



# PERSONNEL RULES AND REGULATIONS

UPDATED AS OF JULY 2021

FOR QUESTIONS REGARDING THIS PUBLICATION, CONTACT THE  
DEPARTMENT OF HUMAN RESOURCES AND RISK MANAGEMENT

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**PART 4 - PERSONNEL**

**CHAPTER 4-4 - PERSONNEL RULES AND REGULATIONS**

**ARTICLE 4-4-2 - ADOPTION, PURPOSE AND SCOPE**

**4-4-2-010 - Adoption.**

The personnel rules and regulations, marked Exhibit A, attached to Ordinance No. 4828 and incorporated therein by reference, are adopted for the city. Such personnel rules and regulations are set out in the remainder of this chapter.

(Code 1978, § 4-1001; Ord. No. 5575, 6/12/96)

**4-4-2-020 - Purpose.**

- A. The purpose of these policies is to establish a system of personnel administration that will recruit, select, develop and maintain an effective work force for the City of Marietta/Marietta Board of Lights and Water.
- B. Any and all references to the term "city" shall include the entities known as the Marietta Board of Lights and Water and/or Marietta Power and/or Marietta Water.
- C. Any and all usage of the pronouns, "he, his, or him" shall refer to both sexes throughout the personnel rules and regulations.
- D. These policies and procedures apply to employees classified as civil service employees except where the subject matter hereof is in conflict with Chapter 4-8 of Part 4 of the Code of Marietta, Georgia, in which event, the provisions of said Chapter 4-8 shall prevail.
- E. The system outlined herein shall be consistent with the following principles:
  - 1. Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge and skills, including competition of qualified applicants for initial appointment;
  - 2. Establishing and maintaining adequate and equitable compensation;
  - 3. Training employees, as needed, to assure high quality performance;
  - 4. Retaining employees on the basis of the adequacy of their performance, correcting inadequate performance and separating employees whose inadequate performance cannot be corrected;
  - 5. Assuring fair treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, age, sex, religion, or disability;
  - 6. Establishing a procedure for the presentation and adjustment of employee grievances based on alleged inequitable treatment or based on alleged

discrimination because of political affiliation, race, color, national origin, age, sex, religion or disability;

7. Assuring the city's protection against partisan political coercion and prohibiting its use of official authority for interfering with or affecting the results of an election or the nomination for an office.

(Code 1978, § 4-1002; Ord. No. 5139, 3/10/93, § 1; Ord. No. 5575, 6/12/96)

**4-4-2-030 - Applicability.**

- A. Except where specifically noted, the personnel rules and regulations shall apply to all employees except the mayor and members of the city council.
- B. The personnel rules and regulations, the pay and classification plans and benefit programs do not apply to independent contractors. Persons retained to conduct a temporary or special project, investigation or inquiry on behalf of the city/BLW or committee thereof, including all contracted labor will be considered an independent contractor through certain factors as follows:
  1. A written agreement between the worker, agency or company and the city/BLW demonstrating the worker's economic independence;
  2. The city/BLW does not control the manner in which the worker completes the assigned tasks;
  3. The worker may solicit and undertake other business opportunities; and
  4. The worker has no guarantee of future continued work with the city/BLW.

Further, the following appointed individuals will be considered independent contractors as a matter of course such as:

1. Members of any council appointed advisory boards or committees;
  2. All municipal court associate judges; and
  3. All municipal court assistant solicitors.
- C. The following persons are considered employees, are required to abide by the personnel rules and regulations and may be eligible for benefit programs only as provided by separate contract or as specifically referenced herein:
    1. The following personnel appointed by the mayor or city council: the city manager, city clerk, administrative assistant to the mayor, municipal court judge, and municipal court solicitor;
    2. Persons employed part-time, temporary full-time or for provisional positions unless specifically referenced in any provision herein.

(Code 1978, § 4-1003; Ord. No. 5262, 2/9/94; Ord. No. 5575, 6/12/96; Ord. No. 6016, 8/11/1999, § 1)

#### **4-4-2-040 - Administration of the personnel system.**

- A. City Manager. The city manager shall review recommendations of the human resources director regarding personnel policies and procedures, wage and salary administration, classification system and any other matters pertaining to administrative policies.
- B. Human Resources Director. The city manager shall select a qualified individual to serve as human resources director. This employee shall have full responsibility for all administrative and technical activities of the personnel system under the direction of the city manager.
- C. Department Heads. Department heads will be responsible for the proper and effective administration and enforcement of these rules and regulations within their respective departments.
- D. Amendment of Rules. The city manager or council members may propose additional rules and regulations, deletions or amendments to the personnel rules and regulations manual. Such revisions or amendments will only be effective upon approval by council in ordinance form and upon a date designated by the council.
  - 1. All approved revisions or amendments shall be implemented by the city manager with copies posted on all approved employee bulletin boards and distributed to all departments for information and compliance. All employees should be given a hard copy or access to an electronic copy of all approved revisions or amendments in order to update their issued manuals.
  - 2. Employees' continued employment constitutes acceptance of all approved revisions or amendments.
- E. Departmental Personnel Policies.
  - 1. Departmental personnel policies and procedures shall serve as a supplement to these rules and regulations and are enforceable as such. In the event of a conflict in any section, the more restrictive rule shall prevail.
  - 2. Departmental personnel policies and procedures shall be in writing. The human resources director and the city manager shall review proposed policies and procedures. No such policies and procedures will be effective without the approval of city council. Approval by the city council shall carry the irrebuttable presumption that all required procedures have been followed, and no policy or procedure shall be defective because either the human resources director or the city manager has not reviewed them.
- F. Management and Employee Rights and Responsibilities.
  - 1. Nothing contained in these rules and regulations shall be construed to affect or diminish the city's or the civil service board's prerogatives in accordance with applicable laws, city charter and ordinances.
  - 2. The use herein of mandatory language such as "shall" or "will" is not intended and is not to be construed as creating enforceable interests in continued



employment or benefits of employment or otherwise as limiting or restricting the authority of the city/BLW.

3. Additionally, the powers of city management include, but are not limited to, all the following:
  - a. To determine the organization of the city/BLW government;
  - b. To determine the purpose of each of its units and departments;
  - c. To exercise control and judgment over city/BLW operations;
  - d. To set standards for services to be offered to the public;
  - e. To hire, examine, classify, promote, train, transfer, assign, schedule and retain employees in positions with the city/BLW;
  - f. To discipline employees as necessary;
  - g. To alter the composition and size of the work force, including the option to relieve employees from duty because of lack of work, funds, or for other reasons within the discretion of the city/BLW;
  - h. To determine how operations are to be conducted, including the right to contract and subcontract existing and future work activities;
  - i. To determine the number of employees to be employed by the city/BLW within budget constraints;
  - j. To establish or modify the wage and salary administration and classification and compensation policies including number, types and grades of positions or employees assigned to an organization, unit, department or project;
  - k. To establish or modify job responsibilities.
4. Employees are also entitled to certain rights and privileges which will be safeguarded through administration of these rules and regulations. Employees have a right:
  - a. To equitable treatment in the assignment and compensation of work;
  - b. To compete for advancement;
  - c. To work under safe conditions to the extent reasonably possible in the provision of services to the public and the privilege to recommend means of creating safer working conditions;
  - d. After following the appropriate chain of command, employees have the right to communicate with the city manager and department heads regarding job related problems, suggestions, ideas, inquiries, etc. Employees must initially discuss such issues with the appropriate supervisory staff except as specifically described herein.
  - e. To seek redress for a grievance;
  - f. To work freely and unimpeded by political, social or personal influences;

- g. To reasonable standards of work and reasonable resources to accomplish the work;
- h. To fringe benefits which the city may, in its discretion, provide;
- i. To receive constructive criticism without ridicule and embarrassment;
- j. To nondiscrimination;
- k. To all applicable employment rights granted or implied by the Constitution of the United States, Georgia State Statutes, charter and ordinances of the city/BLW and applicable federal and state regulations.

(Code 1978, § 4-1004; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, §§ 1, 2; Ord. No. 7191, 6/11/2008, § 1)

## **ARTICLE 4-4-4 - EQUAL EMPLOYMENT OPPORTUNITY**

### **4-4-4-010 - Policy.**

- A. It is the policy of the city/BLW to foster, maintain and promote equal employment opportunities. All applicants and employees of the city/BLW shall be assured of fair and equitable treatment in all aspects of personnel administration without regard to race, color, religion, national origin, and political affiliation. Discrimination on the basis of age, sex, physical or mental disabilities is prohibited except where specific age, sex, physical or mental requirements constitute a bona fide occupational qualification necessary for proper and efficient operations or where an attempt to accommodate such limitation would impose an undue hardship on the operation of a program or activity.
- B. It is the policy of the city/BLW to comply fully and completely with the provisions of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Pregnancy Discrimination Act, the Americans With Disabilities Act, the Family and Medical Leave Act (FMLA), Uniformed Services Employment and Reemployment Rights Act (USERRA) and other federal and state laws and regulations to the extent that these acts and regulations issued pursuant thereto apply to the city/BLW government. Nothing in this chapter or elsewhere in these rules and regulations shall be interpreted to impose any greater restriction or obligation on the city/BLW than is imposed by the above referenced laws and regulations.

(Code 1978, § 4-1011; Ord. No. 5134, 3/10/93, § 2; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 3)

### **4-4-4-020 - Administration.**

- A. The human resources director and the city manager shall regularly review the implementation of this policy and relevant practices to assure that equal employment opportunity is being actively observed through reasonable performance related job requirements and standards.

- B. The human resources director shall serve as the equal employment opportunity officer for the city/BLW.

(Code 1978, Sec. 4-1012; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

**4-4-4-030 - Discrimination complaints.**

- A. A discrimination complaint is defined as an allegation by an applicant for employment, an employee, or a former employee that the city/BLW has engaged in an improper practice by discrimination against the applicant, employee or former employee because of race, color, religion, national origin, political affiliation, age, sex, or physical or mental disabilities.
- B. A complaint of discrimination in violation of these regulations shall receive prompt treatment.
- C. Applicants and Former Employees. A discrimination complaint by an applicant for employment or a former employee shall be made in writing to the human resources director within ten calendar days after the applicant for employment or former employee knew or, in the exercise of due diligence, should have known of the conduct or acts upon which the complaint is based. Upon receiving such a complaint, the human resources director shall make an investigation in order to determine whether discrimination has occurred. The human resources director may terminate his investigation and dismiss the complaint if the complainant fails or refuses to cooperate in the investigation. If the human resources director finds that a preponderance of the evidence indicates that discrimination has occurred, he shall recommend to the city manager an appropriate remedy therefor. When possible, discrimination complaints made by applicants for employment or former employees shall be investigated and resolved within 30 calendar days of the date that the complaint is received.
- D. Employees. A discrimination complaint by an employee shall be considered a grievance and shall be received and treated in accordance with the grievance procedure described elsewhere in these regulations, including the time limits established by said grievance procedure.
- E. In all cases, if there is a finding that discrimination has occurred, the city manager shall take such disciplinary action against the person or persons responsible for the discrimination as may be appropriate under the circumstances.

(Code 1978, § 4-1013; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

## ARTICLE 4-4-6 - RECRUITMENT AND SELECTION

### 4-4-6-010 - Recruitment.

#### A. Personnel Requisition.

1. When a department head or designee wishes to fill any vacancy of a budgeted position or would like to create a hiring eligibility list as provided in Section 4-4-6-020(E), he will submit a request to the human resources department to fill the position. The human resources director and the department head or their designees will develop a plan to either open the position competitively to the public and employees or to open the position promotionally to employees only. The request to fill the position must include class title, assigned pay grade, and current minimum job requirements.
2. The human resources director or designee shall review the information submitted by the department head or designee to ensure that information necessary for recruitment, selection, appointment or promotion is provided, and to ensure that suggested employment standards are consistent with equal employment opportunity laws and regulations. All requests must be approved by the human resources director and the city manager or BLW general manager or their designees.

#### B. Posting and Advertisement.

1. All vacancies should be announced on the city/BLW website. If the position is open to the public, the announcement may also be sent to a listing of appropriate organizations and individuals and such other organizations and websites on file in the human resources department that might attract potential candidates. Employees are encouraged to refer qualified applicants to the human resources department.
2. The human resources department, with input from the requesting department head, may advertise to other organizations, universities and schools, and the news media, and make reasonable efforts to publicize open vacancies so that potential candidates are informed and qualified persons are attracted to compete for the position.
3. Announcements shall specify title, minimum starting salary, shift assignment or special hours of work, exemption status, whether the position is "at-will," minimum requirements including alcohol and controlled substance testing, manner of making application, final date on which applications will be accepted, and assurance of equal employment opportunity.

(Code 1978, § 4-1021; Ord. No. 5485, 9/13/95; Ord. No. 5575, 6/12/96; Ord. No. 6705, 8/11/2004, § 1; Ord. No. 7024, 3/15/2007, § 4; Ord. No. 7061, 6/13/2007, § 1; Ord. No. 7191, 6/11/2008, § 1; Ord. No. 8161, 6/10/2020, § 1)

#### **4-4-6-020 - Application process.**

- A. Applications will only be reviewed and considered for advertised or posted positions. Unsolicited applications or resumes will be destroyed in accordance with applicable law.
- B. Applications for positions with the city/BLW shall be made through the human resources department on application forms which require information covering training, experience, skills, and such other job related information as may be necessary to determine the abilities of the applicant to meet the requirements of the position or by resume for certain designated positions.
- C. All applications and letters of interest must be signed or otherwise verified (in a manner deemed sufficient by the human resources director) by the applicant. If, at any time, the applicant's information is, in the sole discretion of the city/BLW determined to be materially false or to contain material omissions, the applicant or employee is subject to either elimination from further consideration or disciplinary action up to and including discharge. The human resources director or the department head may disqualify an applicant who practices or attempts to practice fraud or deception in the application or selection process.
- D. The human resources director or applicable department head may require the applicant to submit proof of education, military service, necessary certifications or licenses or any other job related documentation deemed necessary.
- E. Applicants are considered for advertised positions for which they specifically apply. Except for the police or fire departments, should the same or similar position become open in the same department within 30 days of the closing date of the first announcement, or longer at the discretion of the human resources director, the same applicant pool or group will be used without further announcement or advertisement. In order to utilize this applicant pool or group in this manner, the department hiring manager should create and send to the human resources department an eligibility list of other candidates deemed best qualified at the time the original vacancy is filled.
- F. Applications may be updated to be considered for a new vacancy at the request of the applicant if the applicant can provide the title of the position that he previously applied for and the request for update is within three months of the previous application.
- G. Individuals with passing scores on police and fire entrance examinations are eligible for further selection processing for a time period to be determined at the discretion of the respective chief of each department; provided, however, that absent the approval of the director of human resources, no eligibility list may remain in effect for more than two years with a maximum allowable time period of three years.
- H. The police chief or fire chief may waive their respective police officer/firefighter entrance examination requirement as described above for eligible former employees.

Eligibility at a minimum will include:

1. The candidate must have left employment with the city/BLW in good standing in accordance with all departmental and city/BLW policies and rules and regulations.
2. The candidate must have successfully passed an entrance examination given by the human resources department just prior to their previous employment as a police officer or firefighter.
3. The candidate must not have been out of the employ of the city/BLW any longer than 12 months.
4. In their previous employment with the police or fire department, the candidate must have successfully completed the working test period.
5. The candidate must have maintained all required certifications for the position.
6. The candidate's last evaluation must reflect that the individual met minimally acceptable performance standards.
7. The candidate must have left the department with no disciplinary action pending or with no active investigation into their conduct underway. The candidate's disciplinary history must not include a suspension of one day or more or demotion dating back one year from the date the employee left the department.

All candidates must satisfactorily fulfill the remaining requirements for selection including, but not limited to an updated background investigation, driver's history, physical examination including drug screening and psychological evaluation.

If the police or fire chiefs choose to waive the entrance examination for eligible former employees, they will advise the human resources director in writing of such candidates prior to the date of the scheduled entrance examination.

The police and fire department may issue more restrictive eligibility requirements than the above listing. However, no such supplemental rule or policy will be effective without the approval of the city council. In the event of a conflict, the more restrictive rule will be enforced.

Except as otherwise provided, rehired former employees of the police or fire departments are to be treated as new employees in all other respects including but not limited to working test period, benefits, eligibility for promotion/special assignments and eligibility for performance-based pay raises.

(Code 1978, § 4-1022; Ord. No. 5139, 3/10/93, § 3; Ord. No. 5485, 9/13/95; Ord. No. 5575, 6/12/96; Ord. No. 6216, 2/14/2001, § 1; Ord. No. 7024, 3/15/2007, § 5; Ord. No. 7191, 6/11/2008, § 1; Ord. No. 8161, 6/10/2020, § 1)

#### **4-4-6-030 - Selection process.**

- A. Screening Process, Human Resources Department. The human resources department staff will evaluate and screen each application for an advertised position

for the purpose of determining whether the applicant meets the established employment standards. Applicants may be requested to furnish information or evidence as is necessary to make such a determination including, but not limited to written, oral, physical or performance tests or any combination of these as determined by the hiring department and the human resources department. Applicants best meeting employment standards will be referred to the employing department head or his designee for further review and personal interview.

- B. Screening Process, Department Level. The department head or designee will review referred applications for skill needs and interview at least three of the referred candidates for each vacant position. The department head or his designee may request interviews with additional candidates. However, the department head or his designee may either select an employee from among applicants referred or choose not to select from the provided applicant pool and request that the position be readvertised. The department head shall inform the human resources director or designee of his recommendation for hire as soon as possible after he makes a decision.
- C. Basis of Employment. Employment with the city/BLW shall be based on the ability to perform the essential job functions described for each position, with or without a reasonable accommodation, merit, and moral fitness as evidenced by:
  - 1. Training, experience, education and skill level as reflected by the application form and other requested documentation;
  - 2. Written examination or performance tests when applicable;
  - 3. Drug screening examination for all jobs;
  - 4. References and background investigations;
  - 5. Minimum physical agility standards for non-civilian members of the police and fire departments; and
  - 6. Post-offer medical examinations.
- D. Examinations and Interviews. All applicants are subject to the requirements of the standard examinations and/or performance testing procedures which are currently in practice for the position for which they have applied. Written examinations used by the city/BLW will be validated for job relevancy based on legally acceptable validation methodologies. Interview questions used as a basis for making hiring decisions will be uniformly applied to each applicant for a position and will be job-related to determine the merit and fitness of the applicant for the particular position for which they have applied. However, no hiring authority is restricted from following up with additional related questions based on an applicant's response to any standard interview question or from deleting a standard question if the answer is obvious or well-known to the hiring authority.
- E. References and Background Investigations. The human resources department, the department head or their designee may perform, depending on the nature of the job: reference checks, criminal history checks, credit history checks, education and other

asserted credentials verification or other background investigations including polygraph testing and driving history checks as part of the preemployment procedure.

- F. Post-Employment Offer Physical Examinations and Drug Screening. For certain designated positions, individuals who have received a conditional offer of employment or offer of promotion, transfer or demotion to such designated positions shall receive a physical and/or psychological examination that is job-related and is consistent with business necessity and/or drug screening test prior to their first day of employment or service in the new position. If a current employee who is seeking a promotion, transfer or demotion to a position in a different department fails the drug screen for the new position; the employee's current department head as well as the prospective department head will be notified of such failure.
- G. Selection Decision. The authority for making the final decision as to which applicant will be hired rests with the department head. No offer of employment shall be made until a completed City of Marietta/BLW employment application is on file with the human resources department and the results of all preemployment tests, reference checks and background information are completed and analyzed. All appointments and conditions of employment will be reviewed and approved by the department head and the human resources director.
- H. Establishment of Trainee Position. If, in the judgment of the department head and the human resources director, there appear to be no qualified candidates as a result of a recruitment effort, a position may be temporarily reclassified as a trainee position. The trainee position will be readvertised with lower qualification requirements and starting wage. If the trainee position becomes vacant or the occupant of the position fully meets the requirements of the original position, the trainee position reverts to the original, budgeted classification.
- I. Establishment of Apprenticeship Programs. The city council may establish certain career apprenticeship programs, for example: apprentice electrical lineworker. The purpose of this type of program is to recruit and train individuals with little or no previous experience or training in order to provide an adequate stream of qualified individuals into a high skilled trade or profession. Any individual employed on or after July 1, 2007, in such apprenticeship program is designated as an "at-will" employee. Employment in such an apprenticeship program does not in any way grant, imply, or create a contract of employment for any specific period of time. A program designated as a formal apprenticeship program is a specific training program and success will depend on the ability of the participant to learn and apply specific skills. Employment may be terminated by the city/BLW or the employee for any or no reason whatsoever. However, in consideration of such training opportunity, if the apprentice employee terminates his/her employment, in order to leave the city/BLW's service in good standing, he/she must inform his/her department head of his/her resignation, in writing, at least 14 calendar days in advance of the date of resignation. Failure to comply with this procedure may be cause for denying such individual future employment with the city/BLW. Further, employees serving a formal apprenticeship program do not have the right to administrative appeal, grievance procedures or hearing rights except that such employees have the right to utilize the procedure



outlined in Section 4-4-4-030 to file complaints of discrimination on the basis of race, color, religion, national origin, age, sex, disability and political affiliation in accordance with Article 4-4-4 herein. A post-employment name-clearing hearing for such apprentice workers may be conducted if deemed appropriate at the discretion of the city manager.

J. Reasonable Accommodation Policy.

1. It is the policy of the city/BLW to provide reasonable accommodation to the known physical and/or mental limitations of qualified applicants or employees with disabilities, when to do so does not result in undue hardship. The policy is implemented to:
  - a. Ensure equal opportunity in the application process;
  - b. Enable a qualified individual with a disability to perform the essential functions of a job; and
  - c. Enable a qualified employee with a disability to enjoy equal benefits and privileges of employment.
2. It is the obligation of an individual with a disability to request a reasonable accommodation unless the qualified employee has an obvious or otherwise known disability and it appears that he cannot perform an essential function of the job.
3. A qualified individual with a disability has the right to refuse a reasonable accommodation. However, after refusing a reasonable accommodation, if the individual cannot perform the essential functions of the job, he can be considered unqualified for the job.
4. The following process will be followed to identify the kind of accommodation best suited for the activity:
  - a. The activity or job will be examined to determine its purpose and essential functions.
  - b. The ADA coordinator in the human resources department will consult with the individual with the disability to determine their specific physical and/or mental abilities and limitations as they relate to the essential job functions.
  - c. The ADA coordinator in consultation with the individual and/or sources providing technical assistance for reasonable accommodations, will identify potential reasonable accommodations and assess how effective each would be in enabling the individual to perform essential job functions.

- K. The chiefs of the fire and police departments shall establish bona fide occupational qualifications for non-civilian members of their departments in order to assure the initial and continued fitness and ability of such members to perform their duties. These qualifications shall include, but are not limited to, mental and physical qualifications. In addition, all individuals hired as police officers and firefighters after the date of approval of this ordinance are required, with or without a reasonable accommodation, to meet minimum physical agility standards, established by the city and as may be

amended, in order to be initially employed and shall continue to meet these minimum physical agility standards throughout their career with the city. Failure to meet minimum physical agility standards will constitute a failure to meet minimum fitness for duty requirements and as such will be cause for separation from employment in accordance with Section 4-4-8-030.

- L. When vacancies occur in non-civilian positions in the police and fire departments above entry level and below a deputy chief appointment, the chiefs of the fire and police departments shall have authority to select individuals to fill such vacancies in the following manner:
1. The chief will post or cause to be posted a notice on all employee bulletin boards within their respective departments soliciting applications for the promotional process from eligible candidates.
  2. The selection process may include, but is not limited to:
    - a. A written examination;
    - b. An assessment center;
    - c. A review of the candidates' departmental employment history;
    - d. An evaluation of the candidates' promotional potential by all ranking officers and/or supervisors in the candidates' chain of command below the rank of chief;
    - e. A background investigation including, but not limited to, criminal history, credit history and driving history;
    - f. An alcohol and illegal drug screen;
    - g. For those employees hired after October 12, 1994, either successful completion of a physical agility test or successful completion of a physical agility test within the previous 12 months provided the employee is not participating in any physical agility remediation program at the time of application to participate in the promotional process; and
    - h. Oral interviews may, at the discretion of the chief, be conducted with the chief or his designee.
    - i. Failure to successfully complete or pass any portion of the selection process as outlined in this subsection (L)(2) will eliminate such employee from further consideration; provided, however, that all selection procedures will be uniformly applied to all eligible candidates for the same position to determine their relative qualifications and fitness for the position. The specific selection instruments will be periodically reviewed and validated for job relevancy.
  3. To facilitate the decision-making process regarding promotions, the chief of each department may, in his discretion, utilize an eligibility list. In such event, individuals who have successfully completed the selection process as described in subsection (L)(2) of this section will be listed in ranking order by total score, but shall have no enforceable expectation of promotion. The duration of each list

will be at the discretion of the respective chief of each department; provided, however, that absent the approval of the director of human resources, no eligibility list may remain in effect for more than three years with a maximum allowable time period of four years.

4. The authority for making the final decision as to which candidate will be promoted rests with the chiefs of each department. No offer of promotion shall be made until the results of all of the selection procedures have been completed and analyzed.

(Code 1978, Sec. 4-1023; Ord. No. 5139, 3/10/93, §§ 4—7; Ord. 5360, 10/12/94; Ord. No. 5485, 9/13/95; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 6; Ord. No. 7061, 6/13/2007, § 2; Ord. No. 7191, 6/11/2008, § 1; Ord. No. 7790, 3/11/2015, § 1; Ord. No. 8161, 6/10/2020, § 1)

#### **4-4-6-040 - Limitation on employment of relatives.**

- A. No relative of the mayor, any council member, the city manager, the BLW general manager, any BLW board member, any civil service board member, or any staff member of the human resources department shall be employed in any position with the city. In addition, relatives of city employees shall not be employed if such employment will result in one relative supervising another relative, or where one relative occupies a position which has an influence over the other relative's employment, promotion, salary administration, or other related management or personnel considerations.
- B. For the purpose of this policy, the term "relative" shall mean wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, granddaughter, aunt, uncle, nephew, niece, or cousins of the first generation. Also included are the step, half and in-law relationships as appropriate based on the above listing. Also included are others living within the same household or otherwise so closely identified with each other as to suggest a family unit.
- C. In the event of a marriage between two employees of the same department in which there is a supervisory influence or relationship, one employee is required to make arrangements for a transfer or submit his or her resignation within 30 calendar days of such event. If no prior arrangements are made with the human resources department, the employee hired last will forfeit their position.
- D. Any person who is a relative of the mayor, city council member, BLW general manager, BLW board member, civil service board member, or the city manager, or a staff member of the human resources department who is employed by the city at the time such mayor, council member, BLW general manager, BLW board member, civil service board member, city manager or human resources department staff member is elected or appointed to office or hired may continue in his employment with the city/BLW.
- E. The foregoing section shall not apply to employees of the city/BLW hired or who became related prior to February 13, 1985 (the effective date of adoption of the

original relative limitation policy), but shall apply to all employees hired or who became related thereafter.

(Code 1978, § 4-1024; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 7; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-6-050 - Certification of employability.**

All employees hired after November 6, 1986, are required to complete an employment eligibility verification form within 72 hours of their hire date and to provide documents proving both authorization to work and identity as may be required by federal law and regulations.

(Code 1978, § 4-1025; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 8; Ord. No. 7028, 4/11/2007, § 1)

#### **4-4-6-060 - Orientation of new employees.**

The human resources department will complete the processing of required documents and provide a general orientation to city/BLW employment and benefit programs on the first day of employment. All new employees will receive a current copy of the personnel rules and regulations at the orientation session. The hiring department is responsible for providing specific job and safety training and orientation within the first month of employment.

(Code 1978, § 4-1026; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 9; Ord. No. 7191, 6/11/2008, §§ 1, 2)

#### **4-4-6-070 - Initial working test period.**

- A. The working test period shall be regarded as an integral part of the selection process and shall be utilized for securing the most effective adjustment of a new employee to his position and for rejecting any employee whose performance is not satisfactory.
- B. The length of the working test period is dependent upon the nature of the work required. Sworn or certified employees of the police and fire departments will serve an initial working test period of eighteen months. All other employees have a six-month working test period. Regular appointment status may be granted at the end of the working test period if the employee receives a rating of "meets standards" on his working test period evaluation and with approval by the department head.
- C. The human resources director may, upon request of the department head, extend the duration of the working test. An extension to the initial working test period shall be no greater than an additional three months for all classifications.
- D. At any time during the working test period, the department head may terminate the employment of an employee if, in his opinion, such action is warranted in view of the employee's performance or is otherwise in the best interest of the department and/or

the city. This opinion will be arrived at through consideration of factors other than the employee's political affiliation, race, color, national origin, sex, religion, age or disability. The employee serving a working test period does not have the right to administrative appeal, grievance procedures or hearing rights.

- E. Moving or other incidental expenses paid to or on behalf of a new occupant of any city/BLW position shall be reimbursed to the city/BLW upon voluntary or involuntary resignation or dismissal from employment with the city/BLW during the initial working test period.

(Code 1978, § 4-1027; Ord. No. 5139, 3/10/93, § 8; Ord. No. 5377, 11/9/94; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 10; Ord. No. 7191, 6/11/2008, §§ 1, 3; Ord. No. 7889, 6/8/2016, § 1)

#### **4-4-6-080 - Working test period; promotions/demotions/transfers.**

- A. Changes in classification as a result of a promotion, demotion or lateral transfer will also require a working test period. Sworn or certified employees of the police and fire departments will serve an initial working test period of eighteen months. All other employees have a six-month working test period. Transferred, promoted or demoted employees who have satisfactorily completed an initial working test period and who have attained regular appointment status shall have grievance, appeal and hearing rights.
- B. The working test period shall be used in connection with promotional, transfer, and demotion appointments in the same manner as it is used for initial appointments. If an employee is removed during the working test period following a promotion, transfer, or voluntary demotion such person shall be allowed reemployment in his former class or a similar or lower class if and only if such position is available. A nonvoluntarily demoted employee who is unwilling or unable to meet the requirements of the position will be separated from employment.

(Code 1978, Sec. 4-1028; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 11; Ord. No. 7191, 6/11/2008, § 4; Ord. No. 7889, 6/8/2016, § 1)

### **ARTICLE 4-4-8 - SEPARATION AND REEMPLOYMENT**

#### **4-4-8-010 - Resignation.**

Any employee wishing to leave the city's service in good standing will notify his department head in writing stating the date the employee intends to leave and the reason for leaving. The resignation shall be submitted at least 14 calendar days in advance of the date of resignation. Failure to comply with this procedure may be cause for denying such employee future employment with the city. Vacation leave is not to be considered a part of the notice of resignation unless specifically approved by the appropriate department head.

(Code 1978, § 4-1041; Ord. No. 5575, 6/12/96)

#### **4-4-8-020 - Reduction in force, layoffs.**

- A. In the event that a reduction in force becomes necessary, the city manager will make known to council the causes necessitating the reduction in force and the positions and order identified. Involuntary separation not related to an employee's conduct or performance when necessary to alter the composition and size of the work force, including the option to relieve employees from duty because of lack of work, funds, or for other reasons within the discretion of the city/BLW. Layoff and reductions in force will be addressed as required by state and federal law.
- B. A department head may recommend to the city manager an abolishment of one or more positions that requires the layoff of an employee or employees when deemed necessary for reasons of, but not limited to: shortage of work, material changes in the functions or activities of a department or division or for related reasons which are outside the department head's control. The duties of an abolished position may be reassigned to other employees already working who hold the same or similar positions. The separation from employment of a laid off employee reflects no dissatisfaction with the service of the employee.
- C. Employees on layoff or reduction in force notice are encouraged to apply for vacant positions in other areas unaffected by such actions. If qualified for the vacant position, employees on layoff or RIF notice will be given priority in hiring for the position.
  - 1. Order of Layoff or Reduction in Force.
    - a. Should it become necessary to reduce the number of employees within a given class, the following order shall pertain:
      - (1) Temporary or seasonal employees;
      - (2) Working test part-time employees;
      - (3) Working test full-time employees;
      - (4) Regular employees.
    - b. Layoff or reduction in force decisions will be based on consideration of the value of employees to the city in terms of operating requirements, the qualifications and performance of individuals to be determined by the last three years of performance appraisals and length of service with the city.
    - c. All regular employees who are to be laid off or are to be a part of a reduction in force shall be notified in writing at least 14 calendar days prior to the effective date of the layoff or RIF.
    - d. Whenever a layoff or RIF becomes necessary, the effected department head shall notify the human resources department of the names and job titles of the employees and the order of reduction to be considered. The human resources director will consider submissions by departments for a reduction in force based on the established criteria defined above and recommend the employees and order to the city manager.

2. Recall.

- a. Regular laid off employees or those regular employees who were a part of a reduction in force shall be afforded one opportunity of recall for employment. Such former employees may be recalled to the classification and department from which they were laid off, in the reverse order in which they were laid off. Such former employees shall have precedence for recall to their classification over new applicants for a period of one year. Such recalled employees shall have their tenure of service restored with appropriate adjustments made for time on layoff or RIF. If reemployment occurs after one year, the employee shall be treated as a new employee.
- b. Such former employees shall be notified of their recall opportunity by certified mail. If such individuals do not respond to or accept the recall opportunity within seven calendar days of receipt of the recall notification, the recall opportunity will be withdrawn and any and all obligation for rehire will be expunged.
- c. Employees who were serving a working test or who were part-time, temporary or seasonal when the layoff or reduction in force occurred do not have recall rights.

(Code 1978, § 4-1042; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, §§ 1, 5)

**4-4-8-030 - Loss of job requirements.**

Any employee who is unable to do his job because of:

1. A loss of or failure to fulfill a condition of employment including any loss of any required licenses; or
2. Loss of the individual's ability to perform the essential functions with or without a reasonable accommodation; or
3. Failure to meet minimum fitness for duty requirements of their position including a positive, confirmed testing for controlled substances,

shall be separated from employment. See also Article 4-4-26, Alcohol and Controlled Substances Policy.

(Code 1978, § 4-1044; Ord. No. 5139, 3/10/93, § 10; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 12)

**4-4-8-040 - Abandonment of job.**

An employee not on authorized leave of absence who, without valid reason, fails to report for work for three consecutive work periods or for fire personnel, 36 scheduled work hours, may be terminated from the service of the city for job abandonment.

(Code 1978, § 4-1045; Ord. No. 5575, 6/12/96)

#### **4-4-8-050 - Dismissal.**

For all employees, except those employees in 1) formal apprenticeship programs hired, promoted, or transferred into such programs on or after July 1, 2007, or 2) appointed or contract positions or 3) the position classification and pay category of executives department heads who are hired or promoted into such a position after February 9, 1994, dismissals shall constitute involuntary separation from employment or termination for cause. For employees participating in a formal apprenticeship program, appointed or contract positions or department heads hired after February 9, 1994, dismissals shall constitute involuntary separation from employment or termination with or without cause. However, any police chief and fire chief are exempted from these provisions and will be hired and may be terminated in compliance with the City Charter Section 4-12.1.

(Code 1978, § 4-1046; Ord. No. 5262, 2/9/94; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 13; Ord. No. 7061, 6/13/2007, § 3; Ord. No. 7191, 6/11/2008, § 6)

#### **4-4-8-060 - Retirement.**

The retirement of an employee shall consist of the voluntary separation of an employee who has met the retirement requirements under the rules governing any applicable pension fund of which such employee may participate.

(Code 1978, Sec. 4-1047; Ord. No. 5575, 6/12/96)

#### **4-4-8-070 - Death.**

Separation shall be effective as of the date of the death of the employee. All compensation, including annual leave pay and accrued allowable compensatory leave pay, due to such deceased employee as of the effective date of separation, shall be paid to the beneficiary of the employee, the surviving spouse of such employee or to the estate of such employee, as may be determined by law or by the applicable executed documents in the official personnel record of such employee. It should be noted that the beneficiary of pension benefits of a deceased employee may differ from the recipient of the monies described in this section.

(Code 1978, § 4-1048; Ord. No. 5575, 6/12/96)

#### **4-4-8-080 - Activities required upon separation.**

- A. Exit Interview. All employees have the right to, but are not required to have, an exit interview with the human resources department. Such interview should take place prior to the last day at work and/or release of the final paycheck.
- B. Determination of Post-employment Benefits. All separating employees shall schedule an appointment with the assigned member of the human resources department prior



to the effective date of separation to sign up for any post-employment benefits for which they may be eligible.

- C. Department Clearance. All employees separating from city service shall return all issued property, keys, tools, etc., regardless of condition, to their department head or his designee before close of business on the last day actually worked. Failure to turn in city/BLW property or pay the value of such property to be determined by the department head and the finance department will be considered misappropriation of city/BLW property and the city/BLW will have the discretion to pursue all legal remedies.
- D. Credit Union. It is the employee's responsibility to make arrangements for their outstanding loans with the credit union upon separation from city employment.
- E. Final Paycheck. The employee's final paycheck will be tendered to the employee on the next regularly scheduled payday after the effective date of separation. This paycheck will include payment for any unused accrued vacation leave, holiday leave (if accrued) and allowed accrued compensatory leave. There is no payment for accrued sick leave upon termination. If monies are owed to the city/BLW, such debts will be deducted from the employee's final pay.
- F. Direct Deposit. The city/BLW will void any employee authorization for direct deposit for the final paycheck unless specifically authorized by the human resources director.

(Code 1978, § 4-1049; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 14; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-8-090 - Reemployment.**

- A. Employees who fail to give 14 days' notice prior to resignation or abandon their jobs will not be reemployed for a period of three years. The department head, with the approval of the human resources director, may waive this restriction if it is in the best interests of the city/BLW as determined at time of separation. This waiver must be documented on the separation personnel action form.
- B. Employees who were terminated for cause are not eligible for reemployment.
- C. Employees who have resigned in good standing may reapply for any position with the city's employment.
  - 1. Rehired employees will be required to fulfill all responsibilities and requirements of a new employee.
  - 2. Exceptions.
    - a. Recalled regular employees from a layoff or reduction in force may have some requirements waived by the human resources director. See Section 4-4-8-020(C)(2).
    - b. A former employee who has been out of the city/BLW's employ for less than 12 months and who is determined to possess exceptional and demonstrated qualifications and/or experience superior to other candidates for a technical or

professional position, which position is designated in the pay plan as having an EEOC category of 01, 02, or 03, may have some requirements waived by the human resources director. In addition, when a former employee is rehired under this paragraph or provision, the department head may request authorization to place the employee at the same level of seniority and benefits held immediately prior to his separation, with the approval of the human resources director.

(Code 1978, § 4-1050; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 1; Ord. No. 7191, 6/11/2008, § 1; Ord. No. 8161, 6/10/2020, § 2)

## **ARTICLE 4-4-10 - CONFLICT OF INTEREST, POLITICAL ACTIVITIES AND CODE OF ETHICS**

### **4-4-10-010 - Acceptance of gifts, gratuities, special privileges.**

- A. Employees shall not accept any gifts, loans, rewards, favors or services that may reasonably tend to improperly influence them in the discharge of their official duties. This limitation is not intended to prohibit the acceptance of articles of negligible value which are distributed generally nor to prohibit employees from accepting loans from regular lending institutions. It is particularly important that employees guard against relationships which might be construed as or give the appearance of favoritism, coercion, unfair advantage or collusion.
- B. Employees shall not use or attempt to use their position to secure an economic benefit or advantage, special privileges or exemptions for themselves or others including the use of knowledge obtained through their employment or by virtue of their position and/or assignment. All fundraisers conducted on city/BLW time or worksites for charities and/or other causes must be specifically approved in writing by the city manager or his designee. All employees who have supervisory authority over any other employee are strictly prohibited from actively soliciting contributions, donations, etc., for any fundraiser or other cause from any employee under their supervision.
- C. Employees shall not accept employment or engage in any business or professional activity which they may reasonably expect would require or induce them to disclose confidential information acquired by them by reason of their official position.
- D. Employees shall not accept payment from outside sources for professional services rendered (i.e. teaching, instructing, speaking engagements, consulting, honorariums) when such activities are done on city time or when such services pertain to the purchase or sale of city/BLW property.
- E. City/BLW employees are prohibited from performing any non-city/BLW work inside the city limits or within the BLW service district if such work would require the inspection and/or approval for a city/BLW permit issued by their department. Nothing herein shall prohibit an employee from performing work on property owned by the employee.

(Code 1978, § 4-1061; Ord. No. 5575, 6/12/96; Ord. No. 7028, 4/11/2007, § 2)

#### **4-4-10-020 - Proprietorship of creations.**

All plans, designs, reports, specifications, drawings, devices, inventions, and other items produced or created by employees during working hours or through the use of city/BLW facilities or equipment or at the request of the city/BLW shall be and become the sole property of the city/BLW.

(Code 1978, § 4-1062; Ord. No. 5575, 6/12/96)

#### **4-4-10-030 - Confidential information.**

Employees shall not disclose confidential information gained by reason of their official position and/or assignment, nor shall they otherwise use such information for their personal gain or benefit.

(Code 1978, § 4-1063; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 15)

#### **4-4-10-040 - Conflict of interest.**

- A. If an employee of the city is an officer, director, agent or member of, or owns interest in any entity which is subject to the regulation of, or which has financial commitments with the city, they shall file a sworn statement to this effect with the city clerk.
- B. Employees shall not transact any business in their official capacity with any business entity of which he or she is an officer, director, agent, member, or in which he or she owns a controlling interest, excluding civic, charitable or religious organizations.
- C. Employees shall not have personal investment in any enterprise which will create a conflict or a perceived conflict between their private interest and the public interest.

(Code 1978, § 4-1064; Ord. No. 5575, 6/12/96)

#### **4-4-10-050 - Political activity.**

- A. No person employed by the city shall either publicly or otherwise hold himself out as a candidate in any city election while holding employment with the city.
- B. City employees shall not take any part in political management or political campaigns in election of the mayor or any member of the city council for the City of Marietta during any period of time for which he is expected to perform work or receive compensation from the city.
- C. No employee, official or other person shall solicit, orally or by letter, or be in any other manner concerned in obtaining any assessments, contributions, or services for any political party from any employee during his hours of duty, service or work with the city. Employees are also prohibited from utilizing at any time any document or information obtained through their employment to solicit assessments, contributions or services for any political party or campaign except such documents or information, as the city/BLW may be required to produce under the Georgia Open Records Act.

- D. Employees shall not wear or represent the city/BLW by wearing any uniform or portion thereof, including, but not limited to clothing, badges, or city/BLW identifying emblems or markings, that is issued by the city/BLW or for any item for which a city/BLW allowance has been provided while he is participating in any campaign activities, demonstrations or political gatherings or while attending any other governmental meeting unless on official business.
- E. The city in no way seeks to influence employees in their choice of party affiliations or candidates, recognizing that this is a matter for each person to decide. Therefore, nothing contained herein shall be construed to restrict the right of the employee to hold membership in and support a political party, to vote as he chooses, to express opinions on political subjects or candidates, to maintain political neutrality, to attend political parties after working hours, or to campaign actively during off duty hours in all areas of political activity.
- F. Employees shall not utilize any city equipment or vehicles in support of any political campaign.

(Code 1978, § 4-1065; Ord. No. 5575, 6/12/96; Ord. No. 7024, 3/15/2007, § 16)

## **ARTICLE 4-4-11 - COMPUTER AND COMMUNICATION SYSTEM USAGE**

### **4-4-11-010 - Internet and electronic mail acceptable use policy.**

- A. General Principles. This statement sets forth the policy of the City of Marietta (city) and Marietta Board of Lights and Water (BLW) with regard to access to and disclosure of electronic mail (E-mail), instant messaging (IM), and other electronic records sent or received by employees, utilizing city/BLW-provided technology and Internet technology.

Internet, instant messaging (IM), and E-mail services are provided by the city/BLW to support open communications and exchange of information and the opportunity for collaborative government-related work. The city/BLW encourages the use of electronic communications by its agencies and employees. Although access to information and information technology is essential to the missions of government agencies and their users, use of Internet, instant messaging (IM), and E-mail services is a revocable privilege. Conformance with acceptable use, as expressed in this policy statement is required. Departments of the city/BLW are expected to maintain and enforce this policy.

Internet, instant messaging (IM), and E-mail communications to and from city/BLW employees are presumed to be work-related. City/BLW computers and any data stored in them are the property of the city/BLW, and may be accessed at any time by authorized officials of the city/BLW. Employees shall not expect privacy in the use of city/BLW computers. The city/BLW may, without notice, monitor Internet, instant messaging (IM), and/or E-mail to ensure it is being used only for business purposes.

At a minimum, users of Internet, instant messaging (IM), and E-mail services provided by the city/BLW are expected to:

1. Inform themselves of this acceptable use policy and acceptable and unacceptable uses on the Internet, instant messaging (IM), and with E-mail used both internally to the city/BLW and externally to the world at large. The burden of responsibility is on the user to abide by the acceptable and unacceptable uses, or prior to use, inquire about uses not cited. Compliance with applicable acceptance use restrictions is mandatory.
  2. Use city/BLW-provided Internet, instant messaging (IM), and E-mail services for city/BLW government-related activities and not for personal business.
  3. Abide by the legal protection provided by copyright and license to programs and data.
  4. Know and follow the generally accepted etiquette of the Internet. For example, use civil forms of communication when using E-mail, instant messaging (IM), and/or the Internet.
  5. Avoid uses of the network E-mail, instant messaging (IM), blogging, and/or the Internet that reflect poorly on their department or on the city/BLW. Statements on E-mail, instant messaging (IM), and/or the Internet should reflect the same language used in the presence of a department head or the city manager. City/BLW Conflict of Interest Code and other existing and evolving rules, regulations, and guidelines on ethical behavior of government employees and the appropriate use of government resources apply to the use of electronic communications systems supplied by the city/BLW.
  6. Make each electronic communication truthful and accurate.
- B. Specifically Acceptable Uses of the Internet, Instant Messaging (IM), and E-mail.
1. Communication and information exchange directly related to the mission, charter, or work tasks of the city/BLW department.
  2. Communication and exchange for professional development, to maintain currency of training or education, or to discuss issues related to the user's city/BLW research or programs.
  3. Use in applying for or administering grants or contracts for the city/BLW's research or programs.
  4. Use for advisory, standards, research, analysis, and professional society activities related to the user's city/BLW work tasks and duties.
  5. Announcements of new city/BLW regulations, ordinances, procedures, policies, rules, services, programs, information, or activities.
  6. Any other government administrative communications not requiring a high level of security.
- C. Specifically Unacceptable Uses of the Internet, Instant Messaging (IM) and E-mail.
1. Use of the Internet, instant messaging (IM), and/or E-mail for any purpose that violates a federal, state, or local law.

2. Use for any for-profit activities unless specific to the charter, mission, or duties of the city/BLW department.
3. Use for purposes not directly related to the mission, charter, or work tasks of the city/BLW department during normal business hours.
4. Use for private business, including commercial advertising.
5. Use for access to and distribution of:
  - a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated or patently offensive representations or descriptions of masturbation, excretory functions, or lewd exhibition of the genitals;
  - b. Material sent or received in violation of the Protection of Children Against Sexual Exploitation Act of 1977, as amended, 18 U.S.C. 2252.
6. Use for, access to and distribution of computer games and/or music that have no bearing on the department's mission. Employees may not use the Internet to download games or other entertainment software. Employees may not download screen-savers, music files (e.g., MP3) or messaging software from the Internet. This includes messaging software such as AOL, Yahoo, and MSN. Some games that help teach, illustrate, train, or simulate agency-related issues may be acceptable.
7. Use city/BLW-provided Internet, instant messaging (IM), and/or E-mail services so as to interfere with or disrupt network users, services, or equipment.
8. Intentionally seek out information on, obtain copies of, or modify files and other data, which are confidential under federal, state, or local law, unless specifically authorized to do so once the legal conditions for release are satisfied.
9. No intentional copy is to be made of any software, electronic file, program, music, or data using city/BLW-provided Internet, instant messaging (IM), and/or E-mail services without a prior, good faith determination that such copying is, in fact, permissible. Any efforts to obtain permission should be adequately documented. Copyrighted materials include text and pictures, video, and audio (to include music).
10. Intentionally seeking information on, obtaining copies of, or modifying files or data belonging to others without authorization of the file owner. Seeking passwords of others or the exchange of passwords is specifically prohibited.
11. Users intentionally representing themselves electronically as others, either on the city/BLW internal network or elsewhere on the Internet unless specifically authorized to do so by those other users. Users shall not circumvent established policies defining eligibility for access to information or systems.
12. Intentionally developing programs designed to harass other users or infiltrate a computer or computing system and/or damage or alter the software components of same.

13. Use for fundraising or public relations activities not specifically related to city/BLW-approved activities. Approved city/BLW fundraising must be approved by the city manager.
14. Intentionally playing MP3, or equivalent, music files on a network-connected PC.
15. Intentionally playing XM or other satellite radio on a network-connected PC.
16. Intentionally misusing PDA generated pictures for harming another person's reputation, harassing, defaming, or violating the city/BLW EEO policy.
17. Intentionally tampering with, and/or disabling, automatic vehicle location (AVL) devices in city/BLW vehicles.
18. Intentionally tampering with, and/or disabling, wireless access points installed on city/BLW networks. Only IT staff may install wireless access points on city/BLW networks.
19. Without the express permission of their supervisors, employees may not send unsolicited electronic mail and/or instant messages to persons with whom they do not have a prior relationship.

City Code Section 44-20-040, Rule Z, requires disciplinary action for improper or inappropriate use of the city/BLW computer hardware or software or communications systems and, specifically, violations of this section of the Code of Ordinances.

#### D. Additional Guidelines.

1. Computer Viruses on Downloaded Software. Any software obtained from outside the city/BLW government shall be virus checked prior to use.
2. Use by Contractors. Contractors and other non-city/BLW employees may be granted access to city/BLW-provided Internet services at the discretion of the city manager. Acceptable use by contractors and other non-city/BLW employees working for the city/BLW is the responsibility of the city/BLW contract administrator. The city/BLW contract administrator is expected to provide contractors who use city/BLW Internet, instant messaging (IM), and/or E-mail services with this policy.
3. Passwords. Use passwords associated with a city/BLW information system only on that system. When setting up an account at a different information system that will be accessed using the Internet, choose a password that is different from ones used on city/BLW information systems. Do not use the same password for both local and remote Internet-accessed systems. If the password used at the remote, Internet-accessed remote site were to be compromised, the different password used locally would still be secure. Passwords should not be so obvious so that others could easily guess them, and passwords shall be changed at least every 60 days.
4. Logoff (Exiting). Always make a reasonable attempt to complete the logoff or other termination procedure when finished using a remote, Internet-accessed system or resource. This will help prevent potential breaches of security.

5. E-mail and Instant Messaging (IM) Security. Unencrypted electronic mail and instant messages (IM) sent or received outside any department and on the Internet cannot be expected to be secure.
  6. Large File Transfers and Internet Capacity. The Internet connection is a shared resource. While routine E-mail, instant messaging (IM), and file transfer activities won't impact other users much, large file transfers and intensive multimedia activities will impact the service levels of other users. Users contemplating file transfers of over ten megabytes per transfer or interactive video activities shall, to be considerate of other users, schedule these activities early or late in the day or, better, after business hours.
  7. Disclaimers. Users shall avoid being drawn into discussions where disclaimers like "this represents my personal opinion and not that of my department of the city/BLW" need to be used. When you are using Internet, instant messaging (IM), and or E-mail services provided by the city/BLW, users shall remember that they are representing the city/BLW and shall act accordingly.
  8. Retention. Only essential E-mail and/or instant messages shall be saved. The IT department will delete E-mail transactions greater than 60 days old. It is the responsibility of the department head to establish retention criteria in compliance with federal and state law for essential E-mail and other electronic records within his/her department.
  9. Open Records Act. All public departments are subject to the Open Records Act. All records, including computer-based or generated information fall under this Act. Therefore, users of the city/BLW information systems should treat computer-based information as they would written communications. All information on the city/BLW computer system is confidential. Such information may not be shared with other users internally or externally except through the procedures outlined in the Georgia Open Records Act. Department heads will be responsible for determining what information is appropriate for dissemination via E-mail, instant messaging, and other forms of electronic dissemination.
  10. Permanence. Users shall exercise the same care in drafting E-mail and instant messages that would be applied to any other written communication. E-mail is more permanent than paper communications. Anything said in E-mail and instant messaging may be discovered by an opponent in litigation.
  11. Enforcement. All provisions of this policy are deemed rules of the city/BLW and violation of any could result in disciplinary action up to and including termination under the City Code (Section 4-4-20-040).
- E. Procedures. The department head, or their delegated representative is responsible for their employees' compliance with the provisions of this policy and for investigating noncompliance. When an instance of noncompliance with this policy is discovered or suspected, the agency shall proceed in accord with departmental and city/BLW personnel policies. Complaints about inappropriate or offensive E-mail, instant messaging, and/or other forms of electronic communication should be promptly reported to the immediate supervisor. Such reports shall be taken seriously by the



supervisor and carefully investigated. Suspension of service to users may occur when deemed necessary to maintain the operation and integrity of the city/BLW network. User accounts and password access may be withdrawn without notice if a user violates the acceptable use policy. Disciplinary action up to and including termination of employment may be imposed depending on the severity of the violation. Criminal or civil action against users may be initiated when laws are violated.

(Ord. No. 5683, 4/9/97; Ord. No. 7024, 3/15/2007, § 17; Ord. No. 7545, 7/13/2011, § 1)

#### **4-4-11-020 - Use of microcomputer software.**

In compliance with federal copyright laws, the city/BLW will not participate in or condone the illegal duplication of licensed microcomputer software and/or music. Such activity is strictly prohibited on city/BLW premises and/or machinery. The city/BLW does not own the copyright to any software or its related documentation and, unless authorized by the software developer, does not have the right to reproduce it for use on more than one computer.

With regard to use on local area networks or on multiple machines, city/BLW employees shall use the software only in accordance with the license agreement. City/BLW employees are required to report any misuse of software or related documentation within the city/BLW to their department head or the IT director. City/BLW employees, who make, acquire, or use unauthorized copies of computer software and/or music on city/BLW premises or machinery shall be subject to disciplinary action up to and including termination of employment.

(Code 1978, § 4-1066; Ord. No. 5100, 11/11/92, § 1; Ord. No. 5575, 6/12/96; Ord. No. 5683, 4/9/97; Ord. No. 7024, 3/15/2007, § 18; Ord. No. 7545, 7/13/2011, § 1)

#### **4-4-11-030 - Information security policy.**

- A. Purpose: This document is designed to provide the city/BLW minimum security policies for protection of city/BLW assets inclusive of information, computers and networks.
- B. Information Custodianship: Information, such as data, electronic mail, documents and software, are city/BLW assets. By placing information on a city/BLW system, employees grant the city/BLW the right to edit, delete, copy, republish, and/or distribute such information. The city/BLW at all times retains the right to access, search, and monitor all directories, electronic mail messages, instant messages, voice mail messages, Internet sites visited by employees, chat groups and newsgroups, material downloaded or uploaded by users of the Internet, or any other electronic or telephonic transmissions contained in or used in conjunction with the city/BLW's computer, electronic mail, instant messaging, and voice systems and equipment with no prior notice. This right applies both during employees' employment by the city/BLW and after its cessation for any reason or no reason, including whether the cessation was voluntary or involuntary. In determining the value of an asset,

consideration shall be given not only to the sensitivity of the information, but also to the consequences of unauthorized disclosure, modification, destruction, or unavailability of the information. The value of these assets will determine the level of controls needed to provide adequate safeguards, backup and access controls. However, ownership, custodial responsibility and rights to these assets are herein established.

1. Records. A "record" includes any information kept, held, filed, produced or reproduced by, with or for a department in any form or media including, but not limited to, reports, statements, examinations, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, images, photos, letters, microfilms, computer tapes or discs, rules, regulations or codes.
2. Property of a Department. All records, software, and hardware that are part of a department's information system are considered property of the city/BLW and shall be used for city/BLW business purposes only.
3. Designation of Responsibility. Department heads, or their designee, have the responsibility to ensure that all city/BLW information resources, regardless of medium, are used, maintained, disclosed and disposed of according to law, regulation or policy.
4. Copyright and Licensing of Vendor Hardware and Software. Departments shall adhere to copyright laws and licensing agreements.
5. Records Retention and Destruction. City/BLW information shall be retained and/or destroyed in accordance with records retention schedules developed in cooperation with the State Archives and Records Administration (SARA) and policies and procedures established by the city/BLW, unless required otherwise by applicable laws.
6. State and Federal Access, Privacy and Confidentiality Laws. All information, regardless of the medium in which it is maintained or communicated, is subject to pertinent state and federal laws governing access, the protection of privacy and prohibitions against unauthorized disclosure.
7. Access Categories—Classification of Information. Information classification provides a means for separating information into categories with different protective requirements. The city/BLW determines, in advance, the extent to which information shall be disclosed to specified users. Determinations shall be made based on the nature of the information and the duties of city/BLW employees. The following general categories of information serve to provide guidance in identifying appropriate users or recipients:
  - a. "Public information" is information accessible under Freedom of Information Law and the Georgia Open Records Act and is available to any person, notwithstanding one's status or interest within the limitations as provided in those laws.

- b. "Restricted information" pertains to information that is not public information, but can be disclosed to or used by city/BLW representatives to carry out their duties, so long as there is no legal bar to disclosure.
  - c. "Confidential information" including protected health information (PHI) is information that is protected by law. Access to confidential information is prohibited unless permitted by an exception in law.
- C. Physical Access Security: The department head shall put into place appropriate safeguards to limit physical access to any radio, computer, or computer-related device.
  - 1. Secure Locations. Mainframe, servers and other essential computer devices shall be stored in a location that protects them from unauthorized physical access. Physical access to such equipment potentially provides access to information stored therein.
  - 2. Location Selection. Physical locations for all computer-related equipment shall be selected to protect against equipment and information loss by flood, fire, and other disasters, natural or manmade.
  - 3. Review of New Connections to Outside Sources. Proposed access to or from a network external to the city/BLW shall be reviewed and approved by the department head or designee prior to establishment of the connection. Final approval shall be obtained from the director of IT.
  - 4. Review of Installation. Installation, upgrades, changes and/or repairs of radios, computer equipment, or computer-related devices (hardware, software, firmware) are to be reviewed by the IT department for potential physical security risks.
  - 5. Platform-Specific Physical Security. Platform-specific physical security shall be established, implemented and periodically reviewed and revised as necessary to address physical vulnerabilities of that platform.
  - 6. City/BLW Laptop, Notebook, PDA, Cell Phone, and Portable Computer Devices. Portable computing devices shall not be left unattended at any time unless the device has been secured. When traveling, portable computers and PDAs shall remain with the employee's carry-on hand luggage.
- D. Information Security: The security officer (IT director or designee) is responsible for the security of all electronic information resources. Specific procedures will be developed and disseminated by the security officer to conform to the following policies. These procedures will be reviewed frequently to reflect changes in personnel and technology.
- E. Information Security Administration Functions: The security officer will formally delegate responsibility for information security matters. Multiple individuals across organizational lines may be involved as long as there is a clear separation of duties and responsibilities which provide effective checks, balances and accountability.

- F. Logon Security: Access to computer systems requires identification and authentication. Any exceptions to this rule require approval of the security officer or designee.
- G. Remote Access to City/BLW Information: Remote external access to a city/BLW network, which contains restricted or confidential information, requires extended authentication procedures. Any method for providing this remote access (e.g., modem, firewall) requires Security Officer or designee approval prior to its installation.
- H. External Network Access to City/BLW Information: External network access to a city/BLW network that contains restricted or confidential information including PHI requires at least a firewall. Firewalls provide network security similar to the installation of a perimeter security system on a building by blocking or permitting traffic.
- I. Transaction Controls and Database Security: Transactions entered into the city/BLW production databases shall be checked for accuracy and authenticity. Database management systems (DBMS) shall implement security and authorization subsystems adequate to protect against unauthorized access and modification.
- J. Downloading Software: The security officer, upon request of a department head, will determine whether downloading of software from an external site will be permitted.
- K. City/BLW Owned IT Components: City/BLW hardware shall be reviewed and cleansed (sanitized) before being reassigned or discarded. The security officer shall work with IT department staff to ensure compliance with this policy. Department heads shall maintain adequate documentation of hardware/software taken off city/BLW premises by employees.
- L. Electronic Communications: When transmitting confidential information, such as protected health information (PHI), on an external network (outside the firewall), city/BLW shall employ a secure technology rendering the information unusable to an unauthorized or intercepting third party.
- M. Virus Protection: All city/BLW computers shall be equipped with up-to-date virus protection software. The IT department will ensure that all network attached PCs are virus protected.
- N. City/BLW Security Management: Accountability and appropriate separation of duties and responsibilities are essential elements of security administration. Departments shall develop security awareness among all staff.
  - 1. Security Training. All employees, agents and others who access city/BLW computer systems shall be provided with sufficient training and/or supporting reference materials to allow them to properly protect city/BLW information.
  - 2. Employment Changes. Department heads or their designees shall report changes in employment status of their staff to the security officer and/or systems administrator in the IT department.
  - 3. Audit Trails. The department head shall maintain audit trail records of individuals accessing city/BLW records sufficient to meet the requirements of the law, the

city/BLW internal controls and audit requirements, and as necessary, disaster recovery requirements.

- O. Information Recovery: All business applications shall have backup and recovery procedures that are documented, maintained and the backup media stored off site. The city/BLW shall test these procedures on an annual basis.
- P. Data Exchange Agreements; Third Party Agreements: All agreements with third parties such as vendors, other government agencies, or contractors shall include requirements to adhere to city/BLW information security policies.
- Q. Vendor/Contractor Agreements: All vendor agreements shall contain a requirement that any city/BLW information obtained as a result of such an agreement shall be the property of the city/BLW and shall not be utilized, including but not limited to, secondary release or disclosure, without written authorization of the city/BLW.
- R. Employee/Agent Responsibilities: As a condition of continued employment, all employees/agents by signature of the city/BLW's Personnel Policies and Procedures, as may be amended, indicate that they have read and understand the city/BLW's policies and procedures regarding information security, and agree to comply in all respects to those policies and procedures.
  - 1. Password Protection. Employees/agents shall not post or share their personal passwords, and shall develop secure passwords according to IT department security guidelines.
  - 2. Use of Automatic Logons. Employees/agents shall not facilitate any logon procedure with local programming such as keyboard programming or scripting.
  - 3. Unattended Computers. Unattended computers shall be logged off or protected in such a way as to protect the computer and network from unauthorized access.
- S. Reporting Suspicious Events: Any observations of suspicious activity shall be reported to the appropriate department head and/or the information security officer. Suspicious activity can include: signs of unauthorized equipment usage during evenings and weekends, phone requests from unidentifiable callers for access to PHI, unidentifiable files found on file servers, and unusual activity recorded in log files.

(Ord. No. 6491, 3/12/2003, § 2; Ord. No. 7024, 3/15/2007, § 19; Ord. No. 7545, 7/13/2011, § 1)

## **ARTICLE 4-4-12 - OUTSIDE EMPLOYMENT**

### **4-4-12-010 - Limitations and approval requirement.**

- A. City employment shall be considered to be the primary employment of all full-time employees. No employee may engage in outside employment which will interfere with the interests of city service. Standards by which some employment is not acceptable include, but is not limited to:

1. Illegal activity;
  2. Employment that by virtue of association will reflect upon the reputation of the city/BLW;
  3. High hazard or fatiguing work which might detract from or reduce city/BLW performance;
  4. Any work which requires inspection and/or approval for a city/BLW issued permit by the requesting employee's department.
- B. Prior to beginning any regularly scheduled outside employment, employees will obtain specific written approval from their department head or his designee on request forms which indicate the name of the outside employer, the nature of the work, hours of work, address and telephone number where the employee can be reached. Such information will become a part of the employee's official personnel record. Employees are required to obtain approval from their department head or his designee for any change in a previously approved outside employment request.
- C. Any employee accepting or engaging in outside employment under the terms of this rule shall make arrangements with the outside employer to be available to respond immediately to any emergency call of duty whenever the department head or his designee shall determine that the employee's services are necessary.
- D. Employees sustaining injuries while engaged in outside employment are normally ineligible to receive benefits under the city's worker's compensation program. If an employee sustains an injury while engaged in outside employment, but is performing duties within the scope of his city responsibilities (i.e., a police arrest), he may be eligible for partial city worker's compensation benefits.
- E. Failure to comply with the provisions of this section will result in disciplinary action.

(Code 1978, § 4-1071; Ord. No. 5575, 6/12/96)

#### **ARTICLE 4-4-14 - UNIFORMS, APPEARANCE AND ISSUED EQUIPMENT POLICY**

##### **4-4-14-010 - General appearance.**

- A. The most noticeable expression of conscientiousness that a public employee can make is the care which is taken to present a clean, neat and presentable appearance to the general public. Employees will consider this in all aspects of their appearance and conduct.
- B. Hair styles, facial hair, jewelry and similar appearance factors will be displayed in a manner which does not interfere with the worker's safety or productivity or the safety and productivity of his coworkers.

(Code 1978, § 4-1081; Ord. No. 5575, 6/12/96)

#### **4-4-14-020 - Uniforms.**

- A. As the nature of the city's work varies greatly, it is recognized that what is appropriate for employees in one department may not be appropriate for another. Work clothes and/or uniforms provided for some departments generally set the standard for their functions. Determination of any employee's specific dress and appearance is a supervisory responsibility and will be treated as such; but any such dress or appearance standards prescribed by any department must be relevant to the work to be accomplished.
- B. All uniforms issued, including all required equipment such as clothing, hats, gloves, safety shoes/boots, etc. shall be worn on duty unless excused in writing by a licensed physician and approved in writing by the department head. Such excuse may be verified by an individual or entity appointed by the city/BLW. Such excuse shall be presented to the employee's supervisor. Nevertheless, employees will still be required to perform the essential functions of their position with or without a reasonable accommodation. If the wearing of safety equipment and/or the uniform are essential functions of the position, and the employee cannot, by physician's statement, wear the equipment and/or uniform, then the employee will be separated from employment. See Section 4-4-8-040. No part of the uniform or equipment issued by the city/BLW shall be utilized in any manner while off duty unless permission is granted by the appropriate department head. It is the employee's responsibility to maintain and protect issued uniforms and equipment.
- C. All uniforms and any issued equipment, tools, keys, etc., will be returned to the city/BLW upon separation from employment.

(Code 1978, § 4-1082; Ord. No. 5575, 6/12/96)

### **ARTICLE 4-4-16 - ATTENDANCE AND LEAVE POLICY**

#### **4-4-16-010 - Hours of work.**

- A. The hours of work which constitute full-time regular employment shall, as a minimum, be 30 hours per week.
- B. The city manager or his designee shall determine the hours of work that constitutes a regular workweek for all classifications of employees. The number of hours in a regular workweek for different job classes may vary depending on the nature and demands of each classification's responsibilities. Department heads shall file and maintain current work schedules for the department and place them on file with the human resources department.

(Code 1978, § 4-1091; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-16-020 - Absenteeism and tardiness.**

##### **A. Definitions.**

1. Absence: Failure of an employee to report for scheduled work.
  - a. Excused Absence: A prearranged absence which the employee obtained prior approval from the appropriate supervisory level or an absence that is due to an unforeseen need or problem which requires being away from the job and which in the judgment of the supervisor is a legitimate need.
  - b. Unexcused Absence: Any absence without leave or proper authorization.
2. Tardiness: Arriving for work later than the scheduled starting time or from lunch or break periods.

##### **B. Responsibilities.**

1. Employees: It is a condition of employment when employment is accepted with the city/BLW that the employee is not to have unexcused absences or tardiness and by doing so, can result in disciplinary action(s) being taken.
2. Supervisors: A supervisor is responsible for administering prompt and consistent disciplinary action.

##### **C. Absenteeism and Tardiness; Supervision and Discipline.**

1. Verification of absence due to alleged illness or injury.
  - a. Verification of illness or injury by a physician's statement will be required to support a request for sick leave while on vacation leave.
  - b. Medical statements supporting alleged illness or injury may be required to substantiate sick leave for:
    - (1) Absences of three or more consecutive workdays (firefighter equivalent = 36 hours);
    - (2) At any time when absence recurs frequently or habitually, provided the employee has been previously warned that all future incidents would require verification. Verification by supervisors will be in the form of any of the following:
      - (A) Requiring the employee to bring a physician's statement. The frequency of such statements will be determined by the department head or his designee. The physician's statement must verify that the employee's absence was due to medical necessity and that the employee was unable to work on the day(s) of absence. If absence is due to illness or injury of an eligible family member, such statements may be required from the patient's physician as to the necessity for the employee's attendance.
      - (B) Visiting the employee's home.



- (C) Requiring the employee to have an examination by a city appointed individual or entity, including, but not limited to, a physician, psychologist, or any appropriate medical care provider at city/BLW expense.
- 2. Unexcused employee absenteeism or tardiness shall result in disciplinary action(s) as determined by the department head or his designee.
- D. Absenteeism and Tardiness; Impact on Performance Appraisal. Absenteeism and tardiness records (excused and unexcused) are to be considered in all performance appraisals of an employee.
- E. Absenteeism and Tardiness Records.
  - 1. It is the responsibility of each department to keep accurate absence and tardiness records on each employee and to take immediate action when necessary to do so.
  - 2. The original of any disciplinary action concerning employee violations under this policy are to be sent to the repository of the employee's official personnel file.

(Code 1978, § 4-1092; Ord. No. 5575, 6/12/96)

**4-4-16-030 - Holidays observed.**

- A. The following days have been designated as paid legal holidays for city employees. These holidays are subject to change, addition, and/or deletion by city council.
  - 1. New Year's Day—January 1
  - 2. Martin Luther King's Birthday—Third Monday in January
  - 3. Spring Day—Friday before Easter
  - 4. Memorial Day—Last Monday in May
  - 5. Independence Day—July 4
  - 6. Labor Day—First Monday in September
  - 7. Thanksgiving Day—Fourth Thursday in November
  - 8. Day after Thanksgiving—Friday after Thanksgiving
  - 9. Christmas Eve—December 24
  - 10. Christmas Day—December 25
- B. An employee must be present at work or have an excused or permitted absence on the regularly scheduled workdays immediately before or after a holiday absence in order to receive pay for the holiday. The use of sick leave immediately before or after a holiday is celebrated or holiday leave is taken must be excused by a physician's certificate.

- C. If a holiday falls on a Saturday, it will be celebrated on a Friday; if a holiday falls on a Sunday, it will be celebrated on a Monday unless otherwise designated by the city manager or city council.
- D. Full-time nonexempt personnel who do not accrue holidays and are required to work on the actual day of the holiday shall be compensated for hours worked at one and one-half times their current hourly rate. Exempt personnel who do not accrue and are required to work on the actual day of the holiday shall accrue compensatory time at straight time rate. Employees who accrue holidays shall take the holiday off at another date within one year after the holiday worked.
- E. Any employee who does not accrue holidays and whose regular day off coincides with a holiday will be paid straight time for such holiday.
- F. Holidays accrued for each calendar year that are not taken or paid by the occurrence of the holiday the following year shall be forfeited. It is the responsibility of the department head to ensure that all employees that accrue holiday leave have the opportunity to take such leave. If not voluntarily scheduled, the department head may assign a schedule of the use of such leave. Leave may only be taken after approval of the department head or their specific designee so that the employee's absence will not unduly burden the work schedule of the department.
- G. All holiday leave will accrue to the credit of an employee on the day of occurrence of each holiday. Firefighters shall receive 120 hours of holiday leave per year or 12 hours per holiday in lieu of holidays observed by general employees. Other personnel specifically designated by the city manager to accrue holidays shall receive 80 hours of holiday leave per year in lieu of holidays observed by general employees. Holiday hours may not be advanced.
- H. Employees who are regularly scheduled to work a ten-hour day and whose department or work unit is closed for the holiday shall receive a ten-hour holiday on the actual day of celebration of the holiday.
- I. Terminating employees who accrue holiday leave shall be entitled to all unused holiday hours accrued as of the date of termination.
- J. Requests to take accrued holiday leave should be made in writing and approved by the department head or their designee.
- K. If a holiday falls on a normal workday for regular part-time employees, such employees will be paid holiday pay for the number of hours that would have been worked. Temporary employees are not eligible for holidays.

(Code 1978, § 4-1093; Ord. No. 5575, 6/12/96; Ord. No. 7028, 4/11/2007, § 3)

#### **4-4-16-040 - Vacation leave.**

- A. General. Vacation leave is a fringe benefit for the purpose of rejuvenating both physical and mental faculties. Therefore, employees are strongly encouraged to use their vacation time. Vacation leave may be granted for the following purposes:

1. Vacation;
  2. Absences for the transaction of personal business which cannot be conducted during off-duty hours;
  3. Religious holidays other than those designated above as official holidays;
  4. For absences due to illness or injury when sick leave is exhausted.
- B. Eligibility. All full-time employees in the personnel system shall be entitled to earn and accrue vacation leave. Part-time and temporary employees are not eligible for vacation leave.
- C. Vacation Leave Accrual.
1. All full-time employees, except fire department personnel on a 24-hour shift, shall accrue vacation leave at the following rates:

	Hours/ Week	Days/ Year
Initial employment to fifth anniversary	1.54	10
Fifth anniversary to tenth anniversary	2.31	15
Tenth anniversary to fifteenth anniversary	2.77	18
Fifteenth anniversary to twentieth anniversary	3.08	20
Twentieth anniversary to twenty-fifth anniversary	3.54	23
Twenty-fifth anniversary to termination	3.85	25

2. Fire department personnel on a 24-hour shift shall accrue vacation leave at the following rates:

	Hours/ Week	Hours/ Year
Initial employment to fifth anniversary	2.15	112.0
Fifth anniversary to tenth anniversary	3.23	168.0
Tenth anniversary to fifteenth anniversary	3.88	201.6

Fifteenth anniversary to twentieth anniversary	4.31	224.0
Twentieth anniversary to twenty-fifth anniversary	4.95	257.6
Twenty-fifth anniversary to termination	5.38	280.0

3. Employees will accrue vacation leave, but it may not be taken until after successful completion of their first six months of continuous employment.
4. Vacation leave will also accrue to the credit of an employee who is on leave with pay such as vacation, sick, court, compensatory, military and workers' compensation leave.

D. Request for Leave.

1. A request for vacation leave shall be submitted to the employee's department head or his or her designee. Leave may only be taken after approval by the department head or their specific designee so that the employee's absence will not unduly burden the work schedule of the department.
2. Vacation leave may not be granted before it accrues.

E. Maximum Vacation Leave Accrual. Vacation leave may be accrued up to a maximum of 720 hours for fire service personnel and 420 hours for all other employees. Hours earned in excess of the assigned maximums must be used during the calendar year or forfeited after the last pay period of each year. The last pay period is determined on a year-to-year basis, and will be sent to all departments by the human resources department.

F. Payment for Unused Vacation Leave.

1. Employees who have completed their initial working test period are entitled to be paid for all accrued, unused vacation leave up to the maximum accrual as designated in subsection E of this section, upon termination of employment for any reason. Employees terminated during their first six months of initial employment are not entitled to be compensated for any vacation leave accrued or if deceased, their beneficiary or estate is not entitled to any compensation for any vacation leave accrued during the first six months.
2. If an employee who has successfully completed his first six months of employment dies, his beneficiary or estate shall be entitled to payment for all accumulated vacation leave credited to the employee up to the maximum accrual as designated in subsection E of this section.

(Code 1978, § 4-1094; Ord. No. 5114, 12/9/92, § 1; Ord. No. 5575, 6/12/96; Ord. No. 6245, 6/13/2001, § 1; Ord. No. 7028, 4/11/2007, § 4; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-16-050 - Sick leave.**

Sick leave with pay is a privilege granted by the city/BLW for the benefit of an employee.

- A. Eligibility. All full-time employees in the personnel system shall be entitled to accrue sick leave. Part-time and temporary employees are not eligible for sick leave.
- B. Sick Leave Usage. Paid sick leave may be granted upon proper notification and approval of the department head or his designee for the following reasons:
  - 1. Employee's personal illness, pregnancy or disability or mental or drug and/or alcohol counseling;
  - 2. Employee medical, dental or eye appointments which cannot be made outside of working hours;
  - 3. Illness of an employee's family member requiring the personal attendance of the employee; employee's family member's medical, dental, or eye appointments which cannot be made outside of working hours which require the personal attendance of the employee.

Family members for the purpose of this policy are defined as: 1) spouse, 2) children, 3) parents or current spouse's parents; or 4) dependents as defined by the tax code residing in the employee's household. Parents, for the purpose of this policy, include only a biological parent of the employee or current spouse, an individual who adopted the employee or current spouse when the employee or current spouse was a minor and step-parent of the employee or current spouse who stood in loco parentis to the employee or current spouse when the employee or current spouse was a minor.

- C. Rates of Accrual.
  - 1. All regular full-time employees, except fire department personnel assigned to a 24-hour shift, shall accrue sick leave starting with the first day of employment at the rate of 6.66 hours per month. Fire department personnel assigned to a 24-hour shift shall accrue sick leave starting with the first day of employment at the rate of 9.34 hours per month.
  - 2. Sick leave will accrue to the credit of an employee who is on leave with pay such as vacation, sick, compensatory, court, military and workers' compensation.
- D. Maximum Accumulation. There is no maximum limit on the number of sick leave days or hours which may be accumulated by an employee. The city considers sick leave to be a form of disability "insurance" to protect the employee's income in case of serious illness or disability.
- E. Reporting and/or Requesting Sick Leave. Employees are to notify their department head or his designee of any illness covered by this policy and expected period of absence not later than one hour after their normal scheduled

starting time for work. This procedure shall be followed for each day the employee is unable to work, unless prior approval is given by the department head or his designee. Shift work and other special circumstances may require different and/or more restrictive notification methods in some departments. Employees should be advised of any other method during their departmental orientation upon employment.

F. Certification by a Physician.

1. A medical certificate signed by a licensed physician will be required by department heads to substantiate a request for payment of sick leave for the following reasons:
  - a. To support a request for sick leave during a period when the employee is on vacation or days immediately before or after scheduled vacation or a holiday or holiday leave taken.
2. In addition, department heads may also require a medical certificate signed by a licensed physician for the following reasons:
  - a. Any period of absence consisting of three or more consecutive work days or for periods greater than 36 hours for fire personnel on a 24-hour shift.
  - b. Leave of any duration, if absence from duty recurs frequently or habitually, provided the employee has been warned in writing that a certificate will be required.
3. If the employee does not obtain or submit the documentation required above or if documentation is inadequate, payment for sick leave may be denied.
4. The city reserves the right to investigate, in any manner it deems necessary, any possible abuse of sick leave.

G. Pay for Unused Sick Leave.

1. An employee who is separated from employment for any reason other than disability retirement shall not receive pay for unused sick leave accrued to his credit.
2. Employees who qualify for disability retirement under any city-sponsored retirement program shall receive payment for up to one-half of the employee's total accrued sick leave in an amount not to exceed 200 hours.
3. All sick leave requests for the 30 calendar-day period prior to separation from employment are required to be substantiated by a physician's certificate.

H. Sick Leave Incentive. Employees who have completed their initial working test period may, if they choose, convert to cash payment 50 percent of their unused sick leave accrued for that year. Such time shall be deducted from the employee's sick leave balance. The base period for calculation of this benefit shall be from the second Sunday in November of the previous year to the second Saturday in November of the year in which the benefit is paid. Incomplete or partial

completion of the base period voids this benefit. The base period shall include no part of the initial six months of employment.

- I. Exhausted Sick Leave. No sick leave in excess of that accumulated may be granted. For an extended illness, an employee may elect to use his vacation leave or, if applicable, accrued compensatory time. If all accrued sick, vacation and compensatory time is used, the employee may be granted a leave of absence without pay as provided under Section 4-4-16-090 of these policies and procedures or released from employment.

J. Public Health Emergency.

1. Applicability.

a. This section applies in the event of a declared public health emergency geographically relevant to the City/BLW, such as a pandemic event as determined by the World Health Organization (WHO) or the U.S. Centers for Disease Control and Prevention (CDC) or comparable circumstances for which the Governor has declared a public health state of emergency pursuant to O.C.G.A. § 38-3-51; provided, however, that the provisions of this section shall not take effect unless or until announced by the City Manager or his/her designee.

b. This section applies to all City employees, whether regular, full-time, part-time, temporary or seasonal, as well as volunteers, interns, and any other individuals performing services on the City's behalf, whether paid or unpaid; provided, however, that the City Manager, in his/her discretion, may exempt or limit the section's application to certain employees and/or departments depending on the nature of the public health emergency and/or the nature of the duties and responsibilities and/or services provided by such employees or departments.

2. Purpose and Intent.

a. Employees who report to work with a Contagious Condition or with Contagious Symptoms and/or Circumstances, as those terms are defined herein, pose a risk to the health and safety of other employees and/or the public. This, in turn, may significantly impact City operations, including the safe and effective delivery of critical City/BLW services, through compromised job performance, diminished productivity, inadequate staffing, or other adverse working conditions.

b. In accordance with the relevant guidance and recommendations published by Public Health Agencies, it is the purpose and intent of this section, when in effect, to regulate and impose reasonable restrictions on employees in reporting to work with a Contagious Condition or with Contagious Symptoms and/or Circumstances, as those terms are defined herein.

c. In addition, it is the purpose and intent of this section and the expectation of the City/BLW that employees will remain informed regarding the public health emergency and will take recommended precautions to reduce the risk of contracting and/or transmitting a Contagious Condition, as defined, such as receiving optional but recommended flu vaccinations, as well as covering nose or mouth when coughing or sneezing, washing or sanitizing hands, and consistently applying sanitizers in common work areas and equipment.

### 3. Definitions.

When in effect, this section shall be interpreted and applied in a manner consistent with the following definitions:

a. Contagious Condition. As used herein, the term, “Contagious Condition” refers to a medical condition caused by or directly associated with COVID-19/Coronavirus, SARS, swine flu, H1N1, tuberculosis, bacterial meningitis, mononucleosis, mumps, measles, rubella, chicken pox, and the like, which can be transmitted to others, either by direct physical contact with persons with the condition or by indirect contact (e.g., through objects touched by or secretions from such persons or through airborne transmission from such persons’ coughing, sneezing, etc.).

b. Contagious Symptoms. As used herein, the phrase, “Contagious Symptoms” refers to symptoms identified or recognized by a Public Health Agency as indicative of a Contagious Condition. Depending on the Contagious Condition, such symptoms may include influenza-related symptoms, fever, vomiting, diarrhea, headache, cough, sore throat, runny or stuffy nose, and muscle aches.

c. Contagious Symptoms and/or Circumstances. As used herein, the phrase, “Contagious Symptoms and/or Circumstances” refers to the following situations:

- (i) When an employee exhibits or experiences Contagious Symptoms or has been placed under a Quarantine related to the Contagious Condition by a healthcare provider or at the direction of a Public Health Agency; and/or
- (ii) When an employee has had significant or prolonged exposure to, or has been in physical contact with, a family member, household member, or other person [1] who has been diagnosed with a Contagious Condition or [2] who has been placed under a Quarantine related to the Contagious



Condition by a qualified healthcare provider or at the direction of a Public Health Agency; and/or

- (iii) When an employee and/or a family member, household member, or other person with whom the employee has had significant or prolonged exposure to, or has been in physical contact with, exhibits Contagious Symptoms; and/or
- (iv) When an employee and/or a family member, household member, or other person with whom the employee has had significant or prolonged exposure to, or has been in physical contact with, has recently traveled to a geographic area or participated in any other activity identified by a Public Health Agency as presenting a heightened risk of exposure to a Contagious Condition (such as travel to an area for which the CDC has issued a Level 2 or 3 travel advisory or time spent on a cruise ship).

Employees with any questions as to whether a given situation meets the above-stated definition of “Contagious Symptoms and/or Circumstances” should contact Human Resources for further guidance.

d. Incubation Period. As used herein, the term, “Incubation Period” refers to the period of time, as determined by Public Health Agencies, between (i) when a person is exposed to a pathogen known or believed to cause a Contagious Condition and (ii) when Contagious Symptoms would be expected to begin to appear. As a general rule, persons who do not experience such symptoms at the conclusion of the Incubation Period are considered to be no longer at risk for having the Contagious Condition.

e. Quarantine. As used herein, the term, “Quarantine” refers to a period of time during which a person who was exposed to a pathogen known or believed by Public Health Agencies to cause a Contagious Condition remains physically separated from other persons to minimize the potential for further exposure. The Incubation Period for the Contagious Condition normally determines the duration of the Quarantine.

f. Public Health Agency. As used herein, the term, “Public Health Agency” refers to the CDC, the National Institutes of Health (NIH), the Health Resources and Services Administration (HRSA), the Agency for Healthcare Research and Quality (AHRQ), and the Georgia Department of Public Health (and its health districts and affiliated county health departments).

#### 4. Workplace Requirements.

This section reflects the City/BLW's goal of maintaining a safe and healthy work environment for its employees without unduly compromising the productivity and quality of City/BLW operations, including the safe and effective delivery of critical services. Accordingly, employees shall comply with the following workplace requirements:

- a. Any employee diagnosed with a Contagious Condition, as defined above, will not report to the workplace until cleared to return to work as provided in paragraph (d) below.
- b. Any employee with Contagious Symptoms and/or Circumstances, as defined above will not report to the workplace either until cleared to return to work as provided in paragraph (d) below or:
  - (i) In the case of an employee with significant or prolonged exposure to, or physical contact with, a family member, household member, or other person who has been diagnosed with a Contagious Condition or who has been in Quarantine as provided herein, until completion of the relevant Incubation Period as measured from the employee's last exposure to/contact with the person.
  - (ii) In the case of an employee who has exhibited Contagious Symptoms, until his/her symptoms have subsided and the employee is completely symptom-free.
  - (iii) In the case of an employee with significant or prolonged exposure to, or physical contact with, a family member, household member, or other person who has exhibited Contagious Symptoms, until the person's symptoms have subsided and the person is completely symptom-free.
  - (iv) In the case of travel to a geographic area or participation in any other activity identified as presenting a heightened risk of exposure to a Contagious Condition:
    - [1] by an employee, until completion of the relevant Incubation Period as measured from the employee's return from travel or cessation of the activity; or
    - [2] by a family member, household member, or other person with whom the employee has had prolonged exposure to, or physical contact, until completion of the relevant Incubation Period as measured from the employee's last exposure to/contact with such person.

- c. Any employee who reports to work with a Contagious Condition or with Contagious Symptoms and/or Circumstances or who, in the opinion of his/her department head, based on observation and other objective criteria, exhibits Contagious Symptoms, will be sent home.
  - d. When an employee who has been absent due to a Contagious Condition or due to Contagious Symptoms and/or Circumstances is ready to return to work and has met Public Health Agency guidelines, he/she must first contact Human Resources. Depending on the precise reason for the absence, the City may require medical documentation from a healthcare provider that the employee has been cleared to return to work.
    - (i) Any such medical documentation must be submitted to Human Resources, via email, fax, or other electronic form, for review and approval in advance of the employee's return to the workplace.
    - (ii) If an employee is unable to obtain any required medical documentation, the case will be reviewed by the Director of Human Resources and Risk Management and the City Manager.
  - e. Due to the serious ramifications of non-compliance, any violation of this section may subject the employee to disciplinary action, up to and including, termination.
  - f. Any employee not reporting to the workplace in accordance with this section should notify the City/BLW in the same manner as required by Section 4-4-16-050(E) of the Sick Leave Policy.
5. Absence Due to Contagious Condition or Due to Contagious Symptoms and/or Circumstances.
- a. An employee who is absent from work in accordance with this section may be required to work remotely, whether from home or from another location. The decision whether to require an employee to work remotely will be made by the Director of Human Resources, in consultation with the Department Head, and will depend upon consideration of various relevant factors, including the employee's position, the nature of his/her duties and responsibilities, logistical and other practical considerations, and the precise reason for the absence.
  - b. An employee who is absent from work in accordance with this section who is not required to work remotely may be eligible to be

compensated for any (non-overtime) hours they would normally have been scheduled to work during the absence for a period not to exceed fourteen (14) days.

- (i) Such paid administrative leave will be authorized when the employee submits medical documentation from a healthcare provider or a Public Health Agency confirming that the absence is due to a Contagious Condition or due to Contagious Symptoms and/or Circumstances as defined herein.
  - (ii) If the employee is unable to obtain such medical documentation, the case will be reviewed by the Director of Human Resources and Risk Management and the City Manager.
  - (iii) Unless exempted, employees on paid administrative leave in accordance with this section will be placed on standby status. Consistent with the requirements set forth in Section 4-4-24-130(H) of the City's Personnel Rules and Regulations, employees on standby must be immediately reachable during their normal work schedule by telephone, email, or other means of communication in the event it becomes necessary to contact them for work-related reasons. Exemptions from standby status will be determined by the Director of Human Resources and Risk Management, in consultation with the Department Head, based primarily on consideration of the precise reason for the absence.
  - (iv) An employee who is deemed to be ineligible for paid administrative leave under this section will be required to use accrued sick leave, annual leave, or comp time to cover the absence from work. If accrued leave is unavailable or exhausted, the employee may be recorded as absent with approved unpaid leave.
- c. If the event that an employee's absence under this section extends beyond fourteen (14) calendar days, the employee will be required to provide additional medical documentation supporting the extended absence. If the employee is unable to obtain such medical documentation, the case will be reviewed by the Director of Human Resources and Risk Management and the City Manager. Ultimately, the City will handle any extended absences in compliance with all federal and state laws and regulations, including the ADA and the FMLA, as well as the City's Personnel Rules and Regulations.

## 6. Amendments.

Due to the unprecedented nature of the public health emergency precipitating adoption of this section, the ongoing availability of new information, the difficulty in predicting relevant developments, and the need to act more quickly than the local legislative process allows under even ideal circumstances, the Mayor, upon consultation with the City Manager, the City Attorney, and/or the Director of Human Resources, is hereby authorized to make immediate amendments to this section consistent with its stated intent and/or changes implemented by the Federal or State Governments. Any such amendments made to this section by the Mayor shall remain in full force and effect until the next scheduled or called meeting of the City Council, at which time said amendments may be ratified, vacated, or modified.

## 7. Legal Considerations.

- a. This section shall be interpreted and applied in accordance with all applicable federal and state laws and regulations, including the ADA and the FMLA, as well as the City's Personnel Rules and Regulations. If any aspect of this section is determined to be inconsistent or in conflict with any subsequently enacted or promulgated federal or state law, rule, or regulation, the latter shall control to the extent of said inconsistency or conflict.
- b. This section is for the City's internal, administrative use only and is not intended and should not be construed or applied as creating a higher duty of care than presently exists under applicable law. Nor does this section create any enforceable rights, entitlements, promises, or expectations or otherwise operate to enlarge the potential civil liability of the City or any City official, officer, or employee in any way.

(Code 1978, § 4-1095; Ord. No. 5575, 6/12/96; Ord. No. 6547, 8/13/2003, § 1; Ord. No. 6704, 8/11/2004, § 1; Ord. No. 7028, 4/11/2007, §§ 5, 6; Ord. No. 7393, 10/14/2009, § 1; Ord. No. 8142, 4/6/2020, § 1)

### **4-4-16-060 - Military leave.**

These provisions are intended to comply with federal and state laws regarding military leave and are not intended to add to or detract from those regulations. See the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA), 38 U.S.C. Section 4301 et seq., commonly known as the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), the Veterans Benefits Improvement Act of 2004, the Veterans' Benefits Improvement Act of 2008, O.C.G.A. § 38-2-54, and O.C.G.A. § 38-2-279. The city/BLW specifically reserves the right to add to, change, or abolish the provisions of this section, in whole or in part, based upon pertinent action by any appropriate legislative, judicial or regulatory authority.

In accordance with these laws, the city/BLW will not discriminate against any employee or job applicant in initial employment, reemployment, retention, promotion, or any benefit of employment on the basis of their membership, application for membership, performance of military service, application for service, or obligation to the uniformed service.

A. Eligibility. Any regular employee who is a member of a uniformed service, or any current employee who is drafted or joins a uniformed service may be granted a leave of absence for the purpose of service, including travel to and from same. Such service may be voluntary or involuntary, in time of peace or war. The “uniformed services” are defined as the U.S. Army or U.S. Army Reserve, U.S. Navy or U.S. Navy Reserve, U.S. Air Force or U.S. Air Force Reserve, U.S. Marines or U.S. Marine Corps Reserve, U.S. Coast Guard or U.S. Coast Guard Reserve, National Guard, Commissioned Corps of the Public Health Service, State Defense Force, or the National Disaster Medical System.

B. Advance Notice. An employee, or an appropriate officer of the uniformed service in which his service is to be performed, must notify the city/BLW that the employee intends to leave his position to perform uniformed service. An “appropriate officer” is a commissioned, warrant, or noncommissioned officer authorized to give such notice by the uniformed service concerned. Although verbal notice is acceptable, employees should make every effort to provide written notice at least 30 days prior to departure. No advance notice is required if the notice is precluded by military necessity or the giving of notice is impossible or unreasonable.

C. Health Benefits. All full-time employees on military leave are entitled to continue their health insurance under the Consolidated Omnibus Budget Reconciliation Act (COBRA) for up to 24 months. The city/BLW can charge the employee 102 percent of the full premium for this coverage if the military leave exceeds 31 calendar days. If the leave is 31 calendar days or less, the employee can continue to pay the employee portion of the premium and the city/BLW will continue to pay the employer portion until the end of the 31st calendar day.

Employees who do not elect to continue coverage during military leave will have their coverage reinstated upon reemployment without any exclusions or waiting periods except to the extent the exclusion would have applied even if coverage had not been terminated as a result of such service. However, some exclusions or waiting periods could apply to medical problems or conditions that the Secretary of Veterans Affairs determines to be the result of a service-connected disability.

#### D. Pension Benefits.

1. Supplemental Pension. The city/BLW will retroactively contribute to the account of returning employees, an amount that would have been contributed had the employee not left for military duty. Allocations will not include earnings or forfeitures.

2. Regular Pension. Time spent in the uniformed service will be credited to all employees toward meeting length of service requirements for eligibility for participating in a retirement plan, for vesting in the retirement plan or in the calculation of benefits under the retirement plan. The city/BLW will suspend pension contributions during uniformed service because the employee is not in pay status. However, upon such employee's return, the city/BLW will retroactively contribute an amount that would have been contributed had the employee not left for duty. Earnings for pension purposes will be computed at the hourly or salary rate at which it would have been earned if the employee were not on leave. The break in service provision of the retirement plans shall not affect an employee on military leave.

E. Reemployment. Employees on a leave of absence for uniformed service or training have varying time limits within which to report to work or apply for reemployment after service has ended, depending on the length of the period of service or training. For service of 30 days or less, employees must notify the city/BLW verbally or in writing of their intent to return to a position of employment no later than the first regularly scheduled work period on the first full calendar day after the service plus eight hours to return home. For service from 31 to 180 days, an application for reemployment must be filed within 14 days after completion of the service. For service for 181 days or more, an application for reemployment must be submitted not later than 90 days after completion of the service. All of these deadlines can be extended for up to two years if the individual is hospitalized or convalescing from a service-connected injury or illness. Such discharge from service must not be disqualifying and the employee must be physically and mentally capable of performing the essential functions of the work involved in his previous or similar position with or without a reasonable accommodation. An examination by an individual or entity appointed by the city BLW at city/BLW expense will be utilized to aid in determining fitness for duty and/or the ability to perform the essential functions of the position with or without a reasonable accommodation. An "application for reemployment" is defined as an employee notifying the Department of Human Resources verbally or in writing that he or she is returning from duty and seeks reemployment. For any period of service that exceeds 30 days, employees must also submit acceptable documentation that establishes a timely reemployment application, shows that the employee has not exceeded the five-year total time limit on the duration of service, and shows that the employee's separation or discharge from service was not disqualifying. Examples of acceptable documentation include the Department of Defense Form 214 (Certificate of Release or Discharge from Active Duty), military orders carrying an endorsement indicating completion of required service, or copies of payroll documents showing periods of service.

The city/BLW is not required to reinstate returning employees under the following conditions:

1. The city/BLW's circumstances have so changed as to make reemployment impossible or unreasonable;

2. The employment from which the person leaves to serve in the uniformed services is for a brief, nonrecurring period and there is no reasonable expectation that such employment will continue indefinitely or for a significant period;
3. The returning employee is no longer qualified (i.e., no longer has the ability to perform the essential functions of the position) despite the city/BLW's reasonable efforts to requalify such individual (including re-training) and reemployment would cause the city/BLW undue hardship;
4. The returning employee was not released from service under honorable conditions (see 38 U.S.C. Section 4304). NOTE: Reemployment rights are restored upon upgrade of discharge to service under honorable conditions.

#### F. Reemployment Rights.

All regular employees on military leave will retain a right to reemployment for up to five years of cumulative service, with exceptions listed in 38 U.S.C. Section 4312.

1. An employee who is called to active service for less than 90 days is entitled to:
  - a. Reemployment in the position in which the employee would have been employed if the continuous employment of such person with the city/BLW had not been interrupted by such service, the duties of which the person is qualified to perform; or
  - b. Reemployment in the position in which the employee was employed on the date of the commencement of the service in the uniformed services, but only if the employee is not qualified to perform the duties of the position referred to above after reasonable efforts by the city/BLW to qualify the employee.
2. An employee who is called to active service for more than 90 days is entitled to:
  - a. Reemployment in the position of employment in which the person would have been employed if the continuous employment of such person with the city/BLW had not been interrupted by such service, or a position of like seniority, status or pay, the duties of which the person is qualified to perform; or
  - b. Reemployment in the position in which the person was employed on the date of the commencement of the service in the uniformed services, or a position of like seniority, status, and pay, the duties of which the person is qualified to perform, only if the person is not qualified to perform the duties of a position referred to above after reasonable efforts by the city/BLW to qualify the person.
3. In the case of a person who has a disability incurred in, or aggravated during such service, and who, after reasonable efforts by the city/BLW to accommodate the disability, is not qualified due to such disability to be employed in the position of



employment in which the person would have been employed, the employee is entitled to:

a. Reemployment in any other position which is equivalent in seniority, status and pay, the duties of which the employee is qualified to perform or would become qualified to perform with reasonable efforts by the city/BLW; or

b. Reemployment in a position which is the nearest approximation to a position referred to above in terms of seniority, status and pay consistent with circumstances of such person's case.

4. The employee will not be penalized for having been on duty and shall be entitled to the seniority and other rights and benefits determined by seniority that the employee had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed. The returning employee shall also be entitled to any increase in base salary accorded his position, excluding performance increases, which would normally be accorded to the incumbent in the position.

5. Reemployment will not be dependent upon the laying off of another person who was hired at an earlier date than the date of the person returning from military leave in the same or similar position.

6. The city/BLW will make reasonable efforts to refresh or update the skills of the returning employees from military leave by providing refresher training and any training the employee would have received if he or she would have remained on the job.

#### G. Paid Leaves of Absence.

1. All employees are entitled to leave of absence without loss of pay, leave benefits, or service time on all days which they are engaged in ordered military duty up to a maximum of 18 working days in any one federal fiscal year (October 1 – September 30). A shift of 12 hours or less constitutes one workday for the purposes of this policy. For fire personnel who work a 24-hour shift, a maximum of nine shifts or 216 hours will be allowable for paid military leave during any one federal fiscal year. In the event the Governor declares an emergency and orders any employee to ordered military duty as a member of the National Guard, any such employee, while performing such duty, shall be paid his salary or other compensation as an employee for a period not exceeding 30 days in any one federal fiscal year (October 1 – September 30).

2. Leaves of absence exceeding 18 working days (or 216 hours for fire personnel) in any one federal fiscal year shall be granted for assignment to duty functions of a military character, without pay, but not less in service time. For National Guard members who are ordered by the Governor to perform military duty for a declared emergency, leaves

of absence exceeding 30 working days (or 360 hours for fire personnel) in any one federal fiscal year shall be granted, without pay, but not less in service time.

3. Employees will be paid the difference between their city salary and their military basic pay for any or all periods of absence while engaged in the performance of ordered military duty after expiration of the payment periods provided for in paragraphs 1 and 2. Employees must submit proof of military pay to the director of human resources and risk management to justify payment.

(Code 1978, § 4-1096; Ord. No. 5575, 6/12/96; Ord. No. 6787, 3/9/2005, §§ 1—3; Ord. No. 7844, 10/14/2015, § 1; Ord. No. 7891, 6/8/2016, § 1)

#### **4-4-16-070 - Court leave.**

- A. An employee called for jury duty or subpoenaed as a witness, except on cases in which the witness is a plaintiff, cross-complainant or counter complainant, shall be granted court leave and shall be excused from work upon presentation of a court notice to the department head to that effect. Employees called to court for the purposes of this policy shall promptly notify their immediate supervisor so that arrangements can be made for their absence from work. The employee will be paid his regular pay provided he submits evidence of the actual days spent in court. Monies received or which could be received for said service from any court (except actual receipted expense) shall be endorsed to the city/BLW. Only the number of actual days or hours spent in court will be considered in granting leave and the employee must return to duty promptly when released by the court.
- B. Employees who become plaintiffs or defendants are not eligible for court leave with pay.

(Code 1978, Sec. 4-1097; Ord. No. 5575, 6/12/96)

#### **4-4-16-080 - Funeral leave.**

- A. All full-time, regular employees may be granted upon approval of the department head or their designee, time off with pay not to exceed three consecutive workdays or 36 hours for 24-hour shift fire personnel in the event of a death in their family. Two additional workdays or 20 hours for 24-hour fire personnel may be granted at the discretion of the department head.
- B. The maximum allowed funeral leave in one calendar year is five workdays or 56 hours for 24-hour shift fire personnel. Such time is not chargeable to vacation or sick leave.
- C. The employee may be required to provide the department head with proof of death in the family before compensation is approved.

(Code 1978, § 4-1098; Ord. No. 5575, 6/12/96; Ord. No. 7133, 2/13/2008, § 1)

#### **4-4-16-085 – Maternity leave.**

- A. A full-time employee who has been employed with the City/BLW for at least one year and gives birth to a child/children shall be entitled to time off with pay not to exceed four weeks.
- B. Employees shall provide documentation of the basis for any leave requested under this section.
- C. Maternity leave provided in this section shall run concurrently with Family and Medical Leave Act (FMLA) leave as provided in Section 4-4-16-090.

(Ord. No. 7892, 6/8/2016, § 1)

#### **4-4-16-090 - Family and medical leave of absence without pay.**

The provisions of this section are regulated by the Family and Medical Leave Act of 1993 (P.L. 103-3) and pertinent Department of Labor regulations as they may be promulgated. The city/BLW specifically reserves the right to add to, change or abolish the provisions of this section, in whole or in part, based upon pertinent action by any appropriate legislative, judicial or regulatory authority.

- A. Eligibility and Reasons Granted. The provisions of this section apply only to those employees who have been employed for at least 12 months (such 12 months of employment does not have to be consecutive) and who have provided at least 1,250 hours of service during the 12 months before any leave is requested. In determining the hours worked, paid leave, such as vacation, sick or compensatory leave is not included.

The city manager or a department head will grant up to a total of 12 workweeks of Family and Medical Leave Act (hereinafter FMLA) leave to any eligible employee during any 12-month period for one or more of the reasons listed below. The 12-month period for purposes of this section shall be measured forward from the beginning date of an employee's first approved FMLA leave. Employees are required to first use any accrued vacation, sick, holiday or compensatory leave for all or any part of this 12-week period. When an employee uses paid leave in lieu of unpaid FMLA leave, the city/BLW will only provide sufficient unpaid leave to total 12 workweeks in the designated 12-month period of time in accordance with FMLA regulations.

1. Reasons.

- a. Birth of a child and to care for that child if requested within one year after birth of the child. Employees are required to give at least 30 days notice for a request for this reason and specify the amount of time requested. If, due to unforeseeable circumstances, some adjustment must be made to the requested leave, employees are required to provide the city/BLW with reasonable notice of such adjustment. Failure to comply with this

notice requirement may be grounds for postponement of the requested leave.

- b. Placement for adoption or foster care of a child if requested within one year after placement of the child. Employees are required to give at least 30 days notice for a request for this reason and specify the amount of time requested. If, due to unforeseeable circumstances, notice is not able to be given within the 30-day time period, employees are required to provide reasonable notice within two business days of learning of the need for leave. Failure to comply with this notice requirement may be grounds for postponement of the requested leave.
- c. Serious personal health condition making the employee unable to perform the essential functions of his job. Employees are required to give notice as soon as practicable after the need for FMLA leave becomes known to the employee, and specify the amount of time requested.
- d. Care for a parent, spouse, or child with a serious health condition. A qualifying child must be under 18 years of age, or if older, incapable of self care because of a mental or physical disability. Employees are required to give notice as soon as practicable after the need for FMLA leave becomes known to the employee, and specify the amount of time requested. For purposes of this policy, a parent includes only a biological parent or an individual who stands or stood in loco parentis to the employee when the employee was a child. Parents-in-law are not included. For purposes of this policy, child includes biological children, adopted children, foster children, step children, legal wards or a child of an employee standing in loco parentis and the child is either under age 18 or age 18 or older and incapable of self care because of a mental or physical disability. For purposes of this policy, spouse means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized. Domestic partners are not eligible for the provisions of this section. Leave for care of any other relatives or for any other individuals who may be a part of an employee's household is not authorized by this section.
- e. Military Family Leave: The National Authorization Act for FY 2008 amended the FMLA to provide eligible employees working for the city/BLW additional leave rights related to military service.
  - (1) Eligible employees are entitled to up to 12 weeks of leave because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of contingency operation.
  - (2) An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a

serious illness or injury sustained in the line of duty on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member. The military caregiver leave is available during "a single 12-month period" during which an eligible employee is entitled to combined total of 26 weeks of all types of FMLA leave.

2. For the purposes of this section, a serious health condition is an illness, injury, impairment or physical or mental condition that involves one of the following:
  - a. Hospital Care. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with, or as a consequence of, such inpatient care. Incapacity for the purposes of FMLA is defined to mean inability to work, attend schools, or perform other regular daily activities due to the serious health condition, treatment for it, or recovery from it.
  - b. Absence Plus Treatment. A period of incapacity of more than three consecutive calendar days (including any subsequent treatment or period of incapacity relating to the same condition) that also involves:
    - (1) Treatment two or more times by a health care provider, a nurse, or physician's assistant under direct supervision of a health care provider or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
    - (2) Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider.
  - c. Due to Pregnancy, or for Prenatal Care. Any period of incapacity due to pregnancy or for prenatal care.
  - d. Chronic Conditions Requiring Treatments. A chronic condition that:
    - (1) Requires periodic visits for treatment by a health care provider or a nurse or physician's assistant under the direct supervision of a health care provider;
    - (2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
    - (3) May cause episodic incapacity rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)
  - e. Permanent/Long-Term Conditions Requiring Supervision. A period of incapacity that is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of but need not be receiving active

treatment from a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

- f. Multiple Treatments (Non-chronic Conditions). Any period of absence to receive multiple treatments (including any period of recovery from them) by a health care provider or a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury or for a condition that would be likely to result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer, chemotherapy, radiation, etc., severe arthritis (physical therapy) or kidney disease (dialysis).

Employees must give 30 days notice for all requests for leaves of absence for any planned medical treatment. If the employee fails to give 30 days notice, when requested, for foreseeable leave, with no reasonable excuse for the delay, the city manager or department head may deny the taking of FMLA leave until at least 30 days after the date the employee provides notice to the city manager or department head of the need for FMLA leave.

All requests for FMLA leave for the serious medical condition of the employee, spouse, parent or child must be substantiated by a health care provider's certification of the existence of such medical condition. The initial certification must be provided within 15 days after the city/BLW requests such certification. The city/BLW'S request for certification shall be written and addressed to the employee.

The employee is required to provide his department head on the beginning day of the sixth and twelfth week of FMLA leave, a recertification by the health care provider of the status of the employee's, spouse's, parent's or child's serious medical condition, and a written statement by the employee as to his intention to return to work. If the employee's FMLA leave is intermittent or a reduced schedule of work, the employee shall provide the required recertification and written statement of intent at such time as the employee's accumulated FMLA leave totals six weeks and 12 weeks.

Intermittent leave or a reduced schedule of work may be taken whenever medically necessary to care for a seriously ill family member or because the employee is seriously ill and unable to work. Employees needing intermittent leave or leave on a reduced schedule must attempt to schedule their leave so as not to disrupt the department's operations. Intermittent leave or a reduced work schedule will not be approved for birth of a child, placement for adoption or foster care of a child. The city/BLW reserves the right to temporarily transfer an employee on intermittent leave or a reduced schedule of work to an alternative position, with equivalent pay and benefits, that better accommodates the recurring periods of leave than the employee's regular position.

3. If a husband and wife are employed by the city/BLW, they are limited to a combined total of 12 work weeks of FMLA leave during any 12-month period for the following reasons only:

- a. Birth of a child, and to care for the newborn child; or
- b. Placement of a child with the employee for adoption or foster care.

B. Employee Benefits During Leave.

1. Health Insurance. The city/BLW will provide and pay for the same group health care coverage during the FMLA leave in the same manner as for active employees. The city/BLW will notify the employee on FMLA to pay the employee portion of any health insurance premium owed to the city/BLW during his absence. If the employee elects not to return to work after the FMLA leave, the city/BLW will initiate proceedings to collect the city/BLW's portion of the premium paid during the leave of absence. The city/BLW will not collect such premiums if the employee fails to return to work after the FMLA leave due to a continuation, recurrence or onset of the medical condition or other circumstances affecting the employee or other family members which are clearly beyond the employee's control.

2. Life Insurance. The employee may elect to continue coverage of the city/BLW's life insurance benefit. The employee is responsible for timely payment of all premiums, including the city/BLW's portion, during his absence. The employee is responsible for timely payment of all premiums for any supplemental policies the employee wishes to continue. Failure to pay the monthly premiums within 30 days of the due date will result in termination of the coverage.

3. Vacation and Sick Leave. No vacation or sick leave will be earned by an employee on leave of absence without pay status.

4. Pension Plans. No contributions will be made to the employee's supplemental pension fund while on leave without pay status. However, credit for service time for the employee's regular pension plan will be credited to an employee while on leave without pay status for family and medical leave purposes only.

5. Performance Evaluations, Performance Awards and Longevity Bonuses. Any leave of absence without pay for four or more work weeks will result in a corresponding adjustment of evaluation date and, if eligible, the effective date of award of any eligible performance raise or bonus or longevity bonus will also be adjusted.

C. Return to Work. An employee is expected to return to work no later than the first work day of the week following the expiration of the FMLA leave for the above reasons. Failure to do so for any reason will constitute abandonment of city/BLW employment by the employee.

Upon return from FMLA leave, an employee will be restored to his original job, or to an equivalent job with equivalent pay, benefits, and other employment terms and conditions.

If the employee's absence is due to personal illness, the employee may return to work at any time upon providing a fitness for duty certification by his health care provider. Employees who desire to return to work prior to the end of their leave must give the city/BLW notice as soon as possible, but no later than two work days prior to their return.

If an employee who requests leave under this section is identified as a key employee (a salaried employee who is compensated among the highest ten percent of all city/BLW employees at the time of the request) when he requests such leave, then such employee may be denied restoration to his employment with the city/BLW under the following conditions:

1. The restoration of the employee to employment will cause substantial and grievous economic injury to the operations of the city/BLW;
2. The city manager or department head gives written notice to the employee of his status as a "key" employee in response to the employee's notice of intent to take FMLA leave, and informs the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the city/BLW determines that substantial and grievous economic injury to the city/BLW's operations will result if the employee is reinstated from FMLA leave;
3. The city manager or department head gives the employee written notice as soon as a decision is made to deny job restoration and explains the reasons for the decision;
4. The city manager or department head offers the employee a reasonable opportunity to return to work from FMLA leave after giving notice; and
5. The city manager or department head makes a final determination as to whether reinstatement will be denied at the end of the FMLA leave period if the employee then requests restoration.

D. Procedure.

1. **Employee's Responsibilities.** The employee requesting family/medical leave should complete a request form as provided by the human resources department. Such request form should be submitted to the employee's department head and forwarded to the human resources department. The employee should meet with a human resources department staff member to explain the circumstances of the leave and for the personnel staff member to explain the employee's rights and obligations under this Act. The employee is also responsible for providing all information required on the form, notice of absence when required and for all certifications by any treating health care provider. An employee must work cooperatively with supervisors and



department managers to work out a treatment schedule which best suits the needs of both the city/BLW and the employee.

2. Department Responsibilities. The department head is required to approve leave as outlined in this section for eligible employees. Department heads or supervisors are prohibited from discriminating against employees who take family and medical leave in employment decisions such as performance evaluations, promotions or disciplinary actions. Department and division managers are required to maintain the departmental and/or division poster notifying employees of the provisions of the FMLA. If an employee verbally notifies a supervisor, division manager or department head of the need for leave which may be eligible under this policy, such supervisor should inquire further of the employee of the need to have more information about whether FMLA leave is being sought by the employee, and to obtain the necessary details of the leave to be taken.
3. Human Resources Department. The human resources department will serve as advisor to employees and supervisors on the requirements of eligibility for family/medical leave and the provisions of the FMLA. All records pertaining to family and medical leave will be maintained in the employee's confidential medical file in the custody of the human resources department. The human resources department will be responsible for notification of any premiums due from the employee and the collection of same.

(Code 1978, § 4-1099; Ord. No. 5198, 8/11/93; Ord. No. 5575, 6/12/96; Ord. No. 7028, 4/11/2007, § 7; Ord. No. 7191, 6/11/2008, §§ 1, 7; Ord. No. 7545, 7/13/2011, § 3)

#### **4-4-16-100 - Leave of absence for religious holidays, education or special work.**

The city manager may grant a regular full-time employee a leave of absence without pay for a period of one day up to but not to exceed 12 calendar months for reasons of celebrations of religious holidays, education or special work which will permit the city/BLW to profit by the experience gained or the work performed.

No benefits will be provided to any employee while on a leave of absence without pay for these reasons unless discontinuance and reinstatement of any such benefit is impractical due to the short length of the absence in the discretion of the human resources director.

Performance Evaluations, Performance Awards and Longevity Bonuses. Any leave of absence without pay for four or more work weeks will result in a corresponding adjustment of evaluation date and, if eligible and funded by the city/BLW, the award of any performance raise or bonus or longevity bonus.

The employee is required to keep the human resources department (payroll section) advised of his current address at all times.

An employee is expected to return to work no later than the first work day of the week following the end of the requested leave of absence. Failure to do so will constitute abandonment of city/BLW employment.

(Code 1978, § 4-1100; Ord. No. 5198, 8/11/93; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

**4-4-16-110 - Disability.**

- A. A department head, with the concurrence of the human resources director, shall have the right to direct any employee within such department to be examined by an individual or entity, including, but not limited to, a physician, psychologist, or any appropriate medical care provider, designated by the city/BLW at city/BLW expense to aid in determining fitness for duty and/or the ability to perform the essential functions of the position with or without a reasonable accommodation and/or whether the employee poses a direct threat to the health or safety of himself or others. Upon the discovery of a disability of any kind which, with or without a reasonable accommodation, precludes the ability to perform the essential functions of the position or results in the employee becoming a direct threat to the health and/or safety of himself or others, the employee will be allowed sick leave, pursuant to city/BLW policy, until able, by certification of the designated individual or entity, to perform the duties of his position, or if sick leave is exhausted, he may apply for a leave of absence without pay as provided under Section 4-4-16-090 of these policies and procedures. If the city/BLW concludes that the employee is not disabled, but cannot meet or satisfy the minimum fitness for duty requirements, it may take any appropriate action including, but not limited to termination of employment as provided under Section 4-4-8-040.
- B. It is the policy of the city/BLW to make all employment decisions without regard to any disability status unless required as a bona fide job qualification.

(Code 1978, § 4-1043; Ord. No. 5139, 3/10/93; Ord. No. 5362, 10/12/94; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

**ARTICLE 4-4-18 - SEXUAL HARASSMENT OR CONDUCT**

**4-4-18-010 - Policy.**

- A. Sexual harassment is a form of employee misconduct which undermines the integrity of the work environment. Sexual harassment is also a form of sex discrimination in violation of various federal and state civil rights laws.
- B. It is the policy of the city/BLW to seek prevention of sexual harassment of its employees and applicants for employment.

(Code 1978, § 4-111; Ord. No. 5575, 6/12/96)

**4-4-18-020 - Rights and responsibilities.**

In order to preserve the rights of all employees to work in an environment free from sexual harassment and, also, to protect the legitimate privacy interests of innocent parties, the city/BLW will provide a method for the confidential resolution of sexual

harassment complaints. All parties should but are not required to exhaust the informal remedies described herein before they resort to the formal grievance procedure.

- A. Supervisory Responsibilities. Supervisors are responsible for maintaining a positive work environment, setting a good example for others and promptly investigating all complaints of sexual harassment to determine what, if any, remedial action may be warranted. In resolving sexual harassment complaints, supervisors should seek advice and guidance from the human resources director and cooperate fully with his efforts to resolve any complaints referred to the human resources director by other parties. Supervisors should strive first and foremost to prevent any recurrence of prohibited activities or retaliation against victims.
- B. Aggrieved Employee/Applicant Responsibilities.
  - 1. An aggrieved party should try to tell the aggressor directly that his behavior is unwelcome, harmful or offensive to the aggrieved party. Some offenders may be genuinely oblivious to the effect of their words or conduct on other people and would be willing to change if only they knew they were hurting or offending someone. Aggrieved parties are strongly encouraged to promptly report the incident to the offender's supervisor or department head, or alternatively to the human resources department, so as to minimize the risk of repeated incidents or retaliation by the aggressor. Although supervisors and managers of the city/BLW are to take appropriate action when they have reason to suspect that harassment has occurred, employees should not assume that the city/BLW is aware of any problem. It is also the employee's responsibility to bring any complaint to the attention of the management of the city/BLW so that the problem may be resolved.
  - 2. Aggrieved parties should make reasonable, good faith efforts to resolve their complaints before they resort to the formal grievance process. However, failure to do so does not preclude resorting to the formal grievance procedure and/or disciplinary action or any other resolution by the appropriate manager as a result of such grievance.
- C. Human Resources Director Responsibilities.
  - 1. The human resources director shall facilitate the resolution of any complaints brought to his attention. Upon request, the human resources director will provide counseling and support to victims, supervisors and other involved parties. The human resources director shall serve as expert advisor to any supervisor who is part of the reviewing procedure in the formal grievance process. In this capacity, the director shall offer his best professional judgment as to whether certain allegations, if true, would constitute sexual harassment.
  - 2. The human resources director is responsible for providing training to city/BLW supervisors and managers on the subject of sexual harassment. The training should provide supervisors with current information on

applicable laws, rules, regulations and procedures and provide techniques for the careful investigation and mediation of sexual harassment allegations.

(Code 1978, § 4-1112; Ord. No. 5575, 6/12/96; Ord. No. 7028, 4/11/2007, § 8; Ord. No. 7191, 6/11/2008, § 1)

**4-4-18-030 - Definitions.**

- A. "Sexual harassment" includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature where:
  - 1. Submission to said conduct is made, either explicitly or implicitly, a term or condition of an individual's employment; or
  - 2. Submission to or rejection of such conduct by an individual is used as the basis for employment or continued employment; or
  - 3. Such conduct has the purpose or necessary effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment; or
  - 4. Such conduct or behavior was known by the aggressor to be unwelcome, harmful or offensive; or
  - 5. A person of average sensibilities would clearly have understood that the behavior or conduct was unwelcome, harmful or offensive.
- B. "Work environment" is defined as any place where the business of the city/BLW is conducted in the name of the city/BLW or any department or division thereof.

(Code 1978, § 4-1113; Ord. No. 5575, 6/12/96)

**4-4-18-040 - Resolution procedure.**

- A. Any employee or applicant for employment who, in good faith, believes that he may be a victim of sexual harassment should:
  - 1. Immediately ask the alleged offender to stop doing the unwelcome, harmful or offensive conduct; and
  - 2. Promptly contact the offending party's supervisor, department head or the human resources director for support and guidance. Successful resolution efforts will be greatly facilitated by the timely reporting of complaints.
- B. The supervisor of the alleged offender and department head will promptly investigate the complaint and if the complaint is founded, will take appropriate disciplinary action up to and including termination of employment.
- C. The aggrieved party may also file a formal grievance as outlined in Article 4-4-20 of the personnel rules and regulations. Time limits for filing a formal grievance of sexual harassment are extended to 30 calendar days from the date of a specific alleged

occurrence. If the alleged issue relates to on-going conditions, the employee may file a written grievance at any time.

- D. The human resources director will advise all supervisors/managers regarding the substance of the formal charges.
- E. If a complaint is filed against the human resources director, the city manager or his designee shall fulfill the role ascribed to the director of human resources.

(Code 1978, § 4-1114; Ord. No. 5575, 6/12/96; Ord. No. 7028, 4/11/2007, § 9; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-18-050 - Remedial action.**

- A. In determining what remedial action may be appropriate, supervisors should consider the extent to which the offender knew or reasonably should have known that his conduct was unwelcome, harmful or offensive. Any person who:
  - 1. Commits sexual harassment; or
  - 2. Shirks his investigatory or supervisory responsibilities; or
  - 3. Provides false witness against another;

shall be subject to appropriate disciplinary action including, but not limited to, referral to professional counseling at the offending party's expense; oral and written reprimands, performance probation, suspension or termination.

- B. Some coercive behavior, such as threats or promises that employment reprisals or wards will follow the refusal or granting of sexual favors, constitutes gross misconduct and may provide just cause of immediate termination.

(Code 1978, § 4-1115; Ord. No. 5575, 6/12/96)

### **ARTICLE 4-4-20 - DISCIPLINARY ACTION POLICY AND PROCEDURE**

#### **4-4-20-010 - Goal and purpose.**

- A. The goal of the city/BLW is to provide quality public services to the citizens and customers of the city/BLW. The establishment and maintenance of a cooperative and goal oriented work atmosphere is a responsibility of all employees and will go a long way toward eliminating serious disciplinary problems. If, however, disciplinary problems do arise, supervisors and department heads should make every effort to ensure that employees have a thorough understanding of city/BLW policies and an awareness of what is expected in job behavior and performance.
- B. The purpose of this policy is to provide a means to encourage employees to change their behavior through disciplinary action. The application of these guidelines must be consistent and equitable among all employees and departments so that employees receive like treatment for similar offenses.

(Code 1978, § 4-1121; Ord. No. 5575, 6/12/96)

**4-4-20-020 - Definitions.**

- A. Adverse Action. An adverse action is an action taken by the appointing authority or his designee that results in monetary loss due to disciplinary suspension without pay, disciplinary demotion or disciplinary dismissal.
- B. Conduct Undermining the Operations of the City/BLW. Any conduct or actions on the part of any employee which tends to jeopardize or reduce the efficient operation of the city/BLW in the delivery of services to the public, including the interference with the performance or duties of any other employee, through harassment or other methods, on or off the job.
- C. Delinquency. Vandalism; nonpayment of debts owed to the city; or absences or tardiness to work.
- D. Disciplinary Demotion. An employee may be demoted from one pay range (grade) to a lower range (grade) for disciplinary reasons. A disciplinary demotion will include a decrease in salary.
- E. Insubordination: The refusal by an employee to perform work assigned or comply with the written or verbal instructions of any supervisor who is entitled to give such direction and have it obeyed.
- F. Negligence. The failure to exercise reasonable and ordinary care under the circumstances.
- G. Sexual Harassment. See Article 4-4-18.
- H. Unauthorized Absence. An absence from work either not authorized by an employee's supervisor or not covered under the paid leave or leave of absence policies; see Article 4-4-16.
- I. Under the Influence of Alcohol. Under the influence of alcohol shall mean any measurable amount of alcohol as measured by blood, breath or urine tests while the employee is on duty or subject to be called back to duty in a paid stand-by status, unless such measurement of alcohol is the result of consumption of alcohol or an alcohol related product that is prescribed by a licensed physician. Employees will be subject for testing who have the smell of alcohol on their breath which is capable of being smelled by another, or visible impairment of their normal abilities. Departments may have requirements more restrictive than the above limitations (see Article 4-4-26).
- J. Under the Influence of Illegal Drugs (including the combination of drugs and alcohol). Under the influence of illegal drugs shall mean any measurable amount of illegal drugs as measured by blood or urine tests while the employee is on duty or subject to be called back to duty in a paid stand-by status. Departments may have requirements more restrictive than the above limitations (see Article 4-4-26).

- K. Legal Drug. Includes prescribed drugs and over-the-counter drugs which have been legally obtained and are being used solely for the purpose for which they were prescribed or manufactured (see Article 4-4-26).
- L. Illegal Drugs. Any drug:
  - 1. Which is not legally obtainable in the State of Georgia;
  - 2. Which may be legally obtainable but has not been legally obtained; or
  - 3. Which is being used in a manner or for a purpose other than as prescribed (see Article 4-4-26).

(Code 1978, § 4-1122; Ord. No. 5575, 6/12/96)

**4-4-20-030 - Procedure.**

- A. The procedure listed below is intended to assist supervisors and department heads in determining a proper course of action when discipline is needed. Any employee who violates any of the established personnel policies, directives or operational, safety or departmental rules shall be disciplined depending on the severity and/or frequency of the violation.
- B. Severity can generally be interpreted in the following manner:
  - 1. Minor. Not a threat to the safety or well-being of persons (employees, citizens, customers), property or the organization.
  - 2. Serious. A threat to the safety or well-being of persons (employees, citizens, customers), property or the organization.
  - 3. Major. Matters that cannot be tolerated. (Example: Fighting on the job; sale of illegal drugs, etc.).
- C. The city/BLW will utilize a corrective or progressive system of discipline to encourage employees to change their behavior in matters that can be described a "minor" in severity level. However, matters described as "serious" or "major" will be handled on a case by case basis.
- D. Supervisory staff has the right and responsibility to correct employee behavior by recommending disciplinary action. The department head and/or their designee, subject to the appeal rights of regular employees, shall have the following alternatives for taking disciplinary action, again depending upon the severity and/or frequency of the incident or like occurrences:
  - 1. Verbal Reprimand. An employee may be called in for private counseling by his supervisor, division manager or department head regarding unacceptable behavioral patterns or work performance standards. The department head or designee should record the giving of such verbal reprimand by documenting on a notice of counseling form which shall indicate the date of the counseling session, subject matter, and remedial action to be taken and timeframe, if any. The employee should, but is not required to acknowledge receipt of the notice of

counseling form by their signature. Signing of the notice of counseling form does not indicate agreement with the action taken and failure to sign does not negate the disciplinary action. The notice of counseling is a departmental record and does not need to be sent to the human resources department unless it is to support subsequent disciplinary action(s). Verbal reprimands can be neither grieved nor appealed.

2. Written Reprimand. A written reprimand may be given to an employee by his department head or specified designee when:
  - a. A verbal reprimand has not resulted in the desired improvement; or
  - b. When the initial actions required greater discipline than a verbal warning.

An employee should, but is not required to, acknowledge receipt of all written disciplinary actions by their signature. Signing of the disciplinary action form does not indicate agreement with the action taken and failure to sign does not negate the disciplinary action. A copy of notice of written reprimand shall be filed in the employee's personnel file in the human resources department. All supporting documentation should be attached to the disciplinary action form. Written reprimands can be neither grieved nor appealed. However, the employee has the right to: a) discuss the written reprimand with the department head or specified designee and/or b) submit a written statement to be attached to the written reprimand and with any copy of such reprimand.

3. Suspension Without Pay. Prior to a final decision regarding a suspension without pay, a regular status employee (who has successfully completed his work test period) will be given a hearing before the department head. Written notice of that hearing will be submitted to the employee by the department head or their designee at least 24 hours before the time of the hearing. Notice shall be hand delivered to the employee or personally delivered to the employee's home, leaving it with the employee or with a person of suitable age and discretion residing therein. If the employee cannot, after due diligence, be located, notice shall be sent by regular and certified mail, return receipt requested. The notice will specifically state the alleged grounds for which the suspension without pay is being considered, including a summary of the incident(s) from which the proposed disciplinary action arose. The employee will then have an opportunity at the hearing to explain, rebut or otherwise respond to the information upon which the proposed action is being taken.

A department head may suspend an employee without pay for up to 56 hours for fire personnel and 40 hours for all other personnel. A department head may suspend an employee without pay for periods exceeding 56 hours for fire personnel and 40 hours for all other personnel up to a maximum of 112 hours for fire personnel and 80 hours for all other personnel after informing the city manager and human resources director of the proposed disciplinary action. Failure to inform the city manager and human resources director shall not invalidate such disciplinary action.



4. Administrative Leave With Pay. During the investigation, hearing, or trial of an employee on a criminal charge or during the course of a civil action involving an employee, when allowing the employee to continue to perform his regular duties would be, in the opinion of the department head and the human resources director, detrimental to the city's legitimate interests, the department head may authorize administrative leave with pay of the employee for the duration of the proceedings as a nondisciplinary action. The department head may also authorize administrative leave with pay for non-disciplinary reasons pending investigation by the city of a suspected disciplinary infraction.
5. Demotion. Prior to a final decision to demote an employee, a regular status employee (who has successfully completed his work test period) will be given a hearing before the department head. Written notice of that hearing will be submitted to the employee by the department head or their designee at least 24 hours before the time of the hearing. Notice shall be hand delivered to the employee or personally delivered to the employee's home, leaving it with the employee or with a person of suitable age and discretion residing therein. If the employee cannot, after due diligence, be located, notice shall be sent by regular and certified mail, return receipt requested. The notice will specifically state the alleged grounds for which the demotion is being considered, including a summary of the incident(s) from which the proposed disciplinary action arose. The employee will then have an opportunity at the hearing to explain, rebut or otherwise respond to the information upon which the proposed action is being taken.

An employee who is unsatisfactory in his present position may be demoted for disciplinary reasons if, in the opinion of his department head or specified designee, he shows reasonable promise of becoming a satisfactory employee in another position. An employee who is demoted for disciplinary reasons shall be relieved of his present duties and responsibilities and assigned new duties and responsibilities which are less difficult and demanding and which will provide the employee a lower salary. This option is only available if a lower level authorized position is vacant or is created by the authorization of the city manager to downgrade an authorized position.

6. Transfers that involve no reduction in salary or benefits do not constitute a demotion and can neither be grieved nor appealed, even if the transfer involves a change of duties, responsibilities and authority.
7. Dismissal.
  - a. A department head may dismiss an employee for cause after informing the city manager and human resources director of the proposed disciplinary action. Failure to inform the city manager and human resources director shall not invalidate the dismissal. The human resources director shall serve as expert advisor to the department head regarding all dismissal actions. Prior to a final decision regarding dismissal, a regular status employee (who has successfully completed his work test period) will be given a hearing before the department head. Written notice of that hearing will be submitted to the

employee by the department head or their designee at least 24 hours before the time of the hearing. Notice shall be hand delivered to the employee or personally delivered to the employee's home, leaving it with the employee or with a person of suitable age and discretion residing therein. If the employee cannot, after due diligence, be located, notice shall be sent by regular and certified mail, return receipt requested. The notice will specifically state the alleged grounds for which termination is being considered, including a summary of the incident(s) from which the proposed dismissal action arose. The employee will then have an opportunity at the hearing to explain, rebut or otherwise respond to the information upon which the proposed action is being taken.

- b. If discharge action is taken subsequent to the departmental hearing, the employee shall be furnished notice of the discharge in writing stating the reasons and his rights to appeal the dismissal, if applicable. The notice and attachments become a permanent record unless modified by appeal action.
- c. Employees classified, as department heads who are employed in that capacity after February 9, 1994 are at-will employees of the city/BLW. However, any police chief and fire chief are exempted from these provisions and will be hired and may be terminated in compliance with the City Charter Section 4-12-1. Any other such department head may be discharged at any time within the discretion of the city manager, with or without cause. Prior to discharging a department head without cause or for cause deemed by the city manager to be beyond the department heads control as defined below, the city manager shall advise the city council in executive session of this intent; provided, that his omission to do so shall not affect the effectiveness of the discharge.
- d. Upon his discharge, a department head hired after February 9, 1994, may be eligible for severance benefits as follows: (1) severance pay equal to an amount up to four times his most recent gross weekly salary, the amount of which is dependent upon whether or not such executive finds other employment within four weeks after the effective date of the discharge; and (2) continued participation in the city/BLW health insurance program at full predischarge levels at the expense of the city/BLW for a period up to four weeks from the date of separation, or until covered by another health insurance program, whichever occurs first. To qualify for these severance benefits, an otherwise eligible executive, as defined below, shall, in writing and in a form approved by the city attorney, release the city/BLW and its elected and appointed officials, officers and employees in both their official capacity and personally, from any and all claims relating to his employment or the termination thereof, and shall likewise relinquish rights to a grievance/appeal hearing as provided herein.
- e. Only a department head hired after February 9, 1994, is eligible for the above described severance benefits if and only if he is discharged without cause or for cause deemed by the city manager within his discretion to be beyond the

department head's control (for example—reductions in force; elimination of a department; inability to perform job requirements at acceptable levels despite consistent demonstrable attempts to do so, etc.). Additionally, an eligible department head, upon being notified by the city manager that discharge is imminent, may choose instead to resign his employment voluntarily without loss of eligibility for severance benefits. A department head hired after February 9, 1994, who is discharged for cause as set forth in subparagraphs 1. through 24. of Section 4-4-20-040 of this chapter or other provisions of these rules and regulations or for any cause deemed by the city manager within his discretion to be contrary to the interests of the city/BLW shall not be eligible for severance benefits.

- E. At each level up to discharge action, employees will be warned that failure to correct their behavior, will result in specific, more severe disciplinary action.
- F. Notification of Disciplinary Suspension, Demotion or Dismissal. When an employee is suspended, demoted or dismissed by his department head, the department head shall immediately provide the employee with written notice of the action taken, the effective date, the reasons for the action and the recourse available to the employee under the provisions of these rules and regulations. A copy of such notice shall be furnished to the human resources director with copies of all supporting documentation.

(Code 1978, § 4-1123; Ord. No. 5140, 3/10/93, §§ 1, 2; Ord. No. 5262, 2/9/94; Ord. No. 5575, 6/12/96; Ord. No. 7028, 4/11/2007, § 10; Ord. No. 7191, 6/11/2008, §§ 1, 8)

#### **4-4-20-040 - Reasons for disciplinary action.**

Please note that the following listing is not exhaustive and certain actions or inactions may warrant disciplinary action under a given set of circumstances.

- A. Plea or conviction of any felony or any misdemeanor that is related to the duties of the employee or the entry of a plea of nolo contendere to either.
- B. Excessive tardiness or absenteeism as defined by the policy herein. Unauthorized absence from work for a period of three consecutive work days, or for periods greater than 36 hours for fire personnel on a 24-hour shift, shall be considered job abandonment.
- C. Abuse of any leave policy including vacation, sick, compensatory, military, holiday or leave of absence without pay.
- D. Absent without permission or the failure to work assigned hours, including required overtime or emergency work.
- E. Inefficiency, negligence, or incompetence in the performance of duties.
- F. Careless, negligent or improper use of city/BLW property or equipment and/or other organizations' property or equipment utilized by city/BLW employees in the performance of assigned tasks.

- G. Theft or conversion of city/BLW or employee property, materials, or equipment. Theft or conversion of a citizen's property occurring on city/BLW worksites or on city/BLW time.
- H. Willfully giving false statements to supervisors, department heads or the public including falsification of city/BLW records.
- I. Gross discourtesy to coworkers, supervisors, department heads, or the public up to and including threats of violence, violent acts and fighting, on city/BLW property or worksites.
- J. Harassment or discrimination based upon race, color, creed, age, sex, national origin or ancestry, personal beliefs or handicaps.
- K. Possession of, sale of, or being under the influence of alcohol or illegal drugs when reporting for work or the use of such while on duty. Adulteration of any sample provided or disruption of any city/BLW authorized drug/alcohol testing process. Abuse of prescribed medication or the failure to inform appropriate supervisory authority of the use of prescribed medication that might adversely affect the employee's performance of assigned duties.
- L. Unauthorized possession of any explosive compound, firearm, or knife designed for the purpose of offense or defense in a city/BLW owned or operated building, vehicle, park or worksite.
- M. Performing work or activities of a personal nature on city/BLW time.
- N. Gambling during work hours or on city/BLW property.
- O. Unauthorized sleeping on the job; exception: Scheduled rest time for firefighters.
- P. Insubordination as evidenced by the refusal to perform work assigned or to comply with the written or verbal instructions of any supervisor who is entitled to give such direction and have it obeyed.
- Q. Instigation of, participation in, or leadership of strike, work stoppage, slow down or artificial restriction of productive work.
- R. Political activity, outside employment, or acceptance of gratuities, ownership interest or personal activity in conflict with the policies and restrictions set forth in other articles of the personnel rules and regulations.
- S. Refusal to submit to any medical or psychological or other examination or drug screening for the purpose of determining fitness to remain on the job.
- T. Failure to report accidents or injuries.
- U. Preventable accidents which result in injury to self, others or damage to city/BLW equipment or property and/or other organizations' property or equipment utilized by city/BLW employees in the performance of assigned tasks.
- V. Violation of city/BLW charter requirements, administrative directives, safety, operational or departmental rules and regulations.

- W. The loss of job requirements, such as the loss of a necessary license, which prevents the adequate performance of assigned duties.
- X. Failure to report deficient, inadequate or otherwise poor quality of work to the appropriate supervisory personnel.
- Y. Other activities which adversely affect the safety, welfare, efficiency or successful performance of city/BLW services.
- Z. Improper, offensive or inappropriate use of city/BLW computer hardware or software or communications systems and, specifically, abuse of the policies as outlined in Article 4-4-11, Computer and Communication System Usage.

(Code 1978, § 4-1124; Ord. No. 5575, 6/12/96; Ord. No. 5683, 4/9/97; Ord. No. 7028, 4/11/2007, § 11; Ord. No. 7191, 6/11/2008, § 9; Ord. No. 7207, 8/13/2008, § 1)

**4-4-20-050 - Safety and departmental personnel rules.**

The city manager, board manager, safety committee and all department heads may publish additional personnel or safety rules and regulations. The human resources director and the city manager shall review proposed personnel or safety rules and regulations. No such rules and regulations will be effective without approval by the city council. Approval by the city council shall carry the irrebuttable presumption that all required procedures have been followed and no rule or regulation shall be defective because the human resources director or the city manager have not reviewed them.

(Code 1978, § 4-1125; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

**4-4-20-060 - Appeal rights.**

- A. Any regular employee, except an employee classified as a department head who was hired after February 9, 1994, who has received disciplinary action after successfully completing his initial work test period shall have the right to appeal such action as provided in the applicable provisions of the grievance and appeals policy. However, any police chief and fire chief are exempted from these provisions and will be hired and may be terminated in compliance with the City Charter Section 4-12.1.
- B. Temporary, part-time and contractual employees do not have grievance, appeal or hearing rights.

(Code 1978, § 4-1126; Ord. No. 5262, 2/9/94; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 10)

**ARTICLE 4-4-22 - GRIEVANCE AND APPEALS POLICY AND PROCEDURE**

**4-4-22-010 - Policy.**

It is the policy of the city/BLW to resolve grievances informally if at all possible. Supervisors and managers are expected to make every effort to discuss and resolve

problems as they arise. However, there may be grievances or appeals of disciplinary actions which can only be resolved after a formal review. This review process is outlined below.

(Code 1978, § 4-1141; Ord. No. 5575, 6/12/96)

#### **4-4-22-020 - Definitions, coverage and applicability.**

##### **A. Definitions.**

1. **Grievance.** A formal grievance is a written complaint made by an employee concerning:
  - a. Unfair treatment in the application and/or interpretation of the personnel rules and regulations, departmental rules, administrative directives; or
  - b. An appeal of a disciplinary action which has the effect of adverse action on his employment with the city/BLW; or
  - c. To request the opportunity to correct an alleged discriminatory action on the basis of race, color, creed, national origin or ancestry, sex, handicap, religion, age, or political affiliation. (See article 4-4-4, equal opportunity policy).
2. **Employee.** This term can refer to one individual employee or to a group of employees having the same grievance. As used in this chapter, this term does not include those employees classified as executives who are hired after February 9, 1994, unless otherwise noted. However, any police chief and fire chief are exempted from these provisions and will be hired and may be terminated in compliance with the City Charter Section 4-12.1.
3. **Non-grievable Issues.** All items listed as powers of city management listed under Article 4-4-2, Section 4-4-2-040 of these rules and regulations and oral and written reprimands.

##### **B. Coverage and Applicability.**

1. This policy applies to all regular employees who have successfully completed their initial work test period. Temporary, contractual and part-time employees are excluded from this policy and procedure. Temporary and part-time and employees serving an initial working test period may grieve discriminatory matters as provided under Article 4-4-4, equal employment opportunity policy of these rules and regulations.
2. Police and fire personnel serving under civil service rules and regulations may utilize the provisions of this article only if they make an affirmative written waiver of their grievance and/or appeal rights to the civil service board.
3. If any eligible employee is denied the opportunity to present a complaint, grievance or appeal, as prescribed by this article, or if the employee is threatened or subjected to harassment or duress when presenting the complaint, the employee should notify the aggressor's department head, or in case of the

department head as the aggressor, the city manager, and the human resources director in writing who will jointly initiate an investigation of any such complaint.

(Code 1978, § 4-1142; Ord. No. 5262, 2/9/94; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

**4-4-22-030 - Formal grievance procedure.**

A. Regular Employees Department Heads Hired Prior to February 9, 1994.

1. If a grievance arises from the action of an official higher than the immediate supervisor, the grievance may be initiated at Step 2 or 3, as appropriate. At no time will an employee bypass a supervisor and/or department head that were involved in the grieved or appealed action.
2. The human resources director shall serve as advisor of all parties involved of the correct procedural handling of each particular grievance/appeal including the determination of whether an issue is grievable.
3. Employees are free to seek legal counsel at their expense at any time. However, the employee may be represented by counsel at Step 3 only and such representation is limited to opening and closing statements and written documentation supporting their client's case. Otherwise, employees are required to speak for themselves. It is the intent of this provision to encourage discussion between employees and supervisory staff on matters of mutual concern.
4. If a grievance/appeal meeting or hearing is held during the normal work hours of any required participant, such participant shall be excused without loss of pay for that purpose. Attendance at grievance/appeal meetings or hearings held outside of normal work hours for any participant shall not be deemed as time worked.
5. Failure to initiate a grievance/appeal within the time limit shall be deemed a waiver of the grievance/appeal. Failure at any step of this procedure to submit a grievance/appeal to the next step within the specified time limit shall be deemed to be acceptance of the decision at that step.
6. Failure at any step of this procedure to communicate the decision on a grievance/appeal within the specified time limit shall permit the employee to proceed to the next step as set forth in the preceding paragraph.
7. Failure of the employee to cooperate, participate and meet as needed will result in dismissal of the grievance/appeal.
8. The time limits of the procedure maybe extended by the human resources director due to illness, vacations, business travel or other legitimate reasons. If an extension is required, involved all parties will be notified.
9. This procedure is the only formal process to handle employee complaints. At no time shall an employee approach the mayor or any council member or BLW board member to resolve a grievance or appeal.

10. The entire written portion of an employee's grievance/appeal and disposition at any level shall be kept in a separate file in the human resources department, under the jurisdiction of the human resources director, and will not be placed in any other file whatsoever.
  11. Any employee who resigns from city/BLW shall be deemed to have waived the right to initiate or to process a grievance or appeal.
- B. Department Heads Hired After February 9, 1994. Department heads hired after February 9, 1994, do not have the right to administrative appeal, grievance procedures or hearing rights. A post-employment name-clearing hearing for such department heads may be conducted at the discretion of the city manager. However, any police chief and fire chief are exempted from these provisions and will be hired and may be terminated in compliance with the City Charter Section 4-12.1.
1. Step 1: Division Level.
    - a. An employee who feels he has a valid reason for complaint should complete the city/BLW grievance/appeal form and submit the completed and signed form to his direct supervisor and/or division manager with a copy to the human resources director within seven calendar days following the incident that gave rise to the complaint. If the grievance is related to ongoing working conditions such as harassment or discrimination, the employee may file a written grievance at any time.
    - b. In filing a complaint, the employee should specifically state what action is being grieved or appealed; provide a description of the incident from the employee's perspective including persons involved, dates, time and relevant facts; specific provision(s) of the personnel rules and regulations that the incident pertains to; a statement as to why the employee feels the grievance or appeal is justified; state the remedy sought by defining the action the employee believes should be taken if the grievance or appeal is upheld.
    - c. The supervisor and/or division manager shall meet with the employee to discuss the grievance/appeal and communicate a decision in writing to the employee within seven calendar days following receipt of the grievance/appeal. A copy of the division manager's decision shall be sent to the department head and the human resources department.
  2. Step 2: Department Level. If the grievance is not resolved at Step 1, the employee may submit the grievance form to his department head, with a copy to the human resources director within seven calendar days after receipt of the decision at Step 1. The department head shall meet with the employee to discuss the grievance and communicate a decision in writing to the employee within seven calendar days following receipt of the written grievance. A copy of the department head's decision shall be sent to the human resources department.
  3. Step 3: City Manager Level.
    - a. This step is the final level of grievance review and/or appeal for all employees who do not report directly to the city manager. If the grievance is not resolved



at Step 2, within seven calendar days of receipt of the department head's decision, the employee may submit the grievance with all supporting documents including copies of decisions rendered at Steps 1 and 2 to the city manager.

b. The city manager will conduct, or designate an impartial individual to conduct either:

(1) A separate investigation of the grievance to discuss the complaint with the grievant, including a meeting accompanied by his representative if the employee desires representation; or

(2) A hearing, if the grievance/appeal concerns an adverse action as defined in Section 4-4-20-020. If necessary, the city manager or his designee will conduct a hearing on the grieved or appealed issue at which all-appropriate witnesses and supporting information shall be heard. The hearing shall be recorded. The grievant or appellant may, if he so desires, obtain a copy of the recording at his own expense. The evidentiary portion of this hearing shall be open to the press and public; however, the deliberation of the findings shall occur in closed session. After the city manager or his designee has heard from all involved parties, he will close the meeting.

After consideration of written materials and testimony given at the hearing, if the city manager has designated a hearing officer, such hearing officer will issue a recommendation to the city manager. The grievant/appellant and appropriate department head will receive copies of the hearing officer's recommendation.

The city manager shall communicate a decision in writing to the employee and to the representative, if any, within 30 days following receipt of the written grievance or following the meeting or hearing or following receipt of the recommended decision, whichever is later. Such decision shall be final.

C. Employees Hired or Promoted Into in a Formal Apprenticeship Program on or After July 1, 2007. Employees hired or promoted into a formal apprenticeship program, such as apprentice electrical lineworker on or after July 1, 2007, do not have the right to administrative appeal, grievance procedures or hearing rights except that such employees have the right to utilize the procedure outlined herein to file complaints of discrimination on the basis of race, color, religion, national origin, age, sex, disability and political affiliation in accordance with Article 4-4-4. A post-employment name clearing hearing for such employees may be conducted at the discretion of the city manager.

D. Procedure for Appeals from Actions of the City Manager. This procedure is available to those department heads and employees who report directly to the city manager to assure these employees have access to due process. An employee in this category who feels he has a valid reason for complaint from actions of the city manager should

complete the city/BLW grievance/appeal form and submit the completed and signed form to the city manager with a copy to the human resources director within seven calendar days following the incident that gave rise to the complaint. If the grievance is related to ongoing working conditions such as harassment or discrimination, the employee may file a written grievance at any time.

In filing a complaint, the employee should specifically state what action is being grieved or appealed; provide a description of the incident from the employee's perspective including persons involved, dates, time and relevant facts; specific provisions of the personnel rules and regulations that the incident pertains to; a statement as to why the employee feels the grievance or appeal is justified; state the remedy sought by defining the action the employee believes should be taken if the grievance or appeal is upheld.

Since the city manager was the individual taking the aggrieved action, the human resources director shall call for the establishment of an ad hoc hearing board to hear the grievance/appeal. The human resources director or his designee shall communicate the hearing board's final decision in writing to the employee and to the city manager within five days following receipt of the hearing board's decision.

- E. Grievance/Appeal Board to Hear Complaints from Actions of the City Manager. The ad hoc grievance/appeal board is established to hear the grievance or appeal of an employee who directly reports to the city manager, the board shall be composed of:
1. A part-time municipal court judge as nonvoting chairperson of the board. The mayor shall select one of the judges from the current personnel roster.
  2. The human resources director shall select from the current personnel roster or the pension payroll, two individuals to serve as members of the board as follows:
    - a. One appointee to this board shall be a current division manager from a city department other than the department of the grievant.
    - b. One appointee to this board may be a current or retired division manager or a retired department head. This appointment should be from a city department other than the department of the grievant and the department of the appointee selected by the human resources director in subparagraph (2)(a) of this section.
  3. The mayor shall select a person who is not a current or retired city/BLW employee and who is a Marietta citizen to serve as the third member of the appeal board.

The chairperson shall determine the procedural rules for the ad hoc grievance/appeal board hearing. The chairperson may also request the city attorney to serve as legal advisor to the grievance/appeal board. The city attorney shall attend the hearing, but shall not be involved in the closed, decision making process of the board or in the deliberations of the board. However, the city attorney shall be available to answer any questions that may arise during the closed session.

All members of this board shall be persons who have no personal relationships with any part to the grievance, that is, not related by blood or marriage, business partners, close personal friends or other relationship or circumstances that would tend to bias the judgment of the board members for or against any party to the grievance or appeal.

There shall be no private, one to one conversations between individual board members and any party to the grievance concerning the merits of the grievance or appeal at any time during the course of the proceedings.

The grievance/appeal board shall hold a hearing on the grieved or appealed issue at which all appropriate witnesses and supporting information shall be heard as determined by the board. The hearing shall be recorded. The grievant or appellant may, if he so desires, obtain a copy of the recording at his own expense. This recording shall be the only official record of the hearing. The evidentiary portion of the hearing before the board shall be open to the press and public, however, the deliberation of the findings of the board shall occur in closed session. After the board has heard from all involved parties, the chairperson will close the meeting. Only the voting members of the board shall be party to the deliberation of the findings of the board. After consideration of written materials and testimony given at the hearing, the board will issue through the chairperson a decision to the human resources director. The grievant/appellant and the city manager will receive copies of the board's decision which shall be final, subject to the right of appeal by either the city or the employee to a court of proper jurisdiction.

(Code 1978, § 4-1143; Ord. No. 5120, 1/13/93, § 2; Ord. No. 5262, 2/9/94; Ord. No. 5575, 6/12/96; Ord. No. 7061, 6/13/2007, § 4; Ord. No. 7191, 6/11/2008, §§ 1, 11)

#### **4-4-22-040 - Salary of suspended, demoted, or dismissed employees.**

- A. Disciplinary action in the form of suspensions and demotions shall become effective upon the employee's receipt of the notice of the department head's decision following the informal hearing as described in Article 4-4-20, disciplinary policy and procedure. In the event the employee appeals such disciplinary action and said action is reversed or modified, then the employee shall be allowed back pay and benefits as consistent with the decision.
- B. From the time of the employee's receipt of the notice of dismissal following the departmental hearing until the dismissal becomes effective, such employee shall be considered suspended without pay pending discharge investigation. During such period of suspension without pay, said employee shall continue to be an employee of the city/BLW and allowed all benefits and accruals pertaining thereto, except said employee shall not be allowed to work, appear on city/BLW property or work sites except on official business, or receive any salary or wages.

(Code 1978, § 4-1144; Ord. No. 5575, 6/12/96)

## ARTICLE 4-4-24 – ADMINISTRATION OF THE CITY’S PAY AND CLASSIFICATION SYSTEM<sup>[1]</sup>

Footnotes:

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**Editor's note(s)**—Ord. No. 8227, § 1, adopted July 14, 2021, amended Art. 4-4-24 in its entirety to read as herein set out. Former Art. 4-4-24, §§ 4-4-24-010—4-4-24-130, pertained to the pay and classification plan, and derived from Ord. No. 7191, § 12, adopted June 11, 2008; Ord. No. 7197, § 1, adopted July 9, 2008; Ord. No. 7526, § 1, adopted Mar. 9, 2011; Ord. No. 7808, § 1, adopted May 13, 2015; and Ord. No. 7835, § 1, adopted Sept. 9, 2015.

### **4-4-24-005 - Definitions.**

Classification title. See Section 4-4-24-020.

Compensatory time means accrued leave provided to non-exempt employees in lieu of overtime pay, calculated at 1.5 hours for every hour of overtime worked.

Demotion. See Section 4-4-24-090.

Exempt employees means employees or positions that are not covered by the overtime provisions of the Fair Labor Standards Act (FLSA).

General employee means a city/BLW employee who is not a sworn member of the fire or police departments.

HR director means the director of human resources and risk management.

Maximum rate salary (wage) means the highest rate of pay in each range of the salary or wage classification system as approved by city council.

Minimum or entry rate salary (wage) means the lowest amount of salary or wage rate assigned in each salary/wage range as approved by the city council. This is the normal hiring rate for new employees.

Non-FLSA compensatory time. Accrued leave provided to exempt employees under certain circumstances for time worked in excess of their regular schedules, calculated at a straight-time (one-hour-for-one-hour) rate.

Pay compression. See Section 4-4-24-050(C).

Pay grade means the minimum and maximum range of pay assigned to a position classification. All positions within a pay grade, though they perform different functions, require the similar levels of difficulty in performance of those duties and responsibilities. A number of other terms may be used with the same meaning as pay grade including salary range, pay levels, grades, etc.

Position. See Section 4-4-24-020.

Position description. See Section 4-4-24-020.

Promotion. See Section 4-4-24-080(A).

Reclassification means the reassignment of a position from one classification either to another existing classification or to a newly established classification, either of which may be a higher or lower-level classification, thereby requiring a change in the position's assigned pay grade and/or job title.

Supervisor or supervisory position. See Section 4-4-24-080(B).

Trainee rate or wage means the rate used in special circumstances approved by the department head and the human resources director for employees who do not meet the minimum qualifications for the position but have the potential to do so within a prescribed time period.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-010 - Purpose.**

- A. It is the policy of the city/BLW to establish and maintain a fair and equitable pay and classification system for all employees covered by these personnel rules and regulations. The pay and classification plan is designed to attempt to reflect:
1. Relative difficulty and responsibility between jobs.
  2. Ranges of pay for other classifications within the city/BLW and competitive rates of pay for similar types of work in public and private employment in the labor market where the city/BLW recruits for employees.
  3. Economic conditions of the job market area, including the availability of qualified candidates.
  4. The city/BLW's economic circumstances.
  5. Financial policies of the city/BLW.
  6. Cost of living factors.
  7. Other business, economic, and operational considerations.

The pay and classification plan is the official and approved system of grouping positions into appropriate pay grades and provides guidelines for administration.

- B. The pay and classification plan is a core component of the city/BLW's personnel policies and practices and should be used as follows:
1. A guide in recruiting and evaluating candidates for employment.
  2. To determine lines of promotions and developing employee training programs.
  3. To determine the salary range for each position.
  4. To provide uniform pay information which is understood by city officials, employees, and the general public.
  5. To assist in maintaining and revising organizational structure, clarifying lines of authority and affixing responsibility.

(Ord. No. 8227, 7/14/2021, § 1)

**4-4-24-020 - Content.**

A "position" is a set of assigned tasks, duties, and responsibilities requiring full-or part-time employment of one person. A position may be occupied or vacant. Each position will be assigned a classification and an appropriate pay range. Classifications and pay ranges shall be listed in the city/BLW's pay and classification plan.

Position descriptions are descriptive statements about every position in the organization. The position description contains a position/classification title, specific duties and responsibilities of that position (including those constituting "essential functions"), training and experience requirements, and other descriptive information defining the position.

A classification title is the official designation or name given to each written position description and shall be used on all official and personnel records.

The pay and classification plan shall establish a salary range for every classification in the city/BLW. Such salary ranges shall be determined with due regard to the factors identified in Section 4-4-24-010(A).

(Ord. No. 8227, 7/14/2021, § 1)

**4-4-24-030 - Plan administration and maintenance.**

A. Responsibility for Administration and Maintenance of the Pay and Classification Plan. The HR director shall be responsible for administering the pay and classification plan and for interpreting (and, in appropriate cases, making recommendations to the city manager regarding) the application of the plan to any compensation concerns not specifically covered by these guidelines.

The HR director shall also review and make recommendations regarding any necessary or appropriate updates or revisions to the pay and classification plan during the annual budget process or, with the approval of the city manager, as needed during the budget year.

The HR director may make or cause to have made such comparative studies as he/she deems necessary or appropriate of one or more of the factors identified in Section 4-4-24-010(A) affecting the level of salary ranges prior to the preparation of the annual budget, as well as at other times as needed. The HR director may request other officials and/or employees to assist in this process. Upon the recommendation of the HR director, the city manager may also authorize a review of the pay and classification plan, or any component thereof, by an independent consultant.

On the basis of the HR director's recommendation and the information derived from any such studies and/or reviews, the city manager shall recommend to the city council such changes in salary ranges or other aspects of the pay and classification plan as he/she deems necessary to fulfill the purpose of this article.

B. Position Descriptions and Classifications. Each department head shall be responsible for developing and maintaining accurate position descriptions, for

updating and revising existing position descriptions as provided herein, and for abolishing position descriptions that are no longer needed. The HR director will assist the department heads as needed in fulfilling their responsibilities under this article.

Should the duties and responsibilities of a position change, the department head must ensure that the official position description is updated and revised accordingly. All such updated/revised position descriptions must be submitted to the HR director for approval, who will also evaluate whether a change in classification is warranted. The HR director's evaluation of the proposed updated/revised position description may result in one of the following actions:

1. A determination that no change to the position description is necessary.
2. A determination that the position description should be updated and revised as proposed (subject to any adjustments the HR director deems appropriate), but that the position is properly classified.
3. A determination that the position description should be updated and revised as proposed (subject to any adjustments the HR director deems appropriate) and that the updates/revisions may warrant reclassification to a currently established higher or lower-level classification as well as a change in the assigned pay grade and/or job title.
4. A determination that the position warrants reclassification to a new classification that requires the official establishment of a new position description.

Whenever a position description is updated/revised, the HR director should initiate an inquiry into whether similar updates/revisions for the descriptions of positions in closely related classifications are warranted.

Whenever a position description is updated/revised or a position is reclassified, the HR director should determine the effect, if any, on the position's status as exempt or non-exempt under the FLSA.

Whenever a position is reclassified, the HR director should determine whether the reclassification requires the abolition of the classification and the subsequent removal of the position from the pay and classification plan.

#### C. Position Review.

1. Vacancies. Each time a vacancy occurs, the position shall be reviewed by the department head to determine whether the position has changed since the last time the position description was updated/revised. If so, then the department head will prepare and submit to the HR director a proposed updated/revised position description, identifying the altered functions and other changes to the position, to facilitate the evaluation described above, including a recommendation whether reclassification of the position is warranted. If the HR director determines that the proposed updates/revisions do not impact the classification of the position, the position description will be updated/revised prior to posting and advertising of the vacant position. If the HR director

determines that the proposed updates/revisions require reclassification of the vacant position, the department head must submit a reclassification request as provided below during the annual budget process or service proposal process, unless the city manager specifically authorizes a reclassification review within the fiscal year.

2. Non-Vacancies. Department heads must otherwise initiate requests for position reclassification during the annual budget or service proposal process whenever a significant change in the duties of a particular position has occurred. Such requests should be submitted via a memorandum of justification to the HR director, identifying the altered functions and other changes to the position, along with a copy of the proposed updated/revised position description. The HR director will review all reclassification requests and complete necessary job audits to determine the appropriate classification. The HR director may then recommend a suitable course of action to the city manager as provided in Subsection B above.
- D. Position Control. All positions in the city/BLW are established and maintained through a personnel budget each fiscal year in accordance with established budgeting and accounting procedures. The establishment of new or additional positions or upward reclassification of approved positions will require approval by the city council. Downward reclassification and lateral changes of approved positions will require the approval of the city manager.
- E. Change in Exemption Status. Any change in exemption status will require approval of the city manager and city council; provided, however, that the city manager shall have the discretion to implement temporary changes pending council approval if deemed appropriate.

(Ord. No. 8227, 7/14/2021, § 1)

**4-4-24-040 - Employee requests for review of classification.**

- A. An employee shall have the right to seek review of his/her position classification, or any changes made thereto. Any such request must be submitted in writing to the employee's immediate supervisor/manager and include a memorandum and position description outlining any relevant changes in duties and responsibilities to the position or explaining any other reasons believed to support the requested reclassification.
- B. The supervisor/manager shall review the request and supporting materials provided by the employee, prepare a memorandum indicating agreement or disagreement with the reclassification request and explaining the basis for such agreement or disagreement, and forward the request, supporting materials, and memorandum to his department head. The department head shall review the information provided by the employee and supervisor/manager, prepare a memorandum indicating agreement or disagreement with the supervisor/manager's determination and explaining the basis for such agreement or disagreement, and forward all documentation to the HR director.



- C. The HR director or his/her designee will meet with the employee, the department head and such other persons as may be necessary to clarify the required duties and responsibilities of the position(s). In his/her discretion, the HR director may conduct or may cause to be conducted a job audit of the position based on observation of tasks performed at the job site(s).
- D. After the information is collected on the position, the HR director or his/her designee shall review the assignment of the job classification and assess the evaluation. The HR director shall make a recommendation to the city manager for final action on the review of classification request.
- E. At each stage, the employee shall be kept advised of the status of the request, which shall be processed as expeditiously as is practicable.
- F. No review of classification request may be resubmitted unless there have been changes in the duties and responsibilities of the position since the previous review was completed.

Under no circumstances will any request for review be accepted at any level on the basis of pay. This is a management decision based on assessment of the employee's actual position, duties, and responsibilities.

- G. The effective date of any action that impacts the employee's pay shall be the date of the final decision. Any additional funding or position upgrade that would result from any reclassification is subject to the approval of the city manager and city council.

(Ord. No. 8227, 7/14/2021, § 1)

**4-4-24-050 - Pay schedules and setting individual employee pay.**

- A. Formal pay schedules will be developed and shall include position classification titles, pay grades/ranges, FLSA exemption status, EEOC job category, and position numbers for payroll purposes, and other information as deemed necessary and appropriate by the city manager in consultation with the HR director.

Except as otherwise provided herein, all modifications to established pay schedules must be approved by the city council. Established pay schedules, including any council-approved modified schedules, shall be used by management in setting individual employee pay in accordance with this article. Requests for copies of pay schedules must be presented to the employee's department head.

- B. When considering placement in the pay range for both new hires and promoted employees, department heads shall take into consideration relevant skill, required education, related ability, years of related experience, and any/all other qualifications required to perform the essential functions of the job, as well as the pay of other employees in the same department and pay grade, with strict adherence to the city/BLW's EEO policy (as stated in Article 4-4-4, Equal Employment Opportunity).
- C. Notwithstanding the foregoing, when considering placement in the pay range for both new hires and promoted employees, department heads shall also make every

reasonable effort to avoid pay compression, defined for purposes of this article as most often resulting when:

1. New hires or promoted employees are paid at or above the pay of existing employees with more experience or more responsibilities in the same position.
2. New hires or promoted employees are paid at or above the pay of their supervisors/managers (when the new hires or promoted employees' routinely earned overtime compensation is included in the calculation).

If a department head is unable to effectuate the new hire or promotion without creating or contributing to existing pay compression, prior to effectuating the new hire or promotion, he/she must promptly notify the HR director who will consult with the city manager to discuss potential options and solutions.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-060 - Original appointments.**

- A. Pay offered to newly hired employees shall be at an initial pay range that falls within the first quartile of the pay grade designated for his/her position, or is consistent with an approved schedule or program, with some exceptions as noted below.
- B. When the city/BLW is unable to recruit qualified applicants or when an applicant possesses exceptional qualifications warranting employment above the first quartile, the department head may request authorization from the HR director to hire up to the mid-point for technical and professional positions only. These positions are designated in the pay and classification plan as having an EEOC category of 01, 02, or 03.
- C. Requests to hire up to the mid-point of the pay grade for other positions requires the recommendation of the HR director and the authorization of the city manager and will be granted only in exceptional circumstances.
- D. Newly appointed personnel in a department head, managerial, or supervisory position may be compensated at any rate within the approved pay grade for the position as approved by the city manager so long as the salary does not exceed the maximum of the assigned pay grade.
- E. Appointments of candidates into a formal apprenticeship program or into a specific career development program, such as apprentice electrical line worker or line worker position, will be compensated according to pay and classification plan provisions specific to those programs as adopted by the city council.
- F. The HR director may authorize the hire of temporary employees at a rate of pay less than the minimum of the classification. Temporary employees on the city/BLW payroll shall be paid only for actual hours worked, inclusive of overtime, if any.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-070 - Trainee status.**

Positions designated as trainee positions may be filled on a temporary basis, at a rate below the minimum salary of the pay grade. Pay rates shall be determined by the length of the training program so that, upon acquisition of required training and experience, the incumbent may be placed at the minimum salary in the pay grade.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-080 - Promotions.**

A. The movement of a current employee from a position in one pay grade to a position in a higher pay grade shall be considered a promotion. All promotions shall be made upon the recommendation of the department head and the HR director, subject to the approval of the city manager. Promotions will typically be made at an increase that falls within the higher pay grade's range and:

1. Justification can clearly be demonstrated based on the employee's experience, education, skills, and abilities;
2. With written consent of the HR director; and
3. With approval of the city manager.

Employees in approved career development programs, progression ladders, step programs, or other specialized pay structures will be promoted and have salary set based on those approved guidelines.

B. Current employees promoted or moved to supervisory positions shall be paid as provided in paragraph A of this section. For purposes of this article, "supervisory position" shall be defined as an employee who has supervisory authority and responsibility over one or more employees on a regular basis.

C. As provided in Section 4-4-6-080, promoted employees shall serve a working test period, the duration of which is determined by the position occupied. The working test period in the promoted position may be extended by the department head, with the approval of the HR director, a maximum of an additional three-month period. Upon successful completion of the working test period, the promoted employee will be granted regular status in the new position. There is no salary increase at the end of the working test period for promoted employees.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-090 - Demotions.**

Demotion is defined as the assignment of an employee from a position in one classification to a position in another classification assigned a lower pay grade. Demotion may be disciplinary or otherwise involuntary or it may be voluntary.

When an employee requests and receives approval of a voluntary demotion, he/she will be placed in the newly assigned pay grade for the lower position at a minimum of five percent less than his/her current rate of pay and within the approved range for the lower pay grade. However, if it can be demonstrated to be in the best

interest of the city/BLW, and with the prior recommendation of the HR director and approval by the city manager, the employee may be paid at a rate that is within the approved range for the lower-level position that does not exceed the employee's pay in his/her previous position, or the employee's current pay rate may be frozen until the pay rate falls within the specified range of the lower assigned pay grade. Employees whose pay is frozen are ineligible for increases until their pay falls within the stated range.

If an employee is involuntarily demoted per Section 4-4-20-030, the department head, in consultation with the HR director, may recommend an appropriate rate of pay in the pay grade to which the employee has been assigned. However, the newly assigned rate of pay will be at least five percent lower than his/her previous rate.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-100 - Lateral transfers.**

An employee who is transferred to a different position in the same pay grade as his/her current position may continue at his/her current pay rate if it can be demonstrated by the department head that the salary offered is appropriate based on the employee's skills, education, and experience as required by the job description.

Notwithstanding the foregoing, if the department head is unable to effectuate the transfer without creating or contributing to existing pay compression, prior to effectuating the transfer, he/she must promptly notify the HR director who will consult with the city manager to discuss potential options and solutions.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-110 - Reclassifications.**

When an employee's position is reclassified to a lower grade and the employee's salary is above the maximum of the lower grade, the employee shall be permitted to continue at the rate of pay at the time of reclassification during the period of incumbency but shall not be entitled to any salary increases until the schedule is adjusted to include the employee's salary.

When an employee's position is approved by council to be reclassified to a higher pay grade, the incumbent will be placed in the newly assigned pay grade.

Notwithstanding the foregoing, when setting the pay for an employee whose position has been reclassified to a higher pay grade, the department head should make every effort to avoid creating or contributing to existing pay compression and, if unable to do so, must promptly notify the HR director who will consult with the city manager to discuss potential options and solutions.

(Ord. No. 8227, 7/14/2021, § 1)

#### **4-4-24-120 - Compensation policies and procedures.**

- A. Overtime. The city/BLW will comply with the requirements as outlined in the Fair Labor Standards Act (FLSA), as amended, and the U.S. Department of Labor's (DOL) regulations pertaining thereto.

1. Non-exempt employees, other than fire protection and law enforcement personnel, earn overtime compensation at 1.5 times their regular hourly rate for all hours worked in excess of 40 hours in a work week. The city/BLW will utilize a partial exemption from the overtime pay requirements of Section 7(k) of the FLSA for otherwise non-exempt fire protection and law enforcement personnel as defined in the FLSA and DOL regulations. Police officers have a work cycle of seven days and earn overtime compensation at 1.5 times their regular hourly rate for all hours worked in excess of 43 hours in the seven-day work cycle. Firefighters have a work cycle of 21 days and earn overtime compensation at 1.5 times their regular hourly rate for all hours worked in excess of 159 hours in the 21-day work cycle.

In the event any non-exempt firefighter remains on duty after the expiration of his/her regularly scheduled shift due to a bona fide emergency situation, as determined by the fire chief, such firefighter shall be compensated for such post-shift work at the overtime rate, regardless of whether such post-shift work places the firefighter in an overtime situation based on the defined work period as described above; provided, however, that in determining whether the firefighter is entitled to overtime pay for the work period, only the actual post-shift hours worked shall be counted.

2. The list of exempt and non-exempt positions will be a part of the pay and classification plan established for each budget year. In accordance with the FLSA, employees who are classified as exempt are paid a fixed salary for each payroll period, except as otherwise permitted under the FLSA. Therefore, exempt employees who work in excess of the FLSA's threshold number of hours for overtime during a payroll period are not entitled to overtime compensation. In addition, exempt employees who work less than the number of hours contemplated by their schedules will not have their salary reduced except as otherwise permitted by the FLSA.
3. The chief of police may allocate canine handlers pay to all police officers who are assigned as canine handlers and who are responsible for the at-home care of a bona fide departmental police dog. Canine handlers are paid for one additional hour per day at the officer's regular rate for reasons of care, boarding, and handling of the canines (including bathing, brushing, exercising, feeding, grooming, cleaning of the canine's kennel or transport vehicle, administering drugs or medicine to the canine for illness, and/or transporting the canine to or from an animal hospital or veterinarian as needed). Because the precise number of hours spent on these tasks is difficult or impossible to determine, this payment reflects a reasonable agreement between the canine handlers and the city, based on consideration of all pertinent facts, regarding the approximate number of hours the tasks are expected to take. The payment for one additional hour per day will be made seven days per week, regardless of whether the canine handler is on-duty or off-duty, on sick leave, or on vacation.

4. The completion of time cards by exempt employees, including the accrual and usage of leave under city/BLW authorized leave programs, provides important records documenting and justifying the city/BLW's expenditures of public funds, and is necessary for the effective administration of city/BLW authorized leave programs. Therefore, the completion of time cards by non-exempt employees, including to note the accrual and use of leave under city/BLW authorized leave programs, or other indicators of the use of exempt employees' time, does not controvert an employee's exempt or salaried status.
5. Department heads may require non-exempt employees to receive compensatory time instead of overtime pay.
6. General non-exempt employees may accumulate a maximum of 240 hours of compensatory time. Non-exempt police and firefighting personnel may accumulate a maximum of 480 hours of compensatory time. Non-exempt employees who have attained the maximum compensatory time shall be paid overtime pay for all overtime hours worked until their compensatory time balances are reduced below the maximum.

To reduce compensatory time balances, department heads or their designees may require employees to schedule time off. Such employees may also be required to utilize their accrued compensatory time prior to other paid leave programs, unless such requirement would result in an employee forfeiting an equivalent accrual balance in those leave programs within the ensuing three months.

7. All non-exempt employees shall be paid all accumulated balances of compensatory time upon termination of employment at a rate of compensation not less than:
  - a. The average regular rate received by such employee during the last three years of the employee's employment; or
  - b. The final regular rate received by such employee, whichever is higher.
8. Exempt employees who are required or authorized to work more hours than the standard work period established for their position may accumulate non-FLSA compensatory time at the rate of one times the number of hours worked in excess of their standard workweek. There will be a maximum accumulation of 120 hours at any time during a calendar year. All such non-FLSA compensatory time earned by an exempt employee in any calendar year must either be utilized by March 31 of the following calendar year or be forfeited. No non-FLSA compensatory time will be paid to exempt employees at any time, including, but not limited to, at termination of employment or upon forfeiture.
9. Deductions from Pay/Safe Harbor. The FLSA limits the types of deductions that may be made from the salary of an exempt employee. For instance, during the week an exempt employee begins work for the city or during his/her last week of employment, the employee will only be paid for actual hours worked. In addition, an exempt employee may be paid only for hours worked during a

period when he/she is using unpaid leave under the Family and Medical Leave Act (FMLA). Other deductions that are permitted include but are not limited to:

- a. Deductions that are required by law (e.g., income taxes);
- b. Deductions for employee benefits when authorized by the employee;
- c. Deductions due to absences from work for one or more full days for personal reasons other than sickness or disability;
- d. Deductions due to absences from work for one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy, or practice of providing compensation for salary lost due to illness;
- e. Unpaid disciplinary suspensions of one or more full days for violations infractions of safety rules of major significance; or
- f. Unpaid disciplinary suspensions of one or more full days for significant violations of major workplace conduct rules.

The city/BLW complies with the FLSA's salary basis requirements and does not make improper deductions from the salaries of exempt employees. Any exempt employee who has reason to believe that an improper deduction has been taken from his/her salary should promptly report the deduction utilizing the procedure set forth in Subsection (A)(10) below.

10. Exempt employees may seek review of salary deductions through the following procedure.

**Step 1: Division Level.** An exempt employee who has reason to believe that an improper deduction has been taken from his/her salary should promptly report the matter to his/her division manager with a copy to the HR director. In submitting the report questioning a deduction(s), the employee should identify the specific deduction(s) in question and include a statement explaining why he/she believes that the deduction(s) was improper. The division manager will promptly investigate the report and issue a decision, in writing, to the employee, the department head, and the HR director within seven calendar days of receipt of the report.

**Step 2: Department Level.** If the matter is not resolved at Step 1, the exempt employee may request that his/her department head review the decision of the division manager by submitting a written request for review to the department head with a copy to the HR director. The department head will promptly review the division manager's decision and the underlying report and issue a decision, in writing, to the employee and the HR director within seven calendar days of receipt of the request for review.

**Step 3: Director of Human Resources and Risk Management Level.** If the matter is not resolved at Step 2, the exempt employee may request that the HR director review the decision of the department head by submitting a written request for review to the HR director. The HR director will promptly review the

department head's decision and the underlying report and issue a decision, in writing, to the employee within seven calendar days of receipt of the request for review; provided, however, that if the HR director elects to consult with the city/BLW's labor counsel for a legal opinion on the matter, he/she may take such additional time as may be required for this purpose. This step is the final level of review, and the decision of the HR director shall not be grievable or appealable under Section 4-4-22 of the city/BLW's personnel rules and regulations.

If it is found that an improper deduction(s) has been made, the city/BLW will reimburse the employee for the improper deduction(s), and the HR director will take steps to ensure no recurrence of the improper deduction(s). Retaliation against any employee reporting a possible improper deduction is strictly prohibited.

11. Employees may seek review of their classifications as exempt or non-exempt through the same procedure set forth in Section 4-4-24-120A(10) above. Such review shall be initiated through the submission of a written report, in which the employee should provide as much information as possible supporting his/her belief that he/she has been misclassified. The third step of the review process is the final level of review, and the decision of the HR director shall not be grievable or appealable under Section 4-4-22 of the city/BLW's personnel rules and regulations.

If it is found that the employee was misclassified as exempt, the classification will be corrected immediately and the HR director will make a recommendation to the city manager regarding any other action to be taken, including but not limited to, payment for any earned but unpaid overtime. Additionally, the change must be approved by the city council in accordance with Section 4-4-24-030(E). Retaliation against any employee reporting a possible exemption misclassification is strictly prohibited.

#### B. Emergency Call-Out Pay for Non-Exempt Employees.

1. If a non-exempt employee is officially ordered to and does report for duty of an unscheduled nature, he/she shall be compensated for a minimum of two and one-half hours at his/her overtime rate. Half an hour of the two- and one-half-hour minimum callback compensation is for travel time for an employee who is called back on the job and who does not have a city/BLW vehicle at home in which to respond to the call. If the employee does have a city/BLW vehicle at home in which to respond to the call, then such employee shall only be entitled to a minimum of two hours' call-back compensation at his/her overtime rate. Notwithstanding the foregoing, in determining whether the employee is entitled to overtime pay for the affected pay period, only the actual unscheduled time worked shall be counted.

To qualify for emergency call-out pay, the employee must be determined by his/her manager/supervisor to have reported promptly to the job site. In making this determination, the manager/supervisor shall take all relevant factors into



consideration, including the time the employee began traveling to the job site and the distance traveled.

2. For the purpose of calculating emergency call-out pay, a non-exempt employee shall be credited with hours worked from the time the employee is notified of the order to report for duty until the work is completed and the employee is no longer restricted from using his/her time for his/her own pursuits.

The employee's regularly defined workday, as established by individual departments, shall be used to define a 24-hour work period in determining callback pay. Before returning home from an emergency call-out, the employee is required to check with his/her manager/supervisor or, if applicable, with the dispatcher for other calls and if none, notify the manager/supervisor or, if applicable, dispatcher that he/she is going off duty or other appropriate status.

3. Non-Emergency Call-Out Pay. If a non-exempt employee is required to and does report back to work at a pre-designated time, the employee will receive a minimum of one hour credited to his/her work period.

#### C. Measuring Employee Performance.

1. The city/BLW encourages the use of annual performance evaluations, which serves as a valuable tool for identifying and recognizing highly performing employees, for providing redirection, training, or other remedial measures to employees who are not achieving performance goals and objectives or otherwise meeting expectations in one or more areas, for establishing a record of performance to assist in making future personnel decisions, among other useful purposes. Department heads who choose not to use annual performance evaluations are required to implement and consistently utilize a reasonable performance management process within their departments, whether formal or informal, designed to serve the above-described functions (including creating a record of performance).
2. Employees in an apprenticeship/career development program will be reviewed in accordance with their respective programs and may be granted increases in compensation as provided by those programs, if funded by the city council.
3. Merit increases, if authorized and approved, are based upon the employee's performance as determined by his/her supervisor and department head on the employee's performance evaluation or other performance management process utilized in the employee's department. Employees may attach a response to their performance evaluations or other relevant records of performance to be included in their personnel files, but performance evaluations and other records of performance may not be grieved past Step 2 of the city/BLW grievance procedure contained in Section 4-4-22-030.

#### D. Longevity Pay.

1. Employees who have completed at least five years of continuous service with the city/BLW are eligible for longevity pay.

2. The amount of longevity pay will be apportioned by five-year increments up to a maximum of 25 years. The dollar amount allocated for each five-year increment of service by the employee will be determined as part of the budget approved annually by the city council.
3. All longevity pay will be distributed in a block amount on the scheduled pay period immediately following the employee's employment anniversary date.

E. Working Out of Classification.

1. An employee who is designated by their department head as working out of classification will be compensated at five percent above his/her regular rate of pay for each day so designated unless limited by the maximum pay in the higher pay grade. An employee must work out of classification at least two full consecutive days or a 24-hour period for firefighters to be eligible for out of classification pay. Eligible employees will be compensated for each day worked out of their normal classification. No out of classification pay will be paid to employees required to act in an equal or lower classification as determined by pay grade.
2. Employees who work out of classification for 30 days or more are to be compensated at the minimum rate of the assigned higher class or five percent above their regular rate of pay, whichever is greater, unless limited by the maximum pay in the higher pay grade. In special circumstances, the department head can recommend adding an additional five percent to the figure through the HR director with approval of the city manager.

F. Required Court Appearance. Employees required to testify or give a deposition on behalf of the city/BLW or because of conduct arising out of and in the course of employment with the city/BLW in connection with a judicial or administrative proceeding shall be paid for all hours required for such testimony or deposition, but non-exempt employees will receive a minimum of two hours credited to their regular work periods if any required appearances occur during their off duty hours, unless the required appearance is immediately before or immediately after the regular workday, in which case such time will be added to their actual hours worked for the pay period.

Any witness fees or other fees that the employee receives for this appearance shall be endorsed and promptly transmitted by the employee to his/her department head for forwarding to the finance department.

G. Police Shift Differential Pay.

1. Police officers and full-time civilian transport officers who work the hours of 3:00 p.m. to 11:00 p.m., will earn an additional \$0.50 per hour for increased risks and hazards in their occupation.
2. Police officers and full-time civilian transport officers who work the hours of 11:00 p.m. to 7:00 a.m. will earn an additional \$1.00 per hour for increased risks and hazards of their occupation.

3. A maximum of eight hours' shift differential pay may be earned in a 24-hour period.
4. Assignment to a shift shall not vest a police officer or full-time civilian transport officer with a vested right to work a particular shift or to receive shift differential pay if reassigned to a different shift.

H. Standby Pay.

1. Employees placed on standby status are those directed to be available by telephone, pager, beeper, police radio or other means of communication so that they are available for and capable of reporting for work within a reasonable period of time. Department heads shall designate the positions and eligible employees for standby status as needed and in writing to the department of human resources and risk management and the finance department.
2. Non-exempt employees who are placed on standby status are entitled to standby pay. Employees who are on standby and fail to respond to a call for duty shall forfeit all standby pay for the assigned period and may be subject to disciplinary action.
3. Compensation for an employee serving standby duty will be at a rate of eight hours of pay at their regular rate for one week of standby duty served. Such hours shall be paid at the normal rate of pay (straight time) but shall not be included in the calculation of hours worked by the employee during the relevant pay period. Exempt employees will accrue eight hours' non-FLSA compensatory leave for one week of standby duty served. Standby time of less than seven days shall be credited on a proportionate basis.
4. In the event a non-exempt employee is called back to duty while on standby status, the employee shall receive compensation for actual hours worked at one and one-half times his/her normal rate of pay. If exempt employees are called back to duty while on standby status, they shall accrue non-FLSA compensatory time as provided in this section.
5. Compensation for police department personnel regarding court attendance will be in accordance with the FLSA. The department will develop and update procedures as necessary to carry out this purpose.

(Ord. No. 8227, 7/14/2021, § 1)

**ARTICLE 4-4-26 - ALCOHOL AND CONTROLLED SUBSTANCE POLICY AND PROCEDURAL GUIDE**

**4-4-26-010 - Policy.**

- A. It is the position of the city/BLW that alcohol and controlled substance abuse is the number one health problem in the United States today. The costs involved with this problem include human costs such as lost jobs, morale problems, injuries, illnesses, deaths, as well as economic costs such as property damage, absenteeism, tardiness,

lost productivity, increased health insurance costs, and the costs involved in replacing and retraining new employees.

- B. The use of alcohol or controlled substances by city/BLW employees while on the job constitutes a direct threat to property and the safety of others. The work involved in many positions is inherently dangerous, and the safety of citizens and employees depends upon the ability of fellow employees to think clearly with unimpaired faculties.
- C. It is the objective of the city/BLW to provide safe and effective public service. To meet this objective, the problem of alcohol and controlled substance abuse must be identified, confronted and defeated. In order to achieve this, the city/BLW has developed a comprehensive alcohol and controlled substance policy. This policy consists of three interrelated programs:
  - 1. An employee education/supervisor training program;
  - 2. An employee referral system for assessment/treatment;
  - 3. An alcohol and controlled substance testing program.

The responsibility for this policy lies with the city/BLW department heads with the human resources department serving as expert advisor and training coordinator.

- D. The city/BLW considers its employees to be its most valuable resource and sincerely wishes to assist its employees with any alcohol or controlled substance related problems they might have. As used in this policy the term "controlled substance" shall have the meaning and include the substances defined as "controlled substances" in the Georgia Controlled Substances Act, O.C.G.A. § 16-13-20 et seq., and especially O.C.G.A. § 16-12-21(4) as said section and said act shall appear from time to time.

(Code 1978, § 4-1161; Ord. No. 5575, 6/12/96; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-26-015 - Definitions.**

- A. Under the Influence. For the purpose of this policy, being "under the influence" means that the employee is affected by a drug(s) or alcohol or the combination of a drug and alcohol in any detectable manner exceeding the measurable benchmarks determined by the testing process authorized herein. The symptoms of influence are not confined to those consistent with misconduct, nor to any obvious impairment of physical or mental ability, such as slurred speech or difficulty in maintaining balance.
- B. Illegal Drug. "Illegal drug" means any drug (a) not legally obtainable or (b) legally obtainable but not legally obtained or used. The term includes prescription drugs obtained illegally and prescription drugs not being used for prescribed purposes including but not limited to those prescribed for other persons. "Controlled substances" mean those listed in Schedules I through V of Section 202 of the Controlled Substance Act (21 U.S.C. 812) and as further defined in regulation 21 CFR 1308.11-1308.15.

- C. Reasonable Suspicion. A belief based on observed, specific, objective facts where the rational inference to be drawn under the circumstances is that the person is under the influence of drugs and/or alcohol.
- D. Safety Sensitive Positions/Duties. Any job that contains any duty regularly and routinely performed that is related to 1) the safe operation of city/BLW motorized equipment and vehicles, 2) the care, custody or interaction with children or the elderly in the course of their assigned responsibilities; and 3) any job or assigned task that involves the handling of hazardous materials, including, but not limited to medications, pesticides/herbicides, cleaning fluids, pool maintenance chemicals, etc. These tasks become safety sensitive during any period in which the city/BLW employee is actually performing, ready to perform or immediately available to perform the above functions.

(Ord. No. 7043, 5/9/2007, § 6)

**4-4-26-020 - Prohibited acts.**

- A. The use or possession of alcohol or any controlled substance while on work time or work premises shall be prohibited.
- B. The sale, distribution or provision of alcohol or any controlled substance while on work time or work premises shall be prohibited.
- C. Reporting to work, or working, while intoxicated or otherwise impaired by alcohol or controlled substance use shall be prohibited.
- D. Alcohol or controlled substance related off duty conduct that tends to undermine the reputation, authority or efficiency of the city/BLW is prohibited.
- E. The use or possession of prescription drugs while on work premises, or while working, shall be prohibited, unless;
  - 1. The prescribing physician has been notified of the duties involved with the employee's position and has approved the use of the drug while that employee is performing those duties. It is the duty of the employee to notify the physician of the specific tasks of the position and the mental and physical demands required in the performance of those duties. Further, the city/BLW reserves the right to clarify those duties and the mental and physical demands required to perform those tasks to the physician; and
  - 2. The employee's supervisor has been notified in writing by the employee that he is using a prescription drug and that the employee's physician has approved the use of the drug while the employee is at work. Identification of a physician authorized prescription drug to the supervisor is not required.

It should be noted that certain departments may have more restrictive regulation of prescription or over the counter medication than as provided herein. Employees are to be informed of such departmental policy upon initial orientation.

- F. Any employee convicted of violating a criminal drug statute must inform his department head of such conviction (including pleas of guilty and nolo contendere) within five days of the conviction occurring. Failure to so inform the employer subjects the employee to disciplinary action up to and including termination for the first offense. By law, the city/BLW must notify any federal contracting officer within ten days of receiving such notice from an employee or other receiving notice of such a conviction.
- G. The adulteration of any sample provided or disruption of any city/BLW authorized drug/alcohol testing process shall be prohibited.

(Code 1978, § 4-1162; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 7)

#### **4-4-26-030 - Alcohol or controlled substance testing.**

Individuals shall submit to alcohol and/or controlled substance testing at the following times:

- A. At a time set by the human resources department during the final selection process prior to the actual commencement of employment or promotion or transfer or voluntary demotion for designated safety sensitive positions with the city/BLW or any other position with the city/BLW not prohibited by law.
- B. As a part of any required physical examination.
- C. When, in the opinion of any supervisory or management employee there is a reasonable suspicion that an employee of the city/BLW has violated any provision of the alcohol and controlled substance policy dealing with the use of alcohol or any controlled substance.
- D. When involved in an accident which results in property damage or personal injury involving city/BLW equipment or while on duty, on standby duty or in the process of reporting to or leaving work.
- E. As part of the random testing program for all employees who:
  - 1. Perform safety sensitive functions [see Subsection 4-4-26-015(D) above] which shall include but is not limited to those employees who regularly drive a city/BLW vehicle as part of their required duties of their position; or
  - 2. Are required by the Federal Highway Administration (FHWA), 49 CFR, Part 382, to maintain a commercial driver's license.
- F. If the employee is returned to regular duty after violation of the alcohol and controlled substance policy and follow-up testing for employees after such violation, employees will be, at a minimum, subject to 18 unannounced tests over a 36-month period. The time period and tests may be extended at the discretion of the human resources director.

The city/BLW may test for the following substances and for any other substance as may be deemed an illegal and/or controlled substance or that may be required by federal, state law or regulation. This list is provided for information only and is

not in any way intended to limit the scope of testing for illegal and/or controlled substances:

1. Alcohol.
2. Hallucinogens.
3. Amphetamines/methamphetamines.
4. Marijuana (THC).
5. Barbiturates.
6. Methadone.
7. Benzodiazepines.
8. Opiate derivatives (example: Oxycontin or oxy derivatives, heroin, morphine, codeine).
9. Cocaine metabolites.
10. Phencyclidine (PCP).
11. MDMA (Ecstasy).

The city/BLW specifically authorizes the human resources director to periodically review the foregoing list and to add additional illegal and/or controlled substances to the testing list with or without notice to the employee.

(Code 1978, § 4-1163; Ord. No. 5575, 6/12/96; Ord. No. 6905, 4/12/2006, § 1; Ord. No. 7043, 5/9/2007, § 8; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-26-040 - Procedural guide for violations.**

If in the opinion of the supervisor, a reasonable suspicion exists that the employee is reporting to work, or is working, while under the influence of alcohol or controlled substances, or while impaired from the use of same, the procedures outlined below shall be followed. Please note that for the purposes of this policy the term "reasonable suspicion" shall be based on objective indications of substance abuse.

##### **A. Procedures for Impairment Violations.**

1. The supervisor shall arrange, if possible, for at least one other supervisor to observe the conduct of the employee. The observing supervisor shall make a written report of the incident, including the "supervisor's observation checklists" form which includes a description of the conduct of the employee upon which such reasonable suspicion is based.
2. If the employee fails to explain his condition to the satisfaction of the employee's supervisor, an alcohol and/or controlled substance screening test shall be administered to the suspected employee. The employee will be driven by the supervisor or other designated official to the city designated testing facility. Refusal to submit to such tests shall constitute insubordination

and shall be a sufficient ground for termination. The employee will be suspended with pay pending the results of the alcohol and/or controlled substance screening test. Tests for alcohol impairment may be administered by the use of the device known as Intox 5000 or any other similar device approved for use by the director of the state crime lab.

3. The supervisor should make the necessary arrangements to have the employee taken home. If the employee refuses any assistance, at least two supervisory personnel can verify that the employee refused such assistance. However, if an employee cannot control his actions and refuses assistance, then the police department shall be called to warn them of the employee's condition and refusal of assistance before the employee is allowed to leave the work site. The police department shall be given the employee's name and description of the employee's car. The reason for this action is for the safety of the employee and the general public. The city/BLW has a duty to take such action as a reasonably prudent employer to prevent the employee from causing an unreasonable risk of harm to himself and others.
4. If the confirmed results of such tests indicate the presence of alcohol or any illegal controlled substance in the system of the employee, it will be presumed that the employee is impaired. The presumption of impairment will result in the suspension with pay pending discharge investigation of the employee pursuant to procedures set forth in Article 4-4-20 of these rules and regulations.
5. During the period the employee is suspended with pay, an investigation shall take place. This investigation will be completed within five eight-hour work days (Saturday, Sunday and holidays excluded) unless extended by the human resources director. During this investigation, the employee may through his own effort attempt to rebut the presumption of impairment. For example, the employee may submit to a blood test within three hours of the city/BLW-administered test for the presence of alcohol or controlled substances. If such blood test produces a negative result, the presumption of impairment may be considered rebutted, depending upon such factors as the timing of the blood test and other circumstances surrounding the impairment.
6. If after the investigation is completed, and if it has been determined that a violation of the alcohol and controlled substance policy has occurred, it shall be within the discretion of the supervisory personnel to:
  - a. Discipline up to and including termination of the employee following the procedural guidelines set forth in Article 4-4-20 of these rules and regulations; or
  - b. Coordinate with the human resources department to refer the employee for a rehabilitation assessment, at the city's expense to determine if there is a significant chance that the employee can be rehabilitated. This option is only available if the employee has not committed an act or omission



which presented an immediate danger to the public, himself or other employees or if he has not committed any felony or a misdemeanor related to his job or acts or omissions which could reasonably impact his ability to do his job effectively. The employee permitted to utilize this option will be required to sign an agreement accepting the conditions of the rehabilitation program in order to maintain an employment relationship with the city. Any conditions of the rehabilitation program must have been previously approved by the human resources director and the employee's department head. If such conditions are unacceptable to the employee, the provisions of Subsection (6)(a) shall apply. This referral would be the employee's "last chance." After successful completion of an alcohol and/or controlled substance program, at the employee's expense, the employee may return to work subject to random alcohol and controlled substance screening tests for a minimum period of 36 months. If at any time during this "last chance" testing period, a screening test indicates the presence of alcohol or any controlled substance in the employee's system, the employee shall be immediately terminated after following the procedural guidelines set forth in the Disciplinary Action Policy and Procedure in Article 4-4-20 of these rules and regulations. Any subsequent relapse after 36 months will be handled as in Subsection (6)(a) above.

- B. Procedures for the Sale, Distribution or Provision of Alcohol/controlled Substances While at Work Violations. Violations of Section 4-4-26-020(b) will ordinarily result in termination consistent with the procedural guidelines set forth in Article 4-4-20 of these rules and regulations.

(Code 1978, § 4-1164; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 9; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-26-050 - Confidentiality.**

At all times during an investigation of violations of the alcohol and controlled substances policy, reasonable steps will be taken to maintain the confidentiality of the case.

(Code 1978, § 4-1165; Ord. No. 5575, 6/12/96)

#### **4-4-26-060 - Awareness program.**

The basic idea behind this program is that employee alcohol/controlled substance abuse can be prevented by supplying employees with information about the problems alcohol/controlled substances can create. The awareness program is divided into two sections, an employee education section to include all city employees and a supervisory training section.

- A. Employee Education, Generally. The human resources department with assistance from the Marietta police and fire departments will provide educational seminars at least once annually. These seminars may include questionnaires at both the start and completion of the program (to chart any belief/knowledge changes); audiovisual programs; group discussions; a presentation of what a treatment program is, what it does, and how to take advantage of one; insurance coverage for treatment (if any); and a description and discussion of the city/BLW's alcohol and controlled substances policy.
- B. Employee Education for Holders of Commercial Drivers' Licenses. All new hires required to possess and maintain a commercial driver's license (CDL), and current employees transferring to positions requiring them to obtain a CDL, will be given a handbook entitled, "Drug Abuse and Alcohol Misuse Training Guide for CDL Drivers", which will include:
1. The identity of the person designated to answer questions about the materials.
  2. The categories of drivers who are subject to the provisions of 49 CFR, Part 382.
  3. Sufficient information about safety sensitive functions performed by those drivers to make clear what period of the work day the driver is required to be in compliance.
  4. Specific information concerning driver conduct that is prohibited.
  5. The circumstances under which a driver will be tested for alcohol and/or controlled substances.
  6. The procedures that will be used to test for the presence of alcohol and controlled substances, protect the driver and the integrity of the testing process, safeguard the validity of the test results and ensure that those results are attributed to the correct driver.
  7. The requirement that a driver submit to alcohol and controlled substances tests.
  8. An explanation of what constitutes a refusal to submit to an alcohol or controlled substances test.
  9. The consequence for drivers found to have an alcohol concentration of .02 or greater, but less than .04.
  10. Information concerning the effect of alcohol and controlled substances use on an individual's health, work and personal life; signs and symptoms of an alcohol or a controlled substances problem; and available methods of intervening when an alcohol or controlled substances problem is suspected, including confrontation, referral programs and/or referral to management for disciplinary action.
- C. Supervisory Training. The human resources department with assistance from the Marietta police and fire departments will provide training to supervisors on the

important role supervisors have in preventing alcohol/controlled substance abuse. The program may include instruction in identifying warning signs of alcohol/ controlled substance abuse by employees; role playing scenarios of what to do if an employee is suspected; group discussions; and a thorough presentation of the alcohol and controlled substances policy. Supervisory personnel designated to determine whether an employee should be required to submit to a controlled substance or alcohol reasonable suspicion test, shall receive an initial 60 minutes of training on controlled substance use, and 60 minutes of training on alcohol use, which will include the physical, behavioral, speech and performance indicators of probable use of controlled substances and alcohol.

- D. The city/BLW recognizes that alcohol/drug abuse and/or dependency are medical/behavioral conditions that can be successfully treated. Employees with alcohol/drug problems are encouraged to voluntarily request assistance from the Employee Assistance Program (EAP). Participation in an EAP is totally voluntary and completely confidential; however a request for assistance or actual participation in an EAP does not excuse an employee from violation of this policy. The only exception to the EAP confidentiality provision occurs when an employee is referred to the EAP by city/BLW authorized management personnel.

(Code 1978, § 4-1166; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 10; Ord. No. 7191, 6/11/2008, § 1)

**4-4-26-070 - Referral for rehabilitation.**

- A. The alcohol and controlled substance policy allows a supervisor to refer an employee for assessment and rehabilitation as an option other than termination for a violation of this policy. However, this option is only available if the employee has not committed an act or omission which presented an immediate danger to the public, himself or other employees or if he has not committed any felony or a misdemeanor related to his job or acts or omissions which could reasonably impact his ability to do his job effectively.
- B. All referrals will be coordinated through the city/BLW human resources department. Factors to take into account when this decision is made include:
  - 1. The employee's length of service;
  - 2. The employee's position and performance in that position prior to and during impairment;
  - 3. The severity of the policy violation;
  - 4. The publicity concerning the violation including the loss of credibility or believability of an employee who exercises discretionary judgment in the duties of his position;

5. Whether the violation involved substance dependence or an incident(s) motivated by reasons other than substance dependence (for example, the sale of drugs to other employees).
- C. After a decision to refer the employee for rehabilitation has been made, the employee will be counseled by the department head and a representative of the human resources department. At this counseling session, the policy shall be reviewed with the employee, the employee shall sign the "employee consent and referral" form. It must be made clear to the employee at this time that the referral is his last chance, and that he must make the firm choice between rehabilitation or termination.
- D. If an employee must take time off to take part in a rehabilitation program, the absence will be treated as sick leave.
- E. Upon returning to work, the employee will be subject to unannounced alcohol/controlled substance screening tests for a minimum period of 36 months, with an emphasis on post-weekend (Mondays) testing or after vacations. However, a fixed schedule will not be established. Unless circumstances clearly require more frequent testing, there shall be no more than one screening test per month.

(Code 1978, § 4-1167; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 11; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-26-080 - Screening test program.**

- A. Testing Quality and Techniques to be Utilized.
  1. The city/BLW will establish a professional relationship with a professional laboratory which shall comply with all current National Institute of Drug Abuse standards. An assessment of the laboratory will be performed which will include a review of how samples are actually tested; all procedures involved (chain of custody of sample, notation of time and place sample was taken, the amount of turn around time that will elapse before a result is reached, etc.); qualifications of the laboratory personnel; and a check of the internal quality control records of the laboratory.
  2. All samples will be collected at the laboratory, hospital or other city designated testing facility including but not limited to any law enforcement agency that has an Intox 5000 or similar device. The samples will be carefully checked and marked with the name of the employee, the date and time the sample was collected, and the location where the sample was collected. A chain of custody/control will be established so that samples are properly handled before testing occurs. Every effort must be made to assure that the sample being tested is the sample actually collected from the employee/applicant in question.
  3. When testing for alcohol, a breathalyzer, such as the Intox 5000 or other similar device. Any measurable amount of alcohol found will be sufficient for a presumption of impairment, unless such measurement is the result of consumption of alcohol or an alcohol related product that is prescribed by a licensed physician. Some departments may require more restrictive standards

than described herein. The employee has the right to request a blood test if he so desires. This test will be at the employee's expense.

4. The city/BLW will use urine samples for controlled substance testing even though the presence of foreign metabolites in urine does not necessarily indicate impairment, but rather recent exposure to the substance. However, alternatives such as blood tests and hair analysis may be interpreted as more intrusive, but may be used if necessary.
  5. The city/BLW will utilize the testing standards of the department of transportation regulations as provided in 49 CFR Part 40, as amended and as may be hereafter amended. The following is a brief outline of the methods to be used. The city/BLW will utilize the technique known as immunoassay technique of chemical testing. The immunoassay technique has a high degree of reliability under "optimal" conditions. However, all positive immunoassay tests on current employees shall be confirmed by another more elaborate and thorough test method. Confirmatory methods include any one of the following techniques: thin layer chromatography, gas chromatography and gas chromatography/mass spectrometry. All positive immunoassay tests on samples from applicants will be confirmed with a repeat administration of the immunoassay technique on the sample.
- B. Testing Procedure. The alcohol and controlled substance policy provides for testing in six different situations: the preemployment or promotion/demotion/transfer screen; the screen as part of any required annual physical examination; the "reasonable suspicion" screen; post accident screen; random test program for safety sensitive positions and drivers of city/BLW vehicles; and random test program after return to work after an alcohol and/or controlled substance policy violation.
1. Post Employment Offer or Promotion/Demotion/Transfer Screen.
    - a. After an employment offer has been made to a prospective employee, but before employment has begun or any employee who has applied for and is offered a safety sensitive position, a position requiring driving of a city/BLW vehicle or any other position with the city/BLW not prohibited by law, will be sent to the human resources department and scheduled for a post employment offer alcohol and controlled substance test. The applicant when sent to the testing facility will be asked to sign consent and notice form. Job candidate applicants, including current employees, are required to provide truthful statements to the questions asked. Any false statements provided will result in rescission of the employment offer and in the case of current employees, could result in disciplinary action up to and including termination of employment.
    - b. Should the applicant refuse to sign the consent form, the application process will continue. On the application it will be noted only that the applicant "refused screen". It will not mention suspected alcohol or drug use by the applicant. The applicant has a right to refuse to consent to the test, but the city/BLW has a parallel right to refuse to hire/promote/transfer/voluntarily demote the applicant. However, should an inquiry as to that specific

application be made by the applicant or a third party at a later date, the city will protect the confidentiality of the application process. For instance, if another employer contacts the city/BLW in the context of a reference check, the only information that will be supplied is that the applicant did apply and that the applicant "failed to meet the qualifications necessary for employment". It will never be revealed that the applicant refused to consent to an alcohol/controlled substances screen unless required to defend, answer and/or litigate a suit or through some other legal action.

- c. If the applicant being considered for the position has consented to the test and the test results are negative, the applicant will continue with the hiring process. However, should the test results come back positive, the test must be confirmed utilizing the same sample originally provided.
- d. All test results are confidential except as provided herein. If a preemployment test is confirmed a positive result, all inquiries as to why the applicant who is not a current city/BLW employee, was not hired will be answered by stating, "the applicant failed to meet the qualifications necessary for the position". However, the city/BLW reserves the right to notify the current department head of any employee who tests positive on any alcohol/drug screen conducted as a part of any application process for another position within the city/BLW organization. All applicants with a confirmed positive result may reapply at a later date at which time he/she will submit to another alcohol/controlled substance screening test.

## 2. Medical Examination Screen.

- a. At the time the employee is to undergo a required medical examination, the alcohol and controlled substance policy should be explained to the employee and he/she will sign the "employee consent and notice" form at the testing facility. Alcohol testing may be performed by the use of the standard breathalyzer, Intox 5000 or any similar device approved by the state crime lab director at a city designated testing facility including, but not limited to, any law enforcement agency that has such equipment.
- b. Should the employee refuse to sign the consent form, the medical examination will proceed. After the examination has been completed, the employee will be suspended with pay, following the procedure set forth in Article 4-4-20 of these rules and regulations. The employee may be terminated for "insubordination", pursuant to the procedure set forth in Article 4-4-20 of these rules and regulations. The stated reason for terminating an employee will never be "refusal to submit to urinalysis", but rather "insubordination" or "failure to follow the legitimate instructions of supervisors", or other reason listed in Article 4-4-20.
- c. If the employee consents to the test and the test results are negative, the employee can return to work if he has passed the rest of the medical examination. However, should the test results indicate the presence of alcohol or controlled substances, that test result must and will be confirmed

by one of the more specific confirmatory tests cited above utilizing the same sample originally provided. If the confirmatory test also indicates the presence of alcohol/controlled substances, the employee will be assumed to be impaired, and may be suspended with pay pending investigation for discharge, in accordance with the alcohol and controlled substance policy and Article 4-4-20 of this chapter.

- d. During the period of suspension, an intensive investigation into the employee's employment background and the circumstances behind the alleged policy violation will take place. After the investigation is completed, and there is sufficient cause to believe that a policy violation has occurred, the employee will be either:
  - (1) Disciplined up to and including termination; or
  - (2) Referred for assessment/treatment by his department head.
- e. If after the investigation has been completed it is determined that a policy violation has not occurred (for example, if the employee successfully rebuts the assumption of impairment by submitting to a blood test within three hours after the original test, and the results of which are negative), the employee will be reinstated to his former position.

3. "Reasonable Suspicion" Screen.

- a. The screen upon reasonable suspicion involves a great deal of discretion on the part of supervisory personnel. The supervisory training program will provide precise guidelines as to what is involved with identifying a potential alcohol or controlled substance abuser. The task of identifying potential abusers does not include diagnosing a worker. The fact that a problem exists is all that is to be discussed when dealing with an employee; that is, demonstrated employee behavior. It is not the position of the supervisor to act in the role of a diagnostician. When it is suspected that an employee has violated the alcohol and controlled substance policy, the employee will only be told that job-related problems have developed and that it is suspected that these job-related problems are the result of alcohol and/or controlled substance abuse. The underlying cause of such abuse should not be a concern of the supervisor.
- b. The phrase "reasonable suspicion" means that a screening test should be administered if it is reasonable to suspect that an employee has violated this policy.
- c. A "suspicion" must be based upon objective indications of substance abuse or other policy violations. Therefore, forms have been developed to provide guidance to supervisors in assessing whether a "reasonable suspicion" exists as well as providing documentation of the basis of a decision to require an alcohol or controlled substance test. Thorough documentation of all steps of an investigation for a possible violation of this policy is a must including the date and time of any discussion with the employee. For further information, see Section 4-4-26-040 above, procedural guide for violations.

4. Post Accident Screen. After an on-the-job accident involving injury to the employee or others or property damage, the department head, with approval of the human resources director, may require testing for alcohol and/or controlled substances.
5. Random Testing for Safety Sensitive Positions. The random testing program shall include all employees who 1) perform safety sensitive functions (see Section 4-4-26-015(D) above) which shall include but is not limited to those employees who regularly drive a city/BLW vehicle as part of the required duties of their position; or 2) are required by the Federal Highway Administration (FHWA), 49 CFR, Part 382, to maintain a commercial driver's license. Employees in safety sensitive positions as described above are subject to random alcohol and controlled substance testing at an annual percentage for the calendar year as prescribed by the Federal Highway Administration for all CDL holders. The tests will be unannounced and will be reasonably spaced throughout the year. Drivers chosen for a random test must proceed immediately upon notification of the random test to the designated test site.
6. Return to Duty After Policy Violation. If an employee has been relieved of duty for a prohibited use of alcohol or controlled substances, that employee shall undergo an alcohol and controlled substance test before returning to work, if permitted to do so. The results of such test must be negative. If an employee is returned to duty, the employee is required to comply with the conditions of a rehabilitation program, such employee shall be subject up to nine unannounced tests in the first 12 months after their return and up to 18 unannounced tests in the 36 months following return to duty.

(Code 1978, § 4-1168; Ord. No. 5575, 6/12/96; Ord. No. 6905, 4/12/2006, § 2; Ord. No. 7043, 5/9/2007, § 12; Ord. No. 7191, 6/11/2008, § 1)

#### **4-4-26-090 - Disciplinary actions.**

- A. The suspension or termination of an employee will never be justified on the basis that the employee is an alcoholic or substance abuser. Instead, discipline will center around the employee's failure to meet objective, job-related criteria. "Substandard performance," "insubordination," "violation of policy," or "failure to follow orders," "under the influence of alcohol while on duty" are examples of proper reasons for discipline.
- B. Discriminatory enforcement will not be tolerated and any supervisor exhibiting such behavior will be disciplined accordingly.
- C. The employee cannot be terminated unless the procedures set forth in Article 4-4-20 are followed.
- D. After disciplinary proceedings have taken place, inquiries as to the reason for termination/suspension will be answered by the statement of the actual rule violations only.



(Code 1978, § 4-1169; Ord. No. 5575, 6/12/96)

## **ARTICLE 4-4-28 - EMPLOYEE EVALUATION<sup>[2]</sup>**

Footnotes:

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**Editor's note**—Section 13 of Ord. No. 7191, adopted June 11, 2008, amended Art. 4-4-28 in its entirety to read as herein set out. Former Art. 4-4-28 was comprised of §§ 4-4-28-010—4-4-28-160, pertained to similar subject matter, and derived from §§ 4-1181—4-1196 of the 1978 Code; Ord. No. 4929, adopted Aug. 14, 1991; Ord. No. 5061, adopted July 8, 1992; Ord. No. 5376, adopted Nov. 9, 1994; Ord. No. 5475, adopted Aug. 9, 1995; Ord. No. 5575, adopted June 12, 1996; Ord. No. 5607, adopted Oct. 9, 1996; Ord. No. 5781, adopted Dec. 17, 1997; Ord. No. 6283, adopted Sept. 12, 2001; Ord. No. 6705, adopted Aug. 11, 2004; Ord. No. 6891, adopted Dec. 14, 2005; Ord. No. 7043, adopted May 9, 2007; Ord. No. 7061, adopted June 13, 2007; and Ord. No. 7113, adopted Nov. 19, 2007.

### **4-4-28-010 - Purpose.**

Performance evaluation is considered a key element in the management of human resources. It is the process of identifying and communicating organizational requirements, then measuring and developing the employee's performance. The primary purpose of performance evaluation is to provide an opportunity for feedback. Performance evaluations may be used to facilitate management decisions regarding compensation, training and development. It is of the utmost importance that the performance evaluation system be consistent, job related, and based on clear and objective criteria.

1. A performance evaluation system should be formalized, standardized, objective and not biased against race, color, sex, religion, or national origin.
2. Performance measurements must be job-related and based on critical elements specific to the job.
3. Evaluators must be trained and have substantial daily contact with the employee evaluated.
4. Administration and scoring of the performance evaluation must be standardized and controlled.

(Ord. No. 7191, 6/11/2008, § 13)

### **4-4-28-020 - Types of evaluations.**

1. Annual Evaluations. Pursuant to Section 2-2-24-120, employees will be evaluated annually on the anniversary of their most recent hire date for purposes of determining eligibility for merit increases. If the employee receives a rating of satisfactory or higher on their last annual evaluation they will be eligible to receive any council approved merit increase. Merit increases do not apply to part-time employees, appointed

employees, employees in the apprentice line worker and line work program, interns or contractual employees.

2. Working Test Period Evaluations. Employees are placed in a working test status upon hire by the city/BLW and when promoted, demoted or transferred. A working test period evaluation must be completed at the end of the employee's working test period indicating successful completion of that process. If an employee's working test period is extended, an additional evaluation will be completed prior to the employee being assigned regular status.
3. Other Evaluations. A performance evaluation may be performed when an employee's performance has substantially declined or in connection with a disciplinary action when approved in advance by the department head and human resources director.

(Ord. No. 7191, 6/11/2008, § 13)

#### **4-4-28-030 - Supervisory responsibilities.**

An employee's supervisor is required to prepare an employee's evaluation then meet, review and discuss the evaluation with the employee. After the review, the employee should be asked to sign the evaluation to indicate that he has read and understood the evaluation and has had an opportunity to discuss any question he might have with his supervisor. The employee's signature does not necessarily mean he agrees with the evaluation, just that he has had the opportunity to meet and discuss the evaluation with his supervisor.

Failure to complete an employee's evaluation timely or failure to responsibly communicate the contents of an evaluation to employees will result in lower evaluation scores on the supervisor's annual evaluation.

(Ord. No. 7191, 6/11/2008, § 13)

### **ARTICLE 4-4-30 - SAFETY AND WORKERS' COMPENSATION POLICY**

#### **4-4-30-010 - Safety policy.**

It is the policy of the city/BLW that every employee is entitled to work under the safest possible conditions in the various positions of the city. To this end, every reasonable effort will be made to provide and maintain a safe and healthy workplace, safe equipment, proper materials to work with and to establish and enforce safe work methods and practices at all times.

(Code 1978, § 4-1211; Ord. No. 5575, 6/12/96)

#### **4-4-30-020 - On-the-job injuries.**

- A. The purpose of this section is to provide city/BLW employees with fair and equitable workers' compensation benefits as defined under the State of Georgia Workers' Compensation Act.
- B. This policy applies to all employees on city/BLW payroll and excludes all contracted services.
- C. Responsibilities.
  - 1. Employee. When injured or ill due to an on-the-job incident, notify his supervisor of the injury or illness immediately, to keep their supervisor informed of required absences and to follow the instructions of the treating physician.
  - 2. Supervisor. To provide proper safety training and supervision of job skills so that accidents may not occur and to ensure that injured or ill employees that are involved in on-the-job accidents receive proper medical or first aid treatment as soon as possible.
  - 3. Department Heads or Their Designee. To make authorization and/or approvals for treatment of injured or ill employees; ensure proper follow-up of accident investigations; ensure that absences of the employee are properly excused; and that the proper payment is made to the employee, if any, under any leave policy while absent due to an on-the-job injury or illness. The department head will ensure that the human resources department is informed within 24 hours of any on-the-job injury or illness or by 5:00 p.m. on Monday following an incident occurring over the previous weekend and of any absence of the employee due to such injury or illness.
  - 4. Human Resources Department. This department will coordinate and administer the city/BLW workers' compensation program and fund.
- D. Treatment of Injured Employees.
  - 1. A supervisor or department head may administer minor first aid treatment for scratches, minor cuts or scrapes only.
  - 2. Injuries or illnesses requiring physician treatment:
    - a. All occupational injuries or illnesses which require physician treatment are to be referred to one of the physicians or physician groups listed on the workers' compensation approved panel of physicians that are posted on all employee bulletin boards. Department heads or their designee will issue an authorization to treat the employee to give to the designated physician. A copy of such authorization will be sent to the human resources department. If none of the posted physicians or physician groups are available, the employee is to be treated at the nearest urgent care facility (such as Wellstar, etc.) or if necessary, the nearest hospital emergency room.
    - b. All emergency on-the-job accident victims shall be transported to the emergency room of a licensed hospital. Supervisors must have approval from

their department head to personally transport or delegate an employee to transport job-related injured or ill employees to the hospital emergency room. In cases of severe injuries or illnesses, the supervisor or their designee will immediately call 911 for immediate treatment and transport to the hospital. However, as soon as possible after the employee is transported to the hospital, the supervisor should notify his department head.

- c. The human resources department will be responsible for review of bills received for treatment, and submitted to the city's workers' compensation administrator for approval and payment. The city will only be responsible for those medical expenses authorized by the department head, the department of human resources or medical emergency treatment at a licensed hospital or urgent care facility for job-related injuries or illnesses. If a claim for workers' compensation benefits is subsequently denied due to fraud, violation of safety rules, or other legitimate reasons, incurred expenses may be the responsibility of the employee.
- d. Employees injured on the job have the right to a one-time change of their initial treating physician to another physician on the workers' compensation panel. Employees shall inform the human resources department in writing of any change in treating physicians.
- e. Prescription drugs/medical supplies authorized for treatment of on-the-job injuries. Employees may choose between the following options for filling prescribed drugs and obtaining medical supplies.
  - (1) The employee may go to one of the pharmacies or medical supply businesses that the city/BLW has arranged to be invoiced for workers' compensation-related charges. The employee will need to show the pharmacist an authorization to invoice the city/BLW that is on the bottom of the "authorization to treat" form as well as proper identification that the person to whom the pharmacist is giving the prescription drugs to is the injured employee or their authorized representative. Only the prescription drugs and medical supplies authorized by the treating physician shall be charged and paid for by the city/BLW.
  - (2) The employee may pay for the prescription drugs and/or medical supplies and submit receipts indicating the prescription number, issuing pharmacy, prescribing physician, date filled, and price to the human resources department for reimbursement.

#### E. Required Reports.

- 1. The employee, or if unavailable, the appropriate supervisor must report all occupational injuries, accidents and illnesses to the department head or his designee by the end of the workday in which an accident, injury or illness occurs. After normal working hours or on weekends, a report must be filed with the department head or his designee by 12:00 noon the following workday. The city/BLW may consider as invalid any on-the-job injury/accident that has not been reported using the required "first report of injury" form and within the above time

limits. A "first report of injury" form will be used to report all job-related accidents, injuries or illnesses regardless of the nature or severity.

2. It is the employee's responsibility to make sure that the "first report of injury" form states exactly what happened and a clear indication of the type and severity of the injury or illness. If the supervisor or department head disagrees with the employee's explanation, he should so indicate in an attachment memorandum to the "first report of injury" form and provide explanatory detail. However, the report should be submitted to the human resources department with the employee's account of the accident/incident intact.
3. Employees are responsible for obtaining excused absence slips from their treating physicians and to provide them to their department head or his designee on a timely basis so that the workers' compensation insurance payments may be promptly processed. The excuse should include an estimated time that will be required to be absent from duty. If light duty is authorized, the physician should include specific restrictions in order to properly assign duties without further injury. If excuses for absences due to on-the-job injury are not received (except for hospital admissions due to on-the-job injuries), then the city/BLW's absenteeism policy will be enforced.
4. Employees are also responsible for obtaining authorization to return to work from their treating physician.
5. The department head should review and discuss the accident and subsequent injury or illness with the appropriate supervisor to develop safety precautions to help ensure that similar accidents, if preventable, do not recur.
6. The department head must file the "first report of injury" form with the human resources department within two eight-hour workdays after the accident, injury or illness occurred or by 5:00 p.m. on the Monday following an incident that occurred over the immediately preceding weekend (including accidents involving employees assigned to shifts). The department head shall notify the human resources department when an employee returns to work after being off due to an on-the-job injury or illness.
7. The human resources director and/or risk manager shall consult with the workers' compensation administrator's assigned attorneys on all legal matters regarding liabilities of the city/BLW in relation to workers' compensation.

#### F. Temporary Assignments.

1. Occasionally, an employee who has suffered an on-the-job injury is temporarily partially disabled, but is able to perform other productive duties in his department. Department heads should make every effort to return employees to work in some productive capacity from on-the-job injuries as soon as possible. However, if light duty work or appropriate duties within the skill level and physical capability of the employee is not available within their department, the department head should consult with the human resources department for placement of the light duty employee in another department on a temporary basis. If there is still no light duty

available, the employee will remain off duty on workers' compensation benefits until he/she is able to return to work without restrictions.

2. Employees on light duty work due to an on-the-job injury shall be paid the same rate of pay worked on their regular job. This provision does not apply to any period of partial loss of earnings due to an injury for which a permanent award is paid under the Workers' Compensation Act since such award is intended to compensate the employee for loss of all earnings during the stated period. Any temporary light duty work assignment provided as an accommodation to an on-the-job injury will not constitute working out of the employee's classification for purposes of Section 4-4-28-120.

G. Employee Compensation.

1. Medical bills: If an employee is injured on the job or becomes ill due to an on-the-job condition or exposure, the employee is eligible for treatment as provided under the State of Georgia Workers' Compensation Act, as amended.
2. Salary or wage, first 90 days of lost time due to the approved injury: The employee shall be paid regular straight pay up to 90 calendar days, or 67 eight-hour workdays (536 hours) or for fire personnel 751 hours, unless the claim for workers' compensation benefits is controverted by the city/BLW or by the city/BLW's workers' compensation administrator. For approved claims, no deduction will be made from any leave balance credited to the employee. However, the employee is required to endorse the workers' compensation check to the city/BLW. The intent is to provide the employee's normal base salary or wage for the first 90 calendar days of lost time due to the injury, but not any amount greater than the employee would earn if they were working their normal base workweek.
3. Salary or wage, after the first 90 days of lost time injury: If the employee remains unable to return to work due to his on-the-job injury or illness after the first 90 days of absence, or 67 eight-hour workdays (536 hours) or for fire personnel 751 hours, the employee may choose one of the following options:
  - a. Receive full salary from accrued leave balances and endorse the workers' compensation check to the city/BLW; or
  - b. Receive the workers' compensation check and receive partial salary from leave balances; or
  - c. Accept the workers' compensation check as total compensation. If the workers' compensation check is accepted as total compensation, no time will be deducted from any leave balance while the employee remains unable to return to work due to an on-the-job injury or illness.
  - d. Notwithstanding the foregoing, at the discretion of the city manager, in consultation with the human resources director, the following option may also be made available to an eligible employee under qualifying circumstances: Continuation of salary or wage payments for up to an

additional 90 days, or 67 eight-hour workdays (536 hours) or for fire personnel 751 hours, as provided in Section 4-4-30-020G(2) above.

- (i) For purposes of this discretionary option, "qualifying circumstances" means circumstances [A] that are beyond the employee's control and were not unreasonably caused or contributed to by the employee, [B] that have precluded the employee from being able to return to work due to his/her on-the-job injury or illness, and [C] that would result in substantial harm or prejudice to the employee if the relief authorized herein were not provided.
- (ii) Where this option is initially determined to be available to an employee, it will be provided in one-third (e.g., 30-day) increments, to enable the city/BLW to make any reasonable inquiries necessary and appropriate to ensure the continued existence of qualifying circumstances. An initial determination that this option is available shall create no enforceable expectation, contractual right, or property interest in the continuation of the option.

4. Accruals. Except as otherwise provided in Section 4-4-16-090A, all leave balances and benefits will continue to accrue to the employee while absent due to on-the-job injury or illness.

H. Coordination with FMLA Leave. Workers' compensation does not establish an independent basis for leave of absence. Therefore, when an on-the-job injury or illness requires an employee to be absent from work and to receive inpatient care or continuing treatment by a healthcare provider, it constitutes a serious personal health condition within the meaning of the city/BLW's FMLA policy. See Section 4-4-16-090A(1)(c), (2). Accordingly, where the employee otherwise meets all eligibility requirements, his/her absence shall be designated as FMLA leave; provided, however, that for any period of time during which an employee is receiving workers' compensation benefits while on FMLA leave, the requirement that he/she first use any accrued vacation, sick, holiday or compensatory leave for all or any part of the 12-week FMLA leave period shall not apply.

(Code 1978, § 4-1212; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 20; Ord. No. 7191, 6/11/2008, § 1; Ord. No. 8211, 1/13/2021, §§ 1, 2)

#### **4-4-30-030 - Weapons policy.**

- A. Purpose and Intent. The city/BLW's employees are its most valuable resource and, for that reason, their health and safety is of paramount concern. As such, the purpose and intent of this policy are to promote safe and secure working environments for all city/BLW employees.
- B. Weapon Defined. For purposes of this policy, the term "weapon" means the following: any explosive compounds (including fireworks); firearms (including those designed to fire or expel bullets, pellets, BBs, paintballs, arrows, darts, or other projectiles); Tasers or other electrical stunning devices; knives (with blades longer than three inches); pepper spray, mace, or other noxious chemicals or substances designed to

incapacitate; any club, baton, metal or plastic knuckles, or other bludgeon; and any other instrument, device, or item designed, modified, or adapted for use primarily as a weapon. The term "weapon" also includes any of the foregoing instruments, devices, or items that are non-functional, unloaded, or imitation (excluding obvious toys). The term "weapon" does not include any tool provided or approved for an employee's use by the city/BLW; provided, however, that the use or threatened use of any such tool (or any other instrument, device, or item not referenced above or not normally regarded as a weapon) as a weapon shall be considered to be a violation of this policy.

- C. Scope. This policy shall apply to all city/BLW employees other than sworn or unsworn employees of the police department or employees who otherwise work under the supervision of the chief of police. The chief of police shall implement a standard operating procedure regulating and determining the possession, carrying, and transportation of firearms and other weapons by sworn and unsworn employees of the police department or who otherwise work under his or her supervision, in accordance and consistent with state and federal law.
- D. Prohibited Conduct; Exception.
  - 1. No employee of the city/BLW shall carry, possess, or transport a weapon inside any city/BLW government building, on the grounds of any city/BLW property (including parking lots or parking facilities as provided below), or in a city/BLW government vehicle, while on duty or otherwise acting in the course of his or her employment.
  - 2. No employee of the city/BLW, whether on duty or off duty or whether or not acting in the course of his or her employment, shall carry, possess, or transport a weapon inside any city/BLW government vehicle.
  - 3. No employee of the city/BLW who is off duty or otherwise not acting in the course of his or her employment shall wear any uniform, shirt, jacket, hat, or other visible article of clothing or other item that identifies him or her as an employee of the city/BLW while carrying, possessing, or transporting a weapon. The purpose of this latter prohibition is to prevent misunderstandings or confusion among members of the general public as to the identity, position, authority, duties, or responsibilities of an off-duty employee of the city/BLW and to make clear that such an employee is not carrying, possessing, or transporting the weapon in the course of his or her employment.
  - 4. Limited exception. Notwithstanding the foregoing, it shall not be a violation of this policy for any city/BLW employee to possess a weapon in his or her personal vehicle in a parking lot or parking facility owned or operated by the city/BLW, provided each of the following requirements is met:
    - a. The weapon is secured in a locked compartment or locked rack of the employee's personal vehicle or in a locked container in the vehicle; and
    - b. The parking lot or parking facility (or the portion thereof in which the employee's vehicle is parked) is unsecured and available to the general public. For purposes of this provision, the term "unsecured" means not



controlled by a security station, security officer, or similar means which limit public access to such parking lot or parking facility.

To the extent that this limited exception applies, it shall not be a violation of this policy for an employee to carry a weapon on his or her person or otherwise have a weapon in his or her control while in his or her personal vehicle and entering or exiting the parking lot or parking facility; provided that, if the weapon is one for which state law requires a license, said employee holds such license.

- E. Exemptions. In his or her sole discretion, the city manager shall be authorized to grant a temporary or limited exemption to an employee, in writing, upon a showing of good cause or other appropriate circumstances.
- F. Construction. This policy shall be construed and applied in a manner fully consistent with the United States Constitution, the Constitution of the State of Georgia, and HB 60 (2014).

(Ord. No. 7734, 7/9/2014, § 1)

## **ARTICLE 4-4-34 - TRAVEL AND TRAINING POLICY**

### **4-4-34-010 - Policy.**

It is the policy of the city/BLW to provide for the necessary training and business travel of its employees on a planned basis that provides fairness to all participants and conservation of public funds.

Nothing contained herein shall be construed as creating enforceable interests in this chapter as a benefit of employment or otherwise as limiting or restricting the authority of the city/BLW.

(Code 1978, § 4-1231; Ord. No. 4981, 11/13/91, § 1; Ord. No. 5575, 6/12/96)

### **4-4-34-020 - Scope.**

These policies and procedures apply to all employees covered by the personnel rules and regulations and:

- A. Full-and part-time regular employees appointed by the mayor or city council: City manager, city clerk, administrative assistant to the mayor, municipal court judge, solicitor, and municipal court clerk and other appointed positions not named herein.
- B. Permanent and temporary part-time, temporary full-time, volunteers, or provisional positions.

(Code 1978, § 4-1232; Ord. No. 4981, 11/13/91, § 1; Ord. No. 5575, 6/12/96)

#### **4-4-34-030 - Responsibilities.**

- A. Supervisory Responsibilities. In declaring this policy, the city/BLW recognizes and affirms the obligation of every individual having supervisory responsibility to:
1. Determine the individual and collective training needs of employees under his supervision.
  2. Provide each employee with adequate information on the objectives, policies and programs of the city/BLW, his department and his organizational unit so that he will be guided by a clearer understanding of the work of the city/BLW and the department and unit in which he is employed.
  3. Compare the relative worth of the different methods of receiving training and to recommend/participate in the most cost-beneficial method.
  4. Develop annual training plans for each employee under his supervision to be included as a part of the employee evaluation program.
  5. All employees will be given fair and equitable consideration in selection for training, without regard to race, color, religion, sex, national origin, age or handicapped status.
  6. Employees will be selected for training on the basis of the following factors.
    - a. The relative degree of need for the training;
    - b. The relative extent to which knowledge, skills and attitudes are likely to be improved by the training;
    - c. The relative potential of the employee to apply the improved knowledge, skills and attitudes to present and future assignments;
    - d. The relative ability of the employee to pass on the training to others upon return to the job;
    - e. The relative length of time and the degree to which the city/BLW can expect to benefit from the employee's improved knowledge and skills;
    - f. The employee's interest in improving his performance, and the efforts he has made to improve his performance;
    - g. The need to meet mandated certification requirements.
  7. Evaluation of training received to include a determination of the economics, increased efficiency, improved work methods, etc., that have resulted from the training received within budgetary limitations.
  8. Keep adequate and accurate records of training offered, taken, and completed, including attendance figures on scheduled training events, such as, did the employee actually participate in the educational sessions of the conference? Which ones? etc., and all expenses related thereto.
  9. Adhere to, support and enforce these regulations.

- B. Employee Responsibilities. It is the responsibility of all employees participating in training and business travel to adhere to these regulations with the understanding that such activity, while improving an individual's personal knowledge, skill, abilities and attitudes, is intended to improve the city/BLW's services. It is the responsibility of all employees participating in training activities to physically attend the training sessions that are planned for the employee to attend and to request and receive city/BLW funds for expenses specifically authorized herein. Failure to comply with the provisions of this policy can result in disciplinary action up to and including termination from employment.
- C. Finance Department. The finance director shall designate a qualified individual to review all business travel and training expenses to determine compliance with these regulations for payment and/or reimbursement purposes.

(Code 1978, § 4-1233; Ord. No. 4981, 11/13/91, § 1; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 21)

#### **4-4-34-040 - Definitions.**

- A. City/BLW Business. As used in this chapter, city/BLW business shall pertain to either of the following:
  - 1. Business Travel. Travel for the purposes of conducting official city/BLW business.
  - 2. Professional/educational Travel. Travel to attend meetings, conferences, training programs for professional growth and development as well as the benefit of the city/BLW.
- B. Authorizing Party. The individual department head authorized to approve or disapprove travel and training requests for the requesting employee. All advances and expense reports require the approval of the division head (if applicable), department head and budget officer. If a department head is a requesting party, the city manager is the authorizing party and must approve the advance request and the corresponding expense report. All approvals must be obtained in writing prior to any advance being issued to the requesting party.
- C. Requesting Party. The employee who will be reimbursed for travel costs incurred.
- D. Metro-Atlanta Area. Includes the counties of Cobb, Fulton, Gwinnett, DeKalb, Clayton, Cherokee, Bartow, Forsyth, Rockdale, Henry, Fayette, Douglas and Paulding.
- E. Per Diem. Authorized only for approved overnight trips. The amount of the per diem for employees covered by this policy is \$40.00 a day and is set by council action as a part of the budget process. The per diem is to provide for all meals and all tips, including those given to luggage handlers, taxi cab drivers, waiters/waitresses, etc.
- F. Mileage Allotment. Authorized for reimbursement for use of personal vehicles in the conduct of city/BLW business. The mileage allotment rate for employees covered by this policy is \$0.40 per mile effective July 1, 2007, and is set by council action as a

part of the budget process. The mileage allotment is to provide for all costs associated with the use of the employee's personal vehicle including insurance, repairs, etc.

(Code 1978, § 4-1234; Ord. No. 4981, 11/13/91; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 22)

**4-4-34-050 - General guidelines for authorization of travel/training.**

- A. Decisions as to how much and which travel and training is authorized begins with the budgetary process. Travel/training needs must be anticipated and submitted in the budget each year for approval by the city council. An annual training/travel plan should be developed and submitted with the department's budget request.
- B. The department head must stay within the travel/training allocation for their department as approved by the city council.
- C. Prior to approving a travel request, the department head is responsible for determining that a sufficient unexpended balance remains in the travel budget to reimburse all anticipated costs of the travel/training. Travel requests should be received by the finance department two weeks prior to the date for which a check is needed. Any exception to this schedule must be approved by the finance director.
- D. Personal items (such as cigarettes, shampoo, razor, etc.) and alcoholic beverages for employees and all expenses for family members are not authorized. Only business telephone calls are authorized. Expense reports must be prepared to reflect only actual expenses essential to the conduct of city/BLW business.
- E. The per diem rate is \$40.00 per day and is determined by council action as a part of the annual budgetary process. Breakfast allowance will not be authorized, either in a per diem calculation or based on receipt, if the business travel was initiated from the employee's home as the first business activity of the day.
- F. Mileage expense authorized shall be calculated from wherever the trip is initiated from (either the employee's home or work site). The mileage reimbursement rate is \$.040 per mile effective July 1, 2007, and is determined by council action as a part of the annual budgetary process.

(Code 1978, § 4-1235; Ord. No. 4981, 11/13/91, § 1; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 23)

**4-4-34-060 - Authorization for travel/training.**

- A. As soon as the requesting party becomes aware of the need to travel, he should prepare and submit a request for travel and training form to his authorizing party. All estimated expenses and a description of each expense should be filled out on one form. For example, registration, lodging, airfare, mileage and all other costs should not be submitted on multiple request forms. The form should be submitted to the authorizing party in sufficient time for the authorizing party to adequately assess it

and forward the request to the finance department, budget officer and, if necessary, the city manager or his designee.

- B. The authorizing party is responsible for determining that:
  - 1. There is factual and sufficient justification provided by the requesting party to permit approval and that the request only includes expenditures for expenses authorized under this policy.
  - 2. There is sufficient unexpended appropriation amount remaining in the department's travel budget to reimburse all anticipated costs of travel. Inquiries regarding the remaining budget balance available can be done through the information available to the department head via online access to the GMBA information on the computer. This will provide the most current information except for trips for which there is no expense report received.
  - 3. The authorizing party may approve the request form once he has determined the need and validity of the request.
- C. When approved by the department head, the original of the request for travel and training form shall be sent to the finance department (to be matched with the subsequently submitted expense report form covering the actual accounting of the trip costs). After review the request form shall be forwarded to the budget officer for verification of funds available, and, if necessary, to the city manager or his designee. The form will then be forwarded to the finance department to issue checks.
- D. Reservations. Nonrefundable reservations shall not be made until the authorizing party approves the travel and training request form.
- E. Travel Advances. No travel advance for amounts greater than \$500.00 will be issued without the prior approval of the city manager.
- F. Estimated Travel Expenses. Travel and training forms for all trips with estimated expenses in the amount of \$1,000.00 or more shall be approved by the city manager or his designee regardless if advance checks are issued.
- G. Emergency Travel. Emergency travel situations should follow the above procedures with the exception that it may be necessary, due to time constraints, for the finance department to prepare a manual check. Requests for manual checks should be limited to emergencies. A manual check request should be in writing explaining the emergency need for the check and should be submitted with the travel and training request form no later than 11:00 a.m. on the date needed to allow time for preparation. Manual checks will be ready for pickup by 3:00 p.m. The finance director or his designee will determine if the manual check request is of sufficient urgency to warrant issuing a manual check.

(Code 1978, § 4-1236; Ord. No. 4981, 11/13/91, § 1; Ord. No. 5575, 6/12/96; Ord. No. 7043, 5/9/2007, § 24)

#### **4-4-34-070 - Expense reimbursement.**

The following reimbursement guidelines are intended to set forth maximum standards. Employees of the city/BLW are expected to spend funds prudently. All travel and training expenses should be submitted for reimbursement on the approved travel and training expense form.

##### **A. Subsistence.**

1. Lodging. Reimbursement for lodging is authorized when the individual's travel requires overnight accommodation. Overnight accommodations are generally not considered necessary within the metro-Atlanta area, however, overnight accommodations will be considered for approval on a case-by-case basis by the city manager or his designee. Detailed receipts (not charge slips) are required for all lodging costs. Charges for meals and telephone calls that are included in hotel/motel bill should be extrapolated for reporting purposes. If a per diem is used, charges for individual meals are not authorized.
  - a. Lodging shall be a standard hotel/motel consistent with other facilities available in the area.
  - b. Accommodations shall be reimbursed at actual costs incurred at the single room rate.
  - c. When two employees share a room, one employee shall pay and request reimbursement for the full lodging charge. The second employee shall not be entitled to any reimbursement since they did not incur any expense.
  - d. The requesting party is responsible for obtaining a tax exempt statement from the finance department prior to departure and give the statement to the registrar at their hotel/motel upon arrival. It is recognized that different hotel/motels acknowledge such statements to varying degrees.
2. Meals.
  - a. Meals During Overnight Travel. Employees are entitled to reimbursement for meals based on a per diem amount for overnight travel only. The per diem rate is \$40.00 per day and may be amended periodically by the city council. The per diem should be sufficient in most locales visited by the requesting party. Receipts are not required when requesting reimbursement at per diem rates. Occasionally, due to the location of the travel, the per diem rate may be insufficient. Reimbursement in excess of the per diem rate will be considered only when supported by receipts clearly proving more cost was incurred. This is intended to reimburse the traveler for higher costs in major cities and not provide a reason to spend more. The department heads are expected to carefully monitor and specifically approve/deny requests for reimbursement in excess of the per diem rate.

Breakfast allowance will not be authorized, either in a per diem calculation or based on receipt, if the business travel was initiated from the employee's home as the first business activity of the day. If the requesting party returns to their home or to Cobb County before 2:00 p.m., then the \$10.00 allotment for lunch for that day's travel per diem will be deducted. If the requesting party returns to their home or to Cobb County before 7:00 p.m., then the \$15.00 allotment for dinner of that day's travel per diem will be deducted.

- b. If meals are provided as a part of the registration, such meals should be deducted from the per diem authorized by the following amounts of the per diem: \$7.00 for breakfast, \$10.00 for lunch and \$15.00 for dinner. Example: At a per diem rate of \$40.00 per day with a luncheon that is provided as a part of the registration, the reduced per diem for that day of the conference would be \$40 - \$10 = \$30.
- c. Single Day Travel. Reimbursement may be made for meal expense during single day travel based on the individual meal allotment amounts described in the above paragraph if the following requisite conditions exist:

Breakfast—Generally, no reimbursement will be authorized for breakfast during a single day trip unless the employee is attending a formal breakfast at which the city/BLW business is conducted or a breakfast that is included as a part of a registration fee for a workshop, seminar, etc.

Lunch—Generally, no reimbursement will be authorized for lunch during a single day trip except under the following conditions:

- (1) The employee cannot return from city/BLW business before 2:00 p.m.; or
- (2) The employee is attending a formal luncheon at which city/BLW business is conducted.
- (3) The luncheon is included as a part of a registration fee for a workshop, seminar, etc.

Dinner—Reimbursement may be authorized provided the employee returns to their home or to Cobb County after 7:00 p.m.

- B. Transportation Expense. Transportation shall be reimbursed at the most economical rate for the most economical and practical method of travel. Example: The traveler may choose to travel by personal vehicle, perhaps so that his family may go along; however, the most economical method is to fly at coach rates with the ticket for the employee purchased through the city-designated travel agency. Therefore, the traveler would be reimbursed for the amount of such coach ticket.
  - 1. Ticketed Travel. A travel agency in the metropolitan Atlanta area shall be selected by the purchasing division with the approval of the city manager to be the city/BLW's sole agent for providing travel reservations and ticketing

for a predetermined time period. All requesting parties who anticipate overnight travel or air travel should check with this travel agency as to the most economical method of travel. Employees have the option of arranging air travel through this agency in which case the invoices will be paid directly to the agency by the finance department. Employees also have the option of booking air travel via the Internet and charging the fare to their personal credit card. Reimbursement to the employee will be made using the travel and training expense form. The authorizing party should certify that the method of travel selected is the most economical and practical method for the city/BLW.

Reimbursement for ticketed travel expense should be substantiated by the traveler's copy of the ticket or travel agency invoices as well as copies of any automobile rental contracts.

2. **City Vehicles.** The use of a city/BLW vehicle is authorized for travel to a destination of up to 400 miles from Cobb County. Operation of the city/BLW vehicle outside the State of Georgia requires the prior approval of the department head.

If more than one employee is attending the same conference or business meeting, only one city/BLW vehicle shall be used until the limit of the capacity of such vehicle is attained.

Gasoline and oil should not, except in emergency situations, be purchased for city/BLW vehicles at commercial providers in the metropolitan Atlanta area. The traveler in the metropolitan area should prepare the city/BLW vehicle for anticipated travel at the motor transport division or other designated city/BLW loading areas.

Receipts must be obtained for all city/BLW vehicle expenses incurred, including gasoline purchases, for reimbursement approval.

City/BLW vehicles may be driven only by city/BLW employees and officials.

3. **Personal Vehicles.**
  - a. Advance approval for use of a personal vehicle for business travel must be obtained from the department head. Advance approval for department and division heads for personal vehicle usage is not necessary, but the criteria below will be applied for approval for reimbursement purposes.

Use of a personal vehicle may be authorized only if one of the following conditions is met:

- (1) No suitable city/BLW vehicle is available.
- (2) Round trip travel mileage is less than 100 miles.
- (3) The requesting party has a physical handicap which requires the use of a specially equipped vehicle.



- (4) An employee's family member(s) accompany the employee on the trip.
- (5) The most economical and practical method to attend a conference or seminar is the use of a personal vehicle.
- b. Mileage expense authorized shall be calculated from the initiating point of the business travel (either from the employee's home or the work site). If personal usage of the vehicle occurs while on business travel, such mileage shall be deducted from authorized business travel mileage. The mileage reimbursement rate is \$0.40 per mile [effective July 1, 2007] and may be increased or decreased by council action. Requested mileage reimbursement must be supported by odometer readings (as amended by Ord. No. 5300, 5/11/94).
- c. Employees who are directed to utilize their personal vehicles for the conduct of city/BLW business, should be reimbursed for all business miles driven during such trips. Employees who are routinely assigned to conduct city/BLW business through the use of their personal vehicles should complete a monthly mileage log which should indicate the time and date the trip was initiated and completed, purpose of the trip and odometer readings at the beginning and end of the trip.

Reimbursement for the business use of a personal vehicle constitutes all compensation for the use of the vehicle including insurance for property damage to the vehicle, breakdown repairs, etc.

#### 4. Rental Cars.

- a. A rental car may be used when:
    - (1) The traveler has flown to a location; and
    - (2) Travel between sites at such location is necessary for the conduct of city/BLW business; and
    - (3) It is determined that no other mode of transportation is as economical or practical, i.e., taxi, subway, bus; and
    - (4) Is preapproved by the department head or city manager or his designee.
  - b. Rental cars should be limited to a maximum of "mid-size" automobiles with standard accessories unless special circumstances dictate a larger vehicle which should be preapproved by the department head or city manager or assistant city manager.
  - c. Receipts are required for the reimbursement of any rental car costs, including gas. Purchase of insurance for rental vehicles at the time of rental is not necessary.
5. Local Ground Transportation. Travelers on authorized trips outside the metropolitan area may be reimbursed for local transportation costs incurred

in the conduct of city/BLW business, such as, taxis, subways, etc. Receipts for such services should be obtained when possible and provided to support reimbursement. Such receipts should not contain reimbursements for tips since tips are to be accounted for out of the allowed per diem. If receipts cannot be obtained, the employee shall certify as to the accuracy of the amount paid on the expense report upon return.

- C. Registration. Registration fees are paid by the finance department in advance of the trip provided the travel request with sufficient documentation is received two weeks in advance of the date that a check is needed. The requesting party should make every attempt to take advantage of discounted registration fees by meeting early-bird registration deadlines. If advance registration is not utilized, registration fees for approved conferences or seminars are reimbursable when supported by receipts. An expense report for registration fees is necessary even if the employee did not receive any additional funds for the training.

D. Miscellaneous Expenditures.

- 1. Parking Fees. Parking fees for business travel will be reimbursed when supported by receipts.
- 2. Toll Road/Bridge Charges. Toll charges for business travel will be reimbursed when supported by receipts for amounts of \$1.00 or more per charge and by certification of the employee for amounts less than \$1.00 per charge.
- 3. Telephone Calls. Necessary business related telephone calls are reimbursable when supported by receipts. No personal calls are reimbursable.

Other travel related expenses are reimbursable when it is supported by receipt and it is determined by the department head that such expense was to the benefit of the city/BLW.

E. Expense Reports.

- 1. Upon returning from an authorized trip, the requesting party shall present to the authorizing party a complete itemization of all trip expenses on an expense report form within five calendar days after returning from the trip. Such report will be prepared accurately and completely including all required receipts and explanations to facilitate its review, understanding and processing. Failure to provide the required receipts will result in the unsupported amount not being reimbursed. The authorizing party shall review, sign and submit the expense report to the finance department within two workdays after receipt from the requesting party. The employee signature on the expense reports will be certification by the employee that all expenses paid are compliant with this policy.
- 2. Settlement of Travel Advances. If the requesting party received a travel advance that was greater than the actual expenses incurred, a check in the amount of the unused portion of the advance must accompany the expense report. Any travel advance that remains outstanding for periods greater than

15 calendar days from the date of return, shall be deemed a salary advance and may be deducted from the employee's next paycheck. Further advances will not be issued until the employee has settled all previous travel advances.

3. Finance Department Review. The finance department shall audit all expense reports to determine mathematical accuracy; cross reference amount claimed to appropriate receipts; and review the appropriateness of expenditures in accordance with this policy. Upon determination of accuracy and compliance, the finance department will authorize the issuance of a check of net amounts due to the employee in the event that actual expenses exceed any advance taken. Reimbursement as a result of an expense report will be processed only after the report has been matched with the travel request form. If a reimbursement is due to the requesting party, the budget officer will approve the expense form verifying that funds are available for such reimbursement. Submission of inaccurate expense reports will result in return to the authorizing party for correction and resubmission, possible disallowance of amounts requested to be reimbursed and review for possible disciplinary action.
4. Falsification of Expense Report. An employee who submits a false claim for reimbursement will be subject to disciplinary action up to and including termination of employment.

(Code 1978, § 4-1237; Ord. No. 5128, 2/10/93, § 1; Ord. No. 5575, 6/12/96; Ord. No. 5756, 10/8/97, §§ 1, 2; Ord. No. 6823, 6/8/2005, § 1; Ord. No. 7043, 5/9/2007, § 25)

#### **4-4-34-080 - Meals/entertainment (nontravel).**

This type of expense is restricted for the use of marketing/sales/customer retention, and economic development. This expense is also allowed for executive level employees when the purpose of the expense is for the benefit of the city/BLW. When meals and entertainment are provided for others, their names, companies/agencies and the reason for the expenditure should be included as an attachment to the receipt, for which reimbursement is requested. All meal/entertainment expenses (nontravel) may be approved for reimbursement at the discretion of the finance director, city manager or BLW general manager, after determining that such interaction will prove beneficial to the city/BLW. Any difference in interpretation, exceptions or conflict for such expenses, will be resolved by the city manager. Meals where only another employee(s) is present are prohibited.

(Ord. No. 5756, 10/8/97, § 3; Ord. No. 7043, 5/9/2007, § 26)

### **ARTICLE 4-4-36 - SMOKING POLICY**

#### **4-4-36-010 - Purpose.**

The purpose of this policy is to provide a healthful work and business environment for the city/BLW employees, citizens, customers and visitors to city owned buildings,

facilities and vehicles and to comply with the Georgia Smokefree Air Act of 2005 or as hereafter amended by the Georgia State Legislature.

(Code 1978, § 4-1251; Ord. No. 5128, 2/10/93; Ord. No. 5575, 6/12/96; Ord. No. 6838, 7/13/2005, § 1)

**4-4-36-020 - Scope.**

This article shall apply to all city/BLW employees and visitors to city/BLW buildings, facilities and vehicles.

(Code 1978, § 4-1252; Ord. No. 5128, 2/10/93, § 2; Ord. No. 5575, 6/12/96)

**4-4-36-030 - Policy.**

Smoking and smokeless tobacco use is prohibited in all city/BLW owned buildings, facilities and vehicles. Smoking is prohibited within 100 feet of any flammable substances in outdoor work areas, fueling stations, three-walled garages and storage areas. In addition, smoking is prohibited in indoor and outdoor parks and recreational facilities located within the City of Marietta, including, but not limited to, the restrooms, athletic fields, aquatic areas, parks, hiking/walking/biking trails, playgrounds, off-leash areas, and spectator and concession areas, unless there is a designated smoking area as established by the Parks, Recreation and Facilities Director. A designated smoking area must be the minimum of 50 feet from a playing field, playground and/or program site.

The prohibition set forth in the above paragraph shall not apply to the public golf course known as the City Club or the Marietta Golf Center. Smoking will be permitted in outside work areas, except indoor and outdoor parks and recreational facilities specified in the above paragraph, which are not within 100 feet of any flammable or combustible substances.

"No smoking" signs or symbols will be clearly and conspicuously posted in every city/BLW owned building. All ashtrays are to be removed from any building where smoking is prohibited herein unless such ashtray is permanently affixed to an existing structure. Further, ash trays are not to be brought to any city/BLW owned building on or after July 1, 2005. Such prohibition on smoking shall be communicated to all current employees by July 1, 2005, and to each prospective employee upon their application for employment.

City/BLW employees who fail to comply with this policy will be subject to disciplinary action up to and including termination of employment. Further, a person smoking tobacco in violation of the Georgia Smoke Free Air Act of 2005 shall be guilty of a misdemeanor and, if convicted, shall be punished by a fine of not less than \$100.00 nor more than \$500.00 or as hereafter amended by the Georgia State Legislature.

(Code 1978, § 4-1253; Ord. No. 5128, 2/10/93, § 3; Ord. No. 5575, 6/12/96; Ord. No. 6838, 7/13/2005, § 2; Ord. No. 7349, 7/8/2009, § 1; Ord. No. 7380, 9/9/2009, § 1)