

ORDINANCE NO. 3011

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING THE CITY OF MESQUITE GENERAL GOVERNMENT CIVIL SERVICE RULES AND REGULATIONS BY DELETING SECTIONS 8.2A(3), 15.11), 15.14 AND 19.1 AND ADOPTING NEW SECTIONS 4.5(17), 4.15, 8.2A(3), 15.14, AND 19.1; THEREBY PROVIDING TECHNICAL CORRECTIONS DUE TO RECENT CHANGES IN FEDERAL LEGISLATION AND REVISIONS TO THE CITY'S CATASTROPHIC LEAVE POLICY; 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 City of Mesquite General Government Civil Service Rules and Regulations are hereby amended by deleting Sections 8.2A(3), 15.11, 15.14 and 19.1 and adopting new Sections 4.5(17), 4.15, 8.2A(3), 15.14 and 19.1 to read as follows, said Rules and Regulations in all other respects to remain in full force and effect.

CHAPTER 4. EMPLOYMENT POLICIES

5. Rejection or Discontinuance of Processing (Chapter 4.5)

(Amend Section 4.5 by adding a new paragraph (17) to read as follows:)

17. **Public Safety:** Due to the high level of public trust, the high expectations of the public, the need for continued public confidence in the City's public safety agencies, and the heavy responsibility for the safety of lives and of property, grounds for rejection or discontinuance of processing of a public safety job applicant will be more comprehensive than those of other city personnel. Those additional grounds for rejection or discontinuance of a public safety applicant will include but not be limited to the following:

a. Prior illegal activity, whether detected or undetected, whether prosecuted or unprosecuted, whether convicted or unconvicted, whether completed, attempted, or a conspiracy, including but not limited to:

1. theft, fraud, or other misappropriation of property;
2. illegal use or possession of controlled substances;

3. sexual assault or misconduct;
 4. assaultive or other violent offenses, including family violence;
 5. bribery or other corrupt practice;
 6. perjury or other falsification;
 7. other illegal activity which might reasonably cause the public to lose confidence in the public safety agency or affect the credibility of a witness in a criminal case.
- b. Prior civil action, whether litigated or settled, or pending or anticipated civil action against the applicant for an intentional tort or an alleged intentional tort relating to duties as a law enforcement officer or security officer which could reasonably be expected to influence a jury in any future tort action for a similar duty-related incident.
- c. Prior public activities which would offend community standards, or cause the public to question the motives of a public safety agency or cause the public to lose confidence in a public safety agency, including but not limited to:
1. Exotic dancing, posing nude or semi-nude for publication or public display, or ownership, management or employment in a sexually-oriented business;
 2. Public espousal of membership in or philosophy of an organization that espouses racial, religious, or ethnic hatred.
 3. Public espousal of membership in or philosophy of an organization that espouses civil disobedience.

(Amend Section 4.15 by adding a new paragraph (15) to read as follows:)

15. Establishment of Best Qualified Applicants (Chapter 4.15)

Upon verification of minimum qualifications, the Human Resource department will determine the best qualified set of applicants for referral to the department. The determination of best qualified rests solely with the

Human Resource department and only those in the best qualified group shall be referred to the department for consideration.

CHAPTER 8. TERMINATION

Types of Disciplinary Action (Chapter 8.2[A])

(Amend Section 8.2A by deleting in its entirety and inserting a new paragraph (3) to read as follows:)

3. **Suspension Without Pay:** Suspension without pay is used when an employee's unsatisfactory job performance or conduct requires more severe disciplinary action than a written reprimand. A suspension may not exceed twenty working days for any single disciplinary incident. Employees on disciplinary suspension without pay may not use compensatory, vacation, or sick leave to recuperate the lost time.

CHAPTER 15. EMPLOYEE BENEFITS

(Amend Section 15.11 by deleting in its entirety and replacing with Chapter 19.

See Chapter 19.

(Amend Section 15.14 by deleting in its entirety and inserting a new paragraph (14) to read as follows:)

14. **Education Leave** (Chapter 15.14)

Department Heads may, subject to budgetary and staffing constraints, grant employees leave with pay and expenses to attend professional conferences, short schools, and other training activities which are considered to be in the best interest of the City. Educational leave without pay may be granted for a period not to exceed 12 months upon approval of the City Manager.

CHAPTER 19. GENERAL PROVISIONS

(Amend Chapter 19 by deleting in its entirety and inserting a new Chapter 19 to read as follows:)

1. **Family and Medical Leave** (Chapter 19.1)

A. Definitions:

1. **Eligible Employee:** An employee who has been employed with the City of Mesquite for at least 12 months. The employee must have worked at least 1,250 hours of service during the previous 12 month period.
2. **12 Month Period:** A rolling 12 month period measured backward from the date leave is taken and continuous with each additional day leave is taken.
3. **Hours of Service:** Hours of service will be determined by applying Section 7 of the Fair Labor Standards Act.
4. **Immediate Family Member:** An employee's spouse, son, daughter or parents.
5. **Son or Daughter:** A biological, adopted or foster child, stepchild, legal ward or a child of a person standing *in loco parentis*, who is (1) under 18 years of age, or (2) 18 years or older and incapable of self care because of a mental or physical disability.
6. **Parent:** A biological parent of an employee or an individual who *in loco parentis* to an employee when the employee was a son or daughter.
7. **Spouse:** A husband or wife as defined or recognized under state law for purposes of marriage, including common law marriage in states where it is recognized.
8. **Serious Health Condition:** An illness, injury, impairment or physical and medical condition requiring:
 - a. inpatient care in a hospital, hospice or residential medical care facility or
 - b. any period of incapacity requiring absence from work for more than three calendar days and that involves continuing treatment by a health care provider; or

- c. continuing treatment by a health care provider for a chronic or long-term health condition that is incurable or which, if left untreated, would likely result in a period of incapacity of more than three calendar days; or
 - d. prenatal care by a health care provider.
9. **Accrued Leave:** The balance of leave on the books at the time leave begins.
10. **Continuing Treatment:**
- a. two or more visits to a health care provider; or
 - b. two or more treatments by a health care practitioner on referral from, or under the direction of, a health care provider, or
 - c. a single visit to a health care provider that results in a regimen of continuing treatment; or
 - d. in the case of a serious, long-term or chronic condition or disability that cannot be cured, being under the continuing supervision of, but not necessarily being actively treated by, a health care provider.
11. **Health Care Provider:** A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which he or she practices. Anyone determined by the secretary of labor to be capable of providing health care services will also qualify as a health care provider. Included are: 1) podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by X-ray to exist) authorized to practice in the state; 2) nurse practitioners and midwives who are authorized to practice in the state; and 3) Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Mass.

12. **Certification:** An employee who requests leave because of a serious health condition or to care for a spouse, child or parent with a serious health condition, may be required to support the leave request with a certification issued by a health care provider.

B. Coverage and Eligibility

1. To be eligible for family/medical leave an employee must:
 - a. have worked for the City of Mesquite for at least 12 months; and
 - b. have worked at least 1,250 hours over the previous 12 month period.

C. Types of Leave

1. **Eligible Circumstances:** Eligible employees are entitled to 12 weeks of leave per year for:
 - a. birth of the employee's son or daughter and care of the infant;
 - b. placement of a son or daughter with the employee for adoption or foster care;
 - c. care of a spouse, son, daughter or parent of the employee if the spouse, son, daughter or parent has a serious health condition; or
 - d. employee's own serious health condition which makes the employee unable to perform the functions of his or her job.
2. **Birth, Adoption or Foster Care:** Leave for the birth, adoption or placement of a foster child must be taken within 12 months of the birth or placement.
3. **Spouses Both Employed by the City:** Spouses both employed by the City are jointly entitled to a combined total of 12 weeks of family leave for the birth or

placement of a child for adoption or foster care, and to care for a parent (but not a parent-in-law) who has a serious health condition.

4. **Paid and Unpaid Leave:** Employees will be required to use eligible paid or accrued leave including but not limited to workers' compensation, sick leave, vacation leave and compensatory time before paid leave will begin. The total of paid and unpaid leave may not exceed 12 weeks per 12 month period. Paid leave will be administered in the following manner:
 - a. **Paid leave for an employee's serious illness:** Accrued sick leave must be used first, vacation leave must be used after all accrued sick leave has been exhausted and any accrued compensatory time must then be exhausted. All leave taken under workers' compensation will be counted as family/medical leave and takes precedence over any accrued leave usage. Once all paid leave is exhausted, unpaid leave may be taken for a combined total of paid and unpaid leave of up to 12 weeks of absence in a 12 month period.
 - b. **Paid leave for serious illness of a spouse, son, daughter or parent:** Emergency leave must be used first, followed by accrued vacation leave and accrued compensatory time. Once all vacation and compensatory time is exhausted, unpaid leave may be taken for a combined total of paid and unpaid leave for up to 12 weeks of absence in a 12 month period.
5. **Intermittent or Reduced Leave:**
 - a. An employee may take leave intermittently (a few days or a few hours at a time) or on a reduced leave schedule to care for an eligible family member with a serious health condition or because of a serious health condition of the employee when medically necessary.

- b. The smallest increment of time an employee may request is one hour.
- c. An employee may take intermittent or reduced leave for birth, adoption or placement of a foster child only with the department's approval.
- d. Where intermittent or reduced leave must be provided, the employee may be required to temporarily transfer to an available alternative position which provides equivalent pay and benefits, if the alternative position better accommodates the intermittent or reduced work schedule.

D. Leave Requests

1. Supervisor Responsibility:

- a. Supervisors are required to refer all requests for leave which appear to conform to the guidelines for family/medical leave to the Human Resource department to determine eligibility for family/medical leave. Original requests for leave and requests for extension of leave should be received in the Human Resource department no later than 2 workdays following departmental notification of the request.
- b. All requests for unpaid leave must be referred to the Human Resource department.
- c. Departments are responsible for properly coding leave in the time reporting system as paid or unpaid family/medical leave.
- d. All medical information received by the department must be forwarded to the Human Resource department marked *Personal and Confidential* to be filed.
- e. Supervisors who do not comply with this policy will be subject to disciplinary action.

2. Employee Responsibility:

- a. Employees are required to give 30 days notice in the event of a foreseeable leave. A "Request for Family/Medical Leave" form must be completed by the employee and returned to the Human Resource department. In unexpected or unforeseen situations, an employee should provide as much notice as is practicable, usually verbal notice within one or two business days of when the need for leave becomes known, followed by a completed "Request for Family/Medical Leave" form.
- b. An employee who fails to give 30 days notice for a foreseeable leave, with no reasonable excuse for the delay, will be denied leave until 30 days after the employee provides notice.
- c. An employee must attempt to schedule treatment so that it will not unduly disrupt the employer's operation for leave which is needed for care of an immediate family member or the employee's own illness and is planned medical treatment.
- d. Employees on leave must report their current status (via telephone) to their department every week.

E. Certification of Medical Leave

1. Employees using family/medical leave are required to supply a completed "Physician or Practitioner Certification" form supporting the need for leave due to a serious health condition affecting the employee or an immediate family member. Leave or continuation of leave may be denied if certification is not received.
2. The City may require additional medical opinions at the City's expense.
3. The City may require periodic recertification of the employee's or family members serious health condition.

4. All medical information related to the employee's or family member's medical condition will be held in strict confidence and maintained in the employee's medical records file.
5. Employees may not perform work for other employers or self-employment while using family/medical leave.

F. FMLA Leave and Benefits

1. **Accrual of Benefits:** Benefits typically accrued by employees including, but not limited to, vacation leave and sick leave will cease accruing during family/medical leave.
2. **Continuation of Health Care Coverage under the Group Medical Plan:** Coverage under the City's Group Medical Plan and Group Term Life Insurance will continue in the same manner they would have had the employee been continuously at work during the leave period.
 - a. Premium payments normally made by the employee must continue to be paid by the employee while on family/medical leave. Employee premium amounts are subject to any change in rates that occurs while the employee is on leave.
 - b. Premium payments that are more than 30 days late will result in termination of coverage.
 - c. The City will seek reimbursement of premium payments made (during the period of leave) by the City for the employee's insurance coverage if the employee does not return to work from family/medical leave for reasons other than 1) the continuation of a serious health condition of the employee or a covered family member or 2) circumstances beyond the employee's control (certification required within 30 days of failure to return for either reason).

3. An employee may not be penalized for using family/medical leave. Unacceptable actions include reducing incentive pay, base pay, longevity pay and giving poor performance reviews due to the family/medical leave.


G. Job Reinstatement

1. An employee who returns to work within 12 weeks following family/medical leave will be reinstated to his/her former position or an equivalent position with equivalent pay, benefits, status and authority.
2. An employee who fails to return to work within 12 weeks following family/medical leave may be reinstated to his/her same or equivalent position only if available in accordance with applicable laws. If a same or similar position is unavailable the employee may be terminated.
3. The Human Resource department may require the employee to see the City Physician for a "fitness-for-duty" determination.

SECTION 2. That it is the intent of the City Council that the provisions hereof be deemed severable and in the event any such provision shall be declared unconstitutional or invalid for any reason such unconstitutionality or invalidity shall not affect those provisions left standing.

SECTION 3. Due to recent changes in federal legislation and to ensure compliance with recent court decisions, the technical corrections to several chapters of the General Government Policies and Procedures manual and due to federal passage of the Family and Medical Leave Act revisions to the City's Catastrophic Leave Policy creates an urgency and emergency in the interest of the public health, safety, and welfare, and makes necessary that this ordinance take effect immediately from and after its date of passage.


DULY PASSED AND APPROVED by the City Council of the City of Mesquite,
Texas, on the 5th day of December, 1994.




Cathye Ray
Mayor

ATTEST:

APPROVED:



Lynn Prugel
City Secretary



B.J. Smith
City Attorney