

ORDINANCE NO. 2795

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE CITY OF MESQUITE GENERAL GOVERNMENT CIVIL SERVICE RULES AND REGULATIONS BY DELETING THE PRESENT SECTION 16.3 AND ADOPTING NEW SECTIONS 13, 16, 17 AND 18 THEREBY DEFINING WORKERS' COMPENSATION AND SAFETY/RISK MANAGEMENT, SUBSTANCE ABUSE, PERFORMANCE APPRAISAL AND SEXUAL HARASSMENT; PROVIDING A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. That the present Section 16.3 of the City of Mesquite General Government Civil Service Rules and Regulations is deleted and new Sections 13, 16, 17 and 18 are hereby adopted to read as follows, said Rules and Regulations in all other respects to remain in full force and effect.

SECTION 13. WORKERS' COMPENSATION AND SAFETY/RISK MANAGEMENT

13.1 Program Management

The Personnel Department is responsible for the management and administration of the City's workers' compensation and employee safety/risk management program. The safety program includes but is not limited to the following areas: accident and injury investigation; safety training; general liability assessment; facility inspection; evaluation of hazardous work activities or environment; preventability determination; return to work releases.

13.2 Workers' Compensation

An employee injured on the job and in the line of duty will be eligible for workers' compensation according to established State law.

13.3 Failure to Report Injury

Failure to report an on the job injury by an employee or supervisor, however minor, to the designated departmental representative or Personnel Director shall be considered a violation of the City's workers' compensation policy. Violation of this policy will result in loss of employee's salary continuation and/or disciplinary action for the parties involved.

13.4 Medical Examinations**1. Injury**

Employees sustaining an on the job injury shall be examined and receive emergency treatment, if necessary, by the City Physician. This provision shall not apply when, in the judgement of the emergency response personnel, a life threatening situation exists.

2. Return to Work Release

Employees released to return to work from an on the job injury shall be examined by the City Physician.

3. Fitness Determination

- a. Employees returning to work from an absence resulting from a non-workers' compensation illness or injury may be required to be examined by the City Physician to determine his or her fitness to perform the essential functions of their position.
- b. Employees, whose performance or behavior indicates they may be medically unable to perform the essential functions of their position, may be required to undergo a fitness determination by the City Physician.

4. Failure to Comply

An employee's failure to comply, unless authorized to do so in writing by the Personnel Director [Items 13.4 (1)(3)] shall be considered a violation of the City's workers' compensation policy. Violation of this policy will result in disciplinary action.

13.5 Injury Leave Under Seven Days

Employees absent on injury leave for under seven (7) days will receive full salary during said absence unless found to have violated the provisions of the City's workers' compensation policy or been found to have committed a preventable act.

13.6 Injury Leave Over Seven Days

Employees absent on injury leave over seven (7) days will receive compensation in accordance with the Texas Workers' Compensation Act and the City's Salary Continuation Policy (Reference Section 13.9).

13.7 Accrual of Benefits

Employees shall continue to accrue vacation and sick leave at their regular rate while on injury or extended injury leave.

13.8 Injury Leave

Injury leave is any combination of payroll time allowed an injured employee to recover from a work related injury. The payroll time may be charged and accumulated as injury leave with pay, injury leave without pay, and/or when working in an approved light duty status for partial or full day periods of time.

a. **Maximum Time Limit**

Injury leave is subject to a maximum time limit not to exceed three (3) months of equivalent work hours per injury occurrence within a consecutive twelve (12) month period.

b. **Hardship Determination**

Prior to exhaustion of injury leave the Personnel Director will determine when the employee will return to work since a hardship may exist on the City in continuing not to provide the injured employee's job position services to the citizens of Mesquite.

c. **Extended Injury Leave**

An employee may be granted extended injury leave, not to exceed an additional three (3) months of equivalent work hours per injury occurrence within a consecutive twelve (12) month period, upon written approval of the City Manager. Consideration of a request by the City Manager is subject to the following conditions:

1. Coordinated through the Personnel Director.
2. Supported by sound medical grounds.
3. A medical examination by the City Physician, when deemed necessary by the Personnel Director.
4. Requested, in writing, by the Department Head after finding that the employee's job performance is considered exemplary.

d. **Hardship Separation**

Upon exhaustion of injury leave or extended injury leave determination that a hardship to the City continues to exist, an employee will be granted a nondisciplinary separation if he or she is still unable to return to work.

13.9 Salary Continuation Payments

Salary continuation payments are voluntary payments made by the City to make up the difference between workers' compensation payments and general government employees' base rate of pay. Only workers who have sustained non-preventable work related injuries and are in compliance with the City's policies are eligible for salary continuation payments. Under no circumstances shall the sum of the employee's workers' compensation payments and the salary continuation payments exceed the employee's normal rate of pay.

1. **Suspension of Salary Continuation Payments**

Salary continuation payments may be suspended at any time due to an employee's failure to comply with city policies, procedures or directions.

2. **Grounds for Suspension of Injury Leave**

The following are grounds for denial or suspension of injury leave including salary continuation payments:

- a. If employee is awaiting a final injury prevention determination.
- b. If employee engages in work, whether part-time for pay or as a volunteer, while off work receiving or requesting salary continuation.
- c. If employee is terminated for any reason.
- d. If employee fails or refuses to comply with instructions or medical advice of a treating physician to improve the injured's condition.
- e. If employee fails to act in a manner consistent with the City's policies for work convallescening.
- f. If a Compromise Settlement Agreement or an agreed judgment is executed, Workers' Compensation indemnity payments will be stopped.

- g. If Workers' Compensation indemnity payments are stopped.
- h. If employee refuses to accept or perform a different or light duty job with the City that, in the opinion of a treating physician, is within the employee's physical capacity and for which the employee is able, qualified, and/or will be trained.
- i. If employee refuses to submit to any independent medical examination or treatment in accordance with the Texas Workers' Compensation Statute.
- j. If employee refuses to return to regular duty after being released by a treating physician.
- k. If employee is injured as a result of:
 - (1) breaking safety rules, regulations or laws; and
 - (2) negligence of the employee.
- l. If employee failed to use required safety equipment or follow safety procedures which would have, in all likelihood, prevented the injury from occurring.
- m. If employee reports an injury requiring submission of an "alleged" report by the Personnel Director.
- n. If employee fails to report an injury within twenty four (24) hours without good cause for the delay as determined by the Personnel Director.
- o. If employee fails to keep the immediate supervisor informed on a weekly basis as to the status of the injury when off work receiving injury leave with pay.
- p. If employee submits a claim which is controverted by the City's Workers' Compensation administrator.
- q. If employee refuses to cooperate with City administration in ascertaining facts, information, and requests concerning the status of the injured employee.
- r. If employee has injury ruled preventable by the Personnel Director.

3. Appeal of Injury Leave

Denial of injury leave or salary continuation in compliance with these policies is not appealable to the Trial Board or subject to the complaint process. An injured employee may not use the appeal or complaint process to restore past, present, and/or future denied salary continuation payments.

13.10 Light Duty Work Release

Light duty work releases shall be permitted, whenever possible, to injured employees, and coordinated through the Personnel Director, but shall only be approved when the following conditions are met:

- a. The injured's supervisor discusses each definitive light duty release and typical duties of each proposed light duty assignment with the Personnel Director.
- b. A treating physician's light duty release is "definitively outlined," i.e., the physician outlines the injured worker's limitations for lifting, stooping, bending, carrying, and driving, and/or any other specific limitations of the injured worker.
- c. The proposed light duty assignment includes duties that are meaningful in that the light duty assignment benefits the City of Mesquite and provides needed services to the citizens of Mesquite.
- d. The City Physician, after examining the injured employee and evaluating the light duty restrictions with the proposed light duty assignment, shall approve or disapprove the light duty release. The City Physician's decision regarding physical capabilities shall be final.

13.11 Personnel Director Incident Preventability Decision

Upon receipt of the incident report form the Department Head, the Personnel Director shall review and render a ruling of preventable or non-preventable and, if applicable, identify additional individuals' causal to the incident.

13.12 Employee Appeal to Department Head

Employees receiving a formal notice of a preventable decision by the Personnel Director may request a Department Incident Review Conference with the Department Head and the Personnel Director. The appeal must be in writing and made within five (5) days of receipt of the formal notice. If, after review, the Department Head believes the incident should be ruled non-

preventable, a written request to convene the Incident Review Appeal Board may be filed with the Personnel Director.

13.13 Incident Review Appeal Board

The City's Incident Review Board is established to determine the causes and assess the responsibility of injury and vehicle accidents. Furthermore, the Board will seek to identify why the unsafe acts or conditions are occurring and determine whether known prevention controls are being utilized.

1. Board Membership

The Board shall consist of an Assistant City Manager, two (2) supervisors not in the appealing Director's department, one (1) supervisor in the appealing Director's department, and each shall be a voting member. The Assistant City Manager shall also function as Board Chair and the Personnel Director as Secretary.

2. Review of Factual Evidence

The Board will review the facts of the case as previously developed without the presentation of new evidence.

3. Board Decisions

All decisions of the Board shall be by majority vote. In the event of a tie, the recommendation of the Personnel Director shall prevail.

4. Preventable Incidents

Employees shall be subject to progressive discipline based on the total number of incidents determined preventable within a thirty six (36) month period.

- 1st Written Reprimand
- 2nd Minor Suspension
- 3rd Major Suspension
- 4th Demotion or Termination

The total number of preventable incidents used to determine the level of disciplinary actions will be considered separately, i.e., Personal Injury vs. Collision or Vehicle Accident Reports.

5. Acceleration of Progressive Discipline

The Department Director may accelerate discipline, if:

- a. Any employee's behavior, action, inaction, failure to warn, error in judgement, carelessness, and/or negligence which could have predictably resulted in or did in fact cause the death, loss of limb, physical impairment, catastrophic property damage, or like harm to employee or others.
- b. Any employee breaks safety rules conscious of the fact that what employee was doing constituted a violation of safety.
- c. Any employee, though not consciously violating a rule, policy, regulation, etc. was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.
- d. Any employee refuses to comply with any requirement as defined herein or fails to cooperate fully during the investigation of an incident.

6. Supervisory Discipline

Any supervisor who fails to comply with the provisions or intent of this policy shall be subject to disciplinary action up to and including termination.

13.14 Driver Selection Standards

The following driver selection standards are deemed to be minimum qualifications which apply to initial applicants and current employees being considered for promotion. Driver standards apply to all positions classified as "primary drivers" or where duties of the position necessitate the operation of a motor vehicle on City business as determined by the job description.

1. Required Verification

No employment or promotion action shall be final until appropriate driving history verification and evaluation by the Personnel Department has been completed.

2. Evaluation Period

The evaluation period shall be for the thirty six (36) month period immediately preceding consideration for appointment or promotion. Applicants failing to meet selection standards will not be further

considered until their record for the prior thirty six (36) months meets the minimum qualifications.

3. Evaluation Standards

Grounds for disqualification include but are not specifically limited to the type offenses issued herein. Offenses not noted will be evaluated on an individual basis by the Personnel Director.

- a. Operating a motor vehicle under the influence of alcohol or drugs.
- b. Loss of driving privileges by reason of revocation, suspension, withdrawal, or denial of license to drive.
- c. Two (2) traffic accidents determined to involve contributory negligence. The applicant is responsible for furnishing documentation necessary to resolve questions concerning assignment of negligence.
- d. Involuntary manslaughter or criminally negligent homicide.
- e. Operating a motor vehicle with license suspended or revoked.
- f. Conviction of three (3) violations, of the type listed below within the thirty six (36) month evaluation period, or more than one (1) violation of the type listed below within the twelve (12) months immediately preceding consideration for employment or promotion:
 1. operating a motor vehicle in violation of driver's license restriction;
 2. disregarding traffic control signals and devices;
 3. following too closely;
 4. failing to signal intentions, improper turn, lane change;
 5. exceeding speed limit;
 6. illegal operation of motor vehicle without State required auto insurance.
- g. Any incident or combination of convictions, driving violations, or action, which in the judgment of the Personnel Director

indicates a disregard for citizen or employee safety and the safe operation of a motor vehicle or equipment.

SECTION 16. SUBSTANCE ABUSE

16.1 Drug-Free Work Place

The City of Mesquite is committed to providing a drug-free working environment for its employees as described in Ordinance No. 2652, 2681 and subsequent amendments.

16.2 Program Management

The Personnel Director shall be responsible for the management and administration of the City's Substance Abuse Program.

16.3 Scope

The City's drug testing program covers:

1. All applicants for initial appointment; and
2. All other employees.

16.4 Testing

The City's drug testing program provides for testing under the following conditions:

1. Pre-employment
2. Post Accident
3. Random
4. Reasonable cause
5. Post Rehabilitation Monitoring

16.5 Education

The Personnel Department will make available training and information to heighten awareness program for all employees and supervisors. All supervisors shall annually complete not less than one (1) hour classroom instruction on substance abuse.

16.6 Test Results Disclosure

All drug test results will be maintained in a confidential file in the Personnel Department. Willful disclosure of test results by an informed individual to anyone outside of the "need to know" shall be subject to disciplinary action up to and including termination.

16.7 Rehabilitation

Whenever possible, consistent with the needs of the City, the option of employee rehabilitation will be considered.

16.8 Medical Review Officer

All drug testing will be conducted under the direction and/or supervision of the City Physician.

SECTION 17. PERFORMANCE APPRAISAL**17.1 Purpose**

The purpose of evaluating an employee's performance is to identify whether the employee is meeting supervisory expectations and to provide a time for structured feedback to the employee. Performance appraisal is a continuous communication process between the employee and supervisor. Formal periods involving written appraisal forms allow the employee and supervisor to fully review all aspects of the employee's performance and establish expectations for future review periods.

17.2 Evaluation Forms and Procedures

The Personnel Director shall be responsible for development of forms and procedures and the administration of the City's performance appraisal program.

17.3 Rating Frequency**1. Probationary Period**

The following outlines the routine frequency of occurrence for performing appraisals. Nothing in this section shall prohibit the City from taking disciplinary action, including termination, against an unsatisfactorily performing employee at any time while in probationary status.

a. **Mid Probationary Evaluation**

Probationary employees shall be evaluated at approximately three (3) calendar months of performance. The intent of the mid probationary evaluation is to furnish the probationary employee at least one formal assessment of performance prior to the final evaluation which normally occurs immediately prior to completion of the six (6) calendar months of performance.

b. **Prior to Completion**

Probationary employees shall be evaluated at approximately five and one half (5 1/2) months. The results of this evaluation contribute to the department's decision to retain or release the probationary employee.

c. **Promotional Probation**

Promotional probationary employees will be evaluated as set forth in 17.3 (1) (a) and (b).

17.4 Annual Performance Appraisals

All regular classified employees shall have their performance appraised not less than annually by their immediate supervisor prior to completion of their anniversary date.

a. **Submission of Appraisal Form**

Supervisors shall submit an appraisal form to the Personnel Department prior to completion of employee's anniversary date. This review is required even if the employee is not eligible for a salary (merit) increase.

b. **Merit Increases**

All merit increases require that a completed performance appraisal form be submitted to the Personnel Department prior to the effective date of the increase. Merit increases received without the required performance appraisal form will not be processed. Only employees whose overall evaluation is rated "Meets Standards" or above are eligible to receive a merit increase. Annual merit increases are based on employees performance for the previous twelve (12) month period.

17.5 Evaluation Forms

Upon request, departments will furnish employees a copy of their performance appraisal form.

17.6 Evaluation Training

The Personnel Department is responsible for ensuring that supervisors performing evaluations receive instruction in the proper evaluation, completion and processing of performance appraisals.

17.7 Appeal of Performance Evaluation

Employees who believe that their evaluation is not representative of their performance may discuss their concerns with the supervisor conducting their evaluation. If a satisfactory resolution is not reached through the department's normal supervisory chain of command, the employee may appeal the evaluation to the Departmental Director or organizational equivalent. The decision of the Departmental Director shall be final. In cases where the Departmental Director is the evaluator, the appeal would be heard by the appropriate Assistant City Manager.

SECTION 18. SEXUAL HARASSMENT**18.1 Policy**

It is the policy of the City of Mesquite that all employees are entitled to a work environment that is free from sexual intimidation and any unwelcome sexual advances. The City of Mesquite strictly prohibits any conduct which constitutes sexual harassment. Any employee who engages in any conduct or actions which constitutes sexual harassment is subject to discipline up to and including termination.

18.2 Definition and Examples**1. Definition**

For purposes of this policy, sexual harassment is defined as unwelcome sexual advances, requests for sexual favors and other verbal, nonverbal, or physical conduct of a sexual nature when:

- a. submission to such conduct is made a term or condition of employment;

- b. submission to or rejection of such conduct is used as a basis for employment decisions;
- c. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

2. Examples

Examples of verbal, nonverbal, or physical harassment may include, but shall not be limited to: subtle pressure to engage in sexual activity; patting, pinching, brushing against, embracing or touching another person's body; demanding sexual favors accompanied by implied or other threats concerning an individual's employment status; offensive gestures or motions; explicit comments; sexually oriented paraphernalia or publications; displaying drawings, pictures or photographs of a sexual nature; sexual remarks or jokes that are objectionable or discomforting to the recipient; or questions of a sexual nature about an employee's private life.

18.3 Management Responsibility

It is the responsibility of each supervisor and manager to create and maintain an atmosphere free of sexual harassment by example and ensuring awareness of the City's position on this matter. Any supervisor or manager who is aware of or suspects the existence of any form of sexual harassment occurring within the work place shall take appropriate action as specified in this section.

18.4 Reporting Sexual Harassment

1. Offending Individual

Employees who are subject to actions covered under this section may confront the individual(s) involved making them aware of employees' feelings about the activity or incident and asking that the activity cease immediately and not be repeated. However, confrontation is not a prerequisite to reporting instances of sexual harassment.

2. Notify Supervisor

Employees who feel they have been the victims of sexual harassment shall notify their supervisor immediately. If the supervisor is the source of the sexual harassment, the employee shall notify the next higher level of supervision not a party to the activity or incident.

3. **Notify Personnel**

Departmental Directors or their organizational equivalent immediately notify the Personnel Director that an allegation of harassment has been made. The Personnel Department is responsible for conducting all investigations where sexual harassment has been alleged.

18.5 Confidentiality

All allegations of sexual harassment shall be treated with strict confidentiality to all parties involved. Failure to comply with the confidentiality requirement will subject the violator to disciplinary action.

18.6 Administrative Inquiry

The Personnel Director shall conduct an administrative inquiry concerning allegations of sexual harassment. The Personnel Director will interview the alleged offender and all alleged witnesses, while at the same time maintain as much confidentiality as possible. Upon completion of the investigation, a report of findings and recommended corrective action will be presented to the City Manager. The Personnel Director shall require the complainant to furnish a written statement which shall include as much detail as possible concerning the incident, the name of the alleged offender, type of harassment, date and place of harassment, names of any witnesses to the harassment, and any other information relevant to the complaint.

18.7 Disciplinary Action

1. **Severity of Discipline**

The severity of discipline will be determined in accordance with Section 8 and on a case-by-case basis taking into consideration the nature of the offense, the context in which it occurred, and the record of the employee committing the offense.

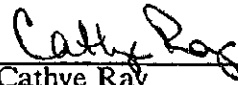
2. **Final Decision**

Upon completion of the administrative investigation, the City Manager will take appropriate action, said action being final and not subject to appeal by either party.

SECTION 2. That should any word, sentence, clause, paragraph, or portion of this ordinance be held to be invalid or unconstitutional, the remaining provisions of this ordinance shall remain in full force and effect.

SECTION 3. The fact that the present ordinances of the City of Mesquite do not provide adequate policies concerning workers' compensation and safety risk management, substance abuse, performance appraisal and sexual harassment, creates an urgency and an emergency for the preservation of the public health, safety, and welfare and requires that this ordinance shall take effect immediately from and after its passage and publication of said ordinance, as the law in such cases provides.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 2nd day of March, 1992.

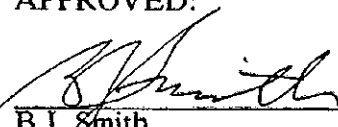


Cathye Ray
Mayor

ATTEST:



Lynn Prugel
City Secretary

APPROVED:


B.J. Smith
City Attorney