

Chapter 2

ADMINISTRATION¹

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¹ **Cross references**—Air pollution control board, § 4-6; beer board, § 5-16 et seq.; control of airport, Ch. 8; beautification commission, § 9-16 et seq.; city court clerk, § 12-36 et seq.; civil defense, Ch. 13; board of electrical examiners, § 14-31 et seq.; fire department, § 16-26 et seq.; police department, § 16-41 et seq.; bureau of fire prevention, § 17-16 et seq.; board of examiners of gasfitters and installers, § 19-51 et seq.; better housing commission, § 21-5 et seq.; metropolitan transit authority, Ch. 23; administration of traffic rules and regulations, § 24-61 et seq.; Miller Park board, § 26-71 et seq.; board of examiners of plumbers, § 27-36 et seq.

² **Editor's note** - Division referenced in Ord. No. 11975, § 1, 6-5-07, was renumbered to follow existing Divisions.

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- Art. VI. Memorial Auditorium, §§ 2-581 – 2-600**
- Art. VII. Municipal Planning Commission, §§ 2-601 – 2-620**
- Art. VIII. Inspection Department, §§ 2-621 – 2-640**
- Art. IX. Human Services Department, §§ 2-641 – 2-660**
- Art. X. Supplemental Pension Benefits, §§ 2-661 – 2-690**
- Art. XI. Suspension and Debarment of Contractors,
§§ 2-691 – 2-710**
- Art. XII. Office of Multicultural Affairs³
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- Art. XIII. Boards and Commissions
§ 2-750**

ARTICLE I. IN GENERAL

Sec. 2-1. Corporate seal.

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

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

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

The mayor shall report to the city council any violation or neglect of duty on the part of any officer which may come to his knowledge.
(Code 1986, §2-2; Ord. No. 9654, §2, 01-06-92)

³ **Editor's note**--Formerly Human Rights and Human Relations Commission, repealed by Ord. No. 11767, § 1, 11-22-05.

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Sec. 2-3. Office hours of departments.

The office hours to be maintained by the departments of the city government having offices in the city hall shall be from 8:00 a.m. to 4:30 p.m., with forty-five (45) minutes for lunch, Monday through Friday, except on legal holidays.

(Code 1986, §2-3)

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

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

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

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

Each department and agency of the city shall, under the supervision of the city finance officer, keep a perpetual inventory of the city property under its control, and shall furnish such reports in relation thereto as the city finance officer may require.

(Code 1986, §2-5; Ord. No. 9654, §4, 01-06-92)

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

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

(Code 1986, §2-6)

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

Contributions during each fiscal year, in the sum of twenty cents (\$0.20) per hour, fifteen cents (\$0.15) per hour, and fifteen cents (\$0.15) per hour, may be paid to the Central Pension Fund of the International Union of Operating Engineers and Participating Employers; Central States Southeast and Southwest Areas Pension Fund; and Laborers' International Union of North America National (Industrial) Pension Fund, respectively, for pensions coverage of certain hourly employees of the city. Specific payments, whether past due or to become due, or contracts for future payments, shall be authorized by resolution adopted by the city council.

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

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

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

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

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

(Code 1986, §2-8)

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

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

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

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

Cross reference--City human services department, §2-441 et seq.

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

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

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

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

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

(Code 1986, §2-10)

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

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

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

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

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

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

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

(Ord. No. 10849, §1, 05-11-99)

Secs. 2-13 – 2-25. Reserved.

ARTICLE II. OFFICERS⁴

⁴ **Cross reference**—City court clerk, § 12-36 et seq.; fire and police departments, Ch. 16; city traffic

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DIVISION 1. GENERALLY

Secs. 2-26 – 2-40. Reserved.

DIVISION 2. CITY ATTORNEY⁵

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

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

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

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

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

(Code 1986, §2-42)

Sec. 2-43. Docket and opinion book.

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

(Code 1986, §2-43)

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

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

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

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

engineer, §24-96 et seq.

⁵ **Charter reference**—City attorney generally, §3.61 et seq.

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

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Each assistant city attorney shall be a practicing attorney, and shall be a resident of the state licensed to practice in the state. The assistant city attorney shall be subordinate to and shall assist the city attorney in the performance of the duties incident to his office.
(Code 1986, §2-45)

Sec. 2-46. Appointment of subordinates.

The city attorney shall appoint and/or contract for the services of assistants, special counsel, agents and stenographers, or other employees who shall serve at the pleasure of the city attorney.
(Code 1986, §2-46)

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

The office investigator for the office of the city attorney is hereby created and established, which shall be composed of one (1) or more persons on a full-time, part time, temporary or contractual basis, who shall be subordinate to and shall assist the city attorney in the performance of the duties incident to his office. The appointment and services shall be pursuant to section 2-46. Upon appointment, such person shall comply with section 16-42; and shall have and possess the authority contained in section 16-45 and the last sentence of section 5-43, together with any other applicable ordinances or laws, but such appointment shall not be subject to the personnel policies of the city.
(Code 1986, §2-47)

Sec. 2-48. Payment for legal services.

The city attorney is authorized to execute contracts for professional legal services pursuant to sections 2-46 and 2-356, whereby such attorneys will be paid a maximum retainer, whether, as periodic fees or as a salary, against which charges for legal services rendered for general corporate legal counseling, advising and drafting, etc., on behalf of the city will be debited and any credit balance shall be applied against additional fees for legal services relating to litigation involving the city, including matters involving administrative tribunals, title search and certifications, and security transactions; and all of such compensation shall not be inconsistent with Rule 8, Canon 2-106(B)1-8, of the Tennessee Supreme Court; and, further, that such arrangement is authorized for all other or subsequent attorneys in the office of the city attorney; provided, however, that any such additional payments as fees for legal services rendered by a special counsel relative to litigation shall be within budgetary limitations, and in order to comply with such budgetary limitations any such professional legal service contracts with special counsel shall provide that all retainer and/or fee determinations shall be made by the city attorney and his judgment on such questions shall be final and conclusive.
(Code 1986, §2-48)

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Secs. 2-49 – 2-60. Reserved.

DIVISION 3. CITY FINANCE OFFICER⁶

Sec. 2-61. Oath of office.

The city finance officer shall, before entering upon the discharge of the duties of his office, take an oath to faithfully and honestly discharge such duties.
(Code 1986, §2-61; Ord. No. 9654, §8, 01-06-92)

Sec. 2-62. Official bond.

The city finance officer shall execute a guaranty bond in the penal sum of one hundred thousand dollars (\$100,000.00) before entering upon the duties of his office, conditioned that he will faithfully and fully discharge all the duties imposed on him by law or ordinance, and will well, truly and faithfully pay over and account for, according to law, all money or funds that may come into his hands, or under his control, by virtue of his office.
(Code 1986, §2-62; Ord. No. 9654, §8, 01-06-92)

Sec. 2-63. Custody of public records.

The city finance officer shall be responsible for the care and protection of all public records kept at the city hall whose custody is not assigned to another officer by law or ordinance.
(Code 1986, §2-63; Ord. No. 9654, §8, 01-06-92)

Sec. 2-64. Resolution book.

The clerk of the city council shall maintain a suitable wellbound book, to be called “resolution book,” in which he shall copy all resolutions passed by the city council. He shall place at the head of each resolution entered an appropriate caption indicating the nature of such resolution, with the name of the mover, and shall properly enter the caption in the index of the book, with the number of such resolution, and the number of the page in the book on which it is copied. He shall not be required to spread any resolution in full on the minute book or journal of the board, but when reference to any resolution is made in the minutes, it shall be by caption or number and the number of the page of the resolution book where such resolution is copied.
(Code 1986, §2-64; Ord. No. 9654, §9, 01-06-92)

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

⁶Charter reference—City finance officer [auditor] generally, §3.95 et seq.

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

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

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

Sec. 2-66. Franchise book.

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

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

Sec. 2-67. Assistant city finance officer.

The office of assistant city finance officer is hereby created. The assistant city finance officer shall exercise the same authority as the city finance officer relative to countersigning vouchers, certifying the availability of funds, and certifying the correctness of public records, and he shall perform such other duties as may be imposed upon him from time to time by the city finance officer; however, the assistant city finance officer at all times shall be subordinate to and shall assist the city finance officer in the performance of the duties incident to his office. When the office of the city finance officer is vacant, or when the city finance officer is absent or unable to perform his duties, the assistant city finance officer shall act for and in the stead of the city finance officer. The assistant city finance officer shall be appointed by the city finance officer with the approval of the mayor and city council, but shall serve at the pleasure of the city finance officer, and shall give bond with good and sufficient sureties in the sum of fifty thousand dollars (\$50,000.00).

(Code 1986, §2-67; Ord. No. 9654, §11, 01-06-92)

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

(a) The office of budget officer is hereby created. He shall be appointed by the city finance officer with the approval of the mayor and city council, but shall serve at the pleasure of the city finance officer, and shall give bond with good and sufficient sureties in the sum of fifty

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

(b) The office of assistant budget officer is likewise created, who shall have the same authority as the budget officer but shall be subordinate to and assist the budget officer as well as the superiors of the budget officer.

(Code 1986, §2-68; Ord. No. 9654, §11, 01-06-92)

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

DIVISION 4. ENGINEER⁷

Sec. 2-81. Duty to prepare map.

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

(Code 1986, §2-81)

Sec. 2-82. Duty to survey streets.

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

(Code 1986, §2-82)

⁷**Charter reference**—City engineer generally, §3.111 et seq.

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

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

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

(Code 1986, §2-83)

Sec. 2-84. Reserved.

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

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

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

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

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

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

Secs. 2-87 – 2-100. Reserved.

DIVISION 5. TREASURER⁸

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

⁸ **Charter reference**—City treasurer generally, §3.102 et seq.; finance and taxation generally, Title 6.

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

Sec. 2-102. Official bond.

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

Sec. 2-103. Extra compensation prohibited.

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

Sec. 2-104. Tax collections and receipts.

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

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

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

Sec. 2-106. Same-Duties.

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

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(Code 1986, §2-106)

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

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

(Code 1986, §2-107)

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

The city treasurer shall, unless otherwise provided, issue all licenses and permits required under the provisions of this Code or any ordinance. Each person to whom a license is issued pursuant to the payment of a privilege tax shall keep such license posted conspicuously in his place of business for the entire year for which such license was issued. The city treasurer shall collect an administrative charge of five dollars (\$5.00) for the issuance of each such license and permit in addition to the fees imposed therefor under the provisions of this Code or any ordinance.

(Code 1986, §2-108; Ord. No. 9202, §1, 07-25-89)

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

Sec. 2-109. Licenses and permits.

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

(b) Settlement upon termination or transfer of business.

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

(2) The person's successor, successors, or assigns, if any, shall withhold sufficient of the purchase money to cover the amount of such taxes, interest and penalties due and unpaid until such former owner shall produce a receipt from the proper city tax collector stating that no taxes, interest or penalties are due.

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- (3) If the purchaser of a business or stock of goods shall fail to withhold the purchase money as above provided, the purchaser shall be personally liable for the payment of the taxes, interest and penalties accruing and unpaid on account of the operation of the business by any former owner, owners, or assigns.
- (4)
 - (i) Nothing in this section shall apply to any license transferring a business from one (1) location to another, within the municipality, on a one-time basis during any annual taxable period.
 - (ii) In this event a licensee shall notify the local tax collector at least five (5) days prior to the last day of business at the old location, submitting information and payment of a five dollar (\$5.00) recording fee for the new location.
 - (iii) Succeeding transfers by the same licensee, with the same annual taxable period, shall be subject to a final return and payment within fifteen (15) days, plus a new minimum business license and recording fee for the new location.

(Code 1986, §2-109; Ord. No. 10561, §1, 04-29-97)
Secs. 2-110 – 2-120. Reserved.

ARTICLE III. PERSONNEL ORDINANCE⁹

⁹ **Cross reference**—City authorized to contribute to pension funds created and operated by labor organizations, §2-7; mayor authorized to prescribe rules and regulations for police department, §16-43; superintendent authorized to issue rules and regulations for administration of garbage and refuse chapter, §18-4; superintendent's authority to make rules and regulations for identification of private garbage collectors, §18-67; minimum pension for teachers with 25 years service, §30-1; pension for personnel for whom city receives reimbursement, §30-2.

ADMINISTRATION

DIVISION 1. GENERAL

Secs. 2-121 – 2-135. Reserved.

Sec. 2-136. Title.

This division shall be known as the “Personnel Ordinance.”

Sec. 2-137. General purpose.

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

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

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

(2) Just and equitable incentives and conditions of employment shall be established and maintained.

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

(d) This article is controlling in regard to all city employment matters to the extent that this article is lawful under applicable state or federal laws. If any portion of this article is deemed unlawful under the City Charter or an applicable state or federal law, such portion shall be stricken and, if needed, replaced with the minimum standard necessary for the city to comply with its Charter or with the applicable state or federal law.

Sec. 2-138. Definitions.

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The following definitions shall apply in this division, unless the context clearly indicates otherwise:

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

Appeals: Procedures as prescribed by this division for appealing disciplinary actions, employee evaluations and other individual grievances.

Applicant: An individual who has or is applying in writing on a city application form for employment with the city.

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

Classified services: The classified service shall include positions in the city service except those listed under non-classified service.

Compensatory leave time: Paid leave granted to certain employees to compensate them for work on holidays, overtime work or work in excess of the standard work week or work day.

Contributions: The funds deducted from employees' pay for insurance and retirement.

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

Department: Any of the divisions of city government, as established by the mayor and approved by the council.

Disciplinary action: Action which may be taken by a department head or appropriate supervisor when an employee fails to follow the rules and regulations of his/her department, supervisor or the personnel administration sections of this Code. The types of disciplinary action are oral reprimand, written reprimand, suspension, demotion and dismissal.

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

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(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:* A new employee appointed to a regular classified position or an employee promoted who is required to successfully serve a probationary period.

(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 six (6) months.

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 physical, skills, performance, aptitude, preference, knowledge and psychological testing.

Exempt employee: An employee to whom the city is not obligated to pay overtime pursuant to the Fair Labor Standards Act.

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

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. For the purposes of overtime pay and compensatory leave, hours

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worked shall not include paid holidays (as established or approved by the city council) which are not actually worked. Generally, hours worked does not include meal periods free from duties nor does it include travel time to and from work or preliminary or postliminary activities which are not part of the principal activities of employment, nor does it include compensatory leave time taken pursuant to section 2-155 or to paid personal leave. In the case of employees engaged in fire protection or law enforcement activities, hours worked shall include all time the employee is effectively restricted from personal pursuits by the constraints of his/her employment.

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

Laborer: an employee whose job, regardless of job title, does not require special skill or fitness and does not require examination procedures to assess employment qualifications

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 compensatory leave provisions of this division, maximum allowable hours shall refer to maximum allowable hours worked and shall be forty (40) hours during any work week for all employees not engaged in fire protection or law enforcement activities; for employees engaged in fire protection or law enforcement activities, maximum allowable hours worked shall be set by the ratios provided in 29 C.F.R. §§ 553.201(a), 553.230. Thus, for employees engaged in fire protection, overtime pay and/or compensatory leave is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 212 hours to 28 days. Likewise, for employees engaged in law enforcement, overtime pay and/or compensatory leave is required when the ratio of the number of hours worked to the number of days in the work period exceeds the ratio of 171 hours to 28 days. In any event, court appearances which arise out of the employee's duties as a city employee shall be used in calculating an employee's maximum allowable hours.

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 the testing allowed by Section 2-143:

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- (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 or part-time employment;
- (5) Students, interns and college work-study employees;
- (6) Department heads (administrators), administrative or executive assistants under the direct supervision of the mayor or direct supervision of any department head. When the persons filling these positions are newly hired upon a change in administration, such persons may be terminated without cause by any newly elected official, viz: mayor. (The foregoing provision shall be effective from and after the change in administration in April 1987.) If, upon a change in administration, the elected official assigns a person to such a position who is already employed by the city, then upon a change in administration 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 assigned to an administrative or executive assistant position under the direct supervision of the mayor or any member of the city council.
- (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 to whom the city is obligated to pay overtime 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: An absence approved by an employee's department head or supervisor.

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

Personnel Director: The individual appointed by the mayor, subject to confirmation of the city council, who is the head of the personnel department.

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Probationary period: The designated period of time after an applicant is appointed or an employee is promoted in which the employee is required to demonstrate his 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); a semimonthly salary is multiplied by twenty-four (24) and divided by fifty-two, (52); and a monthly salary is multiplied by twelve (12) and divided by fifty-two (52). 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, denoting 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.

Supervisor: Any individual having authority on behalf of the city to assign, appraise, direct or discipline other employees, if the exercise of such authority is not of a mere routine or clerical nature, but 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 week: Shall be the fixed and regularly recurring period of one hundred sixty-eight (168) hours beginning on such day and hour of each calendar week as shall be established herein or by the mayor for any one (1) or more departments or divisions of government.

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;

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- (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.

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Every employee 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.

DIVISION 2. QUALIFICATIONS

Sec. 2-142. Basis for determining qualifications for employment and promotion; physical examination.

(a) Qualifications for employment or in-service promotions shall be based upon merit and fitness. The personnel director shall work closely with the 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) 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.

(c) After an individual has been offered employment, such person may be required to have a medical examination at the expense of the city to determine his/her ability to perform certain jobs. The physician performing same shall indicate on the report to the mayor or department head whether such person is medically able to perform the duties of the job. Prior to the examination a written job description shall be furnished to the physician.

(d) If an employee is not able to perform the essential functions of his/her job with reasonable accommodation, then he/ she may be subject to removal from the position.

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

(a) Any employee of the department of fire and police participating in and covered by the Fire and Police Pension Fund shall submit to a medical examination after an offer of employment is made. After employment, such employees 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

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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 fitness-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 with a copy to the employee. All screening tests and medical examination reports shall be maintained as a confidential record under *Tennessee Code Annotated §§ 10-7-503 and 10-7-504* and in compliance with Federal law.

(b) All employees of the department of fire and police who are participants in the Fire and Police Pension Fund and fire and police emergency dispatchers shall be subject to testing for drugs and alcohol in a manner comparable to regulations of the U. S. Department of Transportation for testing of commercial motor vehicle drivers.

(c) The department heads shall promulgate written policies and procedures prior to implementation of the provisions of this section.

(d) 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.

Sec. 2-144. Probationary period.

All employees employed or promoted to permanent positions shall serve a probationary period of six (6) months, except that employees appointed to sworn police officer or sworn firefighter positions or dispatcher/communication officer 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 and director:

- (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;

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- (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.

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

DIVISION 3. EVALUATION PROCESS

Sec. 2-146. Employee evaluation generally.

- (a) Each employee shall periodically receive a written evaluation of his/her work by his/her supervisor(s). The employee performance review system shall be based upon the specific job classification of the employee which is based upon specific tasks performed by the employee in the city government. Evaluation categories may differ among city employees depending upon the job they perform and the tasks which are expected of the employee. Each employee shall be furnished, in advance, a copy of the rating instrument to be used for his/her particular job so that he/she may be aware of the skills, job behaviors, job characteristics, and other performance indicators on which he/she is being evaluated.
- (b) 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.
- (c) Regular employees shall receive performance evaluations at least once each year.

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

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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.

Each employee shall have the opportunity to review every written periodic evaluation made of the employee. Upon review of the evaluation the employee shall note in writing that the evaluation is agreeable or disagreeable and, if disagreeable, in what respect(s) it is disagreeable. 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 at Sections 2-177 - 2-178 of the Chattanooga City Code.

DIVISION 4. BENEFITS

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).

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(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

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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

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(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

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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

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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.

Sec. 2-151. Salary payments to injured or disabled employees.

(a) Any employee of the city who sustains a job-related injury, disability or condition so as to be incapacitated for service shall be paid his/her salary for such period of incapacity, but not to exceed six (6) months (1560 hours for Fire Department personnel working shifts and 1040 hours for all other employees) per injury including any initial, follow-up or exacerbation-related treatments. The employee is required to follow the City's program for the treatment for work-related injuries, including initial, continued and follow-up treatments. When an employee sustains an injury, disability or condition, an incident report shall be prepared by the employee's supervisor and filed with the department within 24 hours and copies shall be sent to the Benefits Office for processing of the injury claim. The affected employee shall utilize physicians and facilities approved by the Employee Benefits Office or its designee.

(b) If an employee placed on injured-on-duty leave status fails to attend follow-up medical treatment, without prior notification to the physician, all injured-on-duty wage benefits will be suspended until a makeup appointment is attended. If an employee fails to attend two scheduled work-related medical appointments, without prior notification, he will be subject to suspension from his position until an updated status is obtained from the treating physician before resuming injured-on-duty status. If an employee fails to attend three medical appointments, without prior notification, he will be removed from injured-on-duty status, and will be subject to further disciplinary action.

(c) If such injuries arise out of an accident caused by or contributed to by the negligence of a third party, no payment of salary, medical expenses or other related

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expenses shall be made by the city until the employee shall execute a subrogation and assignment agreement to be approved by the city attorney as to form assigning to the City all claims or causes of action which the employee may have to recover against any third person to the extent of any or all such payments as are made by the City. Said subrogation and assignment agreement shall include an assignment by the employee to the city of any claim or claims which the employee may have against the employee's uninsured motorist insurance carrier or the employee's homeowner's insurance carrier.

Sec. 2-152. Death benefits.

If any employee of the city dies as a result of job-related injuries sustained in the course of his/her employment, there shall be paid to his/her spouse, or dependents if there is no spouse, the sum of four thousand dollars (\$4,000.00). This section shall not apply to members of the Fire and Police Pension Fund who are otherwise covered as to a death benefit.

Sec. 2-153. Hospital, medical, or drug expenses.

(a) The city shall pay any hospital, medical, or pharmacy bills when any employee of the city sustains a job-related injury, disability or condition; provided, that such payment shall not be made when such member has been or is to be reimbursed by a third party because such third party caused or contributed to the injury, disability or condition. Except in cases requiring emergency care, employees affected by an on-the-job injury or illness shall obtain their medical care from providers approved by the Employee Benefits Office or its designee.

(b) If such injuries arise out of an accident caused by or contributed to by the negligence of a third party, no payment of salary, medical expenses or other related expenses shall be made by the city until the employee shall execute a subrogation and assignment agreement to be approved by the city attorney as to form assigning to the city any and all claims or causes of action which the employee may have to recover against any third person to the extent of any or all such payments as are made by the city. Said subrogation and assignment agreement shall include an assignment by the employee to the city of any claim or claims which the employee may have against the employee's uninsured motorist insurance carrier or the employee's homeowner's insurance carrier.

(c) Prior to any treatment being rendered, other than emergency medical treatment, the employee must contact his supervisor, who will in turn follow the City's job-injury reporting procedures. It is the affected employee's responsibility to keep his/her supervisor and department informed of all medical treatments and directives issued by the treating physician. These medical directives include, but are not limited to,

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attending diagnostic and therapy appointments, taking medications as prescribed and complying with all restrictions relating to the progressive attainment of maximum medical improvement. Any physical activity restrictions, prescriptions and postscriptions rendered by a physician in the course of a work-related injury treatment apply 24 hours a day during the recovery period. A directive of “no-work”, “limited duty”, or any other condition as specified by the treating physician applies to the injured employee’s primary employment with the City as well as to all secondary employment. Violations of this section shall result in cessation of job-related medical and wage compensation benefits for the injury, and can result in disciplinary action by the City.

(d) The City shall only pay for any hospital, medical or pharmacy billings for an employee who has sustained a job-related injury, disability or condition unless the employee has followed the City’s injured-on-duty program. The attending physician shall submit all statements, billings or requisitions for treatment, medications, etc., to the Benefits Office, or their designee, for disbursement. Except for emergency care, no job-related billings for treatment shall be paid unless the employee has followed these procedures. Any employee incurring expenses for which he/ she seeks reimbursement under this section shall submit all requests to the Benefits Office for payment within one (1) year following the date upon which such expense was incurred. The City shall not reimburse any expenses which have not been filed within this one-year period.

Sec. 2-154. Retention of sick leave and annual leave benefits accrued on or before March 29, 1988.

All hourly employees who began service under the city council of the city prior to June 22, 1982, which was the effective date of Personnel Ordinance No. 8012, who have previously accrued annual leave and sick leave benefits as are indicated by the files of the City of Chattanooga existing on March 29, 1988, and who have been retained as employees of the City of Chattanooga without any break in city employment to the effective date of this ordinance since their date of original service and are classified at the effective date of this ordinance as regular permanent employees, shall be allowed to retain accrued sick leave and annual leave benefits existing within city records on or before March 29, 1988. All future benefits of such employees shall be accrued in accordance with the permanent hiring dates of such employees as established by records of the City of Chattanooga existing on March 29, 1988.

DIVISION 5. OVERTIME

Sec. 2-155. Overtime and Compensatory Leave.

(a) Whenever any job classification is created or modified, which the Office

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of the City Personnel Director believes is exempt from Section 7 of the Fair Labor Standards Act, the Office of the City Personnel Director shall forward the job description of such classification to the office of the City Attorney, which shall advise the Mayor, City Finance Officer, the City Council and the Personnel Director within thirty (30) days whether in his/her opinion such classification is exempt from the provisions of Section 7 of the Fair Labor Standards Act. The City Council, as advised by the City Attorney, shall declare by resolution employment positions that are exempt from the overtime pay provisions of the Fair Labor Standards Act.

(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.

(c) A supervisor may require an employee to work on holidays or at any time when circumstances require work beyond the maximum allowable hours. All other employees engaged in fire protection or law enforcement activities shall be subject to duty and call in case of emergency.

(d) The office of the City Finance Officer shall monitor overtime records and shall 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 or her department so as to minimize the amount of overtime pay and compensatory time paid by the city. Employees eligible for overtime pay or compensatory leave shall only work beyond the maximum allowable hours when it is authorized by a department head or authorized supervisor. Any employee who fails to get authorization for working beyond the maximum allowable hours shall be subject to discipline up to and including termination. However, no department head or supervisor shall deny overtime pay for work performed beyond the maximum hours allowable that has been already been performed regardless of whether such overtime was previously authorized. The Administrators for the Departments of Fire and Police shall establish written policies on overtime pay 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) Where allowable, compensatory time will be given to city employees in lieu of overtime. Such compensatory time shall be paid leave at the employee's regular rate and shall be earned at a rate described below.

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(g) No overtime compensation or 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.

(h) The provisions of this paragraph shall apply to compensatory leave for all employees in non-exempt positions:

(1) In the event a non-exempt employee works more than his/her maximum allowable hours, he/she shall be compensated for such hours worked at the overtime pay rate of one and one-half (1.5) times his/her regular rate of pay or shall be credited with compensatory leave equal to one and one-half (1.5) times the number of excess hours worked.

(2) A non-exempt employee normally scheduled to work five (5) eight (8) hour days a week shall be compensated for work on a sixth consecutive day worked during a workweek at the rate of one and one-half (1.5) times the regular rate at which he/she is paid and at the rate of two (2) times the regular rate at which he/she is paid for work on a seventh consecutive day worked during a workweek. Although this work counts toward an employee's maximum allowable hours, the special pay accrued from this work shall not be used to calculate an employee's regular rate and shall be creditable toward any overtime compensation payable to an employee.

(3) A non-exempt employee normally scheduled to work four (4) ten (10) hour days a week shall be compensated for work on a fifth or sixth consecutive day worked during a workweek at the rate of one and one-half (1.5) times the regular rate at which he/she is paid and at the rate of two (2) times the regular rate at which he/she is paid for work on a seventh consecutive day worked during a workweek. Although this work counts toward an employee's maximum allowable hours, the special pay accrued from this work shall not be used to calculate an employee's regular rate and shall be creditable toward any overtime compensation payable to an employee.

(4) For every hour over eight (8) that a non-exempt employee shall work in a workday, he/she shall be compensated for such hours worked at the rate of one and one-half (1.5) times his/her regular rate of pay. Although this work counts toward an employee's maximum allowable hours, the special pay accrued from this work shall not be used to calculate an employee's regular rate and shall be creditable toward any overtime compensation payable to an employee.

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- (5) Payment for accrued compensatory time shall be paid at the rate earned by the non-exempt employee at the point the employee utilizes the compensatory time. Upon termination of employment, a non-exempt employee shall be paid for unused compensatory time at the greater of (i) the average regular rate of compensation received by such employee during the last three (3) years of the employee's employment; or (ii) the employee's final regular rate.
- (6) A non-exempt employee who has accrued 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. Mere inconvenience is an insufficient basis for denial of a request for compensatory time off. For a supervisor to turn down a request from a non-exempt employee for compensatory time off requires that the supervisor reasonably and in good faith anticipate that it would impose an unreasonable burden on the department's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the non-exempt employee's services. Likewise, whether a request to use compensatory time has been granted within a "reasonable period" will be determined by considering the customary work practices within the non-exempt employee's department based upon the facts and circumstances in each case. Such practices include, but are not limited to, (i) the normal schedule of work, (ii) anticipated peak workloads based on past experience, (iii) emergency requirements for staff and services and (iv) the availability of qualified substitute staff.
- (7) 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 compensatory leave. Other non-exempt employees may only accrue up to 240 hours of compensatory leave.
- (8) A non-exempt employee cannot transfer accrued compensatory leave to another employee.
- (9) When measuring a non-exempt employee's entitlement to special pay, any hour worked by a non-exempt employee may be affected only by the single highest applicable multiplier.
- (i) The provisions of this paragraph shall apply to compensatory leave for all employees in exempt positions through pay grade through 18:
- (1) In the event an exempt employee through pay grade 18 works more than

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his/her maximum allowable hours, he/she shall be compensated with compensatory leave equal to one (1.0) times the number of excess hours worked. For every hour over eight (8) that such an employee shall work in a workday, he/she shall be compensated with compensatory leave equal to one (1.0) times the number of excess hours worked.

(2) An exempt employee through pay grade 18 normally scheduled to work five (5) eight (8) hour days a week shall be compensated for hours worked on the sixth and seventh day with compensatory leave equal to one (1.0) times the number of excess hours worked.

(3) An exempt employee through pay grade 18 normally scheduled to work four (4) ten (10) hour days a week shall be compensated for hours worked on the fifth, sixth, or seventh day with compensatory leave equal to one (1.0) times the number of excess hours worked.

(4) An exempt employee through pay grade 18 may accrue up to a maximum of eighty (80) hours compensatory leave.

(5) An exempt employee through pay grade 18 cannot carry over compensatory leave from one fiscal year to the next unless earned in the last calendar month of the fiscal year, in which case the leave must be used within the first sixty (60) days of the following fiscal year.

(6) An exempt employee through pay grade 18 cannot transfer compensatory leave to another employee or from one division to another.

(7) A supervisor may require an exempt employee through pay grade 18 to use his/her earned compensatory leave at any time.

(8) It shall be the duty of the supervisor of any exempt employee through pay grade 18 who is entitled to compensatory leave to make certain that such leave is taken as soon as possible, except in situations where it would be detrimental to the operation of the department.

(9) Compensatory leave for exempt employees shall be used prior to personal leave.

(10) Only a current employee may use compensatory leave, and there shall be no payment or other compensation upon retirement or separation from employment to any exempt employee through pay grade 18 for unused, accrued

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compensatory leave.

(j) Overtime pay and 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) Police Officers, Sergeants and Lieutenants engaged in law enforcement shall receive overtime pay for all hours worked in excess of their normally scheduled work day.

(B) If such personnel exceed the maximum allowable hours worked for the work period and have not been compensated pursuant to the preceding subsection, they shall receive overtime pay or compensatory leave for the remaining uncompensated overtime for the work period.

(C) 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.

(D) Notwithstanding any other provision of this section, the Chief of Police may, with the agreement of the officer, grant compensatory leave to a sworn, non-exempt employee in lieu of overtime pay in accordance with the Fair Labor Standards Act and regulations of the Department of Labor.

(Ord. No. 11753, §1, 10-11-05)

(2) *Fire protection personnel.* Firefighters, Lieutenants and Captains 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 shift.

(k) Exempt employees in pay grade 19 and above shall be ineligible to

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receive overtime pay or compensatory leave unless expressly authorized by the Mayor and/or City Council.

DIVISION 6. LEAVE/ABSENCES

Sec. 2-156. Charging absences against leave.

Periods of absence from duty shall be charged in multiples of one-half hour against the employee's leave record in accordance with Section 2-161. A fraction of a one-half hour shall be considered a full half hour.

Sec. 2-157. Leave periods to be stipulated.

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.

Sec. 2-158. Return to duty after leaves.

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, leaves of absence without pay, and compulsory leave.

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; 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.

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Sec. 2-161. Personal leave.

- (a) (1) Personal leave shall be granted to regular (permanent full-time) employees and executive, special and administrative assistants in lieu of holidays, sick leave, annual leave 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 one day of personal leave. An employee shall not be charged one day of 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, except as provided in subsection (a)(3) below. 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.
- (3) Unless otherwise provided, an employee who works on a regularly scheduled holiday shall be granted extra pay at a rate equivalent to his or her overtime pay rate, as provided in Section 2-155 of this Code. An employee granted such extra pay for work on a holiday shall not be charged for the use of one day of personal leave unless, as directed by the departmental administrator, one day of personal leave shall also be deducted and paid at the employee's regular rate of pay. Such extra pay shall not be used to calculate an employee's regular rate and shall be creditable toward any overtime compensation payable to an employee. Days off for all sworn personnel of the Departments of Fire and Police shall be governed by Section 2-161(b) of this Chapter.
- (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 during the first ten complete years of continuous service.

Beginning with the first accrual period of the eleventh year of continuous service after ten full years of continuous service have been completed, 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 after seventeen full years of continuous service have been completed, such employees shall earn personal leave at a rate of 19.85 hours per two-week

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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 9.54 hours per two-week accrual period during the first ten years of continuous service. Beginning with the first accrual period of the eleventh year of continuous service after ten full years of continuous service have been completed and with each year of continuous service thereafter, said employees shall earn personal leave at the rate of 11.08 hours per two-week accrual period of employment. Beginning with the first accrual period of the eighteenth year of continuous service after seventeen full years of continuous service have been completed and with each year of continuous service thereafter, said employees shall earn personal leave at a rate of 12.31 hours per two-week accrual period of employment

YEARS OF SERVICE	0-10	11-17	18+
Hours accrued biweekly	9.54	11.08	12.31
Hours accrued annually	248	288	320

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Days accrued annually	31	36	40
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(3) Personal leave shall be earned by all other regular employees at a rate of 9.54 hours per two-week accrual period during the first ten years of continuous service. Beginning with the first accrual period of the eleventh year of continuous service after ten full years of continuous service have been completed and with each year of continuous service thereafter, said regular employees shall earn personal leave at the rate of 10.77 hours per two-week accrual period of employment. Beginning with the first accrual period of the eighteenth year of continuous service after seventeen full years of continuous service have been completed and with each year of continuous service thereafter, said regular employees shall earn personal leave at a rate of 12.00 hours per two-week accrual period of employment. Regular 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	9.54	10.77	12.00
Hours accrued annually	248	280	312
Days accrued annually	31	35	39

(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

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by the provisions in subsection (b)(1) or (2) above shall be governed by the provisions of subsection (b)(3) above.

(c) Personal leave shall be earned by an employee who is on a leave of absence with pay, but shall not be earned by an employee who is on leave without pay or suspended without pay. 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) Each employee shall be eligible to carry over from one calendar year to the next calendar year not more than ten (10) days of personal leave in addition to his/her personal leave days carried over from the previous calendar year.

(3) Personal leave shall not be taken in excess of twenty-five consecutive working days per calendar year 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 up to and including dismissal.

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- (6) Personal leave shall be earned by an employee during any accrual period while on an approved injured-on-duty leave with pay. Notwithstanding the foregoing, any employee who is on an approved injured-on-duty leave during any calendar year may not carry over to the next calendar 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 calendar 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 calendar 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 year more than 100 days of personal leave.
- (8) New employees shall accrue personal leave after working one complete two-week accrual period. Current employees completing ten or seventeen years of employment will accrue personal leave at the new rate after working one full two-week accrual period after his/her anniversary date.
- (9) 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

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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) *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 lifetime;
- (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;
- (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) The employee receiving the transfer of personal leave shall have suffered a "personal emergency," which is defined as a medical or family emergency or other hardship that is likely to require an employee's absence from duty for a prolonged period of time and to result in a substantial loss of income to the employee because of the unavailability of personal leave. The employee desiring to receive the benefits of the

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transfer of personal leave or someone acting on the behalf of an incapacitated employee shall apply to the Administrator of the employee's department to participate in the leave transfer program. The Administrator 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) The length of the "personal emergency" for purposes of continued participation in the program shall not exceed one year.

(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 days and to have gone five (5) work days without pay.

(d) Unless the employee donating personal leave is of an equal or higher pay grade than the employee receiving the transfer of personal leave, then the contribution of leave shall be pro rata reduced to account for difference in pay. Provided that, no employee who manages or supervises other employees may receive a transfer of personal leave from any employee who he or she directly or indirectly manages or supervises.

(e) Employees who donate personal leave, other than members of the immediate family, must have accumulated more than thirty (30) days of personal leave to be eligible to transfer leave.

(f) The donor employee shall authorize the donation of personal leave to the donee employee upon forms provided by the Personnel Director, and except for members of the immediate family may authorize the transfer of a minimum of one and a maximum of two (2) days per donation. The donor employee's leave record will be adjusted to deduct the personal leave donated upon receipt of the request by the Personnel Director, and shall not be refunded. The personal leave days donated by all employees shall be available for the use of the employee suffering the "personal emergency"; however, the amount of leave taken may not exceed the length of the emergency. The Personnel Director shall establish conversion formulas to adjust for relative differences caused by the transfer of leave days to or from firefighters, police officers, or other employees whose leave days are not equivalent to the standard eight-hour leave day or for differences in wages where the employee donating leave is in a lower pay grade.

(g) An employee shall not be eligible to receive more than one year of transfer of personal leave from other employees within a five year term; subject to an exception granted in the discretion of the mayor for the good of the City. Provided, however, sworn members of the fire and police services shall not be eligible to receive more than six (6) months of transfer of personal leave from other employees within a

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five (5) year term for personal injuries caused by an on-the-job injury or job-related disease or condition; subject to an exception granted in the discretion of the mayor for the good of the City.

(h) 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. Leaves of absence without pay.

(a) Leaves of absence without pay may be granted to employees by ~~the mayor~~ their department heads. Employees shall be required to use all earned compensatory leave and personal leave prior to being placed on leave without pay, except in those cases where such leave is granted upon the recommendation of the department held so that the employee may accept temporary employment with another governmental agency and in which event there shall be prior approval by the mayor and the city attorney relative to the continuing liability of the City.

(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 cause 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.

(3) The total period of absence from city employment shall not exceed six (6) months.

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

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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 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, or for his or her own serious health condition, 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

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because of a mental or physical disability.

(5) Spouse shall mean a husband or wife, as recognized by the State of Tennessee

(6) 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 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, 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 for each employee on a rolling basis, beginning on the date on which the employee first takes FMLA leave. 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. Employees shall use personal leave, including accumulated personal leave, until it expires and the remaining leave shall be without pay.

(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 one (1) or two (2) working days of when the employee becomes aware of the need for FMLA leave. 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

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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.

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(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. Maternity leave.

(a) A female 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 "maternity leave").

(b) (1) A female employee who gives at least three (3) months' advance notice to the City of her anticipated date of departure for maternity leave, her length of maternity leave, and her intention to return to full-time employment after maternity leave, shall be restored to 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.

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- (2) A female employee who is prevented from giving three (3) months' advance notice because of a medical emergency which necessitates that maternity leave begin earlier than originally anticipated shall not forfeit her rights and benefits under this section solely because of her failure to give three (3) months' advance notice.
- (c) (1) Maternity 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 maternity leave. Further, maternity leave shall not affect the employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which she was eligible at the date of her leave, and any other benefits or rights of her employment incident to her employment position; provided, that the City need not provide for the cost of any benefits, plans or programs during the period of maternity 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 her maternity leave period.
- (3) The purpose of this section is to provide leave time to female employees for pregnancy, childbirth and nursing the infant, where applicable; therefore, if the City finds that the female employee has utilized the period of maternity 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 maternity leave, then the City shall not be liable under this section for failure to reinstate the employee at the end of her maternity leave.
- (4) Whenever the City shall determine that the employee will not be reinstated at the end of her maternity leave because her position cannot be filled temporarily or because she has used maternity 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 maternity pursuant to Tennessee Code Annotated § 49-5-701 *et seq.*, or to return for reinstatement after leave.

Sec. 2-167. Military leave.

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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 fifteen (15) days of paid leave for each calendar year for military service.

(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.

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.

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.

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.

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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.

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 superior, 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.

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.

Notwithstanding the excused absence as herein provided, the employee shall be entitled to such employee's usual compensation received from such employment, less the amount of the fee or compensation the employee received for serving as a juror.

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.

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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.

DIVISION 7. DISCIPLINE

Sec. 2-171. Disciplinary action generally.

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

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. Dismissal, suspension or demotion - authority of department heads; appeals.

(a) An administrator of a department or the mayor may for just cause discipline any city employee. Such disciplinary action may include dismissal, suspension and or demotion; unless otherwise provided in this Section, no such suspension shall exceed thirty (30) calendar days. After a dismissal, suspension or demotion, a statement of the reasons therefore shall be inserted in the employee's official personnel file, and a copy of said statement shall be given to the employee. Any

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dismissal, suspension or demotion of a city employee shall be reported to the City Council by the mayor or administrator taking such action. No employee in the classified service may be dismissed from an employment position without having had the opportunity to have a hearing before the administrator of his or her department in which the employee shall be advised of the charges of misconduct with which the employee is charged and in which the employee shall be afforded an opportunity to be heard in response to such charges.

(b) Employees who are charged with a felony may be either dismissed or suspended until such employee is either found guilty, not guilty, or the charges are dismissed; any such employee placed on suspension shall be placed on personal leave during the time of such suspension until such personal leave is exhausted and shall then be placed on leave without pay; if an employee is found guilty of a felony and has been on suspension, such employee shall be dismissed forthwith. If the felony charge is reduced to a misdemeanor charge, disciplinary action may be taken against the employee as otherwise provided in this ~~Section~~ Code; if the felony charge is dismissed for whatever reason, a suspended employee shall be returned to duty with back pay, provided that no payment for back pay shall be made for any delay in the criminal prosecution caused or requested by the employee or the employee's attorney, and provided further that if it appears that there is sufficient evidence to show that the employee is not a fit or suitable employee, then he or she shall be dismissed without back pay. Any employee returned to duty after a suspension shall be eligible for payment of back pay only for that time he/ she had been placed on leave without pay.

(c) Any employee who is charged with a 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 if, and only if, the conviction for such a misdemeanor offense prior to such employee's employment with the City would have otherwise disqualified such employee from the employment position occupied by such employee; any such suspended employee shall be placed on personal leave while available during such period of suspension and shall then be placed on leave without pay. 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 administrator, after taking all mitigating and aggravating factors into consideration, the conduct of the employee requires dismissal. If the misdemeanor charges are dismissed for whatever reason, a suspended employee shall be returned to duty with back pay, provided that no payment for back pay shall be made for any delay in the criminal prosecution caused or requested by the employee or the employee's attorney, and provided further that if it appears that there is sufficient evidence to show

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that the employee is not a fit or suitable employee, then he or she shall be dismissed without back pay. Any employee returned to duty after a suspension shall be eligible for payment of back pay only for that time he or she had been placed on leave without pay.

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

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

(f) Notwithstanding anything herein to the contrary, if after taking all circumstances into consideration including, but not limited to, the nature of the crime with which an employee has been charged, the nature of the evidence against the employee and all other relevant factors, the mayor or administrator of a department determines that the suspension of an employee charged with a felony or misdemeanor is warranted, such employee shall be suspended. Nothing in this subparagraph (f) shall prohibit the mayor or any administrator from re-evaluating and/or reversing a decision to suspend an employee charged with a crime.

(g) An employee may be demoted one or more pay grades 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 or a panel named therefrom. 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 or a panel named therefrom. 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.

(h) 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

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mayor. An employee shall be required to file a request for the mayor to review the grievance prior to appealing to the council, and in the event the employee files a grievance with the mayor, no appeal shall be filed with the 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 event, the fifteen (15) day appeal period will begin immediately following the thirty (30) day period.

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

Any city employee who shall be dismissed, suspended or demoted shall be furnished with written charges within twenty-four (24) hours from such disciplinary action that specifically state the offenses with which he/she is charged, which shall be signed by the department head or the department head's designated subordinate, except that such charges as to the department of fire and police must be signed by the department head.

Sec. 2-176. Discipline.

(a) No city employee shall be dismissed, suspended or demoted for political reasons or for any other unjust or arbitrary cause, or because of age, sex, 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 prescriptive medication during working hours;

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- (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 Section 2-174 of this Code;
- (6) Conduct unbecoming a public employee;
- (7) Absence from work without proper notification or authorization;
- (8) Participating in a strike, work stoppage, work slow-down, sick-in or other so-called job actions;
- (9) Conviction of a felony or misdemeanor, subject to the provisions of Section 2-174 of the City Code; or
- (10) 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 a department head, if he/she so sees fit, to provide by administrative directive for a departmental disciplinary review board to recommend disciplinary action prior to a decision by the department head.

DIVISION 8. GRIEVANCES

Sec. 2-177. Grievance procedure.

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

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

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

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

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

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

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

(c) An employee desiring to file a grievance must submit a written statement to a supervisor in his/her department stating the basis for the grievance and the relief sought. A supervisor receiving a grievance shall note the time and date of receipt and shall sign the grievance. A copy of the grievance shall be forwarded by the employee to the head of the employee's department. A grievance must be signed by the employee and must include the following:

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

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

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

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

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

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

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

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

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

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

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

Sec. 2-179. Personnel director available to counsel employees.

The personnel director or his/her designee shall be available to confer with any city employee concerning any grievance or on any other matter. Discussions pertaining to personal problems shall be kept strictly confidential. However, it shall be understood that there can be no secrecy in discussions of matters pertaining to the employee's job where there is a need for supervisory personnel to know. The duty of the personnel director shall be to assist in the settlement of grievances through the clearing up of any misunderstanding or the bringing to the attention of the proper authority of any variances from established policy, and he/she may in some instances be required to assemble needed information to determine facts.

DIVISION 9. TERMINATION OF EMPLOYMENT RELATIONSHIP

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

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

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

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

Sec. 2-181. Layoff generally.

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

Sec. 2-182. Implementation of layoff.

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

DIVISION 10. HARASSMENT

Sec. 2-183. Anti-harassment policy.

As an equal opportunity employer, the City is committed to promoting and

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

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

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

Sec. 2-184. Making complaints about harassment.

(a) Any employee who feels he/she is being subjected to harassment by anyone, including a co-worker, supervisor, or visitor, has an obligation to immediately contact one of the persons below with whom the employee feels the most comfortable. Complaints may be made orally or in writing to:

- (1) the employee's immediate supervisor;
- (2) the employee's department head;
- (3) the City's equal employment opportunity officer;
- (4) the city personnel director; or

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(5) the mayor.

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

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

(1) the employee's or official's name, department, and position title.

(2) the name of the person or persons committing the harassment, including their title(s), if known.

(3) the specific nature of the harassment, how long it has gone on, and any employment action (demotion, failure to promote, dismissal, refusal to hire, transfer, etc.) taken against the employee as a result of the harassment, or any other threats made against the employee as a result of the harassment.

(4) any and all witnesses to the harassment.

(5) whether such harassment has been previously reported, and, if so, when and to whom.

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

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

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

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

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

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

(i) Obtain a written statement from the person complaining of harassment which includes a comprehensive report of the nature of the harassment complained of, the times, dates, and places where the harassment occurred; and the investigator shall verbally question the person complaining of harassment about any information in the written statement which is not clear or needs amplification.

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

(iii) Obtain a written statement from the person against whom the complaint of harassment has been made. The investigator shall verbally question the person against whom the complaint of harassment about any information in the written statement which is not clear or needs amplification.

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

(b) *Complaints against an elected official.*

(1) Complaints of harassment against elected legislative and judicial officials

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shall be investigated by a city employee appointed by the mayor and any such complaints against the mayor shall be investigated by a city employee appointed by the city council.

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

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

(a) *Complaints against an employee.*

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

(2) Based upon the report, and his/her own investigation (where one is made) the department head of the department involved shall, within a reasonable amount of time not to exceed one workweek, determine whether the conduct of the person against whom a complaint of harassment has been made constitutes unlawful harassment. In making that determination, the department head of the department involved shall look at the record as a whole and the totality of the circumstances, including the nature of the conduct in question, the context in which the conduct, if any, occurred, and the conduct of the person complaining of harassment. The determination of whether harassment occurred will be made on a case-by-case basis.

(3) If the department head of the department involved determines that the complaint of harassment is founded, he/she shall take immediate and appropriate

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disciplinary action against the employee accused of harassment, consistent with his/her authority under the City charter, ordinances, resolutions or rules governing his/her authority to discipline employees.

(4) The disciplinary action shall be consistent with the nature and severity of the offense. Disciplinary action may include demotion, suspension, dismissal, warning or reprimand. A determination of the level of disciplinary action shall also be made on a case-by-case basis.

(5) A written record of disciplinary action taken shall be kept, including verbal reprimands. In all events, an employee accused of harassment shall be warned not to retaliate in any way against the person making the complaint of harassment, witnesses or any other person connected with the investigation of the complaint of harassment.

(6) In cases where the harassment is committed by a non-employee against a City employee in the workplace, the department head of the department involved shall take whatever lawful action against the non-employee as is necessary to bring the harassment to an immediate end.

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

Sec. 2-187. Duty of employees.

(a) Employees are obligated to report instances of harassment and to cooperate in every investigation of harassment. This obligation includes, but is not limited to, coming forward with evidence (both favorable and unfavorable to a person accused of harassment) fully and truthfully making a written report or verbally answering questions when required to do so by an investigator during the course of an investigation of harassment; and refraining from making bad faith accusations of harassment.

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

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DIVISION 11. WORKPLACE VIOLENCE

Sec. 2-188. Workplace Violence Policy.

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

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

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

The department head will ensure all reports of workplace violence are investigated and appropriate action taken. The City shall assign and train those responsible for investigating all incidents of workplace violence.

DIVISION 12. EXTRACURRICULAR ACTIVITIES

Sec. 2-189. Outside employment.

The work of the City shall have precedence over the other occupational intersections of regular, full-time employees. All outside employment and all self-employment must be reported to an employee's department head. The department head may restrict or prohibit outside work that is in conflict with proper performance of duties for the City or would be detrimental to the best interests of the City and the public it represents.

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

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

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departmental supervisor.

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

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

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

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

Sec. 2-192. Political Activities - Restrictions.

No officer or employee of the City shall:

- (1) Be compelled or coerced to make any contributions, assessments or other payments to any political organization or member or committee thereof;
- (2) Be allowed to solicit any contribution, or to sell any ticket, or to procure money by any devise from the public or any member thereof, or to solicit any other political favor, while on duty;
- (3) Use or threaten to use his/her influence, because of position as a City employee, favoring or opposing any candidate or issue;
- (4) Use any City funds, supplies or equipment for political purposes;

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- (5) Participate in any political activity while wearing any uniform or part of any uniform associating them with their City employment; or
- (6) Work on any political posters, mailing lists or other materials, whether written or otherwise, which are used to influence or attempt to influence voters, while on duty or while in uniform.

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.

DIVISION 13. MISCELLANEOUS

Sec. 2-194. Gratuities restricted.

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

Sec. 2-195. Nepotism.

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

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

Temporary or interim assignments of employees to department head status shall

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

Sec. 2-197. Misuse of city records.

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

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

Sec. 2-198 – 2-230. Reserved.

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

DIVISION 14. SOCIAL SECURITY GENERALLY¹⁰

Sec. 2-231. Policy and purpose.

It is hereby declared to be the policy and purpose of the city to extend, at the earliest date, to the employees and officials thereof, not excluded by law or this division, and whether employed in connection with a governmental or proprietary function, the benefits of the system of Federal Old Age and Survivors Insurance as authorized by the Federal Social Security Act and amendments thereto, including Public Law 734--81st Congress, and Public Law 761--83rd Congress. In pursuance of such policy, and for that purpose, the city shall take such action as may be required by applicable state or federal laws or regulations.

(Code 1986, § 2-231)

Sec. 2-232. Agreements authorized.

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

(Code 1986, § 2-232)

¹⁰ **Charter reference**—For pensions and death benefits generally, see § 3.29 et seq.; pensions for policemen and firemen, § 13.63 et seq.

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

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Sec. 2-233. Withholdings.

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

Sec. 2-234. Appropriations.

There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, which shall be paid over to the state or federal agency designated by such laws or regulations.
(Code 1986, § 2-234)

Sec. 2-235. Records, reports.

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

Sec. 2-236. Employees excluded.

There is hereby excluded from this division any authority to make any agreement with respect to position or any employee or official now covered or authorized to be covered by any retirement system for any employee or official of the city, other than any position, employee or official covered by the general employees retirement system who have heretofore, by a majority vote in a referendum, duly held as provided by Public Law 761--83rd Congress, voted in favor of accepting the benefits offered by the Federal Social Security Act.
(Code 1986, § 2-236)

Secs. 2-237 – 2-250. Reserved.

DIVISION 15. SOCIAL SECURITY FOR EDUCATIONAL PERSONNEL¹¹

Sec. 2-251. Policy and purpose.

¹¹ **Cross references**—City authorized to contribute to pension funds created and operated by labor organizations, § 2-7; social security for city employees generally, § 2-231 et seq.; minimum pension for teachers with twenty-five years' service, § 30-1; pension for personnel for whom city receives reimbursement, § 30-2.

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It is hereby declared to be the policy and purpose of the city to extend, at the earliest date, to the employees and officials of the department of education who are employed in positions covered by such department's insurance and pension fund, not excluded by law or this division, and whether employed in connection with a governmental or proprietary function, the benefits of the system of Federal Old Age and Survivors Insurance as authorized by the Federal Social Security Act and all amendments thereto. In pursuance of such policy, and for that purpose, the city shall take such action as may be required by applicable state or federal laws or regulations.

(Code 1986, § 2-251)

Sec. 2-252. Agreements authorized.

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

(Code 1986, § 2-252)

Sec. 2-253. Reserved.

Sec. 2-254. Appropriations.

There shall be appropriated from available funds such amounts at such times as may be required by applicable state or federal laws or regulations for employer's contributions, which shall be paid over to the state or federal agency designated by such laws or regulations.

(Code 1986, § 2-254)

Sec. 2-255. Records, reports.

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

(Code 1986, § 2-255)

Sec. 2-256. Employees excluded.

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

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(Code 1986, § 2-256)

Secs. 2-257 – 2-270. Reserved.

DIVISION 16. OCCUPATIONAL
SAFETY AND HEALTH PROGRAM¹²

Sec. 2-271. Title.

This division shall be known as "The Occupational Safety and Health Program for the City of Chattanooga, Tennessee."

(Code 1986, § 2-271)

Sec. 2-272. Purpose and Coverage

The purpose of this plan is to provide guidelines and procedures for implementing the Occupational Safety and Health Program for the City of Chattanooga, Tennessee, and to assure as far as possible safe and healthful working conditions to preserve the human resources of the City.

This plan shall apply to all Departments, Divisions, and Agencies of the City of Chattanooga, TN, and shall cover work performed for the City government by all part-time or full-time, seasonal or permanent employees, contractors, and anyone performing any service for the City of Chattanooga.

The objective of the Program is to minimize injury to persons and property by and through the establishment of requirements and guidelines relating to job performance, working conditions and safety appliances and equipment through inspection, reporting and evaluation procedures. It is the intent and purpose of this Program to endeavor to eliminate on-the-job injuries and illnesses as far as possible and in so doing, to conserve both human and material resources of the City of Chattanooga, Tennessee.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-273. Definitions

For the purposes of this program, the following definitions apply:

- a. ACT or TOSHAct shall mean the Tennessee Occupational Safety and Health Act of 1972.
- b. CITY means City of Chattanooga government.

¹² **Cross reference**—Health and sanitation generally, Ch. 20.

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- c. CITY COUNCIL - CITY OF CHATTANOOGA means the elected officials having legally designated powers of appointment, employment, or removal therefrom for a specific department, board, commission, division, or other agency of the City government.
- d. COMMISSIONER OF HEALTH means the chief executive officer of the TN Department of Public Health. This includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Health.
- e. COMMISSIONER OF LABOR means the chief executive officer of the Tennessee Department of Labor. This includes any person appointed, designated, or deputized to perform the duties or to exercise the powers assigned to the Commissioner of Labor.
- f. COMPLIANCE INSPECTOR(S) means the individual(s) appointed or designated by the Director, and/or Safety Officers to conduct inspections provided for herein. If no such compliance inspector(s) is appointed, inspections shall be conducted by the Director of Occupational Safety and Health
- g. DIRECTOR OF OCCUPATIONAL SAFETY AND HEALTH PROGRAM or DIRECTOR means the person designated by the establishing ordinance, or executive order to perform duties or to exercise powers assigned so as to plan, develop, and administer the occupational safety and health program for the City of Chattanooga.
- h. EMPLOYEE means any person performing services for the City and listed on the payrolls either as part-time, seasonal, temporary, or permanent full-time employees. However, that such definition shall not include independent contractors, their agents, servants or employees.
- i. EMPLOYER means the City of Chattanooga and shall include each administrative department, board, commission, division, or other agency of the City.
- j. ESTABLISHMENT or WORKSITE means a single physical location under the control of this employer where business is conducted, services are rendered, or industrial type operations are performed.
- k. IMMINENT DANGER means any conditions or practices in any place of employment which are such that a hazard exists which could reasonably be expected

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to cause death or serious physical harm immediately or before the imminence of such hazard can be eliminated through normal compliance enforcement procedures.

1. PERSON means one or more individuals, partnerships, associations, corporations, business trusts, or legal representatives of any organized group of persons.

- m. SERIOUS INJURY or HARM means that type of harm that would cause permanent or prolonged impairment of the body in that:
 1. A part of the body would be permanently removed (e.g., amputation of an arm, leg, finger(s); loss of an eye) or rendered functionally useless or substantially reduced in efficiency on or off the job (e.g., leg shattered so severely that mobility would be permanently reduced), or
 2. A part of an internal body system would be inhibited in its normal performance or function to such a degree as to shorten life or cause reduction in physical or mental efficiency (e.g., lung impairment causing shortness of breath).

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

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

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-274. Employer's Rights and Duties

Rights and duties of the employer shall include, but are not limited to, the following provisions:

- a. Employer shall furnish to each employee conditions of employment and a place of employment free from known and recognized hazards that are causing or are likely to cause death or serious injury or harm to employees; provided, however, that

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Employer shall have a reasonable period of time to correct any such hazards once such becomes known to him.

- b. Employer shall comply with occupational safety and health standards and regulations promulgated pursuant to Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972.
- c. Employer shall refrain from any unreasonable restraint on the right of the Commissioner of Labor to inspect the employer's place(s) of business. Employer shall assist the Commissioner of Labor in the performance of their monitoring duties by supplying or by making available information, personnel, or aids reasonably necessary to the effective conduct of the monitoring activity.
- d. Employer is entitled to participate in the development of standards by submission of comments on proposed standards, participation in hearing on proposed standards, or by requesting the development of standards on a given issue under Section 6 of the Tennessee Occupational Safety and Health Act of 1972.
- e. Employer is entitled to develop additional standards to those put into effect by the State Commissioner of Labor and State Commissioner of Health that affect and concern only the City, so long as said standard does not require less than that set out by said Commissioners.
- f. Employer is entitled to request an order granting a variance from an occupational safety and health standard.
- g. Employer is entitled to protection of trade secrets and other legally privileged communication.
- h. Employer shall inspect all installations, departments, and worksites to insure the provisions of this Program are complied with and carried out as soon as possible after this Program has been fully implemented and shall make periodical inspections to insure continued compliance and abatement procedures are followed.
- i. Employer shall notify and inform any employee who has been or is being exposed in a biologically significant manner to harmful agents or material in excess of the applicable standard and of corrective action being taken.
- j. Employer shall keep and maintain records of all injuries and illnesses that involve employees on the job and shall insure that the recordkeeping and reporting procedures are carried out by all responsible personnel.

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- k. Employer is entitled to review the performance of an employee who is in repeated violation of an established Occupational Safety & Health Standard and make a determination with regard to such employee's future duties, employment, and possible disciplinary action as necessary.
- l. Employer shall not penalize or use disciplinary measures against any employee who reports a violation of the Occupational Safety & Health standards or hazard to his supervisors, the Director or any Safety Officer.
- m. Employer shall notify all employees of their rights and duties under this program.
(Ord. No. 11518, §1, 02-17-04)

Sec. 2-275. Employee's Rights and Duties

Rights and duties of employees shall include, but are not limited to, the following provisions:

- a. Each employee shall comply with occupational safety and health act standards and all rules, regulations, and orders issued pursuant to this program and the Tennessee Occupational Safety and Health Act of 1972 which are applicable to his or her own actions and conduct.
- b. Each employee shall be notified by the placing of a notice upon bulletin boards of any application for a permanent or temporary order granting the employer a variance from any provision of the TOSHAct or any standard or regulation promulgated under the Act.
- c. Each employee shall be given the opportunity to participate in any hearing that concerns an application by the employer for a variance from a standard or regulation promulgated under the Act.
- d. Any employee who may be adversely affected by a standard or variance issued pursuant to the Act or this program may file a petition with the Commissioner of Labor or whoever is responsible for the promulgation of the standard or the granting of the variance.
- e. Any employee who has been exposed or is being exposed to toxic materials or harmful physical agents in concentrations or at levels in excess of that provided for by any applicable standard shall be provided by the employer with information on any significant hazards to which they are or have been exposed, relevant symptoms, and proper conditions for safe use or exposure. Employees shall also be informed of corrective action being taken.

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- f. Subject to regulations issued pursuant to this program, any employee or authorized representative of employees shall be given the right to request an inspection and to consult with the Director or Inspector at the time of the physical inspection of the worksite.
 - g. Any employee may bring to the attention of the Director any violation or suspected violations of the standards or any other health or safety hazards.
 - h. No employee shall be discharged or discriminated against because such employee has filed any complaint or instituted or caused to be instituted any proceeding or inspection under or relating to this program.
 - i. Any employee who believes that he or she has been discriminated against or discharged in violation of subsection (h) of this section may file a complaint alleging such discrimination with the Director. Such employee may also, within thirty (30) days after such violation occurs, file a complaint with the Commissioner of Labor alleging such discrimination.
 - j. Nothing in this or any other provisions of this program shall be deemed to authorize or require any employee to undergo medical examination, immunization, or treatment for those who object thereto on religious grounds, except where such is necessary for the protection of the health or safety of others or when a medical examination may be reasonably required for performance of a specific job.
 - k. Employees shall report any accident, injury, or illness resulting from their job, however minor it may seem to be, to their supervisor or the Director within twenty-four (24) hours after the occurrence.
- (Ord. No. 11518, §1, 02-17-04)

Sec. 2-276. Administration

- a. The Director of Occupational Safety and Health is designated to perform duties or to exercise powers assigned so as to administer this Occupational Safety and Health Program.
 - 1. The Director may designate person or persons, as he deems necessary to carry out his powers, duties, and responsibilities under this program.

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2. The Director may delegate the power to make inspections, provided procedures employed are as effective as those employed by the Director.
 3. The Director shall employ measures to coordinate, to the extent possible, activities of all departments to promote efficiency and to minimize any inconveniences under this program.
 4. The Director may request qualified technical personnel from any department or section of government to assist in making compliance inspections, accident investigations, or as he may deem necessary and appropriate in order to carry out his duties under this program.
 5. The Director shall prepare the report to the Commissioner of Labor required by subsection (g) of Section 1 of this plan.
 6. The Director shall make or cause to be made periodic and follow-up inspections of all facilities and worksites where employees of this employer are employed. He shall make recommendations to correct any hazards or exposures observed. He shall make or cause to be made any inspections required by complaints submitted by employees or inspections requested by employees.
 7. The Director shall assist any officials of the employer in the investigation of occupational accidents or illnesses.
 8. The Director shall maintain or cause to be maintained records required under Section VIII of this plan.
 9. The Director shall, in the eventuality that there is a fatality or an accident resulting in the hospitalization of three or more employees, insure that the Commissioner of Labor receives notification of the occurrence within eight (8) hours.
- b. The administrative or operational head of each department, division, board, or other agency of this employer shall be responsible for the implementation of this occupational safety and health program within their respective areas.

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1. The administrative or operational head shall follow the directions of the Director on all issues involving occupational safety and health of employees as set forth in this plan.
2. The administrative or operational head shall comply with all abatement orders issued in accordance with the provisions of this plan or request a review of the order with the Director within the abatement period.
3. The administrative or operational head should make periodic safety surveys of the establishment under his jurisdiction to become aware of hazards or standards violations that may exist and make an attempt to immediately correct such hazards or violations.
4. The administrative or operational head shall investigate all occupational accidents, injuries, or illnesses reported to him. He shall report such accidents, injuries, or illnesses to the Director along with his findings and/or recommendations in accordance with APPENDIX V of this plan.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-277. Standards Authorized

The standards adopted under this program are the applicable standards developed and promulgated under Section VI (6) of the Tennessee Occupational Safety and Health Act of 1972 or which may, in the future, be developed and promulgated. Additional standards may be promulgated by the governing body of this employer as that body may deem necessary for the safety and health of employees.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-278. Variance Procedure

The Director may apply for a variance as a result of a complaint from an employee or of his knowledge of certain hazards or exposures. The Director should definitely believe that a variance is needed before the application for a variance is submitted to the Commissioner of Labor.

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

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- a. The application for a variance shall be prepared in writing and shall contain:
 1. A specification of the standard or portion thereof from which the variance is sought.
 2. A detailed statement of the reason(s) why the employer is unable to comply with the standard supported by representations by qualified personnel having first-hand knowledge of the facts represented.
 3. A statement of the steps employer has taken and will take (with specific date) to protect employees against the hazard covered by the standard.
 4. A statement of when the employer expects to comply and what steps have or will be taken (with dates specified) to come into compliance with the standard.
 5. A certification that the employer has informed employees, their authorized representative(s), and/or interested parties by giving them a copy of the request, posting a statement summarizing the application (to include the location of a copy available for examination) at the places where employee notices are normally posted and by other appropriate means. The certification shall contain a description of the means actually used to inform employees and that employees have been informed of their right to petition the Commissioner of Labor for a hearing.
- b. The application for a variance should be sent to the Commissioner of Labor by registered or certified mail.
- c. The Commissioner of Labor will review the application for a variance and may deny the request or issue an order granting the variance. An order granting a variance shall be issued only if it has been established that:
 1. The employer
 - i. Is unable to comply with the standard by the effective date because of unavailability of professional or

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technical personnel or materials and equipment required or necessary construction or alteration of facilities or technology.

- ii. Has taken all available steps to safeguard employees against the hazard(s) covered by the standard.
- iii. Has as effective program for coming into compliance with the standard as quickly as possible.

2. The employee is engaged in an experimental program as described in subsection (b), section 13 of the Act.

- d. A variance may be granted for a period of no longer than is required to achieve compliance or one (1) year, whichever is shorter.
- e. Upon receipt of an application for an order granting a variance, the Commissioner to whom such application is addressed may issue an interim order granting such a variance for the purpose of permitting time for an orderly consideration of such application. No such interim order may be effective for longer than one hundred eighty (180) days.
- f. The order or interim order granting a variance shall be posted at the worksite and employees notified of such order by the same means used to inform them of the application for said variance (see subsection (a)(5) of this section).

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-279. Recordkeeping and Reporting

- a. The City shall establish and maintain a system for collecting, maintaining and reporting safety and health data as soon as is reasonably possible after implementing this program. All occupational accident, injuries, and illnesses shall be reported to the Director on the report forms provided by the City. Reports shall be initially completed by the supervisor on the scene of the injury/illness and sent that day to the Safety Officer for the Division/Department. The Safety Officer shall within one working day of receipt of said report complete the form and send it to the Director.
- b. The Director shall maintain a continuous log of occupational injuries and illnesses as required by the RECORDKEEPING REQUIREMENTS UNDER THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 (Revised 1978), or as

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may be prescribed by the Tennessee Department of Labor.

- c. The Director, or the Department Safety Officer, shall report to the Commissioner of Labor any accident that results in either a fatality or the hospitalization of three (3) or more employees within eight hours from the time of the event.
- d. The City shall make an annual report to the Commissioner of Labor showing statistical data required by Section 50-550-106 (annual summary) of the State OSHA Regulations for Recordkeeping & Reporting.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-280. Employee Complaint Procedure

If any employee feels that he is assigned to work in conditions that might affect his health, safety, or general welfare at the present time or at any time in the future, he should report the condition to the Safety Officer of the Department/Division to which he is assigned.

- a. The complaint should be in the form of a letter and give details on the condition(s) and how the employee believes it affects or will affect his health, safety, or general welfare. The employee should sign the letter but need not do so if he wishes to remain anonymous (see subsection (h) of Section 1 of this plan).
- b. Upon receipt of the complaint letter, the Director will evaluate the condition(s) and institute any corrective action, if warranted. Within ten (10) working days following the receipt of the complaint, the Director will answer the complaint in writing stating whether or not the complaint is deemed to be valid and if no, why not, what action has been or will be taken to correct or abate the condition(s), and giving a designated time period for correction or abatement. Answers to anonymous complaints will be posted upon bulletin boards or other places of common passage where the anonymous complaint may be reasonably expected to be seen by the complainant for a period of three (3) working days.
- c. If the complainant finds the reply not satisfactory because it was held to be invalid, the corrective action is felt to be insufficient, or the time period for correction is felt to be too long, he may forward a letter to the Chief Executive Officer or to the governing body explaining the condition(s) cited in his original complaint and why he believes the answer to be inappropriate or insufficient.
- d. The Chief Executive Officer or a representative of the governing body will evaluate the complaint and will begin to take action to correct or abate the condition(s) through arbitration or administrative sanctions or may find the complaint to be

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invalid. An answer will be sent to the complainant within ten (10) working days following receipt of the complaint or the next regularly scheduled meeting of the governing body following receipt of the complaint explaining decisions made and action taken or to be taken.

- e. After the above steps have been followed and the complainant is still not satisfied with the results, he may then file a complaint with the Commissioner of Labor. Any complaint filed with the Commissioner of Labor in such cases shall include copies of all related correspondence with the Director and the Chief Executive Officer or the representative of the governing body.
- f. Copies of all complaint and answers thereto will be filed by the Director who shall make them available to the Commissioner of Labor or his designated representative upon request.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-281. Education and Training

- a. Safety Officers:
 - 1. The Director will arrange for the Safety Officers and/or Compliance Inspector(s) to attend training seminars, workshops, and other educational functions conducted by the State of Tennessee or other agencies. Attendance at National Safety functions may be authorized by the Director with the approval of the Mayor or City Council.
 - 2. The City will furnish reference materials, manuals, equipment, etc., deemed necessary for use in conducting compliance inspections, conducting local training, wiring technical reports, and informing officials, supervisors, and employees of the existence of safety and health hazards will be furnished.
- b. All Employees (including supervisory personnel):

The City shall establish a suitable safety and health training program designed to at a minimum:

- 1. Instruct each employee in the recognition and avoidance of hazards or unsafe conditions and of standards and regulations applicable to the employee's work environment to control or

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eliminate any hazards, unsafe conditions, or other exposures to occupational illness or injury.

2. Instruct employees who are required to handle poisons, acids, caustics, explosives, and other harmful or dangerous substances in the safe handling and use of such items and make them aware of the potential hazards, proper handling procedures, personal protective measures, person hygiene, etc., which may be required.
3. Instruct employees who may be exposed to environments where harmful plants or animals are present of the hazards of the environment, how to best avoid injury or exposure, and the first aid procedures to be followed in the event of injury or exposure.
4. Instruct employees required to handle or use flammable liquids, gases, or toxic materials in their safe handling and use and make employees aware of specific requirements contained in Subparts H and M and other applicable subparts of TOSHAct standards (1910 and/or 1926).
5. Instruct employees on hazards and dangers of confined or enclosed spaces, and how to recognize a hazardous situation. Confined or enclosed spaces include, but are not limited to, storage tanks, boilers, ventilation or exhaust ducts, sewers, underground utility accesses, tunnels, pipelines, and open top spaces more than four feet (4') in depth such as pits, tubs, vaults, and vessels.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-282. General Inspection Procedures

It is the intention of the City of Chattanooga to have an occupational safety and health program that will insure the welfare of employees. In order to be aware of hazards, periodic inspections must be performed. These inspections will enable the finding of hazards or unsafe conditions or operations that will need correction in order to maintain safe and healthful worksites. Inspections will be conducted on both a pre-designated basis, and on a random basis at intervals not to exceed thirty (30) calendar days.

- a. In order to carry out the purposes of this program, the Director, Safety Officer and/or Compliance Inspector(s), if appointed, is authorized:

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1. To enter at any reasonable time, any establishment, facility, or worksite where work is being performed by an employee when such establishment, facility, or worksite is under the jurisdiction of the employer and;
 2. To inspect and investigate during regular working hours and at other reasonable times, within reasonable limits, and in a reasonable manner, any place of employment and pertinent conditions, processes, structures, machines, devices, equipment, and materials therein, and to question privately any supervisor, operator, agent, or employee working therein.
- b. If an imminent danger situation is found, alleged, or otherwise brought to the attention of the Director or Inspector during a routine inspection, he shall immediately inspect the imminent danger situation in accordance with Section XII of this plan before inspecting the remaining portions of the establishment, facility, or worksite.
 - c. An administrative representative of the employer and a representative authorized by the employees shall be given an opportunity to consult with and/or to accompany the Director or Inspector during the physical inspection of any worksite for the purpose of aiding such inspection.
 - d. The right of accompaniment may be denied any person whose conduct interferes with a full and orderly inspection.
 - e. The conduct of the inspection shall be such as to preclude unreasonable disruptions of the operation(s) of the workplace.
 - f. Interviews of employees during the course of the inspection may be made when such interviews are considered essential to investigative techniques.
 - g. Advance Notice of Inspections.
 1. Generally, advance notice of inspections will not be given as this precludes the opportunity to make minor or temporary adjustments in an attempt to create misleading impression of conditions in an establishment.
 2. There may be occasions when advance notice of inspections will be necessary in order to conduct an effective inspection or investigation. When advance notice of inspection is given,

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employees or their authorized representative(s) will also be given notice of the inspection.

- h. The Director need not personally make an inspection of each and every worksite once every thirty (30) days. He may delegate the responsibility for such inspections to supervisors or other personnel provided:
 - 1. Inspections conducted by supervisors or other personnel are at least as effective as those made by the Director.
 - 2. Records are made of the inspections and of any discrepancies found and are forwarded to the Director.
- i. The Director shall maintain records of inspections to include identification of worksite inspected, date of inspection, description of violations of standards or other unsafe conditions or practices found, and corrective action taken toward abatement. Said inspection records shall be subject to review by the Commissioner of Labor or his authorized representative.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-283. Imminent Danger Procedures

- a. Any discovery, any allegation, or any report of imminent danger shall be handled in accordance with the following procedures:
 - 1. The Director shall immediately be informed of the alleged imminent danger situation and he shall immediately ascertain whether there is a reasonable basis for the allegation.
 - 2. If the alleged imminent danger situation is determined to have merit by the Director, he shall make or cause to be made an immediate inspection of the alleged imminent danger location.
 - 3. As soon as it is concluded from such inspection that conditions or practices exist which constitutes an imminent danger, the Director or Compliance Inspector shall attempt to have the danger corrected. All employees at the location shall be informed of the danger and the supervisor or person in charge of the worksite shall be requested to remove employees from the area, if deemed necessary.

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4. The administrative or operational head of the workplace in which the imminent danger exists, or his authorized representative, shall be responsible for determining the manner in which the imminent danger situation will be abated. This shall be done in cooperation with the Director or Safety Officer and to the mutual satisfaction of all parties involved.
 5. The imminent danger shall be deemed abated if:
 - i. The imminence of the danger has been eliminated by removal of employees from the area of danger.
 - ii. Conditions or practices which resulted in the imminent danger have been eliminated or corrected to the point where an unsafe condition no longer exists.
 6. A written report shall be made by or to the Director describing in detail the imminent danger and its abatement. This report will be maintained by the Director in accordance with subsection (i) of Section XI of this plan.
- b. Refusal to Abate.
1. Any refusal to abate an imminent danger situation shall be reported to the Director and Chief Executive Officer immediately.
 2. The Director and/or Chief Executive Officer shall take whatever action may be necessary to achieve abatement.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-284. Abatement Orders and Hearings

- a. Whenever, as a result of an inspection or investigation, the Director or Safety Officer finds that a worksite is not in compliance with the standards, rules or regulations pursuant to this plan and is unable to negotiate abatement with the administrative or operational head of the worksite within a reasonable period of time, the Director shall:
 1. Issue an abatement order to the head of the worksite.

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2. Post, or cause to be posted, a copy of the abatement order at or near each location referred to in the abatement order.
- b. Abatement orders shall contain the following information:
1. The standard, rule, or regulation which was found to be violated.
 2. A description of the nature and location of the violation.
 3. A description of what is required to abate or correct the violation.
 4. A reasonable period of time during which the violation must be abated or corrected.
- c. At any time within ten (10) days after receipt of an abatement order, anyone affected by the order may advise the Director in writing of any objections to the terms and conditions of the order. Upon receipt of such objections, the Director shall act promptly to hold a hearing with all interested and/or responsible parties in an effort to resolve any objections. Following such hearing, the Director shall, within three (3) working days, issue an abatement order and such subsequent order shall be binding on all parties and shall be final.
- d. The Director may issue subpoenas to City employees, pursuant to his duties as set forth herein, to require the attendance and testimony of witnesses and the production of evidence under oath at such hearings.
- (Ord. No. 11518, §1, 02-17-04)

Sec. 2-285. Penalties

- a. The City shall not issue any civil or criminal penalties shall be issued against any public official, employee, or any other person, administrative department, commission, board, division or other agency of the City for failure to comply with safety and health standards or any rules or regulations issued pursuant to this program.
- b. Any employee who willfully and/or repeatedly violates, or causes to be violated, any safety and health standard, rule, regulation or order shall be subject to disciplinary action. The Department/Division Administrator, Safety Officer and Safety Committee as a group shall review the employee's record and recommend

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disciplinary action based upon the severity of the violation:

1. Oral reprimand.
 2. Written reprimand.
 3. Suspension
 4. Termination
- c. The employee shall have the right of appeal to the City Action Committee within ten (10) days of the Department Safety Committee's decision, and a hearing shall be held before the City Action Committee to discuss the Department/Division's decision. The Director and all the Safety Officers as a group shall review the employee's record and the Department's recommended action and decide to either uphold or overturn the Department/Division's ruling. The employee may lastly appeal any AC decision directly to the Mayor/City Council.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-286. Confidentiality of Privileged Information

All information obtained by or reported to the Director pursuant to this plan of operation or the legislation (ordinance, or executive order) enabling this occupational safety and health program which contains or might reveal information which is otherwise privileged shall be considered confidential. Such information may be disclosed to other officials or employees concerned with carrying out this program or when relevant in any proceeding under this program. Such information may also be disclosed to the Commissioner of Labor or their authorized representatives in carrying out their duties under the Tennessee Occupational Safety and Health Act of 1972.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-287. Compliance with Other Laws not Excused

a. Compliance with any other law, statute, ordinance, or executive order, as applicable, which regulates safety and health in employment and places of employment shall not excuse the employer, the employee, or any other person from compliance with the provisions of this program.

b. Compliance with any provisions of this program or any standard, rule, regulation, or order issued pursuant to this program shall not excuse the employer, the employee, or any other person from compliance with and law, statute, ordinance, or executive order, as applicable, regulating and promoting safety and health unless such law, statute, ordinance, or executive order, as applicable, is specifically repealed.

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(Ord. No. 11518, §1, 02-17-04)

Sec. 2-288. Funding the Program

Sufficient funds for administering and staffing the program pursuant to this ordinance shall be made available as authorized by the City Council for the City of Chattanooga.

(Ord. No. 11518, §1, 02-17-04)

Sec. 2-289. Severability

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

(Ord. No. 11518, §1, 02-17-04)

Secs. 2-289--2-300. Reserved.

DIVISION 17. GENERAL PENSION PLAN

Sec. 2-301. Deferred Retirement Option Plan ("DROP").

(a) A deferred retirement option plan ("DROP") is hereby created. A DROP is an optional retirement plan elected by the participants. A one year DROP provides a lump sum payment to the participant at retirement based upon twelve (12) times the monthly benefit amount that the participant would be eligible to receive at retirement calculated prior to any actuarial reductions for other retirement options elected. Two or three year DROP payments shall be based upon twenty-four (24) or thirty-six (36) times said monthly benefit amount. The amount of the DROP lump sum elected shall be deducted from the actuarial value of the participant's pension and the reduced actuarial equivalent balance shall be payable in monthly periodic pension payments dependent upon the participant's elected retirement option.

(b) Only participants with twenty-six (26) or more years of service shall be eligible to participate in the DROP. A participant with twenty-six (26) years of service may elect a one year DROP payment, a participant with twenty-seven (27) years of service may elect a one or two year DROP, and a participant with twenty-eight (28) or more years of service may elect a one to three year DROP. DROP elections shall be made in whole years only. The election shall be made at the time of retirement.

(c) The DROP payment elected shall be paid as soon as practicable after the retirement of the participant.

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(d) Actuarial equivalents shall be based upon the age of the participant, the age of beneficiaries, if any, the retirement option selected, the amount of the DROP elected, the mortality tables and rates of interest then adopted by the Trustees of the General Pension Plan and upon such rules as may be adopted by said Trustees.

(e) A participant's right to participate in the DROP plan shall not be vested until a participant retires and elects to receive DROP lump sum payments. The DROP plan may be discontinued at any time or modified in any manner.

(Ord. No. 11103, § 1, 11-28-00)

Secs. 2-302 – 2-399. Reserved.

DIVISION 18. FIRE AND POLICE PENSION FUND

Sec. 2-400. Appropriation to pension fund of percentage of salaries; control of fund; investments.

The City Council of said city, after it has adopted a budget for the salaries of the departments of fire and police each year, shall add a sum to be fixed by a majority vote of the City Council of said city, which shall not be less than ten percent (10%) of each monthly payroll of those persons who are participants in the pension system, which sum so added shall be placed in the Fire and Police Pension Fund. Said pension and trust fund from all sources herein provided shall be paid to the trustee. The trustee shall be a national or state chartered bank, under a suitable bond, designated, from time to time, as the trustee of this fund by the Board of Directors. The trustee shall hold said funds for the purposes stated in this Article. The funds coming into the hands of the trustee shall be under the direction and control of the Board of Directors of the Fire and Police Pension Fund. Any and all investments made under the direction and control of the Board of Directors, and all other acts done in the administration of the plan in good faith, shall be without liability on their part. (Priv. Acts 1949, Ch. 165, #2; Priv. Acts 1971, Ch. 149, #1; Priv. Acts 1972, Ch. 406, #1; Ord. No. 8688, #1(7), 8-19-86; Ord. No. 9778, #14, 8-19-92; Ord. No. 11377, §1, 02-04-03)

Sec. 2-401. Tax levy for pensions.

The City Council of said city be and is hereby required to levy a sufficient annual tax upon all taxable property and taxable privileges within the City of Chattanooga for the purposes of raising revenue for the payment of pensions to members of said department of fire and police and appropriate same for such purpose. (Priv. Acts 1949, Ch. 165, § 3; Ord. No. 11377, §1, 02-04-03)

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Sec. 2-402. Assessment of employees.

Each and every sworn firefighter and sworn police officer, excluding those employees of said departments who are not now contributing to the Pension Fund, shall be assessed a sum to be fixed by a majority vote of the Board of Directors of the Fire and Police Pension Fund which shall not be less than eight percent (8%) of each member's Base Salary.

Notwithstanding the foregoing, a member hired prior to July 1, 1999 whose Average Base Salary as of July 1, 1999 was less than \$41,138 and whose Average Base Salary as of July 1, 2007 is less than \$41,138, shall be assessed a sum, beginning July 1, 2007 and thereafter, to be fixed by a majority vote of the Board of Directors of the Fire and Police Pension Fund which shall not be less than eight percent (8%) of such member's Base Salary, but in no event less than eight percent (8%) of \$41,138, annually.

Said amounts shall be deducted and withheld from the salary of each member during all the time such employee may be a member of said fire and police department and it shall be the duty of the city officer to pay the total amount of deduction so withheld to the Fire and Police Pension Fund at the times regular salaries are paid, and said funds shall be kept by the said Trustee as part of the Fire and Police Pension Fund. (Priv. Acts 1949, Ch. 165, § 4; Priv. Acts 1953, Ch. 90, § 1; Priv. Acts 1961, Ch. 222, § 1; Priv. Acts 1969, Ch. 165, § 1; Priv. Acts 1972, Ch. 406, § 1; Ord. No. 8688, § 1 (8), 8-19-86; Ord. No. 9778, § 1(5), 8-18-92; Ord. No. 10463, § 1(2), 8-20-96; Ord. No. 11012, § 1(1), 5-9-00; Ord. No. 11377, §1, 02-04-03)

Sec. 2-403. Sum to be collected, paid over to trustee when employee contribution deducted.

An amount equal to the sum fixed by the City Council, as provided in Section 2-400 of this Article, shall be collected by the tax collector and treasurer and paid over to said trustee when the contribution by the employees as provided in Section 2-402 is deducted from the payroll. (Priv. Acts 1949, Ch. 165, § 7; Priv. Acts 1969, Ch. 82, § 6; Priv. Acts 1971, Ch. 149, § 1; Priv. Acts 1972, Ch. 406, § 1; Ord. No. 9778, § 1(12), 8-18-92; Ord. No. 11377, §1, 02-04-03)

Sec. 2-404. Proceeds from sale of unclaimed property to be placed in pension fund.

If any personal property comes into the possession of the departments of fire and police, if the owner cannot be found, or if no person shall claim such property after six (6) months, the property shall be sold, the net proceeds derived from the sale thereof shall be turned over to said trustee to be placed in said special Fire and Police Pension Fund, as provided in Sections 2-400 and 2-402 of this Article. (Priv. Acts 1949, Ch. 165, § 6; Ord. No. 11377, §1, 02-04-03)

Sec. 2-405. Reserved.

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(Ord. No. 11377, §1, 02-04-03)

Editor's note-Former Charter § 13.69, a prior State Act, was repealed by Charter § 1(12) of Ord. No. 8688, enacted Aug. 19, 1986. The repealed provisions derived from Priv. Acts 1949, Ch. 165, § 9.

Sec. 2-406. Board of directors of pension fund-Created; membership; term of office; vacancies.

There is hereby created a board to be known as the Board of Directors of the Fire and Police Pension Fund, consisting of six (6) members, three (3) of which shall be active members from the fire department and three (3) of which shall be active members of the police department. The present Board of Directors shall continue in office until their respective terms expire. Each year after the passage of this Article on the first Tuesday of September there shall be held an election for the purpose of electing one member of said board from the fire department, and one from the police department, for a term of three (3) years.

Said election shall be held at the fire department training center and at police headquarters and at the Pension Fund Office between the hours established by the Board of Directors. The votes shall be counted openly and publicly and the firefighters and police officers receiving the highest number of votes shall be elected for a term of three (3) years. At no time shall more than one member of any one rank of the fire department be elected to serve as a member of said Board, and at no time shall more than one member of any one rank of the police department be elected to serve as a member of said Board. If a vacancy should occur in said Board for any reason such vacancy shall be filled by the remaining members of said Board for the unexpired term. In addition to the six (6) members hereinbefore provided for, the mayor, by virtue of this office, shall be a member of said board. (Priv. Acts 1949, Ch. 165, § 10; Priv. Acts 1972, Ch. 406, § 1; Ord. No. 8688, § 1 (14), 8-19-86; Ord. No. 9778, § 1(11), 8-18-92; Ord. No. 11377, §1, 02-04-03; Ord. No. 11863, § 1, 8-8-06)

Sec. 2-407. Same-Organization; officers; compensation of secretary.

As soon as may be practical following such election the Board shall meet and organize. There shall be elected for a term of one year from the membership a president, vice-president and secretary, who shall respectively discharge the customary duties of such office. The secretary and president shall receive pay for his services, amount of such pay to be fixed by the Board, commensurate with the amount of time and work required of him to fulfill his duties. The secretary shall maintain a record or document to be known as the list of retired firefighters, police officers and their spouses; which record or document shall give a full and complete record of all pensions being paid; the action of the Board in retiring any and all persons under this

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Article, including the names, dates of employment in the department, date of retirement, and the reasons therefore as to all persons retired. The compensation of each of the members of the Board of Directors, except the secretary and president, shall be fixed from time to time by the City Council, City of Chattanooga, and paid from the fund. The Directors shall pay from the fund the fees, charges or expenses for consultants, actuary or legal services as well as such expenses as may be necessary for the administration of the fund. (Priv. Acts 1949, Ch. 165, § 11; Ord. No. 8688, § 1 (15), 8-19-87; Ord. No. 9778, § 1(17), 8-18-92; Ord. No. 11377, §1, 02-04-03)

Sec. 2-408. Same-To hear and decide applications for pensions and benefits.

The said Board of Directors shall hear and decide all applications for pensions and death benefits under this Article, and its decision on such applications shall be final and conclusive. The said Board shall have the power to make and enforce such reasonable rules and regulations, not inconsistent with the Article, as in its opinion may be necessary or desirable for the carrying out of its duties and shall have the authority to interpret the provisions of the Article. (Priv. Acts 1949, Ch. 165, § 12; Ord. No. 11377, §1, 02-04-03)

Sec. 2-409. Same-Supervision of retired, disabled, etc., employees.

Upon organization of the Board of Directors, the Board shall assume supervision of all members of the Fire Department and Police Department who have heretofore been placed on the existing pension roll, including the ones placed thereon as the result of a disability or injuries causing disability, and said Board, on the advice of competent physicians, shall determine whether or not such members have again become able to perform duties in the Fire Department and Police Department and are eligible for reinstatement. In the event the Board of Directors shall determine, on the advice of competent physicians, that an employee retired on disability is again able to work, then such employee shall be re-employed and placed on active duty. (Priv. Acts 1949, Ch. 165, § 14; Ord. No. 8688, § 1 (11), 8-19-86; Ord. No. 9778, § 1(16), 8-18-92; Ord. No. 11377, §1, 02-04-03)

Sec. 2-410. Disability or death benefits from cause not resulting from performance of duties.

(a) Any member with not less than three (3) years nor more than ten (10) years of active service in the Fire Department and Police Department who shall become disabled from causes arising outside of the course of his or her employment with the said department shall so long as they remain disabled be paid a monthly sum equal to thirty percent (30%) of the Average Base Salary of such member during the three (3) years of member's service which yields the highest average; plus two percent (2%) of the said defined Average Base Salary for each year's active service in the said departments over ten (10) years but not to exceed sixty percent (60%)

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of the above defined Average Base Salary. Payment under this Section shall commence after the member's sick days, annual days, accumulated days, compensatory days, and annual leave days have been exhausted.

Any member with less than three (3) years of service, who shall become disabled from causes arising outside of the course of his or her employment with the said department, shall be refunded his or her contributions under the provisions of Section 2-413. In the event of death of any member with less than three (3) years of service, the \$10,000.00 death benefit shall be paid to his or her beneficiary and his or her contributions shall be refunded to his or her estate.

A member will not be eligible for disability benefits nor their spouse eligible for periodic death benefits under this Section if disability or death is a result of any of the following:

- (1) Excessive and habitual use by the plan member of drugs, intoxicating liquors, or narcotics unless, at the time of disability or death, such member is actively and continuously undergoing treatment for substance abuse at an approved clinic or treatment center for drug addicts and alcoholics.
- (2) Injury or disease sustained by the plan member while willfully and illegally participating in acts of violence, riots, civil insurrections, or while committing an unlawful act.
- (3) Injury or disease sustained by the plan member while serving in any Armed Forces or as the result of warfare.
- (4) Injury or disease sustained by the plan member after his or her employment has been terminated or while the plan member has been on leave without pay for a period exceeding forty-five (45) consecutive days.
- (5) Intentional, self-inflicted injury.

If a member is not qualified for benefits under this Section, he or she shall receive a refund of his or her contributions. In the event of the death of a member, when the death is a direct result of any of the above stipulations, his or her contributions shall be refunded to his or her estate.

Before approving any disability retirement request, the Board may request proof of disability or the verification by one or more competent physicians selected by the Board that the member has become disabled in accordance with the Pension Fund provisions. The Board may further require continued medical examinations of the disabled member from time to time and at

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its discretion. No member shall be given disability benefits under this Section if the Board finds that said disability could probably be successfully corrected by competent medical treatment, and said member fails or refuses to be so treated.

The term "disabled" or "disability" in this Section shall mean a medically determinable impairment which in the opinion of the Board prevents such member from meeting the normal and reasonable demands of his regularly assigned job or any other job in city government which the City may offer said member for which he or she is reasonably qualified by experience, training, or education.

- (b)
 - (1) If any member with less than ten (10) years of active service dies before retirement from any cause not growing out of and not in consequence of his or her duty in the Fire Department or Police Department, there shall be paid to his or her beneficiary the death benefit of \$10,000.00 and to the surviving spouse the sum of \$500.00 per month until death, subject to the conditions of Section "(a)" of this Section.
 - (2) If a member has more than ten (10) years of active service but less than the time required for a service retirement pension and dies before retirement from any cause not growing out of and not in consequence of his or her duty in the said departments, there shall be paid to his or her beneficiary a death benefit of \$10,000.00 and to the surviving spouse until death that benefit which said spouse would have been entitled to receive under Option D, Section 2-418 of this Article, subject to the conditions of Section "(a)" of this Section.
 - (3) If any member dies before retirement and has reached the conditions for a service retirement pension, there shall be paid to said member's beneficiary a death benefit of \$10,000.00, and if said member was an employee on November 3, 1992, the surviving spouse shall be paid the sum of \$500.00 per month until death, if said member has not designated the spouse as a beneficiary under one of the options listed in Section 2-418. If there is no election, the surviving spouse shall receive the benefit paid under Option D, Section 2-418.

If a member who is employed after November 3, 1992, shall die before retirement and has reached the conditions for a service retirement pension, there shall be paid to the beneficiary of said member a death benefit of \$10,000.00 and the benefits elected under Section 2-418.

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(c) If there be no surviving spouse, then the dependent's minor child or children shall each receive \$500.00 per month during their minority, provided that the total amount payable to all of such children shall not exceed the member's maximum pension. If such deceased member is not survived by spouse or minor children, but is survived by two parents solely dependent upon said member, each parent, so long as he or she has no other means of support, shall receive one-half (1/2) of the benefits which a surviving spouse would receive under this Section. If there is only one parent dependent upon such member for support, such parent shall be paid the same benefits which a surviving spouse would receive under this Section.
(Ord. No. 9778, § 1(2), 8-18-92; Ord. No. 9785, adopted September 8, 1992; Ord. No. 11012, §§ 1(2)-1(4), 5-9-00)

(d) At the death, hereafter, of any retired employee of the departments of Fire and Police, who was a participant in the Fire and Police Pension Fund, and whose beneficiaries for any reason do not receive the \$10,000.00 death benefit in Section 2-411, or the monthly spouse's benefit in Section 2-412 of this Article, there shall be paid from the said Fire and Police Pension Fund to the member's Estate, whichever said benefits have not been received.
(Ord. No. 11377, §1, 02-04-03)

Sec. 2-411. Service retirement pension; maximum pension benefits; death benefit.

(a) From and after July 1, 1999, a member of the Fund who was employed in the Fire Department or Police Department may at his or her election retire upon completion of twenty-five (25) years of active service in the Fire or Police Departments, and upon notifying the Board in writing of such election, receive an annual Service Retirement Pension payable in twelve (12) monthly installments in an amount equal to two and three-quarters percent (2.75%) of the average pay for such member during the highest three (3) years that such member is employed in the Fire or Police Department multiplied by said member's years of active service up to twenty-five (25) years of active service plus one and one-quarter percent (1.25%) of the aforesaid average pay for each year of active service between twenty-five (25) and thirty (30) years. Such benefit shall be based upon such member's Average Base Salary. Notwithstanding the foregoing, the Service Retirement Pension of any member who elects to take the Deferred Retirement Option Plan (DROP) shall be adjusted as provided in Sec. 2-416 below. Provided that members whose benefits would have heretofore been based upon the maximum salary of a Sergeant in the Police Department shall be required to have previously paid or to retroactively pay to the Board of Directors a sum sufficient to equal eight percent (8%) of their Average Base Salary for a minimum of three (3) years preceding the effective date of their retirement to be eligible for any increase in benefits. Notwithstanding the foregoing, the annual Service Retirement Pension payable to a member who was hired prior to July 1, 1999, shall not be less than the annual Service Retirement Pension of a Police Sergeant who retired as of July 1, 1999.

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(b) From and after July 1, 1999, a member who becomes employed in the Fire or Police Departments after November 3, 1992, may at his or her election retire after the completion of twenty-five (25) years of active service in the Fire or Police Department and upon notifying the Board in writing of such election, will receive an annual Service Retirement Pension payable in twelve (12) monthly installments in an amount paid to retirees in Part “(a)” of this Section who complete twenty-five (25) years of active service in the Fire or Police Departments; plus one and one-quarter percent (1.25%) of the salary set out in Part “(a)” for each year in active service following eligibility for retirement, not to exceed five (5) years.

(c) Upon the death of any member employed on November 3, 1992, who is retired under the provisions of this Section, or upon the death of such member prior to retirement, but eligible for benefits under this Section, there shall be paid to said member's beneficiary a death benefit of \$10,000.00, and the benefits under Section 2-418, and the surviving spouse shall be paid, the sum of \$500.00 per month until death if said spouse is not a beneficiary under one of the options listed in Section 2-418. If the member has not elected any option prior to his or her death, a benefit shall be payable to the deceased's surviving spouse, if any, as though he or she had elected Option D., Section 2-418. If a member who is employed after November 3, 1992, shall die before retirement and has reached the conditions for a service retirement pension, there shall be paid to his or her beneficiary, or beneficiaries the death benefit of \$10,000.00 and such benefits elected under Section 2-418.

(d) The City Council, City of Chattanooga, in its discretion, only after a recommendation of the Board of Directors of the Fire and Police Pension Fund, upon advice by the Mayor, may, by ordinance, passed on three separate readings, amend any section of the Private Acts of 1949, as amended, or this Article XIII; provided that such amendment is not inconsistent with sound actuarial principles, methods, and actuarial assumptions and further provided that such amendment shall not in any way decrease any vested financial benefits accrued by any participant or beneficiary of the Fire and Police Pension Fund.

(e) Those benefits payable to participants retired prior to the date of the passage of this amendment or beneficiaries of those members retired prior to the date of the passage of this amendment shall continue under the provisions in effect at the time such benefit was granted except where specifically amended or modified to include such participants or beneficiaries. No participant or beneficiary vested as of July 1, 1999, or the effective date of this amendment, shall receive an amount that would be less than the amount payable to a participant or beneficiary with equivalent service retiring as of July 1, 1999 or the effective date of this amendment, whichever is more beneficial to the participant.

(Ord. No. 9778, § 1(3), 8-18-92; Ord. No. 11012, §§ 1(2), 1(5)-1(8), 5-9-00; Ord. No. 11377, §1, 02-04-03)

Sec. 2-412. Disability or death benefits from cause resulting from performance of duty.

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(a) If any member of the departments of Fire or Police while engaged in the discharge of his or her duties shall receive injuries resulting in such employee becoming disabled from performing duties in the Fire or Police Department, he or she shall be placed on a pension and paid sixty percent (60%) of the member's Base Salary as computed over the highest three (3) years of Base Salary during the member's years of active service, regardless of the length of time served; provided, however, that the member shall make application to the Board on a form to be provided by said Board, which application shall be accompanied by proof of facts entitling disability retirement, or proper medical proof of disability; provided further that before such member shall be retired on a pension the Board may have him or her examined by competent physicians to determine whether or not such disabled member is unable to discharge his or her regular duty or any other duty that may be required of him or her by officials of the Department of the Fire and Police. Due notice of application shall be recorded by the Secretary and the applicant shall be notified five (5) days in advance, unless waived by applicant, of the hearing by the Board on his or her application. Notwithstanding the foregoing, in no event shall a retired member's monthly benefit be less than Seven Hundred Fifty Dollars (\$750.00). No member shall be retired on a pension under this Section because of injury until six (6) months after such injury was received. Any employee retired on a pension because of an injury, in the event of recovery to the extent that he or she is again able to perform any duty required of him or her, shall be removed from the pension roll and reinstated in service. If such employee who has been placed on the pension roll refuses to allow himself or herself to be examined by physicians selected by the Board, the Board shall have the right to suspend his or her pension until such time as he or she may permit an examination by the physicians selected by the Board. No member shall be given disability benefits under this Section if the Board finds that said disability could probably be successfully corrected by competent medical treatment, and said member fails or refuses to be so treated.

(b) If any member shall die prior to retirement from any injury suffered in line of duty, or receive injuries while engaged in the performance of their duties resulting in death within six (6) months thereafter, and shall leave a surviving spouse, said surviving spouse shall be entitled, unless receiving benefits under Section 2-418, to receive until his or her death the benefit herein provided for a member receiving a disability benefit under this Section. Said surviving spouse shall in no event receive a monthly benefit of less than Five Hundred Dollars (\$500.00).

If there be no surviving spouse, then the dependent child or children shall each receive \$500.00 per month during the minority, provided that the total amount payable to all of such children shall not exceed the member's maximum pension. If such deceased member is not survived by spouse or minor children, but is survived by two parents solely dependent upon said member, each parent so long as he or she has no other means of support, shall receive one-half (1/2) of the benefits to which a surviving spouse would receive under this Section. If there is

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only one parent dependent upon such member for support, such parent shall be paid the same benefits which a surviving spouse would receive under this Section.

(c) Upon death of any member who retires under the provision of this Section, there shall be paid to his or her beneficiary or beneficiaries the sum of \$10,000.00. (Ord. No. 9778, § 1(6), 8-18-92; Ord. No. 10747, § 1(1), 8-18-98; Ord. No. 11012, §§ 1(3), 1(9)-1(10), 5-9-00; Ord. No. 11377, §1, 02-04-03)

Sec. 2-413. Refund to member terminating employment.

Except as otherwise provided in the Uniform Services Employment and Re-Employment Rights Act of 1994, if the employment of a member is terminated for any reason, or if the member is on leave without pay for a period in excess of ninety (90) consecutive days, said member shall be entitled to receive at the time of said termination or leave 100% of whatever sums he or she contributed to the fund. If such member is subsequently reemployed in the fire and police department, he or she shall at the time of reemployment reimburse the fund to the full extent of the amount he or she received from the fund upon said termination with interest compounded annually and computed at the rate utilized in the actuarial evaluation of the Pension Fund during their periods of absence from the date of said withdrawal to the date of reemployment. Any such employee withdrawing monies from the fund pursuant to the provisions herein shall not be eligible for reinstatement or reemployment in the fire and police department until they shall have paid back the said monies. (Ord. No. 9778, § 1(7), 8-18-92; Ord. No. 11377, §1, 02-04-03)

Sec. 2-414. Benefits exempt from debts of employee, may not be garnished, etc.

The Pension Fund, either before or after its distribution by the trustee to disabled or retired employees of said fire and police department, and their widows, or the beneficiary of any deceased employee, shall be exempt from the debts of such employee and shall not be assignable nor subject to attachment, garnishment, execution or other legal process, but the same shall be received by such employee or beneficiary, free from debts, judgments and demands of such employee or beneficiary. (Priv. Acts 1949, Ch. 165, § 18; Ord. No. 9778, § 1(13), 8-18-92; Ord. No. 11377, §1, 02-04-03)

Sec. 2-415. Termination of employment after ten years of service; vesting; death after termination.

Except as otherwise provided in the Uniform Services Employment and Re-Employment Rights Act of 1994, a member who has completed ten (10) or more years of active service at the time of his or her termination of employment, or at the time he or she has been on leave without

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pay for a period in excess of ninety (90) consecutive days, shall have the right to either (1) or (2) as follows:

(1) A right to receive a 100% refund of whatever sums he or she contributed to the Fund. If such member is subsequently reemployed in the Fire and Police Department, he or she shall at the time of reemployment reimburse the Fund to the full extent of the amount he or she received from the Fund upon said termination with interest compounded annually and computed at the rate utilized in the actuarial valuation of the Fund from the date of withdrawal to the date of reemployment.

(2) A right to leave his or her contribution in the Fund and be eligible to receive after reaching fifty-five (55) years of age a monthly deferred vested retirement benefit equal to 2.4% of his or her Average Base Salary as computed over the highest three (3) years of pay during the member's years of service for each year of active service, subject to a maximum of twenty-five (25) years.

If the death of such member occurs prior to commencement of the payment of any benefits under this Section, a refund of whatever sums such member contributed to the Fund shall be paid to the member's estate, and his or her beneficiary shall be paid a death benefit sum of \$10,000.00. If death occurs following the commencement of eligibility to receive benefits under this Section, benefits shall be payable according to the terms elected under Section 2-410. If there is no election a surviving spouse shall receive the benefit paid under Option D. (Priv. Acts. 1949, Ch. 165, #19; Ord. No. 8688, #1(18), 8-19-86; Ord. No. 9778, #8, 8-18-92; Ord. No. 9839, #3, 2-9-93; Ord. No. 11377, §1, 02-04-03)

Sec. 2-416. Permanent and Total Disability

(a) From and after July 1, 1999, if an active member of the departments of Fire or Police shall become Permanently and Totally Disabled, he or she shall be placed on a pension and paid sixty-eight and 75/100 percent (68.75%) of the member's Base Salary as computed over the highest three (3) years of Base Salary during the member's years of active service, regardless of the length of time served, provided, however, that the member shall make application to the Board on a form to be provided by said Board, which application shall be accompanied by proof of facts entitling the member to Permanent and Total Disability retirement, or proper medical proof of Permanent and Total Disability; provided further that before such member shall be retired on a pension the Board may have him or her examined by competent licensed physicians to determine whether or not such member is Permanently and Totally Disabled. Due notice of application shall be recorded by the Secretary and the applicant shall be notified five (5) days in advance, unless waived by applicant, of the hearing by the Board on his or her application. Notwithstanding the foregoing, in no event shall a retired member's monthly benefit be less than Seven Hundred Fifty Dollars (\$750.00).

(b) In the event that a member who was Permanently and Totally Disabled recovers

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to the extent that he or she is able to engage in gainful employment again, he or she shall notify the Board of such change of condition and such Permanent and Total Disability retirement pension shall be discontinued. Such member may reapply for such other disability pension as such member may be eligible for. If such member who has been placed on the pension roll refuses to allow himself or herself to be examined by physicians selected by the Board, the Board shall have the right to suspend his or her pension until such time as he or she may permit an examination by physicians selected by the Board.

(c) In addition to any other Permanent and Total Disability Benefit to which a member is entitled under this Section, if a member has one or more minor children at the time he or she begins to receive a Permanent and Total Disability retirement pension, he or she shall receive Five Hundred Dollars (\$500.00) per month, per minor child, not to exceed a total of One Thousand Dollars (\$1,000.00) during the minority of such children.

(d) The Board shall provide to the Mayor and City Council on or before April 1 of each year an annual report of the action of the Board on applications for Permanent and Total Disability pensions during the preceding calendar year.

(e) The City Council declares its intent to review the effect of increasing Disability benefits as provided by this section, and to sunset said increases effective December 31, 2007. The Board shall submit a report by an actuary or such other information as may be available to evaluate said effects to be prepared not less than 90 days nor more than 180 days prior to December 31, 2007. The benefits provided by this section which are over and above any benefits that have heretofore been authorized by Section 13.74 or 13.76 of the Chattanooga City Code, Part I, shall terminate effective December 31, 2007, unless they are renewed by the City Council on or before said date. Any application for Permanent and Total Disability benefits presented prior to December 31, 2007, shall be governed by the provisions of this section. Any application presented after that date shall be governed by any applicable enactment of the City Council. If the City Council fails to act, then the provisions of Chattanooga City Code, Part I, Sections 13.74 or 13.76 as amended and existing prior to the enactment of this provision shall apply to applications submitted on and after January 1, 2008, supplanting the benefits provided by this section.

(Ord. No. 11377, §1, 02-04-03)

Sec. 2-417. Cost of living adjustments to pension benefits.

The benefits payable to retired members or any of their survivors or beneficiaries shall be increased each January 1, following the first twelve (12) months of benefit, by three percent (3%).

(Ord. No. 9778, § 1(10), 8-18-92; Ord. No. 11012, § 1(11), 5-9-00; Ord. No. 11377, §1, 02-04-03)

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Sec. 2-418. Optional retirement benefits.

1. When a member reaches the conditions for retirement benefits under Section 2-411; or qualifies to reach the conditions for retirement benefits under Section 2-411 and qualified for retirement benefits under Section 2-412; or is eligible to commence receiving retirement benefits under Section 2-415, he or she may elect to have the pension benefits under said Sections converted into an optional retirement benefit which is the actuarial equivalent of such benefit based upon mortality basis approved from time to time by the Board, and the age of the member and of the beneficiary as of the date the member becomes eligible to exercise the election.

The optional retirement benefits may take one of the forms listed below and for members who become employed after November 3, 1992 there shall be paid to the beneficiary the option selected by such member under this Section; but for a member who was an employee on November 3, 1992, the surviving spouse shall receive the sum of \$500.00 per month for life, if the said member has not designated the spouse as a beneficiary under one of the option forms listed below.

OPTION A: 120 Payments Certain and Life Option

A decreased retirement benefit payable for life with the first 120 payments guaranteed. Any guaranteed payments due after the death of the retired participant shall be payable to the designated beneficiary, if any who survives the retired participant, or the estate of the retired participant if there is no surviving designated beneficiary.

OPTION B: Joint and Survivor Option

A decreased retirement benefit payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 100% of that payable to the retired participant.

OPTION C: Modified Joint and Survivor Option

A decreased retirement benefit payable to the retired participant for life which shall continue after his or her death to their surviving beneficiary at 75% of that payable to the retired participant.

OPTION D: Modified Joint and Survivor Option

A decreased retirement benefit payable to the retired participant for life which shall continue after his or her death to their surviving beneficiary at 50% of that payable to the retired participant.

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OPTION E: Modification of Option B

A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 100% of that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the member not elected an option. (Ord. No. 10463, § 1(3), 8-20-96)

OPTION F: Modification of Option C

A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 75% of that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the member not elected an option. (Ord. No. 10463, § 1(3), 8-20-96)

OPTION G: Modification of Option D

A decreased retirement benefit, subject to an actuarial reduction, payable to the retired participant for life shall continue after his or her death to their surviving beneficiary at 50% of that payable to the retired participant provided, that if such designated beneficiary shall predecease the retired participant, the retirement benefit payable to the participant after death of the designated beneficiary, shall be equal to the retirement benefit, which would have been payable had the member not elected an option. (Ord. No. 10463, § 1(3), 8-20-96)

2. Application for any optional retirement benefit shall be in writing, duly executed, and filed with the Board. Such application shall contain all information required by the Board, including such proofs of age as are deemed necessary by the Board. A retirement option selected at the time of eligibility may only be changed by written notice of the new election filed with or prior to his or her application for retirement and subject to such requirement as the Board may require.

3. If an active member dies after he or she has reached the aforesaid conditions for retirement benefits, any option they may have elected, in lieu of their otherwise retirement benefit, shall be payable as though he or she had been entitled to have such optional benefit commence on their date of death. (Ord. No. 9778, § 1(9), 8-18-92)

4. In the event of a divorce of a member who retired under an optional retirement

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plan, where the spouse is the designated beneficiary, the beneficiary may be cancelled upon the written request of the member and proper documentation, which shall include the final decree and marital dissolution agreement of the parties; provided, that such cancellation is not in conflict with the decree or marital dissolution agreement. The retirement allowance payable to the retiree after the cancellation of the designated beneficiary shall not be affected by such cancellation. (Ord. No. 10463, § 1(4), 8-20-96; Ord. No. 11377, §1, 02-04-03)

Sec. 2-419. Definition of terms.

1. The term "Member" shall mean an employee of the Chattanooga Fire or Police Department who is a sworn Firefighter or Police Officer. An employee hired into the said department to be a sworn Firefighter or Police Officer shall not become a member until he or she completes all training required for the position and is sworn, nor shall he or she be eligible for participation in the General Pension Plan.

2. The term "Board" shall mean the Board of Directors of the Chattanooga Fire and Police Pension Fund.

3. The term "Fund" shall mean the Chattanooga Fire and Police Pension Fund, formerly called the Firemen's and Policemen's Insurance and Pension Fund, created by Chapter 165 of the Private Acts of 1949, as amended.

4. The term "Average Base Salary" or "Base Salary" shall mean the regular wages or salary paid on a monthly basis, but shall not include overtime pay or any supplements, including but not limited to supplements for years of service or education.

5. The term "Active Service" shall mean that period of time after the date of permanent employment as a sworn officer with POST certification in the Chattanooga Police Department or a sworn officer with permanent employment in the Chattanooga Fire Department, that the member serves and is paid from the payroll of the said departments.

6. The term "Service Retirement Pension" shall mean the pension a member shall be entitled to receive upon completion of twenty-five (25) years of active service.

7. The term "Surviving Spouse" shall mean the spouse who is married to a member at the member's death and who has been continuously married to the member for a period of at least eighteen (18) months prior to the date of the member's death.

8. The term "Permanent and Total Disability" or "Permanently and Totally Disabled" shall mean the medically determinable consequences of a catastrophic injury or illness that permanently prevents a member from performing any gainful work.
(Ord. No. 11377, §1, 02-04-03)

Sec. 2-420. City court costs for benefit of Fire and Police Pension Fund.

The sum of five dollars (\$5.00) [shall] be added as and in the nature of court costs to the cost incurred in the City Court of the City of Chattanooga on all forfeitures of fines or monies for or on conviction for violation of any city ordinances and that said increase in court costs for the City Court of the City of Chattanooga be collected by the clerk of said court and paid over to the treasurer the City of Chattanooga who will account for said funds and pay same over to the trustees of the Fire and Police Pension Fund together with all other monies properly collected for credit to said fund as herein before set out. (Priv. Acts 1969, Ch. 165, § 1; Ord. No. 11377, §1, 02-04-03)

Sec. 2-421. Credited service under general pension plan.

A participant in the General Pension Plan who has transferred employment from the provisions of the Fire and Police Pension Plan shall have the right to have his service under the Fire and Police Pension Plan vested if it amounts to five (5) years or more and said participant has more than five (5) years credited service under the General Pension Plan. Such employee shall be entitled to receive at age fifty-five (55), if not employed by the City of Chattanooga, ten (10%) percent of the pension he or she could have received if employed for twenty-five (25) years that was paid at the time of transfer, for five (5) years of service, and if any employee transfers after serving more than five (5) years and less than ten (10) years, the vested percent of said pension paid at the time of transfer shall be increased by three (3%) percent for each additional year of service up to ten (10) years of service. (Ord. No. 8688, § 1(2)(a), 8-19-86; Ord. No. 11377, §1, 02-04-03)

Sec. 2-422. Deferred Retirement Option Provision.

(a) From and after July 1, 1999, a member of the Fire Department and Police Department with more than twenty-five (25) years of active service, but no more than thirty (30) years of active service, may elect the Deferred Retirement Option Provision (DROP) at the time of retirement, to cover a retroactive period not to exceed thirty-six (36) months.

(b) A member shall elect to take the DROP by completing a written form provided by the Board of Directors. If a member elects to take the DROP, his or her Service Retirement Pension shall be adjusted as follows: Upon retirement, the eligible member's Service Retirement Pension shall be calculated as provided in Section 2-411 above, and further adjusted as provided in Section 2-418, if applicable, except that, for purposes of the calculation under Section 2-411, the member's active service shall be reduced by the number of months elected by the member hereunder. The number of months elected by the member hereunder shall not exceed the lesser of: (A) the number of months of active service accumulated by the member beginning on the date the member attains twenty-five (25) years of active service and ending on the member's actual retirement date; and (B) thirty-six (36) months.

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(c) The member's monthly Service Retirement Pension, calculated in accordance with the provisions of subsection (b), above, shall be added together with an amount that is equal to the average of the member's monthly employee assessment, required by Section 2-402, above, for the thirty-six (36) month period immediately prior to the member's retirement. The resulting sum shall then be multiplied by the number of months elected by the member pursuant to subsection (b), above. The resulting product shall be credited with interest at seven percent (7%) annually, compounded monthly, for the same number of months. The total amount so derived shall constitute the DROP benefit, which shall be paid in a single lump sum.

(d) The DROP payment shall be paid as soon as practicable after the retirement of the member.

(e) A member's right to participate in the DROP shall not be vested until the member retires and elects to take the DROP. The DROP may be discontinued or modified at any time.

(Ord. No. 11377, 02-04-03)

Secs. 2-423 - 2-500 Reserved.

(Ord. No. 11377, §1, 02-04-03)

DIVISION 19. OTHER POST-EMPLOYMENT BENEFITS PROGRAM¹³

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

DIVISION 19.1 DEFINITIONS

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

- (a) *Account* means the investment recordkeeping account established to fund post-retirement welfare benefits on behalf of Employer's Employees, their Spouses, Dependents and Beneficiaries.
- (b) *Administrator* means the Employer, acting by and through its City Finance Officer. The Employer acting through its Administrator or its Trustees may secure such administrative services as are necessary to implement a Plan.

¹³ **Editor's note** - Division and subdivisions referenced in Ord. No. 11975, § 1, 6-5-07, were renumbered to follow existing Divisions.

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- (c) *Beneficiary* means the Spouse, Dependents, or the person or persons designated by a Participant pursuant to the terms of a Plan, who will receive any benefits payable under a Plan in the event of the Employee's death. In the case where there is no designated Beneficiary, any amount of contributions, plus accrued earnings thereon, remaining in a Participant's Account must, under the terms of a Plan, be returned to the Trust.
- (d) *Code* means the Internal Revenue Code of 1986, as amended from time to time.
- (e) *Dependent* means an individual who is a person described in Code Section 152(a).
- (f) *Employee* means an individual who performs services for the Employer, and who has been designated as eligible to participate in, and received benefits under a Plan.
- (g) *Investment Fund* means any investment vehicle selected by the Employer in which all or a portion of the Trust assets may be invested as herein provided.
- (h) *Non-Forfeitable Interest* means the interest of a Participant or the Participant's Spouse, Dependent or Beneficiary (whichever is applicable) in the percentage of Employer Contributions that has vested pursuant to the vesting schedule in a Plan sponsored by the Employer. A Participant shall, at all times, have a one hundred percent (100%) Non-Forfeitable Interest in the Participant's own contributions, if Participant contributions are permitted pursuant to the terms of the Plan.
- (i) *Participant* means an Employee of the Employer who satisfies the requirements for participation in a Plan sponsored by the Employer.
- (j) *Participant Account* means an individual recordkeeping account maintained under a Plan to record the contribution, if any, and earnings of a Participant in the Plan in accordance with Section 7.4.
- (k) *Plan or Plans* means one or more post-employment welfare benefits established by Employer for the Employer's Employees, their Spouses, Dependents, and Beneficiaries. Plan or Plans shall include such post-employment welfare benefit plans established by Employer prior to or subsequent to the adoption of this Division as the same maybe adopted, amended or repealed from time to time.
- (l) *Spouse* means the Participant's lawful spouse as determined under the laws of the state in which the Participant has his primary place of residence.
- (m) *Trust* means the trust established by this Declaration.

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- (n) *Trustees* means the Trustees of the General Pension Plan of the City of Chattanooga who shall act as designees of the Employer to administer the Investment Fund.

DIVISION 19.2 ESTABLISHMENT OF TRUST

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

DIVISION 19.3 CONSTRUCTION

- 3.1 This Trust and its validity, construction and effect shall be governed by the laws of the State of Tennessee.
- 3.2 Pronouns and other similar words used herein in the masculine gender shall be read as the feminine gender where appropriate, and the singular form of words shall be read as the plural where appropriate.
- 3.3 If any provision of this Trust shall be held illegal or invalid for any reason, such determination shall not affect the remaining provisions, and such provisions shall be construed to effectuate the purpose of this Trust.

DIVISION 19.4 BENEFITS

- 4.1 *Benefits.* This Trust may be used to fund benefits on behalf of a Participant, the Participant's Spouse and Dependents pursuant to the terms of a Plan.
- 4.2 *Form of Benefits.* Assets held in this Trust may be used to reimburse a Participant, his Spouse and Dependents for insurance premiums or other payments expended for permissible benefits described under a Plan. This Trust may reimburse the Employer, or the Administrator for insurance premiums or other payments pursuant to the Plan.

DIVISION 19.5 GENERAL DUTIES

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

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- 5.2 It shall be the duty of the Employer, subject to the provisions of a Plan, to pay over to the Administrator or other person designated hereunder from time to time the Employer's contributions, and to keep accurate books and records, or cause its designee to keep accurate books and records with respect to the Account and a Plan.

DIVISION 19.6 INVESTMENTS

- 6.1 The Employer shall appoint an investment committee that will, as a minimum, develop an investment policy.
- 6.2 The Employer delegates to its Trustees the authority to appoint one or more delegates and Trustees shall notify Employer in writing of any such appointment.
- 6.3 To the extent directed by the Employer (or Participants, their Spouses, Dependents or Beneficiaries, to the extent provided herein), the Trustees are authorized and empowered with the following powers, rights and duties, each of which the Trustee shall exercise in a non-discretionary manner:
- (a) To cause stocks, bonds, securities, or other investments to be registered in its name as Trustee or in the name of a nominee, or to take and keep the same unregistered;
 - (b) To employ such agents and legal counsel as it deems advisable or proper in connection with its duties. The Trustees shall not be liable for the acts of such agents and counsel or for the acts done in good faith and in reliance upon the advice of such agents and legal counsel, provided it has used reasonable care in selecting such agents and legal counsel;
 - (c) To exercise where applicable and appropriate any rights of ownership in any contracts of insurance in which any part of the Trust may be invested and to pay the premiums thereon; and
 - (d) At the direction of the Employer (or Participants, their Spouses, Dependents or Beneficiaries or the investment manager, as the case may be) to sell, write options on, convey or transfer, invest and reinvest any part thereof in each and every kind of property, whether real, personal or mixed, tangible or intangible, whether income or non-income producing and wherever situated, including but not limited to, time deposits, shares of common and preferred stock, mortgages, bonds, leases, notes, debentures, equipment or collateral trust certificates, rights, warrants, convertible or exchangeable securities and other corporate, individual or government securities or obligations, annuity, retirement or other insurance contracts, mutual funds or in units of any other common, collective or commingled trust fund.

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- 6.4 Notwithstanding anything to the contrary herein, the assets of the Account shall be held by the Trustees as title holders only. Persons holding custody or possession of assets titled to the Trust shall include the Employer, the Administrator, the investment manager, and any agents and subagents, but not the Trustees. The Trustees shall not be responsible or liable for any loss or expense which may arise from or result from compliance with any direction from the Employer, Administrator, the investment manager, or such agents to take title to any assets nor shall the Trustees be responsible or liable for any loss or expense which may result from the Trustees' refusal or failure to comply with any direction to hold title, except if the same shall involve or result from the Trustees' negligence or intentional misconduct. The Trustees may refuse to comply with any direction from the Employer, the Administrator, the investment manager, or such agents in the event that the Trustees, in their sole and absolute discretion, deem such direction illegal.
- 6.5 The Employer, to the extent permitted by the Tennessee Governmental Tort Liability Act, 29-20-201 *et seq.*, particularly, Section 29-20-310, or other applicable law hereby indemnifies and holds the Trustees harmless from any and all actions, claims, demands, liabilities, losses, damages or reasonable expenses of whatsoever kind and nature in connection with or arising out of (i) any action taken or omitted in good faith by the Trustees in accordance with the directions of the Employer or its agents and subagents hereunder; or (ii) any disbursements of any part of the Trust made by the Trustees in accordance with the directions of the Employer; or (iii) any action taken by or omitted in good faith by the Trustees with respect to an investment managed by an investment manager in accordance with any direction of the investment manager or any inaction with respect to any such investment in the absence of directions from the investment manager. Notwithstanding anything to the contrary herein, the Employer shall have no responsibility to the Trustees under the foregoing indemnification if the Trustees fail intentionally or recklessly to perform any of the duties undertaken by it under the provisions of this Trust.
- 6.6 Notwithstanding anything to the contrary herein, the Employer or, if so designated by the Employer, the Administrator and the investment manager or another agent of the Employer or Trustees, will be responsible for valuing all assets so acquired for all purposes of the Trust and of holding, investing, trading and disposing of the same. The Employer will indemnify and hold the Trustees harmless, to the extent permitted by law, against any and all claims, actions, demands, liabilities, losses, damages, or expenses of whatsoever kind and nature, which arise from or are related to any use of such valuation by the Trustee or holding, trading, or disposition of such assets.
- 6.7 The Trustees shall and hereby do indemnify and hold harmless the Employer from any and all actions, claims, demands, liabilities, losses, damages and reasonable expenses of whatsoever kind and nature in connection with or arising out of (a) the Trustees' failure to follow the directions of the Employer, the Administrator, the investment manager, or

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agents thereof, except as permitted by the last sentence of Section 6.4 above; (b) any disbursements made without the direction of the Employer, the Administrator, the investment manager, or agents thereof; and (c) the Trustees' willful misconduct, or recklessness with respect to the Trustee's duties under this Declaration.

DIVISION 19.7 CONTRIBUTIONS

- 7.1 *Employer Contributions.* The Employer shall contribute to the Trust such amounts as specified in a Plan or by resolution.
- 7.2 *Participant Contributions.* If specified in a Plan, each Participant may make voluntary after-tax contributions. Under no circumstances shall Participant Contributions exceed an insubstantial amount. These contributions shall be collected by the Employer and remitted to the Trust for deposit at such time or times as required under the terms of the Plan.
- 7.3 *Accrued Leave.* If the Employer's Plan includes contributions from accrued leave, the plan must contain a forfeiture provision that will prevent Participants from receiving the accrued leave in cash in lieu of a contribution to the Trust.
- 7.4 *Accounts.* Employer contributions, and if provided under the terms of a Plan, Participant contributions and contributions of accrued leave, and all investment income and realized and unrealized gains and losses, and forfeitures allocable thereto will be deposited into one or more Accounts in the name of the Employer for the exclusive purpose of funding benefits on behalf of Participants, their Spouses, Dependents and Beneficiaries under a Plan. The assets in each Account may be invested in Investment Funds as directed by the Trustees from among the Investment Funds selected by the Trustees.
- 7.5 *Receipt of Contributions.* The Employer or, if so designated by the Employer, the Administrator or investment manager or another agent of the Employer, shall receive all contributions paid or delivered to it hereunder and shall hold, invest, reinvest and administer such contributions pursuant to this Declaration, without distinction between principal and income. The Trustee shall not be responsible for the calculation or collection of any contribution under the Plan, but shall hold title to property received in respect of the Plan in the Trustee's name as directed by the Employer or its designee pursuant to this Declaration.
- 7.6 *Spend Thrift Clause.* No amount in any Account or Participant Account maintained under this Trust shall be subject to transfer, assignment, or alienation, whether voluntary or involuntary, in favor of any creditor, transferee, or assignee of the Employer, the Trustees, any Participant, his Spouse, Dependent or Beneficiaries.

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DIVISION 19.8 MULTIPLE PLANS

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

DIVISION 19.9 DISBURSEMENTS AND EXPENSES

- 9.1 The Employer or its designee shall make such payments from the Trust at such time to such persons and in such amounts as shall be authorized by the provisions of a Plan provided, however, that no payment shall be made, either during the existence of or upon the discontinuance of the Plan, which would cause any part of the Trust to be used for or diverted to purposes other than the exclusive purpose of funding post-employment welfare benefits for Employees, their Spouses, Dependents and Beneficiaries pursuant to the provisions of a Plan. Provided, however, the investment and administrative expenses of the Trust can be funded from the assets of the Trust.
- 9.2 All payments of benefits under the Plan shall be made exclusively from the assets of the Accounts or Participant Accounts of Participants to whom or to whose Spouse, Dependents or Beneficiaries such payments are to be made, and no person shall be entitled to look at any other source for such payments.
- 9.3 The Employer, Trustee and Administrator may be reimbursed for expenses reasonably incurred by them in the administration of the Trust. All such expenses, including, without limitation, reasonable fees of accountants, investment managers, and legal counsel to the extent not otherwise reimbursed, shall constitute a charge against and shall be paid from the Trust upon the direction of the Employer.

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DIVISION 19.10 ACCOUNTING

- 10.1 All accounts, books, and records relating thereto shall be maintained by the Employer or its designee.
- 10.2 As promptly as possible following the close of each year, the Trustees shall file with the Employer a written account setting forth assets titled to the Trust as reported to the Trustees by the Employer or its designee.

DIVISION 19.11 MISCELLANEOUS PROVISIONS

- 11.1 The Trustees shall not be required to give any bond or to qualify before, be appointed by, or account to any court of law in the exercise of its powers hereunder.
- 11.2 No person transferring title or receiving a transfer of title from the Trustees shall be obligated to look to the propriety of the acts of the Trustees in connection therewith.
- 11.3 The Employer may engage the Trustees as their agent in the performance of any duties required of the Employer under a Plan, but such agency shall not be deemed to increase the responsibility or liability of the Trustees under this Declaration.
- 11.4 The Employer shall have the right at all reasonable times during the term of this Declaration and for three (3) years after the termination of this Declaration to examine, audit, inspect, review, extract information from, and copy all books, records, accounts, and other documents of the Trustees relating to this Declaration and the Trustees' performance hereunder.
- 11.5 The Trust shall be subject to audit by the State Comptroller.

DIVISION 19.12 AMENDMENT AND TERMINATION

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

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- 12.2 *Rights Upon Plan Termination or Substantial Modification.* In the event the other post-employment benefits plan is terminated or substantially modified rendering the assets of the trust to be unnecessary to fund the plan, the assets will be distributed pursuant to section 12.3.
- 12.3 *Employee and Beneficiary Vested Rights.* (a) If the plan is terminated the employees and former employees who have met all the conditions for other post-employment benefits as set out in the plan document in existence immediately preceding plan termination, to include retirees or their surviving beneficiaries shall be vested in a proportionate share of the accumulated assets based on the present value of the previous plan benefit as determined by an independent consulting actuary; (b) If substantial plan modification is adopted that because a reduction of benefits or eligibility results in the plan moving from a funded status of less than seventy-five percent (75%) to an over-funded status of at least one hundred fifty percent (150%) and continues in such over-funded level for two (2) consecutive actuarial valuations, then such action shall be considered a plan termination and the excess assets shall be distributed in the same manner as in subsection (a) above.
- 12.4 *Actuarial Valuations.* Actuarial valuations contemplated by this section shall be performed by the plan's independent consulting actuary in accordance with actuarial methods recognized by the Governmental Accounting Standards Board for other post-employment benefits.

DIVISION 19.13 TRUSTEES AND SUCCESSOR TRUSTEES

- 13.1 The Trustees of the General Pension Plan of the City of Chattanooga are designated as Trustees of the City of Chattanooga Post-Employment Benefits Other than Pension Trust. The General Pension Plan trustees shall not commingle the assets of the OPEB Trust Plan(s) and shall maintain separate and apart OPEB assets and liabilities from the assets and liabilities of the General Pension Plan, provided that this shall not preclude the use of the same investments providing that the books and records for such investments shall separately account for the OPEB investment. The Trustees may elect but are not required to utilize the same attorneys, actuaries, investment managers, custodians, and other supporting services as used by the General Pension Plan.
- 13.2 The Employer reserves the right to change Trustees for any or no reason, at any time by giving ninety (90) days' advance written notice.
- 13.3 The Employer reserves the right to change Trustees for cause by giving thirty (30) days advance written notice.

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- 13.4 The Trustees reserve the right to resign at any time by giving ninety (90) days' advance written notice to the Employer; provided that individual General Pension Plan Trustees may resign from time to time in their discretion.
- 13.4 In the event of a change or resignation of a Trustee, the Employer may appoint a successor Trustee who shall succeed to all rights, duties, and responsibilities of the former Trustee under this Declaration and the terminated Trustee shall be deemed discharged of all duties under this Declaration and responsibilities for the Trust.

DIVISION 19.14 LIMITED EFFECT OF TRUST

- 14.1 Neither the establishment of the Trust or any modification thereof, the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any person any legal or equitable right against the Trustees, the Administrator, the Employer or any officer or employee thereof, except as may otherwise be expressly provided in a Plan or in this Declaration.
- 14.2 The creation of this trust shall not be deemed to create rights beyond the assets of the trust. Any non-forfeitable rights beyond this trust must be bestowed in the employment contract, plan document, ordinance, resolution, or statute.

DIVISION 19.15 PROTECTIVE CLAUSE

- 15.1 Neither the Administrator, the Employer, nor the Trustees shall be responsible for the validity of any contract of insurance or other arrangement maintained in connection with a Plan, or for the failure on the part of the insurer or provider to make payments provided by such contract, or for the action of any person which may delay payment or render a contract void or unenforceable in whole or in part.
- (Ord. No. 11975, § 1, 6-05-07)

ARTICLE IV. FINANCE¹⁴

Sec. 2-501. Fiscal year.

The fiscal year of the city shall be computed and reckoned from the first day of July of each year. All annual reports relating to the city's finances, as well as those of all departments,

¹⁴ **Charter reference**—Finance and taxation, Title 6.

Cross reference—City finance officer, § 2-61 et seq.; city treasurer, § 2-101 et seq.; purchases, contracts and property disposition, § 2-541 et seq.; businesses, trades and occupations, Ch. 11; free public library fund created, § 22-7; disposition of revenues from operation of refreshment stands and amusement places and devices in parks and playgrounds of the city, § 26-18.

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officers and agencies of the city, shall be made up to and including the thirtieth day of June of each year.

(Code 1986, § 2-301; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-502. Reserved.

(Ord. No. 11103, § 2, 11-28-00)

Sec. 2-503. Transfer of unencumbered balances.

At the close of each fiscal year any unencumbered balance of an appropriation, except special funds duly created, shall revert to the general fund. The city council may transfer the unencumbered balance of one general fund appropriation to any other; provided, that such action shall only be taken during the last two (2) months of the fiscal year.

(Code 1986, § 2-303; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-504. Supervisory powers of city finance officer.

The city finance officer shall supervise and have charge of the keeping of all accounts and financial records for every department and agency of the city, the preparation of all financial reports and statements, the audit of all claims, and budgetary and auditing control over the city's revenues and expenditures.

(Code 1986, § 2-304; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-505. Accounting procedure; weekly reports.

The method of installing and keeping all general and departmental accounts and financial records of the city and of rendering all financial reports shall be prescribed by the city finance officer and, unless otherwise directed by him, such accounts and records shall be kept in his office. He shall establish the city accounting procedure in such a way that his accounts will show the financial transactions of every branch of the city government and the financial transactions relating to all appropriations and funds, all revenues accrued and liabilities incurred, all cash receipts and disbursements and all transactions affecting the acquisition, custody, and disposition of assets. He shall secure a weekly report from each department and agency of the city showing all money received by it and the disposition thereof, and shall see that all such money is paid promptly into the treasury.

(Code 1986, § 2-305; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-506. Monthly and annual reports.

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(a) The city finance officer shall prepare and submit a report to the mayor and city council not later than the tenth day of each month, showing revenues accrued and expenditures incurred, giving details as to appropriations and funds in such manner as to show the exact financial condition of the city and of each department and agency thereof as of the last day of the previous month. Such monthly report shall also show actual revenue receipts of the city as compared with the estimated receipts set up in the annual budget, and it shall be his responsibility to call the fact to the attention of the council in writing whenever actual receipts are falling behind estimated receipts in order that the council may curtail original budget appropriations in accordance with the new situation.

(b) At the close of the fiscal year, the city finance officer shall have prepared an annual report showing the financial condition and transactions of the city and file the same with the council.

(Code 1986, § 2-306; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-507. Audits required.

(a) At least once each year the city finance officer shall audit the accounts of all officials and employees of the city who have the custody of, collect or disburse funds.

(b) Upon the resignation, removal or expiration of the term of any city officer other than the city finance officer, the city finance officer shall make an audit and investigation of the accounts of such officer and shall report the condition thereof to the mayor and city council.

(c) Either the mayor or the council may at any time require the city finance officer to make other audits or investigations of the accounts of any officer, department or agency of the city.

(Code 1986, § 2-307; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

State law reference--Audits required, T.C.A. § 6-56-101.

Sec. 2-508. Audit of finance officer's accounts.

In case of the death, resignation or removal of the city finance officer, the mayor shall cause an audit to be made of his accounts. The mayor and council shall provide for an independent annual audit of the city finance officer's accounts, records and transactions, and may provide for such an audit at any other time. All audits provided by this section shall be made by certified public accountants holding certificates issued by the state board of accountancy or by a similar agency in some other state maintaining an equal standard of professional requirements.

(Code 1986, § 2-308; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

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Sec. 2-509. Action where audit or investigation reveals indebtedness by officer.

If, as a result of any audit or investigation made as provided in this article, an officer is found to be indebted to the city, the city finance officer or other person making such audit shall immediately give notice thereof to the mayor and city council and the city attorney, and the city attorney shall proceed forthwith to collect such indebtedness.

(Code 1986, § 2-309; Ord. No. 9654, § 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-510. Accounts for appropriations and loan authorizations.

Accounts shall be kept by the city finance officer for each appropriation and loan authorization made by the city council and every warrant issued for payment shall state specifically against which of such accounts it is drawn. The city finance officer's accounts shall show in detail the appropriations or loan authorizations made by the city council, the amount drawn thereon, the unpaid obligations charged against each and the unencumbered balance to the credit of each.

(Code 1986, § 2-310; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-511. Records of status of city's bank accounts.

When city funds are paid out for any purpose or on any account or withdrawn from one bank and deposited in another bank, an account of the transaction shall be recorded in the city finance officer's accounts so that at any time there may be determined by a reference to his records the exact status and condition of all bank accounts of the city and their nature, whether general or special funds, and, if special, the rate of interest they are earning on time deposits, if any.

(Code 1986, § 2-311; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-512. Finance officer to keep record of city treasurer's receipts and disbursements.

All funds paid to the city treasurer for any purpose or from any source and all funds paid out by the city treasurer shall be reported by him to the city finance officer, whose accounts shall show the amounts reported as received, from what source they were derived, the amounts reported as paid out and for what purposes they were so paid.

(Code 1986, § 2-312; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-513. Special accounts with respect to state and federal moneys received.

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The city finance officer shall set up and maintain special accounts with respect to moneys received for designated purposes from the state or the federal government.
(Code 1986, § 2-313; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

State law reference--Similar provisions, T.C.A., § 12-4-114.

Sec. 2-514. Treasurer's accounts.

(a) The city finance officer shall maintain an account with the city treasurer as tax collector. He shall charge to the city treasurer, as such collector the full amount of the annual tax levy and all uncollected back tax levies, and credit him with all sums reported by him as collected. When the city treasurer goes out of office as such collector, the city finance officer shall credit him with all uncollected balances and releases made by proper authority and shall charge him with all sums reported as coming into his hands as tax collector.

(b) The city finance officer shall maintain another account with the city treasurer as such, in which he shall charge him with all sums coming into his hands as city treasurer, and shall credit him with such sums as are shown to be paid out by him on warrants issued as provided herein.

(Code 1986, § 2-314; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-515. Custody of cash book and tax duplicates.

The city's cash book and tax duplicates shall be under the immediate control and supervision of the city treasurer and he shall be responsible for the safekeeping of the same.
(Code 1986, § 2-315; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-516. Record of daily cash balance.

The city treasurer shall bring down and show on his cash book the city's daily cash balance at the close of each day's business.
(Code 1986, § 2-316; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-517. Deposit of checks received; dishonored checks.

All checks received in the department of public affairs and finance as payment for taxes, license fees or permit fee, or received for any other purpose shall be deposited by the city treasurer within two (2) days after they are received. If for any reason any check is not honored by the bank on which it is drawn, it shall be turned over to the mayor for such action as he may see fit to take including, but not limited to, collection of an additional fee of fifteen dollars (\$15.00) to partially offset the cost of processing the returned check. A record shall be made by the officer handling such check showing the disposition thereof.
(Code 1986, § 2-317; Ord. No. 9209, 8-15-89; Ord. No. 11103, § 2, 11-28-00)

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Sec. 2-518. Duplicate deposit slips required; where filed.

When making deposits of funds for any purpose, the city treasurer shall prepare duplicate slips, one (1) to be filed with the city finance officer and one (1) to be kept in the office of the city treasurer.

(Code 1986, § 2-318; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-519. Record and report of bank balances.

The city treasurer shall keep a book showing the amount of public money on deposit with each bank and which deposits are made, and shall file with the mayor at such times as the mayor may require a report of the bank balances for all funds on deposit, showing each fund separately.

(Code 1986, § 2-319; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-520. Issuance of warrants; withdrawal of funds.

(a) No money shall be paid out of the city treasury except by means of a warrant on the treasury issued by the city finance officer. The city finance officer shall examine all payrolls, bills and other claims and demands against the city and shall issue no warrant for payment unless he has found by diligent investigation that the claim is in proper form, correctly computed and duly approved, and that it is justly due and payable. He may investigate any claim and for that purpose may summon before him any officer, agent or employee of the city, the claimant or other person, and examine him upon oath or affirmation administered by him relative to such claim. If he finds that a claim is fraudulent, erroneous or otherwise invalid, he shall not authorize the payment of such claim.

(b) No warrant shall be issued by the city finance officer to satisfy any claim unless the claim is approved in the department or agency to which the claim pertains by the official of such department or agency authorized by the mayor or department head to approve such claim. Every warrant shall set out the purpose for which it is issued.

(c) When a warrant is issued, as provided herein, the city treasurer or the assistant city treasurer shall issue a check for the amount called for in such warrant payable to the person named therein.

(Code 1986, § 2-320; Ord. No. 9654, §§ 40-41, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-521. Withholding percentage of salary or claims due, for payment of delinquent taxes.

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The city finance officer shall retain twenty-five (25) percent of the salary due any person on the payroll of the city who is indebted to the city for delinquent taxes until the amount of such taxes, with penalties and interest, has been paid in full. He shall retain twenty-five (25) percent of any amount due by the city to any person indebted to the city for delinquent taxes on each claim or bill due such person, until a sufficient amount has been withheld from such claim or bill to pay such taxes, with penalties and interest, in full.

(Code 1986, § 2-321; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-522. Checks to be countersigned by mayor or city finance officer.

All checks issued by the city treasurer or assistant city treasurer shall be countersigned by the city finance officer or the mayor before they will be payable at any bank in which deposits are kept by the city.

(Code 1986, § 2-322; Ord. No. 9654, § 40, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-523. Debt service fund.

A fund to be known as the debt service fund is hereby created and designated as the fund from which all expenditures relating to the bonded debt or other long term obligations of the city shall be made as herein provided, and in which all revenues therefor shall be deposited. Transactions involving the city's funding and refunding bonds outstanding on July 1, 1948, shall be handled through the funding and refunding sinking fund under the administration of the sinking fund commission, but all other debt service transactions shall be administered by the finance officer through the debt service fund, and disbursement warrants therefor shall be prepared by the city finance officer in the manner provided for all other city funds. The amount necessary to finance debt service requirements shall be provided and set up in the budget of the city general fund and disbursements shall be made from the general fund to the debt service fund as need may arise.

(Code 1986, § 2-323; Ord. No. 9654, §§ 40 & 42, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-524. Manpower development and training fund.

There hereby is established a special fund known as the manpower development and training fund for the purpose of implementing federal laws and to authorize expenditures from such fund in the carrying out of the purposes of federal law pending receipt of funds from the federal government in reimbursement therefor.

(Code 1986, § 2-324; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-525. Capital expenditures.

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(a) *Requests.* All requests for capital expenditures by all departments, agencies and branches of the city government wherein city funds are to be expended shall be presented to the office of the mayor prior to the beginning of each calendar year. Such requests shall be on forms supplied by the office of the mayor and shall include detailed requests for capital funds for the ensuing calendar year and forecasts and estimates of capital expenditures or needs for each of the next five (5) calendar years.

(b) *Submittal of proposed annual capital improvements budget and program.* The office of the mayor shall prepare and submit to the city council a proposed annual capital improvements budget and program for consideration after adoption of the annual budget ordinance for the city. Such capital improvements program shall include a detailed budget recommendation for the ensuing calendar year and recommendations for a capital improvements program for the subsequent five (5) calendar years. A schedule of submission by the various departments, agencies, and branches of government shall be set by the mayor and distributed each year with materials for the departmental submissions.

(c) *Action upon capital improvements budget and program.* It is intended that the capital improvements budget and program should be acted upon by the council not later than January 30 of each year.

(d) *Review of ordinance by planning commission staff.* Before adoption of the annual capital improvements ordinance, or any amendments thereto, such ordinance or amendments shall first be submitted to the staff of the Chattanooga-Hamilton County Regional Planning Commission for review and recommendation prior to the passage by the city council and such staff shall make a report to the mayor and city council on any proposed amendments within sixty (60) days of submission.

(e) *Compliance with budget ordinance.* All capital expenditures of the city shall be in accordance with the capital improvements budget ordinance except that the city council may make an appropriation, allocation or authorization for a project in order to meet an emergency. (Code 1986, § 2-325; Ord. No. 9654, §§ 2, 43 & 44, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-526. Appropriation and disbursement of municipal funds to nonprofit charitable and civic organizations.

(a) Appropriated funds may be used for the purpose of promoting the common good and general welfare of the people of the city by bringing about civic betterments and social improvements including efforts to maintain and increase employment opportunities in the city by promoting industry, trade, commerce, tourism and recreation by introducing manufacturing, industrial, governmental, educational, financial, service, commercial, recreational and

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agricultural enterprises to locate in or remain in the city or to locate nearby so as to provide jobs for residents of the city.

(b) Appropriated funds may be expended to carry out any activity which promotes the above-mentioned purpose so long as such activity is approved by the city council.

(c) Any proposed project to be undertaken by the recipient of appropriated funds shall be submitted to the mayor for approval by the city council before any city funds are expended in connection with such project in order to assure compliance with these guidelines.

(d) The budget of the city shall specify each recipient organization by name as beneficiary of the appropriated funds and the amount appropriated therefor.

(e) Any non-profit organization requesting funds from the City of Chattanooga shall furnish the mayor and all council members prior to any consideration of monetary appropriation with the following information:

- (1) The name and address of the non-profit organization;
- (2) The name, address and telephone number of a specific contact person knowledgeable within the non-profit organization relative to any request for fund assistance;
- (3) A copy of the applicable budget for the non-profit organization effective at the time any request for assistance from the City of Chattanooga is made;
- (4) A copy of the charter of the non-profit organization filed with Tennessee Secretary of State;
- (5) A reference to the specific non-profit exemption applicable to such non-profit organization under the Internal Revenue Code;
- (6) A copy of the annual report of the non-profit organization applicable for the year in which assistance is requested from the City of Chattanooga which shall include, but is not limited to:
 - a. A copy of the annual audit or review (satisfactory to the council's fiscal advisor) for non-profit organization;
 - b. A description of the specific programs of the non-profit organization which serve the residents of the City of Chattanooga; and

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- c. The proposed usage for any financial assistance appropriated by the City of Chattanooga.
- (7) A statement by the chief executive officer of the non-profit organization indicating that the non-profit organization will provide a detailed accounting of how and for what purpose municipal funds were spent by the non-profit organization prior to the close of the City of Chattanooga's fiscal budget year and at the close of each succeeding fiscal budget year until all municipal funds have been spent by the non-profit organization; along with the list of the accomplishments scheduled by use of the municipal funding;
 - (8) A statement by the chief executive officer of the non-profit organization that the non-profit organization will provide the City of Chattanooga with copies of annual audits or reviews (satisfactory to the council's fiscal advisor) of the non-profit organization for each year that it spends funds appropriated to it by the City of Chattanooga; and
 - (9) Each non-profit organization requesting funds from the City of Chattanooga shall pay an application fee of fifty dollars (\$50.00) which shall be expended to cover the costs of advertising notices pursuant to T.C.A. § 6-54-111 and to defray clerical time and supplies associated with the application.
- (f) Each organization receiving such funds from the city shall comply with the requirements of Tennessee Code Annotated section 6-54-111, as amended regarding filing with the city clerk a copy of an annual report of its business affairs and transactions, which includes a copy of an annual audit, its program which serves the residents of the city and the proposed use of the municipal assistance.
 - (g) Funds appropriated by the city may not be utilized for advertising commercial, social, industrial or any other advantages of the city in excess of the amount authorized to be appropriated annually from city funds for this purpose by Tennessee Code Annotated section 6-54-201.
 - (h) Appropriations to nonprofit organizations other than charitable organizations may be made only upon meeting the following conditions:
 - (1) Notices shall be published in a newspaper of general circulation in the city of the intent to make an appropriation to a non-profit but not charitable organization specifying the intended amount of the appropriation and the purposes for which the appropriation will be spent; and

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- (2) The city council must approve the appropriation at two (2) consecutive regularly scheduled meetings.

(Code 1986, § 2-326; Ord. No. 9654, § 2, 1-6-92; Ord. No. 9693, § 1, 4-7-92; Ord. No. 11103, § 2, 11-28-00)

Secs. 2-527 – 2-540. Reserved.

(Ord. No. 11103, § 2, 11-28-00)

**ARTICLE V. PURCHASES, CONTRACTS
AND PROPERTY DISPOSITION¹⁵**

Sec. 2-541. Purchasing department created; supervision; subordinate personnel.

There is hereby created a department of the city to be known as the purchasing department. The head of such department shall be known as the purchasing agent. He shall be elected by the mayor to serve at the pleasure of the mayor. The mayor may appoint such deputy or assistant purchasing agents as may be necessary to carry out the efficient and orderly functions of the department.

(Code 1986, § 2-341; Ord. No. 9654, § 45, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

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

Sec 2-542. Duties, powers of purchasing agent.

The purchasing agent as head of the purchasing department shall possess the following powers and perform the following duties:

¹⁵**Charter references**—Power to purchase property, § 1.1; authority to dispose of surplus property, § 2.1(33).

Cross references—City finance officer, § 2-61 et seq.; city treasurer, § 2-101 et seq.; city finance generally, § 2-501 et seq.; businesses, trades and occupations, Ch. 11.

State law reference—Municipal purchasing, T.C.A. § 6-56-301 et seq.

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- (1) He shall contract for and purchase all supplies, materials and equipment necessary for the conduct and operation of all departments and agencies of the city; except, the department of education may establish its own purchasing department subject to the city charter and applicable ordinances enacted pursuant thereto. Such purchases shall include those for all jointly financed agencies (such as civil defense, the Chattanooga-Hamilton County Health Department, the metropolitan planning commission, and any other joint operations with the county, other municipalities or the state or the federal government) when payment for such supplies and the accounting function therefor is a responsibility of the city.
- (2) He may transfer from one department or agency to any other departments or agencies such supplies, materials and equipment or other personal property not needed by one but necessary to the conduct and operation of the other; or may sell any personal property belonging to the city which is declared surplus by the head of a department or agency, or by the city council.
- (3) When established by the mayor, he shall have charge of and supervision over all storerooms and storage places and may distribute to the departments and agencies of the city on requisition any supplies, materials or equipment available for distribution from such storerooms.
- (4) He may inspect or supervise inspection of all deliveries of supplies, materials and equipment to determine their conformity to the specifications as to quantity and quality stated in the contract therefor.
- (5) He may, subject to the approval of the mayor and city council, advertise for and enter into contracts for requirements, annual orders or indefinite quantity contracts, or term contracts. No such contract shall be let unless the same shall have been first advertised for bids as required by section 2-552; and no such requirements contract shall be let for a period in excess of one (1) year, but may contain a one-year renewal option by the city.
- (6) He may, subject to the approval of the mayor and city council, establish standard specifications as to quantity and quality for all supplies, materials and equipment generally needed by the departments or agencies of the city, and may make use of existing laboratories or other agencies belonging to the city for testing samples and inspecting deliveries.

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- (7) The purchasing agent may establish rules and regulations for the operation, procedures and functions of the purchasing department. Before submission to the city council, such rules and regulations shall first be submitted to the mayor, city finance officer and to the city attorney. The city finance officer shall advise whether or not such rules and regulations are consistent with the prevailing accounting practices of the city and are fiscally feasible. The city attorney shall approve such rules and regulations as to legality and form. When and if approved by the city council, such rules and regulations shall be spread upon the minutes of the city council and filed in the office of the city finance officer. The purchasing agent shall then publish such rules and regulations in the form of a purchasing manual for the benefit of the various departments, agencies and divisions of the city, persons dealing with the city and the general public.

(Code 1986, § 2-342; Ord. No. 9654, §§ 2, 13, 46 & 47, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-543. Emergency purchases.

(a) In the event of an apparent emergency which requires immediate procurement of supplies, material and equipment, or contractual services, the mayor shall be empowered to authorize the purchasing agent to procure, at the lowest available price, any supplies or contractual services, regardless of the amount of the expenditure. A full report of the circumstances of an emergency purchase shall be filed by the purchasing agent with the city council at its next meeting, and shall be entered on the minutes of the city council.

(b) In the event of actual emergency and with the consent of the purchasing agent and the approval of the mayor, the head of any department may procure directly at the lowest available price any supplies, material and equipment, or contractual services, whose immediate procurement is essential to prevent delays in the work of a department which may vitally affect the life, health, safety or convenience of the public. The head of such department shall send to the purchasing agent a requisition and a copy of the delivery record, together with a full written report of the circumstances of the emergency. The report shall be filed with the city council and spread upon its minutes.

(c) When it is necessary to purchase from a single source, a report thereon shall be filed with the mayor and city council before its next meeting.

(Code 1986, § 2-343; Ord. No. 9654, §§ 2 & 48, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-543.5. Fuel purchase in the open market.

Fuel and fuel products may be purchased in the open market without public advertisement, but shall whenever possible be based on at least three (3) competitive bids. Fuel

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and fuel products may be purchased from the state department of general services contract where available.

(Code 1986, § 2-343.5; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-544. Unclaimed personal property – Forfeiture; notice to owner.

All unclaimed personal property which comes into the possession of the police department, city court or other departments of the city shall, if it remains unclaimed for a period of sixty (60) days thereafter, be delivered to the purchasing agent, to be forfeited and disposed of by him. The purchasing agent, before selling same, shall make every reasonable effort to give actual notice to the owner thereof if such has not been done by the department that came into possession of same.

(Code 1986, § 2-344; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-545. Same – Sale at public auction.

At intervals during each year, the purchasing agent shall hold a public sale of unclaimed personal property delivered to him. Notice of sale, giving the time and place, shall be by advertisement at least once in all daily newspapers published in the city at least ten (10) days prior to the time set for the sale. Such sale shall be made at public auction to the highest bidder for cash, and shall be conducted by the purchasing agent or some person designated by him. The purchasing agent shall furnish the city finance officer a list to be kept of all articles sold and the price for which each article was sold.

(Code 1986, § 2-345; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-546. Same-Disposition of proceeds of sale.

(a) The money received from the sale of unclaimed personal property, as provided in this article, shall be paid by the purchasing agent into the city treasury, and he shall certify to the city treasurer the expense incurred in making the sale or otherwise disposing of such personal property, including the cost and expense of storage during the period such personal property was in possession of the city.

(b) If the owner of any article of personal property sold shall, within a period of sixty (60) days after the sale, present satisfactory proof to the city that he was the owner of any article sold, he shall be entitled to the proceeds of the sale thereof, less his proportionate share of the expenses of the sale.

(c) The money arising from sales of unclaimed personal property which had been in the possession of the department of fire and police shall be kept in a separate account by the city

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treasurer and, at the end of the fiscal year, the city treasurer shall pay the net amount of these proceeds into the firemen's and policemen's insurance and pension fund.

(d) The net proceeds arising from sales of all other unclaimed personal property shall be paid by the city treasurer into the general fund of the city.
(Code 1986, § 2-346; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-547. Purchase requisitions required; approval of form.

All purchases made under the provisions of this article shall be made pursuant to a written requisition from the head of a department, agency or division of the city. The city finance officer shall approve the form of any requisition.
(Code 1986, § 2-347; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-548. Signing, custody of contracts.

(a) Contracts for the purchase of supplies, materials and equipment shall be signed for and on behalf of the city by the purchasing agent. Contracts for construction, services and all other contracts shall be signed for and on behalf of the city by the purchasing agent or the head of a department, agency or division of the city where the contract originates, or as otherwise provided by ordinance or resolution.

(b) The original of all contracts shall be delivered to and kept by the city finance officer.
(Code 1986, § 2-348; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-549. Approval not required for expenditures not exceeding ten thousand dollars.

Where the amount of a requisition or voucher or contract does not exceed ten thousand dollars (\$10,000.00), approval by the city council shall not be necessary for the issuance of a purchase order or payment of a voucher or the execution of a contract. In no event shall a requisition, voucher or contract be split or divided into two (2) or more with the intent of evading the necessity for having competitive bids and/or the necessity of obtaining the approval of the city council.
(Code 1986, § 2-349; Ord. No. 9590, § 1, 8-6-91; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-550. Petty cash funds.

The mayor and every other official who has the responsibility of expending an appropriation is hereby authorized to maintain a petty cash fund not to exceed five hundred dollars (\$500.00) from which purchases or payments may be made not to exceed fifty dollars

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(\$50.00) each, and receipts shall be attached to the warrant voucher replenishing or reimbursing the petty cash fund, provided, that the city treasurer and golf course managers are hereby authorized to maintain petty cash funds not to exceed two thousand dollars (\$2,000.00). From said funds, purchases or payments may be made not to exceed said amount by the city treasurer and not to exceed one thousand dollars (\$1,000.00) each by the golf course managers, and receipts shall be attached to the warrant voucher replenishing or reimbursing the petty cash fund. (Code 1986, § 2-350; Ord. No. 9943, § 1, 9-7-93; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-551. Approval of expenditures exceeding ten thousand dollars.

Whenever any requisition or voucher or contract calls for the expenditure of more than ten thousand dollars (\$10,000.00), the issuance of a purchase order or the payment of a voucher, or the award of a contract shall be subject to the approval of the city council, and shall not be binding on or create any liability against the city until approved by the city council. Such approval shall be by resolution or by motion adopted by majority vote of the city council; provided, however, that such approval shall not be necessary where a voucher or requisition is issued pursuant to a prior lawful contract or pursuant to an ordinance authorizing such expenditure.

(Code 1986, § 2-351; Ord. No. 9590, § 1, 8-6-91; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-552. When bids required; advertisements for bids.

Whenever any requisition or voucher or contract calls for an expenditure exceeding ten thousand dollars (\$10,000.00), there shall be public advertisement for competitive bids; provided, however, purchases under ten thousand dollars (\$10,000.00) shall also be subject to advertisement and bids in the case of purchases of like items which individually cost less than ten thousand dollars (\$10,000.00), but which are customarily purchased in lots of two (2) or more, if the total purchase price of such items would exceed ten thousand dollars (\$10,000.00) during any fiscal year. Notice for bids shall be advertised at least once in one (1) or more daily newspapers published in the city at least ten (10) days prior to the time set for a public opening of bids. The purchasing agent may also issue written invitations to bid to dealers in the articles to be purchased in addition to, but not in lieu of the advertisement required under this section. The head of any department, agency or division of the city may cause such advertisement to be made where any other types of contracts are involved or may direct the purchasing agent to make such advertisement and receive the bids thereon; provided, however, secondhand equipment or specialized equipment or equipment purchased from any federal, state or municipal agency, where it is not practicable to take bids, may be purchased without taking bids, but such purchases shall be subject to the requirements of sections 2-549 and 2-551.

(Code 1986, § 2-352; Ord. No. 9590, § 1, 8-6-91; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11013, § 2, 11-28-00)

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No public advertisement or competitive bidding shall be required for purchases, leases, or lease-purchases up to forty percent (40%) of the above amount established for purchases requiring full public advertisement and competitive bidding. For purchases between forty percent (40%) and one hundred percent (100%) of said amount, such purchases, leases, or lease-purchases shall, whenever possible, be based upon three (3) written competitive bids. (Ord. No. 11834, § 1, 5-30-06)

Sec. 2-553. Submission, opening, acceptance of bids.

(a) All bids shall be sealed and submitted to the official authorized herein to request bids on or before the specified time when such bidding is to be closed. The official receiving bids shall open them publicly on the date and at the hour specified. A purchase order may be issued, and/or a contract may be awarded, to the lowest responsible bidder submitting the best bid after approval by the city council. The city council may reject any and all bids submitted regardless of the amount involved. The term "lowest responsible bidder submitting the best bid" shall mean that in addition to price, consideration may be given to the following factors:

- (1) The ability, capacity and skill of the bidder to perform the contract or provide the service required;
- (2) Whether the bidder can perform the contract or provide the service promptly or within the time specified, without delay or interference;
- (3) The character, integrity, reputation, judgment, experience and efficiency of the bidder;
- (4) The quality of performance of previous contracts or services;
- (5) The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
- (6) The sufficiency of the financial resources and ability of the bidder to perform the contract or provide the service;
- (7) The quality, availability and adaptability of the supplies, material and equipment, or contractual services to the particular use required;
- (8) The ability of the bidder to provide future maintenance and service for the use of the subject of the contract, and the proposed warranty or guaranty;

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- (9) The number and scope of conditions attached to the bid;
- (10) The approach of the bidders to issues raised in the solicitation for bids;
- (11) The peculiar capabilities of the bidders to perform the contract;
- (12) The proprietary features of the bid; and
- (13) The overall responsiveness of the bid to the needs of the City.

(b) If only one (1) bid is received, the bid shall not be opened and the contract or service to be performed shall be re-bid. If after having re-bid the contract or service only one (1) bid is received, the bid may be accepted. Provided, a re-bid shall not be required when there is only one local supplier to perform the contract or provide the service required, or for the purchase of a unique or proprietary product.

(Code 1986, § 2-353; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 2, 9-14-99; Ord. No. 10913, § 1, 9-28-99; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-554. Rentals, leases.

The rental or lease of any equipment, material or vehicles may be contracted for by the head of any department, agency or division of the city; provided, however, that where the expenditure for the rental or lease period shall exceed ten thousand dollars (\$10,000.00), then approval or confirmation shall be obtained from the city council and shall be subject to the advertising and bid requirements of section 2-352; but subject to the exception and requirements contained in Tennessee Code Annotated, section 6-56-304(4). Nothing herein shall preclude the rental or lease of equipment, material or vehicles merely because the rental or lease contract contains an option to purchase.

(Code 1986, § 2-354; Ord. No. 9590, § 1, 8-6-91; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10903, § 1, 9-14-99; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-555. Exception for utility charges.

Nothing in this article shall preclude the head of any department, agency or division of the city from arranging for reasonable utility services to be charged against its appropriation account.

(Code 1986, § 2-355; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-556. Exception for professional services.

Contracts for professional services shall not be subject to competitive bidding. Tennessee Code Annotated, section 12-4-106.
(Code 1986, § 2-356; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-557. Contents of bid proposals.

All bid proposals for contracts to furnish supplies, materials or equipment, or do construction work, shall set forth with particularity the nature of the work to be performed, how it shall be done, the type and quality of the material to be used and any other details necessary for the guidance of the contractor and the protection of the city.
(Code 1986, § 2-357; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-558. Specifications attached to contracts.

The purchasing agent, or the department head in whose department the contract is to be executed, may have the city engineer or other competent city officer or employee, or private consultant, draw specifications in detail which shall be attached to the contract and construed to be a part thereof. Such specifications shall be made in duplicate, one (1) copy to be furnished to the contractor and the other retained by the department head and filed in his office as a part of the records of the city.
(Code 1986, § 2-358; Ord. No. 9654, § 49, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-559. Compliance prerequisite to paying warrants.

No warrant shall be approved for the payment of any contract of the city unless provisions of this article shall have been complied with and unless the original of the contract is on file with the city finance officer and the minutes of the city council show that the contract has been ratified or approved by the board where necessary.
(Code 1986, § 2-359; Ord. No. 9654, §§ 2 & 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-560. Public improvement contracts.

All contracts of the city for any public improvement, when the cost shall exceed ten thousand dollars (\$10,000.00) shall be let to the lowest responsible bidder, the city council to be the judge thereof, and the council shall have the right to reject any and all bids. All contracts of the city shall be in writing, and may be signed on behalf of the city by the mayor or head of the department in whose department such contract originates. All contracts shall be subject to the approval of the city council. Notice to bidders shall be given by publication in a daily newspaper published in the city, giving the date, hour and place bids will be received and

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publicly opened, which publication notice shall be at least ten (10) days before the bids are to be received.

(Code 1986, § 2-360; Ord. No. 9654, § 50, 1-6-92; Ord. No. 10903, § 3, 9-14-99; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-561. Force account or cost-plus contracts for public improvements.

After bids have been advertised and received for making any public improvement, the mayor may negotiate with the lowest responsible bidder to have such bidder make such public improvement by force account or on a cost-plus basis if, in the opinion of the mayor, the making of such agreement is advantageous to the city. Contracts for repair of buildings or structures may be let on a cost-plus basis which shall include the cost of labor, material, insurance or other legitimate expenses of the contractor and a fixed fee or percentage for profit with a maximum cost to the city of such contract. All such agreements shall be in writing and approved by the city council.

(Code 1986, § 2-361; Ord. No. 9654, § 51, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-562. Contractor's bond.

No contract shall be let for any public work until the contractor shall have first executed a good and solvent bond to the effect that he will pay for all the labor and materials used by such contractor, or any immediate or remote subcontractor under him, in such contract, in lawful money of the United States. The bond to be so given shall be for one hundred (100) percent of the contract price. Where advertisement is made, the condition of the bond shall be stated in the advertisement; provided, that this section shall not apply to contracts under one hundred dollars (\$100.00).

(Code 1986, § 2-362; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-563. Certificate that funds available required.

No contract, purchase order, order on stores, agreement or other obligation involving the expenditure of any money shall be issued or entered into or be valid unless the city finance officer first certifies thereon that there is in the city treasury to the credit of the appropriation or loan authorization for which it is to be paid on unencumbered balance in excess of all other unpaid obligations. Before so certifying, the city finance officer shall encumber the proper appropriation or loan authorization with the amount of such contract, purchase order, order on stores, agreement or obligation until the city is discharged therefrom.

(Code 1986, § 2-363; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-564. Obligations without funds declared void; liability.

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(a) All contracts, purchase orders, orders on stores, agreements and obligations issued or entered into contrary to the provisions of the preceding section shall be void and no person shall have any claim or demand whatever against the city thereunder, nor shall any official or employee of the city waive or qualify the limitation fixed by the preceding section or fasten upon the city any liability whatever contrary to such limitation.

(b) If any official or employee of the city authorizes or incurs an obligation against the city without first securing the city finance officer's certification as required by the preceding section, such official or employee and his sureties shall be individually liable for the amount of such obligation.

(Code 1986, § 2-364; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-565. Determination of available funds.

All unencumbered money actually in the treasury to the credit of a fund from which they may be drawn, all money anticipated to be received from taxes or other sources to the extent of the amounts stated in the annual budget, all money to be derived from bonds, notes and certificates of indebtedness, either then or previously authorized and either sold or authorized to be sold, shall, for the purpose of the city finance officer's certification, be deemed to be in the treasury to the credit of the appropriate fund and subject to certification.

(Code 1986, § 2-365; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-566. Disposal of surplus real property.

(a) When the head of any department, agency, office, board or commission of the city shall determine that any real property used in that department is no longer useful or required for the operations of such department, he shall certify this fact to the mayor and city council, together with a full description of the property in question; its former use or uses; and whether it has or may have any future use for any other department or agency, etc., of the city. Upon receipt of such certification, the city council shall determine in its sound discretion whether to declare the property to be surplus and whether to be sold or disposed of or whether to be held or transferred to other branches of the city.

(b) Upon a determination by the city council, by motion to be spread upon the minutes of the council, that such real property is surplus and no longer required for the present use of any branch of the city, or in the foreseeable future, the city council, subject to the limitations hereinafter set out, may direct the mayor to cause the purchasing agent of the city to advertise for bids for the sale of such real property.

(c) The purchasing agent, when so directed, shall prepare an advertisement to be published in all the daily newspapers of the city at least ten (10) days before the date set for the submission of bids. Such advertisement shall clearly state that the property is to be sold to the

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highest and best bidder with the right retained by the city to reject any or all bids or to waive any informalities or immaterial defects contained in such bids. The full and complete legal description of the property shall be included in the advertisement; the street address, if any, together with a full and complete disclosure of any liens, encumbrances, easements, restrictions or known defects in title and the zoning classification of the property on the date of advertisement thereof.

(Code 1986, § 2-366; Ord. No. 9654, § 52, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-567. When negotiated or private sales authorized.

Nothing in this article shall be construed to limit the right of the mayor, subject to city council approval, to make a negotiated or private sale of property without advertisement, where such appears to be advantageous to the city; or where the property in question is of such a specialized nature as not to be of general market-ability; or where the prospective purchaser is an agency of the United States, this state or any political subdivision thereof.

(Code 1986, § 2-367; Ord. No. 9654, § 53, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Secs. 2-568 – 2-580. Reserved.

ARTICLE VI. MEMORIAL AUDITORIUM¹⁶

Sec. 2-581. Board of directors--Created; composition.

A Board of Directors is hereby created which shall be known as the "Chattanooga Memorial Auditorium and Tivoli Theater Board of Directors." Such Board shall be composed of twelve (12) members. The Administrator of Parks and Recreation or his or her designee shall serve as Executive Director of the Board. In addition to the twelve members of the Board, there is created the positions of Director Emeritus, the qualifications for which shall be twenty (20) years of prior service on the Board and designation by the Mayor. Director(s) Emeritus shall have the right to vote on all matters coming before the Board. The Board shall adopt its own bylaws and elect a chairperson from among its membership.

(Code 1986, § 2-381; Ord. No. 10010, § 1, 2-8-94; Ord. No. 10541, § 1, 2-25-97; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-582. Same--Appointment, term of office.

The members of the Board of Directors shall be appointed by the Mayor and confirmed by the City Council. They shall hold office for a term of three (3) years and until their successors are confirmed. The initial Board shall have four (4) members appointed to one (1)

¹⁶ **Cross reference**—Parks and playgrounds, Ch. 26.

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year terms, four (4) members appointed to two (2) year terms and four (4) members appointed to three (3) year terms. Thereafter, appointments shall be for three (3) year terms. Absent compelling reasons to the contrary, each Board member may serve a maximum of three (3) terms.

(Code 1986, § 2-382; Ord. No. 10010, § 1, 2-8-94; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-583. Same - Powers; duties.

The Board of Directors shall provide guidance and recommendations to the administration in all matters affecting the operation and maintenance of the Soldiers and Sailors Memorial Auditorium and the Tivoli Theater.

(Code 1986, § 2-383; Ord. No. 9386, § 1, 5-29-90; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10010, § 1, 2-8-94; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-584. Civic Facilities Show Account for the Memorial Auditorium and Tivoli Theater.

A checking account shall be maintained and titled “Civic Facilities Show Account” for the Chattanooga Memorial Auditorium and Tivoli Theater, which shall include a petty cash fund in the amount of Ten Thousand Dollars (\$10,000.00). The Administrator of the Department of Parks and Recreation shall designate the person or persons authorized to sign for this account.

(Code 1986, § 2-384; Ord. No. 10826, § 1, 2-9-99; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-585. Preservation fee.

There is hereby imposed a preservation fee on each ticket sold for events held at either the Memorial Auditorium or the Tivoli Theater as follows:

Increase of \$.50 for tickets costing \$0.00 - \$10.00
Increase of \$1.00 for tickets costing \$10.01 - \$20.00
Increase of \$1.50 for tickets costing \$20.01 and above

This preservation fee is to be added to the cost of the tickets as otherwise provided for or negotiated.

(Ord. No. 11103, § 2, 11-28-00; Ord. No. 11175, § 15, 9-11-01; Ord. No. 11581, §15, 07-06-04)

Sec. 2-586. Rental rates for Memorial Auditorium and Tivoli Theater and Community Theater.

There is hereby established a rental rate schedule for the Memorial Auditorium, Tivoli Theater and Community Theater as follows:

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Memorial Auditorium

		<u>Ticketed Events</u>	<u>Non-Ticketed Events</u>
Resident Non-Profit	(Monday-Thursday)	\$1,200.00	\$1,600.00
	(Friday-Sunday)	\$1,450.00	\$1,850.00
Non-Profit	(Monday-Thursday)	\$1,300.00	\$1,700.00
	(Friday-Sunday)	\$1,550.00	\$1,950.00
For-Profit	(Monday-Thursday)	\$1,400.00*	\$1,800.00*
	(Friday-Sunday)	\$1,650.00*	\$2,050.00*

* vs. 10%-no cap (negotiated by Manager)

Tivoli Theater

		<u>Ticketed Events</u>	<u>Non-Ticketed Events</u>
Resident Non-Profit		\$1,100.00	\$1,300.00
Non-Profit		\$1,200.00	\$1,400.00
For-Profit		\$1,300.00*	\$1,500.00*

- vs. 10%-no cap (negotiated by Manager)

Community Theater

		<u>Ticketed Events</u>	<u>Non-Ticketed Events</u>
Resident Non-Profit		\$450.00	\$550.00
Non-Profit		\$450.00	\$550.00
For-Profit		\$450.00*	\$550.00*

* vs. 10%-capped @ \$800.00

(Ord. No. 11103, § 2, 11-28-00; Ord. No. 11175, § 15, 9-11-01)

Secs. 2-587 – 2-600. Reserved.

(Ord. No. 11103, § 2, 11-28-00)

ARTICLE VII. MUNICIPAL PLANNING COMMISSION¹⁷

Sec. 2-601. Designated.

The Chattanooga-Hamilton County Regional Planning Commission, a regional planning commission established by the state planning commission in accordance with Tennessee Code

¹⁷ **Charter reference**—Planning generally, § 12.1 et seq.

Cross references—Zoning regulations, App. B.

State law references—Regional planning commission, T.C.A. §§ 13-3-101 – 13-3-105; regional planning regulations, T.C.A. §§ 13-3-401 – 13-3-408.

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Annotated, section 13-3-101, is designated as the municipal planning commission of the city in accordance with Tennessee Code Annotated, section 13-3-301.
(Code 1986, § 2-401; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-602. Membership.

The commission referred to in section 2-401 shall consist of fifteen (15) members (as specified in Tennessee Code Annotated, section 13-3-101 designated by the director of the state planning office with the approval of the local government planning advisory committee in accordance with the bylaws of the Chattanooga-Hamilton County Regional Planning Commission, and Tennessee Code Annotated, section 13-3-101.
(Code 1986, § 2-402; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-603. General duties.

It shall be the duty of the commission referred to in section 2-401 to make and adopt a general plan for the physical development of the territory of Hamilton County, including the territory within the municipalities; to develop a land use plan for all property within the county, including the municipalities; and to develop a major street plan so as to coordinate the streets and highways in the county and municipalities; and to perform other such duties and make such plans as directed by the city council and the planning commission.
(Code 1986, § 2-403; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-604. Disbursement of funds.

The city finance officer will disburse the funds which are appropriated by the city and county for the operation of the municipal planning commission, the disbursements to be made upon vouchers signed by the chairman and countersigned by the mayor or county executive.
(Code 1986, § 2-404; Ord. No. 9654, § 54, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-605. Authority to adopt bylaws; purchases and contracts regulated.

The municipal planning commission is hereby authorized to adopt bylaws governing its internal operations relative to the employment, discharge, promotion or demotion of personnel. All purchases and all contracts shall be made or executed pursuant to the provisions of sections 2-341 through 2-367, inclusive, of this Code or as the same may be hereafter amended.
(Code 1986, § 2-405; Ord. No. 11103, § 2, 11-28-00)

Secs. 2-606 – 2-620. Reserved.
(Ord. No. 11103, § 2, 11-28-00)

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ARTICLE VIII. INSPECTION DEPARTMENT¹⁸

Sec. 2-621. Composition.

The personnel of the inspection department, under the general administrative supervision of the city engineer, shall consist of a chief building inspector and assistants, electrical inspector and assistants, plumbing inspector and assistants, sidewalk inspector and such other inspectors and assistants as may be needed from time to time. Such employees shall be appointed by the mayor.

(Code 1986, § 2-421; Ord. No. 9654, § 55, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-622. Building inspector and assistant – Powers and duties.

The building inspector shall supervise inspections of buildings. He and his assistant may enter any building in the city in the performance of their duties and may issue such orders as may be necessary to secure compliance with the ordinances of the city relating to buildings and structures. Failure, neglect or refusal of any person to comply with any such order shall be unlawful. Any duty or act required of or authorized to be done by the building inspector may be performed by the assistant building inspector, subject to the approval of the building inspector. (Code 1986, § 2-422; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-623. Same – Conflict of interest prohibited.

The building inspector and his assistant shall not, during their tenure in office, be employed or engaged directly or indirectly in any building business, enter into any contract for building for others or furnish materials, specifications or plans for buildings for others in the city.

(Code 1986, § 2-423; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-624. Plumbing inspector.

The office of plumbing inspector is hereby created. Such officer shall be appointed by the mayor for a term of one (1) year from the first Monday in June until his successor is elected and qualified; provided, that he shall be subject to removal at any time by the mayor. When a vacancy in such office occurs, it shall be filled by the mayor. The plumbing inspector shall be a capable man of good moral character experienced in plumbing work. He shall enforce the provisions of this Code and other ordinances of the city relating to the installation and

¹⁸ **Cross references**—Purchasing department created, § 2-341; buildings, Ch. 10; electrical regulations, Ch. 14; fire prevention and protection, Ch. 17; gas, Ch. 19; housing, Ch. 21; mechanical code, Ch. 22.5; plumbing regulations, Ch. 27.

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maintenance of plumbing. Before entering upon the discharge of the duties of his office, he shall take and subscribe before the mayor an oath faithfully and impartially to perform his duties. (Code 1986, § 2-424; Ord. No. 9654, § 13, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-625. Construction Board of Adjustment and Appeals for Building, Residential, Electrical, Fire, Fuel Gas, Life Safety, Mechanical, and Plumbing codes.

(a) There hereby is created a Construction Board of Adjustment and Appeals for all of the adopted building codes of the city. Such Board shall consist of nine (9) members, who shall be active in the field of construction and shall serve without compensation. One (1) member of the board shall be a building contractor; one (1) member shall be a plumbing contractor; one (1) member shall be an electrical contractor; one (1) member shall be a mechanical, heating, ventilation, and air conditioning contractor; one (1) member shall be a realtor; one (1) member shall be an architect; one (1) member shall be an engineer; one (1) member shall be a building supply dealer; and one (1) member shall be a person who is qualified by experience and training with the hazards of fire, explosions, hazardous conditions or fire protection systems. The members shall be appointed by the mayor, subject to city council approval, for terms of four (4) years each. The board shall organize by electing one (1) of its members as chair. The chair or the chair's designee shall act as secretary to the Board.

(b) The Construction Board of Adjustment and Appeals shall meet once monthly on a date to be determined by its chair, to consider appeals from the decisions of the various enforcement officers of the various construction codes of the city and to consider adjustments in the various construction codes. The Board shall also have the power to determine questions of administrative interpretations of the code, questions of the use of materials and types of construction, to hear proof of performance of new materials or materials not specifically covered in the codes, and to determine the usability of such materials and the safety and permanence of various types of construction.

(c) Every decision of the Board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity from the Hamilton County Chancery Court.

(d) The Construction Board of Adjustment and Appeals shall also have power to make recommendations for revisions or modifications of all existing construction codes to the mechanical codes review committee.

(e) Five (5) members of the Construction Board of Adjustment and Appeals shall constitute a quorum. In varying the application of any provisions of this Code or in modifying an order of the building official, affirmative votes of the majority present, but not less than three (3) affirmative votes, shall be required. No board member shall act in a case in which that board member has a personal interest.

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(f) Powers. The Construction Board of Adjustment and Appeals shall have the power, as further defined in (g), to hear appeals of decisions and interpretations of the building official and consider variances of the technical codes.

(g) Appeals of a Decision of the Building Official. The owner of a building, structure or service system, or a duly authorized agent, may appeal a decision of the building official to the Construction Board of Adjustment and Appeals whenever any one of the following conditions are claimed to exist:

- (1) The building official rejected or refused to approve the mode or manner of construction proposed to be followed or materials to be used in the installation or alteration of a building, structure or service system.
- (2) The provisions of this code do not apply to this specific case.
- (3) That an equally good or more desirable form of installation can be employed in any specific case.
- (4) The true intent and meaning of this code or any of the regulations thereunder have been misconstrued or incorrectly interpreted.

(h) Variances. The Construction Board of Adjustment and Appeals, when so appealed to and after a hearing, may vary the application of any particular case when, in its opinion, the enforcement thereof would do manifest injustice and would be contrary to the spirit and purpose of this or the technical codes or public interest, and also finds all of the following:

- (1) That special conditions and circumstances exist which are peculiar to the building, structure or service system involved and which are not applicable to others.
- (2) That granting the variance requested will not confer on the applicant any special privilege that is denied by this code to other buildings, structures or service system.
- (3) That the variance granted is the minimum variance that will make possible the reasonable use of the building, structure or service system.
- (4) That the grant of the variance that will be in harmony with the general intent and purpose of this code and will not be detrimental to the public health, safety and

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general welfare.

Conditions of the variance. In granting the variance, the board may prescribe a reasonable time limit within which the action for which the variance is required shall be commenced or completed or both. In addition, the board may prescribe appropriate conditions and safeguards in conformity with this code. Violation of the conditions of a variance shall be deemed a violation of this code.

- (i) Procedures of the Board.
 - (1) Rules and regulations. The board shall establish rules and regulations for its own procedure not inconsistent with the provisions of this code. The board shall meet once monthly, if applications are submitted, on a date to be determined by the chairman. The board shall meet within thirty (30) calendar days after notice of appeal has been received. No applications for any appeal shall be accepted if filed less than five (5) days before a scheduled monthly meeting.
 - (2) Decisions. The Construction Board of Adjustment and Appeals shall, in every case, reach a decision without unreasonable or unnecessary delay. Each decision of the Board shall also include the reasons for the decision. If a decision of the Board reverses or modifies a refusal, order, or disallowance of the building official or varies the application of any provision of this code, the building official shall immediately take action in accordance with such decision. Every decision shall be promptly filed in writing in the office of the building official and shall be open to public inspection. Every decision of the Board shall be final, subject however to such remedy as any aggrieved party might have at law or in equity.

(Code 1986, § 2-425; Ord. No. 9654, §§ 2 & 53, 1-6-92; Ord. No. 11041, § 5, 7-25-00; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11721, § 5, 7-26-05)

Sec. 2-626. Mechanical codes review committee.

(a) There is hereby created a mechanical codes review committee. The committee shall have 12 members which shall include all members of the Construction Board of Adjustment and Appeals for building, residential, electrical, fire, fuel gas, life safety, mechanical and plumbing codes for the city, and the Building Official, the Fire Marshall, and the City Attorney.

(b) The review committee shall meet, as needed, whenever the City considers the adoption of any new building, residential, electrical, fire, fuel gas, life safety, mechanical or plumbing codes as amendments to those codes become available. The review committee shall submit a recommendation any new code amendments which shall be presented to the City

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Council whenever new codes are considered for adoption.

(Code 1986, § 2-426; Ord. No. 9654, § 56, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11721, § 5, 7-26-05)

Sec. 2-627. Charge for issuance of permits.

The personnel of the inspection department shall collect an administrative charge of five dollars (\$5.00) for the issuance of each permit issued by the department as required under the provisions of this Code or any ordinance or state statute in addition to the fees imposed therefor by the provisions of this Code or any ordinance or state statute.

(Code 1986, § 2-427; Ord. No. 9545, § 1, 4-30-91; Ord. No. 11103, § 2, 11-28-00)

Secs. 2-628 – 2-640. Reserved.

(Ord. No. 11103, § 2, 11-28-00)

ARTICLE IX. HUMAN SERVICES DEPARTMENT¹⁹

Sec. 2-641. Created; purpose.

There be and is hereby created and established a department to be known as the Chattanooga Human Services Department. This department will provide for the administration and the operations of all public programs and projects of a human nature in the city.

(Code 1986, § 2-441; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-642. City council designated policy body; powers.

The city council is hereby appointed as the policy body for human services programs. Such body shall also have the power to grant final approval of all programs, proposals and budgets; to enforce compliance with all conditions made by federal agencies; and to determine, subject to such federal regulations and policies, the rules of procedure for the policy-making body.

(Code 1986, § 2-442; Ord. No. 9654, § 57, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-643. Human services board – Created; composition.

¹⁹ **Cross references**—City relief bureau, § 2-9 et seq.; purchasing department created, § 2-341; fair housing regulations, § 21-61 et seq.

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(a) There is hereby created a city-wide Human Services Advisory Board of thirty-three (33) members. The mayor, each member of the city council, and the Hamilton County Executive, or their respective non-elected designees shall be members, *ex officio*. Eleven (11) members shall be appointed from the private sector by selection by the mayor of the following six categories: private social service agencies; educational institutions; business organizations; veteran organizations; religious institutions; and organizations representing the interests of the poor. The respective appointed members shall all be subject to the prior confirmation of the city council. Eleven (11) members shall be appointed by the mayor subject to confirmation by the city council as follows: One (1) person from each of the nine districts of the city, and two (2) additional selected members shall be chosen at large from among the residents of the balance of the county. Two (2) executive directors emeritus shall be appointed indefinitely. All these appointed representatives shall be poor and/or representatives of the poor.

(b) The board shall be known as the human services department-community development advisory board.
(Code 1986, § 2-443; Ord. No. 9496, § 2, 12-11-90; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-644. Same – Terms; vacancies.

The terms of the initial members of the human services board shall be staggered so that of the members chosen from the private sector, two (2) shall serve a term of three (3) years, three (3) shall serve terms of two (2) years, and six (6) shall serve terms of one (1) year; and further, so that of the appointed members, two (2) shall serve terms of three (3) years, three (3) shall serve terms of two (2) years, and six (6) shall serve terms of one (1) year. At the first meeting of the board the initial members' respective terms as herein provided shall be determined by lot. Thereafter, upon the expiration of the term of any appointed member, his successor shall serve a term of three (3) years. Should any vacancy occur on the board by death, resignation, or removal of a member, the member's unexpired term shall be filled by appointment of a member residing in the same district of the member vacating the board. All elected officials or their respective non-elected designees shall serve during their tenure of office. No member other than an elected official or his designee may serve more than six (6) full years on the board.
(Code 1986, § 2-444; Ord. No. 9496, § 3, 12-11-90; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-645. Same – Function.

The human services department-community development advisory board shall be an advisory body to the policy body, and its advice shall be considered in setting broad policies with regard to the establishment of goals, objectives, priorities and needs for human services. The board shall organize its work on a quarterly meeting basis. The human services department-community development advisory board shall further be an advisory board for

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citizen input with reference to the planning and implementation of the community development program.

(Code 1986, § 2-445; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-646. Same – Bylaws; officers; executive committee.

The human services board shall adopt and may amend bylaws for the regulation of its meetings and proceedings, subject to ratification of the major policy board. It shall also elect officers, appoint an executive committee, not to exceed ten (10) in number, with power to function between formal board meetings. The executive committee shall have as members the board chairman, and nine (9) members elected by the board from among its number.

(Code 1986, § 2-446; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-647. Reserved.

(Ord. No. 11103, § 2, 11-28-00)

Sec. 2-648. Administrator.

There shall be an administrator of the human services department who shall be appointed by the mayor of the city subject to confirmation by the city council of the city. If a vacancy shall thereafter occur in the office of executive director, the vacancy shall be filled by the mayor, and again be subject to confirmation of the city council.

(Code 1986, § 2-448; Ord. No. 9654, §§ 2 & 59, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-649. Administrative control of department; powers of mayor, administrator.

The mayor does hereby assign administrative control of the human services department to the mayor of the city, and with such control he shall be empowered to employ, discharge or suspend the administrator of the department subject to confirmation by the city council. The administrator shall be empowered to employ, discharge or suspend all other employees of the department subject to confirmation of the mayor and city council.

(Code 1986, § 2-449; Ord. No. 9654, §§ 2 & 59, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-650. Financial affairs; receipts and disbursements.

All fiscal and financial affairs of the human services department shall be conducted by the city finance officer. All receipts and disbursements shall be handled in accordance with the applicable provisions of the charter and ordinances of the city.

(Code 1986, § 2-450; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Secs. 2-651 – 2-660. Reserved.
(Ord. No. 11103, § 2, 11-28-00)

ARTICLE X. SUPPLEMENTAL PENSION BENEFITS²⁰

Sec. 2-661. Special fund created.

There be and is hereby created a special fund to be known as the "supplemental pension fund."
(Code 1986, § 2-461; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-662. Administration of fund by board of directors.

The supplemental pension fund shall be administered by a board to be known as the board of directors of the supplemental pension fund. Such board shall be composed of five (5) persons to be appointed by the mayor subject to confirmation by the city council. The board members shall serve for three-year terms or until their successors have been duly appointed. Any member may be reappointed. The mayor, subject to confirmation by the city council, shall designate a chairman, vice-chairman and a secretary of the board. The board members shall serve either at the pleasure of the mayor or the city council.
(Code 1986, § 2-462; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-663. Procedure for determining supplemental benefit.

Any retiree or person who is being paid a pension by the city, or from the firemen's and policemen's insurance and pension fund, who is or will be at least sixty-five (65) years of age on any entitlement date, as defined in section 2-467, shall be entitled to receive as a supplemental pension benefit two hundred fifty dollars (\$250.00) per month less the total amount such person is now receiving per month from any pension or retirement benefit paid by any government entity (whether federal, any state, county or city), including the amount such person is or would be entitled to receive as social security benefits or any annuity income that has been or is being provided in whole or in part by contributions from any government entity, but excluding earned or investment income.
(Code 1986, § 2-463; Ord. No. 11103, § 2, 11-28-00)

²⁰ **Charter reference**—Pensions and death benefits, §§ 3.29 – 3.50.

Cross references—City authorized to contribute to pension funds created and operated by labor organizations, § 2-7; city employees generally, § 2-121 et seq.; benefits for employees injured, disabled or killed as a result of job-related activities, § 2-216 et seq.; social security for city employees generally, § 2-231 et seq.; minimum pension for teachers with 25 years' service, § 30-1.

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Sec. 2-664. Application for supplemental benefit; termination of benefits.

(a) Before any person shall be entitled to a supplemental pension benefit such person shall file an application with the city finance officer on a form provided by the city finance officer stating under oath or affirmation the required information or facts as would show that such person may be entitled to a supplemental pension benefit, and there shall be filed with such application proof as to the amount of social security or pension income being received by or to which the applicant may be entitled. If the city finance officer at any time shall not be satisfied as to the accuracy or truthfulness of the contents of the application, whether before or after a supplemental pension benefit may have been granted, he shall be and is hereby empowered to subpoena such person or other witnesses and examine them under oath or affirmation as to the facts contained in such application, or as to any such matters as should have been contained therein. If the city finance officer is of the opinion that such application is false, fraudulent, erroneous, inaccurate or invalid, he shall report such finding to the board of directors which shall then conduct a hearing after at least fourteen (14) days' notice to all parties in interest. The city attorney or his representative may attend and examine or cross-examine any witness. The chairman, vice-chairman or secretary of the board of directors shall have the authority to summon witnesses and administer oaths or affirmations. The decision of the board of directors shall be final and conclusive, but subject to review by any court of competent jurisdiction as may be provided by law. The applicant may be represented by counsel before the city finance officer and/or before the board of directors at any such hearing.

(b) If at any time the board of directors has reason to believe that any person is not entitled to a supplemental pension benefit that may have been previously granted, or that any person is no longer entitled thereto, it shall be the duty of the board of directors to have a notice served on the recipient of such supplemental pension benefit, either by certified mail or otherwise, requiring such person to appear, not less than fourteen (14) days after service of such notice, before the board of directors and show cause, if any there be, why such supplemental pension benefit should not be terminated. If the board of directors finds that such person has previously received supplemental pension benefits to which such person was not entitled under the provisions of this article, or that an application of such person contains false or materially inaccurate information or false testimony was given before either the city auditor or the board of directors, or before a court, then in such event the recipient shall be liable to repay the total of such illegally received money and the city attorney is authorized in his discretion to file suit on behalf of the city to collect same. Furthermore, if any person files a willfully false or materially inaccurate application, such person shall be fined not more than fifty dollars (\$50.00) upon conviction by the city court. Any person found by the board of directors to have filed a false or materially inaccurate application, or to have given false testimony, or who is convicted by the city court as aforesaid, shall forfeit any right to any future supplemental pension benefits under this article.

(Code 1986, § 2-464; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-665. Application filing date; payment of benefit.

Applications for supplemental pension benefit by any person who is entitled thereto as of January 1, 1975, shall be filed on or before May 1, 1975; and if granted by the board of directors of the supplemental pension fund, then supplemental pension benefit payments shall be paid in a lump sum retroactive to and for the month of January, 1975; otherwise, such person shall be entitled to a supplemental pension benefit the first of the month following the filing of an application, provided the same is granted.

(Code 1986, § 2-465; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-666. Annual reapplication required.

On or before October 1, 1975, and each year thereafter, each person receiving a supplemental pension benefit shall refile an application similar to the original application, setting forth under oath or affirmation the pertinent information relative to pension or retirement income as referred to in section 2-463. Such annual reapplication shall be subject to examination by the city finance officer in the same manner as provided in section 2-464(a) and (b), and the review procedure shall be the same as provided therein.

(Code 1986, § 2-466; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-667. "Entitlement date" defined.

The phrase "entitlement date," as used in section 2-463 shall mean January 1, 1975, and the first day of the month following the applicant's sixty-fifth birthday.

(Code 1986, § 2-467; Ord. No. 11103, § 2, 11-28-00)

Cross reference--Definitions and rules of construction generally, § 1-2.

Sec. 2-668. When benefits payable.

Supplemental pension benefits shall be payable on the first of each month for the preceding month.

(Code 1986, § 2-468; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-669. Termination upon death of recipient.

Any supplemental pension benefits shall terminate as of the date of death of any person receiving same.

(Code 1986, § 2-469; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-670. Studies of city pension systems; purpose.

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It shall be the duty of the city finance officer to conduct an ongoing study of all the pension systems of the city, and he is authorized to employ from time to time the services of actuarial or other consultants to make any necessary and relevant studies that may now or hereafter be needed. The results of any such studies by the city finance officer and/or any consultant, together with any recommendations, shall be reported annually to the mayor and city council. It shall be the purpose of such studies to accomplish equity and fairness of treatment among all retirees relative to retirement benefits, including those retirees who will not, at the time of the enactment of this article, receive supplemental pension benefits under the provisions of this article.

(Code 1986, § 2-470; Ord. No. 9654, §§ 8 & 38, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-671. Benefit increases.

(a) Every person receiving or hereafter entitled to receive a supplemental pension benefit, and every person who retired on or before July 1, 1972, receiving or hereafter entitled to receive a pension from any pension plan of the city, shall receive as a supplemental pension benefit a sum equal to five (5) percent more than such person is now [August 12, 1975] receiving or would otherwise hereafter be entitled to receive. Such additional five (5) percent shall commence with the payment due for the month of September, 1975, and thereafter.

(b) Every person receiving or hereafter entitled to receive a supplemental pension benefit, and every person who retired on or before July 1, 1973, receiving or now entitled to receive, or hereafter entitled to receive, a pension from any pension plan of the city, shall receive as a supplemental pension benefit an additional four (4) percent over and above and in addition to the amount so provided in prior ordinances. Such additional four (4) percent shall commence with the payment due for the month of October, 1976 and thereafter.

(Code 1986, § 2-471; Ord. No. 11103, § 2, 11-28-00)

Secs. 2-672 – 2-690. Reserved.

(Ord. No. 11103, § 2, 11-28-00)

ARTICLE XI. SUSPENSION AND DEBARMENT OF CONTRACTORS²¹

²¹ **Editor's note**—The Court of Appeals of Tennessee, Eastern Section, in the case of *CFW Construction Company, Inc., et al. v. City of Chattanooga* and *McDowell Contractors, Inc., et al. v. City of Chattanooga*, dated February 21, 1985, reversed and dismissed the decision of the Hamilton County Chancery Court which had held that Ordinance No. 8259, codified in this article, violated the Tennessee Constitution's prohibition on retrospective laws and was preempted by T.C.A. § 12-4-601 et seq. The Court of Appeals rules that the ordinance violated no vested right or contractual obligation. The Court also held that the statute cited did not preempt local ordinances on the subject, noting that T.C.A. § 6-56-306 gives municipalities authority to adopt regulations for competitive bidding on municipal contracts.

Sec. 2-691. Authority of city to take action; grounds for debarment or suspension.

In addition to other provisions of law for rejecting bids and debarring or suspending bidders, the city may take the following actions to debar or suspend persons not otherwise debarred from city contracts by Tennessee Code Annotated, section 12-4-602 or other applicable law:

- (1) Any person who has, since January 1, 1979, performed services as a contractor or subcontractor under, or bid on, a city contract, may be debarred from bidding on, or subcontracting for all or any part of, or entering any partnership or joint venture with respect to, or other-wise participating in, city contracts for a period
- (2) of not more than five (5) years, if in connection with any federal, state or local government contract (including without limitation, the submission of bids or proposals therefor) the person has at any time since January 1, 1979:
 - a. Violated or participated in a violation of the Sherman Act (15 U.S.C. §§ 1, 2), or the Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. §§ 1961-1968), or the Hobbs Act (18 U.S.C. § 1951), or the mail or wire fraud statutes (18 U.S.C. §§ 1341, 1343), or the false statement statute (18 U.S.C. § 1001) or other similar provision of federal or state law, as evidenced by (i) a plea of guilty or nolo contendere or a conviction in a criminal action; (ii) a judgment of liability in a civil action (whether public or private); or (iii) other competent evidence; or
 - b. Committed or participated in any other acts of such a serious nature as to affect the person's responsibility as a contractor or subcontractor on city contracts.
- (2) a. Any person who has since January 1, 1979, performed services as a contractor or subcontractor under, or bid on, a city contract may be suspended from bidding on, or subcontracting for all or any part of, or entering any partnership or joint venture with respect to, or otherwise participating in, city contracts if there are reasonable grounds for suspecting that such person has committed any of the acts or conduct stated in subparagraph (1) of this section and the public interest requires that the person be immediately temporarily disqualified from bidding. Reasonable grounds shall consist of, but are not limited to, the return of an indictment or the filing of criminal information.

Cross reference—City purchases, contracts and property disposition, § 2-541 et seq.

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- b. A suspension shall be for a temporary period, pending investigation, legal proceedings or other events which would be a basis for a debarment, or pending the completion of a debarment proceeding. A suspension shall not continue more than twelve (12) months, unless criminal or civil legal proceedings or debarment proceedings are in progress, in which case the suspension may be extended until the completion of such legal or debarment proceedings.
- (3) For purposes of determining whether a basis for debarment or suspension exists under subparagraphs (1) and (2) of this section (and the scope of such debarment or suspension under this article), the term "person" shall include (i) in the case of a corporation: the corporation, its officers, directors, shareholders, employees and agents, and its parents, subsidiaries or affiliates, whether in existence at the time of the event referred to in subparagraph (1) of this section or subsequently formed or acquired; (ii) in the case of a partnership or joint venture: the partnership or joint venture, its general or limited partners and joint venturers, its officers, employees and agents; and (iii) in the case of a sole proprietorship: the individual proprietor and his employees and agents. Where a partner or joint venture is a corporation, the partnership or joint venture shall have attributed to it the actions of persons attributable to the corporation under paragraph (i) of this subsection.

(Code 1986, § 2-491; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-692. Instituting debarment process.

(a) The debarment process shall begin with the issuance of a notice to debar which may be issued by the mayor. The notice to debar shall specify the grounds, set forth in section 2-491, for the debarment, and advise the person considered for debarment that he may request a hearing thereon, and shall be served on the person named therein or on his duly authorized agent.

(b) Debarment shall be effective at 12:00 noon upon the twentieth day after the notice to debar is issued unless within that time the bidder has requested in writing a hearing on the notice, in which event debarment shall not be effective until or unless so ordered by the mayor. A request for a hearing shall be effective only if it is received by the city finance officer before 12:00 noon on the twentieth day after issuance.

(c) If a timely request for a hearing is made, a hearing shall be scheduled as soon as practicable before a hearing officer who shall promptly report his findings and recommendation to the city council. Based on these findings, the city council shall determine whether the person should be debarred and the period of such debarment. In the event of debarment, the period thereof shall begin on the day following such determination.

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(Code 1986, § 2-492; Ord. No. 9654, §§ 2, 8, 61 & 64, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-693. Instituting suspension process.

(a) The suspension process shall begin with the issuance of a notice to suspend which may be issued by the mayor. The notice to suspend shall specify the grounds set forth in section 2-491, for suspension, and advise the person suspended that he may request a hearing thereon, and shall be served on the person named therein or on his duly authorized agent.

(b) Suspension shall be effective as of the date of the notice to suspend. A suspended bidder may request a hearing if he files a request therefor with the clerk of the city council by 12:00 noon on the twentieth day after issuance of the notice to suspend.

(c) If a timely request for a hearing is made, a hearing shall be scheduled before a hearing officer within twenty (20) days of receipt of the request therefor, and the hearing officer shall, within ten (10) days of the hearing, report his findings and recommendation to the city council. Based on these findings, the city council shall determine whether the suspension shall remain in effect.

(Code 1986, § 2-493; Ord. No. 9654, §§ 2, 10 & 61, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-694. Debarment or suspension hearing.

(a) Any hearing convened under this article shall be presided over by a hearing officer appointed by the mayor, subject to confirmation by the city council. The hearing officer shall be an attorney or former judge, licensed to practice law in this state, who has never represented the persons subject to debarment or suspension proceedings. Such attorney or former judge shall be entitled to a reasonable fee for his services rendered. The hearing officer shall be a notary public authorized to administer oaths in the county.

(b) At any hearing convened pursuant to this section, the party requesting the hearing shall have the burden of demonstrating that it is not subject to debarment under section 2-491(1) or suspension under section 2-491(2), as the case may be.

(c) The party requesting the hearing shall have the right to be represented by counsel and to present evidence. Such party shall (i) produce testimony under oath from all persons under its control and (ii) produce all documents in its possession, custody or control, which shall be requested by the hearing officer, or by the attorney for the city, which are relevant to the issues before it. All witnesses shall be subject to cross-examination by the hearing officer and the attorneys for the parties, including the attorney for the city.

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(d) The hearing officer shall regulate proceedings in hearings before him and may receive any evidence which is probative and trustworthy, without being bound by judicial rules of evidence. If evidence requested by the hearing officer pursuant to paragraph (c) of this section is not produced, the hearing officer may draw such adverse inferences therefrom as may be warranted under the circumstances.

(Code 1986, § 2-494; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-695. Debarred and suspended bidders list.

The city finance officer shall maintain a current list of debarred and suspended bidders which shall be circulated to all city contracting personnel.

(Code 1986, § 2-495; Ord. No. 9654, § 8, 1-6-92; Ord. No. 11103, § 2, 11-28-00)

Sec. 2-696. Petition for early lifting of debarment.

(a) Any debarred bidder may petition at any time to have the debarment lifted or the term of debarment reduced by filing a petition in writing with the city finance officer. Upon any such petition which shows, by affidavits or otherwise, substantial facts which may warrant lifting of the debarment or reduction of its term, the mayor may schedule a hearing thereon under the procedures of section 2-494. A petition which does not set forth substantial facts under oath which may warrant lifting of the debarment or reduction in its term under the standards of this section shall not be effective, and no such hearing shall be scheduled thereon.

(b) The debarment may be lifted, or reduced in term, only if the petitioner proves that there is no significant risk that the petitioner will commit any of the acts described in section 2-491 on city contracts in the future, and the relief requested otherwise serves the public interest under the circumstances, taking into account the following factors:

- (1) Whether petitioner has taken adequate and specific steps to insure that these acts are unlikely to occur in the future;
- (2) Whether all individuals responsible for the prior violations have been removed from responsibility for the relevant matters;
- (3) Whether petitioner has adopted a compliance program designed and implemented so as to educate its personnel about these violations and substantially to reduce the risk that they will recur;
- (4) Whether petitioner has had its relevant personnel, and will take steps to assure that new personnel will, execute and file with the city a non-collusion affidavit in form acceptable to the city;

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- (5) Whether petitioner has cooperated in any investigation of the relevant violations by city, the state and the federal government;
- (6) The degree of culpability on the part of the petitioner;
- (7) The degree of continuity of the petitioner's business, assets or personnel;
- (8) Whether petitioner has made monetary restitution to the city for the violations which affected city contracts; and
- (9) Any other factor significantly affecting the public interest.

(Code 1986, § 2-496; Ord. No. 11103, § 2, 11-28-00)

Secs. 2-697 – 2-710. Reserved.

(Ord. No. 11103, § 2, 11-28-00)

ARTICLE XII. OFFICE OF MULTICULTURAL AFFAIRS²²

Sec. 2-711. Declaration of policy and purpose.

The purpose of this article is to encourage understanding and goodwill, promote justice, and eliminate discriminatory practices between and among its citizens because of race, religion, national origin, age, sex, disability or ethnicity.

(Code 1986, § 2-511; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

Sec. 2-712. Limits of article.

This article shall not abridge, limit, impair, create, enlarge, or otherwise affect substantively or procedurally, the right of any person to damages or other relief on account of injury to persons or property and to maintain any action or other appropriate proceeding therefore.

(Code 1986, § 2-512; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

²²**Editor's note**--Formerly Human Rights and Human Relations Commission, repealed, Ord. No. 11767, § 1, 11-22-05.

Cross references—City relief bureau, § 2-9 et seq.; employees and employee benefits, § 2-136 et seq.; human services department, § 2-641 et seq.; fair housing, § 21-81 et seq.

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Sec. 2-713. Establishment of office.

- (a) There is hereby established an office of multicultural affairs.
- (b) The Director of the office shall be appointed by the Mayor, subject to confirmation by the City Council at the same time and in the same manner as department heads and removal in the same manner as department heads.
- (c) There is hereby established an Advisory Board of Multicultural Affairs to provide guidance and recommendations to the Administration through the Director of the Office and to the City Council.
 - (1) The Board shall provide oversight and guidance to the Office of Multicultural Affairs.
 - (2) The Board shall review applicants for position of Director of the Office of Multicultural Affairs.
 - (3) The Board shall recommend no more than three finalists for position of Director of the Office of Multicultural Affairs to the Mayor, for final selection.
 - (4) In conjunction with the office of the Mayor, the Board shall undertake an annual review of the performance of the Director of the Office of Multicultural Affairs.
 - (5) No officer or employee of the City shall be eligible for appointment to the Board except one member of the City Council.
 - (6) The Mayor shall appoint all members, subject to confirmation by the Council members, except those appointed by the Council and the Council Chair or his/her designee. Nominations for appointment to the Board shall be solicited through the City Council members per district from broadly representative community groups, including, but not limited to, business and labor organizations, the clergy, associations such as the NAACP and Urban League whose purpose is to eliminate discrimination and promote good will. The maximum number of board members shall not exceed twenty-three (23). The initial board shall consist of recommendations from the nine (9) members of city council,

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seven (7) CAAS task force chairs (at large recommendation from the board) and one representative each from the area of law and research. In addition, the Mayor will have four (4) appointees and the Council Chair or his/her designee shall be members. All appointments shall be made in 90 days of the vacancy on the board.

- (7) The terms of the members, except the Council Chair or his/her designee, shall be three (3) years, except that of the initially appointed members 8 shall serve for one (1) year, 8 for two (2) years, and 7 for three (3) years as designated at the time of appointment and until their successors are appointed, except that effective July 1, 2006 the seven (7) seats occupied initially by Task Force Chairs would become Mayoral appointments in addition to his/her other appointees. Whenever a vacancy occurs, the vacancy shall be filled for the unexpired term in the same manner as the original appointment. No person shall serve on the Board for more than two (2) consecutive complete terms.
 - (a) The Board shall establish a Nominating Committee to be comprised of at least three Board members, not to exceed 5, to recommend a slate of officers to the board, review and make recommendations to fill vacancies of the 9 appointments, and to perform other duties as deemed necessary.
- (8) The Board shall select annually its chairperson, vice-chairperson, and secretary from among its members of officers; each officer shall have the right to vote on all matters and shall hold office until the expiration of the term for which elected and thereafter until his successor has been elected. The Board shall meet at least monthly with such additional meetings as the chairperson deems desirable. Special meetings shall be called by the chairperson or upon written request of a majority of the Board. A simple majority of the Board membership shall constitute a quorum. All members of the Board shall serve without compensation. However, members may when attending out-of-town meetings by direction of the Director receive actual expenses incurred.

(Code 1986, § 2-513; Ord. No. 9654, § 2, 1-6-92; Ord. No. 10703; § 1, 5-19-98; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

Sec. 2-714. Power and duties.

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(a) The Office shall endeavor to eliminate discrimination against and alienation between religious, racial and ethnic groups and individuals, including discrimination on the basis of race, ancestry, national origin or creed. It shall promote communication and mutual understanding and respect among diverse constituencies and persons of the Greater Chattanooga area.

(b) The Office shall cooperate with the departments, agencies, boards, and offices of the city and of the state in carrying out the ends of this article.

(c) In fulfilling its functions, the Office shall have the following powers and duties:

(1) To receive, record and investigate complaints of the denial of equal access to, or discrimination against, either an individual or a group where such denial of human rights or discrimination is based on race, religion, color, national origin, age, sex, or disability.

(a) All complaints shall be investigated unless referred to other local, state or federal agencies in a timely manner.

(2) To act as a public forum to promote mutual understanding and respect for the purpose of eliminating discriminatory practices, and to hear complaints from groups and/or individuals regarding concerns which may lead to intergroup conflict.

(3) To hold public hearings or private or private staff hearings to determine the facts about instances of discrimination or intergroup tensions.

(4) To attempt by public or private staff conciliation or mediation to resolve any complaint over which it has jurisdiction as defined in this article.

(5) To recommend methods for eliminating discrimination and intergroup tensions, and to use its best efforts to secure compliance with its recommendations.

(6) To report to the mayor and city council the first Tuesday of each quarter on the prior quarter's activities.

(7) To make such recommendations to the mayor and city council as

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it deems necessary and beneficial to fully implement the policy of this article and to recommend appropriate legislation to the city council and executive action to the mayor.

- (8) To submit an annual report to the mayor and city council.
- (9) To cooperate with other public and private agencies involved with intergroup relations at the city, state and national level in performing its function under this article.
- (10) To conduct research and studies, and to present public reports on discrimination and/or progress in community relations and the elimination of discrimination.
- (11) To enlist the support of civic, labor, religious, professional, business, industrial, and educational organizations in community activities and programs which may further the goals of this article.
- (12) To organize community committees and ad hoc task forces and to conduct educational programs within the community regarding human rights and community relations practices, laws, regulations, policies and programs affecting equal rights and opportunities for persons of all ethnicities.
- (13) To work with department heads to assure an equal opportunity for all with regard to city employment matters, including, but not limited to, hiring and promotional opportunities.
- (14) To work with departments and the business and labor communities to find and implement methods of ensuring opportunities for all citizens, regardless of ethnicity, to participate in contracts with the City.
- (15) To administer the City's Fair Housing laws.
- (16) To administer such other tasks as they relate to multicultural affairs as may be assigned by the Mayor.

(Code 1986, § 2-514; Ord. No. 9654, §§ 2, 38 & 56, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

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Sec. 2-715. Budget.

The Director shall prepare an annual budget. The Board shall review, make recommendations and approve the budget for submittal to the mayor and the city council. (Code 1986, § 2-515; Ord. No. 9654, § 2, 1-6-92; Ord. No. 11103, § 2, 11-28-00; Ord. No. 11767, § 2, 11-22-05)

Sec. 2-716. Repealed. (Ord. No. 11767, § 2, 11-22-05)²³

ARTICLE XIII. CODE OF ETHICS

Sec. 2-750. Applicability.

This Article is the code of ethics for personnel of the City of Chattanooga. It applies to all full-time and part-time employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentality appointed or created by the municipality. The words “municipal” and “municipality” include these separate entities.

Sec. 2-751. Definition of “personal interest.”

- (1) For purposes of Sections 2-752 and 2-753, “personal interest” means:
 - (a) Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or
 - (b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or
 - (c) Any such financial, ownership, or employment interest of the official’s or employee’s spouse, parent(s), stepparent(s), grandparent(s), sibling(s),

²³ **Editor’s note** – Part of former Article XII, Human Rights and Human Relations Commission, repealed, Ord. No. 11767, § 1, 11-22-05.

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child(ren), or stepchild(ren).

- (2) The words “employment interest” include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.
- (3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter.

Sec. 2-752. Disclosure of personal interest by official with vote.

An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official’s vote on the measure. In addition, the official shall not lobby any Board official or employee of the City of Chattanooga or vote on matters in which they have a personal interest.

Sec. 2-753. Disclosure of personal interest in nonvoting matters.

An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the recorder. In addition, the official or employee shall not participate in any way on matters in which they have a personal interest.

Sec. 2-754. Acceptance of gratuities, etc.

- (1) An official or employee shall not accept any substantial gift from anyone by reason of service as an official or employee, without the express consent of the City Council.
- (2) An employee shall not accept any gift from anyone by reason of service as an official or employee, without the express consent of the City Council.
- (3) For purposes of this Section, a gift is defined as anything of economic value, whether in, the form of money, service, loan, travel, entertainment, hospitality, item or promise without adequate and lawful consideration.
- (4) “Substantial gift” means worth more than one hundred dollars (\$100.00) on an annual basis. “Substantial gift” does not include items received for expenses that

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would otherwise be reimbursable by the City government as legitimate business expenses.

Sec. 2-755. Use of Information.

- (1) An official or employee shall not disclose any information obtained in his official capacity or position of employment that is made confidential under state or federal law except as authorized by law.
- (2) An official or employee shall not use or disclose information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity.

Sec. 2-756. Use of municipal time, facilities, etc.

- (1) An official or employee shall not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.
- (2) An official or employee shall not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality.

Sec. 2-757. Use of position or authority.

- (1) An official or employee shall not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.
- (2) An official or employee shall not use or attempt to use his or her position for personal financial gain or to secure any privilege or exemption for himself, herself, or others that is not authorized by the charter, general law, or ordinance or policy of the municipality.

Sec. 2-758. Outside employment.

An official or employee shall not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy and outside employment must comply with Sections 2-189 and 2-190 of this Chapter.

Sec. 2-759. Ethics complaints.

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- (1) The city attorney is designated as the ethics officer of the municipality. Upon the written request of an official or employee potentially affected by a provision of this chapter, the city attorney may render an oral or written advisory ethics opinion based upon this chapter and other applicable law.
- (2)
 - (a) Except as otherwise provided in this subsection, the city attorney shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on his own initiative when he acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in the attorney's judgment, constitutes a violation of this code of ethics.
 - (b) The city attorney may request that the governing body hire another attorney, individual, or entity to act as ethics officer when he has or will have a conflict of interests in a particular matter.
 - (c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body, the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has sufficient merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the city attorney or another individual or entity chosen by the governing body.
- (3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.
- (4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation, the violation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics.

Sec. 2-760. Violations.

An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law and in addition, is subject to censure by the governing body which censure shall be spread upon the minutes of the governing body. An appointed official or an employee who violates any

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provision of this chapter is subject to disciplinary action.

Sec. 2-761. Conduct during meetings.

Conduct of individual members during meetings of any municipal board, commission, committee, authority, corporation, or other instrumentality is expected to reflect a total sense of respect for the office held by those assembled to conduct business. Members shall be courteous to one another, to any member of the administrative staff, as well as other persons who may address the municipal board, commission, committee, authority, corporation, or other instrumentality. A member may not speak until recognized by the Chair and shall not be recognized the second time on the same subject matter until all members who wish to speak have had an opportunity to do so. Any disorderly conduct shall be noted by the Chair, and the offending Member shall forfeit the privilege of the floor for the remainder of the meeting, except for the purpose of casting his vote.

Sec. 2-762. Meeting Attendance.

Municipal board, commission, committee, authority, corporation, or other instrumentality members shall be prompt and regular in attendance for scheduled meetings. Failure of a member to be present at three consecutive scheduled meetings for a calendar year shall institute grounds for terminating his/her membership as provided in Section 2-12 of this Chapter. The removal of City Council members for failure to attend meetings is provided for in Title 8, Section 8.5 of the City of Chattanooga Charter and therefore not governed by this section.
(Ord. No. 11769, § 1, 12-06-05; Ord. No. 11985, § 2, 6-26-07)