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ORDINANCE NO. 12414

AN ORDINANCE TO AMEND CHATTANOOGA CITY CODE, PART II, CHAPTER 2, ARTICLE I, SECTION 2-3, IN GENERAL, AND ARTICLE III, DIVISIONS 1 THROUGH 7, SECTIONS 2-136 THROUGH 2-174, AND TO REPEAL SECTION 2-193 OF THE PERSONNEL ORDINANCE.

SECTION 1. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 2, Article I, Section 2-3, In General, be and the same is hereby amended by repealing the existing section and substituting in lieu thereof the following:

**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-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.

SECTION 2. BE IT FURTHER ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 2, Article III, Divisions 1 through 7, Sections 2-136 through 2-174, be and the same are hereby amended by repealing the existing sections and substituting in lieu thereof the following:

**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.

*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.
- (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.

*Immediate family:* The employee's spouse and the employee or spouse's grandparents, parents, children, grandchildren, brother or sister and/or legally adopted relatives.

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

*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.

*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.

*Personnel Director:* The individual appointed by the Mayor, subject to confirmation of the City Council, who is the head of the personnel department.

*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.

*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.

*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.

#### **Sec. 2-139. Personnel Department; Director**

The City Personnel 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 Personnel Director, who shall be in charge of the department, shall be to:

- (1) Supervise the Personnel 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;
- (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.

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

The personnel 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 personnel director shall keep a record of qualified applicants for the various positions in the classification plan and, except as to non-classified service, the personnel director shall certify the names of those determined by testing procedures to be the most qualified of such available applicants to the mayor.

**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.

**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 personnel 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.

**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 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 Personnel 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.



**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.

**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.

**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.

**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.

**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.

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

- (a) The spouse and dependent children of an employee who would otherwise lose health care coverage because of:
  - (1) the employee's death;
  - (2) the employee's divorce or legal separation;
  - (3) a dependent child ceasing to be eligible for dependent coverage; or
  - (4) a Medicare ineligible spouse shall be entitled to continued health care coverage not to exceed thirty-six (36) months.
- (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).

- (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 personnel 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 personnel 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

- (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.

**Sec. 2-150. Hospitalization and other benefits after retirement.**

- (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; 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 =  $TMP - (YS) (TMP \text{ Contribution} / 25)$

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 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 the subsection (a) as of July 1, 2010, and firefighters or police officers hired on or before March 31, 1986, shall continue to be eligible for the benefits set-forth in subsections (a) through (e).
- (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).
- (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.

**Secs. 2-151 – 2-153. Reserved.**

**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.
- (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.

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

- (a) Whenever any job classification is created or modified, which the Personnel Director believes is exempt from Section 7 of the Fair Labor Standards Act, the Personnel 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.
- (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 been 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:
- (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.

**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.

**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 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 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.

**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.

**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.

**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.

**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.
  - (2) 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) 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 earn personal leave at a rate of 14.77 hours per two-week accrual period (equivalent to the established

biweekly payroll period) during the first ten complete years of continuous service.

Beginning with the first accrual period of the eleventh year of continuous service, such employees shall earn personal leave at a rate of 17.54 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 19.85 hours per two-week accrual period.\*

YEARS OF SERVICE	0-10	11-17	18+
Hours accrued biweekly	14.77	17.54	19.85
Hours accrued annually	384	456	516
Days accrued annually	32	38	43

- (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.

YEARS OF SERVICE	0-10	11-17	18+
Hours accrued biweekly	11.08	12.62	13.85
Hours accrued annually	288	328	360
Days accrued annually	36	41	45

- (3) 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.

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

- (4) 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. 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.
- (5) 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.
  - (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 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.
- (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.

**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:

- (a) Employees must establish a formal leave status (Family and Medical Leave or a 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) Unless the employee donating personal leave is of an equal or higher rate of pay than the employee receiving the transfer of personal leave, then the contribution of leave shall be pro rata reduced to account for the difference in pay.
- (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 Personnel Department, and except for members of the immediate family, may authorize the transfer of a minimum of 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 separate department heads if the donor employee and donee employee work in separate departments). After approval, the forms shall be routed to the Personnel 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 Personnel Department along with a copy of the memorandum denying the request. The intended recipient may file a grievance within the 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 Personnel Department. Hours transferred shall take into account the differences in wages between the donor employee and donee employee and as prescribed in Section 2-161 (d). The Personnel 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 with an unused balance of transferred personal leave.

The donee employee's department shall inform the Personnel 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 months of transferred personal leave from other employees within a three 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.

#### **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.

- (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.

**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 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.

**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:

(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, 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 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:

- (i) 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
  - (ii) 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:
  - (i) the date upon which the serious health condition commenced;
  - (ii) probable duration of the condition;
  - (iii) the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
  - (iv) 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 estimate calculated on an actuarial basis of the cost of providing health care coverage for health care that it pays under the following conditions:
  - (i) the employee fails to return from leave after the period of leave is expired; or
  - (ii) 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.

**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 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.

**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 will be granted paid leave for each calendar year for military service based on provisions in T.C.A. 8-33-109, as may be amended from time to time.
- (c) Every employee returning from military leave shall submit to his/her department head proof of the number of days spent on duty.

**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 a) who appear in court at the request of the office of the city attorney or b) 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.

- (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.

**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.

**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.

**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.

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

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.

**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.

**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;
  - (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.
- (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 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 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) An employee may be demoted one or more pay levels and one or more positions; provided, however, an employee whose demotion results in a loss of income in excess of ten percent (10%) of his or her gross wages, whether that income loss be from a single demotion or two (2) or more demotions within a period of three (3) years, shall be entitled to appeal the demotion to the City Council. Likewise, an employee may be suspended one or more times; provided, however, an employee whose suspension results in a loss of income in excess of ten percent (10%) of his or her gross wages, whether that income loss be from a single suspension or two (2) or more suspensions within a period of three (3) years, shall be entitled to appeal the suspension to the City Council. A demotion and/or suspension involving a cumulative loss of gross income of less than ten percent (10%) in any three (3) year period may be treated as a grievance to be resolved by the Mayor. When an appeal is provided for, notice of the appeal shall be filed with the Clerk of the City Council. The City Attorney shall examine any demotion of an exempt employee to ensure that the demoted employee remains exempt under the Fair Labor Standards Act.



- (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) days after such action has been taken against such employee by the Mayor. An employee shall be required to file a request for the Mayor to review the grievance prior to appealing to the City Council, and in the event the employee files a grievance with the Mayor, no appeal shall be filed with the City Council, until the grievance is acted upon by the Mayor or the Mayor has failed to act on same within thirty (30) days. Failure by the Mayor to act shall constitute an affirmation of the department head's action and, in such an event, the fifteen (15) day appeal period will begin immediately following the thirty (30) day period.

SECTION 3. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That Chattanooga City Code, Part II, Chapter 2, Article I, Section 2-193, Running for public office, be and the same is hereby amended by repealing the existing section and substituting in lieu thereof the following:

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

Whenever an employee runs for election to a public office, the constituency for which is composed in whole or in part by residents of the City, the employee shall be required to go on leave (1) from and after any public announcement by such employee of his/her candidacy for said public office, or (2) from and after commencing to actually campaign, or (3) from and after having qualified as a candidate for such elective office, whichever occurs first. The employee shall first use compensatory leave, then personal leave, and then go on leave without pay. Such leave shall extend until the employee withdraws his/her candidacy or until the date such employee is either finally elected or not elected; however, the mayor may grant such leave for a longer period of time if requested by such employee. 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.

SECTION 4. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that the provisions of existing City Code Section 2-161(b)(1) concerning personal leave for fire protection personnel shall remain in effect until further amendment.

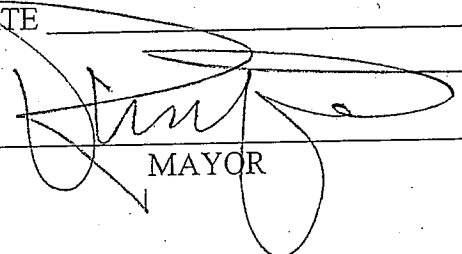
SECTION 5. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that the application of any changes of overtime and compensatory leave for employees pursuant to Section 2-155 shall be applied to payroll periods beginning July 2, 2010.

SECTION 6. BE IT FURTHER ORDAINED, That this Ordinance shall take effect immediately upon passage.

PASSED on Second and Final Reading  
July 20, \_\_\_\_\_, 2010.

  
\_\_\_\_\_  
CHAIRPERSON

APPROVED: \_\_\_\_\_ DISAPPROVED: \_\_\_\_\_

DATE \_\_\_\_\_, 2010  
  
\_\_\_\_\_  
MAYOR

/mms