

ORDINANCE NO. 4934

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING CHAPTERS 4, 10, 14, AND 15 OF THE CITY OF MESQUITE GENERAL GOVERNMENT POLICIES AND PROCEDURES MANUAL; PROVIDING A REPEALER CLAUSE; AND PROVIDING A SEVERABILITY CLAUSE.

WHEREAS, by Ordinance No. 4729 approved by the City Council of the City of Mesquite (“**City Council**”) on October 21, 2019, and following review and recommendation by the Personnel Board, the City Council approved and adopted the revised General Government Policies and Procedures Manual (“**Manual**”); and

WHEREAS, the Human Resources Department now proposes additional amendments to the Manual in Chapters 4, 10, 14, and 15, regarding Employment Policies, Compensation Policies, Employee Benefits, and Controlled Substance, Alcohol Abuse and Tobacco Testing Policy, respectively (the “**Amendments**”), and the Amendments are highlighted in the attached Exhibit A, incorporated herein by reference; and

WHEREAS, pursuant to the City’s Charter, Article IX-A, Section 6, the Director of Human Resources presented the Amendments to the Personnel Board for review and recommendation on January 28, 2022, and the Personnel Board voted to recommend adoption of the Amendments; and

WHEREAS, the Director of Human Resources presented the Amendments to the City Manager as recommended by the Personnel Board and the City Manager now presents the Amendments to the City Council for consideration for approval.

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

SECTION 1. That the facts and recitations contained in the preamble of this ordinance are hereby found and declared to be true and correct and are incorporated and adopted as part of this ordinance for all purposes.

SECTION 2. That the Amendments are hereby approved, Chapters 4, 10, 14, and 15 of the Manual are hereby amended as shown in the Amendments, and the amended sections and provisions of the Manual shall now read as shown in the Amendments; in all other respects said Manual and Chapters therein are to remain in full force and effect.

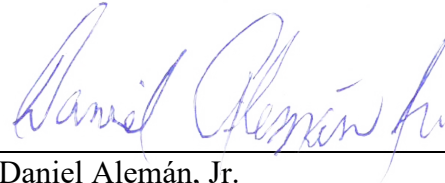
SECTION 3. That all ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 4. 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 5. That the policy and procedures contained in the Manual, including but not limited to the Amendments, are not intended to create contractual rights between the City of Mesquite and its employees.

SECTION 6. That upon passage of this ordinance all employees of the City of Mesquite shall be notified of the Amendments.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 7th day of February 2022.



Daniel Alemán, Jr.
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

Revisions in the 2020 Policies and Procedures Manual are Listed Below
This list does not include any minor changes which do not affect the intent of the policy.

→ **CHAPTER 4: EMPLOYMENT POLICIES**

Section 4.1 – Equal Employment Opportunity and Americans with Disabilities Act

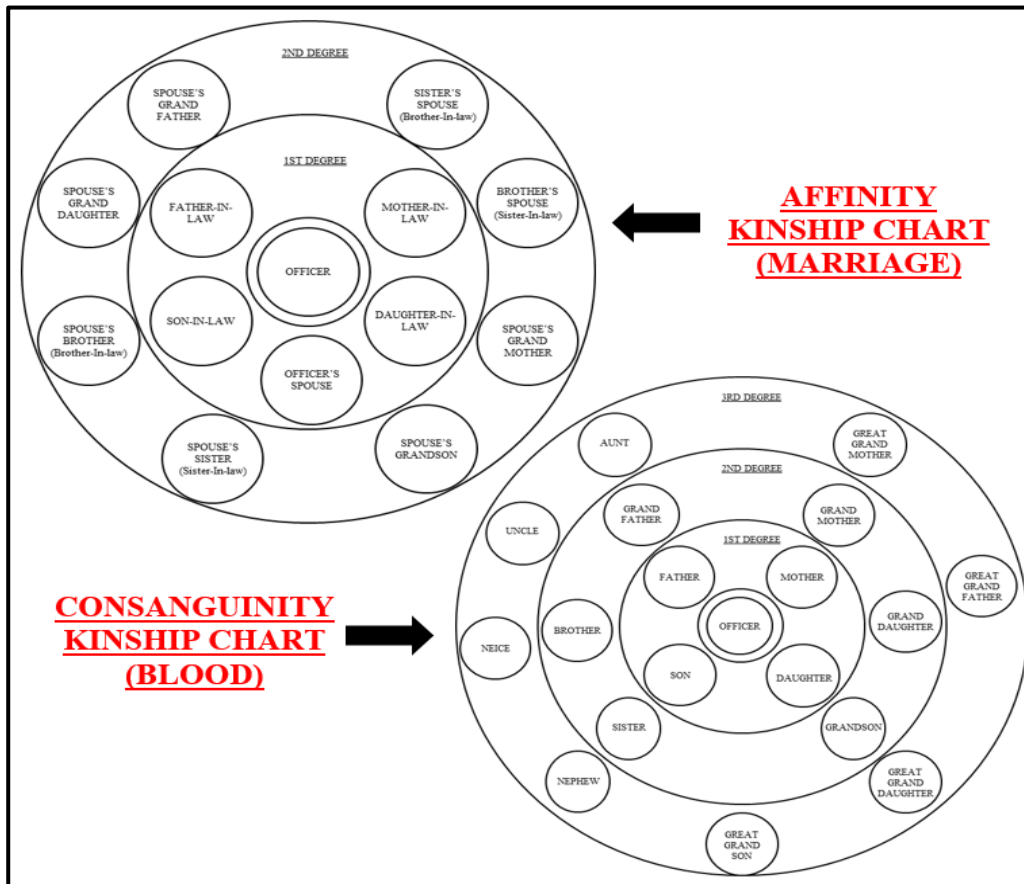
- Updated location of complaint procedures.

2. **Americans with Disabilities Act:** To the extent reasonably possible, the City will accommodate individuals with disabilities in the application, hiring and employment process. Reasonable accommodation is available to all employees and applicants, so long as the accommodation does not create an undue hardship for the City and can be provided without posing a substantial or imminent safety risk to the employee, coworkers or public. Individuals with disabilities requiring accommodations should notify the Human Resources Department in writing and provide medical documentation. Applicants or employees wishing to complain about the denial of reasonable accommodation or other disability-related discrimination should follow the procedures outlined by the City for harassment or discrimination complaints in accordance with Title II – Grievance Procedure Under the Americans with Disabilities Act located on the City Internet page and in the Human Resources Department. Such individuals will not be subject to retaliation for requesting accommodation or because of complaints about the denial of reasonable accommodation.

→ **CHAPTER 4: EMPLOYMENT POLICIES**

Section 4.16 – Kinship Charts

- Updated labels to match corresponding charts.



→ CHAPTER 10: COMPENSATION POLICIES

Section 10.3 – Overtime

- Modified City compensatory time payout policy

<p>4. Compensatory Time</p> <p>a. Comp Time: Nonexempt employees, except firefighting and emergency medical service personnel, who work authorized overtime may be compensated for that time by receiving compensatory time off at the rate of one and one-half (1 ½) hours of compensatory time for every hour of authorized overtime worked. However, the City may at any time, in its sole discretion, substitute cash payment for overtime at the rate of one and one-half (1 ½) times the employee's regular rate in lieu of compensatory time off, either in whole or in part.</p> <p>b. Comp Time Accrual in Public Safety Jobs: Firefighting and emergency medical service personnel will receive cash payment for overtime at the rate of one and one-half (1 ½) times their regular rate and are not eligible for compensatory time without prior department head approval. Nonexempt employees engaged in public safety activities, emergency response activities or seasonal activities that are approved and eligible for compensatory time may accrue up to one hundred twenty (120) hours of compensatory time off, after which overtime will be paid at the rate of one and one-half (1 ½) times the employee's regular rate.</p> <p>c. Comp Time Accrual in General Government Jobs: All nonexempt employees eligible for compensatory time will receive cash payment for overtime at the rate of one and one-half (1 ½) times their regular rate after they have accrued one hundred twenty (120) hours of compensatory time off.</p> <p>d. Payment for Accrued Comp: Payment for accrued compensatory time may be made at any time, at the City's sole discretion and shall be paid at the regular rate earned by the employee at the time payment is made.</p> <p>e. Comp Payment Upon Termination: <u>Upon termination of employment, nonexempt employees will be paid for unused compensatory time at a rate of compensation not less than the higher of:</u></p> <ol style="list-style-type: none">1) <u>The average regular rate received by the employee during the three-year (3) period immediately prior to termination; or</u>2) <u>The final regular rate received by the employee.</u> <p>f. Exempt Employees: Employees who are exempt from the Fair Labor Standards Act are not entitled to automatically accrue compensatory time.</p>
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→ CHAPTER 10: COMPENSATION POLICIES

Section 10.5 – Other Payroll Time Definitions and Policies

- Modified City policy to define paid leave codes that will NOT be considered as hours worked for purposes of determining eligibility for overtime payment.

<p>1. Leave Time</p> <p>a. General Government Employees: Paid leave time, including vacation, sick leave or workers' compensation will not be considered as hours worked for purposes of determining eligibility for overtime payment.</p> <p>b. Sworn Police: <u>Compensatory time, personal leave, sick leave, worker's compensation leave, ABL (as defined in the Meet and Confer Agreement), and all other paid leave, will not be included in the calculation of hours worked for purposes of determining eligibility for overtime pay or compensatory time.</u></p> <p>c. Firefighting and Emergency Medical Service Personnel: Time not actually worked will not be considered as hours worked when calculating FLSA overtime payment for Fair Labor Standards Section 207(k) firefighting and emergency medical service personnel assigned to shift duty.</p>
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→ CHAPTER 14: EMPLOYEE BENEFITS

Section 14.4 – Vacation and Catastrophic Family Sick Leave Bank

- Modified City policy to include guidelines for requesting sick leave usage during an approved FMLA event for a qualified family member.

3. Vacation and Catastrophic Family Sick Leave Bank Procedures
Application Requirements: An employee is eligible to apply for the Vacation and Catastrophic Family Sick Leave Bank when all of the following conditions are met:

- a. The employee or employee's immediate family has a catastrophic illness or injury¹ and is covered under the Family Medical Leave Act (FMLA);
- b. The employee has exhausted all accrued sick leave (if applicable);
- c. The employee has exhausted all accrued vacation leave, excluding compensatory time;
- d. If an employee is on approved FMLA leave for an eligible family member, and has exhausted all of their available family sick leave and vacation accruals, they may submit a written request to the Director of HR and Benefits Manager, accompanied with a doctor's statement certifying need of employee's additional absences, to utilize their accrued sick leave for consideration.
- e. The employee has been, or will be, placed on leave without pay for at least eight (8) hours (one work day);
- f. The employee has not exhausted the maximum allowable hours established under the Vacation and Catastrophic Family Sick Leave Bank policy guidelines for the current year and contingent upon there being donated hours in the City of Mesquite Leave Bank as set forth herein;
- g. The Vacation and Catastrophic Family Sick Leave Bank application has been approved by the employee's director;
- h. The condition is not an on-the-job injury covered by Worker's Compensation insurance;
- i. The employee applying for vacation or catastrophic family sick leave donations must also have the required medical certification on file in the HR office; and
- j. The employee has exhausted all vacation or catastrophic family sick leave awarded under a prior award before the employee may apply for a subsequent award.

The employee can apply to the Vacation and Catastrophic Family Sick Leave Bank no more than two (2) times per twelve (12)-month period with a limit of six (6) weeks per request and the employee will not accrue any paid leave until the employee returns back to full duty.

→ CHAPTER 14: EMPLOYEE BENEFITS

Section 14.12 – Traumatic Event Leave - NEW POLICY

- -Added leave policy available to employees involved in certain traumatic event circumstances.

14.12
TRAUMATIC EVENT LEAVE

1. **Statement of Purpose:**
 - a. The City of Mesquite is committed to safeguarding the mental health and emotional well-being of all City of Mesquite employees, and the purpose of this policy is to establish guidelines governing the circumstances under which City employees are granted traumatic event leave.
2. **Eligibility:**
 - a. Traumatic event leave will be granted to all full-time employees who have directly experienced a traumatic event related to their work function during the course and scope of employment, so that they can address any mental health concerns stemming from such an event. Any traumatic event leave granted will be coded as Traumatic Event Leave.
 - b. This policy complies with mental health leave requirements for licensed peace officers under Section 614.015 of the Texas Government Code.

3. Definitions:

- a. A "traumatic event" is a shocking, intensely frightening, or dangerous event that causes the employee to experience unusually strong emotional reactions or feelings that have the potential to interfere with their ability to perform their job duties and that requires mental health care. The employee must have been present at the scene when the traumatic event occurred or was the first employee responding except as provided below in section 3b.
- b. For purposes of this policy, "traumatic events" are limited to the following:
 - 1) Major disasters which may include response to weather-related events involving multiple casualties; fires or explosions involving multiple casualties; or search and recovery missions involving multiple casualties.
 - 2) Incidents involving multiple casualties, such as traffic accidents or shootings.
 - 3) Line of duty death or serious bodily injury of a fellow employee.
 - 4) Encountering the death of a child resulting from violence or neglect.
 - 5) Officer involved shooting of a person.
 - 6) Any extraordinary event subject to the approval of one of the following: Chief of Police, Fire Chief, Human Resources Director, or the City Manager.
- c. "Traumatic event leave" is administrative leave with pay granted to a full-time employee in response to a traumatic event that occurred in the course and scope of their employment.
- d. A "mental health professional" is a licensed mental health worker, counselor, psychotherapist, psychologist, or psychiatrist.
- e. "Confidentiality" is a professional or ethical duty to refrain from disclosing information from or about a recipient of mental health services.
- f. Traumatic events, as referenced in this policy, refer to only work-related events. Personal trauma, such as family issues or an event encountered outside the course of employment, is not covered by this policy.

4. General Provisions:

- a. Any City supervisor or co-worker who becomes aware of behavioral changes in a co-worker directly involved in a traumatic event should report the behavioral change to their department director, so professional assistance and/or leave may be offered.
- b. Any approved traumatic event leave used by an employee runs concurrent with leave authorized under the Family Medical Leave Act.
- c. Employees will continue to accrue all benefits, seniority and applicable special pays when using their traumatic event leave.
- d. Employees must use all available approved traumatic event leave within thirty (30) days of traumatic event leave authorization. Under no circumstances will approved traumatic event leave be rolled over or accrue on a continuing basis after thirty (30) days has elapsed from the date of traumatic event leave authorization.

5. Procedure to Request and Approve Traumatic Event Leave:

- a. Any full-time employees requesting traumatic event leave must submit their traumatic event leave request in writing on a City-designated traumatic event leave request form within three (3) business days from the occurrence of the traumatic event:
 - 1) The employee must notify their department director in writing.
 - 2) The employee will also promptly provide a completed City-designated traumatic event leave request form to the appropriate department director in the Police Department, Fire Department or Human Resources Department, or their designees, who will timely grant a qualifying traumatic event leave request unless they have an articulatable and specific compelling reason to deny the request.
- b. Requests granted by the Chief of Police or Fire Chief must be reported to the Human Resources Department, and all approvals shall be sent in writing to the requesting Employee and their director using the City-designated approval form.
- c. If a traumatic event leave request is denied, it must be provided in writing to the requesting employee by the Chief of Police, Fire Chief, or the Human Resources Director.
- d. The Chief of Police and the Fire Chief, or their designees, are authorized to grant traumatic event leave for employees in their respective departments. The Human Resources Director, or designee, is authorized to grant traumatic event leave to Employees in all other City departments.
- e. The use of traumatic event leave may also be initiated at the discretion of the Chief of Police, Fire Chief or Human Resources Director, or their designee, based on their awareness of an employee's involvement in a work-related traumatic event. Any traumatic event leave initiated by the Chief of Police, Fire Chief or Human Resources Director must be in writing on a City-designated traumatic event leave form.
- f. When multiple requests for a traumatic event leave are requested simultaneously, the department head of the affected department shall coordinate coverage to ensure appropriate staffing levels are maintained.

6. **Duration of Traumatic Event Leave and Extension Requests:**
 - a. An employee directly involved in a traumatic event may request up to three (3) business days, or one (1) fire shift for firefighters, of traumatic event leave per traumatic event.
 - b. Any traumatic event leave hours granted are not required to be used consecutively. If additional days beyond the initial three (3) working days of traumatic event leave are necessary, the employee must use accrued leave unless the leave is determined to be covered under workers' compensation or requests an extension of traumatic event leave.
 - c. Traumatic event leave extensions may be granted under circumstances where the employee provides appropriate documentation from a mental health professional currently treating the employee and recommending the extension up to a total of five (5) business days and the equivalent of two (2) fire schedule at the discretion of the Chief of Police, Fire Chief, Human Resources Director. The Chief of Police, Fire Chief, Human Resources Director may also consider other circumstances presented by the employee concerning their request for traumatic event leave extension, such as inability to obtain mental health appointments for treatment and supporting employee documentation.
 - d. Each employee may request no more than one (1) extension per traumatic event by submitting their traumatic event leave extension request in writing on a City-designated traumatic event leave extension request form with relevant documentation attached. The Chief of Police, Fire Chief, or Human Resource Director shall grant the extension request upon receipt of sufficient documentation explaining the need for the traumatic event leave extension and will notify Human Resources in writing of any necessary time adjustments.
 - e. If a traumatic event leave extension request is denied, it must be provided in writing to the requesting employee by the appropriate City personnel as listed above.
7. **Documentation Required for Return to Work From Traumatic Event Leave:**
 - a. Upon return to work from traumatic event leave, the employee must provide appropriate documentation indicating the employee received proper treatment, consultation, or care from a mental health professional.
 - b. The City may request further documentation from the employee to verify any licensing or accreditation standards for the mental health professional that the employee utilized.
 - c. For Police and Fire Department employees, all such documentation received from the employee will be kept in the employee's departmental personnel file in accordance with Chapter 143, section 143.089(g) of the Local Government Code. Documentation received from employees in all other City departments shall remain confidential and may not be stored in any employee personnel files.
8. **Traumatic Event Leave Abuse:**
 - a. Employees using traumatic event leave other than as permitted in this policy shall be subject to disciplinary action. Upon the discovery of an abuse of traumatic event leave, such leave may be denied and/or converted to another leave status.
9. **Confidentiality:**
 - a. Any request for traumatic event leave shall be treated as confidential by all parties involved and shall not be discussed openly, except where necessary for operations or to facilitate the use of leave. Any breach of this confidentiality shall be grounds for discipline.
 - b. Confidentiality may be waived by the employee seeking traumatic event leave or may be waived under circumstances which indicate the employee is a danger to themselves or others and the City must confer with the appropriate professionals. Confidentiality is also waived in the event of traumatic leave abuse.
 - c. All submitted City-designed traumatic event leave forms and accompanying employee documentation, such as the Employee Request Form for Traumatic Leave, the Employee Request Form for Traumatic Event Leave Extension, and Traumatic Event Leave Initiated by Police/Fire/HR Directors, shall not be stored in any employee personnel files. Such records are confidential and shall be maintained by the Human Resources Department in compliance with appropriate legal retention requirements.
10. **No Reduction in Salary:**
 - a. Any employee, including a licensed peace officer, using traumatic event leave will not experience a reduction in salary or other compensation as a result of using this type of leave.
11. **Mental Health Services Available to Employees:**
 - a. The City's Human Resources Department compiles and maintains an up-to-date list of all mental health resources accessible to employees. (<https://www.cityofmesquite.com/613/Employee-Benefits-Resources>)

→ CHAPTER 14: EMPLOYEE BENEFITS

Section 14.20 – Tax Saver Program

- Modified City policy to update IRS grace period rules.

14.20 TAX SAVER PROGRAM	
1.	Description: The Tax Saver Program as adopted by the City of Mesquite allows certain medical expenses and dependent care expenses to be reimbursed with funds deducted before tax withholding in order to reduce tax liability, for employees and their covered dependents not eligible or receiving Social Security benefits. This program is also known as the Flexible Spending Account, created under Section 125 of the Internal Revenue Code. In addition, Group Medical Plan rates will be deducted on a pre-tax basis unless the employee designates otherwise.
2.	Eligibility and Enrollment <ol style="list-style-type: none">Regular full-time: All regular full-time employees are eligible to participate in the Tax Saver Program.Enrollment Period: Eligible employees may enroll in the Tax Saver Program upon appointment with the City or at open enrollment periods that occur annually.Plan Year: Plan years are on a calendar- year basis beginning January 1 and ending December 31. However, under the Internal Revenue code grace period rule for Dependent Care only, expenses may be incurred through March 15 of the following plan year.Plan Election: To participate in the Tax Saver Plan, an employee must make an election each year. Once election has been made to participate or not participate in the Plan, no change or revocation may be made in that election year except in the case of a change in family status as defined by the Internal Revenue Code.
3.	Reimbursement Procedures: Employees with eligible medical or dependent care expenses must complete a Tax Saver Reimbursement form. Substantiating documents to verify expenses must be attached to the reimbursement form and forwarded to the Human Resources Department.
4.	Forfeited Balance: A claim for benefits may be submitted for the plan year in which expenses were incurred, including expenses incurred during the grace period. Reimbursements for the plan year may be submitted up to March 15th (Medical Tax Saver) and June 15th (Dependent Care Tax Saver) of the following plan year. On March 16th (Medical – amounts over \$500) and June 16th (Dependent – total) any previous plan year's Tax Saver dollars remaining in the participant's accounts will be forfeited as mandated by the Internal Revenue Code.
5.	Note: The City's Healthcare Reimbursement Tax Saver Program has been amended to reflect the IRS ruling allowing a carryover provision of up to \$500. This provision allows Healthcare Reimbursement Tax Saver participants to carryover up to \$500 for the following year's healthcare expenses. The carryover of up to \$500 will not count against the annual IRS maximum permitted. The carryover provision only applies to Healthcare Reimbursement and does not apply to Dependent Care Reimbursement.

→ CHAPTER 15: CONTROLLED SUBSTANCE, ALCOHOL ABUSE AND TOBACCO TESTING

Section 15.2 - Purpose

- Modified City Policy to align with the Department of Transportation Federal Transit Authority requirements.

1. It is the policy of the City to provide a work environment that is free from the **manufacture**, use, consumption, sale, **dispensing**, **distribution** or possession of controlled substances (drugs) or alcohol in the workplace. (In this policy, use of the term "drugs" also includes alcohol.) The specific purpose of the policy is to outline the methods for maintaining a work environment free from the effects of controlled substances and alcohol.
2. Each City employee has a responsibility to deliver service in a safe, **efficient** and conscientious manner. Therefore, the **manufacture**, use, sale, **dispensing**, distribution, possession or being under the influence of alcohol or any controlled substances, including prescription medication (when use of such prescribed medication is likely to affect the employee's ability to perform assigned duties) during working hours, as outlined in the provisions of this policy, is strictly **prohibited** and shall result in disciplinary action, up to and including termination.

→ **CHAPTER 15: CONTROLLED SUBSTANCE, ALCOHOL ABUSE AND TOBACCO TESTING**

Section 15.3 – Alcohol/Controlled Substance/Medication Use: Employee Responsibility

- Modified City Policy to elaborate on an employee’s responsibility when taking medications

<p>15.3 ALCOHOL/CONTROLLED SUBSTANCE/<u>MEDICATION</u> USE: EMPLOYEE RESPONSIBILITY</p>
<ol style="list-style-type: none">1. No employee shall report to work under the influence of alcohol, illegal substances or controlled substances without a prescription.2. Any employee <u>manufacturing, distributing, dispensing</u>, using, selling or in personal possession of alcohol, illegal substances or controlled substances while on duty or on City property at any time may be subject to termination, except when in the discharge of official duties or where otherwise permitted.3. Any employee using illegal substances or controlled substances without a prescription, at any time, on or off the job, is subject to disciplinary action, up to and including termination.4. Employees taking prescription or non-prescription <u>medications, including CBD oil</u>, must report this use to their supervisor or a designee when the use of such <u>medications</u> is likely to affect the worker's ability to perform assigned duties. It is the employee's responsibility to ascertain from his or her medical provider whether the medication is likely to have an adverse impact on the employee's performance of his or her duties, <u>or if it may interfere with the employee's ability to pass a drug screening and, whether prescribed or non-prescribed, the employee assumes the risk of such medication resulting in a positive test during drug screening which is subject to disciplinary action up to and including termination.</u> This provision is intended to protect the safety of each employee and his or her co-workers, property and the public. Employees failing to follow this instruction may be subject to disciplinary action, up to and including termination. Any information received from an employee under this provision will be kept confidential except to the extent it may be shared with individuals who are in a "need-to-know" position, such as the immediate supervisor or as required by state or federal law.5. Any use of controlled substances and alcohol abuse that has an adverse effect on the employee's performance or that could jeopardize the safety of others, City equipment or the City's relations with the public is a violation of this policy, and the employee may be subject to disciplinary action, up to and including termination.6. An employee scheduled to be on call, who is called out, is subject to the provisions in this policy.7. An employee not scheduled to be on call, who is called out and is under the influence of legally prescribed drugs or alcohol or who is impaired by alcohol, must so advise his or her supervisor and will not be required to report to work. An employee who is called out and who reports to work, but fails to notify his or her supervisor that he or she is under the influence or impaired may be subject to disciplinary action, up to and including termination.

→ **CHAPTER 15: CONTROLLED SUBSTANCE, ALCOHOL ABUSE AND TOBACCO TESTING**

Section 15.10 – CBD Oil Usage - NEW POLICY

- Added policy to address CDB oil use and testing

<p>15.10 <u>CBD OIL USAGE</u></p>
<p><u>Whether the use of CBD oil (with or without THC) is considered lawful/unlawful by the State of Texas, it's use is prohibited by city employees while on duty and performing the essential duties of their jobs. As part of random or post-accident drug screening, any employee testing positive for a CBD derivative is subject to disciplinary action up to and including termination.</u></p>