



City of Dayton, Tennessee

Employee Policy Handbook

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PERSONNEL POLICY

General Purpose. It is the purpose of this Personnel Policy to establish a fair and uniform system of the personnel administration for all employees of the City of Dayton in order that the most effective services possible may be delivered to the citizens of the community in keeping with the social and economic needs of the citizens. It shall therefore be the policy that:

- (1) Employment shall be based on merit and fitness, without regard to race, religion, national origin, political affiliation, sex, or age.
- (2) Just and equitable incentives and conditions of employment shall be established and maintained.
- (3) There will be full compliance with the provisions of the Federal Fair Labor Standards Act and the regulations established by the Department of Labor in accordance therewith.
- (4) Employment with the City of Dayton is for an indefinite period of time. Any employee is subject to demotion, suspension, transfer, or removal by the city manager.
- (5) The policies expressed in these personnel rules and regulations reflect the current position of the City of Dayton. Nothing in these personnel rules and regulations may be constructed to prohibit or limit the power and authority of the city council to make such changes, alterations and amendments in these rules and regulations as it may deem necessary. Furthermore, nothing herein may be constructed to prohibit or limit the power and authority of the city council to suspend the operation of any or all of the provisions of these rules and regulations as it may deem necessary.

Administration. The city manager shall have the basic responsibility for the personnel program as set forth in these rules and regulations. In addition to other duties as set forth in these rules and regulations, the city manager shall:

- (1) Exercise leadership in developing a system of effective personnel administration within the municipal departments subject to these rules and regulations.
- (2) Develop programs for improvement of employees effectiveness, including training, safety, and health.
- (3) Recruit qualified applicants for city employment and assist department heads in identifying qualified employees for promotion.
- (4) Maintain records of all employees of the municipal departments.
- (5) Perform other such duties as may be assigned by the city council or are provided in the city charter or the city code.

Pay Plan. The pay plan shall be established and maintained which will consist of minimum and maximum rates of pay and intermediate steps for each existing position classifications as adopted by the city council.

- (1) Maintenance of pay plan. The pay plan is intended to provide fair compensation for all positions in consideration of pay for other positions, general rates of pay for similar employment in private establishments and other public jurisdictions in the area, cost of living data, the financial condition of the city, and other factors. To this end, the city manager will from time to time make comparative studies of all factors affecting the level of salary ranges and will recommend to the city council such changes in salary ranges as appear to be in order. Such adjustments will be made by increasing and decreasing the salary ranges and the appropriate number of steps as provided in the basic salary schedule, and the rate of pay for each employee will be adjusted an appropriate number of steps in conformance with the adjustment of the salary range for the position as approved by the city council.
- (2) Status report. (a) Every employee shall have a status form completed upon employment and all changes shall be recorded by completing a new report form properly signed by the employee and city manager. The report will include name,

social security number, current salary or wage with employee's signature on all reports plus other pertinent information as required. On termination, resignation or separation, the report will include all compensation over and beyond the last work day and state what compensation is due per category but exempt employees will not be compensated for earned time.

- (b) For the City of Dayton Fire Department only and effective at the beginning of the first pay period in September 2009, the fire department shall implement a new shift schedule to be identified as the "Non-Traditional 24/48 Hour Firefighter Schedule" and the City of Dayton shall use the status report/form to change the work schedule of the current firefighters to the new Non-Traditional 24/48 Hour Firefighter Schedule.

The Non-Traditional 24/48 Hour Firefighter Schedule shall be defined as follows: The firefighter work schedule approved under the Fair Labor Standards Act (FLSA) 7(k) exemption where the employee works one (1) day on and two (2) days off (twenty-four and one-quarter (24.25) hours on-duty/forty-seven and three-quarters (47.75) hours off-duty). The work period is twenty-eight (28) days and overtime shall be paid after the employee works more than two hundred twelve (212) hours.

- (c) For the City of Dayton Police Department only and effective at the beginning of the first pay period in January 2010, the police department shall implement a new shift schedule to be identified as the new "Rotating Schedule/Cycle" and the City of Dayton shall use the status report/form to change the work schedule of the current police officers to the new Rotating Schedule/Cycle.

The Rotating Schedule/Cycle police schedule shall be defined as follows: one cycle consisting of an officer working two (2) twelve hour shifts/off two (2) days or 48 hours, working three (3) twelve hour shifts/off two (2) days or 48 hours, working two (2) twelve hour shifts/off three (3) days or 36 hours and then cycling back to the beginning of the Schedule. The police chief has the discretion and authority to adjust and make changes to the schedule/cycle as may be necessary. The work period is 28 days and overtime shall be paid after the employee works more than 171 hours.

- (3) Pay rates, promotion, demotion, transfer. When an employee is promoted his salary shall be advanced one (1) full step or to the base of the salary range for the position that is being promoted.

When an employee is demoted to a position for which he is qualified, the salary shall be set at the step rate in the lower salary range which provides the smallest decrease in pay, however in no case shall the employee's salary be lower than the base of the new salary range.

- (4) Base rate or minimum rate. This is the normal hiring rate, except in those cases where unusual circumstances (such as inability to fill the position at the hiring rate or exceptional qualifications of an applicant) appear to warrant employment at a higher rate in the pay range. The city manager must make such approval.
- (5) Pay for part-time work. The time worked is the actual time that will be paid.
- (6) Overtime. Exempt employees, as defined by applicable state and federal laws, are not eligible for overtime compensation or compensatory time off.

Non-exempt employees are eligible to receive overtime compensation for any time worked over and above the FLSA overtime threshold. Except for shift personnel of the fire and police departments, overtime is paid for any time worked over 40 hours during the seven day workweek. Only actually worked, not including vacation or PTO leave hours taken, are considered in determining when overtime is due to the employee. In the case of an emergency call out overtime will be authorized at the discretion of the City Manager.

Employees who are not exempt from the overtime pay provisions of the FLSA shall be compensated at a rate of one and one-half times the employee's regular rate of pay for any overtime work.

Employees required to work on a non-scheduled basis on holidays and Sunday will be paid double time for time worked, not including regular holiday pay.

For the City of Dayton Fire Department only, overtime will be paid when a firefighter actually works more than 212 hours within a 28-day pay period. Firefighters scheduled to work on holidays on the Non-Traditional 24/48 Hour Firefighter Schedule will be eligible for holiday pay at the double time rate plus 8-hours when the holiday falls on their regular schedule and a city recognized holiday. Additionally, firefighters working the Non-Traditional 24/48 Hour Firefighter Schedule will be paid in accordance with the Fair Labor Standards Act (FLSA).

For the City of Dayton Police Department only, overtime will be paid when a police officer actually works more than 171 hours within a 28-day pay period. Police officers scheduled to work on holidays on the Rotating Schedule/Cycle will be eligible for holiday pay at the double time rate plus 8-hours when the holiday falls on their regular schedule and a city recognized holiday. Additionally, police officers working the Rotating Schedule/Cycle will be paid in accordance with the Fair Labor Standards Act (FLSA).

- (7) Compensatory time may be given to those employees who work overtime as provided in the section on "Overtime" and with whom the City of Dayton has a prior agreement or understanding that the employee will accept compensatory time in lieu of cash payment for overtime. Employees are encouraged to use their accrued compensatory time, and the City will make every effort to grant reasonable requests for the use of compensatory time when sufficient advance notice is given and the workplace is not unduly disrupted. The maximum number of compensatory time hours that may be accrued are as follows:

Administrative Employees:	40 Hours
Law Enforcement Employees:	160 Hours
Fire Protection Employees:	209 Hours

Any employee who has reached this maximum shall not work any

additional overtime until the employee's accrued compensatory time has fallen below the maximum allowed, unless the employee receives advance written authorization and receives payment in cash for any such additional overtime. The City reserves the right at any time to pay an employee in cash for any or all accrued compensatory time and/or to require the employee to use accumulated compensatory time.

Recruitment and employment.

- (1) **Eligibility.** Individuals shall be recruited from a geographic area as wide as is necessary to assure obtaining well qualified applicants for the various types of employment positions; recruitment therefore shall not necessarily be limited to residents of Dayton; however cases where residents and non-residents are equally qualified for positions presently vacant, the resident shall receive first consideration in filing such vacancies.
- (2) **Announcements.** The city manager shall make announcements of all full-time vacancies (except as filled by promotion) with media of local circulation at least seven days in advance of the closing for receipt of applications. Subsequent vacancies may be filled from a qualified list of applicants during the thirty (30) days subsequent to the announcement.
- (3) **Minimum qualifications.** The city manager will announce the minimum qualifications to all applicants; such qualifications shall be stated in the job descriptions.

Examinations. Recruitments by examination. All appointments shall be made according to merit and fitness and may be subject to competitive examination. All such examinations shall be either assembled or unassembled as provided for in these rules and shall fairly and impartially test those matters relative to the capacity and fitness of the applicant to discharge efficiently the duties of the positions filled. The city manager will determine which tests will be appropriate.

- (1) **Types of examinations.** The fitness test held to establish a list of eligible's for any class shall consist of one or more of the following parts determined by the city manager.
 - (a) **Written test.** This part, when required, shall include a

written demonstration designed to show the familiarity of applicants with the knowledge involved in the class to which they seek appointment. An oral test may also be used in examinations where a written test is necessary or impractical.

- (b) Oral interview. All applicants for a vacancy within a department will be interviewed by the department head. Upon conclusion of all interviews a hiring recommendation will be made to the city manager by the department head in writing.
 - (c) Performance tests. This part, when required shall include such tests of performance or trade as would determine the ability and manual skills of applicants to perform the work involved.
 - (d) Physical test. This part, when required, shall consist of tests of bodily conditions, muscular strength, agility, and physical fitness of applicants. This may be given weight in the examination or may be used in excluding from further examination applicants who do not measure up to the job related required standards.
 - (e) Mental test. This part, when required, shall include any test to determine mental alertness, general capacity of applicants to adjust their thinking to new standards, or to ascertain special character traits and aptitudes.
 - (f) Training and experience. This part, when required shall be obtained and evaluated from statements of education and experience contained in the application form or from such supplementary data as may be required.
- (2) Rating examinations. Appropriate scientific techniques and procedures shall be used to the extent possible in rating the results or examinations in determining the relative ranking of the applicants.

Pre-employment and Post Employment Medical Examinations. Applicants,

who have been selected for possible employment positions with the city, will be required to undergo a medical examination to determine physical and mental fitness to perform work in the positions to which appointment is to be made. Applicants determined to be physically or mentally unfit for service shall not be considered for appointment. All employees of the city during their period of employment may be required by their department head with the approval of the city manager to undergo periodic medical examinations to determine their physical and mental fitness to perform the work of the position in which they are employed. Such periodic medical examinations shall be at no expense to the employee. Determination of physical or mental fitness will be by a physician or physicians designated by the city manager.

Promotions. Vacancies in the positions above the entrance level shall be filled by promotion whenever in the judgment of the city manager it is in the best interest of the city to do so, and promotions shall be on a competitive basis and shall give appropriate consideration to the applicants performance ratings, qualifications, and seniority.

Appointments.

- (1) Vacancies shall be filled by promotional appointment, original appointments, transfer or demotion.
- (2) Emergency appointments. In an emergency, the city manager may authorize the appointment of any qualified person in the position to prevent stoppage of public business or loss or serious inconvenience to the public. However, a vacancy of which the department head has had reasonable notice, or an employment condition of which he had, or might with due diligence have had previous knowledge, shall not be considered an emergency under this section.
- (3) Student appointment. Upon the recommendation of the city manager, students majoring in fields of value to the city, from qualified cooperating educational institutions, may be employed on an "internship" basis for a specified period of time.
- (4) Transfers. Any employee may be transferred to the same or similar position in a different department. Transfer of an employee from one position to another without significant change in level may be effective when the employee meets the qualification requirements for the new position, if it is in the

best interest of the city, if further training and development of an employee in another position would be beneficial to the future staffing potential of the city, and if it meets the personal need of the employee as consistent with the other requirements of this rule.

- (5) Demotions. An employee may be demoted for any purpose as determined by the city manager.

Hours of Work. (1) The city manager shall establish hours of work per work period for each position. The normal work week must be forty (40) hours minimum to be considered as full time. For certain positions designated lunches may be taken during work hours, however these positions are considered to be paid for forty (40) hours worked and will not receive additional compensation until over forty (40) hours has been worked.

- (2) However, effective at the beginning of the first pay period in September 2009, the City of Dayton firefighters shall work the Non-Traditional 24/48 Hour Firefighter Schedule consisting of twenty-four and one-quarter (24.25) hours on-duty and forty-seven and three-quarters (47.75) hours off-duty as defined in paragraph (2) (b) of Pay Plan of the Personnel Policy. Further, firefighters working the Non-Traditional 24/48 Hour Firefighter Schedule shall work in accordance with the work periods as defined in the Fair Labor Standards Act (FLSA).
- (3) Effective at the beginning of the first pay period in January 2010, the City of Dayton police officers shall work the Rotating Schedule/Cycle as defined in paragraph (2) (c) of Pay Plan of the Personnel Policy. Further, the police officers working the Rotating Schedule/Cycle shall work in accordance with the work periods as defined in the Fair Labor Standards Act (FLSA).

Attendance. An employee shall be in attendance at regular work in accordance with these rules and with written department regulations. All departments shall keep daily attendance records of their employees, which shall be reported to the city manager on the dates he shall specify.

Outside Employment. No employee of the city may have any additional employment outside the official hours of duty unless approved by the city manager.

Pecuniary Interests. No councilman or employee of the city shall have any financial interests in the profits of any contract, service or other work performed by the city, or shall personally profit directly or indirectly from any contract, purchase, sale or service between the city and any person or company, or personally or as an agent provide any surety, bail, or bond required by law, unless such is reported and maintained on file, and consistent with state statutes in regard to conflict of interests. No officer, councilman or employee shall accept any gift with a value of over \$50.00 and only then for a special occasion such as Christmas, etc. Gifts from separate individuals or corporations with an individual value of less than \$50.00 but totaling in excess of \$100.00 must be documented by such company or individuals and reported to the city manager who will report the same to the city council.

Political Activity. Every officer (except for elected officers or councilmen) and employees of the city shall enjoy the same rights to be a candidate for any state or local political office, the right to participate in political activities by supporting or opposing political parties, political candidates and petitioning to governmental entities except as set forth herein.

- (1) Restrictions for City of Dayton officers and employees (except councilmen). No city officer or employee while on the job or on duty and during working hours and whether on or off city property shall at any time or any place:
 - (a) Become a candidate for, or campaign for an elected city office.
 - (b) Directly or indirectly solicit, receive, collect, handle, disburse, or account for assessments, contributions or other funds for a candidate for office.
 - (c) Organize, sell tickets to, promote or actively participate in a fund raising activity of a candidate for office.
 - (d) Take an active part in managing the political campaign of a candidate for office.
 - (e) Solicit votes and support of or in opposition to a candidate for office.
 - (f) Act as a recorder, watcher, challenger or similar officer at the polls on behalf of a candidate for office.

- (g) Drive voters to polls on behalf of a candidate for office.
 - (h) Endorse or oppose a candidate for office in a political advertisement, broadcast, campaign literature or similar material.
 - (i) Address a rally or similar gathering of the supporters or opponents of a candidate for office.
 - (j) Initiate or circulate a nominating petition for a candidate for office.
 - (k) Wear campaign buttons, pins, hats, or other similar attachments or distribute campaign literature in support or opposition to a candidate for office.
- (2) Election to other offices. Should a City of Dayton officer or employee be elected to a political office and the officer or employee is required to be absent during working hours, arrangements shall be made with the city manager to make up the time or the officer or employee shall agree not to be paid for said time off except where the time off affects the employee's ability to perform his job then other arrangements shall be made by the elected employee so as to not interfere with his job performance. Absence from the job shall be in the sole discretion of the city manager. Nothing herein shall prohibit the officer or employee from using compensatory time (not accumulated PTO days) or vacation days.
- (3) Leaves of absence shall not be granted to city officers or employees to engage in any political activity.
- (4) Nothing herein is intended to prohibit any city officer or employee from privately expressing his or her political views or from casting his or her vote in all elections.

Holiday Leave. The following shall be official holidays of the city and employees required to work on them will be paid twice their regular pay for hours worked in addition to their holiday pay: New Year's, Martin Luther King Day², President's Day³, Good Friday, Memorial Day, Fourth of July, Labor Day, Columbus Day, Veteran's Day, Thanksgiving, Day After Thanksgiving, Christmas Eve and Christmas Day. Where possible every full-time employee shall be given approved holidays as set out in this section. An employee whose regularly scheduled day off falls on a holiday will receive the next regular working day as a holiday. In order to receive pay for an observed holiday, an employee must not have been absent without leave or either on the workday before or the day after the holiday.

Vacation Leave. (1) All full-time employees shall be given one (1) calendar week of vacation leave with pay after the first full year of employment and two (2) calendar weeks of vacation after two (2) full years of employment and three (3) weeks of vacation with pay after a period of ten (10) years employment and four (4) weeks of vacation with pay after a period of twenty (20) years of employment with the city. Such vacation leave shall be taken at a time approved by the city manager or such other officer as he may designate. At no time shall a person's total credit for a vacation leave exceed four (4) calendar weeks. Personnel continuing to work during their vacation will receive twice their regular pay but this will be allowed only for the convenience of the city with the approval of the city manager.

An employee resigning voluntarily with at least one (1) year of service, who has given two (2) weeks written notice to Human Resource of such resignation, will receive all vacation credit accrued as of the date of resignation. An employee who fails to provide such notice will have his accrued vacation reduced by an equivalent number of hours for each day not worked.

- (2) However, firefighters working the Non-Traditional 24/48 Hour Firefighter Schedule will be given vacation leave

equivalent to other city employees as defined in the equivalency chart below:

	Normal City Employees	Firefighters24/48 Schedule
After 1 st year of employment	1 week	2 shifts
After 2 full years of employment	2 weeks	5 shifts
After 10 years of employment	3 weeks	7 shifts
After 20 years of employment	4 weeks	9 shifts

Vacation leave already accrued by firefighters shall be converted in accordance with the equivalency chart set forth above at the beginning of the first pay period in September 2009 when the new Non-Traditional 24/48 Hour Firefighter Schedule becomes effective.

Additionally, Firefighters working the Non-Traditional 24/48 Hour Firefighter Schedule may be given a Kelly day from time-to-time. However, a Kelly day is not a benefit for the firefighter but rather is a day off (an entire shift off) to prevent an employee from getting overtime pay. Kelly days are not automatic and are only given within a specific pay period where the normal schedule would require the employee to work more than the two hundred twelve (212) hours per pay period. If an employee takes leave time during this specific pay period, then the employee is not eligible for the Kelly day since actual time worked would fall below the two hundred twelve (212) hour limit.

- (3) Police Officers working the Rotating Schedule/Cycle will be given vacation leave equivalent to other city employees as defined in the equivalency chart below:

	Normal City Employees	Police Officers Schedule
After 1 st year of employment	1 week	40 hours
After 2 years of employment	2 weeks	80 hours
After 10 years of employment	3 weeks	120 hours
After 20 years of employment	4 weeks	160 hours

Vacation leave already accrued by police officers shall be converted in accordance with the equivalency chart set forth above at the beginning of the first pay period in January 2010 when the new Rotating Schedule/Cycle becomes effective.

Additionally, police officers working the Rotating Schedule/Cycle may be given time off from work in order to prevent the employee from getting overtime pay. The police chief has the authority and discretion to modify the Rotating Schedule/Cycle in order to prevent employees from working more than 171 hours within a 28-day pay period.

Personal Time Off (PTO). (1) All full time employees shall be given a credit of one (1) working day of personal time off with pay for each full calendar month of employment. The maximum credit for accrued PTO under provisions of this section shall be one hundred and twenty (120) days.

Termination, Resignation, Retirement: Any unused Personal Time Off will be forwarded to Tennessee Consolidated Retirement to be added to your account.

Notice and Scheduling: You are required to provide your supervisor with reasonable advance notice and obtain approval prior to using PTO. This allows for you and your supervisor to prepare for your time off and assure that all staffing needs are met. You must complete an Absence Report for all PTO time used. The amount of PTO accrued, used and available will appear on your paycheck stub.

There may be occasions, such as sudden illness, when you cannot notify your supervisor in advance. In those situations, you must inform your supervisor of your circumstances as soon as possible. The City Manager may request a Physicians return to work for three or more consecutive days of absence.

PTO provides the employee with the flexibility to use time off to meet their personal needs, while recognizing their individual responsibility to manage their time off. It is up to the employee to allocate how to use their time – for illness, caring for children, school activities, medical/dental appointments, personal business or emergencies. The City of Dayton requires the use of any unpaid PTO during disability or family medical leave, or any other leave of absence. (PTO does not replace the City’s holiday schedule)

- (2) However, firefighters working the Non-Traditional 24/48 Hour Firefighter Schedule shall be given PTO leave equivalent to other city employees and shall receive nine and two-thirds (9.66) hours of PTO leave per month while other city employees shall receive eight (8) hours (one (1) working day) of PTO leave per month. This calculation is based upon and in accordance with the Fair Labor Standards Act (FLSA) because firefighters working the Non-Traditional 24/48 Hour Firefighter Schedule actually work 20.72% hours more per year than the regular forty (40) hour per week employee. A regular employee is scheduled to work two thousand eighty (2,080) hours per year where as a firefighter working the Non-Traditional 24/48 Hour Firefighter Schedule works two thousand five hundred eleven (2,511) hours per year. This calculation is based upon working nine (9) shifts per month at twenty-three and one-quarter (23.25) hours per shift (meal time included).

Additionally, the maximum credit for accrued PTO leave under the provisions of this section for firefighters working Non-Traditional 24/48 Hour Firefighter Schedule shall be fifty-four (54) shifts. Fifty-four (54) shifts is equal to six (6) months where one hundred-twenty (120) days for a regular city employee working a forty (40) hour week is also equal to six (6) months. The equivalency maximum in hours is one thousand two hundred fifty-five and one-half (1255.5) hours for firefighters and nine hundred sixty (960) hours maximum PTO leave for regular employees. The method of determining equivalency for firefighters with regular City employees is based upon the regular employee having a maximum of six (6) months off due to sickness. Further, in the event a firefighter changes to the regular shift, the benefit maximum and equivalencies shall be adjusted back as a normal employee.

PTO leave already accrued by firefighters shall be converted in accordance with the provisions set forth above at the beginning of the first pay period in September 2009 when the new Non-Traditional 24/48 Hour Firefighter Schedule becomes effective.

- (3) Police officers working the Rotating Schedule/Cycle shall be given PTO leave equivalent to other city employees and shall receive eight (8) hours of PTO leave per month while other city employees shall receive 8 hours (1 working day) of PTO leave per month. This calculation is based upon and in accordance with the Fair Labor Standards Act (FLSA). Additionally, the maximum credit for accrued PTO leave under the provisions of this section for police officers working the Rotating Schedule/Cycle shall be 960 hours. In the event a police officer changes to the regular shift, the benefit maximum and equivalencies shall be adjusted back as a normal employee. PTO leave already accrued by police officers shall be converted in accordance with the provisions set forth herein at the beginning of the first pay period in January 2010 when the new Rotating Schedule/Cycle becomes effective.

Bereavement Leave. Two (2) consecutive days' paid leave will be granted to an employee to attend any funeral or memorial service in the event of the death of an immediate family member. Immediate family is defined as an employee's spouse, child, child-in-law, parent, parent-in-law, brother, sister, brother-in-law, sister-in-law, grandparent and grandchild. One (1) day is allowed for the death of any other relative. After using bereavement leave, an employee may use, with approval, compensatory time off, vacation leave, PTO or leave without pay in this order.

Administrative Leave. The city manager may authorize administrative leave with pay for jury duty, official government court proceedings, investigation pending against employee, and other official absences as necessary.

If the employee is called for jury duty and not chosen then said employee shall report back to work immediately. If the employee is selected as a member of the jury he shall be paid his full salary for the days served, however, he shall endorse over to the city any moneys received for said jury service.

Leave without pay. Full-time employees may be granted a leave of absence without pay for a period not to exceed one (1) year for good and sufficient reasons, with city council approval.

Prohibitions. No person shall be appointed to or promoted to, or demoted or dismissed from any position or in any way be favored or discriminated against with respect to employment in the city service because of race, religion, national origin, political affiliation, sex, or age.

Separation - Separation of employees from position in the full time city service shall be designated as one of the following, resignation, lay off, retirement, disability or ill health and removal (termination). At the time of separation all government property is to be transferred to the department head. Shortages will immediately be paid for. Disciplinary action may be in the form of suspension, demotion, transfer, or removal (termination) and may be taken in a non-progressive manner at the discretion of the city manager.

- (1) **Resignation.** An employee resigning voluntarily with at least one (1) year of service, who has given two (2) weeks written notice of such resignation, will receive all vacation credit accrued as of the date of resignation. An employee who fails to provide such notice will have his accrued vacation reduced by an equivalent number of hours for each day not worked.
- (2) Unauthorized absence from work for three (3) consecutive days may be considered as a resignation.
- (3) **Lay-Off.** Performance and length of service will be given consideration and two (2) weeks' notice will be given, if possible, if lay-offs are necessary.

Lay-offs shall begin by determining what positions and corresponding services can be eliminated. Higher paid employees will be given the choice of lay-off or demotion to the position immediately below if the employee is qualified to perform the duties. Those employees holding the lower position shall be considered for demotion to the next lower position. This procedure should operate from top; seniority should govern the layoff based on total service to the city.

Laid off employees returning to city service will be given credit for prior accumulated unused PTO leave and prior service if reinstated within two years.

- (4) Retirement. Whenever an employee meets the conditions set forth in the pension retirement plan regulations, he may elect to retire and receive all benefits earned in the city's retirement plan. The City of Dayton and each Employee will contribute to a retirement system in accordance with the rules of the system.
- (5) Disability or ill health. An employee may be separated for disability when he cannot perform required duties because of a physical or mental impairment. Action may be initiated by the employee or the city, but in all cases it must be supported by medical evidence acceptable to the city manager. The city may require an examination at its expense and performed by a licensed physician of its choice.
- (6) Demotion. A type of disciplinary action usually taken after an employee has been notified of deficiencies or inability to perform at the current classification, although, in his discretion, the city manager may demote any employee at any time if he deems it appropriate under circumstances.
- (7) Removal. Any employee may be removed and terminated by the city manager at any time for any or no cause without notice.

Grievance Procedures. It shall be the policy of the city, insofar as possible, to prevent the occurrence of grievances (not related to disciplinary action) and to deal promptly with those that occur. When any grievance comes or is directed to the attention of any supervisory employee of the city, the supervisor shall discuss within two (2) working days all relevant circumstances with the employee and remove the causes of the grievances to the extent he deems advisable and possess authority. Failing resolution at this level, the grievance shall be carried to higher authority within five (5) working days, and if necessary, to and including the department head, until satisfactory solution has been reached or authority to deal with the situation has been exhausted.

Grievances which cannot be resolved at the supervisory or intermedial level shall be brought to the attention of the city manager so he may have an opportunity to resolve the grievance in question. The city manager shall have final authority to settle all employee grievances.

In-Service Training. It will be the responsibility of the city manager to foster and promote in-service training of employees for the purpose of improving the quality of personnel service rendered to the city and to assist employees to equip themselves for advancement in the service. The city manager shall establish

standards for training programs, see training is carried out as approved; prepare certificates or other forms for recognition to persons who satisfactorily complete approved courses and programs; provide assistance to department heads in developing and conducting training to meet the specific needs of their departments; and develop supervisory and management training and other types of training programs common to all departments.

Records and Reports. Personnel records, including examinations, service rating reports, personnel histories, and such other reports as may be specified in these rules or by action of the city manager, shall be public records. The city manager shall retain records necessary to the property administration of the personnel system.

The city manager may prescribe necessary forms and reports for all necessary personnel changes and actions.

Nepotism. In no event shall applicants be approved for employment in a full-time position or shall individuals already in the employment of the city be allowed to transfer to, or remain in, positions in which immediate family members would have direct reporting or supervisory relationships.

In no event shall applicants be approved for employment in a full-time position in a department in which immediate family members are already employed; nor shall immediate family members already in the employment of the city be allowed to transfer to a department in which immediate family members are already employed.

Where two (2) or more individuals already in the employment of the city in the same department become immediate family members by marriage, they may decide among themselves who shall leave the department and who shall stay. Should they be unable to reach an agreement within fifteen (15) calendar days, the rule of seniority shall apply and a termination shall be effected immediately. Withholding of information pursuant to this section shall render the employees subject to disciplinary action at the discretion of the city manager.

Present employees who were employed by the City of Dayton prior to the enactment of this chapter, and were in violation of this section as of the date of enactment, are exempted from this nepotism rule as it pertains to the violation that existed as of the date of enactment. These requirements apply also to those positions listed as volunteer, temporary, seasonal, part-time and the chief of police.

Control of city owned vehicles.

- (1) All city employees and authorized passengers in a city vehicle are required to wear seat belts when using vehicles equipped with them.
- (2) Employees driving city-owned vehicles are required to have such driver's license as may be required by the State of Tennessee for the type of vehicle being operated.
- (3) City-owned vehicles are to be used for official business only; personal use of city-owned vehicles is not permitted.
- (4) Employees that reside outside the corporate limits of the City of Dayton are eligible for assignment of city-owned vehicles provided such employees reside within a ten (10) mile radius of city hall. All department heads may be assigned a city-owned vehicle regardless of whether or not such department head lives within the corporate limits of the City of Dayton and regardless of whether or not such department head lives within a ten (10) mile radius of city hall.
- (5) Employees eligible for assignment of city-owned vehicles are city manager, department heads and police officers.
- (6) Use of city manager's vehicle will be governed by the city council.

Grantee Employee. Employees who work with 100% of their salary paid from grant funds shall receive all benefits except lay off procedures do not apply. If employees of this category move to a budgeted position they will receive credit for all previous time worked.

Medical Plan. The city employees will continue with a health care plan with 100% payment of single coverage of the premium being paid for by the city.

Life Insurance Benefits. The City of Dayton's health insurance plan includes life insurance coverage for participants in the plan. Life insurance coverage in the amount of \$25,000.00 will be 100% funded by the city for full time employees who are participants in the health insurance plan.

Training Reimbursement. Employees that are sent to the training for certification (i.e. Police Academy, Lineman training, Administration Certifications, etc.), then

voluntarily resign, must reimburse the city for school expenses if they do not remain as a city employee for twenty-four (24) months after graduation. Uniform allowance is paid at the rate of \$45.00 per month, payable at the end of each quarter. Termination for any reason requires the allowance to be pro-rated; day 1 through 15 past month; day 16 through 31 next month. The remainder shall be reimbursed by the departing employee to the city.

Tuition Refund Plan. The City of Dayton will provide opportunities for education and training which will increase the proficiency of city employees in carrying out their present duties and responsibilities as well as improving the quality of service. The city will reimburse one hundred percent (100%) of tuition and books for an employee, excluding part time employees taking courses above the high school level in an accredited college or university. The following stipulations must be met:

- (1) **Qualifications.** (a) The training is necessary and has a direct value to the city and is pertinent to the general field of work (3b related).
 - (b) There is clear intent to obtain a degree above the high school level in an area that is job related.
 - (c) There is clear intent to improve one's knowledge in an area associated with one's where completion of several courses would make the employee eligible for promotion.
 - (d) A maximum of two (2) employees or volunteers eighty-nine percent (89%) of larger departments employees or volunteers may be enrolled at any one time.
 - (e) A maximum of six (6) hours per employee, per semester will be eligible for reimbursement.

- (2) **Application for Tuition Refund Plan.** Application for tuition refund will be completed and approved through the department head with final approval by the city manager provided:
 - (a) Qualifications in (1) above have been met.

- (b) Tuition costs are identified prior to attending first class and books must be purchased within thirty (30) days of first class with receipts submitted.
 - (c) A grade point average of "C" or better is required for reimbursement.
- (3) **Reimbursement**. Only candidates meeting stipulations in (1) and (2) above will be reimbursed under the plan. They will be reimbursed at one hundred percent (100%) of documented receipts as stated in paragraph (2) subparagraph (b). Additionally, any and all employees receiving a refund for tuition and/or books as provided for herein shall be required to remain continuously employed by the City of Dayton for a period of three (3) years from the date of the last payment made by the City of Dayton, Tennessee for tuition and/or books or for a period of three (3) years from the date the employee receives his/her last grade, whichever date is the latest. Any employee that voluntarily leaves employment or is terminated for cause by the city and does not remain continuously employed for a period of three (3) years as set forth herein shall reimburse the City of Dayton for all monies paid on a prorated basis pursuant to the tuition refund plan set forth above. For each month the employee is employed after he/she receives his/her last grade or for each month after the last payment made by the City of Dayton for tuition and/or books, whichever date is the latest, the amount owed to the City of Dayton will be reduced by one-thirty-sixth (1/36th).

Current employee testing: general standard. The municipal government may require a current city employee to undergo drug and alcohol testing if there is reasonable suspicion the employee is under the influence of drugs or alcohol during working hours. "Reasonable suspicion" means an articulate belief based on specific facts and reasonable inferences drawn from those facts an employee is under the influence of drugs or alcohol. Circumstances that constitute a basis for determining "reasonable suspicion" may include, but are not limited to:

- (1) A pattern of abnormal or erratic behavior.

- (2) Information provided by a reliable and credible source.
- (3) A work-related accident.
- (4) Direct observation of drug or alcohol use.
- (5) Presence of the physical symptoms of drugs or alcohol use (i.e., glassy or bloodshot eyes, alcohol odor on breath, slurred speech, poor coordination and or reflexes).

Supervisors are required to detail in writing the specific facts, symptoms, or observations that formed the basis for their determination that reasonable suspicion existed to warrant the testing of an employee. This documentation shall be forwarded to the appropriate department head or designated alternate.

Drugs in the work place. As the result of the Drug-Free Work-Place Act of 1988, the city is required to inform all employees of the following policy.

The City of Dayton has a legal responsibility and management obligation to ensure a safe work environment, as well as paramount interest in protecting the public by ensuring its employees have the physical stamina and emotional stability to perform their assigned duties. Employees must be free from drug or alcohol dependence, illegal drug use, or drug or alcohol abuse. There is sufficient evidence to conclude the use of illegal drugs or alcohol; drug or alcohol dependence; and drug or alcohol abuse seriously impair an employee's performance and general physical and mental health.

The illegal possession and use of drugs, alcohol, and/or narcotics by employees of the municipality is a crime in this jurisdiction and clearly unacceptable. Therefore, the City of Dayton has adopted this written policy to ensure an employee's fitness for duty as a condition of employment.

- (1) Municipal government employees shall not take or be under the influence of any narcotics or dangerous substance unless prescribed by the employee's licensed physician. Employees who are required to take prescription medicine shall notify their immediate supervisors of the medication prescribed and the nature of the illness or injury.
- (2) Municipal government employees are prohibited from the use,

possession, manufacture, distribution, and sale of drugs, alcohol, or any other controlled substance on municipal government property or in city vehicles.

Reporting of Convictions. All employees are required to report to their department head as well as the city manager any convictions that are classified as felonies by the Tennessee Code or any other conviction that affects their job.

Use of Municipal Time, Facilities, etc. No city officer or employee shall use or authorize the use of city time, facilities, equipment, or supplies for private gain or advantage to himself or any other private person or group. This prohibition shall not apply where the city manager has authorized the use of such time, facilities, equipment, or supplies, and the city is paid at such rates as are normally charged by private sources for comparable services.

Use of Position. No city officer or employee shall make or attempt to make private purchases, for cash or otherwise, in the name of the city, nor shall he otherwise use or attempt to use his position to secure unwarranted privileges or exemptions for himself or others.

Saving Clause. If any rule, section, or subsection of these rules and regulations is held by any court to be invalid or unconstitutional, the same shall not invalidate, force, or effect of any other rules, section, or subsection of these rules and regulations unless it clearly appears such other section or subsection is wholly or necessarily dependent for its operation upon the rule, section, or subsection is held invalid or unconstitutional.

FAMILY AND MEDICAL LEAVE POLICY

Purpose:

The purpose of this policy is to provide a family and medical leave policy in compliance with Public Law 103-3, titled Family and Medical Leave Act (FMLA) of 1993. The policy also provides the changes to FMLA that come as part of the National Defense Authorization Act of 2008.

Eligibility:

The Family and Medical Leave Policy is applicable to both male and female employees who have worked at least 12 months for the City of Dayton and who have worked at least 1,250 hours during the preceding 12-month period. Such employees are eligible for a maximum of 12-26 weeks leave under the Act. Special rules apply for husbands and wives employed by the same employer, for highly compensated employees, and for local educational agencies. People who are not covered include elected officials, political appointees, volunteers, independent contractors, and legal advisors.

FMLA Circumstances:

Employees may be eligible for Family and Medical Leave for one or more of the following reasons:

- For the birth of the newborn child of the employee;
- For the placement with the employee of a son or daughter for adoption or foster care;
- To care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.
- To care for an immediate family member (spouse, son, daughter, or parent) injured while on active duty if that injury renders the service member unfit for military duty;

- To handle a "qualifying exigency" relating from an employee's spouse or child being called to active duty.

Paid/Unpaid Leave:

Family Medical Leave may be paid or unpaid. FML runs concurrently with paid time off (i.e., PTO, annual time). If the employee has the time available he/she may be paid. If the employee does not have time available or he/she exhausts paid time while out on FML, the remainder of the approved leave will be unpaid. **During periods of unpaid leave, an employee may not accrue any additional leave.**

PTO/Annual Leave Usage:

Employees requesting medical leave or family leave due to serious illness or injury (of themselves or eligible family members) must generally use their accumulated PTO leave followed by, annual leave. Fathers requesting Family leave for the routine uncomplicated birth of a child or adoption/foster placement must first use their annual, followed by unpaid time. Eligible fathers may use PTO leave to care for their spouse/child during the hospital stay/birth and for complications post birth.

The combination of PTO leave, annual leave, and unpaid leave may not exceed the total allowable leave under FMLA.

Guidelines:

An eligible employee may take up to 12 weeks of FML in a 12-month period for the birth of a child or the placement of an adopted or foster care child. Leave may also be taken to care for oneself, a child, spouse, or parent who has a serious health condition. The right to take leave applies equally to male and female employees who are eligible. Eligible employees may take up to 12 weeks of unpaid leave to deal with family issues resulting from a spouse, son, daughter, or parent being called to active duty (including being notified of an impending call to active duty).

Eligible family members of military personnel defined as the spouse, son, daughter, parent, or next of kin of a covered service member may take a maximum of 26 weeks leave under FML to care for a wounded member of the armed forces. This includes family members of the National Guard or Reserves who are

undergoing medical treatment, recuperation, therapy or other medical treatment for a "serious injury or illness."

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves one of the following:

- Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or subsequent treatment.
- A period of incapacity of more than three (3) consecutive calendar days that also involves treatment two (2) or more times by a health care provider or treatment which results in a regimen of continuing treatment under the supervision of the health care provider.
- Any period of incapacity due to pregnancy or for prenatal care.
- A chronic condition that requires periodic treatments, continues over an extended period of time, and may cause episodic rather than a continuing period of incapacity.
- A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, requiring continuing supervision of a health care provider.
- Multiple treatments either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) calendar days in the absence of medical intervention or treatments, such as cancer, severe arthritis or kidney disease.

Serious Injury or Illness for an injured Service Member is defined as a covered service member's injury or illness incurred in the line of duty on active duty in the Armed Forces that may render the service member medically unfit to perform the duties of the member's office, grade, rank, or rating. This could include medical treatment, recuperation, therapy, outpatient care and other treatments for a serious injury or illness.

During periods of unpaid leave, an employee may not accrue any additional seniority or similar employment benefits during the leave period.

Spouse/Same Employer:

If spouses are employed by the same employer and eligible to take leave for the birth or adoption of a child, their aggregate leave under FMLA is limited to 12 weeks. For example, if the father takes four weeks leave to care for a child, the mother would be entitled to eight weeks leave, for a total of 12 weeks. If, however, the spouse experiences her own serious health condition as a result of the pregnancy, both employees are entitled to the full 12 weeks.

Right to Return to Work

On return from FML, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to such reinstatement even if the employee has been replaced or his/her position has been restructured to accommodate the employee's absence.

If the employee is unable to perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no right to restoration to another position under FMLA. The employer however may be required by the American with Disabilities Act to offer the employee an accommodation.

Notification and Scheduling:

An eligible employee must provide the employer at least 30 days advance notice of the need for leave for birth, adoption, or planned medical treatment when it is foreseeable. This 30-day advance notice is not required in cases of medical emergency or other unforeseen events; such as premature birth or sudden changes in a patient's condition that require altering scheduled medical treatment.

Parents who are awaiting the adoption of a child and are given little notice of the availability of the child may also be exempt from this 30-day notice.

It is the City of Dayton's responsibility to designate leave in writing as FMLA leave and to notify the employee. Employees may not retroactively claim that leave was for FMLA. Failure to provide notification will result in the leave not being designated as FMLA.

The employer will, if necessary, provide the FMLA leave notice in alternate formats.

Certification:

The employer reserves the right to verify an employee's request for family/medical leave. If an employee requests leave because of a serious health condition or to care for a family member with a serious health condition, the employer may require the request be supported by certification from the health care provider of either the eligible employee or the family member, as appropriate. Failure to submit proper certification may result in a delay of FML approval.

If the employer has reason to question the original certification, the employer may, at the employer's expense, require a second opinion from a different health care provider chosen by the employer. That health care provider may not be employed by the employer on a regular basis. If a resolution of the conflict cannot be obtained by a second opinion, a third opinion may be obtained from another provider and that opinion will be final and binding.

Payment for the second opinion shall be borne by the employer. Payment for the third shall be divided between the employee and the employer. This certification must contain the date on which the serious health condition began, its probable duration, and appropriate medical facts within the knowledge of the health care provider regarding the condition. The certification must also state the employee's need to care for the family member and must include an estimate of the amount of time the employee is needed to care for the family member. Medical certifications will be treated as confidential and privileged information under HIPAA and the State's Open Records laws as appropriate.

An employee may be required to report periodically to the employer the status and the intention of the employee to return to work. Before return is granted, employees who have taken unpaid leave under this policy may be required to furnish the employer with a medical certification from the employee's health care provider that the employee is able to resume work.

Failure to provide certification in a timely manner may result in delay or denial of FMLA.

Reduced and Intermittent Leave:

FMLA leave may be taken intermittently or on a reduced schedule when medically necessary as certified by the health care provider. Intermittent leave is defined as whatever increment your system will accommodate. Intermittent or reduced leave schedules for routine care of a new child can be taken only with the employer's approval. The schedule must be mutually agreed upon by the employee and the employer.

Employees on intermittent or reduced leave schedules may be temporarily transferred by the employer to an equivalent alternate position that may better accommodate the intermittent or reduced leave schedule.

Intermittent or reduced leave may be spread over a period of time longer than 12 weeks, but it will not exceed the equivalent of 12 work week's total leave in a 12-month period.

Restoration:

Employees who are granted leave under the FMLA policy will be reinstated to an equivalent or the same position held prior to the commencement of their leave. Certain highly compensated key employees, who are salaried and among the 10 percent highest paid workers, may be denied restoration.

Restoration may be denied if:

- (a) The employer shows such denial is necessary to prevent substantial and grievous economic injury to the employer's operations;
- (b) The employer notifies the employee it intends to deny restoration on such basis at the time the employer determines such injury would occur; and
- (c) In any case the leave has commenced, the employee elects not to return to work within a reasonable period of time after receiving such notice.

Employees voluntarily accepting a light duty assignment in lieu of continuing FMLA leave maintain their right to restoration to the original or an equivalent job until the twelve (12) weeks of FMLA leave has passed.

The 12-Month FMLA Period:

The 12-month period during which an employee is entitled to 12 work weeks of FMLA leave is measured forward from the date the employee's first Family Medical Leave begins. An employee is entitled to 12-26 weeks of leave during the 12-month period after the leave begins. The next 12-month period will begin the first time the employee requests Family and Medical Leave after the completion of the previous 12-month period.

Denial of FMLA Leave:

If an employee fails to give timely, advanced notice when the need for FMLA leave is foreseeable, the employer may delay the taking of FMLA leave until 30 days after the date the employee provides notice to the employer of the need for FMLA leave.

If an employee fails to provide, in a timely manner, a requested medical certification to substantiate the need for FMLA leave due to a serious health condition, an employer may delay continuation of FMLA leave until an employee submits the certificate. If the employee never produces the certification, the leave is not designated as FML.

If an employee fails to provide a requested fitness-for-duty certification to return to work, an employer may delay restoration until the employee submits the certification.

Employee Benefits While on FMLA:

During periods of FMLA, the City will continue to provide health insurance benefits at the employee rate. If premiums are current, the employer will maintain health insurance benefits during periods of unpaid leave without interruption. Any payment for premiums or other payroll deductible insurance policies must be paid by the employee or the benefits may not be continued and may be terminated. The employer is obligated to reinstate benefits upon an employee's return to work.

The employer has the right to recover from the employee all health insurance premiums paid during the unpaid leave period if the employee fails to return to work after leave. Employees who fail to return to work because they are unable to perform the functions of their job because of their own serious health condition or because of the continued necessity of caring for a seriously ill family member may be exempt from this recapture provision at the employer's discretion.

FMLA Leave under this policy does not constitute a qualifying event that entitles an employee to Consolidated Omnibus Budget Reconstruction Act (COBRA) benefit; however, the qualifying event triggering COBRA may occur when it becomes clearly known an employee will not be returning to work. At that point, the employee ceases to be entitled to leave under this policy and may be offered COBRA.

Workers Compensation while on FMLA:

Workers' compensation injury/illness meets the criteria for a serious health condition; therefore, the workers' compensation absence and the FMLA leave entitlement will run concurrently.

TENNESSEE MATERNITY LEAVE ACT

Maternity/paternity leave is granted to employees for a maximum of sixteen (16) weeks, with the first twelve (12) weeks of leave falling under the Family Medical Leave Act (FMLA), **a federal leave provision** and the remaining four (4) weeks as maternity/paternity leave, a **state provision**. Eligible employees must be employed full time for at least twelve (12) months (and 1250 hours) to receive maternity/paternity leave.

The employee must provide at least four to six (4-6) weeks advanced notice of his/her anticipated date of departure, except in those cases where medical emergency prevents this notice. The employee should state the length of his/her requested leave and detail the intention to return to fulltime employment after the leave.

Employees may be required to use accrued leave (annual, PTO, comp) during maternity/paternity leave. Accrued leave and maternity/paternity leave are used at the same time - employees do not take accrued leave first and then take maternity/paternity leave.

The purpose of this leave is to provide time off for pregnancy, childbirth, nursing, and/or bonding with the infant. If the City finds the employee pursued other employment opportunities or worked part-time or full-time for another employer during the period of maternity/paternity leave, then the City does not have to reinstate the employee at the end of the leave period.

These four (4) months includes the 12 weeks allowable under FMLA.

Leave Provision	Maximum Time Allowed
FMLA	12 Weeks
Tennessee Maternity Act	4 Weeks
TOTAL	16 Weeks
These are different laws. FMLA is a federal law, and Tennessee Maternity Act is a state law.	

WORKPLACE VIOLENCE AND HARASSMENT

It is the policy of the City of Dayton to promote a productive, safe and healthy work environment for all employees, customers, vendors, contractors and members of the general public and to provide for the efficient and effective operation of the local government's activities. The City of Dayton will not tolerate verbal or physical conduct by an employee which harasses, disrupts, or interferes with another's work performance or which creates an intimidating, offensive or hostile environment.

1. No employee or non-employee shall be allowed to harass any other employee or non-employee by exhibiting behavior including, but not limited to, the following:
 - a. Verbal Harassment - Verbal threats toward persons or property; the use of vulgar or profane language directed towards others; disparaging or derogatory comments or slur; offensive flirtations or propositions; verbal intimidation; exaggerated criticism or name-calling; spreading untrue or malicious gossip about others.
 - b. Physical Harassment - Any physical assault, such as hitting, pushing, kicking, holding, impeding or blocking the movement of another person.
 - c. Visual Harassment - Displaying derogatory or offensive posters, cartoons, publications or drawings.

2. Under no circumstances are the following items permitted on the City of Dayton property, including local government-owned parking areas, except when issued or sanctioned by the local government for the use in the performance of the employee's job:
 - a. all types of firearms, switchblade knives, and knives with a blade longer than four inches;
 - b. dangerous chemicals;
 - c. explosives or blasting caps;

- d. chains; or
 - e. other objects carried for the purposes of injury or intimidation.
3. Charges of violence and harassment may be reported to any supervisory employee of the City of Dayton, including the Human Resource Administrator, City Manager and Mayor. The Human Resource Administrator is charged with investigating all cases of workplace violence and harassment. Depending on the severity of the charges or whether a crime is committed, the City Manager may request the Police Chief provide assistance to the Human Resource Administrator or assume responsibility for the investigation. All employees are required to assist in the course of the investigation by providing testimony, statements, and evidence, as required. Failure to cooperate may result in disciplinary action.
4. Copies of the investigative report with recommendations for appropriate action will be turned over to the City Manager as appropriate for further action. Disciplinary action may be taken against any employee who commits acts of workplace violence and harassment.

A. Sexual Harassment

Purpose

The City of Dayton may be held liable for the actions of all employees with regard to sexual harassment and will not tolerate sexual harassment of its employees. The City of Dayton will take immediate, positive steps to stop such harassment when it occurs. The City of Dayton is responsible for acts of sexual harassment in the workplace when the City of Dayton (or its agents or supervisory employees) knows or should have known of the conduct, unless it can be shown the City of Dayton took immediate and appropriate corrective action. The City of Dayton may also be responsible for the acts of non-employees, with respect to sexual harassment of employees in the workplace, where the City of Dayton (or its agents or

supervisory employees) knows or should have known of the conduct and failed to take immediate and appropriate corrective action.

This policy applies to all officers and employees of the City of Dayton including, but not limited to the following: full and part-time employees, elected officials, seasonal and temporary employees, employees covered or exempt from the personnel rules or regulations of the City of Dayton, and employees working under contract for the City of Dayton. The following rules shall be strictly enforced.

Definitions

The following actions constitutes an unlawful employment practice and are absolutely prohibited by the City of Dayton when they affect employment decisions, create a hostile job environment, cause distractions, or unreasonably interfere with work performance. They are:

1. Sexual harassment or unwelcome sexual advances;
2. Requests for sexual favors;
3. Verbal or physical conduct of a sexual nature in the form of pinching, grabbing, patting, or propositioning;
4. Explicit or implied job threats or promises in return for submission to sexual favors;
5. Sex-oriented comments on appearance;
6. Sex-oriented stories;
7. Displaying sexually explicit or pornographic material, no matter how the material is displayed; and/or
8. Sexual assault on the job by supervisors, fellow employees, or, on occasion, non-employees.

Sexual harassment includes conduct directed by men toward women, conduct directed by men toward men, conduct directed by women toward men, and conduct directed by women toward women.

1. MAKING SEXUAL HARASSMENT COMPLAINTS

An employee who feels he/she is subjected to sexual harassment should immediately contact a person (listed below) with whom the employee feels the most comfortable. Complaints may be made orally or in writing to:

1. The employee's immediate supervisor;
2. The employee's department head;
3. The Human Resource Administrator,
4. The City Recorder,
5. The City Manager,
6. The City Attorney (only in cases involving the City Manager);
7. The Mayor, and/or
8. The City council.

Employees have the right to circumvent the employee chain-of-command when selecting the person to complain to about sexual harassment. The employee should be prepared to provide the following information:

1. His/her name, department, and position/title;
2. The name of the person or people committing the sexual harassment, including their title(s), if known;
3. The specific nature of the sexual harassment, how long it has gone on, any employment action (demotion, failure to

promote, dismissal, refusal to hire, transfer, etc...) taken against the employee as a result of the harassment, or any other threats made against the employee as a result of the harassment;

4. Witnesses to the harassment; and
5. Whether the employee has previously reported the harassment and, if so, when and to whom.

2. REPORTING AND INVESTIGATING SEXUAL HARASSMENT COMPLAINTS

The City Manager is the person the City of Dayton designates as the investigator of sexual harassment complaints against employees. The City Manager may delegate the investigation to another city employee, at his/her discretion, which may include the city attorney. In the event the sexual harassment complaint is against the City Manager, the investigator shall be the city attorney.

When an allegation of sexual harassment is made by any employee, the person to whom the complaint is made shall:

1. Immediately prepare a report of the complaint according to the preceding section and submit it to the City Manager (or in the event the complaint is against the City Manager, to the city attorney);
2. Make and keep a written record of the investigation at the time the verbal interview is in progress, including notes on:
 - a. Verbal responses made to the investigator by the person complaining of sexual harassment;
 - b. Witnesses interviewed during the investigation;
 - c. The person against whom the complaint of sexual harassment was made; and

- d. Any other person contacted by the investigator in connection with the investigation.
3. Within twenty (20) working days of receiving the complaint, the City Manager prepares and presents the findings to the Mayor in a report, which will include:
 - a. The written statement of the person complaining of sexual harassment;
 - b. The written statements of witnesses;
 - c. The written statement of the person against whom the complaint of sexual harassment was made; and
 - d. All the investigator's notes connected to the investigation.

3. ACTION ON COMPLAINTS OF SEXUAL HARASSMENT

Upon receiving an investigation report of a sexual harassment complaint, the City Manager shall immediately review the report. If the City Manager determines the report is not complete in some respect, he/she may question the person complaining of sexual harassment, the person against whom the complaint has been made, witnesses to the conduct in question, or any other person who may have knowledge about the harassment.

Based upon the report and his/her own investigation (where a separate investigation is made), the City Manager shall within a reasonable time, determine whether the conduct in question constitutes sexual harassment. In making that determination, the City Manager shall look at the record as a whole and at the totality of circumstances, including the nature of the conduct, the context in which the alleged actions occurred, and the behavior of the person complaining. The decision of whether sexual harassment actually took place will be determined on a case-by-case basis.

If the City Manager determines the harassment complaint is founded, he/she shall take immediate and appropriate disciplinary

action against the guilty employee, consistent with his/her authority under the City of Dayton Charter, ordinances, resolutions, or rules governing his/her authority to discipline employees. If the City Manager feels the harassment warrants disciplinary action stronger than he/she is authorized to impose by the Charter, ordinances, resolutions, or rules governing employee discipline, he/she shall make that determination known, along with the report of the investigator, to the governing body of the City of Dayton. If the governing body determines the sexual harassment complaint is founded, it may discipline the employee consistent with its authority under the City of Dayton Charter, ordinances, resolutions, or rules governing employee discipline.

The disciplinary action shall be consistent with the nature and severity of the offense, the employee's rank, and any other factors the governing body believes relate to fair and efficient administration of the local government. This includes, but is not limited to, the effect of the offense on employee morale, public perception of the offense, and the light in which it casts the City of Dayton. The disciplinary action may include demotion, suspension, dismissal, warning, or reprimand. Determining the level of disciplinary action shall also be made on a case-by-case basis. A written record shall be kept of imposed disciplinary actions, including verbal reprimands.

In all events, an employee found guilty of sexual harassment shall be warned not to retaliate in any way against the person making the complaint, witnesses, or any other person connected with the investigation.

In cases where sexual harassment is committed by a non-employee against a City of Dayton employee in the workplace, the City Manager shall take whatever lawful action is necessary against the non-employee to bring the sexual harassment to an immediate end.

4. OBLIGATION OF EMPLOYEES

Employees are not only encouraged to report instances of sexual harassment; they are **obligated** to report them. Employees are also obligated to cooperate in every harassment investigation. The obligation includes, but is not necessarily limited to, coming forward with the evidence (both favorable and unfavorable) about a

person accused of such conduct, fully and truthfully making written reports, or verbally answering questions when required to do so by an investigator. Employees are also obligated to refrain from making bad faith accusations of sexual harassment.

Disciplinary action may be taken against employees who fail to report instances of sexual harassment fail or refuse to cooperate in the sexual harassment investigation, or file a complaint of sexual harassment in bad faith.

This chapter is copied verbatim from the City of Dayton Municipal Code,
Title 1, Chapter 2

CODE OF ETHICS

SECTION

- 1-201. Applicability.
- 1-202. Definition of “personal interest”.
- 1-203. Disclosure of personal interest by official with vote.
- 1-204. Disclosure of personal interest in nonvoting matters.
- 1-205. Acceptance of gratuities, etc.
- 1-206. Use of information.
- 1-207. Use of municipal time, facilities, etc.
- 1-208. Use of position or authority.
- 1-209. Outside employment.
- 1-210. Ethics complaints.
- 1-211. Violations.

1-201. Applicability. This chapter is the code of ethics for personnel of the municipality. It applies to all full-time and part-time elected or appointed officials and employees, whether compensated or not, including those of any separate board, commission, committee, authority, corporation, or other instrumentally appointed or created by the municipality. The words “municipal” and “municipality” include these separate entities. (as added by Ord. #475, Oct. 2006)

1-202. Definition of “personal interest.”

(1) For purposes of §§ 1-203 and 1-204, “personal interest” means:

- (a) Any financial, ownership, or employment interest in the subject of a vote by a municipal board not otherwise regulated by state statutes on conflicts of interests; or
- (b) Any financial, ownership, or employment interest in a matter to be regulated or supervised; or
- (c) Any such financial, ownership, or employment interest of the official’s or employee’s spouse, parent(s),

stepparent(s), grandparent(s), sibling(s), child(ren), or stepchild(ren).

- (2) The words “employment interest” include a situation in which an official or employee or a designated family member is negotiating possible employment with a person or organization that is the subject of the vote or that is to be regulated or supervised.
- (3) In any situation in which a personal interest is also a conflict of interest under state law, the provisions of the state law take precedence over the provisions of this chapter. (as added by Ord. #475, Oct. 2006)

1-203. Disclosure of personal interest by official with vote.

An official with the responsibility to vote on a measure shall disclose during the meeting at which the vote takes place, before the vote and so it appears in the minutes, any personal interest that affects or that would lead a reasonable person to infer that it affects the official’s vote on the measure. In addition, the official may recuse himself from voting on the measure. (as added by Ord. #475, Oct. 2006)

1-204. Disclosure of personal interest in nonvoting matters.

An official or employee who must exercise discretion relative to any matter, other than casting a vote, and who has a personal interest in the matter that affects or that would lead a reasonable person to infer that it affects the exercise of the discretion shall disclose, before the exercise of the discretion when possible, the interest on a form provided by and filed with the recorder. In addition, the official or employee may, to the extent allowed by law, charter, ordinance, or policy, recuse himself from the exercise of discretion in the matter. (as added by Ord. #475, Oct. 2006)

1-205. Acceptance of gratuities, etc.

An official or employee may not accept, directly or indirectly, any money, gift, gratuity, or other consideration or favor of any kind from anyone other than the municipality:

- (1) For the performance of an act, or rehiring from performance of an act, that he would be expected to perform, or refrain from performing, in the regular course of his duties; or
- (2) That might reasonably be interpreted as an attempt to influence

his action, or reward him for past action, in executing municipal business. (as added by Ord. #475, Oct. 2006)

1-206. Use of information.

(1) An official or employee may not disclose any information obtained in the official capacity or position of employment that is made confidential under state or federal law except as authorized by law.

(2) An official or employee may not disclose any information obtained in his official capacity or position of employment with the intent to result in financial gain for himself or any other person or entity. (as added by Ord. #475, Oct. 2006)

1-207. Use of municipal time, facilities, etc.

(1) An official or employee may not use or authorize the use of municipal time, facilities, equipment, or supplies for private gain or advantage to himself.

(2) An official or employee may not use or authorize the use of municipal time, facilities, equipment or supplies for private gain or advantage to any private person or entity, except as authorized by legitimate contract or lease that is determined by the governing body to be in the best interests of the municipality. (as added by Ord. #475, Oct. 2006)

1-208. Use of position of authority.

(1) An official or employee may not make or attempt to make private purchases, for cash or otherwise, in the name of the municipality.

(2) An official or employee may not use or attempt to use his position to secure any privilege or exemption for himself or others that is not authorized by the charter, general law, or ordinance or policy of the municipality. (as added by Ord. #475, Oct. 2006)

1-209. Outside employment. An official or employee may

not accept or continue any outside employment if the work unreasonably inhibits the performance of any affirmative duty of the municipal position or conflicts with any provision of the municipality's charter or any ordinance or policy. (as added by Ord. #475, Oct. 2006)

1-210. Ethics complaints.

- (1) An ethics committee is hereby created pursuant to the requirements set forth herein. Each committee member shall be at least twenty-one (21) years of age, a resident and citizen of the City of Dayton for a period of at least six (6) months preceding the appointment, and of good moral character. Said ethics committee members shall serve a one (1) year term, with the first term to begin on March 15, 2007. The ethics committee members may serve up to two successive terms before being replaced and, after the expiration of one year without serving, may be appointed to the ethics committee. The ethics committee shall be appointed by the Mayor for the City of Dayton, Tennessee.

Upon the written request of an official or employee potentially affected by a provision of this chapter, the ethics committee may render an oral or written advisory ethics based upon this chapter and other applicable law.

- (2)(a) Except as otherwise provided in this subsection, the ethics committee shall investigate any credible complaint against an appointed official or employee charging any violation of this chapter, or may undertake an investigation on its own initiative when it acquires information indicating a possible violation and make recommendations for action to end or seek retribution for any activity that, in ethics committee's judgment, constitutes a violation of this code of ethics. All decisions made by the ethics committee herein shall be voted on by all three (3) members (full committee) and shall be passed by at least two affirmative votes of the three (3) members.

- (b) The ethics committee may request that the governing body appoint the city attorney or hire another attorney, individual, or entity to act in place of an ethics committee member or the ethics committee

when the ethics committee or one of its members has or will have a conflict of interest in a particular matter.

(c) When a complaint of a violation of any provision of this chapter is lodged against a member of the municipality's governing body the governing body shall either determine that the complaint has merit, determine that the complaint does not have merit, or determine that the complaint has merit to warrant further investigation. If the governing body determines that a complaint warrants further investigation, it shall authorize an investigation by the ethics committee or another individual or entity chosen by the governing body.

(3) The interpretation that a reasonable person in the circumstances would apply shall be used in interpreting and enforcing this code of ethics.

(4) When a violation of this code of ethics also constitutes a violation of a personnel policy, rule, or regulation or a civil service policy, rule, or regulation shall be dealt with as a violation of the personnel or civil service provisions rather than as a violation of this code of ethics. (as added by Ord. #475, Oct. 2006, and replaced by Ord. #478, Jan. 2007)

1-211. Violations. An elected official or appointed member of a separate municipal board, commission, committee, authority, corporation, or other instrumentality who violates any provision of this chapter is subject to punishment as provided by the municipality's charter or other applicable law and in addition is subject to censure by the governing body. An appointed official or an employee who violates any provision of this chapter is subject to disciplinary action. (as added by Ord. #475, Oct. 2006)