

ORDINANCE NO. 3351

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, REVISING THE GENERAL GOVERNMENT POLICIES AND PROCEDURES MANUAL BY DELETING CHAPTER 13 IN ITS ENTIRETY AND ADOPTING A NEW CHAPTER 13; THEREBY PROVIDING FOR CHANGES REGARDING EMPLOYEE SAFETY AND HEALTH; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, the City of Mesquite has adopted a General Government Policies and Procedures Manual; and

WHEREAS, Chapter 1 of the Policies and Procedures Manual provides for the revision of the policies and procedures set forth in such manual by adoption of ordinance; and

WHEREAS, it has been determined that the policies and procedures relating to safety and health for City employees are in need of revision.

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

Section 1. That the General Government Policies and Procedures Manual is hereby revised by deleting the current Chapter 13 in its entirety and adopting a new Chapter 13 to read as follows; said Policies and Procedures Manual in all other respects to remain unchanged.

CHAPTER 13

EMPLOYEE SAFETY AND HEALTH

13.1 Program Management

The Human Resources 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, and return-to-work releases.

13.2 Workers' Compensation

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 or Illness

1. **Employees:** Employees must report in writing their on-the-job injury/illness, however minor, to the designated department representative by the next business day or the employee's next assigned shift, whichever is sooner. Violation of this policy will result in loss of the employee's salary supplemental pay while on injury absence and/or disciplinary action.
2. **Supervisory Personnel:** Upon receipt of a report of injury, supervisory personnel must report a subordinate's injury/illness, however minor, to the Human Resources Department by the next business day or by the supervisor's next assigned shift, whichever is sooner. Violation of this policy will result in disciplinary action.

13.4 Medical Examinations

1. **Initial Examinations:** Employees sustaining an on-the-job injury requiring medical treatment other than first aid shall be required to be initially examined by one of a panel of preferred medical providers chosen by the City. Exceptions to this policy may be granted under the following circumstances:
 - a. When the urgency of medical treatment results in an emergency room visit.
 - b. Circumstances involved justify waiving the initial examination by the Director of Human Resources.
2. **Lost-time Examinations:** If an employee is not initially examined by one of a panel of preferred medical providers chosen by the City, and the employee loses more than two working days as a result of a work related injury/illness, then the employee must be evaluated by one of a panel of preferred medical providers chosen by the City as soon as practical.
3. **Failure to Comply:** An employee's failure to comply with this section, unless authorized to do so in writing by the Director of Human Resources, shall be considered in violation of the City's workers' compensation policy. Violation of this policy will result in disciplinary action.

13.5 Injury Absence

1. **Injury Absence Time Limit:** Injury absence is time allowed an injured employee to recover from a work-related injury. The payroll time may be charged and accumulated as injury absence with pay, injury absence without pay, injury absence with pay – Family Medical Leave Act (FMLA), injury absence without pay – FMLA (Family Medical Leave will run concurrent with injury leave). Injury absence is subject to a time limit not to exceed six (6) months of equivalent work hours per injury (1,040 work hours). Injury absence does not include sick or vacation leave.
2. **Injury Absence Under Eight Days:** Eligible employees absent due to an on-the-job injury for under eight (8) days will receive supplemental pay according to the City's Supplemental Payments Policy (13.6) during said absence unless found to have violated the provisions of this policy or been found to have committed a "chargeable" act. Employees who are not eligible to receive supplemental pay may use their accrued sick and vacation in accordance with Section 13.6 "Salary Supplement Payments" and the City's vacation and sick leave policies.
3. **Injury Absence Over Seven Days:** Employees absent due to an on-the-job injury over seven (7) days will receive compensation in accordance with the Texas Workers' Compensation Act and the City's Supplemental Payments Policy (Reference Chapter 13.6).
4. **Accrual of Benefits:** Employees shall continue to accrue vacation and sick leave at their regular rate while on paid injury absence.
5. **Use of Accumulated Sick and Vacation Leave:** Employees who are not eligible to receive supplemental pay may use their accrued sick and vacation in accordance with Section 13.9 "Salary Supplement Payments" and the City's vacation and sick leave policies. Upon exhausting injury absence, employees may use their remaining accumulated sick and vacation leave as well as any accumulated compensatory time. Sick and vacation leave balances will be deducted at a rate of one lost day due to injury to one day deducted from accumulated sick or vacation leave.
6. **Modified Duty:** For each incident, modified duty may not exceed six months or 180 calendar days (see Section 13.10).

7. Non-Disciplinary Separation: Upon exhaustion of injury absence, available modified duty and all accumulated sick or vacation leave, the employee will be given a non-disciplinary separation if he or she is still unable to perform the essential functions of his or her job.
8. Injury Absence Extension: The City Manager may, after all leave is exhausted, authorize an extension of injury absence under exceptional circumstances and in cases where a full-duty work release is anticipated. Absent the City Manager's written approval, no employee's injury absence may be extended. Employees not eligible to receive salary supplement will not be considered for an injury absence extension. To qualify for injury absence extension, the City Manager will consider the following:
 - a. Employee longevity;
 - b. Work record; and
 - c. Recommendation of Department Head.

13.6 Salary Supplement Payments

The supplemental payments benefit provides eligible regular full-time employees, who are injured during the course of employment, with pay in addition to Temporary Income Benefits under the Texas Workers' Compensation Act (commissioned Fire and Police personnel will receive work related injury benefits in accordance with the state workers' compensation law as well as applicable State and local civil service statutes). Payments will be in an amount equal to the difference between any workers' compensation Temporary Income Benefits payments and the employee's net pre-injury wage. Net pre-injury wage is defined as gross wage (excluding overtime) less deductions for Texas Municipal Retirement System, Social Security, Medicare/FICA, and Federal Income Tax Withholding. Only workers who are on injury absence and are in compliance with this policy are eligible for salary supplement payments.

1. Eligibility Requirements for Salary Supplement: Eligibility requirements are based on employment status (only regular full-time employees are eligible for salary supplement) and length of service with the City. Salary supplement payments will be made to eligible employees based on the guidelines below:

<u>Length of Service</u>	<u>Salary Supplement</u>
Less than 1 year	No
Greater than 1 year	Yes

2. Suspension of Salary Supplement Payments: Salary supplement payments may be suspended at any time for the employee's failure to comply with city policies, procedures or directions.
3. Grounds for Suspension of Injury Absence and/or Salary Supplement Payments: The following are grounds for denial or suspension of injury absence, including salary supplement payments:
 - a. If employee is awaiting a final injury chargeability decision.
 - b. If employee engages in work, whether part time for pay or as a volunteer, while off work receiving or requesting salary supplement payments.
 - c. If employee is terminated for any reason.
 - d. If an employee fails or refuses to comply with the instructions or advice of a treating physician to improve his/her condition.
 - e. If employee fails to act in a manner consistent with being off work convalescing.
 - f. If Workers' Compensation indemnity payments are stopped.
 - g. If employee refuses to accept or perform a different or modified duty assignment 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 can be trained.
 - h. If employee refuses to submit to any Independent Medical Examination or treatment in accordance with the Texas Workers' Compensation Statute.
 - i. If employee refuses to return to regular duty after being released by a treating physician.
 - j. If employee reports an injury requiring submission of an "alleged" report by the Human Resources Director.

- k. If employee fails to report an injury in compliance with this policy.
 - l. If employee fails to keep the immediate supervisor informed on a weekly basis as to the status of the injury when off work receiving salary supplement payment.
 - m. If employee submits a claim which is denied by the City's Workers' Compensation administrator.
 - n. If employee refuses to cooperate with City administration in ascertaining facts, information, and requests concerning the status of the injured employee.
 - o. If employee fails, or refuses to take any post-accident drug or breath alcohol test.
 - p. If employee sustains an injury ruled "chargeable" by the Incident Review Committee.
 - q. If employee is not initially examined by one of the panel of preferred medical providers chosen by the City in accordance with section 13.4 of this chapter.
4. Appeal of Injury Absence: Denial of injury absence or salary supplement payments 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 supplement payments.

13.7 Modified Duty

In the sole discretion of an employee's Department Head, an employee who is temporarily unable to perform one or more of the "essential requirements" of their job due to a work or non-work related injury or an illness may be assigned modified duty work. Modified duty work is defined as a temporary job assignment provided to an employee who due to an illness or injury is temporarily unable to perform one or more of the essential requirements of their job. A modified duty assignment may involve an assignment whereby an employee is working less than eight hours a day or fewer than five days a week. For each incident, modified duty assignment(s) may not exceed a total of six months (180 calendar days). Partial days worked as time off, paid or unpaid, during the modified duty assignment(s) shall count

towards the 180 days total. An employee's absence from regular work hours, i.e., hours based upon a 40 hour work week during the period of modified duty will be charged against their approved leave time or if leave time is not available, be recorded as appropriate pursuant to City policy. A modified duty assignment may be terminated at the discretion of the employee's Department Head. A modified duty assignment will be approved only when the following conditions and responsibilities are met.

1. Conditions for Approving Modified Duty:

- a. The proposed modified duty assignment includes duties that are meaningful in that the modified duty assignment benefits the City and provides needed services to the citizens of Mesquite.
- b. The disability is judged by the employee's treating physician to be of a temporary nature.
- c. The department decides that there is an availability of work, and there is an ability to accommodate the modified duty assignment.
- d. Modified duty releases outline limitations for lifting, walking, stooping, bending, carrying, driving and/or other specific limitations of the injured/ill employee.
- e. The employee fulfills all of the recertification requirements for extending modified duty assignments.
- f. Department Head approval.

2. Employee Responsibilities:

- a. Obtain a medical release from his/her treating physician. A medical release must contain a prognosis and an estimated date for the employee's complete recuperation and return to regular duty. The medical examination for an off-the-job injury or illness will be at the employee's expense.
- b. Sign a Modified Duty Agreement. Procedures for the administration of the Modified Duty Agreement will be available for review within each department and Human Resources.
- b. Upon release to full duty with no physical restrictions, report to the assigned supervisor with the treating physician's statement

showing that the employee has been released to full duty with no restrictions.

3. Supervisor Responsibilities:

- a. Assigns work hours and maintain time reports.
- b. At the inception of the modified duty assignment and prior to returning to full duty, forward the Modified Duty Agreement along with the medical documentation to the Human Resources Department.

4. Recertification for Modified Duty Assignment:

- a. The Departments will be given an opportunity to periodically assess their staffing needs and status of modified duty employees. Therefore, employees working a modified duty assignment must recertify approximately every 45 calendar days.
- b. Recertification Procedure:
 - i. Employee must obtain a medical release from his/her treating physician. A medical release must contain a prognosis and an estimated date for the employee's complete recuperation and return to regular duty. The medical examination for off-the-job injuries or illnesses will be at the employee's expense.
 - ii. Sign a Modified Duty Agreement. Procedures for the administration of the Modified Duty Agreement will be available for review within each department and Human Resources.

13.8 Incident Investigations

Upon receipt of the incident report, the Department Head and the Risk Manager will review and render a ruling of "chargeable" or "non-chargeable" and, if applicable, identify additional individuals' causal to the incident. A "chargeable" incident is defined as "the failure to follow policy, instructions, or safe work practices, which directly contributed to an incident that resulted in property damage or injury."

13.9 Employee Appeal to Department Head

Employees receiving a formal notice of a “chargeable” decision by the Risk Manager may request a Department Incident Review Conference with the Department Head or his designee and the Risk Manager. 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-chargeable”, a written request to convene the Incident Review Appeal Board may be filed with the Director of Human Resources.

13.10 Incident Review Appeal Board

The City’s Incident Review Appeal 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 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 Director of Human Resources 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 Decision: All decisions of the Board shall be by majority vote. In the event of a tie, the recommendation of the Director of Human Resources shall prevail.
4. Chargeable Incidents: Employees shall be subject to progressive discipline as stated in Chapter 8 of this policy manual, based on the total number of incidents determined chargeable within an eighteen (18) month period:

1 st	Oral Warning – (Documented)
2 nd	Written Reprimand
3 rd	Minor Suspension
4 th	Major Suspension
5 th	Demotion or Termination
5. 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.

13.11 Applicant and Employee Motor Vehicle/Equipment Operator Standards

1. **Statement of Purpose:** The purpose of this policy is to establish guidelines covering minimum standards for the qualification of applicants to operate City vehicles/equipment. In addition, it is the desire of the City to minimize the risks of vehicle/equipment accidents by improving the quality of drivers by permitting only those employees with appropriate licenses, insurance coverages and acceptable driving records to operate City vehicles/equipment. The following driver standards apply to all positions classified as "primary drivers" or where duties of the position necessitate the operation of a motor vehicle/equipment on City business as determined by the job description.
2. **Required Verification:** No employment action shall be final until appropriate driving history verification and evaluation by the Human Resources Department has been completed.
3. **Evaluation Period:** The evaluation period shall be for seven (7) years immediately preceding consideration for initial appointment. Applicants failing to meet selection standards will not be considered until their record for the prior seven (7) years meets the minimum qualifications.
4. **Minimum Qualifications/Standards for Initial Applicant Consideration:**
 - a. Before beginning work in the position, the applicant must possess a current valid Texas driver's license that is not under suspension or revocation in the appropriate class as established on the official position description for that position;
 - b. The applicant must be physically qualified to hold a driver's license and to safely operate a motor vehicle and/or motorized equipment; and
 - c. The employee/applicant must be insurable under the City's automobile insurance coverages program.
5. **Grounds for Automatic Disqualification for Initial Appointment:** The applicant may not have a conviction or have been placed on deferred adjudication within the past seven (7) years for any of the following:
 - a. Driving Under the Influence (DUI);

- b. Driving While Intoxicated (DWI);
 - c. License suspended, revoked or denied;
 - d. Manslaughter or criminally negligent homicide involving the operation of a motor vehicle; or
 - e. Operating a motor vehicle with license suspended or revoked.
6. Grounds Which May be Cause for Disqualification for Initial Appointment: Conviction of three violations of the type listed below within the last 36 months immediately preceding consideration for employment may be grounds for disqualification:
- a. Operating a motor vehicle in violation of driver's license restriction;
 - b. Disregarding traffic control signals and devices;
 - c. Exceeding speed limit;
 - d. Illegal operation of motor vehicle without State required auto insurance; or
 - e. Two traffic accidents determined to involve contributory negligence.
7. Employee Driving Standards and Driving Record Audits:
- a. Only City employees or authorized personnel may operate City vehicles.
 - b. Employees who are in jobs requiring the driving/operating of City vehicles shall report **any** and **all** traffic convictions, citations for moving violations and/or revocations incurred while operating a City vehicle to their immediate supervisor within 24 hours of the violation and/or conviction.
 - c. All employees who drive during the course and scope of their employment shall be subject to periodic audits of their driver license and driving records.

8. Employee Loss of Driving Privileges: Loss of driving privileges will occur to employees who are convicted or are on deferred adjudication for the following violations:
 - a. Driving Under the Influence (DUI);
 - b. Driving While Intoxicated (DWI);
 - c. License suspended, revoked or denied;
 - d. Manslaughter or criminally negligent homicide involving the operation of a motor vehicle; or
 - e. Operating a motor vehicle with license suspended or revoked.

9. Results of Lost Driving Privileges: Employees who cannot drive City-owned, leased, borrowed, or rented vehicles and/or motorized equipment and are in a position which requires the operation of a vehicle and/or motorized equipment will be given a non-disciplinary termination within ten (10) days from the date the employee was determined ineligible for driving privileges.

10. Employee Disciplinary Action for Motor Vehicle Violations: Employees must report to their supervisor when they have been convicted of three (3) moving violations of the same or similar type listed below. Employees who are convicted of any violation of the type listed below or who have been involved in a vehicle accident that was determined to be his/her fault may be subject to progressive disciplinary action. The Department Director will evaluate convictions not noted on an individual basis.
 - a. Operating a motor vehicle in violation of driver's license restriction;
 - b. Disregarding traffic control signals and devices; or
 - c. Exceeding speed limit.

SECTION 2. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

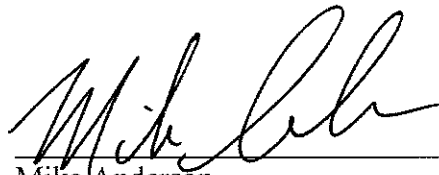
SECTION 3. That should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 4. That, as with all policy and procedures contained in the General Government Policies and Procedures Manual, the provisions of this ordinance are not intended to create contractual rights between the City of Mesquite and its employees.

SECTION 5. That upon passage of this ordinance all employees of the City of Mesquite shall be notified of the revisions made herein to the General Government Policies and Procedures Manual.

SECTION 6. That this ordinance shall be effective from and after April 1, 2000.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 21st day of February, 2000.



Mike Anderson
Mayor

ATTEST:

APPROVED:



Ellen Williams
City Secretary

B. J. Smith
City Attorney