

First Reading: 11/12/2013
Second Reading: 11/19/2013

ORDINANCE NO. 12781

AN ORDINANCE AMENDING CHATTANOOGA CITY CODE, PART II, CHAPTER 2, ARTICLE III, SECTIONS 2-137, 2-138, 2-149, 2-151, 2-152, 2-153, 2-165.1, 2-183 AND PART II, CHAPTER 2, ARTICLE XIII, SECTION 2-751, RELATIVE TO DOMESTIC PARTNERSHIP AND NON-DISCRIMINATION.

WHEREAS, the City Council of the City of Chattanooga desires to ensure that City employees are afforded equal protection against harassment and discrimination and have access to employment based on merit; and

WHEREAS, the City Council of the City of Chattanooga recognizes that the State of Tennessee precludes recognition of domestic partnerships granted by any state, but desires to provide certain medical and leave benefits to unmarried domestic partners; and

WHEREAS, to the extent not superseded by federal, state, or other city law or contrary to rights conferred by contract or separate legal instrument, a qualified domestic partner, as defined in Section 2-138 below, of a City employee shall be eligible for the same medical and leave benefits as are available to the spouse of a City employee.

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE:

SECTION 1. That Part II, Chattanooga City Code, Chapter 2, Article III, Division 1, Section 2-137 of the Chattanooga City Code is hereby amended by deleting subsection (b)(1) in its entirety and substituting in lieu thereof the following:

Sec. 2-137. General purpose.

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

- (1) Employment shall be based on merit and fitness, without regard to age, sex, race, sexual orientation, gender identity or expression, ethnicity, religion, physical disability, national origin, protected veteran or military status, or political affiliations, except where such category or class constitutes a bona fide occupational qualification.

SECTION 2. That Part II, Chattanooga City Code, Chapter 2, Article III, Division 1,

Section 2-138 is hereby amended by adding the following definitions in alphabetical order:

Sec. 2-138. Definitions.

Basic living expenses means the cost of basic food and shelter.

Affidavit of Domestic Partnership means a form provided by the Department of Human Resources that creates a domestic partnership when signed by the city employee and the domestic partner. By signing it, the city employee and the domestic partner attest, under penalty of perjury, that they both meet all of the requirements of domestic partners as provided herein.

Dependent and Dependency defined:

1. As used with respect to domestic partnership benefits these terms shall mean one who relies on another for financial support. Dependency does not depend on whether the dependent could support himself/herself without the supporter's earnings or whether the dependent could so reduce his/her expenses such that he/she could live independently of the supporter's earnings. Dependency does not depend on whether the dependent is employed and/or earns a substantial part of his/her own support. Dependency depends on whether the dependent was and is supported, in whole or in part, by the supporter's earnings.
2. An employee's domestic partner shall be deemed a "dependent" of the employee if:
 - (a) The employee makes contributions to the domestic partner of cash and supplies, and the domestic partner relies upon and uses those contributions to support himself/herself in order to maintain his or her standard of living. The contributions may be at irregular intervals and of irregular amounts; however, the contributions must have existed at least twelve (12) months, and must be continuing;

- (b) The employee is obligated, based upon his/her commitment set forth in the Affidavit of Domestic Partnership, to continue the financial support of the domestic partner for so long as the domestic partnership shall be in effect.; and
- (c) The domestic partner is supported, in whole or in part, by the employee's earnings, and has been for at least the last twelve (12) months.

Domestic Partner means two (2) adult people who meet the requirements set forth in Section 2-151 and is dependent on the employee as that term is defined in section 2-138.

Immediate family: The employee's spouse, the employee's domestic partner, and each person who is any of the following relations to the employee, the employee's spouse, or the employee's domestic partner:

- (a) grandparent;
- (b) parent;
- (c) child;
- (d) grandchild; and
- (e) sibling.

Share a primary residence means that two (2) persons share the same primary living quarters; however, it is not necessary that the legal right to possess the living quarters be in both of their names.

SECTION 3. That Part II, Chattanooga City Code, Chapter 2, Article III, Division 4, Section 2-149, is hereby amended by deleting subsections (a), (a)(4), (e) and (g)(3) in their entirety and substituting in lieu thereof the following and, as appropriate, by adding new sections below:

Sec. 2-149. Medical benefits for eligible employees.

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

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

- (4) a Medicare ineligible spouse or domestic partner.
- (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 experiences a qualifying life event as defined by IRS Section 125, for example but not limited to, when an employee 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 discharge, or voluntarily quits or resigns (this does not include retirement), or is laid-off for economic reasons, it is the employee's responsibility to notify the City Benefits Office within thirty (30) days of the qualifying life event. Upon notification of the qualifying life event, the City Benefits Office shall notify the City COBRA administrator who in turn shall notify any eligible employee or spouse, eligible employee or domestic partner or eligible employee or dependent child of a domestic partner of his or her right to select continued health care coverage pursuant to this section. The City COBRA administrator shall provide a separate notice to any dependent child not residing with the eligible employee or the spouse or domestic partner of the eligible employee. Such notice by the COBRA 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, domestic partner, or dependent 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. 2-151. Eligibility For Benefits—Qualified Domestic Partners.

To be eligible for coverage as a qualified domestic partner, the city employee and the domestic partner must complete and file the ‘Affidavit of Domestic Partnership’ in which they attest that:

- (a) The city employee and the domestic partner are over age 18 and are mentally and legally competent to enter a contract;
- (b) The city employee and the domestic partner have shared a primary residence for the preceding three hundred sixty-five (365) days the duration of which time both were over age 18;
- (c) The city employee and the domestic partner have chosen to share one another’s lives in a nonplatonic and committed relationship of mutual caring;

- (d) The city employee and the domestic partner are jointly responsible for basic living expenses regardless of actual contributions to such expenses, as demonstrated by a signed declaration of financial interdependence and by providing three (3) proofs of the following criteria to the satisfaction of the Human Resources Department:
- 1) Joint ownership of a primary residence or joint tenancy of a residential lease;
 - 2) Copy of a utility (water, gas or electric) invoice listing both domestic partners;
 - 3) Joint ownership of an automobile;
 - 4) Joint bank, credit account, or other liabilities;
 - 5) A will or trust designating either the city employee or the domestic partner as beneficiary or trustee of the other;
 - 6) A retirement plan or life insurance policy beneficiary designation form designating the city employee or the domestic partner as beneficiary of the other; and
 - 7) A durable power of attorney signed by the city employee or the domestic partner designating powers to the other.
- (e) Neither the city employee nor domestic partner has either another spouse as recognized by Tennessee or another domestic partner as defined in this Section 2-138, or has had such during the period describable in § 2-151(1) above.
- (f) The city employee and domestic partner are not lineal ancestors or descendants, and are not related to a degree of kinship that would otherwise prevent marriage from being recognized under the laws of the State of Tennessee.
- (g) The definition of “dependent,” as set forth in Section 2-138 shall require the employee and his/her domestic partner to attest that the domestic partner is a dependent of the employee and to also attest that the employee and domestic partner agree to notify the Human Resources Department in writing, within 30 days, if the domestic partner no longer meets all the requirements set forth in the definition of “dependent and “dependency.”

Sec. 2-152. Regulations for domestic partnerships.

The Human Resources Department is authorized to promulgate regulations to effectuate the purposes of Section 2-151. The regulations shall provide that any person who submits false information in connection with Section 2-151 shall be **subject to discipline as set forth in Section 2-174.**

Sec. 2-153. Termination of a domestic partnership.

- A. A domestic partnership terminates when at least one of the domestic partners no longer qualifies as a domestic partner as that term is defined in Section 2-138.
- B. If a domestic partnership ends, the employee must submit written notice to the Human Resources Department within thirty (30) calendar days after the termination of the domestic partnership. The notice must be dated and signed under penalty of perjury. The employee must also send a written copy of the notice to his or her former domestic partner by certified mail.

SECTION 4. That Part II, Chattanooga City Code, Chapter 2, Article III, Division 6, Section 2-165 is hereby amended by the addition of the following subsection:

Sec. 2-165.1. Extended family and medical leave.

(a) Any city employee who has been employed for at least twelve (12) months 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, domestic partner or parent who has a serious health condition, for his or her own serious health condition, or a qualifying exigency arising from a domestic partner, child or parent on active military duty in support of a contingency operation as a member of the National Guard or Reserves. Extended 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 or parents of domestic partners.
- (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, a child of a person standing in loco parentis, or a child of domestic partner 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) Next of kin shall mean the nearest blood relative other than the covered service member's domestic partner, child or parent.

(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, domestic partner, or parent who has a serious health condition, or 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 Extended Family and Medical Leave. An eligible employee who is the domestic partner, child, parent or next of kin of an active service member of the Armed Forces, including the National Guard or Reserves, is limited to a total of twenty-six (26) work weeks of unpaid leave during a single twelve (12) month period. Nothing herein shall be deemed to limit the right of any employee to use accumulated personal leave when the employee has a serious health condition that makes the employee unable to perform the functions of the position of such employee.

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

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

which is foreseeable, the employee shall:

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

(f) When leave is for the care of a seriously ill domestic partner, 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:

- (1) the date upon which the serious health condition commenced;
- (2) probable duration of the condition;
- (3) the appropriate medical facts within the knowledge of the health care provider regarding the condition; and
- (4) a statement that the eligible employee is needed to care for the child, spouse, domestic partner, 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) Extended Family and Medical Leave may be taken intermittently or on a reduced leave (part-time) basis. However, if Extended Family and Medical 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 Extended Family and Medical 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 Extended Family and Medical 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 the employee and the domestic partner work for the City, then the aggregate number of work weeks of leave of both the employee and the domestic partner 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:

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

(m) Employees meeting the requirements herein will be eligible for leave either as provided under this Section 2-165.1 or leave under Section 2-165 but not both.

SECTION 5. That Part II, Chattanooga City Code, Chapter 2, Article III, Division 10, Section 2-183 is hereby amended by deleting this section in its entirety and substituting in lieu thereof the following:

Sec. 2-183. Anti-harassment policy.

As an equal opportunity employer, the City is committed to promoting and maintaining a working environment free of all forms of sexual and other unlawful harassment and discrimination. Simply put, the City does not and will not tolerate illegal harassment of its employees. Any form of harassment related to an individual's race, color, sex, religion, national origin, age, disability, sexual orientation, gender identity or expression, and ethnicity is a violation of this policy and will be treated as a disciplinary matter. The term "harassment" includes, but is not limited to, slurs, jokes and other verbal, graphic, or physical conduct, statements, or materials relating to an individual's race, color, sex, religion, national origin, age or disability sexual orientation, gender identity or expression, and ethnicity. "Harassment" also includes sexual advances, requests for sexual favors, unwelcome or offensive touching, sexually provocative or abusive language, and other verbal, graphic, or physical conduct of a sexual nature. Unlawful harassment may result in the loss of a tangible job benefit, take the form of an

implied or express condition of employment, or it may result in an unduly hostile or oppressive work environment. If any employee has any questions about what constitutes harassing behavior, such employee is encouraged to contact his/her supervisor or the City Personnel Director.

SECTION 6. That Part II, Chattanooga City Code, Chapter 2, Article XIII, Section 2-183, Code of Ethics, of the Chattanooga City Code is hereby amended by deleting subsection (c) in its entirety and substituting in lieu thereof the following:

Sec. 2-751. Definition of "personal interest."

(c) Any such financial, ownership, or employment interest of the official's or employee's spouse or domestic partner, parent(s), stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

SECTION 7. That Part II, Chattanooga City Code, Chapter 2, Article III, Division 4, Section 2-153.1 is hereby amended by the addition of the following:

Sec. 2-153.1 Severability.

Any provision of this Ordinance which shall be determined to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision and all other provisions shall remain in full force and effect.

SECTION 8. That the provisions of this Ordinance are not intended to create any contractual rights between the City and its employees.

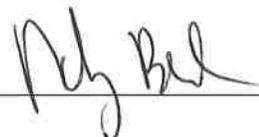
SECTION 9. BE IT FURTHER ORDAINED, That this Ordinance shall take effect at the beginning of the City's 2014 renewal period of the employee health insurance program.

Passed on second and final reading: November 19, 2013



CHAIRPERSON

APPROVED: DISAPPROVED:



MAYOR