employee arrested, charged or indicted on a Class A misdemeanor, a felony or any other misdemeanor has said charges dismissed for whatever reason and was terminated, such employee may apply for an available advertised position for which he/she meets the minimum qualifications and shall be treated as any other applicant.

(q) An employee placed on leave for any period of time immediately following an arrest, charge or indictment shall have back pay or paid leave restored if charges are dropped or is found not guilty. This provision shall not apply if an employee pleads guilty or enters into a plea agreement on said charges.

(r) Any employee who loses income as a result of demotion, suspension or termination shall have the right to appeal, following the conclusion of full, administrative due process. (Ord. No. 12567, § 1, 1-31-2012)

(s) Any employee who commits a verifiable action based on gross misconduct shall be immediately terminated. Said employee shall be presented with the verifiable charges in writing at a pre-termination hearing.

(t) No appeal shall be accepted or heard by the city council from a dismissal, demotion or suspension as provided for herein or otherwise in this code that is filed more than fifteen (15) calendar days after such action has been taken against such employee by the Mayor or Department Head. Notice of the appeal shall be filed with the Clerk of the City Council (hereafter in this Section the "Clerk"). (Ord. No. 12766, § 1, 9-17-13)

The Clerk shall notify the Tennessee Secretary of State's Administrative Procedures Division (hereafter the "APD") that an appeal has been filed. The APD is authorized to assign an administrative law judge (hereafter "ALJ") to conduct a fair and impartial hearing and adjudicate the employee's appeal for the City Council as requested by an employee.

If the APD's office is not available to conduct a hearing, the Chairperson of the City Council (hereafter "Chairperson") shall appoint an ALJ to conduct a fair and impartial personnel hearing and adjudicate the employee's appeal. The ALJ appointed by the Chairperson shall be an attorney licensed to practice law in the State of Tennessee. The Chairperson may remove an ALJ if the ALJ fails to adjudicate an employee's appeal, for cause or as allowed by law.

The ALJ to whom a case is assigned may convene the parties for a scheduling conference within fifteen (15) days or as soon as practical and shall set a hearing date within ninety (90) days of the date the employee's written request for a hearing is filed with the Clerk unless the employee and the City agree otherwise or for good cause shown. The

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hearing date may be re-set by agreement of the parties or for cause.

The ALJ to whom a case is assigned shall provide the Clerk with the hearing date. The Clerk shall issue notice of the hearing date to the employee, Department, ALJ and all other interested parties. The Clerk shall make arrangements for a suitable hearing location.

The ALJ appointed to conduct a personnel hearing shall disclose any possible conflicts of interests and shall not engage in *ex parte* communications except pursuant to law or rules of the City Council. The ALJ shall conduct the hearing in accordance with the rules of procedure established by the City Council. The ALJ shall determine if there is a reasonable basis for the employment decision. The ALJ shall affirm the employment decision if there is a reasonable basis for the decision or modify or set aside any decision of an Administrator on the basis of the evidence. The ALJ shall prepare a record, including a transcript, list of exhibits admitted into evidence during the hearing and all matters of record for a fair and just adjudication of the employee's appeal.

The ALJ shall file written findings of facts and conclusions in the Clerk's office within twenty (20) days after the hearing is concluded and issue the written findings to the employee and Department Administrator. The written decision shall include a statement of available procedures and time limits for seeking reconsideration or seeking judicial review.

The Department or employee, within ten (10) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. However, the filing of a request for reconsideration shall not be a prerequisite for seeking judicial review. The other party may respond to the request within ten (10) days. The ALJ shall issue a written decision on the request for reconsideration within thirty (30) days of the request.

Any decision of the ALJ appointed under this Section shall be the final decision of the City Council. Any party aggrieved by the ALJ's decision shall have the right to seek judicial review in the Hamilton County Chancery or Circuit Courts within sixty (60) days of the final decision pursuant to T.C.A. § 27-9-101, *et seq.*

Any time limitation set forth in this Section may be extended in writing by the ALJ for good cause shown except the time to file an appeal for judicial review which shall be controlled by applicable State law.

(Code 1986, § 2-185; Ord. No. 9639, § 1, 11-19-91; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 2, 7-20-10; Ord. No. 12482, § 1, 3-8-11)

### **Sec. 2-175. Dismissal, suspension or demotion - Written charges to be filed.**

Any city employee who shall be dismissed, suspended or demoted shall be furnished with written charges within twenty-four (24) hours from such disciplinary action that specifically state the offenses with which he/she is charged, which shall be signed by the

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department head or the department head's designated subordinate, except that such charges as to the department of fire and police must be signed by the department head.  
(Code 1986, § 2-186; Ord. No. 11638, §1, 11-02-04; Ord. No. 9654, § 27, 1-6-92)

### **Sec. 2-176. Reserved.**

**Editor's note--**Ordinance No. 12469, enacted January 25, 2011, repealed Section 2-176 due to duplication.  
(Code 1986, § 2-187 & 2-188; Ord. No. 9639, § 2, 11-19-91; Ord. No. 11638, §1, 11-02-04; Ord. No. 12469, § 1, 1-25-11)

## DIVISION 8. GRIEVANCES

### **Sec. 2-177. Grievance procedure.**

(a) As used in this section and section 2-178, the following definitions shall apply:

*"Deputy administrator"* is the supervisor (or his/her designee in the absence of such supervisor), regardless of title, who reports directly to a department head and is in the department's chain of command between an aggrieved employee and the department head.

*"Immediate supervisor"* is the supervisor to whom an aggrieved employee directly reports.

*"Twenty-four (24) hour shifts"* are such shifts actually worked by an employee or supervisor.

*"Working days"* are days actually worked by an employee or supervisor.

Any time limitation placed on an employee, deputy administrator or immediate supervisor for taking any action shall be measured by the working days or twenty-four (24) hour shifts of the person who is required to take such action.

(b) An employee is not required but is urged to attempt to resolve any grievance informally with his/her immediate supervisor. If informal discussion does not resolve the matter, the affected employee must file a written grievance within five (5) working days of the cause of the grievance, provided that an employee in the Fire Department working twenty-four hour shifts must file a written grievance within two (2) twenty-four (24) hour shifts of the cause of the grievance.

(c) An employee desiring to file a grievance must submit a written statement to a supervisor in his/her department stating the basis for the grievance and the relief sought. A supervisor receiving a grievance shall note the time and date of receipt and shall sign the

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grievance. A copy of the grievance shall be forwarded by the employee to the head of the employee's department. A grievance must be signed by the employee and must include the following:

- (1) a clear, concise and factual statement of the specific wrongful act or harm done;
- (2) a statement of the remedy or adjustment sought; and
- (3) citation of any rules or regulations, the violation of which constitutes the basis of the grievance.

(d) Within five (5) working days (or two (2) twenty-four (24) hour shifts if the employee is working such shifts) of the receipt of the grievance, the supervisor shall meet with the employee and attempt to resolve the grievance insofar as it is within his/her power to so do. Further, the supervisor shall render a decision in writing and provide a copy of same to the aggrieved employee within three (3) working days (or two (2) twenty-four (24) hour shifts if the employee is working such shifts) of the date the supervisor meets with the aggrieved employee.

(e) If the grievance is beyond the authority of the supervisor to resolve or if the employee disagrees with a supervisor's decision, the employee may appeal the grievance to the deputy administrator. Any such appeal must be made within three (3) working days (or two (2) twenty-four (24) hour shifts if the employee is working such shifts) of the employee's receipt of the supervisor's decision concerning the grievance.

Within five (5) working days of the receipt of the appeal, the deputy administrator shall meet with the employee and attempt to resolve the grievance insofar as it is within his/her power to so do. Further, the deputy administrator shall render a decision in writing and provide a copy of same to the aggrieved employee within three (3) working days (or two (2) twenty-four (24) hour shifts if the employee is working such shifts) of the date the deputy administrator meets with the aggrieved employee.

(f) If the grievance is beyond the authority of the deputy administrator to resolve or if the employee disagrees with a deputy administrator's decision, the employee may appeal the grievance to the administrator. Any such appeal must be made in writing within three (3) working days (or two (2) twenty-four (24) hour shifts if the employee is working such shifts) of the employee's receipt of the deputy administrator's decision concerning the grievance, along with copies of the original grievance, the supervisor's decision, and the deputy administrator's decision. The employee shall clearly state why the attempted resolution failed and what relief the employee is seeking. Within five (5) working days (or two (2) twenty-four (24) hour shifts if the employee is working such shifts) of the receipt of the appeal, the administrator shall meet with the employee and attempt to resolve the grievance insofar as it is within his/her power to so do. Further, the administrator shall

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render a decision in writing and provide a copy of same to the aggrieved employee within three (3) working days (or two (2) twenty-four (24) hour shifts if the employee is working such shifts) of the date the administrator meets with the aggrieved employee.

(g) Failure at any step in the grievance procedure by a supervisor lower than a department head to make and communicate a decision in writing within the specified time limits shall constitute a denial of the relief sought and shall permit the grievance to be appealed to the next step by the employee.

(h) The employee's failure to file a grievance within the time specified in this section constitutes abandonment of the grievance by the employee. The employee's failure to appeal a decision by the supervisor or the deputy administrator within the applicable time period specified in this section shall constitute abandonment of the grievance by the employee. A grievance may also be terminated at any time upon receipt of a signed statement from the employee requesting such termination.

(i) The grievance procedure shall not be used as a means of collectively bringing about changes in wages, hours or other conditions of employment applicable to other employees.

(Code 1986, § 2-176; Ord. No. 10806, § 1, 12-1-98; Ord. No. 11638, §1, 11-02-04)

### **Sec. 2-178. Unresolved grievances to be brought to department head; timely appeals.**

Grievances which cannot be resolved at levels of supervision lower than the department head may be appealed to the department head. The department head shall have final authority to settle all employee grievances except those that involve a suspension, demotion or dismissal. If, after the foregoing steps are exhausted, an employee is still aggrieved and the grievance involves a suspension or demotion, which results in a loss of more than ten percent (10%) of gross wages in any three (3) year period or involves a dismissal, the employee may file a written appeal for the City Council to review the grievance, after requesting a review from the Mayor, as provided by Section 2-174, within 15 days of the department head's decision. The action of the department head with respect to all other grievances shall be final.

(Code 1986, § 2-177; Ord. No. 9398, § 2, 6-5-90; Ord. No. 10806, § 1, 12-1-98; Ord. No. 11638, §1, 11-02-04; Ord. No. 12072, § 1, 2-5-08)

### **Sec. 2-179. Human Resources Director available to counsel employees.**

The Human Resources Director or his/her designee shall be available to confer with any city employee concerning any grievance or on any other matter. Discussions pertaining to personal problems shall be kept strictly confidential. However, it shall be understood that there can be no secrecy in discussions of matters pertaining to the employee's job where there is a need for supervisory personnel to know. The duty of the Human Resources Director

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shall be to assist in the settlement of grievances through the clearing up of any misunderstanding or the bringing to the attention of the proper authority of any variances from established policy, and he/she may in some instances be required to assemble needed information to determine facts.

(Code 1986, § 2-178; Ord. No. 11638, §1, 11-02-04)

### DIVISION 8.1. OTHER POST-EMPLOYMENT BENEFITS PROGRAM

This division creates an irrevocable “City of Chattanooga Post-Employment Benefits Other than Pension Trust” which is sometimes referred to as an OPEB Trust.

(Ord. No. 11975, § 1, 6-5-07)

#### **Sec. 2-179.1. Definitions.**

For the purposes of this Declaration, the following terms shall have the respective meanings set forth below unless otherwise expressly provided.

- (a) *Account* means the investment recordkeeping account established to fund post-retirement welfare benefits on behalf of Employer’s Employees, their Spouses, Dependents and Beneficiaries.
- (b) *Administrator* means the Employer, acting by and through its City Finance Officer. The Employer acting through its Administrator or its Trustees may secure such administrative services as are necessary to implement a Plan.
- (c) *Beneficiary* means the Spouse, Dependents, or the person or persons designated by a Participant pursuant to the terms of a Plan, who will receive any benefits payable under a Plan in the event of the Employee’s death. In the case where there is no designated Beneficiary, any amount of contributions, plus accrued earnings thereon, remaining in a Participant’s Account must, under the terms of a Plan, be returned to the Trust.
- (d) *Code* means the Internal Revenue Code of 1986, as amended from time to time.
- (e) *Dependent* means an individual who is a person described in Code Section 152(a).
- (f) *Employee* means an individual who performs services for the Employer, and who has been designated as eligible to participate in, and received benefits under a Plan.

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- (g) *Investment Fund* means any investment vehicle selected by the Employer in which all or a portion of the Trust assets may be invested as herein provided.
- (h) *Non-Forfeitable Interest* means the interest of a Participant or the Participant's Spouse, Dependent or Beneficiary (whichever is applicable) in the percentage of Employer Contributions that has vested pursuant to the vesting schedule in a Plan sponsored by the Employer. A Participant shall, at all times, have a one hundred percent (100%) Non-Forfeitable Interest in the Participant's own contributions, if Participant contributions are permitted pursuant to the terms of the Plan.
- (i) *Participant* means an Employee of the Employer who satisfies the requirements for participation in a Plan sponsored by the Employer.
- (j) *Participant Account* means an individual recordkeeping account maintained under a Plan to record the contribution, if any, and earnings of a Participant in the Plan in accordance with Section 7.4.
- (k) *Plan or Plans* means one or more post-employment welfare benefits established by Employer for the Employer's Employees, their Spouses, Dependents, and Beneficiaries. Plan or Plans shall include such post-employment welfare benefit plans established by Employer prior to or subsequent to the adoption of this Division as the same maybe adopted, amended or repealed from time to time.
- (l) *Spouse* means the Participant's lawful spouse as determined under the laws of the state in which the Participant has his primary place of residence.
- (m) *Trust* means the trust established by this Declaration.
- (n) *Trustees* means the Trustees of the General Pension Plan of the City of Chattanooga who shall act as designees of the Employer to administer the Investment Fund.

(Ord. No. 11975, § 1, 6-5-07)

**Sec. 2-179.2. Establishment of trust.**

The Trust is hereby established as of the effective date of this Division for the exclusive purpose of providing a funding mechanism for post-employment welfare benefits for the Employer's Employees, their Spouses, Dependents and Beneficiaries.

(Ord. No. 11975, § 1, 6-5-07)

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### **Sec. 2-179.3. Construction.**

(a) This Trust and its validity, construction and effect shall be governed by the laws of the State of Tennessee.

(b) Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.

(c) If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions, and such provisions shall be construed to effectuate the purpose of this Trust.

(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.4. Benefits.**

(a) *Benefits.* This Trust may be used to fund benefits on behalf of a Participant, the Participant's Spouse and Dependents pursuant to the terms of a Plan.

(b) *Form of Benefits.* Assets held in this Trust may be used to reimburse a Participant, his Spouse and Dependents for insurance premiums or other payments expended for permissible benefits described under a Plan. This Trust may reimburse the Employer, or the Administrator for insurance premiums or other payments pursuant to the Plan.

(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.5. General duties.**

(a) It shall be the duty of the Trustees to hold title to assets held in respect of the Account and Plan or Plans in the Trustees' name, as directed by the Employer or its designees in writing. The Trustees shall not be under any duty to compute the amount of contributions to be paid by the Employer or to take any steps to collect such amounts as may be due to be held in trust under the terms of a Plan. The Trustees shall not be responsible for the custody, investment, safekeeping or disposition of any assets comprising the Trust, to the extent such functions are performed by the Employer or the Administrator, or both.

(b) It shall be the duty of the Employer, subject to the provisions of a Plan, to pay over to the Administrator or other person designated hereunder from time to time the Employer's contributions, and to keep accurate books and records, or cause its designee to keep accurate books and records with respect to the Account and a Plan. (Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.6. Investments.**

(a) The Employer shall appoint an investment committee that will, as a minimum, develop an investment policy.

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(b) The Employer delegates to its Trustees the authority to appoint one or more delegates and Trustees shall notify Employer in writing of any such appointment.

(c) To the extent directed by the Employer (or Participants, their Spouses, Dependents or Beneficiaries, to the extent provided herein), the Trustees are authorized and empowered with the following powers, rights and duties, each of which the Trustee shall exercise in a non-discretionary manner:

- (1) To cause stocks, bonds, securities, or other investments to be registered in its name as Trustee or in the name of a nominee, or to take and keep the same unregistered;
- (2) To employ such agents and legal counsel as it deems advisable or proper in connection with its duties. The Trustees shall not be liable for the acts of such agents and counsel or for the acts done in good faith and in reliance upon the advice of such agents and legal counsel, provided it has used reasonable care in selecting such agents and legal counsel;
- (3) To exercise where applicable and appropriate any rights of ownership in any contracts of insurance in which any part of the Trust may be invested and to pay the premiums thereon; and
- (4) At the direction of the Employer (or Participants, their Spouses, Dependents or Beneficiaries or the investment manager, as the case may be) to sell, write options on, convey or transfer, invest and reinvest any part thereof in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever situated, including but not limited to, time deposits, shares of common and preferred stock, mortgages, bonds, leases, notes, debentures, equipment or collateral trust certificates, rights, warrants, convertible or exchangeable securities and other corporate, individual or government securities or obligations, annuity, retirement or other insurance contracts, mutual funds or in units of any other common, collective or commingled trust fund.

(d) Notwithstanding anything to the contrary herein, the assets of the Account shall be held by the Trustees as title holders only. Persons holding custody or possession of assets titled to the Trust shall include the Employer, the Administrator, the investment manager, and any agents and subagents, but not the Trustees. The Trustees shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any direction from the Employer, Administrator, the investment manager, or such agents to take title to any assets nor shall the Trustees be responsible or liable for any loss or expense which may result from the Trustees' refusal or failure to comply with any direction to hold title, except if the same shall involve or result from the Trustees' negligence or

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intentional misconduct. The Trustees may refuse to comply with any direction from the Employer, the Administrator, the investment manager, or such agents in the event that the Trustees, in their sole and absolute discretion, deem such direction illegal.

(e) The Employer, to the extent permitted by the Tennessee Governmental Tort Liability Act, 29-20-201 *et seq.*, particularly, Section 29-20-310, or other applicable law hereby indemnifies and holds the Trustees harmless from any and all actions, claims, demands, liabilities, losses, damages or reasonable expenses of whatsoever kind and nature in connection with or arising out of (i) any action taken or omitted in good faith by the Trustees in accordance with the directions of the Employer or its agents and subagents hereunder; or (ii) any disbursements of any part of the Trust made by the Trustees in accordance with the directions of the Employer; or (iii) any action taken by or omitted in good faith by the Trustees with respect to an investment managed by an investment manager in accordance with any direction of the investment manager or any inaction with respect to any such investment in the absence of directions from the investment manager. Notwithstanding anything to the contrary herein, the Employer shall have no responsibility to the Trustees under the foregoing indemnification if the Trustees fail intentionally or recklessly to perform any of the duties undertaken by it under the provisions of this Trust.

(f) Notwithstanding anything to the contrary herein, the Employer or, if so designated by the Employer, the Administrator and the investment manager or another agent of the Employer or Trustees, will be responsible for valuing all assets so acquired for all purposes of the Trust and of holding, investing, trading and disposing of the same. The Employer will indemnify and hold the Trustees harmless, to the extent permitted by law, against any and all claims, actions, demands, liabilities, losses, damages, or expenses of whatsoever kind and nature, which arise from or are related to any use of such valuation by the Trustee or holding, trading, or disposition of such assets.

(g) The Trustees shall and hereby do indemnify and hold harmless the Employer from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of (a) the Trustees' failure to follow the directions of the Employer, the Administrator, the investment manager, or agents thereof, except as permitted by the last sentence of Section (4) above; (b) any disbursements made without the direction of the Employer, the Administrator, the investment manager, or agents thereof; and (c) the Trustees' willful misconduct, or recklessness with respect to the Trustee's duties under this Declaration.

(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.7. Contributions.**

(a) *Employer Contributions.* The Employer shall contribute to the Trust such amounts as specified in a Plan or by resolution.

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(b) *Participant Contributions.* If specified in a Plan, each Participant may make voluntary after-tax contributions. Under no circumstances shall Participant Contributions exceed an insubstantial amount. These contributions shall be collected by the Employer and remitted to the Trust for deposit at such time or times as required under the terms of the Plan.

(c) *Accrued Leave.* If the Employer's Plan includes contributions from accrued leave, the plan must contain a forfeiture provision that will prevent Participants from receiving the accrued leave in cash in lieu of a contribution to the Trust.

(d) *Accounts.* Employer contributions, and if provided under the terms of a Plan, Participant contributions and contributions of accrued leave, and all investment income and realized and unrealized gains and losses, and forfeitures allocable thereto will be deposited into one or more Accounts in the name of the Employer for the exclusive purpose of funding benefits on behalf of Participants, their Spouses, Dependents and Beneficiaries under a Plan. The assets in each Account may be invested in Investment Funds as directed by the Trustees from among the Investment Funds selected by the Trustees.

(e) *Receipt of Contributions.* The Employer or, if so designated by the Employer, the Administrator or investment manager or another agent of the Employer, shall receive all contributions paid or delivered to it hereunder and shall hold, invest, reinvest and administer such contributions pursuant to this Declaration, without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall hold title to property received in respect of the Plan in the Trustee's name as directed by the Employer or its designee pursuant to this Declaration.

(f) *Spend Thrift Clause.* No amount in any Account or Participant Account maintained under this Trust shall be subject to transfer, assignment, or alienation, whether voluntary or involuntary, in favor of any creditor, transferee, or assignee of the Employer, the Trustees, any Participant, his Spouse, Dependent or Beneficiaries.  
(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.8. Multiple plans.**

If the Employer hereafter adopts one or more other Plans and designate the Trust hereby created as part of such other Plan, the Employer or, if so designated by the Employer, the Trustees shall, subject to the terms of this Declaration, accept and hold hereunder contributions to such other Plans. In the event (a) the Employer or, if so designated by the Employer, the Administrator or the Trustees, may commingle for investment purposes the contributions received under such Plan or Plans with the contributions previously received by the Trust, but the books and records of the Employer or, if so designated by the Employer, the Administrator or Trustees or another agent of the Employer, shall at all times show the portion of the Trust Fund allocable to each Plan; (b) the term "Plan" as used herein shall be deemed to refer separately to each other Plan; and (c) the term "Employer" as used herein

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shall be deemed to refer to the person or group of persons which have been designated by the terms of such other Plans as having the authority to control and manage the operation and administration of such other Plan.

(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.9. Disbursements and expenses.**

(a) The Employer or its designee shall make such payments from the Trust at such time to such persons and in such amounts as shall be authorized by the provisions of a Plan provided, however, that no payment shall be made, either during the existence of or upon the discontinuance of the Plan, which would cause any part of the Trust to be used for or diverted to purposes other than the exclusive purpose of funding post-employment welfare benefits for Employees, their Spouses, Dependents and Beneficiaries pursuant to the provisions of a Plan. Provided, however, the investment and administrative expenses of the Trust can be funded from the assets of the Trust.

(b) All payments of benefits under the Plan shall be made exclusively from the assets of the Accounts or Participant Accounts of Participants to whom or to whose Spouse, Dependents or Beneficiaries such payments are to be made, and no person shall be entitled to look at any other source for such payments.

(c) The Employer, Trustee and Administrator may be reimbursed for expenses reasonably incurred by them in the administration of the Trust. All such expenses, including, without limitation, reasonable fees of accountants, investment managers, and legal counsel to the extent not otherwise reimbursed, shall constitute a charge against and shall be paid from the Trust upon the direction of the Employer.

(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.10. Accounting.**

(a) All accounts, books, and records relating thereto shall be maintained by the Employer or its designee.

(b) As promptly as possible following the close of each year, the Trustees shall file with the Employer a written account setting forth assets titled to the Trust as reported to the Trustees by the Employer or its designee.

(Ord. # 11975, § 1, 6-5-07)

### **Sec. 2-179.11. Miscellaneous provisions.**

(a) The Trustees shall not be required to give any bond or to qualify before, be appointed by, or account to any court of law in the exercise of its powers hereunder.

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(b) No person transferring title or receiving a transfer of title from the Trustees shall be obligated to look to the propriety of the acts of the Trustees in connection therewith.

(c) The Employer may engage the Trustees as their agent in the performance of any duties required of the Employer under a Plan, but such agency shall not be deemed to increase the responsibility or liability of the Trustees under this Declaration.

(d) The Employer shall have the right at all reasonable times during the term of this Declaration and for three (3) years after the termination of this Declaration to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of the Trustees relating to this Declaration and the Trustees' performance hereunder.

(e) The Trust shall be subject to audit by the State Comptroller.  
(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.12. Amendment and termination.**

(a) *Plan Alteration, Amendment or Termination.* The Employer reserves the right to alter, amend, or (subject to Section 9.1) terminate this Declaration at any time for any reason without the consent of the Trustees or any other person, provided that no amendment affecting the rights, duties, or responsibilities of the Trustees shall be adopted without the execution of the Trustee to the amendment. Any such amendment shall become effective as of the date provided in the amendment, if requiring the Trustees' execution, or on delivery of the amendment to the Trustees, if the Trustees' executive is not required.

(b) *Rights Upon Plan Termination or Substantial Modification.* In the event the other post-employment benefits plan is terminated or substantially modified rendering the assets of the trust to be unnecessary to fund the plan, the assets will be distributed pursuant to section 2-179.11(3).

(c) *Employee and Beneficiary Vested Rights.* (a) If the plan is terminated the employees and former employees who have met all the conditions for other post-employment benefits as set out in the plan document in existence immediately preceding plan termination, to include retirees or their surviving beneficiaries shall be vested in a proportionate share of the accumulated assets based on the present value of the previous plan benefit as determined by an independent consulting actuary; (b) If substantial plan modification is adopted that because a reduction of benefits or eligibility results in the plan moving from a funded status of less than seventy-five percent (75%) to an over-funded status of at least one hundred fifty percent (150%) and continues in such over-funded level for two (2) consecutive actuarial valuations, then such action shall be considered a plan termination and the excess assets shall be distributed in the same manner as in subsection (a) above.

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(d) *Actuarial Valuations.* Actuarial valuations contemplated by this section shall be performed by the plan's independent consulting actuary in accordance with actuarial methods recognized by the Governmental Accounting Standards Board for other post-employment benefits.

(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.13. Trustees and successor trustees.**

(a) The Trustees of the General Pension Plan of the City of Chattanooga are designated as Trustees of the City of Chattanooga Post-Employment Benefits Other than Pension Trust. The General Pension Plan trustees shall not commingle the assets of the OPEB Trust Plan(s) and shall maintain separate and apart OPEB assets and liabilities from the assets and liabilities of the General Pension Plan, provided that this shall not preclude the use of the same investments providing that the books and records for such investments shall separately account for the OPEB investment. The Trustees may elect but are not required to utilize the same attorneys, actuaries, investment managers, custodians, and other supporting services as used by the General Pension Plan.

(b) The Employer reserves the right to change Trustees for any or no reason, at any time by giving ninety (90) days' advance written notice.

(c) The Employer reserves the right to change Trustees for cause by giving thirty (30) days advance written notice.

(d) The Trustees reserve the right to resign at any time by giving ninety (90) days' advance written notice to the Employer; provided that individual General Pension Plan Trustees may resign from time to time in their discretion.

(e) In the event of a change or resignation of a Trustee, the Employer may appoint a successor Trustee who shall succeed to all rights, duties, and responsibilities of the former Trustee under this Declaration and the terminated Trustee shall be deemed discharged of all duties under this Declaration and responsibilities for the Trust.

(Ord. No. 11975, § 1, 6-5-07)

### **Sec. 2-179.14. Limited effect of trust.**

(a) Neither the establishment of the Trust or any modification thereof, the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person any legal or equitable right against the Trustees, the Administrator, the Employer or any officer or employee thereof, except as may otherwise be expressly provided in a Plan or in this Declaration.

(b) The creation of this trust shall not be deemed to create rights beyond the assets of the trust. Any non-forfeitable rights beyond this trust must be bestowed in the employment contract, plan document, ordinance, resolution, or statute.

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(Ord. No. 11975, § 1, 6-5-07)

**Sec. 2-179.15. Protective clause.**

Neither the Administrator, the Employer, nor the Trustees shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with a Plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any person which may delay payment or render a contract void or unenforceable in whole or in part.

(Ord. No. 11975, § 1, 6-5-07)

DIVISION 9. TERMINATION OF EMPLOYMENT RELATIONSHIP

**Sec. 2-180. Notice upon separation from service; personal leave on resignation or retirement.**

(a) An employee who desires to resign in good standing shall submit a written resignation at least two (2) weeks in advance, setting forth his/her reasons for resigning.

(b) Employees with up to six (6) months' service may be given one (1) week's notice of dismissal and employees with more than six (6) months' service may be given two (2) weeks' notice of dismissal except that, if in the discretion of the supervisor the interests of the City will thus be best served, payment of compensation for the notice period may be made in lieu of continued work for that period; provided, however, that, when a supervisor terminates an employee for cause, the employee shall not be entitled to compensation for the notice period.

(c) Whenever an employment relationship is terminated, whether because of resignation, retirement, discharge or death, such employee shall receive pay for any accrued personal leave at the Regular Rate the employee is earning upon termination, provided, however, that no such payment shall be made which would increase such employee's pension benefit; in the event an employee is entitled to payment for accrued personal leave which would have the effect of increasing his or her pension benefit if paid in a lump sum upon termination, the City shall pay to such employee upon termination of employment a lump sum payment for a portion of such personal leave which would not have the effect of increasing such employee's pension benefit, and the balance of such pay for accrued personal leave shall be due and payable in January of the next calendar year. Accrued personal leave shall not be counted as part of the employee's "credited service" for pension purposes under the general pension plan. At time of payment for personal leave, accrued personal leave shall not have deductions made for the general pension plan. Payment of personal leave shall not exceed the annual maximum payable under Section 2-161(c)(7).

(Code 1986, § 2-181 & 2-202; Ord. No. 11638, §1, 11-02-04; Ord. No. 12470, § 4, 1-25-11)

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### **Sec. 2-181. Layoff generally.**

Any city employee may be laid off for lack of work or lack of funds without reflection on his/her standing. At least two (2) weeks' written notice of the effective date of the layoff shall be given each employee affected thereby, other than seasonal or temporary employees, specifically stating the reason for the layoff. Such notice shall be signed by the department head or the department head's designated subordinate.

(Code 1986, § 2-179; Ord. No. 11638, §1, 11-02-04)

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### **Sec. 2-182. Implementation of layoff.**

Regular employees shall not be laid off until all permanent part-time, temporary and seasonal employees occupying the same class are laid off, unless the non-regular employees' jobs are not funded solely by the City. Regular and permanent part-time employees shall be given an opportunity to transfer to another organizational unit of the City if the position for which they qualify exists in such other organizational unit. Evaluation records shall be used in determining which employees shall be laid off when two (2) or more employees are basically qualified to fill one (1) position. Also, seniority may be used as a criterion, at the discretion of the mayor, or any other objective criteria that has a rational basis and is not inconsistent with state or federal law.

(Code 1986, § 2-180; Ord. No. 11638, §1, 11-02-04)

### DIVISION 10. HARASSMENT

### **Sec. 2-183. Anti-harassment policy.**

As an equal opportunity employer, the City is committed to promoting and maintaining a working environment free of all forms of sexual and other unlawful harassment and discrimination. Simply put, the City does not and will not tolerate illegal harassment of its employees. Any form of harassment related to an individual's race, color, sex, religion, national origin, age, or disability is a violation of this policy and will be treated as a disciplinary matter. The term "harassment" includes, but is not limited to, slurs, jokes and other verbal, graphic, or physical conduct, statements, or materials relating to an individual's race, color, sex, religion, national origin, age or disability. "Harassment" also includes sexual advances, requests for sexual favors, unwelcome or offensive touching, sexually provocative or abusive language, and other verbal, graphic, or physical conduct of a sexual nature. Unlawful harassment may result in the loss of a tangible job benefit, take the form of an implied or express condition of employment, or it may result in an unduly hostile or oppressive work environment. If any employee has any questions about what constitutes harassing behavior, such employee is encouraged to contact his/her supervisor or the City Human Resources Director.

(a) This harassment policy adopted by the city applies to all officers and employees of the city including, but not limited to, full- and part-time employees, elected officials, and permanent and temporary employees covered under the personnel rules and ordinances of the City.

(b) This policy will be distributed to all officials and employees of the City. Every official and employee will be required to acknowledge his or her receipt of this policy in writing. A copy of that acknowledgement shall be kept on permanent file in the City. Department heads and supervisors shall also be responsible for ensuring that all employees under their direction are familiar with this policy.

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(Ord. No. 11638, § 1, 11-02-04)

### **Sec. 2-184. Making complaints about harassment.**

(a) Any employee who feels he/she is being subjected to harassment by anyone, including a co-worker, supervisor, or visitor, has an obligation to immediately contact one of the persons 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) the City's equal employment opportunity officer;
- (4) the city Human Resources Director; or
- (5) the mayor.

(b) Employees have the right to circumvent the employee chain of command in selecting which person to whom to make a complaint concerning harassment.

(c) Regardless of the specific person to whom an employee makes a complaint of harassment, the employee should, to the extent possible, provide the following information:

- (1) the employee's or official's name, department, and position title.
- (2) the name of the person or persons committing the harassment, including their title(s), if known.
- (3) the specific nature of the harassment, how long it has gone on, and 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) any and all witnesses to the harassment.
- (5) whether such harassment has been previously reported, and, if so, when and to whom.

(d) All complaints will be promptly investigated as confidentially as possible, and, where appropriate, disciplinary action, up to and including discharge, will be taken.

(Ord. No. 11638, § 1, 11-02-04)

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**Sec. 2-185. Reporting an investigation of harassment complaints against employees, or elected officials.**

(a) *Complaints against employees.* The city Human Resources Director or his/her authorized representative is designated by the City to be the investigator of complaints of harassment against employees. In the event the harassment complaint is against the city Human Resources Director, the investigator shall be a municipal employee appointed by the mayor.

(1) When an allegation of harassment is made by any employee, the person to whom the complaint is made shall immediately prepare a report of the complaint according to the preceding section and submit it to the city Human Resources Director, or in the event the harassment complaint is against the city Human Resources Director, to the mayor.

(2) The city Human Resources Director or his/her authorized investigator shall make and keep a written record of the investigation, including notes of verbal responses made to the investigator by the person complaining of harassment, witnesses interviewed during the investigation, the person against whom the complaint of harassment was made, and any other person contacted by the investigator in connection with the investigation. The notes shall be made at the time the verbal interview is in progress.

(3) When the investigator receives a complaint of harassment, he or she shall immediately:

- (i) Obtain a written statement from the person complaining of harassment which includes a comprehensive report of the nature of the harassment complained of, the times, dates, and places where the harassment occurred; and the investigator shall verbally question the person complaining of harassment about any information in the written statement which is not clear or needs amplification.
- (ii) Obtain written statements from witnesses which include a comprehensive report of the nature of the conduct witnessed, the times, dates, and places where the conduct occurred, and the conduct of the person complaining of harassment towards the person against whom the complaint of harassment was made. The investigator shall verbally question witnesses about any information in their written statements, which is not clear or needs amplification.
- (iii) Obtain a written statement from the person against whom the complaint of harassment has been made. The investigator shall

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verbally question the person against whom the complaint of harassment about any information in the written statement which is not clear or needs amplification.

- (iv) Prepare a report of the investigation, which includes the written statement of the person complaining of harassment, the written statements of witnesses, the written statement of the person against whom the complaint of harassment was made, and all of the investigator's notes connected to the investigation, and submit the report to the mayor.

(b) *Complaints against an elected official.*

- (1) Complaints of harassment against elected legislative and judicial officials shall be investigated by a city employee appointed by the mayor and any such complaints against the mayor shall be investigated by a city employee appointed by the city council.

- (2) The investigator shall investigate the complaint against an elected official in the same manner as is outlined in this policy for the investigation of complaints against employees. However, upon completion of the investigation, the investigator shall submit the report of the investigation to the person or body appointing him/ her.

(Ord. No. 11638, § 1, 11-02-04)

**Sec. 2-186. Action on complaints of harassment.**

(a) *Complaints against an employee.*

- (1) Upon receipt of a report of the investigation of a complaint of harassment against an employee, the department head of the department involved shall immediately review the report. If the department head of the department from which a harassment complaint is made determines that the report is not complete in some respect, he/ she may question the person complaining of harassment, the person against whom the complaint of harassment has been made, witnesses to the conduct in question or any other person who may have knowledge about the conduct in question. The department head of the department from which a harassment claim is made shall also keep written records of his/her investigation in the same manner prescribed for the investigator. However, if the department head of the department from which a harassment claim is made feels that the investigation report is adequate, he/ she may make a determination of whether harassment occurred, based on the report.

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- (2) Based upon the report, and his/her own investigation (where one is made) the department head of the department involved shall, within a reasonable amount of time not to exceed one workweek, determine whether the conduct of the person against whom a complaint of harassment has been made constitutes unlawful harassment. In making that determination, the department head of the department involved shall look at the record as a whole and the totality of the circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred, and the conduct of the person complaining of harassment. The determination of whether harassment occurred will be made on a case-by-case basis.
- (3) If the department head of the department involved determines that the complaint of harassment is founded, he/she shall take immediate and appropriate disciplinary action against the employee accused of harassment, consistent with his/her authority under the City charter, ordinances, resolutions or rules governing his/her authority to discipline employees.
- (4) The disciplinary action shall be consistent with the nature and severity of the offense. Disciplinary action may include demotion, suspension, dismissal, warning or reprimand. A determination of the level of disciplinary action shall also be made on a case-by-case basis.
- (5) A written record of disciplinary action taken shall be kept, including verbal reprimands. In all events, an employee accused of harassment shall be warned not to retaliate in any way against the person making the complaint of harassment, witnesses or any other person connected with the investigation of the complaint of harassment.
- (6) In cases where the harassment is committed by a non-employee against a City employee in the workplace, the department head of the department involved shall take whatever lawful action against the non-employee as is necessary to bring the harassment to an immediate end.

(b) *Complaints against an elected official.* The City council may discipline an elected official in whatever manner it deems appropriate, consistent with its authority under state law, the City charter, ordinances, resolutions or other rules governing discipline of elected officials.

(Ord. No. 11638, § 1, 11-02-04)

### **Sec. 2-187. Duty of employees.**

(a) Employees are obligated to report instances of harassment and to cooperate in every investigation of harassment. This obligation includes, but is not limited to, coming

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forward with evidence (both favorable and unfavorable to a person accused of harassment) fully and truthfully making a written report or verbally answering questions when required to do so by an investigator during the course of an investigation of harassment; and refraining from making bad faith accusations of harassment.

(b) Disciplinary action may be taken against any employee who fails to report instances of harassment of or by fellow employees, or who fails or refuses to cooperate in the investigation of a complaint of harassment, or who files a complaint of harassment in bad faith. No employee will be penalized in any way for truthfully reporting harassment. (Ord. No. 11638, § 1, 11-02-04)

### DIVISION 11. WORKPLACE VIOLENCE

#### **Sec. 2-188. Workplace Violence Policy.**

It is the City of Chattanooga's policy to promote a safe environment for its employees. We are committed to working with all employees to maintain a work environment free from workplace violence.

Workplace violence includes but is not limited to physical or verbal assaults, threats of violence or physical coercion, or other actions where the motive is to cause pain, fear or personal injury.

Workplace violence will not be tolerated; all reports of incidents will be taken seriously and will be dealt with appropriately. Individuals who commit such acts may be removed from the premises and may be subject to disciplinary action up to termination. Also, failure to report an incident of workplace violence may subject the non-reporting employee to disciplinary action up to termination.

The department head will ensure all reports of workplace violence are investigated and appropriate action taken. The City shall assign and train those responsible for investigating all incidents of workplace violence. (Ord. No. 11638, § 1, 11-02-04)

### DIVISION 12. EXTRACURRICULAR ACTIVITIES

#### **Sec. 2-189. Outside employment.**

The work of the City shall have precedence over the other occupational intersections of regular, full-time employees. All outside employment and all self-employment must be reported to an employee's department head. The department head may restrict or prohibit outside work that is in conflict with proper performance of duties for the City or would be detrimental to the best interests of the City and the public it represents. (Code 1986, § 2-189; Ord. No. 11638, §1, 11-02-04)

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### **Sec. 2-190. Regulation of outside employment so as to prevent conflicts of interest.**

(a) An official or employee who has the duty of approving or giving permission to members of the public to do or not to do something lawfully regulated by the city, or is otherwise an employee of the office, division or agency responsible for an official city approval process, or is a fireman or a policeman, shall not do any work or service outside his/her city employment without the written approval of his/her departmental supervisor.

(b) The criteria in giving such approval shall be whether or not the proposed work or service poses a conflict of interest with the employee's city employment or diminishes the employee's capacity to fulfill the responsibility of his/her city employment or compromises the integrity of the city department in carrying out its official duties.

(c) No city employee shall purchase or receive personal property belonging to or taken by the City which has been repaired or worked on by said employee and is thereafter offered for sale or disposition at a public auction or otherwise.

(Ord. No. 9249, § 1, 9-26-89; Ord. No. 9654, § 28, 1-6-92; Ord. No. 11638, §1, 11-02-04)

### **Sec. 2-191. Political activities - Rights of employees.**

All employees shall be free to vote for and support any political candidate they choose without interference, coercion, pressure or dictation by any superior. All employees as private citizens and off duty shall be free to join or affiliate with civic organizations including those of a partisan or political nature; attend political meetings; advocate and support the principles or policies of civic or political organizations in accordance with the constitution and laws of the state and in accordance with the Constitution and laws of the United States; take an active part in any political campaign, except as set forth in section 2-193 below; act as custodian of funds for political or partisan purposes; and distribute books, pamphlets or handbills favoring or opposing any candidate for nomination or election to public office; except as any or all of the above are modified by laws of the state or laws or regulations of the United States.

(Code 1986, 2-192; Ord. No. 11638, §1, 11-02-04)

### **Sec. 2-192. Political Activities - Restrictions.**

No officer or employee of the City shall:

(1) Be compelled or coerced to make any contributions, assessments or other payments to any political organization or member or committee thereof;

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- (2) Be allowed to solicit any contribution, or to sell any ticket, or to procure money by any devise from the public or any member thereof, or to solicit any other political favor, while on duty;
  - (3) Use or threaten to use his/her influence, because of position as a City employee, favoring or opposing any candidate or issue;
  - (4) Use any City funds, supplies or equipment for political purposes;
  - (5) Participate in any political activity while wearing any uniform or part of any uniform associating them with their City employment; or
  - (6) Work on any political posters, mailing lists or other materials, whether written or otherwise, which are used to influence or attempt to influence voters, while on duty or while in uniform.
- (Code 1986, 2-193; Ord. No. 11638, §1, 11-02-04)

### **Sec. 2-193. Running for public office.**

Employees are eligible to run for an elective office, including elective offices for the City of Chattanooga, so long as the employee adheres to the following provisions:

- (1) Federal law prohibits a city employee from running for an elective office if the employee's position or duties are connected with an activity financed in whole or in part by federal loans or grants, unless the election is nonpartisan.
- (2) Before officially filing, employees who seek to run for public office, with the exception of elected officials of the City of Chattanooga, shall give written notice to the employee's Department Director or Administrator stating the intention to seek elective office and the title of the elective office the employee will seek.
- (3) The employee's Department Director or Administrator holds the right to place the employee on a leave of absence if it is determined that the employee's candidacy does one or more of the following:
  - (a) interferes with the employee's assigned job duties and responsibilities;
  - (b) represents a conflict of interest;
  - (c) results in campaigning while on duty; or
  - (d) results in a violation of the provisions of Section 2-192 of this

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### Article.

If there is a question as to whether a conflict of interest exists, such matter shall be forwarded to Chief Ethics Officer for a recommendation to the employee's Administrator. In those instances in which a conflict is found to exist, the employee may appeal the decision as set forth in Section 2-174(t) of the Chattanooga City Code. If a conflict is found to exist, the employee shall be placed on leave of absence. If the employee wishes to continue receiving compensation when placed on leave of absence, the employee shall first use compensatory leave, then personal leave. When all accrued leave is finally exhausted, the employee may be placed on leave of absence without pay subject to the provisions of Section 2-163 of the City Code.

- (4) Should the employee be successful in acquiring the elective office sought, other than a City of Chattanooga elective office, the employee shall be allowed to continue City employment as long as the employee's elected responsibilities do not conflict with the employee's assigned job duties and responsibilities. The employee's Administrator shall decide whether such a conflict exists. If the Administrator determines that a conflict exists, the employee shall decide within fifteen (15) days from the date of such determination whether to retain employment with the City or serve in his or her elected position. In those instances in which the conflict results in a dismissal of the employee, the employee may appeal the decision as set forth in Section 2-174(t) of the Chattanooga City Code.
- (5) Should problems arise in the matter of City employees seeking elective office that are not defined in this section, the matter shall be presented to the employee's Administrator for resolution.
- (6) Nothing contained in this section shall be construed to be inconsistent with any applicable state or federal statute or regulation that may provide otherwise, and this section shall be supplemental to any such applicable state or federal regulation or statute.

(Code 1986, § 2-173; Ord. No. 9551, § 1, 5-14-91; Ord. No. 9654, § 13, 1-6-92; Ord. No. 10163, § 9, 1-17-95; Ord. No. 11638, §1, 11-02-04; Ord. No. 12414, § 3, 7-20-10; Ord. No. 12798, § 1, 02-04-14)

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DIVISION 13. MISCELLANEOUS

**Sec. 2-194. Gratuities restricted.**

No city employee shall, without the consent of the city council, receive any money or gratuity or compensation in addition to his/her salary for any service he/she may render as an employee.

(Code 1986, § 2-190; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11638, §1, 11-02-04)

**Sec. 2-195. Nepotism.**

No applicant shall be employed in a position where a member of his/her immediate family would serve in a supervisory position which could directly affect his/her job performance or job evaluation.

(Code 1986, § 2-199; Ord. No. 11638, §1, 11-02-04)

**Sec. 2-196. Limitations on temporary or interim assignment to department head status.**

Temporary or interim assignments of employees to department head status shall not continue for more than (ninety) 90 days and all such employees who have operated above their normal pay grade and step shall be returned to their normal pay grade and step and shall be returned to their regular salary and benefits at the expiration of ninety 90 days or upon the confirmation of a new department head, whichever shall first occur.

(Ord. No. 9653, § 1, 12-17-91; Ord. No. 11638, §1, 11-02-04)

**Sec. 2-197. Misuse of city records.**

No city official or employee shall use confidential information for personal gain or profit.

(Code 1986, § 2-191; Ord. No. 11638, §1, 11-02-04)

**Sec. 2-198 – 2-230. Reserved.**

(Code 1986, § 2-136 – 2-225; Ord. No. 11638, §1, 11-02-04)

**Editor's note**-Article III, §§ 2-136 – 2-225 were deleted and replaced, with renumbering of succeeding Divisions, by Ord. No. 11638, §§ 1 and 2, 11-02-04.

DIVISION 14. SOCIAL SECURITY GENERALLY<sup>9</sup>

**Sec. 2-231. Policy and purpose.**

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<sup>9</sup> **Charter reference**—For pensions and death benefits generally, see § 3.35 et seq.; pensions for policemen and firemen, § 13.63 et seq.

**Cross references**—City authorized to contribute to pension funds created and operated by labor organizations, § 2-7; social security for educational personnel, § 2-251 et seq.

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It is hereby declared to be the policy and purpose of the city to extend, at the earliest date, to the employees and officials thereof, not excluded by law or this division, and 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, and Public Law 761--83rd Congress. In pursuance of such policy, and for that purpose, the city shall take such action as may be required by applicable state or federal laws or regulations.  
(Code 1986, § 2-231)

### **Sec. 2-232. Agreements authorized.**

The mayor of the city is hereby authorized and directed to execute all necessary agreements and amendments thereto with the state executive director of Old Age and Survivors Insurance, as agent or agency, to secure coverage of employees and officials as provided in section 2-230 of this division.  
(Code 1986, § 2-232)

### **Sec. 2-233. Withholdings.**

Withholdings from salaries or wages of employees and officials for the purpose provided in Section 2-231 of this division are hereby authorized to be made in the amounts and at such times as may be required by applicable state or federal laws or regulations and shall be paid over to the state or federal agency designated by such laws or regulations.  
(Code 1986, § 2-233)

### **Sec. 2-234. Appropriations.**

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, which shall be paid over to the state or federal agency designated by such laws or regulations.  
(Code 1986, § 2-234)

### **Sec. 2-235. Records, reports.**

The city shall keep such records and make such reports as may be required by applicable state and federal laws or regulations.  
(Code 1986, § 2-235)

### **Sec. 2-236. Employees excluded.**

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There is hereby excluded from this division any authority to make any agreement with respect to position or any employee or official now covered or authorized to be covered by any retirement system for any employee or official of the city, other than any position, employee or official covered by the general employees retirement system who have heretofore, by a majority vote in a referendum, duly held as provided by Public Law 761--83rd Congress, voted in favor of accepting the benefits offered by the Federal Social Security Act.

(Code 1986, § 2-236)

### **Secs. 2-237 – 2-250. Reserved.**

## DIVISION 15. SOCIAL SECURITY FOR EDUCATIONAL PERSONNEL<sup>10</sup>

### **Sec. 2-251. Policy and purpose.**

It is hereby declared to be the policy and purpose of the city to extend, at the earliest date, to the employees and officials of the department of education who are employed in positions covered by such department's insurance and pension fund, not excluded by law or this division, and 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 all amendments thereto. In pursuance of such policy, and for that purpose, the city shall take such action as may be required by applicable state or federal laws or regulations.

(Code 1986, § 2-251)

### **Sec. 2-252. Agreements authorized.**

The mayor of the city is hereby authorized and directed to execute all necessary agreements and amendments thereto with the state executive director of Old Age and Survivors Insurance, as agent or agency, to secure coverage of employees and officials as provided in section 2-251 of this division.

(Code 1986, § 2-252)

### **Sec. 2-253. Reserved.**

### **Sec. 2-254. Appropriations.**

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,

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<sup>10</sup> **Cross references**—City authorized to contribute to pension funds created and operated by labor organizations, § 2-7; social security for city employees generally, § 2-231 et seq.; minimum pension for teachers with twenty-five years' service, § 30-1; pension for personnel for whom city receives reimbursement, § 30-2.

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which shall be paid over to the state or federal agency designated by such laws or regulations.

(Code 1986, § 2-254)

### **Sec. 2-255. Records, reports.**

The city shall keep such records and make such reports as may be required by applicable state and federal laws or regulations.

(Code 1986, § 2-255)

### **Sec. 2-256. Employees excluded.**

There is hereby excluded from this division any authority to make any agreement with respect to any position or any employee or official now covered or authorized to be covered by any retirement system for any such employee or official of the city, other than any position, employee or official covered by the insurance and pension fund of the department of education of the city.

(Code 1986, § 2-256)

### **Secs. 2-257 – 2-270. Reserved.**

## DIVISION 16. OCCUPATIONAL SAFETY AND HEALTH PROGRAM<sup>11</sup>

### **Sec. 2-271. Title.**

This section shall be known as “The Occupational Safety and Health Program Plan” for the employees of the City of Chattanooga.

(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, § 1, 02-18-14)

### **Sec. 2-272. Purpose.**

The purpose in electing to update the established Program Plan will maintain an effective and comprehensive Occupational Safety and Health Program Plan for its employees and shall:

- 1) Provide a safe and healthful place and condition of employment that includes:
  - a) Top Management Commitment and Employee Involvement;
  - b) Continually analyze the worksite to identify all hazards and potential hazards;
  - c) Develop and maintain methods for preventing or controlling

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<sup>11</sup> **Cross reference**—Health and sanitation generally, Ch. 20.

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- the existing or potential hazards; and
- d) Train managers, supervisors, and employees to understand and deal with worksite hazards.
  - 2) Acquire, maintain and require the use of safety equipment, personal protective equipment and devices reasonably necessary to protect employees.
  - 3) Record, keep, preserve, and make available to the Commissioner of Labor and Workforce Development, or persons within the Department of Labor and Workforce Development to whom such responsibilities have been delegated, adequate records of all occupational accidents and illnesses and personal injuries for proper evaluation and necessary corrective action as required.
  - 4) Consult with the Commissioner of Labor and Workforce Development with regard to the adequacy of the form and content of records.
  - 5) Consult with the Commissioner of Labor and Workforce Development, as appropriate, regarding safety and health problems which are considered to be unusual or peculiar and are such that they cannot be achieved under a standard promulgated by the State.
  - 6) Provide reasonable opportunity for the participation of employees in the effectuation of the objectives of this Program Plan, including the opportunity to make anonymous complaints concerning conditions or practices injurious to employee safety and health.
  - 7) Provide for education and training of personnel for the fair and efficient administration of occupational safety and health standards, and provide for education and notification of all employees of the existence of this Program Plan.

(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, § 1, 02-18-14)

### **Sec. 2-273. Coverage.**

The provisions of the Occupational Safety and Health Program Plan for the employees of City of Chattanooga shall apply to all employees of each administrative department, commission, board, division, or other agency whether part-time or full-time, seasonal or permanent.

(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, §1, 02-18-14)

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### **Sec. 2-274. Standards authorized.**

The Occupational Safety and Health standards adopted by the City of Chattanooga are the same as, but not limited to, the State of Tennessee Occupational Safety and Health Standards promulgated, or which may be promulgated, in accordance with Section 6 of the Tennessee Occupational Safety and Health Act of 1972 (T.C.A. Title 50, Chapter 3).  
(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, §1, 02-18-14)

### **Sec. 2-275. Variances from standards authorized.**

Upon written application to the Commissioner of Labor and Workforce Development of the State of Tennessee, we may request an order granting a temporary variance from any approved standards. Applications for variances shall be in accordance with Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, VARIANCES FROM OCCUPATIONAL SAFETY AND HEALTH STANDARDS, CHAPTER 0800-01-02, as authorized by T.C.A., Title 50. Prior to requesting such temporary variance, we will notify or serve notice to our employees, their designated representatives, or interested parties and present them with an opportunity for a hearing. The posting of notice on the main bulletin board shall be deemed sufficient notice to employees.  
(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, §1, 02-18-14)

### **Sec. 2-276. Administration**

For the purposes of this ordinance, the Director of Risk Management and Insurance is designated as the Safety Director of Occupational Safety and Health to perform duties and to exercise powers assigned to plan, develop, and administer this Program Plan. The Safety Director shall develop a plan of operation for the Program Plan in accordance with Rules of Tennessee Department of Labor and Workforce Development Occupational Safety and Health, SAFETY AND HEALTH PROVISIONS FOR THE PUBLIC SECTOR, CHAPTER 0800-01-05, as authorized by T.C.A., Title 50.  
(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, §1, 02-18-14)

### **Sec. 2-277. Funding the program plan.**

Sufficient funds for administering and staffing the Program Plan pursuant to this ordinance shall be made available as authorized by the City of Chattanooga.  
(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, §1, 02-18-14)

### **Sec. 2-278. Severability.**

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If any section, sub-section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

(Ord. No. 11518, §1, 02-17-04; Ord. No. 12802, §1, 02-18-14)

**Secs. 2-279 – 2-289. Reserved.**

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### DIVISION 17. GENERAL PENSION PLAN

#### **Sec. 2-301. General Pension Plan.**

The General Pension Plan as established by the Private Acts of 1965, Chapter 254, as amended by private acts and Home Rule referenda, shall be transferred from the Charter compilation to the City Code compilation, but the vested rights of any participant or beneficiary shall not thereby be affected. No current provision of the General Pension Plan may be amended hereafter except pursuant to the provisions of section 2-318. (Priv. Acts 1965, Ch. 254; Priv. Acts 1967, Ch. 169; Priv. Acts 1968, Ch.430; Priv. Acts 1971, Ch. 137; Priv. Acts 1972, Ch. 402; Ord. No. 7408, 8-22-78; Ord. No. 8688, 8-19-86; Ord. No. 9766, 8-11-92; Ord. No. 10084, 8-16-94; Ord. No. 10463, 8-20-96; Ord. No. 10739, 8-18-98; Ord. No. 11011, 5-9-00; Ord. No. 11272, 4-30-02; Ord. No. 12677, 12-18-12)

**Editor's Note**-The General Pension System initially created by the Priv. Acts 1965, Ch. 254 moved from Charter to City Code pursuant to Ordinance No. 12677, § 3, 12-18-12. The City Attorney has been authorized pursuant to Section 33 of Ordinance No. 12677 to rearrange, regroup, and renumber titles, chapters, and parts thereof to change reference numbers to correlate with any renumbered chapter or heading. Such changes are necessary to assimilate the General Pension System into the City Code and such changes will be referenced in Editor's notes. The notes will reflect the previous references to the Priv. Acts and to the Charter.

#### **Sec. 2-302. Contents of Plan.**

The City Council of the City of Chattanooga, in its discretion, may upon recommendation of the Board of Trustees of the General Pension Plan, upon advice by the Mayor, and upon receipt of an actuarial report as to the costs and actuarial soundness of such changes, may amend by ordinance passed upon two separate meetings the provisions of the General Pension Plan providing such amendments are consistent with sound actuarial principles, methods and assumptions and further provided that such amendments shall not decrease any vested financial benefits accrued by any participant or beneficiary. (Ord. No. 11101, §1(12), 5-9-00).

**Cross references**-Identical provision codified at Chattanooga City Charter, Sec. 3.52 (Ord. No. 12677, 12-18-12)

#### **Sec. 2-303. Definitions.**

As used herein the following words and phrases shall have the meaning indicated, unless otherwise defined or required by the context: (Priv. Acts 1965, Ch. 254, § 3(1))

- (1) Plan shall mean the "General Pension Plan" as contained herein. (Priv. Acts 1965, Ch. 254, § 3(1.01))
- (2) Former plan shall mean any other pension plan created for the benefit of employees of the City of Chattanooga now in existence, whether open or closed to current or further participation, including but not limited to the Employees' Insurance and Pension Fund created by Chapter 678 of the Private Acts of 1937; the Department of Education Insurance and Pension Fund

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created by Chapter 221 of the 1937 Private Acts; Salaried Employees' Insurance and Pension Fund created by Chapter 298 of the 1961 Private Acts; Officials Pension System created by Chapter 300 of the 1961 Private Acts; and all Acts amendatory of any of said Acts. (Priv. Acts 1965, Ch. 254, § 3(1.02))

- (3) Board of trustees or board or trustees shall mean the board of trustees appointed in accordance with Section 2-311, charged with the administration of the Plan as provided in Sections 2-311 and 2-313 hereof. (Priv. Acts 1965, Ch. 254, § 3(1.03); Ord. No. 11272, § 1, 05-02-2).

**Editor's Note**-Section 2-311 was formerly numbered 3.44 in the City's Charter and Article 8 in the Priv. Acts 1965. Section 2-313 was formerly numbered 3.46 in the City's Charter and Article 10 in Priv. Act. 1965, references to Art. 8 and 10 of Priv. Acts 1965 changed for codification.

- (4) City council shall mean the governing body of the City of Chattanooga. (Priv. Acts 1965, Ch. 254, § 3(1.04); Ord. No. 9766, § 1(7), 8-11-92)

- (5) City shall mean the City of Chattanooga, Tennessee, a Municipal Corporation chartered under the laws of the State of Tennessee. (Priv. Acts 1965, Ch. 254, § 3(1.05))

- (6) Employee shall mean any person regularly employed by the City and paid on an hourly basis or on a weekly, semimonthly or monthly salary (but not including temporary or seasonal employees or persons rendering a service under a contract) whether employed on a full-time or a part-time basis. However, the term "employee" shall not include (i) any person employed by the City in the Department of Fire or Police who is eligible for or is participating in the [Firemen's and Policemen's Insurance and Pension Fund, created by Chapter 165 of the 1949 Private Acts], as amended in § 2-400, *et seq.* hereof, (ii) any person who is eligible for or who is participating in the Tennessee Teachers Retirement System, as contained in Section 49-1501, *et seq.* [repealed], of Tennessee Code Annotated, or (iii) any Active Retired Participant as herein defined in subsection (24). In all cases of doubt, the Board of Trustees shall determine whether or not a person is an employee as herein defined.

(Priv. Acts 1965, Ch. 254, § 3(1.06); Ord. No. 7408, § 1(2), 8-22-78; Ord. No. 12852, §1, 8-26-14)

**Editor's Note**-In the opinion of the City Attorney, § 3 (1.06) of the Priv. Acts. 1965, Ch. 254, § 3 (1.06) has been effectively repealed by the assimilation of the former Tennessee Teachers Retirement System into the Tennessee Consolidated Retirement System. T.C.A. § 8-34-101, *et seq.* The Firemen's and Policemen's Insurance and Pension Fund is now named the Fire and Police Pension Fund codified at sections 2-400 *et seq.* of this City Code.

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- (7) Participant shall mean any employee or any of the 2013 Active Retirees as defined in subsections (6) and (23) of this Section 2-303 or a former employee who completed five (5) years of credited service and thereby has a vested interest in the general pension plan.  
(Priv. Acts 1965, Ch. 254, § 3(1.07); Priv. Acts 1967, Ch. 169, § 2; Ord. No. 10739, § 1(1), 8-18-98; Ord. No. 12852, § 1, 8-26-14)

**Editor's Note-** Prior reference to Charter Section 3.38 changed to § 2-303 for codification.

- (8) Participant in a former plan shall mean any employee who, on the day prior to the effective date, was covered under a former plan or then had a right to receive a benefit from a former plan. (Priv. Acts 1965, Ch. 254, § 3(1.08))
- (9) Retired participant shall mean any participant who is retired from the city and is entitled to receive retirement benefits provided by the plan. (Priv. Acts 1965, Ch. 254, § 3(1.09))
- (10) Credited service shall mean the length of time a person participated in this plan or any former plan prior to the date as of which credited service is being determined. Credited service shall be expressed in years and a decimal fraction of a year based on completed calendar months. Credited service shall include that period of time that such person was an employee, whether continuous or not, while a former plan(s) was in force and he was not a participant in such former plan(s); but it shall not include any time a person is on leave of absence without pay or for any time for which a refund was paid in accordance with Section 2-312. Prior reference to Priv. Acts 1965 Section 4.98 and prior reference to 3.45(3) of the Charter changed to § 2-312 for codification. (Priv. Acts 1965, Ch. 254, § 3(1.10); Priv. Acts 1967, Ch. 169, § 3; Priv. Acts 1968, Ch. 430, § 1; Priv. Acts 1971, Ch. 137, § 5; Ord. No. 7408, § 1(3), 8-22-78)

**Editor's Note-**The following sentence which was the last sentence in this subsection has in the opinion of the editors been removed from this compilation as having been repealed by Ord. No. 8688. [Such credited service for any period of time that he was not a participant will be granted only if and on the condition that the employee pay to the city an amount as determined in accordance with the provisions for reinstatement of prior service (Section 4.09) [Section 3.45.1 hereof], the social security law.]

- (11) Earnings shall mean the total compensation paid by the city to an employee by a weekly, semimonthly or monthly salary for his personal services that are subject to federal income tax but excluding any payment for personal services made by virtue of any contract. (Priv. Acts 1965, Ch. 254, § 1(1.11); Ord. No. 8688, § 1(23), 8-19-86)
- (12) Average shall mean an arithmetic average determined for the highest paid three (3) full calendar years of a participant preceding the date as of which such average is being determined, or based on such lesser number of full calendar years of credited service actually completed by the participant. (Priv. Acts 1965, Ch. 254, § 3(1.12); Priv. Acts 1972, Ch. 402, § 1)

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- (13) Effective date shall mean the effective date of the plan which shall be January 1, 1965. (Priv. Acts 1965, Ch. 254, § 3(1.17))
- (14) Normal retirement date shall mean the first day of the month next following the sixty-second (62nd) birthday of a participant. (Priv. Acts 1965, Ch. 254, § 3(1.18))
- (15) Beneficiary shall mean the recipient or recipients, last designated by the participant in writing on form acceptable to the board who shall receive any death benefits payable under the plan. (Priv. Acts 1965, Ch. 254, § 3(1.19))
- (16) Plan year shall mean the fiscal year adopted from time to time by the city; but the first plan year shall mean the eighteen (18) month period ending June 30, 1966. (Priv. Acts 1965, Ch. 254, § 3(1.20))
- (17) Fund shall mean the cash or other property held and maintained in trust in accordance with Section 2-313 hereunder and Sections 2-302 to 2-314. (Priv. Acts 1965, Ch. 254, § 3(1.21))

**Editor's Note**-Prior references to Article 10 and Section 3 of Priv. Acts 1965 and to former Charter provisions 3.46 and 3.36 through 3.47 have been changed to Section 2-313 hereof and 2-302 to 2-314 respectively for codification.

- (18) Early retirement date shall mean the first day of the month next following the fifty-fifth (55<sup>th</sup>) birthday of a participant; provided that if the sum of a participant's age and years of credited service is at least eighty (80), the early retirement date shall be the first day of the month after the participant attains said eighty (80) years of age and credited service. (Priv. Acts 1965, Ch. 254, § 3(1.22); Priv. Acts 1967, Ch. 169, § 4; Ord. No. 10739, § 1(1), 8-18-98; Ord. No. 11011, § 1(1), 5-9-00)
- (19) Primary insurance amount shall mean the amount payable to a person at sixty-two (62) under the social security law. (Priv. Acts 1967, Ch. 169, § 5; Ord. No. 8688, § 1(3), 8-19-86)

**Editor's Note**-This definition is utilized in calculations for social security offset in Section 2-308 hereof for employees hired or vested prior to 8/19/86 pursuant to Ord. No. 8688.

- (20) Refund shall mean a refund of a participant's contributions in lieu of all other benefits to which he may be entitled, payable one year after a participant's termination of employment as an employee or at such earlier date approved by the board of trustees, together with interest at the refund interest rate from the date of termination to the date the refund is to be made. (Ord. No. 7408, § 1(4), 8-22-78)
- (21) Refund interest rate shall mean the rate of six (6) per cent per annum. (Ord. No. 9766, § 1(3), 8-11-92)

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- (22) Part-time employee shall mean an employee whose job description provides for one thousand (1,000) hours per year or more is eligible to be a participant, but this term shall not apply to an official of the city elected by popular vote who is also eligible to be a participant. (Ord. No. 11011, § 1(4), 5-9-00)
- (23) 2013 Active Retirees shall mean those retired participants who (i) have terminated their employment with the City, (ii) are receiving retirement benefits provided by the plan, and (iii) were re-employed by the City between April 15, 2013 and April 1, 2014; and (iv) are paid on an hourly basis or on a weekly, semimonthly or monthly salary (but not including temporary or seasonal employees or persons rendering a service under a contract) whether employed on a full-time or a part-time basis. However, the term “2013 Active Retirees” shall not include (i) any person employed by the City in the Department of Fire or Police who is eligible for or is participating in the [Firemen’s and Policemen’s Insurance and Pension Fund, created by Chapter 165 of the 1949 Private Acts], as amended in § 2-400, *et seq.* hereof, or (ii) any person who is eligible for or who is participating in the Tennessee Teachers Retirement System, as contained in Section 49-1501, *et seq.* [repealed], of Tennessee Code Annotated. (Ord. No. 12852, § 2, 8-26-14)
- (24) Active Retired Participant shall mean any retired participant who (i) has terminated his/her employment with the City, (ii) is receiving retirement benefits provided by the plan, (iii) is re-employed by the City on or after April 1, 2014, and (iv) is paid on an hourly basis or on a weekly, semimonthly or monthly salary (but not including temporary or seasonal employees or persons rendering a service under a contract) whether employed on a full-time or a part-time basis. However, the term “Active Retired Participant” shall not include (i) any person employed by the City in the Department of Fire or Police who is eligible for or is participating in the [Firemen’s and Policemen’s Insurance and Pension Fund, created by Chapter 165 of the 1949 Private Acts], as amended in § 2-400, *et seq.* hereof, or (ii) any person who is eligible for or who is participating in the Tennessee Teachers Retirement System, as contained in Section 49-1501, *et seq.* [repealed], of Tennessee Code Annotated. In all cases of doubt, the trustees shall determine whether or not a person is an Active Retired Participant as herein defined. (Ord. No. 12852, § 2, 8-26-14)

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**Sec. 2-304. Conditions of eligibility; non-eligibility**

- (a) Except for an Active Retired Participant as that term is defined in Section 2-303(24), each employee hired after February 1, 1979, and each of the 2013 Active Retirees shall be a participant of this plan as a condition of employment. Participation in the plan shall commence with the first payroll period.

(Priv. Acts 1965, Ch. 254, § 3(2.01); Ord. No. 7408, § 1(16), 8-22-78; Ord. No. 8688, § 1(5), 8-19-86)

- (b) Each of the 2013 Active Retirees as that term is defined in Section 2-303(23) shall be allowed to either (i) opt out of participation in the plan for their current re-employment, receive a refund of all contributions made for their current re-employment and be eligible to participate in the deferred compensation program offered by the City or (ii) make the mandatory employee contributions at the plan's stated percentage rate and be entitled to accrue credited service for the period of re-employment in the same manner and subject to the same vesting rules applicable to newly hired employees with any benefit earned being treated as a new and independent retirement benefit.<sup>12</sup>

(Ord. No. 7408, § 1(6), 8-22-78; Ord. No. 10084, § 1(6), 8-16-94)

- (c) Except for an Active Retired Participant as that term is defined in Section 2-303(24), each employee or 2013 Active Retiree shall continue to be a participant as long as he/she continues employment with the City.

(Ord. No. 7408, § 1(6), 8-22-78)

- (d) Beginning April 1, 2014, and continuing thereafter, any Active Retired Participant who has terminated his/her employment with the City and who is receiving pension benefit payments during his/her re-employment period with the City (which represents benefits accrued for periods of employment before his/her re-employment) shall continue to receive his/her pension benefit payments but shall not be entitled to participate in the plan during the period of re-employment with the City. However, during the period of re-employment, an Active Retired Participant may participate in the deferred compensation program offered by the City.

(Ord. No. 12852, § 3, 8-26-14)

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<sup>12</sup> It is the opinion of the City Attorney that this provision is not inconsistent with Chattanooga City Charter, Appendix 1, ¶ 35.

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### Sec. 2-305. Financing of plan.

(1) Employee contributions. Each participant shall pay to the city by payroll deduction an amount which shall be two percent (2%) of their earnings. Employee contributions shall be payable by a participant each payroll period during which he or she is a participant. The City Council, in its discretion, after, and only after, a recommendation has been received from the board of trustees, may by ordinance passed on three (3) separate readings, increase or decrease such employee contributions on or after July 1, 1969, and annually thereafter; provided, however, that such increase or decrease specified in said ordinance is the same as recommended by the board of trustees and is not inconsistent with any recommendation or report rendered by a qualified and accredited actuary as required by subsection (2) below. (Priv. Acts 1965, Ch. 254, § 3(3.01); Priv. Acts 1967, Ch. 169, § 8; Ord. No. 7408, § 1(7), 8-22-78; Ord. No. 9766, § 1(7), 8-11-92; Ord. No. 10084, § 1(2), 8-16-94)

**Editor's Note**-Former reference to § 3.02 of Priv. Acts 1965 and to Charter § 3.39(2) changed to subsection (2) below for codification.

(2) City contributions. The city shall contribute monthly to the fund for the first plan year an initial amount equal to nine per cent (9%) of the annual payroll of participants, such percentage being known as the "city contribution rate." The city must also contribute, commencing with the fiscal year of 1966-67, an amount that will amortize the past service liabilities over a period not in excess of thirty (30) years from December 31, 1978. Thereafter the city contribution rate applicable for any plan year shall be determined actuarially on the basis of an annual actuarial valuation of the plan made as of December 31 in the preceding plan year. The city contribution rate, and the past service liability, shall be determined by a qualified or accredited actuary, selected by the board of trustees, according to accepted and sound actuarial principles, methods and actuarial assumptions. Such city contributions, as are so determined by said actuary and when approved by the board of trustees and certified to the Human Resources Director on or before June 1, must be appropriated by the city in the annual budget ordinance for the immediately following fiscal year. (Priv. Acts 1965, Ch. 254, § 3(3.02); Priv. Acts 1967, Ch. 169, § 9; Priv. Acts 1972, Ch. 402, § 2; Ord. No. 7408, § 1(7), 8-22-78; Ord. No. 9766, § 1(7), 8-11-92)

(3) City to levy tax. The city is hereby empowered, authorized, and required to levy a sufficient annual tax upon all taxable property and taxable privileges within the City of Chattanooga for the purpose of raising revenue in order to make its contributions to the plan and for the payment of pensions to participants in the plan, and it shall appropriate same for such purposes. (Priv. Acts 1965, Ch. 254, § 3(3.03); Priv. Acts 1967, Ch. 169, § 10; Priv. Acts 1967, Ch. 169, §§ 8-10; Priv. Acts 1972, Ch. 402, § 2; Ord. No. 7408, § 1, 8-22-78)

(4) Picking up of contributions. Notwithstanding the provisions hereof employee contributions may be "picked up" by the city pursuant to Section 414(h) of the Internal Revenue Code. (Ord. No. 9766, § 1(5), 8-11-92)

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### Sec. 2-306. Benefits; conditions.

(1) Application forms. Payment of all benefits under the plan shall be subject to written application by the participant or beneficiary, as the case may be, submitted in such form as the board may direct from time to time. (Priv. Acts 1965, Ch. 254, § 3(4.01))

(2) Normal retirement-conditions. Each participant in the employment of the city on his normal retirement date shall be eligible to retire on that date and to receive a benefit as provided in Section 2-307 hereof. (Priv. Acts 1965, Ch. 254, § 3(4.02))

**Editor's Note**-Former reference to Section 5.01 of the Priv. Acts 1965 and to § 3.41 of the Charter has been changed to Section 2-307 for codification.

(3) Early retirement, vesting-conditions. A participant who has at least five (5) years of credited service as provided in this plan and whose employment is terminated for whatever reason, including resignation or for cause, may elect not to receive a refund and thereby be eligible for any of the benefits provided under this plan. (Priv. Acts 1965, Ch. 254, § 3(4.03); Priv. Acts 1967, Ch. 169, § 1; Priv. Acts 1972, Ch. 402, § 4; Ord. No. 7408, § 1(8), 8-22-78; Ord. No. 10739, § 1(1), 8-18-98)

(4) Death before retirement benefits are payable. If a participant dies before he has completed five (5) years of credited service and before he has attained age 62, his beneficiary shall receive a refund of all the deceased participant's contributions to the plan, without interest, payable within fifteen (15) days after date of death. If a participant dies after he has completed five (5) years of credited service or after he has attained age 62, any option he may have elected, in lieu of his otherwise retirement benefit, shall be payable as though he had been entitled to have such optional benefit commence on his date of death; and in the event such a participant has not elected any option prior to his death, a benefit shall be payable to the deceased participant's surviving spouse, if any, as though he had elected Option A. However, a beneficiary entitled to receive any optional benefit in accordance with this subsection shall be eligible to elect to receive a full refund, without interest, of the deceased participant's contributions to this plan in lieu of all other benefits payable in accordance with this subsection, or may elect to receive a monthly benefit payable for life to commence at or after age 62 which has an actuarial value equal to and in lieu of the amount of optional benefit to which she is otherwise entitled. (Priv. Acts 1965, Ch. 254, § 3(4.04); Priv. Acts 1967, Ch. 169, § 12; Ord. No. 10739, § 1(1), 8-18-98)

**Editor's Note**-Change in original text from reference of "section" to "subsection" made for accuracy.

(5) Death after retirement benefits are payable. No death benefit shall be payable to a participant's beneficiary under the plan other than a refund of the amount by which the deceased participant's contributions exceed benefits that have been paid to him or his beneficiary in the case of a participant who dies after retirement benefits are payable, unless an optional form of retirement benefit has been elected which specifically provides for another method of payment. (Priv. Acts 1965, Ch. 254, § 3(4.05))

(6) Disability pensions.

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- (a) The board of trustees shall establish a disability pension plan for persons who become disabled in the line of duty or not in the line of duty. The trustees may fulfill this obligation by purchasing a commercial disability insurance policy, by establishing a self-funded disability plan administered by an insurance company or other qualified administrator, or by any combination thereof. This disability program may provide for partial disability payments for employees who recover sufficiently to become gainfully employed, but who are not recovered sufficiently to return to their normal employment or occupation.
- (b) For the purposes hereof, the phrase "disabled in the line of duty" shall generally relate to those disabilities proximately caused by acts or incidences occurring as a result of employment with the city; however, the trustees may purchase insurance policies with different definitions. The trustees are also authorized to adopt a more specific definition of disability with respect to a self-funded program.
- (c) For the purposes hereof, the phrase "disabled not in the line of duty" shall refer to those disabilities that do not qualify as "disabled in the line of duty." The trustees may purchase insurance policies with different definitions of "disabled not in the line of duty" or may establish a more specific definition with respect to a self-funded program.
- (d) For the purposes hereof, the words "disabled" or "disability", shall refer to a medically determinable bodily injury, disease, or condition or mental disorder so that during the continuation thereof the person is unable to perform the duties of his occupation or employment. The trustees may purchase insurance policies with different definitions, including definitions of "partial disability", or adopt more specific definitions in a self funded disability program.
- (e) For the purposes hereof, the phrases "partial disability" or "partially disabled" shall refer to those medically determinable bodily injury, disease, or condition or mental disorder which prevents a person from following his normal employment or occupation, but which does not disable the employee from other employment or occupations for which he or she is qualified by reasons of education, training, or experience or for which he or she can be reasonably trained. The trustees may purchase insurance policies with different definitions or adopt a more specific definition in a self funded disability program.
- (f) Employees who become totally disabled as a result of an injury in the line of duty continue to accrue credited service for those periods of time in which

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they are totally disabled. The accrual of such credited service shall end at the normal retirement date of the employee.

- (g) Except to the extent otherwise provided by any policy or self-funded program, no employee shall be entitled to disability benefits under the section if the disability may be corrected by competent medical treatment, and said employee fails or refuses to be so treated. Employees may be required to undergo medical examinations by physicians selected by the insurance carrier or Trustee to establish eligibility for a disability pension. If a disability pension is approved, employees shall thereafter be subject to periodic medical examinations by physicians selected by the Trustees or the insurance carrier to maintain their eligibility for disability pension payments.

(Ord. No. 9766, § 1(2), 8-11-92; Ord. No. 10739, § 1(1), 8-18-98; Ord. No. 11011, § 1(9), 5-9-00)

(7) Physical examination. The trustees or insurance carrier, before granting any disability pension, may require the applicant to submit to a physical examination by one or more physicians designated by said trustees or insurance carrier. Each person drawing any disability pension shall be subject to periodic examination by a physician selected by the trustees or insurance carrier at the expense of the fund or carrier. (Ord. No. 9766, § 1(2), 8-11-92)

(8) Other termination of employment. If the employment of a participant is terminated for any reason, and he or his beneficiary is not eligible to receive a benefit under subsections (2) through (6) above, he shall receive a refund without interest of his contributions to this plan, and any former plan, without interest, payable ninety (90) days thereafter, if he so requests. (Priv. Acts 1965, Ch. 254, § 3(4.08); Priv. Acts 1967, Ch. 169, §§ 11-13; Priv. Acts 1972, Ch. 402, § 4; Ord. No. 7408, § 1, 8-22-78)

**Editor's note**-Former reference to Sections 4.02, 4.03, 4.04, 4.05 or 4.06 of Priv. Acts 1965 changed to "subsection (2) through (6) above" for codification.

### **Sec. 2-307. Benefits; methods of calculation.**

(1) Normal retirement benefit. Any participant may upon retirement at his or her normal retirement date or early retirement date receive as an annual pension, payable in monthly installments beginning upon the last day of the first month following retirement and on the last day of each month thereafter during his lifetime, the sum of two percent (2%) of average earnings multiplied by years of credited service up to twenty (20) years plus one percent (1%) of average earnings multiplied by years of credited service in excess of twenty (20) years. Provided that any employee who shall be vested as of the effective date of this amendment may have his or her normal retirement benefit calculated pursuant to the provisions of 2-308, but the remaining applicable provisions of this 2-307 shall apply. (Ord. No. 11011, § 1(5), 5-9-00)

**Editor's Note**-Ord. No. 11011 changed the method of calculating benefits to eliminate the "social security offset" except for employees who were vested. The "social security offset" calculation was retained as an optional method of calculation of benefits for those vested as provided in Section 2-307. Former reference to Sections 5.01 and 5.01.1 of Priv. Acts 1965 were changed to Sections 2-307 and 2-308 respectively for codification.

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(2) Early retirement benefit. A participant upon retirement on their early retirement date, shall as they may elect, receive either (a), (b), or (c) as follows:

(a) A monthly deferred early retirement benefit, which shall be payable on his normal retirement date, provided he is then living and on the first day of each month thereafter during his lifetime, computed in the manner set forth in 2-307(1) hereof, except that such computation shall be made as of his early retirement date.

**Editor's note**-Former reference to 5.01 of Priv. Acts 1965 and 3.41(1) of the Charter changed to 2-307(1) for codification.

(b) An immediate early retirement benefit shall be payable on the last day of the month after retirement and monthly thereafter during their lifetime, the amount of which shall be the amount of the benefit provided in subparagraph (a) above reduced by two and one-half divided by twelve ( $2.5 \div 12$ ) of one percent (1%) thereof for each full month in the period of time between their early retirement date and their normal retirement date. However, if the sum of the participant's age and years of credited service is at least eighty (80) at the time of retirement, there shall be no reduction in the immediate early retirement benefit. (Ord. No. 11011, § 1(2), 5-9-00)

(c) Provided that any participant who shall be vested upon the effective date hereof, may have his or her early retirement benefits calculated pursuant to Section 2-308(2). The remaining applicable provisions of this 2-307 shall apply to employees selecting the calculation of benefits pursuant to 2-308(2).

**Editor's Note**-Former reference to Section 5.01, 5.02.1 of Priv. Acts 1965 and 3.41.1(2) of Charter changed to 2-307, 2-308(2), and 2-308(2) respectively for codification.

(3) Reduction of benefits. Notwithstanding any provision in this plan to the contrary, any benefit payable to the participant determined in accordance with this section on account of service as an employee of the city shall be reduced actuarially to reflect any pension benefit or other benefit attributed to the same service and payable from any other pension plan (other than Social Security), including but not limited to labor union pension plan(s), to which the city has contributed and under which an employee has a right to receive a benefit. The actuarial method to be used to effect the actuarial reduction shall be to determine the benefit which has the same single sum value as the single sum value of pension benefits otherwise payable under this plan less the single sum value of the pensions received from said other pension plan. (Ord. No. 7408, § 1(10), 8-22-78)

(4) Cost-of-living adjustments to pension benefits. Effective January 1, 2000, any benefit payable under this plan to or on account of a retired participant shall be increased by a three percent (3%) cost-of-living adjustment and such benefits shall be increased each subsequent year on January 1 by three percent (3%); provided that the City Council may by ordinance upon recommendation from the Board of Trustees of the General Pension, and upon receipt of a report of the actuarial consequences of a change either increase or decrease future cost of living increases for any subsequent year. Once a cost-of-living benefit has been

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added to a benefit, it shall never be reduced thereafter. Provided, further, that the cost of living increase payable to any surviving beneficiary of a participant receiving optional benefits shall be determined by multiplying the applicable cost-of-living percentage by the benefit payable to the participant at the time of his death and the benefit payable to the beneficiary shall thereafter be adjusted in accordance with the applicable cost-of-living percentage payable on the optional benefits received by the beneficiary commencing on the January 1 following the participant's date of death. (Priv. Acts 1965, Ch. 254, § 3(5.03); Ord. No. 7408, § 1(11), 8-22-78; Ord. No. 11011, § 1(2), 5-9-00)

(5) Transfer to Firemen's and Policemen's Insurance and Pension Plan. Notwithstanding any provisions to the contrary, the General Pension Plan is hereby amended to provide that a Participant in the Firemen's and Policemen's Insurance and Pension Plan [Fire and Police Pension Fund] who has transferred employment from the provisions of the General Pension Plan shall have the right to have his service under the General Pension Plan vested if it amounts to five (5) years or more and said Participant has more than five (5) years credited service under the Firemen's and Policemen's Insurance and Pension Plan. Such employee shall be entitled to receive, if no longer employed by the City, a proportionate pension from the General Pension Plan based upon either the Early Retirement or Normal Retirement Provisions, provided such employee is eligible to retire under either of such provisions. Such pension shall be calculated according to salary history and method used at the time of such transfer from the General Pension Plan. If a Participant leaves the employment of the City with less than five (5) years credited service in each plan, unless disabled in the line of duty or entitled to any pension benefits under either plans, then said person shall receive a Refund of the contributions made by such person to either or both of said pension plans. (Ord. No. 8688, § 1(2)(b)(c), 8-19-86; Ord. No. 10084, §§ 1(1) & 1(2), 8-16-94)

**Editor's Note**-Firemen's and Policemen's Pension Plan is now called Fire and Police Pension Fund and is set forth in this Code at § 2-400 *et seq.*

### **Sec. 2-308. Benefits; method of calculation with Social Security Offset.**

(1) Normal retirement benefit. A participant, upon retirement on his normal retirement date, shall receive a monthly retirement benefit which shall be payable on the last day of the month after retirement and on the last day of each month thereafter during his lifetime. Unless an optional benefit under Section 2-309 is selected, the amount of such monthly benefit, computed as of his normal retirement date, shall be one-twelfth (1/12) of (a) multiplied by (b) as follows:

- (a) Sixty per cent (60%) of average earnings, less fifty per cent (50%) of any primary insurance amount payable to him as a benefit under the Social Security law at age sixty-two (62), but not including that portion of Social Security benefits attributable to his having a spouse and/or dependents. If a participant has credited service at retirement in excess of twenty-five (25) years, the sixty per cent (60%) in the preceding sentence will be increased in increments of one per cent (1%) for each full year of such credited service in excess of twenty-five (25) years. (Ord. No. 11011, § 1(6), 5-9-00)

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- (b) Credited service not in excess of twenty-five (25) years divided by twenty-five (25). The amount of such primary social security shall be computed by the board of trustees in accordance with the method by which the primary insurance amount is determined under the social security law as such law existed on the date of termination of the participant's employment; except that the primary insurance amount shall be based on the amount of his average earnings on such date, and shall be assumed to commence on such date; provided further, however, that if the participant proves to the satisfaction of the board of trustees that the actual amount of his monthly primary social security, not reduced by reason of any earnings, is less than the amount computed by the board of trustees, then the board shall thereupon adjust upward his benefit provided by this plan to reflect appropriately his actual amount of primary social security. (Priv. Acts 1965, Ch. 254, § 3(5.01); Priv. Acts 1967, Ch. 169, § 14; Priv. Acts 1972, Ch. 402, § 3; Ord. No. 8688, § 1(4), 8-19-86; Ord. No. 11011, § 1(7), 5-9-00)

**Editor's Note**-Former reference to Article 6 of Priv. Acts 1965 and Section 3.42 of Charter changed to Section 2-309 for codification.

(2) Early retirement benefit. A participant, upon retirement on his early retirement date, shall as he may elect, receive either (a) or (b), as follows:

- (a) A monthly deferred early retirement benefit, which shall be payable on his normal retirement date, provided he is then living, and on the first day of each month thereafter during his lifetime, computed in the manner set forth in Section 2-307, except that such computation shall be made as of his early retirement date and the deduction for social security shall be based upon an estimate of the primary insurance amount payable at age sixty-two (62), subject to adjustment of future payments based upon the primary insurance amount actually payable at age sixty-two (62). (Ord. No. 10084, § 1(4), 8-16-94)

**Editor's Note**-Former reference to Section 5.01 of Priv. Acts 1965 and Section 3.41(1) of Charter changed to Section 2-307 for codification.

- (b) An immediate early retirement benefit shall be payable on the last day of the month after retirement and monthly thereafter during their lifetime, the amount of which shall be the amount of the benefit provided in subparagraph (a) above reduced by two and one-half divided by twelve ( $2.5 \div 12$ ) of one percent (1%) thereof for each full month in the period of time between their early retirement date and their normal retirement date. However, if the sum of the participant's age and years of credited service is at least eighty (80) at the time of retirement, there shall be no reduction in the immediate early retirement benefit (Priv. Acts 1965, Ch. 254, § 3(5.02); Priv. Acts 1967, Ch. 169, § 15; Ord. No. 10084, § 1(5), 8-16-94; Ord. No. 11011, § 1(3), 5-9-00)

### **Sec. 2-309. Optional retirement benefits.**

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(1) Election of optional retirement benefits. A participant entitled to a retirement benefit may elect, subject to written notice of his election filed with or prior to his application for retirement to which the participant may be entitled and subject to such requirements as the trustees may establish, to have a retirement benefit payable under one of the options hereinafter set forth in lieu of all other retirement benefits he is otherwise entitled to receive. The benefit shall be paid in accordance with the terms of the option elected. The participant may revoke his election of an option and make a new election, subject to written notice of his new election filed with or prior to his application for retirement and subject to such requirements as the trustees may establish. Election of any optional retirement benefit shall be approved by the trustees and must be made by the participant in writing in such manner and form as the trustees may require. (Priv. Acts 1965, Ch. 254, § 3(6.01))

(2) Description of optional retirement benefits. The amount of any optional retirement benefit set forth below shall be the actuarial equivalent of the amount of benefit that would otherwise be payable to the retired participant under Section 2-307; provided, however, that an optional retirement benefit in lieu of the deferred early retirement benefit shall not be less than the benefit that would have been payable if retirement had occurred at the normal retirement date.

OPTION A: 120 PAYMENTS CERTAIN AND LIFE OPTION. A decreased retirement benefit payable for life with the first one hundred twenty (120) payments guaranteed. Any guaranteed payments due after the death of the retired participant shall be payable to his designated beneficiary, if any, who survives the retired participant, or to the estate of the retired participant if there is no surviving, designated beneficiary.

OPTION B: JOINT AND SURVIVOR OPTION. A decreased retirement benefit payable to the retired participant for life which shall continue after his death to his surviving beneficiary in the same amount as that payable to the retired participant.

OPTION C: MODIFIED JOINT AND SURVIVOR OPTION. A decreased retirement benefit payable to the retired participant for life, fifty (50) per cent (or some other per cent that is less than one hundred (100) per cent) of which shall continue after his death to his surviving beneficiary for life. (Priv. Acts 1965, Ch. 254, § 3(6.02))

OPTION D: MODIFICATION OF OPTION B. A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life which shall continue after his or her death to their surviving beneficiary in the same amount as that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary,

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shall be equal to the retirement benefit, which would have been payable had the participant not elected an option. (Ord. No. 10463, § 1(5), 8-20-96)

**OPTION E: MODIFICATION OF OPTION C.** A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life fifty (50) percent (or some other percent that is less than one hundred (100) percent) of which shall continue after his or her death to their surviving beneficiary for life. Provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the participant not elected an option. (Ord. No. 10463, § 1(5), 8-20-96)

**Editor's Note**-Former reference to Article 5 of Priv. Acts 1965 and Section 3.41 of Charter changed to Section 2-307 for codification.

(3) In the event of a divorce of a participant who retired under an optional retirement plan, where the spouse is the designated beneficiary, the beneficiary may be cancelled upon the written request of the member and proper documentation, which shall include the final decree and marital dissolution agreement of the parties; provided, that such cancellation is not in conflict with the decree or marital dissolution agreement. The retirement allowance payable to the retiree after the cancellation of the designated beneficiary shall not be affected by such cancellation. (Priv. Acts 1965, Ch. 254, § 3(6.03); Ord. No. 8688, § 1(2)(d), 8-19-86; Ord. No. 10463, § 1(6), 8-20-96)

### **Sec. 2-310. Amendment and termination of plan.**

In the event that the plan is amended, no such amendment shall cause or permit any part of the plan assets to be used for, or diverted to, purposes other than for the exclusive benefit of the participants and retired participants, or their beneficiaries; no amendment shall have the effect of reverting in the city any portion of such funds; and no amendment, unless it is necessary to meet the requirements of any state or federal law or regulation, shall operate to deprive any participant of any benefits which have vested in him prior to such amendment. (Priv. Acts 1965, Ch. 254, § 3(7.01))

### **Sec. 2-311. Administration of plan.**

(1) **Administration.** The Board of Trustees of the General pension Plan is hereby expanded to seven (7) members. The Mayor shall be an ex-officio member of the Board of Trustees and shall have the right to vote on all matters. The other six (6) Trustees shall be appointed by the Mayor with the approval of a majority vote of the entire membership of the City Council. (The City Auditor and City Treasurer shall no longer serve as ex officio members of the Board of Trustees.) The Mayor and Council shall ensure in the exercise of their appointment powers as vacancies occur on the Board of Trustees that black representation thereon will be consistent with the percentage of the black population in the

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City. No person shall be eligible to be a Trustee unless he or she (a) is a trust or investment officer, or has the qualifications of a trust or investment officer as determined from the requirements for those positions by prevailing custom in local government, and among the banks, insurance companies or licensed stock or bond brokers who have offices in Chattanooga, Tennessee, and (b) is a resident of the City of Chattanooga, Tennessee, or is employed within the corporate boundaries of the City of Chattanooga, Tennessee. Of the six (6) appointed members of the Board, no more than two (2) may be employed by the same employer. Two (2) of the members of the Board shall be appointed to initial terms of five (5) years, two (2) of the members shall be appointed to initial terms of four (4) years and two (2) of the members shall be appointed to initial terms of three (3) years. Thereafter, all terms shall be for five (5) years. The City Human Resources Director (by whatever title) shall be the keeper of the records of the Board of Trustees.

It shall establish written rules, regulations and procedures to be followed by participants and beneficiaries in filing applications for benefits, in furnishing and verifying proof necessary to determine age, and in any other matters required to administer this plan or as required by law. Before any such rule, regulation or procedure is operative it shall be approved by the city attorney as to legality and form, and shall then be filed with the city finance officer.

The Board of Trustees shall receive all applications for benefits and shall determine all facts necessary to establish the right of the applicant to benefits under the provisions of the plan and the amount thereof as herein provided, and it will afford any applicant the right of a hearing with respect to any findings of fact or determination.

The Board of Trustees shall prepare and distribute information concerning the plan to the participants at the expense of the fund and in such manner as it shall deem appropriate.

The Board of Trustees shall be entitled to rely upon all tables, valuations, certificates, and reports furnished by a consultant or actuary appointed by it. The trustees may require opinions from the city attorney or any special counsel selected by the city attorney. The board of trustees and the city shall be fully protected in respect of any action taken or suffered by them in good faith in reliance upon the advice or opinion of any such consultant, actuary of [or] counsel, and all action so taken or suffered shall be binding upon each of them and upon all participants or other persons interested in the plan. The trustees shall pay from the fund the fees, charges or expenses for consultant, actuary or said legal services. (Priv. Acts 1965, Ch. 254, § 3(8.01)) (Ord. No. 11272, 05-02-02)

(2) Records. All acts and determinations of the Board shall be duly recorded and all such records, together with such other documents as may be necessary for the administration of the plan, shall be preserved in its custody and kept by the City Human Resources Director. Such records and documents shall at all reasonable times be open for inspection and for the purpose of making copies by any person duly authorized by the Board. (Priv. Acts 1965, Ch. 254, § 3(8.02); Ord. No. 9766, § 1(7), 8-11-92)

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(3) Exemption from liability. The members of the Board, and each of them, shall be free from all liability, joint or several, for their acts, omissions and conduct, and for the acts, omissions and conduct of their duly constituted agents, in the administration of the plan, and the city shall indemnify and save them, and each of them, harmless from effects and consequences of their acts, omissions and conduct in their official capacity, except to the extent that such effects and consequences shall result from their own willful misconduct or gross negligence. (Priv. Acts 1965, Ch. 254, § 3(8.03))

### **Sec. 2-312. Additional rights and powers.**

(1) Supplemental contributions. Any person who was an employee on January 1, 1965, upon becoming a participant in this plan, shall be eligible to receive credited service for (a) all of the time he was a participant in a former plan, plus (b) a period of time not to exceed ten (10) prior years that he was an employee, whether continuous or not, while a former plan(s) was in force and he was not a participant in such former plan(s); but only if, and on the condition that, he pay to the city before January 1, 1966, such amounts as he would have paid as employee contributions under this plan had it been in existence during such time. The City shall likewise pay into this plan nine per cent (9%) of the gross compensation for the same period of time of said employee who, as aforesaid, shall pay for said past service while not a participant in a former plan(s). (Priv. Acts 1965, Ch. 254, § 3(9.01); Priv. Acts 1967, Ch. 169, § 16)

(2) [Determination of service for charter officials.] With regard only to the computation of benefits as provided in Section 2-307 hereof, credited service for the charter officials of the city who are elected by the voters shall mean and be equal to the sum of credited service as defined in Section 2-303(10), plus an additional amount of service equal to fifty per cent (50%) of the number or years of service as such official. This credited service also shall apply to such official who is appointed to the city council or to a city judgeship to fill a vacancy. (Priv. Acts 1965, Ch. 254, § 3(9.02); Priv. Acts 1971, Ch. 137, § 7; Priv. Acts 1972, Ch. 403, § 1; Ord. No. 9766, § 1(7), 8-11-92)

**Editor's Note-**Former references to Article 5 and Section 1.10 of Priv. Acts 1965 and of Section 3.37(10) of the Charter changed to 2-307 and 2-303(10) for codification.

(3) Employees who terminated employment under the salaried employees insurance and pension fund prior to the effective date of this plan. In the event that an employee, who was covered by the salaried employees' insurance and pension fund (Private Acts of 1961, Chapter 298), ceased to be employed by the city after December 31, 1965, and was eligible to receive a refund of a portion of his contributions from the aforesaid salaried employees' insurance and pension fund, he shall receive a refund of his total contributions without interest. Such amount shall be deducted and payable from the fund of the salaried employees' insurance and pension fund before any transfer of funds is made to the plan. (Priv. Acts 1965, Ch. 254, § 3(9.03))

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**Editor's note**-In the opinion of the City Attorney, this provision is archaic and no employees or beneficiaries of this plan are affected; however, it is retained in this codification for historic reference.

(4) Reserved.

(Priv. Acts 1965, Ch. 254, § 3(9.04); Ord. No. 8688, § 1(2)(d), 8-19-86)

(4.1) Reserved.

(Priv. Acts 1965, Ch. 254, § 3(9.04-A); Priv. Acts 1971, Ch. 137, § 6; Ord. No. 8688, § 1(2)(d), 8-19-86)

(5) Minimum benefit for participants who were participants in a former plan.

Notwithstanding any other provision of this plan to the contrary, eligibility for and the amount of benefits under any former plan(s), in which the participant under this plan was a member may be paid in the manner provided for in such former plan(s) if requested by the participant or his beneficiary, but such selection, once made, shall be irrevocable; provided, however, that any person who was under the Department of Education Insurance and Pension Fund Act, and who has elected to become a member of this plan, shall also be eligible for retirement benefits under the salaried employees' insurance and pension fund act if said benefits are not less than the benefits under this plan. (Priv. Acts 1965, Ch. 254, § 3(9.05); Priv. Acts 1967, Ch. 169, § 17)

(6) Reserved.

(Priv. Acts 1965, Ch. 254, § 3(9.06); deleted by provisions of Ord. No. 9766, § 1(b), 8-11-92)

### **Sec. 2-313. Trust management.**

(1) Establishment of trust.

The fund under this plan shall initially consist, as of January 1, 1965, of the current appropriations, if any, and/or the assets less any benefits or expenses incurred between January 1, 1965, and when this Act is ratified, of said existing pension systems whether now open or closed by law, known as-

- (a) Employees' Insurance and Pension Fund (Private Acts of 1937, Chapter 678),
- (b) Department of Education Insurance and Pension Fund (Private Acts of 1937, Chapter 221),
- (c) Salaried Employees' Insurance and Pension Fund (Private Acts of 1961, Chapter 298), and
- (d) Officials Pension System (Private Acts of 1961, Chapter 300), all as may have been heretofore amended. (Priv. Acts 1965, Ch. 254, § 3(10.01))

**Editor's note**-In the opinion of the City Attorney, these references to prior pension plans are archaic and that no current participant or beneficiary is affected; however, these provisions are maintained in this codification for historic reference.

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(2) Contributions to trustee. Contributions shall be paid to the trustees from time to time in accordance with the terms of this Act [division]. It shall be the duty of the trustees to receive, hold, invest, reinvest and distribute the fund in accordance with the provisions of this Act [division]. The trustees shall be under no duty to enforce payment of any contribution to the fund and shall not be responsible for the adequacy of the fund to meet and discharge any liabilities under this plan. (Priv. Acts 1965, Ch. 254, § 3(10.02))

(3) Management of fund. The trustee shall be authorized and empowered to manage the fund and invest and reinvest the principal and income thereof in its discretion, subject to the terms and provisions of Chapter Two, Chapter Three, Chapter Seven and Chapter Nine of Title Thirty-five of the Tennessee Code Annotated as said statutes now exist or as they may be hereafter amended, repealed or interpreted by the courts. (Priv. Acts 1965, Ch. 254, § 3(10.03))

(4) Disbursements. The trustees shall be authorized to direct the city Human Resources Director to make payments from the fund and shall maintain a written account of all payments from the fund. The trustees shall be fully protected in acting upon any action decided up by the board in good faith without inquiry or investigation, and shall have the duty and authority to determine the right or benefits of any employee or beneficiary under the plan. The board of trustees may give directions in writing signed by such person or persons as the trustees may authorize in writing from time to time. (Priv. Acts 1965, Ch. 254, § 3(10.05); Ord. No. 9766, § 1(7), 8-11-92)

(5) Spendthrift clause. Except for obligations which may be owed to the city by an employee at the time of his termination or retirement, no benefit under the plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber or charge shall be void. No such benefit shall in any manner be liable for or subject to the debts, contracts, liabilities, engagements or torts of the person entitled to such benefit except as specifically provided in the plan. (Priv. Acts 1965, Ch. 254, § 3(10.06))

(6) Accounting by trustee. The trustees shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder; and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any certified public accountant designated by the city council and the expense thereof shall be paid by the city. The city council shall have an annual audit made as aforesaid. (Priv. Acts 1965, Ch. 254, § 3(10.07); Ord. No. 9766, § 1(7), 8-11-92)

(7) Expenses. The expenses incurred by the city in the installation and in the administration of this plan, and the expenses incurred by the trustees in the performance of their duties, and all other proper charges and disbursements of the trustees, shall be paid from the fund unless paid by the city. The compensation of each of the seven (7) trustees for his services as such trustee shall be fixed from time to time by the city council, and paid from the

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fund. Taxes of any and all kinds whatsoever that might be levied or assessed under existing or future laws upon the fund, or the income thereof, shall be paid from the fund. (Priv. Acts 1965, Ch. 254, § 3(10.08); Ord. No. 9766, § 1(7), 8-11-92)

(8) Resignation and removal of trustee. Any elected trustee may resign at any time upon written notice delivered to the board. Any elected trustee may be removed at any time for cause by the city council upon thirty (30) days' prior written notice delivered to said trustee and after an open hearing. Upon such resignation or removal of any trustee, the Mayor of the city shall, for the unexpired term of such trustee, appoint a successor trustee, subject to the approval of the Council, who shall have the same powers and duties as those conferred upon the trustees hereunder; and, upon acceptance of such election by the successor trustee, the funds and properties then constituting the fund shall thereby automatically be assigned, transferred and paid over to the board of trustees as then constituted. (Priv. Acts 1965, Ch. 254, § 3(10.09); Ord. No. 9766, § 1(7), 8-11-92; Ord. No. 11272, § 1, 05-02-02)

### **Sec. 2-314. Miscellaneous.**

(1) Headings. The headings and subheadings in this Act [division] have been inserted for convenience of reference only, and are to be ignored in any construction of the provisions hereof. (Priv. Acts 1965, Ch. 254, § 3(11.01))

(2) Construction. In the construction of this Act [division], the masculine shall include the feminine and the singular the plural in all cases where such meanings would be appropriate. The plan shall be construed in accordance with the laws of the State of Tennessee. (Priv. Acts 1965, Ch. 254, § 3(11.02))

(3) Claims. Any payment to or for a participant, retired participant, or beneficiary, or to their legal representatives, in accordance with the provisions of this plan, shall, as to the extent of the method of computation as well as the amount thereof, constitute full satisfaction of all claims arising hereunder against the trustees and/or the city, and the trustees may require such participant, retired participant, or beneficiary or legal representative, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the trustees. (Priv. Acts 1965, Ch. 254, § 3(11.03))

(4) Legally incompetent. If any participant, retired participant, or beneficiary is a minor, or is in the judgment of the trustees otherwise legally incapable of personally receiving and giving a valid receipt for any payment due him hereunder, the trustees may, unless and until claim shall have been made by a guardian or conservator of such person duly appointed by a court of competent jurisdiction, direct that payment or any part thereof be made to such person or to such person's spouse, child, parent, brother or sister, or other person deemed by the board to be a proper person to receive such payment. Any payment so

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made shall be a complete discharge of any liability under the plan for such payment. (Priv. Acts 1965, Ch. 254, § 3(11.04))

(5) Vested right based on credited service. Any participant whose credited service has been five (5) years or more shall not be deprived of a pension if discharged because of a change of administration, political or any other reason. Without prejudice to the foregoing vested right based on credited service, any employee may be discharged for legal cause after charges have been preferred in writing and he has been given a reasonable opportunity to have a public hearing and the charges are sustained by competent evidence. (Priv. Acts 1965, Ch. 254, § 3(11.05); Priv. Acts 1971, Ch. 137, § 3; Ord. No. 10739, § 1(1), 8-18-98)

(6) Correction of errors. If any change in records or error results in any retired participant or beneficiary receiving from the plan more or less than he would have been entitled to receive had the records been correct or had the error not been made, the board, upon discovery of such error, shall correct the error by adjusting, as far as practicable, the payments in such a manner that the benefits to which such person was correctly entitled shall be paid. (Priv. Acts 1965, Ch. 254, § 3(11.06))

(7) Teacher benefits. A participant in this plan or former plan who is a teacher, whether now retired or who hereafter retires, shall receive an annuity that shall be twice the amount of the actuarial equivalent of his accumulated contributions to this plan plus any amount paid to this plan under Section 49-1542, Tennessee Code Annotated, as amended, or as it may be amended hereafter; but the total amount received from this plan and/or the Tennessee Teachers Retirement System by any such participant who hereafter retires on or after his normal retirement date shall not be less than the retirement benefit payable under Article 4 [section 3.04 hereof] (Benefits); provided, however, that the total amount received by such participant who is now retired from this plan and/or the Tennessee Teachers Retirement System, if any, shall not be less than the amount said participant is receiving from this plan and/or the Tennessee Teachers Retirement System, if any, at the time when this Act shall become operative by ratification by the city council.

As used in the preceding paragraph the following words and phrases shall have the following meaning:

- (a) TEACHER shall mean any person employed in a public school as a teacher, helping teacher, librarian, principal, or supervisor, and shall include any superintendent or administrative officer of the department of education.
- (b) TEACHER ANNUITY shall mean payment for life derived from the accumulated contributions of a participant.

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- (c) ACTUARIAL EQUIVALENT shall mean a benefit of equal value when computed upon the basis of mortality tables and rates of interest as shall be adopted by the board of trustees.
- (d) ACCUMULATED CONTRIBUTIONS shall mean the sum of all the amounts deducted from the compensation of a participant together with interest compounded annually at the rate of three per cent (3%). (Priv. Acts 1965, Ch. 254, § 3(11.07); Priv. Acts 1971, Ch. 137, § 2; Ord. No. 9766, § 1(7), 8-11-92)

**Editor's Note**-It is the opinion of the City Attorney that no participants or beneficiaries remain in the plan that would be affected by this subsection; however, it is retained in this codification as a historic reference.

(8) Rights of survivors to pension. Should any participant die as a result of any medically determinable bodily injury, disease or condition resulting, directly or indirectly, from an act occurring, or a thing done, or a known or unknown risk taken in the performance of his duty with the city and shall be survived by a spouse, then his or her spouse shall receive the pension to which such deceased participant would have been entitled as if he had retired at age sixty-two (62) with twenty-five (25) years credited service so long as she remains his or her spouse and does not re-marry; if not survived by a spouse but is survived by a child or children under twenty-one (21) years of age, or if the spouse of such deceased participant should thereafter leave a surviving child or children of the deceased participant under twenty-one (21) years of age, the child shall receive said pension until he reaches the age of twenty-one (21) years or said children shall receive a pro rata amount of said pension until each becomes twenty-one (21) years of age. As each surviving child reaches age twenty-one (21), the pension shall be reapportioned among the then living children under age twenty-one (21). Further, in the event such participant is not survived by a spouse, or child or children under twenty-one (21) years of age, but is survived by a parent(s) solely dependent on the deceased participant, the parent(s) shall receive the pension to which a spouse would have been entitled as aforesaid so long as there is no other means of support. (Priv. Acts 1965, Ch. 254, § 3(11.08); Priv. Acts 1971, Ch. 137, § 4; Priv. Acts 1972, Ch. 402, § 2; Ord. No. 10739, § 1(1), 8-18-98; Ord. No. 11011, § 1(10), 5-9-00)

### **Sec. 2-315. Other pension systems closed to new employees.**

Upon the date when this Act is ratified by the board of commissioners of the City of Chattanooga the pension systems known as Employees' Insurance and Pension Fund (Private Acts of 1937, Chapter 678), Salaried Employees' Insurance and Pension Fund (Private Acts of 1961, Chapter 298), and Officials Pension System (Private Acts of 1961, Chapter 300), shall be closed to all persons now or thereafter employed by the city who would otherwise have been eligible to participate therein, but the foregoing provision closing said pension systems to all future employees or elected officials, as the case may be, shall not effect or impair the right of any person who may now or hereafter receive a retirement or a full or disability pension therefrom. (Priv. Acts 1965, Ch. 254, § 4)

**Editor's note**-The acts referred to in the above subsection are not included in this compilation, since they are closed to future employees. It is the opinion of the City Attorney that no participants or beneficiaries remain in the plan that would be affected by this section; however, it is retained in this codification as a historic reference.

### **Sec. 2-316. Amendment to Ch. 73, Priv. Acts 1959; effect of plan thereon.**

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Chapter 73 of the 1959 Private Acts, the title of which is set forth in the caption hereof, shall apply to this plan, and the age of children specified in said Act as being "sixteen (16) years of age" shall be changed, amended, or deleted and the words and figures "eighteen (18) years of age" shall be substituted in lieu thereof wherever they appear in said Chapter 73, Private Acts of 1959, but this amendment shall not affect or impair the existing right of any person who is receiving benefits provided under said 1959 Act. (Priv. Acts 1965, Ch. 254, § 5)

**Editor's note**-Ch. 73, Priv. Acts 1959, is set out as § 3.29 of this compilation. The caption of Priv. Acts 1965, Ch. 254, which comprises this division, is not set out in this compilation. It is the opinion of the City Attorney that no participants or beneficiaries remain in the plan that would be affected by this section; however, it is retained in this codification as a historic reference.

### **Sec. 2-317. Repeal of Ch. 397, Priv. Acts 1961.**

Chapter 397, Private Acts of 1961, the title of which is set forth in the caption hereof, be and the same is hereby repealed, but this repeal shall not affect or impair the existing right of any person who is now receiving the benefits provided by said Act to continue to receive benefits under said Act. (Priv. Acts 1965, Ch. 254, § 6)

**Editor's note**-The caption to Priv. Acts 1965, Ch. 254, which comprises this division, is not set out herein. Ch. 397, Priv. Acts 1961 is not set out in this compilation. It is the opinion of the City Attorney that no participants or beneficiaries remain in the plan that would be affected by this section; however, it is retained in this codification as a historic reference.

### **Sec. 2-318. Deferred Retirement Option Plan ("DROP").**

(a) A deferred retirement option plan ("DROP") is hereby created. A DROP is an optional retirement plan elected by the participants. A one year DROP provides a lump sum payment to the participant at retirement based upon twelve (12) times the monthly benefit amount that the participant would be eligible to receive at retirement calculated prior to any actuarial reductions for other retirement options elected. Two or three year DROP payments shall be based upon twenty-four (24) or thirty-six (36) times said monthly benefit amount. The amount of the DROP lump sum elected shall be deducted from the actuarial value of the participant's pension and the reduced actuarial equivalent balance shall be payable in monthly periodic pension payments dependent upon the participant's elected retirement option.

(b) Only participants with twenty-six (26) or more years of service shall be eligible to participate in the DROP. A participant with twenty-six (26) years of service may elect a one year DROP payment, a participant with twenty-seven (27) years of service may elect a one or two year DROP, and a participant with twenty-eight (28) or more years of service may elect a one to three year DROP. DROP elections shall be made in whole years only. The election shall be made at the time of retirement.

(c) The DROP payment elected shall be paid as soon as practicable after the retirement of the participant.

(d) Actuarial equivalents shall be based upon the age of the participant, the age of beneficiaries, if any, the retirement option selected, the amount of the DROP elected, the mortality tables and rates of interest then adopted by the Trustees of the General Pension Plan and upon such rules as may be adopted by said Trustees.

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(e) A participant's right to participate in the DROP plan shall not be vested until a participant retires and elects to receive DROP lump sum payments. The DROP plan may be discontinued at any time or modified in any manner.

(Ord. No. 11103, § 1, 11-28-00)

**Sec. 2-319. Amendments by ordinance.**

The City Council of the City of Chattanooga, in its discretion, may upon recommendation of the Board of Trustees of the General Pension Plan, upon advice by the Mayor, and upon receipt of an actuarial report as to the costs and actuarial soundness of such changes, may amend by ordinance passed upon two separate meetings the provisions of the General Pension Plan providing such amendments are consistent with sound actuarial principles, methods and assumptions and further provided that such amendments shall not decrease any vested financial benefits accrued by any participant or beneficiary. (Ord. No. 11101, §1(12), 5-9-00; Ord. No. 12677, 12-18-12)

**Cross reference:** identical provision codified in Chattanooga City Charter, Sec. 3.52

**Secs. 2-320 – 2-399. Reserved.**

DIVISION 18. FIRE AND POLICE PENSION FUND

**Sec. 2-400. Appropriation to pension fund of percentage of salaries; control of fund; investments.**

The City Council of said city, after it has adopted a budget for the salaries of the departments of fire and police each year, shall add a sum to be fixed by a majority vote of the City Council of said city, which shall not be less than ten percent (10%) of each monthly payroll of those persons who are participants in the pension system, which sum so added shall be placed in the Fire and Police Pension Fund. Said pension and trust fund from all sources herein provided shall be paid to the trustee. The trustee shall be a national or state chartered bank, under a suitable bond, designated, from time to time, as the trustee of this fund by the Board of Directors. The trustee shall hold said funds for the purposes stated in this Article. The funds coming into the hands of the trustee shall be under the direction and control of the Board of Directors of the Fire and Police Pension Fund. Any and all investments made under the direction and control of the Board of Directors, and all other acts done in the administration of the plan in good faith, shall be without liability on their part. (Priv. Acts 1949, Ch. 165, #2; Priv. Acts 1971, Ch. 149, #1; Priv. Acts 1972, Ch. 406, #1; Ord. No. 8688, #1(7), 8-19-86; Ord. No. 9778, #14, 8-19-92; Ord. No. 11377, §1, 02-04-03)

**Sec. 2-401. Tax levy for pensions.**

The City Council of said city be and is hereby required to levy a sufficient annual tax upon all taxable property and taxable privileges within the City of Chattanooga for the purposes of raising revenue for the payment of pensions to members of said department of fire

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and police and appropriate same for such purpose. (Priv. Acts 1949, Ch. 165, § 3; Ord. No. 11377, §1, 02-04-03)

### **Sec. 2-402. Assessment of employees.**

(a) Beginning on the effective date of this ordinance and continuing until June 30, 2015, each Member will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than nine percent (9%) of the Member's Base Salary. However, each Member eligible for and who has elected to participate in the DROP provided for in Section 2-422 will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than ten percent (10%) of the Member's Base Salary.

(b) Beginning July 1, 2015, and continuing until June 30, 2016, each Member will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than ten percent (10%) of the Member's Base Salary. However, each Member eligible for and electing to participate in the DROP provided for in Section 2-422 will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than eleven percent (11%) of the Member's Base Salary.

(c) Beginning July 1, 2016, and continuing thereafter, each Member will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than eleven percent (11%) of the Member's Base Salary. However, each Member eligible for and electing to participate in the DROP provided for in Section 2-422 will be assessed a contribution to the Fund in an amount, fixed by majority vote of the Board, not less than twelve percent (12%) of the Member's Base Salary.

(d) Notwithstanding the provisions of subsection (a), (b), and (c), a Member hired prior to July 1, 1999, whose Average Base Salary as of that date was less than \$41,138 and whose Average Base Salary as of July 1, 2007, was less than \$41,138, will be assessed a sum, beginning July 1, 2007 and continuing thereafter, to be fixed by a majority vote of the Board, which will not be less than eight percent (8%) of that Member's Base Salary, and in no event will be less than eight percent (8%) of \$41,138, annually.

(e) The contribution amounts set forth in this Section 2-402 will be deducted and withheld from the salary of each Member during the time that the Member is employed by the Chattanooga Fire or Police Department. The city officer responsible for disbursing salary payments to Members will make the appropriate deductions and withholdings of contribution amounts and will pay all such amounts to the Fund at the time deducted and withheld to be kept by its trustee in accordance with the provisions of Section 2-400 of the Chattanooga City Code.

(Priv. Acts 1949, Ch. 165, § 4; Priv. Acts 1953, Ch. 90, § 1; Priv. Acts 1961, Ch. 222, § 1; Priv. Acts 1969, Ch. 165, § 1; Priv. Acts 1972, Ch. 406, § 1; Ord. No. 8688, § 1 (8), 8-19-86; Ord. No. 9778, § 1(5), 8-18-92; Ord. No. 10463, § 1(2), 8-20-96; Ord. No. 11012, § 1(1), 5-9-00; Ord. No. 11377, §1, 02-04-03; Ord. No. 12813, § 1, 03-11-14)

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**Sec. 2-403. Sum to be collected, paid over to trustee when employee contribution deducted.**

An amount equal to the sum fixed by the City Council, as provided in Section 2-400 of this Article, shall be collected by the tax collector and treasurer and paid over to said trustee when the contribution by the employees as provided in Section 2-402 is deducted from the payroll.

(Priv. Acts 1949, Ch. 165, § 7; Priv. Acts 1969, Ch. 82, § 6; Priv. Acts 1971, Ch. 149, § 1; Priv. Acts 1972, Ch. 406, § 1; Ord. No. 9778, § 1(12), 8-18-92; Ord. No. 11377, §1, 02-04-03)

**Sec. 2-404. Proceeds from sale of unclaimed property to be placed in pension fund.**

If any personal property comes into the possession of the departments of fire and police, if the owner cannot be found, or if no person shall claim such property after six (6) months, the property shall be sold, the net proceeds derived from the sale thereof shall be turned over to said trustee to be placed in said special Fire and Police Pension Fund, as provided in Sections 2-400 and 2-402 of this Article. (Priv. Acts 1949, Ch. 165, § 6; Ord. No. 11377, §1, 02-04-03)

**Sec. 2-405. Reserved.**

(Ord. No. 11377, §1, 02-04-03)

**Editor's note**-Former Charter § 13.69, a prior State Act, was repealed by Charter § 1(12) of Ord. No. 8688, enacted Aug. 19, 1986. The repealed provisions derived from Priv. Acts 1949, Ch. 165, § 9.

**Sec. 2-406. Board of directors of pension fund-Created; membership; term of office; vacancies.**

(a) There is hereby created a board to be known as the Board of Directors of the Fire and Police Pension Fund, consisting of eight (8) members, three of whom shall be active members from the fire department, three of whom shall be active members of the police department, one of whom shall be the Mayor, by virtue of his office, or if the Mayor so chooses, he may replace himself with a City employee knowledgeable of pensions, investments, and financial matters appointed by the mayor, and one of whom shall not be a City employee but shall be knowledgeable of pensions, investments and financial matters to be appointed by the City Council.

(b) The present Board of Directors shall continue in office until their respective terms expire. The members to be appointed by the mayor and city council shall have terms contemporaneous with the mayor's and council's terms of office, but shall continue to serve until their replacements are appointed.

(c) Each year on the first Tuesday of September there shall be held an election for the purpose of electing one member of said board from the fire department, and one member from the police department, for a term of three years. Said election shall be held at the fire department training center, at police headquarters, and at the Pension Fund Office between the hours established by the Board of Directors. The votes shall be counted openly and publicly

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and the firefighter and police officer who received the highest number of votes shall be elected for a term of three (3) years. At no time shall more than one member of any one rank of the fire department be elected to serve as a member of said Board, and at no time shall more than one member of any one rank of the police department be elected to serve as a member of said Board.

(d) If a vacancy of a firefighter or police officer should occur in said Board, the vacancy shall be filled by the remaining firefighters and police officers on said board for the unexpired term. If a vacancy should occur in the Board by the member appointed the mayor or the city council, the vacancy shall be filled by the mayor or city council respectively.

(Priv. Acts 1949, Ch. 165, § 10; Priv. Acts 1972, Ch. 406, § 1; Ord. No. 8688, § 1 (14), 8-19-86; Ord. No. 9778, § 1(11), 8-18-92; Ord. No. 11377, §1, 02-04-03; Ord. No. 11863, § 1, 8-8-06; Ord. No. 12155, § 1, 9-2-08)

### **Sec. 2-407. Same-Organization; officers; compensation of secretary.**

As soon as may be practical following such election the Board shall meet and organize. There shall be elected for a term of one year from the membership a president, vice-president and secretary, who shall respectively discharge the customary duties of such office. The secretary and president shall receive pay for his services, amount of such pay to be fixed by the Board, commensurate with the amount of time and work required of him to fulfill his duties. The secretary shall maintain a record or document to be known as the list of retired firefighters, police officers and their spouses; which record or document shall give a full and complete record of all pensions being paid; the action of the Board in retiring any and all persons under this Article, including the names, dates of employment in the department, date of retirement, and the reasons therefore as to all persons retired. The compensation of each of the members of the Board of Directors, except the secretary and president, shall be fixed from time to time by the City Council, City of Chattanooga, and paid from the fund. The Directors shall pay from the fund the fees, charges or expenses for consultants, actuary or legal services as well as such expenses as may be necessary for the administration of the fund. (Priv. Acts 1949, Ch. 165, § 11; Ord. No. 8688, § 1 (15), 8-19-87; Ord. No. 9778, § 1(17), 8-18-92; Ord. No. 11377, §1, 02-04-03)

### **Sec. 2-408. Same-To hear and decide applications for pensions and benefits.**

The said Board of Directors shall hear and decide all applications for pensions and death benefits under this Article, and its decision on such applications shall be final and conclusive. The said Board shall have the power to make and enforce such reasonable rules and regulations, not inconsistent with the Article, as in its opinion may be necessary or desirable for the carrying out of its duties and shall have the authority to interpret the provisions of the Article. (Priv. Acts 1949, Ch. 165, § 12; Ord. No. 11377, §1, 02-04-03)

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**Sec. 2-409. Same-Supervision of retired, disabled, etc., employees.**

Upon organization of the Board of Directors, the Board shall assume supervision of all members of the Fire Department and Police Department who have heretofore been placed on the existing pension roll, including the ones placed thereon as the result of a disability or injuries causing disability, and said Board, on the advice of competent physicians, shall determine whether or not such members have again become able to perform duties in the Fire Department and Police Department and are eligible for reinstatement. In the event the Board of Directors shall determine, on the advice of competent physicians, that an employee retired on disability is again able to work, then such employee shall be re-employed and placed on active duty. (Priv. Acts 1949, Ch. 165, § 14; Ord. No. 8688, § 1 (11), 8-19-86; Ord. No. 9778, § 1(16), 8-18-92; Ord. No. 11377, §1, 02-04-03)

**Sec. 2-410. Disability or death benefits from cause not resulting from performance of duties.**

(a) Any member with not less than three (3) years nor more than ten (10) years of active service in the Fire Department and Police Department who shall become disabled from causes arising outside of the course of his or her employment with the said department shall so long as they remain disabled be paid a monthly sum equal to thirty percent (30%) of the Average Base Salary of such member during the three (3) years of member's service which yields the highest average; plus two percent (2%) of the said defined Average Base Salary for each year's active service in the said departments over ten (10) years but not to exceed sixty percent (60%) of the above defined Average Base Salary. Payment under this Section shall commence after the member's sick days, annual days, accumulated days, compensatory days, and annual leave days have been exhausted.

Any member with less than three (3) years of service, who shall become disabled from causes arising outside of the course of his or her employment with the said department, shall be refunded his or her contributions under the provisions of Section 2-413. In the event of death of any member with less than three (3) years of service, the \$10,000.00 death benefit shall be paid to his or her beneficiary and his or her contributions shall be refunded to his or her estate.

A member will not be eligible for disability benefits nor their spouse eligible for periodic death benefits under this Section if disability or death is a result of any of the following:

- (1) Excessive and habitual use by the plan member of drugs, intoxicating liquors, or narcotics unless, at the time of disability or death, such member is actively and continuously undergoing treatment for substance abuse at an approved clinic or treatment center for drug addicts and alcoholics.

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- (2) Injury or disease sustained by the plan member while willfully and illegally participating in acts of violence, riots, civil insurrections, or while committing an unlawful act.
- (3) Except as hereinafter provided, injury or disease sustained by the Pension Fund member while serving in any Armed Forces or as the result of warfare. Notwithstanding the foregoing, in the case of a death or disability occurring on or after January 1, 2007, if a member dies while performing qualified military service (as defined in Section 414(u) of the Internal Revenue Code of 1986, as amended, the survivors of the member are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Fund as if the member had resumed and then terminated employment on account of death.

(Ord. No. 12674, § 1, 12-11-12)

- (4) Injury or disease sustained by the plan member after his or her employment has been terminated or while the plan member has been on leave without pay for a period exceeding forty-five (45) consecutive days.
- (5) Intentional, self-inflicted injury.

If a member is not qualified for benefits under this Section, he or she shall receive a refund of his or her contributions. In the event of the death of a member, when the death is a direct result of any of the above stipulations, his or her contributions shall be refunded to his or her estate.

Before approving any disability retirement request, the Board may request proof of disability or the verification by one or more competent physicians selected by the Board that the member has become disabled in accordance with the Pension Fund provisions. The Board may further require continued medical examinations of the disabled member from time to time and at its discretion. No member shall be given disability benefits under this Section if the Board finds that said disability could probably be successfully corrected by competent medical treatment, and said member fails or refuses to be so treated.

The term "disabled" or "disability" in this Section shall mean a medically determinable impairment which in the opinion of the Board prevents such member from meeting the normal and reasonable demands of his regularly assigned job or any other job in city government which the City may offer said member for which he or she is reasonably qualified by experience, training, or education.

- (b)(1) If any member with less than ten (10) years of active service dies before retirement from any cause not growing out of and not in consequence of his or her duty in the Fire Department or Police Department, there shall

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be paid to his or her beneficiary the death benefit of \$10,000.00 and to the surviving spouse the sum of \$500.00 per month until death, subject to the conditions of Section "(a)" of this Section.

- (2) If a member has more than ten (10) years of active service but less than the time required for a service retirement pension and dies before retirement from any cause not growing out of and not in consequence of his or her duty in the said departments, there shall be paid to his or her beneficiary a death benefit of \$10,000.00 and to the surviving spouse until death that benefit which said spouse would have been entitled to receive under Option D, Section 2-418 of this Article, subject to the conditions of Section "(a)" of this Section.
- (3) If any member dies before retirement and has reached the conditions for a service retirement pension, there shall be paid to said member's beneficiary a death benefit of \$10,000.00, and if said member was an employee on November 3, 1992, and made no election of benefits under Section 2-418, the surviving spouse will receive the benefit paid under Option D of Section 2-418. (Ord. No. 12813, § 2, 3-11-14)

If a member who is employed after November 3, 1992, shall die before retirement and has reached the conditions for a service retirement pension, there shall be paid to the beneficiary of said member a death benefit of \$10,000.00 and the benefits elected under Section 2-418.

(c) If there be no surviving spouse, then the dependent's minor child or children shall each receive an amount equal to \$500.00 per month, increased by all appropriate cost of living adjustments under this Division from and after July 1, 1999, during their minority, provided that the total amount payable to all of such children shall not exceed the member's maximum pension. If such deceased member is not survived by spouse or minor children, but is survived by two parents solely dependent upon said member, each parent, so long as he or she has no other means of support, shall receive one-half (1/2) of the benefits which a surviving spouse would receive under this Section. If there is only one parent dependent upon such member for support, such parent shall be paid the same benefits which a surviving spouse would receive under this Section.

(Ord. No. 9778, § 1(2), 8-18-92; Ord. No. 9785, adopted September 8, 1992; Ord. No. 11012, §§ 1(2)-1(4), 5-9-00; Ord. No. 12813, § 2, 03-11-14)

(d) At the death, hereafter, of any retired employee of the departments of Fire and Police, who was a participant in the Fire and Police Pension Fund, and whose beneficiaries for any reason do not receive the \$10,000.00 death benefit in Section 2-411, or the monthly spouse's benefit in Section 2-412 of this Article, there shall be paid from the said Fire and Police Pension Fund to the member's Estate, whichever said benefits have not been received.

(Ord. No. 11377, §1, 02-04-03)

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**Sec. 2-411. Service retirement pension; maximum pension benefits; death benefit.**

(a) Minimum Age and Service Requirements for Service Retirement Pension.

(1) Any Member who has completed ten (10) or more years of Active Service with the Chattanooga Fire or Police Department as of the effective date of this ordinance may, at his or her election, retire upon completing twenty-five (25) years of Active Service with the Chattanooga Fire or Police Department and, upon notifying the Board of his or her election pursuant to this subsection, will be entitled to receive the annual Service Retirement Pension provided in subsection (b) to be distributed in twelve (12) equal payments as benefits become payable each month.

(2) Any Member who has completed fewer than ten (10) years of Active Service with the Chattanooga Fire or Police Department as of the effective date of this ordinance, including, for purposes of this subsection, any person who is a fire or police academy cadet as of the effective date of this ordinance and subsequently becomes a Member, may, at his or her election, retire upon (i) completing twenty-five (25) years of Active Service with the Chattanooga Fire or Police Department and attaining the age of fifty (50) years or (ii) completing twenty-eight (28) years of Active Service with the Chattanooga Fire or Police Department and, upon notifying the Board of his or her election pursuant to (i) or (ii) of this subsection, will be entitled to receive the annual Service Retirement Pension provided in subsection (b) to be distributed in twelve (12) equal payments as benefits become payable each month.

(3) Any Member hired by the Chattanooga Fire or Police Department after the effective date of this ordinance (except current fire and police academy cadets covered under subsection (a)(2)) may, at his or her election, retire upon (i) completing twenty-five (25) years of Active Service with the Chattanooga Fire or Police Department and attaining the age of fifty-five (55) years or (ii) completing thirty (30) years of Active Service with the Chattanooga Fire or Police Department and, upon notifying the Board of his or her election pursuant to (i) or (ii) of this subsection, will be entitled to receive an annual Service Retirement Pension. The total annual pension for the Member will be an amount equal to two-and-one-half percent (2.5%) of the average Base Salary paid to the Member during his or her three (3) highest-earning years of Active Service in the Chattanooga Fire or Police Department multiplied by the Member's years of Active Service up to a maximum annual payment equal to no more than seventy-five percent (75%) of the average Base Salary paid to the Member during his or her three (3) highest-earning years of Active Service in the Chattanooga Fire or Police Department. The annual pension will be distributed in twelve (12) equal payments as benefits become payable each month.

(4) Notwithstanding the foregoing, the age and service requirements of paragraphs (1), (2), and (3) of this subsection (a) must comply with the rules and regulations of the Internal Revenue Service relating to normal retirement as they may change from time to time. If the age and service requirements do not comply with these rules and regulations, then they will change automatically to comply.

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(b) From and after July 1, 1999, a member of the Fund who was employed in the Fire Department or Police Department may at his or her election retire upon completion of twenty-five (25) years of active service in the Fire or Police Departments, and upon notifying the Board in writing of such election, receive an annual Service Retirement Pension to be distributed in twelve (12) equal payments as benefits become payable each month in an amount equal to two and three-quarters percent (2.75%) of the average pay for such member during the highest three (3) years that such member is employed in the Fire or Police Department multiplied by said member's years of active service up to twenty-five (25) years of active service plus one and one-quarter percent (1.25%) of the aforesaid average pay for each year of active service between twenty-five (25) and thirty (30) years. Such benefit shall be based upon such member's Average Base Salary.

(c) Upon the death of any member employed on November 3, 1992, who is retired under the provisions of this Section, or upon the death of such member prior to retirement, but eligible for benefits under this Section, there shall be paid to said member's beneficiary a death benefit of \$10,000.00, and the benefits under Section 2-418, and the surviving spouse shall be paid the sum of \$500.00 per month, increased by all appropriate cost of living adjustments under this Division from and after July 1, 1999, until death if said spouse is not a beneficiary under one of the options listed in Section 2-418. Effective January 1, 2013, upon the death of such member who is eligible for benefits under this Section, there shall be paid to said member's beneficiary a death benefit of \$10,000.00, and the benefits, if any, elected by the member under Section 2-418. If the member has not elected any option prior to his or her death, a benefit shall be payable to the deceased's surviving spouse, if any, as though he or she had elected Option D., Section 2-418. Notwithstanding the foregoing, if a member who is employed on November 3, 1992, but is not eligible for benefits under this Section on January 1, 2013, or is employed after November 3, 1992, shall die before retirement and after reaching the conditions to be eligible for benefits under this Section or shall die after retirement, there shall be paid to his or her beneficiary or beneficiaries the benefit of \$10,000.00 and such benefits elected under Section 2-418.

(Ord. No. 12674, § 2, 12-11-12)

(d) The City Council, City of Chattanooga, in its discretion, only after a recommendation of the Board of Directors of the Fire and Police Pension Fund, upon advice by the Mayor, may, by ordinance, passed on three separate readings, amend any section of the Private Acts of 1949, as amended, or this Article XIII; provided that such amendment is not inconsistent with sound actuarial principles, methods, and actuarial assumptions and further provided that such amendment shall not in any way decrease any vested financial benefits accrued by any participant or beneficiary of the Fire and Police Pension Fund.

(e) Those benefits payable to participants retired prior to July 1, 1999, or beneficiaries of those members retired prior to July 1, 1999, shall continue under the provisions in effect at the time such benefit was granted except where specifically amended or modified to include such participants or beneficiaries. No participant or beneficiary vested as of July 1, 1999, will receive an amount that would be less than the amount payable to a participant or beneficiary with equivalent service retiring as of July 1, 1999.

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(f) For years beginning after December 31, 2008, (i) a member receiving a differential wage payment, as defined by Section 3401(h)(2) of the Internal Revenue Code of 1986, as amended, shall be treated as an employee of the City of Chattanooga, (ii) the differential wage payment shall be treated as compensation, and (iii) the Pension Fund shall not be treated as failing to meet the requirements of any provision described in Section 414(u)(1)(C) of the Internal Revenue Code of 1986, as amended, by reason of any contribution or benefit which is based on the differential wage payment.

(Ord. No. 9778, § 1(3), 8-18-92; Ord. No. 11012, §§ 1(2), 1(5)-1(8), 5-9-00; Ord. No. 11377, §1, 02-04-03; Ord. No. 12674, § 3, 12-11-12; Ord. No. 12813, § 3, 03-11-14)

### **Sec. 2-412. Disability or death benefits from cause resulting from performance of duty.**

(a) If any member of the departments of Fire or Police while engaged in the discharge of his or her duties shall receive injuries resulting in such employee becoming disabled from performing duties in the Fire or Police Department, he or she shall be placed on a pension and paid sixty percent (60%) of the member's Base Salary as computed over the highest three (3) years of Base Salary during the member's years of active service, regardless of the length of time served; provided, however, that the member shall make application to the Board on a form to be provided by said Board, which application shall be accompanied by proof of facts entitling disability retirement, or proper medical proof of disability; provided further that before such member shall be retired on a pension the Board may have him or her examined by competent physicians to determine whether or not such disabled member is unable to discharge his or her regular duty or any other duty that may be required of him or her by officials of the Department of the Fire and Police. Due notice of application shall be recorded by the Secretary and the applicant shall be notified five (5) days in advance, unless waived by applicant, of the hearing by the Board on his or her application. Notwithstanding the foregoing, in no event shall a retired member's monthly benefit be less than Seven Hundred Fifty Dollars (\$750.00). No member shall be retired on a pension under this Section because of injury until six (6) months after such injury was received. Any employee retired on a pension because of an injury, in the event of recovery to the extent that he or she is again able to perform any duty required of him or her, shall be removed from the pension roll and reinstated in service. If such employee who has been placed on the pension roll refuses to allow himself or herself to be examined by physicians selected by the Board, the Board shall have the right to suspend his or her pension until such time as he or she may permit an examination by the physicians selected by the Board. No member shall be given disability benefits under this Section if the Board finds that said disability could probably be successfully corrected by competent medical treatment, and said member fails or refuses to be so treated.

(b) If any member shall die prior to retirement from any injury suffered in line of duty, or receive injuries while engaged in the performance of their duties resulting in death within six (6) months thereafter, and shall leave a surviving spouse, said surviving spouse shall be entitled, unless receiving benefits under Section 2-418, to receive until his or her death the benefit herein provided for a member receiving a disability benefit under this Section. Said surviving spouse shall in no event receive a monthly benefit of less than Five Hundred Dollars

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(\$500.00), increased by all appropriate cost of living adjustments under this Division from and after July 1, 1999.

If there be no surviving spouse, then the dependent child or children shall each receive \$500.00 per month increased by all appropriate cost of living adjustments under this Division from and after July 1, 1999, during the minority, provided that the total amount payable to all of such children shall not exceed the member's maximum pension. If such deceased member is not survived by spouse or minor children, but is survived by two parents solely dependent upon said member, each parent so long as he or she has no other means of support, shall receive one-half (1/2) of the benefits to which a surviving spouse would receive under this Section. If there is only one parent dependent upon such member for support, such parent shall be paid the same benefits which a surviving spouse would receive under this Section.

(c) Notwithstanding the provisions of subsection (b), if any Member employed by the Chattanooga Fire or Police Department on or after April 1, 2011, is killed in the line of duty prior to retirement, the Member's surviving spouse will be placed on an annual pension calculated as one hundred percent (100%) of the average Base Salary paid to the Member during his or her three (3) highest-earning years of Active Service in the Chattanooga Fire or Police Department. This pension will be distributed in twelve (12) equal payments as benefits become payable each month until the death of the Member's surviving spouse.

(d) Upon death of any member who retires under the provisions of subsection (a), there shall be paid to his or her beneficiary or beneficiaries the sum of \$10,000.00. (Ord. No. 9778, § 1(6), 8-18-92; Ord. No. 10747, § 1(1), 8-18-98; Ord. No. 11012, §§ 1(3), 1(9)-1(10), 5-9-00; Ord. No. 11377, §1, 02-04-03; Ord. No. 12813, § 4, 03-11-14)

### **Sec. 2-413. Refund to member terminating employment.**

Except as otherwise provided in the Uniform Services Employment and Re-Employment Rights Act of 1994, if the employment of a member is terminated for any reason, or if the member is on leave without pay for a period in excess of ninety (90) consecutive days, said member shall be entitled to receive at the time of said termination or leave 100% of whatever sums he or she contributed to the Pension Fund. If such member is subsequently reemployed in the Fire or Police Department, he or she may at the time of reemployment reimburse the Pension Fund to the full extent of the amount he or she received from the Pension Fund upon said termination with interest compounded annually and computed at the rate utilized in the actuarial evaluation of the Pension Fund during their periods of absence from the date of said withdrawal to the date of reemployment. Any reimbursement of amounts received upon prior termination shall be made by the date of reemployment and may not be reimbursed thereafter. If a member who is subsequently reemployed does not reimburse the Pension Fund, such member shall be treated as a newly hired member for purposes of the Pension Fund.

(Ord. No. 9778, § 1(7), 8-18-92; Ord. No. 11377, §1, 02-04-03; Ord. No. 12674, § 4, 12-11-12)

### **Sec. 2-414. Benefits exempt from debts of employee, may not be garnished, etc.**

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The Pension Fund, either before or after its distribution by the trustee to disabled or retired employees of said fire and police department, and their widows, or the beneficiary of any deceased employee, shall be exempt from the debts of such employee and shall not be assignable nor subject to attachment, garnishment, execution or other legal process, but the same shall be received by such employee or beneficiary, free from debts, judgments and demands of such employee or beneficiary. (Priv. Acts 1949, Ch. 165, § 18; Ord. No. 9778, § 1(13), 8-18-92; Ord. No. 11377, §1, 02-04-03)

### **Sec. 2-415. Termination of employment after ten years of service; vesting; death after termination.**

Except as otherwise provided in the Uniform Services Employment and Re-Employment Rights Act of 1994, a member who has completed ten (10) or more years of active service at the time of his or her termination of employment, or at the time he or she has been on leave without pay for a period in excess of ninety (90) consecutive days, shall have the right to either (1) or (2) as follows:

(1) A right to receive a 100% refund of whatever sums he or she contributed to the Pension Fund. If such member is subsequently reemployed in the Fire or Police Department, he or she may at the time of reemployment reimburse the Pension Fund to the full extent of the amount he or she received from the Pension Fund upon said termination with interest compounded annually and computed at the rate utilized in the actuarial valuation of the Pension Fund from the date of withdrawal to the date of reemployment. Any reimbursement of amounts received upon prior termination shall be made by the date of reemployment and may not be reimbursed thereafter. If a member who is subsequently reemployed does not reimburse the Pension Fund, such member shall be treated as a newly hired member for purposes of the Pension Fund.

(2) A right to leave his or her contribution in the Pension Fund and be eligible to receive after reaching fifty-five (55) years of age a monthly deferred vested retirement benefit equal to 2.4% of his or her Average Base Salary as computed over the highest three (3) years of pay during the member's years of service for each year of active service, subject to a maximum of twenty-five (25) years.

If the death of such member occurs prior to commencement of the payment of any benefits under this Section, a refund of whatever sums such member contributed to the Pension Fund shall be paid to the member's estate, and his or her beneficiary shall be paid a death benefit sum of \$10,000.00. If death occurs following the commencement of eligibility to receive benefits under this Section, benefits shall be payable according to the terms elected under Section 2-418.

(Priv. Acts. 1949, Ch. 165, #19; Ord. No. 8688, #1(18), 8-19-86; Ord. No. 9778, #8, 8-18-92; Ord. No. 9839, #3, 2-9-93; Ord. No. 11377, §1, 02-04-03; Ord. No. 12674, § 5, 12-11-12)

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### **Sec. 2-416. Permanent and Total Disability**

(a) From and after July 1, 1999, if an active member of the departments of Fire or Police shall become Permanently and Totally Disabled, he or she shall be placed on a pension and paid sixty-eight and 75/100 percent (68.75%) of the member's Base Salary as computed over the highest three (3) years of Base Salary during the member's years of active service, regardless of the length of time served, provided, however, that the member shall make application to the Board on a form to be provided by said Board, which application shall be accompanied by proof of facts entitling the member to Permanent and Total Disability retirement, or proper medical proof of Permanent and Total Disability; provided further that before such member shall be retired on a pension the Board may have him or her examined by competent licensed physicians to determine whether or not such member is Permanently and Totally Disabled. Due notice of application shall be recorded by the Secretary and the applicant shall be notified five (5) days in advance, unless waived by applicant, of the hearing by the Board on his or her application. Notwithstanding the foregoing, in no event shall a retired member's monthly benefit be less than Seven Hundred Fifty Dollars (\$750.00).

(b) In the event that a member who was Permanently and Totally Disabled recovers to the extent that he or she is able to engage in gainful employment again, he or she shall notify the Board of such change of condition and such Permanent and Total Disability retirement pension shall be discontinued. Such member may reapply for such other disability pension as such member may be eligible for. If such member who has been placed on the pension roll refuses to allow himself or herself to be examined by physicians selected by the Board, the Board shall have the right to suspend his or her pension until such time as he or she may permit an examination by physicians selected by the Board.

(c) In addition to any other Permanent and Total Disability Benefit to which a member is entitled under this Section, if a member has one or more minor children at the time he or she begins to receive a Permanent and Total Disability retirement pension, he or she shall receive Five Hundred Dollars (\$500.00) per month, per minor child, not to exceed a total of One Thousand Dollars (\$1,000.00) during the minority of such children.

(d) The Board shall provide to the Mayor and City Council on or before April 1 of each year an annual report of the action of the Board on applications for Permanent and Total Disability pensions during the preceding calendar year.

(e) The City Council declares its intent to rescind the sunset provisions of Section 2-416(e) of the Chattanooga City Code.

(Ord. No. 11377, §1, 02-04-03; Ord. No. 12067, 1-15-08; Ord. No. 12813, § 5, 03-11-14)

### **Sec. 2-417. Cost of living adjustments to pension benefits.**

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(a) The annual pension to a Member retired before the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member will be increased in the manner described in subsection (b) or (c), whichever is applicable, each January 1 after the twelfth monthly benefit payable.

(b) Any time the Fund is less than eighty percent (80%) funded on a market value basis as determined by the Fund's most recently completed annual actuarial valuation and review, the total amount payable from the Fund to eligible recipients will be increased effective each January 1, beginning as soon as practicable after January 1, 2015, by one and one-half percent (1.5%). This increase will be allocated among eligible retired Members receiving annual pensions and the qualified survivors or beneficiaries of such Members by the Board, after consultation with the Fund's actuary, to provide higher cost of living adjustments to those receiving lower monthly benefits payable. In no event, however, will any annual pension be increased by greater than two percent (2%) or less than one percent (1%) of the monthly benefit payable.

(c) Any time the Fund is at least eighty percent (80%) funded on a market value basis as determined by the Fund's most recently completed annual actuarial valuation and review, all cost of living adjustments beginning the following January 1 will correspond to the Consumer Price Index up to a maximum cost of living adjustment of three percent (3%), provided that the Fund, inclusive of this change, would not be less than eighty percent (80%) funded on a market value basis.

(d) The cost of living adjustment for the annual pension to a Member retiring on or after the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member, will be as follows:

- (1) The annual pension to a Member retiring on or after the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member, will not be increased until the January 1 after the thirty-sixth monthly benefit payable, at which time the annual pension will be increased in the manner described in subsection (b) or (c), whichever is applicable, except as provided in subsection (d)(2).
- (2) If after the twelfth monthly benefit payable but before the thirty-sixth monthly benefit payable to a Member retiring on or after the effective date of this ordinance, or to any qualified survivor or beneficiary of such Member, the Fund is at least seventy percent (70%) funded on a market value basis as determined by the Fund's most recently completed annual actuarial valuation and review, the annual pension will be increased, beginning the following January 1, in the manner described in subsection (b) or (c), whichever is applicable, so long as the increase would not cause the Fund to fall below seventy percent (70%) funded on a market value basis. If the increase is applied, but the Fund subsequently falls below seventy percent (70%) funded on a market value basis before the thirty-sixth monthly benefit payable, then the increase for these

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Members will be discontinued until the January 1 following the first thirty-sixth monthly benefit payable.

(e) For individuals eligible for cost of living adjustments effective January 1, 2015, and January 1, 2016, such cost of living adjustments will be dividend cost of living adjustments and will not be compounded or placed into the base pension amount in subsequent years. Nothing in this Section 2-417 should be construed to affect benefits payable as of the effective date of this ordinance.

(Ord. No. 9778, § 1(10), 8-18-92; Ord. No. 11012, § 1(11), 5-9-00; Ord. No. 11377, §1, 02-04-03; Ord. No. 12813, § 6, 03-11-14)

**Sec. 2-418. Optional retirement benefits.**

1. When a member reaches the conditions for retirement benefits under Section 2-411; or qualifies to reach the conditions for retirement benefits under Section 2-411 and qualified for retirement benefits under Section 2-412; or is eligible to commence receiving retirement benefits under Section 2-415, he or she may elect to have the pension benefits under said Sections converted into an optional retirement benefit which is the actuarial equivalent of such benefit based upon mortality basis approved from time to time by the Board, and the age of the member and of the beneficiary as of the date the member becomes eligible to exercise the election.

The optional retirement benefits may take one of the forms listed below and for members who become employed after November 3, 1992 there shall be paid to the beneficiary the option selected by such member under this Section; but for a member who was an employee on November 3, 1992, and eligible to retire on or before December 31, 2012, the surviving spouse shall receive the sum of \$750.00, increased by all appropriate cost of living adjustments under this Division, if the said member has not designated the spouse as a beneficiary under one of the option forms listed below.

(Ord. No. 12813, § 7, 03-11-14)

**OPTION A: 120 Payments Certain and Life Option**

A decreased retirement benefit payable for life with the first 120 payments guaranteed. Any guaranteed payments due after the death of the retired participant shall be payable to the designated beneficiary, if any who survives the retired participant, or the estate of the retired participant if there is no surviving designated beneficiary.

**OPTION B: Joint and Survivor Option**

A decreased retirement benefit payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 100% of that payable to the retired participant.

**OPTION C: Modified Joint and Survivor Option**

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A decreased retirement benefit payable to the retired participant for life which shall continue after his or her death to their surviving beneficiary at 75% of that payable to the retired participant.

### OPTION D: Modified Joint and Survivor Option

A decreased retirement benefit payable to the retired participant for life which shall continue after his or her death to their surviving beneficiary at 50% of that payable to the retired participant.

### OPTION E: Modification of Option B

A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 100% of that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the member not elected an option. (Ord. No. 10463, § 1(3), 8-20-96)

### OPTION F: Modification of Option C

A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 75% of that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the member not elected an option. (Ord. No. 10463, § 1(3), 8-20-96)

### OPTION G: Modification of Option D

A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 50% of that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the member not elected an option. (Ord. No. 10463, § 1(3), 8-20-96)

2. Application for any optional retirement benefit shall be in writing, duly executed, and filed with the Board. Such application shall contain all information required by the Board, including such proofs of age as are deemed necessary by the Board. A retirement option selected at the time of eligibility may only be changed by written notice of the new election filed with or prior to his or her application for retirement and subject to such requirement as the Board may require.

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3. If an active member dies after he or she has reached the aforesaid conditions for retirement benefits, any option they may have elected, in lieu of their otherwise retirement benefit, shall be payable as though he or she had been entitled to have such optional benefit commence on their date of death. (Ord. No. 9778, § 1(9), 8-18-92)

4. In the event of a divorce of a member who retired under an optional retirement plan, where the spouse is the designated beneficiary, the beneficiary may be cancelled upon the written request of the member and proper documentation, which shall include the final decree and marital dissolution agreement of the parties; provided, that such cancellation is not in conflict with the decree or marital dissolution agreement. The retirement allowance payable to the retiree after the cancellation of the designated beneficiary shall not be affected by such cancellation. (Ord. No. 10463, § 1(4), 8-20-96; Ord. No. 11377, §1, 02-04-03)

### **Sec. 2-419. Definition of terms.**

1. The term "Member" shall mean an employee of the Chattanooga Fire or Police Department who is a sworn Firefighter or Police Officer. An employee hired into the said department to be a sworn Firefighter or Police Officer shall not become a member until he or she completes all training required for the position and is sworn, nor shall he or she be eligible for participation in the General Pension Plan.

2. The term "Board" shall mean the Board of Directors of the Chattanooga Fire and Police Pension Fund.

3. The term "Fund" shall mean the Chattanooga Fire and Police Pension Fund, formerly called the Firemen's and Policemen's Insurance and Pension Fund, created by Chapter 165 of the Private Acts of 1949, as amended.

4. The term "Average Base Salary" or "Base Salary" shall mean the regular wages or salary paid on a monthly basis, but shall not include overtime pay or any supplements, including but not limited to supplements for years of service or education.

5. The term "Active Service" shall mean that period of time after the date of permanent employment as a sworn officer with POST certification in the Chattanooga Police Department or a sworn officer with permanent employment in the Chattanooga Fire Department, that the member serves and is paid from the payroll of the said departments.

6. The term "Service Retirement Pension" means the annual pension that a Member who has elected to retire upon meeting the applicable minimum age and service requirements of Section 2-411(a) is entitled to receive and which will be distributed in twelve (12) monthly benefits payable subject to adjustment as provided in Sections 2-418, 2-422, and 2-423, if applicable. (Ord. No. 12813, § 8, 03-11-14)

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7. The term “Surviving Spouse” shall mean the spouse who is married to a member at the member’s death and who has been continuously married to the member for a period of at least eighteen (18) months prior to the date of the member’s death. Effective April 1, 2013, the term “Surviving Spouse” shall mean any spouse who meets the requirements of the preceding sentence and who is married to a member on April 1, 2013, or, the spouse who is married to a member at the member’s retirement and who has been continuously married to the member for a period of at least eighteen (18) months prior to the date of the member’s death and who is married to the member upon his or her death. (Ord. No. 12674, § 6, 12-11-12)

8. The term “Permanent and Total Disability” or “Permanently and Totally Disabled” shall mean the medically determinable consequences of a catastrophic injury or illness that permanently prevents a member from performing any gainful work.

9. The term “Consumer Price Index” means the percent change in the Chained Consumer Price Index for All Urban Consumers (C-CPI-U) as reported by the Bureau of Labor Statistics of the United States Department of Labor for the twelve (12) months ending the previous September.

(Ord. No. 11377, §1, 02-04-03; Ord. No. 12813, § 8, 03-11-14)

### **Sec. 2-420. City court costs for benefit of Fire and Police Pension Fund.**

The sum of five dollars (\$5.00) [shall] be added as and in the nature of court costs to the cost incurred in the City Court of the City of Chattanooga on all forfeitures of fines or monies for or on conviction for violation of any city ordinances and that said increase in court costs for the City Court of the City of Chattanooga be collected by the clerk of said court and paid over to the treasurer the City of Chattanooga who will account for said funds and pay same over to the trustees of the Fire and Police Pension Fund together with all other monies properly collected for credit to said fund as herein before set out. (Priv. Acts 1969, Ch. 165, § 1; Ord. No. 11377, §1, 02-04-03)

### **Sec. 2-421. Credited service under general pension plan.**

A participant in the General Pension Plan who has transferred employment from the provisions of the Fire and Police Pension Plan shall have the right to have his service under the Fire and Police Pension Plan vested if it amounts to five (5) years or more and said participant has more than five (5) years credited service under the General Pension Plan. Such employee shall be entitled to receive at age fifty-five (55), if not employed by the City of Chattanooga, ten (10%) percent of the pension he or she could have received if employed for twenty-five (25) years that was paid at the time of transfer, for five (5) years of service, and if any employee transfers after serving more than five (5) years and less than ten (10) years, the vested percent of said pension paid at the time of transfer shall be increased by three (3%) percent for each additional year of service up to ten (10) years of service. (Ord. No. 8688, § 1(2)(a), 8-19-86; Ord. No. 11377, §1, 02-04-03)

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**Sec. 2-422. Deferred Retirement Option Provision.**

(a) Only Members who have completed at least twenty-four (24) years of Active Service with the Chattanooga Fire Department or Police Department as of the effective date of this ordinance and filed a written election with the Board on or before December 31, 2008, agreeing to contribute an additional one percent (1%) of their Average Base Salary to the Fund will be eligible for the Deferred Retirement Option Provision (DROP) described in this Section 2-422 so long as the Member complies with the contribution requirements of Section 2-402.

(b) From and after July 1, 1999, a member of the Fire Department or Police Department with more than twenty-five (25) years of active service, but no more than thirty (30) years of active service, may elect the Deferred Retirement Option Provision (DROP) at the time of retirement, to cover a retroactive period not to exceed thirty-six (36) months.

(c) A member shall elect to take the DROP by completing a written form provided by the Board of Directors. If a member elects to take the DROP, his or her Service Retirement Pension shall be adjusted as follows: Upon retirement, the eligible member's Service Retirement Pension shall be calculated as provided in Section 2-411 above, and further adjusted as provided in Section 2-418, if applicable, except that, for purposes of the calculation under Section 2-411, the member's active service shall be reduced by the number of months elected by the member hereunder. The number of months elected by the member hereunder shall not exceed the lesser of: (A) the number of months of active service accumulated by the member beginning on the date the member attains twenty-five (25) years of active service and ending on the member's actual retirement date; and (B) thirty-six (36) months.

(d) The member's monthly Service Retirement Pension, calculated in accordance with the provisions of subsection (c), above, shall be added together with an amount that is equal to the average of the member's monthly employee assessment, required by Section 2-402, above, for the thirty-six (36) month period immediately prior to the member's retirement. The resulting sum shall then be multiplied by the number of months elected by the member pursuant to subsection (c), above. The resulting product shall be credited with interest at seven percent (7%) annually, compounded monthly, for the same number of months. The total amount so derived shall constitute the DROP benefit, which shall be paid in a single lump sum.

(e) The DROP payment shall be paid as soon as practicable after the retirement of the member.

(f) A member's right to participate in the DROP shall not be vested until the member retires and elects to take the DROP. The DROP may be discontinued or modified at any time.

(Ord. No. 11377, 02-04-03; Ord. No. 12813, § 9, 03-11-14)

**Sec. 2-423. Modified Deferred Retirement Option Provision.**

(a) Members who do not meet the requirements of Section 2-422(a) are eligible only for the DROP described in this Section 2-423. A Member may elect to receive, and may receive, only one DROP. Any Member not eligible for the DROP described in Section 2-422 who, as of the effective date of this ordinance, filed a written election with the Board on or before December 31, 2008, agreeing to contribute an additional one percent (1%) of their Average Base Salary to the Fund will have the total amount of their additional one percent (1%) contributions refunded to them as soon as practicable after the effective date of this ordinance.

(b) Beginning on the effective date of this ordinance, a Member of the Chattanooga Fire Department or Police Department currently employed in such capacity with the City who serves at least twenty-five (25) years of Active Service, but no more than thirty-three (33) years of Active Service (the DROP Period), may elect to receive the DROP described in this Section 2-423. Any Member hired by the Chattanooga Fire or Police Department after the effective date of this ordinance who reaches the age and service requirement for a normal retirement as noted in section 2-411(a)(3), but has achieved no more than thirty-three (33) years of Active Service (the DROP Period), may elect to receive the DROP described in this Section 2-423. The Service Retirement Pension for a Member who has elected to receive the DROP described in this Section 2-423 will be adjusted as follows: Upon retiring and providing written notice of retirement to the Board, the Member's Service Retirement Pension will be calculated as provided in Section 2-411, and further adjusted as provided in Section 2-418, if applicable, except that, for purposes of the calculation under Section 2-411, the Member's Active Service will be reduced by the number of months elected by the Member on his or her DROP election form. The number of months elected by the Member may not exceed the lesser of (i) the number of months of Active Service accumulated by the Member beginning on the date the Member completes twenty-five (25) years of Active Service and ending on the Member's actual retirement date or (ii) thirty-six (36) months.

(c) The DROP will be calculated by multiplying the number of months elected by the Member as provided in subsection (b) by the Member's Average Base Salary at the time the Member first becomes eligible to elect to receive the DROP as provided in subsection (b). The resulting dollar amount will be paid, in a single lump sum, from the Fund as soon as practicable after the Member's retirement. No cost of living adjustment or interest will be applied to or earned by the DROP payment.

(d) To elect to receive the DROP described in this Section 2-423, an eligible Member must complete a written election form provided by the Board and file it with the Board during the DROP Period. The right of a Member who elects to receive the DROP described in this Section 2-423 will not accrue or vest until the Member retires.

(e) A member's right to participate in the DROP shall not be vested until the member retires and elects to take the DROP. The DROP may be discontinued or modified at any time.

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(Ord. No. 12155, §2, 9-2-08; Ord. No. 12813, § 10, 03-11-14)

**Sec. 2-424. Actuarial and Experience Study Review.**

(a) Immediately upon the effective date of this ordinance and once every five years thereafter, the Board will commission a full actuarial study of the financial impact and cost neutrality of the DROPs on the Fund. The study will be performed by a third party actuary (an actuary or actuarial firm holding membership in the Academy of American Actuaries that does not serve as actuary for either the Board or the Fund), which will prepare a report of the study and its findings. The study and report will be submitted to the Mayor, the City Council, and the Board and will include an assessment of whether the DROP provided for in Section 2-423 is cost neutral to the Fund. The first report required by this subsection (a) is due as soon as practicable after the effective date of this ordinance. In the event that a report indicates that the DROP provided for in Section 2-423 is not cost neutral to the Fund, the Board will modify the DROP to ensure its cost neutrality to the Fund.

(b) The Board will submit to the Mayor and City Council quarterly performance evaluations of the Fund.

(Ord. No. 12212, § 1, 2-17-09; Ord. No. 12155, §2, 9-2-08; Ord. No. 12212, § 1, 2-17-09; Ord. No. 12813, § 11, 03-11-14)

**Secs. 2-425 - 2-429 Reserved.**

(Ord. No. 11377, §1, 02-04-03; Ord. No. 12155, §2, 9-2-08; Ord. No. 12413, § 2, 7-13-10)

<sup>13</sup>See footnote below.

DIVISION 19. INJURY ON DUTY PROGRAM

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<sup>13</sup>The specific intent of the City Council in passing this ordinance is to create a structure for the Fund that ensures its long-term actuarial integrity and ability to pay benefits while preserving the City's fiscal health. This ordinance must be construed to effectuate this specific intent.

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### **Sec. 2-430. Purpose.**

It is the purpose of this Division to provide uniform procedures for the reporting, treatment and compensation to qualified individuals employed by the City who sustain a job-related injury, condition or occupational disease.  
(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-431. Definitions.**

For the purpose of this Division, the following terms, phrases and words and their derivatives, shall have the meaning given herein:

*Employee or Employees:* As defined in Part I, Chapter 2, Article III, Division 1.

*First Report of Injury:* A document created by the department supervisor from the Employee's report of a job-related injury or illness detailing how the illness or injury occurred.

*Injury on Duty (IOD):* An accidental injury or occupational disease sustained by an Employee that arises out of and in the course of employment with the City which causes injury, occupational disease, disablement or death of an Employee and shall include a mental injury arising out of and in the course of employment. May also be referred to as IOD.

*Injury on Duty Compensation:* Payment made by the City to an Employee who sustains an IOD if the Employee is unable to work light or restricted work based on medical documentation from a medical provider. May also be referred to as IOD Compensation.

*Light or Restricted Duty:* A less arduous duty position or an alternate position that may include job classifications and positions in other departments.

*Maximum Medical Improvement (MMI):* A designation given to an Employee by the Medical Provider when the Employee has reached the maximum level of improvement from each IOD. May also be referred to as MMI.

*Medical Expenses:* Any hospital, medical, pharmacy or other bills reasonably necessary in connection with an IOD.

*Medical Provider:* Any clinic or occupational medical specialist authorized by the City to provide a diagnosis and/or treatment for IOD claims.

*Mental Injury:* A loss of mental faculties or a mental or behavioral disorder where the proximate cause is a compensable, physical injury resulting in a permanent disability, or an identifiable work-related event resulting in a sudden or unusual mental stimulus.

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A mental injury shall not include a psychological or psychiatric response due to the loss of employment or employment opportunities.

*Occupational Disease:* All diseases arising out of and in the course of employment. A disease shall be deemed to arise out of the employment only if: (1) it can be determined to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment; (2) it can be fairly traced to the employment as a proximate cause; (3) it has not originated from a hazard to which workers would have been equally exposed outside of the employment; (4) it is incidental to the character of the employment and not independent of the relation of employer and employee; (5) it originated from a risk connected with the employment and flowed from that source as a natural consequence, though it need not have been foreseen or expected prior to its contraction; and (6) there is a direct causal connection between the conditions under which the work is performed and the occupational disease. Diseases of the heart, lung, and hypertension arising out of and in the course of any type of employment shall be deemed to be occupational diseases.

*Permanent Partial Impairment (PPI):* An impairment rating assigned by the Medical Provider in accordance with current American Medical Association guidelines.

*Program Director:* The Director of Risk Management Insurance or his/her designee for the administration of the Injury on Duty Program.

*Supervisor:* A City employee who supervises the work performed by subordinate employees. Departmental supervisors shall have the responsibility of training their subordinate employees in their job-related responsibilities.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-432. Administration.**

(a) The Injury on Duty Program shall be administered under the direction of the Program Director. The Program Director shall determine whether an Employee's injury or condition qualifies as an IOD arising out of and in the course of employment and whether an Employee is eligible for medical treatment at the City's expense. Decisions of the Program Director shall be final unless appealed in the manner outlined in Section 2-449 herein.

(b) The City shall, through a third party administrator, provide each covered IOD claim with a case manager. All accepted IOD claims will be case managed until the Employee has reached MMI and, if necessary, a PPI rating has been assigned.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-433. IOD Compensation.**

(a) Except for the exclusions set forth in Section 2-437 and provided Employees comply with the requirements set forth in Section 2-436, IOD Compensation shall be made in

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the following manner for covered IODs to Employees for a period not to exceed one (1) year after the date on which the IOD occurred:

- (1) Initial IOD Compensation Period. All Employees shall receive as IOD Compensation at the rate of seventy-five percent (75%) of the Employee's salary earned at the time of the IOD, not to exceed six (6) months (1,560 hours for Fire Department personnel working shifts and 1,040 hours for all other employees), provided, however, that the City receives medical documentation from a Medical Provider stating that it is medically necessary for the Employee to remain off work during the period of incapacity, including any follow-up treatments or therapy required by the Medical Provider.
- (2) IOD Extension Period. To receive IOD Compensation beyond the Initial IOD Compensation Period following an IOD, the City must receive medical documentation from a Medical Provider stating that it is still medically necessary for the Employee to remain off work. An additional six (6) months (1560 hours for Fire Department personnel working shifts and 1040 hours for all other employees) of IOD Compensation at the rate of sixty-five percent (65%) of the Employee's salary earned at the time of the IOD shall be paid by the City upon receipt of documentation from a Medical Provider stating that it is medically necessary for the Employee to remain off work during the period of incapacity, including any follow-up treatments or therapy required by the Medical Provider.

(b) Regular part-time, intermediate, temporary or seasonal Employees shall not be entitled to receive IOD Compensation.

(c) IOD Compensation shall be considered payment in the nature of a worker's compensation claim as set forth in the Internal Revenue Code and excluded from an Employee's gross income.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-434. Hospital, Medical, or Drug Expenses.**

Except for the exclusions set forth in Section 2-437 and provided Employees comply with the requirements set forth in Section 2-436, the City shall pay Medical Expenses attributable to a covered IOD sustained by an Employee for a period not to exceed two (2) years from the date of the IOD.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-435. Death benefits.**

If any Employee of the City dies as a result of a covered IOD, the City shall pay to the Employee's spouse, or dependents if there is no spouse, the sum of \$10,000.00. This Section

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shall not apply to the Fire and Police Pension Fund members who are otherwise covered as to a death benefit.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-436. Requirements.**

Employees must comply with the following requirements to receive IOD Compensation and/or payment of Medical Expenses for covered IODs:

- (a) All IODs, whether requiring medical attention or not, must be reported to the Employee's Supervisor immediately or within twenty-four (24) hours after such occurrence. An Employee must also complete and submit a First Report of Injury to the Employee's Supervisor. An exception to the IOD reporting requirement shall be made if the circumstances of the IOD are such that the Employee does not have reason to know of the IOD at the time it occurs and if independent evidence exists regarding the IOD that supports making such an exception.
- (b) Employees must seek medical treatment for an IOD within five (5) working days from the date of the claim. Non-compliance with this rule may result in denial of the IOD claim.
- (c) Employees shall receive treatment only at City-designated facilities. Any non-authorized treatment shall be paid by the Employee except for unavoidable emergency situations. Once an Employee is stabilized, the City has the right to direct or relocate the Employee to a City-designated Medical Provider or facility. Non-authorized treatment will result in denial of any future IOD benefits for this specific claim.
- (d) Employees shall follow all orders given by a Medical Provider, including but not limited to: using prescribed and non-prescribed medications properly; participating in physical exercise or therapy programs; adhering to prescribed dietary programs; keeping appointments; and complying with the Medical Provider's instructions. Failure to keep scheduled appointments without advanced notification to the Medical Provider or to comply with a Medical Provider's orders may result in termination of benefits.
- (e) Any physical activity restrictions, prescriptions, and proscriptions rendered by a Medical Provider in the course of IOD treatment apply twenty-four (24) hours per day during the recovery period. A Medical Provider's "no work" directive applies to the injured Employee's primary employment with the City, as well as secondary employment. It is the Employee's duty to follow medical directives.

(Ord. No. 12413, § 2, 7-13-10; Ord. No. 12425, §1, 8-17-10)

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**Sec. 2-437. Exclusions.**

No IOD Compensation or Medical Expenses shall be paid by the City for the following:

- (a) Activities neither related to nor in the course and scope of the Employee's job. The Program Director will make such determinations.
- (b) Injuries or illnesses resulting from the influence of alcohol or from unlawful use of drugs (as determined by a Medical Provider).
- (c) Injuries or illnesses resulting from misconduct, including horseplay.
- (d) Intentional or self-inflicted injury even as a result of a medical or mental condition.
- (e) Failure or refusal to use safety devices and/or personal protective equipment as outlined in the departmental safety policies, as amended, except in exigent circumstances; failure to perform duties as required by law; or failure to follow general safety precautions in performing job duties.
- (f) On-the-job injuries or illnesses aggravated by any activity while off-duty.
- (g) Injuries suffered while an Employee is traveling to and/or from work.
- (h) Pre-existing injuries or conditions, except as provided for in Section 2-444.  
(Ord. No. 12413, § 2, 7-13-10; Ord. No. 12425, §2, 8-17-10)

**Sec. 2-438. Personal Leave; Leave of Absence.**

- (a) **Personal Leave.** Upon receiving notification from a Medical Provider that an Employee is unable to work because of an IOD, the Employee shall not accrue personal leave time until he/she is released by a Medical Provider to return to work.
- (b) **Leave of Absence.** If an Employee who suffers an Injury on Duty reaches Maximum Medical Improvement but is unable to perform his/her pre-injury job due to permanent restrictions, the Employee may apply for a leave of absence; however, in no event shall any combination of leave time authorized by this Chapter 2 exceed six (6) months.  
(Ord. No. 12413, § 2, 7-13-10; Ord. No. 12573, § 1, 3-13-12)

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**Sec. 2-439. General Pension Plan; Fire and Police Pension Fund.**

(a) Credited Service. Employees who sustain an IOD shall be entitled to continue to receive credited service under either the General Pension Plan or the Fire and Police Pension Fund as set forth in Chattanooga City Charter, Title 3, Chapter III, Article 2, Section 3.37(10), and Title 13, Chapter IV, Section 13.83(6), respectively.

(b) Contributions. The City and Employees who sustain an IOD shall continue to make contributions to the General Pension Plan or the Fire and Police Pension Fund as set forth in Chattanooga City Charter, Title 3, Chapter III, Article 2, Section 3.39, and Title 13, Chapter IV, Section 13.64 and 13.66, respectively.

(Ord. No. 12413, § 2, 7-13-10; Ord. No. 12425, §3, 8-17-10)

**Sec. 2-440. Actions by Third Parties.**

When the IOD for which benefits are payable under this Injury on Duty Program arises out of an accident caused by or contributed to by the negligence of a third party, no IOD Compensation, Medical Expenses or other related expenses shall be made by the City until the Employee executes a Subrogation and Assignment Agreement, approved in form by the City Attorney, assigning to the City any and all claims or causes of action to which the Employee may be entitled to recover against any third person to the extent of any or all such payments as are made by the City. The Subrogation and Assignment Agreement shall include an assignment by the Employee to the City of any claim or claims which the Employee may have against the Employee's uninsured motorist insurance carrier or the Employee's homeowner's insurance carrier.

(Ord. No. 12413, § 2, 7-13-10)

**Sec. 2-441. Cessation of IOD Benefits.**

IOD benefits shall cease when any one (1) of the following occur:

- (1) non-compliance with a Medical Provider's instructions;
- (2) approval for long term disability benefits or Social Security Disability benefits;
- (3) when Maximum Medical Improvement has been reached or a directive to return to work without restrictions has been provided by a Medical Provider or a PPI has been assigned;
- (4) seeking treatment with a non-authorized medical provider, except for unavoidable emergencies;
- (5) expiration of the one-year period from date of IOD for IOD Compensation; expiration of the two-year period from date of IOD for Medical Expenses;

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- (6) non-compliance with the conditions contained in Section 2-442;
- (7) filing a fraudulent IOD claim; or
- (8) incarceration following a conviction of a felony or misdemeanor.

(Ord. No. 12413, § 2, 7-13-10)

**Sec. 2-442. Notice of Injury and claim for IOD Compensation and Medical Expenses.**

(a) Employees shall, immediately upon occurrence of an IOD or within 24 hours, report the IOD to the Employee's Supervisor and together complete a First Report of Injury. The Supervisor will then follow the City's IOD reporting procedures. Failure to report the IOD and complete the First Report of Injury within the twenty-four hour period may result in forfeiture of any IOD benefits, unless the Employee is involved in a serious injury and is unable to complete the form within the twenty-four hour period. In the event the Employee sustains a serious injury prohibiting completion of the First Report of Injury, the Employee shall not be entitled to receive any benefits under the Injury on Duty Program unless the City receives medical documentation from a Medical Provider giving reasonable excuse for the Employee's failure to complete the First Report of Injury.

(b) It is the Employee's responsibility to keep his/her Supervisor, department, and assigned case manager informed of all directives, including possible accommodations, issued by the Medical Provider. These medical directives include, but are not limited to, attending diagnostic and therapy appointments, taking medications as prescribed, and complying with all restrictions relating to the objective of attaining Maximum Medical Improvement.

(c) Any violation of this Section shall result in cessation of payment of IOD Medical Expenses and IOD Compensation for the IOD, and can result in disciplinary action by the City for failure to follow medical directives.

(Ord. No. 12413, § 2, 7-13-10; Ord. No. 12425, §4, 8-17-10)

**Sec. 2-443. Light or Restricted Duty Assignments.**

When a Medical Provider allows an Employee to return to work on an unspecified Light or Restricted Duty assignment, the City's medical facility will contact the Medical Provider prior to making an assignment. Approved Light or Restricted Duty assignments are temporary in nature and will not be permanent job modifications. Discretionary judgment decisions as to whether temporary Light or Restricted Duty assignments are available will be made by each department on a case-by-case basis.

(Ord. No. 12413, § 2, 7-13-10)

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**Sec. 2-444. Pre-existing conditions.**

Claims of work-related aggravation or exacerbation of a pre-existing condition must be documented by a Medical Provider to be causally related to a specified work task or essential job function pursuant to the Employee's job description. To receive IOD benefits, employees must sign an authorization of release of health information pursuant to the Health Insurance Portability and Accountability Act and all available records must be obtained by the Employee from the previous treating physician regarding the pre-existing medical condition. (Ord. No. 12413, § 2, 7-13-10)

**Sec. 2-445. Maximum Benefits; Settlements; Appeal.**

- (a) **Maximum Benefits.** IOD Compensation shall not extend beyond one (1) year from the date of the IOD. Medical Expenses shall not extend beyond two (2) years from the date of the IOD except as may be otherwise provided for in this section.
- (b) **Settlements.** The Employee and the City shall have the right to settle all matters of compensation between themselves. The Program Director may approve settlements of less than \$10,000.00. In the event that a settlement calculation exceeds \$10,000.00, the Program Director shall make a recommendation to City Council for a lump sum settlement award to the Employee, which may include or exclude future medical expenses. City Council may establish such administrative procedures for the review and approval of settlements as it may deem appropriate. If City Council or any designated hearing body or judge approves an award for settlement of an IOD and the Employee accepts the award, all amounts paid by the City and received by the Employee shall be a final compromise and settlement of all matters of compensation and future medical expenses. A settlement agreement shall be signed by the City and Employee.
- (c) **Permanent Partial Disability.** If an Employee reaches Maximum Medical Improvement but is unable to return to his or her pre-injury position or a comparable position, the City shall offer the Employee a lump sum settlement in accordance with the procedures set forth below:
  - a. Upon receipt of a Maximum Medical Improvement statement for each approved IOD claim, the Program Director will request that the

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Medical Provider determine the degree of permanent or partial impairment. The PPI rating will be determined in accordance with the American Medical Association Guidelines.

- b. After receipt of the PPI rating, the Program Director will calculate a lump sum settlement using the then-existing schedule of compensation provided in the Tennessee Worker's Compensation Act, T.C.A. § 50-6-207, for same or similar injuries or impairment as guidance. However, the schedule of compensation may not be binding. The City retains discretion as to the method used to calculate any lump sum settlement, but in no event shall the schedule of compensation be less than the amounts provided in the Tennessee Worker's Compensation Act.
  - c. IOD benefits payable under this Injury on Duty Program may be offset by any City-sponsored disability benefits received by Employees.
- (d) **Permanent Total Disability.** A permanent total disability is an injury that totally incapacitates an Employee from working at an occupation that brings the Employee any income.
- (1) If at the end of the IOD Extension Period, as provided for in Section 2-433(a)(2), an Employee is unable to return to work and is totally and permanently disabled and no job is available for which the Employee is qualified, then the Employee will be separated from employment with the City. However, an Employee who is determined to be permanently totally disabled by a Medical Provider shall be offered a lump sum settlement calculated in accordance with the provisions set forth in subsection (c) of this section.
  - (2) Employees who suffer a permanent total disability shall be required to apply for any City-sponsored disability benefits. IOD benefits payable under this Injury on Duty Program may be offset by any such benefits received by Employees.

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- (e) **Release and Waiver.** Any lump sum settlement that is awarded and accepted by an Employee resulting in payment after the expiration of the payment periods provided for in Sections 2-433 and 2-434 shall be conditioned upon the Employee's execution of a release and waiver.
- (f) **Appeal.** If an Employee disagrees with the amount of the lump sum settlement offered by the City, the Employee may appeal by requesting a hearing before an administrative law judge within thirty (30) days following the City's written notification of the settlement offer.

Notice of the appeal shall be filed with the Clerk of the City Council ("Clerk"). The Clerk shall notify the Tennessee Secretary of State's Administrative Procedures Division ("APD") that an appeal has been filed. The APD is authorized to assign an administrative law judge ("ALJ") to conduct a fair and impartial hearing and adjudicate the Employee's appeal.

If the APD's office is not available to conduct a hearing, the Chairperson of the City Council ("Chairperson") shall appoint an ALJ to conduct a fair and impartial hearing and adjudicate the Employee's appeal. The ALJ appointed by the Chairperson shall be an attorney licensed to practice law in the State of Tennessee. The Chairperson may remove an ALJ if the ALJ fails to adjudicate an Employees, appeal, for cause, or as allowed by law.

The ALJ to whom a case is assigned may convene the parties for a scheduling conference within fifteen (15) days or as soon as practical and shall set a hearing date within ninety (90) days of the date the Employee's written request for a hearing is filed with the Clerk unless the Employee and the City agree otherwise or for good cause shown. The hearing date may be reset by agreement of the parties or for cause.

The ALJ to whom a case is assigned shall provide the Clerk with the hearing date. The Clerk shall issue notice of the hearing date to the Employee, Program Director,

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ALJ and all other interested parties. The Clerk shall make arrangements for a suitable hearing location.

The ALJ appointed to conduct the hearing shall disclose any possible conflicts of interests and shall not engage in *ex parte* communications except pursuant to law or rules of the City Council. The ALJ shall determine if there is a reasonable basis for the settlement offer. The ALJ shall affirm the settlement offer is there is a reasonable basis for the calculation of the offer or modify the offer on the basis of the evidence. The ALJ shall prepare a record, including a transcript, list of exhibits admitted into evidence during the hearing and all matters of record for a fair and just adjudication of the Employee's appeal.

The ALJ shall file written findings of facts and conclusions in the Clerk's Office within twenty (20) days after the hearing is concluded and issue the written findings to the Employee and the Program Director. The written decision shall include a statement of available procedures and time limits for seeking reconsideration.

The Program Director or Employee, within ten (10) days after entry of an initial or final order, may file a petition for reconsideration, stating the specific grounds upon which relief is requested. The other party may respond to the request within ten (10) days. The ALJ shall issue a written decision on the request for reconsideration within thirty (30) days of the request.

Any decision of the ALJ appointed under this Section shall be the final decision, except as otherwise may be provided for by law.

(Ord. No. 12413, § 2, 7-13-10; Ord. No. 12573, § 2, 3-13-12)

### **Sec. 2-446. Post-Accident/Post-Incident Employee Drug and Alcohol Testing.**

Post-Accident/Post-Incident drug and alcohol testing shall be conducted in accordance with the City's Drug and Alcohol Testing Policy.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-447. Misrepresentation; Fraudulent Activities.**

Any Employee who willfully makes any false or misleading statement of misrepresentation for the purpose of obtaining any benefits or payments under the Injury on

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Duty Program or who presents or causes to be presented any written or oral statement as part of, or in support of, a claim for payment or other benefit pursuant to this Division, knowing that such statement contains any fact or thing material to such IOD claim, can be criminally prosecuted. Filing a fraudulent IOD claim or engaging in misrepresentation shall be grounds for immediate termination of employment as well as termination of any benefits provided for herein.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-448. IOD Case Investigation.**

An Employee may be contacted by the City's IOD case investigator for follow-up regarding their IOD claim. IOD claims may be investigated at random.

(Ord. No. 12413, § 2, 7-13-10)

### **Sec. 2-449. IOD Review Committee; Appeals.**

- (a) If an Employee disagrees with, disputes or does not understand the Program Director's determination regarding IOD decisions under the Injury on Duty Program, the Employee may request a meeting with the Program Director. The meeting must be requested **in writing** by the Employee within ten (10) calendar days following the Program Director's written notification of the final decision. At this meeting, the Employee and the Program Director will discuss the facts and review all available information related to the claim in an attempt to explain the Program Director's decision and to resolve any disputes. The Program Director will explain the Employee's rights under the Injury on Duty Program and will attempt to reach a mutual agreement resolving any dispute.
- (b) If the matter is not resolved during the meeting with the Program Director or if the Employee does not request such a meeting, the Employee may appeal the Program Director's decision by requesting a hearing before an Administrative Law Judge within thirty (30) days following the Program Director's written notification of the final decision in accordance with the procedures set forth in Section 2-445(f).

(Ord. No. 12413, § 2, 7-13-10; Ord. No. 12573, § 3, 3-13-12)

## **ARTICLE IV. FINANCE<sup>14</sup>**

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<sup>14</sup> **Charter reference**—Finance and taxation, Title 6.

**Sec. 2-501. Fiscal year.**

The fiscal year of the city shall be computed and reckoned from the first day of July of each year. All annual reports relating to the city's finances, as well as those of all departments, officers and agencies of the city, shall be made up to and including the thirtieth day of June of each year.

(Code 1986, § 2-301; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-502. Reserved.**

(Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-503. Transfer of unencumbered balances.**

At the close of each fiscal year any unencumbered balance of an appropriation, except special funds duly created, shall revert to the general fund. The city council may transfer the unencumbered balance of one general fund appropriation to any other; provided that such action shall only be taken during the last two (2) months of the fiscal year.

(Code 1986, § 2-303; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-504. Supervisory powers of city finance officer.**

The city finance officer shall supervise and have charge of the keeping of all accounts and financial records for every department and agency of the city, the preparation of all financial reports and statements, the audit of all claims, and budgetary and auditing control over the city's revenues and expenditures.

(Code 1986, § 2-304; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-505. Accounting procedure; weekly reports.**

The method of installing and keeping all general and departmental accounts and financial records of the city and of rendering all financial reports shall be prescribed by the city finance officer and, unless otherwise directed by him, such accounts and records shall be kept in his office. He shall establish the city accounting procedure in such a way that his accounts will show the financial transactions of every branch of the city government and the financial transactions relating to all appropriations and funds, all revenues accrued and liabilities incurred, all cash receipts and disbursements and all transactions affecting the acquisition, custody, and disposition of assets. He shall secure a weekly report from each department and agency of the city showing all money received by it and the disposition thereof, and shall see that all such money is paid promptly into the treasury.

(Code 1986, § 2-305; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

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**Cross reference**—City finance officer, § 2-61 et seq.; city treasurer, § 2-101 et seq.; purchases, contracts and property disposition, § 2-541 et seq.; businesses, trades and occupations, Ch. 11; free public library fund created, § 22-7.

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### **Sec. 2-506. Monthly and annual reports.**

(a) The city finance officer shall prepare and submit a report to the mayor and city council not later than the tenth day of each month, showing revenues accrued and expenditures incurred, giving details as to appropriations and funds in such manner as to show the exact financial condition of the city and of each department and agency thereof as of the last day of the previous month. Such monthly report shall also show actual revenue receipts of the city as compared with the estimated receipts set up in the annual budget, and it shall be his responsibility to call the fact to the attention of the council in writing whenever actual receipts are falling behind estimated receipts in order that the council may curtail original budget appropriations in accordance with the new situation.

(b) At the close of the fiscal year, the city finance officer shall have prepared an annual report showing the financial condition and transactions of the city and file the same with the council.

(Code 1986, § 2-306; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-507. Audits required.**

(a) At least once each year the city finance officer shall audit the accounts of all officials and employees of the city who have the custody of, collect or disburse funds.

(b) Upon the resignation, removal or expiration of the term of any city officer other than the city finance officer, the city finance officer shall make an audit and investigation of the accounts of such officer and shall report the condition thereof to the mayor and city council.

(c) Either the mayor or the council may at any time require the city finance officer to make other audits or investigations of the accounts of any officer, department or agency of the city.

(Code 1986, § 2-307; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**State law reference--**Audits required, T.C.A. § 6-56-101.

### **Sec. 2-508. Audit of finance officer's accounts.**

In case of the death, resignation or removal of the city finance officer, the mayor shall cause an audit to be made of his accounts. The mayor and council shall provide for an independent annual audit of the city finance officer's accounts, records and transactions, and may provide for such an audit at any other time. All audits provided by this section shall be made by certified public accountants holding certificates issued by the state board of accountancy or by a similar agency in some other state maintaining an equal standard of professional requirements.

(Code 1986, § 2-308; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-509. Action where audit or investigation reveals indebtedness by officer.**

If, as a result of any audit or investigation made as provided in this article, an officer is found to be indebted to the city, the city finance officer or other person making such audit shall immediately give notice thereof to the mayor and city council and the city attorney, and the city attorney shall proceed forthwith to collect such indebtedness.

(Code 1986, § 2-309; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-510. Accounts for appropriations and loan authorizations.**

Accounts shall be kept by the city finance officer for each appropriation and loan authorization made by the city council and every warrant issued for payment shall state specifically against which of such accounts it is drawn. The city finance officer's accounts shall show in detail the appropriations or loan authorizations made by the city council, the amount drawn thereon, the unpaid obligations charged against each and the unencumbered balance to the credit of each.

(Code 1986, § 2-310; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-511. Records of status of city's bank accounts.**

When city funds are paid out for any purpose or on any account or withdrawn from one bank and deposited in another bank, an account of the transaction shall be recorded in the city finance officer's accounts so that at any time there may be determined by a reference to his records the exact status and condition of all bank accounts of the city and their nature, whether general or special funds, and, if special, the rate of interest they are earning on time deposits, if any.

(Code 1986, § 2-311; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-512. Finance officer to keep record of city treasurer's receipts and disbursements.**

All funds paid to the city treasurer for any purpose or from any source and all funds paid out by the city treasurer shall be reported by him to the city finance officer, whose accounts shall show the amounts reported as received, from what source they were derived, the amounts reported as paid out and for what purposes they were so paid.

(Code 1986, § 2-312; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-513. Special accounts with respect to state and federal moneys received.**

The city finance officer shall set up and maintain special accounts with respect to moneys received for designated purposes from the state or the federal government.

(Code 1986, § 2-313; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

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### **Sec. 2-514. Treasurer's accounts.**

(a) The city finance officer shall maintain an account with the city treasurer as tax collector. He shall charge to the city treasurer, as such collector the full amount of the annual tax levy and all uncollected back tax levies, and credit him with all sums reported by him as collected. When the city treasurer goes out of office as such collector, the city finance officer shall credit him with all uncollected balances and releases made by proper authority and shall charge him with all sums reported as coming into his hands as tax collector.

(b) The city finance officer shall maintain another account with the city treasurer as such, in which he shall charge him with all sums coming into his hands as city treasurer, and shall credit him with such sums as are shown to be paid out by him on warrants issued as provided herein.

(Code 1986, § 2-314; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-515. Custody of cash book and tax duplicates.**

The city's cash book and tax duplicates shall be under the immediate control and supervision of the city treasurer and he shall be responsible for the safekeeping of the same.

(Code 1986, § 2-315; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-516. Record of daily cash balance.**

The city treasurer shall bring down and show on his cash book the city's daily cash balance at the close of each day's business.

(Code 1986, § 2-316; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-517. Deposit of checks received; dishonored checks.**

(a) All checks or money orders received by the City as payment for taxes, license fees or permit fees, or received for any other purpose shall be deposited within three (3) days after they are received.

(b) If for any reason any check or money order is not honored by the bank on which it is drawn, in addition to other penalties by law, there shall be paid as a penalty by the person who tendered such check or money order, upon written notice and demand by the City, an amount equal to one percent (1%) of the amount of such check or money order, except that if the amount of the check or money order is less than two thousand dollars (\$2,000.00), the fee under this section shall be twenty dollars (\$20.00) or the amount of the check, whichever is less.

(c) A record shall be made by the officer handling such check or money order showing the disposition thereof.

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(Code 1986, § 2-317; Ord. No. 9209, 8-15-89; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12078, 2-19-08; Ord. No. 12644, § 1, 9-18-12)

### **Sec. 2-518. Duplicate deposit slips required; where filed.**

When making deposits of funds for any purpose, the city treasurer shall prepare duplicate slips, one (1) to be filed with the city finance officer and one (1) to be kept in the office of the city treasurer.

(Code 1986, § 2-318; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-519. Record and report of bank balances.**

The city treasurer shall keep a book showing the amount of public money on deposit with each bank and which deposits are made, and shall file with the mayor at such times as the mayor may require a report of the bank balances for all funds on deposit, showing each fund separately.

(Code 1986, § 2-319; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-520. Issuance of warrants; withdrawal of funds.**

(a) No money shall be paid out of the city treasury except by means of a warrant on the treasury issued by the city finance officer. The city finance officer shall examine all payrolls, bills and other claims and demands against the city and shall issue no warrant for payment unless he has found by diligent investigation that the claim is in proper form, correctly computed and duly approved, and that it is justly due and payable. He may investigate any claim and for that purpose may summon before him any officer, agent or employee of the city, the claimant or other person, and examine him upon oath or affirmation administered by him relative to such claim. If he finds that a claim is fraudulent, erroneous or otherwise invalid, he shall not authorize the payment of such claim.

(b) No warrant shall be issued by the city finance officer to satisfy any claim unless the claim is approved in the department or agency to which the claim pertains by the official of such department or agency authorized by the mayor or department head to approve such claim. Every warrant shall set out the purpose for which it is issued.

(c) When a warrant is issued, as provided herein, the city treasurer or the assistant city treasurer shall issue a check for the amount called for in such warrant payable to the person named therein.

(Code 1986, § 2-320; Ord. No. 9654, §§ 40-41, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-521. Withholding percentage of salary or claims due, for payment of delinquent taxes.**

The city finance officer shall retain twenty-five (25) percent of the salary due any person on the payroll of the city who is indebted to the city for delinquent taxes until the

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amount of such taxes, with penalties and interest, has been paid in full. He shall retain twenty-five (25) percent of any amount due by the city to any person indebted to the city for delinquent taxes on each claim or bill due such person, until a sufficient amount has been withheld from such claim or bill to pay such taxes, with penalties and interest, in full.

(Code 1986, § 2-321; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-522. Checks to be countersigned by mayor or city finance officer.**

All checks issued by the city treasurer or assistant city treasurer shall be countersigned by the city finance officer or the mayor before they will be payable at any bank in which deposits are kept by the city.

(Code 1986, § 2-322; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-523. Debt service fund.**

A fund to be known as the debt service fund is hereby created and designated as the fund from which all expenditures relating to the bonded debt or other long term obligations of the city shall be made as herein provided, and in which all revenues therefor shall be deposited. Transactions involving the city's funding and refunding bonds outstanding on July 1, 1948, shall be handled through the funding and refunding sinking fund under the administration of the sinking fund commission, but all other debt service transactions shall be administered by the finance officer through the debt service fund, and disbursement warrants therefor shall be prepared by the city finance officer in the manner provided for all other city funds. The amount necessary to finance debt service requirements shall be provided and set up in the budget of the city general fund and disbursements shall be made from the general fund to the debt service fund as need may arise.

(Code 1986, § 2-323; Ord. No. 9654, §§ 40 & 42, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-524. Manpower development and training fund.**

There hereby is established a special fund known as the manpower development and training fund for the purpose of implementing federal laws and to authorize expenditures from such fund in the carrying out of the purposes of federal law pending receipt of funds from the federal government in reimbursement therefor.

(Code 1986, § 2-324; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-525. Capital expenditures.**

(a) *Requests.* All requests for capital expenditures by all departments, agencies and branches of the city government wherein city funds are to be expended shall be presented to the office of the mayor prior to the beginning of each calendar year. Such requests shall be on forms supplied by the office of the mayor and shall include detailed requests for capital funds for the ensuing calendar year and forecasts and estimates of capital expenditures or needs for each of the next five (5) calendar years.

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(b) *Submittal of proposed annual capital improvements budget and program.* The office of the mayor shall prepare and submit to the city council a proposed annual capital improvements budget and program for consideration after adoption of the annual budget ordinance for the city. Such capital improvements program shall include a detailed budget recommendation for the ensuing calendar year and recommendations for a capital improvements program for the subsequent five (5) calendar years. A schedule of submission by the various departments, agencies, and branches of government shall be set by the mayor and distributed each year with materials for the departmental submissions.

(c) *Action upon capital improvements budget and program.* It is intended that the capital improvements budget and program should be acted upon by the council not later than January 30 of each year.

(d) *Review of ordinance by planning commission staff.* Before adoption of the annual capital improvements ordinance, or any amendments thereto, such ordinance or amendments shall first be submitted to the staff of the Chattanooga-Hamilton County Regional Planning Commission for review and recommendation prior to the passage by the city council and such staff shall make a report to the mayor and city council on any proposed amendments within sixty (60) days of submission.

(e) *Compliance with budget ordinance.* All capital expenditures of the city shall be in accordance with the capital improvements budget ordinance except that the city council may make an appropriation, allocation or authorization for a project in order to meet an emergency. (Code 1986, § 2-325; Ord. No. 9654, §§ 2, 43 & 44, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-526. Appropriation and disbursement of municipal funds to nonprofit charitable and civic organizations.**

(a) Appropriated funds may be used for the purpose of promoting the common good and general welfare of the people of the city by bringing about civic betterments and social improvements including efforts to maintain and increase employment opportunities in the city by promoting industry, trade, commerce, tourism and recreation by introducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational and agricultural enterprises to locate in or remain in the city or to locate nearby so as to provide jobs for residents of the city.

(b) Appropriated funds may be expended to carry out any activity which promotes the above-mentioned purpose so long as such activity is approved by the city council.

(c) Any proposed project to be undertaken by the recipient of appropriated funds shall be submitted to the mayor for approval by the city council before any city funds are expended in connection with such project in order to assure compliance with these guidelines.

(d) The budget of the city shall specify each recipient organization by name as beneficiary of the appropriated funds and the amount appropriated therefor.

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(e) Any non-profit organization requesting funds from the City of Chattanooga shall furnish the Chief Financial Officer, prior to any consideration of monetary appropriation, with the following information:

- (1) The name and address of the non-profit organization;
- (2) The name, address, and telephone number of a specific contact person within the non-profit organization relative to any request for appropriation of funds;
- (3) A description of the specific programs of the non-profit organization which serve the residents of the City of Chattanooga;
- (4) A signed statement by the chief executive officer of the non-profit organization indicating that the non-profit organization will, upon request, provide the following:
  - a. Detailed accounting of how and for what purpose municipal funds were spent by the non-profit organization;
  - b. List of accomplishments or outcomes achieved through the use of municipal funds;
  - c. Copies of annual audits of the non-profit organization (performed by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards)
- (5) A copy of the annual operating budget for the non-profit organization effective at the time of the request for appropriation of funds from the City of Chattanooga;
- (6) A copy of the charter of the non-profit organization filed with the Tennessee Secretary of State;
- (7) A copy of the document indicating non-profit tax exemption status for the non-profit organization under the Internal Revenue Code, such as an IRS Determination Letter;
- (8) A copy of the most recent IRS Form 990 as filed with the IRS;
- (9) A copy of the most recent annual audit of the non-profit organization, prepared by an independent Certified Public Accountant in accordance with Generally Accepted Auditing Standards;

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- (10) A description of the proposed usage, proposed outcomes, and proposed budget related to request for appropriation of funds (template to be provided);
- (11) Other financial and operational information upon request;
- (12) Each non-profit organization requesting appropriation of funds from the City of Chattanooga shall pay an application fee which shall be expended to cover the costs of advertising notices pursuant to T.C.A. Section 6-54-111 and the defray clerical time and supplies associated with the application.

(f) Each organization receiving such funds from the city shall comply with the requirements of Tennessee Code Annotated section 6-54-111, as amended, by filing with the Chief Financial Officer, a copy of an annual report of its business affairs and transactions, which includes a copy of an annual audit, its program which serves the residents of the city and the proposed use of the municipal assistance.

(g) Funds appropriated by the city may not be utilized for advertising commercial, social, industrial or any other advantages of the city in excess of the amount authorized to be appropriated annually from city funds for this purpose by Tennessee Code Annotated section 6-54-201.

(h) The City or its agent may audit all financial and related records (including digital) associated with the terms of the contract or agreement including timesheets, reimbursable out of pocket expenses, materials, goods, and equipment claimed by the organization. The City may further audit any organization records to conduct performance audits (to identify waste and abuse or to determine efficiency and effectiveness of the contract or agreement) or to identify conflicts of interest. Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. The recipient organization shall reimburse the City for the total costs of an audit that identifies significant findings that would benefit the City.

(i) Appropriations to nonprofit organizations other than charitable organizations may be made only upon meeting the following conditions:

- (1) Notices shall be published in a newspaper of general circulation in the city of the intent to make an appropriation to a non-profit but not charitable organization specifying the intended amount of the appropriation and the purposes for which the appropriation will be spent; and
- (2) The city council must approve the appropriation at two (2) consecutive regularly scheduled meetings.

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(Code 1986, § 2-326; Ord. No. 9654, § 2, 1-6-92; Ord. No. 9693, § 1, 4-7-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12872, § 1, 11-04-14)

**Secs. 2-527 – 2-540. Reserved.**  
(Ord. No. 11103, § 2, 11-28-00)

**ARTICLE V. PURCHASES, CONTRACTS  
AND PROPERTY DISPOSITION<sup>15</sup>**

**Sec. 2-541. Purchasing department created; supervision; subordinate personnel.**

There is hereby created a department of the city to be known as the purchasing department. The head of such department shall be known as the purchasing agent. He or she shall be elected by the mayor to serve at the pleasure of the mayor. The mayor may appoint such deputy or assistant purchasing agents as may be necessary to carry out the efficient and orderly functions of the department.

(Code 1986, § 2-341; Ord. No. 9654, § 45, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Cross references**--Inspection department, § 2-621 et seq.; Chattanooga Youth and Family Development Department, § 2-641 et seq.; fire department, § 16-26 et seq.; police department, § 16-41 et seq.

**Sec 2-542. Duties, powers of purchasing agent.**

The purchasing agent as head of the purchasing department shall possess the following powers and perform the following duties:

- (1) He shall contract for and purchase all supplies, materials and equipment necessary for the conduct and operation of all departments and agencies of the city; except, the department of education may establish its own purchasing department subject to the city charter and applicable ordinances enacted pursuant thereto. Such purchases shall include those for all jointly financed agencies (such as civil defense, the Chattanooga-Hamilton County Health Department, the metropolitan planning commission, and any other joint operations with the county, other municipalities or the state or the federal government) when payment for such supplies and the accounting function therefor is a responsibility of the city.

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<sup>15</sup>**Charter references**—Power to purchase property, § 1.1; authority to dispose of surplus property, § 2.1(33).

**Cross references**—City finance officer, § 2-61 et seq.; city treasurer, § 2-101 et seq.; city finance generally, § 2-501 et seq.; businesses, trades and occupations, Ch. 11.

**State law reference**—Municipal purchasing, T.C.A. § 6-56-301 et seq.

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- (2) He may transfer from one department or agency to any other departments or agencies such supplies, materials and equipment or other personal property not needed by one but necessary to the conduct and operation of the other; or may sell any personal property belonging to the city which is declared surplus by the head of a department or agency, or by the city council.
- (3) When established by the mayor, he shall have charge of and supervision over all storerooms and storage places and may distribute to the departments and agencies of the city on requisition any supplies, materials or equipment available for distribution from such storerooms.
- (4) He may inspect or supervise inspection of all deliveries of supplies, materials and equipment to determine their conformity to the specifications as to quantity and quality stated in the contract therefor.
- (5) He may, subject to the approval of the mayor and city council, advertise for and enter into requirements, blanket, annual orders or indefinite quantity contracts, or term contracts. No such contract shall be let unless the same shall have been first advertised for bids as required by section 2-552. Such contracts must contain a provision giving the city the right of cancellation at any time with no more than one (1) year's notice, and at the end of any fiscal year without notice in the event that funds to support the contract become unavailable and no such contract may be let for periods of time in excess of sixty (60) months. (Ord. No. 12204, § 1, 1-13-09)
- (6) He may, subject to the approval of the mayor and city council, establish standard specifications as to quantity and quality for all supplies, materials and equipment generally needed by the departments or agencies of the city, and may make use of existing laboratories or other agencies belonging to the city for testing samples and inspecting deliveries.
- (7) The purchasing agent may establish rules and regulations for the operation, procedures and functions of the purchasing department. Before submission to the city council, such rules and regulations shall first be submitted to the mayor, city finance officer and to the city attorney. The city finance officer shall advise whether or not such rules and regulations are consistent with the prevailing accounting practices of the city and are fiscally feasible. The city attorney shall approve such rules and regulations as to legality and form. When and if approved by the city council, such rules and regulations shall be spread upon the minutes of the city council and filed in the office of the city finance officer. The purchasing agent shall then publish such rules and regulations in the form of a purchasing manual for the benefit of the various departments, agencies and divisions of the city, persons dealing with the city and the general public.

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(Code 1986, § 2-342; Ord. No. 9654, §§ 2, 13, 46 & 47, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12204, § 1, 1-13-09)

### **Sec. 2-543. Emergency purchases.**

(a) In the event of an apparent emergency which requires immediate procurement of supplies, material and equipment, or contractual services, the mayor shall be empowered to authorize the purchasing agent to procure, at the lowest available price, any supplies or contractual services, regardless of the amount of the expenditure. A full report of the circumstances of an emergency purchase shall be filed by the purchasing agent with the city council at its next meeting, and shall be entered on the minutes of the city council.

(b) In the event of actual emergency and with the consent of the purchasing agent and the approval of the mayor, the head of any department may procure directly at the lowest available price any supplies, material and equipment, or contractual services, whose immediate procurement is essential to prevent delays in the work of a department which may vitally affect the life, health, safety or convenience of the public. The head of such department shall send to the purchasing agent a requisition and a copy of the delivery record, together with a full written report of the circumstances of the emergency. The report shall be filed with the city council and spread upon its minutes.

(c) When it is necessary to purchase from a single source, a report thereon shall be filed with the mayor and city council before its next meeting.

(Code 1986, § 2-343; Ord. No. 9654, §§ 2 & 48, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-543.5. Fuel purchase in the open market.**

Fuel and fuel products may be purchased in the open market without public advertisement, but shall whenever possible be based on at least three (3) competitive bids. Fuel and fuel products may be purchased from the state department of general services contract where available.

(Code 1986, § 2-343.5; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-544. Unclaimed personal property – Forfeiture; notice to owner.**

(a) All unclaimed personal property which comes into the possession of the City Court or other department of the City shall, if it remains unclaimed for a period of sixty (60) days, be delivered to the purchasing agent to be forfeited and disposed of as surplus property. Prior to disposal of the unclaimed personal property, the purchasing agent shall make reasonable efforts to notify the owner, including mailing notice to the owner of such personal property by certified mail to such owner's last known address if such has not been done by the department that came into possession of such unclaimed/abandoned property before delivery to the purchasing agent.

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(b) All unclaimed/abandoned personal property from any citizen or business which comes into the possession of the Chattanooga Police Department and which remains unclaimed for a period of sixty (60) days thereafter shall be declared abandoned and all rights, interests, and/or ownership shall be forfeited by the owner. The Chief of Police shall declare such unclaimed personal property abandoned and may dispose of such property by the following means: (a) internet auction; (b) destruction; or (c) may be diverted to city property. Any articles declared by the Chief of Police to be sold at auction shall have a complete inventory list prepared which shall be delivered to the city purchasing agent. Prior to disposal of the unclaimed personal property, the purchasing agent shall make reasonable efforts to notify the owner, including mailing notice to the owner of such personal property by certified mail to such owner's last known address if such has not been done by the department that came into possession of such unclaimed/abandoned property before delivery to the purchasing agent. (Code 1986, § 2-344; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12075, §1, 2-12-08)

### **Sec. 2-545. Methods of disposal of Unclaimed Personal Property.**

(a) The purchasing agent shall dispose of unclaimed/abandoned personal property which comes into the possession of the Police Department, City Court and/or other departments of the City, by any method of disposal authorized pursuant to T.C.A. § 12-2-403. Methods of disposal shall include sales at public auction, publicly advertised and held; sale under sealed bids, publicly advertised, opened and recorded; sale by internet auction; negotiated contract for sale, at arms length; but only in those instances in which the availability of the property is recurring or repetitive in character, such as marketable waste products, for disposal of the property as it is generated in the most economically feasible, fiscally sound, and administratively practicable method for the City to utilize; trade-in, where such is permitted due to the nature of the property or equipment and under the terms and conditions of the contract by which the City replaces the property as authorized by T.C.A. § 12-2-403.

(b) Notice of any public auctions and sales under sealed bids, as provided in this part, shall be publicly advertised and publicly held. Notice of intended disposal by public auction or sale under sealed bid shall be entered by the purchasing agent in at least one (1) newspaper of general circulation in Hamilton County or the county in which the disposal is to be made. Such notice shall specify and reasonably describe the property to be disposed of, the date, time, place, manner, and conditions of disposal, all as previously determined by the purchasing agent in accordance with the regulations of the City. The advertisement shall be entered in the public notice or equivalent section of the newspaper and shall be run not less than one (1) day. Disposal shall be made not sooner than seven (7) days after the last day of publication nor later than fifteen (15) days after the last day of publication of the required notice, excluding Saturdays, Sundays, and holidays. Prominent notice shall also be conspicuously for ten (10) days prior to the date of disposal, excluding Saturdays, Sundays, and holidays, in at least two (2) public places in Hamilton County or the County where the disposal is to be made. Furthermore, notice shall be sent to the County Clerk of Hamilton County and such notice shall be posted in the Hamilton County Courthouse unless otherwise directed by the purchasing agent.

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(c) Notice of intended disposal by internet auction shall be posted on the city's web site and the Police Departments web page notifying the public of such intend sale. Such notice shall specify the site and provide a link to the online auction site in which any citizen may view and/or bid on any article. The Web Page notice shall be displayed on a basis of 24 hours a day, seven (7) days per week. Such Web Page notice shall serve as a permanent notice thereby excluding section 2 requirements and reasonably describe the property to be disposed of, the date (s), time, manner and conditions of disposal, all as previously determined by the internet auction provider in accordance with the contract and/or signed agreement with the Police Department.

(d) The purchasing agent shall furnish the City Finance Officer a list of all articles disposed of by surplus, the method of disposal of such surplus property, and the price obtained as a result of the sale of any surplus property disposed of in accordance with T.C.A. § 12-2-403.

(e) The Chief of Police or his designee shall obtain from the contract vendor a list of all abandoned/unclaimed items disposed of by the vendor for the department, the method of disposal and the price obtained as a result of the sale of any unclaimed/abandoned property. Documentation of disposed items of shall be furnished to the Purchasing agent by the police department.

(Code 1986, § 2-345; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12075, §1, 2-12-08)

### **Sec. 2-546. Same-Disposition of proceeds of sale.**

(a) Any money received from the sale of unclaimed personal property of the Chattanooga Police Department, as provided in this article, shall be paid to the Chattanooga Police Department by the contract vendor. The Police Chief or his designee shall deposit all such monies received by the department to the City Treasurer's office upon receipt of any payments from the vendor.

(b) Any money received from sales of unclaimed/abandoned personal property which has been in the possession of the departments of fire and/or police shall be kept in a separate account by the city treasurer and, quarterly, the city treasurer shall pay the amount of these proceeds into the firemen's and policemen's insurance and pension fund.

(c) If the owner of any article of unclaimed/abandoned personal property sold shall, present satisfactory proof to the city that he was the owner of any article sold within a period of thirty (30) days after the sale, he shall be entitled to the proceeds of the sale thereof, less his proportionate share of the expenses of the sale.

(d) All funds received from the sale of unclaimed, abandoned or surplus property from any other city departments shall be paid by the purchasing agent into the city treasury and shall certify to the city treasurer. The purchasing agent shall certify to the city treasurer the expense incurred in making the sale or otherwise disposing of such property, including the

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costs and expenses of storage during the period such property was in the possession of the city. All funds received from the sales of unclaimed/abandoned personal property in all other city departments except Fire & Police shall be paid into the city general fund.

(Code 1986, § 2-346; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12075, §1, 2-12-08)

### **Sec. 2-547. Purchase requisitions required; approval of form.**

All purchases made under the provisions of this article shall be made pursuant to a written requisition from the head of a department, agency or division of the city. The city finance officer shall approve the form of any requisition.

(Code 1986, § 2-347; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-548. Signing, custody of contracts.**

(a) Contracts for the purchase of supplies, materials and equipment shall be signed for and on behalf of the city by the purchasing agent. Contracts for construction, services and all other contracts shall be signed for and on behalf of the city by the purchasing agent or the head of a department, agency or division of the city where the contract originates, or as otherwise provided by ordinance or resolution.

(b) The original of all contracts shall be delivered to and kept by the city finance officer.

(Code 1986, § 2-348; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-549. Approval not required for expenditures not exceeding twenty-five thousand dollars.**

Where the amount of a requisition or voucher or contract does not exceed twenty-five thousand dollars (\$25,000.00), approval by the city council shall not be necessary for the issuance of a purchase order or payment of a voucher or the execution of a contract. In no event shall a requisition, voucher or contract be split or divided into two (2) or more with the intent of evading the necessity for having competitive bids and/or the necessity of obtaining the approval of the city council.

(Code 1986, § 2-349; Ord. No. 9590, § 1, 8-6-91; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12794, § 1, 01-7-14)

### **Sec. 2-550. Petty cash funds.**

The mayor and every other official who has the responsibility of expending an appropriation is hereby authorized to maintain a petty cash fund not to exceed five hundred dollars (\$500.00) from which purchases or payments may be made not to exceed fifty dollars (\$50.00) each, and receipts shall be attached to the warrant voucher replenishing or

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reimbursing the petty cash fund, provided, that the city treasurer and golf course managers are hereby authorized to maintain petty cash funds not to exceed two thousand dollars (\$2,000.00). From said funds, purchases or payments may be made not to exceed said amount by the city treasurer and not to exceed one thousand dollars (\$1,000.00) each by the golf course managers and receipts shall be attached to the warrant voucher replenishing or reimbursing the petty cash fund.

(Code 1986, § 2-350; Ord. No. 9943, § 1, 9-7-93; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-551. Approval of expenditures exceeding twenty-five thousand dollars.**

Whenever any requisition or voucher or contract calls for the expenditure of more than twenty-five thousand dollars (\$25,000.00), the issuance of a purchase order or the payment of a voucher, or the award of a contract shall be subject to the approval of the city council, and shall not be binding on or create any liability against the city until approved by the city council. Such approval shall be by resolution or by motion adopted by majority vote of the city council; provided, however, that such approval shall not be necessary where a voucher or requisition is issued pursuant to a prior lawful contract or pursuant to an ordinance authorizing such expenditure.

(Code 1986, § 2-351; Ord. No. 9590, § 1, 8-6-91; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12794, § 1, 01-07-14)

### **Sec. 2-552. When bids required; advertisements for bids.**

Whenever any requisition or voucher or contract calls for an expenditure exceeding twenty-five thousand dollars (\$25,000.00), there shall be public advertisement for competitive bids; provided, however, purchases under twenty-five thousand dollars (\$25,000.00) shall also be subject to advertisement and bids in the case of purchases of like items which individually cost less than twenty-five thousand dollars (\$25,000.00), but which are customarily purchased in lots of two (2) or more, if the total purchase price of such items would exceed twenty-five thousand dollars (\$25,000.00) during any fiscal year. Notice for bids shall be advertised at least once in one (1) or more daily newspapers published in the city at least ten (10) days prior to the time set for a public opening of bids. The purchasing agent may also issue written invitations to bid to dealers in the articles to be purchased in addition to, but not in lieu of the advertisement required under this section. The head of any department, agency or division of the city may cause such advertisement to be made where any other types of contracts are involved or may direct the purchasing agent to make such advertisement and receive the bids thereon; provided, however, secondhand equipment or specialized equipment or equipment purchased from any federal, state or municipal agency, where it is not practicable to take bids, may be purchased without taking bids, but such purchases shall be subject to the requirements of sections 2-549 and 2-551.

No public advertisement or competitive bidding shall be required for purchases, leases, or lease-purchases up to twenty percent (20%) of the above amount established for purchases requiring full public advertisement and competitive bidding. For purchases between twenty

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percent (20%) and one hundred percent (100%) of said amount, such purchases, leases, or lease-purchases shall, whenever possible, be based upon three (3) written competitive bids. (Code 1986, § 2-352; Ord. No. 9590, § 1, 8-6-91; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11834, § 1, 5-30-06; Ord. No. 12795, § 1, 01-07-14)

### **Sec. 2-553. Submission, opening, acceptance of bids.**

(a) All bids shall be sealed and submitted to the official authorized herein to request bids on or before the specified time when such bidding is to be closed. The official receiving bids shall open them publicly on the date and at the hour specified. A purchase order may be issued, and/or a contract may be awarded, to the bidder presenting the best value after approval by the city council. The city council may reject any and all bids submitted regardless of the amount involved. In determining the best value for the City, the purchase price and whether the goods or services meet specifications are the most important considerations. However, the purchasing agent may consider other relevant factors including, but not limited to the following:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (2) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (4) The quality of performance of previous contracts or services;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (7) The quality, availability and adaptability of the supplies, material and equipment, or contractual services to the particular use required;
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract, and the proposed warranty or guaranty;
- (9) The number and scope of conditions attached to the bid;
- (10) The approach of the bidders to issues raised in the solicitation for bids;
- (11) The peculiar capabilities of the bidders to perform the contract;

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- (12) The proprietary features of the bid;
- (13) The overall responsiveness of the bid to the needs of the City;
- (14) Installation Costs;
- (15) Life Cycle Costs;
- (16) Delivery Terms;
- (17) The cost of employee training associated with the purchase;
- (18) The effect of the Purchase on Productivity; and
- (19) Other factors relevant to determining Best Value for the City in the context of a particular purchase with the approval of the purchasing agent.

(b) If only one (1) bid is received, the bid shall not be opened and the contract or service to be performed shall be re-bid. If after having re-bid the contract or service only one (1) bid is received, the bid may be accepted. Provided, a re-bid shall not be required when there is only one local supplier to perform the contract or provide the service required, or for the purchase of a unique or proprietary product.

(Code 1986, § 2-353; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 2, 9-14-99; Ord. No. 10913, § 1, 9-28-99; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12795, § 2, 01-07-14)

### **Sec. 2-554. Competitive sealed proposals.**

(a) The purchasing agent may use competitive sealed proposals to purchase goods and services rather than competitive sealed bids after determining that the use of competitive sealed bidding is either not practicable or not advantageous for the City.

(b) In the decision to use competitive sealed proposals, the purchasing agent shall follow the purchasing manual.

(c) Competitive sealed proposals may be used only when qualifications, experience, or competence are more important than price in making the purchase and:

- (1) When there is more than one solution to a purchasing issue and the competitive sealed proposals will assist in choosing the best solution; or
- (2) When there is no readily identifiable solution to a purchasing issue and the competitive sealed proposals will assist in identifying one (1) or more solutions.

(d) Adequate public notice of the request for competitive sealed proposals shall be given in the same manner provided for competitive sealed bids.

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(e) Competitive sealed proposals shall be opened in a manner that avoids disclosure of contents to competing proposers during the negotiation. The proposals shall be open for public inspection after the intent to award the contract to a particular proposer is announced.

(f) The request for competitive sealed proposals shall state the relative importance of price and other evaluation factors.

(g) As provided in the request for competitive sealed proposals and in the purchasing manual, discussions may be conducted for clarification to assure full understanding of, and responsiveness to, the solicitation requirements with responsible proposers who submit proposals determined by the purchasing agent to be reasonably susceptible of being selected. The proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submission and before the intent to award to a particular proposer is announced to obtain the best and final offers. In conducting discussions, the purchasing agent and other City personnel shall make no disclosure to any proposer of any information derived from proposals submitted by competing proposers.

(h) The competitive sealed bid award shall be made to the responsible proposer whose proposal the purchasing agent, subject to approval of the City Council as necessary, determines is the most advantageous to the City, taking into consideration price and the evaluation factors set out in the request for competitive sealed proposals and factors set forth for competitive sealed bids to determine the lowest responsible proposer. No other factor may be used in the evaluation. The purchasing agent shall place in the contract file a statement containing the basis on which the award was made.

(Code 1986, § 2-354; Ord. No. 9590, § 1, 8-6-91; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12676, § 1, 12-18-12)

### **Sec. 2-555. Exception for utility charges.**

Nothing in this article shall preclude the head of any department, agency or division of the city from arranging for reasonable utility services to be charged against its appropriation account.

(Code 1986, § 2-355; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-556. Exception for professional services.**

Contracts for professional services shall not be subject to competitive bidding. Tennessee Code Annotated, section 12-4-106.

(Code 1986, § 2-356; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-557. Contents of bid proposals.**

All bid proposals for contracts to furnish supplies, materials or equipment, or do construction work, shall set forth with particularity the nature of the work to be performed,

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how it shall be done, the type and quality of the material to be used and any other details necessary for the guidance of the contractor and the protection of the city.

(Code 1986, § 2-357; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-558. Specifications attached to contracts.**

The purchasing agent, or the department head in whose department the contract is to be executed, may have the city engineer or other competent city officer or employee, or private consultant, draw specifications in detail which shall be attached to the contract and construed to be a part thereof. Such specifications shall be made in duplicate, one (1) copy to be furnished to the contractor and the other retained by the department head and filed in his office as a part of the records of the city.

(Code 1986, § 2-358; Ord. No. 9654, § 49, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-559. Compliance prerequisite to paying warrants.**

No warrant shall be approved for the payment of any contract of the city unless provisions of this article shall have been complied with and unless the original of the contract is on file with the city finance officer and the minutes of the city council show that the contract has been ratified or approved by the board where necessary.

(Code 1986, § 2-359; Ord. No. 9654, §§ 2 & 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-560. Public improvement contracts.**

All contracts of the city for any public improvement, when the cost shall exceed ten thousand dollars (\$10,000.00) shall be let to the bidder providing the best value, the city council to be the judge thereof, and the council shall have the right to reject any and all bids. All contracts of the city shall be in writing, and may be signed on behalf of the city by the mayor or head of the department in whose department such contract originates. All contracts shall be subject to the approval of the city council. Whenever a requisition or contract calls for an expenditure exceeding twenty-five thousand (\$25,000.00), notice to bidders shall be given by publication in a daily newspaper published in the city, giving the date, hour and place bids will be received and publicly opened, which publication notice shall be at least ten (10) days before the bids are to be received.

(Code 1986, § 2-360; Ord. No. 9654, § 50, 1-6-92; Ord. No. 10903, § 3, 9-14-99; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12795, § 3, 01-07-14)

### **Sec. 2-561. Force account or cost-plus contracts for public improvements.**

After bids have been advertised and received for making any public improvement, the mayor may negotiate with the lowest responsible bidder to have such bidder make such public improvement by force account or on a cost-plus basis if, in the opinion of the mayor, the making of such agreement is advantageous to the city. Contracts for repair of buildings or structures may be let on a cost-plus basis which shall include the cost of labor, material, insurance or other legitimate expenses of the contractor and a fixed fee or percentage for profit

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with a maximum cost to the city of such contract. All such agreements shall be in writing and approved by the city council.

(Code 1986, § 2-361; Ord. No. 9654, § 51, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-562. Contractor's bond.**

No contract shall be let for any public work until the contractor shall have first executed a good and solvent bond to the effect that he will pay for all the labor and materials used by such contractor, or any immediate or remote subcontractor under him, in such contract, in lawful money of the United States. The bond to be so given shall be for one hundred (100) percent of the contract price. Where advertisement is made, the condition of the bond shall be stated in the advertisement; provided, that this section shall not apply to contracts under one hundred dollars (\$100.00).

(Code 1986, § 2-362; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-563. Certificate that funds available required.**

No contract, purchase order, order on stores, agreement or other obligation involving the expenditure of any money shall be issued or entered into or be valid unless the city finance officer first certifies thereon that there is in the city treasury to the credit of the appropriation or loan authorization for which it is to be paid on unencumbered balance in excess of all other unpaid obligations. Before so certifying, the city finance officer shall encumber the proper appropriation or loan authorization with the amount of such contract, purchase order, order on stores, agreement or obligation until the city is discharged therefrom.

(Code 1986, § 2-363; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-564. Obligations without funds declared void; liability.**

(a) All contracts, purchase orders, orders on stores, agreements and obligations issued or entered into contrary to the provisions of the preceding section shall be void and no person shall have any claim or demand whatever against the city thereunder, nor shall any official or employee of the city waive or qualify the limitation fixed by the preceding section or fasten upon the city any liability whatever contrary to such limitation.

(b) If any official or employee of the city authorizes or incurs an obligation against the city without first securing the city finance officer's certification as required by the preceding section, such official or employee and his sureties shall be individually liable for the amount of such obligation.

(Code 1986, § 2-364; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-565. Determination of available funds.**

All unencumbered money actually in the treasury to the credit of a fund from which they may be drawn, all money anticipated to be received from taxes or other sources to the extent of the amounts stated in the annual budget, all money to be derived from bonds, notes

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and certificates of indebtedness, either then or previously authorized and either sold or authorized to be sold, shall, for the purpose of the city finance officer's certification, be deemed to be in the treasury to the credit of the appropriate fund and subject to certification. (Code 1986, § 2-365; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-566. Disposal of surplus real property.**

(a) When the head of any department, agency, office, board or commission of the city shall determine that any real property used in that department is no longer useful or required for the operations of such department, he shall certify this fact to the mayor and city council, together with a full description of the property in question; its former use or uses; and whether it has or may have any future use for any other department or agency, etc., of the city. Upon receipt of such certification, the city council shall determine in its sound discretion whether to declare the property to be surplus and whether to be sold or disposed of or whether to be held or transferred to other branches of the city.

(b) Upon a determination by the city council, by motion to be spread upon the minutes of the council, that such real property is surplus and no longer required for the present use of any branch of the city, or in the foreseeable future, the city council, subject to the limitations hereinafter set out, may direct the mayor to cause the purchasing agent of the city to advertise for bids for the sale of such real property.

(c) The purchasing agent, when so directed, shall prepare an advertisement to be published in all the daily newspapers of the city at least ten (10) days before the date set for the submission of bids. Such advertisement shall clearly state that the property is to be sold to the highest and best bidder with the right retained by the city to reject any or all bids or to waive any informalities or immaterial defects contained in such bids. The full and complete legal description of the property shall be included in the advertisement; the street address, if any, together with a full and complete disclosure of any liens, encumbrances, easements, restrictions or known defects in title and the zoning classification of the property on the date of advertisement thereof.

(Code 1986, § 2-366; Ord. No. 9654, § 52, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-567. When negotiated or private sales authorized.**

Nothing in this article shall be construed to limit the right of the mayor, subject to city council approval, to make a negotiated or private sale of property without advertisement, where such appears to be advantageous to the city; or where the property in question is of such a specialized nature as not to be of general market-ability; or where the prospective purchaser is an agency of the United States, this state or any political subdivision thereof.

(Code 1986, § 2-367; Ord. No. 9654, § 53, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Secs. 2-568 – 2-580. Reserved.**

**ARTICLE VI. MEMORIAL AUDITORIUM<sup>16</sup>**

**Sec. 2-581. Board of directors--Created; composition.**

A Board of Directors is hereby created which shall be known as the "Chattanooga Memorial Auditorium and Tivoli Theater Board of Directors." Such Board shall be composed of twelve (12) members. The Administrator of General Services or his or her designee shall serve as Executive Director of the Board. In addition to the twelve members of the Board, there is created the positions of Director Emeritus, the qualifications for which shall be twenty (20) years of prior service on the Board and designation by the Mayor. Director(s) Emeritus shall have the right to vote on all matters coming before the Board. The Board shall adopt its own bylaws and elect a chairperson from among its membership.

(Code 1986, § 2-381; Ord. No. 10010, § 1, 2-8-94; Ord. No. 10541, § 1, 2-25-97; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 6, 7-2-13)

**Sec. 2-582. Same-Appointment, term of office.**

The members of the Board of Directors shall be appointed by the Mayor and confirmed by the City Council. They shall hold office for a term of three (3) years and until their successors are confirmed. The initial Board shall have four (4) members appointed to one (1) year terms, four (4) members appointed to two (2) year terms and four (4) members appointed to three (3) year terms. Thereafter, appointments shall be for three (3) year terms. Absent compelling reasons to the contrary, each Board member may serve a maximum of three (3) terms.

(Code 1986, § 2-382; Ord. No. 10010, § 1, 2-8-94; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-583. Same - Powers; duties.**

The Board of Directors shall provide guidance and recommendations to the administration in all matters affecting the operation and maintenance of the Soldiers and Sailors Memorial Auditorium and the Tivoli Theater.

(Code 1986, § 2-383; Ord. No. 9386, § 1, 5-29-90; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10010, § 1, 2-8-94; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-584. Civic Facilities Show Account for the Memorial Auditorium and Tivoli Theater.**

A checking account shall be maintained and titled "Civic Facilities Show Account" for the Chattanooga Memorial Auditorium and Tivoli Theater, which shall include a petty cash fund in the amount of Ten Thousand Dollars (\$10,000.00). The Administrator of the Department of General Services shall designate the person or persons authorized to sign for this account.

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<sup>16</sup> **Cross reference**—Parks and playgrounds, Ch. 26.

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(Code 1986, § 2-384; Ord. No. 10826, § 1, 2-9-99; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 6, 7-2-13)

**Sec. 2-585. Preservation fee.**

There is hereby imposed a preservation fee on each ticket sold for events held at either the Memorial Auditorium or the Tivoli Theater as follows:

- \$0.50 for tickets costing \$0.00 - \$10.00
- \$1.00 for tickets costing \$10.01 - \$20.00
- \$1.50 for tickets costing \$20.01 - \$60.00
- \$2.00 for tickets costing \$60.01 and above

If no tickets are sold for an event, there is a flat preservation fee of \$400.00 for the Memorial Auditorium; \$200.00 for the Tivoli Theater; and \$100.00 for the Community Theater.

(Ord. No. 11103, § 2, 11-28-00; Ord. No. 11175, § 15, 9-11-01; Ord. No. 11581, §15, 07-06-04; Ord. No. 12362, § 1, 3-2-10)

**Sec. 2-586. Rental rates for Memorial Auditorium and Tivoli Theater and Community Theater.**

There is hereby established a rental rate schedule for the Memorial Auditorium, Tivoli Theater, and Community Theater as follows:

<b>MEMORIAL AUDITORIUM</b>	<b>Ticketed Events</b>	<b>Non-Ticketed Events</b>
Non-Profit located within Hamilton County (Mon. – Thurs.)	\$1,400.00	\$1,800.00*
Non-Profit located within Hamilton County (Fri. – Sun.)	\$1,650.00	\$2,050.00*
Non-Profit (Mon. – Thurs.)	\$1,500.00	\$1,900.00*
Non-Profit (Fri. – Sun.)	\$1,750.00	\$2,150.00*
For-Profit (Mon. – Thurs.)	\$1,600.00**	\$2,000.00*
For-Profit (Fri. – Sun.)	\$1,850.00**	\$2,250.00*
Exhibit Hall – If rented separately	\$300.00	\$700.00*

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Lobby – If rented separately	\$500.00	\$900.00*
East Meeting Room – If rented separately	\$100.00	\$100.00
West Meeting Room – If rented separately	\$50.00	\$50.00
Orchestra Rehearsal Room – If rented separately	\$50.00	\$50.00
Civic Committee Meetings	\$25.00	\$25.00
Rehearsals/Load-In for event (If on day other than performance day)	50% of base rent	50% of base rent
Forty (40) or more scheduled Performance Events per year at any City facility	50% of base rent	50% of base rent

**\*Includes Preservation Fee at Flat Rate**

**\*\*In addition to above-listed rental rate, an additional ten (10%) percent of net box office receipts shall be paid for any event where ten (10%) percent of net box office receipts exceed the listed rental rate up to a negotiated cap.**

<b>TIVOLI THEATER</b>	<b>Ticketed Events</b>	<b>Non-Ticketed Events</b>
Non-Profit located within Hamilton County	\$1,300.00	\$1,500.00*
Non-Profit	\$1,400.00	\$1,600.00*
For Profit	\$1,500.00	\$1,700.00*
Matinee: when evening performance same day	\$900.00**	\$1,100.00*
Matinee: when no evening performance same day	\$1,100.00**	\$1,300.00*
Two Matinee Performances same day	\$650.00 each**	\$950.00 each*
Green Room – If rented separately	\$100.00	\$100.00
Lobby – If rented separately	\$550.00	\$750.00*
Rehearsal Room – If rented separately	\$100.00	\$100.00
Civic Committee Meetings	\$25.00	\$25.00

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Stage Only – Meeting	\$100.00	\$100.00
Bridal Portrait – Stairs/Inner Lobby Only	\$100.00	\$100.00
Rehearsals/Load-In for Events (If on day other than performance day)	50% of base rent	50% of base rent
Forty (40) or more Scheduled Performance Events per year at any City facility	50% of base rent	50% of base rent

**\*Includes Preservation Fee at Flat Rate**

**\*\*In addition to above-listed rental rate, an additional ten (10%) percent of net box office receipts shall be paid for any event where ten (10%) percent of net box office receipts exceed the listed rental rate up to a negotiated cap.**

<b>COMMUNITY THEATER</b>	<b>Ticketed Events</b>	<b>Non-Ticketed Events</b>
Non-Profit located within Hamilton County	\$450.00	\$550.00
Non-Profit	\$450.00	\$550.00
For-Profit	\$450.00*	\$550.00*
Forty (40) or more Scheduled Performance Events per year at any City facility	50% of base rent	50% of base rent
<p><b>* In addition to above-listed rental rate, an additional ten (10%) percent of net box office receipts shall be paid for any event where ten (10%) percent of net box office receipts exceed the listed rental rate up to \$800.00.</b></p>		

(Ord. No. 11103, § 2, 11-28-00; Ord. No. 11175, § 15, 9-11-01; Ord. No. 12362, § 2, 3-2-10)

**Secs. 2-587 – 2-600. Reserved.**

(Ord. No. 11103, § 2, 11-28-00)

**ARTICLE VII. MUNICIPAL PLANNING COMMISSION<sup>17</sup>**

**Sec. 2-601. Designated.**

<sup>17</sup> **Charter reference**—Planning generally, § 12.1 et seq.

**Cross references**—Zoning regulations, Ch. 38.

**State law references**—Regional planning commission, T.C.A. §§ 13-3-101 – 13-3-105; regional planning regulations, T.C.A. §§ 13-3-401 – 13-3-408.

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The Chattanooga-Hamilton County Regional Planning Commission, a regional planning commission established by the state planning commission in accordance with Tennessee Code Annotated, section 13-3-101, is designated as the municipal planning commission of the city in accordance with Tennessee Code Annotated, section 13-3-301.

(Code 1986, § 2-401; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-602. Membership.**

The commission referred to in section 2-401 shall consist of fifteen (15) members (as specified in Tennessee Code Annotated, section 13-3-101 designated by the director of the state planning office with the approval of the local government planning advisory committee in accordance with the bylaws of the Chattanooga-Hamilton County Regional Planning Commission, and Tennessee Code Annotated, section 13-3-101.

(Code 1986, § 2-402; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-603. General duties.**

It shall be the duty of the commission referred to in section 2-401 to make and adopt a general plan for the physical development of the territory of Hamilton County, including the territory within the municipalities; to develop a land use plan for all property within the county, including the municipalities; and to develop a major street plan so as to coordinate the streets and highways in the county and municipalities; and to perform other such duties and make such plans as directed by the city council and the planning commission.

(Code 1986, § 2-403; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-604. Disbursement of funds.**

The city finance officer will disburse the funds which are appropriated by the city and county for the operation of the municipal planning commission, the disbursements to be made upon vouchers signed by the chairman and countersigned by the mayor or county executive.

(Code 1986, § 2-404; Ord. No. 9654, § 54, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-605. Authority to adopt bylaws; purchases and contracts regulated.**

The municipal planning commission is hereby authorized to adopt bylaws governing its internal operations relative to the employment, discharge, promotion or demotion of personnel. All purchases and all contracts shall be made or executed pursuant to the provisions of sections 2-341 through 2-367, inclusive, of this Code or as the same may be hereafter amended.

(Code 1986, § 2-405; Ord. No. 11103, § 2, 11-28-00)

### **Secs. 2-606 – 2-620. Reserved.**

(Ord. No. 11103, § 2, 11-28-00)

**ARTICLE VIII. INSPECTION DEPARTMENT<sup>18</sup>**

**Sec. 2-621. Composition.**

The personnel of the inspection department, under the general administrative supervision of the city engineer, shall consist of a chief building inspector and assistants, electrical inspector and assistants, plumbing inspector and assistants, sidewalk inspector and such other inspectors and assistants as may be needed from time to time. Such employees shall be appointed by the mayor.

(Code 1986, § 2-421; Ord. No. 9654, § 55, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-622. Building inspector and assistant – Powers and duties.**

The building inspector shall supervise inspections of buildings. He and his assistant may enter any building in the city in the performance of their duties and may issue such orders as may be necessary to secure compliance with the ordinances of the city relating to buildings and structures. Failure, neglect or refusal of any person to comply with any such order shall be unlawful. Any duty or act required of or authorized to be done by the building inspector may be performed by the assistant building inspector, subject to the approval of the building inspector.

(Code 1986, § 2-422; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-623. Same – Conflict of interest prohibited.**

The building inspector and his assistant shall not, during their tenure in office, be employed or engaged directly or indirectly in any building business, enter into any contract for building for others or furnish materials, specifications or plans for buildings for others in the city.

(Code 1986, § 2-423; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-624. Plumbing inspector.**

The office of plumbing inspector is hereby created. Such officer shall be appointed by the mayor for a term of one (1) year from the first Monday in June until his successor is elected and qualified; provided, that he shall be subject to removal at any time by the mayor. When a vacancy in such office occurs, it shall be filled by the mayor. The plumbing inspector shall be a capable man of good moral character experienced in plumbing work. He shall enforce the provisions of this Code and other ordinances of the city relating to the installation and maintenance of plumbing. Before entering upon the discharge of the duties of his office, he

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<sup>18</sup> **Cross references**—Buildings, Ch. 10; electrical regulations, Ch. 14; fire prevention and protection, Ch. 17; gas, Ch. 19; housing, Ch. 21; mechanical code, Ch. 22.5; plumbing regulations, Ch. 27.

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shall take and subscribe before the mayor an oath faithfully and impartially to perform his duties.

(Code 1986, § 2-424; Ord. No. 9654, § 13, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-625. Construction Board of Adjustment and Appeals for Building, Residential, Electrical, Fire, Fuel Gas, Life Safety, Mechanical and Plumbing codes.**

(a) There hereby is created a Construction Board of Adjustment and Appeals for all of the adopted building codes of the city. Such Board shall consist of nine (9) members, who shall be active in the field of construction and shall serve without compensation. One (1) member of the board shall be a building contractor; one (1) member shall be a plumbing contractor; one (1) member shall be an electrical contractor; one (1) member shall be a mechanical, heating, ventilation, and air conditioning contractor; one (1) member shall be a realtor; one (1) member shall be an architect; one (1) member shall be an engineer; one (1) member shall be a building supply dealer; and one (1) member shall be a person who is qualified by experience and training with the hazards of fire, explosions, hazardous conditions or fire protection systems. The members shall be appointed by the mayor, subject to city council approval, for terms of four (4) years each. The board shall organize by electing one (1) of its members as chair. The chair or the chair's designee shall act as secretary to the Board.

(b) The Construction Board of Adjustment and Appeals shall meet once monthly on a date to be determined by its chair, to consider appeals from the decisions of the various enforcement officers of the various construction codes of the city and to consider adjustments in the various construction codes. The Board shall also have the power to determine questions of administrative interpretations of the code, questions of the use of materials and types of construction, to hear proof of performance of new materials or materials not specifically covered in the codes, and to determine the usability of such materials and the safety and permanence of various types of construction.

(c) Every decision of the Board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity from the Hamilton County Chancery Court.

(d) The Construction Board of Adjustment and Appeals shall also have power to make recommendations for revisions or modifications of all existing construction codes to the mechanical codes review committee.

(e) Five (5) members of the Construction Board of Adjustment and Appeals shall constitute a quorum. In varying the application of any provisions of this Code or in modifying an order of the building official, affirmative votes of the majority present, but not less than three (3) affirmative votes, shall be required. No board member shall act in a case in which that board member has a personal interest.

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(f) Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in (g), to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes.

(g) Appeals of a Decision of the Building Official. The owner of a building, structure or service system, or a duly authorized agent, may appeal a decision of the building official to the Construction Board of Adjustment and Appeals whenever any one of the following conditions are claimed to exist:

1. The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
2. The provisions of this code do not apply to this specific case.
3. That an equally good or more desirable form of installation can be employed in any specific case.
4. The true intent and meaning of this code or any of the regulations thereunder have been misconstrued or incorrectly interpreted.

(h) Variances. The Construction Board of Adjustment and Appeals, when so appealed to and after a hearing, may vary the application of any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds all of the following:

1. That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
2. That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system.
3. That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
4. That the grant of the variance that will be in harmony with the general intent and purpose of this code and will not be detrimental to the public health, safety and general welfare.

Conditions of the variance. In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe

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appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

- (i) Procedures of the Board.
  - 1. Rules and regulations. The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The board shall meet once monthly, if applications are submitted, on a date to be determined by the chairman. The board shall meet within thirty (30) calendar days after notice of appeal has been received. No applications for any appeal shall be accepted if filed less than five (5) days before a scheduled monthly meeting.
  - 2. Decisions. The Construction Board of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the Board shall also include the reasons for the decision. If a decision of the Board reverses or modifies a refusal, order, or disallowance of the building official or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. Every decision of the Board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

(Code 1986, § 2-425; Ord. No. 9654, §§ 2 & 53, 1-6-92; Ord. No. 11041, § 5, 7-25-00; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11721, § 5, 7-26-05)

### **Sec. 2-626 Mechanical codes review committee.**

(a) There is hereby created a mechanical codes review committee. The committee shall have 12 members which shall include all members of the Construction Board of Adjustment and Appeals for building, residential, electrical, fire, fuel gas, life safety, mechanical and plumbing codes for the city, and the Building Official, the Fire Marshall, and the City Attorney.

(b) The review committee shall meet, as needed, whenever the City considers the adoption of any new building, residential, electrical, fire, fuel gas, life safety, mechanical or plumbing codes as amendments to those codes become available. The review committee shall submit a recommendation any new code amendments which shall be presented to the City Council whenever new codes are considered for adoption.

(Code 1986, § 2-426; Ord. No. 9654, § 56, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11721, § 5, 7-26-05)

### **Sec. 2-627. Charge for issuance of permits.**

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The personnel of the inspection department shall collect an administrative charge of five dollars (\$5.00) for the issuance of each permit issued by the department as required under the provisions of this Code or any ordinance or state statute in addition to the fees imposed therefor by the provisions of this Code or any ordinance or state statute.

(Code 1986, § 2-427; Ord. No. 9545, § 1, 4-30-91; Ord. No. 11103, § 2, 11-28-00)

**Secs. 2-628 – 2-640. Reserved.**

(Ord. No. 11103, § 2, 11-28-00)

### ARTICLE IX. CHATTANOOGA YOUTH AND FAMILY DEVELOPMENT DEPARTMENT<sup>19</sup>

**Sec. 2-641. Created; purpose.**

There be and is hereby created and established a department to be known as the Chattanooga Youth and Family Development Department. This department will provide for the administration and the operations of all public programs and projects of a human nature in the city.

(Code 1986, § 2-441; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 1, 7-2-13)

**Sec. 2-642. City council designated policy body; powers.**

The city council is hereby appointed as the policy body for human services programs. Such body shall also have the power to grant final approval of all programs, proposals, and budgets; to enforce compliance with all conditions made by federal agencies; and to determine, subject to such federal regulations and policies, the rules of procedure for the policy-making body.

(Code 1986, § 2-442; Ord. No. 9654, § 57, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-643. Chattanooga Youth and Family Development Department Board – Created; composition.**

(a) There is hereby created a city-wide Chattanooga Youth and Family Development Department Board of fifteen (15) members. The City Mayor, each member of the City Council, and the Hamilton County Mayor, or their respective non-elected designees, shall be entitled to designate members to this Board. All other members of this Board shall be appointed by the City Mayor, subject to confirmation by the City Council, from the following categories: private social service agencies; educational institutions; child services; business organizations; veteran organizations; religious institutions; and low income residents of the City. The prospective appointees shall all be subject to the prior confirmation of the City Council. At any meeting of this Board eight (8) members shall constitute a quorum to conduct business.

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<sup>19</sup> **Cross references**—City relief bureau, § 2-9 et seq.; fair housing regulations, § 21-81 et seq.

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(b) The Board shall be known as the Chattanooga Youth and Family Development Department Board. This governing Board shall be directly responsible for the oversight of Head Start Grants and other community service grants obtained for the benefit of citizens of the City of Chattanooga and Hamilton County. The Board shall have the responsibility to administer the Head Start/Early Head Start Program pursuant to Head Start Performance Standards as set forth in 45 CFR §§ 1301, *et seq.*  
(Code 1986, § 2-443; Ord. No. 9496, § 2, 12-11-90; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12148, §1, 7-22-08; Ord. No. 12736, § 1, 7-2-13)

### **Sec. 2-644. Same – Terms; vacancies.**

The terms of the members of the Chattanooga Youth and Family Development Department Board shall be for three (3) years. Upon the expiration of the term of any appointed member, a successor shall serve a term of three (3) years. The failure of any member to attend two (2) consecutive meetings or three (3) meetings within any calendar year shall be the basis for removal by the City Mayor and reappointment of another member by the City Mayor, subject to the confirmation of the City Council. Should any vacancy occur on the Board by death, resignation, or removal of a member, the member's unexpired term shall be filled by appointment of a member residing in the same district as the member vacating the board, if possible. All elected officials, or their respective non-elected designees, shall serve during their tenure of office. No member, other than an elected official or his designee, may serve more than two (2) consecutive terms on the Board.  
(Code 1986, § 2-444; Ord. No. 9496, § 3, 12-11-90; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12148, §2, 7-22-08; Ord. No. 12736, § 1, 7-2-13)

### **Sec. 2-645. Same – Function.**

The Youth and Family Development Department-community development advisory board shall be an advisory body to the policy body, and its advice shall be considered in setting broad policies with regard to the establishment of goals, objectives, priorities and needs for human services. The board shall organize its work on a quarterly meeting basis. The Youth and Family Development Department-community development advisory board shall further be an advisory board for citizen input with reference to the planning and implementation of the community development program.  
(Code 1986, § 2-445; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 1, 7-2-13)

### **Sec. 2-646. Same – Bylaws; officers; executive committee.**

The Chattanooga Youth and Family Development Board shall adopt and may amend bylaws for the regulation of its meetings and proceedings, subject to ratification of the major policy board. It shall also elect officers, appoint an executive committee, not to exceed ten (10) in number, with power to function between formal board meetings. The executive committee shall have as members the board chairman, and nine (9) members elected by the board from among its number.  
(Code 1986, § 2-446; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 1, 7-2-13)

**Sec. 2-647. Reserved.**  
(Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-648. Administrator.**

There shall be an administrator of the Youth and Family Development Department who shall be appointed by the mayor of the city subject to confirmation by the city council of the city. If a vacancy shall thereafter occur in the office of executive director, the vacancy shall be filled by the mayor, and again be subject to confirmation of the city council.

(Code 1986, § 2-448; Ord. No. 9654, §§ 2 & 59, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 1, 7-2-13)

**Sec. 2-649. Administrative control of department; powers of mayor, administrator.**

The mayor does hereby assign administrative control of the Youth and Family Development Department to the mayor of the city, and with such control he shall be empowered to employ, discharge or suspend the administrator of the department subject to confirmation by the city council. The administrator shall be empowered to employ, discharge or suspend all other employees of the department subject to confirmation of the mayor and city council.

(Code 1986, § 2-449; Ord. No. 9654, §§ 2 & 59, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 1, 7-2-13)

**Sec. 2-650. Financial affairs; receipts and disbursements.**

All fiscal and financial affairs of the Youth and Family Development Department shall be conducted by the city finance officer. All receipts and disbursements shall be handled in accordance with the applicable provisions of the charter and ordinances of the city.

(Code 1986, § 2-450; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 12736, § 1, 7-2-13)

**Secs. 2-651 – 2-660. Reserved.**  
(Ord. No. 11103, § 2, 11-28-00)

## ARTICLE X. SUPPLEMENTAL PENSION BENEFITS<sup>20</sup>

**Sec. 2-661. Special fund created.**

There be and is hereby created a special fund to be known as the "supplemental pension fund."

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<sup>20</sup> **Charter reference**—Pensions and death benefits, §§ 3.35 – 3.52.

**Cross references**—City authorized to contribute to pension funds created and operated by labor organizations, § 2-7; social security for city employees generally, § 2-231 et seq.; minimum pension for teachers with 25 years' service, § 30-1.

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(Code 1986, § 2-461; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-662. Administration of fund by board of directors.**

The supplemental pension fund shall be administered by a board to be known as the board of directors of the supplemental pension fund. Such board shall be composed of five (5) persons to be appointed by the mayor subject to confirmation by the city council. The board members shall serve for three-year terms or until their successors have been duly appointed. Any member may be reappointed. The mayor, subject to confirmation by the city council, shall designate a chairman, vice-chairman and a secretary of the board. The board members shall serve either at the pleasure of the mayor or the city council.

(Code 1986, § 2-462; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-663. Procedure for determining supplemental benefit.**

Any retiree or person who is being paid a pension by the city, or from the firemen's and policemen's insurance and pension fund, who is or will be at least sixty-five (65) years of age on any entitlement date, as defined in section 2-467, shall be entitled to receive as a supplemental pension benefit two hundred fifty dollars (\$250.00) per month less the total amount such person is now receiving per month from any pension or retirement benefit paid by any government entity (whether federal, any state, county or city), including the amount such person is or would be entitled to receive as social security benefits or any annuity income that has been or is being provided in whole or in part by contributions from any government entity, but excluding earned or investment income.

(Code 1986, § 2-463; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-664. Application for supplemental benefit; termination of benefits.**

(a) Before any person shall be entitled to a supplemental pension benefit such person shall file an application with the city finance officer on a form provided by the city finance officer stating under oath or affirmation the required information or facts as would show that such person may be entitled to a supplemental pension benefit, and there shall be filed with such application proof as to the amount of social security or pension income being received by or to which the applicant may be entitled. If the city finance officer at any time shall not be satisfied as to the accuracy or truthfulness of the contents of the application, whether before or after a supplemental pension benefit may have been granted, he shall be and is hereby empowered to subpoena such person or other witnesses and examine them under oath or affirmation as to the facts contained in such application, or as to any such matters as should have been contained therein. If the city finance officer is of the opinion that such application is false, fraudulent, erroneous, inaccurate or invalid, he shall report such finding to the board of directors which shall then conduct a hearing after at least fourteen (14) days' notice to all parties in interest. The city attorney or his representative may attend and examine or cross-examine any witness. The chairman, vice-chairman or secretary of the board of directors shall have the authority to summon witnesses and administer oaths or affirmations. The decision of the board of directors shall be final and conclusive, but subject to review by any court of

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competent jurisdiction as may be provided by law. The applicant may be represented by counsel before the city finance officer and/or before the board of directors at any such hearing.

(b) If at any time the board of directors has reason to believe that any person is not entitled to a supplemental pension benefit that may have been previously granted, or that any person is no longer entitled thereto, it shall be the duty of the board of directors to have a notice served on the recipient of such supplemental pension benefit, either by certified mail or otherwise, requiring such person to appear, not less than fourteen (14) days after service of such notice, before the board of directors and show cause, if any there be, why such supplemental pension benefit should not be terminated. If the board of directors finds that such person has previously received supplemental pension benefits to which such person was not entitled under the provisions of this article, or that an application of such person contains false or materially inaccurate information or false testimony was given before either the city auditor or the board of directors, or before a court, then in such event the recipient shall be liable to repay the total of such illegally received money and the city attorney is authorized in his discretion to file suit on behalf of the city to collect same. Furthermore, if any person files a willfully false or materially inaccurate application, such person shall be fined not more than fifty dollars (\$50.00) upon conviction by the city court. Any person found by the board of directors to have filed a false or materially inaccurate application, or to have given false testimony, or who is convicted by the city court as aforesaid, shall forfeit any right to any future supplemental pension benefits under this article.

(Code 1986, § 2-464; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-665. Application filing date; payment of benefit.**

Applications for supplemental pension benefit by any person who is entitled thereto as of January 1, 1975, shall be filed on or before May 1, 1975; and if granted by the board of directors of the supplemental pension fund, then supplemental pension benefit payments shall be paid in a lump sum retroactive to and for the month of January, 1975; otherwise, such person shall be entitled to a supplemental pension benefit the first of the month following the filing of an application, provided the same is granted.

(Code 1986, § 2-465; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-666. Annual reapplication required.**

On or before October 1, 1975, and each year thereafter, each person receiving a supplemental pension benefit shall refile an application similar to the original application, setting forth under oath or affirmation the pertinent information relative to pension or retirement income as referred to in section 2-463. Such annual reapplication shall be subject to examination by the city finance officer in the same manner as provided in section 2-464(a) and (b) and the review procedure shall be the same as provided therein.

(Code 1986, § 2-466; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-667. "Entitlement date" defined.**

The phrase "entitlement date," as used in section 2-463 shall mean January 1, 1975, and the first day of the month following the applicant's sixty-fifth birthday.

(Code 1986, § 2-467; Ord. No. 11103, § 2, 11-28-00)

**Cross reference--**Definitions and rules of construction generally, § 1-2.

**Sec. 2-668. When benefits payable.**

Supplemental pension benefits shall be payable on the first of each month for the preceding month.

(Code 1986, § 2-468; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-669. Termination upon death of recipient.**

Any supplemental pension benefits shall terminate as of the date of death of any person receiving same.

(Code 1986, § 2-469; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-670. Studies of city pension systems; purpose.**

It shall be the duty of the city finance officer to conduct an ongoing study of all the pension systems of the city, and he is authorized to employ from time to time the services of actuarial or other consultants to make any necessary and relevant studies that may now or hereafter be needed. The results of any such studies by the city finance officer and/or any consultant, together with any recommendations, shall be reported annually to the mayor and city council. It shall be the purpose of such studies to accomplish equity and fairness of treatment among all retirees relative to retirement benefits, including those retirees who will not, at the time of the enactment of this article, receive supplemental pension benefits under the provisions of this article.

(Code 1986, § 2-470; Ord. No. 9654, §§ 8 & 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-671. Benefit increases.**

(a) Every person receiving or hereafter entitled to receive a supplemental pension benefit, and every person who retired on or before July 1, 1972, receiving or hereafter entitled to receive a pension from any pension plan of the city, shall receive as a supplemental pension benefit a sum equal to five (5) percent more than such person is now [August 12, 1975] receiving or would otherwise hereafter be entitled to receive. Such additional five (5) percent shall commence with the payment due for the month of September, 1975, and thereafter.

(b) Every person receiving or hereafter entitled to receive a supplemental pension benefit, and every person who retired on or before July 1, 1973, receiving or now entitled to receive, or hereafter entitled to receive, a pension from any pension plan of the city, shall receive as a supplemental pension benefit an additional four (4) percent over and above and in

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addition to the amount so provided in prior ordinances. Such additional four (4) percent shall commence with the payment due for the month of October, 1976 and thereafter.  
(Code 1986, § 2-471; Ord. No. 11103, § 2, 11-28-00)

**Secs. 2-672 – 2-690. Reserved.**  
(Ord. No. 11103, § 2, 11-28-00)

### ARTICLE XI. SUSPENSION AND DEBARMENT OF CONTRACTORS<sup>21</sup>

#### **Sec. 2-691. Authority of city to take action; grounds for debarment or suspension.**

In addition to other provisions of law for rejecting bids and debarring or suspending bidders, the city may take the following actions to debar or suspend persons not otherwise debarred from city contracts by Tennessee Code Annotated, section 12-4-602 or other applicable law:

- (1) Any person who has, since January 1, 1979, performed services as a contractor or subcontractor under, or bid on, a city contract, may be debarred from bidding on, or subcontracting for all or any part of, or entering any partnership or joint venture with respect to, or other-wise participating in, city contracts for a period of not more than five (5) years, if in connection with any federal, state or local government contract (including without limitation, the submission of bids or proposals therefor) the person has at any time since January 1, 1979:
  - a. Violated or participated in a violation of the Sherman Act (15 U.S.C. §§ 1, 2), or the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961-1968), or the Hobbs Act (18 U.S.C. § 1951), or the mail or wire fraud statutes (18 U.S.C. §§ 1341, 1343), or the false statement statute (18 U.S.C. § 1001) or other similar provision of federal or state law, as evidenced by (i) a plea of guilty or nolo contendere or a conviction in a criminal action; (ii) a judgment of liability in a civil action (whether public or private); or (iii) other competent evidence; or

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<sup>21</sup> **Editor's note**—The Court of Appeals of Tennessee, Eastern Section, in the case of *CFW Construction Company, Inc., et al. v. City of Chattanooga* and *McDowell Contractors, Inc., et al. v. City of Chattanooga*, dated February 21, 1985, reversed and dismissed the decision of the Hamilton County Chancery Court which had held that Ordinance No. 8259, codified in this article, violated the Tennessee Constitution's prohibition on retrospective laws and was preempted by T.C.A. § 12-4-601 et seq. The Court of Appeals ruled that the ordinance violated no vested right or contractual obligation. The Court also held that the statute cited did not preempt local ordinances on the subject, noting that T.C.A. § 6-56-306 gives municipalities authority to adopt regulations for competitive bidding on municipal contracts.

**Cross reference**—City purchases, contracts and property disposition, § 2-541 et seq.

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- b. Committed or participated in any other acts of such a serious nature as to affect the person's responsibility as a contractor or subcontractor on city contracts.
- (2)
- a. Any person who has since January 1, 1979, performed services as a contractor or subcontractor under, or bid on, a city contract may be suspended from bidding on, or subcontracting for all or any part of, or entering any partnership or joint venture with respect to, or otherwise participating in, city contracts if there are reasonable grounds for suspecting that such person has committed any of the acts or conduct stated in subparagraph (1) of this section and the public interest requires that the person be immediately temporarily disqualified from bidding. Reasonable grounds shall consist of, but are not limited to, the return of an indictment or the filing of criminal information.
  - b. A suspension shall be for a temporary period, pending investigation, legal proceedings or other events which would be a basis for a debarment, or pending the completion of a debarment proceeding. A suspension shall not continue more than twelve (12) months, unless criminal or civil legal proceedings or debarment proceedings are in progress, in which case the suspension may be extended until the completion of such legal or debarment proceedings.
- (3) For purposes of determining whether a basis for debarment or suspension exists under subparagraphs (1) and (2) of this section (and the scope of such debarment or suspension under this article), the term "person" shall include (i) in the case of a corporation: the corporation, its officers, directors, shareholders, employees and agents, and its parents, subsidiaries or affiliates, whether in existence at the time of the event referred to in subparagraph (1) of this section or subsequently formed or acquired; (ii) in the case of a partnership or joint venture: the partnership or joint venture, its general or limited partners and joint ventures, its officers, employees and agents; and (iii) in the case of a sole proprietorship: the individual proprietor and his employees and agents. Where a partner or joint venture is a corporation, the partnership or joint venture shall have attributed to it the actions of persons attributable to the corporation under paragraph (i) of this subsection.

(Code 1986, § 2-491; Ord. No. 11103, § 2, 11-28-00)

**Sec. 2-692. Instituting debarment process.**

(a) The debarment process shall begin with the issuance of a notice to debar which may be issued by the mayor. The notice to debar shall specify the grounds, set forth in section 2-691, for the debarment, and advise the person considered for debarment that he may request a hearing thereon, and shall be served on the person named therein or on his duly authorized agent.

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(b) Debarment shall be effective at 12:00 noon upon the twentieth day after the notice to debar is issued unless within that time the bidder has requested in writing a hearing on the notice, in which event debarment shall not be effective until or unless so ordered by the mayor. A request for a hearing shall be effective only if it is received by the city finance officer before 12:00 noon on the twentieth day after issuance.

(c) If a timely request for a hearing is made, a hearing shall be scheduled as soon as practicable before a hearing officer who shall promptly report his findings and recommendation to the city council. Based on these findings, the city council shall determine whether the person should be debarred and the period of such debarment. In the event of debarment, the period thereof shall begin on the day following such determination.

(Code 1986, § 2-492; Ord. No. 9654, §§ 2, 8, 61 & 64, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-693. Instituting suspension process.**

(a) The suspension process shall begin with the issuance of a notice to suspend which may be issued by the mayor. The notice to suspend shall specify the grounds set forth in section 2-691, for suspension, and advise the person suspended that he may request a hearing thereon, and shall be served on the person named therein or on his duly authorized agent.

(b) Suspension shall be effective as of the date of the notice to suspend. A suspended bidder may request a hearing if he files a request therefor with the clerk of the city council by 12:00 noon on the twentieth day after issuance of the notice to suspend.

(c) If a timely request for a hearing is made, a hearing shall be scheduled before a hearing officer within twenty (20) days of receipt of the request therefor, and the hearing officer shall, within ten (10) days of the hearing, report his findings and recommendation to the city council. Based on these findings, the city council shall determine whether the suspension shall remain in effect.

(Code 1986, § 2-493; Ord. No. 9654, §§ 2, 10 & 61, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-694. Debarment or suspension hearing.**

(a) Any hearing convened under this article shall be presided over by a hearing officer appointed by the mayor, subject to confirmation by the city council. The hearing officer shall be an attorney or former judge, licensed to practice law in this state, who has never represented the persons subject to debarment or suspension proceedings. Such attorney or former judge shall be entitled to a reasonable fee for his services rendered. The hearing officer shall be a notary public authorized to administer oaths in the county.

(b) At any hearing convened pursuant to this section, the party requesting the hearing shall have the burden of demonstrating that it is not subject to debarment under section 2-691(1) or suspension under section 2-691(2), as the case may be.

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(c) The party requesting the hearing shall have the right to be represented by counsel and to present evidence. Such party shall (i) produce testimony under oath from all persons under its control and (ii) produce all documents in its possession, custody or control, which shall be requested by the hearing officer, or by the attorney for the city, which are relevant to the issues before it. All witnesses shall be subject to cross-examination by the hearing officer and the attorneys for the parties, including the attorney for the city.

(d) The hearing officer shall regulate proceedings in hearings before him and may receive any evidence which is probative and trustworthy, without being bound by judicial rules of evidence. If evidence requested by the hearing officer pursuant to paragraph (c) of this section is not produced, the hearing officer may draw such adverse inferences therefrom as may be warranted under the circumstances.

(Code 1986, § 2-494; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-695. Debarred and suspended bidders list.**

The city finance officer shall maintain a current list of debarred and suspended bidders which shall be circulated to all city contracting personnel.

(Code 1986, § 2-495; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

### **Sec. 2-696. Petition for early lifting of debarment.**

(a) Any debarred bidder may petition at any time to have the debarment lifted or the term of debarment reduced by filing a petition in writing with the city finance officer. Upon any such petition which shows, by affidavits or otherwise, substantial facts which may warrant lifting of the debarment or reduction of its term, the mayor may schedule a hearing thereon under the procedures of section 2-694. A petition which does not set forth substantial facts under oath which may warrant lifting of the debarment or reduction in its term under the standards of this section shall not be effective, and no such hearing shall be scheduled thereon.

(b) The debarment may be lifted, or reduced in term, only if the petitioner proves that there is no significant risk that the petitioner will commit any of the acts described in section 2-691 on city contracts in the future, and the relief requested otherwise serves the public interest under the circumstances, taking into account the following factors:

- (1) Whether petitioner has taken adequate and specific steps to insure that these acts are unlikely to occur in the future;
- (2) Whether all individuals responsible for the prior violations have been removed from responsibility for the relevant matters;
- (3) Whether petitioner has adopted a compliance program designed and implemented so as to educate its personnel about these violations and substantially to reduce the risk that they will recur;

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- (4) Whether petitioner has had its relevant personnel, and will take steps to assure that new personnel will, execute and file with the city a non-collusion affidavit in form acceptable to the city;
  - (5) Whether petitioner has cooperated in any investigation of the relevant violations by city, the state and the federal government;
  - (6) The degree of culpability on the part of the petitioner;
  - (7) The degree of continuity of the petitioner's business, assets or personnel;
  - (8) Whether petitioner has made monetary restitution to the city for the violations which affected city contracts; and
  - (9) Any other factor significantly affecting the public interest.
- (Code 1986, § 2-496; Ord. No. 11103, § 2, 11-28-00)

**Secs. 2-697 – 2-710. Reserved.**  
(Ord. No. 11103, § 2, 11-28-00)

### ARTICLE XII. OFFICE OF MULTICULTURAL AFFAIRS

#### **Sec. 2-711. Declaration of policy and purpose.**

The purpose of this article is to encourage understanding and goodwill, promote justice, and eliminate discriminatory practices between and among its citizens because of race, religion, national origin, age, sex, disability or ethnicity.  
(Code 1986, § 2-511; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

#### **Sec. 2-712. Limits of article.**

This article shall not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally, the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefore.  
(Code 1986, § 2-512; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

#### **Sec. 2-713. Establishment of office.**

- (a) There is hereby established an office of multicultural affairs.

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(b) The Director of the office shall be appointed by the Mayor, subject to confirmation by the City Council at the same time and in the same manner as department heads and removal in the same manner as department heads.

(c) There is hereby established an Advisory Board of Multicultural Affairs to provide guidance and recommendations to the Administration through the Director of the Office and to the City Council.

- (1) The Board shall provide oversight and guidance to the Office of Multicultural Affairs.
- (2) The Board shall review applicants for position of Director of the Office of Multicultural Affairs.
- (3) The Board shall recommend no more than three finalists for position of Director of the Office of Multicultural Affairs to the Mayor, for final selection.
- (4) In conjunction with the office of the Mayor, the Board shall undertake an annual review of the performance of the Director of the Office of Multicultural Affairs.
- (5) No officer or employee of the City shall be eligible for appointment to the Board except one member of the City Council.
- (6) The Mayor shall appoint all members, subject to confirmation by the Council members, except those appointed by the Council and the Council Chair or his/her designee. Nominations for appointment to the Board shall be solicited through the City Council members per district from broadly representative community groups, including, but not limited to, business and labor organizations, the clergy, associations such as the NAACP and Urban League whose purpose is to eliminate discrimination and promote good will. Council or Mayoral appointments shall be made from residents of the City. Council appointments shall be made from residents within their council district if practical and with each Councilperson giving preference to cultural diversity representation reflective of the City. The maximum number of board members shall not exceed twenty-three (23). The initial board shall consist of recommendations from the nine (9) members of city council, seven (7) CAAS task force chairs (at large recommendation from the board) and one representative each from the area of law and research. In addition, the Mayor will have four (4) appointees and the Council Chair or his/her designee shall be members. All appointments shall be made within 90 days of the vacancy on the board.

(Ord. No. 12243, § 1, 5-19-09)

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(7) The terms of the members, except the Council Chair or his/her designee, shall be three (3) years, except that of the initially appointed members eight (8) shall serve for one (1) year, eight (8) for two (2) years, and seven (7) for three (3) years as designated at the time of appointment and until their successors are appointed, except that effective July 1, 2006 the seven (7) seats occupied initially by Task Force Chairs would become Mayoral appointments in addition to his/her other appointees. Previously appointed members shall remain in office until the expiration of their terms. Whenever a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. No person shall serve on the Board for more than two (2) consecutive complete terms. (Ord. No. 12243, § 2, 5-19-09)

(i) The Board shall establish a Nominating Committee to be comprised of at least three Board members, not to exceed 5, to recommend a slate of officers to the board, review and make recommendations to fill vacancies of the 9 appointments, and to perform other duties as deemed necessary.

(8) The Board shall select annually its chairperson, vice-chairperson, and secretary from among its members of officers; each officer shall have the right to vote on all matters and shall hold office until the expiration of the term for which elected and thereafter until his successor has been elected. The Board shall meet no less than four (4) times each calendar year with such additional meetings as the chairperson deems desirable. Special meetings shall be called by the chairperson or upon written request of a majority of the Board. A simple majority of the Board membership shall constitute a quorum. All members of the Board shall serve without compensation. However, members may when attending out-of-town meetings by direction of the Director receive actual expenses incurred. (Ord. No. 12243, § 2, 5-19-09)

(Code 1986, § 2-513; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10703; § 1, 5-19-98; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05; Ord. No. 12243, 5-19-09)

### **Sec. 2-714. Powers and duties.**

(a) The Office shall endeavor to eliminate discrimination against and alienation between religious, racial and ethnic groups and individuals, including discrimination on the basis of race, ancestry, national origin or creed. It shall promote communication and mutual understanding and respect among diverse constituencies and persons of the Greater Chattanooga area.

(b) The Office shall cooperate with the departments, agencies, boards, and offices of the city and of the state in carrying out the ends of this article.

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- (c) In fulfilling its functions, the Office shall have the following powers and duties:
- (1) To receive, record and investigate complaints of the denial of equal access to, or discrimination against, either an individual or a group where such denial of human rights or discrimination is based on race, religion, color, national origin, age, sex, or disability.
    - (i) All complaints shall be investigated unless referred to other local, state or federal agencies in a timely manner.
  - (2) To act as a public forum to promote mutual understanding and respect for the purpose of eliminating discriminatory practices, and to hear complaints from groups and/or individuals regarding concerns which may lead to intergroup conflict.
  - (3) To hold public hearings or private or private staff hearings to determine the facts about instances of discrimination or intergroup tensions.
  - (4) To attempt by public or private staff conciliation or mediation to resolve any complaint over which it has jurisdiction as defined in this article.
  - (5) To recommend methods for eliminating discrimination and intergroup tensions, and to use its best efforts to secure compliance with its recommendations.
  - (6) To report to the mayor and city council the first Tuesday of each quarter on the prior quarter's activities.
  - (7) To make such recommendations to the mayor and city council as it deems necessary and beneficial to fully implement the policy of this article and to recommend appropriate legislation to the city council and executive action to the mayor.
  - (8) To submit an annual report to the mayor and city council.
  - (9) To cooperate with other public and private agencies involved with intergroup relations at the city, state and national level in performing its function under this article.
  - (10) To conduct research and studies, and to present public reports on discrimination and/or progress in community relations and the elimination of discrimination.

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(11) To enlist the support of civic, labor, religious, professional, business, industrial, and educational organizations in community activities and programs which may further the goals of this article.

(12) To organize community committees and ad hoc task forces and to conduct educational programs within the community regarding human rights and community relations practices, laws, regulations, policies and programs affecting equal rights and opportunities for persons of all ethnicities.

(13) To work with department heads to assure an equal opportunity for all with regard to city employment matters, including, but not limited to, hiring and promotional opportunities.

(14) To work with departments and the business and labor communities to find and implement methods of ensuring opportunities for all citizens, regardless of ethnicity, to participate in contracts with the City.

(15) To administer the City's Fair Housing laws.

(16) To administer such other tasks as they relate to multicultural affairs as may be assigned by the Mayor.

(Code 1986, § 2-514; Ord. No. 9654, §§ 2, 38 & 56, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

**Sec. 2-715. Budget.**

The Director shall prepare an annual budget. The Board shall review, make recommendations and approve the budget for submittal to the mayor and the city council.

(Code 1986, § 2-515; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

**Sec. 2-716. Repealed.** (Ord. No. 11767, § 2, 11-22-05)<sup>22</sup>

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<sup>22</sup> **Editor's note** – Part of former Article XII, Human Rights and Human Relations Commission, repealed, Ord. No. 11767, § 1, 11-22-05.

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ARTICLE XIII. CODE OF ETHICS<sup>23</sup>

**Sec. 2-750. Applicability.**

This Article is the code of ethics for personnel of the City of Chattanooga (“City”). It applies to all full-time and part-time employees, including individuals serving on any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the City, whether compensated or not.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

**Sec. 2-751. Definition of “personal interest.”**

- A. For purposes of Sections 2-752 and 2-753, “personal interest” means:
1. Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or
  2. Any financial, ownership, or employment interest in a matter to be regulated or supervised; or
  3. Any such financial, ownership, or employment interest of the official’s or employee’s spouse, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).
- B. “Employment interest” includes, but is not limited to, a situation in which an official or employee or an immediate family member is negotiating possible employment with a person or entity that is the subject of the vote or that is to be regulated or supervised.
- C. In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

**Sec. 2-752. Disclosure of personal interest by official with vote.**

An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official’s vote on the measure. In addition, the official shall not lobby any official or employee of the City of Chattanooga or vote on matters in which they have a personal interest.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

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<sup>23</sup> **Editor’s note** – Formerly entitled “Boards and Commissions,” which was created by Ord. No. 11769, § 1, 12-6-05 and repealed by Ord. No. 11985, § 2, 6-26-07.

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**Sec. 2-753. Disclosure of personal interest in nonvoting matters.**

An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the Office of the City Attorney. In addition, the official or employee shall not participate in any way on matters in which they have a personal interest.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

**Sec. 2-754. Acceptance of gratuities, etc.**

- A. An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the City:
  - 1. For the performance of an act, or refraining from performance of an act, that he or she would be expected to perform, or refrain from performing, in the regular course of his or her duties; or
  - 2. That might reasonably be interpreted as an attempt to influence his or her action, or reward him or her for past action, in executing business of the City.
  
- B. No official or employee shall solicit or accept, directly or indirectly, on behalf of himself or any member of the employee's household, any gift, including but not limited to any gratuity, service, favor, food, entertainment, lodging, transportation, loan, loan guarantee or any other thing of monetary value from any person or entity that:
  - 1. Has or is seeking to obtain contractual or other business or financial relations with the City;
  - 2. Conducts operations or activities that are regulated by the City; or
  - 3. Has interests that may be substantially affected by the performance or nonperformance of the official's or employee's duties.
  
- C. Exceptions. The prohibition of accepting gifts does not apply to:
  - 1. A gift or gratuity that is not cash or a cash equivalent (such as a check or gift card), and which has a value of Fifty Dollars (\$50.00) or less, shall not be interpreted as an attempt to influence the action of an official or employee;

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2. A gift given by a member of an official's or employee's immediate family, or by an individual if the gift is given for a non-business purpose and is motivated by a close personal relationship;
3. Informational materials, such as books, periodicals, audio or video, or sample merchandise helpful as a part of the employee's or official's duties in determining the appropriateness of the product for use as a part of city business;
4. Unsolicited tokens or awards of appreciation, honorary degrees or bona fide awards in recognition of public service, provided that any such item cannot be readily converted to cash;
5. Food, refreshments, foodstuffs, entertainment or beverages provided as a part of a meal or other event in which the employee or official is attending or is a speaker or part of a panel discussion at a scheduled meeting of an established or recognized membership organization;
6. Loans from established financial institutions made in the ordinary course of business on usual and customary terms; and
7. Voluntary, legally disclosed political campaign contributions given in accordance with applicable federal and state statutes to an individual covered by the provisions of this section who has announced his intention to seek elected office.

Except as provided in subsection C. above, an official or employee shall not accept any gift from anyone for any service or duty performed as an official or employee of the City without the express consent of the City Council.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14; Ord. No. 12863, § 1, 10-14-14)

### **Sec. 2-755. Use of information.**

- A. An official or employee shall not disclose any information obtained in his or her official capacity or position of employment that is made confidential under state or federal law except as authorized by law.
- B. An official or employee shall not use or disclose information obtained in his or her official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

### **Sec. 2-756. Use of municipal time, facilities, etc.**

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- A. An official or employee shall not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself or herself.
- B. An official or employee shall not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

**Sec. 2-757. Use of position or authority.**

- A. An official or employee shall not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.
- B. An official or employee shall not use or attempt to use his or her position for personal financial gain or to secure any privilege or exemption for himself, herself, or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

**Sec. 2-758. Outside employment.**

An official or employee shall not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy and outside employment must comply with Sections 2-189 and 2-190 of this chapter.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

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**Sec. 2-759. Ethics Officer.**

- A. Authority. The city attorney is designated as the Chief Ethics Officer of the City. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.
- B. Conflicts of Interest. Except as otherwise provided in this subsection, the Chief Ethics Officer shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his or her own initiative when he or she acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.
- C. Conflicts of Interest for the Chief Ethics Officer. When a conflict of interest exists in a particular matter, the Chief Ethics Officer may request that the governing body hire another attorney, individual, or entity to act as Chief Ethics Officer.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

**Sec. 2-760. Ethics Committee.**

- A. Creation and membership. There is created the Ethics Committee for the City. The Ethics Committee shall consist of the Director of Human Resources, the Chief Financial Officer, and the Chair of the City Council or his or her designee.
- B. Duties of the Ethics Committee. The Ethics Committee shall work with the Chief Ethics Officer to review ethics opinions as provided in subsection C of this section and to perform such other duties as provided in this Article.
- C. Ethics opinions.
  - 1. An official or employee subject to this Article may request an ethics opinion; provided, however, that the Ethics Committee or the Chief Ethics Officer shall retain sole discretion concerning whether such a formal ethics opinion should be issued.
  - 2. The Chief Ethics Officer shall place and publish formal ethics opinions on the Office of City Attorney's website for public access.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

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### Sec. 2-761. Complaints and Complaint Procedures.

- A. Complaints against an official or employee.
1. Any citizen of the City, including but not limited to officials or employees, may submit a complaint in writing and under oath, alleging that one or more officials or employees have violated or may have violated any provision of this Article within ninety (90) days following of the alleged violation.
  2. The complaint must be signed by the complainant and notarized, and must contain the following:
    - (i) The complainant's legal name and current mailing address;
    - (ii) The name or names of any officials or employees who committed or may have committed the alleged violation;
    - (iii) A summary of the facts giving rise to the complaint; and
    - (iv) Some explanation of why those facts constitute or may constitute a violation of this Article.
  3. Anyone filing a false complaint will be subject to the penalties for perjury.
  4. The Chief Ethics Officer, or his or her designee, may assist complainants in completing the form of a complaint.
  5. The complaint must be filed with the Chief Ethics Officer. Upon receipt, the Chief Ethics Officer shall promptly provide a copy of the complaint to the official or employee named therein and to the Ethics Committee. As used in this section, unless otherwise noted, the term "provide" means to send by U.S. mail or to hand deliver.
  6. The Chief Ethics Officer will evaluate the complaint, applying the law of the standards of conduct to the facts alleged in the complaint.
  7. Within twenty-one (21) days from receipt of the complaint, the Chief Ethics Officer shall issue a report and recommendation, including a copy of the complaint, to the Ethics Committee. The report should provide a conclusion as to whether the facts alleged in the complaint, if true, would give rise to a violation of this Article.

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8. After receiving the Chief Ethics Officer's report, the Ethics Committee shall review the Chief Ethics Officer's report, and may accept or reject the Chief Ethics Officer's recommendation. Based on its findings, the Ethics Committee is authorized to dismiss the complaint or make certain recommendations to the official, administrator, or chair of the board, commission, or committee on which an employee or official serves. .
  9. Any decision shall require the affirmative concurring vote of at least two members of the Ethics Committee. The decision shall be filed with the Chief Ethics Officer, who shall within a reasonable amount of time place all such decisions on City Attorney's office website for public access, and provide to the complainant and to the official or employee named in the complaint.
  10. From the time a complaint has been received by the members of the Ethics Committee, until a written decision has been issued, no member of the Ethics Committee shall participate in any communication regarding the allegations or merits of the complaint, outside of the Ethics Committee's public meetings or hearings, except as contemplated by these procedures.
  11. If a complaint is filed against a member of the Ethics Committee, that member shall recuse himself or herself from any discussion contemplated by this article pursuant to the process outlined herein.
- B. Complaints against members of City Council. When a complaint of a violation of any provision of this Article is lodged against a member of City Council, the Chief Ethics Officer shall present such complaint at the next regularly scheduled meeting of the City Council. Upon hearing the nature of the complaint, by a majority vote, the City Council shall determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If by a majority vote, the City Council determines that a complaint warrants further investigation, it shall authorize an investigation by the Chief Ethics Officer or another individual or entity chosen by the City Council.
- (Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

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**Sec. 2-762. Reporting; whistleblower protection; abuse of process; complicity.**

- A. It is the duty of every employee of the City to report, directly and without delay, to their supervisor, Chief Ethics Officer, or City Auditor any and all information concerning conduct which they know or should reasonably know to involve corrupt or other criminal activity, by an official or employee, which concerns his or her office or employment or by persons dealing with the City, which concerns their dealings with the City. The knowing failure of any official or employee to report as required above shall subject the official or employee to disciplinary action. For purposes of this Subsection A, a report made to the ethics hotline shall be considered a report to the City Auditor.
- B. Officials and employees are encouraged to report suspected ethical violations to the Ethics Committee.
- C. No official or employee shall use or threaten to use any official authority or influence to discourage, restrain or interfere with any other person for the purpose of preventing such person from acting in good faith to report or otherwise bring to the attention of the Ethics Committee information relating to an ethics violation or investigation.
- D. No official or employee shall use or threaten to use any official authority or influence to effect any action to retaliate against any person who reports or initiates a complaint, or otherwise assists in the investigation of an ethics complaint.
- E. No official or employee shall file a complaint with the Chief Ethics Officer absent a good-faith basis for the allegations.
- F. An official or employee shall not falsely accuse another official or employee of failing to comply with this Article.
- G. No official or employee may knowingly induce, encourage, or aid anyone to violate any provision of this Article.
- H. Any violation of this subsection shall be subject to investigation and action by the Chief Ethics Officer and the Ethics Committee.

(Ord. No. 11985, §2, 6-26-07; Ord. No. 12804, §1, 02-18-14)

**Sec. 2-763. Violations.**

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An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this Article is subject to punishment as provided by the Charter, City Code, or other applicable law and, in addition, is subject to censure by the governing body, which censure shall be made a part of the minutes of the governing body. Additionally, an appointed official or an employee who violates any provision of this Article is subject to disciplinary action.  
(Ord. No. 12804, §1, 02-18-14)

### **Sec. 2-764. Conduct during meetings.**

Conduct of individual members during meetings of any municipal board, commission, committee, authority, corporation, or other instrumentality is expected to reflect a total sense of respect for the office held by those assembled to conduct business. Members shall be courteous to one another, to any member of the administrative staff, as well as to other persons who may address the municipal board, commission, committee, authority, corporation, or other instrumentality. A member may not speak until recognized by the Chair and shall not be recognized the second time on the same subject matter until all members who wish to speak have had an opportunity to do so. Any disorderly conduct shall be noted by the Chair, and the offending member shall forfeit the privilege of the floor for the remainder of the meeting, except for the purpose of casting his or her vote.  
(Ord. No. 12804, §1, 02-18-14)

### **Sec. 2-765. Meeting attendance.**

Municipal board, commission, committee, authority, corporation, or other instrumentality members shall be prompt and regular in attendance for scheduled meetings. Failure of a member to be present at three consecutive scheduled meetings for a calendar year shall constitute grounds for terminating his/her membership. The removal of City Council members for failure to attend meetings is provided for in Title 8, Section 8.5 of the City of Chattanooga Charter and therefore not governed by this section.  
(Ord. No. 12804, §1, 02-18-14)

### **Sec. 2-766. Ethics Training.**

The ethics training program to be provided by the Ethics Committee in accordance with the City's ethics ordinance shall be mandatory for all City personnel described in Section 2-750. The training should not simply be a review of this ethics ordinance, policy or law. Instead, training should emphasize ethical decision making in complex and/or high pressure situations.  
(Ord. No. 12804, §1, 02-18-14)

### **Sec. 2-767. Ethics Pledge.**

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The following persons shall comply with the requirements of this section:

- (1) Any employee who serves in the Office of the Mayor;
- (2) Any Administrator or Director reporting to the Mayor;
- (3) Any employee who serves City Council; and
- (4) Any person who is appointed by the Mayor or the City Council to a statutory board, commission, authority, or agency on or after February 4, 2014.

As a condition of employment or appointment, any person meeting the requirements of this section shall sign, and upon signing shall be contractually committed to, the following pledge:

“As a condition, and in consideration, of my employment or appointment by the City of Chattanooga in a position of the public trust, I hereby acknowledge and agree to abide by the City of Chattanooga’s Code of Ethics as set forth in City Code Section 2-750 *et seq.* which I understand is binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by my government service.”

Any person required to sign a pledge under this section shall file such pledge with the Chief Ethics Officer within fourteen (14) days of commencing employment or appointment.  
(Ord. No. 12804, §1, 02-18-14)

**Secs. 2-768 – 2-774. Reserved.**

### ARTICLE XIV. AUDIT COMMITTEE

**Sec. 2-775. Audit Committee.**

(a) There is hereby established an Audit Committee of the City of Chattanooga (the “Audit Committee”). The Audit Committee shall consist of five (5) voting members. There shall be at least three (3) members with expertise in auditing, such as, but not limited to, a Certified Public Accountant, Certified Internal Auditor, or Certified Information Systems Auditor. The City Council shall appoint two (2) members who shall be experienced in business, law, information systems, or government. All members shall be residents of the City. Initially, members shall serve terms as follows: one (1) member for one (1) year, two (2) members for two (2) years, and two (2) members for three (3) years. Thereafter, appointments shall be for a term of three (3) years. Future appointees will be nominated by the Council Chair and require approval of a majority of the Council. All members shall continue to serve until their successors are appointed. Three (3) members shall constitute a quorum. No member of the Audit Committee shall have a direct or indirect interest in any contract with the

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City during their term of service, nor for one (1) year after their term of service. Nor shall any member, member of their immediate family, or regular member of their household, be employed by any City Department or any agency that obtains more than ten percent (10%) of its annual funding from the City.

(Ord. No. 12250, 6-9-09)

### **Sec. 2-776. Duties of Audit Committee.**

The Audit Committee shall meet as needed to perform its duties but shall not meet less than once quarterly and shall:

- (a) Review any audit plan prepared by the Internal Audit Division and recommend to the City Council additional audits that it deems advisable;
- (b) Monitor follow-up on reported findings of the Internal Audit Division to assure corrective action is taken;
- (c) Report to the legislative body on problems or problem areas at such times as deemed appropriate;
- (d) Provide oversight of the external audit;
- (e) Evaluate findings and recommendations of any peer review as required by recognized government auditing standards; and
- (f) Provide advice to the City Council Auditor, in performing audits or procuring contracted audit services.

(Ord. No. 12250, 6-9-09)

### **Sec. 2-277. Subversion of Audit Process.**

Any efforts or attempts to subvert the audit process shall be reported to the Audit Committee. Any effort or attempt to subvert the audit process by an employee of the City shall be grounds for dismissal. Each Audit Committee member shall be required to certify annually to the City Council that they are unaware of any efforts or attempts to subvert the audit process or alternatively to report any known or suspected attempts to subvert the audit process.

(Ord. No. 12250, 6-9-09)

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**Sec. 2-778. City Council Auditor.**

The City Council shall appoint a person to be the City Council Auditor, provided that this person may also be assigned other duties. The City Council Auditor shall have the authority to conduct audits and request funding for additional contract audit services based on need. Funding shall not to be withheld absent substantial cause. The City Council Auditor shall meet with the Audit Committee to assist with the development of an audit plan. In addition to planned audits, the City Council Auditor shall conduct special audits or investigations upon receiving reports of fiscal mismanagement or misappropriation. (Ord. No. 12250, 6-9-09)

**Secs. 2-779 – 2-780. Reserved.**

**ARTICLE XV. WHISTLE BLOWER PROTECTION**

**Sec. 2-781. Purpose.**

The purpose of this Article is to establish protection by confidentiality for City employees who report illegal, improper, wasteful or fraudulent activity in good faith. (Ord. No. 12376, 4-13-10)

**Sec. 2-782. Audit Committee.**

The Audit Committee appointed by the City Council shall be responsible for oversight of the provisions of this Article. It shall recommend to the mayor, administrators, and department heads internal controls or procedures that will tend to reduce fraud, waste, abuse, and illegal or unethical behavior. It shall recommend to the City Council policies and procedures needed to implement this article. It shall when warranted recommend to the City Council changes to the City Code or ordinances of the City. (Ord. No. 12376, 4-13-10)

**Sec. 2-783. Confidential Reports.**

(a) All City officials, appointees, and employees are required to report any instances of suspected waste, abuse, fraud or other illegal acts upon becoming aware of such suspect activity or issues within City government.

(b) The City shall maintain a telephone hotline number providing any employee, vendor, or member of the public the ability to anonymously and confidentially report any suspected fraud, waste, abuse, illegal or unethical behavior. The Audit Committee shall have oversight of the hotline's administration. In addition to a telephone hotline, web and e-mail based reporting may be utilized.

(c) The audit working papers of the internal audit staff regarding illegal, improper, wasteful or fraudulent activity or any investigation of illegal, improper, wasteful or fraudulent

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activity are confidential pursuant to T.C.A. 10-7-504(22) and, therefore, not open to public inspection.

(d) The Audit Committee shall keep all information confidential while an active investigation is being conducted. When an investigation results in a criminal indictment or arrest, it shall be considered active until disposed of by the judicial system. This shall not be construed to limit those conducting an actual investigation from revealing or discussing information as necessary to facilitate said investigation.

(e) Nothing in this ordinance shall be construed to limit, discourage, or prevent employees from reporting inappropriate or unethical activities directly to their supervisor, Administrator, the Mayor, the Human Resources Department or the Internal Audit Division.  
(Ord. No. 12376, 4-13-10)

### **Sec. 2-784. Employee protection.**

(a) Employees of the City of Chattanooga shall be protected from being disciplined, discharged, or subjected to threats thereof, or otherwise discriminated against in retaliation for bringing forth, in good faith, charges of fraud, unlawful conduct, unethical conduct, or conduct in violation of any City policy, directive, ordinance, or Charter provision by any official, employee, appointee, contractor, or vendor of the City.

(b) Good faith is established if an employee had a reasonable belief that an official, employee, appointee, contractor, or vendor of the City engaged in fraud, unlawful conduct, unethical conduct, or conduct in violation of a City policy, directive, ordinance, or Charter provision.

(c) An employee will not have protection under this Article if they were the subject of an ongoing or existing disciplinary action or investigation prior to filing a report of fraud, unlawful conduct, unethical conduct or conduct in violation of any City policy, directive, ordinance, or Charter provision.

(d) An employee who knowingly or with reckless indifference to the truth, makes a false report shall be subject to disciplinary and legal action.

(e) Employees who believe they have suffered retaliation must file a detailed written report within thirty (30) days from the date of the alleged retaliatory action or when the employee first had knowledge of alleged retaliatory action. The report must be filed with the Director of Internal Audit, the Administrator of Personnel, and the Chair of the City Council. The written report must include all the relevant facts concerning the alleged retaliatory action including:

- (1) The name and work address of the complainant;

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- (2) The name and title of each City employee against whom the complaint of retaliation is made;
- (3) The specific type and date of retaliation;
- (4) A statement as to the facts that form the basis of the complaint of retaliation; and
- (5) A statement of the complainant's explanation of how his or her reported allegation of fraud or misconduct and/or participation in an investigation, proceeding, or hearing is related to the retaliation.

(f) All complaints alleging a violation of this Section shall be promptly investigated. In the event that the City Council determines that an investigation conducted by City staff would present a conflict of interest, an independent investigator may be appointed by the Audit Committee.

(g) Those involved in initiating, recommending, imposing and/or implementing disciplinary action against the employee shall not be in violation of this Article if they can demonstrate they had no knowledge that a report of fraud, unlawful conduct, unethical conduct, or conduct in violation of any City policy, directive, ordinance, or Charter provision had been filed by the employee prior to initiating disciplinary action against the employee.

(h) Nothing herein shall supplant any other remedies available to City officers and employees pursuant to the City Code.  
(Ord. No. 12376, 4-13-10)

**Secs. 2-785 – 2-790. Reserved.**